

ORDER NO. 91099

Washington Gas Light Company's	*	BEFORE THE
Application for Approval of a New Gas	*	PUBLIC SERVICE COMMISSION
System Strategic Infrastructure	*	OF MARYLAND
Development and Enhancement Plan and	*	_____
Accompanying Cost Recovery Mechanism	*	CASE NO. 9708
_____	*	_____

Issue Date: April 19, 2024

ORDER ON REHEARING

On February 9, 2024, the Office of People’s Counsel filed a request for rehearing of the Commission’s decision on appeal (the “Order on Appeal”)¹ from the Public Utility Law Judge (“PULJ”) Division’s Proposed Order on Washington Gas Light Company’s (“Washington Gas,” “WGL,” or the “Company”) application for approval of a new gas system Strategic Infrastructure Development and Enhancement (“STRIDE”) plan and an accompanying cost recovery mechanism, (collectively, the “Application”). Responsive comments were filed by Commission Staff (“Staff”) and WGL.

After due consideration of the arguments summarized below, the Commission denies the request for rehearing.

Background

On June 16, 2023, Washington Gas filed its Application for approval of a new STRIDE plan and an accompanying cost recovery mechanism, pursuant to Section 4-210 of the Public Utilities Article (“PUA”), *Annotated Code of Maryland*. The Application

¹ In two parts, Order No. 90941 and Maillog No. 307037.

called for the plan to be effective January 1, 2024, and operate for the years 2024 through 2028.

On July 6, 2023, the Commission instituted proceedings to consider the Application and delegated those proceedings to the PULJ Division. Following the presentation of evidence and argument, on October 25, 2023, the PULJ issued a proposed order, approving WGL's plan with modifications.²

The Proposed Order modified and approved WGL's Application, providing for:

a reduced number of replacement projects equal to a reduction to the five-year budget by at least one-third ... pending approval by the Commission of actual projects from WGL's November 1, 2023 Project List, with an anticipated reduction in the associated STRIDE surcharge of at least one-third over the five-year term.³

Additionally, the Proposed Order directed WGL to

serve notice of the Company's request for review and approval of its November 1, 2023 Project List to owners of the properties where services are proposed to be replaced, providing in such notice contact information for both OPC and Staff counsel whose appearances were entered in this case.⁴

On November 13, 2023, OPC, the Sierra Club of Maryland ("Sierra Club"), and Chesapeake Climate Action Network ("CCAN") filed Appeals from the Proposed Order. WGL and Staff filed responsive memoranda on November 11, 2023, urging the Commission to reject the Appeals and affirm the Proposed Order.⁵

² Maillog No. 306097.

³ Proposed Order at 48, Ordering Para. 1.

⁴ *Id.* at Ordering Para. 3.

⁵ Staff Memorandum, Docket No., 52, Amended Docket No. 55; WGL Memorandum, Docket No. 53.

On December 13, 2023, the Commission issued its Decision in this matter⁶, modifying a directive in the Proposed Order⁷ unrelated to the present request for rehearing, but otherwise affirming the rest of the Proposed Order.

Order No. 90941 also stated that a memorandum would follow, explaining the grounds for the Commission’s conclusions. The Commission issued a memorandum opinion on January 10, 2024. And together with the December 13, 2023 Order, they constitute the Commission’s complete Order on Appeal.

In parallel with the Commission’s review of WGL’s STRIDE Application, the Commission also considered WGL’s application for authority to increase its rates in Case No. 9704. The Commission issued its decision on that application on December 14, 2023 (the “WGL Rate Order”).⁸ As part of Case No. 9704, the Commission considered arguments by OPC and other stakeholders that the Commission should limit the growth of WGL’s distribution plant in order to avoid stranded costs and maintain affordable rates given Maryland’s public policies on reducing greenhouse gas (“GHG”) emissions.⁹

In the WGL Rate Order, the Commission stated that “the potential for decreasing gas demand and gas utility line extension policies needs to be addressed” but “these issues are out-of-scope in the context of” a single utility’s rate case.¹⁰ The Commission noted that it anticipates those concerns will be addressed in Case No. 9707.¹¹ The Commission also stated that all Maryland gas companies “must consider the likely contraction in gas

⁶ Order No. 90941.

⁷ Proposed Order, Ordering Para. 3.

⁸ *Washington Gas Light Company's Application for Authority to Increase Rates and Charges for Natural Gas Services*, Order No. 90943, Case No. 9704.

⁹ *Id.* at 122-135.

¹⁰ *Id.* at 133.

¹¹ *Id.* at 134.

consumption in all capital expenditure plans intended to maintain required levels of system safety” and “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.”¹²

On February 9, 2024, OPC filed a request for rehearing of the Order on Appeal in this case.¹³ WGL¹⁴ and Staff¹⁵ filed responsive comments. On March 8, 2024, OPC filed a reply to Staff and WGL’s comments. On March 20, 2024, Staff filed a motion to strike OPC’s reply as not permitted under the PUA or COMAR. On March 25, 2024, OPC filed a response to Staff’s motion to strike.¹⁶

Separately, WGL filed a request for rehearing of the WGL Rate Order, requesting among other things, that the Commission’s direction, quoted above, regarding non-pipeline alternatives be reconsidered or withdrawn.

Party Positions

1. OPC

OPC makes three arguments in support of its request for rehearing:

First, OPC argues that the Commission’s Order on Appeal is inconsistent with the WGL Rate Order.¹⁷ OPC points to the language in the WGL Rate Order, quoted above, that capital expenditure plans must consider the likely contraction in gas consumption and,

¹² *Id.* at 135.

¹³ Maillog No. 307552. (“OPC”).

¹⁴ Maillog No. 307773. (“WGL”).

¹⁵ Maillog No. 308109. (“Staff”).

¹⁶ The Commission agrees with Staff that OPC’s Reply is not anticipated by COMAR or the PUA and was not authorized by Commission order. The Commission notes, however, that OPC’s Reply raises no new arguments and merely restates those arguments made by OPC in its initial request for rehearing, which OPC claims Staff mis-stated in its own filing. Those original arguments will be addressed herein.

¹⁷ OPC at 4-6.

relatedly, must consider all cost-effective non-pipeline alternative options in order to prudently justify system safety and reliability spending in the future. OPC argues that this is inconsistent with the Order on Appeal, which approved the PULJ's recommendation on WGL's STRIDE plan notwithstanding the fact that WGL's plan did not address contraction in gas consumption or non-pipeline alternatives.

Secondly, OPC argues that the Commission's Order on Appeal misinterpreted OPC's position that a STRIDE plan "simply must consider the risks of reduced gas consumption and stranded costs, as well as consider cost-effective alternatives."¹⁸ OPC argues that the Commission's language in the Order on Appeal that the statutory STRIDE "standard does not – currently – require a STRIDE plan to be an electrification plan or to plan for the end of gas distribution in Maryland, as the appealing parties would suggest the Commission read into it" signals a misunderstanding of OPC's position that arbitrarily and capriciously ignores OPC's argument.

Thirdly, OPC argues that the Commission's Order on Appeal erred by misinterpreting the Commission's own powers under the STRIDE statute.¹⁹ OPC argues that the language in the Order on Appeal – reading "[u]ntil the General Assembly enacts changes to the STRIDE statute to further refine the allowable investments in the natural gas infrastructure in light of the potential for diminished gas service, the Commission is limited in available options regarding proposed plans" – erroneously assumed that the Commission is bound by PUA § 4-210(e)(3) to approve a proposed STRIDE plan. OPC argues that the Commission's authority is permissive, quoting the language that the "Commission may approve a plan" if it determined that the "investments and estimated

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 8.

costs” of the work is “reasonable and prudent” and designed to improve public safety or infrastructure reliability “over the short term and long term.”²⁰

2. WGL

WGL argues that the WGL Rate Order specified that its directive regarding consideration of non-pipeline alternatives was limited to cases “in the future” and therefore was not intended to undo the 2023 STRIDE proceedings.²¹

WGL argues that the language at issue from the WGL Rate Order is presently before the Commission on rehearing and might be changed.

WGL argues that OPC’s argument is a proposal to delay and decrease the speed and volume of safety-based pipeline replacements, in direct conflict with OPC’s past arguments that the Commission should penalize WGL for delays in causing customers to receive less than the approved benefits from its STRIDE plans.²²

WGL argues that OPC’s clarification of its own arguments on appeal does not require Commission action to note.²³

WGL argues that OPC’s arguments regarding the powers of the Commission under the STRIDE statute are unclear and conflict with the Commission’s general authority under PUA § 3-203 and its STRIDE authority under PUA § 4-210.

3. Staff

Staff states that, if the Commission’s language regarding non-pipeline alternatives in the WGL Rate Order was intended to be a directive that applies to the current WGL STRIDE plan, then the costs of any project that implements a non-pipeline alternative

²⁰ *Id.*, quoting PUA § 4-210(e)(3).

²¹ WGL at 2.

²² *Id.* at 3.

²³ *Id.*

option to an infrastructure replacement may not meet the statutory definition of “eligible infrastructure replacement” contained in PUA § 4-210(a)(3). Staff also states that, in that same case, the failure to document consideration and cost-effectiveness of non-pipeline alternative options to a STRIDE project may result in claims in a future rate proceeding that the project was not prudent as implemented.²⁴ Staff suggests that the Commission clarify its intent on this issue or reserve the matter for determination and implementation in Case No. 9707.

Staff argues that OPC has mischaracterized its own arguments in suggesting now that it is not arguing for an end to gas distribution in regards to its STRIDE proposal in this proceeding. Staff points to testimony by OPC witness Larkin-Connolly, cited by OPC, recommending planning for a 50 to 100 percent reduction in gas throughput by 2045. Staff argues that it was not arbitrary and capricious for the Commission to evaluate that as a possibility of OPC’s arguments and not a basis for rehearing.

Staff argues that OPC’s argument regarding the Commission’s authority under STRIDE, which OPC characterizes as a conclusion that the Commission “is required to approve a STRIDE plan” quotes the Commission’s Order out of context and ignores the Commission’s statements reciting the standard of PUA § 4-210(e)(3).²⁵ Staff further notes that the STRIDE Order did not approve WGL’s original STRIDE plan but rather approved a modified plan that included significant spending reductions, which is inconsistent with OPC’s characterization.

²⁴ Staff at 5-6.

²⁵ *Id.* at 11-12.

Commission Decision

First, to OPC's argument that the Commission may have misinterpreted OPC's position regarding STRIDE and the future of gas, the Commission notes the clarification by OPC and will proceed accordingly in this Order.

Second, to OPC's argument that the Commission misinterpreted its own powers under the STRIDE statute, the Commission offers the following clarification: The language quoted by OPC concerns the related issue of whether non-pipeline alternatives can be included as projects within STRIDE plans, as noted by Staff. Currently, PUA § 4-210(a)(3) defines eligibility requirements for STRIDE projects. The Commission has not yet approved any non-pipeline alternative under that standard, though the possibility remains.

The Commission is aware of the statutory standard for approval of a STRIDE plan under PUA § 4-210, which it quoted in the Order on Appeal. The Commission is not under the mistaken impression that it is *required* to approve a STRIDE plan, as OPC suggests. The Commission has limited discretion within the bounds of PUA § 4-210(e), which assuming the other requirements of § 4-210 are met, requires a finding by the Commission as to whether the investments and estimated costs are reasonable and prudent and designed to improve public safety or infrastructure reliability over the short term and long term.

If the Commission finds that a STRIDE plan application does not meet that statutory standard, then the Commission must deny the application. Here, the Commission has found that the plan, as modified by the PULJ, meets the statutory requirements and should be approved.

Third and finally, to OPC's argument that the Commission has issued conflicting decisions, the Commission appreciates the concern raised by the near-simultaneous

issuance of orders addressing related issues. The Commission notes that WGL's STRIDE application was filed and later approved with modifications by the Commission in the Order on Appeal prior to the Commission's issuance of the WGL Rate Order. The Commission declines to retroactively rely on the Commission's explicitly prospective language²⁶ in the subsequently issued WGL Rate Order to find, as OPC requests, that WGL's STRIDE plan application was deficient for not having contained evidence of consideration of gas consumption reduction and cost-effective alternatives that was not required either at the time of filing or at the time the Commission's decision was rendered.

Nonetheless, as the Commission noted in its Order on Appeal, approval of the structure of a STRIDE plan does not mean WGL has project-approvals or that any proposed projects will be found prudent. When WGL presents its STRIDE projects to be moved into rate base pursuant to PUA §§ 4-203 and 4-204 at the end of this plan, those projects will be judged for prudence, and recovery may be disqualified upon a finding that the investment was imprudent if implementation of the plan ignores – among other reasons known and knowable – the risk of a measurable decline in system-wide gas consumption and the availability of non-pipeline alternatives. The Commission anticipates further development and refinement regarding this issue in Case No. 9707, as noted in the Order on Appeal.

Having considered the evidence and arguments presented, the Commission denies OPC's request for rehearing.

²⁶ "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.**" WGL Rate Order, Order No. 90943, at 135 (emphasis added).

IT IS, THEREFORE, this 19th day of April, in the year Two Thousand Twenty-Four, **ORDERED** that the Office of People’s Counsel’s request for rehearing in this matter is hereby denied.

/s/ Frederick H. Hoover, Jr. _____

/s/ Michael T. Richard _____

/s/ Anthony J. O’Donnell _____

/s/ Kumar P. Barve _____

/s/ Bonnie A. Suchman _____

Commissioners