

**ORDER NO. 92106**

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

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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Case No. 9645  
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**ORDER ON PILOT MULTI-YEAR RATE PLAN  
FINAL RECONCILIATION**

Before: Frederick H. Hoover, Jr., Chair  
Kumar P. Barve, Commissioner  
Bonnie A. Suchman, Commissioner

Issued: December 22, 2025

## APPEARANCES

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Lloyd J. Spivak, Annette B. Garofalo, and Michael A. Dean for the Maryland Public Service Commission Staff.

Brian R. Greene and Eric J. Wallace for H.A.Wagner, LLC.

Robert A. Weishaar, Jr. for the National Railroad Passenger Corporation (Amtrak).

Alex J. Kronauer, Barry A. Naum, and Derrick Price Williamson for Walmart.

John J. McNutt for the United States Department of Defense and Related Federal Agencies.

Margaret M. Witherup and David W. Beugelmans for the Maryland Energy Group.

Lisa Brennan for Montgomery County, Maryland.

Doug E. Micheel for Delmarva Power & Light Company.

Michael Segers and Kim Hassan for Potomac Electric Power Company.

### Interested Persons:

Michael C. Powell and Todd R. Chason for Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.

David Baña for Former BGE Employee Intervenors, Acevedo, et al.

Colleen Collins for Gordon Feinblatt LLC.

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## I. EXECUTIVE SUMMARY

In this Order, the Commission addresses Baltimore Gas and Electric Company’s (“BGE” or the Company”) first Multi-Year Rate Plan (“MRP 1”) Rate Year Three Reconciliation (“RY3”), the final reconciliation regarding BGE’s MRP 1 rates.<sup>1</sup> In its Annual Information Filing for 2023,<sup>2</sup> at the conclusion of MRP 1, BGE asked for an additional \$152.28 million in revenues, approximately twice the Company’s previous two years of approved reconciliation amounts combined. After considering the testimony of numerous witnesses, evidentiary hearings, and the Parties’ briefs, the Commission determines herein that a temporary reconciliation rider providing additional revenue of \$77,197,074 should be added to BGE’s electric and gas service distribution rates.<sup>3</sup> In allowing for this adjustment, the Commission is mindful of the burdens that increased electric and gas utility rates place on customers, especially residential ratepayers. These concerns were noted by the Maryland General Assembly as well, when the legislature enacted SB937/HB1035 (2025), the Next Generation Energy Act (the “NGEA”), which among other things, allows utilities to continue to propose multi-year rate plans and other alternative forms of ratemaking for recovery of costs associated with providing utility services, but prohibits reconciliation in future MRP cases.<sup>4</sup>

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<sup>1</sup> The acronym “MRP” refers to a multi-year rate plan, as discussed and approved for a pilot in Commission Order No. 89482. In this Order, “MRP” and “MYP” are used interchangeably.

<sup>2</sup> Maillog No. 308670.

<sup>3</sup> This value does not reflect the additional voluntary reduction in the revenue requirement agreed to by BGE in its confidential filing. As this value was designated confidential, the value was not presented in the final value. When the Company makes its compliance filing, it shall deduct the agreed amount to revenue requirement and indicate why the final value cannot disclose the agreed to adjustment if BGE continues to maintain the confidentiality designation. The adjustment was agreed to in Maillog 314658 at 6 and footnote 12, Opposition to Office of People's Counsel Motion to Suspend Procedural Schedule. (Jan. 6, 2025.)

<sup>4</sup> The NGEA authorizes the Commission to approve a multi-year rate plan only if the plan demonstrates the customer benefits of the investment, and only if the plan does not allow for the utility to file for the reconciliation of cost or revenue variances. *See* PUA § 4-213(b).

These concerns are also evident in the General Assembly’s establishment of the 2025 Legislative Relief Fund, as part of the NGEA. The 2025 Legislative Relief Fund authorized the transfer of \$200,000,000 from the Strategic Energy Investment Fund to provide residential customer credits based on each customer’s electricity consumption.<sup>5</sup> It is with this backdrop that the Commission decides BGE’s MRP 1 RY3 reconciliation request and limits the Company’s revenue adjustment to approximately 50 percent of the Company’s request.

The Commission was created by the General Assembly to supervise and regulate monopoly utilities in the State, to “ensure their operation in the public interest,” and to “promote adequate, economical, and efficient delivery services in the State without unjust discrimination.” In supervising and regulating public service companies, the Commission must consider—among other things—“the economy of the State,” and more recently, “the preservation of environmental quality, including protection of the global climate ...”

While the MRP proceeding is quasi-judicial, the Commission’s powers are “legislative in character,” requiring the Commission to determine whether the rates proposed by the utility are just and reasonable, as defined in PUA § 4-101. Rates approved pursuant to PUA § 7-505—under an alternative form of ratemaking (“AFOR”), as opposed to using historical data under a traditional form of ratemaking—must still protect consumers; ensure the quality, availability, and reliability of regulated electric services; and be in the

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<sup>5</sup> The Strategic Energy Investment Fund (“SEIF”) is a Maryland program that supports a wide range of energy efficiency, renewable energy, and climate change initiatives across the State. The purpose of the SEIF is to decrease energy demand and increase energy supply to promote affordable, reliable, and clean energy to fuel Maryland’s future prosperity. Despite these important goals, given the exorbitant energy costs currently facing Maryland ratepayers, the General Assembly acted through the NGEA to remove \$200 million from the SEIF to reduce residential ratepayer bills. *See* State Gov. Article § 9-20B-05(i)(4), referencing the Legislative Energy Relief Refund. Recognizing the exigency of the present economy, in June 2025, Exelon (BGE’s parent company) also launched a \$50 million customer relief fund to assist low- and middle-income customers struggling as energy supply costs escalated over the summer.

interest of the public. In other words, MRP ratemaking does not allow for unbounded and run-away cost recovery when the utility overruns its budget projections.

In this case, the Commission finds that BGE's proposed reconciliation of \$152.28 million in costs following the completion of MRP 1 is not just and reasonable. Approval of BGE's reconciliation request would amount to twice as much as what the Company was granted for BGE MRP 1 Rate Years 2021 and 2022 combined and results in a final revenue requirement in 2023 greater than the Company sought in its Pilot MRP application. The Commission finds this would amount to a misuse of BGE's MRP 1 and reconciliation process and detrimental to the consumer protection required of AFORs.

The Commission is mindful of the numerous public comments, from customers (including some 7,000 postcards from customers in Baltimore City), as well as State and federal public officials sharing their concerns regarding increasingly unaffordable utility bills attributable both to BGE's MRP 1 and MRP 2 (Case No. 9692) reconciliation requests.

Approving BGE's full RY3 reconciliation request on a base MRP-1 foundation of questionable forecasting, followed up by substantial overruns of its approved budgets, would wrongly reward the utility's performance rather than encourage a more disciplined approach to managing for results that benefit both the utility and its customers.

For purposes of reconciliation, the Company was given a budget with expectations to work within the parameters of that budget. While some variance was expected, as no forecast is 100 percent correct, the Commission's authorized reconciliation process should have been viewed within the context of the MRP goals, which cannot be satisfied with reconciliation requests of this magnitude. For purposes of recovering revenue requirements above those authorized through reconciliation, which outside of an AFOR would be viewed

as retroactive, there needs to be a marked demonstration of why the spend is needed now and consideration for its subsequent impact to customer rates.

For these reasons, and as more fully discussed in this Order, the Commission rejects BGE's MRP 1 RY3 requested reconciliation of \$152.28 million and authorizes a revenue requirement of \$77.20 million. Based on the record presented, the Commission finds that the recovery of updated or adjusted electric and gas distribution rates in the amount of \$30,834,091 (electric) and \$46,362,983 (gas) are just and reasonable in this case.<sup>6</sup> This results in a monthly bill impact of \$0.72 for residential electric customers and \$1.95 for residential gas customers over the time period authorized for rate recovery in this Order. The following table summarizes the bill impacts of the requested and authorized revenue requirement.

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<sup>6</sup> This value does not reflect the additional voluntary reduction in the revenue requirement agreed to by BGE in its confidential filing. As this adjustment was designated confidential, the impact is not presented in our final revenue requirement contained in this order. When the Company makes its compliance filing, it shall deduct the agreed adjustment from the revenue requirement and indicate why the final value cannot be disclosed. The adjustment was agreed to in Maillog 314658 at 6 and footnote 12, Opposition to Office of People's Counsel Motion to Suspend Procedural Schedule. (Jan. 6, 2025).

**Table 1: Requested versus Authorized Revenue Requirement and Bill Impacts (\$000)<sup>7</sup>**

		Revenue Requirement	Average Bill Impact: Cost Recovered in a single year	Average Bill Impact: Cost Recovered over the Commission authorized timeline
Requested	Electric	\$ 78,938.00	\$ 3.56	\$ 1.85
	Gas	\$ 73,338.00	\$ 5.91	\$ 3.08
	Total	\$ 152,276.00		
Authorized	Electric	\$ 30,834.00	\$ 1.39	\$ 0.72
	Gas	\$ 46,363.00	\$ 3.74	\$ 1.95
	Total	\$ 77,197.00		

While the estimated monthly bill impacts for customers resulting from this decision does not fully mitigate the utility affordability risks faced by residential customers, it does at least—to some degree—buffer the impact.

As further explained in this Order, this decision does not deprive BGE of future cost recovery for the cost of investments that are determined to be used and useful in providing utility services, so long as the costs for those investments are paired with prudence and proposed within a requisite test-year context. The Commission’s decisions are further discussed herein.

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<sup>7</sup> Bill impacts based on an average residential usage of 876 kWh and 55 therms for electric and gas respectively. Bill impacts based on billing determinants provided in Witness Fiery’s Direct Testimony, LKF-1 for residential customers from March 2025 through December 2026. These billing determinants were normalized to 12 months to represent a single year and 23 months to represent the Commission’s authorized recovery timeline. It is anticipated that the billing determinants may be revised to reflect more current usage at the time of compliance filing.

BGE’s final proposal for rate recovery assumed reconciliation occurring the month after the Commission’s order and ending in December 2026. The Commission’s authorized recovery period spans from the first of the month after the Commission approves the reconciliation rider through the end of 2027. This is anticipated to begin February 2026.

## II. BACKGROUND

On May 15, 2020, BGE filed its application for both gas and electric multi-year rate plans, as the MRP<sup>8</sup> pilot utility.<sup>9</sup> In support of its request to use the MRP construct, BGE had argued, in part, that it would provide the Company’s customers with “predictable and stable electricity and gas utility distribution rates over the next three years ... and spreads rate charges over multiple years if the Commission deems it appropriate.”<sup>10</sup> BGE further argued that the forward-looking nature of the plan “allows for greater transparency and visibility into the Company’s workplans.”<sup>11</sup>

On December 16, 2020, the Commission issued Order No. 89678, authorizing BGE to set rates over a three-year period, based on forecasted capital and operations costs. On February 17, 2023, BGE filed an application for a second MRP (“MRP 2”) for both gas and electric distribution rates.<sup>12</sup> As part of that application and in addition to requests for rate increases for both electric and gas customers, BGE requested reconciliation for the first two years of the Pilot MRP, years 2021 and 2022. BGE requested \$52.2 million for electric and \$21.8 million for gas in reconciliation costs. On December 14, 2023, the Commission issued Order No. 90948, which after adjustments approved all but approximately \$2.6 million of the requested reconciliation costs for 2021 and 2022.

In April 2024, BGE filed its 2023 reconciliation request, seeking approximately \$79.9 million in electric revenues and \$73.3 million in gas revenues, beyond those

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<sup>8</sup> As discussed in previous orders, parties to this case have used the acronyms MYP and MRP to refer to multi-year rate plans. This Order uses the term MRP except in quotations where parties refer to an MYP.

<sup>9</sup> Maillog No. 230267.

<sup>10</sup> Maillog No. 232487 at 2-3, *In the Matter of the Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*, BGE Post-Hearing Initial Brief (Nov. 5, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> Maillog No. 301409.

authorized. Testimony and comments were filed by BGE;<sup>13</sup> OPC;<sup>14</sup> the International Brotherhood of Electrical Workers, Local 410 (“IBEW”);<sup>15</sup> and Staff.<sup>16</sup> On October 8 and 9, 2024, the Commission held an evidentiary hearing where all testimonies were admitted into evidence, and BGE was allowed to present live testimony to all witnesses, as was OPC and Staff.

On October 25, 2024, the Commission issued a Notice of Suspension of Procedural Schedule, staying proceedings regarding the 2023 reconciliation, with an explanatory order to follow. On November 1, 2024, the Commission issued Order No. 91396, which found that BGE had failed to file testimony demonstrating that its project investments and costs were prudently incurred. The Commission directed BGE to provide testimony providing a baseline for a prudency analysis, demonstrating the prudency of the projects and the cost recovery requested, noting that BGE bears the burden of proof with regard to prudency issues. The Commission also noted arguments raised by stakeholders that some of BGE’s requested cost recovery does not align with the projects the Commission previously considered in setting BGE’s MRP 1 rates. The Commission directed BGE to include a thorough explanation of which projects were abandoned or altered and why new projects were or are being pursued.

On December 11, 2024, BGE filed supplemental direct testimony.<sup>17</sup> On January 15, 2025, Staff<sup>18</sup> and OPC<sup>19</sup> filed supplemental reply testimony. On February 4, 2025, BGE

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<sup>13</sup> Maillog No. 309241.

<sup>14</sup> Maillog No. 311100.

<sup>15</sup> Maillog No. 311079.

<sup>16</sup> Maillog No. 311104.

<sup>17</sup> Maillog No. 314181. (Errata filed as Maillog No. 314865.)

<sup>18</sup> Maillog No. 314933.

<sup>19</sup> Maillog No. 314935.

filed rebuttal testimony.<sup>20</sup> On February 21, 2025, OPC filed supplemental reply testimony.<sup>21</sup>

On February 24, 2025, BGE, OPC, and Staff filed initial briefs on BGE’s 2023 reconciliation.<sup>22</sup> On March 7, 2025, parties filed reply briefs.<sup>23</sup>

Also on March 7, BGE filed a motion to strike portions of OPC’s brief, arguing that OPC had improperly argued in its brief in favor of disallowing costs associated with 10 projects for which OPC did not provide supporting sworn testimony or expert analysis.<sup>24</sup> On March 14, 2025, OPC filed a reply to BGE’s motion to strike.<sup>25</sup> On March 21, 2025, BGE filed a second motion to strike portions of OPC’s reply brief, alternatively requesting that the Commission accept supplemental rebuttal testimony.<sup>26</sup> On March 28, 2025, OPC filed a response.<sup>27</sup> On October 16, 2025, the Commission denied both motions to strike and rejected the supplemental rebuttal testimony of BGE witness John Frain.<sup>28</sup>

### **III. DISCUSSION AND FINDINGS**

#### **A. Overview of the MRP Reconciliation Process**

On February 4, 2020, the Commission issued Order No. 89482 (the “MRP Pilot Order”) in Case 9618, establishing a framework for a Multi-year Rate Plan (“MRP”)

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<sup>20</sup> Maillog No. 315428.

<sup>21</sup> Maillog No. 316110.

<sup>22</sup> Maillog Nos. 316217 (BGE); 316218 (OPC); and 316219 (Staff).

<sup>23</sup> Maillog Nos. 316563 (BGE); 316562 (OPC); and 316564 (Staff).

<sup>24</sup> Maillog No. 316540.

<sup>25</sup> Maillog No. 316562.

<sup>26</sup> Maillog No. 316967.

<sup>27</sup> Maillog No. 317205.

<sup>28</sup> Order No. 91906. The Commission found, *inter alia*, that the challenged portions of OPC’s briefs constituted legal arguments contending that BGE failed to meet its burden of proof, and therefore did not require a supporting witness. The Commission also found that the record had closed such that additional testimony would not be accepted.

Pilot.<sup>29</sup> The MRP Pilot Order provided guidance for the Maryland utility that was the first to file an MRP application to serve as a “Pilot Utility” pursuant to the specific instructions in Order No. 89482. On May 15, 2020, BGE was the first Maryland utility to file a rate application with the Commission using the MRP framework and requested gas and electric rates to be effective January 1, 2021, January 1, 2022, and January 1, 2023.<sup>30</sup>

The MRP Pilot Order directed that the Pilot Utility filing for a rate adjustment under the MRP Pilot must demonstrate that the proposed adjustments are based on a historic test year and that the plan (1) contains the requisite filing requirements; (2) allows up to three future rate-effective years with an agreement to “stay out” for that period; (3) contains specific criteria for any “off-ramp” process (i.e., extraordinary circumstances outside the utility’s control that would warrant the Commission’s intervention to modify or terminate the MRP); (4) tracks the accuracy of the utility’s forecast; (5) has an annual informational filing which the Commission may use as the basis for mid-cycle MRP adjustments; and (6) contains adequate reporting requirements.<sup>31</sup>

In addition to these requirements, the Commission determined that the Pilot MRP will undergo a reconciliation process.<sup>32</sup> The MRP Pilot Order stated that “reconciliation of the Pilot Utility’s costs will be conducted by three distinct means: (1) an annual information filing, (2) a consolidated reconciliation and prudence review in a subsequent rate case, and (3) a final reconciliation and prudence review after the conclusion of the Pilot MRP rate-effective period.”<sup>33</sup> The Commission determined that the MRP reconciliation process

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<sup>29</sup> *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company*, Case No. 9618, Feb. 4, 2020.

<sup>30</sup> *In the Matter of the Application of Baltimore Gas and Electric Multi-Year Plan*, Case No. 9645, Dec. 16, 2020.

<sup>31</sup> Order No. 89482 at 3.

<sup>32</sup> *Id.* at 37.

<sup>33</sup> *Id.*

would strike the delicate balance of achieving increased transparency and accountability from a utility opting to use the MRP framework while realizing certain other benefits such as: shortening the cost recovery period, providing more predictable revenues for utilities and more predictable rates for customers, spreading changes in rates over multiple years, decreasing administrative burdens on regulators by staggering filings over several years, and more transparency in utility planning.<sup>34</sup>

These measures correspond with some of the acknowledged goals of the MRP pilot, including but not limited to:

- (1) enhanced transparency, proactive information sharing, and discovery;
- (2) review and alignment of utility investment plans – in advance vs. after the fact;
- (3) opportunity to challenge utility proposals up front and make adjustments;
- (4) utilities able to make investments aligned to state policy goals and priorities;
- (5) less administrative burden vs. “pancaked” annual (or more frequent) rate cases;
- (6) predictability of rates;
- (7) enhanced service to customers; and
- (8) credit supportive, balancing of risks, asymmetric reconciliation.<sup>35</sup>

BGE actively sought the adoption of the MRP process to address the issue of regulatory lag and to allow the Company to forecast and plan investments in its operations. The Commission’s move from the traditional review and approval process undertaken in a “traditional” rate case was premised on the Company’s adherence to the first three goals listed above. However, as described in this Order, the current reconciliation process as well as BGE’s presentation and evidence falls significantly short of those goals.

On December 16, 2020, the Commission issued Order No. 89678 authorizing BGE, as the Pilot Utility, to increase its electric and gas distribution rates for each of the years of the MRP as provided in the chart below:

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<sup>34</sup> *Id.*

<sup>35</sup> *See e.g.*, BGE Brief (Case No. 9618/9645), Maillog No. 313247 at 2.

**Table 2: Commission Authorized Incremental Revenue Requirement for BGE MRP 1<sup>36</sup>**

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>TOTAL</b>
Electric - Incremental Revenue Requirement	\$59,334,000	\$38,696,000	\$41,879,000	<b>\$139,919,000</b>
Gas - Incremental Revenue Requirement	\$53,246,000	\$10,769,000	\$9,872,000	<b>\$73,887,000</b>
<b>TOTAL</b>	\$112,580,000	\$49,465,000	\$51,751,000	<b>\$213,796,000</b>

The chart shows that for BGE’s MRP 1 the Commission granted the Company a combined total authorized revenue requirement of \$213,796,000 based on a historic test year and the planned and projected capital and operations and maintenance expenditures for the MRP effective period 2021 to 2023. In other words, the Commission found that the proposed expenditures and adjustments approved in BGE’s MRP 1 were just and reasonable and supported an increase in BGE’s electric and gas rates at this level over the course of the MRP effective period.

In accordance with the MRP Reconciliation process, the Company, as part of its BGE MRP 2 in Case No. 9692, was granted rate recovery of reconciliation amounts for

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<sup>36</sup> Order No. 89678 at 2.

BGE MRP 1 Rate Year 2021 in the amount of \$19.9 million and for BGE MRP 1 Rate Year 2022 in the amount \$54.1 million, which translates into \$52.2 million for electric and \$21.8 million for gas. The following table summarizes Order No. 90948 reconciliation authorization for the first two years of BGE MRP 1.

**Table 3: Commission Authorized Incremental Reconciliation to Date for BGE MRP 1<sup>37</sup>**

	2021	2022	2023	TOTAL
Electric - Incremental Revenue Requirement	\$12,607,000	\$39,582,000	To Be Determined	<b>\$52,189,000</b>
Gas - Incremental Revenue Requirement	\$7,275,000	\$14,511,000	To Be Determined	<b>\$21,786,000</b>
<b>TOTAL</b>	<b>\$19,882,000</b>	<b>\$54,093,000</b>	To Be Determined	<b>\$73,975,000</b>

In the current proceeding for its MRP 1 Final Reconciliation, BGE is requesting rate recovery of reconciliation amounts of \$78.94 million for electric and \$73.34 million for gas for BGE’s MRP 1 Rate Year 2023. Hence, BGE is requesting an additional \$152.28 million for Year 3 of its first MRP, making the requested 2023 reconciliation amount alone **twice** as much as what the Company was granted for BGE MRP 1 Rate Years 2021 and 2022 combined. Moreover, when BGE’s requested 2023 reconciliation amount is

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<sup>37</sup> Order No. 90948 at Appendix C Electric Reconciliation and Appendix D Gas Reconciliation.

combined with the previously approved reconciliation amounts for 2021 and 2022, the Company's overall additional revenue requirement for BGE's MRP 1 would equal \$227 million (or \$19.8 million (2021) *plus* \$54.1 million (2022) *plus* \$153.28 million (2023)). If fully authorized this would increase the total additional revenue authorized over 2021 - 2023 relative to 2020 revenues from \$488 million to \$716 million, an approximate 50 percent increase. Additionally, BGE's proposed revenue requirement for 2023 after reconciliation is \$367 million, which is \$152 million above that authorized by the Commission (\$213 million) and approximately \$60 million more than BGE proposed in its Pilot MRP case (\$304 million). Spending at this level demonstrates that BGE not only exceeded its authorized budget but even exceeded what it projected as the appropriate authorization for those three years.<sup>38</sup>

“The goal of any ratemaking proceeding is for the Commission to ensure that the rates approved for a public utility to charge customers for regulated service are just and reasonable.”<sup>39</sup> Here, the Commission must determine in the context of the MRP construct and its intended benefits whether BGE's request for an additional revenue requirement for **\$152.28** million for 2023 MRP 1 Final Reconciliation is just and reasonable and thereby recoverable in customer rates.

The Commission's statutory responsibility governing its rate-setting authority to set “just and reasonable” rates is codified at PUA §§ 4-101, 4-102 and 4-201. For a rate to be just and reasonable, the rate: (1) cannot violate any provision of the PUA, (2) must “fully consider and be consistent with the public good,” and (3) must “result in an operating

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<sup>38</sup> BGE's amount of overspend for BGE MRP 1 inclusive of reconciliation is even more egregious considering the Company's reconciliation revenue requirement is based on a rate of return lower than proposed in its Pilot MRP application.

<sup>39</sup> Order No. 91181 at 207.

income ... that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.”<sup>40</sup> Also the Commission found in Order No. 89226 that it has express authority to adopt alternative forms of regulations such as MRPs pursuant PUA § 7-505, “if the Commission finds, after notice and hearing, that the alternative form of regulation: (1) protects consumers, (2) ensures the quality, availability, and reliability of regulated electric services, and (3) is in the interest of the public, including shareholders of the electric company.”<sup>41</sup>

“No statute or law requires the Commission to use any particular rate-setting method.”<sup>42</sup> This is because, under the “just and reasonable” standard, “it is the result reached, not the method employed, which is controlling.”<sup>43</sup> As the U.S. Supreme Court explains, rate-making bodies are not bound “to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.”<sup>44</sup> Additionally, the Maryland Supreme Court has recognized that “... the Commission has the power, legislative in character, to regulate rates of public service companies, determining whether the rates they charge are just and reasonable.”<sup>45</sup>

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<sup>40</sup> PUA § 4-101.

<sup>41</sup> PUA § 7-505(c)(2).

<sup>42</sup> *Off. of People's Couns. v Maryland Pub. Serv. Comm'n*, 355 Md. 1, 24 (1999) (“[PUA § 4-102] merely requires the Commission to set “just and reasonable” rates; it does not prescribe the specific criteria to be used for the determination, and evaluation, of justness and reasonableness of those rates”).

<sup>43</sup> *Fed. Power Comm'n v Hope Natural Gas Co.*, 320 U.S. 591, at 603 (1944) (*See also, Fed. Power Comm'n v. Natural Gas Pipeline Co. of Am.*, 315 U.S. 575 (1942)).

<sup>44</sup> *Natural Gas Pipeline Co. of Am.*, 315 U.S. at 586.

<sup>45</sup> *See e.g., Chesapeake & Potomac Tel. Co. v. Pincoffs*, 23 Md. App. 474 Maryland (1974).

BGE's requested 2023 reconciliation amount, when combined with the previously approved reconciliations for Year 2021 and Year 2022, is egregiously excessive and would result in the type of rate shock to ratepayers that the Commission wanted to avoid due to improper forecasting by the Pilot Utility, especially given that Order No. 89482 provided for a consolidated reconciliation and prudence analysis of Rate Year 1 and Rate Year 2 during the subsequent rate case filing (BGE Case No. 9692).<sup>46</sup>

When establishing the reconciliation process, the Commission noted its goal of balancing increased transparency and accountability while achieving the other stated goals of MRPs. The Commission rejected reconciliation proposals that placed all the risk on customers and none on the utilities. According to Order No. 89482, the focus of the final reconciliation and prudence case should only be those costs *not previously reviewed* for prudence and reconciled in the rate case<sup>47</sup> against the forecasted projects and costs originally authorized at the initiation of the Pilot Utility's MRP and subsequently amended by BGE's 2021-2023 Revised MYP Capital Workplan filed February 12, 2021. In fact, certain parties to this proceeding testified to the fact that the Company spent money on projects not contained in the Company's Pilot MRP proposal, in contradiction to MRP's goals of greater transparency and visibility.<sup>48</sup> The final reconciliation was not intended to be a catch-all to sanction bad forecasting, cost overruns on the part of the Pilot Utility, or new or emergent projects not originally authorized. If that were the case, then the final reconciliation would serve to undermine two of the key benefits—i.e., *more predictable*

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<sup>46</sup> Order No. 89482 at 38.

<sup>47</sup> *Id.* at 5 and 39.

<sup>48</sup> OPC Initial Brief at 1 and 4.

*rates for customers and greater transparency*-that BGE and other utilities have argued justifies the Commission's adoption of the MRP form of ratemaking.

In Order No. 89678, the Commission held that “[w]ith respect to customer benefits, MRPs are designed to make rates more predictable for customers, with rate increases spread gradually over multiple years.”<sup>49</sup> The MRP construct allowed the utility the benefit of a shortened cost recovery period and more predictable revenues, and, as discussed earlier, these items were the primary drivers for BGE in its advocacy of MRPs. In exchange for its adherence as closely as possible to its forecasted capital and operation and maintenance budget, customers would experience more predictable rates over the MRP lifecycle, inclusive of reconciliation. Without such a compact, the utility could use the reconciliation process as a means to remove any consequences resulting from exceeding its forecasts and thus creating an unmitigated pass through of costs to customers.

The Commission made clear in Order No. 89482 that the Pilot Utility should bear the risk of forecasting errors.<sup>50</sup> Specifically, the Commission determined that “[g]iven the risk of inaccurate forecasts as well as the reality that the utility has both greater information than other stakeholders and greater control over its own costs, it is imperative that the utility have strong incentives to develop accurate forecasts and then plan appropriately to stay within the authorized revenue requirement while also not under-investing to the detriment of safe and reliable utility service.”<sup>51</sup> The Commission reiterated its determination that “the risks of improper forecasting remain on the Pilot Utility, and to encourage cost control,”

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<sup>49</sup> Order No. 89678 at 254.

<sup>50</sup> Order No. 89482 at 21.

<sup>51</sup> *Id.* at 21-22.

by adopting the asymmetrical method for returning over- and under-collections of prudent expenditures.<sup>52</sup>

The Commission's emphasis on who bears the burden for improper forecasting indicates that even during the final reconciliation, the Pilot Utility must strive to stay within its authorized revenue requirement. Additionally, the Commission's emphasis on improper forecasting indicates that the Commission did not intend for the Pilot Utility to receive a 100% true-up for all costs exceeding its authorized revenue requirement. If the reconciliation was intended to remove the consequences of exceeding the MRP budget, the utility would then bear no financial risk.

In Order No. 89678, the Commission, when deciding to prohibit BGE from using contingencies in its forecasts, stated that “[t]he MRP process requires the utility to use its best judgment to accurately forecast the budget that it will need to safely and adequately operate its distribution system on behalf of its customers, [sic].<sup>53</sup> It further noted that [t]here are financial implications to customers and the utility for overestimating (or underestimating) that budget. However, given the information, resource, and expertise asymmetries inherent in MRPs, BGE is in the best position among the Parties to forecast accurately.”<sup>54</sup>

BGE's request for an adjusted revenue increase of \$152.28 million for its MRP 1 RY3 Final Reconciliation, when viewed in the full context of BGE's MRP 1, demonstrates an inability of the Company to properly forecast and stay within its authorized budget by exercising the judgement necessary to minimize cost impacts while maintaining safe and

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<sup>52</sup> *Id.* at 39.

<sup>53</sup> Order No. 89678 at 43.

<sup>54</sup> *Id.*

reliable service. The Commission stated in Order No. 90948 that “BGE is expected to control costs and minimize impacts to ratepayers while providing safe and reliable service” and that it expected “strong scrutiny from parties when these costs are reviewed for prudence in the future, especially when cost variances are high.”<sup>55</sup>

During the evidentiary hearing for the 2023 BGE Final Reconciliation, in an exchange between Commissioner Suchman and BGE witness John Frain about the magnitude of BGE’s RY3 reconciliation request, the Company acknowledged that the Commission had placed cost constraints within the MRP process and that those features could be strengthened.

Commissioner Suchman: “And I guess I’m trying to figure out, you know, where there’s a value in the MYP if you’re given \$213 million, and basically over the next three years, you essentially double that request, .... I know we’re at the end of this MYP, but I guess I’m trying to understand how ratepayers see a benefit from this when you’re essentially doubling what we had originally authorized?”

BGE witness Frain: “Yeah, so I think, you know, you’re right. We’ll talk about this a lot more in the MYP lessons learned process. I do think there are a number of ways that cost control features could be strengthened and added in the multi-year plan structure.”

Commissioner Suchman: “If you can tell me how they were affected. I mean, I’m not—I mean, we’re seeing a doubling of what we had authorized. So, are you saying that without the cost-causation signals, the cost-control signals, it would have been so much more? I’m just seeing a lot of money.”

BGE witness Frain: Yeah. So what I would say is that without the multi-year plan, there would have been potentially instances where, you know, in 2024, *if BGE had filed a historic rate case, there might have been a much larger increase because we might have not been given the cost signal through this reconciliation process to say, you’ve got to find as, you know, many ways as you can to manage to, you know, the original targets that you were given.* And so part of that discussion with OPC counsel was that we were given the, you know, the signal that we needed to hold to those targets as much as we could. And to your point about ‘21 and ‘22, we were able to do that better in those years. In fact, in 2021 on electric, it would

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<sup>55</sup> Order No. 90948 at 2.

have been, without the OPC electric depreciation adjustment recommendation, it would have been a refund of \$10 million to customers in 2021. ***So, the signals were there.*** I grant you that like by the time you get to 2023, this is a large, you know, kind of variance and a large request that we're making here, and—<sup>56</sup> (emphasis added)

In its initial brief, OPC argued that “[i]n 2023, BGE increased its capital and O&M spending far above its authorized capital budgets, expanding the scope of some existing projects, continuing to work on other projects after budgets were exceeded, and adding entirely new projects that could have been deferred to BGE’s second multi-year plan.”<sup>57</sup> In Order No. 90948, the Commission acknowledged that it understood “that projecting costs three and four years in the future is difficult, but that is the challenge utilities undertake when they elect to file an MYP. Commission-approved budgets and spending are not aspirational. The Commission expects utilities to manage their operations and spending within the limits the Commission has approved.”<sup>58</sup> The Commission further emphasized the importance of adhering to budget while affording the utility flexibility when the Commission awarded BGE its first MRP revenue requirement. The Company was awarded a revenue requirement lower than requested in Order No. 89678 but was directed to file an updated project list with the awarded revenue requirement “that either: (i) accepts the reduced revenue requirement as presented herein; or (ii) proposes to prioritize the reduced revenue requirement on a different set of work plans by, for example, choosing to remove or further reduce select work plans in order to maximize the benefit of others. BGE will be

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<sup>56</sup> Hrg. Tr., Vol.1 at 171:21-174:1, Oct. 8, 2024.

<sup>57</sup> OPC Initial Brief at 1 noting that “Some of the new projects that BGE established in 2023 were introduced in the Company’s 2023 project list filed on Nov. 1, 2022. (Maillog No. 242894).”

<sup>58</sup> Order No. 90948 at 180-181.

in compliance as long as it does not exceed the reduced capital budget revenue requirement.”<sup>59</sup>

The Commission has recognized that forecast error and decisions could introduce volatility to the final rate design via reconciliation. The debate in this case between OPC and BGE regarding depreciation may best capture this tension where BGE’s projected depreciation rates are lower than what actually occurred and the Commission directed the use of depreciation rates below those.<sup>60</sup> In both instances this led to a lower projected revenue requirement than predicted. The risk of this was recognized by the Commission when upholding its decision to approve the lower depreciation rate stating that “[t]o the extent that BGE is correct that its actual depreciation expense will exceed the amount collected through rates during the MRP, BGE will be made whole through the reconciliation process. Further, the transition to a MRP was meant to minimize, not completely eliminate regulatory lag.”<sup>61</sup> This recognizes that there was risk of under recovery in the MRP, but this did not reduce the need for BGE to work within the authorized revenue requirement.

The Commission also recognizes that there are market forces outside of the Company’s control which can drive up overall costs. For instance, BGE MRP 1 Case No. 9645 was filed in May 2020, a month before the Commission began proceedings to address the economic impacts of the COVID-19 pandemic on ratepayers.<sup>62</sup> The economic

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<sup>59</sup> Order No. 89678 at 102.

<sup>60</sup> Maillog No. 314935 at 10, OPC Witness Fitzhenry’s Supplemental Reply Testimony.

<sup>61</sup> Order No. 89794 at 12.

<sup>62</sup> In OPC’s Petition to docket an Emergency Proceeding Regarding the COVID-19 State of Emergency ..., then OPC attorney Fred Hoover, noted the following: “Economists and government officials have described the unemployment levels experienced during the current crisis as similar to those during the Great Depression of the 1930s. At that time the Commission embarked on a series of negotiated rate reductions by utilities to provide relief for customers suffering during the economic crisis.” (Report of the Public Service Commission of Maryland for the Year 1934 at 2-3, (Dec. 31, 1934).

circumstances that plagued consumers during the pandemic have not fully abated, and new economic conditions have arisen since that time. During the 2025 legislative session, the General Assembly sought to mitigate these issues by establishing the Legislative Relief Fund and prohibiting reconciliation for future MRPs.

Nonetheless, to achieve the intended benefits of the MRP construct, the Commission fully expected that the utility would exercise every effort including deferring non-mission critical new or emergent projects or reducing the scope where possible of existing projects when the budget is exceeded, and any other fiscally responsible maneuvers that allow the utility to stay within the authorized budget while maintaining safe and reliable service. Any other expectation or allowance would mean the MRP construct would allow benefits to flow predominantly to the utility, and ratepayers to be saddled with unpredictable rate increases.

The Commission—being charged with setting just and reasonable rates—must ensure that rates are not only “just” compensation for the utility but also reasonable and affordable for ratepayers. BGE chose to be the MRP Pilot Utility. Under the MRP construct set forth in the MRP Pilot Order, the utility was expected to bear the risk of forecasting, while being allowed to experience a shorter cost recovery period and permitted more predictable revenues. Simultaneously, the MRP construct intends for ratepayers to experience more predictable rates throughout the lifecycle of the MRP including reconciliation. The Commission was troubled that the Company failed to work within its forecasted budget in Years 1 and 2 of the MRP but still allowed for \$52.2 million for electric and \$21.8 million for gas in reconciliation costs. But here, the Commission finds that approval of BGE’s final reconciliation request—an additional \$152.28 million in

revenues for BGE MRP 1 RY3, an amount twice the Company’s previous two years of approved reconciliation amounts combined-would not be just and reasonable in the context of the MRP construct. As discussed above, BGE’s requested adjustment would undermine two of the MRP’s key benefits—i.e., *more predictable rates for customers and greater transparency*—and would fail to protect consumers as required under PUA § 7-505(c)(2).

In Order No. 90948, the Commission cautioned BGE that it may in the future consider a variance test, whereby a percentage over-budget or under-implementation would be deemed imprudent.<sup>63</sup> It also warned the Company that “the lack of a specific variance test should not be considered free rein to exceed approved budgets.”<sup>64</sup> Given the magnitude of the variance requested which leads to undermining key benefits of the entire MRP process, the Commission, therefore, limits BGE’s revenue adjustment to approximately 50 percent of the Company’s 2023 MRP 1 Final Reconciliation request. However, BGE is not precluded from requesting certain disallowed adjustments if prudence is demonstrated in future rate cases.<sup>65</sup> The Commission finds the rates charged based on this adjustment<sup>66</sup> are just and reasonable, and consistent with the guidance provided in the MRP Pilot Order.

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<sup>63</sup> See Order No. 90948 at 180 where the Commission cautioned BGE that it may in the future consider a variance test, whereby a percentage over-budget or under-implementation would be deemed imprudent. The Commission, although rejecting OPC’s disallowance of the \$27.8 million for system performance work at that time, warned that its “decision does not abrogate BGE’s duty to carefully consider if spends should be deferred into future years if cost overruns are occurring in a category of spend. Failure to adjust Company practices when budgets are being exceeded could lead to future disallowances.”

<sup>64</sup> *Id.* at 181 where the Commission stated “Nevertheless, the lack of a specific variance test should not be considered free rein to exceed approved budgets.” Additionally, Staff witnesses in the present case indicated that the Commission should consider some type of cost cap or containment in MRPs to ensure electric distribution rate stability and affordability in Maryland. See *Dererie Direct* at 16-17, and *Clementson Direct* at 7. While these were forward looking recommendations, circumstances in the instant case give rise to full consideration now.

<sup>65</sup> Unless expressly stated otherwise, current or future cost-preclusion does not apply to the Company’s requests for recovery of prudently incurred capital costs.

<sup>66</sup> *Natural Gas Pipeline Co. of Am.*, 315 U.S. at 586.

## **B. Contested Project Costs**

Where Staff, OPC and other intervenors offered comments or specific recommendations, those comments and recommendations are noted or summarized. However, the Parties did not always offer recommendations as to all projects and often did not fully explain why in some cases no adjustments were proposed and in other cases failed to explain why they found portions of the Company's request acceptable. In these instances, in the absence of specific Party recommendations or other commentary, the Commission has considered the record as a whole – including many of the Company's confidential filings. The Commission's decisions are also informed by the learnings noted in the Commission's past orders that support the thoughtfulness reflected in the determinations made in this case. Because the prudence analysis is specifically focused on the question of whether BGE's management decision to proceed with spending in 2023 was prudent, prudence decisions herein do not, unless stated otherwise, preclude BGE from seeking to request recovery of capital costs at future net book value<sup>67</sup> or future O&M costs related to these projects in future rate cases.

### 1. New or Emergent Projects

#### *Major and Non-Major Storms*

#### **BGE**

BGE witness Singh testified that central Maryland experienced more damaging storm activity in 2023 than the historical five-year average upon which the minor storm budget was set, causing a strain on resources and increasing labor and material costs.<sup>68</sup> He

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<sup>67</sup> Historic cost less accumulated depreciation at the time of the rate case.

<sup>68</sup> Singh Supplemental Direct at 17 and 67-68.

testified that BGE does not budget for major storm events.<sup>69</sup> As a result, BGE experienced O&M and capital variances for minor and major storms as follows:

- (1) Minor Storm Capital (Project 61414) - \$32.7 million variance (on a \$7.5 million budget);
- (2) Minor Storm O&M (Project 61413) - \$26.5 million variance (on a \$29.2 million budget);
- (3) Major Storm Capital (Project 61417) - \$29.7 million (not budgeted); and
- (4) Major Storm O&M (Project 61418) - \$2 million (not budgeted)<sup>70</sup>

BGE also indicated that incremental Major Storm O&M had already been placed into a regulatory asset per Order No. 89678.<sup>71</sup>

### **OPC**

OPC witness Fitzhenry testified that, while storm-related expenditures are difficult for utilities to control, unforeseen increases in uncontrollable expenses can be offset by deferring discretionary emergent projects to a later period.<sup>72</sup>

### **Staff**

Staff noted that “one category of spend which exceeded its capital budget was a significant increase in minor storm costs. BGE reported that the severity of storm events in its service territory in 2023 was higher than the average over the past five years with more damage per event and used the Customer Average Interruption Duration Index (“CAIDI”) to substantiate this claim. The costs per customer for Major Outage Event restoration also showed a large increase in 2023.”<sup>73</sup>

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<sup>69</sup> Singh Supplemental Direct Testimony at 50.

<sup>70</sup> Singh Supplemental Direct Errata Testimony at 51 and 68-69.

<sup>71</sup> Singh Supplemental Direct Testimony at 69.

<sup>72</sup> Fitzhenry Supplemental Reply Testimony at 6.

<sup>73</sup> Maillog No. 316219, Staff Initial Brief at 14.

## Commission Decision

The Commission finds that BGE’s storm spending—both major storms and minor storms, capital and O&M—was prudent and that recovery of those costs via reconciliation is just and reasonable.

The Company cited storms as one of the main drivers of cost overruns in this case outside of the Company’s control, particularly minor storms.<sup>74</sup> The Commission has previously observed that “[t]he timing, duration and costs associated with major storms are beyond the control of BGE.”<sup>75</sup> The Commission has also heard and rejected OPC’s argument that “unforeseen and unpredictable storm” expenses that increased a utility’s major storms budget “should be used to curtail the Company’s system performance work and associated budget.”<sup>76</sup> At the same time, the Commission has also noted that “[t]his decision does not abrogate BGE’s duty to carefully consider if spends should be deferred into future years if cost overruns are occurring in a category of spend. Failure to adjust Company practices when budgets are being exceeded could lead to future disallowances.”<sup>77</sup>

The Commission notes with concern the high costs incurred for storm spending as this issue was also raised for BGE’s 2022 major storm expenditures in Case No. 9692. In Case No. 9692, the Commission agreed that a Major Outage Event benchmarking analysis should be produced going forward when significant outage event costs similar to 2022 occur, and it directed BGE to produce the analysis requested by Staff in the current case.<sup>78</sup> The Commission is still waiting for BGE’s benchmarking analysis. Although the Commission

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<sup>74</sup> Frain Direct Testimony at 8-9. Frain Rebuttal Testimony at JCF-5E. Frain Supplemental Direct Testimony at 10, Chart 1.

<sup>75</sup> Case No. 9692, 2023 BGE MRP Order at 179.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Order No. 90948 at 32 and n.107.

finds the present costs to be prudent, based on the record at hand, the unpredictable nature of storms is not a blank check for utility spending, and the Commission anticipates greater scrutiny of storm costs going forward, which should include benchmarking for these costs, both for minor and major storms.

The Commission notes that BGE has already placed its major storm O&M costs into a regulatory asset with a five-year recovery period, per prior Commission direction in Order No. 89678.

In light of the unanticipatedly large amount of expenses involved here, the Commission now directs that the O&M variances for minor storms shall be removed from this reconciliation similar to major storm O&M and placed into a regulatory asset with a five-year recovery period. In Order No. 89482, the Commission explained that the time period for recovery of reconciliation amounts would be set on a case-by-case basis and that under-collection by the utility shall not receive carrying costs.<sup>79</sup> Accordingly, no carrying costs will apply to the asset. The variance to be placed into a regulatory asset is \$26,537,655 for Project 61413. As noted previously the Company has already placed major storm O&M into a regulatory asset.

This treatment is consistent with the Commission's past treatment of major storm costs. The Commission cautions that regulatory asset treatment for minor storm costs is disfavored,<sup>80</sup> but it is approved in this extraordinary case because of the exceptionally high dollar amounts, in order to reduce rate shock by spreading costs over a longer period of time. BGE is directed to make a separate tariff filing for this rider.

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<sup>79</sup> Order No. 89482 at 39-40.

<sup>80</sup> It is not, however, unheard of. *See* Case No. 9230, Order No. 83907 at 34 (allowing recovery of minor storm costs over five years in a case of extraordinarily high minor storm costs).

Recovery of capital storm costs is approved for recovery in this reconciliation as requested.

*Stoney Creek Horizontal*

**BGE**

BGE witness Wright testified that Project 76080 was originally initiated as a cable replacement project because a fault-and-cable failure occurred in a section of submarine cable that crosses Stoney Creek in 2018. While the scope of this base MRP 1 project was to replace the cable that crosses Stoney Creek and to add an additional duct to allow for future cable replacement in the event of a future failure, Witness Wright explains that this project's scope was expanded beyond the scope of a normal cable replacement project due to the fact that in the event of a Rivera Beach integral substation failure, customers would be out of service until the integral substation was replaced, because a mobile transformer cannot service as back-up because the integral substation has no mobile connection. This could result in an extended customer outage until the integral substation was replaced. Therefore, it was determined that a new tie feeder with a distribution feeder from another substation was needed.<sup>81</sup> She testified that this project was originally included in Project 61132 associated with the cable replacement program, but that the magnitude of work required exceeded the typical size and scope of that project, and budget allocation was moved from Project 61132 to a new Project 76080.<sup>82</sup> The original budget was \$2.19 million with an actual spend of \$2.76 million, with the increased cost attributed by BGE to permitting delays, redesign, and change orders during construction because of site conditions along the creek.<sup>83</sup>

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<sup>81</sup> Wright Supplemental. Direct Testimony at 33.

<sup>82</sup> *Id.* at 34.

<sup>83</sup> BGE Response to Data Request 4 2023 FR.

**OPC**

In its brief, OPC argues that BGE failed to provide sufficient evidentiary support for its position that the Stoney Creek (ITN 76080) Project was necessary in 2023, beyond the reliability need driven by a Riviera Beach integral substation failure.<sup>84</sup> OPC argues that BGE failed to provide information that might demonstrate the immediate need of this project, such as the condition of the integral substation, its reliability history, and the likelihood that it may fail.<sup>85</sup> OPC recommends disallowance of these costs.

**Commission Decision**

The Commission finds that BGE's decision to proceed with Project 76080 and incur the variances in question due to unanticipated site conditions, which resulted in delays and increased costs, was reasonable for this project. The Commission notes the concerns raised by OPC regarding the possible benefits of a record regarding the condition of the substation and its reliability history and encourages BGE to present such information in the future. However, the potential consequences of a failure of either the cable that crosses Stoney Creek or the integral substation are persuasive that this project is necessary.

**Pumphrey Extension**

**BGE**

BGE witness Wright testified that Project 78022, the Pumphrey Substation extension/tie, an emergency unforecasted project, was necessary due to recurring outages at a nearby university that were affecting student life and university operations.<sup>86</sup> She testified that this was a serious, emergent reliability issue that, accordingly, was not budgeted in the

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<sup>84</sup> OPC Initial Brief at 20.

<sup>85</sup> *Id.*

<sup>86</sup> Wright Supplemental Direct Testimony at 19.

2023 Revised Plan. She further testified that the eventual cost was \$8.3 million, creating a variance of \$4.08 million from the 2023 Capital and O&M Project List (due to 2022 budgeted materials moving into calendar year 2023).<sup>87</sup> After the project was identified, BGE incurred \$1.6 million in costs from a scope change resulting from an inability to obtain a right-of-way and costs of overhead and underground equipment, with multiple instances of transitioning from overhead to underground lines.<sup>88</sup>

BGE argued that there is no evidence contradicting witness Wright's testimony about multiple outages and disruptions at a major university.<sup>89</sup> BGE stated that reducing costs was not a motivating factor behind this project, but rather that its goal was providing safe and reliable service.<sup>90</sup>

### **OPC**

In its brief, OPC argues that BGE failed to provide sufficient evidentiary support for its position that the Pumphrey Extension/TIE (ITN 78022) was necessary in 2023.<sup>91</sup> OPC recommends disallowance of these costs.

### **Commission Decision**

The Commission finds that BGE failed to demonstrate the prudence of moving forward with this unplanned and emergent project, in light of the substantial cost overruns occurring across BGE's distribution system. The Commission is concerned that BGE has not presented evidence regarding the size and risk of the reliability issue in question that would justify the significant expense and emergency treatment that this project was given. Although

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<sup>87</sup> *Id.* at 51-52; BGE Response to OPC Data Request 4 2023 FR.

<sup>88</sup> Wright Supplemental Direct Testimony at 52.

<sup>89</sup> BGE Reply Brief at 24.

<sup>90</sup> *Id.* at 24-25.

<sup>91</sup> OPC Initial Brief 20-21.

the utility must ensure safe and reliable service, that basis is not grounds for boundless spending beyond approved budgets, particularly in an environment of substantial spending increases that risk customer rate shock. Recovery of the \$8,333,479 in capital costs for Project 78022 in this reconciliation is therefore denied; however, the Company is not precluded from requesting cost recovery for capital costs in a future rate case.

### Mesh Network

#### **BGE**

BGE witness Cloyd testified that Project 85303, the mesh network expansion program, replaced an outdated wireless system, improving reliability and operational efficiency.<sup>92</sup> He testified that BGE considered alternative solutions and postponing this project, both of which were found to be unsuitable because of lack of compatibility or the risk of vulnerabilities and reliability.<sup>93</sup> He testified that the project was added in 2023, using amounts originally budgeted in Project 66379, and ultimately cost \$4.8 million.<sup>94</sup>

#### **OPC**

In its brief, OPC argues that BGE failed to provide sufficient evidentiary support for its position that its Mesh Network enhancement Project, upgrading BGE's communication network, (ITN 85303) was necessary in 2023.<sup>95</sup> OPC argued that BGE's testimony and exhibits provided no explanation for why this new "discretionary" capital program was prudent in a rising cost environment.<sup>96</sup> OPC recommends disallowance of these costs.

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<sup>92</sup> Cloyd Supplemental Direct Testimony at 61.

<sup>93</sup> *Id.* at 62.

<sup>94</sup> *Id.*

<sup>95</sup> OPC Initial Brief at 21-22.

<sup>96</sup> *Id.* at 22.

## Commission Decision

The Commission finds that BGE has failed to demonstrate the prudence of moving forward with this unplanned and emergent project, in light of the substantial cost overruns in the third year of the multi-year rate plan. BGE has made no demonstration, beyond the assertion of increased reliability and security, of the overall benefit to ratepayers of this project that would justify its inclusion as an unplanned investment of this size in a year where BGE overall experienced extraordinary cost overruns. Therefore, the \$4,842,600 in capital costs for Project 85303 are removed from the reconciliation. The Commission notes that project costs for this project were approved for inclusion in projected rates in Case No. 9692 for subsequent years.

### 2. Projects Exceeding Approved Budgets

#### i. **Electric Projects**

##### 4kV Conversion Projects

#### **BGE**

BGE witness Laura Wright testified that the Company's 4kV Conversion projects "focused on upgrading the 4kV infrastructure to modern 13kV standards, providing reliability, operational, and environmental benefits."<sup>97</sup> She noted that the substations that are part of the 4kV system are some of the oldest owned by BGE, which means the equipment is unique and requires specific knowledge to address issues or failures.<sup>98</sup> Additionally, she pointed out that spare equipment is not readily available in the event there is a failure. Ms. Wright argued the Company's conversion of 4kV to 13kV provides several benefits

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<sup>97</sup> Wright Supplemental Direct Testimony at 45.

<sup>98</sup> *Id.*

including safety improvements and “creating a grid that can facilitate customer interest in a greater array of energy offerings such as rooftop solar, which 4kV has limited capacity to support.”<sup>99</sup>

Ms. Wright testified that the 4kV Conversions include feeders that currently have both aging substation and distribution assets, limited load capacity, and limited feeder restoration options. The MRP 2023 budget for 4kV Conversion projects was \$10,503,581 and the MRP 2023 actuals was \$15,657,213. Ms. Wright argued that the variance of \$5.1 million across all 4kV projects was “mostly driven by contractor bids higher than estimate, new Baltimore City traffic requirements, and carryover work from 2022.”<sup>100</sup> She cautioned that delaying a 4kV conversion project could result in needing to reapply for permits causing further delays and additional costs. Additionally, there could be a safety concern of leaving the 4kV projects and feeders outside of the expected construction schedule.<sup>101</sup>

### **OPC**

OPC argued that BGE provided little support to demonstrate the prudence of continuing the 4kV work at higher costs. OPC pointed out that while Ms. Wright provided several potential impacts of delaying the projects, BGE did not provide any data to substantiate its claims.<sup>102</sup> For instance, BGE provides “no estimates of the increased permitting costs that would result from pausing ongoing projects. Nor does the company provide any information about the current reliability of a particular feeder that may be affected by a work slowdown and the likelihood and customer impact of an outage on the

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 46.

<sup>101</sup> *Id.*

<sup>102</sup> OPC Initial Brief at 23.

feeders that the ongoing construction makes difficult to restore.”<sup>103</sup> OPC also noted that in Order No. 90948 BGE MRP 2, the Commission reduced BGE’s 4kV conversion budget to “strike an appropriate balance between the need to continue 4kV conversions and the goal of minimizing burden on ratepayers.”<sup>104</sup> OPC, thus, argued that BGE has not justified the \$5 million variance and therefore it should be disallowed.

### **Commission Decision**

As noted previously, the Commission expected strong scrutiny when there were significant cost overruns. The Commission finds, as argued by OPC, that the Company’s testimony failed to provide information to substantiate its claims regarding higher contractor bid prices, or show the reliability impacts on slowing down the 4kV conversion projects by staying within the authorized budget, or provide details on how the Baltimore City traffic requirements impact the costs. While the Company made these cursory claims, given the significant cost overruns the Commission expected more quantitative information to justify the additional spend in this category.

In Order No. 89678, the Commission elected not to eliminate BGE’s 4kV conversion program or disallow spending. Rather, it determined to extend the budget spending period for some programs and concluded that “BGE must reduce the financial impact to customers by reducing the speed of its spending.”<sup>105</sup> Similarly, the Commission reiterates that while it encourages BGE to continue its 4kV conversions in order to modernize its infrastructure to bring greater value to the grid, the Company should do so in a manner that minimizes the burden on ratepayers. Given the level of overspend in 2023, the Commission finds that it is

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<sup>103</sup> *Id.* at 23-24.

<sup>104</sup> *Id.* at 24.

<sup>105</sup> Order No. 89678 at 101.

inappropriate to allow the cost overruns on a set of projects in which the Company had been previously instructed to slow the pace of spending. Therefore, the Commission will disallow the variance on 4kV projects labeled as “in-service” in 2023, which is Project 55783: Clifton Park Substation 4827 4kV Conversion and results in a disallowance of \$1.1 million instead of \$5.1 million as recommended by OPC.<sup>106</sup> However, the Company would not be precluded from seeking cost recovery in a future rate case.

### Cable Replacement

#### BGE

In her Supplemental Direct testimony, BGE witness Laura Wright testified that the primary purpose of the Cable Replacement programs is to strategically and proactively replace BGE’s aging distribution cable, which in turn improves the operation and reliability of the underground system while reducing maintenance spending.<sup>107</sup> She indicated that BGE prioritizes cables for replacement using several factors and generally replaces the most fault prone cables first. Ms. Wright argues using this approach, the utility is directly reducing customer interruptions.<sup>108</sup> She also noted that “cable faults are amongst BGE’s top cause for outages.”<sup>109</sup> Therefore, she deduced that “proactive cable replacement will in turn reduce RM43 SAIDI and SAIFI,<sup>110</sup> as well as our CEMI, driving up reliability. Proactive replacement reduces the higher costs associated with emergent repairs.”<sup>111</sup>

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<sup>106</sup> Wright Supplemental Direct Testimony at 45 and LW-3.

<sup>107</sup> *Id.* at 42.

<sup>108</sup> *Id.* at 43.

<sup>109</sup> *Id.*

<sup>110</sup> Referring to System Average Interruption Duration Index, System Average Interruption Frequency Index, and Customers Experiencing Multiple Interruptions, respectively.

<sup>111</sup> Wright Supplemental Direct Testimony at 43.

Ms. Wright testified that BGE has two main cable replacement programs. 61132: Cable Replacement Planned Primary, which funds the identification and replacement of aging distribution cable to improve the operation and electric system reliability on the underground primary system.<sup>112</sup> The second program is 61134: Cable Replacement Planned Secondary, which “funds the identification and replacement of aging distribution cable to improve the operation and electric system reliability on the underground secondary system.”<sup>113</sup> Ms. Wright’s testimony also noted that the 62920: Turnkey Cable Program was absorbed into 61132: Cable Replacement Planned Primary, which caused the \$1.2 million budgeted in the Revised Plan for 2023 this program to subsequently be \$0 in 2023 actuals.<sup>114</sup> Mr. Wright claims that the cost overruns for these projects were driven by unfavorable environmental conditions, requiring hand digs and difficult drilling, that subsequently increased costs.<sup>115</sup>

**Table 4: Cable Replacement Subset Projects<sup>116</sup>**

<b>Project Name</b>	<b>MYP 2023 Budget</b>	<b>MYP 2023 Actuals</b>	<b>Variance \$</b>	<b>Variance %</b>
61132: Cable Replacement Planned Primary	\$10,380,001	\$13,883,342	\$3,503,341	33.8%
61134: Cable Replacement Planned Secondary	\$1,220,000	\$2,266,522	\$1,046,522	85.8%
62920: Turnkey Cable Program	\$1,249,903	-	(\$1,249,903)	-100.0%
<b>TOTAL</b>	<b>\$12,849,904</b>	<b>\$16,149,864</b>	<b>\$3,299,960</b>	<b>25.7%</b>

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 44.

<sup>114</sup> See Table 13-Cable Replacement Subset Projects at 42.

<sup>115</sup> Wright Supplemental Direct at 44.

<sup>116</sup> *Id.* at 42.

### **OPC**

In its Initial Brief, OPC pointed out that BGE exceeded its budgets for both of the Cable Replacement Programs by \$3.5 million for Project 61132 and \$1 million for Project 61134.<sup>117</sup> OPC argued that “BGE has not demonstrated the prudence of pursuing the volume of cable replacement work completed in 2023 given the environmental challenges posed by the projects it identified.”<sup>118</sup> OPC admonished that a prudent utility operating within a fixed budget would adjust the scope of its work to maximize the effectiveness of available budgeted funds.<sup>119</sup> OPC argued that BGE has not provided any evidence where it has made adjustments to the projects or showed evidence where reducing the scope of work to align with the Company’s authorized budget would harm customers and negatively impact reliability. OPC recommended that the Commission disallow the \$4.5 million variance in Project 61132 and Project 611324.

### **BGE Rebuttal**

BGE rebutted OPC’s arguments, stating that OPC failed to provide any opinion from a qualified expert to support its assertion about the actions a “prudent utility” would take. BGE noted that OPC made its assertion in its Initial Brief instead of proffering testimony of a qualified expert witness for admission into the evidentiary record. BGE argued that the Commission must reject OPC’s proposed disallowances.

### **Commission Decision**

The Commission finds that while OPC may not have made the specific assertion during the evidentiary phase of this case, its admonition about utilities staying within an

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<sup>117</sup> OPC Initial Brief at 24.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

authorized budget is not new nor unreasonable. To the contrary, in Order No. 90948, the Commission explicitly expressed a similar admonition to BGE by stating that “Commission-approved budgets and spending are not aspirational. The Commission expects utilities to manage their operations and spending within the limits the Commission has approved.”<sup>120</sup> The Commission’s expectation for a utility to exercise good business judgment and budget governance is grounded in its authority to establish just and reasonable rates that fully consider and are consistent with the public good, and allow a reasonable return on the fair value of a utility’s property used and useful in providing service to the public.<sup>121</sup>

Here, BGE budgeted \$10.3 million in its MRP 2023 Budget for Project 61132 and recorded MRP 2023 Actuals for \$13.8 million representing a variance of \$3.5 million. Likewise, the Company budgeted \$1.2 million in its MRP 2023 Budget for Project 61134 and recorded MRP 2023 Actuals for \$2.2 million representing a variance of \$1.0 million. BGE provides cursory statements to argue that the variance is warranted because proactive cable replacement reduces RM43 SAIDI and SAIFI, as well as CEMI, which increases reliability. Additionally, the Commission acknowledges the charts in the confidential section that demonstrate improved reliability over time associated with this program. However, the Commission is not persuaded that with the current cost overruns it is appropriate to assess customers the variance of the program through reconciliation at this time. There is a lack of discussion as to why the volume of projects had to be maintained or why pursuing fewer projects would have detrimentally impacted reliability at the increased costs in a year the reconciliation revenue requirement was exceeded so greatly. Hence, the Commission accepts OPC’s recommendation of disallowance for inclusion in the Company’s MRP 1 Year 3

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<sup>120</sup> Order No. 90948 at 181.

<sup>121</sup> PUA § 4-101.

Reconciliation but, the Commission finds the appropriate amount of disallowance is \$3.3 million reflecting the variance for the entire cost category of cable replacement projects including Project 62920: Turnkey Cable Program.<sup>122</sup> This decision, however, does not preclude BGE from seeking cost recovery in a future rate case.

*13kV Overhead Distribution Automation Reclosers*

**BGE**

BGE witness Wright testified that Project 61147: Overhead Distribution Automation Reclosers and Sectionalization is part of the Company’s system monitoring and automation technology projects needed to monitor and improve the reliability of BGE’s electric system. Specifically, Ms. Wright noted that the “distribution automation equipment ... reduces the number of customers experiencing sustained interruptions by intelligently reconfiguring the distribution circuit following an outage.”<sup>123</sup> Additionally, Ms. Wright testified that since the distribution automation programs began including devices installed under the 2023 budget, the Company “realized a customer interruption avoidance of approximately 1.78 million Avoided Customer Interruptions (“ACI”) in 2023 alone when integrated into BGE’s auto restoration schemes.”<sup>124</sup> Ms. Wright argued that the increased 2023 spend in Project 61147: Overhead Distribution Automation Reclosers and Sectionalization was primarily driven by adding more reclosers to the plan in order to improve RM 43 SAIFI, drive down Poorest Performing Feeders and increase customer reliability.<sup>125</sup>

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<sup>122</sup> Projects included are: Projects 61132, 61134, and 62920.

<sup>123</sup> Wright Supplemental Direct Testimony at 47.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 48.

### **OPC**

In its Initial Brief, OPC argued that BGE provided “no information explaining the necessity and impact of increasing the scope of work.”<sup>126</sup> Specifically, OPC pointed out that BGE fails to provide any quantification of how much the increased scope of work will improve SAIFI or the extent to which it will reduce the number of poorest performing feeders.<sup>127</sup> OPC argued that absent a compelling justification and supporting evidence, the Company has not demonstrated the prudence of its \$3.8 million variance.<sup>128</sup>

### **BGE Rebuttal**

BGE argued that OPC did not sponsor any expert witness opinion testimony or evidence whatsoever during the case to challenge the prudence of the investments in distribution automation.<sup>129</sup> BGE maintained that “[t]he uncontested testimony of Company Witness Wright and exhibits thereto provide more than enough evidence to satisfy the Company’s burden of proof with respect to the prudence of these investments.”<sup>130</sup> BGE argued that the Commission should reject as baseless OPC’s recommendation for disallowance.

### **Commission Decision**

The Commission recognizes that BGE provided general historical data such as the approximate number of ACI since the Company implemented distribution automated equipment, including devices installed in 2023, as well as BGE’s target to reduce SAIFI from 1.08 in 2019 to 0.83 SAIFI in 2023. The Commission finds that while this general historical

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<sup>126</sup> OPC Initial Brief at 25.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 26.

<sup>129</sup> BGE Reply Brief at 32.

<sup>130</sup> *Id.*

data supports BGE's investment in this tool as a cost-effective means to reduce customer interruptions, it does not address specifically how the \$3.8 million variance in 2023 provided value to ratepayers as directed in Order No. 91396 nor the prudence of moving forward with this additional work in light of the substantial cost overruns occurring across BGE's distribution system. BGE has made no demonstration, beyond the assertion of increased reliability of the overall benefit to ratepayers that would justify its overspend of this of this size in a year where BGE overall experienced extraordinary cost overruns. Hence, the Commission accepts OPC's recommendation of disallowance of the \$3.8 million variance for Project 61147, but the Company is not precluded from requesting cost recovery in a future rate case.

*Pad Mount*

***BGE***

BGE witness Wright testified that Project 60808: Pad Mounted Distribution Automation Reclosers and Sectionalization "helps improve BGE's underground system that has minimal automation to sectionalize faults and automatically restore the non-faulted customers which can cause excess customer outages and longer duration of the outages due to required repairs."<sup>131</sup> She explained that pad mounted distribution automation equipment is installed at these select locations to reduce the customer count per segment and limit the outage impact to only those customers directly affected.<sup>132</sup> Ms. Wright contended that the \$1.3 million increase in actual costs was primarily driven by material costs being higher than anticipated.<sup>133</sup>

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<sup>131</sup> Wright Supplemental Direct Testimony at 48.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

## **OPC**

OPC argued that BGE provides no explanation as to why the Company could not reduce the scope of work in light of increased costs.<sup>134</sup> Additionally, OPC claimed that BGE has not shown the prudence of overspending on a project when the Company could have adjusted the scope in light of increasing materials costs.<sup>135</sup>

## **Commission Decision**

The Commission finds that the Company’s general statement about higher material cost without additional information providing cost comparisons is insufficient. Therefore, the Commission finds that the Company has not demonstrated, as directed in Order No. 91396, that these “projects were appropriately selected, that they provide value to ratepayers, that good management judgement was exercised in the selection of the materials and methods used to execute the projects, and that the costs—by comparison with alternatives were justified.”<sup>136</sup> The Commission also finds that BGE has failed to demonstrate the prudence of moving forward with this higher spend, in light of the substantial cost overruns occurring across BGE’s distribution system that would justify its overspend of this size in a year where BGE overall experienced extraordinary cost overruns. Hence, the Commission accepts OPC’s recommendation of disallowance of the \$1.3 million variance for Project 60808 for 2023 MRP reconciliation purposes, but the Company is not precluded from seeking cost recovery for capital costs in a future rate case.

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<sup>134</sup> OPC Initial Brief at 26.

<sup>135</sup> *Id.*

<sup>136</sup> Order No. 91396 at 3-4.

## Project Apollo

### **BGE**

BGE witness Cloyd testified that BGE's Apollo project is a multi-year investment that will replace Exelon's financial, work planning and tracking systems, and upgrade fixed assets system.<sup>137</sup> Mr. Cloyd noted that implementation of the Apollo is scheduled for 2026 and is expected to reduce the number and complexity of applications and system interfaces and implement a scalable technology platform.<sup>138</sup> He argued that this project is necessary because it replaces outdated systems that are no longer supported by vendors, minimizes technical debt, and ensures cybersecurity protection.<sup>139</sup> Mr. Cloyd stated that across both the gas and electric lines of business the total spend in 2023 was \$6.1 million, which is \$4.5 million higher than the MRP budget of \$1.6 million. He argued the variance was primarily driven by the delay of the Project Apollo financial system transformation, which shifted the workplans from 2022 to 2023.<sup>140</sup>

### **OPC**

OPC argued that Mr. Cloyd's testimony does not make clear how customers benefit from this cost exceedance and that the cost should be removed because BGE's testimony and exhibits do not show which portions of the project have been placed in service and are currently used and useful.<sup>141</sup> Additionally, OPC pointed out that the scope and timing of this project is within the Company's discretion and that "in a rising cost environment, good fiscal stewardship entails minimizing cost increases by curtailing discretionary spending."<sup>142</sup>

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<sup>137</sup> Cloyd Supplemental Direct Testimony at 65.

<sup>138</sup> *Id.* at 66.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> OPC Initial Brief at 27.

<sup>142</sup> *Id.* at 28.

### **BGE Rebuttal**

In BGE’s Reply Brief, the Company stated that it followed appropriate generally accepted accounting principles for recognizing licensing cost for the testing and training portions of the implementation.<sup>143</sup> BGE also mentioned that it had provided discovery responses to OPC to explain the specific costs for the Apollo Project and that OPC failed to acknowledge those responses in its Initial Brief.<sup>144</sup>

### **Commission Decision**

BGE witness Cloyd indicated that the implementation of the platform is scheduled for 2026 after which the full benefits enumerated in his testimony will be realized.<sup>145</sup> Therefore, the Commission finds that it is not clear if the Apollo Project system is used and useful to ratepayers at this time.

The Commission acknowledges that BGE’s response to OPC’s January 3, 2025 data request indicated that the license costs related to Project Apollo are considered used and useful and that the specific costs placed into service are the platform licenses used to develop the enterprise-wide system. However, BGE’s response also makes clear that the program is not fully in use as the Company states “the program in its entirety will transform Exelon’s ability to serve customers by empowering Exelon’s workforce through simplification of Finance and Work Planning & Tracking processes...”<sup>146</sup> Given that the Project Apollo is not fully implemented for customer benefits to be realized and broad cost overruns exist, the Commission finds it is inappropriate to include these costs for reconciliation at this time. Hence, the Commission disallows the capital costs of \$6.1 million for Project 74744 for

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<sup>143</sup> BGE Reply Brief at 33.

<sup>144</sup> *Id.*

<sup>145</sup> Cloyd Supplemental Direct Testimony at 66 and Company Exhibit 2023 FR Supplemental MJC-7.

<sup>146</sup> BGE Reply Brief at Attachment 1 and BGE Response to OPC Data Request 10 2023 FR.

inclusion in the Company's MRP 1 Year 3 Reconciliation but does not preclude BGE from seeking cost recovery in a future rate case once the system is fully implemented.

### Fleet Procurement

#### BGE

BGE witness Cloyd testified that there were five projects in 2023 in the Fleet Capital category with a budget or actual spend greater than or equal to \$1 million which represent approximately 92% of the Fleet Capital spend in 2023.<sup>147</sup> He noted that BGE's key capital fleet projects are comprised of the procurement of vehicles, construction equipment, and trailers. Mr. Cloyd testified that the majority of the Fleet Capital spend represents the replacement of various types of fleet assets (i.e., ICE heavy duty and light duty, JEMS heavy duty and light duty, and BEV light duty) that have reached end-of-life.<sup>148</sup> The actual spend in 2023 for the five Fleet Capital Projects for both gas and electric sectors was a combined \$23.4 million with a variance of \$6.8 million (electric) and \$3.8 million (gas) over budget. Mr. Cloyd argued that the budget increase is primarily driven by higher fleet additions due to growth in business, including shifting work from contractors to BGE employees and the purchase of eight mobile command center trailers, inflation and supply chain shortages.<sup>149</sup>

#### OPC

OPC argued that BGE has not demonstrated prudence of spending nearly twice its approved fleet procurement budgets. OPC argued that BGE failed to show "why the scope and pace of its fleet procurements could not be reduced given the 'unforeseen' cost increases

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<sup>147</sup> Cloyd Supplemental Direct Testimony at 67.

<sup>148</sup> *Id.* at 68.

<sup>149</sup> *Id.* at 90-91.

the Company experienced. OPC highlighted that BE also provided no information on the number of it needed to replace nor explain why it needed to procure new mobile command center trailers or short falls for the Company's current emergency readiness.<sup>150</sup>

### **BGE Rebuttal**

In BGE's Reply Brief, Company argued that OPC improperly for the first time raised questions concerning the Fleet Capital category or requested disallowance of the 2023 variance in BGE spending in this category. The Company recommended that the Commission reject OPC's request and reiterated the cost drivers and rationale that Mr. Cloyd stated in his Supplemental Direct testimony.<sup>151</sup>

### **Commission Decision**

The Commission finds that BGE provided general reasons supporting the amount of spend in the fleet capital category but failed to substantiate its statements with a quantitative showing of why the pace of procurement of vehicles should accelerate given the budget constraints. Nor did the Company discuss any adverse impacts to reliability that would have occurred without the Company increasing the amount of spend in this area nor the prudence of moving forward with the purchase of eight mobile command center trailers in light of the substantial cost overruns occurring across BGE's distribution system in a year where BGE overall experienced extraordinary cost overruns. Hence, for reconciliation purposes the Commission disallows the \$10.6 million for inclusion in the Company's MRP 1 Year 3

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<sup>150</sup> OPC Initial Brief at 29.

<sup>151</sup> BGE Reply Brief at 34-35.

Reconciliation, but the Company is not precluded from seeking cost recovery in a future rate case.<sup>152</sup>

**ii. Gas Projects**

*Gas Services Regulator Relocation Program*

**BGE**

BGE witness White testified that, as a result of the Flower Branch Act, BGE is required to relocate any gas service regulator that provides service to a multifamily residential structure from indoors to outdoors.<sup>153</sup> BGE filed with the Commission a compliance plan that called for replacing approximately 7000 regulators over 10 years, an average of 700 per year, but with lower numbers of regulators replaced in the early years of the plan.<sup>154</sup> BGE initially proposed replacing 200 regulators in 2023, with higher amounts in later years. The Commission issued Order No. 90250, approving BGE’s compliance plan. As Project 79897, BGE eventually replaced 750 regulators in 2023, with a total cost of \$10.3 million.<sup>155</sup>

BGE argued that its decision to accelerate its regulator replacement program was within its own discretion, that the overall program was required by law and approved by the Commission, and that “BGE should not be penalized for performing more work in 2023 than what was originally estimated.”<sup>156</sup> BGE also argued that the decision to increase replacement work was driven by the availability of resources due to a work stoppage on main replacement

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<sup>152</sup> This encompasses the difference between original and actual cost for Project IDs 68302, 78798, 78801, 78804, 78806, and 78807.

<sup>153</sup> White Supplemental Direct Testimony at 59-60.

<sup>154</sup> Maillog No. 238325.

<sup>155</sup> White Supplemental Direct Testimony at 60-61.

<sup>156</sup> BGE Reply Brief 36.

projects in 2023.<sup>157</sup> BGE also notes, in its reply brief, that the Commission never specified a cap on the number of replacements to be performed in 2023, and also that BGE made a filing in January 2024 that put forth BGE’s progress on this project, which did not elicit public concerns at that time.<sup>158</sup>

### **OPC**

In its brief, OPC notes that the Commission approved, in Order No. 90250, an implementation plan for the completion of 200 gas meter regulator relocations in 2023 at a cost of \$3.6 million, but BGE exceeded the approved scope of work and budget by relocating 750 regulators at a cost of \$10.3 million.<sup>159</sup> OPC argues that BGE’s filings provide no explanation or justification for the need to accelerate this regulator relocation work, especially in a rising capital cost environment. OPC recommends disallowance of these costs.

### **Commission Decision**

The Commission finds that BGE’s decision to significantly accelerate its gas regulators relocations at nearly four times the rate previously approved by the Commission was imprudent and that the associated variances should not be recoverable in the Company’s MRP 1 Year 3 Reconciliation. Although the Commission appreciates that the work does need to be done eventually, BGE has failed to demonstrate the prudence of this significant acceleration given the extraordinary increases in costs across BGE’s distribution system.

The Commission is unpersuaded by BGE’s arguments that this program was required by law and approved by the Commission. BGE massively sped up the timeline of work approved by the Commission and has provided no justification for the decision to accelerate

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<sup>157</sup> *Id.* at 37.

<sup>158</sup> *Id.* at 36-37.

<sup>159</sup> OPC Brief at 29-30.

its spending plan in the face of rapidly rising spending across BGE's distribution network, beyond the fact that it had resources available. BGE does not assert that those resources were a sunk cost that needed to be used or be wasted. The Commission can only conclude that BGE had the opportunity to follow its original plan at lower cost or accelerate its plan at higher cost and chose the higher cost option. The Commission is similarly unpersuaded by the fact that BGE notified the Commission in 2024 of its 2023 progress on this project, in a proceeding unlike this present one because prudence was not at issue.

Accordingly, the Commission finds that the Company has not demonstrated that the decision to accelerate its plan was prudently undertaken. The associated variances of \$6,609,898 for Project 79897 may not be collected in the MRP 1 Year 3 Reconciliation, but the Company is not precluded from seeking cost recovery in a future rate case.

#### *System Reliability-Gas Distribution*

##### *BGE*

BGE witness White testified that Project 58194 addressed regions of the gas system identified as having potential reliability concerns and generally involved installation of gas mains to interconnect existing systems, or installation of new mains and services to transfer customers to a more reliable system while retiring the less reliable system.<sup>160</sup> Work in 2023 involved a total of 17 jobs in various stages of construction, eight of which were completed and the remaining nine continued construction activities into 2024.<sup>161</sup>

Witness White testified that Project 58194 had a variance of \$5.4 million, ultimately costing 106 percent more than its 2023 budget, due to a Temporary Restraining Order

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<sup>160</sup> White Supplemental Direct Testimony at 54.

<sup>161</sup> *Id.* at 54-55.

(“TRO”) issued by the Circuit Court for Baltimore City and work stoppage resulting from Case No. 9711.<sup>162</sup> She testified that BGE reallocated the employees who were working on the projects affected by the work stoppage to Project 58194, accelerating certain 2024 reliability work in 2023 and rebalancing resources unable to complete service work requiring a regulator to other pipeline work in its system.<sup>163</sup> She testified that this decision was motivated by a desire to keep these employees working on BGE’s system to be available to continue work for Case No. 9711 after the work stoppage was completed.<sup>164</sup>

### **OPC**

In its brief, OPC challenged statements by BGE witness White that accelerating work on this project was justified by the need for BGE to “keep qualified resources on the BGE system” by redeploying contractors affected by a work stoppage to other projects, to ensure those contractors were available to resume work once the work stoppage was lifted. OPC argues that there is no evidence in the record that the redirection of contractors was necessary to ensure that contractors could resume work once the work stoppage was lifted.

### **Commission Decision**

The Commission finds that BGE has not established that inclusion of its variances for this project in this reconciliation is just and reasonable. The Commission understands that the TRO created challenges, but the decision to massively accelerate work into 2023 when that work could have followed its original timeline was not justified given the large additional

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<sup>162</sup> White Supplemental Direct Testimony at 55. (On June 28, 2023, the Circuit Court issued a TRO in Case No. 24-C-23-002872 stating that BGE could not install a gas service regulator on the outside of an existing residential customer’s property if the customer opposed the installation. Subsequently, the Commission ordered a pause in gas service location work.) BGE Initial Brief at 32 and n. 101.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

costs and extraordinary overspend across BGE's distribution system. The Commission does not find, given the circumstances and price, that it was necessary for BGE to re-allocate its contractors. Therefore, the associated variances of \$5,386,276 for Project 58194 may not be collected in the MRP 1 Year 3 Reconciliation. However, the Company would not be precluded from seeking cost recovery for capital costs in a future rate case.

3. Other Miscellaneous Projects

Baltimore City Conduit

**BGE**

BGE witness Singh testified that Project 87472: Conduit Capital represents costs related to capital improvements to the Baltimore City conduit system which is reflective of the amended conduit agreement between BGE and Baltimore City.<sup>165</sup> The Company explained that since 1903, BGE and Baltimore City have had agreements regarding BGE's use of the conduit system and had periodically amended the agreement to increase the fees that the Company pays for occupancy and City-conducted maintenance of the conduit system.<sup>166</sup> The BGE-Baltimore City conduit agreement included in the Company's initial MRP filing in Case No. 9645 expired on June 30, 2021. Mr. Singh testified that in 2023, BGE and Baltimore City negotiated an amended agreement, under which BGE is responsible for a portion of capital improvements to the city's conduit system, while Baltimore City remains responsible for the system's maintenance.<sup>167</sup> Mr. Singh further clarified that BGE is obligated for up to \$120 million in capital improvements over the initial term of the

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<sup>165</sup> Singh Supplemental Testimony at 52.

<sup>166</sup> BGE Initial Brief at 16.

<sup>167</sup> Singh Supplemental Testimony at 52.

agreement which covers February 15, 2023 to December 31, 2026.<sup>168</sup> He also noted that the amended agreement became effective after the Company's 2023 Project List was submitted to the Commission.<sup>169</sup>

Mr. Singh argued that the 2023 expenditure on the conduit system was both prudent and necessary. In his Rebuttal testimony, Mr. Singh testified that “[i]n order to provide safe and reliable electric service in Baltimore City, BGE and all other utilities are required to run their utility lines within the City-owned conduit system.”<sup>170</sup> Mr. Singh noted that in 2023, the Company experienced multiple emergent and customer related conduit system issues that BGE was required to address that impacted safe and reliable electric service in Baltimore City.<sup>171</sup> He indicated that addressing these issues resulted in an overall cost of \$17 million in conduit expenditures.<sup>172</sup> Mr. Singh stated that “[a] significant portion of the expenditures focused on replacing failing conduit instead of repairing the old assets, eliminating rework and future delays in customer restoration.”<sup>173</sup> He also noted that the Company rebuilt manholes in disrepair that were degraded and collapsing in order to prevent injury to BGE employees and service disruptions.<sup>174</sup>

In his Supplemental Testimony, Mr. Singh reiterated his position that BGE's conduit system expenditures were prudent and necessary. First, he highlighted that “the amended agreement now allows BGE to perform capital improvements to the city-owned conduit system, an ability BGE was previously not permitted to undertake.”<sup>175</sup> Previously, BGE paid

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Singh Rebuttal Testimony at 7.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 8.

<sup>175</sup> Singh Supplemental Testimony at 53.

fees to Baltimore City and the city decided what if any maintenance or capital improvements to perform on the conduit system.<sup>176</sup> Second, he argued that the Baltimore City conduit system is largely composed of outmoded material no longer used in modern conduit construction.<sup>177</sup> He noted that because of the rate of failure associated with this outmoded material the Company assessed that it was more cost effective to systematically replace the outmoded materials with more modern materials used by BGE in other parts of its service territory.<sup>178</sup> BGE contended that “the outmoded nature of the city-owned conduit has directly contributed to several well-publicized fires, which caused disruptive and costly outages and damage.”<sup>179</sup> Mr. Singh asserted that the amended agreement would allow BGE to apply the same modern technology and infrastructure it uses in its conduits in other parts of its service territory, where disruptive and costly events do not occur.<sup>180</sup>

Therefore, Mr. Singh argued that the 2023 capital cost variance of \$17 million for Project 87472 is primarily due to the Baltimore City Conduit capital work not included in the base MRP for Case No. 9645. Mr. Singh argued that BGE has demonstrated that the conduit-related expenses were prudent and necessary, and thus should be allowed in its entirety, rejecting both OPC’s recommendation to disallow \$7 million in incremental expenditures and Staff’s recommendation to disallow all of the conduit expenditures. In its Initial Brief, the Company suggested that alternatively the Commission could approve BGE’s deferral of the revenue requirement associated with all the conduit-related expenditures to a regulatory asset and address the prudence once the benefit-cost analysis has been completed

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 54.

<sup>180</sup> *Id.*

by the Company.<sup>181</sup> Further, BGE contended that the alternative regulatory asset treatment is the only proposal before the Commission, other than providing BGE with full recovery of the 2023 expenditures, that could even be argued to be fair and equitable.<sup>182</sup>

**OPC**

In his Direct Testimony, OPC witness Fitzhenry noted that BGE did not budget for Project 87472 in Case No. 9645. Instead, the Project 87472 emerged from the February 2023 amendment of the Company's conduit agreement with Baltimore City, whereby the Company agreed to make up to \$120 million in capital improvements in the conduit system over the course of 2023 to 2027.<sup>183</sup> Mr. Fitzhenry testified that the Company in its MRP 2 filing in Case No. 9692 projected that it would make \$10 million in capital improvements to the conduit system in 2023 but instead the Company made capital expenditures of \$17 million, a \$7 million increase over the Company's projections. Mr. Fitzhenry recommended that the Commission disallow the \$7 million increase, highlighting that the amended agreement "did not require any specific amount of capital investment in 2023" and pointed out that the agreement was being challenged by OPC in the Company's MRP 2 filing in Case No. 9692 making the Commission's approval uncertain.<sup>184</sup> Therefore, Mr. Fitzhenry argued that BGE should not have accelerated its capital investments in the conduit for 2023 without Commission approval.<sup>185</sup>

In its Initial Brief, OPC noted that the Commission in Order No. 90948 authorized BGE to include projected conduit expenditures in its MRP 2 base rates while emphasizing

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<sup>181</sup> BGE Initial Brief at 19.

<sup>182</sup> *Id.*

<sup>183</sup> Fitzhenry Direct Testimony at 13.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 14.

that such expenditures would be subject to a future prudence review at the reconciliation states of Case No. 9692 and a benefit cost analysis.<sup>186</sup> OPC further pointed out that the Commission issued Order No. 90948 on December 13, 2024, which meant that the majority of the \$17 million in conduit-related expenditures occurred during a time when the Company did not have approval from the Commission to recover any of the costs.<sup>187</sup> Neither did the amended contract between BGE and Baltimore City require any conduit investments in 2023.<sup>188</sup> In fact, OPC’s Initial Brief indicated that BGE “opted to *accelerate* the pace of its conduit expenditures in 2023 despite the uncertainty over whether the Commission would allow BGE to recover the costs of the conduit investments and the absence of any contractual obligation for the company to perform conduit work in 2023.”<sup>189</sup> In its Reply Brief, OPC stated that it “opposes BGE’s recommendation to place the [C]ompany’s revenue requirement associated with the 2023 conduit-related expenditures in a regulatory asset, if the Commission denies recovery through this reconciliation.”<sup>190</sup> OPC disagreed with BGE’s suggestion that denying regulatory asset treatment would result in a “write-off and permanent under-recovery of the 2023 conduit spending...” and instead argued that BGE’s analysis was plainly incorrect because “BGE’s conduit expenditures are being recovered now through the company’s MRP II rates...”<sup>191</sup>

**Staff**

Staff witness Dererie testified that regarding recovery of conduit-related costs the Commission in Order No. 90948 stated that it “will authorize BGE’s proposed expenditures

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<sup>186</sup> OPC Initial Brief at 37.

<sup>187</sup> *Id.* at 37-38.

<sup>188</sup> *Id.* at 38.

<sup>189</sup> *Id.*

<sup>190</sup> OPC Reply Brief at 18.

<sup>191</sup> *Id.*

associated with the new Baltimore City Conduit agreement, but the Commission will require that BGE provide a benefit cost analysis consistent with the recommendation and the parameters provided by Staff” in Case No. 9692.<sup>192</sup> Order No. 90948 further stated that BGE would be subject to the prudency review at the reconciliation stage of BGE MRP 2 and that the Company will also be required to provide ongoing benefit cost analyses of the conduit agreement for ratepayers that will be presented in every rate case until the costs of the contract are fully recovered.<sup>193</sup> Ms. Dererie asserted that, based on Order No. 90948, it is her understanding that the prudence review of the 2023 Baltimore City Conduit related expenditures should be evaluated in Case No. 9692. Therefore, Ms. Dererie testified that since BGE failed to provide any benefit cost analysis, Staff had not performed a prudence review of the conduit related expenditures in 2023.<sup>194</sup>

In her Supplemental Reply Testimony, Ms. Dererie modified her position and recommended that the Commission disallow entirely the recovery of costs BGE incurred in 2023 associated with the new Baltimore City Conduit Agreement until the Company demonstrates via a benefit cost analysis that the new Agreement, compared to the previous agreement that expired in 2021, is in the interest of ratepayers.<sup>195</sup> Ms. Dererie argued that allowing the Company to recover costs associated with the new Baltimore City Conduit Agreement without the benefit cost analysis the Commission required that shows net ratepayer benefits, is presuming prudence of the new Baltimore City Agreement and BGE’s conduit related expenditures for 2023.<sup>196</sup> She noted that the total expenditures for the new

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<sup>192</sup> Dererie Direct Testimony at 13.

<sup>193</sup> *Id.* at 14.

<sup>194</sup> *Id.* at 15.

<sup>195</sup> Dererie Supplemental Reply Testimony at 16-17.

<sup>196</sup> *Id.* at 18.

Baltimore City Conduit Agreement was \$17 million in capital expenditures and approximately \$4.3 million in O&M spending, and that her recommendation for disallowance covered both.<sup>197</sup>

Additionally, in response to a BGE data request regarding regulatory asset treatment of the 2023 Baltimore Conduit expenditures as alternative, Staff stated:

“Staff supports a regulatory asset for costs incurred in 2023 by BGE to provide safe and reliable service in Baltimore City through the conduit system, until a benefit cost is filed and reviewed in BGE’s next base rate case. Staff defers further decisions about the regulatory asset until the next rate case, including carrying costs and amortization.”<sup>198</sup>

In its Reply Brief, Staff continued to recommend that the 2023 conduit system costs be removed from the Year 3 reconciliation with any recovery deferred until BGE completes a benefit cost analysis and prudence review consistent with the direction provided in Order No. 90948 and recommended that a regulatory asset be approved for the Rate Year 2023 conduit costs.<sup>199</sup>

### **Commission Decision**

In BGE’s Pilot MRP, the MRP-effective period covered BGE expenditures between January 1, 2021 through December 31, 2023. The Baltimore City Conduit Agreement in existence when the base BGE MRP 1 commenced expired on June 30, 2021. The amended new agreement was finalized between BGE and Baltimore City on February 15, 2023 after the Company had submitted its 2023 Project List. Although the amended agreement was executed eight months prior to the end of MRP 1 (or December 31, 2023), there was no

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<sup>197</sup> *Id.* at 20.

<sup>198</sup> Frain Supplemental Rebuttal Testimony at 24 citing Staff Response to BGE DR 02-01 (Staff witness Smith).

<sup>199</sup> Staff Reply Brief at 5.

requirement in the amended agreement for BGE to make any conduit-related investments in 2023. Nonetheless, in BGE's application for its MRP 2 in Case No. 9692, the Company projected that it would make \$10 million in capital improvements to the conduit system in 2023. In actuality, BGE made capital expenditures of \$17 million (a \$7 million variance) over the Company's projections.

In Order No. 90948 in Case No. 9692, the Commission authorized BGE's to include its proposed expenditures related to the new Baltimore City Conduit agreement with certain conditions including requiring that BGE provide a benefit cost analysis, perform prudence review at the reconciliation stage of Case No. 9692, conduct ongoing benefit cost analysis of the conduit agreement for ratepayers that will be presented in every rate case until the costs of the contract are fully recovered. The Commission finds that BGE has not met the conditions set forth in Order No. 90948.

Considering that the Company opted to accelerate its conduit-related expenses above those in the contractual terms in a year with substantial cost overruns, and that the Company did not adhere to the condition of submitting a benefit cost analysis as laid out in Case No. 9692, the Commission finds for purposes of the 2023 Final Reconciliation that permitting use of a regulatory asset for conduit related costs is appropriate until a benefit cost analysis is filed and reviewed in BGE's next rate case. The Commission agrees with Staff to defer decisions regarding carrying costs and amortization of the regulatory asset.

### *Outdoor Lighting*

#### **BGE**

In his Supplemental Direct Testimony under the Corrective Maintenance – Distribution section, BGE witness Singh discussed the capital investments included in the

2023 Final Reconciliation that replaced defective equipment such as poles, transformers, switches, sections of cable and wire and other miscellaneous distribution materials.<sup>200</sup> He indicated that BGE’s Corrective Maintenance goal “is to mitigate the risk that degraded equipment will adversely impact the performance or reliability of the electric system.”<sup>201</sup>

Mr. Singh discussed capital investments the Company made in Project 60806 Outdoor Lighting Outage-Diagnose and Replace. He testified that “the purpose of this project is to diagnose and replace defective streetlighting fixtures that are experiencing an outage.”<sup>202</sup> He noted that this project is split between capital and O&M and that BGE invested \$5.2 million in capital on this project in 2023.<sup>203</sup> The Company originally budgeted \$1 million but spent an additional \$4.2 million. Mr. Singh testified that the large capital variance (equivalent to 404.3%) was primarily driven by a higher volume of capital work to replace LED fixtures than the historical trend upon which the original budget was based.<sup>204</sup> Mr. Singh explained that the increase in capital expenditure reflected BGE’s review of the project which determined that the actual capital percentage was 95% rather than the previously assumed 78% which resulted in this variance from the Company’s budget.<sup>205</sup>

### **Staff**

Staff witness Dererie testified that BGE did not initially include the O&M portion of Project 60806 in the Revised Capital List 2021-2023.<sup>206</sup> However, when the Company filed its 2023 Project List, which was filed in 2023, the O&M portion was included, which resulted

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<sup>200</sup> Singh Supplemental Direct Testimony at 19.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 27.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at 27. *See also*, Company Exhibit 2023 FR Supplemental SAS-3E.

<sup>205</sup> *Id.* at 28.

<sup>206</sup> Dererie Supplemental Reply Testimony at 12.

in a 222% increase in the forecasted total (capital and O&M) budget for the Project.<sup>207</sup> She further explained that BGE's final reconciliation reported a total (capital and O&M) Project expenditure that was 442% higher than forecasted in the initial MRP filing and about \$2.5 million more (a 78% increase) compared to forecasted 2023 budget included in the 2023 Project List.<sup>208</sup>

Ms. Dererie argued that if the primary driver was the capital versus O&M cost allocation, as the Company presented, applying the 95% allocation for capital on the forecasted amount included in the 2023 Project List (i.e., \$3.3 million), then the actual capital expenditure would have amounted to \$3.1 million and not \$5.2 million.<sup>209</sup> She also pointed out that BGE also did not provide additional justification for the increased volume of work, beyond that forecasted in the 2023 Project List, indicating it needed to be done on outdoor lighting fixtures it owns and the standard for the replacements. Ms. Dererie testified that subject to any additional justification, she recommended a disallowance of the \$2.5 million the Company incurred beyond what was included in the 2023 Project List.<sup>210</sup> Table 5 below depicts the Project cost variance.

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<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

**Table 5: Forecasted versus Actual Costs for Project 60806<sup>211</sup>**

<b>Project 60806 (utility owned)</b>	<b>Revised Capital List (2021-2023)<sup>212</sup></b>	<b>2023 Forecasted (Project List)<sup>213</sup></b>	<b>Actual 2023 Expenditure</b>
Capital	\$1,029,789	\$1,692,739	\$5,193,302
O&M (includes material and labor)	\$0	\$1,618,896	\$689,505
Total Budget for Project 60806 (\$)	\$1,029,789	\$3,313,635	\$5,882,807
Variance compared to Revised Capital List		222%	442%
			**78% increase compared to 2023 Project List

**BGE Rebuttal**

In his Supplemental Rebuttal Testimony, BGE witness Singh reiterated that the Company is committed to maintaining a reliable lighting system that heightens visibility and enhances safety throughout the service territory.<sup>214</sup> He pointed out that Project 60806 Outdoor Lighting Outage-Diagnose and Replace work is reactive based on customer demand<sup>215</sup> and that in 2023 BGE “experienced a higher volume of customer reported light outages than was anticipated, which had a variety of different reasons the lights failed.”<sup>216</sup> Regardless of the reason, he noted that BGE is required to fix the lights as part of the comprehensive maintenance plan subscribed to by the outdoor lighting customers.<sup>217</sup> In addition to higher customer demand for replacement/repairs, Mr. Singh testified that there was a higher cost per job because there are more LEDs on the lighting system, as well as an increase in contractor per unit rates for replacing an LED fixture.<sup>218</sup>

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<sup>211</sup> *Id.* at 13.

<sup>212</sup> *See* Maillog No. 233739.

<sup>213</sup> *See* Maillog No. 242894.

<sup>214</sup> Singh Supplemental Rebuttal Testimony at 2.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 3.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

### **Commission Decision**

Regarding Project 60806 Outdoor Lighting Outage - Diagnose and Replace, the record presents several shortcomings which preclude full acceptance of the Company's 2023 actual expenditures for Project 60806. First, the Company failed to properly include any O&M expenditures in its Pilot MRP Revised Project List for 2021 to 2023. Second, once it updated the 2023 Forecasted Project list to include capital expenditures of \$1,692,739 and O&M expenditures of \$1,618,896 for a total of \$3,313,635, the Company still exceeded its budget by \$2,569,172. Additionally, while the Company noted that it experienced higher customer demands, the Company did not provide an analysis showing cost comparisons or unit price discounts based on increased sales volume for LED fixtures or analysis of cost comparisons across contractors. While the Company provided a discussion of cost drivers in its supplemental rebuttal testimony, it failed to demonstrate what was driven by demand versus cost and labor and how these costs were appropriately aligned with industry standards or contractors. The reconciliation process is not an opportunity to reward bad forecasting or sanction cost overruns that have not demonstrated good management judgement in the selection of materials and methods used to execute projects and that have not shown the costs—by comparison with alternatives—were justified.<sup>219</sup> Therefore, for purposes of the 2023 Final Reconciliation the Commission accepts Staff's recommendation to disallow, for Project 60806, the \$2.5 million the Company incurred beyond what was included in the 2023 Project List. However, the Company would not be precluded from requesting cost recovery for capital costs in a future rate case.

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<sup>219</sup> Order No. 91396 at 3-4.

## Gas Leak Spending

### **BGE**

BGE witness White provided testimony discussing the key drivers for Corrective Maintenance–Gas, and why the projects in this area are necessary. She indicated that the capital component of this category comprises capital projects that address BGE gas mains, services, meters or other gas system components that require immediate attention or reactive repair due to safety or reliability concerns that are emergent.<sup>220</sup> Further, Ms. White testified that these projects generally involve asset replacement and leak repair, but also include the activities necessary to define the scope of reactive work required for either replacement or repair.<sup>221</sup> In 2023, the Corrective Maintenance–Gas capital category contained six projects over \$1 million to support emergent safety or reliability concerns.<sup>222</sup> OPC, as discussed below, challenges the cost associated with Project 60523: Leaks Capital Leak Repairs.

Project 60523: Leaks Capital Leak Repairs, focuses on repairs to gas leaks on mains and services through a capital activity. Ms. White noted that these gas leaks are reported on the gas distribution system by customers or detected during Preventative Maintenance leak surveys. Project 60523 focuses on capital gas leak repair activities on the Company's gas assets, which are repairs of larger diameter cast iron main, from 8” to 48” in diameter, as well as repairs via service and riser replacements or abandonments.<sup>223</sup> Ms. White testified that this project is critical for ensuring the safety of BGE’s gas system through timely repairs of both hazardous and non-hazardous leaks.<sup>224</sup> She also reported that in 2023, the Company

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<sup>220</sup> White Supplemental Direct Testimony at 63-64.

<sup>221</sup> *Id.* at 64.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 67.

<sup>224</sup> *Id.*

performed 3,462 leak repair activities within this project.<sup>225</sup> Regarding the 2023 budget investment and variance, Ms. White testified that for Project 60523 the Company forecasted \$26,035,896 in the MRP 1 budget and reported actuals of \$41,997,980. This represents a \$15,962,084 (or 61.3%) variance between forecast and actuals.<sup>226</sup>

Ms. White explained the significant variance in Project 60523 resulted from the Company's forecast assumption about the leak repair types that would require fixing. Specifically, she testified that BGE expected a decrease in the actual number of leak repairs to be performed under Project 60523 which did, in fact, decrease.<sup>227</sup> She acknowledged that BGE's projections "did not forecast each type of leak repair, and thus, assumed that the proportion of leak repair types would remain the same."<sup>228</sup> However, in 2023, the Company noticed that "some of the largest diameter mains saw an increase in the number of leak repair activities, disrupting the trend of decreasing leaks seen in other types of repairs within this project."<sup>229</sup> Ms. White pointed out that "[w]hile overall leak repair activities decreased, leak repairs on 12" in diameter or larger mains increased. Furthermore, groupings of even larger mains also increased, with 16" or larger mains and 20" or larger mains both increasing in the number of leak repairs compared to previous years."<sup>230</sup> She remarked that all three groupings of large diameter leak repairs were at a *five-year high* in 2023.<sup>231</sup> Ms. White noted that leak repairs on larger diameter cast iron mains are more expensive.<sup>232</sup> She argued that the variance experienced in this project in 2023 was a direct result of the most expensive leak repair types

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<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 65. See Table 5: 2023 Investments, Budget, and Variance for Corrective Maintenance Gas Capital.

<sup>227</sup> *Id.* at 70.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

not following the decreasing trend, and instead increasing.<sup>233</sup> She also contended that other factors such as inflation and new paving requirements which drive increased costs contributed to the overall cost variance.<sup>234</sup>

In 2023, the Corrective Maintenance–Gas O&M category contained six projects over \$1 million to support the goal of this category. OPC, as discussed below, challenged the cost associated with Project 60515: Leaks-O&M Leak Repairs.

Project 60515: Leaks-O&M Leak Repairs project, prioritizes and repairs gas leaks on mains and services through an O&M activity. BGE witness White testified that Project 60515 focuses on O&M gas leak repair activities on the Company’s gas assets, which are repairs of smaller diameter cast iron main, 6” or smaller in diameter, as well as other repairs of mains or services that do not involve replacements.<sup>235</sup> Regarding the 2023 budget investment and variance, Ms. White testified that for Project 60515 the Company forecasted \$17,849,180 in the MRP 1 budget and reported actuals of \$30,983,276. This represents a \$13,134,096 (or 73.6%) variance between forecast and actuals.<sup>236</sup> Ms. White testified that in 2023, the Company performed 3,065 leak repair activities within this project.<sup>237</sup>

She noted that while the total number of leak repair activities estimated in this project were close to what was experienced for 2023, the Company has seen changes to the overall costs related to leak repairs in this project since the COVID-19 pandemic. Ms. White provided the following explanation for the increase in costs:

- (1) “Changes in paving standards by various municipalities have resulted in extended paving costs that were not anticipated in 2019. One notable example includes Baltimore City, which affects a

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<sup>233</sup> *Id.* at 71.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 76-77.

<sup>236</sup> *Id.* at 76. *See* Table 7: 2023 Investments, Budget, and Variance for Corrective Maintenance Gas O&M.

<sup>237</sup> *Id.* at 77.

substantial population of leak repairs. Baltimore City updated its standards, mandating a larger area to be restored following excavations, including additional mill and overlay and cutbacks, increasing the scope of work for restoration of excavations; and

- (2) Overall labor costs related to O&M leak repairs increased compared to projections as a result of rising costs due to inflation as well as additional back-office support costs.”<sup>238</sup>

### **OPC**

OPC witness Fitzhenry argued that Ms. White's general explanations about the variance “do not fully demonstrate the extent to which larger diameter mains drove up BGE’s leak repair costs.”<sup>239</sup> Specifically, Mr. Fitzhenry’s analysis of 2019-2023 data provided by BGE during discovery confirms that the company experienced higher than average repairs for its largest diameter mains. Yet, BGE also experienced reductions in repairs of other main diameters.<sup>240</sup>

Mr. Fitzhenry found that relative to 2019–2022, the percentage of large gas main repairs increased by only 5.9 percent. He concluded that such “marginal increases” in the number of complex repair jobs is not significant enough to justify the \$16 million increase in gas leak repair expenses.<sup>241</sup> He argued that the critical information that would confirm the extent to which BGE’s higher costs were driven by more complex replacements of large diameter mains—such as information on the actual, project-specific costs incurred—is not in the record.<sup>242</sup> He insisted that if costs within the same size diameter of main can have levels of variability, then details on the specific costs incurred are the only way to confirm that BGE’s increased Project 60523 spend was prudently incurred. Absent this level of

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<sup>238</sup> *Id.* at 78.

<sup>239</sup> OPC Initial Brief at 42.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

supporting data, Mr. Fitzhenry argued that Ms. White’s testimony provides little additional information to support the cost variance explanation. OPC argued that “customers should not be required to incur additional expense to the company solely due to a forecasting error within the utility’s control. The risks and consequences of budget forecasting errors should be borne by the utility, not by its customers.”<sup>243</sup>

Similarly, OPC argued that BGE provides little additional support to demonstrate prudence of the increased costs of Project 60515.<sup>244</sup> Mr. Fitzhenry argued that “no record evidence explains the dramatic increase in the company's 2023 cost per leak repair relative to 2022. Nor does the company show that the variance reflects only prudently incurred costs.”<sup>245</sup> Likewise, OPC contended there is no record evidence supporting Ms. White's claim that the Project 60515 variance was driven by increased labor expense. On the contrary, Mr. Fitzhenry pointed out that the discovery confirms that labor expenses for Project 60515 were largely consistent with expenses incurred from 2020-2023 and *lower* than labor expenses incurred in 2019.<sup>246</sup>

OPC argued that the cost variances BGE reports for Projects 60523 and 60515 are largely unexplained with little evidence to support that these costs were prudently incurred. Therefore, OPC argued that the Commission should disallow recovery of cost variances for both projects.

### **Commission Decision**

The Commission agrees with OPC that the cost variances BGE reports for Projects 60523 and 60515 are not satisfactorily explained. While BGE explains that for Project 60523

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<sup>243</sup> *Id.* at 43.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 45.

<sup>246</sup> *Id.*

large diameter leak repairs saw an increase in the number of leak repairs, it also provided data that showed reductions in repairs in other main diameters. The Commission finds that without having additional project-specific cost information it is hard to determine the portion of the variance that is attributed to large diameter mains which BGE claims as a key driver. Additionally, while the Company indicated that labor costs related to O&M leak repairs for Project 60515 was a major driver of the variance, the record, as pointed out by OPC, also showed that labor expenses were largely consistent with expenses during the MRP 1 period. The Commission recognizes that there will be high cost and low-cost years by program, which is the risk of forecast error but the Company did not sufficiently explain why the leak repair work could not have been scaled back once budgets were being overrun. Therefore, for purposes of the 2023 MRP 1 Year 3 Final Reconciliation, the Commission accepts OPC's recommendation to disallow cost variances totaling \$29 million for Projects 60523 and 60515. However, the Company would not be precluded from requesting cost recovery for capital costs in a future rate case.

### *Gas Main Replacement*

#### **BGE**

BGE witness White testified that Project 58034: Centrally Managed Gas Main Replacements program addressed large scale main replacement work both in size and scope outside of the STRIDE program.<sup>247</sup> She indicated that the program was focused on the replacement of poor performing, outmoded assets, which replaced cast iron or bare steel main with larger scale projects. In 2023, six jobs were worked in Project 58034, with a total of 8.1 miles of main installed, 0.4 miles of main retired, and seven services replaced. Of the six

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<sup>247</sup> White Supplemental Direct Testimony at 41.

jobs worked, one was completed in 2023. She noted that Project 58034 had a variance of \$12.5 million, or 55.2%.

Ms. White explained that Project 58034 was managed collectively with two additional projects (Projects 60677 and 86320) and that the increase was a result of the TRO ordered by the Circuit Court for Baltimore City and work stoppage, which caused BGE to opt to accelerate work scheduled for 2023 and 2024 to increase main installation in 2023 within Project 58034 to help keep qualified resources deployed on BGE's gas system and provide a path for success for abandonments once the TRO was lifted.<sup>248</sup> Further, Ms. White stated that by proactively continuing to install main, the first step of main replacement could continue for these jobs until service work restarted. The Company determined that this would ensure future success of these projects at the end of the TRO. Ms. White argued that if viewed collectively-Projects 58034, 60677 and 86320-then the variance amounted to \$11.4 million less than budgeted due to less service production resulting from the TRO.

BGE noted that while the TRO had a significant impact on the Company's ability to perform service work during the latter part of 2023 and, subsequently, limited main retirement, the Company still performed valuable work within Projects 58034, 60677 and 86320. Specifically, Ms. White in her Rebuttal testimony stated that:

In 2023, Project 58034 installed about 80% more main than the prior two years. It is important to note that much of the cost to perform main replacement work is spent upfront during pipe installation work. The cost to perform the final abandonment is a smaller percentage of the total cost of the job. This is why Project 58034 spent \$35.4 million without significant abandonment.<sup>249</sup>

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<sup>248</sup> *Id.* at 42.

<sup>249</sup> White Rebuttal Testimony at 23.

Ms. White also rebutted OPC's cost per mile of retired main metric, discussed below, and used to show excessive expenditures in Project 58034 alone, as well as, all three projects are misleading and incomplete.<sup>250</sup> Ms. White explained that a proper cost per mile should be performed once all work was completed for a given job or consistent levels of activities achieved carryover work from the previous year.<sup>251</sup>

### **OPC**

OPC witness Fitzhenry in his Surrebuttal Testimony argued that, even viewed collectively, the actual 2023 expense was \$8.7 million per mile which is well above the average cost of replacement for older infrastructure.<sup>252</sup> Mr. Fitzhenry noted that, according to the U.S. Department of Energy, the average cost of replacing cast iron and unprotected steel mains can range anywhere from \$1.0 million to \$5.0 million per mile depending on the location.<sup>253</sup> He argued that had BGE replaced mains in these projects at the highest end of the range (\$5 million per mile), the total cost of main replacement would have been approximately \$79.4 million, or \$59.2 million less than actual expenditures. Mr. Fitzhenry argued that BGE witness White includes a lot of discussion about work performed under the main replacement projects that does not consist of retiring main, but offers no data to support her conclusions. He argued that Ms. White could have demonstrated that the level of service regulator replacements was higher in 2023 relative to prior years, or that BGE was able to complete more work on commercial properties as a result of the TRO on residential

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<sup>250</sup> BGE Initial Brief at 38.

<sup>251</sup> White Rebuttal Testimony at 2.

<sup>252</sup> Fitzhenry Surrebuttal Testimony at 30.

<sup>253</sup> *Id.* at 31.

properties, or that the amount of retired main in the first half of 2024 exceeded historical levels, but Ms. White offers no objective evidence to support her conclusions.<sup>254</sup>

### **Staff**

BGE's Initial Brief points out that Staff witness Clementson testified that the Company provided "a wealth of information as to why certain projects were ... reallocated from one project to another project" all lines of business provided in the present case.<sup>255</sup> Further, Staff witness Clementson testified that he did not discover any of the Company's gas projects where the Company's selection of those projects was done imprudently.<sup>256</sup>

### **Commission Decision**

While the TRO had a significant impact on the timing of the work performed under Project 58034, the Commission nonetheless authorized \$22.7 million in the MRP 1 2023 Budget and the Company actually spent \$35.2 million. The Commission finds that the Company did not clearly demonstrate whether it explored other avenues of cost containment to stay within budget while maintaining quality of service, nor did it show that without this exceedance of the budgeted amount that the Company would jeopardize its delivery of safe and reliable service. Therefore, the Commission accepts OPC's recommendation to disallow the \$12.5 million for 2023 MRP 1 Year 3 Final Reconciliation purposes; however, the Company is not precluded from requesting cost recovery for capital costs in a future rate case.

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<sup>254</sup> *Id.*

<sup>255</sup> BGE Initial Brief at 32 citing Staff witness Clementson Supplemental Reply Testimony at 3.

<sup>256</sup> Clementson Supplemental Reply Testimony at 4.

### Substation Distribution Field Switching

#### **BGE**

BGE witness Cloyd testified that BGE had variances of \$3 million and \$1.2 million in O&M and capital respectively, for Project 60043, substation distribution field switching. The O&M component of Project 60043 was forecasted at \$0.9 million, but there was no capital budget for this project in BGE's MRP 1.<sup>257</sup> This project was classified as back-office administrative work to support business operations and was originally forecasted, in 2022, as 100% O&M, but BGE reviewed its work orders in 2022 and found that a portion of the work should also be accounted for as capital, which was ultimately determined to be a 70/30 split between O&M and capital. He testified that the higher spend was primarily driven by higher volumes of incoming distribution switching jobs due to increased internal tracking efficiencies made in the inspection process.

#### **Commission Decision**

The Commission is concerned that this project saw a 471.7% cost increase<sup>258</sup> over forecast, with the only justification being “higher volumes of incoming distribution switching jobs due to increased internal tracking efficiencies made in the inspection process.” This is an extraordinary increase by both percentage and in absolute terms. The Commission finds that the justification does not meet the standard of prudence, particularly given the extraordinary overspending across BGE's distribution network. BGE has not provided any details explaining why this increased volume was necessary and provided commensurate value to ratepayers or the public. Accordingly, the variances of \$3,013,441 million in O&M

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<sup>257</sup> Cloyd Supplemental Direct Testimony at 83.

<sup>258</sup> *Id.* at MJC-6E: Geography Within Capital Projects-Electric Distribution, Table D. The percent represents the category total for both capital and O&M.

and \$1,189,780 million in capital for Project 60043 will not be recoverable in this reconciliation. However, the Company is not precluded from requesting cost recovery for capital costs in a future rate case.

### Pole Replacement

#### BGE

BGE witness Singh testified that the increased per-pole cost on (a \$7.7 million variance in excess of a \$5.4 million approved budget) was attributable to an expansion of the scope of Project 61160 to include vegetation management activities and to greater complexity in pole replacement jobs than anticipated, such as more 34kV pole replacements than anticipated and a relatively high degree of replacement work conducted in marshy soils.<sup>259</sup> Witness Singh also testified that BGE projected it would replace 650 poles in 2023, but it ultimately replaced 795 poles based on inspections.<sup>260</sup>

Witness Singh also testified that vegetation management work was included to avoid having to subject customers to a separate outage and associated disruption in service, though the work was performed by different crews.<sup>261</sup> He testified that this approach was an industry best practice that he brought with him from Philadelphia Electric Company, where he worked until 2022, though he did not identify any other utilities that utilize this practice.<sup>262</sup>

Witness Singh also testified that costs were increased because BGE relied on contracted labor for some of the work, because BGE employees who historically performed pole replacement were assigned to other projects, which had the secondary benefit of keeping

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<sup>259</sup>Singh Rebuttal Testimony at 4-5; Hrg. Tr., Vol.1 at 16:17-17:8, Oct. 8, 2024.

<sup>260</sup> Singh Supplemental Direct Testimony at 30; Hrg. Tr., Vol. 1 at 14:8, Oct. 8, 2024.

<sup>261</sup> *Id.*; Tr. 29-31. Hrg. Tr., Vol.1 at 29:1-31:23, Oct. 8, 2024.

<sup>262</sup>Hrg. Tr., Vol.1 at 32-34, Oct. 8, 2024.

contracted crews available for storm response.<sup>263</sup> He testified that this work goes beyond the traditional tree trimming work done under other projects and can include tree removal, using the same crews as traditional vegetation management program.<sup>264</sup>

**OPC**

OPC argued that BGE's variances in Project 61160 were imprudent overspend.<sup>265</sup> OPC stated that the approved budget of \$5.4 million was consistent with historical spending and noted that Project 61160 historically did not exceed its budget by more than small amounts. OPC also questioned BGE's decision to overspend its budget by 142 percent while only replacing 22 percent more poles than had been budgeted for.<sup>266</sup>

OPC argued that the high spending on project 61660 comes not from increased complexity of jobs but from (1) BGE having originally performed an inaccurate forecast as to the number of overall pole replacement jobs that was much lower than the number of jobs eventually performed; (2) the inclusion of vegetation management costs in the pole replacement budget; and (3) the addition of significant new contract labor in the budget.<sup>267</sup>

OPC argued that inclusion of vegetation management in a capital account was inappropriate and belonged in an O&M account.<sup>268</sup> OPC also argued that BGE had not shown how the vegetation management spending in Project 61160 was necessary, provided meaningful benefits for customers, or enhanced the efficiency of BGE's other vegetation management operations.<sup>269</sup> OPC witness Fitzhenry testified that vegetation management

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<sup>263</sup> *Id.* at 39-42, Oct. 8, 2024.

<sup>264</sup> *Id.* at 56-59, Oct. 8, 2024.

<sup>265</sup> OPC Brief at 31.

<sup>266</sup> *Id.* at 31-32.

<sup>267</sup> *Id.* at 35-36.

<sup>268</sup> *Id.* at 33-34.

<sup>269</sup> *Id.* at 34.

crews routinely perform maintenance work on distribution lines that are not in an outage.<sup>270</sup>

OPC pointed to the testimony of BGE witness Singh that the crews that performed the vegetation management work were not the same crews that replaced poles.<sup>271</sup>

OPC also argued that BGE failed to demonstrate that all of the 795 poles replaced in 2023 needed to be replaced in 2023 specifically, and that their replacement could not be postponed.<sup>272</sup> OPC further noted that poles requiring immediate replacement were replaced under a different project, 61161 not 61160, and that BGE failed to identify the remaining number of poles requiring near term replacement.<sup>273</sup>

OPC witness Fitzhenry testified that BGE exceeded its budgeted contract labor cost on Project 61160 by \$4.4 million.<sup>274</sup> OPC noted that BGE witness Singh attributed this to BGE shifting its internal crews to Project 61161, but internal labor costs in Project 61160 also increased by over half a million dollars, without explanation.<sup>275</sup>

OPC recommended that the Commission disallow the entirety of BGE's \$7.7 million variance in Project 61160.<sup>276</sup>

### **Commission Decision**

The Commission finds that BGE has failed to demonstrate the prudence of its variances in this project, which are substantial, poorly justified, and show questionable managerial decision-making given the significant cost overruns across the BGE distribution network.

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<sup>270</sup> Fitzhenry Surrebuttal Testimony at 19.

<sup>271</sup> OPC Brief at 34, citing Hrg. Tr., Vol.1 at 31, Oct. 8, 2024.

<sup>272</sup> OPC Brief at 34.

<sup>273</sup> *Id.* at 34-35.

<sup>274</sup> Fitzhenry Direct Testimony at 12.

<sup>275</sup> *Id.* at 12, Table 3.

<sup>276</sup> OPC Initial Brief at 37.

The Commission notes with concern the lack of support in BGE’s case establishing the necessity of the significantly increased costs that BGE undertook to replace poles, including the use of much more expensive labor than is typical for pole replacement. Furthermore, BGE does not provide an explanation for why its cost forecasts did not anticipate the significant variances due to “a greater complexity in pole replacement jobs than anticipated, such as more 34kV pole replacements than anticipated and a relatively high degree of replacement work conducted in marshy soils.” BGE should be able to forecast future pole replacements more accurately than a 142% overspend based on the Company's asymmetrical knowledge of pole asset information such as areas to be inspected, pole locations in marshy soils, pole ages and previous pole inspection results.

The Commission also is concerned with the inclusion of vegetation management costs in this project and the lack of evidence regarding the necessity of those costs, both outside of and in addition to BGE’s ordinary vegetation management programs.

Therefore, the Commission finds that BGE has failed to demonstrate the prudence of this overspend and disallows \$7,707,685 in capital costs for Project 61160 from the Company’s MRP 1 Year 3 Reconciliation. BGE is not precluded from requesting cost recovery for capital costs in a future rate case.

*Facilities Solar Projects*

**BGE**

BGE witness Cloyd testified that BGE spent \$1 million on Project 86588, an unforecasted project to install solar panels on BGE facilities, plus EV charging stations, as part of work towards Path to Clean and Maryland Climate Solutions Now Act (“CSNA”)

emissions reduction goals.<sup>277</sup> This project was not forecasted. In December 2023, after the projects were begun, the Commission issued Order No. 90948 on BGE's MRP 2, which removed BGE's proposed budget for accelerated rooftop solar installations. BGE nonetheless moved forward and completed certain projects, and it is those costs which are included in this reconciliation.

### **Commission Decision**

The Commission finds that the decision to pursue this unforecasted project, while well-intentioned, was unjustified and imprudent given the extraordinary overspending across BGE's distribution network. The Path to Clean and CSNA goals are important, but there are many avenues through which Maryland is working towards compliance with those goals. The Company's request to recover Facilities Solar Projects capital costs of \$1,024,417 (Gas) and \$1,838,295 (Electric) is denied, but the Company is not precluded from requesting cost recovery for capital costs in a future rate case.

### **City Permitting Fees**

#### **BGE**

BGE sought to recover estimated settlement amounts as O&M in 2023 related to unbilled Baltimore City permitting fees that may be owed for past BGE work. BGE witness Frain testified that BGE cannot commit to being able to disaggregate the final amount between capital and O&M because necessary data may not be available, and therefore accounting principles require that the amount be recorded as O&M.<sup>278</sup>

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<sup>277</sup> Cloyd Supplemental Direct Testimony at 78-79.

<sup>278</sup> Frain Rebuttal Testimony at 16.

BGE stated that it is amenable to deferring recovery if the Commission prefers to wait until the final settlement amount is known.<sup>279</sup>

### **OPC**

OPC challenged BGE's inclusion in Project 60936 variances based on an estimated settlement for permitting fees owed to the City of Baltimore for past projects completed but which have not been paid and where the final amount to be paid is not known because it is currently being negotiated.<sup>280</sup> OPC argued that BGE failed to present evidence linking the associated permitting costs to specific projects that have gone into service.<sup>281</sup> OPC also argued that BGE failed to identify which portions of the identified permitting costs are associated with capital projects versus O&M projects.<sup>282</sup> OPC also argued that the uncertain ultimate amount of the estimated permitting fees makes recovery of those costs premature, noting that BGE has received a preliminary invoice for \$1.5 million in December 2024 and that settlement discussions continue.<sup>283</sup> OPC witness Fitzhenry recommended disallowance of \$760,500.<sup>284</sup>

### **Commission Decision**

The Commission finds that approval of collection of permitting fees that have not been incurred or determined is premature and that the Commission cannot determine prudence of the ultimate amounts without knowing what those amounts are. Accordingly,

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<sup>279</sup> BGE Reply Brief at 47.

<sup>280</sup> OPC Initial Brief at 46.

<sup>281</sup> *Id.* at 47.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> Fitzhenry Direct Testimony at 18.

the \$760,500 variance of O&M for the estimated settlement shall be excluded from the Company's MRP 1 Year 3 Reconciliation.

*Business Services Originally Contracted Work*

**BGE**

In his Supplemental Direct Testimony, BGE witness Cloyd testified that the Business Services Company (“BSC”) provides services under an agreement with BGE referred to as the General Services Agreement (“GSA”), which is filed with the Commission with the Company's Cost Allocation and Transfer Pricing Manual.<sup>285</sup> He also noted that annually BGE, along with the other companies using services provided by BSC, reviews the services it expects to require in the upcoming year and provides approval for the services provided by BSC through the Service Level Agreement (“SLA”) process.<sup>286</sup> Mr. Cloyd explained that the SLA review process contains various cost control measures to ensure the BSC costs charged to BGE are prudent and reasonable. He further indicated that budgets are established each year for categories of BSC costs and the baseline levels of services are established and that this process allows BGE to understand and prioritize the work and activities to be undertaken by BSC and their costs to be paid by BGE.<sup>287</sup>

BGE witness Cloyd provided several charts showing that there are large cost variances between MYP 2023 Budget and MYP 2023 Actuals in both capital spend and the O&M for the Business Services Company (“BSC”) in both electric and gas distribution.<sup>288</sup> He testified that the “BSC O&M costs are comprised of two main components: IT and Non-

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<sup>285</sup> Cloyd Supplemental Direct Testimony at 21-22.

<sup>286</sup> *Id.* at 22.

<sup>287</sup> *Id.* at 24.

<sup>288</sup> See Table 4—Capital Spend by Category at 28, Table 11—O&M Spend by Category at 96.

IT.”<sup>289</sup> He also noted that “there [were] 36 projects in 2023 with a budget or actual spend greater than or equal to \$1 million which represents approximately 72% of the Other O&M spend incurred in 2023”<sup>290</sup> and then proceeded to describe the reason for the variances for these 36 projects on pages 111-135 of his testimony.<sup>291</sup> However, for Project 60113 BSC Originally Contracted Work which has an approximate \$17 million combined O&M cost variance for electric and gas distribution, Mr. Cloyd offered only a brief explanation found in Company Exhibits 2023 FR Supplemental MJC-10E and 10G.

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<sup>289</sup> Cloyd Supplemental Direct at 100.

<sup>290</sup> *Id.* at 111.

<sup>291</sup> *Id.* at 111-135.

**Company Exhibit 2023 FR Supplemental MJC-10E: Remaining O&M Projects-Electric\***

Electric O&M	Project Name	MYP 2023 - Budget	MYP 2023 - Actuals	Variance \$	Variance %	Variance Explanations	First Filing Where Project Was ≥\$1M
Business Services Company	Project 60113 BSC Originally Contracted Work	\$40,950,091	\$49,894,648	\$8,944,557	21.8%	60113: Primarily driven by changes in market conditions (i.e. inflation) related to higher insurance expense, interest expense, cybersecurity costs, recruiting and staffing costs and nonrecoverable outside counsel costs related to legal matters	Case No. 9645 2021 O&M Project List (2/15/2021)

**Company Exhibit 2023 FR Supplemental MJC-10G: Remaining O&M Projects-Gas\***

Gas O&M	Project Name	MYP 2023 - Budget	MYP 2023 - Actuals	Variance \$	Variance %	Variance Explanations	First Filing Where Project Was ≥\$1M
Business Services Company	Project 60113 BSC Originally Contracted Work	\$17,205,387	\$25,204,893	\$7,999,506	46.5%	60113: Primarily driven by changes in market conditions (i.e., inflation) related to higher insurance expense, interest expense, cybersecurity costs, recruiting and staffing costs and legal matters (recorded below the line)	Case No. 9645 2021 O&M Project List (2/15/2021)

**Commission Decision**

The Commission finds that the Company failed to provide sufficient explanation supporting the prudence or reasonableness for the significant variance in Project 60113 BSC Originally Contracted Work for either the electric (21.8%) or gas (46.5% variance) distribution categories. Mr. Cloyd failed to include this category amongst the other 36 projects with variances greater than \$1 million. Additionally, the Commission expected but

did not find any strong scrutiny of the variances in Project 60113 BSC Originally Contracted Work by the other parties. Given that BSC provides internally managed services to BGE and the other Exelon utilities with annual budget targets, the Commission finds that the Company was in the best position to make adjustments particularly in this area given the magnitude of cost overruns requested in this reconciliation. The Commission finds that the Company has not met its burden of proof to support its variance in Project 60113 BSC Originally Contracted Work nor has it shown how ratepayers have benefited. Therefore, the Commission disallows the variance of \$7,999,506 of gas O&M and \$8,944,557 of electric O&M for Project 60113 BSC Originally Contracted Work.

#### Settlements Gas

##### BGE

BGE witness Apte testified that the Company's actual spend for settlements in Project 60564 was \$2.6 million, which is \$2.3 million higher than the MYP budget of \$0.3 million.<sup>292</sup> He stated that the higher spend was primarily due to increased legal reserves and labor settlements.<sup>293</sup> He argued that these costs were prudent and reasonable because "resolving disputes in a timely fashion brings finality to matters and can reduce overall costs for the Company, to the benefit of customers."<sup>294</sup>

#### Commission Decision

The Commission acknowledges that settling matters expeditiously can curtail long-term litigation costs which benefits the Company and ratepayers. However, the Commission finds that BGE failed to demonstrate that this magnitude of such variance (697.7%) is

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<sup>292</sup> Apte Supplemental Direct Testimony at 49.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

consistent with past trends in this category. Therefore, the Commission disallows the variance of \$2,263,136 of gas O&M for Settlements Gas.

*Cut In/Cut Out Capital Gas*

**BGE**

In his Supplemental Direct Testimony, witness Apte described BGE's Cut In/Cut Out Capital Gas program to include gas service abandonments, gas build overs, gas meter changes for service orders, and gas infrastructure modifications.<sup>295</sup> He testified that the gas service abandonment program identifies inaccessible meters that need to be removed from the system due to inactivity, maintenance issues, or for unauthorized use of energy.<sup>296</sup> The primary purpose of gas service abandonments program is to eliminate non-AMI meters from the system and minimize or eliminate safety risk due to unaddressed maintenance issues or unauthorized use of energy.<sup>297</sup>

Mr. Apte testified that the gas build overs program identifies meters and/or services that may need to be relocated because a customer has added an unauthorized structure (e.g., deck, garage, addition) that prevents access to or regulator ventilation of the gas meter, and/or creates another safety concern.<sup>298</sup> Additionally, he noted that gas meter changes for service orders refer to any gas meter asset that is required to be changed for regulatory compliance, Commission requirements, damages, and/or malfunctioning meters.<sup>299</sup> Lastly, BGE witness Apte testified that gas infrastructure modifications refer to any replacement of large commercial meter sets, regulators, or service relocations due to Commission regulations.<sup>300</sup>

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<sup>295</sup> *Id.* at 22.

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.* at 23.

For 2023, the Company budgeted \$1.7 million for the Cut In/Cut Out program areas and the actual spend for 2023 was \$5.3 million.<sup>301</sup> Witness Apte testified that “[t]he higher-than-budgeted spend in 2023 was primarily driven by an increased volume of meter reconnects and proactive service abandonments.”<sup>302</sup> He stated that the higher volume of proactive service abandonments was primarily driven by the increased availability of qualified service crews in 2023 due to the gas work stoppage related to the matter addressed in Case No. 9711.<sup>303</sup> He also attributed the cost variance to an increase in vendor paving rate as well as permitting costs.<sup>304</sup> He argued that the \$3.6 million cost overrun was prudently incurred because it was addressing efforts to make BGE’s gas system safer for customers and the public, was necessary to comply with jurisdictional requirements, or was a result of vendor cost increases (both of which were outside of BGE’s control).<sup>305</sup>

### **Commission Decision**

While addressing the issues presented in these program areas contribute to making BGE’s gas system safer for customers and the public overall, the Commission finds that BGE’s decision to pursue the backlogged work was a discretionary overspend decision that could have been prioritized in a manner that would not have resulted in a 212% cost variance. The Commission acknowledges that the Company desired to take advantage of available service crews due to the gas work stoppage resulting from the TRO. Nonetheless the Commission finds that BGE has not met its burden of proof to accelerate the work in 2023 without demonstrating a significant detrimental impact to service quality on ratepayers or

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<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.* at 23. *See also*, Staff DR03-03 2023 FR in Case No. 9645.

any significant prices in vendor paving rates or permitting costs that would merit such an enormous cost variance. Therefore, the Commission disallows the variance of \$3.6 million of gas capital expenses for Project 66598: Cut In/Cut Out Capital Gas, but the Company is not precluded from requesting cost recovery for capital costs in a future rate case.

### *Distribution Equipment Replacement*

#### *BGE*

In his Supplemental Direct Testimony, BGE witness Singh described BGE's Distribution Equipment Replacement project (Project 60505) as a reactive project to replace defective or damaged distribution equipment that is identified by a first responder such as employees, municipalities, emergency personnel, or customers.<sup>306</sup> Mr. Singh testified that replacement of distribution equipment under this program is necessary to the continued operation of the electric distribution system.<sup>307</sup> He also noted that the budget includes costs for labor, materials, and equipment except for the cost to purchase transformers, which is captured under Project 55734.

Witness Singh observed that the volume of work in this category is driven by the number of defects found during inspections or in the course of operations. He indicated that this project is split between capital and O&M. According to Company Exhibit 13 2023 FR Supplemental SAS-3E Capital Projects (Electric), in 2023, BGE budgeted \$14.9 million and actual spend was \$21.6 million. Mr. Singh indicated that the \$6.8 million capital variance in 2023 was the result of higher actual work volumes compared to historical levels.<sup>308</sup> He testified that “[o]ne major driver of the higher work volume in 2023 was that the company

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<sup>306</sup> Singh Supplemental Direct Testimony at 25.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* at 26.

deferred a number of Priority 30 jobs from the fourth quarter of 2022 in an attempt to mitigate external inflationary and regulatory pressures affecting its forecasted budget, which it scheduled to be worked in the first quarter of 2023.<sup>309</sup>

Additionally, witness Singh noted that the costs for support tasks such as vegetation management and traffic control were higher than the forecast for 2023.<sup>310</sup> Regarding O&M in 2023 for Project 60505, BGE budgeted \$3.9 million and spent \$5.8 million. According to Company Exhibit 13 2023 FR Supplemental SAS-10E Remaining O&M Projects (Electric), BGE commented that the variance was driven primarily by an increased amount of work-related high priority emergent jobs citing that the 2023 volume of work was higher than historical averages seen in 2023 due to the addition of proactive inspections to mitigate issues in the field before the equipment fails. Further on Page 31 of witness Singh's testimony about Project 61161: Pole Replacements-Emergent (see Company Exhibit 2023 FR 12 Supplemental SAS-3E and Company Exhibit 2023 FR Supplemental SAS-5E) indicated that “historically these costs would have been categorized under 60505: Distribution Equipment Replacement, a much broader program,”<sup>311</sup> which means that had these costs remained in Project 60505, the variances would have been much higher.

### **Commission Decision**

Based on Mr. Singh’s Supplemental Direct Testimony, Project 60505 is categorized as lower priority corrective work or Priority 30 corrective work to be completed within nine months to one year per BGE witness Singh.<sup>312</sup> Therefore, the Commission had some discretion on moving the projects from year to year. While BGE provided cursory statements

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<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 31.

<sup>312</sup> *Id.* at 20.

about increased volume of proactive inspections and the higher historical averages, the Commission finds that BGE did not provide a more detailed showing the necessity of why the 2023 work could not have been postponed until 2024, especially given the magnitude of the cost variance. Therefore, the Commission disallows the variance of \$6.8 million of capital expenses for electric distribution and \$1.8 million of O&M expense for electric distribution Project 60505: Distribution Equipment Replacement. However, the Company would not be precluded from requesting cost recovery for capital costs in its next rate case provided that it includes the affirmative testimony demonstrating the prudence of the project.

#### 4. Rate Design - Rate Effective Period

##### **BGE**

BGE witness Fiery testified that, due to the revised procedural schedule approved in order No. 91412, she recommended revising the recovery period for reconciliation to begin with the calendar month following the issuance of this Order, on the 1st day of the month.<sup>313</sup> She recommended that the recovery period run through the end of 2026, in order that recovery will align with BGE's current rate years on a calendar basis.<sup>314</sup> She testified that BGE will make a compliance filing as soon as practical after receiving an order and proposes to put rates into effect on the 1st of the next month, even if the compliance filing has not yet been considered at a Commission Administrative Meeting.<sup>315</sup>

In its brief, BGE repeated its proposal to recover the approved reconciliation amounts through December 2026.<sup>316</sup>

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<sup>313</sup> Fiery Supplemental Direct Testimony at 2.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> BGE Initial Brief at 39.

**Staff**

Staff witnesses Hoppock and Thomas recommended that the Commission make a decision on the recovery period for reconciliation when it considers BGE's compliance filing in this matter.<sup>317</sup> They also testified that it is generally beneficial to spread the final approved reconciliation over more months.<sup>318</sup>

In its brief, Staff noted that a shorter recovery period will have increased customer impacts, because the reconciliation amount will need to be recovered over a more limited number of customer bills.<sup>319</sup> Staff suggested that the Commission could wait to set a recovery period until after BGE made its compliance filing, and then set the recovery period as part of the subsequent Administrative Meeting.<sup>320</sup>

**Commission Decision**

In Order No. 89482, which initiated the MRP Pilot, the Commission notes that the time period for reconciliation shall be set on a case-by-case basis.<sup>321</sup> The Commission notes the concerns raised by all parties regarding the timing of the reconciliation rider, including the risk of greater ratepayer impact if a shorter recovery period is approved. Given the large dollar amounts at issue in this reconciliation, the Commission is concerned that BGE's proposal will begin charging customers under the rider before it is approved. Accordingly, the Commission directs that the reconciliation recovery period shall begin on the 1st of the

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<sup>317</sup> Hoppock Supplemental Reply Testimony at 6 and Thomas Supplemental Reply Testimony at 7.

<sup>318</sup> *Id.*

<sup>319</sup> Staff Initial Brief at 22.

<sup>320</sup> *Id.* at 22-23.

<sup>321</sup> Order No. 89482 at 39-40.

month following the Commission’s approval of a reconciliation rider, and conclude at the end of the 2027 calendar year.<sup>322</sup>

5. Revenue Allocation

**BGE**

BGE witness Fiery proposed to apportion any approved reconciliation revenues among rate classes in proportion to each class’s 2023 revenue requirement increases as decided in Case No. 9645, excluding any classes that did not receive a revenue increase.<sup>323</sup> That allocation was not disputed by any other party.<sup>324</sup>

The Commission accepts and adopts the undisputed revenue allocation proposed by BGE. The following tables outline the revenue allocation. These revenue allocations along with the authorized rate effective period result in a monthly bill impact of \$0.72 for electric and \$1.95 for gas.<sup>325</sup>

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<sup>322</sup> If the Commission approves a final tariff at some time in January 2026, then the tariff would apply to ratepayer consumption beginning February 1, 2026.

<sup>323</sup> Fiery Direct Testimony at 4.

<sup>324</sup> See Hoppock Direct Testimony at 5 and Thomas Supplemental Reply Testimony at 6.

<sup>325</sup> Bill impacts based on an average residential usage of 876 kWh and 55 therms for electric and gas respectively. Bill impacts based on billing determinants provided in Witness Fiery’s Direct Testimony, LKF-1 for residential customers from March 2025 through December 2026. These billing determinants were normalized to 23 months to represent the Commission’s authorized recovery timeline assuming a start date of February 1, 2026. It is anticipated that the billing determinants may be revised to reflect more current usage at the time of compliance filing.

**Table 6: Electric Revenue Allocation (\$000)**

Electric Tariff	Allocated
R	\$ 18,907
RL	\$ 1,368
G/GU	\$ 2,687
GS	\$ 220
GL	\$ 5,489
P	\$ 1,643
T	\$ -
SL	\$ 520
PL	\$ -
Total	\$ 30,834

**Table 7: Gas Revenue Allocation (\$000)**

Gas Tariff	Allocated
D	\$ 26,605
C	\$ 16,456
PLG	\$ -
IS	\$ 3,040
ISS	\$ 261
EG	\$ -
Total	\$ 46,363

## V. CONCLUSION

The goal of any ratemaking proceeding is for the Commission to ensure that the rates approved for a public utility to charge customers for regulated service are just and reasonable. This requires that the rates established by the Commission also be consistent with the public good. BGE's MRP 1 RY3 reconciliation is being addressed during a period of economic difficulties for consumers, especially residential utility customers. The Company's Pilot MRP rates were established during the onset of the COVID-19 pandemic, which presented economic uncertainties in and of itself. While the Commission approved the base MRP, the Commission has repeatedly emphasized that MRP-utilities should not expect full recovery of their reconciliation requests, particularly where those requests are not supported, and that rate affordability by customers should be a serious consideration – warning utilities that close adherence to budgets is a crucial consideration in addressing reconciliation requests.

Having duly considered the entire record in this proceeding, including all of the filed and oral testimony and exhibits, and taking into account recent Commission decisions, the Commission hereby authorizes adjusted MRP electric and gas distribution revenues of \$30,834,091 (electric) and \$46,362,983 (gas). The Commission finds that these terms, along with the decisions stated elsewhere in this Order, encompass just and reasonable rates that mitigate the risk of rate shock that customers would otherwise experience were BGE's full reconciliation request to be approved.

**IT IS, THEREFORE,** this 22<sup>nd</sup> day of December, in the year of Two Thousand Twenty-Five, by the Public Service Commission of Maryland, **ORDERED:**

(1) that the MRP-1 YR3 Reconciliation Request filed by Baltimore Gas and Electric Company on April 24, 2024, seeking an increase in its MRP-1 revenues of \$152,276,000 million, is hereby denied, as discussed in the body of this Order;

(2) that BGE is hereby authorized additional MRP-1 revenues in the amount of \$77,197,074, consistent with the findings in this Order;<sup>326</sup>

(3) that BGE is hereby authorized to increase the Company's existing MYP riders in accordance with this Order, and subject to appropriate billing determinants;

(4) that BGE is directed to file tariffs in compliance with this Order, subject to acceptance by the Commission; and

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

*/s/ Frederick H. Hoover, Jr.* \_\_\_\_\_

*/s/ Kumar P. Barve* \_\_\_\_\_

*/s/ Bonnie A. Suchman* \_\_\_\_\_  
Commissioners<sup>327</sup>

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<sup>326</sup> This value does not reflect the additional voluntary reduction in the revenue requirement agreed to by BGE in its confidential filing. As this value was designated confidential the value was not presented in the final value. When the Company makes its compliance filing it shall deduct the agreed to revenue requirement and indicate why the final value cannot disclose the agreed to adjustment if BGE continues to maintain the confidentiality designation. The adjustment was agreed to in Maillog 314658 at 6 and n. 12, Opposition to Office of People's Counsel Motion to Suspend Procedural Schedule. (Jan. 6, 2025).

<sup>327</sup> Commissioners Odogwu Obi Linton and Ryan C. McLean did not take part in the Commission's decision in this matter.