

ORDER NO. 89893

Washington Gas Light Company’s
Application for Authority to Increase
Its Rates and Charges

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9651

Issue Date: July 29, 2021

ORDER DENYING REHEARING

1. On April 9, 2021, the Commission issued Order No. 89799, resolving 12 issues in appeals filed by Washington Gas Light Company (“WGL”), the Maryland Office of People’s Counsel (“OPC”), and the Apartment and Office Building Association of Metropolitan Washington from the February 12, 2021 Proposed Order by the Public Utility Law Judge (“PULJ”). On May 10, 2021, OPC submitted a Petition for Rehearing pursuant to *Annotated Code of Maryland*, Public Utilities Article (“PUA”) § 3-114, in which it challenges: (1) whether the Commission sufficiently addressed OPC’s objections to the prudence of costs incurred by WGL for 14 of its capital projects; and (2) the Commission’s conclusion that WGL satisfied its obligations to demonstrate \$800,000 in annual synergy savings pursuant to the Commission’s approval of the merger between AltaGas Ltd. and WGL Holdings, Inc. In this Order, the Commission denies OPC’s Petition for Rehearing.

2. In *Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n*, 246 Md. App. 388 (2020) (“*Office of People’s Counsel*”), the Court of Special Appeals addressed a recurring

objection from OPC that the Commission failed to sufficiently address objections made by OPC. That case involved a petition by Columbia Gas of Maryland, Inc. for higher utility rates. In one of its appellate issues, OPC contended that the Commission failed to “offer any explanation for its implicit rejection of OPC’s argument regarding PUA § 4-211’s limitation on a utility’s ability to recover environmental remediation expenses.” OPC asked the Court of Special Appeals to “order a remand so that the Commission may more clearly state the rationale for its decision.”¹

3. In the present case, as in *Office of People’s Counsel*, the PULJ and the Commission summarized OPC’s positions as well as WGL’s response to each issue before explaining the basis upon which the Commission based its final decision. In *Office of People’s Counsel*, the Court of Special Appeals concluded that the “Commission need not have explained in detail the basis for its decision when its rationale can be readily discerned after reading the entire order Nor is the Commission required to repeat itself in its fact findings and analysis when a reasoning mind can readily grasp the connection between related issues.”²

4. This language by the Court of Special Appeals refers to the review of a Commission decision by a reviewing court pursuant to the standards of review set forth in PUA § 3-203. The Commission has wide discretion to reconsider its own decisions pursuant to PUA § 3-114. (*See, e.g., Building Owners & Managers Ass’n v. Public Service Com.*, 93 Md. App. 741 (1992) (consideration of an application for rehearing is

¹ 246 Md. App at 409.

² *Id.* at 414.

permissive, not mandatory). After reviewing OPC's Petition for Rehearing, the Commission affirms Order No. 89799.

A. The Commission's April 9, 2021 Order sufficiently explained the basis upon which it approved the costs incurred by WGL for the 14 challenged capital projects.

5. In Order No. 89799, the Commission summarized OPC's basis for appealing the Commission's approval of the costs incurred in the 14 capital projects at issue.³ The Commission similarly summarized WGL's Reply.⁴ Thereafter, contrary to OPC's Petition, the Commission explained exactly why it decided to approve these project costs. Although that explanation requires no elaboration here, a brief summary of the holding should remove any confusion as to the Commission's rationale with respect to the Commission's findings.

6. First, OPC Witness Sebastian Coppola did identify a systemic issue in WGL's ability to accurately estimate the costs of its projects. However, that systemic issue does not have obvious ratemaking implications. WGL's project estimates are for internal budgeting purposes. As WGL noted, and the Commission agreed, requiring WGL to direct more resources toward obtaining improved estimates would produce better estimates but would not change the actual costs incurred – *i.e.* WGL would request recovery for, the Commission would approve (if prudently incurred), and ratepayers would ultimately pay the exact same amount in rates.⁵ Obviously, if a project's actual costs were below WGL's internal estimated costs, the Commission would not approve the higher estimates.

³ Order at 25-26.

⁴ *Id.* at 26-27.

⁵ *Id.* at 28.

7. By way of example, the Commission's Order referenced the first project to which OPC objected - WGL's Newport Mill Road project. This project entailed the replacement of 1,475 feet of pipe and 11 service lines and had an original cost-estimate of \$2,193,460. However, the actual incurred costs were \$3,734,004, reflecting an increase of 70%.⁶ WGL explained these higher costs as (1) the need to limit the number of hours worked near a school; (2) the need to lease additional space to store materials and equipment; and (3) higher than anticipated paving costs.

8. OPC witness Coppola contended that WGL should have anticipated these unforeseen costs, and the Commission agreed that there seemed to be a problem with WGL's budgeting accuracy. However, there is no dispute in the record that WGL did incur these costs and that the project overall was prudently conducted. OPC witness Coppola never identified any costs that were in fact imprudently incurred, instead requesting that the Commission limit rate recovery to budgeted costs, a request the Commission rejected. Had WGL anticipated these additional costs in its original budget estimate, as OPC witness Coppola believed they should, WGL's estimate would have increased, but the approved costs would not have changed.

9. The use of the word "could" in paragraph 73 of the Order does not reflect a lack of understanding of the Commission's role in determining whether a utility prudently incurred certain costs. The PULJ developed an extensive record regarding each of these capital projects, and the Commission agreed with the PULJ's decision based upon this fully developed record. The use of the word "could" simply reflected the fact that the record did not mandate this conclusion, but it supported the PULJ's conclusion. The fact

⁶ Coppola Direct at 26; Order at 25.

that the PULJ and the Commission “could” have ruled otherwise does not suggest the *de minimis* standard of review OPC suggests.

10. Although not legally set forth in the Public Utilities Article, as a practical matter, the Commission does accord deference to the PULJ’s findings as the trier of fact.⁷ The PULJ has the opportunity to develop the record as new facts unfold, evaluate the credibility of witnesses, make evidentiary rulings in the context of the unfolding case, etc. In short, the Commission will generally respect the factual findings made by a PULJ so long as the record contains evidence to support those findings. The record did so here.

11. To the extent the phrasing of the standard of review caused confusion, the Commission clarifies that it found that the record supported the PULJ’s findings, and the Commission agreed with those findings in reviewing the record evidence. Therefore, the Commission did in fact conclude that WGL should recover its costs for the capital projects in dispute.

12. In footnote 117, the Commission noted that several of the projects were included in WGL’s STRIDE program pursuant to PUA § 4-203(e)(3) (Maryland’s STRIDE law). The Commission did not rely upon that footnote in approving the costs at issue, which is why it relegated the fact of prior STRIDE review to a footnote. The Commission approved the costs of all 14 projects as prudent based upon the developed record in the present case.

⁷ *Motor Vehicle Admin. V. Karwacki*, 340 Md. 271, 284 (1995) (“...credibility findings of the agency representative who sees and hears witnesses are entitled to great deference on further agency review and should not be reversed absent an adequate explanation of the grounds for the reviewing body’s disagreement with those findings.”). *See also, In the Matter of the Complaint of the Staff of the Public Service Commission v. SmartEnergy Holdings, LLC d/b/a SmartEnergy*, Case No. 9613, Order No. 89795 at para. 122 (Mar. 31, 2021) (as to questions of fact, the Commission gives deference to the PULJ as the initial fact-finder who had the opportunity to examine, observe the witnesses under cross examination on the stand, and assess witnesses’ credibility).

B. The Commission’s Order sufficiently explained its interpretation of its own prior order in concluding that WGL complied with Commitments 28 and 44 of the “AltaGas Order”.

13. Contrary to OPC’s argument, approving cost recovery does not “undermine” or “derogate” the Commission’s role. In its Order in the present case, the Commission summarized the arguments proffered by OPC as to how the Commission should interpret the interaction between Commitments 28 and 44 as well as WGL’s response. The Commission explained the basis for its decision, and the Commission need not repeat that basis here.⁸ In reviewing OPC’s Petition as well as Order No. 89799, the Commission finds no reason to reconsider its conclusions.

14. As noted in the Commission’s Order, WGL witness Robert Tuoriniemi provided detailed testimony regarding the synergy savings required by Merger Commitment 44. This testimony was not contested in the record. OPC stated it found the supporting documentation confusing and noted that post-merger costs had increased. However, the PULJ and the Commission concluded that Witness Tuoriniemi’s testimony and exhibits sufficiently complied with the requirements of Merger Commitment 44. As the Commission noted, that commitment did not require costs to decrease so long as overall annual synergy savings exceeded \$800,000. The record supported that conclusion, and the Commission therefore denies OPC’s Petition.

IT IS THEREFORE, this 28th day of July, in the year of Two Thousand Twenty-One, by the Public Service Commission of Maryland

⁸ See Order No. 89799 at 20-25.

ORDERED: That the Office of People’s Counsel’s Petition for Rehearing is hereby denied.⁹

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O’Donnell

/s/ Odogwu Obi Linton

/s/ Mindy L. Herman

Commissioners

⁹ Commissioner Richard dissents in part from the majority decision and writes separately.

Statement Dissenting In Part of Commissioner Michael T. Richard

I respectfully dissent on the decision to deny the OPC petition. I would find that Washington Gas has not met its burden to show that it is in compliance with Merger Conditions 28 and 44 of the AltaGas Merger.¹ I would therefore disallow certain costs approved in the Order.

Among other things, Merger Condition 44 committed WGL to track and account for merger-related savings; committed WGL to provide annual net benefits to customers of \$800,000.00 per year over five years; and prohibited WGL from seeking rate recovery for five years of any corporate costs allocated from AltaGas in excess of merger-related savings.² Relatedly, Merger Condition 28 required WGL to provide a “side-by-side comparison by function of the pre-Merger corporate and shared-services costs incurred by Washington Gas as compared to the post-Merger” of the same costs incurred by the Company.

The burden of proof is on the Company to demonstrate compliance with the Merger Conditions. The undisputed evidence is that WGL’s annual corporate costs increased by over \$18 million. Meanwhile, WGL presented a Merger-savings analysis showing annual merger savings of \$839,000.

In its Memorandum of Appeal, OPC stated that it was unable to reconcile the findings in both the Condition 28 and 44 reports. Nor was OPC able to acquire satisfactory responses from the Company to certain of its data requests. I find OPC’s arguments on these points persuasive and WGL’s responses inadequate.

¹ Case No. 9449, Order No. 88631 (the “Merger Order”).

² The Merger Conditions appear in the Appendix to the Merger Order.

I also note that Condition 28 in this case is very similar to Merger Condition 39 in Case No. 9361, which required the Potomac Electric Power Company (“Pepco”) and Delmarva Power and Light Company (“DPL”) to provide shared service costs in a side-by-side comparison. The reports provided by Pepco and DPL, pursuant to this similar commitment, are more informative and contain more analysis than that which was provided by WGL in this case.

The combination of these facts brings me to the conclusion that the Company did not meet its burden of proof and therefore did not show that it achieved the required customer savings in compliance with the Merger Order. I would find OPC witness Coppola’s proposed \$4.3 million adjustment appropriate. I would also direct that future Condition 28 reports should be improved to summarize how the report was developed, reasons for any increases in costs, inflation adjustments, and include details of synergy savings, similar to the Pepco and DPL filings.

/s/ Michael T. Richard

Commissioner