Maillog No. 308525

ORDER NO. 91079

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 REHEARING

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

Issued: March 28, 2024

Table of Contents

I. BACKGROUND 1
II. DISCUSSION 2
A. Terminal and Post- Test Year Treatment of STRIDE and Safety-Related Expenditures 3
B. Exclusion of CWIP Relating to Test Year STRIDE and Test-Year Non-STRIDE Capital Expenditures 9
C. Disallowance of Non-STRIDE Test-Year O&M Expenses 11
D. Post-Test-Year Union Pay Raises 12
E. Lobbying Expenses 13
F. Capital Structure 14
G. Affiliate Cost of Service Study (ACOSS) 19
H. Cash Working Capital (CWC) Lead-Lag Study 20
I. Gas Planning Directive 22
J. Headquarters Relocation 25
K. Debit Card Vendor Fees 26
L. Revenue Requirement Clarifications (Staff and WGL) 27
M. Coincident Peak Class Cost of Service Study (CP-COSSS) 27
III. CONCLUSION 28

APPENDIX A (Commission’s calculation of the appropriate rate base, operating income, and overall revenue requirement for rate making purposes)

I. BACKGROUND

On December 14, 2023, the Commission issued Order No. 90943 denying Washington Gas Light Company's ("WGL," "Washington Gas," or the "Company") base rate Application requesting a $42.5 million increase in its natural gas service distribution rates, and instead authorizing an increase in the Company's rates in the amount of $10,051,241.

On January 16, 2024, pursuant to Public Utilities Article ("PUA"), *Annotated Code of Maryland*, § 3-113(b) and Code of Maryland Regulations ("COMAR") 20.07.02.08, Washington Gas filed a Petition for Rehearing, requesting reconsideration of, among other things, certain ratemaking adjustments, the Commission's cost of capital determinations, and the Commission's gas planning directives.[1] Additionally, on January 12, 2024, the United States General Services Administration ("GSA") submitted a Request for Clarification,[2] requesting that the Commission clarify Order No. 90943 to direct that WGL continue filing a Coincident Peak Class Cost of Service Study ("CP-CCOSS") in its future base rate cases. On January 16, 2024, the Commission's Technical Staff ("Staff") also filed a Motion for Clarification,[3] requesting clarification of certain alleged inconsistencies regarding revenue requirement determination.

Staff, Chesapeake Climate Action Network ("CCAN"),[4] the Maryland Office of People's Counsel ("OPC"),[5] and the Apartment and Office Building Association ("AOBA")[6] filed responses to the WGL Petition for Rehearing.

[1] Maillog No. 307118 (WGL Petition for Rehearing).
[2] Maillog No. 307079 (GSA Request for Clarification).
[3] Maillog No. 307119 (Staff Motion for Clarification).
[4] Maillog No. 307400 (CCAN Response).
[5] Maillog No. 307402 (OPC Response).
[6] Maillog No. 307452.

In this Order, with limited exceptions, the Commission denies Washington Gas' Petition for Rehearing. The Commission grants WGL's request for rehearing regarding Construction Work in Progress ("CWIP") relating to test year STRIDE and test year STRIDE capital expenditures, non-STRIDE test year Operating and Maintenance ("O&M") expenses, and in part union pay raise expenses, and clarifies the discussion in Order No. 90943 regarding customer responsibility for debit card vendor fees. The Commission also grants Staff's request for clarification with regard to the disallowance of $3.7 million in non-STRIDE test year operation and maintenance expense. Further, this Order grants GSA's request for clarification requiring WGL to continue producing and filing a coincident peak class cost of service study ("CP-CCOSS") in future rate cases. The Commission also clarifies the requirement directing Washington Gas to provide an affiliate cost of service study, as requested by AOBA.

II. <u>DISCUSSION</u>

PUA § 3-113(b) provides that "[a]n order of the Commission shall take effect within a reasonable time that the Commission prescribes and shall continue in force according to the terms of the order unless vacated, suspended, modified, or superseded by further order of the Commission or by a court of competent jurisdiction." PUA § 3-114(a) provides that "[o]n rehearing, the Commission may: (1) consider facts not presented in the original hearing, including facts arising after the date of the original hearing; and (2) abrogate, change, or modify the original order by new order." COMAR 20.07.02.08D(2)(b) requires that a petition seeking to reverse or modify a Commission order or decision must allege consequences resulting from compliance with the decision that justifies or entitles the applicant to reversal or modification.

A petition seeking to reverse or modify an order of the Commission shall allege the facts and circumstances which have arisen after the hearing or order which justify the reversal or modification; or the consequences resulting from compliance with the order which justify or entitle the applicant to the reversal or modification. COMAR 20.07.02.08D(2). As a preliminary matter, OPC argues that Washington Gas' rehearing petition does not satisfy the requirements for rehearing under PUA § 3-114 and COMAR 20.07.02.08D.[7] The Commission agrees, and for the reasons discussed below, the majority of WGL's specific requests for rehearing are denied.

A. Terminal and Post- Test Year Treatment of STRIDE and Safety-Related Expenditures

WGL

The Company argues that the Commission should reverse or modify Order No. 90943 to allow terminal and post- test year treatment for WGL's Strategic Infrastructure Development and Enhancement Plan ("STRIDE") and non-STRIDE safety-related plant in service ("GPIS"), including CWIP.[8] WGL argues that the Company followed Commission precedent, which it argues allows rate base updates for known and measurable investment prior to the hearing date. In this case, WGL proposed terminal treatment through July 31, 2023 for its STRIDE expenditures, proposing to increase the Company's rate base by $78.8 million above the 13-month average based on a test year consisting of the 12 months ending December 31, 2022, comprising 12 months of actual information as of December 31, 2022.[9] WGL also notes that for its non-STRIDE safety-related expenditures, the Company proposed terminal treatment also through July 31,

[7] OPC Response at 1.
[8] WGL Petition for Rehearing at 3.
[9] Maillog No. 303021: Application of Washington Gas Light Company (May 18, 2023) (WGL Ex. 2) at 2.

2023, which would have increased WGL's rate base by $28.1 million above the 13-month average.

WGL argues that the Commission's decision denying terminal treatment for the Company's STRIDE and non-STRIDE safety related expenditures, in lieu of the 13-month average, breaks from Commission precedent and reverses Commission policy in that it is inconsistent with a number of prior Commission decisions.[10] WGL also argues that the Commission's reliance on Staff witness Ostrander's testimony, which recommended denial of terminal treatment in lieu of 13-month average treatment for STRIDE and non-STRIDE safety related expenditures, is not supported by the record and results in rates that are not just and reasonable.[11] The Company argues further that the Commission's acceptance of OPC's arguments and its reliance on other utilities' rate cases, relating to terminal versus 13-month average treatment for these expenditures, is arbitrary and capricious.[12]

Staff

In response to WGL's arguments on this issue, Staff submits that WGL correctly notes that the Commission, "in its decision in some rate cases, has determined that, based on the facts surrounding the utility's post Test Year facility costs in those rate cases, these costs could be recovered in rates established in those rate cases."[13] However, Staff notes that, in rejecting WGL's proposed recovery of post-test-year costs in this rate case, the Commission also cited OPC witness Meyer's testimony, noting that WGL's proposed "inclusion of both post-test-year expenditures and end-of-year balance departs from

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[10] WGL Petition for Rehearing at 7-10.
[11] *Id*. at 11.
[12] *Id.* at 14-16.
[13] Staff Reply at 4 (emphasis added).

traditional ratemaking practice… including… the all-related factor test associated with a test year."[14]

OPC

In its response, OPC argues that the Commission's finding that use of the standard 13-month historic test year chosen by Washington Gas and average balances aligns with precedent and cost matching principles. OPC argues further that the Commission correctly agreed that safety is an ongoing requirement that does not qualify for special treatment or an exception to standard practice, absent a showing of urgent circumstances not present here.[15] OPC argues that, on this issue, Washington Gas has reargued case law but has not offered new facts that would justify an exception to the standard test year, an average approach, or that would otherwise show that the resulting rates are unreasonable.[16]

Additionally, OPC notes that the Commission appropriately distinguished previous departures from the historic-test-year (Case Nos. 9481 and 9651) where safety and reliability issues were pressing concerns, finding that, unlike those cases, in this case, safety and reliability concerns are routine and do not justify special treatment.[17] Also, regarding WGL's challenge to the Commission's post-test-year disallowance and rejection of terminal treatment of STRIDE and non-STRIDE safety-related expenditures, OPC argues that WGL's request for rehearing merely rehashes arguments previously made by the Company and rejected by the Commission; noting (1) that Washington Gas

[14] *Id.*
[15] OPC Reply at 1-2.
[16] *Id.*
[17] *Id.* at 7.

is not entitled to recover post-test-year costs, and (2) the Commission's use of an average balance rather than terminal approach is reasonable.[18]

Commission Decision

The Commission denies WGL's request to modify Order No. 90943 to adopt terminal treatment for its STRIDE and safety-related expenditures in this case. Allowing a utility to utilize terminal treatment of plant and facility expenditures that do not demonstrably remediate exigent safety and reliability concerns is a discretionary matter for the Commission. In this case, both Staff and OPC opposed terminal treatment and recommended the use of a 13-month average treatment instead.

The Commission is not persuaded by Washington Gas's assertion that the Commission's decision to utilize the 13-month standard for STRIDE and safety-related expenditures rather than terminal treatment is arbitrary or capricious. Both approaches can be appropriate for ratemaking purposes, depending on the circumstances of the case. In this case, using the terminal treatment approach does not incentivize the resolution of exigent safety and reliability, but rather would merely result in the addition of $78 million to WGL's rate base for the rate effective period, increasing customer rates exponentially and concurrently reduces the Company's STRIDE surcharge to zero–allowing WGL to replenish the surcharge–adding up to an additional $2.00 in monthly costs to customer rates. Washington Gas argues that denial of terminal treatment for STRIDE and safety-related expenditures and post-test year costs results in revenue shock (or "rate shock") - a concept that is universally reserved to protect ratepayers. There is no such thing as revenue shock for utilities not achieving their management's expectations for a final revenue requirement and the derivation to arrive at it. In reality, the

[18] *Id.* at 8-10.

Commission's decision avoids the very rate shock—*to ratepayers*—that WGL argues that it should be protected against. The utility has the choice in its selected test year, and the accounting strategies the Company uses to propose and implement rates.

The Commission has indeed allowed terminal treatment of costs in several utility rate cases over the years. However, the Commission has not by any means abandoned the use of the 13-month average as the standard treatment for ratemaking purposes. In this case, the Commission finds that the 13-month average is appropriate to buffer ratepayers from the substantial rate shock that would accompany a utility's strategy to increase rates exponentially in the rate effective period, especially in cases where surcharge mechanisms can be utilized to compound the costs to customers. The Commission's preference for use of an average rate base has become well established, and has not been superseded.[19] 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. In arguing that the Commission's decision in this case breaks with precedent and reverses Commission policy, the Company ignores the Commission's many pronouncements noting that allowing and disallowing terminal treatment is considered by the Commission on a case-by-case basis.

In the Baltimore Gas and Electric Company ("BGE") 2011 rate order (Order No. 85374), the Commission noted the testimony of then-OPC witness Ostrander, arguing

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[19] *See* e.g. Order No. 83907*, In the Matter of the Application of Baltimore Gas and Electric Company for Revisions in Its Electric and Gas Base Rates,* Case No 9230 (Mar. 9, 2011), slip op. at 13, where the Commission rejected BGE's proposed terminal plant adjustments to the average rate base. The Commission noted that "[t]he test year should represent a fair snapshot of all of a utility's expenses, revenues, and investment. Use of a test year average for all three components is consistent with the matching principle, which requires that revenues, expenses, and investment be measured on a comparable basis."

that the burden is on the utility to show that a change from traditional average rate base treatment to terminal treatment is appropriate. There, the Commission noted it rejected the utility's request in Case No. 9230 to reflect test year safety and reliability plant on a terminal basis because the company failed to demonstrate an increasing trend in safety and reliability investment.[20] However, in that case, BGE had satisfied its burden of proof and demonstrated to the Commission's satisfaction an increased commitment to safety and reliability, which is reflected in its actual test-year level of safety and reliability investment. In this regard, the Commission emphasized that these costs have already been incurred and the safety and reliability plant is currently providing utility service to customers. Here, the Commission reiterates that 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.[21]

According to Washington Gas, the consequence of the Commission's denial of terminal treatment for its expenditures in this case is that rates resulting from the Commission's Order constitute revenue shock to the utility.[22] As discussed above, avoidance of "rate shock" is a regulatory precept reserved for the protection of consumers, not the utilities. The protection afforded utilities in accordance with the regulatory compact is that rates may not be confiscatory, so as to deprive the utility of the

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[20] Order No. 85374, *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustment in Its Electric and Gas Base Rates*, Case No. 9299 (Feb. 22, 2013), slip op. at 35. There, the Commission noted that BGE satisfied its burden of proof and demonstrated an increased commitment to safety and reliability. This is not to say that WGL lacks a commitment to safety and reliability. However, a commitment to safety and reliability—in and of itself—does not necessarily warrant allowing terminal treatment of expenditures where the use of the traditional average—and the matching principle reflected therein—fits the test year case presented by the utility.

[21] Order No. 90943 at 18, citing *Re Delmarva Power & Light Co. of Maryland* (1980) 71 Md PSC 28. The Commission has held that the decision to use an average or a terminal rate base is one to be "made on a case-by-case basis and is determined on the evidence which has been presented in each proceeding." *See also Re Application of Columbia Gas of Maryland, Inc. (Cumberland and Hagerstown Areas) for Authority to Increase Rates and Charge*, 86 MD PSC 328. 330-31 (Oct. 6, 1995).

[22] WGL Petition for Rehearing at 2.

ability to recover its costs and earn a reasonable return on its investments used in providing service to customers. Here, the denial of terminal treatment for WGL's STRIDE and safety-related expenditures does not deny the Company the ability to recover its costs for these expenditures, which can be sought and arguably recovered in a future rate case–where they are part of an average period–associated with an appropriately developed test year.[23]

While post- test year adjustments are sometimes acceptable, within a range of two to three months, 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. Even if Washington Gas views the Commission's decision on this issue as departing from past precedents, which it is not, denial of terminal (and post- test year) treatment for STRIDE and safety-related expenditures, where the utility both increases customer rates by increasing rate base and resetting its STRIDE surcharge, is justified – in order to mitigate the obvious consequence of customer rate shock. For these reasons, WGL's request to modify the treatment applicable to STRIDE and safety-related expenditures in this case is denied.

B. Exclusion of CWIP Relating to Test Year STRIDE and Test-Year Non-STRIDE Capital Expenditures

WGL

The Company argues that the Commission's exclusion of test-year STRIDE CWIP is contrary to the proper treatment of CWIP in rate base.[24] Washington Gas argues

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[23] As Staff notes in its response, "the issue here is not whether WGL can fully recover the cost of new facilities. Instead, the issue is the timing of this recovery." Staff Response at 12. (emphasis original).

[24] WGL Petition for Rehearing at 17-18.

that Order No. 90943 fails to recognize that Staff witness Tesfaye's recommendation is not related to post-test-year STRIDE, but addressed actual test-year STRIDE expenditures not in service. The Company notes further that, as evidenced by Staff witness Ostrander's surrebuttal testimony, "the amounts are computed over an average period, not on an end-of-period basis as the Commission's reasoning indicates."[25] The Company's filing indicates that Staff was expected to recommend a change to Attachment A of the Order to correct this alleged error.[26]

The Company also argues that the Commission's adoption of the first two expenditure components of Staff witness Tesfaye's test-year rate base exclusions ignores the Commission's long-standing practice related to CWIP.[27]

Staff

This issue was not addressed by Staff in its response. However, during the hearing on his Supplemental Surrebuttal Testimony, Staff witness Tesfaye acknowledged CWIP as a ratemaking or regulatory concept, noting that CWIP applies to projects which are not yet in service.[28] In addressing how CWIP costs are treated in rates, Mr. Tesfaye explained that he was only concentrating on expenditures for projects that are used and useful. He was not opining on costs for projects or portions of projects not yet used and useful.

Commission Decision

The Commission grants WGL's request for rehearing on this issue. As Washington Gas noted during the hearing, Staff did not proffer an accounting adjustment supporting witness Tesfaye's recommended disallowance for costs for projects not in

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[25] *Id.* at 18.
[26] *Id.*
[27] *Id.* at 19.
[28] Evidentiary Hearing Transcript ("Hr.g Tr.") at 724-25.

service. Disallowing CWIP costs for projects that remain under construction, but not yet in service, is inconsistent with the Commission's long-standing practice.[29] Having met its burden for requesting rehearing on this issue, Washington Gas' request for reconsideration on this issue is granted.

C. Disallowance of Non-STRIDE Test-Year O&M Expenses

The Company argues that the Commission's decision to accept Staff witness Tesfaye's recommendation to disallow $3.7 million in non-STRIDE O&M costs or expenses should be abrogated "because the $3.7 million figure *does not represent O&M cost or expenses*."[30] WGL argues that despite its explanations that the $3.7 million figure addressed in response to Staff DR 33-1 represents "the change in net operating income," Staff incorrectly represented that the figure represents O&M "expense" or "costs."[31] The Company notes further that Staff's accounting witness (Mr. Ostrander) did not provide testimony on this issue, and that it was improperly addressed by Staff's engineering witness. WGL requests the Commission reverse this adjustment to net operating income, resulting in a decrease in net operating income, and that an appropriate revenue increase be granted.

<u>Commission Decision</u>

Staff did not file comments opposing Washington Gas' request for rehearing on this issue.[32] As the $3.7 million represents the aggregate of various adjustments within the record as represented by WGL, the Commission grants WGL's request for rehearing

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[29] *See* Order No. 81517, *In the Matter of the Application of Potomac Electric Power Company for Authority to Revise Its Rates and Charges for Electric Service and for Certain Rate Design Changes*, Case No. 9092 (Jul. 19, 2007) slip op. at 36.
[30] WGL Petition for Rehearing at 20 (emphasis original).
[31] *Id*.
[32] The Commission notes that the adjustment was not supported by Staff's accounting witness, which is the appropriate witness to support Staff's revenue requirement adjustments.

on this issue and reverses the Order disallowing $3.7 million in non-STRIDE test year O&M expenses.

D. Post-Test-Year Union Pay Raises

Washington Gas objects to the Commission description of its test-year as "stale" in the context of denying the Company's post-test-year union pay raises.[33] The Company argues that the Commission's decision on this issue modifies Commission precedent where union pay increases per union contracts are acceptable for purposes of known and measurable post-test year adjustments, and the decision is also inconsistent with the Maryland prevailing wage law's requirement that Washington Gas pay its employees not less than the prevailing wage determined by the Commissioner of Labor and Industry.[34]

<u>Commission Decision</u>

In Order No. 90943, the Commission noted that while Staff's analysis did not consider changes in headcounts amongst other employee groups, the discussion and underlying data indicated that there is enough uncertainty about post-test year employee headcounts to not warrant a post-test year adjustment.[35] The Commission acknowledges that it has permitted some adjustment for post-test year adjustments for union employees in previous rate cases.[36] The contention on this issue is not if the raise is known, but what the appropriate headcount is for the adjustment. WGL originally proposed a 2022 test year average headcount of 721 union employees. Staff used a headcount of 699 as of June 2023 to justify its opposition to the adjustment. In rebuttal testimony as an alternative approach WGL represents an average headcount of 718 as of March 2023 for union

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[33] WGL Petition for Rehearing at 23.
[34] *Id.*
[35] Order No. 90943 at 35.
[36] *See e.g.* Order No. 88944, *Washington Gas Company's Application for Authority to Increase Rates and Charges*, Case No. 9481 (Dec 11, 2018) slip op. at 29–30.

employees. WGL did not discuss why it used March values when it rebutted Staff's argument, instead focused on Staff's failure to not include a matching adjustment for management pay increases, though WGL acknowledged such inclusion of management pay increases was not in alignment with previous Commission precedent. Using the March 2023 values, WGL estimated a reduction in union wages and salary expenses by $73,000 and an upward adjustment of management wages and salaries by $595,000.[37] The Commission grants in part WGL's request.

WGL is correct that the Commission has previously permitted adjustment for this issue. The Commission also recognizes that adjustments to the revenue requirement for post- test year adjustment that are farther into the future are under scrutiny in this order and Staff's headcount used in its justification falls within a timeframe that has been considered concerning for permitting post- test year adjustments. Therefore, the Commission will accept the revision to WGL's revenue requirement for union pay raises only, not management and salary wages, in lieu of Staff's proposed adjustment.

E. Lobbying Expenses

WGL argues that the Commission should reverse its decision accepting OPC's 25% adjustment to its AGA dues, arguing that the decision is arbitrary and that OPC's recommendation was not supported on a factual or analytical basis.[38] OPC and Staff did not comment in response to WGL's request for rehearing on this issue.

Commission Decision

In the Order, the Commission noted OPC's witness Meyer's citation to AGA's own materials acknowledging that the organization "does conduct advocacy to advance

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[37] T. Smith Rebuttal at 5-8.
[38] WGL Petition for Rehearing at 2, n.4.

its members' interests."[39] The Commission also noted the definition of "lobbying" provided by AGA, defining "lobbying" broadly to include activities for the purpose of "influencing legislation" at the state or federal level. These support the Commission conclusion, and the Commission again finds OPC's 25% reduction in AGA dues reasonable. The fact that the Commission is allowing for the recovery of 75% of AGA dues does not mean that the Commission will find it appropriate to recover those dues in a subsequent proceeding. Going forward WGL should provide more complete information regarding the appropriateness of ratepayers paying any of the AGA dues, particularly to the extent such activities promote the increased use of gas in the current environment. Therefore, WGL's request for rehearing of this issue is denied.

F. Capital Structure

WGL

In its Petition for Rehearing, WGL argues that the Commission wrongly lowered the Company's actual equity ratio of 52.60% down to 52%.[40] WGL contends that the record does not support this reduction, nor does the record support the change in Commission policy that caused the Commission to lower the Company's equity ratio (an incentive to pursue more debt).

WGL contends that the Commission's decision to disallow recovery of financing costs based upon the Company's actual capital structure is outside the Commission's discretion in setting rates. The Company also questioned why the Commission stated in its Order that it was "unclear" why WGL had proposed its specific mix of debt and equity components. Referring to Company witness Zelond, WGL argues that witness Zelond

[39] Order No. 90943, citing OPC Reply Brief at 17. (emphasis added.)
[40] WGL calculates that this reduction imposes an annual disallowance of $760,000.00. Petition at 24, n. 1.

provided "detailed, and unrebutted testimony describing the Company's financing strategy to fund the various aspects of its operation…"[41]

Ms. Zelond testified in support of WGL's proposed capital structure and explained why the Commission's reference to "cheap debt" ignores the challenges of developing and executing a financing strategy in the Washington D.C. metropolitan area.[42] Additionally, Ms. Zelond testified as to how the impact of a company's credit rating impacts cost of debt. Finally, Ms. Zelond argued that consideration of credit ratings on the cost of debt is not unique.

WGL argues that the record does not support the Commission's policy to "incentivize" the Company to pursue debt. In disallowing actual, known, and measurable financing costs, WGL argues that the Commission failed to properly balance the interests of customers and shareholders. The Company argues further that the decision by the Commission to incentivize the Company to pursue debt fails to provide WGL's management with any guidance as to how to do so or the extent to which they should do so. WGL contrasts the Commission's order approving the WGL-AltaGas merger, in which the Commission provided an operating band of 48% to 55%.[43]

The Company argues that the record contains plenty of evidence to support the reasonableness of its capital structure, which is comparable with similarly situated peer companies. In contrast to OPC witness Garrett's testimony, WGL witness Donge explained why Mr. Garrett's proxy comparison groups are unreasonable for three reasons: (1) Mr. Garrett's group included NiSource Inc., which is not comparable to WGL; (2) Mr. Garrett used the parent company capital structures instead of their more

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[41] Petition at 25-26.
[42] Citing Zelond Direct at 3-4.
[43] Case No. 9449, Order No 88631, Appendix A at Commitment 35.

applicable publicly available utility structures: New Jersey Resources Corporation ("NJR") and Spire Inc. ("SR"); and (3) Mr. Garrett synchronized the reporting periods for the financial data.[44]

Finally, the Company objects to the Commission's reliance on the "utility industry average debt ratio" from a chart in Mr. Garrett's direct testimony. First, these debt ratios are based upon an inadequate sample size of only 15 firms out of 2,022 natural gas delivery companies to end-use customers in the United States in 2018. Second, Mr. Donge testified as to the notable differences in operational, regulatory, and financial profiles. WGL contends that the Commission erred by disallowing costs based upon this chart.

OPC

By contrast, OPC urges the Commission to deny WGL's request for rehearing on this issue. OPC argues that the Commission's decision to reduce the Company's equity ratio slightly from 52.6% to 52% was reasonable and well-supported by the record. OPC witness Garrett had testified that WGL's existing equity ratio was barely within the range of WGL's own proxy group. Mr. Garrett contended that it is unfair to require ratepayers to pay a premium for WGL's equity-rich capital structure when an analysis of proxy companies demonstrates that they can assume more debt while remaining financially viable.[45] Ultimately, Mr. Garrett recommended a 49.2% equity ratio, notably lower than the ratio adopted by the Commission.[46] OPC agrees with the Commission's decision that a slight reduction in WGL's equity ratio better aligned WGL with matching companies in its proxy group, thus easing rate burdens. OPC argues the Commission properly

[44] Citing Donge Rebuttal at 9-10.
[45] OPC Response at 12-13 (unnumbered).
[46] Garrett Direct at 5.

incentivized WGL to pursue debt, which lowers customers' rates. OPC identifies several former rate cases in which the Commission adjusted WGL's proposed capital structure including its last rate case (Case No. 9651).[47]

OPC argues that WGL's citations to Ms. Zelond's analysis of credit ratings and the cost of debt is irrelevant to the issue of WGL's capital structure as no party has contended that the Company's credit rating has suffered.[48] OPC argues that Mr. Garrett relied upon the same proxy group as WGL witness D'Ascendis to determine his proposed debt ratio. Mr. Garrett testified that the 51% average debt ratio of Mr. D'Ascendis' proxy companies is "notably higher" than the Company's proposed debt ratio of 47% based on Mr. Donge's different proxy group.[49] Mr. Garrett argued that it is disingenuous for WGL to use different proxy groups to calculate cost of equity and capital structure.

OPC contends that the Commission's revised capital structure properly balances customer and shareholder interests. OPC notes that the annual disallowance of $760,000 referenced by WGL's Petition constitutes roughly 1% of the Company's overall proposed revenue increase (as calculated by Staff). OPC claims, based upon the record the Commission could have ultimately adopted a debt ratio as high as 51%. That the Commission only raised the Company's debt ratio to 48% demonstrates the Commission's decision was reasonable.

OPC agrees with the Commission's conclusion that incentivizing WGL to pursue debt would lower rates. OPC contends that WGL is exaggerating the thrust of this incentive. The Commission's incentive is not a binding policy, but an observation about the effect of a higher debt ratio on rates, an effect about which Mr. Garrett had testified.

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[47] OPC Response at 14.
[48] *Id*. at 15.
[49] Garrett Direct at 79.

OPC argues that WGL's argument that the Commission's order lacks guidelines for company management is also without merit. The reason the Commission did not provide guidelines is that there are no guidelines. The Commission made an observation that was supported by the record.

Lastly, OPC argues that the Commission's adoption of a 52% equity ratio was well within the range of percentages contained within Commitment 35 of the Commission's AltaGas order. That Commitment intended to protect ratepayers from an excessively high debt ratio, not to allow the Company to choose its own capital structure within that range.

Commission Decision

As an initial matter, the Commission agrees with OPC that much of WGL's argument regarding the Company's proposed capital structure consists of returning to the disagreement between Mr. Garrett and Mr. Donge as to how the Commission should determine WGL's equity ratio. WGL offers no additional argument as to why the Commission should have adopted Mr. Donge's testimony, but simply repeats what the Commission has read and heard during these proceedings. After reviewing the parties' pleadings, the Commission denies WGL's request for a rehearing and affirms its findings on this issue contained in Order No. 90943.

As OPC argues, the record supported a debt ratio as high as 51%. Mr. Garrett testified at length as to why utilities can generally afford to maintain higher debt levels than other industries.[50] Mr. Garrett himself recommended the Commission adopt a

[50] Garrett Direct at 78-82.

ratemaking capital structure consisting of 51% debt and 49% equity.[51] Ultimately, the Commission did not adopt Mr. Garrett's recommendation in its entirety. However, the Commission did rely upon his rationale in determining to slightly reduce the Company's equity ratio. This determination was well within the discretion afforded the Commission when deciding among the parties' various proposals.

Otherwise, the Commission affirms its findings in Order No. 90943 for the reasons expressed in that order. Nothing in the Company's Petition for Rehearing has caused the Commission to reconsider its prior conclusions.

G. Affiliate Cost of Service Study (ACOSS)

WGL

WGL argues that the Commission should remove the obligation adopted in Order No. 90943 that requires the Company to provide an ACOSS in future rate cases.[52] The Company argues that the requirement to produce an ACOSS has not been justified and is unnecessary, and that any new ACOSS requirement should be considered in a generic proceeding or through rulemaking.

AOBA

In response to WGL's arguments on this issue, AOBA submits that Washington Gas's objection that an ACOSS will impose new requirements on the Company should be disregarded.[53] AOBA argues that the requirement that WGL produce and provide an ACOSS in future rate cases is supported by evidence in this case and that the requirement should not be considered (or deferred) to a generic proceeding or rulemaking. AOBA

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[51] *Id*. at 5. for purposes of his testimony, Mr. Garrett uses the round numbers 51% and 49%. Technically, his expert testimony was a capital structure consisting of 45.61% long-term debt, 5.19% short-term debt, and 49.2% common equity. *See id.,*n.5.
[52] WGL Petition for Rehearing at 31.
[53] AOBA Response at 4.

argues further the content of the ACOSS will augment the information contained in the Company's annual CAM filing by itemizing specific applications of the CAM for affiliate transactions and would, therefore, not be duplicative of the information contained in the CAM.

Commission Decision

The Commission denies WGL's request for rehearing on this issue, but clarifies that information comparable (or equivalent) to an ACOSS is what the Company is required to produce. The purpose of this requirement is for greater transparency, and testimony on the record related to the impact that WGL's provided service to its affiliates has on the Company's revenue requirement. The Commission also finds that a general proceeding involving other utilities on this matter, as suggested by Washington Gas, is unnecessary. The information provided to satisfy this request should include production of work papers by the Company.

H. Cash Working Capital (CWC) Lead-Lag Study

WGL

WGL argues that the Commission should modify Order No. 90943 to authorize the Company's proposed CWC,[54] alleging that the Order does not identify or explain any assumptions, but nonetheless reduces the Company's rate base. Additionally, WGL argues that the Order does not address points raised by WGL witness Tuoriniemi that contend Staff witness Ostrander's analysis was "results oriented" and unreasonable. The Company asserts in accepting Staff's recommended CWC lead-lag adjustment, the Order

[54] WGL Petition for Rehearing at 34-37.

accepts Staff witness Ostrander's rejection of "actual data" and – what WGL argues – was witness Ostrander's erroneous use of data from years other than the test-year.[55]

Staff

In response to WGL's arguments on this issue, Staff submits that WGL's CWC was appropriately reduced due to discrepancies in Washington Gas' lead-lag study.[56] Staff reiterated its concern that the Company's CWC had increased by approximately 68% since WGL's prior rate case, with significant drivers being the increase in Average Daily Expenses and in Revenue Lag, with the latter reflecting a 10-day increase in the Revenue Lead Days from 55 days in the prior rate case to 65 days in the current proceeding.[57] Staff argues that WGL simply repeats the argument made in its briefs in this rate case that any adjustment to the CWC proposed by WGL was unreasonable and was inconsistent with precedent. Staff submits that the Commission should affirm its finding in the Order that CWC should be reduced by $14 million, especially in view of the large and unexplained increase in CWC.

Commission Decision

The Commission denies WGL's request for rehearing on this issue. Regardless of the use of assumptions or actual data, the Commission agrees that the increase in lead timeframes as identified by Staff were problematic and Washington Gas' testimony failed to sufficiently justify the result. While data may have been put on the record this does not by itself justify the results of the use of actual data as a reasonable outcome for setting just and reasonable rates.

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[55] *Id.* at 37.
[56] Staff Reply at 13.
[57] *Id.,* citing Staff Ex. 21/21C, P74-P75 (Ostrander Surrebuttal).

I. Gas Planning Directive

WGL

WGL argues that the Commission should reverse its gas planning directive in this case, instead considering any issues related to this matter in Case No. 9707.[58] In this argument, WGL notes that the Commission found most of the gas policy issues raised in this case to be out-of-scope for the Company's rate case. The Company argues the Commission's directive that "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" could be interpreted to apply to companies that are not part of the instant rate case and are not aware of its existence. It argues further that the directive is "unworkably vague" and assumes that cost-effective non-pipeline alternative options are available.[59] The Company insists that this is a new prudency standard that does not appear in any statute, regulation, or Commission Order, and submits that this issue is better addressed in Case No. 9707, the Commission's gas planning proceeding.

CCAN

In response, CCAN submits that, contrary to WGL's arguments, Order No. 90943 does not enunciate a new prudency standard regarding utility infrastructure spending, but rather "further defined specific showings needed to satisfy that standard."[60] CCAN notes that the directive fits squarely within the Commission's charge that it must consider: (1) "the preservation of environmental quality, including protection of the global climate from continued short-term and long-term warming based on the best available scientific

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[58] WGL Petition for Rehearing at 38-39.
[59] *Id.* at 38.
[60] CCAN Reply at 2.

information recognized by the Intergovernmental Panel on Climate Change," and (2) "the achievement of the State's climate commitments for reducing statewide greenhouse gas emissions, including those specified in Title 2, Subtitle 12 of the Environment Article."[61] CCAN argues further, "[a]s part of its prudency review of utility spending, the Commission is obligated to examine every public service company filing—including any WGL request for approval of infrastructure spending—in light of Maryland's climate law and policies."[62] CCAN notes that, in Order No. 90943, the Commission chose to further define its existing prudency standard of review by enumerating several showings that gas utilities in Maryland must make "in order to prudently justify their system safety and reliability spending in the future."

OPC

In its response, OPC also noted that the Commission recognized its commitment under PUA § 2-113(a(2)(v-vi) to address and to consider the preservation of environmental quality and the achievement of the State's climate commitments for reducing GHG emissions.[63] OPC adds that the Commission's reminder of Washington Gas's obligation to prudently consider alternatives to new pipelines is a reasonable and well-supported response to the Company's "business as usual" conduct in the face of State policy and climate change.[64]

Commission Decision

The Commission denies WGL's request for rehearing on this issue. In Order No. 90943, the Commission made reasonable findings, noting the emerging State policies that

[61] *Id.*, citing PUA § 2-113(a)(2)(v)–(vi).
[62] CCAN Reply at 3.
[63] OPC Reply at 19.
[64] *Id.* at 20.

require reconsideration of the energy generation resources consumed by Maryland utility customers. At the same time, the Commission limited its immediate findings to the framework of the historic test-year filed by WGL.

However, gas planning initiatives and the future endeavors that will likely reduce natural gas consumption in the State – and the reduced use of gas already evidenced by the testimony supplied by OPC, Sierra Club, and CCAN witnesses – are well known not only by Washington Gas, but also gas distributors and customers throughout the state. Pursuant to PUA § 2-113(a)(2)(v-vi), the Commission is required to address preservation of environmental quality and the achievement of the State's climate commitments for reducing *statewide* GHG emissions. In Order No. 90943, the Commission noted that 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, thus referencing the general gas planning docket in this case. In this context, the Commission expressed that 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. However, the Commission's focus in this case is Washington Gas. Order No. 90943 does not place an express burden or requirement on other gas utilities in the State.[65]

Order No. 90943 requires gas utilities—in this case, WGL—to 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

[65] Other utilities will have the opportunity to speak for themselves in Case No. 9707 and in their own specific rate case. Contrary to WGL's assertion, Order No. 90943 does not implement a rule of general applicability.

infrastructure replacement, in order to justify their system safety and reliability spending in the future. This is not a new "prudency" standard, as Washington Gas argues. All indications suggest that the consumption of natural gas in the State is likely contracting. Rather than ignoring this and persisting with a business-as-usual approach, the Commission recommends that WGL "consider" taking these changes in stride.

It is the prerogative of utility management to pursue the course of action that they deem necessary to meet customer demand, without creating stranded investments.[66] The consequences of the utility's actions lie with the Company, but the concerns raised in WGL's rehearing petition do not warrant reversal of the Commission's decision on this issue. The Company's request for rehearing on this issue is therefore denied.

J. Headquarters Relocation

WGL requests that the Commission withdraw the statement in Order No. 90943, "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."[67] Washington Gas characterizes the statement as "ancillary" and asserts that there is no record evidence to support what it also characterizes as a "*new"* notice requirement. WGL argues that the Company first provided notice of its planned headquarters relocation on May 15, 2018 in Case No. 9841, and filed a formal Notice of Relocation on July 28, 2018, also in Case No. 9481.

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[66] *See e.g. Re Baltimore Gas and Electric Company Intervenors: General Motors Corporation and Office of People's Counsel,* 74 MD PSC 319, 328 (Jul. 22, 1983) (Order reversing a hearing examiner's denial of an increased electric fuel rate because of mismanagement, noting that: "The Commission's task is to judge whether the [utility's] actions were reasonably based upon the facts known or knowable at that time.")
[67] WGL Petition for Rehearing at 39, citing Order No. 90943 at 28.

Commission Decision

The Company's request for rehearing on this issue misses the point, and is denied. The Commission is well aware that the Company is required by law to maintain its headquarters in the District of Columbia. That is not the point. The point is that relocating its headquarters within the District of Columbia, at significant cost to Maryland ratepayers, is something that requires more upfront communication by the Company. Admonishing the Commission with regard to its understanding of the matter is a disservice to the Company as well.

K. Debit Card Vendor Fees

WGL requests clarification that card vendor fees for credit and debit card payment, if any, should be paid by the customer using that payment method.[68] Under the Company's proposal, customers would be responsible for any vendors' fees that result in making a bill payment with a credit or debit card. In seeking clarification of this issue, the Company requests that the Commission strike the clause "with the understanding that no customers who choose to pay by debit card or bank account will incur a fee," arguing that the language is confusing by potentially suggesting that the Company offer a fee-free payment for customers using debit cards.

Commission Decision

The Commission clarifies that the intent of Order No. 90943 is not to result in "fee-free" payments when customers use credit and debit cards when making payments. Instead, any applicable card credit or debit fees required by the card vendor for customer bill payment should be allocated or borne by the individual customer. If a card vendor

[68] WGL Petition for Rehearing at 41.

does not charge a fee for using a credit or debit for customer bill payment, no credit/debit bill payment costs should be allocated to the customer.

L. Revenue Requirement Clarifications (Staff and WGL)

Staff requests clarification of portions of Order No. 90943 regarding inconsistencies between findings pertaining to certain operating income adjustments and elements in the determination of the Company's revenue requirement in Appendix A to the Order.[69] According to Staff, correction of these inconsistencies would result in a *revised* further <u>reduction</u> in WGL's revenue requirement in excess of $2 million. The inconsistencies pointed out by Staff include adjustments relating to WGL's: (a) software amortization, (b) leak detection program, (c) lobbying expenses, (d) payroll taxes, and (e) the final revenue requirement amount.[70]

<u>Commission Decision</u>

Staff's request for clarification is unopposed and is corrective in nature. Therefore, Staff's request for clarification regarding the revenue requirement issues identified in its filing is granted.

M. Coincident Peak Class Cost of Service Study (CP-COSSS)

<u>GSA</u>

GSA requests clarification that as it relates to Class Cost of Service Studies ("CCOSS"), WGL is required to also produce and provide a CP-CCOSS in future rate cases. GSA notes that while no parties objected to the use of the CP-CCOSS in this case, Order No. 90943 is silent regarding the use and consideration of a CP-CCOSS in WGL's future cases. In support of its request, GSA argues that the CP-CCOSS reflects how WGL

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[69] Staff Request for Clarification at 2.
[70] *Id.* at 2-5.

plans its system, filing a CP-CCOSS in future base rate proceedings advances administrative efficiency, and requiring the filing of a CP-CCOSS in future cases provides more information for consideration in evaluating the allocation of costs.[71]

Staff

In response, Staff rebuts what it argues are "incorrect assertions" by GSA regarding the proper way to allocate costs among WGL's customer classes. Staff submits that requiring WGL to file the Peak-and-Annual CP-CCOSS in future cases is unnecessary as long as WGL continues to file the Peak-and-Annual NCP-CCOSS, as is required by the Order.[72] However, Staff also supports a utility's filing of alternative cost-of-service studies in rate cases.[73]

Commission Decision

The Commission grants GSA's request for clarification that WGL must continue to produce and provide a CP-CCOSS in future rate cases. While Staff notes that the CP-CCOSS may not necessarily provide additional information beyond the information presented in a NCP-CCOSS, the Commission believes that the CP-CCOSS produced will not impose undue incremental costs on the Company, and may afford the parties and the Commission more information for which to opine on related to cost of service issues.

III. CONCLUSION

For the foregoing reasons, the Commission denies—except in part—and grants in part WGL's Petition for Rehearing, granting rehearing regarding CWIP relating to test year STRIDE and test year STRIDE capital expenditures, non-STRIDE test year O&M

[71] GSA Request for Clarification at 4-7.
[72] Staff Reply at 17
[73] *Id.* at 14.

expenses and accept Staff's revised union pay raise expense adjustment as proposed, grants clarification regarding customer responsibility for debit card vendor fees for bill payment, and in all other respects denies the Company's Petition for Rehearing. The Commission grants the General Services Administration's Request for Clarification regarding the Company's requirement to produce and provide coincident peak class cost of service studies (CP-CCOSS) in future rate cases. Additionally, the Commission grants Staff's Motion for Clarification regarding revenue requirement adjustments in Attachment A to Order No. 90943. Pursuant to this Order, the Commission amends Order No. 90943 and hereby authorizes an increase in rates of $12,579,764, with an overall ROR of 7.04% based on a ROE of 9.50% on an adjusted rate base of $1,399,947,375.

IT IS, THEREFORE, this 28th day of March, in the year Two Thousand Twenty-Four by the Public Service Commission of Maryland, **ORDERED**:

(1) that Washington Gas Light Company's Petition for Rehearing is denied—except in part, granted in part, and clarified in part, as discussed herein;

(2) that the General Service Administration's Request for Clarification regarding the inclusion of coincident peak class cost of service studies (CP-CCOSS) be produced and provided in Washington Gas' future rate cases is granted;

(3) that the Commission Staff's Motion for Clarification regarding accounting adjustments in Attachment A to Order No. 90943 is granted;

(4) that Order No. 90943 is revised to authorize Washington Gas to increase its Maryland distribution rates by no more than $12,579,764 for service rendered on or after December 14, 2023, consistent with the findings in this Order;

(5) 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

(6) 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