

ORDER NO. 89794

Application of Baltimore Gas and Electric
Company for an Electric and Gas Multi-
Year Plan

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9645

ORDER ON REQUESTS FOR REHEARING AND CLARIFICATION

Before: Jason M. Stanek, Chairman
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner
Odogwu Obi Linton, Commissioner
Mindy L. Herman, Commissioner

Issued: March 31, 2021

1. On January 15, 2021, pursuant to *Annotated Code*, Public Utilities Article (“PUA”) § 3-114, and Code of Maryland Regulations (“COMAR”) 20.07.02.08, Baltimore Gas and Electric Company (“BGE”) filed a Request for Rehearing of the Commission’s December 16, 2020 Order No. 89678, “Order on Pilot Application for a Multi-Year Rate Plan,” (hereinafter “the December 16 Order”), which authorized BGE to increase its electric and gas distribution rates subject to multiple conditions.¹ Also on January 15, 2021, the National Railroad Passenger Corporation (“Amtrak”) filed a Request for Rehearing, and the Maryland Office of People’s Counsel (“OPC”) filed a Request for Clarification of the December 16 Order. For the reasons discussed below, the Request for Rehearing of BGE is denied, the Request for Rehearing of Amtrak is granted in part and denied in part, and the Request for Clarification of OPC is granted.

I. BGE REQUEST FOR REHEARING

A. Party Positions

2. BGE requests rehearing regarding the Commission’s decision to adopt the electric depreciation expense adjustment proposed by OPC witness David Effron. BGE argues that the decision: (i) is based on the Commission’s erroneous belief that BGE did not use Commission-approved depreciation accrual rates; (ii) is not supported by substantial evidence; and (iii) is contrary to precedent.

3. First, BGE argues that the Commission accepted OPC’s depreciation adjustment “under the mistaken belief that BGE’s depreciation expense was calculated using

¹ Order No. 89678, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*, Case No. 9645 (Dec. 16, 2020) (“the December 16 Order”).

depreciation accrual rates that the Commission had not already approved with the benefit of a depreciation study.”² BGE posits that the Commission’s alleged error may have related to OPC witness Effron’s calculation of “composite depreciation rates,”³ which he testified fluctuate throughout the multi-year rate plan (“MRP”) period.⁴ BGE states “use of the term ‘composite depreciation rate’ carried the potential to inadvertently mislead the Commission into thinking that BGE proposed changes to its depreciation accrual rates each year of the [MRP].”⁵ BGE states that in fact, it has consistently calculated its depreciation expense in rate cases, including this MRP rate case, by applying the Commission-approved accrual rates for each plant account to the plant balances in each respective account during the time period under review.⁶ BGE states that the most recent case in which it filed a depreciation study was Case No. 9610.⁷ In that proceeding, all settling parties, including OPC, agreed to the depreciation accrual rates set forth in Exhibit 5 to the Stipulation and Settlement Agreement (“Settlement”).⁸ The Commission approved the Settlement, including the agreed-upon depreciation accrual rates.⁹ In the present MRP rate case, BGE asserts that it calculated the depreciation expense for the

² BGE Request for Rehearing at 7. To support the premise that a misunderstanding affected the Commission’s decision on depreciation, BGE cites language in the December 16 Order providing that “[t]he Commission’s policy is to require a depreciation study in order to change depreciation rates” and “the Commission will make an exception—in this case—from its general policy not to change a depreciation rate without a depreciation study for that one year.” December 16 Order at 99 and 100.

³ OPC witness Effron analyzed BGE’s depreciation expense by calculating the ratio of electric depreciation expense to the average balance of electric plant in service, to derive what he referred to as the “composite depreciation rate.” See Effron Direct at 24.

⁴ BGE Request for Rehearing at 7-8.

⁵ *Id.* at 8.

⁶ *Id.* at 3.

⁷ Case No. 9610, *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to its Electric and Gas Base Rates*.

⁸ See Order No. 89400, *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to its Electric and Gas Base Rates*, Case No. 9610 (Dec. 17, 2019) at 5.

⁹ BGE Request for Rehearing at 3-4, citing Order No. 89400 at 5, 14, and 16.

MRP period using the depreciation accrual rates that were approved in Case No. 9610.¹⁰ BGE concludes that the Commission adopted OPC's depreciation adjustment based on the erroneous assumption that BGE did not calculate depreciation expense based on previously approved depreciation accrual rates.

4. BGE next argues that Mr. Effron's depreciation adjustment is not supported by substantial evidence and is logically inconsistent.¹¹ BGE notes that OPC witness Effron used his composite depreciation rate calculation to evaluate the ratio of electric depreciation expense to the average balance of electric plant in service during the MRP period. However, BGE asserts that there is no substantive basis to conclude that fluctuations in the composite depreciation rates are a concern in an MRP, because, according to BGE, "a myriad of valid explanations" can justify the fluctuations.¹² To that end, BGE contends that company witness Vahos produced record evidence identifying plant additions with shorter average service lives that explained the increase.¹³ In particular, Mr. Vahos testified that BGE "is implementing a variety of IT investments that do generally have shorter than average lives," which he argued "is a legitimate cause for the increasing composite rate witness Effron notes in his depreciation calculations."¹⁴

5. BGE further contends that Mr. Effron did not produce any evidence to contradict BGE's explanation. Additionally, BGE portrays Mr. Effron's analysis as logically inconsistent because he found acceptable fluctuations in the composite depreciation rate

¹⁰ *Id.* at 4. BGE notes that Company witness David Vahos testified during the hearing that BGE's depreciation expense "reflects updated depreciation rates in accordance with the Case No. 9610 Stipulation and Settlement Agreement. It is not anticipated that these rates will change during the [MRP] period." Vahos Direct Part 2 at 37.

¹¹ BGE Request for Rehearing at 10-11.

¹² *Id.* at 10.

¹³ *Id.* at 5.

¹⁴ *Id.* at 6, citing Vahos Rebuttal at 54-55.

for gas but not for electric and because he testified that IT investments could explain composite depreciation rate fluctuations in 2023 but not for 2021-2022. Accordingly, BGE argues that the record does not support the Commission's acceptance of Mr. Effron's depreciation adjustment.¹⁵

6. BGE's final argument is that the Commission's decision regarding depreciation expense is contrary to precedent. In contrast to BGE's methodology of calculating depreciation expense through use of Commission-approved depreciation accrual rates, OPC witness Effron analyzed BGE's depreciation expense through use of his composite depreciation rate.¹⁶ BGE contends that Mr. Effron's composite depreciation rate "is not a rate that BGE uses to record depreciation expense on its financial statements," and is "merely an analytical tool that [Mr. Effron] used to evaluate fluctuations in the depreciation expense over the [MRP] period."¹⁷ BGE concludes that Mr. Effron's depreciation adjustment "violates the Commission's practice of calculating depreciation expense based on Commission-approved depreciation accrual rates that were set with the benefit of a depreciation study" and is "inconsistent with Commission practice and precedent."¹⁸

7. BGE asserts that the Commission's decision to accept OPC's depreciation adjustment will result in BGE's approved electric distribution rates not accounting for \$37 million in electric depreciation expense that BGE expects to incur over the MRP period. If uncorrected, BGE states that customers will be confronted with a \$37 million

¹⁵ *Id.* at 6-7.

¹⁶ *See* Effron Direct at 24.

¹⁷ BGE Request for Rehearing at 5.

¹⁸ *Id.* at 11.

under-recovery of electric depreciation expense at the end of the MRP, during the reconciliation process.¹⁹ To remedy the putative error, BGE requests that the Commission enter an order reversing the electric depreciation expense adjustment required by the December 16 Order and authorize BGE to adjust the customer rate offset, which will prevent an increase in customer bills in 2021.²⁰ Alternatively, BGE requests that the Commission grant it authority to defer in a regulatory asset the difference between the electric depreciation expense included in base rates in the December 16 Order and the electric depreciation expense it incurs based on the depreciation accrual rates previously approved in Case No. 9610.

8. OPC opposes BGE's Request for Rehearing, arguing the Commission properly found, in accordance with Mr. Effron's composite depreciation rate analysis, that the forecasted electric depreciation expense over the term of the MRP reflected an unexplained increase in depreciation expense relative to plant in service.²¹ OPC argues that use of a composite rate is not precluded in an MRP, noting that BGE also used a composite rate for new investments that go into service after January 1, 2020. OPC also contends that substantial evidence supports the Commission's acceptance of Mr. Effron's depreciation adjustment. Specifically, Mr. Effron testified that IT investments in 2021 and 2022 paled in comparison to BGE's total plant additions and would not "noticeably affect the composite depreciation rate."²² OPC also asserts that Mr. Effron's conclusions are not logically inconsistent, as BGE had alleged. While Mr. Effron did testify that

¹⁹ *Id.* at 2, 9.

²⁰ *Id.* at 12. For a discussion of the customer rate offsets, *see* the December 16 Order at 12 *et seq.*

²¹ OPC Response at 2-3.

²² *Id.* at 4, citing Effron Surrebuttal at 13.

BGE’s IT investments could affect the composite depreciation rate in 2023 (in contrast to 2021-2022), that conclusion was based on the fact that IT investments in 2023 were approximately 4.9 times larger than IT investments in 2021 and 3.4 times larger than IT investments in 2022.²³

9. Regarding BGE’s precedent argument, OPC asserts that BGE also used composite depreciation rates to calculate the depreciation on plant additions in the years of the MRP. “Thus, BGE uses the same methodology that it claims is not valid for Mr. Effron to use.”²⁴ Finally, OPC opposes BGE’s proposed remedies, including the creation of a regulatory asset, arguing: “The Commission has established a process to reconcile differences between actual and forecasted revenue requirements over the term of the [MRP]. There is no reason to depart from that process in the selective and one-sided fashion sought by BGE.”²⁵

Commission Decision²⁶

10. Contrary to BGE’s assertion, the Commission did not accept Mr. Effron’s depreciation adjustment under the erroneous assumption that BGE failed to use Commission-approved depreciation accrual rates.²⁷ Instead, the Commission accepted Mr. Effron’s adjustment because it agreed with his analysis that the forecasted electric depreciation expense over the term of the MRP reflected an unexplained increase in depreciation expense relative to plant in service. Ultimately, the Commission did not

²³ *Id.* at 5-6.

²⁴ *Id.* at 6.

²⁵ *Id.* at 7.

²⁶ Chairman Stanek and Commissioner O’Donnell filed a concurring statement on this issue.

²⁷ The Commission acknowledges that the language used in the December 16 Order accepting OPC’s depreciation adjustment could have been more clearly written to better express the Commission’s rationale.

accept BGE's projection of its future depreciation expense and amended it pursuant to Mr. Effron's analysis.

11. The Commission understood that BGE based its MRP depreciation expense on the depreciation accrual rates used in Case No. 9610. The parties to that case—including OPC—agreed to the depreciation accrual rates set forth in the Settlement, and the Commission approved that Settlement. Additionally, in the present case, Mr. Vahos presented testimony addressing the Case No. 9610 Settlement, including the agreed-upon depreciation accrual rates,²⁸ and Mr. Effron acknowledged BGE's use of those accrual rates in his testimony.²⁹

12. What the Commission found convincing about Mr. Effron's depreciation testimony was his analysis of how depreciation expenses in relation to the balances of plant in service changed materially over the course of the MRP. Mr. Effron testified that the composite depreciation rate for BGE's electric plant during the historic test year was 3.04%.³⁰ However, the composite depreciation rate increased to 3.12% in the 2020 bridge year. It then increased in each year of the MRP, reaching a maximum of 3.24% in the year 2024. As Mr. Effron testified: "The composite depreciation rate should not vary materially from year to year" without reasoned explanation.³¹ That does not mean that Mr. Effron, or the Commission, conflated the composite depreciation rate with the

²⁸ Vahos Direct at 37. Mr. Vahos testified that BGE's depreciation expense "reflects updated depreciation rates in accordance with the Case No. 9610 Stipulation and Settlement Agreement. It is not anticipated that these rates will change during the [MRP] period."

²⁹ Mr. Effron testified that "[t]here have been no further changes in the electric depreciation accrual rates since Case No. 9610." Effron Direct at 26.

³⁰ *Id.* at 24.

³¹ *Id.* Mr. Effron testified that such reasons could include changes to the depreciation accrual rates or amortization rates applied to individual plant accounts, or changes to the relative weightings of individual plant accounts as a result of plant additions to or retirements from individual accounts.

Commission-approved depreciation accrual rates. It just means that when making a forecast about what depreciation expenses will be several years in the future, the ratio of electric depreciation expense to the average balance of electric plant in service should be relatively consistent, absent a compelling explanation.

13. BGE is correct that Mr. Vahos testified about potential reasons for variation in the composite depreciation rate. For example, he testified that BGE “is implementing a variety of IT investments which do generally have shorter than average lives.”³² However, the Commission found Mr. Effron’s testimony more compelling. In particular, Mr. Effron examined IT investments in 2021 and 2022 and found that they totaled just \$27.3 million and \$38.8 million respectively, representing only a small percentage of the total plant additions of \$800 million planned for those years.³³ He concluded: “I do not believe that the magnitude of IT investments cited [by BGE] for those years would noticeably affect the composite depreciation rate.”³⁴

14. The Commission does not agree with BGE’s argument that Mr. Effron’s analysis is logically inconsistent. It is true that Mr. Effron ultimately found acceptable fluctuations in his calculated gas composite depreciation rate, while simultaneously finding unacceptable fluctuations in his calculated electric composite depreciation rate. However, he provided reasoned explanations for the dichotomy. Specifically, he testified that BGE’s gas composite depreciation rate “is relatively constant over the years of the MRP.”³⁵ Additionally, the composite depreciation rate between the historic test year and

³² Vahos Rebuttal at 54.

³³ Effron Surrebuttal at 13.

³⁴ *Id.*

³⁵ Effron Direct at 24.

the MRP did not show as large of an increase for gas as it did for electric. Accordingly, Mr. Effron's analysis of BGE's gas depreciation expense fits within his underlying assumption that the composite depreciation rate should not vary materially from year to year absent explanation, and he therefore recommended no changes to BGE's gas depreciation expense. BGE's electric depreciation expense, in contrast, showed a significant fluctuation in the composite depreciation rate, particularly during the years of the MRP.

15. Similarly, Mr. Effron explained why BGE's IT investments could justify composite depreciation rate fluctuations in 2023 but not for 2021-2022. He testified that BGE's IT investments in 2021 and 2022 were relatively small compared to total plant additions and would not noticeably affect the composite depreciation rate. In contrast, for 2023, he observed that BGE's IT investments totaled \$132.8 million. As OPC observed, IT investments for 2023 are approximately 4.9 times the size of IT investments in 2021 and 3.4 times the size of IT investments in 2022.³⁶ Mr. Effron accordingly found that "IT investments of this magnitude could plausibly affect the composite depreciation rate."³⁷ He therefore modified the 2023 composite depreciation rate he used to calculate the depreciation expense in that year, in accordance with the record evidence.

16. Regarding precedent, BGE is correct that, in the context of a traditional historic test-year rate case, the Commission's practice is to calculate depreciation expense based on Commission-approved depreciation accrual rates that were set with the benefit of a depreciation study. However, the Commission finds arguments about precedent

³⁶ OPC Response at 5-6.

³⁷ Effron Surrebuttal at 13.

unconvincing in the context of a *pilot* MRP. This rate case represents Maryland’s first step toward setting rates for multiple years in the future based on projections.³⁸ There is no precedent in Maryland for administering an MRP. Although applying approved depreciation accrual rates to actual plant-in-service worked well for traditional historic test-year rate cases, the MRP requires a forecast of what plant will be in service during the MRP period. The process requires a significant amount of forecasting that was absent in traditional rate cases. As discussed above, Mr. Effron presented compelling testimony, through the use of his composite depreciation rate analysis, that BGE’s projection was not reasonable. For electric plant-in-service, BGE’s composite depreciation rate fluctuated significantly, even when considering additions of IT. The Commission therefore accepted Mr. Effron’s recommended adjustments to make the projection more accurate.

17. OPC also correctly observes that BGE used a composite rate in computing its depreciation expense – demonstrating that a composite rate is not anathema in an MRP. BGE’s response to OPC’s data requests show that for all existing assets placed into service prior to January 1, 2020, depreciation will be calculated based on the Case No. 9610 depreciation accrual rates. However, for new investments that have not yet gone into service, BGE will calculate depreciation from the date the plant is placed into service based on the forecasted depreciation group to which the project has been assigned. BGE acknowledged in its response to the data request that the “depreciation groups are

³⁸ See Order No. 89482, *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company*, Case No. 9618 (Feb. 4, 2020) (“Pilot Order”) at 14: “MRPs differ from traditional ratemaking principles by specifying rates or revenues for future years using forecasted data and information beyond the rate-effective year following a traditional rate case.”

composite rates that are based on the rates accepted in the Case No. 9610 Stipulation and Settlement Agreement.”³⁹

18. Finally, the Commission observes that to the extent BGE’s actual depreciation during the MRP deviates from the projected amount, the company (or the ratepayer) has a remedy. The Commission has established a process in this MRP pilot to reconcile differences between actual and forecasted revenue requirements over the term of the MRP that will consist of: (i) an annual information filing; (ii) a consolidated reconciliation and prudence review in a subsequent rate case; and (iii) a final reconciliation and prudence review after the conclusion of the pilot MRP rate-effective period.⁴⁰ To the extent BGE is correct that its actual depreciation expense will exceed the amount collected through rates during the MRP, BGE will be made whole through the reconciliation process. Further, the transition to an MRP was meant to minimize, not completely eliminate regulatory lag.⁴¹ Therefore, the Commission declines BGE’s request to create a special exception for one issue associated with the MRP by creating a regulatory asset for depreciation expense.

³⁹ Effron Direct, Response to OPC Data Request 23.

⁴⁰ See Order No. 89482, *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company*, Case No. 9618 (Feb. 4, 2020) (“Pilot Order”) at 78.

⁴¹ The Commission notes that although one purpose of the MRP is to reduce regulatory lag, especially vis-à-vis a historic rate case, the Commission never purported to entirely remove all regulatory lag from rate cases. See Pilot Order at 37, noting that the MRP “is an alternative form of ratemaking that substantially reduces ... regulatory lag...”

II. AMTRAK REQUEST FOR REHEARING

A. Party Positions

19. On rehearing, Amtrak asserts the Commission's December 16 Order erred in several ways. *First*, Amtrak claims that the December 16 Order "makes a mathematical error in characterizing Amtrak's proposal."⁴² Specifically, Amtrak claims that the Commission's December 16 Order misstated Amtrak's proposal to correct the disproportionate over-collection from Schedule T customers⁴³ as requesting to reduce Schedule T revenue to a level that would achieve a relative rate of return ("RROR") of 1.0 and not 1.66. To support its argument, Amtrak points to only one section of the December 16 Order which makes reference to an RROR of 1.0 in relation to Schedule T and draws the conclusion that the Commission uses this language as the basis of its decision to not grant Amtrak's proposal. Specifically, Amtrak highlights the following language from the December 16 Order:

"A simple review of BGE's ECOSS presented in Exhibit No. SCF-3 of Amtrak witness Faryniarz shows the required reduction in Schedule T's revenue to achieve an RROR of 1.0 is \$2.9 million. Schedule T's distribution revenue recovered from base rates which are being set in this proceeding are approximately \$2.3 million which means the Commission would have to reduce Schedule T's distribution rates to effectively zero (or negative) to achieve Amtrak's outcome."⁴⁴

Amtrak argues that not only is this excerpted language from the December 16 Order not reflective of its proposal to reduce Schedule T's RROR to 1.66, but that it also contains a

⁴² Amtrak Petition at 2.

⁴³ *Id.* at 4.

⁴⁴ *Id.*, citing the December 16 Order at 461.

mathematical error.⁴⁵ Further, Amtrak claims that its proposal did not suggest that the requested relief come solely from Schedule T's distribution charges.⁴⁶ Amtrak notes that "[t]he reduction could be taken from Schedule T's total revenue of \$4,748,652,⁴⁷ which includes direct distribution charges, as well as the revenues associated with BGE's seventeen riders and surcharges applicable to Schedule T."⁴⁸

20. *Second*, Amtrak argues the December 16 Order fails to provide adequate relief to Amtrak. Specifically, Amtrak points out that the December 16 Order directs BGE to include certain information in its 2021 Annual Informational Filing such as an examination of "what costs, riders, surcharges, or other revenue streams are driving the significant over-earning by Schedule T relative to other schedules."⁴⁹ However, Amtrak claims that "the process surrounding the Informational Filing provides no avenue for additional relief."⁵⁰ Amtrak further contends that "[t]here is not a guarantee that the Informational Filing will provide enough information to enable Schedule T customers to muster an evidentiary basis for seeking additional relief from the revenue over collection present with Schedule T."⁵¹ Amtrak argues that BGE's embedded cost of service study ("ECOSS") presented in this proceeding does not provide any separation of the costs that are allocated to Schedule T between "pure" distribution-related costs and rider-related costs."⁵² Consequently, Amtrak recommends that BGE be directed to provide the

⁴⁵ *Id.* at 5.

⁴⁶ *Id.*

⁴⁷ Amtrak Ex. 1 at 7, line 1.

⁴⁸ Amtrak Petition at 5.

⁴⁹ *Id.* at 6, citing the December 16 Order at 462.

⁵⁰ *Id.* at 6-7.

⁵¹ *Id.* at 7.

⁵² *Id.*

following information as part of its 2021 Annual Informational Filing: “a detailed accounting of: (1) the distribution costs and revenues that are allocated to and collected from Schedule T customers; and separately, (2) all rider-related costs and revenues that are allocated to and collected from Schedule T customers.” Amtrak asserts that this level of detailed accounting will enable an analysis of the further steps that can and should be taken to address the anomalous RROR for Schedule T.⁵³ Amtrak also states that the timing of any potential future relief that would be granted under the December 16 Order is problematic and suggests that the Order be modified to “establish a clear process through which Amtrak may obtain additional relief and obtain such additional relief before mid-2022.”⁵⁴

21. *Third*, Amtrak argues that ordering the removal of \$200,000 from Schedule T’s distribution revenues was not sufficient to provide for just and reasonable rates. Amtrak acknowledges the Commission’s effort to provide some “immediate relief from Schedule T overcharges” by removing \$200,000 of distribution revenue in Step One of the rate design process from Schedule T; however, Amtrak argues that this measure is inadequate to render Schedule T rates just and reasonable. Amtrak argues that “The Commission has the ability and obligation, based on the record developed in this proceeding, to provide further relief now in order to set rates for Schedule T that are just, reasonable, and not unduly discriminatory.”⁵⁵ As a result, Amtrak contends that the Commission should require BGE to set Schedule T rates in a manner that ensures that overall revenue from

⁵³ *Id.*

⁵⁴ *Id.* at 8.

⁵⁵ *Id.*

Schedule T customers do not produce an excessive RROR.⁵⁶ Amtrak argues that the Commission's setting Schedule T rates such that its customers obtain adequate relief from chronic over-collection is consistent with the public good and reflects the Commission's obligation under PUA § 4-102.⁵⁷

22. Staff filed a response⁵⁸ to Amtrak's Petition for Rehearing. In its Response, Staff argues that the Commission's Order is free of mathematical errors, properly characterizes Amtrak's position, and is supported by the evidence in the record.

23. Staff argues that the December 16 Order is based on evidence in the record and is without error. In support of its position, Staff points out that in establishing BGE's MRP rates, the Commission utilized the two-step rate design process, which is its customary practice. For Step One of the process, Staff notes that as is customary, Schedule T, which is an overearning (or over collecting) class, was not allocated any revenues. Further, Staff indicates that the December 16 Order allocates "[t]wenty percent of the authorized revenue requirement increase to under-earning Schedule R in Step 1 of the two-step allocation method, with additional revenue allocated to all classes other than Schedules T and PL in Step 2 each year of the MRP."⁵⁹ Staff also contends that the December 16 Order properly characterized Amtrak's proposal. Staff observes that in several locations the December 16 Order accurately describes that Amtrak's proposal was for Schedule T's

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Response of the Staff of the Public Service Commission of Maryland to Petition for Rehearing of National Railroad Passenger Corporation ("Staff Response") filed January 28, 2021.

⁵⁹ Staff Response at 1-2.

RROR to be set at 1.66, but singularly referenced an RROR of 1.0 once in relation to Amtrak witness Faryniarz's Exhibit No. SCF-3.⁶⁰

24. Additionally, Staff asserts that the rates established in the December 16 Order were just and reasonable and highlighted that the Commission followed its usual two-step allocation rate design process to bring "underearning classes closer to parity at the outset of the rate setting process."⁶¹ Staff points out that in this case "Schedule T received no increase in Step 1 because it was over earning." However, "Schedule T was awarded a \$200,000 decrease in Step 1, Year 1 of the three-year [MRP], which is highly unusual, even for over-earning classes."⁶² Staff also explains that the overall goal of the Commission's rate setting actions is to move all classes closer to a unitized rate of return ("UROR") of 1, and with respect to Schedule T, which started at the outset of Case No. 9645 with a UROR of 12.61, it "is projected to decrease each year of the [MRP] with an estimated value of 8.34 in 2023."⁶³ Additionally, Staff describes how the December 16 Order directed BGE to examine other costs, riders, surcharges and other revenue streams that are driving the significant over-earning by Schedule T relative to other classes.⁶⁴

Commission Decision

26. Contrary to Amtrak's Petition, the Commission's December 16 Order properly characterizes Amtrak's position, is free of mathematical errors that would unfairly impact the adjudication of Amtrak's position, and yields just and reasonable rates for Schedule T customers and all other rate classes.

⁶⁰ *Id.* at 2.

⁶¹ *Id.* at 3.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

27. Regarding the characterization of Amtrak’s position, the Commission’s December 16 Order is replete with direct quotes from Amtrak’s key witness -- who described Amtrak’s proposal for Schedule T’s RROR. In Paragraph 449 of the December 16 Order, the Commission summarizes Amtrak witness Faryniarz’s assessment of BGE’s relative rates of return from 2010 to 2014 ECOSS and the relative rates of return for 2019 ECOSS finding that on average Schedule T customers were over contributing. The Commission’s December 16 Order then quoted Mr. Faryniarz’s recommendation that the Commission “correct this chronic inequity by ordering BGE to redesign all of its rates to bring Rate T RROR within the bandwidth of +/- 10% around the system average, that is, to within a 0.9 – 1.1 RROR bandwidth over the three-year rate horizon contemplated in this proceeding.”⁶⁵

28. Further, the December 16 Order at Paragraph 450 describes Amtrak’s proposal to move Schedule T toward the system average. Specifically, the Commission’s December 16 Order states that “...Mr. Faryniarz proposed to first allocate any reductions to the revenues sought by BGE in this case and approved by the Commission, to Rate T, so that this class contributes at *an RROR of no greater than 1.66* by no later than the third year of the BGE 3-year rate plan. If no revenue reductions below the revenues sought by BGE are approved, or if they are insufficient to lessen the RROR for Rate T to no greater than 1.66, Mr. Faryniariz argued the Commission should order BGE to implement minor increases to Rate Schedule R to ensure not only that the Rate T class is left contributing at *an RROR no greater than 1.66*, but that Rate R is brought marginally closer to parity with the BGE system average rate of return by no later than the third year of BGE’s

⁶⁵ December 16 Order at 449.

three-year rate plan”⁶⁶ (emphasis added). Additionally, within the Commission Decision section of the December 16 Order in Paragraph 456, the Commission again properly articulates Amtrak’s position by stating “Amtrak, unlike the other parties, recommends that the Commission direct BGE to redesign all of its rates to bring Schedule T within the relative rate of return to around + /- 10 percent of the system average over the period of the MRP, or *at least to an RROR of 1.66*”⁶⁷ (emphasis added). On multiple instances, the Commission’s December 16 Order properly describes or even quotes verbatim the recommendation put forth by Amtrak witness Faryniarz regarding Schedule T’s RROR. Amtrak’s Petition that the Commission erred in its characterization of its requested relief is flatly incorrect.

29. The Commission rejects Amtrak’s argument that the Commission’s December 16 Order mischaracterized Amtrak’s proposal. As pointed out above, the Commission had full and complete understanding of Amtrak’s proposal for BGE’s rates to be designed in a manner where the Schedule T class is left contributing at *an RROR no greater than 1.66*. As Staff notes, the only time that achievement of an RROR of 1.00 is discussed is in relation to witness Faryniarz’s Exhibit No. SCF-3. “By referencing SCF-3, the Commission was merely pointing out that an RROR of 1 could not be accomplished for Amtrak without zeroing out its rates.”⁶⁸ In rate design, the Commission’s overall goal is to move all classes closer to an RROR of 1.00. This is a known and accepted concept and principle and one that Amtrak witness Faryniarz described in his Direct Testimony. Mr. Faryniarz explained that:

⁶⁶ December 16 Order at 450.

⁶⁷ *Id.* at 456.

⁶⁸ Staff Response at 2.

RROR is a common measure of inter-class equity and a measure of the extent to which rates are being designed to collect the costs of service to each class, that is, the extent to which rates are adhering to the principle of cost causation. Following the preparation of an electric cost of service study (ECOSS), RROR is a metric that shows the relative or unitized rate of return on rate base, i.e., the contribution from each class to Company earnings as a fraction, compared to the systemwide average (scaled in this metric as 1.0). An RROR > 1.0 indicates a class is over-contributing to BGE earnings as rates are recovering more than the class' allocated cost of service. Likewise, an RROR < 1.0 indicates a class is under-contributing to BGE earnings and that rates for that class are not recovering the full cost of service for the class.⁶⁹

The Commission was by no means substituting an RROR of 1.00 for Amtrak's proposed Schedule T RROR of 1.66. Rather, the Commission merely pointed out the theoretical effect of an RROR of 1.00 in relation to witness Faryniarz's Exhibit No. SCF-3.

30. The Commission's December 16 Order establishes just and reasonable rates based on the evidence presented by the record while simultaneously taking proactive measures to bring Schedule T's RROR into better alignment with other classes and maintain fundamental principles of rate design such as gradualism, reasonableness, economic efficiency, inter- and intra- class equity, and avoidance of rate shock.

31. The Commission followed its standard two-step allocation method "to bring underearning classes closer to parity at the outset of the rate setting process."⁷⁰ As customary, Schedule T received no increase in Step 1 because it was over-earning; moreover, the Commission awarded a decrease to Schedule T in Step 1, which is highly unusual and generally not the Commission's practice.⁷¹ In its Initial Brief, Amtrak acknowledged how unusual a Step 1 decrease is when it stated that "the record here

⁶⁹ Faryniarz Direct Testimony at 13.

⁷⁰ Staff's Response at 3.

⁷¹ *Id.*

shows that applying the Commission’s ‘no decrease if there is an increase’ policy universally, with no exceptions, could perpetuate indefinitely the disproportionate RROR for Schedule T.” Here, to establish just and reasonable rates, the Commission did make an exception in this case. As a result, Staff points out that “Schedule T’s UROR, which was 12.61 at the outset of Case No. 9645, is projected to decrease each year of the [MRP] with an estimated value of 8.34 in 2023.”⁷²

32. In addition to these measures to bring Schedule T into better alignment, the Commission also directed BGE to examine what costs, riders, surcharges, and other revenue streams are driving the significant over earning by Schedule T compared to other schedules, and file the results of this analysis with its 2021 Annual Informational Filing. Amtrak states that it appreciates the Commission’s recognition that more than direct charges contribute to the disproportionately high RROR for Schedule T, but argues that the December 16 Order’s Annual Informational Filing Requirement fails to provide an avenue for additional rate relief between the filing of MRPs.

33. The Commission finds that Amtrak’s recommendation for certain additional information should be included as part of BGE’s 2021 Annual Informational Filing. Therefore, in addition to the items outlined in the Commission’s December 16 Order, BGE is directed to provide in its 2021 Annual Informational Filing, “a detailed accounting of: (1) the distribution costs and revenues that are allocated to and collected from Schedule T customers; and separately, (2) all rider-related costs and revenues that are allocated to and collected from Schedule T customers.” Amtrak purports that this

⁷² *Id.*

level of detailed accounting will enable an analysis of the further steps that can and should be taken to address the anomalous RROR for Schedule T.⁷³

34. The Commission also directs that, should BGE determine with its detailed accounting that Schedule T's RROR over-earning is due primarily to non-base rate charges, then BGE should also include proposed solutions and timelines for reducing those charges during the MRP period. According to Order No. 89482, base rates cannot be changed during the pendency of an MRP.⁷⁴ However non-base rate charges can be fixed before the next base rate case. In accordance with Order No. 89482, "the Pilot Utility must file an annual informational filing within 90 days of the end of the first and second annual periods during the Pilot MRP."⁷⁵ Further Order No. 89482 finds that "[f]ollowing each annual informational filing, the Commission will allow non-utility parties 60 days to conduct discovery from the utility and provide written comments on the annual informational filing. If Staff, OPC, or another party [such as Amtrak] demonstrates a significant disparity between revenues and expenses to the detriment of ratepayers, the Commission may hold a hearing and determine whether an adjustment of the revenue requirement and/or rates is appropriate."⁷⁶ Therefore, the Commission finds that the December 16 Order with the clarification and additional filing requirements for BGE described herein provides a process by which Amtrak can pursue additional relief.

⁷³ Amtrak Petition at 7.

⁷⁴ Order No. 89482 at 79.

⁷⁵ *Id.*

⁷⁶ *Id.*

III. OPC REQUEST FOR CLARIFICATION

A. Party Positions

35. OPC requests clarification of two issues related to the December 16 Order. First, OPC argues that the Order’s language regarding reconciliation is inconsistent with the Commission’s prior statements on that issue. Second, OPC contends that there is an internal inconsistency in the Order’s language regarding BGE’s COVID-19 regulatory asset.

36. Regarding reconciliation, OPC observes that in Order No. 89482, “Order Establishing Multi-Year Rate Plan,” (“Pilot Order”) the Commission stated that reconciliation will consist of three distinct means, which are: (i) an annual information filing; (ii) a consolidated reconciliation and prudence review in a subsequent rate case; and (iii) a final reconciliation and prudence review after the conclusion of the Pilot MRP rate-effective period.⁷⁷ Nevertheless, OPC notes that the December 16 Order provides in a footnote that “the reconciliation process will occur at the end of BGE’s MRP.”⁷⁸ OPC argues that this footnote is inconsistent with the Pilot Order in two respects. First, the footnote “refers to only one reconciliation process,” while the Pilot Order “provides for two separate reconciliations after the annual information filings.”⁷⁹ Second, the December 16 Order provides that reconciliation will occur “at the end of BGE’s MRP,”

⁷⁷ Pilot Order at 78.

⁷⁸ December 16 Order at 90, n. 143.

⁷⁹ OPC Request for Clarification at 2.

while the Pilot Order states that the consolidated reconciliation will occur during year three of the MRP, meaning before the end of the MRP.⁸⁰

37. To the extent the Commission orders are inconsistent regarding reconciliation, OPC argues that the process outlined in the Pilot Order is superior because the Commission will have the opportunity to review most of the spending in the MRP before ruling on BGE's next rate application. OPC contends that the process described in the Pilot Order is "more conducive to effective regulation" than a single, post-MRP reconciliation, especially in the context of a pilot proceeding.⁸¹

38. Regarding the COVID-19 regulatory asset, OPC observes that BGE proposed to establish a regulatory asset for the recovery of actual incremental COVID-19 costs, net of savings, over a five-year period beginning in 2023. Commission Staff did not oppose the revenues, costs, or savings included in the COVID-19 regulatory asset. However, Staff did propose that lost revenues (for late payment charges and service connections) and savings not be included in rate base and therefore not earn a return.⁸² The December 16 Order accepted Staff's unopposed proposal, and provides: "The Commission directs that lost revenues and savings not be included in rate base, and that the COVID-19 regulatory asset begin amortization in the year 2021 rather than 2023."⁸³ Nevertheless, as observed by OPC, a previous sentence in the December 16 Order provides that the amortization will occur "over a five-year period beginning in 2023."⁸⁴ OPC asks that the Commission

⁸⁰ OPC Request for Clarification at 2, citing December 16 Order at 90, n. 143.

⁸¹ *Id.* at 3.

⁸² December 16 Order at 41.

⁸³ *Id.* at 43.

⁸⁴ *Id.*

clarify that it intended for the COVID-19 regulatory asset to begin amortization in the year 2021 rather than 2023.⁸⁵

Commission Decision

39. The Commission grants OPC's Request for Clarification regarding reconciliation. The abbreviated language used in footnote 143 of the December 16 Order was not intended to cause a deviation from the reconciliation process outlined in the Pilot Order. As provided in the Pilot Order, there will be a consolidated reconciliation and prudence review in BGE's next rate case, as well as a final reconciliation and prudence review after the conclusion of the Pilot MRP rate-effective period.⁸⁶ Additionally, regarding timing, the consolidated reconciliation will occur *during* year three of the MRP, *i.e.*, before the end of the MRP. The final reconciliation will occur after the end of the MRP.

40. Regarding the COVID-19 regulatory asset, the Commission grants OPC's Request for clarification. The Commission intended that the COVID-19 regulatory asset begin amortization in the year 2021 rather than 2023. Therefore, the clause "over a five-year period beginning in 2023" should be stricken from the December 16 Order.

IV. BGE's Offset Rider

41. In reviewing the December 16 Order and the related compliance tariffs, in connection with the Requests for Rehearing filed by Amtrak and BGE, the Commission notes that the language in BGE's tariff (#34 related to the offset rider), which was approved by the Commission on January 14, 2021, could be viewed as inconsistent with

⁸⁵ OPC Request for Clarification at 4.

⁸⁶ See Order No. 89482, *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company*, Case No. 9618 (Feb. 4, 2020) at 78.

the Commission's December 16 Order regarding the timing of filing the offset rider credit. The Commission believes that BGE's tariff language is ambiguous because it could be interpreted to allow BGE to file the offset rider credit on a cycle other than what was prescribed in the December 16 Order, which is not what the Commission intended. Therefore, BGE and Staff are directed to review the tariff with respect to the offset rider credit and to file a revised tariff (if needed) removing any ambiguity with regard to the direction set forth in the Commission's December 16 Order.

IT IS THEREFORE, this 31st day of March, in the year Two Thousand Twenty One, by the Public Service Commission of Maryland,

ORDERED: (1) That Baltimore Gas and Electric Company's Request for Rehearing of the Commission's December 16, 2020 Order No. 89678 is denied;

(2) That the Application for Rehearing of the National Railroad Passenger Corporation (Amtrak) is granted in part, and denied in part as set forth herein;

(3) That as prescribed herein, BGE is directed to file certain additional detailed accounting information and related proposed solutions and timelines as part of its 2021 Annual Informational Filing;

(4) That the Request for Clarification of the Maryland Office of People's Counsel is granted; and

(5) That BGE and Staff are directed to review the tariff with respect to the offset rider credit and to file a revised tariff, if needed, removing any ambiguity with regard to the direction set forth in the December 16 Order.

/s/ Jason M. Stanek _____

/s/ Michael T. Richard _____

/s/ Anthony J. O'Donnell _____

/s/ Odogwu Obi Linton _____

/s/ Mindy L. Herman _____

Commissioners

**Concurring Statement of
Chairman Jason M. Stanek and Commissioner Anthony J. O'Donnell**

While we agree with the decision to deny BGE's rehearing request regarding its depreciation expense adjustment, we recognize there can be more than one just and reasonable approach to calculating the adjustment. BGE's proposal to base its depreciation expense on rates previously approved by the Commission is not unreasonable. However, we agree with the Commission's finding that OPC's depreciation adjustment is based on a more compelling analysis of unexplained increases in BGE's forecasted depreciation expense over the MRP period.

The Commission's decision in this matter is in the context of the pilot multi-year rate case, which by its nature means the case will yield valuable information and learnings for the benefit of future rate cases. If BGE realizes an under-recovery of electric distribution expense at the end of the MRP period, the reconciliation process will not only resolve this gap but also provide instruction as to an appropriate methodology to consider in future cases. As it stands, we are unable to determine whether the traditional method of applying previously approved depreciation accrual rates to actual plant-in-service is an appropriate method to use with forecasted plant that is anticipated to be placed into service during the MRP period. For these reasons, we concur.

/s/ Jason M. Stanek

Chairman

/s/ Anthony J. O'Donnell

Commissioner