

IN THE SUPREME COURT OF MARYLAND

---

September Term 2023

Petition Docket No.

---

**IN THE MATTER OF THE PETITION OF  
THE MARYLAND OFFICE OF PEOPLE'S COUNSEL**

---

Appellate Court of Maryland Case No. 775, September Term 2022

Circuit Court for Baltimore City (Hon. Kendra Young Ausby) Case No. 24-C-21-003749

---

**PETITIONER MARYLAND OFFICE OF PEOPLE'S COUNSEL'S  
PETITION FOR WRIT OF CERTIORARI**

---

DAVID S. LAPP  
PEOPLE'S COUNSEL  
CPF# 9903040003

/s/ Mollie Soloway Woods  
Mollie Soloway Woods  
Assistant People's Counsel  
[mollie.woods@maryland.gov](mailto:mollie.woods@maryland.gov)  
CPF# 2112150150

*Counsel for Petitioner*  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150

June 26, 2023

## TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE AND RELEVANT FACTS .....	3
QUESTIONS FOR REVIEW .....	8
1. Should the Commission’s interpretation of the Merger Order be given the usual deference afforded Commission evidentiary findings, rather than reviewed in light of the parties’ reasonable understanding of the Merger Order at the time it was issued?	
2. Does an increase of \$7.8 million in corporate costs post-merger comply with the Merger Order’s plain language, intent, and purpose that the merger produce “tangible financial benefits” in the form of a “reduction in distribution rates” for customers?	
REASONS FOR GRANTING THE WRIT .....	9
I. Certiorari should be granted to clarify that a past Commission order must be interpreted consistent with a reasonable person’s understanding of that order when it was issued.....	9
II. Certiorari should be granted to ensure customers receive the benefit of the Merger Order’s plain language, intent, and purpose. ....	12
A. The Rate Order violates the Merger Order’s requirement for a comparison to 2016 corporate costs, instead relying on a hypothetical that the Merger Order expressly rejected. ....	13
B. The Rate Order violates the intent and purpose of the Merger Order to comply with the statute.....	14
CONCLUSION.....	16

EXHIBIT 1 – Circuit Court Docket Entries

EXHIBIT 2 – Memorandum Opinion and Order of the Circuit Court, Case No. 24-C-21-003749

EXHIBIT 3 – Order Granting Motion to Alter or Amend Judgment, Case No. 24-C-21-003749

EXHIBIT 4 – Opinion of the Appellate Court of Maryland, Case No. 0775, Sept. Term, 2022

## TABLE OF AUTHORITIES

	Page(s)
<b>Federal Cases</b>	
<i>Encino Motorcars, LLC v. Navarro</i> , 579 U.S. 211 (2016).....	9
<b>Maryland Cases</b>	
<i>Sy-Lene of Wash., Inc. v. Starwood Urb. Retail II, LLC</i> , 376 Md. 157 (2003).....	10
<i>Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n</i> , 461 Md. 380 (2018).....	9, 11
<i>Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n</i> , 246 Md. App. 388 (2020).....	9
<b>Maryland Statutes</b>	
Courts & Judicial Proceedings Article § 12-201 .....	1
Public Utilities Article § 3-203.....	9
Public Utilities Article § 6-105.....	<i>Passim</i>
<b>Maryland Rules</b>	
Rule 2-534 .....	8
Rule 8-301, et seq. ....	1
<b>Maryland Public Service Commission Decisions</b>	
Order No. 84698 (Feb 17, 2012) 2012 WL 833884.....	12

Order No. 88631 (the “Merger Order”) (Apr. 4, 2018)	
2018 WL 1705968 .....	<i>Passim</i>
Order No. 89799 (the “Rate Order”) (Apr. 9, 2021)	
2021 WL 3545013 .....	2, 7, 15
Order No. 89893, Case No. 9651, (July 29, 2021) 2021 WL 3545082.....	7

Pursuant to § 12-201 of the Courts and Judicial Proceedings Article and Maryland Rules 8-301, et seq., the Office of People’s Counsel (“OPC”), respectfully petitions this Court for a writ of certiorari to review the Appellate Court of Maryland’s unreported decision in Case No. 775, September Term, 2022, issued May 9, 2023.

This case involves the question of whether Washington Gas Light Company complied with the conditions imposed by the Public Service Commission as part of its approval of the company’s 2018 acquisition by AltaGas. Specifically at issue is the company’s commitment to realize \$4 million in customer savings during the first five years post-merger.

This case has significant implications for Washington Gas customers but also for the customers of all of Maryland’s regulated utilities. Since 2011, Maryland’s five largest public utilities<sup>1</sup> have all been acquired by utility holding companies. In approving these acquisitions—to which utility customers are captive and which are undisciplined by a competitive market—the Commission has imposed more than a hundred conditions to ensure the acquisitions are “consistent with the public interest” and provide “benefits and no harm to consumers” as required by section 6-105(g)(3)(i) of the Public Utilities Article (“PUA”). Compliance with the conditions in the relevant Commission orders is, therefore, critical to ensuring that customers obtain the benefits and protections required by statute.

---

<sup>1</sup> Baltimore Gas and Electric, Delmarva Power and Light, Pepco, Potomac Edison, and Washington Gas.

Compliance is also critical to protecting the procedural rights of customers who must rely on the Commission's order approving the merger. Importantly, subsequent Commission decisions should be consistent with how a party to the initial merger proceeding would have understood the terms of the merger approval—much as a contract must be interpreted consistent with a reasonable party's expectations at the time the contract was entered. A failure to consider how parties to the merger proceeding would have interpreted the terms and conditions is fundamentally unfair to the parties who must rely on those terms.

Here, the Commission approved AltaGas's acquisition of Washington Gas subject to a commitment to realize at least \$4 million in customer savings as a result of sharing corporate functions with other AltaGas subsidiaries, creating economies of scale and lowering corporate costs.<sup>2</sup> Instead of reduced costs and customer savings, however, three years later, the Commission approved a substantial, undisputed increase in corporate costs of \$7.8 million, or 30 percent over pre-merger costs.<sup>3</sup> In approving that increase, the Commission failed to address how this perverse result benefits customers and ignored entirely the Merger Order's discussion of how the shared cost savings should be determined.

Instead of examining the Merger Order's explanation of the commitments, the Commission and courts treated the issue as one in which the Commission has discretion to accept as evidence of compliance the testimony of a company witness that occurred in

---

<sup>2</sup> Order No. 88631 (the "Merger Order") (Apr. 4, 2018), 2018 WL 1705968.

<sup>3</sup> Order No. 89799 (the "Rate Order") (Apr. 9, 2021), 2021 WL 3545013.

the rate case, three years after the merger, despite that evidence’s irrelevance to the conditions under the terms of the Merger Order itself. That error by the Commission—and the courts’ subsequent deference to that evidentiary finding—affects the general enforceability of hundreds of merger conditions across numerous multi-billion-dollar utility mergers.

As the Office of Legislative Audits recently identified, the Commission’s enforcement of merger conditions has been inconsistent.<sup>4</sup> Without this Court’s intervention, the Commission’s conditions for approving mergers risk becoming meaningless, leading to unlawful results fundamentally unfair to customers and contrary to public policy. It is, therefore, in the public interest for the Court to grant certiorari to determine how the Commission and the courts enforce merger condition compliance.

### **STATEMENT OF THE CASE AND RELEVANT FACTS**

In 2017, Washington Gas, its then-corporate parent WGL Holdings, Inc., and AltaGas filed with the Commission an application for AltaGas to acquire Washington Gas. To meet the statutory requirement that the acquisition be “consistent with the public interest” and provide “benefits and no harm to consumers,”<sup>5</sup> the companies testified that post-merger, Washington Gas’s Maryland customers would eventually benefit from

---

<sup>4</sup> Off. of Legis. Audits, Dep’t of Legis. Servs., Md. Gen. Assemb. *Audit Report – Public Service Commission* (Jan. 2021) (finding that the Commission “did not have an adequate process to ensure that utility companies complied with all conditions set forth in the merger orders,” and that for 64 of the 142 conditions in effect during the audit, the Commission “did not ensure that utility companies complied with the conditions”).

<sup>5</sup> See PUA § 6-105(g)(3)(i).

annual “synergy savings” of \$2.8 million.<sup>6</sup> Utilities promote “synergy savings” in acquisition cases as occurring when a large corporate parent can perform some utility functions—such as work related to legal, business development, supply chain, and IT—at lower cost than the utility on its own. The theory is that after the acquisition, the utility will incur fewer direct corporate costs in addition to allocated corporate costs from the parent company—purportedly at a lower level of total corporate costs, generating savings that will be passed on to customers.

After an initial round of evidentiary hearings in 2017, the applicants sought the Commission’s approval of a partial settlement of the case. Commission staff and OPC opposed this settlement.<sup>7</sup> To support the settlement, Washington Gas committed that “customer rates [would] reflect an annual net benefit to Washington Gas’s Maryland customers of not less than \$800,000 per year over the five years following Merger Close.”<sup>8</sup> As the Merger Order explains, however, other parties to the merger case argued that “post-merger synergy savings are too vague to quantify.”<sup>9</sup>

The Commission approved the settlement agreement subject to modifications that it explained were “necessary to fulfill applicable statutory requirements.”<sup>10</sup> In particular, the Merger Order explained that the application and settlement agreement referred to “pre-Merger” and “post-Merger” for purposes of comparing corporate costs, but failed to

---

<sup>6</sup> Merger Order at 36.

<sup>7</sup> *Id.* at 16-20.

<sup>8</sup> *Id.* at 36.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.

“clearly identify where the line is drawn between the two,” and so it “designat[ed] . . . calendar year 2016 as the ‘pre-Merger’ reference point for pre- and post-Merger comparisons.”<sup>11</sup> Relatedly, it expressly rejected “AltaGas’s preference to use a ‘hypothetical’ for purposes of” a “side-by-side comparison by function of corporate and shared services incurred by Washington Gas pre-merger and those same services for the five years post-merger.”<sup>12</sup> The Commission explained that these modifications allowed it to “quantify these [synergy] savings” and ensure they would “lower customer distribution rates.”<sup>13</sup> With these modifications to the settlement, the Commission found that “synergy savings will result in direct ratepayer benefits,” which it described as “a reduction in distribution rates of \$4 million over five years.”<sup>14</sup>

The two conditions implementing the Merger Order’s promise of customer savings from reduced corporate costs are Commitments 28 and 44, contained in the order’s appendix of 52 conditions. Condition 28 requires Washington Gas to provide the Commission a “side-by-side comparison” of 2016 “corporate and shared-services” costs to those same costs post-merger, using the Federal Energy Regulatory Commission’s Uniform System of Accounts.<sup>15</sup> The company must file the comparison for the “five years after Merger close” and, if the first report has not yet been filed by the first post-Merger rate case, it must be filed “as part of its base rate application.”<sup>16</sup> Condition 44, also

---

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> *Id.* at 56.

<sup>13</sup> *Id.* at 36.

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

<sup>15</sup> *Id.* at A-12.

<sup>16</sup> *Id.*

applicable for “five years after Merger close,” provides for the promised savings, requiring that “customer rates reflect an annual net benefit to Washington Gas’s Maryland customers of not less than \$800,000 per year over the five years following Merger Close.”<sup>17</sup> Condition 44 states that the commitment will result in “tangible financial benefits achieved as a result of the Merger” and expressly prohibits Washington Gas from recovering in rates “any corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings.”<sup>18</sup>

On August 28, 2020, Washington Gas applied for a rate increase, requesting an additional \$28.4 million in annual revenue from its Maryland customers, including—despite the promise of “synergy” savings and resulting rate reductions—an undisputed increase of \$7.8 million in corporate costs. The company claimed that this substantial increase somehow was offset by an even greater amount of corporate cost savings, resulting in a “net benefit” to customers. Specifically, although total corporate costs jumped by 30 percent in just three years, a company executive insisted the company saved Maryland customers \$9.1 million in corporate costs based on an internal survey of business units, using the theory that—in the hypothetical situation in which the merger never occurred—corporate costs actually would have grown *even more* than 30 percent. The witness did not use 2016 costs anywhere to demonstrate the purported “savings.”

Despite extensive evidence and argument on whether the increased corporate costs complied with the Merger Order, a proposed order from the Public Utility Law Judge

---

<sup>17</sup> *Id.* at A-17 – A-18.

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

(“PULJ”) did not contain a single mention of the issue, and OPC appealed to the full Commission. The Commission disagreed with OPC and authorized Washington Gas to recover the increased corporate costs, crediting the company’s testimony and stating that “Commitment 44 does not prohibit recovery of an increase in post-merger costs, so long as the increase in benefits exceeds those costs by greater than \$800,000.”<sup>19</sup> The Commission did not address any of the Merger Order’s language explaining how and why it “designat[ed] calendar year 2016 as the ‘pre-Merger’ reference point for pre- and post-Merger companies,” nor how it is plausible that customers could “benefit” and suffer “no harm” when corporate costs substantially increased post-merger.

OPC filed a request for rehearing, which the Commission denied. In a 4-1 decision, the Commission reiterated its conclusions, asserting that evidence supported its decision and that condition 44 “did not require costs to decrease so long as overall annual synergy savings exceeded \$800,000.”<sup>20</sup> Commissioner Richard dissented, finding that Washington Gas “did not show that it achieved the required customer savings in compliance with the Merger Order.”<sup>21</sup>

Upon judicial review, the Circuit Court for Baltimore City initially issued an opinion and order reversing the decision of the Commission and remanding for additional proceedings on two issues, including the corporate cost issue.<sup>22</sup> The Commission

---

<sup>19</sup> Rate Order at 24-25.

<sup>20</sup> Order No. 89893 at 6 (July 29, 2021), 2021 WL 3545082.

<sup>21</sup> *Id.* at Commissioner Richard – 1-2.

<sup>22</sup> Memorandum Opinion and Order, Case No. 24-C-21-003749 (Feb. 25, 2022). OPC raised two issues on judicial review. OPC prevailed at the circuit court on the second issue regarding prudence, and the Commission accepted that ruling.

thereafter filed a Rule 2-534 Motion to Alter or Amend Judgment concerning the corporate cost issue, which the circuit court granted, affirming the Commission’s decision to permit the recovery of increased corporate costs.<sup>23</sup> OPC appealed to the Appellate Court of Maryland, which affirmed in an unpublished opinion deferring to the Commission’s factual findings in the rate case.<sup>24</sup> On June 9, 2023, the Appellate Court issued its mandate.

### QUESTIONS FOR REVIEW

1. Should the Commission’s interpretation of the Merger Order be given the usual deference afforded Commission evidentiary findings, rather than reviewed in light of the parties’ reasonable understanding of the Merger Order at the time it was issued?
2. Does an increase of \$7.8 million in corporate costs post-merger comply with the Merger Order’s plain language, intent, and purpose that the merger produce “tangible financial benefits” in the form of a “reduction in distribution rates” for customers?

---

<sup>23</sup> Order granting Respondent Maryland Public Service Commission’s Motion to Alter or Amend Judgment, Case No. 24-C-21-003749 (May 27, 2022).

<sup>24</sup> *In the Matter of the Pet. of the Md. Off. of People’s Couns.* (“Appellate Court Opinion”), No. 775, Sept. Term, 2022 (May 9, 2023).

## REASONS FOR GRANTING THE WRIT

### **I. Certiorari should be granted to clarify that a past Commission order must be interpreted consistent with a reasonable person’s understanding of that order when it was issued.**

OPC does not dispute that Commission decisions come to this Court on a highly deferential standard of review.<sup>25</sup> But that deference is not without limit. If a party challenging an agency decision shows “that the agency exercised its discretion unreasonably or without a rational basis,” that is grounds for reversal.<sup>26</sup> Courts reviewing whether an agency decision is arbitrary and capricious “may look for consistency with the policy goals stated in the pertinent statutes or regulations and with the agency’s past decisions.”<sup>27</sup> As the Appellate Court recently explained, it must be “possible to follow the path of the [Commission’s] reasoning” in reaching its decision.<sup>28</sup> When parties to a proceeding must rely on a prior agency decision—especially where that earlier decision includes future measures deemed necessary to comply with a statute—it is even more incumbent upon the agency to explain how its new decision comports with its earlier decision.<sup>29</sup>

---

<sup>25</sup> See, e.g., PUA § 3-203 (“Every final decision, order, or regulation of the Commission is prima facie correct ...”); *Md. Off. of People’s Couns. v. Md. Pub. Serv. Comm’n*, 461 Md. 380, 393-94 (2018).

<sup>26</sup> *Off. of People’s Couns.*, 461 Md. at 399.

<sup>27</sup> *Id.* at 399-400.

<sup>28</sup> *Md. Off. of People’s Couns. v. Md. Pub. Serv. Comm’n*, 246 Md. App. 388, 413 (2020) (quoting *Off. of People’s Couns.*, 461 Md. at 405).

<sup>29</sup> See, e.g., *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (stating that where parties rely on an agency interpretation or policy, the agency must provide a “more reasoned explanation”).

Here, the Commission had the foresight in 2018 to craft merger conditions so that it could verify that AltaGas’s acquisition of Washington Gas would result in “benefits and no harm to consumers,” as required under PUA § 6-105(g)(3). Three years later, however, it accepted an interpretation of those merger conditions that violated the plain language, intent, and purpose of those conditions, rendering the carefully crafted requirements illusory. In particular, the Commission interpreted the merger commitments without any discussion of (i) the Merger Order’s explanations for those same commitments, (ii) the intent of those commitments to produce tangible benefits, or (iii) the purpose of those commitments to comply with PUA § 6-105. The resulting decision was “inconsistent with the policy goal” of PUA § 6-105 to ensure “benefits and no harm to consumers” and inconsistent with the Commission’s “past decisions.” Thus, it was an unreasonable and arbitrary exercise of the Commission’s discretion—however broad that discretion is.

Fundamental procedural fairness requires that the Merger Order requirements be evaluated similar to a contract—viewing all its terms, intent, and purpose as they would be viewed by a reasonable party to the merger proceeding when the order was issued.<sup>30</sup> OPC opposed the settlement leading to the Merger Order, and, in deciding whether to seek judicial review, necessarily would have considered that judicial review would be based on the Merger Order in its entirety, including its explanations of the conditions, and

---

<sup>30</sup> See, e.g., *Sy-Lene of Wash., Inc. v. Starwood Urb. Retail II, LLC*, 376 Md. 157, 167 (2003) (“[W]hen the court is called upon to interpret a contract,” it must “[d]etermine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.”) (internal quotations omitted).

not just the conditions themselves as they stood in the appendix.<sup>31</sup> If OPC had appealed the Merger Order and argued that the promised customer benefits were insufficient because they would allow corporate costs to rise without any practical limit so long as the company could present hypothetical offsetting savings—as the Commission allowed here—the Commission and reviewing courts would have correctly defended that appeal by pointing to the discussion in the Merger Order. They would have said the promised customer benefits were “tangible” and “quantifiable” based on the 2016 “comparison” year and that the order rejected using a hypothetical to compare pre-merger and post-merger costs. OPC would have been highly unlikely to prevail.

In the Rate Order at issue here, however, the Commission accepted the company’s testimony of hypothetical offsetting “savings” without regard to how the language, intent, and purpose of the Merger Order would have been construed by parties at the time of the merger proceeding. Then the courts below applied ordinary deference to the Commission’s factual findings—again without any discussion of language in the Merger Order describing the purpose and intent of the commitments.<sup>32</sup> By not considering how the Merger Order would have been understood at the time, the Rate Order arrives at the illogical and incoherent conclusion that customers somehow “benefit” from a massive increase in corporate costs post-merger. Put simply, it is not “possible to follow the path

---

<sup>31</sup> See *Off. of People’s Couns.*, 461 Md. at 400-401 (discussing the merger order, apart from conditions contained in the order’s appendix).

<sup>32</sup> See, e.g., Appellate Court Opinion at 10 (“The Commission’s decision was based upon expert testimony that the Commission chose to credit. It is not the province of this Court to substitute its judgment for that of the Commission.”).

of the [Commission's] reasoning" in deviating from the requirements and purpose of the Merger Order. This Court should grant certiorari to perform the interpretive analysis that the Commission and lower courts bypassed.

**II. Certiorari should be granted to ensure customers receive the benefit of the Merger Order's plain language, intent, and purpose.**

To approve a proposed acquisition, the Commission must find "the acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers."<sup>33</sup> As the Commission has explained, "for a benefit to qualify under the statute, it must be 'direct' and 'certain' as opposed to 'contingent' or 'intangible.'"<sup>34</sup> Thus, at the time of the 2018 merger, the Commission was concerned that any promise to achieve merger savings not be too "speculative" or only materialize as "foregone requests for rate relief," which the Commission had previously "held to be too intangible to qualify as a benefit under PUA § 6-105."<sup>35</sup> In assessing customer "benefits," the Commission found the required "benefits" were present because Washington Gas committed, in condition 44, that "customer rates [will] reflect an annual net benefit to Washington Gas's Maryland customers of not less than \$800,000 per year over the five years following Merger Close."<sup>36</sup> It found that the imposed conditions would "ensure[] that customer rates will decline or otherwise be lower than they would have been absent

---

<sup>33</sup> PUA § 6-105(g)(3)(i).

<sup>34</sup> Order No. 84698 at 88 (Feb. 17, 2012), 2012 WL 833884.

<sup>35</sup> *Id.* at 90.

<sup>36</sup> Merger Order at 36 (emphasis added).

the merger,” allowing the Commission “to quantify these savings” and comply with the statute.<sup>37</sup>

The Rate Order, however, contradicts the plain language of the Merger Order as well as its intent and purpose to comply with the statutory requirement under PUA § 6-105.

**A. The Rate Order violates the Merger Order’s requirement for a comparison to 2016 corporate costs, instead relying on a hypothetical that the Merger Order expressly rejected.**

In 2018, the Commission did not accept the companies’ promise of synergy savings at face value. Instead, the plain language of the Merger Order required that “for purposes of shared-services cost comparison,” it is necessary to “clearly identify where the line is drawn between” pre- and post-merger costs.<sup>38</sup> The Merger Order expressly “[did] not accept AltaGas’s preference to use a ‘hypothetical’ for purposes of this comparison,”<sup>39</sup> designating instead calendar year 2016 “as the ‘pre-Merger’ reference point for pre- and post-merger comparisons.”<sup>40</sup>

The Rate Order, however, determined that Washington Gas complied with the savings requirement without any comparison to 2016 corporate costs, disregarding entirely the commitment to side-by-side comparison, the only accounting of actual pre- and post-merger corporate and shared-services costs. Instead, it allowed Washington Gas to rely on a hypothetical scenario created by an “internal survey of business unit

---

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

<sup>38</sup> *Id.* at 3-4.

<sup>39</sup> *Id.* at 56.

<sup>40</sup> *Id.* at 4, 56.

leaders” that purported to show that absent the merger, corporate costs *would have* increased even more than the undisputed 30 percent increase above 2016 corporate costs.

By ignoring the 2016 comparison year, Washington Gas’s witness—and the Rate Order—disregarded the corporate costs Washington Gas directly billed its Maryland customers. It is undisputed, however, that corporate costs *allocated* from AltaGas to Washington Gas went from zero pre-merger to over \$8 million post-merger, while corporate costs *billed directly* by Washington Gas decreased by only \$251,306 post-merger, resulting in a net increase of \$7.8 million and a corresponding increase in Maryland customer distribution rates. Washington Gas’s customers, of course, are indifferent as to whether corporate costs are incurred directly or indirectly by AltaGas’s allocation, precisely illustrating why comparing total pre- and post-merger costs is necessary to determine if the promised “benefits” accrued to customers.

**B. The Rate Order violates the intent and purpose of the Merger Order to comply with the statute.**

Aside from contradicting the text of the Merger Order, the Rate Order is also plainly contrary to the intent and purpose of the promised “synergy savings”—to produce tangible benefits and meet the PUA § 6-105 requirement that the merger result in “benefits and no harm to consumers.” The Merger Order relies in part on the finding of corporate cost savings—the “synergy” savings that the company promised during the merger proceeding—to meet the statutory requirement. The company asserted that savings would lower customer rates and committed that for five years post-merger,

customers would see an “annual net benefit” of at least \$800,000 per year.<sup>41</sup> The Commission found these benefits would “result in a reduction in distribution rates of \$4 million over five years” and “thereby help satisfy this prong of the statute.”<sup>42</sup>

But in approving Washington Gas’s request to recover a 30 percent increase in corporate costs post-merger, the Rate Order defeats the entire purpose of the benefits requirement. Customers do not “benefit” from higher costs or rates—especially ones that jump 30 percent over three years. To arrive at its result, the Rate Order parses the Commitment 44 language, incoherently concluding that it “does not prohibit recovery of an increase in post-merger costs, so long as the increase in benefits exceeds those costs by greater than \$800,000.”<sup>43</sup> Restated, the Rate Order concludes that the promised \$800,000 “savings” can occur despite an *increase* in overall corporate costs. Under this rationale, costs can increase by *any* amount, so long as the company can point to hypothetical offsetting “savings.” This conclusion cannot be reconciled with the Merger Order’s intent and purpose of providing tangible benefits for customers to satisfy PUA § 6-105, and the Rate Order never explains otherwise.

The Court should grant review to clarify that the Rate Order is legally flawed because it undermines the Merger Order’s requirements for satisfying PUA § 6-105 by denying customers the statutorily required benefits promised under that order.

---

<sup>41</sup> *Id.* at 36.

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

<sup>43</sup> Rate Order at 25.

## CONCLUSION

The issue raised by this case—how the Commission and the courts enforce the conditions the Commission has attached to its approvals of utility mergers to date—has implications not only for Washington Gas customers, but for the customers of all regulated utility companies that have been, or may in the future be, acquired. It is, thus, necessary and in the public interest for this Court to grant a writ of certiorari.

Respectfully submitted,

DAVID S. LAPP  
People's Counsel  
CPF# 9903040003

/s/ Mollie Soloway Woods  
Mollie Soloway Woods  
Assistant People's Counsel  
[mollie.woods@maryland.gov](mailto:mollie.woods@maryland.gov)  
CPF# 2112150150

*Counsel for Petitioner*  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150

June 26, 2023

Circuit Court of Maryland

## EXHIBIT 1

[Go Back Now](#)

## Case Information

**Court System:** Circuit Court for Baltimore City - Civil System  
**Case Number:** 24C21003749  
**Title:** In The Matter Of The Petition Of The Maryland Office Of People's Couns  
**Case Type:** Administrative Agency Appeal **Filing Date:** 08/30/2021  
**Case Status:** Closed/Inactive  
**Case Disposition:** Decision Reversed **Disposition Date:** 02/25/2022

---

## Plaintiff/Petitioner Information

*(Each Plaintiff/Petitioner is displayed below)*

**Party Type:** Petitioner **Party No.:** 1  
**Business or Organization Name:** The Maryland Office Of People's Counsel  
**Address:** 6 St. Paul Street  
**City:** Baltimore **State:** MD **Zip Code:** 21202

**Attorney(s) for the Plaintiff/Petitioner**

**Name:** Cleaver, Esq, Joseph G  
**Appearance Date:** 08/30/2021  
**Removal Date:** 07/07/2022  
**Practice Name:** Office Of People's Counsel  
**Address:** 6 St. Paul Street #2102  
**City:** Baltimore **State:** MD **Zip Code:** 21202

**Name:** Lapp, Esq, David S  
**Appearance Date:** 06/30/2022  
**Practice Name:** Maryland Office Of People's Counsel  
**Address:** 6 St. Paul Street  
Suite 2102  
**City:** Baltimore **State:** MD **Zip Code:** 21202

**Name:** Zeichner, Esq, Nicole L  
**Appearance Date:** 06/30/2022  
**Practice Name:** Maryland Office Of People's Counsel  
**Address:** 6 St. Paul Street  
Suite 2102  
**City:** Baltimore **State:** MD **Zip Code:** 21202

---

## Court Scheduling Information

**Event Type:** Civil Trial - Fast Track **Notice Date:** 02/04/2022  
**Event Date:** 02/16/2022 **Event Time:** 09:30 AM  
**Result:** Held/Concluded **Result Date:** 02/18/2022

---

**Event Type:** Motion Hearing (Civil) **Notice Date:** 04/25/2022  
**Event Date:** 05/18/2022 **Event Time:** 09:30 AM  
**Result:** **Result Date:**

---

## Related Persons Information

*(Each Related person is displayed below)*

**Party Type:** Administrative Agency **Party No.:** 1  
**Business or Organization Name:** The Maryland Public Service Commission  
**Address:** 6 St. Paul St.

## EXHIBIT 1

City: **Baltimore** State: **MD** Zip Code: **21202**

**Attorney(s) for the Related Persons**

Name: **Erwin, Jr, H Robert**

Practice Name: **Public Service Commission Of Maryland**

Address: **6 St. Paul Street**

City: **Baltimore** State: **MD** Zip Code: **21202**

Name: **English, Esq, Joseph**

Practice Name: **Office Of General Counsel Maryland Public Service Commission**

Address: **6 St Paul Street  
16th Floor**

City: **Baltimore** State: **MD** Zip Code: **21202**

Party Type: **Interested Party** Party No.: **1**

Business or Organization Name: **Washington Gas Light Company's**

**Attorney(s) for the Related Persons**

Name: **Dodge, Esq, John C**

Practice Name: **Office Of General Counsel**

Address: **Washington Gas Light Co  
101 Constitution Ave NW**

City: **Washington** State: **DC** Zip Code: **20080**

**Document Tracking**

*(Each Document listed. Documents are listed in Document No./Sequence No. order)*

Doc No./Seq No.: **1/0**

File Date: **08/30/2021** Entered Date: **09/03/2021** Decision:

Party Type: **Petitioner** Party No.: **1**

Document Name: **Petition for Judicial Review**

Doc No./Seq No.: **1/1**

File Date: **09/21/2021** Entered Date: **09/23/2021** Decision:

Party Type: **Interested Party** Party No.: **1**

Document Name: **Response/Answer to Petition**

Doc No./Seq No.: **1/2**

File Date: **09/23/2021** Entered Date: **09/24/2021** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **Maryland Public Service Commission's Response to Petition for Judicial Review**

Doc No./Seq No.: **2/0**

File Date: **08/30/2021** Entered Date: **09/03/2021** Decision:

Party Type: **Petitioner** Party No.: **1**

Document Name: **Notice of Petition for Judicial Review**

Doc No./Seq No.: **3/0**

File Date: **09/13/2021** Entered Date: **09/17/2021** Decision:

Party Type: **Administrative Agency** Party No.: **1**

Document Name: **Line**

Doc No./Seq No.: **4/0**

File Date: **10/28/2021** Entered Date: **10/29/2021** Decision:

Party Type: **Administrative Agency** Party No.: **1**

**Document Name:** Administrative Agency Record Received (In Brown Accordion Folders, Volume Nos. 2, 3, 4, 5 and 6)

**EXHIBIT 1**

**Doc No./Seq No.:** 5/0

**File Date:** 10/29/2021 **Entered Date:** 10/29/2021 **Decision:**

**Party Type:** Administrative Agency **Party No.:** 1

**Document Name:** Notice of Record Received

**Doc No./Seq No.:** 6/0

**File Date:** 11/01/2021 **Entered Date:** 11/01/2021 **Decision:**

**Document Name:** Expedited Track Scheduling Order Sent

**Doc No./Seq No.:** 7/0

**File Date:** 11/22/2021 **Entered Date:** 11/24/2021 **Decision:**

**Party Type:** Petitioner **Party No.:** 1

**Document Name:** Stipulated Schedule for Filing of Memoranda

**Filed by** PET001-The Maryland Office Of People's Counsel, ADA001-The Maryland Public Service Commission, ITP001-Washington Gas Light Company's

**Doc No./Seq No.:** 8/0

**File Date:** 12/15/2021 **Entered Date:** 12/16/2021 **Decision:**

**Party Type:** Petitioner **Party No.:** 1

**Document Name:** Memorandum Of Petitioner Maryland Office Of People's Counsel

**Doc No./Seq No.:** 9/0

**File Date:** 01/13/2022 **Entered Date:** 01/14/2022 **Decision:**

**Party Type:** Administrative Agency **Party No.:** 1

**Document Name:** Memorandum of Law

**Doc No./Seq No.:** 9/1

**File Date:** 01/14/2022 **Entered Date:** 01/18/2022 **Decision:**

**Party Type:** Interested Party **Party No.:** 1

**Document Name:** WASHINGTON GAS LIGHT COMPANY'S ANSWERING MEMORANDUM LAW

**Doc No./Seq No.:** 9/2

**File Date:** 01/31/2022 **Entered Date:** 02/01/2022 **Decision:**

**Party Type:** Petitioner **Party No.:** 1

**Document Name:** REPLY MEMORANDUM OF PETITIONER MARYLAND OFFICE OF PEOPLE'S COUNSEL

**Doc No./Seq No.:** 10/0

**File Date:** 01/24/2022 **Entered Date:** 01/25/2022 **Decision:** Approved

**Document Name:** ORDER FOR REMOTE ELECTRONIC HEARING

**ORDERED** that the matter will be heard as aremote electronic hearing conducted on the record pursuant to Maryland Rule 2-802 at the following date and time:**Date:** February 16, 2022**Time:** 9:30 a.m.**Meeting ID:** 160 338 8927**Passcode:** 95264842See Order for further details.**Judge Fletcher-Hill**

**Doc No./Seq No.:** 10/1

**File Date:** 01/25/2022 **Entered Date:** 01/25/2022 **Decision:**

**Document Name:** Copies Mailed

## EXHIBIT 1

Doc No./Seq No.: 11/0

File Date: 02/04/2022 Entered Date: 02/04/2022 Decision:

Document Name: Batch Hearing Notice Sent

Event: CTFT Block Date: 02/16/22 Facility: 403FPARTIES : English, Joseph 6 St Paul Street 16th Floor, Baltimore, MD, 21202Erwin, H 6 St. Paul Street , Baltimore, MD, 21202Dodge, John Washington Gas Light Co 101 Constitution Ave NW, Washington, DC, 20080Cleaver, Joseph 6 St. Paul Street #2102 , Baltimore, MD, 21202

Doc No./Seq No.: 12/0

File Date: 02/17/2022 Entered Date: 02/17/2022 Decision:

Document Name: Open Court Proceeding

IN THE MATTER OF THE PETITION OF PEOPLE'S COUNSEL #24C21374902/16/2022 Case submitted to the court for determination without the aid of a jury in front of the Honorable Judge Kendra Ausby on zoom. (K.Ausby, J)ams02/16/2022 Petition for Judicial Review is heard and hereby "held subcuria pending written memorandum". Order to be filed. (K.Ausby, J)ams02/16/2022 File in Chambers. (K.Ausby, J)ams

Doc No./Seq No.: 13/0

File Date: 02/24/2022 Entered Date: 02/24/2022 Decision:

Document Name: Open Court Proceeding

In The Matter Of The Petition Of The Maryland Office Of People's Counsel 24-C-21-00374902/24/2022 Rule 18-102.11 hearing held before the Honorable Kendra Ausby. No party objects. File in chambers pending ruling on the Petition. (Ausby, J.)02/24/2022 Insert Sheet Filed. (Ausby, J.)

Doc No./Seq No.: 13/1

File Date: 02/28/2022 Entered Date: 02/28/2022 Decision:

Document Name: Memorandum Opinion and Order

It is this 25th day of February 2022, ORDERED that the decision of the Public Service Commission in Order No. 89893, in Case No. 9651, is hereby REVERSED; and it is further ORDERED that this matter be REMANDED to the Public Service Commission; and it is further ORDERED that the Commission shall not permit Washington Gas' Recovery of any corporate costs incurred as a result of the merger which exceed merger-related savings; and it is further ORDERED that the Commission shall not permit Washington Gas' recovery of Capital costs associated with the fourteen capitals unless, and until it reviews the prudence of those costs. (see Order for details).Judge K.Y. Ausby

Doc No./Seq No.: 13/2

File Date: 02/28/2022 Entered Date: 02/28/2022 Decision:

Document Name: Copies Mailed

Doc No./Seq No.: 14/0

File Date: 03/10/2022 Entered Date: 03/11/2022 Decision: Granted

Party Type: Administrative Agency Party No.: 1

Document Name: Motion to Alter/Amend Judgment

Doc No./Seq No.: 14/1

File Date: 03/25/2022 Entered Date: 03/28/2022 Decision:

Party Type: Petitioner Party No.: 1

Document Name: Response/Opposition to Motion

Doc No./Seq No.: 14/2

File Date: 03/28/2022 Entered Date: 03/30/2022 Decision:

Party Type: Petitioner Party No.: 1

Document Name: Corrected Response in Opposition to the Maryland Public Service Commission's

## Motion to Alter or Amend Judgment

EXHIBIT 1

Doc  
No./Seq 14/3  
No.:

File Date: 05/31/2022 Entered Date: 05/31/2022 Decision:

Document  
Name: Order of Court

ORDERED that the Motion (#14) is GRANTED; and it is further ORDERED that for the reasons stated supra, the decision of the Maryland Public Service Commission is AFFIRMED IN-PART and REVERSED IN-PART; and it is further ORDERED that the Public Service Commission's decision to permit Washington Gas' recovery for corporate costs is AFFIRMED; and it is further ORDERED that the Public Service Commission's decision to permit Washington Gas' recovery of certain capital costs is REVERSED; and it is further ORDERED that the Public Service Commission shall not permit Washington Gas' recovery of capital costs unless, and until the Public Service Commission reviews the prudence of those costs; and it is further ORDERED that this matter be REMANDED to the Public Service Commission for further proceedings consistent with this Order and the Memorandum Opinion and Order (#13/1). Judge Ausby.

Doc No./Seq No.: 14/4

File Date: 05/31/2022 Entered Date: 05/31/2022 Decision:

Document Name: Copies Mailed

Doc No./Seq No.: 15/0

File Date: 03/28/2022 Entered Date: 03/30/2022 Decision: Granted

Party Type: Petitioner Party No.: 1

Document Name: Consent Motion for Leave to File Corrected Response to Motion

Doc  
No./Seq 15/1  
No.:

File Date: 04/07/2022 Entered Date: 04/07/2022 Decision:

Document  
Name: Order of Court

It is this 15th day of April 2022, ORDERED that the Maryland Office of People's Counsel's Consent Motion for Leave to File Corrected Response to Motion is GRANTED. (See Order for details). Judge Fletcher-Hill

Doc No./Seq No.: 15/2

File Date: 04/07/2022 Entered Date: 04/07/2022 Decision:

Document Name: Copies Mailed

Doc No./Seq No.: 16/0

File Date: 04/25/2022 Entered Date: 04/25/2022 Decision:

Document Name: Notice Motion Hearing Sent

Event: MOTN Block Date: 05/18/22 Facility: 430PARTIES :

Doc  
No./Seq 17/0  
No.:

File Date: 05/18/2022 Entered Date: 05/18/2022 Decision:

Document  
Name: Open Court Proceeding

In the Matter of the Petition of the Maryland Office of People's Counsel, et al v. Maryland Public Service Commission 05/18/22 Case submitted to the court for determination without the aid of a jury. Ausby, 05/18/22 Respondant's motion (Maryland Public Service Commission) to alter and/or amend judgement is hereby heard and "Held Sub Curia" pending written order of the court. Ausby, 05/18/22 Order to be filed. Ausby, 05/18/22 Insert sheet filed. File in chambers TF

Doc No./Seq No.: 18/0

File Date: 06/30/2022 Entered Date: 06/30/2022 Decision:

Party Type: Petitioner Party No.: 1

Document Name: Appeal Order to COSA

## EXHIBIT 1

Doc No./Seq No.: **19/0**  
 File Date: **06/30/2022** Entered Date: **07/01/2022** Decision:  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Entry of Appearance**

Doc No./Seq No.: **20/0**  
 File Date: **07/07/2022** Entered Date: **07/08/2022** Decision:  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Withdrawal of Attorney Appearance**

Doc No./Seq No.: **21/0**  
 File Date: **07/08/2022** Entered Date: **07/08/2022** Decision:  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Attorney Appearance Removed**  
**Joseph G Cleaver**

Doc No./Seq No.: **22/0**  
 File Date: **08/11/2022** Entered Date: **08/12/2022** Decision:  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Correspondence from Office of People's Counsel**

Doc No./Seq No.: **23/0**  
 File Date: **08/09/2022** Entered Date: **08/12/2022** Decision:  
 Document Name: **Order of COSA to Proceed Assigned C. Dockins**  
**No. 0775 September Term 2022CSA-REG-0775-2022Due: 10/03/2022**

Doc No./Seq No.: **24/0**  
 File Date: **08/24/2022** Entered Date: **08/24/2022** Decision:  
 Document Name: **Transcript of Testimony before Judge Karen Young Ausby February 16 2022**  
**\$131.25**

Doc No./Seq No.: **25/0**  
 File Date: **08/24/2022** Entered Date: **08/24/2022** Decision:  
 Document Name: **Transcript of Testimony before Judge Karen Young May 18 2022**  
**\$90.00**

Doc No./Seq No.: **26/0**  
 File Date: **09/12/2022** Entered Date: **09/22/2022** Decision:  
 Party Type: **Petitioner** Party No.: **1**  
 Document Name: **Certificate of Service**

Doc  
 No./Seq **27/0**  
 No.:  
 File Date: **09/26/2022** Entered Date: **09/26/2022** Decision:  
 Document Name: **Record on Appeal Forwarded to COSA**  
**09/26/22 One Volume And Two Blue Transcript and Five Brown Agency Records Sent Via**  
**fedex # 8130 1334 5874 And #8130 1334 5863**

*This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.*

IN THE MATTER OF	*	IN THE
THE PETITION OF	*	CIRCUIT COURT
THE MARYLAND OFFICE OF	*	FOR
PEOPLE'S COUNSEL	*	BALTIMORE CITY
	*	Case No. 24-C-21-003749
	*	PSC Case No. 9651

\* \* \* \* \*

### MEMORANDUM OPINION AND ORDER

This matter came before the Court for a hearing on February 16, 2022 upon Petitioner The Maryland Office of People's Counsel's ("Petitioner") Petition for Judicial Review (Docket Entry No. 1). The hearing was held via remote electronic participation pursuant to Maryland Rule 2-802. Petitioner's counsel appeared. Counsel for the Public Service Commission of Maryland (the "Commission" or "PSC") appeared. Counsel for Washington Gas Light Company ("Washington Gas") appeared.

For the reasons stated *infra*, and upon consideration of the pleadings, argument, and applicable law, it is this 25th day of February, 2022, hereby **ORDERED** that the decision of the Public Service Commission in Order No. 89893, Case No. 9651, be and hereby is REVERSED and REMANDED to the Public Service Commission for further proceedings consistent with this opinion.

#### I. BACKGROUND

On April 4, 2018, the Public Service Commission considered the proposed merger of Alta Gas Ltd. and WGL Holdings, Inc.<sup>1</sup> PSC Order No. 88631, Case No. 9449 (2018). Pursuant to its

---

<sup>1</sup> WGL Holdings, Inc. is the parent holding company of Washington Gas.

authority and responsibility under the Public Utilities Article, § 6-105, the Commission approved the merger. *Id.* The Commission, however, approved the Merger subject to several Commitments (or, Conditions), which were appended to the Order. *Id.* at Appendix A.

Of relevancy to this appeal are Commitment 28 and Commitment 44. Commitment 28, in essence, required Washington Gas to provide a side-by-side comparison of pre-Merger and post-Merger corporate costs, to be filed on an annual basis with the Commission, using 2016 as the base year. Commitment 44 states, in relevant part

Washington Gas will track and account for Merger-related savings and transition costs . . . . Washington Gas will amortize the transition costs over five years, will not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings, and will ensure that customer rates reflect an annual net benefit to Washington Gas's Maryland customers of not less than \$800,000 per year over the five years following Merger Close . . . ."

*Id.*

The instant case began on August 28, 2020, when Washington Gas filed an Application with the PSC to increase existing rates and charges for Maryland ratepayers. Washington Gas proposed to increase its base rate revenue by \$28.4 million, or 7.8%. The matter was delegated to and heard before a Public Utility Law Judge ("PULJ")<sup>2</sup> on January 7, 8, and 11, 2021. The voluminous record indicates the PULJ received testimony, exhibits, and argument from all interested parties. On February 12, 2021, the PULJ issued a Proposed Order. All parties, including Petitioner, filed various timely appeals of the Proposed Order to the PSC.<sup>3</sup> In Order No. 89799,

<sup>2</sup> Pursuant to Public Utilities, § 3-104(d)(1), the Commission "may delegate to a . . . public utility law judge the authority to conduct a proceeding that is within the Commission's jurisdiction."

<sup>3</sup> Pursuant to Public Utilities, § 3-113(d)(2)(i), "[a] proposed order of a . . . public utility law judge . . . becomes final unless a party to the proceeding notes an appeal with the Commission within the time period for appeal designated in the proposed order."

issued on April 9, 2021, the PSC affirmed the PULJ's ruling on all issues raised by Petitioner.<sup>4</sup> Petitioner then filed a timely request for rehearing on only two (2) of those issues (the same issues raised before this Court).<sup>5</sup>

On July 29, 2021, the PSC denied Petitioner's request for rehearing. Order No. 89893, Case No. 9651. Petitioner then filed the instant Petition for Judicial Review (Docket Entry No. 1) requesting judicial review of Order No. 89893. Four Commissioners of the PSC concurred in the Order, with one Commissioner dissenting.<sup>6</sup>

## **II. ISSUES PRESENTED FOR JUDICIAL REVIEW**

Petitioner places two issues before this Court for review which, briefly restyled, are:

1. Whether the PSC acted arbitrarily and capriciously when it approved Washington Gas's request to recover corporate costs allocated to Washington Gas from AltaGas, even though Commitment 44 forbids the recovery of any corporate costs which exceed merger-related savings; and
2. Whether the PSC acted arbitrarily, capriciously, and unlawfully when it failed to perform a prudency analysis of fourteen capital projects disputed by the Office of People's Counsel (collectively, the "Projects").

## **III. STANDARD OF REVIEW**

The Public Service Commission enjoys its own, heightened standard of review. Section 3-203 of the Public Utilities Article sets forth the applicable standard of review in this case. It provides:

---

<sup>4</sup> In this Order, the PSC also addressed issues raised by other interested parties. Those issues are not before the Court.

<sup>5</sup> Pursuant to Public Utilities, § 3-114(c)(1), "[a] party in interest may apply to the Commission for rehearing within 30 days of service of a final order on the party."

<sup>6</sup> Commissioner Michael T. Richard dissented from PSC Order No. 89893.

Every final decision, order, or regulation of the Commission is prima facie correct and shall be affirmed unless clearly shown to be:

- 1) unconstitutional;
- 2) outside the statutory authority or jurisdiction of the Commission;
- 3) made on unlawful procedure;
- 4) arbitrary or capricious;
- 5) affected by other error or law; or
- 6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole.

Md. Code Ann., Public Utilities, § 3-203. Thus, a decision of the Public Service Commission is presumptively correct; it will only be disturbed if it is clearly shown to be arbitrary or capricious or meets one of the other criteria in § 3-203. *Id.*

As the appellate courts have noted, this standard of review is “consistent with the standard of review applicable to all administrative agencies,” *Office of People’s Counsel v. Public Service Commission*, 355 Md. 1, 15 (1999), but “also appears to be a more deferential standard in some respects.” *Maryland Office of People’s Counsel v. Maryland Public Service Commission*, 461 Md. 380, 393 (2018). The standard calls for a circuit court reviewing a decision of the PSC to “be particularly mindful of the deference owed” to the PSC on all issues besides questions of law, jurisdiction, and constitutionality. *Id.* at 394.

The task for the reviewing Court is to determine “whether it is possible to follow the path of the [PSC’s] reasoning.” *Id.* at 405. This task, of course, “depends, to some extent, on the degree of discretion that the Legislature has conferred on the particular agency with respect to that particular decision.” *Communications Workers of America v. Maryland Public Service Commission*, 424 Md. 418, 434 (2012). A decision by the PSC “will not be disturbed on the basis of a factual question except upon clear and satisfactory evidence that it was unlawful and unreasonable.” *Severstal Sparrows Point, LLC v. Public Service Commission of Maryland*, 194 Md. App. 601, 610-11 (2010) (quoting *Town of Easton v. Public Service Commission of Maryland*,

379 Md. 21, 31-32); *see also Public Service Commission v. Byron*, 153 Md. 464, 479 (1927) (“the Commission’s orders shall not be declared inoperative, illegal, or void . . . substantial compliance with the requirements of the law shall be sufficient.”). There must be a “rational connection between the facts found and the choice made.” *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962).

#### IV. DISCUSSION

##### A. The PSC Unreasonably Permitted Washington Gas’s Recovery of Corporate Costs which Greatly Exceeded Merger-Related Savings.

Petitioner’s first asks this Court to review the PSC’s decision to permit Washington Gas’s recovery of increased corporate costs, assigned to it from its parent company, AltaGas, from Maryland ratepayers. Petitioner contends that Commitment 44 in Order No. 88631, Case No. 9449, forbids this recovery.

In its Order denying Petitioner’s request for a rehearing, the PSC stated that Commitment 44 “did not require costs to decrease so long as overall annual synergy savings exceeded \$800,000.” Order No. 89893 at 6. The PSC further stated that the record supported the PULJ’s decision, as well as the Commission’s Order affirming the PULJ’s decision. The PSC did not elaborate further, and simply asserted that its prior decision sufficiently “explained the basis for [that] decision.” *Id.*

Turning to that prior decision (Order No. 89799), the PSC noted record evidence that Washington Gas’s synergy/corporate costs increased following the merger with AltaGas. During the April 2019 – March 2020 test year period, those costs increased by a total of \$18,188,303.<sup>7</sup>

---

<sup>7</sup> Before the PULJ, Petitioner submitted evidence regarding this sudden (and unexpected) increase in post-merger costs, recommending the PULJ disallow recovery of \$4,259,730 of the \$18,188,303 as unreasonable.

Order No. 89799 at 22. However, the PSC credited further evidence from Washington Gas stating that, while synergy costs increased, so too did synergy savings—Washington Gas claimed synergy savings, within the same time period, as totaling \$21,703,998. Of the total savings in the test year period, Washington Gas attributed \$1,084,503 to Maryland ratepayers. Once amortized transition costs were subtracted from this figure, Washington Gas concluded that Maryland ratepayers have realized a total synergy savings of \$829,603. The PSC thus concluded that the PULJ had “substantial evidence in the record upon which to conclude that no downward adjustment was necessary,” and noted that “Commitment 44 does not prohibit recovery of an increase in post-merger costs, so long as the increase in benefits exceeds those costs by greater than \$800,000.” *Id.* at 25.

Before this Court, Petitioner advances a simple argument: that approximately \$18 million in corporate costs is greater than approximately \$829,000 in savings and, therefore, Commitment 44 forbids the recovery of these costs. *See* Brief of Petitioner Maryland Office of People’s Counsel, Docket Entry No. 8, at 13. Petitioner argues, citing to its testimony and evidence presented to the PULJ and the PSC below, that these net savings are dwarfed by the overall increased costs allocated to Washington Gas. Petitioner argues the PSC ignores the plain text of Commitment 44, which, independent of the requirement that Washington Gas provide an annual net benefit to Maryland customers of at least \$800,000 per year, forbids Washington Gas from seeking recovery of any corporate costs and amortized transition costs which exceed Merger-related savings. These are two separate requirements contained within Commitment #44. Petitioner argues this decision is “the epitome of arbitrary and capricious decision making in that it was unreasonable and lacked a rational basis.” *Id.* at 14.

In response, Washington Gas and the Commission rely, first, on the level of deference accorded to the PSC.<sup>8</sup> Both parties argue that the trailing language of Commitment 44 (that Washington Gas must “demonstrate an annual net benefit of at least \$800,000 per year”) has been satisfied and, thus, Commitment 44, in its entirety, has been satisfied. *See* Brief of Maryland Public Service Commission, Docket Entry No. 9, at 5. Before this Court, Washington Gas and the Commission argued that Commitment 44 is, in reality, only about providing Maryland ratepayers with an “annual net benefit of more than \$800,000 per year.” Based on this reasoning, Washington Gas can, without violating Commitment 44, recover an unlimited amount of corporate costs allocated to it from AltaGas so long as Maryland ratepayers, somehow, realize an annual net benefit of more than \$800,000. This argument collapses under its own weight and under the plain text of the Commitment.

If this Court were to believe the arguments advanced by Washington Gas and by the Commission, this Court is left wondering why the Commission even included any language in Commitment 44 beyond requiring Washington Gas provide a net benefit of at least \$800,000 per year over five years, regardless of whatever corporate costs it may have incurred from its new parent company. For convenience, the text is reproduced below, in relevant part, here:

[Washington Gas] will not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings, and will ensure that customer rates reflect an annual net benefit to Washington Gas’s Maryland customers of not less than \$800,000 per year over the five years following Merger Close . . . .

PSC Order No. 88631, Case No. 9449.

---

<sup>8</sup> Having already established the statutory and caselaw explanation of this more-than-usual deference afforded to the PSC’s decisions (and findings of fact, in particular), the Court does not repeat these arguments here. *See* Part III, *supra*.

In other words: why forbid Washington Gas from recovering “amortized transition costs or corporate costs . . . in excess of Merger-related savings” if the controlling language is *actually* that Washington Gas must (and only must) provide an annual net benefit to Maryland ratepayers of more than \$800,000 per year over five years following the merger?

As courts do when interpreting the meaning of a statute, we will never construe a statute such that “a word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory.” *Blake v. State*, 395 Md. 213, 224 (2006); *Mid-Atlantic Power Supply Association v. Public Service Commission*, 361 Md. 196, 204 (2000). Commitment 44 is, of course, not a law—but, the same principle is instructive here. Reviewing courts give heightened deference to the Commission, in large part, because it is a specialized and experienced agency in a niche, yet critically-important, area of Maryland law. It draws on its experience as well as the opinions and arguments of interested parties and staff members when it crafts Orders. Those Orders and those decisions, however, must be rational; a reviewing Court must be able to follow the path of the Commission’s reasoning, even if this Court would come to a different conclusion. *Maryland Office of People’s Counsel*, 461 Md. at 405.

With this backdrop, this Court cannot ignore the very clear language in Commitment 44 which forbids Washington Gas from recovering “corporate costs . . . in excess of Merger-related savings” and simultaneously mandates Washington Gas provide annual savings greater than \$800,000 per year over five years. The plain text of Commitment 44 states that Washington Gas 1) may not recover from Maryland consumers any corporate costs which exceed merger-related savings and 2) that Maryland consumers must realize an annual net benefit of at least \$800,000 per year.

In this case, the PSC only followed one of these two mandates. The corporate costs Washington Gas sought to recover, as established before the PSC below, were approximately \$18 million, and the Merger-related savings were approximately \$829,000. This Court thus cannot reconcile why the PSC chose to permit Washington Gas's recovery of increased corporate costs (approx. \$18 million) when though those costs far exceeded the undisputed post-Merger savings (approx. \$829,000). The path of the PSC's reasoning cannot be followed—and nothing in the briefing or oral arguments before this Court help resolve this glaring error.

The PSC thus acted arbitrarily and capriciously when it permitted Washington Gas's recovery of costs which it explicitly forbade.

**B. The PSC Unreasonably Permitted Recovery of Capital (Construction) Costs Absent a Proper Prudency Review.**

Petitioner next asks this Court to review the PSC's decision to permit Washington Gas's recovery of costs associated with fourteen capital projects (the "Projects") which were disputed by Petitioner before the PULJ and the PSC, below. Petitioner objected to the recovery of these costs, arguing they were imprudently incurred and thus, pursuant to Public Utilities, § 4-201, not recoverable from Maryland ratepayers. Further, Petitioner argues the PSC (and the PULJ, below) failed to consider the prudency of the Projects' costs, rendering the PSC's decision to permit recovery of the costs arbitrarily and capricious.

In its Order denying Petitioner's request for a rehearing, the PSC acknowledged a "systemic issue in [Washington Gas's] ability to accurately estimate the costs of its projects." Order No. 89893 at 3. The PSC nonetheless permitted Washington Gas's recovery of these costs, stating that it "found that the record supported the PULJ's findings, and the Commission agreed with those findings in reviewing the record evidence. Therefore, the Commission did in fact

conclude that [Washington Gas] should recover its costs for the capital projects in dispute.” *Id.* at 5.

The PSC is charged with ensuring that, when a utility seeks to recover costs from ratepayers, that the costs are “just and reasonable.” Public Utilities, § 4-201. It is thus incumbent on the PSC to review the prudence of the costs and expenses claimed by the utility to ensure that the rate sought to be charged by the utility is only to “cover prudent expenses and earn a reasonable profit.” *Office of People's Counsel*, 355 Md. at 8 (emphasis added).

A brief sampling of prior PSC orders helps elucidate what this requirement means, and what it requires of a PULJ or of the PSC. For example, in *In re Baltimore Gas and Electric Co.*, the PSC noted that it would determine the prudence of BGE’s costs in a future rate proceeding and would do so by analyzing “whether the Initiative is being deployed properly and on schedule, whether and how it functions, whether and to what extent customers are receiving benefits, and how the costs compare to the Company’s budget.” PSC Order No. 83531, Case No. 9208 (2010). The PSC also noted that it remains the utility’s “burden of proof to demonstrate the prudence of such costs, and to make the case for recovery in rates.” *Id.* (internal quotations omitted) (emphasis added). In an earlier instance, the PSC stated that, in considering the prudence of costs, “the Commission will examine the extent to which the increased costs . . . could have been avoided through better planning, preventive maintenance, more diligent efforts, closer supervision and more prudent management.” *Re Baltimore Gas and Electric Co.*, PSC Order No. 67013, Case No. 7238EE (1985).

By way of further example, in *In re Washington Gas Light Co.*, the PULJ considered Washington Gas's request to implement a STRIDE<sup>9</sup> plan and to recover certain STRIDE project costs. PSC Order No. 86321, Case No. 9335 (2014). The PULJ began by noting consideration of "the evidence and the arguments," before explicitly finding that "[Washington Gas] has established that the aggregate estimated costs . . . are reasonable and prudent." *Id.* (emphasis added). The PULJ rejected arguments by the Office of People's Counsel, who objected that bid costs were too high, by noting Washington Gas's argument that, because it would have to compete with Baltimore Gas and Electric for contractors, the bid price would necessarily increase. And, since the bids were competitively bid, the PULJ found "no evidence that the costs would in fact decrease if a new blanket contract were competitively bid." *Id.* The PULJ concluded by conditionally approving Washington Gas's STRIDE Plan "subject to the submission of a detailed project list" and subsequent prudency review by the Commission. *Id.*

The case *sub judice* stands in stark contrast to this precedent as well as the PSC's statutory and caselaw mandates. In reviewing the PULJ's decision here, this Court is unable to determine exactly why the PULJ approved Washington Gas's recovery of costs associated with the Projects. Below, the PULJ began by noting Petitioner's objections to the fourteen Projects: 2 non-STRIDE safety and reliability projects, 9 specific STRIDE projects, and 3 large capital projects. In the paragraph immediately thereafter, without conducting any analysis or reasoning, the PULJ concludes "I find that the costs associated with these projects are actual, not estimated costs. . . . OPC's proposed adjustments in this area are hereby rejected." *Id.* at 8. Regardless of the

---

<sup>9</sup> A "STRIDE" Plan, or Strategic Infrastructure Development and Enhancement Plan, stems from a 2013 law which provides incentives to utility companies with the goal of "increase[ing] the pace of natural gas infrastructure improvements, prompt[ing] public safety, and enhance[ing] gas pipeline system reliability." *Washington Gas Light Company v. Maryland Public Service Commission*, 460 Md. 667, 673 (2018).

relationship between the estimated costs and the actual costs, at no point did the PULJ make a finding as to whether these actual costs were prudently incurred.

This Court, of course, cannot fault an administrative agency for failing to make its factual findings in a certain way, or for not using particular language in its reasoning. Agencies, however, must make reasonable and rational decisions which are capable of being followed by a reviewing court, even if that court disagrees with the conclusion. *See Harvey v. Marshall*, 389 Md. 243, 299 (2005) (elucidating that “so long as the actions of administrative agencies are reasonable or rationally motivated, those decisions should not be struck down as arbitrary or capricious.”) (internal quotations omitted); *see also Maryland Office of People’s Counsel*, 461 Md. at 405 (a decision of the PSC will not be disturbed if “it is possible to follow the path of the agency’s reasoning.”); *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962) (there must be a “rational connection between the facts found and the choice made.”).

The error here is that there is no reasoning in the record to support the PULJ’s decision. The PULJ did not, for example, analyze whether better management could produce lower cost or whether the bid system, if any, to be utilized by Washington Gas was what a prudent utility would do under the circumstances. Thus, this Court cannot discern the PULJ’s reasoning (and, similarly, that of the PSC) in permitting Washington Gas’s recovery of these costs beyond its inapposite statement that “the costs associated with these projects are actual, not estimated costs.” For the PSC, upon review of the PULJ, to then conclude that “[t]he Commission approved the costs of all 14 projects as prudent based upon the developed record in the present case[]” is similarly without any discernable reasoning. Order No. 89893 at 5 (emphasis added). The record is simply barren in this regard. This Court must then conclude that the PSC acted “impulsively, at random, or according to [] preference rather than motivated by a relevant or applicable set of norms.” *Harvey*,

389 Md. at 299. And when the reviewing Court cannot, based on the record, follow the reasoning of the PSC, the PSC has acted arbitrarily and capriciously. *Maryland Office of People's Counsel*, 461 Md. at 405.

The PULJ failed to consider the prudence of these costs. The PSC thus acted arbitrarily and capriciously when it endorsed the PULJ's decision even though the PSC, too, failed to review the prudence of the Projects.

#### V. CONCLUSION

In sum, this Court fully apprehends the deference given to the Public Service Commission. The Commission is not just any administrative agency; it is a highly-specialized agency with professional staff, hordes of interested parties, and centuries of collective experience. In the rare instance wherein the Commission's decision is illogical and its reasoning unable to be followed, its decision will not be affirmed.

This case presents such an instance. The Public Service Commission acted arbitrarily and capriciously in this case 1) by permitting the recovery of corporate costs in violation of its own prior ruling and 2) by permitting the recovery of capital costs without performing a prudence analysis of fourteen disputed projects.

For the foregoing reasons, it is this 25th day of February, 2022, hereby

**ORDERED** that the decision of the Public Service Commission in Order No. 89893, in Case No. 9651, is hereby REVERSED; and it is further

**ORDERED** that this matter be REMANDED to the Public Service Commission; and it is further

**ORDERED** that the Commission shall not permit Washington Gas's recovery of any corporate costs incurred as a result of the merger which exceed merger-related savings; and it is further

**ORDERED** that the Commission shall not permit Washington Gas's recovery of capital costs associated with the fourteen capitals unless, and until, it reviews the prudence of those costs.

Judge Kendra Young Ausby  
Judge's Signature appears on the  
original document  
\_\_\_\_\_  
Judge Kendra Y. Ausby

TRUE COPY  
TEST  
*Marilyn Bentley*  
\_\_\_\_\_  
MARILYN BENTLEY, CLERK



IN THE MATTER OF

\*

IN THE

THE PETITION OF

\*

CIRCUIT COURT

THE MARYLAND OFFICE OF

\*

FOR

PEOPLE'S COUNSEL

\*

BALTIMORE CITY

\*

Case No. 24-C-21-003749

\*

PSC Case No. 9651

\* \* \* \* \*

**ORDER GRANTING RESPONDENT MARYLAND PUBLIC SERVICE COMMISSION'S  
MOTION TO ALTER OR AMEND JUDGMENT (DE#14)**

**I. BACKGROUND**

On April 4, 2018, the Public Service Commission considered the proposed merger of Alta Gas Ltd. and WGL Holdings, Inc.<sup>1</sup> PSC Order No. 88631, Case No. 9449 (2018). Pursuant to its authority and responsibility under the Public Utilities Article, § 6-105, the Commission approved the merger. *Id.* The Commission, however, approved the Merger subject to several Commitments (or, Conditions), which were appended to the Order. *Id.* at Appendix A.

Of relevancy to this appeal are Commitment 28 and Commitment 44. Commitment 28, in essence, required Washington Gas to provide a side-by-side comparison of pre-Merger and post-Merger corporate costs, to be filed on an annual basis with the Commission, using 2016 as the base year. Commitment 44 states, in relevant part

Washington Gas will track and account for Merger-related savings and transition costs . . . . Washington Gas will amortize the transition costs over five years, will not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings, and will ensure that customer rates reflect an annual net benefit to Washington Gas's Maryland customers of not less than \$800,000 per year over the five years following Merger Close . . . ."

---

<sup>1</sup> WGL Holdings, Inc. is the parent holding company of Washington Gas.

*Id.*

The instant case began on August 28, 2020, when Washington Gas filed an Application with the PSC to increase existing rates and charges for Maryland ratepayers. Washington Gas proposed to increase its base rate revenue by \$28.4 million, or 7.8%. The matter was delegated to and heard before a Public Utility Law Judge (“PULJ”)<sup>2</sup> on January 7, 8, and 11, 2021. The voluminous record indicates the PULJ received testimony, exhibits, and argument from all interested parties. On February 12, 2021, the PULJ issued a Proposed Order. All parties, including Petitioner, filed various timely appeals of the Proposed Order to the PSC.<sup>3</sup> In Order No. 89799, issued on April 9, 2021, the PSC affirmed the PULJ’s ruling on all issues raised by Petitioner.<sup>4</sup> Petitioner then filed a timely request for rehearing on only two (2) of those issues (the same issues raised before this Court).<sup>5</sup>

On July 29, 2021, the PSC denied Petitioner’s request for rehearing. Order No. 89893, Case No. 9651. Four Commissioners of the PSC concurred in the Order.<sup>6</sup> On August 30, 2021, Petitioner filed a Petition for Judicial Review (Docket Entry No. 1), presenting the following (briefly restyled) issues for this Court’s review:

1. Whether the PSC acted arbitrarily and capriciously when it approved Washington Gas’s request to recover corporate costs allocated to Washington Gas from AltaGas, even though Commitment 44 forbids the recovery of any corporate costs which exceed merger-related savings; and

---

<sup>2</sup> Pursuant to Public Utilities, § 3-104(d)(1), the Commission “may delegate to a . . . public utility law judge the authority to conduct a proceeding that is within the Commission’s jurisdiction.”

<sup>3</sup> Pursuant to Public Utilities, § 3-113(d)(2)(i), “[a] proposed order of a . . . public utility law judge . . . becomes final unless a party to the proceeding notes an appeal with the Commission within the time period for appeal designated in the proposed order.”

<sup>4</sup> In this Order, the PSC also addressed issues raised by other interested parties. Those issues are not before the Court.

<sup>5</sup> Pursuant to Public Utilities, § 3-114(c)(1), “[a] party in interest may apply to the Commission for rehearing within 30 days of service of a final order on the party.”

<sup>6</sup> Commissioner Michael T. Richard dissented from PSC Order No. 89893.

2. Whether the PSC acted arbitrarily, capriciously, and unlawfully when it failed to perform a prudency analysis of fourteen capital projects disputed by the Office of People's Counsel (collectively, the "Projects").

On February 16, 2022, this Court held a hearing, via remote electronic participation, on Petitioner's Petition for Judicial Review (Docket Entry No. 1). On February 28, 2022, this Court entered a Memorandum Opinion and Order (Docket Entry No. 13/1) reversing the decision of the PSC (on both issues) and remanding the matter back to the PSC for further consideration.

On March 10, 2022, the PSC filed a timely Motion to Alter or Amend Judgment (Docket Entry No. 13/1) pursuant to Maryland Rule 2-534. The PSC only sought reconsideration of this Court's ruling on Issue One, regarding Washington Gas' recovery of corporate costs—the PSC does not seek reconsideration of this Court's ruling on Issue Two, regarding Washington Gas' recovery of capital/construction costs.<sup>7</sup> On May 18, 2022, this Court held a hearing, via remote electronic participation, on the Motion.

This matter came before the Court on May 18, 2022 for a hearing on Respondent Maryland Public Service Commission's ("Public Service Commission" or "PSC") Motion to Alter or Amend Judgment (Docket Entry No. 14) and Petitioner the Maryland Office of People's Counsel's ("Petitioner") Response thereto (Docket Entry No. 14/2). The hearing was held via remote electronic participation pursuant to Maryland Rule 2-802. Respondent's counsel appeared. Petitioner's counsel appeared. Counsel for Washington Gas Light Company ("Washington Gas") appeared.

## II. STANDARD OF REVIEW

Maryland Rule 2-534 permits "any party" to ask the Court to alter or amend the Court's findings, reasons for the decision, or the judgment itself. The Court, in turn, may "set forth additional

---

<sup>7</sup> See Maryland Public Service Commission's Motion to Alter or Amend Judgment (Docket Entry No. 14) page 1 at note 2 ("The Commission does not seek reconsideration of Issue [T]wo regarding the costs of fourteen capital projects.").

findings or reasons, may enter new findings or reasons, may amend the judgment, or may enter a new judgment.” Md. Rule 2-534. In entertaining a motion pursuant to Rule 2-534, the Court’s discretion is “more than broad; it is virtually without limit.” *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). Rule 2-311(e) mandates a hearing be held before the Court grants a motion under Rule 2-534. *Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 46 (2005) (“[t]he responding party must have an opportunity to address the merits of the Rule 2-534 motion.”).

### III. DISCUSSION

#### A. This Court’s Prior Order was Wrong—the PSC Properly Permitted Washington Gas’ Recovery of Corporate Costs from Maryland Ratepayers.

Issue One asked this Court to determine whether the PSC acted arbitrarily and capriciously by violating its own prior order when the PSC permitted Washington Gas’ recovery of certain increased corporate costs from Maryland ratepayers. This Court’s Prior Order answered “Yes” and considered arguments made by both Petitioner and by the PSC. This Court agreed with Petitioner and found that Washington Gas’ corporate costs were approximately \$18 million, while the “merger-related savings were approximately \$829,000.” Thus, this Court reasoned that, because \$18 million in corporate costs is (much) larger than \$829,000 in merger-related savings, Commitment 44 precludes the recovery of these corporate costs. This Court then held that the PSC’s decision to nonetheless permit Washington Gas’ recovery of these corporate costs was arbitrary and capricious.

Now, on its Motion to Alter or Amend Judgment, the PSC argues, in essence, that this Court used the wrong numbers in its Commitment 44 calculation. First, the PSC notes that the \$18 million figure represents *total* corporate costs allocated to Washington Gas, but that, because Washington Gas allocates its corporate costs across ratepayers in Maryland, Virginia, and the District of Columbia, the relevant figure here is the amount of corporate costs allocated to *Maryland* ratepayers, which totals \$8,051,332. Second, the PSC notes that Washington Gas achieved “merger-related savings” of

\$9,135,835 during the test year. In support of these figures, the PSC below credited the testimony of Mr. Robert Tuoriniemi, Washington Gas' Chief Regulatory Accountant, in confirming these figures.<sup>16</sup>

Thus, it is clear this Court erred, factually, by using the wrong numbers in its calculation as to whether Commitment 44 was, or was not, violated by the PSC's decision. Accepting as true that Washington Gas achieved merger-related savings of \$9,135,835 and sought to recover \$8,051,332 in corporate costs from Maryland ratepayers, Washington Gas complied with Commitment 44.

**B. The PSC Does Not Challenge this Court's Prior Order Regarding Issue Two.**

As stated *supra*, the PSC does not seek review of this Court's decision regarding Issue Two. In its Motion, the PSC acknowledges that it will "adopt the appropriate procedures for a prudency review going forward at the Commission level."

**IV. CONCLUSION**

For the reasons stated herein, it is, this 27th day of May 2022, by the Circuit Court for Baltimore City hereby:

**ORDERED** that Respondent Maryland Public Service Commission's Motion to Alter or Amend Judgment (Docket Entry No. 14) is GRANTED; and it is further

**ORDERED** that, for the reasons stated *supra*, the decision of the Maryland Public Service Commission in Order No. 89893, Case No. 9651, be and hereby is AFFIRMED IN-PART and REVERSED IN-PART; and it is further

**ORDERED** that the Public Service Commission's decision to permit Washington Gas' recovery of corporate costs is AFFIRMED; and it is further

---

<sup>16</sup> Notably, Petitioner's Petition for Judicial Review (Docket Entry No. 1) does not *explicitly* challenge these findings of fact by the PSC. *See* Md. Code Ann., Public Utilities § 3-203(6) ("Every decision . . . of the Commission is *prima facie* correct and shall be affirmed unless shown to be . . . unsupported by substantial evidence on the record . . .").

**ORDERED** that the Public Service Commission's decision to permit Washington Gas' recovery of certain capital costs is REVERSED; and it is further

**ORDERED** that the Public Service Commission shall not permit Washington Gas' recovery of capital costs unless, and until, the Public Service Commission reviews the prudence of those costs; and it is further

**ORDERED** that this matter be REMANDED to the Public Service Commission for further proceedings consistent with this Order and the Memorandum Opinion and Order (Docket Entry No. 13/1).

Judge Kendra Young Ausby

Judge's Signature appears on the  
original document

Kendra Young Ausby  
Judge

TRUE COPY  
TEST

*Marilyn Bentley*

MARILYN BENTLEY, CLERK



EXHIBIT 4

Circuit Court for Baltimore City  
Case No. C-24-C-21-003749

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 775

September Term, 2022

---

IN THE MATTER OF THE PETITION OF  
THE MARYLAND OFFICE OF PEOPLE'S  
COUNSEL

---

Wells, C.J.,  
Berger,  
Albright,

JJ.

---

Opinion by Berger, J.

---

Filed: May 9, 2023

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

\*\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case is before us on appeal from an order of the Circuit Court for Baltimore City affirming a decision of the Maryland Public Service Commission (“PSC” or “Commission”). We are asked to determine whether the Commission acted arbitrarily and capriciously when it approved an August 28, 2020 “Application for Authority to Increase its Existing Rates and Charges and to Revise Its Terms and Conditions for Gas Services” (the “Application”) filed by Washington Gas Light Company (“Washington Gas”). The Maryland Office of People’s Counsel (“OPC”) urges this Court to conclude that the Commission’s approval of the Application was arbitrary and capricious because, in OPC’s view, the Application did not comply with the requirements set forth by the Commission in 2018 when the Commission approved a merger application of AltaGas Ltd. (“AltaGas”) and Washington Gas.

OPC presents one issue for our consideration on appeal, which we set forth verbatim as presented in OPC’s brief:

Does the Rate Order arbitrarily and capriciously approve Washington Gas’s request to recover from its Maryland customers corporate costs allocated from AltaGas when (1) the AltaGas Order prohibited Washington Gas from recovering corporate costs that exceeded merger savings and required \$800,000 in reduced corporate costs for five years following the merger; and (2) it is undisputed that overall corporate costs increased following the merger?

For the reasons explained herein, we shall affirm.

### **FACTS AND PROCEEDINGS**

In 2017, AltaGas and Washington Gas jointly filed an application seeking authorization from the PSC for AltaGas to acquire Washington Gas as required by Md.

Code (1998, 2020 Repl. Vol.), § 6-105 of the Public Utilities Article (“PU”).<sup>1</sup> After considering written testimony and exhibits filed in support of the merger, the Commission issued Order No. 88631 authorizing the merger on April 4, 2018. The Commission’s approval of the merger was subject to fifty-two commitments. In this appeal, OPC focuses on Commitments No. 28 and 44, which OPC asserts were violated in the rate order at issue in this appeal.

Commitment 28 required Washington Gas to provide the Commission with a “side-by-side comparison by function of the pre-merger corporate and shared-services costs incurred by Washington Gas as compared to the post-merger corporate and shared-services costs incurred by Washington Gas for the five years after Merger Close.” “For purposes of [Commitment 28], per-Merger mean[t] calendar year 2016.”

Commitment 44 required Washington Gas to “track and account for merger-related savings, and transition costs to enable those savings, in its next two base rate cases in which the test year in question includes transition costs.” Commitment 44 required that Washington Gas “amortize the transition costs over five years,” “not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from AltaGas to Washington Gas in excess of merger-related savings,” and “ensure that customer rates reflect an annual net benefit to Washington Gas’s Maryland

---

<sup>1</sup> PU § 6-105 sets forth the requirements by which an entity must obtain prior authorization to acquire control of a public service company that operates in Maryland.

customers of not less than \$800,000 per year over the five years following Merger Close commencing with the first post-Merger base rate case.”

The Commission’s Order did not define “corporate costs allocated from AltaGas” or “net benefit,” but the Commission did explain the reasoning underlying Commitment 44:

Although some parties have contended here, and in prior cases under § 6-105, that post-merger synergy savings are too vague to quantify, we conclude that [Commitment 44] ensures that customer rates will decline or otherwise be lower than they would have been absent the merger and therefore complies with this portion of our statute. Also, as Applicants observe, unlike in most merger situations which do not realize synergy savings for years after closing, the Applicants are applying these savings to rate payers beginning in the first year. Therefore, we find that the synergy savings will result in direct ratepayer benefits.

On August 28, 2020, Washington Gas filed the application to increase rates that ultimately gave rise to this appeal. The Commission delegated the matter to a public utility law judge (“PULJ”) to conduct evidentiary proceedings. After three days of evidentiary hearings, the PULJ issued a proposed order on February 12, 2021, which approved a rate increase but at a lower rate than Washington Gas had requested. Both Washington Gas and OPC each filed appeals to the Commission.<sup>2</sup> OPC appealed the PULJ’s decision on six grounds, one of which focused upon Commitment 44.

---

<sup>2</sup> The Apartment and Office Building Association (“AOBA”) also filed an appeal of the PULJ’s order. AOBA is not a party to the appeal before this Court.

On April 9, 2021, the Commission issued Order No. 89799 (the “Rate Order”), which resolved all of the issues raised by the parties. With respect to the issue regarding Commitment 44, the Commission credited the expert testimony of Robert Tuoriniemi, Chief Regulatory Accountant for Washington Gas, who addressed post-merger savings in the context of Commitment 44. OPC filed a petition for rehearing on two grounds, one of which focused upon Commitment 44. Specifically, OPC sought rehearing on the issue of whether Washington Gas satisfied its obligations to demonstrate \$800,000 in annual synergy savings pursuant to the Commission’s 2018 approval of the AltaGas merger.<sup>3</sup> The Commission denied the petition for rehearing on July 29, 2021 in Order No. 89893.

OPC subsequently filed a petition for judicial review in the Circuit Court for Baltimore City. The circuit court issued its initial order on February 28, 2022, reversing the Commission’s conclusion that Washington Gas had sufficiently complied with Commitment 44. Washington Gas filed a motion to alter or amend on March 10, 2022, which the circuit court granted on May 31, 2022. The circuit court explained that “it is clear this [c]ourt erred, factually, by using the wrong numbers in its calculation as to whether Commitment 44 was, or was not, violated by the PSC’s decision.” The circuit court, therefore, affirmed the Commission’s decision that Washington Gas had complied with Commitment 44. This appeal followed.

---

<sup>3</sup> OPC further argued that the Commission did not sufficiently address its objections to the appropriateness of certain costs incurred by Washington Gas for capital projects. This issue is not before us on appeal.

Additional facts shall be discussed as necessitated by our consideration of the issues before us on appeal.

### STANDARD OF REVIEW

We recently set forth the particularly discretionary standard of review applicable to decisions of the Public Service Commission in the case of *Matter of SmartEnergy Holdings, LLC*, 256 Md. App. 20 (2022), *cert. granted*, \_\_ Md. \_\_, Case No. 1, Sept. Term 2023 (March 7, 2023). We explained:

“The Public Utilities Article ‘sets forth the limited “scope of review” . . . over decisions by the Public Service Commission.’” *Md. Off. of People’s Couns. v. Md. Pub. Serv. Comm’n*, 226 Md. App. 483, 499, 130 A.3d 1061 (2016) (quoting *Town of Easton v. Pub. Serv. Comm’n*, 379 Md. 21, 30, 838 A.2d 1225 (2003)). “It states: ‘Every final decision, order, or regulation [of] the Commission is *prima facie correct* and *shall be affirmed* unless *clearly shown* to be: (1) unconstitutional; (2) outside the statutory authority or jurisdiction of the Commission; (3) made on unlawful procedure; (4) arbitrary or capricious; (5) affected by other error of law; or (6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole.’” *Id.* at 499–500, 130 A.3d 1061 (quoting PUA § 3-203 (emphasis added)).

The Commission is vested with a great deal of discretion in discharging its “important and complex duties.” *People’s Couns. v. Pub. Serv. Comm’n*, 52 Md. App. 715, 722, 451 A.2d 945 (1982). “Because the Commission is well informed by its own expertise and specialized staff, a court reviewing a factual matter will not substitute its own judgment on review of a fairly debatable matter.” *Comm’n’s Workers of Am. v. Pub. Serv. Comm’n*, 424 Md. 418, 433, 36 A.3d 449 (2012). In contrast, an agency’s interpretation of a statute that it administers “may be entitled to some deference,” but the weight to be accorded to that interpretation depends upon a number of considerations:

whether the agency adopted its view soon after the statute’s passage, whether the interpretation “has been applied consistently and for a long period of time,” “the extent to which the agency engaged in a process of reasoned elaboration in formulating its interpretation,” and “the nature and process through which the agency arrived at its interpretation.” *Md. Off. of People’s Couns.*, 226 Md. App. at 501, 130 A.3d 1061 (quotation marks and citations omitted). When the Maryland Public Service Commission has “clearly demonstrated that it has focused its attention on the statutory provisions in question, thoroughly addressed the relevant issues, and reached its interpretations through a sound reasoning process, its interpretation should be accorded the persuasiveness due a well-considered opinion of an expert body.” *Id.* at 505, 130 A.3d 1061 (quotation marks and citations omitted).

*Id.* at 39-40 (emphasis in original).

## DISCUSSION

With this applicable discretionary standard in mind, we turn to the OPC’s assertion that the Commission erred when it determined that Washington Gas had demonstrated compliance with Commitment 44. OPC asserts that the side-by-side comparison of corporate and shared-services costs referenced in Condition 28 is the “only means by which one can objectively compare pre- to post-merger costs to determine” merger-related savings when determining whether Commitment 44 has been satisfied. In its Order, the Commission expressly rejected this assertion, explaining as follows:

63. The Commission agrees with Washington Gas’s contention that Commitments 28 and 44 in the AltaGas Approval Order are separate Commitments, and Washington Gas need not rely upon the same data in its annual report to establish overall synergy savings for purposes of Commitment 44. The commitments are contained in two separate sections of Appendix A to the AltaGas Approval Order, and neither commitment refers to the other.

64. Additionally, Commitment 28 explicitly requires Washington Gas to provide the Company’s annual report in its next rate case if that case occurs before the first annual report is due. This language strongly suggests that if Washington Gas does not file a base rate case before its first annual report is due, Commitment 28’s report is not required in Washington Gas’s next rate case. Washington Gas did file the Company’s Commitment 28 report in the second quarter of 2020. Therefore, the Commission agrees with Washington Gas that Commitment 44 permits Washington Gas more flexibility than OPC contends, so long as it establishes that Maryland ratepayers received over \$800,000 in synergy-related savings during the test-year.

The question before us on appeal is not whether the side-by-side comparison set forth in Commitment 28 could be used to calculate synergy savings, but, rather, whether the Commission was required to reach the conclusion that Commitment 28 *must be used* to calculate synergy savings for the purposes of Commitment 44. We disagree with OPC that merger-related savings could only be reflected via the side-by-side comparison in Commitment 28. As Mr. Tuoriniemi explained, merger-related “savings will appear across many . . . accounts” and “not simply those reflected in [OPC’s] assessment based on Merger Commitment 28.”

The Commission expressly credited Mr. Tuoriniemi’s testimony regarding synergy-related savings, observing that “Mr. Tuoriniemi testified that [Washington Gas] achieved test-year synergy-related savings in Maryland of \$829,603, slightly in excess of the annual savings required by Commitment 44.” OPC acknowledges that “Mr. Tuoriniemi included 12 pages of documents that allegedly support his cost savings calculations,” but asserts that “none of those documents identify how the savings were calculated or the

baseline used in the quantification.” First, we emphasize that the determination of whether to accept Mr. Tuoriniemi’s testimony was well within the discretion of the Commission.

Moreover, the record contains evidence that supports Mr. Tuoriniemi’s testimony. Mr. Tuoriniemi explained that when “assessing the impact of costs related to the merger on Washington Gas,” he “categorized costs into” the following “five types:”

- (1) Costs incurred by Washington Gas to gain approval of the merger;
- (2) Cost incurred by Washington Gas to close the merger;
- (3) Cost incurred by Washington Gas to integrate AltaGas, Washington Gas Holdings, Inc., and Washington Gas, including amortization thereof;
- (4) Costs for services rendered to Washington Gas by AltaGas and its affiliates; and
- (5) Costs incurred by Washington Gas eliminated by the merger.

Mr. Tuoriniemi presented the following chart demonstrating how he calculated that net synergy savings for the test year were \$829,064.00, exceeding the \$800,000 requirement set forth in Commitment 44:

	Total Company <sup>4</sup>	Maryland
Test Year Charges from AltaGas	\$18,774,305	\$8,051,332
Adjusted Test Year Synergy Savings	(21,703,998)	(9,135,835)
Net Synergy Charge (Savings)	(2,929,693)	(1,084,503)
Test Year Transition Costs Post Merger	609,188	255,439
Net Change in Costs Post Merger	\$ (2,320,505)	(829,064)

Mr. Tuoriniemi further produced additional documentary evidence detailing the basis for his conclusions regarding synergy savings.

Mr. Tuoriniemi provided the following explanation for the basis of his calculation:

[Washington Gas] compiled cost savings by department and those were aggregated in total synergy savings. These represent the synergies identified to date . . . [O]nly test year amounts are included in the calculation of the adjustment . . . The amounts in the adjustment start at different dates in the test year. Therefore, the adjustment calculates the pro-rated savings included in the test year for these costs. For positions that were eliminated, the cost savings include the position's total compensation and an estimate of benefits. The exception is for pension and post-retirement benefits where a specific calculation was only available for the Chief Executive Officer position as it is publicly disclosed in the Company's Form 10-K filings.

The Commission was entitled to credit the testimony of Mr. Tuoriniemi over the testimony of OPC's expert witness Sebastian Coppola. Furthermore, the issue before us is

---

<sup>4</sup> Washington Gas's service area includes Maryland, Virginia, and the District of Columbia. Only the Maryland data is relevant to this appeal.

not which testimony is more persuasive. The question is whether the Commission’s decision to credit Mr. Tuoriniemi’s testimony regarding synergy savings and, based upon this testimony, conclude that Commitment 44 was satisfied, was arbitrary and capricious. “To overturn a Commission decision as arbitrary or capricious, a petitioner must overcome a very deferential standard to rebut the presumption that the Commission exercised its discretion properly.” *Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n*, 461 Md. 380, 400 (2018). In our view, OPC has failed to overcome this standard in this case. The Commission’s decision was based upon expert testimony that the Commission chose to credit. It is not the province of this Court to substitute its judgment for that of the Commission.

OPC takes issue with the fact that corporate costs increased after the merger of AltaGas and Washington Gas, asserting the parties to the merger “promised the Commission” that the merger would result in “corporate cost savings for five years of at least \$800,000 per year.” The Commission expressly determined, however, that the merger required no such thing. As the Commission noted in its order denying OPC’s petition for rehearing, Commitment 44 “did not require costs to decrease so long as overall annual synergy savings exceeded \$800,000.” The record before the Public Service Commission provides sufficient support for the Commission’s determination that Commitment 44 was satisfied. Accordingly, we affirm.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**

## **CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112**

1. This petition for writ of certiorari contains 3,892 words, excluding the parts of the petition exempted from the word count by Rule 8-503.
2. This petition for writ of certiorari complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Mollie Soloway Woods

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26<sup>th</sup> day of June 2023, the foregoing Petitioner Maryland Office of People's Counsel's Petition for Writ of Certiorari was served:

Via hand delivery on the following party:

H. Robert Erwin, Jr., Esq., General Counsel  
Joseph M. English, Esq., Assistant General Counsel  
Office of General Counsel  
*Maryland Public Service Commission*  
6 St. Paul Street, 16<sup>th</sup> Floor  
Baltimore, Maryland 21202  
E-mail: [robert.erwin@maryland.gov](mailto:robert.erwin@maryland.gov)  
E-mail: [joseph.english@maryland.gov](mailto:joseph.english@maryland.gov)  
*Counsel for The Maryland Public Service Commission*

Via first-class, postage prepaid mail to the following party:

John C. Dodge, Associate General Counsel  
Megan Roberts-Satinsky, Associate General Counsel  
Spencer S. Nichols, Assistant General Counsel  
Washington Gas Light Company  
1000 Maine Avenue, SW  
Washington, DC 20024  
E-mail: [jdodge@washgas.com](mailto:jdodge@washgas.com)  
E-mail: [megan.robertssatinsky@washgas.com](mailto:megan.robertssatinsky@washgas.com)  
E-mail: [snichols@washgas.com](mailto:snichols@washgas.com)  
*Counsel for Washington Gas Light Company*

/s/ Mollie Soloway Woods