Maillog No. 306656

ORDER NO. 90943

Washington Gas Light Company's Application for Authority to Increase Rates and Charges for Natural Gas Services	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9704

ORDER ON APPLICATION TO INCREASE RATES AND CHARGES FOR NATURAL GAS SERVICES

Before: Frederick H. Hoover, Jr., Chair
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner
Kumar P. Barve, Commissioner
Bonnie A. Suchman, Commissioner

Issued: December 14, 2023

APPEARANCES

John C. Dodge, Spencer Nichols, Robert C. Cain, II, and Paul Buckley for Washington Gas Light Company

Kenneth Albert and Michael Dean for Technical Staff of the Public Service Commission of Maryland

Carolyn Elefant and Juliana Bell for the Maryland Office of People's Counsel

Frann G. Francis for the Apartment & Office Building Association of Metropolitan Washington

David Shapiro for Maryland Energy Administration

Lisa Brennan for Montgomery County, Maryland

James McGee for Prince George's County, Maryland

Susan Stevens Miller for Chesapeake Climate Action Network

Kristi Singleton for U.S. Department of Defense and Federal Executive Agencies

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I. EXECUTIVE SUMMARY

Washington Gas Light Company ("WGL" "Washington Gas" or "the Company") is a regulated domestic corporation that provides natural gas retail sales and delivery service to Maryland customers in Calvert, Charles, Frederick, Montgomery, Prince George's, and St. Mary's counties. On May 18, 2023, the Company filed an application pursuant to *Annotated Code of Maryland*, Public Utilities Article ("PUA") §§ 4-203 and 4-204, initially seeking authority for a $49.4 million increase in annual base rate revenues, and to make certain other changes to its terms and conditions of service.[1] On September 22, 2023, the Company updated its Application, lowering its requested base rate increase to $45.2 million to reflect replacement of forecasted capital expenditures with actual amounts through July 2023.[2]

The Commission has reviewed the evidence and testimony presented, including the comments received at the public hearings, in reaching the decisions in this Order. Based on the record, the Commission has determined that a total revenue increase of $10,051,241, reflecting an adjusted rate base of $1,394,322,952, with an overall rate of return ("ROR") of 7.04% based on return on equity ("ROE") of 9.50% is warranted. In addition to a modest increase in WGL's monthly service charge, the residential customer gas usage bill

[1] Notice of the Commission's Pre-Hearing Conference and Notice of the June 5, 2023 intervention deadline was published by Washington Gas in various newspapers in Montgomery, Prince George's, Calvert, Charles, St. Mary's, Anne Arundel, Howard, and Frederick counties from May 25, 2023 through June 1, 2023, as noted in WGL's Certificate of Publication, which was filed with the Commission on June 7, 2023 (Maillog No. 303380) (WGL Exhibit ("Ex.") 1).

[2] WGL Ex. 23 (Tuoriniemi Rebuttal) at 5-6, Table 1; WGL Brief at 1.

impacts—as shown in **Table 7** herein—reflects a $0.35 increase per month for residential heating customers and a $1.26 *decrease* per month for residential non-heating customers.[3]

This Order rejects WGL's proposed terminal treatment and post-test year plant adjustments for the Company's Infrastructure Development and Enhancement ("STRIDE") and non-STRIDE plant additions, and among other things, addresses the status of WGL's mercury service regulator—quarterly progress reporting compliance, intervenors'—Maryland Office of People's Counsel ("OPC"), Maryland Energy Administration ("MEA") Chesapeake Climate Action Network ("CCAN")—recommendations regarding gas planning and the previously docketed proceeding that addresses future-of-gas issues,[4] and concerns regarding fair labor standards raised by the Philadelphia-Baltimore-Washington Laborers' District Council ("PBWLDC").

II. BACKGROUND

On May 18, 2023, Washington Gas filed an Application for Authority to Increase its Existing Rates and Charges and to Revise its Terms and Conditions for Gas Service ("Application") with the Commission in accordance with PUA §§ 4-203 and 4-204, seeking to increase its rates and charges for the retail distribution of natural gas in its Maryland service territory.[5] The Application's proposed rates and charges would increase the Company's Maryland annual base rate revenues by $49.4 million; however, this

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[3] The decrease in rates for the average residential non-heating customer is driven by the Commission's decision to eliminate declining block rates. The monthly service charge authorized in this Order amounts to a 2.5 percent (or $0.30) increase.

[4] This issue will be addressed to a greater extent in Case No. 9707. Maillog No. 301247: *Petition of the Office of People's Counsel for Near-Term, Priority Actions and Comprehensive, Long-Term Planning for Maryland's Gas Companie*s (June 14, 2023).

[5] Maillog No. 303021: Application of Washington Gas Light Company (May 18, 2023) (WGL Ex. 2). On June 1, 2023, Washington Gas filed an Errata to the Application (Maillog No. 303269). The Errata did not contain any substantive changes to the Application, thus references to "Application" herein are to the initial filing.

included $21.0 million of revenue requirements associated with the Company's STRIDE Plan, therefore the incremental amount of the increase in base rates would be $28.4 million.[6] The Application is based on a test year consisting of the twelve months ending December 31, 2022, comprising twelve months of actual information as of December 31, 2022. The Company presents the test year as *normalized, annualized, and adjusted* for known and measurable changes to reflect conditions expected to prevail during the rate effective period.[7]

WGL noted several factors that have contributed to its request for an increase in base rates, including the growth in rate base, general cost increases in operation and maintenance expenses, employee-related costs, and regulatory requirements, all of which have led to what the Company considers to be inadequate current rates.[8] Washington Gas further noted that its overall ROR for the test year on a *pro forma* basis will be 5.42%, which is substantially below the overall ROR of 7.09% approved by the Commission in Case No. 9651, as well as below the return necessary for the Company to attract capital on reasonable terms.[9] In its Application, Washington Gas requests the Commission's approval to earn an overall ROR of 7.726% and an ROE of 10.75%.[10]

Several parties filed written testimony in this proceeding. Unless otherwise noted, direct testimony was filed on August 25, 2023, rebuttal testimony was filed on September 22, 2023, and surrebuttal testimony was filed on October 12, 2023.

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[6] Application at 1.
[7] *Id*. at 2.
[8] *Id*. at 3.
[9] *Id*.
[10] *Id*.

Washington Gas sponsored the Direct and Rebuttal Testimonies of: James D. Steffes, Senior Vice President, Government and Regulatory Affairs, as the Company's chief policy witness for providing an overview and summary of the rate relief requested (WGL Exs. 5 and 6); Wendy Zelond, Senior Vice President, Finance-Utilities and Treasurer, describing the Company's financing activities since its last rate case and its financing strategy and plans (WGL Ex. 7); Victor D. Donge, Manager of Treasury Operations, addressing the reasonableness of the Company's overall cost of capital (WGL Exs. 8 and 9); Dylan D'Ascendis, Partner, ScottMadden, Inc., providing evidence and a recommendation regarding WGL's requested ROE (WGL Exs. 10 and 11);[11] Tracey M. Smith, Manager of Regulatory Accounting, describing the Company's labor and labor-related accounting adjustments, the Per Book Jurisdictional Cost of Service Study ("PBCOSA" or "COSA"), and the Class Cost of Service Study ("CCOSS") (WGL Exs. 12, 13, and 14);[12] Donald Preston II, Manager of Fixed Asset Accounting, describing and supporting the pro forma, safety-related, and plant adjustments (WGL Exs. 15 and 16); Kimberly M. Bell, Senior Tax Manager of Income Tax Provision and Compliance, describing and supporting the Company's request to change the tax accounting method for the cost of demolishing, dismantling, tearing down or otherwise removing property in response to recent private letter rulings issued by the Internal Revenue Service ("IRS") (WGL Ex. 17); Robert E. Tuoriniemi, Chief Regulatory Accountant, presenting the Company's jurisdictional cost of service and ratemaking adjustments (WGL Exs. 22 and 22-C);[13] Paul H. Raab, independent economic consultant, providing an estimate of

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[11] D'Ascendis Rejoinder Testimony, Evidentiary Hearing Transcript ("Hr.g Tr.") at 117-121.
[12] T. Smith Rejoinder Testimony, Hr.g Tr. at 151-154.
[13] Tuoriniemi Rejoinder Testimony, Hr.g Tr. at 228-238.

weather-normalized test year volumes used in the development of the CCOSS and the Company's rate design (WGL Exs. 24 and 25);[14] Robert C. Yardley Jr., Senior Vice President at Concentric Energy Advisors, Inc., addressing the public interest factors in PUA § 2-113 (WGL Ex. 26); and James B. Wagner, Assistant Vice President of Rates and Regulatory Affairs, supporting the Company's proposed rate design, change in treatment of customer credit card payments, and revisions to tariff pages (WGL Exs. 18 and 19).

Washington Gas also filed Rebuttal and Surrebuttal Testimonies sponsored by Kevin Murphy, Vice President, Asset Management, Engineering & Supply, providing an overview of the WGL gas distribution system, summarizing the Company's O&M expenses, and describing the Company's capital investments since the previous rate case, among other things (WGL Ex. 27); and additional Rebuttal Testimonies sponsored by Tom E. Burgum, Senior Director, Total Rewards and Human Resources Operations, addressing long-term incentive ("LTI") and short-term incentive ("STI") compensation (WGL Ex. 32); Scott A. Smith, Manager of Contractor Services, regarding the Mercury Service Regulators Replacement Program ("MSRRP") (WGL Exs. 31 and 31-C); Michelle W. Musgrove, Vice President of Customer Experience, addressing the Company's Call Center expense and MyAccounts e-platform, promotional advertising, and line extension policy (WGL Ex. 30); Wayne A. Jacas, Director of Construction Program Strategy and Management, regarding the projects in the Company's STRIDE program (WGL Exs. 29 and 29-C);[15] John P. Arcuri, Vice President of Digital, Utilities, regarding the removal of

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[14] Raab Rejoinder Testimony, Hr.g Tr. at 358-360.
[15] Jacas Rejoinder Testimony, Hr.g Tr. at 408.

the amortization expense related to capitalized software (WGL Ex. 20); and Krista Nufrio, Vice President and Controller, regarding affiliate transactions (WGL Ex. 21).[16]

The Commission's Technical Staff ("Staff") sponsored the Direct and Surrebuttal Testimonies of Pamela Coates, Ph.D., Assistant Director of the Telecommunications, Gas, and Water ("TGW") Division, addressing the CCOSS (Staff Exs. 14, 14-C, 15, and 15-C);[17] Negussie Tesfaye, Pipeline Safety Engineer in the Commission's Engineering Division, addressing WGL's STRIDE plan and activities related to maintenance and safety (Staff Exs. 19, 20, and Supplemental Surrebuttal Testimony, Staff Ex. 22); Evan Thomas, Regulatory Economist in TGW, presenting appropriate rate design testimony and reviewing WGL's proposed gas distribution tariff revisions (Staff Exs. 17, 18, and 18-C); Bion Ostrander, President of Ostrander Consulting, addressing WGL's proposed revenue requirement and underlying rate case adjustments (Staff Exs. 3, 21, and 21-C); and Drew M. McAuliffe, Director of the Commission's Electricity Division and Acting Director of TGW, discussing recommendations regarding WGL's ROE and capital structure (Staff Exs. 12 and 13).

OPC sponsored the Direct, Rebuttal, and Surrebuttal Testimonies of: Colin T. Fitzhenry, Senior Consultant, Brubaker & Associates, Inc., addressing capital expenditures and STRIDE investments (OPC Exs. 20, 21, and 21-C, and Supplemental Surrebuttal Testimony, OPC Ex. 22); David J. Garrett, Managing Member, Resolve Utility Consulting, PLLC, addressing cost of capital, capital structure, ROR, and credit ratings (OPC Exs. 5 and 6); Jerome D. Mierzwa, Principal and Vice President of Exeter Associates, Inc.,

[16] Nufrio Rejoinder Testimony, Hr.g Tr. at 176-178.
[17] Coates Rejoinder Testimony, Hr.g Tr. at 646-652.

addressing the CCOSS and rate design proposals (OPC Exs. 13, 14, and 15);[18] Greg R. Meyer, Consultant and Principal, Brubaker & Associates, Inc., supporting OPC's position that WGL's proposed revenue requirement is overstated (OPC Exs. 16 and 17);[19] and James A. Leyko, Consultant, Brubaker & Associates, Inc., addressing the Company's promotional advertising, insurance expenses, and incentive compensation (OPC Exs. 7 and 8).

MEA sponsored the direct testimony of Paul G. Pinsky, Director of MEA, addressing WGL's requests and their relation to the State's implementation of the Climate Solutions Now Act of 2022 ("CSNA") (MEA Ex. 1).

The Apartment and Office Building Association of Metropolitan Washington ("AOBA") sponsored the direct, surrebuttal, and pre-filed rejoinder testimonies of Bruce R. Oliver, President of Revilo Hill Associates, Inc., challenging WGL's requested rate increase (AOBA Exs. 3, 4, and 5),[20] and Timothy Oliver, discussing WGL's capital structure, overall market return expectations and recommended ROE (AOBA Ex. 2).

CCAN sponsored the direct and surrebuttal testimonies of Karl R. Rábago, Principal of Rábago Energy LLC, to address the effect that WGL's proposed programs, costs, and rate impacts would have on climate change and achievement of Maryland's climate policies (CCAN Exs. 3, 3-C, and 4).

The United States General Services Administration ("GSA") sponsored the Rebuttal Testimony of Dennis W. Goins, Ph.D., regarding Staff witness Coates' preferred non-coincident peak ("NCP") methodology for allocating the cost of mains (GSA Ex. 1).

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[18] Mierzwa Rejoinder Testimony, Hr.g Tr. at 612-613.
[19] Meyer Rejoinder Testimony, Hr.g Tr. at 590-597.
[20] B. Oliver Rejoinder Testimony, Hr.g Tr. at 527-538.

Montgomery County, Maryland ("Montgomery County") and Prince George's County, Maryland filed Petitions to Intervene in this matter but did not submit written testimony.

PBWLDC filed a Petition to Intervene and sponsored testimony by Steve Lanning, Business Manager of the Laborers' Local 11; however, no counsel for PBWLDC appeared during the evidentiary hearings and Mr. Lanning's testimony was not admitted into the evidentiary record of this case. The Commission will therefore treat Mr. Lanning's testimony as a public comment in response to Washington Gas witness Yardley's testimony regarding the Company's compliance with the State's fair labor standards requirements.

The Commission conducted a virtual public hearing the evening of September 21, 2023, at which members of the public spoke to their respective positions on WGL's Application.

On October 17, 2023, Staff filed a Revenue Requirement Preliminary Comparison Chart reflecting the positions of the parties with regard to the Company's alleged revenue deficiency.[21] On November 8, 2023, Staff filed a modified, post-hearing Revenue Requirement Final Comparison Chart ("Comparison Chart").[22] The Comparison Chart reflects WGL's purported revenue deficiency of $45,155,213, inclusive of $21.0 million in STRIDE revenues for gas distribution operations. Staff's final position reflects a revenue deficiency of $8,540,360, OPC's final position reflects a revenue deficiency of $163,239, and AOBA's final position reflects a revenue deficiency of $10,613,090.

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[21] Maillog No. 305661.
[22] Maillog No. 306036.

The Commission conducted evidentiary hearings on the Application on October 17, 18, 19, and 25, 2023. On October 25, 2023, Washington Gas filed a Motion to Strike portions of the surrebuttal testimony of Staff witness Tesfaye, pertaining to Staff's recommendations regarding non-STRIDE capital and STRIDE capital expenditures.[23] On October 25, 2023, the Company submitted a filing withdrawing its Motion to Strike.[24] On November 17, 2023, Post-Hearing Briefs were filed by Washington Gas,[25] Staff,[26] OPC,[27] AOBA,[28] GSA,[29] and CCAN.[30] Montgomery County filed Post-Hearing Comments in lieu of a brief.[31]

On December 6 and 7, 2023, Reply Briefs were filed by Staff,[32] Washington Gas[33] and OPC.[34]

III. DISCUSSION AND FINDINGS

Pursuant to PUA § 4-203, a public service company may not change its rates or establish new rates unless authorized to do so by the Commission. In accordance with PUA § 4-201, a public service shall charge "just and reasonable" rates for the regulated services that it provides. A "just and reasonable rate" is defined as a rate that (1) does not violate the Public Utilities Article, (2) fully considers and is consistent with the public good, and (3) will result in an operating income to the public utility that yields, after

[23] Maillog No. 305675.
[24] Maillog No. 305830.
[25] Maillog No. 306218.
[26] Maillog No. 306227.
[27] Maillog No. 306228.
[28] Maillog No. 306229.
[29] Maillog No. 306218.
[30] Maillog No. 306219.
[31] Maillog No. 306226.
[32] Maillog No. 306516.
[33] Maillog No. 306525.
[34] Maillog No. 306559.

reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property "used and useful" in providing service to the public.

In a proceeding involving a temporary or permanent new rate, or a temporary or permanent change in rate, the burden of proof is on the proponent of the new rate or change in rate.[35] In rate proceedings, in meeting its burden of proof, the applicant must show by a preponderance of the evidence that the criteria in PUA § 4-201 are satisfied and that the proposed rates are just and reasonable.

A. Adjustments to Rate Base and Operating Income

Rate base represents the investments a utility makes in plant and equipment to provide safe and reliable utility service to its customers. Operating income is derived based upon the revenues the utility receives for utility service less the cost it incurs in providing service to customers. In its Application, Washington Gas put forth 39 adjustments proposing to make the test year representative of the rate year, *i.e.*, the 12 months ending December 13, 2024.[36] The parties proposed various modifications to WGL's unadjusted rate base and operating income. The Commission has reviewed the record and accepts the uncontested rate base adjustments ("RBA") and operating income adjustments ("OIA") as set forth in the Comparison Chart, and resolves the disputed adjustments, as discussed below.

Briefly stated, the Commission finds based on the evidence in this case: (1) Washington Gas failed to justify the $45.2 million revenue increase requested in its

[35] PUA § 3-112(b).
[36] WGL Brief at 2.

Application (as revised), (2) the terminal and post-test year treatment requested by the Company for STRIDE, non-STRIDE gas plant is not justified in this case; (3) issues persist with regard to WGL's compliance with the Commission's orders Case No. 9662 regarding the removal or mercury regulators; (4) the gas planning and line-extension policy issues raised in this proceeding by OPC and other intervenors are best addressed in Case No. 9707, in response to OPC's Gas Planning Petition; and (5) at this time the Commission finds that a revenue increase in the amount of $10,051,241, with a 9.50% ROE and an overall 7.04% ROR reflecting WGL's appropriate cost of capital is just and reasonable and supported by the record.

1. ***WGL Adjustments 6-9: Plant-in-Service, STRIDE and Safety-Related Plant***

WGL

Washington Gas Adjustments 6 and 9 increase Construction Work in Progress ("CWIP") to reflect balances on a terminal basis: adjustment of $1,705,415, resulting in a balance of $138,138,464. Adjustment 6: Gas Plant in Service ("GPIS") and CWIP includes the following components: (1) $240 million end of period August 31, 2023; (2) less the 13-month average as of December 31, 2022, of $159.2 million; and (3) totaling to a STRIDE ratemaking adjustment of $80.7 million for eligible STRIDE infrastructure replacement costs. The corresponding amounts related to depreciation expense and accumulated depreciation for these eligible infrastructure investment costs are incorporated in Adjustment 8: Accumulated Depreciation, Adjustment 7: Depreciation Expense, and Adjustment 9: Accumulated Deferred Income Taxes ("ADIT").[37]

[37] Preston Direct at 5.

In his testimony, WGL witness Preston stated that, pursuant to the provisions of the STRIDE law, the STRIDE surcharge will be adjusted to remove the final determination of actual, eligible infrastructure costs incorporated in the Company's revenue requirement when new rates from this case are effective.[38]

For safety-related expenditures, witness Preston used the terminal or end-of-period approach for expenditures occurring during the test year. He also included safety-related capital expenditures expected to be incurred through August 2023, which total $53.7 million on an end-of-period basis. He further stated that he compared this to the 13-month average for the test year for the same expenditures, which were $10.5 million, adjusting the test year safety plant by $43.2 million.[39]

Adjustment 7 reflects recomputed depreciation and amortization expense using incremental amounts for the safety-related expenditures in Adjustment 6. Witness Preston stated that he did not adjust revenue as safety-related expenditures, which constitute replacements of existing plant, which by definition does not generate incremental sales.[40]

Staff

Staff witness Ostrander recommended Adjustment BCO-7 to remove WGL's terminal treatment adjustment of $1.7 million.[41] Witness Ostrander acknowledged that, while WGL's terminal treatment adjustment is consistent with the Commission's treatment in Case No. 9651, he raised new and specific concerns in this case which he argued justify a departure from the Commission's treatment in the prior rate case.[42]

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[38] *Id*. at 5-6.
[39] Adjustment 6., *Id.* at 6.
[40] *Id.*
[41] Ostrander Direct at 10.
[42] *Id*.

According to Mr. Ostrander, WGL's responses to certain data requests raised "new and unique concerns" regarding CWIP and GPIS that had not been raised in the Company's recent Maryland rate cases.[43] These issues, he noted, include: (1) an increasing trend of CWIP balance including substantial carryover CWIP costs from prior years, which, he argued, can cause customers to pay in advance for CWIP costs that are not yet used and useful, (2) for the 30 largest 2022 CWIP projects, a conservative calculation shows that actual costs exceed the original budgeted cost by at least 57.24%, which he argued caused customers to pay excessive rates for delayed projects with cost overruns,[44] and (3) for all 2022 CWIP project costs that equal or exceed $400,000, actual costs exceed the original budgeted costs by 377%, which, he argued, causes customers to pay excessive rates for delayed projects with cost overruns.[45]

OPC

OPC witness Meyer opposed WGL's proposal to include end-of-period investment levels for safety-related and STRIDE investments, arguing that the Company failed to provide any rationale for this except prior rate case treatment.[46] He noted that the end-of-test-year balances proposed by the Company's adjustment are $225 million, which is $53.5 million higher than the 13-month average and that under standard ratemaking principles the 13-month average balance is the amount that should be included for the historic test year in a base rate case.[47] Witness Meyer also opposed the Company's proposed post-test

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[43] *Id*. at 14.
[44] One-third of these 2022 costs, witness Ostrander observed, were anticipated to be completed by prior years 2017 to 2019.
[45] Ostrander Direct at 15-20. With regard to the latter, witness Ostrander noted that only one of these 20 projects met the original estimated in-service dates from 2017 to 2023.
[46] Meyer Direct at 19.
[47] *Id.*

year base rate recovery of STRIDE investments through August 31, 2023, noting that this would result in recovery eight months beyond the test-year of this rate case.[48] He argued that including investments beyond the test year violates the test year concept and the "all-relevant factor test" associated with a test year. Allowing Washington Gas to move portions of the rate base beyond the test year and has not considered other factors that may reduce cost of service (*i.e.*, the "all-relevant factor test"), and allows WGL to engage in "single-issue ratemaking for that portion of its rate base by only considering increases to plant in service for safety-related and STRIDE investments.[49]

In its reply brief, OPC reiterated that the Commission has a "long practice of adhering to historic test year principles and the use of average balances."[50] OPC argued further that the Company's request for post-test year cost recovery does not involve plant additions or infrastructure improvements to address "leaky pipes" or generate "savings to ratepayers" that would allow them to fall into any of the Commission's narrow post- test year treatment exceptions.[51] OPC further reiterated that Case No. 9481 only allowed post-test year costs to account for repairs of leaky pipes that plagued the Company's system, and Case No. 9605 allowed inclusion of post-test year costs, but it was an order approving a settlement of "no precedential value."[52]

<u>*WGL Rebuttal*</u>

The Company argued that Staff was mistaken in its understanding of what is informing CWIP. WGL witness Murphy explained that the Company's 2022 CWIP

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[48] *Id. at 20.*
[49] *Id*. at 20-21.
[50] OPC Reply Brief at 7.
[51] *Id.*
[52] *Id.*

balance reflects those projects that were continued into 2022 because they have not been fully moved into service.[53] He stated that projects are made up of several different work orders and phases of work that can extend for multiple years, noting further that a project's life cycle includes phases such as design, permitting, construction, and final restoration. According to witness Murphy, these activities can frequently extend over multiple years, depending upon the project, but that "this does not mean customers are not benefiting from the work that has been performed."[54] Rather, it means that the project will not be closed and may not be entirely removed from CWIP until final restoration is completed.[55]

Regarding WGL's STRIDE and safety-related plant adjustments, Company witness Tuoriniemi argued in rebuttal that in each base rate case since Case No. 9481, "Staff has supported the precedential approach that Washington Gas used to prepare their adjustments for STRIDE and safety-related plant,"[56] arguing that prior to WGL's 2018 rate case, the Staff supported terminal treatment of safety related plant in Case Nos. 9322, 9267, and 9104.[57] In response to OPC witness Meyer's opposition to allowing post- test year STRIDE and safety plant additions to additions through July 2019, WGL witness Tuoriniemi argued that OPC's witness in Case No. 9605 (David Effron) supported the inclusion of post-test year safety-related expenditures and STRIDE plant in that case.[58]

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[53] Murphy Rebuttal at 3.
[54] *Id*.
[55] *Id*.
[56] Tuoriniemi Rebuttal at 26.
[57] *Id.*
[58] *Id*. at 37-38.

Commission Decision

WGL's STRIDE investments "rolled in" from the STRIDE surcharge and the Company's safety-related expenditures through July 30, 2023 represent additions seven months beyond the test year, and uses the end-of-period ("terminal") investment balance for those investments rather than 13-month averages.[59] The Commission accepts Staff's adjustments to remove terminal treatment of STRIDE-related plant additions and other GPIS-related expenditures, including Staff Adjustment BCO-7, removing WGL's terminal treatment adjustment of $1.7 million with regard to Washington Gas Adjustments 6 and 9.

Although witness Ostrander acknowledged that the Company's terminal treatment adjustment was consistent with the Commission's treatment in Case No. 9651,[60] he also noted that WGL's responses to data requests in this case raised the previously stated new and "unique" concerns regarding CWIP and GPIS, which the Commission finds persuasive.

Both Staff and OPC opposed terminal treatment in this case and recommended 13-month average treatment instead. Staff's adjustments, as noted in Staff's Final Comparison Chart of Party Positions—are accepted.

In addition to the arguments by Staff, the Commission is also persuaded by OPC's arguments, including OPC witness Meyer's observation that the Company's inclusion of both post-test year expenditures and end-of-year balance departs from traditional ratemaking practice,[61] noting that the Company's post-test year investments "violate the test year concept and the all-related factor test associated with a test year, and amount to

[59] *See* OPC Brief at 17.
[60] Ostrander Direct at 11.
[61] *See* OPC Brief at 17; Meyer Direct at 19.

single-issue ratemaking for a portion of rate base containing safety-related and STRIDE costs."[62] Citing the Commission's decision in WGL's 2018 rate case, OPC noted that "recovery of post-test year rate base additions and reliability spending is viewed as an exception to the historic test year rule and "is not guaranteed and should not be expected."[63] As noted in OPC's reply brief, the Commission's allowance of post-test year additions in Case Nos. 9481, 9605 and 9651 (as cited by WGL) is distinguishable from this case, in which safety and system reliability were of a greater concern.

Washington Gas—as do all utilities—controls the test year that it selects for a rate case. Here, WGL selected a historic test year, but seeks to add significant post-test year costs into the costs establishing the revenue requirement for the rate effective period. In Order No. 84475, the Commission reaffirmed its 2010 position when it declined to accept end of test year and post-test year reliability plant adjustments proposed by Pepco.[64] Likewise, in Order No. 87591, the Commission rejected post-test year adjustments proposed by BGE, as not known and measurable.[65] The Commission's denial of post-test year plant additions was reiterated in the recent Potomac Edison case.[66] In this case, the Commission finds that the Company's proposal to include plant additions seven months

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[62] Meyer Direct at 20.

[63] OPC Brief at 19, citing Order No. 88944, *Washington Gas Company's Application for Authority to Increase Rates and Charges*, Case No. 9481 (Dec 11, 2018) ("Order No. 88944") slip op. at 74-75.

[64] Order No. 84475, *In the Matter of the Application of Washington Gas Light Company for Authority to Increase Its Existing Rates and Charges and to Revise Its Terms and Conditions for Gas Service*, Case No. 9267 (Nov. 14. 2011).

[65] Order No. 87591, *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustment to Its Electric and Gas Base Rates*, Case No. 9406 (Jun. 3, 2016) ("*BGE Order No. 87591*") slip. op. at 100. ("While the Commission has allowed post-test year adjustment for particular types of expenses, such as reliability expenses, such adjustments must be known and measurable as of the time of the hearings and are still exceptions to the historical test year approach.")

[66] Order No. 90847, *In the Matter of the Application of The Potomac Edison Company for Adjustments to Its Retail Rates for the Distribution of Electric Energy*, Case No. 9695 (Oct. 18, 2023). Where recovery of post-test year expenditures are demonstrably needed to remedy exigent reliability or safety issues, such post-test year costs have been allowed to augment the utility's historic test year rate base.

beyond the test year is not justified or reasonable in this case. In recent cases, the Commission has curtailed post-test period recovery to two to three months after the test period.[67]

Finally, rejecting terminal treatment for WGL's STRIDE-related and other plant additions is consistent with the Commission's case-by-case determination of this issue, and the Commission's preference for average over terminal treatment—a preference designed to provide a consistent matching of costs with benefits received by customers in the rate-effective period.[68]

2. Depreciation Expense Related to Terminal Treatment and Post-Test Period Plant Additions

Staff

Staff recommended the removal of the $1,613,914 depreciation expense impact by excluding Washington Gas Adjustment 7 based on the same concerns previously outlined regarding CWIP and GPIS.[69]

OPC

OPC witness Meyer proposed a depreciation offset to the STRIDE surcharge to "offset" the benefit that Washington Gas shareholders receive from the decline in net plant rate base in between rate cases and to minimize "positive regulatory lag."[70] OPC noted that "[b]ecause the depreciation offset impacted the STRIDE surcharge, and the surcharge

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[67] *Cf.*, *Washington Gas Order No. 89799 at 121.*
[68] *See Re Delmarva Power & Light Co. of Maryland (1980) 71 Md PSC 28* ("The Commission's preference for use of an average rate base has become well established. As a general rule, it has been determined that an average rate base should be used in determining a public service company's revenue requirement since only an average rate base will accurately match test year revenues, expenses, and investment and thereby provide a proper foundation for establishing rates for the future.").
[69] Ostrander Direct at 23; Ostrander Surrebuttal at 44.
[70] Meyer Direct at 24; OPC Reply Brief at 27.

proceeding in Case 9708 was already under way, Mr. Meyer recommended that the Commission consider the offset in the [Case No. 9708] surcharge proceeding."[71] OPC notes that WGL witness Tuoriniemi agreed that the offset should not be part of the rate case.

WGL Rebuttal

In his rebuttal testimony, WGL witness Tuoriniemi explained depreciation expense is derivative of the final approved adjustment to GPIS, he argued that the final determination of depreciation expense should be appropriately synchronized with the Commission's GPIS finding.[72]

In his rejoinder testimony, WGL witness Tuoriniemi further argued that, because CWIP doesn't have a depreciation calculated on it until it goes into service, the plant should not have been removed. Witness Tuoriniemi also argued that applying a depreciation expense on the result was inappropriate.[73]

Commission Decision

Consistent with the acceptance of Staff Adjustment BCO-7, the Commission accepts Staff's depreciation expense adjustment, thereby synchronizing this adjustment with the Commission's GPIS finding.

[71] *Id.*
[72] Tuoriniemi Rebuttal at 32.
[73] Hr.g Tr. at 230 (Tuoriniemi).

3. **STRIDE Adjustments**

WGL

In this case, Washington Gas proposed the transfer of $21 million in revenue currently subject to collection in its STRIDE surcharge to base rates, and then reset the surcharge. WGL proposed using end of test-year balances (the terminal or end-of-period approach) for STRIDE and safety investments instead of the standard 13-month average.[74] Company witness Preston argued that this is consistent with Commission precedent.

Staff

Staff witness Tesfaye recommended that the Commission allow only actual costs of both test year and post-test year (January through August 2023) of WGL's Adjustment 6 that are known and measurable, and after updated information would have been filed prior to the hearing date for review, thereby showing the exact post-test year expenses.[75] The Company indicated that Staff witness Tesfaye and Staff witness Ostrander's direct testimonies contradict one another as Staff witness Ostrander removed post-test year costs while Staff witness Tesfaye was supportive.[76] In surrebuttal Staff witness Tesfaye revised and clarified his position that the Commission only allow Washington Gas to recover actual expenditures for STRIDE capital projects partially or fully in-service by the end of the test year.[77] Staff witness Tesfaye clarified that the Commission accept Staff witness Ostrander's recommendation to disallow post-test year costs; but, if the Commission rejected Staff witness Ostrander's recommendation, then the Commission should only

[74] Preston Direct at 6.
[75] Tesfaye Direct at 3.
[76] Tuoriniemi Direct at 27.
[77] Tesfaye Surrebuttal at 2-3.

permit actual costs of both test year and post-test year (January through August 2023) of WGL's Adjustments that are known and measurable.[78] Staff Adjustment BCO-7 also removes WGL's terminal treatment adjustment for GPIS for STRIDE-related plant.[79]

OPC

OPC witness Meyer opposed the Company's proposal to include end-of-period investment levels for STRIDE and safety-related investments in WGL's rate base, arguing that Washington Gas did not provide any rationale except prior rate case treatment for the inclusion of these plant balances at the end of the test year. He noted that end-of-test-year balances are $225 million - $53.5 million higher than the 13-month average and, under standard ratemaking principles, they should be included based on the 13-month average for the historic test year in a base rate case.[80]

OPC witness Meyer also opposed base rate recovery of STRIDE investments through August 31, 2023, which is eight months beyond the test year in the instant case, arguing (1) the same reasons for opposing safety-related investments beyond the test year, and (2) that WGL's shareholders are protected by the STRIDE surcharge for the costs of those investments, yet Washington Gas still seeks to have those investments included in base rates in violation of the test-year concept.[81]

In furtherance of OPC's gas planning concerns, OPC witness Fitzhenry argued against WGL's STRIDE cost recovery, stating, "[a] prudent utility, anticipating major market shifts, would not be spending money on infrastructure that may be stranded or

[78] *Id.* at 3.
[79] Ostrander Direct at 13.
[80] Meyer Direct at 19.
[81] *Id*. at 20-21.

obsolete in the near term and instead would try to manage its risk by taking a deliberative approach to STRIDE and other capital expenditures."[82] Witness Fitzhenry further stated that, over the past four years, WGL steadily reduced the number of reported gas main leaks in its Maryland service territory, demonstrating its ability to improve the safety and reliability of its distribution system at historical revenue levels;[83] however, while the number of gas leaks per year has declined, the number of distribution plant additions in 2022 has accelerated.[84]

OPC recommended that the Commission disallow the recovery of the total cost variance of 26 STRIDE projects totaling approximately $7.5 million, and that the Company produce cost estimates in its base rate cases for all STRIDE (and non-STRIDE) capital projects in excess of $500,000.[85]

In its reply brief, OPC reiterated that Washington Gas has not met its burden of showing its costs for STRIDE and non-STRIDE projects were prudent, or that its planning and execution of the STRIDE and non-STRIDE projects was consistent with the prudence standard applied in past cases.[86]

WGL Rebuttal

In rebuttal, Washington Gas reiterated that its approach to including STRIDE costs in rate base is consistent with the approach approved by the Commission in Case Nos. 9481, 9322, and 9605.[87] WGL witness Murphy characterized OPC witness Fitzhenry's

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[82] Fitzhenry Direct at 3.
[83] *Id*. at 12.
[84] *Id.* at 17-18.
[85] *Id.* at 4.
[86] OPC Reply Brief at 11.
[87] Preston Rebuttal at 2.

testimony as arguing that the Company need not continue accelerating its investments in leak management and infrastructure replacement and stated that this is illogical. He argued that, without STRIDE and its surcharge funding mechanism, the Company would not have been able to complete the scope of work performed under the STRIDE program on the same timeline, thereby negating the benefits seen through the program year over year.[88] Witness Murphy argued, "A pre-STRIDE pace of replacement" could mean that the number of leaks experienced would begin to rise due to the continued aging and potential declining conditions of the pipe population.[89]

In response to OPC witness Fitzhenry's "prudency" arguments, WGL witness Jacas countered that OPC's position dismissed the purpose of STRIDE by replacing the safety considerations underlying STRIDE with assertions regarding the future demand for natural gas based on future policy considerations and technological advancements.[90] In addition to other benefits, including service replacement (moving inside meters outside where feasible, including meters associated with mercury service regulators) and installation of new mains inside of the roadway curb instead of the street, witness Jacas argued that accelerating the replacement of aging infrastructure results in decreased GHG emissions by proactively addressing leaks.[91]

In its reply brief, WGL reiterated that OPC failed to address the Company's extensive explanations for the cost variances for each project,[92] arguing further that OPC

[88] Murphy Rebuttal at 10-11.
[89] *Id.* at 11.
[90] Jacas Rebuttal at 4.
[91] *Id.* at 8.
[92] WGL Reply Brief at 9.

witness Fitzhenry also made no attempt at assessing the prudency of projects that came in under budget.[93]

Commission Decision

As previously noted, the Commission accepted Staff Adjustment BCO-7 to remove WGL's terminal treatment adjustment of $1.7 million with regard to Washington Gas Adjustments 6 and 9. In addition the Commission accepts Staff's witness Tesfaye's recommendation to only allow plant in-service or the costs associated with plant partially in-service by the end of the test year. These two adjustments are also consistent with OPC's recommendation to use the standard 13-month average for STRIDE safety investments. As OPC noted, safety is an ongoing requirement, which does not necessitate special treatment (*i.e.*, end of test year balances). Use of the end-of-test-year approach sought by Washington Gas violates the test-year concept and the "factor test" associated with a test year. WGL's proposal moves certain things beyond the test year but has not considered other factors that may reduce the Company's cost of service. Furthermore, the Commission finds OPC's argument that the post-test year treatment of STRIDE costs allowed by the Commission in Case No. 9481 was an exception to be persuasive.[94]

With regard to removal of additional STRIDE costs based on prudency, OPC argued that "[a]lthough the Commission considers the prudence of proposed STRIDE projects during the five-year plan approval proceedings, it must still evaluate the prudence of execution of those projects when the Company moves the costs into rate base. The utility bears the burden of demonstrating prudence."[95] The Commission does not accept

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[93] *Id.*
[94] The exception was allowed due to the need to remediate gas leaks and urgent safety-related issues.
[95] OPC Brief at 21.

OPC's request to disallow STRIDE costs based on what it asserted were "excessive" cost variances, as even OPC witness Fitzhenry acknowledged that positive cost variances are not *per se* imprudent.[96]

While the Commission may in the future consider a variance test whereby a specific percentage over-budget or under-implementation would be deemed imprudent, the record in this case does not support adoption of such a test at this time. Nontheless, the lack of a specific variance test should not be considered free rein to exceed approved budgets.

Based on the record in this case, the Commission finds that the disallowance of WGL's STRIDE cost movement into base rates should be limited to the exclusion of post-test year costs, and the costs allowed should be limited to the 13-month average.

4. Non-STRIDE Capital Expenditures

Staff

Staff witness Tesfaye recommended that the Commission disallow a total of $21,127,987.97 in non-STRIDE capital expenditures ("CapEx") as follows: $8,293,782.81 associated with projects described as "not in-service" by the end of the test year ("Group 1"); $4,761,622.63 associated with projects described as "only partially in-service" by the end of the test year ("Group 2"); and $8,072,582.53 associated with projects described as "unrelated to utility operations" or "not related to pipeline safety or reliability" ("Group 3").[97] Witness Tesfaye also recommended a provisional disallowance of the $45.2 million to be added to the rate base as the annual revenue increase generated by the plant additions, given that the Commission's Engineering Division Staff was not provided with a list of

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[96] *Id.* Fitzhenry Surrebuttal at 11.
[97] Included in Group 3 is Work Order No. C1002505, related to the relocation of the Company's corporate headquarters in Washington, DC. Tesfaye Surrebuttal at 2-3.

non-STRIDE capital projects in detailed scope and budget, including the actual expenditures at the individual project level.[98]

Staff explained in detail its efforts to obtain from Washington Gas the supporting information needed to review these projects.[99] Upon receiving the requested information at the eleventh hour, and extending the hearing an additional day to receive Staff witness Tesfaye's supplemental surrebuttal testimony, Staff's final recommendation on this issue was for the Commission to:

> … direct WGL to include justification of the Company's expenditures through engineering testimony in all its future rate case filings. The engineering testimony should have a level of project specific detailed information comparable to what the Company presents in its annual STRIDE reconciliation project list filings (Exhibit NTS-11B-1 and NTS-11B-2) for the capital and O&M projects or programs which drive the revenue requirements. The project list detail should also include, but not be limited to, project status, pipe in-service status, expenditure type (capital or O&M), the amount of expenditure added in the rate base, the amount of expenditure added in the revenue requirement, explanation on the benefits of the expenditures to the customer, and explanation on the prudency of the expenditures.[100]

In its brief, Staff argued the Commission should reject recovery of the $3.7 million non-Stride O&M expense.[101] In discussing Work Order No. C1002505—relating to "the relocation of the Company's corporate headquarters from 101 Constitution Avenue, N.W. to 1000 Maine Avenue, S.W." in Washington, D.C.—Staff noted that it does not oppose recovery of the relocation cost.[102]

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[98] Tesfaye Surrebuttal at 4.
[99] Staff Brief at 30-33.
[100] Staff Brief at 33; Tesfaye Surrebuttal at 15.
[101] Staff Brief at 34.
[102] *Id.* at n.137.

OPC

OPC witness Fitzhenry recommended the Commission disallow 10% of the Company's gas distribution and transmission plant additions included in its historical test year. He argued that a 10% reduction would normalize the Company's plant additions to levels closer to the amount of transmission and distribution plant additions in years prior to 2022, recommending a $12.4 million reduction in the Company's proposed rate base.[103]

WGL Rebuttal

Washington Gas argued that the Commission should dismiss Staff witness Tesfaye's recommendations to disallow test year CapEx costs associated with non-STRIDE plant not in-service and partially in service because, as demonstrated in WGL witness Tuoriniemi's rebuttal testimony, the Company's approach to include CWIP in rate base is consistent with Commission precedent.[104] Washington Gas also argued that OPC witness Fitzhenry's recommendation was based on a misunderstanding of the underlying data,[105] in that the test year amount witness Fitzhenry proposed to eliminate represented actual costs incurred on necessary projects, and his proposed 10% reduction was simply an attempt to lower WGL's authorized ROR, thereby rendering witness Fitzhenry's underlying computations flawed and his recommendation unreliable.[106]

In its reply brief, WGL also argued that Staff does not define "engineering testimony" or explain why testimony from an engineer, as opposed to testimony from a non-engineer, such as an accountant, must be presented in initial rate case applications in

[103] Fitzhenry Direct at 21.
[104] WGL Brief at 7.
[105] *Id*. at 10.
[106] Tuoriniemi Rebuttal at 41.

the future in order for Staff to perform its duties.[107] The Company argued further that Staff "unnecessarily and inaccurately" claims the Company did not provide requested information on non-STRIDE projects.[108]

Commission Decision

The Commission accepts Staff's recommended disallowance of CapEx costs in Groups 1 and 2. The Commission rejects Staff's recommended disallowance of costs in Group 3 except for $2.59 million for M1002050 which Staff's table notes "Company removed 'from determination of rates' following Staff DR 37-1."[109] With regard to Work Order No. C1002505 however, relating to the relocation of the Company's corporate headquarters in Washington, D.C., the Commission is concerned that little effort—if any—was made by the Company to inform the Commission of this requirement prior to embarking upon the significant expenditures associated with this project.

While Washington Gas asserts that the Company is required by the District of Columbia Public Service Commission ("DCPSC") to maintain its headquarters in D.C.,[110] the relocation of the Company's headquarters from one location to another within the District involves significant costs—costs which must be borne by not just District of Columbia customers, but all of the utility's ratepayers. DCPSC's requirement that Washington Gas maintain its headquarters in the District of Columbia is one thing; the Company's decision to relocate its office (at significant ratepayer expense) is another. Despite the significant costs involved, the Company—apparently—saw little need to

[107] WGL Reply Brief at 9-10.
[108] *Id.* at 10.
[109] Tesfaye Supplemental Surrebuttal at 8.
[110] Hr.g Tr. at 721

apprise the Commission of this expense in advance.[111] In an enterprise as significant as the relocation of the Company's corporate office, which no doubt entailed detailed and advanced planning, a prudent course of action would include informing those entities paying the expense. In the future, the Commission expects to be informed ahead of time when multi-jurisdictional utilities—such as Washington Gas—invest in non-safety and non-reliability- related capital expenditures for which costs will be allocated to the utility's Maryland ratepayers.[112]

The CapEx costs in Groups 1 and 2 disallow projects, or portions of projects, that are not in service and therefore are not used and useful to ratepayers. In rejecting Staff's recommended disallowance of CapEx costs in Group 3, the Commission accepts WGL's comment that "not every CapEx needs to be directly related to pipeline safety or reliability,"[113] but also finds that these investments are necessary in supporting the safe and reliable delivery of natural gas to the Company's Maryland customers.

The Commission also accepts Staff's recommendation to disallow $3.7 million in non-STRIDE O&M costs. The Company has the burden of proof to support all of its requested adjustments. Staff witness Tesfaye testified that Staff was not provided with a list of O&M projects.[114] While WGL assured the Commission that the Company provided

[111] Staff does not oppose recovery of this cost. *See* Staff Brief at 34, n.137.
[112] Commissioner O'Donnell dissents from the Commission's allowance of costs in Group 3 associated with Work Order No. C1002505, pertaining to the relocation of the Company's corporate headquarters in Washington, D.C., stating as follows: "The Commission should not allow the allocation of project costs for a capital project which Washington Gas *asserts* was required because another state regulatory utility commission (in this instance, the DCPSC) required the Company to maintain its headquarters within its jurisdiction—where this Commission was not apprised ahead of time of the requirement nor consulted regarding the company's commitment. Unlike rates imposed on utilities by federal regulators such as the FERC pursuant to the federal filed rate doctrine, this Commission should not be obliged to support expenditures required by other state regulatory agencies."
[113] WGL Brief at 8.
[114] Tesfaye Supplemental Surrebuttal at 10-11.

all requested O&M information to Staff in a timely and complete manner, the Company did not show where in the record such information was provided.[115] Having failed to meet its burden of proof regarding test year O&M expenses for non-STRIDE CapEx projects, these expenses are disallowed.

Additionally, the Commission finds WGL's failure to provide adequate information in its filing, and in response to Staff requests, completely unacceptable. In order for Staff to evaluate whether the utility's requested cost recovery is just and reasonable, the company's filing must include all pertinent information, and Staff and intervenor information requests must be answered fully. A fundamental aspect of the Company meeting the burden of proof is the provision of all relevant information on the proposed expense for which recovery is being sought.

5. Capital Projects Addressed in Case No. 9651

OPC

OPC witness Meyer's direct testimony listed 14 capital projects for which OPC's witness in Case No. 9651 (Sebastian Coppola) proposed disallowances.[116] While the Commission approved cost recovery for these projects in Case No. 9651, OPC sought judicial review of the Commission's decision in that matter in the Circuit Court for Baltimore City. On judicial review, the court affirmed in part and remanded in part Commission Order No. 89799. The court remanded the Commission's approval of the Company's capital projects, directing that "the Commission shall not permit Washington

[115] The Company cites Staff DR 33-1 as inclusive of the appropriate information, but a review of this document only identified capital expenditures without associated O&M costs. *See* WGL Brief at 8 and last page of WGL Brief, Attachment 1.
[116] Meyer Direct at 34, Table GRM-5.

Gas's recovery of capital costs associated with the fourteen capital projects unless, and until, it reviews the prudency of these costs."[117] OPC argued that, since the prudency review required by the court on remand has not been conducted, until Washington Gas carries its burden of prudence in a Commission remand proceeding, and the Commission completes a prudency review, OPC recommends that a return "on" and "of" the portions of these capital projects that OPC challenged in Case No. 9651 be removed from WGL's cost of service.[118] Based upon this argument, OPC witness Meyer recommended an adjustment that would reduce WGL's cost of service by $667,000.

WGL Rebuttal

WGL witness Tuoriniemi submitted, "on advice of counsel," that there is an issue concerning whether the Commission has jurisdiction to address this issue from Case No. 9651 in the current rate case, given that this issue from Case No. 9651 is pending before the Supreme Court of Maryland and it has not been remanded back from the courts to the Commission.[119] He further asserted that, regardless, there are "serious deficiencies" in the assumptions underlying OPC witness Meyer's recommended adjustment.

Commission Decision

In Order No. 89799, the Commission affirmed WGL's request to include 14 capital projects within its rate base. Those projects included: (1) two non-STRIDE safety and reliability projects; (2) nine STRIDE projects and (3) three additional significant

[117] *Id*. at 35, citing Memorandum Opinion and Order, *In the Matter of the Petition of the Maryland Office of People's Counsel*, Balt. City. Cir. Ct. Case No. 24-C-21-003749 (Feb. 28, 2022) at 12-13.
[118] *Id*. at 36.
[119] Tuoriniemi Rebuttal at 47.

projects.[120] The Commission reasoned that the inaccuracies within WGL's cost estimates reflected internal budgeting purposes, and otherwise were not intended to have any rate-making effect.

On February 28, 2022, Judge Ausby of the Circuit Court for Baltimore City found that the Commission acted arbitrarily and capriciously "by permitting the recovery of capital costs without performing a prudency review."[121] The Commission did not appeal that decision to the Appellate Court of Maryland and informed Judge Ausby that it would establish a prudency review once the case was remanded to the Commission. However, in that same decision, Judge Ausby (after the Commission filed a Motion to Revise and Amend) affirmed the Commission's ruling regarding WGL's compliance with Commitment 44 in its order approving AltaGas's acquisition of Washington Gas. OPC appealed that decision to the Appellate Court of Maryland, which affirmed the Commission decision. OPC then requested and received a writ of certiorari from the Maryland Supreme Court.[122] That case was argued by the parties on December 4, 2023, and a decision is pending.

The Commission agrees with WGL that the two issues raised in Case No. 9651 - these 14 capital expenditures, as well as WGL's compliance with Commitment 44 of the Merger Approval Order - are currently pending at the Maryland Supreme Court and, as such, deprive the Commission of jurisdiction to issue a ruling on either issue.[123] The

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[120] Order No. 89799, *Re Washington Gas Light Company's Application for Authority to Increase Its Rates and Charges*, Case No. 9651 ("*Washington Gas Order No. 89799*") (Apr. 9, 2021) slip op. at 27-28.
[121] Memorandum Opinion and Order, *In the Matter of the Petition of the Maryland Office of People's Counsel*, Balt. City. Cir. Ct. Case No. 24-C-21-003749 (Feb. 28, 2022).
[122] *In the Matter of the Petition of the Md. Office of People's Counsel.* Sup. Ct. of Maryland Case No. 0775, September Term 2022.
[123] Generally, courts will not remand only one of multiple issues raised in a case if the courts have not resolved all issues included in the case.

Commission therefore cannot currently provide the remedy that OPC seeks. However, the Commission will open a separate proceeding following the Maryland Supreme Court's decision to address whether that decision and/or the prudency review ordered by Judge Ausby entitles WGL ratepayers to any refund and, if so, the amount of that refund.[124]

a. Union Employees Forecasted Post-Test Period Pay Raises

WGL

Washington Gas proposed to include an increase in union wages based on the contractual wage increases that were projected to occur prior to the rate effective period.[125] WGL witness Smith stated that there are five unions that represent collective bargaining units at the Company, and that the Company's contracts with each of these unions specify a schedule for wage increases. Because each contract represents a legal obligation, she argued that these scheduled wage increases are known and measurable. Witness Smith multiplied the annualized payroll for the applicable union by the contractual wage increases that occur between the end of the test year and the beginning of the rate year in order to arrive at her proposed increase.[126]

Staff

Staff removed the Company's entire 2023 adjustment, arguing that WGL's 2023 union pay raise adjustment is not known and measurable, is not accurate, and that Washington Gas has not met a reasonable burden of proof regarding this adjustment.[127]

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[124] Although Commissioner Richard dissented in the Commission's affirmance of the Proposed Order on this issue, he agreed that the Commission is currently without jurisdiction to address these issues.
[125] T. Smith Direct at 7.
[126] *Id.* at 7.
[127] Ostrander Direct at 26.

Staff argued that WGL applied the 2023 pay raise to 2022 employee levels, but that 2023 employee levels are lower.

WGL Rebuttal

WGL witness Tuoriniemi argued that Staff selectively recommends disallowance of pay increase for some employee groups based on lower employee counts but does not recognize a pay increase offset for other groups with increasing numbers of employees.[128] This argument was furthered as WGL witness Smith explained that management salaries went up June 1, 2023, and also argued that Staff witness Ostrander did not account for increasing management numbers.[129] In addition, WGL witness Smith provides a revised wage adjustment that uses the average headcounts for both management and union employees as of March 2023 resulting in a decrease of $73,000 for union wages and an increase of $595,000 for management employees resulting in a net increase of $522,000.[130] Staff Witness Ostrander responded with a calculation of his own based on different head counts for union employees arguing the reduction should have been $708,462 for these employees and did not include an adjustment for management employees.[131] Based on this analysis Staff witness Ostrander continues to support his original adjustment to not allow any increase for union salary increases in 2023 as his adjustment is less than would otherwise be warranted.

[128] Tuoriniemi Rebuttal at 14.
[129] T. Smith Rebuttal at 6-7.
[130] *Id.* at 7.
[131] Ostrander Surrebuttal at 47-48

Commission Decision

While the Commission recognizes that the union pay raise is known and measurable, there appears to be volatility regarding the appropriate headcounts that should be relied upon for such an adjustment. A review of the data source relied upon by both Staff, and the Company, shows a near commensurate decline in non-management employees and increase in management employees post-test year.[132] There is no discussion as to the reasonableness of this commensurate increase in management employees which is relied upon by Washington Gas to rebut Staff. WGL could have partially remedied this situation, both changes in headcounts and changes in salaries, by relying upon a less stale test year. While Staff's analysis did not consider changes in headcounts amongst other employee groups, the discussion and underlying data indicate that there is enough uncertainty about post-test year employee headcounts to not warrant a post-test year adjustment. The Commission therefore accepts Staff's adjustment.

6. Amortization of Union Ratification Bonus

WGL

Washington Gas Adjustment 12 includes expenses for a 5-year amortization of a union ratification bonus, totaling $48,373. The Company argued that Commission precedent supports this adjustment.

Staff

Staff removed Adjustment 12, stating that allowing this adjustment would allow the Company to "unilaterally pick and choose" various single-issue cost increases, and

[132] Section III.1 page 1 of 1. Rate Case Filing Requirements.

defer and amortize these related costs for regulatory purposes, especially when such costs have already been expensed in full on GAAP basis.[133]

WGL Rebuttal

WGL witness Smith stated that, while union contract ratification bonuses represent a variable labor expense, Staff did not put forward a persuasive case that such costs are non-recurring.[134] Witness Smith argued further that variable and recurring costs (equally) are generally normalized for ratemaking purposes, and that Staff adopted amortization as a normalization adjustment for SAP implementation costs in Case No. 9481 - a recommendation the Commission adopted in Order No. 88944.[135]

Commission Decision

The Commission accepts WGL's Adjustment 12, finding that it pertains to a variable and recurring expense which, consistent with Commission precedent, is generally normalized for ratemaking purposes.[136]

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[133] Ostrander Direct at 26-27.
[134] T. Smith Rebuttal at 9.
[135] *Id.*
[136] *See* Order No. 86441, *In the Matter of the Application of Potomac Electric Power Company for Adjustments to Its Retail Rates for the Distribution of Electric Energy*, Case No. 9336 (Jul. 2, 2014) slip op. at 57-58. ("We accept the Company's proposal to amortize this one-time cost … for the Maryland distribution portion of costs associated with the ratification bonus over a four-year period - the period of contractual savings because it did result in savings to the Company. However, the unamortized portion shall not be included in rate base.")

7. **Removal of 50% Long-Term Incentive Expense**

WGL

Washington Gas Adjustment 13 proposes recovery of 50% of the Company's LTI expense, which is $1,729,325 in the Maryland jurisdiction. OPC and Staff opposed Adjustment 13 and recommended that the Commission remove 100% of the expense.

Staff

Staff argued that Washington Gas has not proven that the remaining 50% is unrelated to financial performance.[137] Staff witness Ostrander argued that, just because Washington Gas removed 50% of LTI expense in this case to be compliant with precedent in a prior rate case, it does not exempt the Company from the requirement of providing specific supporting documentation in this proceeding to show that only 50% of the LTI plan is related to financial performance metrics (which would mean that the remaining 50% of performance is tied to allowable customer/operational performance metrics).[138]

OPC

OPC witness Leyko stated that, in addition to the lack of nexus between the plan's financial metrics and direct customer benefits, the LTI plan's financial goals do not specifically relate to the retail operations of Washington Gas in Maryland.[139] Witness Leyko argued that, while customers might benefit from economies of scale and other factors that come from being part of a larger utility company, that does not mean customers benefit when the financial performance of WGL's parent company is enhanced.[140]

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[137] Ostrander Direct at 26-27.
[138] *Id.* at 28.
[139] Leyko Direct at 15.
[140] *Id*.

WGL Rebuttal

WGL witness Smith noted that the Commission affirmed that only 50% of LTI removal was appropriate in Case Nos. 9267, 9322, 9481, and 9651[141] and that the LTI expense in the current case is included in the cost of service on the basis that it is reasonable and prudent, and necessary and proper. Witness Smith argued that neither OPC nor Staff provided new arguments for the exclusion of 100% of the LTI expense from the cost of service. Although it is the Company's position that 100% of the LTI expense should be included in rates, witness Smith submits that, if the Commission adopts an adjustment to remove the remaining LTI expense, it should adopt the adjustment proposed by OPC witness Leyko rather than the adjustment proposed by Staff witness Ostrander.[142] WGL witness Smith explained that Staff witness Ostrander removed more than 100% of LTI expenses with his proposed adjustment.[143] Staff witness Ostrander continued to recommend exclusion of 100% of the LTI expense but accepted WGL's revised value.[144]

Commission Decision

The Commission accepts Staff's and OPC's recommendation to remove the full amount of the LTI expense based on the Company's failure to meet its burden of proof by not demonstrating that the 50% which the Company did not remove was unrelated to financial performance or was needed in a competitive labor market.

[141] T. Smith Rebuttal at 10.
[142] *Id*.
[143] *Id*. at 10-11.
[144] Ostrander Surrebuttal at 49-52.

8. **Short-Term Incentive Expense**

Staff

Staff witness Ostrander proposed removing 50% of the Company's STI expense, arguing that Washington Gas has not provided or assigned a specific percentage of STI expenses to the primary categories of financial performance measures and customer/operations performance measures, and therefore failed to meet its burden of proof to include all STI expenses in the revenue requirement.[145] Witness Ostrander also proposed removing 50% of capitalized STI expenses for the periods 2018 to 2022, arguing that,

> … the cumulative carryforward impact of capitalized STI in plant in service over a prolonged time period has a significant and increasing impact on the rates consumers pay, due to a rate of return being applied to the increasing rate base amount and due to the related depreciation expense that is recorded on this amount.[146]

Witness Ostrander further argued that,

> STI is considered a period cost, [which] is why the primary amount of incentives are "expensed" each year on the operating income statement, because the costs are intended to reward current employee performance in attaining certain recent financial and customer performance metrics.[147]

For regulatory purposes, witness Ostrander asserted that the current level of employee performance via incentive costs should not continue to be capitalized and carried forward for 30 to 40 years on the books "because today's employee performance quickly becomes irrelevant in the short-term, and the incentive cost of this current employee performance especially has no value or relevance to consumers 30 to 40 years later."[148]

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[145] Ostrander Direct at 37.
[146] *Id.* at 38.
[147] *Id*.
[148] *Id*.

OPC

OPC witness Leyko recommended excluding 20% of the Company's STI compensation expense, as consistent with the STI adjustment approved in Case No. 9651 wherein the Commission eliminated 20% of the STI expense in response to evidence presented by OPC showing that the Company's value drivers were "more heavily weighted to shareholder benefits rather than Maryland customers."[149] Witness Leyko argued that the same is true in this case, noting that one of the value drivers provides no customer benefits and should be paid for by shareholders.

WGL Rebuttal

WGL witness Smith argued the Commission should reject both Staff and OPC's proposed STI expense adjustments,[150] claiming that there is no accounting basis for Staff's position and that Staff and OPC's adjustments would constitute retroactive ratemaking.[151]

Commission Decision

The Commission accepts OPC's 20% reduction in WGL's STI expenses, noting that the regulatory and public policy drivers that determine compensation do not benefit ratepayers. This is consistent with the Commission's decision in Order No. 89072,[152] which noted that it is charged with determining which expenses should reasonably be passed on to ratepayers, and that it will continue to disallow costs associated with financial-related goals as not benefitting ratepayers.

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[149] Leyko Direct at 26-27.
[150] T. Smith Rebuttal at 13.
[151] *Id.* at 15.
[152] Order No. 89072, *In the Matter of the Application of The Potomac Edison Company for Adjustments to Its Retail Rates for the Distribution of Electric Energy*, Case No. 9490 (Mar. 22, 2019) ("*Potomac Edison Order No. 89072*").

9. **Payroll Taxes in Conjunction with Proposed Payroll Adjustments**

WGL

Washington Gas Adjustment 19 modifies the Company's payroll taxes, based on the Company's labor expense. WGL witness Smith stated, "[a]s reported by the Social Security Administration, the tax rates for Federal Insurance Contributions Act ("FICA") and Medicare are 6.20% and 1.45%, respectively, and the maximum taxable earnings for social security was $147,000 in 2022." To determine the wage base subject to FICA, she calculated the ratio of calendar year 2022 Social Security earnings to total calendar year 2022 payroll, then applied this ratio to the incremental labor adjustment to determine the Social Security wage base. As a final step, Ms. Smith stated that she applied the payroll tax rates to the relevant wage base to determine the level of incremental FICA and Medicare taxes to be adjusted in the rate effective period totaling $32,956.[153]

Staff

Consistent with Staff Adjustments BCO-3, 4, 5, and 6, Staff witness Ostrander recommended a $460,911 reduction in the Company's payroll tax expense. This adjustment is in response to Washington Gas Adjustment 19 regarding the union pay raise, union ratification bonus, and removing 50% of LTI expenses.[154] Witness Ostrander noted that Staff's proposed adjustment is based on the same format and workpapers WGL used for making its adjustments, and that Staff is not opposed to WGL's calculation method;

[153] T. Smith Direct at 15.
[154] Ostrander Direct at 39.

therefore, if the Commission revises or rejects any of Staff's proposed payroll-related adjustments, this payroll tax adjustment will also need to be revised.[155]

Commission Decision

Staff's adjustment for payroll taxes is consistent with its other payroll adjustments. Therefore, consistent with the Commission's findings regarding other payroll adjustments, Staff's payroll tax adjustment is also accepted.

10. Call Center Expenses, Normalizing Going-Forward Expenses, Remaining Transition Fees

Staff

Staff Adjustment BCO-8 proposes a $559,179 reduction in WGL Call Center expenses, to reduce Call Center expenses by $4,090,029 in order to normalize going-forward expenses and to remove non-recurring overlapping transition expenses that may have been included in 2022.[156] According to Staff witness Ostrander, this adjustment is based on the best cost information available from WGL's responses to Staff data requests. He noted, however, that this adjustment could be revised if or when Washington Gas provides the proper information sought in Staff's data requests.[157]

AOBA

AOBA witness Oliver recommended the Commission find Washington Gas overstated its costs for Call Center operations that the Company can expect to incur during the rate effective period. In the absence of a "quantitative assessment" of WGL's expected Call Center staffing requirements and the impacts of its new MyAccounts e-platform on-

[155] *Id*.
[156] *Id*.
[157] *Id*.

call volumes, witness Oliver recommends that the Commission limit the Company's Call Center costs to not more than the level of Call Center costs included in the Company's requested revenue requirement in Case No. 9651.[158]

WGL Rebuttal

WGL witness Musgrove submitted that Staff's proposed adjustment uses incorrect data for Calendar Year 2023-to-date Call Center expense, and thus overstates the adjustment to test year expense.[159] Witness Musgrove further stated that Staff witness Ostrander is incorrect in asserting that the Company's response to the data request is incomplete or insufficient, describing WGL's response to Staff Data Request 15-46 as "fully responsive" to the questions included in the request.[160]

In response to AOBA's arguments, witness Musgrove submitted that the test year in Case No. 9651 does not reflect an appropriate level of expense for the rate effective period in this case, and the Company should be allowed to include in its rates the level of expense needed to meet customers' expectations and Commission-approved service level metrics during the rate effective period.[161]

Commission Decision

The Commission accepts Staff Adjustment BCO-8 removing $559,170 from WGL's Call Center expense. As noted by Staff witness Ostrander, the Company's Call Center was previously operated by third-party vendor Faneuil through mid-year 2021. Faneuil's poor Call Center performance in 2020 and 2021 resulted in non-compliant

[158] B. Oliver Direct at 17-18.
[159] Musgrove Rebuttal at 6.
[160] *Id*.
[161] *Id.* at 5.

service quality standards in Maryland (and other WGL jurisdictions), which resulted in the Commission assessing a civil penalty of $1,147,600 against Washington Gas in Order No. 90110.[162]

The poor performance of Faneuil and the Commission's civil penalty led to WGL's selection of a new Call Center vendor, Sutherland, in 2021 Staff reviewed the Company's Call Center expense, removing all non-recurring, overlapping transition expenses included in 2022 and determining the Company's reasonable going-forward expenses for the Call Center in this rate case, which resulted in Staff's adjustment.[163]

11. <u>COVID-19 Regulatory Asset and Amortization Expense</u>

WGL

Washington Gas Adjustment 22 reflects $1,253,718 for the Company's COVID-19 regulatory asset, inclusive of Incremental Costs due to Waiver of Disconnections, Incremental Bad Debt Expense, Late Fee Revenue Suspended before October 1, 2020, Waived Reconnect Fees, Incremental PPE, Cleaning and Other, Travel and Training Savings, and RELIEF Act.[164] A five-year amortization of the COVID-19 regulatory asset increases the Company's annual expenses by $250,743.[165]

Staff

Staff witness Ostrander proposed to adjust WGL's COVID-19 regulatory asset similar to the Commission's decision in the last Baltimore Gas and Electric Company

[162] Ostrander Direct at 40, citing Order No. 90110, *In the Matter of the Merger of AltaGas Ltd., and WGL Holdings, Inc.,* Case No. 9449 (March 17, 2022) slip op. at 18.
[163] *Id*. at 40.
[164] Tuoriniemi Direct at 9.
[165] *Id.* at 49.

("BGE") rate case.[166] Witness Ostrander stated that he was unable to confirm or validate the Company's Late Fee Revenue Waived amount of $1,519,222 and the Waived Connect Fee amount of $1,386 and therefore does not agree with those amounts.[167] Consistent with the Commission's decision in the BGE rate case, witness Ostrander proposed removing Late Fee Revenue Waived and Waived Connect Fees from the Company's COVID-19 regulatory asset, thereby excluding these amounts from earning an ROR. Witness Ostrander did, however, allow the related amortization expense of $250,744 to be recovered in rates over a five-year amortization period.[168]

OPC

OPC witness Meyer recommended that approximately $512,000 should be used to offset the remaining COVID-19 deferred expenses of $1,253,718.[169] Witness Meyer noted that WGL's bad debt expense was estimated based on a baseline of bad debt expense, and that the baseline of bad debt expense identified by WGL witness Tuoriniemi is the level of bad debt expense that would be normally incurred without COVID-19-related regulatory asset accounting. By applying the $512,000 to normal, on-going levels of bad debt expense, witness Meyer argued that the utility receives a windfall, and that "[i]t is unfair to WGL's ratepayers to use state funds to reduce ongoing bad debt expenses while collecting COVID-19 expenses through an amortization rather than using the surplus to pay down the COVID-19 expenses."[170]

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[166] *Id.* at 43.
[167] Ostrander Direct at 43.
[168] *Id*.
[169] Meyer Direct at 12.
[170] *Id*. at 13.

Witness Meyer also opposed WGL's collection of lost late fees, based on Commission Order No. 90018 which imposed a civil penalty against Washington Gas for violating customer service standards and required Washington Gas to continue the suspension of dunning letters, disconnections, and late fees until the Company satisfied its customer service obligations. Witness Meyer submitted that, because WGL did not assess late fees until April 6, 2023, pursuant to the Commission's order, the late fees should not be included in the Company's COVID-19 deferral.[171]

Based on witness Meyer's bad debt adjustment and elimination of late fees from WGL's COVID-19 deferral, OPC submits there are no COVID-19 expenses left to include in WGL's cost of service. In its reply brief, OPC argued that Order No. 90018 expressly contemplated the disallowance of such late fees, and that WGL's reference to imprudence "misses OPC's principal point:" that the Commission's COVID-19-related orders were intended to enable companies to recover late fees deferred by COVID only, not to recover for non-compliance.[172]

WGL Rebuttal

In response to Staff's concerns regarding whether the Company's COVID-19 regulatory asset is reflected in rate base, WGL witness Tuoriniemi stated that it is not, and therefore is a non-issue.[173]

In response to OPC witness Meyer's recommendation that the Commission disallow any COVID-19 deferral, witness Tuoriniemi stated "[t]here are no excess or extra funds that were retained by customers," contrary to what witness Meyer asserted. Witness

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[171] *Id.* at 14.
[172] OPC Reply Brief at 15. (citations omitted.)
[173] Tuoriniemi Rebuttal at 53.

Tuoriniemi argued that OPC is attempting to apply "excess" funds when there are none, and disagrees that state relief funds were relief that was already paid for in current customer base rates and should therefore be used to offset the COVID-19 regulatory asset.[174]

Commission Decision

The Commission accepts Staff Adjustment BCO-9, thereby treating WGL's COVID-19 regulatory asset and amortization expense in a manner consistent with the Commission's decision in the noted BGE rate case. Consistent with that decision, Staff witness Ostrander recommended removal of Late Fee Revenue Waived and Waived Connect Fees from the COVID-19 regulatory asset, excluding these amounts from earning an ROR. Staff's recommendation allows the related amortization expense of $250,744 to be recovered in rates via a five-year amortization of these costs, so there is no change from the amortization expense proposed by Washington Gas.[175]

12. Amortization Expense on Capitalized Software

Staff

Staff witness Ostrander proposed Adjustment BCO-11 to remove the amortization expense of $1,474,871 related to capitalized software that becomes fully amortized in 2023.[176] In support of this proposal, witness Ostrander stated that Staff Data Request 15-56 requested that WGL provide "a list of all capitalized software for the test period December 31, 2022, and identify all software that will become fully amortized in 2022, 2023, and 2024."[177] According to witness Ostrander, his review of the information

[174] *Id.* at 54-56.
[175] Ostrander Direct at 43-44.
[176] *Id.* at 45.
[177] *Id.*

provided by Washington Gas showed that a significant amount of capitalized software will become fully amortized in 2023, yet WGL's response to the data request stated that "no software will become fully amortized in 2022, 2023, and 2024."[178]

WGL Rebuttal

WGL witness Tuoriniemi argued that Staff's position is based on the Commission's decision in Case No. 9481 which, he noted, accepted a similar recommendation regarding the Company's amortized expense on capitalized software.[179] Witness Tuoriniemi further argued that the Commission's decision in Case No. 9481 centered around whether the software being addressed was in use and serving customers, and requested that the Commission recognize that Washington Gas will continually face the need to update and replace software.[180] He argued that Staff's adjustment contains an "imbalance of reaching forward to eliminate amortization on fully amortized software."[181]

WGL witness Arcuri argued that software assets require periodic maintenance and on-going investment to maintain asset health, adding that "[n]ot unlike a gas pipe in the ground, these assets have 'life cycles' that need to be managed." Witness Arcuri explained that software asset life cycles "tend to be much shorter than gas pipes due to the accelerated rates at which technology advances and vendor support for assets is depreciated."[182]

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[178] *Id.*
[179] Tuoriniemi Rebuttal at 32.
[180] *Id.*
[181] *Id*. at 34.
[182] Arcuri Rebuttal at 4. "The Company must continuously maintain our assets throughout their lifecycle to ensure they are not subject to excessive security risk. Periodically, as assets approach the end of their lifecycle, investment is required to upgrade, retire, or replace them."

Commission Decision

The Commission accepts Staff Adjustment BCO-11, removing WGL's capitalized software expense which Staff indicated will become fully amortized in 2023. As witness Ostrander noted, it is the Company's policy to discontinue recording amortization expense when capitalized software becomes fully amortized. The Commission acknowledges that Washington Gas will continually update and replace software. However, rather than proposing an offsetting adjustment the Company simply recommended that the Commission reject Adjustment BCO-11. The Commission disagrees and finds it reasonable to remove the amortization expense on this related fully amortized capitalized software, because it is consistent with WGL's amortization policy and ensures that Washington Gas does not over-recover the cost.[183]

13. Non-Recurring Costs Related to Implementing the Customer Mobile Application

Staff

Staff Adjustment BCO-12 removes non-recurring Customer Mobile Application ("CMA") expenses of $222,738 from the 2022 test period. According to Staff witness Ostrander, this adjustment is supported because these expenses will not continue to be incurred in the future and, if Washington Gas is allowed to recover these expenses in this rate case, customers will be paying excessive rates for these non-recurring CMA expenses.[184]

[183] Ostrander Direct at 45.
[184] *Id.* at 46.

AOBA

AOBA argued that WGL's test year costs for Call Center operations are "not indicative" of the Call Center activity and costs that it should expect during the rate effective period, and Washington Gas has not adjusted its Call Center costs to reflect the roll-out of its new MyAccounts e-platform which is intended to provide customers with an alternative to contacting the Company through its Call Center.[185] Witness Oliver argued that WGL's Call Center cost are "overstated" with regard to costs the Company can expect during the rate effective period, and that absent a quantitative assessment of Call Center staffing requirements, the Commission should limit the level of Call Center-related cost to the amount requested in Case No. 9651.[186]

WGL Rebuttal

WGL witness Tuoriniemi argued that Staff's adjustment should be rejected, stating that Staff witness Ostrander's assertion that technology costs will decline after the test year in this case is an "unrealistic" view of the technology challenges facing companies, including Washington Gas. Witness Tuoriniemi further argued, "for Staff witness Ostrander to remove the costs from the test year for one project and not recognize the reality that technology cost will rise in the future is illogical."[187]

Also in rebuttal, WGL witness Musgrove argued that AOBA's suggestion that the Commission limit the Company's Call Center test year expense to costs allowed in its previous rate case is inconsistent with sound ratemaking principles.[188] She also argued that

[185] B. Oliver at 8, 17-18.
[186] *Id.* at 19.
[187] Tuoriniemi Rebuttal at 79.
[188] *See* Musgrove Rebuttal at 6.

Staff witness Ostrander's adjustment appears to ignore this basic principle in favor of a formulaic reduction in the cost of service.[189]

Commission Decision

The Commission rejects Staff Adjustment BCO-12. As WGL witness Tuoriniemi argued in rebuttal, and as the Company reiterated in its brief, the assertion that technology costs will decline after the test year in this case is "unrealistic."[190]

14. Normalization of Savings from Takeback of Accounts Payable by SEMCO

Staff

Staff Adjustment BCO-13 proposes to reduce expenses (or reflect cost savings) by $213,088, resulting from the takeback of the Accounts Payable function in-house (by WGL's affiliate, SEMCO Energy, Inc.) from third party vendor Accenture. According to Staff witness Ostrander, Staff Data Request 15-55 asked Washington Gas to provide the amount of cost savings to WGL by switching the Accounts Payable function from Accenture to affiliate SEMCO and explain when the full amount of the cost savings will be realized, along with calculations supporting this savings.

Witness Ostrander noted that WGL's response stated that SEMCO began providing Accounts Payable services on May 1, 2022, and the cost savings was projected to be $800,000 (on a WGL-Total basis), with savings to be realized during the first full year of services being provided (2023), with actual savings of $262,651 being realized during 2022. Witness Ostrander calculated Staff Adjustment BCO-13 in part based on WGL's

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[189] *Id.*
[190] Tuoriniemi Rebuttal at 79; WGL Brief at 41.

response to Staff Data Request 15-55, Attachment 1, comparing Accenture's expenses for providing Accounts Payable services in 2021 (prior to takeback) of $336,496 (WGL-MD basis) to the expenses incurred by SEMCO for providing Accounts Payable takeback services for the first time in 2022 (after takeback) of $224,624 (WGL-MD basis), and this difference of $111,872 is the incremental partial year Accounts Payable takeback savings in 2022.[191]

WGL Rebuttal

WGL witness Tuoriniemi submitted that Staff's computation of the estimated potential savings identified in the SEMCO Accounts Payable Centralization and Optimization ("SEMCO AP") assessment is overstated.[192] Witness Tuoriniemi argued, "[a]lthough not explicitly stated, the amounts reflected in the SEMCO AP assessment are savings for all of the entities that Washington Gas managed the Accounts Payable activities for, including affiliated entities."[193]

Witness Nufrio noted that the dollar amount of shared services provided *decreased* since WGL's merger with AltaGas, and that the scope of the services offered was set forth in detailed testimony during the merger case.[194]

Witness Tuoriniemi also testified that the Company has yet to achieve the level of savings estimated by Staff witness Ostrander and that, while he does not agree with Staff witness Ostrander's recommendation for the adjustment, if the Commission determines otherwise, he proposed "an adjustment to lower the operating expense by $72,149 to reflect

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[191] Ostrander Direct at 48-49.
[192] Tuoriniemi Rebuttal at 81.
[193] *Id*.
[194] Hr.g Tr. at 178 (Nufrio).

realized savings for the transition of Accounts Payable processing from an outside vendor to SEMCO."[195]

Commission Decision

The Commission accepts Staff Adjustment BCO-13, reducing the Company's expenses by $213,088, resulting from the takeback of the Accounts Payable function from WGL's third-party vendor, Accenture. Despite WGL's assertion that the Company has yet to achieve the level of savings estimated by Staff, Staff's brief noted that it could not verify the Company's calculations or confusing explanation, and the original Company-claimed annual savings of $800,000 from the takeback of accounts payable processing was not mentioned or reconciled to amounts in the Company's rebuttal testimony.[196] In the absence of sufficient clarity allowing Staff to verify the Company's calculations, the Commission finds Staff Adjustment BCO-13 reasonable.

15. Promotional Advertising Expenses

WGL

WGL's revenue requirement request includes a test-year promotional expense level of $393,192 (inclusive of $6,254 in direct assignment, plus $386,938 allocated costs).[197] WGL witness Tuoriniemi noted that Code of Maryland Regulations ("COMAR") 20.07.04.08 defines promotional activities as being "directed toward selling services or promoting the addition of new customers or seeking additional use of utility service." Witness Tuoriniemi further noted that the Company has not changed how it accounts for

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[195] Tuoriniemi Rebuttal at 81.
[196] Staff Brief at 51-52.
[197] Tuoriniemi Direct at 60-61. (Washington Gas removed $32,000 from promotional expenses in the original direct testimony to account for its sponsorship of the Washington Nationals.)

its advertising and promotional expenses since Case Nos. 9104, 9267, 9322, 9481, 9605, and 9651, and that, per WGL's marketing organization, its promotional advertising is in the public interest and directly benefits ratepayers because, in WGL's opinion, it continues to provide necessary information to assist the customer in making informed energy choices.[198]

Staff

Staff Adjustment BCO-14 proposes to remove the entire allocated promotional advertising expense of $418,936 in FERC Account 913.[199] After reviewing the Company's responses to data requests, Staff witness Ostrander stated:

> … the Promotional advertising campaign information at Attachment 1 (page 1 of 4) includes a script that states, "Reliable and Affordable Energy for the DMV" (along with other messages), and this is the same campaign script message provided at Attachment 2 for Institutional advertising.[200]

Witness Ostrander submitted that, since institutional advertising was removed by Washington Gas from this case because it is not considered to be beneficial to customers, the promotional advertising expense which conveys the same message as the institutional advertising to customers should also be removed. Regarding the other examples of promotional advertising provided by Washington Gas, witness Ostrander argued,

> … the advertising was vague, does not provide any meaningful tangible benefit to customers, does not materially assist customers with making any important or informed decisions, and cannot be readily distinguished from Institutional advertising for the most part. Sometimes the Promotional advertising script includes vague statements such as "Enjoy the benefits of natural gas", "Fill your home

[198] *Id.*
[199] Ostrander Direct at 49.
[200] *Id.* at 51.

> with comfort and laughter", and "Natural gas is safe, reliable, affordable."[201]

OPC

OPC witness Lekyo also recommended that the Commission exclude promotional advertising from WGL's cost of service because Washington Gas did not meet the Commission's standard for recovery of these costs.[202]

Witness Lekyo submitted that both COMAR and Commission precedent require proof of a public benefit and a direct benefit to customers for promotional advertising to qualify for inclusion in rates. Witness Lekyo argued that Washington Gas failed to meet the Commission standard for inclusion of its promotional advertising costs in rates by not showing the promotional advertising to be either cost-effective or serving the public interest, rejecting WGL witness Tuorininemi's assertion that "because any customers added to the system under the Company's line extension tariff must be cost-effective, then any promotional advertising, which may or may not have influenced those customers, is cost-effective and in the public interest."[203]

In its reply brief, OPC asserted that promotional advertising costs, trade association dues that support gas industry advocacy effort costs (as well as LTI and certain STI compensation costs)[204] benefited shareholders, not ratepayers, and allowing recovery was inconsistent with, or would interfere with attainment of, Maryland's climate goals.[205] Additionally, OPC argued that "[b]ecause Washington Gas' advertising lacks

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[201] *Id.*
[202] Lekyo Direct at 1-2.
[203] *Id.* at 7.
[204] OPC also reiterated that its LTI and STI compensation adjustments were proper. OPC Reply Brief at 19.
[205] OPC Reply Brief at 16.

informational value, produces few if any economic benefits to consumers, and does not serve the public interest … the Commission should disallow the [WGL][206] recovery of promotional advertising costs.

WGL Rebuttal

WGL witness Musgrove argued that the Company's promotional advertising activity in the 2022 test year remained consistent with Commission-approved precedent in previous cases, and that WGL's promotional advertising is both in the public interest and provides direct benefits to ratepayers, concluding that a showing of direct benefits to customers has been made.[207]

Witness Musgrove disagrees with OPC witness Lekyo's rejection of the Company's net-present-value ("NPV") as a basis for determining direct benefits to ratepayers for promotional advertising, stating that the reason to approve recovery of promotional advertising expenses is that the addition of these new customers contributes long-term net positive benefits, thus moderating the need for future rate increases.[208]

Commission Decision

The Commission accepts Staff Adjustment BCO-14, removing $418,936 related to promotional advertising. As noted by Staff, promotional advertising conveys the same message as institutional advertising, neither of which are beneficial to customers. As explained in Order No. 88944, the Commission's regulations delineate four types of advertising expenses: promotional, informational, community affairs, and institutional.[209]

[206] *Id.* at 18.
[207] Musgrove Rebuttal at 8.
[208] *Id.* at 9.
[209] COMAR 20.07.04.08D.

Promotional advertising is directed toward selling services, adding new customers, or encouraging the further use of utility services.[210] Informational advertising informs customers of "charges and conditions of service, safety precautions, energy conservation, temporary or emergency conditions, employment opportunities, rate cases, annual reports, and legal and financial matters."[211] Community affairs advertising attempts to influence public opinion on a controversial issue or a legislative or administrative matter.[212] Institutional advertising seeks to establish a favorable image of the utility or its employees.[213]

The Commission's advertising regulations favor informational advertising over the other three forms. Informational advertising is presumed to be in the public interest and is recoverable unless it is demonstrated otherwise in the rate case proceeding.[214] In contrast, advertising expenditures other than informational "will not be allowed for rate making purposes unless it is demonstrated to the satisfaction of the Commission in a subsequent rate proceeding that the expense is of direct benefit to the ratepayer and in the public interest."[215]

The Commission is persuaded by the testimony of Staff witness Ostrander that WGL's request for FERC Account 913 advertising expenses fails to distinguish between institutional and promotional advertising, and the Company's promotional advertising has

[210] COMAR 20.07.04.08E(1).
[211] COMAR 20.07.04.08E(2).
[212] COMAR 20.07.04.08E(3).
[213] COMAR 20.07.04.08E(4).
[214] COMAR 20.07.04.08C.
[215] COMAR 20.07.04.08F provides: "Unless a utility company demonstrates during a rate case proceeding before the Commission that a particular item of advertising or promotional expenditure was directly beneficial to the ratepayer and in the public interest, expenses classified as promotional, community affairs, and institutional shall be excluded as an expense for rate making purposes."

not led to concrete benefits for customers. The advertising samples provided in discovery and reviewed by Staff were considered vague and failed to materially assist customers with making any important or informed decisions.[216]

16. **Leak Detection Program Expenses**

Staff

Staff witness Ostrander recommended Staff Adjustment BCO-15 to remove WGL's Leak Detection Program expense in the amount of $589,590 based on an annual average of this expense for the four-year period 2019 to 2022, because the 2022 test period expense of $1,528,003 was significantly larger than the prior year expenses of $607,627 for 2019, $654,902 for 2020, and $963,122 for 2021.[217] This adjustment addresses what witness Ostrander described as "unusual or significant non-recurring or unsupported expenses" related to the various technologies and overlapping leak detection pilot programs provided primarily by outside vendors.

WGL Rebuttal

WGL witness Murphy stated that the Company does not utilize the vendors Staff witness Ostrander uses as examples in his testimony (*i.e.*, Picarro, Satelytics, Gas Technology Institute) for the Company's Leak Management Program in Maryland. Instead, the Company's vendor for its Leak Management Program in Maryland is Heath Consultants.[218] According to witness Murphy, the level of cost for the Leak Detection Program did not change, instead the Company changed the amount allocated.[219] He noted

[216] Staff Brief at 52-53; Ostrander Direct 50-51.
[217] Ostrander Direct at 52.
[218] Murphy Rebuttal at 6.
[219] *See* Tuoriniemi Rebuttal at 82-84.

that, in the past, Washington Gas used a simplified approach to charge vendor costs to the District of Columbia and Maryland based on the premise that the service provider worked equally in both jurisdictions, but that the Company now believes charging cost based on the number of services is a more fair apportionment to the jurisdictions driving the cost and has made that change.[220]

WGL witness Tuoriniemi provided an annualization of its Leak Detection Program vendor costs - 2023 to date - that he argued indicates reasonable spending levels for 2023. Witness Tuoriniemi submitted that WGL's test-year expenses are $603,512, and that the Company has not proposed an adjustment to test year levels.[221]

Commission Decision

The Commission accepts Staff Adjustment BCO-15, removing $589,590 in expenses associated with WGL's Leak Detection Program. As Staff noted, the 2022 cost of the Company Leak Detection Program for Maryland, $1,528,003, was much higher than in prior years. Witness Ostrander's adjustment normalizes this expense over a four-year period from 2019 to 2022. The Company's testimony also lacks supporting documentation for the significant increase in 2022 and does not address any potential future reductions in labor and overtime costs associated with this program. Therefore, in the absence of any effective rebuttal on this issue, normalizing the expense associated with the Leak Detection Program to reflect the average of the Company's costs over the past four years is reasonable.

[220] Murphy Rebuttal at 8.
[221] Tuoriniemi Rebuttal at 84.

17. **Medical Plans Inflation Rate**

WGL

WGL witness Smith adjusted the cost of the Company's medical plans to capture the cost of these plans in the rate effective period, with the adjustment based on an analysis of historical medical cost inflation and supported by the Company's Human Resources ("HR") Department annual plan renewals. The estimates provided by service providers and from independent studies show higher medical inflation rates than used in the adjustment.[222]

In calculating the adjustment, witness Smith stated that she applied the inflation factor estimated by the HR Department, compounded for 1.92 years, to the test-year expense for the medical plans. The application of 1.92 years of inflation was done to arrive at medical plan expense in the rate year. After applying the O&M factor and Maryland allocation factor, this adjustment increases test year medical plans expense by $870,060.[223]

Staff

Staff witness Ostrander recommended Staff Adjustment BCO-16 to only allow a 7% inflation rate for one year subsequent to the test period, resulting in an expense reduction of $430,520. Mr. Ostrander stated that he does not believe it is reasonable to adjust medical plans expense for a period of two years beyond the test period, arguing that the more remote an adjustment is from the test period, the more difficult it is to determine that adjustment is reasonable, known and measurable, and predictive of future costs,

[222] T. Smith Direct at 14.
[223] *Id.*

thereby compromising the benefit and application of the traditional historical test-period concept.[224]

WGL Rebuttal

In its brief, WGL maintained that Staff witness Ostrander provided no objective basis for his proposal to limit the projected inflation period, noting that although witness Smith did not specially address Adjustment 17 in her rebuttal testimony, this adjustment is still supported.[225]

Commission Decision

The Commission accepts Staff Adjustment BCO-16, allowing only a 7% inflation rate for one year subsequent to the test year in this case, resulting in an expense disallowance of $430,520. While Washington Gas argued that its adjustment is based on an analysis of historical medical cost inflation, in Case No. 9418 the Commission agreed with Staff's recommendation to remove altogether projected increases in medical expenses outside of the test year as they are not known and measurable.[226] The Commission therefore finds that allowance of the Company's requested 7% inflation rate for one year subsequent to the test year, but not two, is not unreasonable.

18. Cash-Working Capital and Lead/Lag Study

WGL

Washington Gas Adjustment 35 reflects the Company's cash working capital ("CWC") adjustment, based on the Company's total lead/lag study requirement of

[224] Ostrander Direct at 55.
[225] WGL Brief at 24, n.140.
[226] *Washington Gas Order No. 88944* at 42.

$59,201,529 which, when subtracted from the test-year CWC allowance of $61,920,859, WGL witness Tuoriniemi states results in a combined ratemaking and pro forma adjustment of $2,719,330, which is a decrease in rate base.[227]

Staff

Staff witness Ostrander recommended Staff Adjustment BCO-17, which reflects a downward adjustment of the Company's CWC by $14 million. Witness Ostrander made several revisions to WGL's lead/lag study inputs because the CWC increased from $36.7 million at March 31, 2020 in the prior rate case to $59.2 million at December 31, 2022 in this rate case.[228] Witness Ostrander also expressed concern regarding how the lead and lag of revenues and costs can vary substantially between WGL jurisdictions, given that the accounting function is centralized and numerous costs are shared among the jurisdictions of Maryland, District of Columbia, and Virginia.[229]

OPC

OPC witness Meyer did not include a synchronized CWC adjustment in his direct testimony - a point that was made by WGL witness Tuoriniemi in the Company's rebuttal.[230] However, in his surrebuttal testimony, OPC witness Meyer stated that the CWC impact from the OPC adjustments would have a minor impact on WGL's revenue requirement.[231]

[227] Tuoriniemi Direct at 67.
[228] Ostrander Direct at 56.
[229] *Id. at* 57.
[230] Tuoriniemi Rebuttal at 67.
[231] Meyer Surrebuttal at 25.

WGL Rebuttal

WGL witness Tuoriniemi responded by arguing that Staff witness Ostrander created a "results-oriented adjustment" to achieve the reduction in CWC he desired, noting that he selected individual items to remove from the development of the individual expense leads or applied an inappropriate lead which created an irrational result. Witness Tuoriniemi argued that the reasoning for this change is "factually incorrect" or speculative, and therefore the modification to CWC leads proposed by Staff Witness Ostrander are incorrect and must be disallowed by the Commission.[232]

Commission Decision

The Commission accepts Staff Adjustment BCO-17, reflecting a $14 million downward adjustment of WGL's CWC. Staff demonstrated that several assumptions in WGL's lead/lag study were not reasonable, and therefore utilized a hybrid method (using an average of WGL's proposed CWC (with adjustment, and a ⅛ CWC method) to support its adjustment to WGL's CWC. The hybrid method reduces WGL's CWC from the Company's proposed $44.9 million downward by $14 million.

Staff's testimony also noted that the Company's revenue lag days increased 10 days (from 55 days to 65 days) since WGL's last rate case.[233] Contrary to WGL's assertion, the Commission does not find Staff's hybrid method and CWC adjustment to be "results oriented," but rather based on reasonable concerns regarding the Company's lead/lag study.

[232] Tuoriniemi Rebuttal at 63.
[233] Staff Brief at 43; Staff Ex. 21 and 21C at 75.

Washington Gas could have chosen to correct its study for its unreasonable assumptions but elected not to do so. Lacking a corrected study, the Commission finds Staff's analysis reasonable under present circumstances.

19. Insurance Expenses

WGL

Washington Gas Adjustment 23 reflects the Company's proposed expense for insurance. Company witness Tuoriniemi stated that, during the test year, WGL renewed each of its insurance policies and, based on those new contracts, he developed a ratemaking level for insurance costs.[234] Mr. Tuoriniemi stated that he accumulated the change in premiums for each new policy and allocated the applicable percentage of the costs to the operations of Washington Gas. To determine the percentage applicable to WGL, he stated that he used a labor factor for allocating workers' compensation, then used the allocation to the utility in the test period to allocate property, excess liability, professional, commercial crime, cyber liability, and service fees. He argued that general liability and directors and officers insurance premiums reflected Washington Gas amounts and did not require allocation.

After comparing the total ratemaking insurance premiums to the previous policy premiums, the difference is allocated to Maryland using two factors: (1) the Maryland net gas plant in service allocation factor of 37.3284%, and (2) all other insurance expense allocated based on the Maryland total labor allocation factor of 42.2168%. Mr. Tuoriniemi stated that the increase in the Company's total insurance costs is expected to be

[234] Tuoriniemi Direct at 49.

approximately $1,655,789 (resulting in a $693,337 increase for the Maryland jurisdiction) during the rate effective period.[235]

OPC

OPC witness Lekyo recommended the Commission direct Washington Gas to share the Company's directors and officers liability insurance costs evenly (50/50) between shareholders and customers, arguing that this is insurance that protects the directors and officers from liability for claims based on decisions they make as employees of the Company. The insurance protects these employees when a party sues the directors and officers of a public company, such as WGL's parent company, AltaGas.[236]

Commission Decision

The Commission rejects OPC's proposal recommending an equal sharing of the Company's directors and officers liability insurance. A similar request by OPC was rejected by the Commission in Order No. 85724, wherein the Commission found, "*D&O insurance is a legitimate business expense. OPC has not offered a sufficient basis to exclude part of these costs in this case; therefore, the Commission rejects OPC's proposed adjustment.*"[237] Without directors and officers insurance, the Company would be self-insuring against litigating claims, which would result in greater cost to customers because the cost of claims would need to be financed.[238]

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[235] *Id.*
[236] Lekyo Direct at 11.
[237] Order No. 85724, *In the Matter of the Application of Potomac Electric Power Company for An Increase in Its Retail Rates for the Distribution of Electric Energy*, Case No. 9311 (Jul. 12, 2013) slip op. at 61.
[238] WGL Brief at 26.

20. **Lobbying Expenses**

WGL

Washington Gas Adjustment 33 proposes to reduce by 5.1%, or $13,865, the $271,865 representing Maryland's share of WGL membership dues for the American Gas Association ("AGA"), to eliminate the portion of dues attributable to AGA lobbying activities.

OPC

OPC witness Meyer noted that Commission regulations generally prohibit a utility from recovering lobbying expenses in its cost of service. Witness Meyer argued that lobbying expenses benefit the shareholders of the utility and, therefore, shareholders should bear the responsibility of paying for these costs. Witness Meyer urged the Commission to reduce the Company's AGA dues further to reflect AGA activities that are performed for the benefit of the Company's shareholders, recommending that 25% of the total $271,865 in AGA dues be disallowed from cost of service to recognize lobbying expenses ($13,865) and an additional reduction of $54,101 to reflect an estimate of the AGA dues that are not classified as lobbying but nevertheless involve activities such as advocacy for the gas industry that primarily benefit shareholders.[239]

Additionally, in its reply brief, OPC argued that witness Meyer cited AGA's own materials acknowledging that the organization "*does* conduct advocacy to advance its members' interests."[240] OPC argued further that even if the Commission has allowed

[239] Meyer Direct at 7.
[240] OPC Reply Brief at 17. (emphasis added.)

recovery of non-lobbying portions of AGA dues (as in other cases cited by WGL), the cases where it has done so do not apply here.

WGL Rebuttal

WGL witness Tuoriniemi argued that OPC's proposed adjustment to the Company's AGA dues expense is weakly supported and inconsistent with precedent. He argued that OPC witness Meyer's extract from a four-page description of AGA activities provides no compelling information to conclude AGA activities are shareholder focused, adding that Mr. Meyer fails to quantify or justify why 25% or any other percentage other than the actual information provided by AGA and applied by Washington Gas is appropriate for removing the lobbying expense portion of AGA fees.[241]

In its reply brief, WGL argued that OPC fails to identify any such "advocacy" in costs related to its AGA dues, and argued that Commission precedent in Case Nos. 8959, 9104, 9267, 9322, 9481, and 9651 recognized recovery of costs associated with AGA dues.[242]

Commission Decision

The Commission accepts OPC's adjustment to reduce the Company's AGA dues by 25%. In supporting its recommendation, OPC emphasized WGL's response to OPC DR 7-1, which states in part:

> ***AGA does conduct advocacy to advance its members' interests*** – interests that overlap significantly with the goals of the NGA, the Natural Gas Policy Act, and other federal statutes, including protecting and advancing the interests of

[241] Tuoriniemi Rebuttal at 60.
[242] WGL Reply Brief at 8. WGL acknowledged, however, that the Commission has traditionally excluded the portion of AGA dues attributable to lobbying expenses. *WGL Reply Brief at 8,* citing Case No. 8959, Proposed Order at 45 (Sept. 12, 2003).

> the nation's natural gas utilities and consumers in receiving safe, reliable, and cost-effective natural gas supplies. …[243]

Concluding that at least some portion of AGA dues support advocacy that benefits industry, not ratepayers, OPC witness Meyer estimated a 25% disallowance.

While in Case No. 9418 the Commission denied Staff's request to exclude Company costs that were paid to the AGA in support of the trade association's annual conference, noting there was insufficient record evidence to exclude those costs, the Commission is very much concerned that the Company's trade association expenses must be better justified. There is a thin line between activities of trade associations in regard to providing education to its members (and the public) and advocacy in support of programs that mostly benefit the utility industry as a whole and utility shareholders.

In response to Bench Data Request No. 1, requesting the derivation of the 5.10% lobbying factor associated with AGA dues, referenced in WGL Exhibit RET6, the Company stated that it sought and obtained a statement for AGA referencing U.S. Internal Revenue Code Section 162(e), which defines lobbying.[244] The definition of "lobbying" provided by AGA defines "lobbying" broadly to include activities for the purpose of "influencing legislation" at the state or federal level.[245] In the upcoming Case No. 9707 ("Future of Gas") proceeding, AGA clearly takes on an advocacy role—seeking to influence the Commission with regard to the State's climate policy and the outcome of that proceeding.

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[243] OPC Brief at 31 (emphasis original).
[244] Maillog No. 306466 ("WGL Response to Bench DR-1").
[245] *Id.*

In its brief, CCAN argued that AGA "has been instrumental in undermining climate policy at the local, state, and federal levels" and "routinely fights efficiency standards that will help save Americans money and cut pollution because it will decrease gas sales."[246] As OPC also noted in its brief, "[t]he record shows that AGA advocacy efforts, funded by ratepayers, benefit shareholders by advancing the interest of the gas industry - interests that are not necessarily aligned with Maryland's climate goals."[247]

To best ensure that ratepayers are not financing WGL's trade association activities that conflict with these goals, the Commission finds OPC's reduction of 25% the Company's AGA expenses in this case to be reasonable.

21. Cost Savings Related to AltaGas Merger

WGL

WGL witness Tuoriniemi did not propose an adjustment to rates to reflect merger savings as required by Merger Commitment 44 in the AltaGas-WGL Holdings Merger Order because, in his view, "Washington Gas has met its obligations under Commitment 44 and so no further synergy savings obligation exists."[248] Washington Gas reasoned that Case No. 9481 was filed on May 15, 2018, prior to merger close, and new rates went into effect on December 11, 2018. Because new rates in the present case go into effect on December 14, 2023, Commitment 44 has been satisfied and no further synergy savings obligations exist.

[246] CCAN Brief at 26-27.
[247] *Id* at 32.
[248] Tuoriniemi Direct at 47.

Washington Gas rejected OPC witness Meyer's argument that Commitment 44 also prohibits the Company's overall corporate costs, including corporate costs allocated from AltaGas, from increasing compared to the pre-merger "reference year" of 2016 as determined by Commitment 44. WGL observed this argument by OPC has already been litigated, and rejected, at two levels of appellate review.[249] This issue is also currently before the Maryland Supreme Court and was argued by the parties on December 4, 2023. The Court's decision is currently pending.

<u>*OPC*</u>

OPC rejected WGL's argument that the merger savings required by Commitment 44 expired, observing that the language of the Commitment states that it is intended to ensure that customer rates reflect an annual net benefit to Washington Gas's Maryland customers of not less than $800,000 per year over the five years following Merger Close commencing with the first post-Merger base rate case (*i.e.,* $4 million over five years).

OPC argued that Merger Close was July 6, 2018, and that, because Washington Gas filed the current rate case on May 18, 2023, Commitment 44 does apply to the present case, leaving WGL unable to seek recovery of any corporate costs that exceed merger savings. Based upon this, OPC witness Meyer calculated an adjustment of $8,131,451, which is the amount by which the allocation of corporate costs from AltaGas to WGL exceeds the

[249] WGL cites to the decision by the Appellate Court of Maryland at fn 201 of its brief: *In the Matter of the Maryland Off. of People's Couns.*, No. 775, Sept. Term, 2022, 2023 WL 3316541 at 5. (Md. Ct. Spec. App. May 9, 2023) ("OPC takes issue with the fact that corporate costs increased after the merger of AltaGas and Washington Gas, asserting the parties to the merger 'promised the Commission' that the merger would result in 'corporate cost savings for five years of at least $800,000 per year. The Commission expressly determined that the merger required no such thing."). *Cert. granted,* 485 Md. 134 (2023).

Company's 2016 corporate costs as reflected in the side-by-side comparison required by Merger Condition 28.

In its Reply Brief, OPC argues that the issue of whether Washington Gas has an obligation to demonstrate a net synergy savings of $800,000 in the present case is not before the Maryland Supreme Court. OPC repeats its contention that the issue - which is before the Maryland Supreme Court - is how costs in excess of merger savings should be calculated.[250]

Commission Decision

The Commission agrees with OPC that the five-year time limit on Commitment 44 had not expired when Washington Gas filed the present rate case, and that WGL is therefore required to comply with Commitment 44. As OPC noted, the plain language of Commitment 44 begins the five-year period on the date of the "Merger Close," making Commitment 44 applicable to rate cases filed before July 6, 2023. Because Washington Gas filed the present rate case on May 18, 2023, the five-year period had not yet expired.

The Commission notes, however, that because several of these issues, including the proper methodology for evaluating compliance with Commitment 44 as well the recovery of any increase in WGL's corporate costs, are currently pending at the Maryland Supreme Court, the Commission lacks jurisdiction over these issues in the present case. As a result, the Commission will await the decision of that court and then revisit these issues in a separate proceeding in which it will address all issues from Case No. 9651 and Case No. 9704, including the 14 capital expenditures discussed above, to determine whether the

[250] OPC Reply Brief at 12-13.

Maryland Supreme Court's decision as well as the prudency review ordered by Judge Ausby entitles WGL ratepayers to a refund, as well as the amount of any refund.

22. Accumulated Deferred Income Tax (ADIT)

WGL

WGL witness Tuoriniemi argued that, because of the deficiencies in OPC witness Meyer's computation of the disallowance recommendations, the accumulated depreciation and accumulated deferred income taxes, which are derivative of the adjustments to gas plant in service, are flawed and cannot be relied upon.[251]

OPC

OPC witness Meyer acknowledged that witness Tuoriniemi was correct in noting that his calculations did not consider the impact of ADIT.[252] He stated that this error was corrected in his surrebuttal testimony for calculations of the various plant adjustments that he sponsored, as well as those sponsored by OPC witness Fitzhenry.

Commission Decision

The Commission credits WGL witness Tuoriniemi's testimony regarding ADIT in the Company's plant adjustments, and also accepts OPC's ADIT correction as submitted by OPC witness Meyer.

[251] Tuoriniemi Rebuttal at 52.
[252] Meyer Surrebuttal at 4.

23. AOBA Adjustments

a. Miscellaneous Service Charges

AOBA

AOBA witness Oliver argued that Washington Gas has not adjusted its Miscellaneous Service Charges in at least 16 years, and the Company's failure to reflect inflationary increases in the costs of the services causes its Maryland standard tariff rate schedules to bear unnecessary additional cost burdens.[253] Witness Oliver argued that the Commission should adopt a two-pronged approach to this issue: (1) requiring WGL in this proceeding to increase each of its Miscellaneous Service Charges by at least a percentage equal to the increase in the Consumer Price Index ("CPI") since the time each charge was last adjusted, and (2) require WGL to provide cost support for the levels of each of its Miscellaneous Service Charges in its next base rate filing.[254] Witness Oliver argued further that applying a 47.1% CPI increase to current Miscellaneous Service Revenues would produce at least $1,741,464 of additional annual revenue, reducing the Company's revenue requirement in this case by equally as much.[255]

WGL Rebuttal

In rebuttal, WGL witness Wagner acknowledged that AOBA witness Oliver is correct in noting that the Company has not made a change to the Miscellaneous Service Charges for a significant period of time,[256] but argued that the proposal to increase the Miscellaneous Revenues by an inflation factor (*i.e.*, CPI) is not an appropriate method to

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[253] B. Oliver Direct at 14-15; AOBA Brief at 46.
[254] *Id*. at 47.
[255] *Id.* at 48.
[256] Wagner Rebuttal at 7.

determine any changes. Also, according to witness Wagner, $1.6 million of the "additional" revenues that AOBA witness Oliver would attribute to the Company's annual revenues are "not miscellaneous services charges" but mostly actual CNG Revenues.[257] Witness Wagner further committed that the Company is agreeable to preparing cost studies for the test year for each separate miscellaneous charge in its next rate case filing.[258]

Commission Decision

The Commission rejects AOBA's recommended CPI adjustment for the Company's failure to adjust miscellaneous services charges. However, the Commission directs the Company to prepare and file the cost studies agreed to by WGL witness Wagner in its next base rate case.

b. Unaccounted-For-Gas

AOBA

AOBA witness Oliver argued that the combination of AOBA's Capital Structure, Cost of Equity, and adjustment for excessive Unaccounted-for Gas ("UFG") should be summed and removed from WGL's base rate revenue increase request in this proceeding.[259] Although AOBA does not quantify a revenue requirement adjustment associated with excessive UFG, witness Oliver argued that WGL's UFG percentage is now more than four times the industry average, costs Maryland ratepayers an estimated $12

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[257] *Id.*
[258] *Id.*
[259] B. Oliver Direct at 50. Witness Oliver argued that "[w]hen consideration is given to the effects of the COVID-19 pandemic on Maryland's economy and the Company's continued reporting of excessive amounts of unaccounted-for gas, an increase in the equity returns for WG's sole shareholder, AltaGas, cannot be justified. *Id.* at 18.

million per year,[260] and is inconsistent with Maryland's efforts to limit GHG emissions. Witness Oliver argued that a high UFG level serves to increase the costs of gas service for all of its Maryland customers regardless of whether they use gas sales or delivery services,[261] and added that Washington Gas has offered no specific plan for reducing the levels of unaccounted-for gas it reports annually.[262]

WGL Rebuttal

WGL witness Tuoriniemi stated that there is "no amount of unaccounted for gas" in the Company's revenue requirement in this case,[263] and disputed AOBA witness Oliver's assertions regarding how UFG is used by the Company in projecting its gas cost estimates. The purpose of Adjustment 3: Purchased Gas Costs, he stated, is to synchronize the amount of gas costs removed from the revenue requirement with the revenue for the collection of gas costs in Adjustment 1: Ratemaking Revenues to ensure base rates are unaffected by the cost of gas.[264]

Commission Decision

The Commission rejects AOBA's recommended $12 million adjustment, finding that the issue is more appropriately addressed in proceedings involving the Company's Purchased Gas Costs. Therefore, the Commission directs Washington Gas to file testimony addressing industry UFG standards, the reasonableness of the volume of its UFG, cost of

[260] *Id.* at 11.
[261] *Id.* at 9.
[262] *Id.* at 9-10.
[263] Tuoriniemi Rebuttal at 85.
[264] *Id.*

its UFG, and the Company's efforts to reduce its UFG volumes, in its next Purchased Gas Adjustment case.[265]

c. SEMCO Executive Affiliate Services

AOBA

AOBA witness Oliver raised concerns regarding provisions of the service agreement WGL has with its affiliate SEMCO.[266] AOBA described its concerns as an erosion of WGL's local management and local control,[267] and recommended that the Commission (1) find that WGL's affiliate transactions negatively impact the transparency of the Company's rate-making cost determinations in this proceeding; (2) direct WGL and AltaGas to terminate WGL's service company role for both WGL Holdings affiliates and AltaGas U.S. affiliates within six months of the conclusion of this proceeding; (3) terminate the provisions of WGL's service agreement with SEMCO; and (4) find that the Company failed to justify the costs SEMCO has allocated to WGL for executive services.[268] If WGL recovers costs for SEMCO executives, then AOBA recommended that at least an equal amount of costs should be deducted from the Company's test year for its own local management. If WGL's "service company role" is not terminated, AOBA witness Oliver recommended that the Company should be directed to file both an Affiliate Cost of Service Study ("ACOSS") and an Affiliate Lead/Lag Study ("ALLS") with each subsequent base rate application.[269]

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[265] The Commission reviews WGL's purchased gas costs annually, pursuant to PUA § 4-402(d).
[266] T. Oliver Direct at 37-45.
[267] AOBA Brief at 8.
[268] T. Oliver Direct at 44-45.
[269] AOBA Brief at 62; T. Oliver Direct at 35.

WGL Rebuttal

WGL witness Nufrio argued that the Cost Allocation and Inter-Company Pricing Manual ("CAM") shows that, over the years, including post-merger, the cost of services the Company provides to affiliates has not significantly increased.[270] Also, in response to AOBA's assertion regarding cost allocation, WGL witness Nufrio testified that any costs charged to affiliates by WGL are excluded from the utility's cost of service and are not included in the per book test year in a rate case.[271] WGL witness Tuoriniemi stated that no costs or revenues from affiliates were added to, or removed from, the books used as the starting point in this proceeding.[272]

Commission Decision

The Commission credits WGL witness Nufrio's testimony stating that any costs charged to affiliates by Washington Gas are excluded from the utility's cost of service and are not included in the per book test year in a rate case. Therefore, no costs need be deducted in this case. Also, the Commission declines AOBA's request to require termination of the SEMCO service agreement between SEMCO and WGL. However, as recommended by AOBA, the Commission directs Washington Gas to submit with the Company's next base rate case an ACOSS and an ALLS assessing the amount of CWC that is necessary to support the Company's provision of affiliate services.

[270] Nufrio Rebuttal at 5.
[271] *Id.* at 7.
[272] Tuoriniemi Rebuttal at 91.

d. Antero Verdict Cost

AOBA

In his direct testimony, AOBA witness Oliver noted that the Company paid a legal liability of $12.5 million relating to an adverse jury verdict resulting from a contractual dispute between Antero Energy Resources ("Antero"), WGL, and WGL Midstream.[273] Witness Oliver noted that this amount appears to be a direct cost for Washington Gas, not an affiliate transaction, thus it does not constitute an amount that would be subject to allocation among affiliates or that would be otherwise addressed by WGL's CAM.[274] Witness Oliver further argued that in the absence of explicit and detailed documentation of the Company's treatment of the elements of this payment for ratemaking purposes, the Commission and intervenors must assume that at least some portion of the costs of this payment are included in the amounts that WGL expects to recover through bills to its Maryland customers.[275]

WGL Rebuttal

WGL witness Tuoriniemi noted that the Company's test year in this case is the period from January 1, 2022, to December 21, 2022, thus a payment made in February 2021 is not included in the test year in this case.[276]

Commission Decision

The Commission finds that, since the Antero costs are not included in WGL's test year in this case, no adjustment needs to be made to WGL's revenues regarding this issue.

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[273] T. Oliver Direct at 45-46.
[274] *Id.* at 46.
[275] *Id.*
[276] Tuoriniemi Rebuttal at 92.

B. Cost of Capital

The cost of capital of a company is dependent on the ROE and the return on the cost of debt. This is an expression of the overall ROR, or the total of the weighted returns the utility must earn on its stocks and bonds (equity and debts) to attract and retain investors in those securities in a competitive market.[277] Determination of appropriate ROE is usually calculated by a comparison to "proxy" companies and investments of comparable risk. The parties submitted varying analyses based on differing methodologies.

1. Return on Equity

WGL, Staff, OPC, and AOBA each proposed a different ROE as summarized below:

Table 1
Return on Equity as Recommended by Parties

	WGL	Staff	OPC	AOBA
Range High	11.46%	9.45%	8.5%	9.40%
Range Low	10.46%	9.45%	7.7%	8.90%
Recommendation	10.75%	9.45%	9.1%[278]	9.55%[279]

[277] *Bluefield,* 262 U.S. 679 (1923); *Hope*, 320 U.S. 591 (1944).
[278] Staff determined its recommended ROE by using the midpoint of WGL's current ROE (9.7%) and his calculated ROE of 8.50%.
[279] AOBA would reduce WGL's current ROE by 15 basis points based upon the Commission's commitment to gradualism.

WGL

WGL witness D'Ascendis recommended that the Commission authorize an ROR of 10.75% based on several analytical models, including the Discounted Cash Flow ("DCF") model, the Capital Asset Pricing Model ("CAPM"),[280] and the Risk Premium Model ("RCM").[281]

Witness D'Ascendis contended that the use of a comparable list of utilities is consistent with the Commission's long-held principle that an ROR that will attract capital on reasonable terms should be commensurate with the returns elsewhere in the market for investments of equivalent risk. The use of peer companies to perform the financial analysis of risk mitigates the risk that potential temporary anomalies could impact the results.[282] Witness D'Ascendis identified six utilities that he believes reflect comparable risk to Washington Gas after making certain adjustments,[283] and also applied the same analytic models to a Non-Price Regulated Proxy Group to check the reasonableness of other analytical models.

WGL witness D'Ascendis argued that the use of multiple financial models is also consistent with Commission practice and stated that the indicated cost of common equity under the RPM was derived using two risk premium models: the predictive RPM ("PRPM") and a risk premium model using a total market approach.[284] The PRPM uses

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[280] CAPM is an estimate of return and is a function of adding a risk-free rate to an estimated market risk premium adjusted by beta, which is a measure of a particular company's volatility of returns relative to the market as a whole. D'Ascendis Direct at 37.
[281] *Id*. at Ex. 10, Schedule DWD-1.
[282] *Id*. at 5.
[283] Atmos Energy Corporation, New Jersey Resources Corporation, NiSource, Inc., Northwest Natural Holding Company, ONE Gas, Inc., and Spire, Inc. *Id*. at 16.
[284] The PRPM estimates the risk-return relationship directly, whereas the total market approach indirectly derives a risk premium by using known metrics as a proxy for risk. *Id*. at 22-23.

bond ratings and expected bond yields that reflects the market's assessment of bond/credit risk. Witness D'Ascendis also considered the Company's size and credit rating, since Washington Gas is much smaller than the average of his proxy group. The results were as follows:

> Discounted Cash Flow Model - 9.68%
>
> Risk Premium Model - 10.66%
>
> Capital Asset Pricing Model - 11.68%
>
> Cost of Equity Models Applied to Comparable Risk, Non-Price Regulated Companies - 12.13%
>
> Indicated Range of Common Equity Cost Rates before Adjustments - 10.18%-11.18%
>
> Business Risk Adjustment - 0.15%
>
> Credit Risk Adjustment - 0.11%
>
> Recommended Cost of Common Equity - 10.75%[285]

In its reply brief, Washington Gas argues that Staff does not consider current market conditions in recommending a 9.45% ROE. In 2020-2021, when the Commission heard Case No. 9651 and approved a 9.70% ROE, the cost of capital was lower. Washington Gas argues that all testimony establishes that the cost of capital has risen since Case No. 9651, and the ROE of 9.70% should serve as a floor in the present case.[286]

Staff

Staff rejected Washington Gas's use of a non-regulated proxy group since it consisted of companies in a competitive industry. Although Washington Gas did not rely

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[285] D'Ascendis Rebuttal at 6.
[286] WGL Reply Brief at 11-12.

upon the ROE results associated with non-utility companies,[287] Staff argued that corporate stock issued by the vast majority of gas companies (such as WGL) is issued by the utility's parent company, and that, because a company in a competitive industry faces much greater risk than a utility, the fact that the members of both the WGL and Staff proxy groups receive a significant portion of their revenue from competitive industry companies makes both proxy groups riskier than WGL. Staff argued that its 9.45% ROE likely over-states the ROE required by WGL.[288]

Staff pointed out that the Commission rejected the use of a non-utility proxy group in Case No. 9664, a rate case involving Columbia Gas. Similarly, in a Potomac Edison rate case, Case No. 9490, the Commission stated that "[the] Commission has previously found that including unregulated companies in the proxy group produces results that are "significantly out of line" for a regulated distribution company and 'justifies rejection of the non-utility returns'"[289]

Staff witness McAuliffe's utility proxy group "consists only of companies that are identified as natural gas utilities as identified by the financial firm Value Line and is further restricted to companies that have a Value Line financial strength of B++ or higher, thereby excluding gas companies that may be financially struggling. Utilities that were involved in a merger or acquisition during the sample period were also excluded.[290]

By contrast, Staff witness McAuliffe testified that the proxy group used by Washington Gas consisted of only six companies, which 'would … expose the ROE

[287] D'Ascendis Direct at 30.
[288] Staff Brief at 8-9.
[289] *Potomac Edison Order No. 89072* at 74.
[290] McAuliffe Direct at 21.

analysis to outlier bias because there would be so few ROE results on which to base an ROE recommendation."[291] The need to ensure a sufficiently large proxy group supports the proxy group utilized by Staff.

Staff witness McAuliffe relied upon two different ROE models: the DCF and CAPM. The DCF model relies upon data specific to one company (stock price, dividend, and growth in earnings, without data produced from the broader utility market). By contrast, CAPM relies on the validity of the proxy group in assuring that a company's return is commensurate with similar companies' risks. CAPM calculates the ROE based on the sum of the risk-free rate, and the equity risk premium ("ERP") for the stock market, multiplied by a measure of the risk associated with the proxy group member (the beta).

Despite the differences in the way Staff and WGL applied the DCF model, the median ROE calculated by Staff in applying the DCF method is 9.47%, which is almost identical to WGL's 9.46% median ROE.

Applying the CAPM method, Washington Gas relied on a risk-free rate based upon the average projected yield for Blue Chip financial forecasts for six consecutive quarters ending in Q3 of 2024, and two forecasts for 2024-2028 and 2029-2033,[292] yielding a risk-free rate of 3.84%, which is the average of the eight forecasts of the Treasury bond yield. By contrast, Staff's risk-free rate is the six-month average of the 30-year U.S. Treasury yield beginning on July 1, 2023, which results in a yield of 3.78%.[293] For its beta, Staff

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[291] McAuliffe Surrebuttal at 8.
[292] D'Ascendis Direct at 45.
[293] Staff argued that a 3.78% yield is reasonable because the 30-year U.S. yield has averaged 3.86% as of June 2023. McAuliffe Direct at 26.

relied upon two years of data rather than its usual five years due to the unexpected effects of the COVID-19 pandemic,[294] producing an ROE result of 9.43%.[295]

Staff rejected WGL's request for a 15 basis points upward adjustment in ROE due to WGL's lower market capitalization as compared to its proxy group.[296] Washington Gas asserted that "size affects business risk because smaller companies generally are less able to cope with significant events that affect sales, revenues, and earnings;"[297] however, Staff cites Commission precedent to the effect that higher risks faced by smaller companies in a competitive industry does not apply to a utility.[298] Staff also rejected WGL's request for an upward adjustment based upon its credit rating.

Staff ultimately recommended an ROE of 9.45%, which reflects the average of the proxy group's ROE results associated with the DCF and CAPM models.[299] Staff argued that WGL's proposed ROE of 10.75% does not give much weight to its DCF result, and Washington Gas does not explain why they did not.[300] Additionally, Staff noted that an ROE of 10.75% far exceeds ROE's authorized in recent rate cases at this Commission and in the U.S.[301] Finally, Staff noted that the "nationwide average of the awarded ROE in gas base rate cases was 9.53% for gas utilities. For gas utilities in the first half of 2023, the average authorized ROE is 9.58% in base rate cases."[302]

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[294] *Id*. at 26-27.
[295] *Id.* at 27.
[296] D'Ascendis Direct at 53.
[297] *Id.*
[298] *Citing*, *Potomac Edison Order No. 89072* at 75; *see also* McAuliffe Direct at 53.
[299] McAuliffe Direct at 11.
[300] *Id.* at 36.
[301] Staff Brief at 28, citing the Commission's authorization of a 9.55% ROE for Potomac Edison in Order No. 89868, Case No. 9655.
[302] McAuliffe Direct at 47.

In its Reply Brief, Staff defended its use of three companies (UGI Corporation, Chesapeake Utilities Corporation, and Southwest Gas Holdings) by noting that WGL's more restrictive criteria would limit Staff's Proxy Group to only six companies. Staff also defended its application of the Kroll historical ERP, noting that Mr. D'Ascendis also used the Kroll historical MRP in his CAPM analysis to determine the market return of his CAPM method. Staff pointed out that they have used the same method for calculating ERP in four recent rate cases.[303]

OPC

OPC argued that WGL's proposed ROE of 10.75% and a corresponding ROR of 7.726% is excessive and therefore violative of the "just and reasonable" standard for rates in PUA § 4-101. Rather, OPC contends that the Commission should adopt OPC's ROE of 9.1% with a corresponding ROR of 6.70%. OPC argued that the most important part of capital evaluations is not necessarily the percentages, but that the eventual ROE reflects the lowest possible ROE that allows Washington Gas to attract sufficient equity and debt investment at favorable costs to run its business.[304] OPC agreed with Staff and WGL that the guiding principles in establishing an ROE is that the ROE should be (1) comparable to returns investors expect to earn on investments with similar risk; (2) sufficient to assure confidence in the company's financial integrity; and (3) adequate to maintain the company's credit and to attract capital.

OPC noted that, because debt instruments are generally subject to fixed interest rates, the cost of debt can be directly observed. By contrast, because ROE is not directly

[303] Staff Reply Brief at 5-6.
[304] OPC Brief at 54.

observable, it must be estimated based on market data. OPC witness Garrett's recommendation of 9.1% is slightly lower than Staff's (9.45%) and AOBA's (9.4%). Witness Garrett calculated his 9.1% recommended ROE using the DCF method and CAPM, and the same proxy group that WGL witness D'Ascendis used in his direct testimony. The results of his ROE modeling two CAPM models and two DCF models resulted in an overall ROE of 8.5%. Recognizing the ratemaking principle of gradualism, witness Garrett raised his recommended ROE to 9.1%.[305]

OPC argued that the growth rate used by Washington Gas for its DCF model, and the equity risk premium used for the CAPM model were unrealistic and skewed the output. DCF requires three primary inputs: (1) stock price; (2) dividends; and (3) the long-term growth rate. The first two inputs are known commodities, but the third requires an accurate estimation of the growth rate.[306] Witness Garrett's DCF model encompassed two variations: one using a sustainable growth rate and one using analysts' growth rates.[307] Witness Garrett's sustainable growth rate model produced a cost of equity of 7.7%, and the analysts' growth rate model produced a result of 8.5%. These rates are based upon far more realistic growth rates than those used by WGL witness D'Ascendis.

OPC argued that witness Garrett also used a reasonable equity risk premium (unlike WGL) in his CAPM model. The CAPM is a market-based model founded on the principle that investors expect higher returns for incurring additional risk. The basic CAPM equation requires three inputs to estimate the cost of equity: (1) the risk-free state; (2) the beta

[305] Garrett Direct at 87-88.
[306] *Id.* at 29.
[307] The sustainable growth rate should not exceed the aggregate economic growth rate.

coefficient; and (3) equity risk premium. Based upon the inputs for these three factors, witness Garrett estimated that the Company's CAPM cost of equity was also 8.5%.

Witness Garrett asserted that WGL used unrealistic growth rates in its DCF model because witness D'Ascendis's average long-term growth rate exceeds the terminal growth rate for the entire U.S. economy. In fact, his projected growth rates for his proxy companies are as high as 9.5%, which is more than twice the projected, long-term U.S. GDP growth rate.[308]

Regarding the Equity Risk Premium ("ERP"), witness D'Ascendis estimated the cost of equity to be 9.77%. Witness Garrett used three growth rate experts as well as his own estimates to reach an average cost of equity of 5.3%, concluding that witness D'Ascendis's estimate of 9.77% is significantly higher than estimates reported by thousands of experts across the country.[309]

OPC ultimately recommended that the Commission grant Washington Gas an ROE of 9.1% rather than 8.5%, based upon the principle of gradualism and the fact that WGL's current ROE is 9.7%.

AOBA

AOBA recommended an ROE of 9.55%,[310] noting that no party recommended an ROE higher than 9.7% (WGL's current ROE) with the exception of Washington Gas.[311] AOBA also contends that the Company's ROE request substantially overstates an appropriately determined equity return requirement for its gas distribution utility

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[308] It is a fundamental concept in finance that, in the long-term, a company cannot grow at a faster rate than the economy in which it operates. This is especially true for a regulated utility. Garrett Direct at 45.
[309] *Id.* at 58.
[310] T. Oliver at 7.
[311] AOBA Brief at 5.

operations in the State of Maryland, counter to Witness D'Ascendis' business risk adjustment and credit risk adjustment.[312] AOBA argues that D'Ascendis presents an outdated cost of equity analysis in light of changes in market conditions since his end of March 2023 data sourcing.[313] Additionally, AOBA believes the Company's cost of debt is premised on private issuances that preclude the comparison of the costs of debt that Washington Gas can be expected to incur during the rate effective period.[314]

Commission Decision

The Commission's duty in a rate case is to adopt a "just and reasonable" rate.[315] The ROE must be sufficiently high "to attract capital on reasonable terms, maintain the utility's financial integrity, and provide investors with the opportunity to earn a rate of return comparable to investments carrying similar risks."[316] This is consistent with long-standing Supreme Court precedent, primarily *Bluefield*[317] and *Hope*.[318]

In keeping with precedent, the Commission again declines to adopt a single methodology, but rather uses all of the witnesses' methodologies to establish a range of reasonableness for an ROE.[319] The Commission recognizes that, in previous cases, it has held that reliance on a non-utility proxy group is an inappropriate basis for calculating the ROE of a regulated monopoly electric or gas company.[320] In Order No. 89072, the

[312] T. Oliver Direct at 6.
[313] *Id.* at 10.
[314] *Id*. at 9-10.
[315] PUA § 4-101(3).
[316] Order No. 89868, *In the Matter of Potomac Electric Power Company's Application for an Electric Multi-Year Rate Plan ("Pepco"),* Case No. 9655 (Jun 28, 2021) slip op. at 359 (citing *Bluefield Waterworks and Improvement Co. v. Public Service Comm'n of West Virginia,* 262 U.S. 679 (1923).
[317] *Bluefield Water Works and Improvement Co. v. Pub. Serv. Comm'n of W. Va.,* 262 U.S. 679 (1923) ("*Bluefield*").
[318] *Federal Power Commission v. Hope Natural Gas Co*., 320 U.S. 591 (1944) ("*Hope*").
[319] *See e.g. In re Baltimore Gas and Electric Company*, 104 MD PSC 653, 695 (2013).
[320] *See e.g. Potomac Edison Order No. 89072* at 74-75.

Commission also noted that ECAPM results should be given little weight, because ECAPM is not widely accepted by the financial community in determining ROEs.[321] In Case No. 9424, the public utility law judge observed that ECAPM is "rarely if ever … cited in professional literature" and Commission witnesses have generally not used it as a primary method.[322]

In this case, the results range from a low of 9.1% (OPC) to a high of 10.75% (WGL), with Staff and AOBA in the middle (recommending 9.45% and 9.55%, respectively). This approach also makes it unnecessary to adopt any particular proxy group. After considering all these factors, the Commission finds a modest decrease in WGL's ROE is appropriate, setting it at 9.5%. These ROEs are comparable to returns that investors expect to earn on investments of similar risk as demonstrated through the use of the witnesses' proxy groups, are sufficient to assure confidence in WGL's financial integrity, and are adequate to maintain and support WGL's credit and attract needed capital.

Additionally, as Staff noted, this ROE is very close to the nationwide average of 9.53%. It is also very close to the 9.58% average ROE granted to gas utilities for the first half of 2023.

The Commission agrees with Staff and declines to grant WGL's request for an upward adjustment based upon business or credit risk. The Commission has previously denied upward adjustments for both of these proposals. For example, in Case No. 9490, the Commission concluded that:

> [t]he adjustments proposed by Potomac Edison for business risk, credit risk, and flotation costs should be rejected.

[321] *Id.* at 75.

[322] *Re Application of Delmarva Power & Light Company for Adjustments to Its Retail Rates for the Distribution of Electric Energy,* Case No. 9424, Proposed Order (Jan. 4, 2017) at 152.

> Regarding business risk, the Commission finds that Potomac Edison's size as a relatively small electric distribution utility does not justify an upward adjustment in ROE. The Company has submitted evidence that small unregulated companies may face greater risk than medium to large companies. However, that greater risk does not extend to regulated utilities, which have the benefit of a monopoly service territory and a captive customer base.[323]

The Commission concludes the same reasoning applies in the present case.

2. Capital Structure

The Commission must determine the capital structure that provides a fair ROR and results in just and reasonable rates. Washington Gas and Staff proposed to use WGL's average quarterly 2022 capital structure. OPC and AOBA proposed imputing a capital structure for WGL. The parties each proposed a differing capital structure as appropriate for use in ratemaking as follows:

Table 2
Capital Structure as Recommended by Parties

	WGL	Staff	OPC	AOBA
Long-Term Debt	42.21%	42.21%	45.61%	50%
Short-Term Debt	5.19%	5.19%	5.19%	0%
Common Equity	52.60%	52.60%	49.20%	50%

[323] *See Potomac Edison Order No. 89072* at 75.

WGL

Washington Gas based its proposed capital structure on the same methodology adopted by the Commission in Case No. 9651. The individual components of the actual capital structure, apart from its ROE, come from the Company's financial statements, primarily the balance sheet.[324] WGL made traditional adjustments to the capital structure to address seasonality and non-rate-related activity, consistent with precedent. The resulting adjusted average capital structure is appropriate for rate-making purposes, consistent with Merger Commitment No. 32 in Case No. 9449, which specified a rolling average capital structure range.[325]

Washington Gas criticized OPC and AOBAs's hypothetical capital structures for not matching the costs incurred by WGL to provide safe and reliable service and for not comporting with the Commission's "long-standing policy of using the actual capital structure."[326] Washington Gas claimed that OPC's proposed capital structure does not reflect WGL's unique costs, that OPC witness Garrett's recommended 49.20% equity ratio is "dangerously close" to the lower limit of the merger mandate that WGL maintain an equity ratio between 48 to 55%,[327] and that OPC erred by using the capital structure of the proxy group rather than the capital structure of the regulated utilities themselves.[328]

AOBA witness Oliver proposed a 50/50 hypothetical equity/debt ratio,[329] but provided no basis for proposing this hypothetical capital structure, simply urging the Commission to establish a capital structure that "minimizes the capital costs that Maryland

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[324] Donge Direct at 5.
[325] *Id.* at 4.
[326] Hr.g Tr. at 107 (Donge); s*ee also* WGL Brief at 57, citing *Washington Gas Order No. 89799* at 12-13.
[327] Donge Rebuttal at 8.
[328] *Id.* at 9.
[329] T. Oliver Direct at 17.

ratepayers should have to bear.[330] Washington Gas argued that the Company and Staff demonstrated that its capital structure allows it to issue debt at reasonable costs as its peers with similar credit ratings.[331] Staff witness McAuliffe also testified that the Company's proposed capital structure "is similar to capital structure levels previously approved by this Commission" and "is similar to national trends."[332]

Staff

Staff proposed that the Commission adopt the capital structure recommended by Washington Gas.[333] These values are based on WGL's average quarterly capital structure for 2022. WGL's average year-end equity ratio over the past five years is 50.6%.[334] The average authorized equity ratio for gas companies in the U.S. in 2022 was 51.38%.[335] In WGL's last rate case, the Commission employed an equity ratio of 52.03%.[336]

OPC

OPC claimed that WGL's proposed debt ratio is too low, resulting in excessively high capital costs and utility rates. Because equity is more expensive than debt, ratepayers will pay more if the Company's capital structure leans further toward the equity side. OPC argued that debt is therefore a means of leveraging capital dollars because the issuance of debt enables a utility to raise more capital for a given commitment of dollars than it could with just equity.

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[330] *Id.* at 14.
[331] Donge Rebuttal at 3.
[332] McAuliffe Direct at 23.
[333] *Id.*
[334] WGL Response to Staff DR 1-6.
[335] McAuliffe Direct at 22; citing RRA Regulatory Focus. Major energy rate case decisions in the US - January-March 2023.
[336] *Washington Gas Order No. 89799* at 13; McAuliffe Direct at 23.

Further, OPC witness Garrett stated that utilities have more fixed assets, stable earnings, and stable risk than other industries and therefore can afford to have higher debt ratios.[337] Mr. Garrett cited Dr. Damodaran (an expert in asset valuation):

> Since financial leverage multiplies the underlying business risk, it stands to reason that firms that have high business risk should be reluctant to take on financial leverage. It also stands to reason that firms that operate in stable businesses should be much more willing to take on financial leverage. Utilities, for instance, have historically high debt ratios, but have not had high betas, mostly because their underlying businesses have been stable and fairly predictable.[338]

Because utilities have low levels of risk and operate a stable business, they should generally operate with relatively high levels of debt to achieve their optimal capital structure.

In its Reply Brief, OPC defends its reliance upon a hypothetical capital structure and asserts that Washington Gas has mischaracterized Commission precedent. OPC repeats that Mr. Garrett's recommended capital structure of 51% debt ratio is more fair and reasonable to customers that Washington Gas's proposed 47% debt ratio.[339]

<u>*AOBA*</u>

Noting the Commission's "long-standing policy" to base a utility's "return on its actual capital structure absent evidence that the actual capital structure would impose an undue burden on ratepayers,"[340] AOBA argued that the use of the Company's actual capital structure is not immutable. The Commission has departed from application of a company's actual end-of-test year capital structure "where circumstances have warranted it."[341]

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[337] Garrett Direct at 78.
[338] *Id.*, citing *Investment Valuation: Tools and Techniques for Determining the Value of any Asset* at 196 3rd ed., John Wiley & Sons, Inc. (2012).
[339] OPC Reply Brief at 13-14.
[340] *BGE Order No. 87591* at 165.
[341] *Id.*

Specifically, AOBA concluded that the requisite balancing of interest requires an adjustment to the equity ratio of WGL's capital structure regardless of the Company's actual capital structure.[342]

Commission Decision

As the parties have noted, the general rule is that the Commission will not impute a capital structure, unless there is evidence that the actual capital structure would impose an undue burden on ratepayers. However, a Commission may, and in this case, shall, slightly alter the Company's proposed capital structure by lowering the equity ratio to 52%.

As OPC notes, in light of the availability of cheap debt, a higher debt ratio will result in savings to ratepayers.[343] Additionally, according to the debt ratios recently reported in Value Line for the utility proxy group (the same proxy group used by WGL witness D'Ascendis), the average debt ratio of the proxy group is 51%. This is notably higher than WGL's proposed debt ratio of 47%.[344] In fact, the average debt ratio for the utility industry is 59%.[345] As shown in that table, WGL's proposed debt ratio is clearly too low, which results in excessively high capital costs and utility costs.

In fact, given the availability of debt currently, it is unclear why Washington Gas has proposed such a low debt ratio. Whatever the reason, the Commission rejects WGL's low proposed debt ratio and will incentivize Washington Gas to pursue debt and therefore lower rates.

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[342] AOBA Brief at 7.
[343] OPC Brief at 68.
[344] Garrett at 79.
[345] *Id*., Table 12.

Based on this decision, the final debt/equity ratio will be long-term debt 42.81%, short-term debt 5.19%, and equity 52%.

The parties' rate base and ROR recommendations and the Commission's findings are reflected in the following table:

Table 3
Rate Base and Rate of Return Comparison

(000's)	WGL[346]	Staff[347]	OPC[348]	AOBA[349]	**Commission Determined**
Net Rate Base	$1,489,354	$1,407,209	$1,354,727	$1,487,791	$1,394,323
Rate of Return	7.73.%	7.04%	6.70%	6.97%	7.04%

The Commission believes these ratios fairly compensate Washington Gas and protect ratepayers, while allowing the Company to remain competitive in capital markets. As the Supreme Court stated in *Bluefield*:

> [a utility's] return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.[350]

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[346] Tuoriniemi Rebuttal RET-R1; WGL Brief 2, Table 1 (A-1).
[347] Staff Exhibit BCO-2; Staff Brief at 1, 60, and 63.
[348] Meyer Direct at 6, Table GRM-1; OPC Brief at 55.
[349] T. Oliver Direct at 30, TBO-3 (unadjusted rate base) (citing WG Exhibit RET-1 at 1); AOBA Brief at 7.
[350] *Bluefield Water Works, 262 U.S. at 693.*

The Commission concludes that a rate of return of 7.04% satisfies these policy considerations underlying ratemaking.

C. Cost of Service Study

The purpose of a cost-of-service study ("COS" or "COSS") is to determine the costs a customer class, or in some cases a jurisdiction, imposes upon a company. Costs may be directly assigned or allocated based upon various allocation methodologies. Once costs are assigned, then class (and jurisdictional) RORs can be developed, which are used to assign customer rates. The Commission uses the results from COS studies as a guide in developing appropriate customer class rates.[351] A Jurisdictional COSS ("JCOSS") is utilized for companies that operate over multiple regulatory jurisdictions and is used to correctly allocate the utility's overall costs to each individual jurisdiction, either through direct assignment or the use of allocators. The Class COSS ("CCOSS") estimates the ROR for each class and further determines the Relative Rate of Return ("RROR") based on the system average ROR for all customer classes. The COSS utilizes the principles of cost causation and gradualism when determining results.

1. Jurisdictional Cost of Service

WGL

WGL witness Smith developed the Company's JCOSS results by using similar cost allocation methodologies as used in prior rate cases, with the exception of the use of two new allocation factors: one based on the average accounts receivable balances for each jurisdiction as applied to the allocable portion of customer collections costs, and another

[351] *See BGE Order No. 87591* at 170.

disaggregating the expenses associated with customers paying their bills by credit or debit card from other allocable customer collection expenses.[352] Additionally, in this case, the Company changed the presentation of ADIT in the rate base schedule of the Per Book Jurisdictional Cost of Service Study Allocator ("PBCOSA"), which resulted in a consolidation of multiple ADIT items into summary categories.[353]

Washington Gas also proposed to cease attributing credit card charges by individual customers to all customers in that rate class. Rather, Washington Gas prefers those customers who pay their bill by credit card to incur the additional charges. No party disagreed with this proposal.

Staff

Staff agreed with the Company's JCOSS, including the allocation of customer collection costs and disaggregation of expenses associated with customers paying their bills by credit or debit card from other allocable customer collection expenses.[354] Staff witness Coates concluded that the Company's new allocator for customer collection expenses, as the Company was directed to do in Virginia, is reasonable and consistent with principles of cost causation.[355] Witness Coates therefore recommended that the Commission accept the Company's JCOSS.[356]

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[352] T. Smith Direct at 17-19.
[353] *Id.* at 19.
[354] Coates Direct at 13-18.
[355] *Id.* at 14.
[356] *Id.* at 18.

AOBA

AOBA disagreed with WGL's Normal Weather Regression Analysis used in WGL's JCOSS and recommended that WGL review its regression model input data to ensure that gas use and number of bills by month are not distorted by cancel and rebill transactions.[357] AOBA argued that Washington Gas added new variables to its JCOSS that lead to errors and inconsistencies, that add little to the understanding of normal weather gas use by rate class for the Company's Maryland service territory, and that complicate the interpretation of the model results. Specifically, AOBA asserted that WGL uses inconsistent measures of Normal Heating Degree Days ("HDD") for its District of Columbia service territory, "despite the fact that the Company's measures of weather for the Company's Maryland, Northern Virginia, and the District of Columbia service territories are all premised on temperature readings taken at Reagan National Airport."[358]

Witness Oliver stated that fair and equitable determination of jurisdictional cost responsibility cannot be determined using inconsistent measures of Normal HDD.[359] AOBA argued that this inconsistency causes WGL's jurisdictional cost allocations to understate District of Columbia cost responsibilities and overstate the costs allocated to Maryland and Virginia.[360] AOBA also disagreed with WGL witness Smith's assertions regarding joint costs, and stated that they do not have an extensive amount of experience in COS and in regulatory proceedings in general.[361]

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[357] B. Oliver Direct at 11, 16, and 33-40.
[358] *Id*. at 13.
[359] B. Oliver Surrebuttal at 15-16.
[360] B. Oliver Direct at 13.
[361] B. Oliver Surrebuttal at 16-17.

WGL Rebuttal

The Company disagreed with AOBA, arguing that AOBA's assertion is unsubstantiated, and that AOBA does not quantify the impact of these alleged errors in the Company's proposed weather normalization analysis.[362] The Company also argued that AOBA does not provide any concrete corrections or alternative allocation factors for parties to consider in this case for the relevant accounts that are allocated on normal weather therms.[363]

2. Class Cost of Service

WGL

Washington Gas filed two CCOS studies: a coincident peak ("CP") CCOSS and a non-coincident peak ("NCP") CCOSS. The CP-CCOSS uses coincident peaks to calculate the peak day factor based on a single peak day for all classes. The NCP-CCOSS uses individual class peak days to develop the "composite peak and annual" factor.[364]

The Company relied on both CP and NCP to develop the "peak-and-annual" allocator, which blends a measure of peak demand for each class with annual throughput for each class to effectively allocate gas mains. However, it maintains that the NCP-CCOSS and the associated load study are of little value in designing rates for the Company's Maryland customers.[365] The CP-CCOSS is more reflective of how Washington Gas annually designs and builds its system; therefore, the Company argued

[362] T. Smith Rebuttal at 25.
[363] *Id.*
[364] T. Smith Direct at 24.
[365] *Id.*

there is no reason to continue to use an NCP-CCOSS or require the Company to perform one.[366]

Staff

Staff recommended the Commission accept and use WGL's proposed NCP-CCOSS, and further recommended that the Commission require the Company to file a true NCP-CCOSS, with a mains allocator that assigns the appropriate NCP therms to the Interruptible class, in addition to an NCP Peak-and-Annual CCOSS in a future rate case.[367]

OPC

OPC concluded that the Company's CP-CCOSS is reasonable and can be used as a guide for distributing the revenue increase authorized by the Commission in this proceeding.[368] OPC disagreed with Staff's recommendation to use an NCP-CCOSS in this case, however OPC argued that the relative RORs of the customer classes served by Washington Gas are nearly identical under the two CCOSS studies, and therefore the resulting revenue allocation to each customer class would be the same.[369] OPC additionally recommended for the Company to file a CP demand CCOSS study in its next base rate proceeding similar to the study the Company has filed in the instant proceeding.[370]

GSA

GSA stated that both WGL's CP- and NCP-CCOSS are non-traditional and do not incorporate annual usage in allocation factors for demand-related capacity costs. GSA

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[366] *Id.* at 34-35.
[367] Coates Direct at 2, and 7.
[368] Mierzwa Rebuttal at 2; OPC Brief at 48.
[369] Mierzwa Rebuttal at 2-3.
[370] *Id*. at 4.

stated, and Washington Gas agreed, that WGL's COSS can more accurately be described as a "Peak and Average" cost allocation methodology.[371] GSA also agreed that the Company's CP-CCOSS is reasonable and should be used as a guide for adjusting rates.[372] GSA disagreed with Staff's recommendation for the Company to file a true NCP-CCOSS, with a mains allocator that assigns the appropriate NCP therms to the Interruptible class, on the grounds that this recommendation is inconsistent with how the Company designs and builds its distribution system.

WGL Rebuttal

WGL witness Smith stated that the CP-CCOSS that she recommended is based on how the Company's system is actually designed, noting that Staff offered an alternative methodology, but no actual rebuttal related to the design of the Company's distribution system that would justify a change in methodology.[373] She stated further that "[a]lthough reasonable people can disagree on matters of methodology within a class cost study, that does not mean there is an absolute right or wrong way to prepare an embedded cost CCOSS."[374]

Addressing Staff witness Coates' concern regarding double counting costs with regard to the interruptible CCOS, WGL witness Smith agreed that there can be other ways to do that calculation, but that what the Company provided is not intrinsically wrong. During the hearing, witness Smith stated, "I've just taken 50% of their peak usage, 50% of

[371] Goins Rebuttal at 7.
[372] *Id.* at 6.
[373] T. Smith Rebuttal at 28-29.
[374] *Id.* at 29.

their annual usage, … to allocate costs to them, the same way that I did for the firm customers in that study."[375]

Commission Decision

The Commission adopts Staff's JCOSS recommendations but directs Washington Gas to study the issues raised by AOBA regarding weather normalization (by therms vs. HDDs). A formal study of this issue shall be presented in the Company's next several base rate cases, until the Commission is satisfied that WGL's JCOSS accounts for appropriate metrics. The Commission welcomes parties to discuss this issue in future rate case proceedings. Further, as Staff supports WGL's proposal to disaggregate expenses associated with customers paying their bills by credit and debit cards from customer collection expenses, as consistent with principles of cost-causation, the Commission approves.

The Commission also adopts Staff's recommendation regarding the use of the Company's proposed NCP-CCOSS in the instant rate case. This is consistent with the Commission's decision in Case No. 9651, where the Commission accepted the Company's NCP-CCOSS and directed Washington Gas to continue to provide both a CP and a NCP-CCOSS in future rate cases.[376] Additionally, as recommended by Staff, the Commission directs Washington Gas to file both an NCP Peak-and-Annual CCOSS and a true NCP-CCOSS in future base rate cases as a means of allowing the Commission to weigh both options.

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[375] Hr.g Tr. at 155 (T. Smith).

[376] *Re Washington Gas Light Company's Application for Authority to Increase Its Rates and Charges*, Case No. 9651 Proposed Order (Feb. 12, 2021) at 25 (*aff'd* in *Washington Gas Order No. 89799*).

The following table shows the resulting Relative RORs for both WGL's CP-CCOSS and NCP-CCOSS.

Table 4
Class Cost of Service Study: Relative Rate of Return Results

Class	WGL Proposed CP-CCOSS: Relative ROR	WGL Proposed NCP-CCOSS: Relative ROR
Residential - Heating/Cooling	0.94	0.94
Residential - Non-Heating and Non-Cooling	1.08	1.06
Commercial and Industrial - Heating/Cooling - Small	1.16	1.11
Commercial and Industrial Heating/Cooling - Large	1.22	1.23
Commercial and Industrial Non-Heating and Non-Cooling	1.69	1.69
Group-Metered Apartments Heating/Cooling	1.07	1.06
Group-Metered Apartments Non-Heating and Non-Cooling	1.33	1.23
Interruptible Service	0.79	0.79
Total	1.00	1.00

D. Rate Design

Rate Design involves two functions, (1) the design of inter-class rates, which involves the assignment of the utility's revenue requirement between the various customer classes, and (2) the design of intra-class rates, which involves the manner in which the class revenue requirement will be collected from customers. In order to determine how much of any rate increase (or decrease) should be assigned to a particular customer rate class, the Commission begins with the actual RORs reflected in the CCOSS. These results are then

translated into a relative ROR compared to the utility's system average or overall ROR. This percentage is then compared with the actual earning by that rate class, resulting in a relative or unitized ROR (UROR) for each class.

A UROR greater than 1.0 signifies that a rate class has a return (or contribution) that is greater than the system average, and a UROR that is lower than 1.0 indicates a class return that is less than average. If all customer rate classes have an UROR of 1.0, then each class is contributing equally to the utility's overall ROR based upon its COS. As a matter of policy, the Commission strives to bring all classes closer to a UROR of 1.0 in each rate case, to reflect the cost causation from each class. However, this goal is tempered with notions of gradualism in order to avoid rate shock from the customers of any particular rate class.

Once the revenue requirement is apportioned among the various classes, intra-class rates may be assigned. Almost all rate classes have a service charge, which is designed to recover fixed utility costs, such as the cost of meters. Additionally, Washington Gas customers have a distribution charge, which is designed to cover variable costs. That is, each customer's bill has a fixed, monthly customer charge and a volumetric, per-therm charge. Intra-class rate design is guided by important policy considerations, including gradualism, energy conservation, economic impacts, as well as cost causation.

1. **Revenue Allocation Methodology**

WGL

WGL intends to collect its requested revenue requirement through increases to current System Charges and Distribution Charges. Company witness Wagner proposes an

equal 5% increase to the System Charges for all customer classes (with the exception of Commercial and Industrial Non-Heating and Non-Cooling customer class).

The remaining balance of the requested revenue requirement that is not collected via system charges would be collected in Distribution Charges through a proposed two-step allocation process. WGL's proposed two-step allocation process is consistent with the methodology approved by the Commission in Case No. 9651.[377]

Step 1 allocates 15% of the total requested revenue increase to all classes that have a Relative ROR less than 1.00, with the increases being added to class base rate revenue at current rates. Witness Wagner noted that two classes, Residential - Heating and Cooling and the Interruptible class, have RORs that are below a relative ROR of 1.00. All other classes show a relative ROR above 1.00.

Step 2 allocates the remaining required revenue increase after Step 1 (85% of the total requested revenue increase) equally to classes based on their respective adjusted base rate revenue. Witness Wagner testified that the Commercial Non-Heating and Non-Cooling Class is earning well above the system average ROR and will receive no increase in Step 2.[378] The two-step process is intended to ensure that classes earning below the system average ROR will receive a larger share of the revenue increase, and classes earning above the system average ROR will receive a smaller share of the increase. As a result of this proposal, the average residential customer will experience an approximate 5.3% increase in their total bill.[379]

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[377] *See Washington Gas Order No. 89799*.
[378] *Id.*
[379] *Id*.

WGL noted that Staff witness Thomas agreed with WGL's proposed Step 1 and 2 allocations.[380] OPC witness Mierzwa proposed to allocate $950,000 to the Interruptible Class and provide an increase to the high-earning Commercial Non-Heating and Non-Cooling Class, which Washington Gas argued is inconsistent with Commission precedent.[381] In fact, Washington Gas noted that the Commission rejected a similar proposal made by OPC in Case No. 9651.[382]

Staff

Staff witness Thomas' rate design first used the revenue deficit identified by Staff witness Ostrander, and then applied the 7.04% ROR recommended by Staff witness McAuliffe to determine the amount to be added to the test-year base revenues.[383] Next, the updated revenue was allocated to individual customer classes based on the COSS recommended by Staff witness Coates.[384] Both the Company and Staff agree that effective rate design strives to gradually move all customer classes towards parity with a RROR of 1.0 to alleviate intra-class subsidies.

Staff witness Thomas finds the two-step allocation methodology that Company Witness Wagner uses to be reasonable, and mirrors this approach.[385] This two-step method provides for a 15% allocation to be made in the first step to the under-earning classes, which are identified as the Residential Non-Heating and Non-Cooling Class as well as the Interruptible Class, with the remainder of the revenue increase distributed to all classes

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[380] Wagner Rebuttal at 3-4.
[381] *Id.* at 6.
[382] WGL Brief at 75.
[383] McAuliffe Surrebuttal.
[384] Coates Direct and Surrebuttal.
[385] Thomas Direct at 14

based on each class's proportion of total base revenue.[386] Witness Thomas additionally agrees with WGL's proposal to exclude the C&I Non-Heating/Non-Cooling class for any additional revenue allocation because this class is over-earning with a relative ROR of 1.68.[387] Although Staff agreed with Washington Gas regarding the allocation method, Staff's revenue allocation is based upon the revenue requirement as determined by Staff witness Ostrander, which is lower than the revenue requirement used by the Company. This proposed two-step allocation methodology strives to move under-earning classes closer to the system average and minimizes inter-class subsidies by allocating additional revenue to the under-earning classes.

OPC

OPC witness Mierzwa finds the two-step allocation methodology that Company witness Wagner uses to be generally consistent with Commission precedent and uses this two-step methodology, however he recommends several minor modifications. Mr. Mierzwa recommends that an additional $950,000 of the Step 1 increase be assigned to the non-firm Interruptible class. This will move the non-firm Interruptible class's relative ROR from 0.79 to 0.97.[388] Witness Mierzwa additionally recommends that the rates of the C&I Non-heating/Non-cooling customer class be increased by 5% rather than excluding this class from the revenue allocation methodology as proposed by WGL.[389] Witness Mierzwa states that he does not think it is reasonable to exclude any class from the assignment of some portions of the Company's requested rate increase.

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[386] *Id*. at 8.
[387] *Id.*
[388] Mierzwa Direct at 14.
[389] *Id.*

Witness Mierzwa also contends that the amount of $7,407,393 that WGL assigned in its proposed Rate Design methodology is slightly higher than 15% as stated by WGL, and rather the Company should have assigned $7,360,804 in Step 1 of the revenue allocation.[390] Company witness Wagner responded to this recommendation in rebuttal testimony and revised the Company's rate design proposal to address witness Mierzwa's concern.[391]

2. **System Charges**

WGL

Company witness Wagner proposes an equal 5% increase to the System Charges for all customer classes (with the exception of the Commercial and Industrial Non-Heating and Non-Cooling customer class), thereby providing a "modest movement towards higher fixed cost recovery and parity of return by customer class."[392] This system charge proposal intends to effectuate the Commission's statements in Case No. 9651, urging a gradual movement away from fixed charges.[393] Washington Gas noted that the Commission has approved increases in residential system charges in prior rate cases, including Case No. 9651 (5%) and Case No. 9481 (4.9%).[394] Additionally, the Company's proposed system charge for residential heating customers of $12.15 is well below gas system charges of BGE ($15.25) and Columbia Gas' settled agreed system charge ($16.25).[395]

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[390] *Id.*
[391] Wagner Rebuttal at 5.
[392] WGL Application at 4.
[393] *Id.* at 4 ("The fixed charges applicable to each customer class exceed the current System Charge, thereby supporting the Company proposal for a portion of the requested revenue increase to be collected through the System Charge.").
[394] *Id.* at 9.
[395] *Id.* at 9-10.

OPC and Staff

OPC and Staff proposed the Commission deny Washington Gas a 5% increase in System Charges with OPC recommending no increase to residential customer classes, and Staff recommending a 2.5% increase to system charges.

OPC disagreed with WGL's proposal to increase the existing monthly residential customer charge of $11.55 to $12.15, or by 5%, which it claims is problematic for two reasons. First, the recovery of a utility's fixed costs through fixed charges is inconsistent with efficient competitive pricing and competitive markets, which should govern the setting of utility rates.[396] Second, an increase in fixed charges reduces customer conservation efforts because they pay the same fixed charges regardless of the amount of service used.[397] Witness Mierzwa cites several prior rate cases, including the Commission's decision in Case No. 9406, in which the Commission stated, "No matter how diligently customers might attempt to conserve energy or respond to pricing incentives, they cannot reduce fixed service charges."[398]

WGL argued that OPC and Staff ignore the fact that the increase to the system charge will provide a better matching of non-gas revenue and the costs that the Company incurs in serving customers.[399] WGL also argued that an increase in the system charge will reduce volatility in customer bills compared to if WGL collects more of its revenue volumetrically through the distribution charge.[400]

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[396] OPC cited James C. Bonbright, *et al., Principles of Public Utility Rates, p. 141 (Second Edition, 1988).*
[397] Mierzwa Direct at 14.
[398] BGE Order No. 87591 at 195-196.
[399] *Id.*
[400] Wagner Rebuttal at 8.

Staff recommended a 2.5% increase to the system charge for each rate class as being proportionate to the 2.73% revenue requirement increase as recommended by Staff witness Ostrander. Staff noted that the Commission approved a similar modest increase to the system charge in Case No. 9651. Staff believes its proposed increase to the system charges increases fixed cost recovery while having less of an impact on energy efficiency incentives than the Company's proposed 5% increase.[401]

3. **Declining Block Rate Structure**

WGL

Consistent with the Commission's policy to promote energy efficiency, in Case No. 9651 the Commission ordered Washington Gas "to eliminate the declining block rate structure in its next rate case" and directed WGL to "include the elimination of this rate structure in its proposed rate design."[402] Washington Gas has therefore proposed a single flat rate for the residential customer classes in the instant rate case. WGL has also proposed that the existing two-part rate structure for non-residential customer classes, consisting of the system charge and declining block distribution charges, will remain the same due to the rate shock some customers would experience.[403]

Staff

Staff witness Thomas agreed with the Company's proposed removal of the declining block rate structure for residential customers, but also believes WGL should do the same for non-residential customers. Staff believes that eliminating declining block

[401] Thomas Surrebuttal at 12.
[402] *Washington Gas Order No. 89799* at 37.
[403] Wagner Direct at 7.

rates for all classes would eliminate intra-class subsidies and promote fairness. Staff also believes that the existence of declining block rates benefits large customers, and the lowest usage rate must increase, thereby forcing low usage customers to subsidize high usage customers.

OPC

OPC agreed with WGL's proposal to eliminate the declining block rate structure for residential customers. The declining block rates send price signals that encourage additional energy consumption, so ending this structure is consistent with the Commission's stated policy that residential rate design should encourage conservation efforts.

WGL Rebuttal

WGL responded to Staff's proposal and argued that adopting Mr. Thomas' position on non-residential customer classes would cause tremendous rate shock for some customers in the range of 33% - 42%.[404]

Staff Surrebuttal

Staff rejected WGL's rate shock argument, noting that the rate increase for the larger users would be a small part of their budget and that eliminating declining block rate would end the intra-class subsidies that higher usage customers have enjoyed for 35 years.[405] Staff further asserts that the Commission in Case No. 9651 provided high-usage customers two years of notice that this rate structure would be eliminated.

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[404] Wagner Rebuttal at 5.
[405] Thomas Surrebuttal at 16.

Commission Decision

1. Revenue Allocation

The Commission has regularly employed a two-step process for the determination of inter-class rates, with the intention of balancing the actual RORs reflected in the Company's COSS with the principle of gradualism. The Commission has described this process as follows:

> We have developed a general policy of allocating rate increases using a two-step approach. *First*, a portion of the increase is allocated to under-earning classes to move their rates of return or URORs closer to the system average. In the second step, the remainder of any increase is apportioned to all customer classes based upon the proportion of their class revenues compared to overall system revenues.[406]

For step one, the Commission concludes that allocating 15% to the two customer classes with a current UROR below 1.0 - Residential Non-Heating and Non-Cooling and the non-firm Interruptible Class represents a fair balance between the policies discussed above. For step two, the remaining 85% of the awarded revenue requirement increase should be allocated to all classes, including the Commercial Non-Heating and Non-Cooling class, which is over-earning. However, the Commission believes that a portion of the revenue requirement increase should still be allocated to this class.

This two-step allocation increases the UROR of the Interruptible Class by a small amount and only increases the Residential Class UROR by an even lesser amount. The Commission does not agree with OPC witness Mierzwa's proposed third step, to allocate an additional $950,000 to the Interruptible Class due to their UROR of only 0.79. Although

[406] *In Re Potomac Electric Power Co.,* 103 Md. PSC 293, 352 (2012); Order No. 85028 (Case No. 9286) slip op. at 124-125.

this would increase this class's UROR more than the two steps described above, the Commission expressly rejected this same proposal in Case No. 9651 and does so again here. The Commission also disagrees with OPC's recommendation to add an additional 5% to the Commercial Non-Heating and Non-Cooling Class. However, the Commission does believe this class should be allocated revenue in step two.

2. Service Charges

The Commission agrees with OPC's rationale for objecting to WGL's proposed service charge, as the more Washington Gas recovers revenue through service charges, the less control a customer has over the overall bill. WGL's proposed 5% increase in the residential customer service charge raises the charge from $11.55 to $12.15; however, the Commission is reluctant to eliminate the Service Charge increases entirely. The Commission will adopt Staff's proposed increase in the customer service charges of 2.5%, which constitutes an increase from $11.55 to $11.85 for the residential class. The Commission concludes that the rates of other classes should increase by a similar percentage, resulting in the following service charges for each rate class:

Table 5
System Charge Changes

Customer Class	Current System Charges	Commission Determined System Charges	System Charge Change ($)	System Charge Change (%)
Res - Heat/Cool	$11.55	$11.85	$0.30	2.60%
Res - Non-Heat/Non-Cool	$11.55	$11.85	$0.30	2.60%

C&I - Heat/Cool <3K therms	$21.00	$21.50	$0.50	2.38%
C&I - Heat/Cool >3K therms	$41.95	$43.00	$1.05	2.50%
C&I - Non-Heat/Non-Cool	$15.75	$15.75	$0.00	0.00%
GMA - Heat/Cool	$54.50	$55.85	$1.35	2.48%
GMA - Non-Heat/Non-Cool	$19.30	$19.80	$0.50	2.59%
Interruptible	$133.15	$136.50	$3.35	2.52%

Washington Gas also proposed to cease attributing credit card charges by individual customers to all customers in that rate class. Rather, WGL prefers those customers who pay their bill via credit card to incur the additional charges/vendor fees related to paying by credit. No party disagreed with this proposal, and the Commission agrees with attributing these charges to the individual ratepayers, with the understanding that no customers who choose to pay by debit card or bank account will incur a fee.

Table 6
Proportion of Distribution Revenues

Customer Class	Annual Bills	Average Monthly Customers	Commission Determined Revenue Increase	Percentage of Total Revenue Increase (%)
Res - Heat/Cool	5,671,250	472,604	$7,402,963	73.65%
Res - Non-Heat/Non-Cool	50,300	4,192	$34,025	0.34%

C&I - Heat/Cool <3K therms	202,000	16,833	$296,074	2.95%
C&I - Heat/Cool >3K therms	104,184	8,682	$1,385,423	13.78%
C&I - Non-Heat/Non-Cool	20,973	1,748	$106,730	1.06%
GMA - Heat/Cool	27,573	2,298	$393,129	3.91%
GMA - Non-Heat/Non-Cool	24,692	2,058	$59,413	0.59%
Interruptible	1,807	151	$373,485	3.72%
Total	6,102,779	508,565	$10,051,241	100.00%

The overall result of the Commission's decisions regarding the appropriate design in this case results in the following outcomes for each customer class:

Table 7
Bill Impacts

Customer Class	**Current Average Total Bill**	**Commission Determined Average Total Bill**	**Bill Change ($)**	**Bill Change (%)**
Res - Heat/Cool	$77.00	$77.35	$0.35	0.45%
Res - Non-Heat/Non-Cool	$47.16	$45.90	($1.26)	-2.67%
C&I - Heat/Cool <3K therms	$110.87	$112.52	$1.64	1.48%
C&I - Heat/Cool >3K therms	$1,407.24	$1,421.73	$14.49	1.03%

C&I - Non-Heat/Non-Cool	$689.73	$695.74	$6.01	0.87%
GMA - Heat/Cool	$1,531.88	$1,546.91	$15.03	0.98%
GMA - Non-Heat/Non-Cool	$241.06	$243.72	$2.66	1.10%
Interruptible	$9,242.51	$9,528.68	$286.17	3.10%

Table 8
2-Step Allocation Results

Customer Class	**Revenue Increase Allocated in Step 1 (15%)**	**Revenue Increase Allocated in Step 2 (85%)**	**Current Relative ROR**	**Commission Proposed Relative ROR**
Res - Heat/Cool	$1,435,275	$5,967,687	0.94	0.95
Res - Non-Heat/Non-Cool	$0.00	$34,025	1.06	1.05
C&I - Heat/Cool <3K therms	$0.00	$296,074	1.10	1.08
C&I - Heat/Cool >3K therms	$0.00	$1,385,423	1.23	1.20
C&I - Non-Heat/Non-Cool	$0.00	$106,730	1.68	1.63
GMA - Heat/Cool	$0.00	$393,129	1.06	1.04
GMA - Non-Heat/Non-Cool	$0.00	$59,413	1.23	1.21
Interruptible	$72,411	$301,074	0.79	0.79
Total	$1,507,686	$8,543,555	1.00	1.00

3. <u>Declining Block Rate Structure</u>

Washington Gas has complied with the Commission's directive in *Washington Gas Order No. 89799* that the Company eliminate the declining block rate structure in its next rate case (*this case*), that the Company include the elimination of this rate structure in its proposed rate design, and that the Company may also file alternative rate design proposals in its application. In the instant rate case, WGL has eliminated the declining block rate structure for residential class customers. The Commission accepts this and determines that this change will further the goal of incentivizing energy conservation. Staff additionally recommends that the Commission order Washington Gas to eliminate the declining block rate structure for non-residential classes, as well.

At this time, the Commission will not require WGL to remove the declining block rate structure from its non-residential class rates, citing concerns over the potential bill impacts that could be experienced by the non-residential customer classes. The Commission, however, does stand by its decision in Order No. 89799 to further the Maryland policy goal to encourage energy conservation and efficiency by eliminating all declining block rate structures. The Commission directs Washington Gas, in consultation with Staff, to conduct an analysis of current non-residential customer classes to determine if they still adequately represent the customer base, as well as an analysis in their next base rate case to determine if multiple interruptible customer classes are needed based on their consumption.

The Commission also directs WGL to conduct a study on the rate impacts and the amount of "rate shock" that each non-residential class will incur with the removal of the

current declining block rate structure, and to propose to eliminate declining rate structures altogether for all customer classes in their next base rate case.

E. Mercury Service Regulators

Staff

Staff noted that the Commission imposed a $750,000 penalty on Washington Gas due to WGL's violation of the commitments made in a July 29, 2002 settlement in Case No. 8920, later revised by a supplemental settlement.[407] The supplemental settlement required WGL to replace all mercury service regulators ("MSR") within 10 years.[408] In its decision imposing the civil penalty, the Commission concluded that the supplemental settlement constituted a binding commitment by Washington Gas to remove all outdoor MSRs within 10 years. The Commission also determined that WGL's failure since 2003 to file an annual status report on its replacement of mercury regulators violated the supplemental settlement.[409]

The order ("penalty order") imposing a civil penalty approved WGL's revised MSR replacement program with four conditions:

1. WGL shall provide the Commission with an update on projected and annual costs within 60 days of completing its one- and three-year surveys;

2. Within 30 days of commencing its survey, WGL shall notify the Commission of the date of commencement;

3. WGL shall file annual reports by February 10th of each year as to the status of its program; and

[407] Order No. 89680, *In the Matter of an Investigation of Washington Gas & Light Company Regarding a Building Explosion and Fire in Silver Spring, Maryland*, Case No. 9622 (Dec. 18, 2020).
[408] *Id.* at 3-6.
[409] *Id.* at 23-24.

4. WGL shall work with the Commission's Consumer Affairs Division and Engineering Division to adopt an MSR Replacement Plan.

The requirements imposed by the penalty order are based upon significant safety and environmental concerns. In view of these safety concerns, Staff expressed concern that Washington Gas has violated several of the requirements in the penalty order. For example, WGL still has to complete the one-year survey to locate mercury regulators in occupied multi-family residential structures.[410] Additionally, Washington Gas has only completed 60% of non-multi-family residential MSRs, and this survey is due for completion on March 1, 2024.[411] WGL is also expected to miss the requirement to remove all mercury regulators by the deadline imposed by the penalty order.[412]

Washington Gas has also violated the requirement in the penalty order that WGL "shall work with the Commission's Consumer Affairs Division ("CAD") and Engineering Division to adopt a Replacement Plan customer notification and service termination process."[413] Staff witness Clementson "describes Staff's needs for (1) notification by WGL of pending terminations, and (2) a cumulative summary of all the customer accounts that have previously been terminated, with information such as the date the service termination was executed and when service was reconnected, among other things."[414]

As a result of these violations, Staff asks the Commission to direct WGL to comply with the provisions of Commission Order No. 89680 in Case No. 9622, and begin providing

[410] Tesfaye Surrebuttal at 8.
[411] Tesfaye Direct at 68.
[412] WGL is required to remove all multi-family MSRs by March 1, 2025, and to remove all non-multi-family MSRs by March 11, 2029. Staff noted that it has encountered a significant number of residences for which WGL cannot gain access to see if the regulator contains mercury. WGL states that these inaccessible regulators constituted 67% compared to fully executed surveys in 2022. Tesfaye Direct at 67.
[413] Tesfaye Direct at 68.
[414] *Id.*

to CAD and the Commission's Engineering Division (1) relevant information on pending service terminations, and (2) a second spreadsheet attachment weekly for tracking purposes that is a cumulative summary of all the customer accounts that have previously been terminated with information such as the date the service termination was executed and when service was reconnected.[415]

In its reply brief, Staff reiterated its position that WGL has violated two of the requirements that the Commission imposed in the penalty order that WGL failed to complete the one-year survey to locate mercury regulators in occupied multi-family residential buildings by March 1, 2022 and that WGL failed to comply with the requirement that WGL work with CAD and the Commission's Engineering Division to adopt an MSR Replacement Plan customer notification and service termination process. Although Staff acknowledges that on June 22, 2023, WGL sent Staff the proposed customer notification and service termination process guidelines drafted by WGL, Staff cites specific language in the penalty order alleging that these proposed guidelines failed to include the requirement for WGL to (1) notify CAD and the Engineering Division of pending service terminations, and (2) provide a cumulative summary of all the customer accounts that have previously been terminated to CAD and Engineering Division.

WGL

WGL claimed that it has eight multi-family residences yet to survey out of 3,278 due to inaccessibility (classified as "can't gain access" or "CGA"), owners not being present at the premises when the survey was originally scheduled, the premises being

[415] Tesfaye Surrebuttal at 2.

vacant, or the customer willfully refusing to provide the Company with access to the premises.[416] Washington Gas agreed with Staff's assessment of deadlines for surveying and removing MSRs from multi-family and non-multi-family residences;[417] however, the Company requests flexibility with respect to CGA customers so that it is not penalized for not meeting these deadlines. WGL otherwise agreed to provide the Commission's CAD and Engineering Divisions with its notification and termination process.

In its reply brief, Washington Gas clarified its earlier agreement with Staff's assessment of deadlines characterizing these deadlines in which the Company proposed to "make its best effort." WGL further states that "it would not be prudent or necessary for the Commission, as Staff recommends, to order the Company to remove all multi-family MSRs by March 1, 2025 and all non-multi-family MSRs by March 1, 2029 regardless of factors outside the Company's control."[418] WGL further stated that it has complied with the requirement that WGL work with CAD and the Commission's Engineering Division to adopt an MSR Replacement Plan customer notification and service termination process when the Company submitted to Staff counsel a proposal for a customer notification and service termination process on June 22, 2023.

The Company also welcomed further clarification from the Commission whether the Company's proposed CGA approach remains appropriate in light of the Commission's recent decision involving a valid basis for service terminations involving Baltimore Gas and Electric Company in Case No. 9711.

[416] S. Smith Rebuttal at 4, 5, and 8.
[417] Tesfaye Direct at 67-68.
[418] Washington Gas Reply Brief at 5.

Commission Decision

The Commission agrees with Staff that the MSR Replacement Plan customer notification and service termination process requirements have not been fully met. An approach for a valid basis for service terminations for CGAs should also be addressed in this process. Furthermore, although WGL claims that MSR Replacement deadlines should be "best effort" deadlines, the Commission agrees with Staff's interpretation until a valid basis for service terminations for CGAs is addressed in a customer notification and service termination process. Therefore, the Commission adopts Staff's recommendations and directs Washington Gas to (1) re-address timelines to work with Staff and CAD; (2) set dates for meetings with Staff and CAD; and (3) file quarterly progress reports. The Commission also strongly warns WGL that failure to meet deadlines for surveying and removing MSRs from multi-family and non-multi-family residences risks the imposition of a regulatory liability requirement, as well as additional civil penalties.

The delays associated with WGL's mercury service regulators now date back 20 years, when WGL submitted a 10-year plan to remove all mercury service regulators by 2013 (Case No. 8959). In Case No. 9622, the Commission imposed a significant civil penalty upon Washington Gas for yet again failing to meet deadlines to which they agreed. The Commission strongly recommends that WGL work closely with Staff and CAD to avoid a similar civil penalty.

F. Gas Planning

WGL

WGL witness Steffes described "emerging ecosystems" as a "value driver" focusing the Company's action plans for "near-term integrated strategies" that he argued

are consistent with emerging public policy related to carbon reduction and work to maximize opportunities for government incentives that will enhance what he described as the Company's "existing low-carbon" footprint.[419] Witness Steffes testified that the Company will be preparing for a low-carbon future through the design of innovative renewable natural gas ("RNG"), hydrogen, and energy efficiency programs.[420]

WGL witness Yardley stated that since entering the EmPOWER Maryland program in 2015, Washington Gas has generated savings of 13.34 million therms from 2015 through Q1 of 2023 from its portfolio of energy efficiency programs, arguing that these programs also conserve natural resources while reducing greenhouse gas ("GHG") emissions.[421]

With regard to the RNG program discussed by witness Steffes, witness Yardley noted an 18-year contract with the Washington Suburban Sanitary Commission (WSSC) for the construction and installation of 900 feet of natural gas pipeline and related infrastructure to support the development of RNG associated with WSSC's Piscataway Bioenergy Facility in Accokeek, Maryland, a project that became operational in April 2023.[422] Additional projects were described, including a certified natural gas ("CtNG") program, a direct emission measurement program, and a methane capture and reinjection program.

In testimony regarding the Company's consistency with the Maryland Climate Solutions Now Act ("CSNA"),[423] witness Yardley argued the Company's ongoing

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[419] Steffes Direct at 11.
[420] *Id*. In JDS-1, the Emerging Ecosystems discussion includes: "Identify investment opportunities in emerging energy technologies to supply additional carbon friendly opportunities, domestic and global needs. Maximize opportunities through strategic relationships that will enhance our existing low carbon footprint."
[421] Yardley Direct at 7.
[422] *Id.* at 8.
[423] SB 528 (2022).

obligations to take actions that enhance safety, enhance reliability, and establish programs and services to encourage and promote the efficient use and conservation of energy, and the Company's requirement to develop and implement programs and services for the same, is consistent with CSNA.[424] Witness Yardley also argued that WGL's STRIDE program, as well as other programs including decarbonization of the Company's fleet through a hydrogen fuel cell mobility pilot, participation in the Maryland and federal hydrogen hub initiative, and the implementation of a new flat rate design also reduce GHG emissions.[425]

<u>*OPC*</u>

OPC witness Fitzhenry argued that the demand for fossil gas in WGL's service territory has been declining for the past five years, and future policy considerations and technological advancements will continue to reduce the demand for fossil gas in the years to come.[426] Based on these observations, he argued that the Commission should consider limiting the growth in WGL's distribution plant additions so that customer rates are affordable, stranded costs are avoided, and investment is not wasted on infrastructure that provides fewer benefits with shrinking gas usage.[427] Witness Fitzhenry noted that WGL has made significant improvements in the safety and reliability of its distribution system over the past five years, and therefore argued that accelerating capital expenditures is not necessary to provide safe and reliable service to customers.[428]

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[424] Yardley Direct at 8, citing Commission Order No. 90261 (Jun. 15, 2022), denying Maryland Energy Efficiency Advocates' motion to eliminate EmPOWER funding for gas appliance incentives.
[425] *Id*.
[426] Fitzhenry Direct at 3, 5, 9, and 23.
[427] *Id.* at 3.
[428] *Id.*

In his direct testimony, Mr. Fitzhenry cited a reduction from 94.4 million Dth of gas delivered in 2018 to 90.9 million Dth delivered in 2022, a decrease of 3.7%, and argued that a continuing decline in gas usage is "likely."[429] He noted that OPC filed a Petition for Near-Term, Priority Actions and Comprehensive, Long-Term Planning for Maryland's Gas Companies, docketed as Case No. 9707, which he states provides further reasoning for the continued decline in deliveries of fossil gas in WGL's service territory.[430]

Citing WGL's March 2020 Climate Business Plan for Washington, D.C., witness Fitzhenry noted that Washington Gas has developed a business plan to reduce GHG emissions, with an aim to achieve a 50% GHG emissions reduction associated with the use of fossil gas by 2032 and 100% carbon neutrality associated with the use of fossil gas by 2050.[431] Although this plan was developed for the Company's District of Columbia operations, witness Fitzhenry submits that the actions proposed by the Company in its business plan to reduce gas leaks in its Washington, D.C. distribution system are similar to the distribution investments the Company is seeking recovery for in this proceeding, such as replacing pipes, improving leak detection and response, and preventing third-party damage to reduce GHG emissions in its distribution system. Witness Fitzhenry argued, however, that within the plan itself, Washington Gas acknowledged that, while it believes that reducing gas usage for end users will reduce its GHG emissions by significant margins, reducing gas leaks in the Company's distribution system will have only limited impacts on reducing GHG emissions.[432]

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[429] *Id.* at 5-6.
[430] *Id.* at 6.
[431] *Id.* at 13.
[432] *Id.*

Witness Fitzhenry argued further that WGL's capital spending practices are misaligned with GHG reduction goals, and put customers at risk of significant price increases based on accelerated spending to replace legacy infrastructure with new infrastructure that has a lifetime of 40 years or more, seeking to expand business for new customers and capacity.[433] Witness Fitzhenry stated that "[a] comprehensive and proactive planning proceeding is necessary to ensure that the rates, service, and operations of Maryland's gas companies are consistent with the public interest."[434]

In his surrebuttal testimony, OPC witness Fitzhenry included an April 2020 study that WGL's parent company, AltaGas Ltd., commissioned on the evolution of WGL's natural gas distribution system in the District of Columbia. The study, which relies on U.S. Energy Information Administration (EIA) and other public data, projects D.C. natural gas throughput declines from a 2018 baseline of up to 31% by 2032 and 92% by 2050 under the most aggressive of three possible climate policy approaches - policy-driven electrification. Given the study, as well as the totality of evidence provided, witness Fitzhenry asserted that the conclusion that WGL's future natural gas sales will likely decline should be taken into consideration by the Commission when evaluating WGL's request for a 19% increase in distribution charges.[435]

In keeping with Maryland's climate goals, OPC witness Mierzwa also recommended revisions to WGL's line-extension policy. OPC noted that under WGL's tariff the Company conducts an economic test to compare the cost of the extension to its expected revenues over 30 years. If the project is expected to generate more revenue than

[433] *Id.* at 14.
[434] *Id.* at 15.
[435] Fitzhenry Surrebuttal at 9.

the estimated cost over 30 years, existing customers will cover the cost of the line at no cost to the customer.[436] OPC argued that this 30-year period fails to account for Maryland's decarbonization goals and recommends a seven-year time period. Alternatively, witness Mierzwa recommended a period of 20 years tied to the 2045 deadline by which Maryland must reach net zero GHG emissions.

In OPC witness Mierzwa's testimonies, and throughout its brief, OPC recommended the Commission modify WGL's line extension policy, noting that the 30-year period used for the economic test in the Company's current line-extension policy is problematic because it does not account for Maryland's decarbonization goals and other technological changes causing gas to lose market share to electricity. He recommended the Company be required to utilize a 20-year usage period tied to the 2045 deadline by which Maryland is required to reach net zero in GHG emissions.[437]

In its reply brief, OPC argued further that in this case WGL has attempted to discount the evidence of declining gas use offered by OPC and other intervenors (CCAN and MEA).[438] It reiterated that WGL's line extension policy illustrates the problem of failing to consider prospective declines in gas consumption,[439] adding that "[w]hether or not future declining gas use directly prompted adjustments or merely provided context and meaningful corroboration to justify the adjustments, evidence of declining gas use and the factors that contribute to it … is critical to this rate proceeding and cannot be ignored or discounted."[440] OPC also insisted that modifying WGL's line extension policy (now) to

[436] Mierzwa Direct at 19; Mierzwa Rebuttal at 8.
[437] Mierzwa Direct at 19; Mierzwa Surrebuttal at 8; OPC Brief at 52-52.
[438] OPC Reply Brief at 1 and 4-5.
[439] *Id.* at 4.
[440] *Id.* OPC argued further that postponing review of these issues to subsequent proceedings will result in higher rates and should be rejected. OPC Reply Brief at 21.

align with the deadlines for GHG emissions reduction in the CSNA—as recommended by OPC witness Mierzwa "does not require significant additional investigation".[441] OPC argued that its proposal to revise line extension policy will not impact customers' ability to procure gas service, but only whether other customers will be required to subsidize that service.[442]

<u>*MEA*</u>

MEA Director Pinsky submitted that the CSNA clearly communicated the intent of the Maryland General Assembly to move the State of Maryland towards electrification.[443] Where that leaves the future of natural gas infrastructure, he argued, is an open question, and one that the State and others are working to address under the process laid out by the CSNA. Witness Pinsky stated that "[w]hile safety and reliability of gas service are paramount concerns, these must be better merged with electrification and the GHG reduction requirements of the State."[444]

Noting Case No. 9707, Director Pinsky submitted that questions such as (1) whether natural methane gas and related distribution infrastructure should be reduced and, if so, by how much and when, and (2) whether there is a viable, cost-effective path to use existing gas distribution infrastructure for alternative cleaner fuels, are policy questions that will need to be addressed and answered. He noted, however, that these questions cannot be answered in a single utility's one-year rate case but should be addressed in

[441] *Id*. at 23, citing Mierzwa Surrebuttal at 9.
[442] *Id.* at 24.
[443] Pinsky Direct at 2, quoting Session Laws of 2022, Ch. 38, Section 10 (A)(2) (2) stating that "it is the intent of the General Assembly that the State move toward broader electrification of both existing buildings and new construction on completion of the study required under subsection (b) of this section."
[444] Pinsky Direct at 2.

coordination with various State-agency input and other stakeholders, as the State moves forward in implementing the CSNA.[445]

MEA did not oppose gas infrastructure replacement but recommended that Maryland's gas safety planning concerns be reconciled with the accelerated GHG reduction requirements of the State.[446]

CCAN

CCAN witness Rábago focused on the Company's programs, costs, and resulting rate impacts, including the goals and performance of Washington Gas and its parent AltaGas, relating to GHG reductions and the impact on climate change and the achievement of Maryland's climate policies.[447] Witness Rábago argued that WGL's proposals to continue activities that increase use of fossil methane gas or RNG should be rejected by the Commission, and asserted that, in order to demonstrate meaningful compliance with Maryland's climate-related policies, the Company must take "a more serious and expeditious approach to managing a decapitalization of its gas system and the systematic decommissioning of its gas delivery system."[448]

Witness Rábago submitted that the State's climate and energy policy reflects a concrete obligation on the Commission and the public service utilities that it regulates to support and help realize the goals of the CSNA. Witness Rábago argued that WGL's actions and proposals fail to meet its obligation as a public service company to do so, and that the Commission must set a new course for Washington Gas in the years ahead.[449]

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[445] *Id.* at 3-4.
[446] *Id.* at 5-6.
[447] Rábago Direct at 3.
[448] *Id.*
[449] *Id.* at 6.

In addressing the Company's "Emerging Ecosystems" value driver, witness Rábago also noted WGL's Corporate Social Responsibility value driver, which states that the Company will "continue to focus on progressing its Environmental, Social, and Governance ("ESG") initiatives, and that it will engage "customers and stakeholders to highlight [its] critical infrastructure and garner support for increased investment in [its] core assets and new energy ecosystem propositions," while identifying opportunities "in the emerging low carbon ecosystem to maximize [its] existing infrastructure."[450] According to witness Rábago, as outlined in AltaGas' 2022 ESG update,

> … if WGL achieves its goal on Scope 1 and 2 emissions, the Company will still be responsible for some 285,419 tonnes of GHG emissions each year, [which] is equivalent [to] about 731,685,538 miles of driving by an average gasoline-powered passenger vehicle, or the emissions from burning nearly 320,000 pounds of coal.[451]

Witness Rábago added that "WGL's Scope 3 emissions, which are primarily the emissions associated with customers using the gas that WGL provides and/or delivers, were 4,255,724 mtCO2e, and if Scope 3 emissions from gas delivered for third parties is subtracted, were 1,981,271 mtCO2e … the equivalent of more than 5 million miles driven by an average gasoline-powered passenger vehicle, or of five gas-fired power plants operating for one year.[452]

Witness Rábago argued that WGL has no plans for decommissioning and decapitalizing its gas system, and that the Company's efforts are "out of sync" with Maryland state law.[453] Witness Rábago further argued that the Company's application fails

[450] *Id.* at 11.
[451] *Id.*
[452] *Id.* at 11-12.
[453] *Id.* at 15-16.

to demonstrate that it has objectively analyzed the downside risks it faces as a business and the need to be proactive and innovative in assessing risk and growing a business that no longer depends on the delivery and combustion of fossil methane gas, RNG or hydrogen.[454]

Montgomery County

In its post-hearing comments, Montgomery County focused on the State's goals to reduce GHG emissions. Montgomery County agreed with OPC witness Fitzhenry's argument that gas consumption is likely to continue to decrease because of state and federal policies to reduce GHG emissions, and agreed with OPC witness Mierzwa that the Commission should reconsider the prudence of WGL's current facility extension policy.[455] Montgomery County also supported the arguments made by MEA (and other intervenors) regarding the need for "more comprehensive planning" to guide all stakeholders in a managed transition away from the combustion of natural gas.[456]

WGL Rebuttal

WGL witness Steffes reiterated that the Company's proposal in this case is based on a historical test-year, following Commission precedent. Witness Steffes also countered what he argued is OPC's witness Fitzhenry's assertion regarding a decline in gas sales "as a losing proposition for the Company's customers."[457] Witness Steffes stated "[t]he Company views the more efficient use of natural gas as a positive development for customers. While WGL's investment in distribution plant must be recovered through the

[454] *Id.* at 27.
[455] Montgomery County Comments at 2.
[456] *Id.* at 4.
[457] Steffes Rebuttal at 3.

Company's rates, large parts of the customer bill, such as commodity charges, are completely avoidable as usage declines."[458]

Again, in response to CCAN witness Rábago, WGL witness Steffes submitted that, in this proceeding, the Company is "simply" pursuing fair recovery of its incurred investments and expenses in accordance with Commission precedent, and noted the Commission has already opened a gas system planning docket in Case No. 9707 to address many of the issues raised by CCAN witness Rábago.

Regarding OPC's line-extension policy recommendation, Washington Gas countered that no modification to a customer service item such as a line extension tariff should be made without understanding, at the very least, customer impact. Any significant modification of the Company's policy would also affect other stakeholders, including, for example, electric utilities responsible for system planning and electric load changes.[459]

CCAN Surrebuttal

CCAN witness Rábago acknowledged what WGL witness Steffes described as "novel" filing requirements recommended of WGL, responding that spending on GHG reduction programs is specifically at issue in this proceeding, and that it is entirely appropriate for the Commission to reach findings and conclusions in this proceeding that will impact future spending by Washington Gas[460] During the evidentiary hearing, the witnesses reinforced their initial and rebuttal positions in surrebuttal and hearing testimony,

[458] *Id.* at 4.
[459] Musgrove Rebuttal at 15; WGL Brief at 50.
[460] Rábago Surrebuttal at 7.

including testimony reporting an AltaGas study projecting declining natural gas throughput, based on climate-driven policies.[461]

Commission Decision

The parties in this case, particularly OPC, MEA, and CCAN, raise important issues regarding the future of gas and gas planning, particularly in light of the State's goals addressing climate change and GHG reduction. The Commission is fully committed to meeting its responsibilities under PUA § 2-113(a)(2)(v-vi) to address preservation of environmental quality and the achievement of the State's climate commitments for reducing statewide GHG emissions. In this case however, none of these parties recommended adjustments in this case that directly address predicted decreases in gas demand or stranded gas infrastructure investments.[462]

Undoubtedly, the potential for decreasing gas demand and gas utility line extension policies needs to be addressed;[463] however, these issues are out-of-scope in the context of WGL's historic-test year base rate case.[464] WGL emphasizes this point in its reply brief, arguing that historic test year ratemaking is not based on potential future changes in gas costs. The Company's spending today is based on the service standards set by the

[461] Fitzhenry Surrebuttal at 9.
[462] WGL Brief at 52.
[463] In its reply brief, Staff argued that if the Commission adopts the OPC and CCAN recommendations regarding line extensions, implementation of any tariff change should be delayed by at least six months – to allow adequate notice for contractors and house builders. Staff Reply Brief at 13. Staff notes that it did not take a position on this issue in its testimony; however, it argues that adoption of the OPC and CCAN recommendations would "significantly" increase the fee that Washington Gas customers would have to pay for a line extension. WGL Brief at 15.
[464] *See* Tr. at 748-752 (Rábago).

Commission for the future and OPC does not recommend any specific adjustment to rates based on its future of gas predictions.[465]

To address these issues, the Commission has initiated Case No. 9707. The Commission initially requested comments in Case No. 9707 by October 10, 2023, but extended the comment deadline to October 24, 2023. To date, at least 17 parties including OPC, MEA, CCAN, Washington Gas and other gas utilities in Maryland (including BGE, Chesapeake Utilities, and Columbia Gas), as well as the national gas trade association (AGA), have filed comments.

While the Commission has not established specific proceedings to address these comments, the Commission anticipates that Case No. 9707 will likely address the concerns raised by OPC, MEA, and CCAN in this case. Notably, Washington Gas and other gas utilities in Maryland, as well as the national gas trade association - the interested parties most affected by policy issues that will be addressed in Case No. 9707 - have put forth their comments in that docket.

The Commission appreciates the MEA and CCAN witnesses' desire to get ahead of Case No. 9707, however, consideration of these issues in the single-utility context of WGL's rate case would lack the more robust consideration of these matters that will be afforded by discussion by all interested parties in Case No. 9707. For these reasons, the gas planning and line-extension policy issues raised in this case by OPC and other intervenors, will be deferred to Case No. 9707.

[465] WGL Reply Brief at 3. Washington Gas argues further that the recommendations (relating to capital expenditure plans, the Company's line extension policy, and studies on future gas demand) are all based on unknown and unmeasurable predictions on gas demand and stranded assets, which the Commission has agreed to consider, in Case No. 9707. *Id.*

However, while stating that most gas policy issues are out-of-scope for this instant base rate case proceeding, the Commission is persuaded by testimony from MEA Director Pinsky, OPC witness Fitzhenry, and CCAN witness Rábago that current trends in decreasing gas consumption will continue, largely driven to state policies. The Commission recognizes that the future of natural gas will continue to be considered by State policy makers. For this reason, WGL - and all Maryland gas companies – must consider the likely contraction in gas consumption in all capital expenditure plans intended to maintain required levels of system safety.

Gas utilities must consider all cost-effective non-pipeline alternative options available to defer, reduce, or remove the need to construct or upgrade components of their natural gas systems, and not solely pursue infrastructure replacement, in order to prudently justify their system safety and reliability spending in the future. Future remaining customers on the system should not be burdened with excessive costs and stranded assets due to hasty and unwise decisions made today.

G. Fair Labor Standards

WGL

WGL witness Yardley testified that approximately 47% of the Company's employees are covered by collective bargaining agreements, and relies extensively on procurement contracts with third parties to execute much of its infrastructure replacement program.[466] In compliance with Commission orders directing each Maryland utility to submit an affidavit acknowledging its obligations under HB 513 (2023) (Fair Labor

[466] Yardley Direct at 5.

Standards ("FLS") codified in PUA § 5-305 and indicating how it will comply with the law, witness Yardley reiterated WGL's affidavit, filed on March 1, 2023 by the Company's Senior Vice President of Operations, Laura Boisvert stating:

> Pursuant to the Public Service Commission of Maryland's ("Commission) Letter Order issued on February 1, 2023 (ML301134), Washington Gas Light Company ("Washington Gas") acknowledges that it is aware of its obligation under MD Code Ann., Public Utility Article ("PUA") § 5-305. Washington Gas will comply with this law by providing its contractors with a copy of PUA § 5-305 and by continuing to include the following standard provision (or substantially similar language thereto) in all relevant contracts – that each contractor "warrants that it will comply with all applicable statutes, rules, regulations, ordinances and laws governing services performed or to be performed by it under this Agreement." Further, in all relevant contracts Washington Gas notifies each contractor that it is fully responsible for the work to be performed by any subcontractors.[467]

PBWLDC

In PBWLD's pre-filed written comments, Mr. Lanning recommended that the Commission condition any rate relief upon a showing that Washington Gas has the internal controls in place to ensure its contractors are compliant with all labor laws to ensure fair and stable labor standards for the affected workforce. He stated that, other than reiterating the Company's March 2023 affidavit, Washington Gas has not provided any evidence of compliance with PUA § 5-305 fair labor standards.[468] Mr. Lanning also stated that "[n]ot all contractors and subcontractors of WGL covered projects are paying their employees the prevailing wage."[469]

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[467] *Id.* at 6.
[468] PBWLDC Comments at 6.
[469] *Id.*

PBWLDC also recommended that the Commission condition WGL's rate relief on a showing that its third-party contractors and subcontractors are compliant with the payment of prevailing wages for covered projects, and a requirement that the Company provide the Commission with a detailed description of how contractors will be reimbursed for any additional costs related to compliance.[470]

His comments also suggest that "utilities [including WGL] have not provided sufficient guidance to its contractors on how to comply [with PUA § 5-305 fair labor standards], nor any assurance that contractors will be reimbursed for any additional costs related to compliance."[471] PBWLDC comments that simply requiring compliance with the law in its standard contract terms is insufficient. Mr. Lanning asserts that "[i]f WGL's contracted-out workforce are not being paid their lawful wages, the Company cannot be in compliance with maintaining fair and stable labor standards for affected workers."[472]

WGL

WGL witness Steffes responded to PBWLDC's arguments, stating that Mr. Lanning provided no evidence to support his assertion that not all Washington Gas contractors and subcontractors (for covered projects) are paying their employees the prevailing wage.[473] Citing HB 513 (2023), witness Steffes emphasized the requirement that:

> On or before October 1, 2023, contractors and subcontractors subject to [PUA] § 5-305 shall . . . (1) request from [MDL] a copy of a wage determination of the existing prevailing wage rates applicable to work covered by [PUA]

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[470] *Id.* at 9.
[471] *Id.*
[472] *Id.* at 8.
[473] Steffes Rebuttal at 9.

> § 5-305 . . . and (2) ensure that all employees performing covered work are paid in compliance with the existing prevailing wage rates.

He noted further that, under HB 513 (2023), the Commissioner of Labor must determine an initial prevailing wage for PUA § 5-305 work by December 1, 2023, if no existing rate exists. Witness Steffes noted that, to date, "there have been no prevailing wage determinations by any Maryland agency or authority for PUA § 5-305 work against which Mr. Lanning might compare or contrast what the Company's contractors or subcontractors have paid or are paying their employees…"[474]

Commission Decision

The Commission notes that it has addressed the requirements of PUA § 5-305 in a letter order responding to Baltimore-Washington Construction and Public Employees Laborers' District Council's ("the Council") request for a rulemaking requiring utilities to take certain compliance measures.[475] The Commission also notes the Council's request for reconsideration of its February 1, 2023 letter is moot. Furthermore, uncodified section 3 of HB 513 (2023) provides:

> That the Commissioner of Labor and Industry shall waive all civil penalties for, and may not take any related action against, a contractor or subcontractor who, on or before the effective date of this Act, is not in compliance with the prevailing wage requirements under § 5-305 of the Public Utilities Article, as enacted by Section 1 of this Act, if the contractor or subcontractor comes into compliance with the prevailing wage requirements by March 1, 2024.

[474] *Id.* at 9.
[475] Maillog No. 301134 (Feb. 1, 2023).

While civil penalties for non-compliance with the Fair Labor Standards Act may be addressed by the Commission, non-compliance complaints must be filed with and addressed by the Commissioner of Labor and Industry.

IV. CONCLUSION

The goal of any ratemaking proceeding is for the Commission to ensure that the rates approved for a public utility to charge customers for regulated service are just and reasonable.

Having duly considered the entire record in this proceeding, including all of the filed and oral testimony and exhibits, as well as public comments, and taking into account recent Commission decisions, the Commission hereby authorizes an increase in rates of $10,051,241, with an overall ROR of 7.04% based on a ROE of 9.50% on an adjusted rate base of $1,394,322,952. The Commission finds that these terms, along with the decisions stated elsewhere in this Order, encompass just and reasonable rates that will not induce rate shock and will not unduly burden any one class of customers.

IT IS, THEREFORE, this 14th day of December, in the year Two Thousand Twenty-Three, **ORDERED:**

(1) that the Application filed by Washington Gas Light Company on May 18, 2023 (as supplemented by the Company over the course of this proceeding), seeking an increase in its Maryland distribution rates of $42.5 million, is hereby denied, as discussed in the body of this Order;

(2) that Washington Gas Light Company is hereby authorized to increase its Maryland distribution rates by no more than $10,051,241 for service rendered on or after December 14, 2023, consistent with the findings in this Order;

(3) that Washington Gas is directed to file tariffs in compliance with this Order with the effective dates prescribed herein, subject to acceptance by the Commission; and

(4) that any motions or requests not granted herein are denied.

/s/ Frederick H. Hoover, Jr.

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Kumar P. Barve

/s/ Bonnie A. Suchman
Commissioners