

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

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

Case No. 9692

**OFFICE OF PEOPLE'S COUNSEL COMMENTS ON
BALTIMORE GAS AND ELECTRIC COMPANY'S
RATE YEAR 1 ANNUAL INFORMATIONAL FILING**

Baltimore Gas and Electric Company's Rate Year 1 Annual Informational Filing ("AIF") is more than a backward-looking accounting of forecast-versus-actual expenses. It is an attempted end-run around established ratemaking principles. BGE's filing includes two so-called "normalization" adjustments that significantly increase rate base and reduce the amount of excess deferred income taxes returned to customers.¹ These adjustments reflect a change in BGE's rate base methodology—one that now includes the company's 2024 net operating loss carryforward ("NOLC"). If not for the inclusion of the NOLC, BGE would have reported an *over-recovery* of its Commission-authorized 2024 gas distribution revenue requirement and a much smaller under-recovery on the electric side.²

BGE's new treatment is improper for four reasons: (1) it relies on non-precedential IRS private letter rulings ("PLRs"); (2) it is premature because BGE's own PLR request

¹ BGE 2024 Annual Informational Filing and Operation Pipeline Project Completion Cost Variance Reports, Case No. 9692, ML #317299 (Mar. 31, 2025).

² *Id.* at 3.

is still pending; (3) it seeks to apply a sweeping ratemaking change retroactively and outside the context of a base rate case; and (4) it introduces a major ratemaking change in a proceeding that is not a rate case.

As detailed below, the Commission should reject BGE's normalization adjustments, require removal of the NOLC from its AIF rate base calculations, and direct BGE to return the \$6.393 million it over-collected from gas customers.

BACKGROUND

BGE's 2024 Annual Informational Filing introduces a new approach to the treatment of net operating losses in its rate base calculations. The change reflects a departure from the methodology used in the company's prior multi-year rate plan filings and serves as the basis for the reported gas and electric revenue requirement deficiencies in Rate Year 1.

As required by Order No. 89482, BGE filed its 2024 AIF for Rate Year 1 of its second multi-year rate plan ("MRP") on March 31, 2025.³ BGE's filing reports electric and gas revenue requirement deficiencies of \$27,973,000 and \$458,000, respectively.⁴ The company explains that these deficiencies were, in large part, driven by BGE's decision to change its approach to the normalization of net operating losses, as reflected by the reported NOLC included in BGE's year-end gas and electric rate base calculations.⁵

³ *Id.* at 1.

⁴ *Id.* at Attachment 1-E, 1-G.

⁵ *Id.* at 1–2.

Normalization refers to the process of resolving a timing issue regarding the immediate flow through or sharing of certain income tax benefits available to utilities and their ratepayers. FERC’s normalization rules⁶—which BGE and the Commission have historically followed for determining Maryland jurisdictional rates⁷—attempt to allocate costs among customers and over time in a manner that matches the burdens of costs with the benefits received.⁸ Recovering asset costs for tax purposes on an accelerated basis benefits the utility by reducing the federal income tax otherwise paid in a given year.

Under the normalization system of accounting, utilities receive the tax benefit of an investment tax credit or accelerated depreciation during the early years of an asset’s regulatory useful life. The associated tax benefits of accelerated depreciation or an ITC credit, however, are eventually returned to customers over the lifespan of the asset consistent with the straight-line depreciation approach.⁹ The difference in tax liability and depreciation expense for income tax purposes (accelerated depreciation) and for financial books and ratemaking purposes (straight-line depreciation) is reflected as accumulated deferred income taxes (“ADIT”). In other words, ADIT represents the amount of taxes a utility has recovered through rates but has not yet paid to the government. ADIT also serves as a reserve for additional taxes to be paid sometime in the future when the

⁶ I.R.C. § 168(i)(9).

⁷ BGE Response to OPC DR 1-1(e) (noting that BGE follows FERC’s methodology for determining Maryland jurisdictional rates).

⁸ See *Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, 46 Fed. Reg. 26,613, 26,615–17 (May 14, 1981); see also 18 C.F.R. § 35.24.

⁹ Rev. Proc. 2017-47, 2017-38 I.R.B. 233, § 2 (2017).

depreciation expense included in rates is more than that used for tax purposes, thereby reducing rate base.

Net operating losses can reduce ADIT and increase rate base. A net operating loss occurs when a company's allowable tax deductions exceed its taxable gross income for a tax year, and utilities can choose to carryback or carryforward net operating losses to reduce taxable income in prior or future years.¹⁰ Utilities track net operating losses by recording deferred tax assets on their balance sheets.¹¹ The income tax impact of a net operating loss carryforward ("NOLC") results in a type of deferred tax asset that allows the company to carry a taxable loss into the future and reduce its taxable income at a later date.¹² Since ADIT represents income tax dollars that a utility collected from ratepayers but has not yet paid in taxes, it is considered "cost-free capital" and is deducted from the return-earning rate base.¹³ Thus, a smaller ADIT amount leads to a smaller deduction and ultimately results in a larger rate base.¹⁴

If a utility is a member of an affiliated group of corporations, the utility's parent company can use the utility's reported net operating loss to offset the parent's overall tax liability. In exchange, the parent makes cash payments to the subsidiary utility equal to the tax benefit derived from the parent's use of the utility's net operating loss. Ultimately, this interaction between the utility and its parent increases the amount of the excess

¹⁰ BGE Response to OPC DR 1-1(e).

¹¹ *Id.*

¹² *Id.*

¹³ Darryl Tietjen, *Tariff Development I: Basic Ratemaking Process Briefing for the NARUC/INE Partnership*, at 4-5, <https://pubs.naruc.org/pub.cfm?id=538E730E-2354-D714-51A6-5B621A9534CB#:~:text=19-,Federal%20Income%20Tax%20Expense,20> (last visited May 16, 2025).

¹⁴ *Id.*

deferred income tax balance for the utility that would reduce its rate base by reducing the NOLC-related ADIT. This is essentially the approach BGE—and the Exelon corporation—previously took.¹⁵

BGE’s AIF, however, takes a new approach. Under the methodology adopted in its AIF—which does not recognize the consolidated return tax benefits—BGE directly assigns a determination as to whether an ADIT item relates to accelerated depreciation and to the NOLC, thereby adjusting ADIT downward for any NOLC attributable to accelerated depreciation.¹⁶ Essentially, BGE’s approach estimates what percentage of the net operating loss could contribute to accelerated depreciation.

BGE’s AIF relies on three private letter rulings (“PLRs”) published by the IRS to claim that the company “is required to change its methodology” to account for the NOLC.¹⁷ PLRs are written statements issued to individual taxpayers that interpret and apply tax laws to the taxpayer’s specific set of facts.¹⁸ The three PLRs cited by BGE found that, for the taxpayer requesting the PLR, the use of cash payments from the parent to reduce the deferred tax asset for a net operating loss violated the IRS’s normalization

¹⁵ BGE Response to OPC DR 1-1(e). BGE notes that, rather than recording the cash payment to NOLC as a capital contribution, “the settlement of the separate company net operating loss is recorded as an increase (i.e., debit) to Cash (FERC Account 131) and a decrease (i.e., credit) to Other Accounts Receivable (FERC Account 143).” *Id.*

¹⁶ BGE explains that its new methodology determines the amount of the NOLC attributable to accelerated depreciation “as the excess of the NOLC computed with accelerated depreciation deductions over the NOLC computed without accelerated depreciation.” BGE Response to OPC Data Request 1-1(f).

¹⁷ BGE RY 1 AIF at 2.

¹⁸ See IRS, *Understanding IRS guidance-A brief primer*, (Feb. 28, 2025), <https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer>.

rules.¹⁹ BGE claims that the company must adopt its practices to align with the findings in the three PLRs to avoid violating IRS rules.²⁰ The company submitted its own PLR request to the IRS to confirm the proper application of the normalization rules with respect to NOLC.²¹

COMMENTS

1. BGE’s accounting change artificially inflates rate base and misstates revenue deficiencies.

BGE’s inclusion of the NOLC in its 2024 Annual Informational Filing materially distorts the company’s reported rate base and revenue requirement. The adjustment significantly inflates rate base figures and masks BGE’s actual earnings position—turning what should be an over-earning scenario for gas into a claimed shortfall. These distortions not only misrepresent financial performance, but also attempt to bypass the proper procedural venue for making such substantive ratemaking changes.

For Rate Year 1, BGE’s AIF identifies two impacts from the NOLC. First, the company reports significantly lower gas and electric ADIT balances than its 2024 projections, resulting in a net positive (i.e., increasing rate base) variance of \$40.5 million for electric and \$50.84 million for gas.²² Second, the company reports a lower regulatory asset and liability balance than its 2024 projects, resulting in a net positive variance of

¹⁹ I.R.S. Priv. Ltr. Rul. 202426002, (June 28, 2024); I.R.S. Priv. Ltr. Rul. 202426003, (June 28, 2024); I.R.S. Priv. Ltr. Rul. 202426004, (June 28, 2024).

²⁰ ML #317299 at 2.

²¹ *Id.* at 3.

²² BGE RY1 AIF, Attachment 2-E (line 6) and 2-G (line 6).

\$60.6 million for electric and \$30.8 million for gas.²³ In total, this accounts for a \$103 million increase in electric rate base and a \$63.7 million increase in gas rate base.²⁴ By BGE’s own calculations, these increases to rate base drive up the company’s electric and gas distribution revenue requirement by \$11,365,000 and \$6,851,000, respectively.²⁵

The effect of this change on BGE’s Rate Year 1 results is substantial. But for the NOLC adjustment, BGE would have underearned its electric revenue requirement by \$16.6 million—rather than the company’s reported \$27.9 million.²⁶ For gas, BGE would actually have *over-recovered* its revenue requirement by \$6.4 million.²⁷

2. BGE’s net operating loss adjustment is procedurally improper and premature.

BGE’s justification for changing its rate base methodology hinges on a flawed reading of IRS guidance. The company leans heavily on private letter rulings issued to other utilities—documents that carry no precedential value and do not apply to BGE’s circumstances. Even setting aside that legal defect, BGE’s proposed adjustment is premature: the IRS has not yet ruled on BGE’s own request, and even if it does, IRS procedures make clear that such changes must occur in a rate case—not through an informational filing.

For at least three reasons, the Commission should disregard BGE’s attempt to change its methodology in response to the June 2024 PLRs. *First*, no binding precedent

²³ *Id.*, Attachment 2-E (line 9) and 2-G (line 9).

²⁴ BGE Response to Staff Data Request 3-1, Attachment 3.

²⁵ BGE Response to Staff DR 3-1(f).

²⁶ BGE Response to Staff DR 3-1(f).

²⁷ BGE Response to Staff DR 3-1(f).

requires BGE to change its accounting methodology. PLRs do not have precedential value. In fact, each of the PLRs cited in BGE’s AIF expressly states “[t]his ruling *is directed only to the taxpayer requesting it*. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.”²⁸ As section 6110(k)(3) states: “Unless the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent.”²⁹ Indeed, as numerous courts have explained, PLRs may not be used “to advance a particular interpretation of the Internal Revenue Code” or otherwise be relied on for their substance because PLRs are highly specific to an individual taxpayer’s set of facts.³⁰ BGE’s reliance on the PLRs as justification for its sudden change in course—especially while it has its own PLR request pending on this issue before the IRS—is in direct conflict with the Internal Revenue Code, case law, and the relied-upon PLRs themselves.³¹

Second, BGE’s accounting practices or procedures have not been found to be inconsistent with the IRS’s normalization rules—that issue will be decided in the private letter ruling BGE requested and is currently pending. Until a ruling is issued, there is no inconsistent practice BGE is required to correct.

²⁸ PLR 202426002, 202426003, and 202426004 (emphasis added).

²⁹ I.R.C. § 6110(k)(3).

³⁰ *Alternative Carbon Resources, LLC v. United States*, 137 Fed.Cl. 1, 29 (Fed. Cl. 2018) (quoting *Amergen Energy Co. V. United States*, 94 Fed.Cl. 413, 418 (Fed. Cl. 2010). On appeal, the D.C. Circuit agreed with the Federal Claims Court’s application of the law with respect to PLRs and further explained that “[PLRs] have no precedential weight.” *Alternative Carbon Resources, LLC v. United States*, 939 F.3d 1320, 1332 (D.C. Cir. 2019). See also *Young v. Comm’r of Internal Revenue*, 240 F.3d 369, 374 n. 4 (4th Cir. 2001); *PBBM-Rose Hill, Limited v. Comm’r of Internal Revenue*, 900 F.3d 193, 208 (5th Cir. 2018); *David R. Webb Co., Inc. v. Comm’r of Internal Revenue*, 708 F.2d 1254, 1257 n. 1 (7th Cir. 1983).

³¹ *Id.*; I.R.C. § 6110(k)(3); PLR 202426002; 202426003; and 202426004.

Third, even if BGE could rely on the PLR rulings it cites, the company's inclusion of the NOLC adjustments in its electric and gas rate base calculations is improper. BGE's AIF states that the utility must "change its methodology and take corrective action at the 'next available opportunity' to comply with the 'normalization' provisions or be subject to the penalty for a 'normalization' violation."³² What BGE does not explain is how, and why, the annual information filing is the "next available opportunity." IRS guidance confirms that it is not.

As BGE's AIF notes, Revenue Procedure 2017-47 provides a safe harbor for public utilities that have inadvertently or unintentionally used a practice or procedure that is inconsistent with the normalization rules.³³ For the safe harbor to apply, the utility must change its inconsistent practice or procedure to one that is consistent at the "next available opportunity" in a manner that "totally reverses" the effect of the inconsistent practice.³⁴ For a taxpayer "without a rate proceeding currently pending," the "next available opportunity" is the next "rate proceeding."³⁵ "Rate proceeding" is defined as "a proceeding in which the Taxpayer's Regulator establishes or approves the taxpayer's rates."³⁶

In other words, a taxpayer must come into compliance with the IRS's normalization rules during the first rate case *after* the IRS determines the normalization practice is inconsistent with its rules. If the taxpayer has a rate case pending with its

³² BGE RY1 AIF at 2.

³³ Rev. Proc. 2017-47, 2017-38 I.R.B. 233, § 3.01 (2017).

³⁴ *Id.*

³⁵ *Id.* § 4.07.

³⁶ *Id.* § 4.02

regulator and the IRS has yet to rule on the taxpayer's PLR request, the taxpayer would remain protected by the safe harbor so long as the rate established or approved in the rate case is subject to adjustment.³⁷

The Commission's review of BGE's Rate Year 1 AIF is not a rate proceeding. The AIF is an informational filing "that explains the differences between a utility's MRP forecasted projections for the annual period and what the utility actually spent and collected in that year."³⁸ BGE's AIF filing does not seek to establish nor ask the Commission to approve new rates.

Accordingly, review of BGE's AIF does not constitute the "next available opportunity" for BGE to comply with the IRS normalization rules. Assuming the IRS has ruled on BGE's currently pending PLR request and finds the company must change its practices to comply with the normalization rules, BGE must correct its normalization practices as part of its next base rate case to comply with the safe harbor's "next available opportunity" requirement. Unlike the review of the AIF, that next base rate case is the next proceeding where the Commission will evaluate and authorize new rates. IRS guidance on the application of the safe harbor for normalization violations confirms that compliance with normalization rules is done *prospectively*, not retroactively.³⁹ BGE can

³⁷ *Id.* § 4.07(3).

³⁸ Order No. 89482 at 4.

³⁹ "The phrase 'in a manner that totally reverses the effect of the Inconsistent Practice or Procedure' in Revenue Procedure 2017-47 requires only that the taxpayer change its Inconsistent Practice or Procedure to a Consistent Practice or Procedure on a going forward basis. It does not require reversal of the prior financial effects of the Inconsistent Practice or Procedure, for example through retroactive ratemaking by the Taxpayer's Regulator." I.R.S. Chief Couns. Att'y Memorandum 2018-001, 2018 WL 1036453 (Feb. 23, 2018). While the Chief Counsel's attorney memorandum, like the PLRs cited by BGE, "may not be used or cited as precedent," the guidance indicates how the IRS intends the safe harbor provision to apply.

remain in compliance with the IRS by implementing any required changes to its normalization practices in the first rate case after the IRS’s ruling is issued.

BGE’s attempt to adjust its normalization practices through the Rate Year 1 AIF is both premature and procedurally improper. The Commission should reject this change and require BGE to revert to the tax accounting methodology used when the Commission established the company’s gas and electric MRP base rates.

3. BGE’s accounting change would violate the prohibition against both retroactive and single-issue ratemaking.

Allowing BGE to alter its rate base methodology midstream—outside the context of a base rate proceeding—amounts to retroactive and single-issue ratemaking and undermines regulatory consistency and predictability. The adjustments BGE’s AIF introduces would retroactively change the methodology used to determine its MRP revenue requirement. While AIFs anticipate potential adjustments to Commission-authorized MRP revenue requirements through a subsequent reconciliation, such adjustments concern under- or over-recoveries due to differences between forecasted and actual revenues or expenses—i.e., changes in capital spending or operations and maintenance expense, higher than expected customer growth, and higher late payment and rent revenues.⁴⁰ Neither AIFs nor reconciliations are intended to change the basic components used to set base distribution rates, such as depreciation schedules, the return on equity, or tax treatment methodology. The Commission set BGE’s revenue

⁴⁰ *E.g.*, ML #309316, Delmarva Power & Light, Rate Year 1 Annual Information Filing, Appendix A, Schedule 2 (line 14), Case No. 9681, (Apr. 29, 2024) (noting \$4.9 million operating income variance “driven by growth in residential customers in 2023, higher late payment and rent revenues, and higher intercompany revenue relating to mutual assistance).

requirements using a specific type of tax treatment methodology. To change that methodology through the AIF would amount to single-issue retroactive ratemaking.

The prohibition against retroactive ratemaking bars utilities from recovering revenues for past periods based on changes to ratemaking methodologies after rates have been set.⁴¹ BGE's proposed adjustment—made in an informational filing and seeking to be applied back to January 1, 2024—would effectively change the basis of already-established rates, which is the textbook definition of retroactive ratemaking.

BGE's request would also amount to impermissible single-issue ratemaking. This principle prohibits utilities from adjusting only one element of the rate structure (like rate base or tax treatment) outside a general rate case.⁴² BGE's inclusion of the NOLC in its AIF is an attempt at single-issue ratemaking because it alters tax-related components of rate base without evaluating other interrelated rate components.

BGE should not be allowed to amend its approach midstream. This AIF—as well as any AIFs filed going forward—should input costs using the same methodology and

⁴¹ *Baltimore Cnty. v. Mayor & City Council of Baltimore*, 329 Md. 692, 705 (1993) (“The general prohibition against retroactive ratemaking by a public utility regulatory commission is grounded upon the principle that a regulated public utility is bound by its filed tariffs and must charge the rate set forth therein.”); see also *Pub. Serv. Comm'n v. Delmarva Power & Light Co. of Maryland*, 42 Md. App. 492, 504, 400 A.2d 1147, 1153 (1979) (“We do not mean by this conclusion to suggest even remotely that the Commission is empowered to engage in retroactive rate making, but we distinguish between the ordinary rate making process and the necessarily ongoing process of verifying and adjusting fuel rate adjustment clauses so that they accurately reflect the increased and decreased costs (we hope) of the fuel necessary to operate a utility plant.”).

⁴² See *Citizens Util. Bd. v. Illinois Com. Comm'n*, 166 Ill. 2d 111, 136–37 (1995) (“The rule against single-issue ratemaking is a ratemaking principle which recognizes that the revenue formula is designed to determine a utility's revenue requirement based on the utility's aggregate costs and demand. The rule prohibits the Commission from considering changes to components of the revenue requirement in isolation. Consideration of any one item in the revenue formula in isolation risks understatement or overstatement of the revenue requirement.”).

approach utilized by the Commission to set the company's authorized revenue requirements. The changes BGE made in its AIF are ratemaking changes that require the type of careful consideration only available in a base rate case proceeding.

Even if the IRS were to consider the AIF to be the next available opportunity, the change in the revenue requirement reflecting the inclusion of the net operating loss carry forward could only apply prospectively. Here, BGE is asking that it be applied retroactively to January 1, 2024. The Commission should not allow BGE to use the MRP to circumvent long-held ratemaking principles that serve to protect customers.

4. BGE should refund the \$6.4 million it over-collected from gas customers.

BGE's inflated revenue deficiency claims obscure a fundamental fact: without its premature and improper normalization adjustment, the company over-earned its authorized gas revenue requirement in 2024. When that adjustment is stripped away, it becomes clear that BGE collected more than it was entitled to from gas customers—and those customers are now owed a refund. Under Commission precedent, this over-recovery warrants corrective action.

Order No. 89482 provides that, after a party demonstrates “a significant disparity between revenues and expenses to the detriment of ratepayers, the Commission may hold a hearing and determine whether an adjustment of the utility's revenue requirement and/or rates is appropriate.”⁴³ Such an adjustment is appropriate here. After removing the

⁴³ Order No. 89482 at 4 and 38, Case No. 9618 (Feb. 4, 2020).

adjustment for the NOLC, BGE would have over-earned its authorized gas distribution revenue requirement by \$6.4 million.⁴⁴

Accordingly, the Commission should return the amount earned above its authorized revenue requirement to BGE gas customers as a credit through the MRP adjustment rider. Such an approach is consistent with prior instances where a utility has recovered above its authorized revenue requirement. In 2024, Delmarva Power & Light Company reported in its Rate Year 1 AIF that it had over-recovered its revenue requirement by \$7.3 million.⁴⁵ The Commission authorized DPL to return the difference to customers as a bill credit from August 1, 2024, through June 30, 2025.⁴⁶

OPC recognizes that recent legislation affects whether, and to what extent, MRP reconciliations are permissible. The Next Generation Energy Act (“Act”) prohibits “public service companies” from filing “for reconciliation of cost or revenue variances of the approved revenue component used by the Commission to establish just and reasonable rates.”⁴⁷ Though this language clearly prohibits *utilities* from filing for reconciliation, it does not prohibit a non-utility intervenor—such as OPC or Commission Staff—from requesting that customers be credited for the amount a utility has over-recovered.⁴⁸ Nor does the Act prohibit the Commission from granting such relief.⁴⁹

⁴⁴ BGE Response to Staff DR 3-1(f).

⁴⁵ ML #309316, Delmarva Power & Light, Rate Year 1 Annual Information Filing, Case No. 9681, (Apr. 29, 2024) at 1.

⁴⁶ ML# 311086, Letter Order to DP&L Accepting Revised Tariff Pages, Case No. 9681, (July 24, 2024).

⁴⁷ HB 1035, 447th Gen. Assemb., Reg. Sess., § 4-213(b)(2) (Md. 2025).

⁴⁸ The AIF is not a utility filing for reconciliation that falls under the Act’s prohibition. *See* ML# 319092, OPC Response to Comments of the Staff of the Public Service Commission at 2–4 (May 22, 2025)

⁴⁹ *See id.* at 4–5

Aside from the text of the statute, the purpose of the Act as well as legislative intent support OPC’s interpretation that only the utility is prohibited from filing for reconciliation after January 1, 2025. The Act’s purpose is, unquestionably, to protect ratepayers and limit future rate increases—not decreases. The legislature’s intent is evidenced in the following public statements made during deliberation of the Act—both in the House committee of jurisdiction and on the House floor—which indicate that the legislature considered the issue and determined to allow reconciliation that benefits customers:

- Delegate Brian Crosby, vice-chair of the Economic Matters Committee: “The bill does address reconciliations . . . Additionally, there’s no more reconciliations just in favor of the utility. You can only reconcile down to benefit the ratepayer.”⁵⁰
- Delegate Brian Crosby, vice-chair of Economic Matters Committee: “[The bill] doesn’t allow [utilities] to rectify or reconcile in their favor; you can only reconcile in the ratepayers’ favor.”⁵¹

CONCLUSION

BGE’s normalization adjustment is an overreach—legally unsupported, procedurally improper, and detrimental to customers. The company invokes IRS private letter rulings that are non-precedential by law and expressly limited to the specific circumstances of unrelated taxpayers. Even if those rulings carried weight, BGE would be unable to implement such changes under IRS guidance in an Annual Informational

⁵⁰ Md. Gen. Assemb., Economic Matters Committee voting session at 1:04:50 – 1:05:11 (Apr. 3, 2025), https://mgaleg.maryland.gov/mgawebbsite/Committees/Media/false?cmte=ecm&clip=ECM_4_3_2025_meeting_1&ys=2025rs.

⁵¹ Md. Gen. Assemb., House Floor Action at 1:44:04 – 1:44:22 (Apr. 5, 2025), <https://mgaleg.maryland.gov/mgawebbsite/FloorActions/Media/house-62-?year=2025RS>.

Filing, which is not a rate case and does not set or revise base distribution rates. Worse, BGE seeks to apply that change retroactively—altering established base rate calculations for a period that has already passed. This is not normalization. It is retroactive, single-issue ratemaking.

BGE’s midstream change to its rate base methodology—without Commission approval, outside a proper rate proceeding—violates core ratemaking principles and undermines regulatory predictability. It inflates BGE’s rate base, thereby masking an actual over-recovery of \$6.4 million from gas customers. The Commission should reject BGE’s proposed normalization adjustments, require removal of the NOLC from its electric and gas rate base calculations, and direct the company to return the \$6.4 million over-collected from gas customers through a bill credit under the MRP adjustment rider.

Respectfully submitted,

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May 28, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May 2025, the foregoing Office of People's Counsel Comments on Baltimore Gas and Electric Company's Rate Year 1 Annual Information Filing was e-mailed to all parties of record in this proceeding.

/electronic signature/

Michael F. Sammartino

Assistant People's Counsel

Case No. 9692
Baltimore Gas and Electric Co.
Response to OPC Data Request 1 2024 AIF
Request Received: May 02, 2025
Response Date: May 16, 2025
Sponsor(s): John C. Frain

Item No.: OPCDR01-01 2024 AIF

In reference to Baltimore Gas and Electric Company's ("BGE" or "Company") March 31, 2025 Case No. 9692, 2024 Annual Informational Filing and Operation Pipeline Project Completion and Cost Variance Reports, transmittal letter, page 2, the Company states the following:

On June 28, 2024, the Internal Revenue Service ("IRS") published a series of Private Letter Rulings ("PLR") requested by another taxpayer. The PLRs provide guidance with respect to the application of the "normalization" rules and the proper ratemaking treatment of income tax benefits associated with tax net operating losses among affiliates within a consolidated group. In the PLRs, the IRS concluded that the "normalization" rules would be violated if a utility did not reflect the tax-effect of its separate company tax net operating losses in rate base.

Given BGE's fact pattern is similar to the one described in the PLRs, pursuant to Section 3.01(3) of IRS Revenue Procedure 2017-47, BGE is required to change its methodology and take corrective action at the "next available opportunity" to comply with the "normalization" provisions or be subject to the penalty for a "normalization" violation. Thus, in the 2024 actual results herein, BGE included two adjustments to comply with the "normalization" provisions. These adjustments increase rate base and reduce the amount of EDIT passed through to customers. [emphasis added] [footnotes omitted]

Please provide the following information:

- a. Confirm that BGE has very limited knowledge of the "fact pattern" and neither knows nor has access to all the background and supporting information (*e.g.*, fact pattern) that was supplied by each of the taxpayers, to the IRS, in support of their respective PLR requests which resulted in the specific PLRs issued for each. If the Company cannot confirm, please provide a detailed list of all the fact pattern items that are nearly identical for both the PLRs and BGE, including copies of supporting documents;
- b. Confirm that the PLRs were potentially based on the specific facts related to the individual state commissions' ratemaking positions on consolidated tax agreements, NOLC policies, and guidelines, which had authority over the retail jurisdictional rates and that none of those PLRs related to utilities located in Maryland or under the MD PSC ratemaking jurisdiction. If confirmation cannot be provided, please provide a detailed explanation, including copies of all supporting documentation and guidance (MD PSC, third-party, etc.) which the Company relied upon for its position that BGE and those taxpayers which requested PLRs have a nearly identical fact pattern;

- c. Confirm that each of the PLRs cited states on page 13 the following:

This ruling is directed only to the taxpayer requesting it. Section 6110(i)(3) of the Code provides that **it may not be used or cited as precedent.** [emphasis added]

If confirmation cannot be provided, please provide a detailed explanation, including copies of all supporting documentation and guidance (MD PSC, third-party, etc.) which the Company relied upon for its position that BGE **is required to change its methodology and take corrective action at the “next available opportunity” to comply with the “normalization” provisions or be subject to the penalty for a “normalization” violation;** [emphasis added]

- d. Confirm that each of the PLRs cited states on either page 13 or 14 the following:

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

If confirmation cannot be provided, please provide a detailed explanation, including copies of all supporting documentation and guidance (MD PSC, third-party, etc.) which the Company relied upon for its position that BGE **is required to change its methodology and take corrective action at the “next available opportunity” to comply with the “normalization” provisions or be subject to the penalty for a “normalization” violation;** [emphasis added]

- e. State whether the MD PSC jurisdictional ratemaking policy and guidance authorizes utilities to use the “separate return approach” for the assessment of deferred tax asset realizability or the “benefits-for-loss” approach-which is a “modified separate return approach” where the current or deferred tax assets are characterized as realized (or realizable) by the subsidiary when those tax assets are realized (or realizable) by the consolidated group, even if the subsidiary would not otherwise have realized them on a separate return basis. If confirmation cannot be provided, please provide complete copies of all supporting documentation, guidance, orders, etc. which the Company has relied upon for its position; and
- f. Confirm that the benefit of the current or deferred tax asset recognized in the consolidated tax returns mirrors the Exelon Tax Sharing Agreement, with the consolidated return group settling the NOLC realized under benefits-for-loss accounting policy as being accounted for as a capital contribution to the affiliate/member whose NOLC was realized. If confirmation cannot be provided, please provide complete copies of all supporting documentation, guidance, orders, etc. which the Company has relied upon for its position.

RESPONSE:

- a. On June 28, 2024, the Internal Revenue Service (“IRS”) published a series of private letter rulings¹ (“PLR”) requested by another taxpayer (“Taxpayer”) that provides guidance with respect to the application of the “normalization” rules and the proper treatment of income tax benefits associated with tax net operating losses among affiliates within a consolidated group for ratemaking purposes.

Although a PLR can only be relied upon by the taxpayer that received it, it is instructive to other taxpayers as to the IRS’ point of view on a subject matter.

Given BGE’s fact pattern is similar to the one described in the PLRs, pursuant to Section 3.01(3) of IRS Revenue Procedure 2017-47, BGE is required to change its methodology and take corrective action at the “next available opportunity” to comply with the “normalization” provisions or be subject to the penalty for a “normalization” violation.

Exelon Corporation and its subsidiaries, including BGE, file a consolidated federal U.S. Corporation Income Tax Return. Exelon Corporation is the common parent of the Affiliated Group under Section §1504(a) of the Internal Revenue Code (IRC). Exelon’s consolidated tax liability is determined based on each member’s separate tax return liability.

Under this methodology, consistent with Taxpayer, BGE calculates and pays tax based on its separate company books and records. BGE is paid for any separate company tax losses or other tax attributes (e.g., tax credits) to the extent the tax loss or tax attribute can be utilized in the consolidated return to offset the tax liability of another subsidiary. Under this methodology, BGE’s federal tax losses and tax credits are utilized sooner than they otherwise would because of tax due on income earned by other members of the Exelon consolidated group through the operation of the consolidated tax return rules.²

In the PLRs, the IRS concluded for ratemaking purposes that an individual utility, should reflect the utilization of its tax net operating losses which are attributable to accelerated tax depreciation deductions in future years (or within the carryback period) when it has sufficient separate company taxable income, irrespective of the income of the members of the utility’s consolidated group.

The IRS mandates this ratemaking treatment even if a utility’s tax net operating losses are used to reduce taxable income of other entities in a consolidated group and the utility is paid for the use of its losses through an intercompany tax sharing agreement and the GAAP financial statements reflect that reimbursement.

Please see OPCDR01-01 2024 AIF Attachment 1, OPCDR01-01 2024 AIF Attachment 2, OPCDR01-01 2024 AIF Attachment 3, OPCDR01-01 2024 AIF Attachment 4, OPCDR01-01 2024 AIF Attachment 5, and OPCDR01-01 2024 AIF Attachment 6 for supporting documentation which the Company relied upon for its position that BGE and the Taxpayer that requested the PLRs have nearly identical fact patterns.

¹PLR 2024426002, 202426003, 20246004.

² IRC §1502.

- b. The PLRs were potentially based on the specific facts related to the individual state commissions' ratemaking positions on consolidated tax agreements, NOLC policies, and guidelines, which had authority over the retail jurisdictional rates and that none of those PLRs related to utilities located in Maryland or under the MD PSC ratemaking jurisdiction.

Please see the response to subpart (a), above, for a detailed explanation including copies of supporting documentation which the Company relied upon for its position that BGE and the Taxpayer that requested the PLRs have nearly identical fact patterns.

- c. The PLRs state "This ruling is directed only to the taxpayer requesting it. Section 6110(i)(3) of the Code provides that it may not be used or cited as precedent".

Although a PLR can only be relied upon by the taxpayer that received it, they are instructive to other taxpayers as to the IRS' point of view on a subject matter.

- d. The PLRs state "The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination".

Although a PLR can only be relied upon by the taxpayer that received it, they are instructive to other taxpayers as to the IRS' point of view on a subject matter.

- e. For ratemaking purposes, BGE has calculated its regulatory tax expense by reference to the receipts and expenditures that are recognized for jurisdictional ratemaking purposes by FERC and the MDPSC. This methodology looks beneath the single consolidated tax liability and analyzes each item of income and deduction used to determine the Affiliated Group's tax liability to determine the income and deductions attributable to each utility service. It then allocates to each jurisdictional service those items which were generated by providing that service.

BGE includes all used and useful public utility property in rate base, calculates depreciation expense thereon using a straight-line method, depreciates such property for federal income tax purposes using accelerated depreciation as permitted by the Modified Accelerated Cost Recovery System ("MACRS"), and makes an adjustment to the reserve for ADIT at the federal statutory tax rate to reflect the difference in tax liability attributable to the use of different depreciation methods for book and tax purposes. All of these calculations are done without regard to the property, tax attributes, or separate tax liability, of other members of the Affiliated Group. It also is done without regard to any items of BGE that are non-jurisdictional with respect to the rates it is determining.

A tax net operating loss occurs when a company's allowable tax deductions exceed its taxable gross income for a tax year. For federal income tax purposes, in certain tax years, a corporate taxpayer is permitted to either carryback or carryforward those taxable losses to reduce taxable income in prior or future tax years. A tax net operating loss

carryforward (“NOLC”) represents a future tax benefit. ADIT reflects the current tax benefit attributable to the difference in tax liability from the use of different depreciation methods for book and tax purposes. That benefit is reduced, however, to the extent it is attributable to a NOLC reflecting a future tax benefit from accelerated depreciation. The reduction in the tax benefit is reflected by recording an NOLC– related deferred tax asset (“DTA”), which reduces the net ADIT. Therefore, consistent with this methodology, BGE adjusted its ADIT downward for any NOLC attributable to accelerated depreciation using the “with and without method.”³

Exelon historically has used any BGE tax losses to the extent those tax losses can be utilized in the consolidated return to offset the tax liability of another subsidiary. This results in BGE’s federal tax losses being utilized sooner than they otherwise would because of tax due on income earned by other members of the Exelon Affiliated Group.⁴ For ratemaking purposes, BGE has been reducing its NOLC-related DTA for the utilization of any NOLC that offsets either its separate company income or income of other Affiliate Group members. BGE has followed this methodology for both financial statement and FERC reporting purposes. BGE also follows this methodology for determining MDPSC jurisdictional rates.

- f. BGE does **not** account for the settlement of the NOLC as a capital contribution.

Exelon is the parent of a consolidated group of corporations, the Affiliated Group, that includes BGE. Exelon is the agent for the group pursuant to Treas. Reg. §1.1502-77. The Affiliated Group members are parties to the Exelon Tax Sharing Agreement (“TSA”) that is used to allocate federal and state taxes and tax attributes to each member. Pursuant to the TSA, each member computes its taxable income on a separate company basis and pays only the tax attributable to its separate company taxable income.

Under the TSA, and consistent with Exelon’s and BGE’s financial statement accounting treatment, if an Affiliated Group member reports a separate company net operating loss, that member is not required to make any tax payment to the parent. The Affiliated Group member is paid by the parent for that loss at the time the loss is utilized by other Affiliated Group members. Otherwise, that member is permitted to utilize its loss to reduce its taxable income in future periods.

The settlement of the separate company net operating loss is recorded as an increase (i.e., debit) to Cash (FERC Account 131) and a decrease (i.e., credit) to Other Accounts Receivable (FERC Account 143).

³ The with and without method determines the amount of the NOLC attributable to accelerated depreciation as the excess of the NOLC computed with accelerated depreciation deductions over the NOLC computed without accelerated depreciation.

⁴ Code §1502.

Case No. 9692
Baltimore Gas and Electric Co.
Response to OPC Data Request 1 2024 AIF
Request Received: May 02, 2025
Response Date: May 16, 2025
Sponsor(s): John C. Frain

Item No.: OPCDR01-02 2024 AIF

In reference to Baltimore Gas and Electric Company's ("BGE" or "Company") March 31, 2025 Case No. 9692, 2024 Annual Informational Filing and Operation Pipeline Project Completion and Cost Variance Reports, transmittal letter, page 2, the Company states the following:

Given BGE's fact pattern is similar to the one described in the PLRs, pursuant to Section 3.01(3) of IRS Revenue Procedure 2017-47, **BGE is required to change its methodology and take corrective action at the "next available opportunity" to comply with the "normalization" provisions or be subject to the penalty for a "normalization" violation.** Thus, in the 2024 actual results herein, BGE included two adjustments to comply with the "normalization" provisions. These adjustments increase rate base and reduce the amount of EDIT passed through to customers.
[emphasis added] [footnotes omitted]

Please provide the following:

- a. A detailed description for the Company's position that this 2024 AIF is the "next available opportunity" to comply with the "normalization" provisions or be subject to the penalty for a "normalization" violation since the cited PLRs **may not be used or cited as precedent** as stated in each PLR;
- b. State if it is BGE's position that if the MD PSC does not authorize the Company to change its methodology related to NOLC issue in this 2024 AIF, that the Company will not be in compliance with the "normalization" provisions and would therefore be subject to the penalty for a "normalization" violation;
- c. If BGE's position in subpart (b) is that the Company would have a "normalization" violation, please provide copies of all supporting documentation (IRS, third-party, etc.) upon which the Company has relied for its position; and
- d. State if the Company's position is that the Company would not be covered by the Safe Harbor for Inadvertent Normalization Violations (Rev. Proc. 2017-47) in the situation described in subpart (b), where in SECTION 4. DEFINITIONS, .07 Next Available Opportunity, (3) states:

If, at the conclusion of a Rate Proceeding, the taxpayer has a private letter ruling request pending before the Service to address whether or not a practice or procedure addressed in the Rate Proceeding is a Consistent Practice or Procedure, **and the Taxpayer's Regulator later establishes or approves rates subject to adjustment from the effective date of the**

unadjusted rates in order to conform to the Service's ruling, the taxpayer shall have corrected its Inconsistent Practice or Procedure at the Next Available Opportunity. [emphasis added]

RESPONSE:

- a. BGE's electric and gas base distribution rates are currently set under the framework of a Multi-Year Rate Plan or "MYP." Under the MYP framework, projected rates are set based on forecasted rate base and operating income once every three years. BGE's 2024-2026 electric and gas base rates were set in Case No. 9692. As such, the next time base rates are expected to be set again by the MDPSC will be in BGE's next base rate case for rates effective January 1, 2027. In addition, after the conclusion of each year of an approved MYP, an Annual Informational Filing is made by the utility which provides the MDPSC with the utility's actual financial results. At the time of this response, BGE's Annual Informational Filing for 2024, which was filed on March 31, 2025, provides transparency into BGE's 2024 results for the Commission and other parties to Case No. 9692 and would serve as the basis for an eventual reconciliation of those results. Given this timing, BGE's first opportunity to reflect these tax changes in a MDPSC filing was in its 2024 Annual Informational Filing on March 31, 2025.
- b. Yes. BGE's position is that if the MD PSC does not authorize the Company to change its methodology related to the NOLC issue in this 2024 AIF, that the Company will not be in compliance with the "normalization" provisions and would therefore be subject to the penalty for a "normalization" violation.
- c. Please refer to the response to OPCDR01-01 2024 AIF, subpart (a), for copies of all supporting documentation upon which the Company has relied for its position.
- d. BGE has filed a private letter ruling request with the IRS seeking relief under the Safe Harbor for Inadvertent Normalization Violations (Rev. Proc. 2017-47).

Case No. 9692
Baltimore Gas and Electric Co.
Response to OPC Data Request 1 2024 AIF
Request Received: May 02, 2025
Response Date: May 16, 2025
Sponsor(s): John C. Frain

Item No.: OPCDR01-04 2024 AIF

In reference to BGE's response to StaffDR03-01 2024 AIF.(i.) the Company provided a copy of the PLR (StaffDR03-01 2024 AIF CONFIDENTIAL Attachment 4.pfd) BGE submitted to the IRS regarding the NOLC normalization issue. Please provide the following:

- a. State whether BGE provided the MD PSC or MD OPC the opportunity to participate in the drafting of Company's PLR request to the IRS related to the NOLC treatment issue;
- b. If BGE did not provide the MD PSC or MD OPC the opportunity to participate in the drafting of the Company's PLR request to the IRS related to the NOLC treatment issue, please provide a detailed explanation, including copies of any guidance (MD PSC, IRS, third-parties, etc.,) that the Company relied upon for its position; and
- c. Confirm that BGE has not yet received a written determination from the IRS related to the Company's requested PLR on whether the "normalization" rules would be violated if a utility did not reflect the tax-effect of its separate company tax net operating losses in rate base. If confirmation cannot be provided, please provide a detailed copy of the written determination from the IRS.

RESPONSE:

- a. BGE provided the MD PSC Staff an opportunity to participate in the drafting of the Company's PLR request to the IRS related to the NOLC treatment issue. BGE did not provide the MD OPC an opportunity to participate in the drafting of the Company's PLR request to the IRS related to the NOLC treatment issue.
- b. BGE did not provide the MD OPC an opportunity to participate in the drafting of the Company's PLR request to the IRS related to the NOLC treatment issue. Please refer to the response to OPCDR01-01 2024 AIF, subpart (a), for copies of all supporting documentation upon which the Company has relied for its position.
- c. At the date of this response, BGE has not yet received a written determination from the IRS related to the Company's requested PLR on whether the "normalization" rules would be violated if a utility did not reflect the tax-effect of its separate company tax net operating losses in rate base.

Case No. 9692
Baltimore Gas and Electric Co.
Response to Staff Data Request 3 2024 AIF
Request Received: April 17, 2025
Response Date: May 01, 2025
Sponsor(s): John C. Frain

Item No.: StaffDR03-01 2024 AIF

On Page 2 of the AIF filing (ML No. 317299) BGE indicates that electric and gas actual results have been adjusted to incorporate changes in the flow through of Federal Net Operating Loss Carryforwards necessary to prevent violations of normalizations provision of the IRS Code. Please provide the following information with respect to the NOLC adjustments separately for electric and gas:

- a. Workpapers in Excel (formulae intact) that derive the total change in income taxes flowed to BGE by year resulting from a change in the recognition of the NOLC.
- b. Workpapers in Excel (formulae intact) that derive the change in ADIT to incorporate the changes in the recognition of the NOLC.
- c. Workpapers in Excel (formulae intact) that derive the DTAs used to incorporate changes in the recognition of the NOLC.
- d. Indicate the number of historic years reflected or incorporated in the recognition of the changes in the recovery of the NOLC.
- e. Workpapers that derive changes to Operating Income necessary to accommodate the changes in the recognition of the NOLC.
- f. Of the noted \$27.973 million and \$0.458 million deficiencies for electric and gas, indicate the amount that relates to changes in the recognition of the NOLC.
- g. Indicate the amount of depreciation deductions and taxable income for federal income tax purposes in each period for which a change in recovery of the NOLC was deemed necessary.
- h. Indicate the amount of incremental excess deferred income taxes by year that would be subjected to a penalty due to a change in the recognition of the NOLC.
- i. Provide a copy of the PLR BGE submitted to the IRS regarding the NOLC normalization issue.

RESPONSE:

- a. Please see StaffDR03-01 2024 AIF CONFIDENTIAL *Attachment 1* for workpapers in Excel that derive the total change in income taxes flowed to BGE by year resulting from a change in the recognition of the NOLC. Specifically, please refer to column (D), line 44. Please also see StaffDR03-01 2024 AIF CONFIDENTIAL *Attachment 2* for supporting tax return information.
- b. Please see StaffDR03-01 2024 AIF CONFIDENTIAL *Attachment 1* for workpapers in Excel that derive the change in ADIT to incorporate changes in the recognition of the

NOLC. Specifically, please refer to column (D), line 21. Please also see StaffDR03-01 2024 AIF CONFIDENTIAL Attachment 2 for supporting tax return information.

- c. Please see StaffDR03-01 2024 AIF CONFIDENTIAL Attachment 1 for workpapers in Excel that derive the DTAs used to incorporate changes in the recognition of the NOLC. Specifically, please refer to column (D). Please also see StaffDR03-01 2024 AIF CONFIDENTIAL Attachment 2 for supporting tax return information.
- d. Please see StaffDR03-01 2024 AIF CONFIDENTIAL Attachment 1 for a listing of the historic years reflected or incorporated in the recognition of the changes in the recovery of the NOLC. For tax years Pre-2009, BGE reported cumulative taxable income and thus had no net operating losses on a standalone basis the carried into 2009.
- e. Please see StaffDR03-01 2024 AIF *Attachment 3* for an analysis of the NOLC's impacts on the 2024 electric distribution and gas Annual Information Filings, detailing rate base, operating income, and associated revenue requirement impacts.
- f. The NOLC comprises \$11.365 million of the total \$27.973 million for electric. For gas, the NOLC comprises \$6.851 of the \$0.458 million total amount (meaning, were it not for the NOLC, gas would reflect an *over-recovery* of \$6.393 million). Please also refer to the response to subpart (e), above, for additional detail.
- g. Please see StaffDR03-01 2024 AIF CONFIDENTIAL Attachment 1 for the amount of depreciation deductions and taxable income for federal income tax purposes in each period for which change in recovery of the NOLC was deemed necessary. Specifically, please refer to column (E).
- h. The amount of incremental excess deferred income taxes that would be subject to a penalty due to a change in the recognition of the NOLC is \$80.5 million. Please see StaffDR03-01 2024 AIF CONFIDENTIAL Attachment 1, line 44, for support workpapers.
- i. Please see StaffDR03-01 2024 AIF CONFIDENTIAL *Attachment 4* for a copy of the PLR BGE submitted to the IRS regarding the NOLC normalization issue.

BALTIMORE GAS AND ELECTRIC COMPANY
NOLC IMPACTS ON THE 2024 ANNUAL INFORMATION FILING

ELECTRIC DISTRIBUTION:

	<u>Operating Income</u>	<u>Revenue Requirements</u>
Rate Base--		
Accumulated Deferred Income Taxes	\$57,734	\$5,535
Regulatory Assets & Liabilities	45,644	4,376
Operating Income--		
Income Taxes	\$1,547	\$2,191
Interest Synchronization	-520	-737
		<u>\$11,365</u>
Fixed Data--		
Rate of Return	6.77%	
Gross-Up Factor	1.41612	
Cost of Debt	3.81%	
Tax Rate	27.52%	
Debt Share of Cap Structure	48%	

GAS DISTRIBUTION:

	<u>Operating Income</u>	<u>Revenue Requirements</u>
Rate Base--		
Accumulated Deferred Income Taxes	\$38,446	\$3,671
Regulatory Assets & Liabilities	25,334	2,419
Operating Income--		
Income Taxes	\$859	\$1,217
Interest Synchronization	-321	-455
		<u>\$6,851</u>
Fixed Data--		
Rate of Return	6.74%	
Gross-Up Factor	1.41657	
Cost of Debt	3.81%	
Tax Rate	27.52%	
Debt Share of Cap Structure	48%	