

BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND

IN THE MATTER OF THE
APPLICATION OF BALTIMORE GAS
AND ELECTRIC COMPANY FOR AN
ELECTRIC AND GAS MULTI-YEAR
PLAN

*
*
*
*
*

Case Nos. 9645/9692

* * * * *

OFFICE OF PEOPLE’S COUNSEL’S INITIAL BRIEF

DAVID S. LAPP
PEOPLE’S COUNSEL

William F. Fields
Deputy People’s Counsel

Michael F. Sammartino
Assistant People’s Counsel

Mark C. Szybist
Assistant People’s Counsel

Maryland Office of People’s Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150

Dated: February 24, 2025

TABLE OF CONTENTS

	Page
INTRODUCTION	1
STANDARD OF REVIEW	4
ARGUMENT	5
I. The company has not carried its burden to justify the prudence of its Rate Year 3 spending.....	6
II. BGE’s Rate Year 3 reconciliation shows a lack of capital spending governance	13
A. BGE’s requested reconciliation revenue requirements mask the total cost of BGE’s overspending to ratepayers	14
B. BGE fails to justify its spending on many new and emergent projects	19
C. BGE has not demonstrated the prudence of many of its exceedances of approved budgets	22
III. BGE fails to justify recovery for the projects addressed by OPC’s witness.....	31
A. BGE’s pole replacement budget exceedances are imprudent	31
B. BGE’s request to recover spending on the Baltimore City conduit spending is premature and should be denied.....	37
C. BGE does not explain the prudence of its gas leak repair variances	40
D. Recovery for estimated city permitting costs yet to be charged to BGE is premature and inappropriate.....	46
CONCLUSION	48

TABLE OF AUTHORITIES

Page(s)

Maryland Statutes

Md. Code Ann., Pub. Util. Art. § 3-112..... 4

Md. Code Ann., Pub. Util. § 7-313.....29

Public Service Commission Orders

Order No. 82168, In re Potomac Electric Power Company,
(Case No. 9092, Phase II, August 2008) 4

Order No. 89482, In the Matter of Alternative Rate Plans or Methodologies
to Establish New base Rates for An Electric or a Gas Company
(Case No. 9618, Feb. 2020)..... 4

Order No. 89678, *Baltimore Gas and Electric Company’s Application
for an Electric and Gas Multi-Year Plan*
(Case No. 9645, Dec. 2020)*passim*

Order No. 89794, *Baltimore Gas and Electric Company’s Application
for an Electric and Gas Multi-Year Plan*
(Case No. 9645, March 2021) 15

Order No. 90099, *In the Matter of the Application of Washington Gas Light
Company for Approval of a New Gas System Strategic Infrastructure
Development and Enhancement Plan and Accompanying Cost Recovery*
(Case No. 9486, March 2022) 44

Order No. 90948, Baltimore Gas and Electric Company’s Application
for an Electric and Gas Multi-Year Plan
(Case No. 9692, Dec. 2023)*passim*

Order No. 91181, Potomac Electric Power Company’s Application for
Adjustments to its Retail Rates for the Distribution of Electric Energy
(Case No. 9702, June 10, 2024) 11

Order No. 91396, *Baltimore Gas and Electric Company's Application
for an Electric and Gas Multi-Year Plan*

(Case No. 9645, Nov. 2024)*passim*

INTRODUCTION

As customers reel from three years of rate increases under Baltimore Gas and Electric Company's first multi-year rate plan ("MRP"), BGE seeks to recover an additional \$152 million through its reconciliation request for 2023, the MRP's final year.

BGE disavows responsibility for the additional revenue requirements it asks customers to pay, claiming that its electric and gas reconciliation requests are driven by "uncontrollable factors," primarily storms, inflation and supply chain issues, state policy, and even the Office of People's Counsel.¹ The company did incur significant expenses for major storms (for which the company does not budget) and minor storms (for which it does budget), and higher-than-expected inflation and supply chain disruptions did increase some of the company's costs to ensure safe and reliable service.

But the shocking magnitude of BGE's Rate Year 3 reconciliation request is primarily the result of BGE's failure or refusal to manage and contain the spending it *did* control in the face of costs it did not. In 2023, BGE increased its capital and O&M spending far above its authorized capital budgets, expanding the scope of some existing projects, continuing to work on others after budgets were exceeded, and adding entirely new projects that could have been deferred to BGE's second multi-year plan.² In short, the company failed to operate its business with the fiscal stewardship and financial prudence that its customers deserve—and need to afford their bills.

¹ ML# 314181, Supplemental Direct Testimony of John C. Frain ("Frain Supplemental Direct") at 9:1-10.

² Some of the new projects that BGE established in 2023 were introduced in the company's 2023 project list filed on November 1, 2022. (ML#242894).

Table 1 below shows the enormous differences between BGE’s budgeted and actual capital and O&M spending for Rate Year 3 of MRP 1.

Table 1

	Capital		O&M	
	Budgeted	Actual	Budgeted	Actual
Electric ³	\$400,936,845	\$645,516,410	\$ 445,252,469	\$479,221,603
Gas ⁴	\$408,434,065	\$487,710,263	\$224,065,489	\$256,590,752

In Rate Year 3, the company spent an *additional* \$323 million on capital investments in its gas and electric systems infrastructure. The company exceeded its gas and electric O&M budgets by a combined total of nearly \$66 million.

The company suggests that this overspending is irrelevant to the reconciliation. What matters, BGE claims, is the total amount of the company’s actual electric and gas plant in service the end of 2023. Inclusive of the capital spending adjustments required by Order No. 89678, BGE forecasted plant in service balances for electric and gas were \$8.4 billion and \$4.2 billion, respectively.⁵ BGE’s actual plant in service for 2023 totals \$8.4 billion for electric and \$4.6 billion for gas.⁶ While BGE’s actual electric plant in service

³ BGE Ex. 6-FR, Direct Testimony of John C. Frain, Exhibit JCF-2E. Table 1 reflects BGE’s capital and O&M budgets net of Mr. Frain’s identified ratemaking adjustments.

⁴ *Id.*, Exhibit JCF-2G. Table 1 reflects BGE’s capital budget without ratemaking adjustments, to capture the STRIDE work completed in RY 3, and BGE’s O&M budget net of Mr. Frain’s identified ratemaking adjustments.

⁵ *Id.*, Exhibit JCF 2-E at 1 and JCF 2-G at 1. ⁶ *Id.*, Frain Direct, Exhibit JCF 2-E at 1 and JCF 2-G at 1.

⁶ *Id.*, Frain Direct, Exhibit JCF 2-E at 1 and JCF 2-G at 1.

hewed close to its forecast, the company’s gas plant-in service exceeded BGE’s projections by 9.5 percent—mainly due to Strategic Infrastructure Development and Enhancement (“STRIDE”) plan investments.⁷ In light of this result, BGE proudly states that it has “completed its workplan.”⁸

Moreover, the company’s reconciliation filing and supporting exhibits obscure the fact that much of the 2023 overspending is not yet in rate base. Customers will likely see the impact of that spending in the reconciliation of BGE’s second MRP. Where customers could have benefitted from reduced spending due to project delays or reprioritizations that lower costs, BGE initiated entirely new projects or accelerated work planned for subsequent years. More egregiously, BGE continued to pursue completion of its capital workplan while factors outside of the company’s control drove up overall costs. Companies operating in competitive markets must economize and tighten their belts when faced with rising costs. Monopoly utilities, operating within budgets reviewed and approved by the Commission, should do the same.

Ultimately, BGE bears the burden of proof to demonstrate the prudence of its requested electric and gas reconciliation revenue requirements. Even after filing supplemental testimony and exhibits, as required by Order No. 91396, the company falls short of satisfying its burden. The company’s cursory and inadequate discussion of alternatives and ratepayer value does not enable the robust assessment of prudence that the Commission envisioned in Order No. 91396. The company does not explain the need

⁷ *Id.*, Frain Direct, JCF-2, Attachments 2-E and 2-G.

⁸ BGE Ex. 7-FR, Rebuttal Testimony of John C. Frain (“Frain Rebuttal”) at 8:10-11.

to pursue certain new and emergent projects added to its 2023 project list, nor does the company justify the need to exceed its budgets on numerous projects in an environment of rising costs.

BGE’s failure to justify its spending and inability to manage within its budgets are imprudent. Therefore, BGE’s reconciliation requests should be denied.

STANDARD OF REVIEW

The Commission’s task in this reconciliation proceeding is to review the prudence of BGE’s decisions and spending concerning projects that the company placed into service in 2023 and is now proposing to move into rate base.⁹ PUA § 3-112(b) places the burden of proof—including both the burden of production and the burden of persuasion—on the proponent of a new rate or change in rate.¹⁰ As the Commission explains, the proponent of the rate increase “must produce evidence sufficient to persuade us, by a preponderance of the evidence, that the proposed new rates are just and reasonable.”¹¹

⁹ Order No. 89482 at 5, *In the Matter of Alternative Rate Plans or Methodologies to Establish New base Rates for An Electric or a Gas Company* (Case No. 9618, Feb. 2020) (“Within 120 days after the end of the initial MRP, the Pilot Utility must file a final reconciliation for any investments and costs in the MRP period not previously reviewed for prudence.”) Investments that went into service during 2021 and 2022 were reviewed for prudence as part of Case No. 9692. *See* Order No. 90948, *Baltimore Gas and Electric Company’s Application for an Electric and Gas Multi-Year Plan* (Case No. 9692, Dec. 2023).

¹⁰ PUA 3-112(b); *In re Potomac Electric Power Company*, 99 Md.P.S.C. 125 (2008) (Order No. 82168, Case No. 9092, Phase II).

¹¹ 99 Md.P.S.C. 125.

ARGUMENT¹²

In Order No. 91936, the Commission gave BGE specific instructions regarding what information the company must provide to demonstrate the prudence of its Rate Year 3 capital and O&M spending.¹³ As the Commission explained, “prudency is not just what the project costs, but why the project was constructed and how it will serve the public interest.”¹⁴ Accordingly, the Commission identified four factors that BGE must satisfy to demonstrate prudency: (1) appropriate project selection; (2) that the projects “provided value to ratepayers”; (3) “that good management judgement was exercised in the selection of materials and methods used to execute the projects”; and (4) “that the costs—by comparison with alternatives—were justified.”¹⁵

BGE’s information falls short of satisfying the Commission’s directive. The company largely focuses on explaining the need that each project meets while providing little additional insight about how the project was deemed the best solution, the value the project has for ratepayers, and whether the project was cost effective. Additionally, BGE did not provide information explaining the need to pursue new and emergent projects with discretionary completion timeframes, and BGE did not explain the prudence of

¹² This brief does not address any issues related to the Former BGE Employee’s Petition to Intervene. In Order No. 91518, the Commission denied the petition and all related motions and instructed Staff to undertake an investigation related to the petition’s allegations. OPC requests that any gas reconciliation revenue requirement awarded in this proceeding be subject to adjustment pending the outcome of Staff’s investigation and any proceedings that follow.

¹³ *Baltimore Gas and Electric Company’s Application for an Electric and Gas Multi-Year Plan* (Case No. 9645, Nov. 2024). Because of the Commission’s finding in Order No. 91936 that the “there is not enough evidence in the record . . . to make a prudency determination[.]” this brief will focus on the supplemental testimony filed in response to the Commission’s order. Order No. 91936 at 2.

¹⁴ Order No. 91396 at 3.

¹⁵ Order No. 91396 at 3–4.

certain budget exceedances. The fact that BGE provided a large amount of supplemental information does not show that BGE satisfied the Commission's directives. As will be shown below, when one looks beyond the volume of BGE's testimony and exhibits, it is clear that BGE has not adequately justified the large *additional* revenue requirements it asks the Commission to approve.

I. The company has not carried its burden to justify the prudence of its Rate Year 3 spending.

To comply with Order No. 91396, BGE provided thousands of pages of testimony and supporting exhibits that the company claims satisfy the Commission's directives. Some of the supplemental testimony and materials provided welcome information and insight into the company's management and budgeting operations. But quantity is not the same as quality. When the company's supplemental materials are scrutinized, it is clear that for most of its projects, the company has not fully explained and justified its project selection decisions, demonstrated the ratepayer value of its projects or, importantly, justified the cost of its projects in comparison to alternatives. As OPC witness Colin T. Fitzhenry notes, "BGE provided little additional evidence regarding project management and cost comparisons with alternate projects."¹⁶

BGE's supplemental information comprised witness testimony and supporting exhibits. The testimony provided general information on BGE's approach to budgeting and project selection and a high-level discussion of each program and project with a

¹⁶ ML# 314935, Supplemental Reply Testimony of Colin T. Fitzhenry ("Fitzhenry Supplemental Reply") at 4:5-7.

budget of \$1 million or more in 2023. The exhibits identified new and emergent projects, changes in project name and “geography,”¹⁷ removed projects, and whether each project had been placed into service in 2023.

Mr. Fitzhenry found the materials lacking in several areas. Changing project names and geographies mid-MRP made the reconciliation confusing and more difficult to follow.¹⁸ The company did not describe all the changes to project scope, which are relevant to the question of prudence.¹⁹ Nor did the company provide clear data on changes to project scheduling.²⁰ Parties had to comb through multiple different exhibits and filings just to identify changes to in-service dates and project duration. Many emergent projects did not include budgets. If, as Mr. Frain suggests, there is no time to develop a budget for certain emergent work,²¹ the company should explain why.²² The fact that a project is emergent does not obviate the company from showing how the costs of that project were prudently incurred.

BGE’s supplemental filing largely focused on demonstrating that projects met company needs. Each witness’ explanations claim to show why the projects it completed were necessary. Some witnesses, like Ajit A. Apte and Michael J. Cloyd, directly responded to questions asking why the costs incurred for a specific project “prudent and

¹⁷ BGE uses the term “geography” in this reconciliation to refer to a shifting of spending for a category of work from one project number to one or more different project numbers. *See* Supplemental Direct Testimony of Michael J. Cloyd (“Cloyd Supplemental Direct”) at 90 n. 69.

¹⁸ Fitzhenry Supplemental Reply at 4:22 – 5:4.

¹⁹ *Id.* at 5:5-15.

²⁰ *Id.* at 3:16-17.

²¹ ML# 315428, Supplemental Rebuttal Testimony of John C. Frain (“Frain Supplemental Rebuttal”) at 14:14-15.

²² Fitzhenry Supplemental Reply at 5:18-20.

necessary.”²³ Witnesses Laura Wright and Dawn C. White, on the other hand, provide a description of each project, the need it is addressing and, a brief explanation for the variance.

Yet prudence is not met only by a showing that a project is needed. Prudence also demands a demonstration that a project represents the utility’s most reasonable approach to meeting that need, considering other practical alternatives.²⁴ And, as Mr. Fitzhenry concludes, BGE failed to provide supplemental evidence to demonstrate “by comparison with alternatives” that the company’s costs were justified.²⁵ With the exception of Mr. Cloyd’s testimony,²⁶ BGE’s supplemental testimonies and supporting exhibits contain little discussion of how alternatives factored into the company’s decision-making. For example, the term “alternative” appears just twice in Ms. Wright’s supplemental direct testimony and once in both Mr. Apte’s and Ms. White’s testimony. In Mr. Singh’s testimony, the word does not appear at all. In some cases, there may be arguments that there were no viable alternatives to a particular project. But the company’s witnesses did not make such arguments. Consequently, the company’s affirmative testimony is incomplete and does not fully comply with Order No. 91396.

Some additional information concerning alternatives does appear in the project authorization slides provided in exhibits supporting BGE’s witness testimonies. These

²³ *E.g.*, ML#314181, Supplemental Direct Testimony of Ajit A. Apte at 21:19 (“Why was Project 60601: Meter Cost necessary?”); Cloyd Supplemental Direct” at 46:8-9 (“Why were the costs incurred for Project 6401: Line Sensors Deployment Support prudent and necessary?”).

²⁴ *See* Order No. 91396 at 3-4.

²⁵ OPC Ex. 10-FR, Surrebuttal Testimony of Colin T. Fitzhenry (“Fitzhenry Surrebuttal”) at 4:10-12.

²⁶ Cloyd Supplemental Direct at 42:15-21; 47:1-2.

slides, again limited to projects with a total 2023 spend greater than or equal to \$1 million, simply list the alternatives considered, their respective costs, and brief bullet points about potential advantages or drawbacks. There is no context provided as to how the alternatives were identified and compared to company's preferred solution.

Clearly, as Mr. Cloyd's supplemental direct testimony indicates, the company has a process to develop and evaluate alternative solutions.²⁷ And the results of that analysis are critical to understanding why the company's chosen course of action is the best course of action, both from an engineering and financial standpoint. But, in large part, the project authorization presentation slides do not explain how the alternatives and their respective costs affected the company's decision-making. For several projects, some alternatives were cheaper than the company's recommended solution. Yet, the company does not fully explain why those alternatives were not viable and, ultimately, were rejected.

[BEGIN CONFIDENTIAL CEII] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁷ *Id.* at 17:2-3 and n. 11.

²⁸ ML#314181 Supplemental Direct Testimony of Laura Wright ("Wright Supplemental Direct"), Exhibit LW-7 at 814.

[REDACTED]

²⁹ *Id.*, Exhibit LW-7 at 821.

³⁰ *Id.*

³¹ Supplemental Direct Testimony of Dawn C. White (“White Supplemental Direct”), DCW-7 at 223.

³² *Id.*, DCW-7 at 223.

³³ *Id.*, DCW-7 at 241.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL CEII]**

Additionally, the company’s testimonies do not fully demonstrate the value to customers for the majority of individual projects. BGE’s witness testimony, as well as its project authorization presentation slides, suffer from the same problems of vagueness and generality. For many projects, BGE’s witnesses testify that the project is necessary to improve reliability and safety, or meet safety or reliability metrics. In other instances, the company identifies projects as necessary to replace old or aging infrastructure. Merely declaring that a project will improve reliability or safety—without quantified information that supports these conclusions—is insufficient to demonstrate a project’s prudence.³⁶

And the additional information the company provided to support the prudence of its projects largely fails to provide any quantified benefits. The project authorization

³⁴ *Id.*, DCW-7 at 241.

³⁵ *Id.*, DCW-7 at 241.

³⁶ *E.g.*, Order No. 91181 at 87 (removing budgeted cost of substation rebuild “given the lack of quantitative evidence to support project cost” and the absence of information to substantiate the claim that the substation equipment is “aging and needs to be replaced”).

presentations typically include a slide regarding quantifiable benefits. Yet, it is rare for these presentations to provide actual quantified benefits.³⁷ Again, absent specific information that *shows* the value of the benefits a project will provide to BGE and its customers, the record justifying that project's prudence is incomplete.

Quantity of information does not equate to quality of information. The Commission asked BGE to prove the prudence of its Rate Year 3 investments by demonstrating—not just explaining—how each project was selected, the value each project provides to customers, that the company exercised good judgment in executing its projects, and that project costs were justified.³⁸ Rather than heed the Commission's specific instructions, the company filed broad, voluminous testimony and exhibits with project authorization presentations with minimal information on benefits and alternatives analysis.

As a regulated entity, BGE should take seriously its efforts to fully respond to the Commission's requests for specific analysis. Complying with the Commission's requirements on the company's own terms is not compliance. To recover more revenue from customers, the company must satisfy the evidentiary burden the Commission placed on it. Here, the company has failed to do so. Given the company's failure to carry its burden, the Commission should deny the company's reconciliation revenue requirements.

³⁷ For instance, quantified benefits are provided for only 8 of the 46 projects included in Exhibit LW-7. For Exhibit DCW-7, quantified benefits are provided for only 4 of the 22 projects included.

³⁸ Order No. 91396 at 3–4.

II. BGE’s Rate Year 3 reconciliation shows a lack of capital spending governance.

Even if the Commission concludes that BGE provided adequate alternatives analyses and sufficient information about customer benefits provided by its spending, it should find that the company failed to prudently manage its spending in 2023.

Although the company’s rate base at the end of the year was virtually identical to its forecasted rate base, the company overspent its combined capital budgets by about than \$323 million, of which more than \$180 million was spending on projects newly established in 2023.³⁹ A significant amount of this spending resulted in plant additions in 2023 and had the effect of filling gaps in rate base left by delays in the completion of projects that BGE had initially planned to place into service in 2023.⁴⁰

Given “uncontrollable factors” increasing BGE’s costs in 2023, the company should have curtailed its capital spending and additions to plant so as not to burden customers with a massive revenue requirement on top of the company’s current base distribution rates. Instead BGE prioritized “complet[ing] the workplan,”⁴¹ to the detriment of its customers

³⁹ Frain Supplemental Direct, Exhibit JCF-1E and JCF-1G

⁴⁰ Examples of significant capital projects that BGE had initially planned to place into service in 2023 but did not go into service include Project 58447: Harbor Crossing- Upgrades for in-line inspection, *see* White Supplemental Testimony at DCW-3G; Project 60693: Gate Station-Owings Mills, *see id*; Project 54298: West Hamilton 4521 & 4527 4kV Conversion, *see* Wright Supplemental Testimony at Ex. LW-3E; Project 65143: Calverton Road 4807 4kV Conversion, *see id*. BGE’s compliance filing following the issuance of Order No. 89678 projected that all of these projects would be in service by the end of 2023. *See* ML# 233739.

⁴¹ BGE Ex. 7-FR, Frain Rebuttal at 8:9-11.

BGE’s excess spending falls into two broad categories: (1) spending on new and “emergent” projects that are discretionary as to timing;⁴² and (2) spending on authorized projects that exceeded the company’s budgets. Spending in each of these categories was largely within BGE’s control. BGE controls the creation and execution of new projects that do not address immediate system needs. And BGE controls the pacing and scope of work of existing projects. Certain factors that affect spending—for example, inflation affects the cost of materials that must be purchased for a project—are difficult for a utility to control. Nonetheless, the utility has an obligation to manage costs prudently to the best of its abilities.

BGE’s capital and O&M cost exceedances are concerning. The company’s inability to manage within its capital budgets—as costs increased in areas purportedly outside of BGE’s control—calls the company’s managerial judgment into question. For each project discussed below, the company failed to demonstrate the need to incur the excess spending that it seeks to recover from customers.

A. BGE’s requested reconciliation revenue requirements mask the total cost of BGE’s overspending to ratepayers.

According to BGE, the company’s RY 3 gas and electric reconciliation revenue requirements are mostly a result of factors not related to BGE’s 2023 capital spending.

Mr. Frain’s supplemental testimony identifies \$69 million of BGE’s \$79 million electric

⁴² Even with the supplemental information BGE filed, identifying the basis of BGE’s overspending is a challenge. BGE obscures the extent to which it created new projects in 2023 by repeatedly using its 2021 compliance filing following the Commission’s MRP I order as the reference point for what is new. In fact, many of BGE’s new-in-2023 projects were established after BGE filed its 2023 project list in 2022 (or at least were not disclosed in that project list). Changes in project geography further complicate identifying spending that is actually new. *See Fitzhenry Supplemental Reply at 4:22 – 5:4.*

reconciliation revenue requirement as driven by factors other than capital spending, including alleged increases in depreciation expense,⁴³ O&M expense attributed to major and minor storms, EmPOWER, and “other policy.”⁴⁴ On the gas side, Mr. Frain attributes \$46 million of BGE’s requested \$73 million reconciliation revenue requirement as driven by factors other than capital spending.

The amounts that Mr. Frain identifies in his supplemental testimony may be accurate. But Mr. Frain’s suggestion that BGE’s \$322.8 million capital overspend had basically *no impact* on the company’s reconciliation revenue requirements is misleading at best. While BGE’s actual electric plant in service hewed close to its forecast, the company’s gas plant-in service exceeded BGE’s projections by 9.5 percent.⁴⁵ Mr. Fitzhenry notes that the company’s spending variances “appear to be an attempt to ‘catch up’ end-of-year plant-in-service to the levels the Company originally planned.”⁴⁶ BGE supplemented \$84.5 million in capital spend it removed from its electric capital plan by adding *\$186.1 million in new projects*.⁴⁷ On the gas side, BGE removed \$24.1 million in

⁴³ BGE attributes the under-recovery in electric depreciation to the Commission’s acceptance of OPC’s proposed depreciation rates in CN 9645. Frain Supplemental Direct at 12:14-18. In fact, the Commission accepted OPC’s depreciation rates because BGE “ha[d] not presented a depreciation study or a sufficient record to justify the change in composite depreciation rates it ha[d] proposed.” Order No. 89678 at 48, *Baltimore Gas and Electric Company’s Application for an Electric and Gas Mult-Year Plan* (Case No. 9645, Dec. 2020), *rehearing denied by* Order No. 89794 at 8–11 (Mach 2021). Mr. Fitzhenry showed that BGE’s actual depreciation expense exceeded what the company had forecasted using *its own* composite depreciation rate because the company’s actual capital spending in 2023 built a rate base that differed materially from what it had forecasted. Specifically, BGE’s actual rate base includes much more plant with relatively asset lives than the company’s forecasted rate base. *See* Fitzhenry Supplemental Testimony at 7:9-11:15.

⁴⁴ Frain Supplemental Direct at 10:4-12, Chart 1.

⁴⁵ BGE Ex. 6-FR, Frain Direct, JCF-2, Attachments 2-E and 2-G.

⁴⁶ OPC Ex. 10-FR, Fitzhenry Surrebuttal at 3:14-15.

⁴⁷ Frain Supplemental Direct, Exhibit JCF-1E

planned capital spend, but added *\$105.1 million in new projects*.⁴⁸ While much of BGE's new capital spending went towards plant that was not placed into service in 2023, some of BGE's new spending was placed into service. And these new additions to plant increased the company's rate base relative to what it would have been.

Irrespective of the prudence of individual projects, the magnitude of the company's spending on items within the company's control while incurring higher costs on matters outside of the company's control epitomizes imprudent and unreasonable management. Mr. Fitzhenry found that the significant variances indicate "a lack of adequate cost control or forecasting within the year itself."⁴⁹ The supplemental testimony the company filed further supports Mr. Fitzhenry's conclusion.

BGE claims it had no choice but to exceed its authorized budgets. As Mr. Frain explains, the magnitude of the final reconciliation is due to "uncontrollable items over which BGE has little ability to forecast such as storms, new business, and certain projects required by the legislature or Commission."⁵⁰ Mr. Frain further states that the company could not have further offset its costs, as so doing would have potentially sacrificed safety, reliability, or customer service.⁵¹

In fact, all of the "uncontrollable factors" Mr. Frain identifies are risks that a prudently managed utility should anticipate. While it may be difficult to budget for major and minor storms, such storms are an inevitable occurrence. BGE's obligation to serve

⁴⁸ *Id.*, Exhibit JCF-1G.

⁴⁹ BGE Ex. 7-FR, Frain Surrebuttal at 3:13-14.

⁵⁰ *Id.* at 6:19 – 7:8.

⁵¹ *Id.* at 7:16-20.

requires it to provide service to new customers, regardless of the number actual new service connections requested each year. And, as a regulated utility, BGE is subject to regulation by the Commission and state law. It is foreseeable that compliance with directives from the Commission may require it to incur new or additional costs. BGE did incur higher than anticipated storm related expenditures. As explained in Mr. Singh's testimony, BGE experienced "more damaging storm activity in 2023 than" the historical five-year average" for minor storms and exceeded its RY3 capital budget forecast by \$32.7 million.⁵² BGE spent \$29.7 million related to major storm events on , on December 22, 2022 and on August 7, 2023.⁵³ In total, the company exceeded its electric storm capital and O&M budgets by \$62.4 million and \$28.5 million, respectively.⁵⁴ BGE also claims it incurred higher spending related to "new" legislative and Commission requirements. As to new customer connections, Mr. Singh's testimony identifies both an increase in connection requests and an increase in labor costs as driving the company's variances.⁵⁵ BGE exceeded its electric and gas new business capital budgets by \$26.97 million and \$16.5 million, respectively.⁵⁶

Yet, it does not appear that BGE made any serious efforts to control its spending given rising costs driven by factors the company claims are outside of its control. BGE treats spending driven by such "uncontrollable factors" phenomena to be observed,

⁵² ML# 314181, Errata to Steven A. Singh Supplemental Direct Testimony ("Singh Supplemental Direct") at 17:13-14, 50:7-15.

⁵³ Singh Supplemental Direct at 50:16 – 51:4.

⁵⁴ *Id.*, Exhibits SAS-4E and SAS-11E.

⁵⁵ *Id.* at 35:21–36:3.

⁵⁶ *Id.*, SAS-3E and SAS-3G.

rather than taken into consideration in making other spending decisions. Mr. Frain’s testimony exemplifies this problem. Mr. Frain notes that, by “adjusting for uncontrollable items,” BGE’s electric distribution capital spending for its first MRP was “only higher by 6.46 percent.”⁵⁷ Whether or not certain expenses are within or outside of the company’s control, it is the utility’s obligation to appropriately steward the monies that customers ultimately pay, and to adjust expenditures in light of emergent circumstances that drive up the utility’s costs.

Mr. Frain’s testimony raises questions about whether the company treats the money it spends—and subsequently recovers from customers—with sufficient care. In Rate Year 3, when the company could have tightened its belt after incurring significant expenses related to major and minor storms, BGE instead chose to “ca[tch] up actual spending to planned spending.”⁵⁸ Notwithstanding the “extraordinary levels of inflation” experienced during 2021 and 2022,⁵⁹ the “equally extraordinary supply chain challenges coming out of the pandemic and the worldwide economic downturn,”⁶⁰ and the “storms, new customer business requirements, and emergent regulatory and legislative items,” BGE “essentially completed” the MRP workplan it proposed in May of 2020.⁶¹

Mr. Frain correctly states that the company’s workplan should be considered in its entirety.⁶² But doing that shows that the company failed to make a serious effort to

⁵⁷ BGE Ex. 7-FR, Frain Rebuttal at 7:7-10.

⁵⁸ *Id.* at 8:9-11.

⁵⁹ *Id.* at 7:13-14.

⁶⁰ *Id.* at 7:16-19.

⁶¹ *Id.* at 8:10-11.

⁶² BGE Ex. 7-FR, Frain Rebuttal at 4:5-7.

contain capital costs. The company pursued a number of new projects in 2023 that it could have delayed or deferred. BGE's witnesses do little to show, beyond generalized and vague claims of improving safety or reliability, why reductions in spending on items within BGE's control were not feasible. While company's witnesses identify some efficiencies in capital and O&M spend for Rate Year 3 in their supplemental testimonies, these small cost savings are miniscule compared to the magnitude by which BGE exceeded its budgets.

BGE has failed to show that it managed its budgets as a good steward of its customers' dollars. The company's cavalier attitude to operating within its budgets indicates managerial imprudence and the appropriateness of reductions to BGE's gas and electric reconciliation revenue requirements.

B. BGE fails to justify its spending on many new and emergent projects.

As noted above, new and emergent project spending constituted more than \$180 million of the company's 2023 capital expenditures. While some of these new projects have yet to be placed into service, the company did place into service many projects that were not included in the company's authorized MRP. For each of these projects, the company's filings in this reconciliation provided some explanation as to the project's purpose. But there is little explanation as to why it was necessary and prudent to pursue each project in rising cost environment. BGE has not demonstrated that the following projects, completed and placed into service in 2023, were necessary. Therefore, the

Commission should remove costs of each project from its 2023 reconciliation revenue requirements.⁶³

1. Electric Projects

Stoney Creek Horizontal (ITN 76080) — \$2,764,414

The company originally included this project in the planned cable replacement budget as part of the company’s 2021 revised MRP work plan.⁶⁴ However, given the scope of the work—which involved a submarine crossing of Stoney Creek to replace the failed cable and adding an additional duct for a future cable replacement—the company chose to pursue this as a unique project.⁶⁵ BGE’s project authorization slides do not explain why the completion of this project was necessary in 2023. While Ms. Wright’s testimony identifies the reliability need as driven by the consequences of a Rivera Beach integral substation failure,⁶⁶ BGE provides no information on the condition of the integral substation, its reliability history, and the likelihood it may fail. The lack of a demonstrated immediate need for this project is further underscored by the fact that this project has been under development since 2018.

Pumphrey Extension/Tie (ITN 78022) – \$8,333,479

This project concerns improvements to a feeder serving a major university. Ms. Wright explains that the project was needed “to help improve service reliability” and addressed “multiple outages affecting student life and university operations.”⁶⁷ **[BEGIN**

⁶³ For Section II.B, OPC’s recommended electric capital disallowances total \$15,940,497.

⁶⁴ Wright Supplemental Direct at 34:8-11.

⁶⁵ *Id.* at 34:6-8.

⁶⁶ *Id.* at 34:2-4.

⁶⁷ *Id.* at 51:20 – 52:18.

CONFIDENTIAL CEII] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. [END CONFIDENTIAL CEII] The costs incurred on this project in 2023 related to this project should be removed from the company's Rate Year 3 reconciliation request.

Mesh Network Expansion (ITN 85303) – \$4,842,600

The Mesh Network enhancement project is a program to upgrade BGE to a new communication network, with spending planned from 2023 through 2027. [BEGIN

CONFIDENTIAL CEII] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] d.⁷⁰ [END

⁶⁸ *Id.*, Exhibit LW-7 at 991, 994.

⁶⁹ Cloyd Supplemental Direct, Exhibit MJC-7 FR at 712

⁷⁰ *Id.*, Exhibit MJC-7 FR at 712

CONFIDENTIAL CEIIJ In short, BGE’s testimony and exhibits provide no explanation as to why spending \$5 million to kick off a new, entirely discretionary capital spending program in a rising cost environment is prudent.

C. BGE has not demonstrated the prudence of many of its exceedances of approved budgets.

In Order No. 90948, the Commission stated that it “expects utilities to manage their operations and spending within the limits the Commission has approved.”⁷¹ In so doing, the Commission put BGE on notice that “[f]ailure to adjust [c]ompany practices when budgets are being exceeded could lead to future disallowances.”⁷² Such disallowances are appropriate here.

For a number of projects, the company exceeded its projected budgets and is seeking to recover 2023 excess spending, along with its budgeted amounts, through its reconciliation revenue requirement. Regardless of the prudence of the projects themselves, the company’s failure to contain costs in a rising-cost environment constitutes unreasonable management judgment and is imprudent. For each project discussed below, the identified budget exceedances should be removed from the corresponding electric or gas reconciliation revenue requirements.⁷³

⁷¹ Order No. 90948 at 181.

⁷² *Id.*

⁷³ For Section II.C, OPC’s electric disallowances total \$27,197,632; gas disallowances total \$17,410,908.

1. Electric Projects

4kV Conversion Projects (ITN 54928, 55782, 55783, 65211) – \$7,670,697

These projects are part of the company’s ongoing efforts to upgrade 4kV infrastructure serving residents in Baltimore city. Across these projects, the company incurred a \$7.6 million exceedance on an initial budget of \$10.5 million.⁷⁴ Ms. Wright explains the variance as “mostly driven by contractor bids higher than estimate, new Baltimore City Traffic requirements, and carryover work from 2022.”⁷⁵ In her view, the impacts to customers and operations of delaying the projects into 2024 justified continuing to pursue the projects in 2023, despite the rising costs.⁷⁶

The company provides little support that demonstrates the prudence of continuing the work at a higher cost. Ms. Wright identifies several potential impacts of delaying the 4kV projects, including additional costs and delays due to permitting and increasing difficulty to safely restore customers served by 4kV feeders that are under construction.⁷⁷ But BGE provides no data to substantiate these claims. The company provides no estimates of the increased permitting costs that would result from pausing ongoing projects. Nor does the company provide any information about the current reliability of the particular feeders that may be affected by a work slowdown and the likelihood and

⁷⁴ Wright Supplemental Direct at 45 Table 14. OPC notes that the company removed two 4kV conversion projects initially included in its budgets, thereby reducing the overall 2023 4kV conversion spend by \$2.5 million. *Id.* at 45, Table 14.

⁷⁵ *Id.* at 46:13-15.

⁷⁶ *Id.* at 46:15-18.

⁷⁷ *Id.* at 46:18 – 47:2.

customer impact of an outage on the feeders that the ongoing construction makes difficult to restore.

In Order No. 90948, the Commission reduced BGE's proposed 4kV conversion budget to "strike an appropriate balance between the need to continue 4kV conversion, and the goal of minimizing burden on ratepayers."⁷⁸ BGE has not justified the ratepayer burden of its \$5 million spending exceedance in 4kV conversions for 2023.

Cable Replacement (ITN 61132 and 61134) – \$4,548,561

BGE has two projects dedicated to underground cable replacement. The Planned Cable Replacement project replaces "damaged and poor performing underground primary cable."⁷⁹ The Secondary Cable Replacement program funds replacement of "aging distribution cable to improve the operation and electric system reliability on the underground secondary system."⁸⁰ The company exceeded its budgets for these programs by \$3.5 million and \$1 million, respectively, due to "unfavorable environmental conditions" that complicated the work.

BGE has not demonstrated the prudence of pursuing the volume of cable replacement work completed in 2023 given the environmental challenges posed by the projects it identified. A prudent utility, operating within a fixed budget, would adjust the scope of its work to maximize the effectiveness of available budgeted funds. There is no evidence showing that the utility made any such adjustments. Nor is there any evidence

⁷⁸ Order No. 90948 at 59.

⁷⁹ Wright Supplemental Direct at 43:16-18.

⁸⁰ *Id.* at 44:13-15.

showing that reducing the scope of work to align with the company’s authorized budget would harm customers and negatively impact reliability. BGE has not justified the prudence of incurring the \$4.5 million variance in planned and secondary cable replacement.

13 kV OH DA Recloser (ITN 61147) – \$3,862,401

This project involves the installation of equipment that automatically reconfigures the distribution circuit following an outage, thereby reducing the impact of an outage event.⁸¹ In her testimony, Mr. Wright attributes the increased 2023 spend to “adding more reclosers to improve RM42 SAIFI, drive down Poorest Performing Feeders and increase customer reliability.”⁸²

However, BGE provides no information explaining the necessity and impact of increasing the scope of work. [BEGIN CONFIDENTIAL CEII] [REDACTED]

[REDACTED]

[REDACTED]. [END

CONFIDENTIAL CEII] The company does not provide any quantification of how much the increased scope of work will improve SAIFI or the extent to which it will reduce the number of poorest performing feeders.

⁸¹ *Id.* at 47:7-14.

⁸² *Id.* at 48:2-6.

⁸³ *Id.*, LW-7 at 539.

Absent a compelling justification, supported by evidence, for the need to increase the scope of work and exceed its forecasted budget, BGE has not demonstrated the prudence of its \$3.8 million variance.

Pad Mount Transformers (ITN 60808) – \$1,341,538

BGE’s Pad Mount Transformer program “funds the installation of devices to allow automation to be deployed on the BGE underground system.”⁸⁴ BGE attributes the \$1.3 million budget exceedance for this project to “higher than anticipated” material costs.⁸⁵ BGE provides no explanation, however, as to why the company could not reduce the scope of work in light of increased costs. [BEGIN CONFIDENTIAL CEII] [REDACTED]

[REDACTED]

[REDACTED]⁸⁶ [END

CONFIDENTIAL CEII] BGE has not shown the prudence of overspending on a project when the company could have adjusted the scope in light of increasing materials costs.

Project Apollo (ITN 74744) – \$2,884,186 (electric); \$1,603,616 (gas)

Project Apollo refers to a multi-year project to upgrade Exelon’s financial, work planning and tracking, and fixed assets system.⁸⁷ Mr. Cloyd indicates that the project implementation is scheduled for 2026. The company reports a \$4.5 million variance against a budget of \$1.6 million. BGE attributes increased spend to the delay of the “financial system transformation” planned for 2022.⁸⁸

⁸⁴ *Id.* at 48:10-12.

⁸⁵ Wright Supplemental Direct at 48:19-20.

⁸⁶ *Id.*, LW-7 at 377.

⁸⁷ Cloyd Supplemental Direct at 65:19-21.

⁸⁸ *Id.* at 65:14-16.

investments for this project are currently used and useful, the company provides little information explaining the prudence of its budget exceedance. The scope and timing of this project is entirely within the company's discretion. In a rising cost environment, good fiscal stewardship entails minimizing cost increases by curtailing discretionary spending. The company's budget exceedance for this project is imprudent.

Fleet Procurement– \$6,890,250 (electric), \$3,811,122 (gas)

The company spent \$25.4 million on fleet procurement projects in 2023, against a projected budget of \$14.4 million.⁹³ Mr. Cloyd states in his testimony that these projects replace “various types of fleet assets . . . that have reached end-of-life,” and that such replacements “improve vehicle/equipment reliability and reduce[] downtime.”⁹⁴

The company has not demonstrated the prudence of spending nearly twice its approved fleet procurement budgets. Mr. Cloyd attributes the company's overspending to “business growth,” the purchase of “eight mobile command center trailers” and cost increases due to inflation and supply chain shortages.⁹⁵ What BGE does not show, however, is why the scope and pace of its fleet procurements could not be reduced given the “unforeseen” cost increases the company experienced.⁹⁶ The company provides no information on the number of vehicles it needed to replace, nor the specific vehicle needs

⁹³ Cloyd Supplemental Direct at 66:17-19, Table 7. When BGE's MRP I was approved, the company housed nearly all fleet procurement spending under a single project number, 68032, which included a 2023 budget of \$8.2 million for electric and \$4.6 million for gas. Cloyd Supp. Direct, Exhibits MJC-6E and MJC-6G. In 2023 the company replaced Project 68032 with five more particular fleet projects, with project numbers 78798, 78801, 78804, 78806, and 78807. Cloyd Supplemental Direct, Exhibit MCJ-2E and MCJ-2G.

⁹⁴ *Id.* at 68:1-6.

⁹⁵ *Id.* at 90:19 – 91:2.

⁹⁶ *Id.* at 91:2.

attributable to “transitioning work from contractors to BGE employees.”⁹⁷ Nor does the company fully explain its need to procure new mobile command center trailers. BGE does not identify any shortfalls in the company’s current emergency readiness and response capabilities that require purchase of these command centers to remedy. Assuming *arguendo* that such shortfalls exist, the company does not explain how it determined eight trailers was the sufficient procurement amount.

2. Gas Projects

Gas Services Regulator Relocation Program (ITN 79897) – \$6,609,898

This project concerns BGE’s compliance with the Flower Branch Act,⁹⁸ which requires gas utilities to relocate gas service regulators serving multifamily residential structures from indoors to outdoors.⁹⁹ As Ms. White noted in her testimony, the Company pursues this work under a plan approved by the Commission in Order No. 90250.¹⁰⁰ The Flower Branch Act was enacted in 2021, during the litigation of the MRP 1, and as a result the original MRP did not include a project or budget for implementation of the Act. However, after enactment BGE submitted an implementation plan to the Commission that provided for the completion of 200 regulator relocations in 2023 at a budget of \$3.6 million.¹⁰¹

⁹⁷ *Id.* at 90:19-21.

⁹⁸ White Supplemental Direct, at 60:1-3.

⁹⁹ PUA § 7-313(b)(2).

¹⁰⁰ White Supplemental Direct, at 60:3-5.

¹⁰¹ See ML#38325, BGE Gas Service regulator Relocation Plan at 6 (Dec. 22, 2021); See White Supplemental Direct, Exhibit DCW-7 at 397.

The Commission approved BGE’s plan in Order No. 90250 and the company’s 2023 project list in this case also proposed a budget of \$3.6 million budget for Project 79897.¹⁰² But in 2023, BGE’s regulator relocation scope of work and corresponding budget far exceeded what the company proposed and the Commission approved. The company relocated 750 service regulators—550 more than the Commission approved—at a cost of \$10.3 million.¹⁰³ The company’s filings in this case provided no explanation or justification for the need to accelerate its regulator relocation work, especially as capital costs rose in other areas that the company has less control over. Accordingly, BGE has not demonstrated the prudence of its budget variance.

System Reliability – Gas Distribution (ITN 58194) – \$5,386,276

This project involves the remediation of reliability concerns on the gas system.¹⁰⁴ The company initially budgeted \$5 million for this project. But due to the work stoppage ordered by the Commission in Case No. 9711, the company redirected resources and, ultimately, spent \$10.4 million against its original budget. Ms. White states that, by accelerating work on this project, the company was “able to keep qualified resources on the BGE system.”¹⁰⁵ Yet, the company provides no evidence showing that redeploying contractors affected by the work stoppage was needed to ensure the contractors could resume work once the work stoppage was lifted. Absent such evidence, it appears that the

¹⁰² ML# 242894, BGE 2023 Capital and O&M Project List at 20.

¹⁰³ White Supplemental Direct at 60:6-8, 61:11-12.

¹⁰⁴ *Id.* at 54:14-18.

¹⁰⁵ *Id.* at 55: 11-13.

company took the opportunity to maintain its planned rate of capital spending by accelerating spending in one area due to reductions of spending in another. Such program management does not responsibly steward customer dollars and denies customers potential cost savings and rate relief.

III. BGE fails to justify recovery for the projects addressed by OPC’s witness.¹⁰⁶

In addition to the projects identified *supra* in Sections II.B and II.C, the company has not justified recovery for four projects discussed by OPC witness Fitzhenry: pole replacements, city conduit investments, gas leak repairs, and certain city permitting expenses. With each of these projects, Mr. Fitzhenry found that the company’s evidence and explanations do not sufficiently demonstrate the prudence of the spending the company seeks to recover.¹⁰⁷

A. BGE’s pole replacement budget exceedances are imprudent.

BGE acted imprudently in spending \$13.1 million—\$7.7 million more than it budgeted—on its planned utility pole replacement project, Project 61160.¹⁰⁸

BGE’s compliance filing following the issuance of Commission Order No. 89678 proposed reasonable annual budgets for Project 61160—\$6.2 million in 2021, \$5.5

¹⁰⁶ OPC witness Fitzhenry raised concerns regarding BGE’s common trench enhancement program. Based on the testimony offered during the evidentiary hearing as well as BGE Ex. 5-FR, OPC is no longer challenging the common trench enhancement expenditures incurred in 2023.

¹⁰⁷ The capital disallowances discussed below total \$24,697,578 for electric and \$15,962,084 for gas. For O&M, the electric disallowance is \$1,300,000 and the gas disallowance is \$13,134,096.

¹⁰⁸ See OPC Exhibit 1-FR (Case No. 9645, BGE Response to OPC DR 12-54).

million in 2022, and \$5.4 million in 2023¹⁰⁹—that were also consistent with BGE’s spending on Project 61160 in the three years preceding MRP 1.¹¹⁰ In 2021 and 2022, BGE exceeded its Project 61160 budgets by relatively small amounts.¹¹¹ But in 2023, BGE spent \$13,141,388 on the project, exceeding its budget by \$7.7 million—a 142 percent variance.¹¹² This additional spending purchased the replacement of 795 poles, only 22 percent more than BGE’s 2023 budget assumed.¹¹³

BGE’s explanation for why it spent so much more on Project 61160—and replaced so few additional poles, relative to the amount it spent—changed over the course of this proceeding. In the company’s reconciliation filing, an exhibit to the direct testimony of Mr. Frain attributed the variance “primarily” to “increased workload in efforts to drive down existing backlog. As a result, in 2023, the company saw a higher volume of pole replacements than the historical trend upon which this budget was based.”¹¹⁴ But in response to OPC witness Fitzhenry’s observation that BGE’s spending increase was out of proportion to the number of poles the company replaced, Steven A. Singh, BGE’s Vice President of Electric Operations, identified two different causes of higher spending: first, the expansion of the scope of Project 61160 to include vegetation management activities; and second, greater “complexity” in pole replacement jobs than anticipated, which Mr.

¹⁰⁹ See BGE Revised 2021-23 Capital Workplan and 2021 O&M Project List in Compliance with Order No. 89678 (ML# 233739) at 11.

¹¹⁰ See OPC Exhibit 1-FR and Tr. 11:1-19. The company’s capital expenditures in Project 61160 were \$5,226,262 in 2018, \$5,114,252 in 2019, and \$5,551,787 in 2020.

¹¹¹ See Tr. 13:4-12.

¹¹² OPC Ex. 9-FR, Fitzhenry Direct at 11:4-5.

¹¹³ *Id.* at 11:12-18.

¹¹⁴ BGE Ex. 6-FR, Frain Direct, Exhibit JCF-3: BGE 2023 MYP Project Variance Detail – Distribution Capital, at 2.

Singh said meant more 34kV pole replacements than anticipated and a relatively high degree of replacement work conducted in marshy soils.¹¹⁵

At the hearing, Mr. Singh offered a novel interpretation of the term “backlog” in attempt to harmonize these contradictory explanations. For BGE, he testified, “backlog” does not necessarily refer to work not previously completed; it can also mean “something that was identified in that existing year.”¹¹⁶ According to Mr. Singh, the company used “backlog” in reference to Project 61160 because the part of its service territory where BGE planned to conduct project work in 2023 had “3,000 more poles in it” than other parts of its service territory.¹¹⁷ Accordingly, Mr. Singh stated in his supplemental testimony that a backlog of jobs was factored into the company’s assumption that it would replace 650 poles in 2023.¹¹⁸

BGE’s explanations fail to show that the company’s 142 percent overspend in Project 61160 was prudent. First, if a backlog of pole replacement work was factored into BGE’s projection of 650 replacements, as Mr. Singh testified, that backlog was clearly not a driver either of BGE’s decision to replace more than 650 poles or of any excess spending.¹¹⁹

Second, BGE acted imprudently by including vegetation management work and costs in Project 61160 because *cutting down trees and tree branches is not capital work.*

¹¹⁵ BGE Ex. 2-FR, Singh Rebuttal, at 4:1 – 5:4.

¹¹⁶ Tr. 16:3-5 (Singh).

¹¹⁷ Tr. 15:21-23 (Singh); Tr. 19:8-12 (Singh).

¹¹⁸ Singh Supplemental Direct at 30:7-11.

¹¹⁹ In its 2023 Project List, BGE budgeted \$5,378,443 for Project 61160—a few dollars less than the amount in its 2021 compliance filing—notwithstanding the alleged backlog. *See* BGE 2023 Capital and O&M Project Lists in Compliance with Order No. 89678 (ML# 242894) at 5.

It is O&M¹²⁰—and BGE had no legitimate basis for recording it as a capital expense.

Even if vegetation management work could be properly capitalized, BGE has not shown that the vegetation management work done in Project 61160 was necessary or that it provided meaningful benefits for customers or enhanced the efficiency of BGE’s vegetation management operations. Mr. Singh claims that incorporating vegetation management work in the vicinity of replaced poles was prudent because that work “would otherwise have required a separate outage and associated customer disruption.”¹²¹ But as OPC witness Fitzhenry noted, vegetation management crews routinely perform maintenance work on distribution lines that are not in an outage.¹²² Moreover, it does not appear that combining pole replacement work and vegetation management work created any efficiencies, as Mr. Singh confirmed at trial that the crews that performed vegetation management work under Project 61160 were different from the crews that replaced poles.¹²³

Third, assuming *arguendo* that all of the 795 poles that BGE replaced in 2023 had to be replaced (and could not be reinforced), BGE has not shown that all of those poles had to be replaced *in 2023*. According to Mr. Singh, BGE prioritizes work on poles identified for replacement by designating them as Priority 10, 20, or 30, with Priority 10 requiring immediate replacement, Priority 20 requiring replacement within 14 days, and Priority 30 requiring replacement within nine months.¹²⁴ Asked whether a significant

¹²⁰Wright Supplemental Direct at 75:6 – 76:23.

¹²¹ Singh Supplemental Direct at 30:4-6.

¹²² OPC Ex. 10-FR, Fitzhenry Surrebuttal at 19:12-14.

¹²³ Tr. 31:4-10.

¹²⁴ Tr. 18:2-6.

percentage of the poles that BGE replaced in 2023 were Priority 10, Mr. Singh answered “no.”¹²⁵ In fact, it is unclear whether *any* of the poles replaced in Project 61160 was Priority 10, because Mr. Singh also testified that in 2023, Priority 10 poles were replaced under Project 61161, BGE’s “reactive” or “emergent” pole replacement project.¹²⁶ Nor did BGE quantify the number of poles designated as Priority 20 in Project 61160 or provide evidence justifying that classification.

Finally, BGE’s arguments concerning project complexity are unpersuasive. Mr. Singh’s rebuttal testimony included a table stating that in 2023 BGE performed 149 complex jobs in 2023 at a cost of \$1,457,676, versus 11 complex jobs in 2023 at a cost of \$132,248.¹²⁷ But as Mr. Fitzhenry notes, the cost difference between these figures is not nearly enough to make up for the increases in BGE’s actual expenditures.¹²⁸ Indeed, the average cost of BGE’s *complex* pole replacements (\$9,783) is far less than the *overall* average cost of pole replacements in Project 61160 (\$16,530).¹²⁹

Forecasting fewer complex pole replacement jobs than BGE actually performed is an indication of poor forecasting, since the company knew in advance the part of its service territory where it would conduct Project 61160 in 2023 and should have understood what types of poles it had in that area and the area’s soil conditions.¹³⁰ But job

¹²⁵ Tr. 18:11-15.

¹²⁶ Tr. 46:10-22 (Singh).

¹²⁷ BGE Ex. 2-FR, Singh Rebuttal at 5, Table 1.

¹²⁸ OPC Ex. 10-FR, Fitzhenry Surrebuttal at 20:10-12.

¹²⁹ \$16,530 is the quotient obtained by dividing BGE’s total costs for Project 61160 (\$13.1 million) by the total number of poles replaced (795).

¹³⁰ At the hearing, Mr. Singh testified that BGE conducts Project 61160 over the course of ten years, completing one section per year. Tr. 19:6-12 (Singh).

complexity was not a major driver of BGE’s variance. The major drivers were the higher number of pole replacement jobs that BGE completed, the improper inclusion of vegetation management work, and a third factor identified by Mr. Fitzhenry: the addition of significant new contract labor in Project 61160.

Mr. Fitzhenry showed that BGE exceeded its budgeted contract labor cost in Project 61160 by \$4.4 million.¹³¹ According to Mr. Singh, BGE increased the use of contract labor in Project 61160 because it shifted internal crews from that project to Project 61161, where “there was an increase to the number of emergent or reactive pole replacement jobs over historical levels.”¹³² With a shift in BGE internal labor to Project 61161, internal labor costs in Project 61160 should have decreased, as Mr. Fitzhenry notes.¹³³ Instead, they rose by \$558,277,¹³⁴ an increase that Mr. Singh does not explain. The consequences of BGE’s replacing a high number of poles in Project 61160 while relying heavily on contract labor and improperly including vegetation management work in the project is a far higher per-pole replacement cost than in Project 61161. In the latter project, BGE replaced 727 poles at a cost of \$5.4 million—\$7,481 per pole. In Project 61160, BGE replaced 795 poles at a cost of \$13.1 million—\$16,530 per pole. This extraordinary difference highlights the irresponsibility of BGE’s spending in Project

¹³¹ OPC Ex. 9-FR, Fitzhenry Direct at 12:1-4.

¹³² BGE Ex. 2-FR, Singh Rebuttal at 5:15-18.

¹³³ OPC Ex. 10-FR, Fitzhenry Surrebuttal at 20:18-21:3.

¹³⁴ OPC Ex. 9-FR, Fitzhenry Direct at 12, Table 3.

61160. The Commission should disallow the entirety of BGE’s \$7.7 million variance in the project, consistent with the recommendation of Mr. Fitzhenry.¹³⁵

B. BGE’s request to recover spending on the Baltimore City conduit spending is premature and should be denied.

In its reconciliation filing, BGE reports spending \$17 million on capital improvements to the Baltimore City conduit.¹³⁶ The company did not initially budget for this project.¹³⁷ After executing a contract with Baltimore City on February 15, 2023, obligating it to complete \$120 million in capital repairs from 2023 to 2026, the company included a projected 2023 conduit spend of \$10 million in its MRP 2 filing.¹³⁸

In the litigation concerning BGE’s MRP 2 filing, OPC challenged whether BGE could lawfully earn a return on these capital investments. In Order No. 90948, the Commission authorized BGE to include projected conduit expenditures in MRP 2 base rates, while emphasizing that such expenditures would be “subject to a future prudence review at the reconciliation stage of [Case No. 9692] and a benefit cost analysis.”¹³⁹ Since the Commission issued Order 90948 on December 13, 2024, it is clear that BGE incurred the vast majority of its \$17 million in conduit-related expenditures at a time

¹³⁵ Overall, BGE made capital investments totaling \$18.6 million in 2023 to replace 1,522 poles between Project 61160 and Project 61161. By contrast, BGE spent only \$1,083,760 on its O&M Pole Inspection and Treatment Preventative Maintenance project (Project 61017) and just \$49,124 on its capital pole reinforcement project (Project 60480) after budgeting \$767,331. See Singh Supplemental Direct, Ex. SAS-3E and Ex. SAS-10E. BGE’s pole replacement spending exceeded its combined spending on pole inspection, maintenance, and reinforcement by a factor of more than 16.

¹³⁶ BGE Ex. 6-FR, Frain Direct, Exhibit JCF-3, Attachment 1-E.

¹³⁷ OPC Ex. 9-FR, Fitzhenry Direct at 13:3-4.

¹³⁸ *Id.* at 13:7-9; *see* Case No. 9692, Exhibit DMV-6E to Direct Testimony of David M. Vahos at 41.

¹³⁹ Order No. 90948 at 101.

when the company had no approval from the Commission to recover any of these costs. BGE did so despite the fact that the contract with Baltimore City did not require the company to make any conduit investments *in 2023*—or any amount in a particular year. It only requires the company to spend \$120 million on the conduit through the end of 2026, while allowing the City to continue to make capital repairs “in its discretion” and as necessary due to emergencies.

BGE witness Singh stated that the company originally planned to “stagger the design and permitting of [conduit] jobs based on the timing of when work was expected to start through the four-year agreement.”¹⁴⁰ But according to Mr. Singh, the company “initiated the design process of future conduit jobs sooner than planned” due to a longer-than-expected “design and permitting process.”¹⁴¹ In short, the company opted to *accelerate* the pace of its conduit expenditures in 2023 despite the uncertainty over whether the Commission would allow BGE to recover the costs of the conduit investments and the absence of any contractual obligation for the company to perform conduit work in 2023,¹⁴²

Both OPC and Staff’s witnesses recommended disallowances related to BGE’s 2023 conduit expenditures. OPC witness Fitzhenry recommended that the Commission disallow recovery of the \$7 million increase in capital expenditures over the company’s projected 2023 spend.¹⁴³ Staff witness Samrawit Dererie recommended that the

¹⁴⁰ BGE Ex. 2-FR, Singh Rebuttal at 8:11-13.

¹⁴¹ *Id.* at 8:13-16.

¹⁴² OPC Ex. 10-FR, Fitzhenry Surrebuttal, at 22:12-14.

¹⁴³ OPC Ex. 9-FR, Fitzhenry Direct, at 13:14-16.

Commission disallow recovery of all \$17 million of BGE’s Baltimore City conduit capital costs.¹⁴⁴

Both Mr. Fitzhenry and Ms. Dererie testify that review of the company’s 2023 expenditures for prudence is premature in this reconciliation proceeding. Ms. Dererie explains in her direct testimony that in Order No. 90948 the Commission directed the prudence of BGE’s conduit expenditures to be reviewed in the reconciliation of Case No. 9692 and supported by a benefit-cost analysis (“BCA”),¹⁴⁵ and observes that the company has not yet provided such an analysis.¹⁴⁶ BGE defends its omission of a BCA on the same grounds that BGE opposed Ms. Dererie’s recommendation for a BCA in Case No. 9692¹⁴⁷—essentially, that there is no question about the value that will be provided by BGE’s maintenance of the conduit.¹⁴⁸

In Order No. 90948, the Commission clearly held that the prudence review of conduit related expenditures will occur as part of the prudence review regarding BGE’s second MRP. Further, Order No. 90948 conditioned recovery of conduit-related expenses on BGE’s submission of a benefit-cost analysis demonstrating net ratepayer benefits. For both reasons, as Mr. Fitzhenry states, it would be “more appropriate to consider the prudence of the investments in the MYP II reconciliation proceedings, where the scope of work has been approved by the Commission”.¹⁴⁹ OPC also agrees with Ms. Dererie that

¹⁴⁴ ML# 314933, Supplemental Reply Testimony of Samrawit Dererie (“Dererie Supplemental Reply”) at 16:16 – 17:2.

¹⁴⁵ Staff Ex. 3-FR, Direct Testimony of Samrawit Dererie (“Dererie Direct”) at 14:16-19.

¹⁴⁶ *Id.* at 14:20 – 15:3.

¹⁴⁷ *See* Case No. 9692, BGE Initial Brief at 40-41.

¹⁴⁸ Singh Supplemental Rebuttal at 4:15-18.

¹⁴⁹ OPC Ex. 10-FR, Fitzhenry Surrebuttal at 22:14-17

allowing BGE to prematurely recover conduit costs would effectively pre-judge the prudence of the new conduit agreement and BGE’s conduit-related expenditures before the comprehensive prudence review the Commission envisioned in Order No. 90948.¹⁵⁰

In light of its decision in Case No. 90948, the Commission should disallow as premature BGE’s recovery of any 2023 conduit-related expenditures and instead review the prudence of BGE’s 2023 conduit investments as part of the prudence review of the investments made during BGE’s second MRP. The company assumed the risk of cost disallowance by accelerating spending related to the Baltimore City conduit at a time when it had no contractual obligation to spend anything and before the project budget had been authorized by the Commission.

C. BGE does not explain the prudence of its gas leak repair variances.

BGE’s Capital Leak Repair projects—Project 60523 (capital spend) and Project 60515 (O&M spend)—support expenditures related to repairing natural gas distribution mains.¹⁵¹ BGE witness White explains that Project 60523 “focuses on the repair of larger diameter cast iron main as well as leak repairs via service and riser replacements or abandonments.”¹⁵² Project 60515 includes “repairs to smaller diameter cast iron main, as well as certain repairs to other mains and services.”¹⁵³

¹⁵⁰ Dererie Supplemental Reply at 18:4-8.

¹⁵¹ OPC Ex. 9-FR (Fitzhenry Direct) at 23:17-18.

¹⁵² BGE Ex. 3-FR (Rebuttal Testimony of Dawn White) (“White Rebuttal”) at 7:16-18.

¹⁵³ *Id.* at 9:8-10. Ms. White’s explanation of the difference between BGE’s capital and O&M leak repair programs raises questions about the manner in which BGE delineates the two. The size of the infrastructure being repaired would seem to be less relevant to whether the work can be capitalized than the nature of the repair.

For project 60523, BGE budgeted \$26 million in 2023 yet reported an actual spend of \$41.9 million, a 61.3 percent project variance.¹⁵⁴ The company explains the variance as “[p]rimarily driven by increased complexity of jobs resulting in higher capital cost per leak repair.”¹⁵⁵ For project 60515, the company budgeted \$17.9 million in O&M expense but spent \$31 million, a 73.6 percent variance.¹⁵⁶ BGE attributes its O&M expense variance to “increased labor, material, and paving costs.”¹⁵⁷

Ms. White explains that the cost to repair mains varies based on size, with larger diameter mains more costly to repair than smaller diameter mains.¹⁵⁸ She further states that larger gas main repairs are typically more complex. Yet, Ms. White then explains how “the reality is that all main repairs in Project 60523 have a lot of variability in complexity from job to job, and thus the costs even within the same size diameter of main can have levels of variability.”¹⁵⁹ In other words, the costs of main replacement are largely circumstantial, notwithstanding general cost trends.

Despite acknowledging that the costs of Project 60523 main repairs are context dependent and highly variable, Ms. White generally attributes the cost increases to “larger, more complex main leak repairs.”¹⁶⁰ Indeed, Ms. White states that “increases in some of the most expensive work resulted in increased spend compared to what was

¹⁵⁴ White Supplemental Direct at 65. Table 5.

¹⁵⁵ BGE Ex. 6-FR, Frain Direct, Exhibit JCF 2, Attachment 1-G.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ BGE Ex. 3-FR, White Rebuttal at 8:5-20.

¹⁵⁹ *Id.* at 8:17-20.

¹⁶⁰ *Id.* at 8:21-22.

projected in 2019.”¹⁶¹ In her supplemental testimony, she further explains how, as a general matter, project cost increase rise as the diameter of main increases.¹⁶² Ms. White’s supplemental testimony some additional explanation that, while giving more context into the number and type

Ms. White’s general statements do not fully demonstrate the extent to which larger diameter mains drove up BGE’s leak repair costs. In discovery, the company provided data detailing the number of leak repairs by main material and diameter from 2019–2023.¹⁶³ Mr. Fitzhenry’s analysis of BGE’s data confirms that the company experienced higher than average repairs for its largest diameter mains.¹⁶⁴ Yet, BGE also experienced reductions in repairs of other main diameters.¹⁶⁵ Indeed, relative to 2019–2022, the percentage of large gas main repairs increased by only 5.9 percent.¹⁶⁶ As Mr. Fitzhenry concludes, such “marginal increases” in the number of complex repair jobs is not significant enough to justify the \$16 million increase in gas leak repair expenses.¹⁶⁷

Critically, the information that would confirm the extent to which BGE’s higher costs were driven by more complex replacements of large diameter mains—such as information on the actual, project-specific costs incurred—is not in the record. If costs “within the same size diameter of main can have levels of variability,”¹⁶⁸ then details on

¹⁶¹ *Id.* at 9:2-4.

¹⁶² White Supplemental Direct at 70:15-22.

¹⁶³ OPC Ex. 10-FR, Fitzhenry Surrebuttal, Exhibit CTF-S1 at 6 (BGE Response to OPC DR 7-08).

¹⁶⁴ *Id.* at 26, Table 1.

¹⁶⁵ *Id.* at 26, Table 1.

¹⁶⁶ *Id.* at 26:1-4.

¹⁶⁷ *Id.* at 26:4-6.

¹⁶⁸ BGE Ex. 3-FR, White Rebuttal at 8:17-20.

the specific costs incurred are the only way to confirm that BGE's increased Project 60523 spend was prudently incurred. Absent such supporting data, Ms. White's testimony provides little additional information beyond the general—and conclusory—cost variance explanation provided in the company's reconciliation filing.

In her supplemental direct testimony, Ms. White identifies an additional reason for the variance: inaccurate forecasting. Specifically, Ms. White states that while the company's 2023 forecast "assumed a decreasing trend for all leak repair types," the company actually saw increases in repairs for larger diameter main.¹⁶⁹ In fact, Ms. White describes the project variance for 2023 as "a direct result of the most expensive leak repair types not following the decreasing trend, and instead increasing."¹⁷⁰ Customers should not be required to incur additional expense the company solely due to a forecasting error within the utility's control. The risks and consequences of budget forecasting errors should be borne by the utility, not by its customers.

Similarly, BGE provides little additional support to demonstrate the prudence of the increased costs of Project 60515. In her rebuttal testimony, Ms. White attributes the cost increases to the same primary drivers identified in the company's reconciliation filing: an increase in overall labor costs and "extended paving costs that were not anticipated."¹⁷¹ Yet, Ms. White's explanation provides no additional context or

¹⁶⁹ White Supplemental Direct at 71:1-5.

¹⁷⁰ White Supplemental Direct at 71:5-6.

¹⁷¹ BGE Ex. 6-FR, Frain Direct, Exhibit JCF-3, Attachment 2-G at 11.

information to support and explain the variance; rather, her explanation is nearly *identical*:

- MRP Project Variance Detail – “60515: Primarily driven by higher costs of O&M gas leaks due to increased labor, material, and paving costs. While overall repair volumes were in line with the budget, the O&M cost per leak repair was 73% higher than forecast.”¹⁷²
- White Rebuttal: “While the total number of leak repair activities estimated in this project was close to what was experienced for 2023, BGE has seen changes to the overall costs related to leak repairs in this project since 2019. For instance, paving standards by various municipalities have resulted in extended paving costs that were not anticipated in 2019. In addition, overall labor costs related to this work have increased.”¹⁷³

BGE is not the only company to experience increases in paving costs.¹⁷⁴ And the claim that paving standards underly increasing project costs is not new. OPC witness Fitzhenry aptly notes, “[c]hanges to paving standards . . . are [a] typical cost increase[] of doing business.”¹⁷⁵ Indeed, BGE cited increased paving costs as a factor driving a 23.7 percent higher than forecasted O&M cost per leak repair in 2022.¹⁷⁶ Yet, BGE states that its 2023 O&M costs for leak repair was 73 percent higher than forecasted.¹⁷⁷ It is unclear why BGE’s cost variances for 2023 are dramatically higher than 2022, given that the company’s variance explanations for both years are largely identical. Even accounting for

¹⁷² BGE Ex. 3-FR, White Rebuttal at 9:12-14.

¹⁷³ *Id.* at 9:01-14.

¹⁷⁴ *E.g.*, *In the Matter of the Application of Washington Gas Light Company for Approval of a New Gas System Strategic Infrastructure Development and Enhancement Plan and Cost Recovery Mechanism*, Order No. 90099 at 5 (Case No. 9486, March 2022) (“Washington Gas further argues that paving costs have increased exponentially since 2019, as a result of elevated enforcement of State, county, and municipal requirements related to paving restoration.”)

¹⁷⁵ OPC Ex. 10-FR, Fitzhenry Surrebuttal at 27:9-10.

¹⁷⁶ Case No. 9692, BGE Ex. 37, Frain Supplemental Direct, Exhibit JCF-10, Attachment 2-G.

¹⁷⁷ White Supplemental Direct at 77:18-19.

the additional testimony the Commission required the company to file, no record evidence explains the dramatic increase in the company’s 2023 cost per leak repair relative to 2022. Nor does the company show how that the variance reflects only prudently incurred costs. Though given opportunity to provide supplemental testimony on this issue, Ms. White’s supplemental testimony largely only repeats the statements in her rebuttal.¹⁷⁸

Likewise, there is no record evidence supporting Ms. White’s claim that the Project 60515 variance was driven by increased labor expense. In fact, discovery confirms that labor expense for Project 60515 was largely consistent with expenses incurred from 2020–2023 and *lower* than labor expenses incurred in 2019:

Projects	Multi-Year Plan Period Actual Results (Gas Distribution) ¹⁷⁹				
	2019	2020	2021	2022	2023
Gas Leak Repairs					
60515: CMO Leaks - O&M Leak Repairs	\$48,532,311	\$31,294,391	\$31,859,602	\$30,324,568	\$30,983,276
Contracting	\$17,631,816	\$11,702,050	\$10,684,592	\$9,239,375	\$9,806,250
Labor and Labor Related	\$17,244,925	\$10,858,149	\$11,712,887	\$9,728,178	\$10,019,639
Other	\$13,655,570	\$8,734,192	\$9,462,123	\$11,357,016	\$11,157,388

The 2023 cost variances BGE reports for Projects 60523 and 60515 are largely unexplained. The company provides no additional information in discovery and rebuttal testimony that explain why 2023 variances are significantly higher than what the company experienced in 2022. There is little evidence to support a finding that BGE

¹⁷⁸ *Id.* at 77:18 – 78:12.

¹⁷⁹ OPC Ex. 10-FR, Fitzhenry Surrebuttal, Exhibit CTF-S1 at 5 (BGE Response to OPC DR 07-18, Attachment 1).

these cost variances were prudently incurred. Accordingly, the Commission should disallow recovery of cost variances for Projects 60523 and 60515.

D. Recovery for estimated city permitting costs yet to be charged to BGE is premature and inappropriate.

BGE’s electric reconciliation filing includes \$8.6 million of expenditures under Project 60936–Miscellaneous Corporate Adjustment, Baltimore City Permitting.¹⁸⁰ While initially budgeted for \$1.5 million, the company reports a \$6.9 million budget variance.¹⁸¹ BGE explains this variance as “Primarily driven by write-offs (life-to-date) related to COVID regulatory asset deferral per Case No. 9692 Order No. 90948, an increase to the environmental reserve for Sauer Dump, charges for Baltimore City Permitting, and a union ratification bonus accrual booked for the new union contract from February 2023.”¹⁸² As BGE witness Cloyd explains, BGE stated that the permitting costs “represents an estimated settlement for permitting fee that may be owed to the City of Baltimore for past projects completed by BGE but have yet to be invoiced by the City of Baltimore. In accordance with Generally Accepted Account Principles, this is considered a contingent liability requires any loss contingency to be recorded as an expense on the income statement.”¹⁸³ These permitting costs were recorded as a \$1.3 million expense to the company’s income statement.¹⁸⁴

¹⁸⁰ Cloyd Supplemental Direct, Exhibit MJC-10E

¹⁸¹ *Id.* at 118:13-14.

¹⁸² BGE Ex. 9-FR, Frain Direct, Exhibit JCF-3, Attachment 2-E.

¹⁸³ Cloyd Supplemental Direct at 119:11-15.

¹⁸⁴ *Id.* at 119:17-18.

For at least two reasons, BGE’s request to expense their permitting fee estimate should be denied. *First*, there is no evidence linking the associated permitting costs to specific projects that have gone into service. As OPC witness Fitzhenry explains, permitting costs are generally recovered at the same time that the capital investment requiring the project is placed into service.¹⁸⁵ In his rebuttal testimony, Mr. Frain states that the proper treatment for permitting costs follows the nature of the work being performed.¹⁸⁶ Yet, the company has not explained—in witness testimony or in responses to discovery—which portions of the identified permitting costs are associated with capital projects versus O&M projects.

Second, the lack of finality about the actual amount of the costs makes recovery of those costs premature. The company describes the cost as an “estimated settlement.”¹⁸⁷ Indeed, at trial, BGE witness Frain confirms that the company had yet to incur the permitting costs because it had not been invoiced by the city.¹⁸⁸ Witness Cloyd’s supplemental testimony states that, as of December 2024, Baltimore City “provided BGE with a *preliminary* invoice” for \$1.5 million and that BGE “continues to engage in settlement discussions” with the city.¹⁸⁹ BGE’s customers should not be charged based on a speculative settlement outcome. Accordingly, permitting costs are appropriately recovered after the company receives a final invoice.

¹⁸⁵ OPC Ex. 9-FR, Fitzhenry Direct at 17:17-19.

¹⁸⁶ BGE Ex. 7-FR, Frain Rebuttal at 16:5-9.

¹⁸⁷ OPC Ex. 9-FR, Fitzhenry Direct at 17:20 – 18:3.

¹⁸⁸ Tr. 182:16-21 (Oct. 8, 2024) (Frain).

¹⁸⁹ Cloyd Supplemental Direct at 119:15 – 120:2.

Given the lack of evidence about whether the permitting costs are appropriately categorized as O&M, and the uncertainty as to the actual amount of the costs, the Commission should not allow BGE to recover the portion of permitting costs encompassed within Project 60936 in its 2023 reconciliation revenue requirement.

CONCLUSION

In asking customers to pay \$152 million more for the company's spending in 2023 than they already paid through MRP I rates, BGE states that it "appropriately and reasonably executed [its MRP I] workplan."¹⁹⁰ This claim—made in the face of the company's overspending its capital budgets by \$323 million in 2023—appears to be largely based Mr. Frain's statement that BGE's "plant in service results *in toto* were within one percent of [its] forecasted plant-in-service balances."¹⁹¹ This arbitrary and meaningless statistic obscures the fact that BGE's electric rate base in 2023 was 4.7 percent higher than forecasted, while its actual gas rate base was *18.9 percent* higher than forecasted.¹⁹² More importantly, it illuminates the vast gulf between a successful MRP I outcome for *BGE* and the well-being of BGE's *customers*.

As Commissioner Richard noted at the hearing in this case, the costs that BGE asks its ratepayers to bear have been "spiraling upward"¹⁹³ in recent years. But BGE did not slow the pace and scope of its capital spending in 2023. To the contrary, BGE *accelerated* its spending, not only exceeding its budgets for approved projects but also

¹⁹⁰ BGE Ex. 7-FR (Frain Rebuttal) at 4:17.

¹⁹¹ Frain Supplemental Testimony at 14:17-18.

¹⁹² See BGE Ex. 6 FR at 6:1-15.

¹⁹³ Tr. 178:20.

introducing a host of new capital projects that could have been deferred to later years. Had BGE not incurred high storm expenses in 2023, the impact of its capital spending *in 2023* may have been relatively small. But BGE did have high storm expenses. Nonetheless, BGE plowed forward with its capital spending. Now BGE seeks to bill customers an additional \$152 million.

Commissioner Suchman observed at the hearing that if the Commission awards BGE the additional revenue requirement it is requesting for 2023—on top of the \$73 million reconciliation award the company received for years 2021 and 2022—the total cost of the MRP I for customers will not just be much greater than what the Commission approved: *It will also be much greater than the approximately \$300 million that the company originally requested.*¹⁹⁴ In Case No. 9618, OPC has argued that such outcomes are an inherent risk of Maryland’s MRP structure.¹⁹⁵ In this case, the Commission should conclude that BGE failed to justify its spending and prudently manage its budgets in 2023 and therefore deny BGE’s requested revenue requirement. In the alternative, the Commission should reduce any award to BGE in accordance with the capital and O&M adjustments recommended by OPC in Section II (\$43,138,129 electric capital, \$17,410,908 gas capital) and Section III (\$24,697,578 electric capital, \$17,410,908 gas capital; \$1,300,00 electric O&M, \$13,134,096 gas O&M). In addition, the Commission should make any reconciliation award on the gas side of BGE’s business subject to adjustment, pending the conclusion of Staff’s Engineering Division’s investigation of

¹⁹⁴ Tr. 171:2-16.

¹⁹⁵ See, e.g., OPC Initial Comments in “Lessons Learned” proceeding, ML# 312359 at 2-3.

alleged misconduct by a BGE gas inspector and any proceedings subsequent to that investigation.

Respectfully submitted,

DAVID S. LAPP
PEOPLE'S COUNSEL

William F. Fields
Deputy People's Counsel

/electronic signature/

Michael F. Sammartino

Mark C. Szybist

Assistant People's Counsel

Maryland Office of People's Counsel

6 Saint Paul Street, Suite 2102

Baltimore, Md. 21218

michael.sammartino@maryland.gov

410-767-8150

February 24, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of February, 2025, the foregoing Post-Hearing Initial Brief of the Maryland Office of People's Counsel was either hand-delivered, e-mailed, or mailed first-class, postage prepaid to all parties of record to this proceeding.

/electronic signature/
Michael F. Sammartino
Assistant People's Counsel