

**ORDER NO. 90401**

In the Matter of Alternative Rate Plans or	*	BEFORE THE
Methodologies to Establish New Base	*	PUBLIC SERVICE COMMISSION
Rates for an Electric Company or Gas	*	OF MARYLAND
Company	*	_____
	*	
	*	CASE NO. 9618
	*	_____
_____	*	
Application of Baltimore Gas and Electric	*	
Company for an Electric and Gas Multi-	*	CASE NO. 9645
Year Plan	*	
	*	_____
_____		

Issue Date: October 28, 2022

**ORDER ADDRESSING LESSONS LEARNED REPORT**

1. On June 30, 2022, the Commission’s Technical Staff (“Staff”) filed the Lessons Learned Report of the Parties to Case No. 9645, the Multi-Year Plan of the Baltimore Gas and Electric Company (“Lessons Learned Report”). For the reasons discussed below, Staff and Baltimore Gas and Electric Company (“BGE”) are directed to appear with any other interested party wishing to comment at the November 9, 2022, Administrative Meeting, of the Commission, to clarify the parties’ positions regarding recommendations made in the Lessons Learned Report. Additionally, the Commission takes other action as described in the body of this Order.

## I. BACKGROUND

2. In Order No. 89482, the Commission established a framework for a pilot program for the first Maryland utility (“Pilot Utility”) to file a multi-year rate plan (“MRP”) as an alternative to traditional ratemaking methods.<sup>1</sup> BGE became the Pilot Utility by filing for an electric and gas MRP on May 15, 2020 in Case No. 9645.<sup>2</sup>

3. On December 16, 2020, the Commission approved the pilot MRP application to acquire experience and develop “lessons learned” relating to MRP filings, with the expectation that regulations regarding MRP filings would eventually be developed and adopted. Specifically, in Order No. 89482, the Commission found that “establishing a Pilot to consider the initial MRP [will] ... serve as an opportunity to gather valuable lessons learned,” which will “better inform our effort to adopt regulations.”<sup>3</sup>

4. Pursuant to Order No. 89482, Staff convened the 9645 Work Group, which included BGE, the Maryland Office of People’s Counsel (“OPC<sup>4</sup>”), and Montgomery County, Maryland, to consider lessons learned thus far from BGE’s MRP proceeding.<sup>5</sup> The Work Group reached consensus on improvements to the MRP process, such as revisions to the MRP filing requirements, and recommended that the Commission approve those consensus proposals for use in future MRP proceedings. The Work Group was unable to

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<sup>1</sup> Case No 9618, *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company*, Order No. 89482 (Feb. 4, 2020).

<sup>2</sup> See Case No. 9645, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*. The Commission’s decision on BGE’s MRP is contained in Order No. 89678, issued on December 16, 2020, as modified and clarified by Order No. 89794, issued on March 31, 2021.

<sup>3</sup> Order No. 89482 at 11, 13.

<sup>4</sup> OPC contends that it is not possible to perform a complete lessons-learned review until after the final reconciliation of BGE’s MRP takes place in 2024. OPC June 14, 2021 Memorandum at 1-2. (OPC’s Memorandum is attached to the Lessons Learned Report.) The Commission agrees that an additional lessons-learned review should occur after the final reconciliation of BGE’s pilot MRP.

<sup>5</sup> The lessons learned meetings were open to all parties to Case No. 9645. Staff, BGE, OPC, and Montgomery County met on July 1, 2021, October 18, 2021, February 11, 2022, and March 30, 2022.

reach agreement on all issues, however. Discussion of the proposals contained in Staff's Lessons Learned Report follows below.

## II. DISCUSSION

### A. Pre-Filing Period

5. In Case No. 9645, BGE provided the parties with certain testimony and other information, before the start of the then-existing 180-day statutory period, to litigate and decide all Maryland rate cases. Nevertheless, Staff and OPC argued that obtaining sufficient information in a timely manner to analyze and respond to an MRP case proved difficult.<sup>6</sup> Going forward, Staff argues that cost of capital and class cost of service study testimonies should be provided early. Additionally, Staff contends that basic forecasting testimony describing methodologies used to forecast revenue requirements for each year of the MRP and billing determinants should be provided early.<sup>7</sup> Staff also states that the pre-filing discovery proved "very helpful in processing BGE's MRP," though Staff did not explicitly request that pre-filing discovery be required for future MRPs.<sup>8</sup>

6. It is not clear from the Lessons Learned Report the extent to which BGE agrees with Staff's recommendation. The issue is further clouded by recent legislation. Subsequent to filing the Lessons Learned Report, Governor Larry Hogan signed into law Senate Bill 131, which amended Public Utilities Article ("PUA"), *Annotated Code of Maryland*, § 4-204, to authorize extension of the suspension period for up to an additional 90 days if the filing is for an alternative form of ratemaking (such as an MRP). Given the

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<sup>6</sup> See, e.g., Lessons Learned Report at 10, stating "even with BGE's early provision of pre-filing information, there was still insufficient time for a full analysis of all of the issues."

<sup>7</sup> Lessons Learned Report at 2.

<sup>8</sup> *Id.* at 2-3.

uncertainty in the Lessons Learned recommendation and the changed suspension period, Staff and BGE are directed to address issues related to the pre-filing period at the Administrative Meeting scheduled by this Order. Other parties wishing to comment may do so as well.

**B. Distribution System Planning Process**

7. Staff, OPC, and Montgomery County argue that a distribution system planning process should precede, or at least accompany, an MRP “in order to increase transparency in the MRP process and level the playing field between the public service company and other parties.”<sup>9</sup> Those parties claim that familiarity with the distribution planning process is essential to meaningful participation by non-utility participants in any MRP proceeding. Similarly, OPC and Montgomery County assert that a performance incentive mechanism should not be included in an MRP prior to completion of the distribution system planning process, and that the utility should meet with affected stakeholders to discuss the mechanism prior to its filing.

8. In contrast, BGE contends that there is insufficient time for the Commission to finalize its distribution system planning proceeding given the Commission’s direction in Order No. 89482 that the Pilot Utility file a subsequent rate case so that new rates become effective upon the expiration of the rates in the initial MRP proceeding.<sup>10</sup> BGE argues that it will take time to develop and subsequently implement a distribution system planning

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<sup>9</sup> *Id.* at 3. See also OPC June 14, 2021 Memorandum at 2, stating “the Commission’s MRP transparency goals cannot be met without stakeholder involvement in a utility’s distribution planning process.”

<sup>10</sup> Order No. 89482 provides at 30 that “the Pilot Utility must file a new rate case at least 210 days prior to the conclusion of the authorized Pilot MRP period...[such that] the new rate case must have an effective date that would take effect immediately at the close of the final year of the Pilot MRP.”

proceeding in Maryland, and that a utility should not be precluded from filing a rate case while that effort is underway.

9. The Commission agrees with Staff, OPC, and Montgomery County that transparency into a utility's distribution system planning process is integral to the success of an MRP proceeding. As the Commission stated in previous orders: "A key element of an MRP is that it provides more transparency into a utility's planning process. An MRP will require significant detail into utility planning that is not available to interested parties today."<sup>11</sup> In Case No. 9645, a common complaint among parties, and a lesson learned for purposes of this Order, was that the transparency into BGE's distribution system planning process and the rationales for proposed projects were insufficient.<sup>12</sup> BGE (and other Maryland utilities filing MRPs) must improve that transparency going forward and provide an explanation of the rationale supporting proposed utility capital spending.

10. An important goal in the Commission's PC44 Distribution System planning proceeding is to develop insight and transparency into how Maryland's utilities engage in planning their systems. The next steps for that proceeding will build on that work in ways that could enhance review of MRP filings. Ideally, participation in a Commission

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<sup>11</sup> PC51, *Exploring the Use of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company*; Case No. 9618, *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or a Gas Company*, Case No. Order 89226 (Aug. 9, 2019) at 54. The Commission also presided over a technical conference on electric distribution planning as part of PC44, and established Case No. 9665 – *Distribution System Planning for Maryland Electric Utilities*. In Order No. 89865 (June 23, 2021), which was entered in both of those dockets, the Commission determined that a comprehensive examination of distribution system planning in Maryland is warranted; established the Distribution System Planning Work Group ("DSP Workgroup"); and found that "an important goal of exploring and developing a Maryland-specific distribution system planning process is to increase opportunities for early, meaningful stakeholder engagement through increased transparency and coordination." Order No. 89865 at 5-6.

<sup>12</sup> See OPC June 14, 2021 Memorandum at 3, stating: "Our experience in BGE's MRP confirms that obtaining 'transparency into a utility's planning process'—one of the Commission's express goals in adopting MRPs—is not possible without early stakeholder involvement in the utility's distribution planning."

distribution system planning proceeding will provide stakeholders with insight into the utility's distribution system planning as well as opportunity to comment on how best to align utility decision making with state goals. This engagement, coupled with an MRP that provides transparency and reasoning for the utility's actual infrastructure investments, will enhance the Commission's prudence review and oversight of utility management. Finally, combining these two types of proceedings with performance incentive metrics will allow the Commission to provide additional rewards and incentives for incremental actions that achieve state policy goals, provide benefits to ratepayers, and serve the public interest. These three proceedings will provide the greatest benefit when they are pursued together. However, each has its own benefits individually, which should not be foregone simply because they are considered in isolation.

11. Accordingly, the Commission declines to require that BGE wait to file an MRP upon the completion of Case No. 9665, *Distribution System Planning for Maryland Electric Utilities*. As the Commission has held previously, it is within the discretion of a utility to file an alternative form of rate case, such as an MRP, in lieu of a traditional rate case.<sup>13</sup> Similarly, the Commission will not require as a prerequisite to the filing of a performance incentive mechanism, in conjunction with an MRP, that the utility first participate in a distribution system planning process, which the Commission is now developing in the PC44 and the related DSP workgroup. However, the Commission continues to fully support the concept of using performance incentive mechanisms in an

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<sup>13</sup> See Order No. 89482 at 13, holding that “the Commission does not have the statutory authority to require utilities to stagger their filings of MRPs, or to prevent a utility from filing an MRP at any time. Thus, the filing of the initial MRP under this Pilot will not prohibit another utility from filing a rate case before the issuance of an order in the initial case.”

MRP application and expects the utility to engage with interested stakeholders prior to making such a filing.<sup>14</sup> Finally, the Commission observes that it retains the discretion and authority to reject or modify a proposed MRP that is not providing sufficient transparency or justification of utility proposals in order to satisfy the public interest.<sup>15</sup>

### C. Filing Requirements

12. The 9645 Work Group reviewed the filing requirements adopted by Order No. 89482 and recommended several changes.<sup>16</sup> For example, the Lessons Learned Report proposed to modify certain definitions associated with the MRP filing requirements, require a utility to provide a weighting of the importance of proposed capital projects each year of the MRP, and require additional detail regarding information that must be included in project lists.<sup>17</sup> Nevertheless, the Lessons Learned Report provides that the 9645 Work Group is not requesting that these proposed revisions be adopted as generally applicable regulations at this time. Instead, they are meant to apply to BGE exclusively, to provide clarity should BGE file another MRP in early 2023.<sup>18</sup>

13. The 9645 Work Group also recommended that the filing requirements for traditional rate cases, first published in 1983, should be incorporated into the MRP filing

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<sup>14</sup> The Commission further notes that it could be administratively inefficient to require BGE to file another traditional rate case immediately after the company, Commission Staff, and participating parties transitioned to an MRP. Nevertheless, the choice of filing a traditional rate case, or an MRP, lies with BGE.

<sup>15</sup> See Order No. 89482 at 13, stating: “the Commission may exercise its statutory authority to reject or modify a proposed MRP if it finds that the application is not ‘consistent with the public good’ or the MRP ‘is not in the public interest’ at the time it is filed.”

<sup>16</sup> Lessons Learned Report at 4.

<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> The Lessons Learned Report clarified that the proposed filing changes could serve as a straw proposal when the Commission initiates a rulemaking to develop regulations to guide future MRP applications. *Id.* at 4. See also Order No. 89482 at 5.

requirements for ease of reference. The Work Group proposed several changes associated with the 1983 filing requirements that likewise would apply to BGE alone.<sup>19</sup>

14. Most of the proposed amendments to the filing requirements appear to be consensus recommendations and appear consistent with the Commission's intention to require MRPs to be transparent proceedings, where parties may efficiently respond to the utility with sufficient time to make their case. However, because there is some ambiguity regarding which of the Working Group recommendations are consensus recommendations, the Commission will reserve judgment on the proposed filing requirement revisions until the Commission's November 9, 2022, Administrative Meeting.

**D. Billing Determinant Forecasts**

15. The Lessons Learned Report provides that BGE did not initially provide a witness regarding its billing determinant forecasts in Case No. 9645. However, upon request, the company did subsequently provide Staff with all inputs and post model output data work in Excel format, and BGE also made a technical presentation on its billing determinant forecasts.<sup>20</sup>

16. The Lessons Learned Report provides that billing determinant information should be provided to all parties to an MRP in the utility's initial testimony. In particular, the Report specifies that utilities should provide in their initial filing, including through Excel files, all data used to make adjustments to forecasting model outputs as well as forecast model outputs explaining the data presented in the Excel files. Additionally, utilities should provide detailed descriptions of all post-model data adjustments, with the same level

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<sup>19</sup> Lessons Learned Report at 4. The Report attached proposed revisions to the MRP filing requirements in track changes as Appendix A.

<sup>20</sup> Lessons Learned Report at 6.



of detail that is required to be provided regarding the forecasting models themselves, with applicable worksheets. The Lessons Learned Report provides a list of eight informational categories that utilities should provide related to billing determinant forecasts.<sup>21</sup> BGE does not appear to object to providing this information in its next MRP; however, Staff and BGE should be prepared to answer questions related to this topic at the Administrative Meeting. Other interested parties may comment as well.

17. The Lessons Learned Report also notes Staff's position in Case No. 9645, that BGE's Annual Information Filings and Reconciliation Filings should include a comparison (at the tariff class level) of forecast billing determinants with actual billing determinants.<sup>22</sup> During the Case No. 9645 proceeding, Staff contended that if there is a discrepancy between actual and forecast distribution revenues, any Commission remedy should be specific to the affected tariff class and not be socialized across all classes at the utility level. In contrast, BGE argues that the information is unnecessary because it is inconsistent with the reconciliation approach discussed in the PC51 working group and shown in Appendix 1 of Order No. 89482.<sup>23</sup>

18. The Commission will not prejudge the issue of how to respond to a situation where a utility reconciliation reveals that some customer classes are over- or under-recovering vis-à-vis other classes, including whether any subsequent adjustments should be specific to a particular tariff class or socialized across all classes. However, the Commission finds that the applicable filing requirements for the annual and reconciliation filings should be

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<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.*

updated so that relevant information is available to all parties and the issue can be properly litigated when or if it arises.

**E. Project Lists**

19. The Lessons Learned Report notes that parties expressed concern that BGE's MRP process lacked necessary transparency at times regarding planned capital spending.<sup>24</sup> In future MRP proceedings, Staff has asked that initial filings include a breakdown of capital and O&M spend and any quantitative and qualitative benefits the utility expects to accrue from capital expenditure projects.<sup>25</sup> Staff has also proposed that BGE provide a full project list for MRP Year 1 in initial testimony, in addition to a breakdown of the budget and projected costs together with the methodology used to arrive at both. Finally, Staff asserts that at least one witness must be devoted to detailed testimony on these topics so that discovery and cross examination may be directed to that witness. The Lessons Learned Report indicates that BGE has agreed to those requests.

20. The Commission agrees with Staff that for intervening parties to meaningfully participate in an MRP proceeding, the utility's filings must provide detail regarding planned capital expenditures. The Commission finds reasonable Staff's suggestion that BGE provide summaries of capital and O&M expenses; a breakdown by witness and work category with initial testimony to be updated with changes and for each of the reconciliations required by the Commission; and a breakdown of the budget and projected costs together with the methodology used to arrive at both. Additionally, at least one

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<sup>24</sup> *Id.* at 9.

<sup>25</sup> *Id.* at 9-10. Staff modified the Project List requirement such that demonstrable quantitative and qualitative benefits information for proposed investments is not required for projects that are needed for the utility to comply with regulations.

witness should be devoted to detailed testimony on these topics so that discovery and cross examination may be directed to that witness.

**F. Capital Expenditure Reductions**

21. Finally, in future MRP proceedings where the Commission determines that capital spending should be reduced, OPC asks that the Commission not provide utilities with the discretion to prioritize where the remaining budget should be spent.<sup>26</sup> OPC's request stems from the Commission's decision in Order No. 89678, to extend the timeframe for the budgets of five electric capital categories and four gas capital categories from three- to five-years, with the option that BGE could "prioritize the reduced revenue requirement on a different set of work plans by, for example, choosing to remove or further reduce select work plans in order to maximize the benefit of others."<sup>27</sup> OPC argues that BGE's revised plan "represented a different capital plan from what the Commission and intervenors reviewed" and which "rendered moot much of the work spent reviewing the initial plans."<sup>28</sup>

22. The Commission declines to grant OPC's request, since it relates to a future case that is not currently before the Commission. The Commission will consider each rate case, including the treatment of any proposed budget reductions, based on the particular facts of that case. However, OPC may raise this argument in future MRP proceedings.

**IT IS THEREFORE**, this 28<sup>th</sup> day of October, in the year Two Thousand Twenty-Two, by the Public Service Commission of Maryland, **ORDERED** that:

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<sup>26</sup> OPC June 14, 2021, Memorandum at 4.

<sup>27</sup> Case No. 9645, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-year Plan*, Order No. 89678 (Dec. 16, 2020) at 102.

<sup>28</sup> OPC June 14, 2021 Memorandum at 4-5.

(1) Commission Staff and Baltimore Gas and Electric Company (“BGE”) appear with any other interested party wishing to comment at the November 9, 2022, Administrative Meeting of the Commission to clarify party positions regarding recommendations made in the Lessons Learned Report, including recommendations related to pre-filing and filing requirements for future BGE multi-year rate plans (“MRPs”);

(2) Billing determinant information be included in the company’s initial testimony and provided to all parties to BGE’s next MRP;

(3) The Commission directs BGE to include a comparison between forecasted billing determinants and actual billing determinants, based on historical data, for each individual tariff rate class in applicable future MRP filings; however, the Commission declines to prejudge the issue of how to respond to a future over- or under-recovery of a customer class;

(4) Any future BGE MRP filing must provide details regarding planned capital expenditures and project lists as described in the body of this Order; and

(5) OPC’s request that BGE be denied the discretion to prioritize its remaining project budget after a capital expenditure reduction is denied in this case.

*/s/ Jason M. Stanek*

*/s/ Michael T. Richard*

*/s/ Anthony J. O’Donnell*

*/s/ Odogwu Obi Linton*

*/s/ Patrice M. Bubar*

Commissioners