

**BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION**

**WASHINGTON GAS LIGHT
COMPANY'S APPLICATION FOR
AUTHORITY TO INCREASE RATES
AND CHARGES FOR NATURAL GAS
SERVICES**

CASE NO. 9704

**OFFICE OF PEOPLE'S COUNSEL'S REQUEST FOR RECONSIDERATION OF
COMMISSION ORDER NO. 91830**

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INTRODUCTION

Order No. 91830 directly conflicts with the Commission’s prior order finding that Washington Gas is required to comply with condition 44 in *this* case and committing to “revisit these issues in a separate proceeding in which it will address all issues from Case No. 9651 and Case No. 9704.”¹ The Commission has yet to make a finding on Washington Gas’s compliance with condition 44 during the test year at issue in this case, a fact that Order No. 91830 ignores.² By declining to hold evidentiary proceedings, Order No. 91830 deprives OPC—and the residential customers whom OPC represents—of the right to be heard.

The effect of these failures is profound. OPC has proffered evidence in this case that during the 2018 merger proceeding, Washington Gas’s executive testified that Merger Condition 28 would enable the Commission to “ensur[e] that the Commission has *full transparency and ability to audit*” the corporate cost savings required by condition 44³—benefits upon which the Commission conditioned merger approval. This evidence was not before the Commission and not considered in Case No. 9651, where—just two years later—Washington Gas’s expert witness testified to the opposite, stating that conditions 28 and 44 are unrelated—“independent and should not be conflated.”⁴ That plainly contradictory WGL testimony was the basis of the Commission’s erroneous

¹ Case No. 9704, Order No. 90943 (Dec. 14, 2023) at 71-72.

² The test year in this case consisted of the 12 months ending December 31, 2022. *Id.* at 3.

³ Hearing Transcript (Oct. 11, 2017), Case No. 9449, ML 217512 at 1545, lines 9-11 (emphasis added).

⁴ Rebuttal Testimony of Robert E. Tuoriniemi, Case No. 9651, ML 232876 (Dec. 8, 2020) at 42.

interpretation of the merger conditions in Case No. 9651 and the premise of the Commission’s arguments defending its position on judicial review.

Yet, regardless of the Commission’s interpretation of the merger conditions, Order No. 91830 erroneously and unlawfully denies the Office of People’s Counsel’s motion for further proceedings to address Washington Gas’s outstanding obligation to demonstrate that it achieved the savings required by Merger Condition 44 during the test year at issue in this rate case. The Commission has yet to make *any* finding on Washington Gas’s compliance with condition 44 in this case, whether in reference to Condition 28 or based on hypothetical savings. Order No. 91830 ignores that fact.

Context is important. Since 2011, Maryland’s five largest public utilities⁵ have all been acquired by utility holding companies. In approving these acquisitions—to which utility customers are captive and which are undisciplined by a competitive market—the Commission has imposed more than a hundred conditions to ensure the acquisitions are “consistent with the public interest” and provide “benefits and no harm to consumers” as required by section 6-105(g)(3)(i) of the Public Utilities Article (“PUA”). Compliance with the conditions in the relevant Commission orders is, therefore, critical to ensuring that customers obtain the benefits and protections required by statute. Responding to a 2021 legislative audit finding that the Commission was not adequately ensuring utilities complied with merger requirements,⁶ the Commission has demonstrated a renewed

⁵ Baltimore Gas and Electric, Delmarva Power and Light, Pepco, Potomac Edison, and Washington Gas.

⁶ See Office of Legis. Audits, Dep’t of Legis. Servs., Md. Gen. Assemb., Audit Report: Public Service Commission at 1 (Jan. 5, 2021) (Legislative Audit Report).

interest in holding utility companies accountable for compliance with the conditions of their acquisitions by large corporate parent companies.⁷ Yet, with Order No. 91830, the Commission takes a step in the opposite direction.

As it stands, Order No. 91830 would have the consequence of enabling Washington Gas to evade compliance with the terms of its 2018 merger and denying customers the promised benefits—benefits that were “necessary to fulfill applicable statutory requirements” for merger approval.⁸ If not modified to establish the necessary evidentiary proceedings, Order No. 91830 would leave Merger Condition 44 unenforceable, undermining a key merger condition that was intended to inure to the benefit of residential customers.

STATEMENT OF ERRORS

“Requests for reconsideration are generally governed by the same standards that apply to requests for rehearing under PUA § 3-114 and Code of Maryland Regulations (“COMAR”) 20.07.02.08D(2).⁹ Those provisions require a party in interest to request reconsideration of a Commission decision or order within 30 days after service of a final order, stating specifically the grounds upon which the application is based.¹⁰ A petition seeking to reverse or modify a Commission order must (1) fully set forth the facts,

⁷ Case No. 9449, Order No. 91344 (Oct. 3, 2024).

⁸ Case No. 9449, Order No. 88631 (Apr. 4, 2018) at 3-4.

⁹ Case No. 9748, Order No. 91881 (Sept. 24, 2025) at 3.

¹⁰ Md. Code Ann., Public Utilities Article (“PUA”) § 3-114; Code of Maryland Regulations (“COMAR”) 20.07.02.08(a).

circumstances, and consequences relied upon; and (2) allege the consequences resulting from compliance with the decision, order, or requirement which justify or entitle the applicant to the reversal or modification.¹¹ Pursuant to these provisions, OPC submits that Order No. 91830 errs in three primary ways:

1. Order No. 91830 treats OPC's motion for further proceedings as if it were a request for rehearing in Case No. 9651, when, in fact, OPC's motion requests a proceeding to enforce Merger Condition 44 in Case No. 9704. In this respect, Order No. 91830 is affected by an error of law;
2. Order No. 91830 fails to require Washington Gas to demonstrate compliance with Merger Condition 44 during the test year at issue, in direct conflict with the Commission's prior order holding that the company is required to comply with the condition in this case. In this respect, Order No. 91830 is both arbitrary and capricious and unsupported by substantial evidence on the record; and
3. Order No. 91830 deprives OPC of its rights as a party to this proceeding. In this respect, Order No. 91830 is made on unlawful procedure.

By denying OPC's request for further proceedings without explanation of how—in the absence of further evidentiary proceedings—the Commission intends to make a finding on Washington Gas's compliance with Condition 44 in the test year at issue, Order No. 91880 has the consequence of enabling Washington Gas to evade compliance with a merger condition the Commission previously held applicable in this case¹² and denying

¹¹ COMAR 20.07.02.08D. Alternatively, a party may allege "[t]he facts and circumstances which have arisen after the hearing or order which justify the reversal or modification." COMAR 20.07.02.08D(2)(a).

¹² Order No. 90943 at 71.

customers one of the benefits that the Commission deemed “necessary to fulfill applicable statutory requirements” for merger approval.¹³

BACKGROUND

1. Case No. 9449—the 2018 merger

In 2017, Washington Gas, along with its then-corporate parent WGL Holdings, Inc., and AltaGas Ltd., filed with the Commission an application for AltaGas to acquire Washington Gas.¹⁴ As required by PUA § 6-105(g), the Commission opened a case to evaluate whether the application was “consistent with the public interest, convenience and necessity, including benefits and no harm to consumers.” After an initial round of evidentiary hearings, the applicants notified the Commission that they had reached a partial settlement agreement and sought the Commission’s approval of that agreement. Both Commission staff and OPC opposed the proposed settlement agreement.¹⁵ On April 4, 2018, the Commission issued Order No. 88631 approving the acquisition of WGL Holdings, Inc. by AltaGas Ltd. subject to the companies’ adherence to certain post-merger conditions that the Commission determined were “necessary to fulfill applicable statutory requirements.”¹⁶

To make the requisite showing under the statute that customers would “benefit” from the acquisition, the companies testified during the merger proceeding that “synergy

¹³ Order No. 88631 at 3-4.

¹⁴ Case No. 9449, ML 214781 (Apr. 24, 2017).

¹⁵ Order No. 88631 at 16-20.

¹⁶ *Id.* at 4.

savings” would result from AltaGas’s acquisition of Washington Gas.¹⁷ As the Commission has previously explained, “synergy savings” are corporate cost savings achieved through “leverag[ing] greater economies of scale.”¹⁸ Under this theory, economies occur when a large corporate parent acquires a regulated utility, enabling certain utility functions—such as work related to legal, regulatory, compliance, business development, supply chain, and information technology—to be performed at the parent level at lower cost; those theoretically lower costs are then “allocated” to benefit the parent’s subsidiary companies. Thus, after the acquisition, rather than incurring all corporate costs directly, the utility also incurs certain corporate costs as costs allocated from its parent—purportedly at an overall lower cost due to “economies of scale” than when the acquired utility handled the functions by itself.

During the merger proceeding, Washington Gas executives testified that corporate cost savings beginning in the sixth year after the close of the merger would be \$2.8 million per year and committed to ensuring that in the meantime, “customer rates reflect an annual net benefit to Washington Gas’s Maryland customers of not less than \$800,000 per year over the five years following Merger Close.”¹⁹ Washington Gas proposed as part of the settlement agreement two conditions, numbers 28 and 44 (initially numbered 26 and 41), regarding the impact of the merger on corporate costs. Merger Condition 44

¹⁷ Case No. 9449, ML 214781 (Apr. 24, 2017) at 36.

¹⁸ *In the Matter of the Merger of Exelon Corp. and Pepco Holdings, Inc.*, Case No. 9361, Order No. 86990 (May 15, 2015) at 80.

¹⁹ Order No. 88631 at 36.

requires Washington Gas to “track and account for Merger-related savings,” defined as “tangible financial benefits achieved as a result of the Merger.”²⁰ Merger Condition 44 also contains language expressly prohibiting Washington Gas from recovering in rates “any corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings” and ensuring that Maryland customer rates reflect an annual net benefit from the merger of at least \$800,000 per year for five years.²¹ Condition 28 requires Washington Gas to provide the Commission with a “side-by-side comparison by function [and FERC account]” of pre- and post-merger “corporate and shared-services costs.”²² During the merger proceeding, a Washington Gas executive testified that the two conditions were connected: Merger Condition 28—the side-by-side comparison—would “ensur[e] that the Commission has *full transparency and ability to audit*” the corporate costs savings required by Condition 44.²³

In their entirety, Merger Conditions 28 and 44 read as follows:

Condition 28

Washington Gas shall provide a *side-by-side comparison by function of the pre-Merger corporate and shared-services costs incurred by Washington Gas as compared to the post-Merger corporate and shared-services costs incurred by Washington Gas* for the five years after Merger Close). The comparisons shall be filed on an annual basis as a separate letter, and the first letter shall be filed no later than the end of the second quarter following the first full year after Merger Close. The comparisons shall include information by account under the Federal Energy Regulatory Commission (“FERC”) Uniform System of Accounts. In the event Washington

²⁰ Order No. 88631 at A-12, A-17-18.

²¹ *Id.* at A-17-18.

²² *Id.* at A-12.

²³ Hearing Transcript (Oct. 11, 2017), ML 217512, Case No. 9449 at 1545, lines 9-11 (emphasis added).

Gas files a base rate case prior to the receipt of the first year comparison, Washington Gas will include as part of its base rate application a side-by-side comparison, by function, of pre- and post-Merger corporate and shared-services costs available through the test year, to the extent applicable. Additionally, in the second quarter after the first full calendar year following Merger Closing, and for every subsequent year for the next ten years, Washington Gas shall prepare and file with the Commission a report showing (i) AltaGas's annual charges to Washington Gas and (ii) Washington Gas's corporate and shared services costs. *For purposes of this paragraph, pre-Merger means calendar year 2016.*²⁴

Condition 44

Washington Gas will track and account for Merger-related savings, and transition costs to enable those savings, in its next two base rate cases in which the test year in question includes transition costs. Washington Gas will amortize the transition costs over five years, will not seek recovery in rate proceedings over those five years of any amortized transition costs *or corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings*, and will ensure that customer rates reflect *an annual net benefit to Washington Gas's Maryland customers of not less than \$800,000 per year over the five years* following Merger Close commencing with the first post-Merger base rate case (i.e., \$4 million over five years). In the event that Washington Gas files a base rate case in Maryland in 2018, and the Merger Close occurs before or during the pendency of that rate case, then Washington Gas will consent to a ratemaking adjustment to reduce Washington Gas's revenue requirements by \$800,000 as a known and measurable reduction in Washington Gas's cost of service during the new rate-effective period. "Transition costs" as used in this commitment are incremental non-recurring costs to facilitate the integration of the companies. "Merger-related savings" as used in this commitment refers to the *tangible financial benefits achieved as a result of the Merger* for the five years after Merger Close that would not have been possible if the individual companies were to continue to operate separately.²⁵

²⁴ Order No. 88631 at A-12-13.

²⁵ *Id.* at A-17-18.

Although the Commission had repeatedly found similar promises of synergy savings “inherently speculative,” “too intangible,” and “too contingent and uncertain” to meet the statutory requirement to demonstrate that a proposed transaction will generate customer “benefits,”²⁶ the Commission ultimately found that the promised corporate cost savings in this case would lower customer distribution rates by \$4 million over five years, “and thereby help satisfy [the benefits] prong of the statute.”²⁷ Specifically, the Commission noted that because Condition 44 “ensure[s] that customer rates will decline or otherwise be lower than they would have been absent the merger,” the Commission could actually “quantify [the corporate cost] savings in the present case.”²⁸

2. Case No. 9651—the 2021 rate case and subsequent appeal

Less than three years after close of the merger, Washington Gas filed an application with the Commission seeking to collect an additional \$28.4 million in annual revenue, including an undisputed *increase* in corporate costs of \$7.8 million.²⁹ OPC challenged the proposed rates as excessive, arguing in part that Washington Gas had not demonstrated that the company had achieved the merger-related savings required by condition 44 and that the company’s proposed rates did not reflect the required annual net

²⁶ See, e.g., *In the Matter of the Application of the Merger of FirstEnergy Corp. and Allegheny Energy Inc.*, Case No. 9233, Order No. 83788 (Jan. 18, 2011) at 42-43; *In the Matter of the Merger of Exelon Corp. and Constellation Energy Grp.*, Case No. 9271, Order No. 84698 (Feb. 17, 2012) at 90.

²⁷ Order No. 88631 at 36.

²⁸ *Id.* at 36, n150.

²⁹ Case No. 9651, ML 231646 (Aug. 28, 2020).

merger benefit to Washington Gas’s Maryland customers of at least \$800,000 per year.³⁰ Specifically, OPC challenged Washington Gas’s reliance on a hypothetical baseline of what corporate costs would have been absent the merger—rather than the actual 2016 pre-merger corporate costs reported under Condition 28—to calculate merger-related savings.³¹

On February 20, 2021, the assigned Public Utility Law Judge issued a proposed order approving a rate increase that failed—entirely—to address OPC’s argument that the allocation of AltaGas’s corporate costs and the resulting increase in Washington Gas’s costs violated the merger conditions.³² OPC then appealed to the Commission.³³

On April 9, 2021, the Commission affirmed the proposed order in relevant part and authorized Washington Gas to increase its rates accordingly.³⁴ Unlike the PULJ’s proposed order, the Commission addressed OPC’s merger-condition argument—briefly. In three short paragraphs, the Commission accepted Washington Gas’s position and found that Merger Conditions 28 and 44 are “separate commitments” and that, consequently, Washington Gas could measure merger savings using hypothetical foregone post-merger costs instead of using the Condition 28 comparison of actual

³⁰ See, e.g., Direct Testimony of Sebastian Coppola, Case No. 9651, ML 232686 (Nov. 20, 2020) at 84-91; Surrebuttal Testimony of Sebastian Coppola, Case No. 9651, ML 233041 (Dec. 1, 2020) at 73-75; Post-Hearing Brief of the Maryland Office of People’s Counsel, Case No. 9651, ML 233477 (Jan. 26, 2021) at 7-14.

³¹ *Id.*

³² Case No. 9651, ML 233954 (Feb. 26, 2021) at 1, 9.

³³ *Id.*

³⁴ Case No. 9651, Order No. 89799 (Apr. 9, 2021).

pre- and post-merger costs.³⁵ OPC then petitioned for rehearing,³⁶ which the Commission denied with no further discussion of the Merger Order or how Conditions 28 and 44 interact.³⁷ Commissioner Richard dissented, concluding that Washington Gas had not shown it complied with Conditions 28 and 44.³⁸

OPC timely petitioned for judicial review to the Circuit Court for Baltimore City.³⁹ After briefing and a remote hearing, the court reversed and remanded the Commission's decision.⁴⁰ The court rejected the Commission's reading of Condition 44 as allowing Washington Gas to "recover an unlimited amount of corporate costs allocated to it from AltaGas so long as Maryland ratepayers, somehow, realize an annual net benefit of more than \$800,000."⁴¹ The court held that the Commission acted arbitrarily by allowing recovery of the Maryland portion of the allocated corporate costs "when [they] far exceeded the undisputed post-Merger savings (approx. \$829,000)."

The Commission filed a motion to amend the judgment, arguing, "in essence, that [the court] used the wrong numbers."⁴² On reconsideration, the court recounted Washington Gas's assertion, accepted by the Commission, that Washington Gas had

³⁵ *Id.* at 24-25.

³⁶ Case No. 9651, ML 235195 (May 10, 2021).

³⁷ Case No. 9651, Order No. 89893 (July 29, 2021) at 1, 6.

³⁸ *Id.* at 8.

³⁹ OPC Petition for Judicial Review in the Circuit Court for Baltimore City, *In the Matter of the Petition of the Maryland Office of People's Counsel*, 24-C-21-003749 (Aug. 30, 2021)

⁴⁰ Circuit Court Memorandum Opinion and Order, *In the Matter of the Petition of the Maryland Office of People's Counsel*, 24-C-21-003749 (Feb. 28, 2022).

⁴¹ *Id.* at 7.

⁴² PSC Motion to Alter or Amend Judgment, *In the Matter of the Petition of the Maryland Office of People's Counsel*, 24-C-21-003749 (Mar. 10, 2022).

achieved \$9,135,835 in hypothetical merger-related savings.⁴³ “Accepting [those numbers] as true[,]” the court reversed its decision and held that Washington Gas complied with Condition 44.⁴⁴ The court did not address OPC’s argument that the supposed \$9 million in savings reflected unsupported claims of hypothetical avoided costs that was calculated contrary to the Merger Order requirement to compare actual post-merger and pre-merger costs using 2016 as the pre-merger baseline.

On June 30, 2022, OPC filed a notice of appeal to the Appellate Court of Maryland.⁴⁵ On May 9, 2023, that court issued an unreported opinion affirming the Commission and circuit court decisions.⁴⁶ The Appellate Court considered only whether the Commission acted arbitrarily in crediting the testimony of Washington Gas’s witness.⁴⁷ The Appellate Court did not attempt to reconcile either that testimony—or the Commission’s order based on it—with the language, structure, and purpose of the conditions as elucidated by the Merger Order.

On August 11, 2023, the Supreme Court of Maryland granted OPC’s petition for certiorari to review the Appellate Court’s decision.⁴⁸ On February 23, 2024, the Court issued an opinion holding that the Commission’s interpretation of its own prior order was

⁴³ Circuit Court Order Granting Motion to Alter or Amend Judgment, *In the Matter of the Petition of the Maryland Office of People’s Counsel*, 24-C-21-003749 (May 31, 2022) at 4-5.

⁴⁴ *Id.* at 5.

⁴⁵ OPC Notice of Appeal to the App. Ct. of Md. (formerly Ct. Spec. App.), *In the Matter of the Petition of the Maryland Office of People’s Counsel*, CSA-REG-0775-2022 (June 20, 2022).

⁴⁶ *In the Matter of the Petition of the Maryland Office of People’s Counsel*, No. 775, Sept. Term, 2022 (Md. App. Ct. May 9, 2023).

⁴⁷ *Id.* at 1, 10.

⁴⁸ Order Granting Writ of Certiorari, *In the Matter of the Petition of the Maryland Office of People’s Counsel*, SCM-REG-0011-2023 (Aug. 11, 2023).

not arbitrary or capricious.⁴⁹ Like the Court of Appeals, the Supreme Court did not prescribe the method for calculating merger-related savings, but rather reached its decision based on deference to the Commission. In particular, the Court determined that “the interpretation of the Commission’s own merger order under the circumstances presented here, [] falls on the outermost deference spectrum, thereby commanding a more deferential review under the ‘arbitrary or capricious’ standard.”⁵⁰

3. Case No. 9704—the 2023 rate case

In May of 2023, while the issue of merger savings in Case No. 9651 was still pending before the Maryland Supreme Court, Washington Gas filed an application with the Commission seeking to again increase its rates.⁵¹ Washington Gas did not propose, as part of its application, an adjustment to rates to reflect merger savings as required by Condition 44 because, in Washington Gas’s view, the five-year time limit had expired and, therefore, “no further synergy saving minimum obligation exists.”⁵² OPC disagreed, arguing that Condition 44 applied in the current rate case and recommending an adjustment of roughly \$8.1 million, the amount by which the allocation of corporate costs from AltaGas to Washington Gas exceeded the company’s 2016 corporate costs as reflected in the side-by-side comparison required by Condition 28.⁵³ In Order No. 90943, the Commission agreed with OPC that Washington Gas is required to comply with

⁴⁹ *In the Matter of the Petition of the Maryland Office of People’s Counsel*, 486 Md. 408, 436, 453 (2024).

⁵⁰ *Id.* at 445.

⁵¹ Case No. 9704, ML 303021 (May 18, 2023).

⁵² Direct Testimony of Robert E. Tuoriniemi, Case No. 9704, ML 303021 (May 18, 2023) at 47.

⁵³ Direct Testimony of Greg R. Meyer, Case No. 9704, ML 304745 (Aug. 25, 2023) at 33.

Condition 44, but deferred addressing WGL’s non-compliance until the Supreme Court issued a decision in Case No. 9651:

The Commission notes that because several of these issues, including the proper methodology for evaluating compliance with Commitment 44 as well the recovery of any increase in WGL’s corporate costs, are currently pending at the Maryland Supreme Court, the Commission lacks jurisdiction over these issues in the present case. As a result, the Commission *will await the decision of that court and then revisit these issues in a separate proceeding in which it will address all issues from Case No. 9651 and Case No. 9704*, including the 14 capital expenditures discussed above, to determine whether the Maryland Supreme Court’s decision as well as the prudency review ordered by Judge Ausby entitles WGL ratepayers to a refund, as well as the amount of any refund.⁵⁴

4. Subsequent proceedings

Although the Maryland Supreme Court issued its decision in Case No. 9651 more than a year and a half ago, the Commission has yet to establish the promised “separate proceeding in which it will address all issues from Case No. 9651 and Case No. 9704” and determine whether Washington Gas’s customers are entitled to a refund. In June of 2024, OPC raised this outstanding obligation in comments on Washington Gas’s annual merger compliance report.⁵⁵ In response, the Commission requested that Washington Gas and OPC “file written clarification, within one month, explaining their respective understanding of the status of Condition 44 ... [including] what issues might still need to

⁵⁴ Order No. 90943 at 71-72.

⁵⁵ Case No. 9449, ML 310017 (June 3, 2024) at 24. Although Washington Gas described this condition as “complete” in its 2024 compliance filing, the company appears to have anticipated further proceedings, noting the Commission’s decision “that the 5-year time limit on Commitment 44 had not expired when 9704 was filed” and that Case No. 9651 “ha[d] been or will be remanded to the Commission.” Case No. 9449, ML 308686 (Apr. 1, 2024) at 14.

be resolved in a separate proceeding in light of the Supreme Court’s decision.”⁵⁶ OPC filed extensive responsive comments detailing the procedural posture of the issues and the need for further proceedings.⁵⁷ OPC requested that the Commission “direct Washington Gas to calculate the merger-related savings required by Condition 44 using the actual, non-hypothetical comparison to 2016 baseline costs produced in response to Condition 28,”⁵⁸ while also advising that “[i]n any event, the Commission needs to hold a hearing because it has no evidence before it—hypothetical or otherwise—to find that Washington Gas has complied with its promise of corporate merger savings benefits for its customers.”⁵⁹ Washington Gas’s responsive comments similarly anticipated that the company would present evidence as part of a future proceeding.⁶⁰ The company included as an attachment to the filing an excel document that appears to demonstrate that the company failed to achieve the savings required by Condition 44 during the test year at issue in Case No. 9704 and to recommend a rate adjustment,⁶¹ which, if warranted, the Commission would need to determine how to apply. Despite the collective anticipation of

⁵⁶ Case No. 9449, Order No. 91344 (Oct. 3, 2024) at 12.

⁵⁷ Case No. 9449, ML 313334 (Nov. 4, 2024).

⁵⁸ ML 313334 at 16.

⁵⁹ ML 313334 at 4.

⁶⁰ “Washington Gas understands and clarifies that pursuant to the Commission’s above-described Orders, the issues th[at] might still need to be resolved in a separate proceeding in light of the Maryland Supreme Court’s decision ... include whether Washington Gas Maryland customer rates reflected an annual net benefit of not less than \$ 4 million over five years following merger close. As part of that proceeding, Washington Gas *intends* to show that customers received benefits equaling at least \$4.8 million over the five years following merger close, as demonstrated in Attachment D – MC 44 Synergy Savings by Day.” ML 313331 at 8 (emphasis added).

⁶¹ See WGL Comments, Attachment C, Reformatted Copy of Attachment D at tab 3: “Case No. 9704”, cell I31.

future proceedings, the Commission took no further action, leading OPC to file the motion for further proceedings currently at issue.⁶²

ARGUMENT

By denying OPC’s motion for further proceedings to evaluate whether Washington Gas complied with Condition 44 in the test year at issue in this case, Order No. 91830 errs in three important ways: by (1) treating OPC’s motion as if were a request for rehearing of the Commission’s decision in Case No. 9651; (2) failing to require Washington Gas to demonstrate compliance with Merger Condition 44 during the test year at issue, in direct conflict with the Commission’s prior order in this case; and (3) depriving OPC of its rights as a party to this proceeding.⁶³ If not remedied, these errors have the consequence of enabling Washington Gas to evade its responsibility to deliver on the promised benefits of the company’s 2018 acquisition by AltaGas and risk rendering the Commission’s conditions for approving mergers meaningless.

⁶² The Commission issued a subsequent order on merger compliance, but that order failed to address the outstanding issues related to condition 44. Case No. 9449, Order No. 91502 (Jan. 28, 2025).

⁶³ Order No. 91830 errs in other ways that are more appropriately addressed in a future evidentiary proceeding evaluating the company’s evidence of compliance. For example, the order refers to OPC’s “very late contention that Condition 28 is relevant in this case,” but OPC has repeatedly argued that condition 28 is relevant in both Case No. 9651 and Case No. 9704. *See, e.g.*, Direct Testimony of Sebastian Coppola, Case No. 9651, ML 232686 (Nov. 20, 2020) at 85-91; Surrebuttal Testimony of Sebastian Coppola, Case No. 9651, ML 233041 (Dec. 21, 2020) at 73-75; OPC Post-Hearing Brief, Case No. 9651, ML 233477 (Jan. 26, 2021) at 12-15; Direct Testimony Of Greg R. Meyer, Case No. 9704, ML 304745 (Aug. 25, 2023) at 29-33; Surrebuttal Testimony of Greg R. Meyer, Case No. 9704, ML 305559 (Oct. 12, 2023) at 13-16; OPC Post-Hearing Brief, Case No. 9704, ML 306228 (Nov. 17, 2023) at 41-43.

I. Order No. 91830 treats OPC’s motion for further proceedings as if it were a request for rehearing in Case No. 9651, when, in fact, OPC’s motion requests a proceeding to enforce Merger Condition 44 in Case No. 9704.

The Commission’s justification for denying OPC’s request for further proceedings was that “[t]he arguments presented by OPC’s motion ask the Commission to reverse its prior decision and remove the discretion that was accorded to Washington Gas in Case No. 9651” but that OPC’s motion “offer[ed] no reason to do so.”⁶⁴ To characterize OPC’s motion as a request for rehearing—or even reconsideration—is plainly erroneous. OPC’s motion did not ask the Commission to reverse or modify any decision in Case No. 9651, nor could it, as the Maryland Supreme Court’s decision of February 2024 finally decided the issue of how merger-related savings were calculated in that case.⁶⁵ Instead, OPC’s motion reminded the Commission of its outstanding obligation to take and evaluate evidence of Washington Gas’s compliance with Condition 44 *in an entirely different rate case*, Case No. 9704.⁶⁶ OPC further requested that, when evaluating Washington Gas’s compliance, the Commission reconsider its previous interpretation of what that condition requires, in light of evidence that was (1) not before the Commission in Case No. 9651 and (2) disproves a key rationale for the Commission’s prior interpretation—that

⁶⁴ Order No. 90943 at 4.

⁶⁵ OPC did request further proceedings in Case No. 9651 to address a separate outstanding obligation: the prudence review of 14 capital projects as directed in the remand order of the circuit court. *See* ML 320123 at 3.

⁶⁶ Prior to filing a formal motion, OPC twice raised the issue in comments before the Commission in Case No. 9449, but the Commission took no action. *See* ML 310017 at 24; ML 313334.

conditions 28 and 44 were unrelated.⁶⁷ Whether the Commission ultimately finds that new evidence persuasive should be determined in further proceedings in Case No. 9704, with no bearing on the Commission’s decision in Case No. 9651. The Commission’s treatment of OPC’s request as one for reconsideration is an error of law that must be reversed or modified.

II. Order No. 91830 fails to require Washington Gas to demonstrate compliance with Merger Condition 44 during the test year at issue, in direct conflict with the Commission’s prior order.

The Commission approved the acquisition of Washington Gas by AltaGas subject to a suite of conditions that the Commission found “necessary to fulfill applicable statutory requirements” for merger approval.⁶⁸ This included Condition 44, which requires Washington Gas to “track and account for Merger-related savings,” defined as “tangible financial benefits achieved as a result of the Merger”⁶⁹ and expressly prohibits Washington Gas from recovering in rates “any corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings.”⁷⁰ Washington Gas committed to applying these savings immediately—beginning in the first year post-merger—by ensuring that Maryland customer rates reflect an annual net benefit from the merger of at least \$800,000 per year for five years after the close of the merger.⁷¹

⁶⁷ The Commission’s main rationale for allowing Washington Gas to calculate merger-related savings in Case No. 9651 by comparison to hypothetical, foregone costs was that the merger order did not contemplate the connection between conditions 28 and 44. Order No. 90943 at 24.

⁶⁸ Order No. 88631 at 3-4.

⁶⁹ *Id.* at A-12, A-17-18.

⁷⁰ *Id.*

⁷¹ *Id.*

In Order No. 90943, approving a rate increase for Washington in this case, the Commission found “that the five-year time limit on Commitment 44 had not expired when Washington Gas filed the present rate case, and that WGL *is therefore required to comply with Commitment 44.*”⁷² At the time, the Commission deferred addressing WGL’s non-compliance until the Supreme Court issued a decision in Case No. 9651.⁷³ The Supreme Court issued that decision more than one-and-a-half years ago, and yet to date, the Commission has made no finding on the company’s compliance with Condition 44 in this case. Nor could it, as the Commission has neither taken nor evaluated *any evidence at all*—hypothetical or otherwise—on which to base such a finding. Washington Gas claims that the company demonstrated compliance with the condition by filing a 39-page workbook—“Attachment D”—in Case No. 9449 in 2024,⁷⁴ but that workbook has never been presented as evidence or been subject to examination in any proceeding. Further, in Washington Gas’s same 2024 comments, the company itself anticipated presenting this evidence as part of a future proceeding.⁷⁵ The company attached a version of this same workbook to its opposition to OPC’s motion in this case, but, again, Attachment D has neither been supported by witness testimony nor entered into evidence. Moreover, Attachment D appears to demonstrate that the company failed to achieve the savings required by Condition 44 during the test year at issue and to recommend a rate

⁷² Order No. 90943 at 71 (emphasis added).

⁷³ *Id.*

⁷⁴ Case No. 9704, ML 321397 (Aug. 13, 2025) at 6 (citing Case No. 9449, ML 313331 (Nov. 4, 2024)).

⁷⁵ ML 313331 at 8 (emphasis added).

adjustment,⁷⁶ which, if warranted, the Commission would need to determine how to apply.

OPC has “not challenged” the contents of Attachment D⁷⁷ precisely because this evidence has not been subject to a full evidentiary proceeding. Such a proceeding is necessary to enable the Commission to make a finding on the company’s compliance, the amount of any rate adjustment required, and how to implement such an adjustment, given that the rates at issue went into effect almost two years ago.⁷⁸ Instead, Order No. 91830 summarily denies OPC’s request for further proceedings with no further explanation of how the Commission intends to evaluate the company’s compliance during the relevant test year. In so doing, Order No. 91830 relieves Washington Gas of its obligation to realize an annual net benefit to customers of at least \$800,000 and deprives customers of a promised benefit of the merger. Because Order No. 91830 fails to develop the record evidence necessary to make the required finding and is in direct conflict with the Commission’s prior order, Order No. 91830 is both arbitrary and capricious and unsupported by substantial evidence on the record.

III. Order No. 91830 deprives OPC of its rights as a party to this proceeding.

PUA § 3-107 provides that a party in a proceeding before the Commission may:

(1) summon witnesses, present evidence, and present argument; [and] (2) conduct

⁷⁶ See WGL Comments, Attachment C, Reformatted Copy of Attachment D at tab 3: “Case No. 9704”, cell I31.

⁷⁷ See ML 321397 at 6.

⁷⁸ Order No. 90943 at 140 (authorizing an increase in rates for service rendered on or after December 14, 2023).

cross-examination and submit rebuttal evidence. OPC has the rights of a party in appearances before the Commission,⁷⁹ and did, in fact, appear as a party to this case on behalf of Washington Gas’s residential customers,⁸⁰ who have a vested interest in receiving the promised benefits of the merger.

As a party to this contested case, OPC has the right to conduct cross-examination on any evidence Washington Gas purports to rely on to demonstrate that it has complied with Condition 44. Moreover, OPC has specifically proffered that it will present evidence in this case that during the 2018 merger proceeding, Washington Gas’s executive testified that “ensur[e] that the Commission has *full transparency and ability to audit*” the corporate cost savings required by Condition 44⁸¹—benefits upon which the Commission conditioned merger approval. This evidence was not before the Commission and not considered in Case No. 9651, where Washington Gas’s expert witness testified to the complete opposite—that conditions 28 and 44 are unrelated—“independent and should not be conflated.”⁸² That plainly contradictory Washington Gas testimony was the basis of the Commission’s erroneous interpretation of the merger conditions in Case No. 9651 and the premise of the Commission’s arguments in briefs defending its position on judicial review. The Commission’s failure to hear evidence on Merger Condition 44 in this case deprives OPC—as a party to this proceeding on behalf of Washington Gas’s

⁷⁹ PUA § 2-205(a).

⁸⁰ PUA § 2-204(a)(2) (requiring OPC to appear before the Commission and courts on behalf of residential customers in each matter or proceeding over which the Commission has original jurisdiction whenever OPC considers the interest of residential customers to be affected).

⁸¹ Hearing Transcript (Oct. 11, 2017), ML 217512, Case No. 9449 at 1545, lines 9-11 (emphasis added).

⁸² Rebuttal Testimony of WGL Witness Robert E. Tuoriniemi, Case No. 9651 (Dec. 8, 2020) at 42.

residential customers—of the opportunity to be heard, in violation of PUA § 3-107.⁸³

Because Order No. 91830 is made on unlawful procedure, it must be modified or reversed.

CONCLUSION

The Commission is statutorily charged with ensuring that public utilities operate “in the interest of the public,” and “promote adequate, economical, and efficient delivery of utility services.”⁸⁴ Its primary duties include ensuring that (1) the rates public utilities charge their customers for service are “just and reasonable,”⁸⁵ and (2) proposed acquisitions of Maryland public utilities are “consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers.”⁸⁶ One way that the Commission has traditionally carried out this duty in the context of acquisitions is to subject approval of a proposed acquisition to compliance with any number of conditions designed to ensure that acquisitions are “consistent with the public interest”

⁸³ By depriving Washington Gas’s customers of the promised benefits of the merger without allowing for cross-examination or submission of the proffered evidence, Order No. 91830 may also violate the procedural due process rights of Washington Gas’s customers, represented in this proceeding by OPC. *See Roberts v. Total Health Care, Inc.*, 349 Md. 499, 509 (1998) (internal citations omitted) (“At ‘[t]he core of due process is the right to notice and a meaningful opportunity to be heard.’”); *Boehm v. Anne Arundel County*, 54 Md. App. 497, 512 (1983) (“The rights required by due process before an administrative agency typically include the right to: (1) notice, including an adequate formulation of the subjects and issues involved in the case; (2) present evidence (both testimonial and documentary) and argument; (3) rebut adverse evidence, through cross-examination and other appropriate means; (4) appear with counsel; (5) have the decision based only upon evidence introduced into the record of the hearing; (6) have a complete record, which consists of a transcript of the testimony and arguments, together with the documentary evidence and all other papers filed in the proceeding.”).

⁸⁴ PUA § 2-113(a)(1).

⁸⁵ PUA § 4-102(b).

⁸⁶ PUA § 6-105(g)(3).

and provide “benefits and no harm to consumers.” In Order No. 88631, the Commission approved the acquisition of Washington Gas by AltaGas subject to a commitment to realize at least 800,000 in customer savings annually. In Order No. 90943, the Commission determined that Washington Gas was required to comply with this condition during the test year at issue in this case, but it deferred addressing the issue of compliance to a later, “separate proceeding.” And yet, in Order No. 91830, the Commission denied OPC’s motion for the further proceedings needed to determine whether Washington Gas complied with the required condition. In doing so, Order 91830 denies customers the benefits they were promised as a result of the 2018 merger and risks rendering the Commission’s conditions for approving mergers meaningless. For these reasons, OPC submits that the Commission must reconsider Order No. 91830 and reverse or modify it to establish the proceedings necessary to evaluate Washington Gas’s compliance with Condition 44 in the test year at issue.

Respectfully submitted,

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/electronic signature/
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Assistant People’s Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October 2025, the foregoing Request for Reconsideration of Order No. 91830 was sent via electronic mail to all parties of record to this proceeding.

/electronic signature/
Mollie Soloway Woods
Assistant People's Counsel