ML# 239409

**ORDER NO. 90099**

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR APPROVAL OF A NEW GAS SYSTEM STRATEGIC INFRASTRUCTURE DEVELOPMENT AND ENHANCEMENT PLAN AND ACCOMPANYING COST RECOVERY MECHANISM | * * * * * * * * * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND<br><br>CASE NO. 9486 |

**Issue Date: March 2, 2022**

**ORDER APPROVING 2022 STRIDE-2 PROJECT LIST AND AMENDING STRIDE SURCHARGE**

1. On January 10, 2022, the Maryland Office of People's Counsel ("OPC") filed a request that the Commission schedule a hearing to consider rescission of the Calendar Year ("CY") 2022 Strategic Infrastructure Development and Enhancement ("STRIDE-2")[1] plan of Washington Gas Light Company ("Washington Gas" or "WGL"), or alternatively, reduce its STRIDE surcharge. For the reasons discussed below, the Commission approves Washington Gas' CY 2022 STRIDE-2 Project List,[2] leaves its STRIDE-2 budget unchanged, and reduces its STRIDE-2 surcharge by 14.7 percent for the remainder of this calendar year.[3]

---

[1] Washington Gas filed its first five-year STRIDE plan in 2013, covering the years 2014-2018. The Commission approved this plan, now known as "STRIDE-1," in May 2014 in Case No. 9335, *In the Matter of the Application of Washington Gas Light Company for Authority to Implement a Strategic Infrastructure Development and Enhancement Plan and Associated Cost Recovery Mechanism*, Order No. 86321. On June 15, 2018, Washington Gas filed its second five-year STRIDE plan in the present docket. Maillog No. 220914. This plan, which covers the years 2019-2023, is referred to as "STRIDE-2."

[2] The Washington Gas CY 2022 Project List was approved orally at the February 2, 2022 hearing in this matter. Hr'g. Tr. at 81.

[3] The Commission orally issued the decision articulated in this Order immediately after the hearing held on February 2, 2022. This written Order supplements the rationale for the Commission's February 2, 2022 decision.

## **Background and Party Positions**

2. On November 2, 2021, Washington Gas filed with the Commission its CY 2022 STRIDE-2 Project List and CY 2022 STRIDE-2 Rider and supporting workpapers. In that filing, Washington Gas proposed a total of 160 projects in its CY 2022 Project List, of which 111 are new and 49 are carried over from the CY 2021 STRIDE-2 Project List.[4] On December 30, 2021, Washington Gas filed a revised STRIDE-2 Current Factor Surcharge for consideration at the Commission's January 12, 2022 Administrative Meeting.[5]

3. On January 10, 2022, OPC requested that the Commission schedule a hearing to consider rescission of the Washington Gas STRIDE-2 plan pursuant to *Annotated Code of Maryland*, Public Utilities Article ("PUA"), § 4-210(j). OPC submits that Washington Gas is far behind the replacement pace for distribution gas mains that the Commission specified in its December 11, 2018 order[6] approving the company's STRIDE-2 plan, and argues that Washington Gas "will almost certainly fail to execute its five-year plan by the end of 2023."[7] Specifically, OPC contends that Washington Gas has completed only 73.5 percent of the main mileage replacement that its plan requires, while simultaneously exceeding the plan's approved budget.[8] OPC asserts that Washington Gas "has effectively inflated the costs it may collect from ratepayers through the STRIDE surcharge," thereby bringing into question whether the costs are reasonable and prudent.[9] OPC contends that "Washington Gas has effectively and unilaterally amended the plan

---

[4] Washington Gas Nov. 2, 2021 STRIDE Project List and STRIDE Rider, Maillog No. 237677.
[5] Mail Log No. 238399.
[6] Order No. 88943. In this order, the Commission approved Washington Gas's STRIDE-2 Plan for CY 2019-2023.
[7] OPC Jan. 10, 2022 Comments at 1.
[8] *Id*. at 2.
[9] *Id*. at 6-7, 9-10.

the Commission approved," and that the Commission should therefore rescind its approval of the Washington Gas STRIDE-2 plan.[10]

4. During the Commission's January 12, 2022 Administrative Meeting, the Commission deferred decision on the Washington Gas STRIDE-2 project list and surcharge calculations and announced that it would hold a virtual hearing to further consider these issues.[11]

5. On January 31, 2022, OPC filed additional comments in support of rescinding the Washington Gas STRIDE-2 plan, arguing that the plan's costs and investments were no longer reasonable and prudent given that Washington Gas materially deviated from its projections regarding proposed work, costs, and benefits.[12] Additionally, as an alternative to rescission, OPC argues that the Commission should consider reducing the Washington Gas STRIDE-2 budget to more accurately reflect the cost-factor underlying the original five-year plan's performance targets.[13] Specifically, OPC contends that the company's STRIDE-2 budget should be reduced proportionally to its underperformance in relation to its authorized budgets, which OPC has calculated to be a 14.7 percent reduction. OPC asserts that this reduction would force Washington Gas to focus its STRIDE replacements on the riskiest parts of its distribution infrastructure. OPC states that Washington Gas' statutory obligation to maintain a safe and reliable system would continue irrespective of the STRIDE budget reduction, and that additional work done could be recovered in the company's next base rate case, subject to a prudency review.[14]

[10] *Id*. at 8.
[11] The Washington Gas 2022 STRIDE Project List and 2022 STRIDE Factors was Item 4 on the Commission's January 12, 2022 Administrative Meeting Agenda.
[12] OPC Jan. 31, 2022 Comments at 2-3.
[13] *Id*. at 4. *See also* Hr'g. Tr. at 57 (Cleaver) ("[W]e determined that the simplest thing to do is to reduce the budget by the amount that the Company overpromised."
[14] OPC Jan. 31, Comments at 5.

6. Although the Commission's Staff "shares OPC's concerns about Washington Gas overpromising and under delivering on its STRIDE-2 commitments," Staff recommends that the Commission approve the company's STRIDE-2 project list and proposed 2022 surcharges, in order to ensure continued improvement in public safety and reliability.[15] Nevertheless, Staff asserts that the Commission should review the prudency of Washington Gas' cost variances in the company's next rate case. In subsequent years, Staff advises that the Commission limit Washington Gas' STRIDE recovery to a gas main replacement mileage level that it proves it can execute. In particular, Staff recommends that the Commission restrict Washington Gas' STRIDE-2 recovery in CY 2023 and beyond based on the mileage per year that the company achieved in the preceding year.[16] Alternatively, Staff recommends that the Commission limit Washington Gas' forward cost recovery through the STRIDE surcharge based on the cost per unit that resulted from the Commission's approval of Washington Gas' STRIDE plan.[17] Staff argues that this approach would be reasonable because Washington Gas is completing less work at a higher cost than projected in its approved plan, which potentially violates the plan.[18] Additionally, Staff asserts that this approach would promote forecast discipline by encouraging Washington Gas to provide projections more in alignment with work it can actually complete. Staff concedes, however, that because Washington Gas has begun the fourth year of its five-year STRIDE plan, "this change may be a little late to encourage forecast discipline."[19]

7. In its January 31, 2022 comments, Washington Gas argues that it is successfully implementing its STRIDE 2 plan by removing a significant amount of relatively riskier pipe on

[15] Staff Jan. 31, 2022 Comments at 3.
[16] *Id*. at 1, 3.
[17] *Id*. at 4.
[18] *Id*. at 4-5.
[19] *Id*. at 6.

an accelerated basis, reducing distribution main leaks, and improving public safety and infrastructure reliability.[20] Although Washington Gas concedes that it has experienced a shortfall in distribution main replacement to date in STRIDE-2, the company claims OPC overstated the shortfall. Specifically, Washington Gas asserts that through December 31, 2021, it has retired 50.8 miles of STRIDE-eligible distribution main, a 14.2-mile variance from the STRIDE-2 plan forecast through the same date.[21] Washington Gas states that it will continue to replace 20.3 miles of distribution main in 2022 and 2023, for a total of 71.1 miles of distribution main during STRIDE-2, which amounts to 59 percent of the estimated STRIDE-2 plan forecast, and 88 percent of the estimated STRIDE-2 plan forecast for service replacement including transfers.

8. Washington Gas further argues that paving costs have increased exponentially since 2019, as a result of elevated enforcement of State, county, and municipal requirements related to paving restoration. Washington Gas argues that these increased costs were not foreseeable when Washington Gas created its STRIDE-2 plan estimates in 2018.[22] Going forward, Washington Gas states that it has enhanced its estimation techniques to create more project- and site-specific estimates that reflect the true nature of work.[23] Nevertheless, because "paving costs continue to escalate ahead of estimation models," Washington Gas made a determination "to slow the pace of distribution main replacement to protect the level of investment in distribution service replacements."[24]

[20] Washington Gas Jan. 31, 2022 Comments at 2-3; Hr'g. Tr. at 70 (Townsend). Washington Gas asserts that since 2019, its distribution main leaks in Maryland have declined by 32 percent.
[21] Washington Gas Jan. 31, 2022 Comments at 4.
[22] *Id*. at 4-5.
[23] *Id*. at6.
[24] *Id*.

9. Washington Gas opposes OPC's proposal to rescind its STRIDE-2 plan, arguing that the investments and estimated costs of its STRIDE-2 distribution main projects are reasonable and prudent and consistent with the requirements of PUA § 4-210(j). Additionally, Washington Gas argues that its installation rates are reasonable and prudent in light of the unforeseeable escalation of paving costs. The company also asserts that Order No. 89799 supports its position, because there the Commission found that Washington Gas' variation between its five-year plan estimated costs and its actual STRIDE costs should not be considered imprudence *per se*, and that more accurate cost estimations would not necessarily have led to customers paying lower actual costs.[25] Likewise in this case, Washington Gas argues that OPC has provided no evidence that the actual costs incurred by Washington Gas for distribution main projects were imprudent, and that the variation between its estimated and actual costs is not grounds in itself for a finding of imprudence.

10. Washington Gas states that it is willing to revise its CY 2022 and 2023 STRIDE Project Lists to allocate more funds to main replacement, by reallocating certain CY 2023 dollars from transmission to distribution main replacement.[26] Washington Gas estimates it would be able to replace one additional mile of distribution main in CY 2023 with this reallocation of funds. If accepted, Washington Gas estimates that the five-year total for distribution main replacement would be 71.1 miles, or 59 percent of the STRIDE 2 five-year plan estimate. Washington Gas also states that it could reallocate funds from its meter set and piping remediation program and steel gauge lines program to distribution main replacement. Washington Gas estimates that

[25] *Id*. at 7-8, citing Case No. 9651, *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*, Order No. 9651 at 27-28.
[26] Washington Gas Jan. 31, 2022 Comments at 9.

reallocating these funds would allow it to replace 2.1 additional miles of distribution main in CY 2022 and 2023.

11. During the February 2, 2022 hearing, Washington Gas made the additional argument that the Commission's revisory authority under PUA § 4-210(j) is limited to modifying a particular project that the Commission finds to be imprudent.[27] Washington Gas argues that "the plain language of the statute requires a finding of project-specific imprudence before the Commission can rescind the plan."[28] That is, Washington Gas argues, the PUA does not grant the Commission the authority to make a retroactive change to a utility's approved budget, absent a finding that a particular STRIDE project is imprudent. Because the record does not contain any evidence of imprudent distribution main project investment, Washington Gas claims that its plan cannot be modified. Instead, Washington Gas contends that the appropriate remedy to any disparity in STRIDE surcharge collection from ratepayers and STRIDE expenditures by the utility is the reconciliation process.[29]

## <u>Commission Decision</u>

12. The Commission grants OPC's request to reduce Washington Gas' STRIDE-2 surcharge by 14.7 percent, a percentage reduction that fairly represents the company's underperformance in distribution main replacement relative to its authorized budget. The record demonstrates that Washington Gas is significantly behind the replacement pace for distribution gas mains that the Commission specified in its December 11, 2018 order approving the company's STRIDE-2 plan, and that Washington Gas will fail to execute its five-year plan by the end of 2023. In particular,

---

[27] Four Washington Gas witnesses appeared during the February 2, 2022 hearing, including Tracy Townsend, Vice President of Construction and Safety; Jim Steffes, Senior Vice President of Regulatory Affairs; Jim Wagner, Assistant Vice President for Rates and Regulatory Affairs; and Andrew Larson, Specialist – Regulatory Affairs.

[28] Hr'g. Tr. at 38 (Dodge).

[29] *See* Hr'g. Tr. at 41 (Dodge), stating that the reconciliation process "assures that customers do not pay for work that is not done. If we over-collect, we refund that money with interest. If we under-collect, we reconcile up to our actual costs without interest."

Washington Gas indicates that it will complete approximately 71.1 miles of distribution main during the five-year STRIDE-2 period, which amounts to only 59 percent of the estimated 120-mile STRIDE-2 plan forecast.[30] Washington Gas' offer to revise its STRIDE Project Lists to allocate more funds to main replacement would not materially change this underperformance. The record also shows that Washington Gas will exceed its STRIDE-2 five-year budget before it completes the 160 distribution main projects included in its plan.[31]

13. The Commission agrees with OPC that Washington Gas has effectively and unilaterally amended the plan the Commission approved in 2018, by materially deviating from its projections regarding the amount of work that would be completed, the costs of the projects, and the benefits. In essence, the company has overpromised and under-delivered, depriving customers of the benefits anticipated under the STRIDE statute, including accelerated pipeline replacement. Nevertheless, the Commission is not at this time making any determination regarding prudency, including the prudency of any cost overruns.

14. The Commission does not find persuasive Washington Gas' argument that paving costs were higher than expected. First, Washington Gas did not file with the Commission an amended plan reflecting new project priorities or timelines resulting from higher paving costs. Instead, the company acted unilaterally by delaying projects. Second, no other Maryland utilities have experienced comparable delays in their STRIDE programs resulting from escalating paving costs.[32] Third, Washington Gas has substantially delayed its STRIDE program on multiple prior occasions. As noted in the hearing, Washington Gas has fallen behind in each of the prior years

---

[30] Hr'g. Tr. at 6 (Cleaver); Hr'g. Tr. at 50 (Commissioner Herman). Washington Gas Jan. 31, 2022 Comments at 4.
[31] Hr'g. Tr. at 28 (Dodge).
[32] Hr'g. Tr. at 9-10 (Cleaver); Hr'g. Tr. at 76-77 (Commissioner Linton).

of its STRIDE-2 plan.[33] Additionally, the company faced multiple delays in its STRIDE-1 plan. The Commission referenced these delays in its December 27, 2017 order in Case No. 9335, stating: "[T]he Commission has serious concerns regarding WGL's past failures to complete a significant number of the projects approved by the Commission in prior years. … WGL's proposed 2018 STRIDE project list consists almost entirely of projects that the Commission approved in prior years but remain uncompleted."[34] As a consequence of those delays, the Commission cautioned in Order No. 88943 that the Commission would "remain vigilant to ensure that WGL's project completion rate is consistent with WGL's proposed plan" and that the Commission would "potentially revis[e] our approval in the future if warranted."[35] The Commission finds such revision warranted now.

15. The Commission also finds unpersuasive Washington Gas' argument that the STRIDE statute requires a finding of project-specific imprudence before the Commission can rescind or alter a plan. PUA § 4-210(j) provides the Commission with broad authority to review a previously approved plan. If the Commission determines that an investment of a project or cost of a project no longer meets the requirements of PUA § 4-210(e)(3), the Commission may reduce future base rates or surcharges; or alter or rescind approval of that part of the plan. PUA § 4-210(e)(3), in turn, provides that the Commission "may approve a plan if it finds that the investments and estimated costs of eligible infrastructure replacement projects are reasonable and prudent and designed to improve public safety or infrastructure reliability over the short term and long term."

---

[33] Hr'g. Tr. at 65 (Commissioner Herman).

[34] Case No. 9335, Maillog No. 218328 at 1. During the five-year period of its STRIDE-1 plan, Washington Gas completed approximately 81 miles of the 110 miles of main replacement provided for in its STRIDE-1 plan.

[35] Order No. 88943 (Dec. 11, 2018) at 11-12.

16. Tellingly, the General Assembly used the word "may" when referring to the Commission's approval of a plan. Even if the Commission finds that eligible infrastructure investments are reasonable and prudent, it is not obligated to approve a plan. The broad discretion granted to the Commission to approve a plan under § 4-210(e)(3), or to review a plan under § 4-210(j) (which references subsection 4-210(e)(3)), is inconsistent with Washington Gas' view that the Commission cannot amend a plan unless it finds project-specific imprudence. That reading would leave the Commission powerless to remediate plans that experience significant cost overruns or delays or that otherwise have deviated significantly from what was filed with the Commission. Additionally, it is unclear why the General Assembly would provide the Commission with broad authority to review a plan, only to deny the Commission the authority to subsequently amend the plan when problems were encountered, except upon very limited circumstances.

17. The Commission therefore finds that Washington Gas' CY 2022 STRIDE-2 plan in its current form no longer meets the requirements of § 4-210(e)(3). The distribution main projects in the aggregate are significantly over-budget and behind schedule, which reduces the expected benefits to ratepayers of accelerated infrastructure replacement. For purposes of § 4-210(e)(3), the costs of Washington Gas' STRIDE-2 plan in relation to its authorized surcharge are not reasonable for CY 2022 absent modification.[36] Granting OPC's request for a reduction of Washington Gas' STRIDE surcharge by 14.7 percent will rectify this problem by better aligning

[36] The Commission is not making a determination of imprudence with regard to Washington Gas' recovery of costs in this Order. As stated above, to the extent the reduced surcharge does not recover all of the company's infrastructure replacement costs, it may seek to recover those costs in a subsequent rate case, subject to a prudency review. As aptly stated by OPC: "[M]ost of the STRIDE work within STRIDE-2 hasn't come before the Commission yet….the projects aren't used and useful, they're not finished. So … it's too early to make a formal prudency challenge or to do an appropriate prudency review." Hr'g. Tr. at 24-25 (Cleaver).

the surcharge with the actual work Washington Gas has completed on distribution main replacement, rather than basing the surcharge on its overly ambitious plan.[37]

18. This Order reducing Washington Gas' STRIDE-2 surcharge amount does not alter Washington Gas' STRIDE-2 budget, or modify Washington Gas' CY 2022 STRIDE-2 Project List.[38] Washington Gas retains managerial discretion with regard to the pursuit of those projects.[39] Additionally, nothing in this Order relieves Washington Gas of its statutory obligation to provide safe and reliable gas service, which exists irrespective of STRIDE.[40] To the extent that Washington Gas pursues pipe replacement projects that exceed the STRIDE surcharge, it may seek recovery of those expenses in its next base rate case, subject to a prudency review at that time.[41]

**IT IS THEREFORE**, this 2nd day of March, in the year Two Thousand Twenty-Two, by the Public Service Commission of Maryland,

**ORDERED** That the Calendar Year ("CY") 2022 STRIDE-2 Project List of Washington Gas Light Company ("Washington Gas") is approved;

That Washington Gas shall realize a reduction of 14.7 percent to its CY 2022 STRIDE-2 surcharge, with no reduction to its STRIDE budget; and

---

[37] Although Staff did not advocate for a change in the surcharge in 2022, the Commission notes that this Order is consistent with Staff's recommendation for 2023 and beyond. *See* Hr'g. Tr. at 16-17 (Garofalo) ("Staff and OPC had somewhat similar positions in that we were concerned that WGL might be taking on more than they could accomplish, based on their history only during STRIDE 1…. Staff does conclude that WGL should not be allowed STRIDE recovery in the future beyond the gas main replacement for mileage it's shown it could execute.")

[38] For the year 2023, which is the fifth year of Washington Gas's STRIDE 2 plan, Washington Gas is encouraged to work with Staff to either amend its next year's budget or amend the project list.

[39] *See* Hr'g. Tr. at 58 (Cleaver).

[40] Hr'g. Tr. at 43 (Dodge). *See also* Hr'g. Tr. at 35-36 (Townsend) ("Obviously, if we had any type of safety-sensitive projects, we would commence that work regardless of whether or not it fit in the STRIDE list for normal replacement.")

[41] Hr'g. Tr. at 29-30, 35-36 (Dodge).

That Washington Gas is directed to file a revised STRIDE surcharge, effective February 2, 2022 to be billed for the remainder of this calendar year.[42]

*/s/ Jason M. Stanek*

*/s/ Michael T. Richard*

*/s/ Anthony J. O'Donnell*

*/s/ Odogwu Obi Linton*

*/s/ Mindy L. Herman*
Commissioners

[42] Washington Gas filed its revised STRIDE surcharge in compliance with this Order on February 11, 2022. Maillog No. 239043.