

ORDER NO. 91396

Baltimore Gas and Electric Company's	*	BEFORE THE
Application for an Electric and Gas Multi-	*	PUBLIC SERVICE COMMISSION
Year Plan	*	OF MARYLAND
	*	_____
	*	Case No. 9645
	*	_____

Issue Date: November 1, 2024

ORDER CONTINUING THE YEAR 3 RECONCILIATION PROCEEDING

On October 25, 2024, the Commission issued a Notice suspending the procedural schedule in Baltimore Gas and Electric Company's ("BGE") Year 3 reconciliation proceeding on BGE's multi-year rate plan ("MYP"),¹ prior to the date the parties were scheduled to file briefs and reply briefs. The Notice provided that a subsequent order providing further explanation and direction would follow. This Order provides that explanation, finding deficient the prudence analysis provided by BGE and directing the parties to complete the record, as described below.

Having reviewed the record developed to date, the Commission notes that in their testimony, the Technical Staff ("Staff") and the Office of People's Counsel ("OPC") both asserted that BGE failed to file testimony demonstrating that its project investments and costs were prudently incurred. For example, Staff witness Smith stated: "BGE's filing does not include testimony supporting the reasonableness and prudence of the capital project costs, particularly for new projects and projects that costs increased significantly. As such,

¹ Maillog No. 313135.

other parties are left to support the investment decisions rather than BGE.”² Mr. Smith asserted correctly that BGE “has the burden of proof in these proceedings and should be required to meet that burden without Staff or other parties having to cure the deficiencies in the filed case.”³

In examining prudence, it is undisputed that the utility bears the burden of proof. Although, Staff and OPC argued that BGE did not file sufficient testimony demonstrating prudence, Staff did not propose any disallowance, and OPC only proposed certain disallowances, but this appeared to be based on the variance in costs from the Company’s project budget. The Commission finds that there is not enough evidence in the record for it to make a prudence determination. The Commission is thus not inclined to proceed further without affirmative testimony—from the Company—providing a baseline for a prudence analysis. Therefore, before considering briefs from the parties on the record as it stands, the Commission finds it would benefit from a further, but limited, evidentiary proceeding.

Previously in this case, in addressing BGE’s bollard installation program, Commissioners Herman and O’Donnell emphasized that BGE bears the burden of proof with regard to prudence issues. There, BGE witness Tamla Olivier had elaborated that the bollard installation program was prudent “*because it was done efficiently and under budget,*” but admitted that there were no exhibits or testimony supporting the costs or the efficiency of those costs.⁴ Concluding that the Company failed to meet its burden,

² July 24, 2024 Direct Testimony of Jamie A. Smith (Maillog No. 311104) at 6.

³ *Id.*

⁴ See Concurring Statement of Commissioners Mindy Herman and Anthony O’Donnell, Order No. 89678, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*, Case No. 9645 (Dec. 16, 2020), (“Order No. 89678 Concurrence”) at 2 (emphasis added).

Commissioners Herman and O'Donnell dissented in part with regard to recovery of costs associated with the meter relocation and protection program. They noted that BGE included conclusory language that the bollard installation program is a safety program that the Commission previously allowed, but that the Company provided no exhibits or testimony to support the costs or the efficiency of the program. Commissioners Herman and O'Donnell concluded that they could not support cost recovery for the bollard installation program given that BGE had failed to demonstrate prudence regarding the program and its costs.⁵ While Commissioners Herman and O'Donnell no longer serve on the Commission, their concerns regarding the lack of affirmative testimony on the prudence of the bollard installation program reflect the concerns of the current Commissioners with the prudence of a number of projects contained in the Year 3 reconciliation. To state this concisely, prudence is not just what the project costs, but why the project was constructed, and how it will serve the public interest. The Commission therefore requires BGE in this Year 3 reconciliation to provide affirmative testimony demonstrating the prudence of its projects and the cost recovery being requested.

In making this decision, the Commission emphasizes that prudence is not a variance analysis. A mere accounting of the costs incurred beyond those authorized by the Commission in its MYP order is insufficient. Instead, prudence requires a demonstration by the utility that its projects were appropriately selected, that they provided value to ratepayers, that good management judgment was exercised in the selection of the materials

⁵ Order No. 89678 Concurrence at 4. The Commissioners added further, “[b]ased on the lack of record evidence to support a finding that the additional meter relocation program costs were prudently incurred, we cannot make a prudence determination, or determine the level of disallowance that is warranted, if any.” Order No. 89678 Concurrence at 2.

and methods used to execute the projects, and that the costs—by comparison with alternatives—were justified.⁶

The decision to continue this proceeding is also driven by the large amount in the Company's Year 3 request and the arguments made by several stakeholders that some of the requested cost recovery does not relate to proposals made by the Company's initial requests in its MYP filing and authorized by the Commission in its Order approving the MYP.⁷ Accordingly, the Commission directs that the Company include in its prudence submission a thorough explanation of which projects were abandoned or altered by the Company and why new projects were or are being pursued by the Company.

Therefore, the Commission directs a continuation of the Year 3 Reconciliation Proceeding and that this continuation be a paper proceeding. The Company shall submit written testimony, supported by affidavits, supporting the prudence of the Company's projects and investment costs associated with them. Staff, OPC and other intervenors will be permitted to provide rebuttal testimony, supported also by affidavits as well as counter proposals, which may focus on a stringent variance analysis, if preferred.⁸ The Company,

⁶ See Order No. 90948, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*, Case No. 9692 (Dec. 14, 2023) at 2, stating "prudence issues such as whether particular projects will ultimately benefit ratepayers, whether actual project costs were excessive, and whether the programs were executed effectively and efficiently will become ripe for prudence review during the reconciliation process." In this Year 3 reconciliation proceeding, BGE largely failed to address these questions, focusing instead on the amount of money that it spent, rather than the prudence of those expenditures.

⁷ In Order No. 90948 at 181, the Commission stated unequivocally 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.... [T]he lack of a specific variance test should not be considered free rein to exceed approved budgets." Given that directive, BGE should explain why it is prudent that its actual expenditures, for which it is seeking reconciliation in this proceeding, so vastly exceeded its authorized MYP budgets.

⁸ In Order No. 90948 at 180-81, the Commission explained that while in the future it might consider a variance test whereby a specific percentage over-budget or under-implementation would be deemed imprudent, the record in that case did not support adoption of such a test at that time. The Commission noted however that the lack of a specific variance test should not be considered free rein to exceed approved budgets.

having the burden of proof, may file reply testimony to close the record on this matter. Thereafter, the briefing schedule inclusive of the record to date, as well as the additional record developed in the continuation of the Year 3 Reconciliation Proceeding, shall resume based on the parties' revised procedural schedule.

In order to account for the additional testimony and discovery, the Commission directs the parties to file, no later than November 11, 2024, a consensus procedural schedule for the continued proceeding. The Commission directs that this proceeding be a paper-only proceeding. However, if any party believes that a limited evidentiary hearing is necessary, that party shall make that request to the Commission.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary