

ORDER NO. 90755

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

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9692

Issue Date: August 9, 2023

ORDER ON THE OFFICE OF PEOPLE'S COUNSEL MOTION TO STRIKE

On June 20, 2023, the Maryland Office of People's Counsel ("OPC") filed its Motion to Strike, or, in the Alternative, Dismiss, the Proposed Customer Electrification Plan of the Baltimore Gas and Electric Company ("BGE") from its pending multi-year rate case.¹ Commission Staff filed a response supporting OPC's Motion on June 26, 2023. The Maryland Energy Administration ("MEA") also filed a response in support of OPC's Motion on June 30, 2023. On July 13, 2023, BGE filed its Opposition to the Motion to Strike. For the reasons discussed below, the Commission grants OPC's Motion, subject to the right of BGE to file its electrification plan or an amended plan in another docket, including, without limitation, the EmPOWER Maryland docket or a generic policy docket.

¹ OPC Motion to Strike, or, in the Alternative, Dismiss, the Proposed Customer Electrification Plan of the Baltimore Gas and Electric Company ("OPC Motion to Strike"), Maillog No. 303632.

I. PARTY POSITIONS

A. OPC's Motion to Strike

In its Motion to Strike, OPC asks that the Commission remove BGE's electrification plan² from the larger multi-year base rate case proceeding. OPC provides four arguments in support of its motion.

First, OPC contends that BGE's electrification plan represents a major new policy proposal that will require significant public vetting and is not appropriate for consideration in a rate case.³ OPC states that in approving the filing of multi-year plans ("MYPs") in lieu of traditional rate cases, the Commission "did not ... authorize utilities to use MYPs as vehicles for entirely new programs unrelated to the determination of 'the fair value of the public service company's property used and useful in providing service to the public.'"⁴ OPC further contends that considering BGE's electrification plan in a base rate proceeding would limit input on electrification policy to those parties participating in the case, and confine testimony to supporting, opposing, or modifying BGE's proposal. Parties would not have the opportunity to comprehensively address Maryland's climate goals, including by proposing electrification plans outside of BGE's proposal. Additionally, parties would be constrained by the strict deadlines imposed by statute in a base rate case. Although OPC acknowledges that the Commission has sometimes allowed utilities to seek recovery in rate cases of the costs of policy-based programs, OPC insists that those policy programs have

² BGE's electrification plan comprises three primary categories that include building electrification, non-road electrification, and workforce development. The full plan entails expenditures of approximately \$272 million over the three-year MYP period that would be deferred to a regulatory asset and recovered in base rates pursuant to a 12.5-year amortization schedule. OPC states that the total cost of BGE's electrification plan, including borrowing costs, would be \$400 million. OPC Motion to Strike at 10.

³ *Id.* at 3.

⁴ *Id.* at 11, citing Public Utilities Article ("PUA") § 4-101.

been developed and approved in separate dockets that do not have statutorily limited timeframes and purposes.⁵

OPC's second argument is that BGE's electrification plan is essentially an EmPOWER Maryland program that should be filed in the EmPOWER docket⁶ rather than in a rate case.⁷ OPC claims that BGE's proposed electrification programs fit within the energy efficiency and conservation programs encompassed in EmPOWER, but are not well suited to a rate case. OPC also states that BGE has used the EmPOWER framework to support its electrification programs, including by proposing: (i) that greenhouse gas emission reductions from BGE's electrification plan be counted toward the company's next EmPOWER goals; (ii) that the electrification plan's cost effectiveness be determined by the Maryland jurisdictional-specific test developed for EmPOWER; and (iii) that the electrification plan's results be evaluated through EmPOWER's evaluation, monitoring, and verification process.⁸ OPC further argues that BGE's proposal to place its electrification programs in base rates would impose significantly greater long-term costs on ratepayers, because customers would pay BGE's rate of return on the unpaid balance of the programs.⁹ OPC claims that result would be inconsistent with recent Commission orders, which transitioned the EmPOWER program from costs being amortized over a five-year period, with utilities collecting carrying charges on the unamortized balance, to a program in which costs are fully expensed on an annual basis. OPC further asserts that funding BGE's electrification program through base rates rather than through the

⁵ *Id.*

⁶ For the Commission's current EmPOWER docket, see Case No. 9648, *The 2021-2023 EmPOWER Maryland Program*.

⁷ OPC Motion to Strike at 13, 18.

⁸ *Id.* at 13.

⁹ *Id.* at 14-15.

EmPOWER surcharge would undercut transparency. OPC argues that the EmPOWER surcharge “serves the important purpose of informing customers of the amounts they are paying toward rebate and other related programs that are separate from the utilities’ core service of delivering electricity and gas to customer homes.”¹⁰

OPC’s third argument to strike BGE’s electrification plan is that it is contrary to ratemaking principles.¹¹ Specifically, OPC contends that BGE’s proposal to put the costs of its rebate programs into rate base would cast BGE in the role of “electrification financier,” which would be far afield of a utility’s primary function of safely and reliably delivering electricity and gas to customers.¹² OPC argues that the financing of rebates “is not an appropriate utility service because it is a service that any number of other businesses or governmental entities ... could provide.”¹³

OPC’s final argument is that BGE’s electrification plan is inconsistent with the Climate Solutions Now Act (“CSNA”).¹⁴ Under the CSNA, the Maryland Department of the Environment (“MDE”) must adopt a State plan that reduces statewide greenhouse gas emissions 60 percent by 2030, and that “sets the state on a path” toward achieving net-zero statewide greenhouse gas emissions by 2045.¹⁵ MDE’s plan is due on December 31, 2023. Additionally, the CSNA requires the Maryland Building Codes Administration (“MBCA”) to file a final report by December 1, 2023, of its findings and recommendations related to the “fastest and most cost–efficient methods for decarbonizing buildings and other sectors

¹⁰ *Id.* at 17.

¹¹ *Id.* at 18-19.

¹² *Id.* at 18.

¹³ *Id.* at 19.

¹⁴ *Id.* at 22.

¹⁵ *See* Md. Code Ann., Environ. Art. § 2-1205(c).

in the State.”¹⁶ OPC contends that it would be premature to review BGE’s electrification plan prior to the filing of MDE’s plan or MBCA’s report. Additionally, OPC argues that BGE’s electrification plan—which would condition the receipt of rebates for electric equipment on customers’ agreement to retain their gas furnaces—could contradict the recommendations of MDE and MBCA, which will likely propose electrification policies for Maryland that rely on a more limited use of gas approach.¹⁷

B. Commission Staff

Staff filed a response in support of OPC’s motion.¹⁸ Staff contends that BGE’s electrification plan “requires major policy decisions that do not fit easily into a base rate proceeding and prejudices the direction and perhaps the details of the State’s environmental policy plan.”¹⁹ Staff also argues that BGE’s proposed electrification projects are outside the typical scope of the business of a public service company. Staff observes that the prefiled direct testimony of Staff witnesses Drew A. McAuliffe and Enrique Bacalao provide further support for why BGE’s electrification plan is ill-suited to the present rate case.²⁰ Accordingly, Staff recommends that a decision regarding BGE’s electrification program be deferred from consideration in the present rate case and allowed to be

¹⁶ CSNA at § 10(b).

¹⁷ OPC Motion to Strike at 24-25.

¹⁸ Staff Response, Maillog No. 303711.

¹⁹ *Id.* at 1.

²⁰ *See* Maillog No. 303611. Mr. McAuliffe additionally argued that BGE’s electrification plan could impose significant and disproportionate impact on low and moderate income (“LMI”) households, and that the proposed projects were “outside of the scope of BGE’s operations and core competency” as an electric and gas distribution company. McAuliffe Direct at 60-61. Mr. Bacalao also testified that BGE’s electrification programs are inconsistent with the nature of a rate case and would be better considered within the EmPOWER docket or a generic proceeding in which all interested parties could participate. Bacalao Direct at 6.

considered either in EmPOWER Maryland or in an alternative generic case that allows for broader participation and a longer schedule than a rate case would allow.

C. Maryland Energy Administration

MEA similarly recommends that the Commission dismiss BGE's electrification plan from consideration as a part of the present MYP and, instead, defer consideration of the electrification programs to a separate proceeding.²¹ MEA asserts that BGE's electrification plan will require significantly more public vetting than is possible in a rate case, that the electrification projects are outside the scope of typical electric utility business, and that consideration of the electrification projects should be deferred until "after [MDE] has completed its initial report, and State guidance under the CSNA is available."²² MEA witness Paul G. Pinsky also provided written testimony in the MYP case, stating that the Maryland General Assembly envisioned a State-led process as the means to implement its accelerated climate solutions requirements, that the present MYP proceeding "is not the appropriate process," and that "the CSNA does not envision primary implementation of the law by the State's utilities."²³

D. Baltimore Gas and Electric Company

BGE opposes OPC's Motion to Strike for four reasons.

First, BGE argues that OPC's Motion is untimely.²⁴ BGE observes that OPC's Motion was filed over five months after BGE filed its Application and Direct Testimony, which described its electrification plan. BGE states that during that time period, the parties

²¹ MEA Response, Maillog No. 303834, at 1.

²² *Id.* at 2.

²³ Direct Testimony of Paul G. Pinsky, Maillog No. 303618, at 4, 10.

²⁴ BGE Opposition to OPC's Motion to Strike, or in the Alternative Dismiss, Maillog No. 304042, at 5-6.

engaged in months of discovery concerning the company’s electrification plan and that multiple parties submitted substantive direct testimony in response to BGE’s plan.²⁵ BGE argues that if OPC’s Motion to Strike were filed in a traditional civil case in court, OPC’s Motion would be precluded by rules of civil procedure that would limit such motions to being filed within 30 days of the initial pleading.²⁶ For example, BGE states that Federal Rule of Civil Procedure 12(f) governs motions to strike in federal court and would limit a motion to dismiss to 30 days.

Second, BGE contends that OPC’s Motion should be denied because BGE’s proposed cost recovery for the electrification plan is a proper and relevant issue for this MYP rate case.²⁷ BGE observes that PUA § 2-113 requires the Commission to consider “the achievement of the State’s climate commitments for reducing statewide greenhouse gas emissions” in its supervision and regulation of Maryland’s public service companies. BGE argues that its plan will assist the State in meeting the goals set forth by the General Assembly.

Third, BGE claims that evaluation of its electrification plan should not be delayed because effectuation of the plan will support the State’s aggressive greenhouse gas reduction goals.²⁸ BGE asserts that the goals of the 2022 CSNA are significantly more ambitious than the State’s prior climate milestones. Additionally, the CSNA specifically references the energy efficiency and emissions reduction requirements for buildings and calls on Maryland utilities to take action to help achieve the CSNA’s goals.²⁹ Accordingly,

²⁵ BGE states that it has responded to 217 data requests related to the company’s electrification plan. BGE Opposition at 3.

²⁶ *Id.* at 5.

²⁷ *Id.* at 7.

²⁸ *Id.* at 9.

²⁹ *Id.* at 10.

BGE argues that “there is no room for delay in the development of [utility] plans to comply with the statute’s directives.”³⁰

Finally, BGE contends that its electrification plan would be best evaluated in this MYP proceeding rather than in a new policy docket or the EmPOWER case.³¹ BGE argues that a policy docket or EmPOWER would be inferior to an MYP because BGE cannot seek base rate cost recovery in a policy docket for the programs proposed under its plan.³² Additionally, BGE claims that policy proceedings lack an evidentiary record, or robust discovery process, and offer reduced opportunities for public hearings or comments.³³ BGE also contends that the Commission should not discount the extensive discovery record or pre-filed testimony that has already been developed in the MYP proceeding relating to its electrification plan.

II. COMMISSION DECISION

The Commission grants OPC’s Motion to Strike. The Commission finds that it is premature to consider and potentially approve BGE’s electrification plan in the current proceeding, when MDE’s State plan to reduce statewide greenhouse gas emissions to meet required targets will not—pursuant to the CSNA—be filed until December 31, 2023. Moreover, the MBCA is not required to file its final report addressing timely and cost-efficient methods for decarbonizing buildings in the State until December 1, 2023.

³⁰ *Id.*

³¹ *Id.* at 11, 13.

³² BGE asserts that if the Commission strikes the electrification plan from the current MYP, the parties would need to wait until the reconciliation process in BGE’s next MYP in 2027 to re-evaluate the plan, which is inconsistent with the General Assembly’s desire to expedite greenhouse gas reduction programs. *Id.* at 16.

³³ *Id.* at 12.

The Commission agrees with OPC that approval of BGE’s plan, which conditions certain rebates for electric equipment on the agreement by customers to retain their gas furnaces, could contradict the recommendations of MDE and MBCA. It is not possible to verify the consistency of BGE’s electrification plan with State policy until those state agencies make their requisite filings. Additionally, the sheer scale of BGE’s electrification plan, which would cost approximately \$400 million for years 2024-2026, including borrowing costs, could easily eclipse other, potentially more cost-effective, greenhouse gas reduction programs that the Commission has not had the opportunity to consider. As articulated by Staff witness McAuliffe, BGE’s electrification plan should not “preempt the authority of the State to determine the best route to decarbonization.”³⁴ Moreover, policy decisions to address and pay for electrification to meet the requirements of the CSNA should not be made in isolation in a single utility’s MYP.

The Commission also agrees with OPC that it is prudent and consistent with past precedent for the Commission to consider major new policy proposals in a separate docket rather than in a base rate case, where the parties and the Commission are required to address a multitude of issues in a constrained time frame. For example, the Commission first established an electric vehicle (“EV”) working group in PC44, which led to the working group submitting a petition to the Commission for a statewide EV portfolio, including BGE’s EV program. Only after multiple hearings did the Commission approve the EV pilot programs and authorize the utilities to create regulatory assets for potential recovery in future rate cases. With regard to BGE’s electrification plan, stakeholders should have the opportunity to propose their own electrification plans, or greenhouse gas reduction

³⁴ McAuliffe Direct at 59.

plans, beyond the proposals contained in BGE's MYP. Neither stakeholders nor the Commission should be limited to the strict statutory timeline of a rate case in submitting and evaluating those plans.

Nevertheless, the Commission's grant of OPC's Motion to Strike in this case is without prejudice to the filing by BGE of the same or an amended electrification plan in another docket, including, without limitation, the EmPOWER Maryland docket or a generic policy docket. However, if BGE elects to refile its electrification plan (or an amended plan) in either the EmPOWER Maryland docket or another docket, the Company should not make that filing until after MDE and MBCA have made the filings required under the CSNA in December 2023.

The Commission finds BGE's arguments in opposition to the Motion to Strike unpersuasive. Regarding the timing of the motion, as BGE concedes, the Commission's rules of procedure do not have a 30-day deadline for filing a motion to dismiss that is parallel to that contained in the Federal Rule of Civil Procedure. The first filing deadline for intervenors imposed by the scheduling order in this case was June 20, 2023.³⁵ On that date, witnesses for Staff (McAuliffe and Bacalao) and MEA (Pinsky) filed direct testimony arguing that BGE's electrification plan was premature and should be examined in a separate docket. OPC also filed its Motion to Strike on that date. The Commission does not find it unreasonable that parties inquired about BGE's electrification plan through discovery prior to moving to dismiss it.

Regarding BGE's argument that PUA § 2-113 requires the Commission to consider the State's climate commitments in its supervision and regulation of public service

³⁵ See Order No. 90544 at 4.

companies, the Commission agrees. However, the Commission finds that the best avenue for addressing BGE's electrification plan and for cost-effectively and comprehensively addressing the State's climate commitments is through another proceeding. Nothing in this Order should be construed as denying BGE's electrification plan on the merits.

Similarly, although the Commission appreciates BGE's zeal in commencing electrification rapidly to meet climate goals, the Commission finds that it may be counterproductive to consider and potentially approve BGE's programs in this docket before the filings of MDE and MBCA are even made.

Finally, the Commission does not consider the discovery conducted on BGE's electrification plan to be wasted. The parties will have the opportunity to revisit BGE's proposed programs in another docket.

IT IS THEREFORE, this 9th day of August, in the year of Two Thousand Twenty-Three, by the Public Service Commission of Maryland **ORDERED** that without prejudice to Baltimore Gas and Electric Company filing its Customer Electrification Plan in another docket, the Office of People's Counsel's Motion to Strike, or, in the Alternative, Dismiss, BGE's Proposed Customer Electrification Plan in this docket is granted.

/s/ Fredrick H. Hoover, Jr.

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Kumar P. Barve

/s/ Bonnie A. Suchman

Commissioners