UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Baltimore Gas and Electric Company	Docket No. ER25-3018-000

PROTEST AND REQUEST FOR EVIDENTIARY HEARING
OF THE MARYLAND OFFICE OF PEOPLE'S COUNSEL

The Maryland Office of People's Counsel ("MPC"), pursuant to Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. §§ 385.211 and 385.212, submits this Protest and Request for Evidentiary Hearing in response to the Baltimore Gas and Electric Company's ("BGE") Filing of revised tariff sheets to Attachment H-2A of the PJM Tariff and Request for authorization to recover 100 percent of Construction Work in Progress costs in rate base ("CWIP incentive") that are related to the construction of new major baseline wholesale electric transmission projects under Sections 205 and 219 of the Federal Power Act ("FPA"),[1] Part 35 of the regulations of the Federal Energy Regulatory Commission,[2] Order No. 679[3] and the Commission's November 15, 2012 policy statement on transmission rate incentives[4] filed by Exelon Corporation ("Exelon"), on behalf of its affiliate BGE on July 30, 2025. MPC filed a timely motion for leave to intervene in this proceeding on August 18, 2025.

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[1] 16 U.S.C. §§ 824d, 824s.
[2] 18 C.F.R. Part 35 (2024).
[3] *Promoting Transmission Inv. Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 ("Order No. 679"), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) ("Order No. 679-A"), *order on reh'g,* 119 FERC ¶ 61,062 (2007).
[4] *Promoting Transmission Inv. Through Pricing Reform*, 141 FERC ¶ 61,129 (2012).

INTRODUCTION

MPC is the statutory representative of the residential ratepayers of utility services in Maryland. Pursuant to Maryland Public Utility Companies Code Annotated, Section 2-205(b), the People's Counsel "may appear before any federal or state agency as necessary to protect the interests of residential…users of [gas, electricity or other regulated services]."

The PJM 2022 Regional Transmission Expansion Plan, Window 3 Project, located in central Maryland, is a large-scale transmission upgrade designated to BGE by PJM to address reliability risks caused by rapid data center load growth in northern Virginia. The project consists of multiple new 500 kV transmission lines, substations, transformers, and rebuilds, with an estimated cost of $634 million for BGE. FERC has already granted an abandoned plant incentive for the project in 2024. BGE now requests CWIP treatment due to credit agency concerns about financial strain. To support its request, BGE cites the project's scale—an unusually large project, equaling roughly 25 percent of BGE's existing transmission plant value—and its potential impact on credit ratings, debt costs, and customer rates.

The Commission should deny BGE's requested CWIP incentive, or in the alternative, grant an evidentiary hearing because (1) the Window 3 Project is being developed in BGE's Maryland territory, but its primary driver is data center growth in northern Virginia, raising questions about whether the proposal would unfairly burden Maryland ratepayers, and whether Maryland customers are the recipients of the benefits of the project; (2) BGE is seeking additional financial incentives (CWIP), which utilizes a rate of return higher than the Allowance for Funds Used During Construction ("AFUDC") rate, beyond the already-approved abandoned plant incentive, increasing the financial burden on customers; (3) the request introduces generational ratepayer cost shifts together with cost shifts between ratepayers within PJM; (4) BGE misrepresented its application to PJM by stating it would utilize AFUDC rather than CWIP for the Window 3 Project; (5) BGE's financial pressures are as a result of its decisions to bid on the Window 3 Project and its request unduly burdens ratepayers with the consequence of its decisions; and (6) the filing lacks specific and detailed support in its financial plan and an explanation as to whether BGE is utilizing other financial instruments available to them, and if not why, to determine whether the CWIP incentive is needed.

The Commission has acknowledged that granting the CWIP incentive is a departure from standard ratemaking principles, as it provides for the recovery of costs, in the form of a "return on" capital expenditure related to plant that is not used and useful. Therefore, close examination is merited for the instances where the Commission does depart from its standard ratemaking practices, such as BGE's request for a CWIP incentive in respective of the construction of the Window 3 Project. As discussed herein, there are sufficient grounds to deny BGE's request and, failing that, to set the matter for an evidentiary hearing.

ARGUMENT

I. BGE's proposal would result in an unjust and unreasonable cost shift to current ratepayers.

As discussed in Order No. 679, to substantiate a departure from its standard ratemaking policies, the Commission must reasonably balance consumers' interest in fair rates against investors' interest in maintaining financial integrity and access to capital markets.[5] Here, a reasonable balance is not achieved because of an expected near-term generational shift in load. The need for the Window 3 Project is driven in large part by the new and significant data center load locating in northern Virginia and the need to manage that new load growth from a transmission reliability perspective.[6] Therefore, to the extent that new load, estimated at 7,500 MW by PJM,[7] is not interconnected and paying network integration transmission service charges, the burden of paying for a "return on" capital expenditure during the project's construction phase will be shouldered by existing PJM ratepayers. Existing customers will pay the costs despite the new data center load creating the need for the transmission project. This generational ratepayer cost shift is not a just and reasonable outcome.

BGE's witness, Mr. Michael J. Cloyd, shares a simplified message that from an economic perspective, customers are at worst unaffected, whether the CWIP incentive is granted or if BGE utilizes the standard approach of capitalizing an allowance for funds

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[5] Order No. 679, at P 117.
[6] See transmittal letter at page 4 and 5.
[7] RTEP - 2022 RTEP Proposal Window #3 available at https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2023/20231205/20231205-pjms-role-in-regional-planning-2022-rtep-window-3.ashx.

used during construction ("AFUDC"), and that the CWIP incentive lowers the costs, on a nominal basis, over the transmission facilities asset life.[8] While this may be true from an academic perspective, and setting aside concerns regarding the payment for facilities not yet in service, the rationale falls flat when considering the generational cost shift discussed above. It matters "who" the ratepayers are; it is a not a single aggregate entity. Rather, the PJM ratepayers impacted here include a large number of Maryland residents and businesses.

Further, Mr. Cloyd estimates that customers will pay between $100 million to $250 million less over the life of the project if the CWIP incentive is granted. Again, given the generational cost shift, it must be anticipated that current ratepayers would receive a much-reduced benefit of these lifetime savings, as they are the only party to front the construction financing costs in the form of paying a "return on" capital expenditure during the construction period. Additionally, if project components are abandoned, which BGE acknowledged in its abandoned plant incentive filing in Docket No. ER24-1313-000 could happen for any number of reasons, customers would receive no such lifetime benefit savings.

II. BGE's proposal inequitably allocates costs amongst ratepayers within PJM.

As discussed in the PJM Manual 14f – Competitive Bidding Process, Section 1,[9] Commission Order No. 1000, issued on July 21, 2011, requires that PJM "[e]nsure that

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[8] Exhibit No. BGE-1 at 16: 10-15.

[9] https://www.pjm.com/-/media/DotCom/documents/manuals/m14f.pdf.

the costs of transmission solutions chosen to meet regional transmission needs *are allocated fairly to those who receive benefits from them.*"[10]

BGE's proposal to include a CWIP incentive creates inequities between the current ratepayers as determined through the PJM RTEP allocation process and the ratepayers who will benefit from these projects once PJM revises its RTEP allocations when the Window 3 Project is energized. Because PJM deemed Window 3 projects to be "needed for reliability" and the line is high-voltage, half of the costs will be spread out across PJM's 13 states and the District of Columbia, based on a measure of their Load Ratio Share on the transmission system. The other half is allocated based on what PJM calls its "DFAX" methodology, which uses a power flow analysis to estimate the relative use of the new transmission facility by power flows into each PJM zone (referred to as locational deliverability areas or "LDAs").

Since these projects are not currently in-service, the ratepayers who will pay the CWIP incentive are based on the current topology of the transmission system and assumptions being included in a DFAX analysis. However, once these projects go into service, PJM will re-evaluate the load-ratio shares and DFAX analysis to determine the true beneficiaries of the projects. This reevaluation will result in changes in the cost allocation for the projects. Moreover, PJM's method to allocate RTEP projects based on a load-ratio share and DFAX analysis—which would be applied to the requested CWIP

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[10] *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011) at P 4 [emphasis added], Order No. 1000-A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

incentive but which will change once the project is energized—has no mechanism to true-up any over or under charges based on the customers who ultimately benefit from the project. This would result in an unjust and unreasonable cost shift between ratepayers and a violation of Order No. 1000.

III. BGE bears the responsibility to manage its financial wellbeing, not ratepayers.

In support of its CWIP incentive request, BGE and its witness Mr. Cloyd point to financial pressures resulting from the need to manage the significant cash outlays associated with the project pursuant to the standard utility cost recovery framework.[11] It was BGE, however, that made the decision to provide a proposal to the 2022 RTEP Window 3 Update process. As required by the PJM Manual 14f - Competitive Planning Process[12] ("PJM Manual 14f"), Section 2.2 – Pre-qualification Application establishes the requirements for an entity to be eligible to be a "Designated Entity." Item 6 of this section states that PJM requires "[f]inancial statements of the entity or its affiliate, partner or parent company for the most recent fiscal quarter, as well as the most recent three fiscal years, or the period of the entity's existence, if shorter, or such other evidence demonstrating an entity's or its affiliates, partner's or parent company's current and expected financial capability acceptable to PJM." Therefore, as a requirement of the application process, PJM evaluated BGE's financial strength and determined that it had the financial capability to accept this project by awarding BGE the project.

[11] Exhibit No. BGE-1 at 19:14 – 20:17.
[12] https://www.pjm.com/-/media/DotCom/documents/manuals/m14f.pdf.

Further, it appears that BGE represented to PJM that it would utilize AFUDC as its component of recovery from ratepayers. As part of PJM planning process, as required in the PJM Manual 14f, Section 8.4.2 – Assessment of Project Proposal with Cost Commitment Provisions, "A cost commitment provision submitted as part of a project proposal may include, but is not limited to, the capital structure (debt to equity ratio) and caps on: initial capital costs (total costs associated with bringing the project into service); the annual revenue requirement; the rate of return on equity (ROE); the debt cost; the total capital cost; *allowance for funds used during construction (AFUDC); construction work in progress (CWIP)*; abandonment costs and schedule guarantees. A cost commitment proposal may also exclude defined cost elements from the cost commitment provision" [emphasis added]. BGE's cost proposal identified numerous projects included in the components covered by the cost containment.[13] Similarly, BGE's cost proposal to PJM for Project 10—"Reconductor Brighton - Conastone 500 kV line: BGE – BGE"[14]—aligns with BGE's transmittal letter project Item 11, "b3800.41, Conastone-Brighton 500 kV (5011) - Replace terminal equipment at Conastone 500 kV."[15] BGE's redacted cost proposal goes on to indicate that it included AFUDC as a part of its cost containment

[13] From the cost proposal, Project 2, "Reconductor Peach Bottom (PECO) - Conastone (BGE) 500kV Line: BGE Portion – BGE,", and Project 15, -" Conastone Substation Upgrades for 5012 Line Reconductor: BGE – BGE,", appear to align with BGE's transmittal letter identifying Item 7, - "b3800.34, Rebuild 5012 (existing Peach Bottom-Conastone) (new Graceton-Conastone) 500 kV line on single circuit structures within existing right-of-way (ROW) and cut into North Delta 500 kV and Graceton 500 kV stations," and Iitem 8, - "b3800.36, Rebuild 5012 (existing Peach Bottom-Conastone) (new North Delta-Graceton BGE) 500 kV line on single circuit structures and cut into North Delta 500 kV and Graceton 500 kV stations." https://www.pjm.com/-/media/DotCom/planning/rtep-dev/expan-plan-process/ferc-order-1000/rtep-proposal-windows/2022-window-3-redacted-proposals/proposal-2022-w3-600.pdf at 51; Transmittal letter at 5.

[14] *Id*.

[15] Transmittal letter at 6.

provisions when it designated "Yes"[16] as to whether AFUDC was included in the cost containment.

Further evidence that BGE represented to PJM that it would utilize AFUDC as its component of recovery from ratepayers is in the PJM financial analysis report. That report identifies that only Transource requested CWIP. Specifically, the PJM financial analysis states: "The associated financing costs of construction are modeled using either return on Construction Work In Progress (CWIP) or AFUDC for each proposal. Both returns on CWIP and AFUDC are calculated using the developer-specific after-tax WACC. If a developer does not specify collecting a return on CWIP versus AFUDC, Consultant modeled AFUDC. Transource is the only developer that clearly claimed a return on CWIP."[17]

As noted in the transmittal letter, this was a competitive process, with 72 proposals from 10 entities received by PJM. It now appears that after successfully winning the Window 3 projects that BGE is seeking to improve its financial wellbeing and minimize its risks on an ex-post basis, and on the backs of ratepayers. In the alternative, BGE had the option to provide a cost proposal that indicated that it wanted to use CWIP rather than AFUDC in the PJM bidding process. While we do not know whether the outcome of PJM's selection process would have changed had BGE disclosed its desire to recover CWIP rather than AFUDC. BGE would have had to meet the financial metrics under the

[16] https://www.pjm.com/-/media/DotCom/planning/rtep-dev/expan-plan-process/ferc-order-1000/rtep-proposal-windows/2022-window-3-redacted-proposals/proposal-2022-w3-600.pdf at 52.
[17] https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2023/20231205/20231205-2022-rtep-window-3-constructability--financial-analysis-report.pdf at 104.

PJM bidding process in order to be selected. Given the magnitude of this project, the financial considerations of bidding on the project should have been at the forefront of BGE's decision to bid. If BGE was uncomfortable with its financial metrics as a result of the process, simply let other bidders proceed with the project and avoided the financial pressures it now seeks to mitigate with the CWIP incentive.

IV. BGE's filing in support of its CWIP incentive request lacks specific and detailed support.

Notwithstanding the fact that BGE would have already considered its financials as part of the PJM bidding process, BGE provides little to no specific information, or financial modeling, regarding how it plans to manage the financing of the project, together with its other planned investments. All BGE says is notwithstanding whether a CWIP incentive is granted or not, investors will need to finance this project[18] and additional debt financing will need to be obtained.[19] That is unsurprising given the CWIP incentive provides for the "return on" on capital but not the core underlying funds, or "return of" funds. The credit rating reports accompanying Mr. Cloyd's testimony are informative to understand BGE's financial position from a credit agency perspective, but they do not provide the specific plans of BGE to fund its capital expenditure plans. The thrust of BGE's filing is that the CWIP incentive is presented as the sole method to mitigate the stated financial pressures, albeit Mr. Cloyd is careful to say that the incentive at least partially mitigates the financial pressures.[20]

[18] Exhibit No. BGE-1 at 12:10-15.
[19] Exhibit No. BGE-1 at 9:14 – 10:4.
[20] Exhibit No. BGE-1 at 12: 16 – 13: 7.

The Commission should consider whether different funding options may increase or decrease the financial pressures faced by BGE before granting BGE's request. For instance, its parent company, Exelon, may inject equity funding via paid-in capital or BGE could reduce dividends it pays to Exelon. Or alternatively, perhaps BGE may largely avail itself of its $600 million senior unsecured revolving credit facility which, as of December 31, 2024, it had not drawn funds from.[21] Moreover, S&P mentions that BGE "can lower its high capital spending (averaging about $1.8 billion) during stressful periods…".[22] The specific details of BGE's financing plan and an explanation as to whether BGE is utilizing other financial instruments available to it, and if not why, is necessary for both the Commission and ratepayers to assess the merits of the CWIP incentive and the ability of BGE to manage its financial well-being and access to capital. These missing details are at the crux of the matter and are necessary to allow the Commission to determine the reasonableness of granting the CWIP incentive, which would be a departure from standard ratemaking for construction projects, and is required to balance consumer and investor interests.

Additionally, Mr. Cloyd points to two specific examples of dollar savings for ratepayers if the CWIP incentive were granted, namely, that (a) "customers will pay between $100 - $250 million less over the life of the project if the Commission authorizes the CWIP Incentive"[23] and (b) avoiding increased interest expense of $100 million if

[21] Exhibit No. BGE-3.
[22] Exhibit No. BGE-2.
[23] Exhibit BGE-1 at 18:3-4.

BGE were to be downgraded by credit rating agencies.[24] Neither of these purported benefits, however, are supported by workpapers or calculations that accompany Mr. Cloyd's testimony. It is also unclear if these purported benefits are adjusted to take into account the time value of money from customers' perspective. Discovery is required to verify the reasonableness of these purported cost savings.

Furthermore, BGE's filing lacks information regarding the potential anti-competitive impacts of CWIP recovery as required by 18 C.F.R. §§ 35.25(c)(4) and (g).

V. BGE's request for a CWIP incentive produces a higher return compared to the AFUDC rate.

In instances where the Commission has granted a CWIP incentive, the CWIP order usually takes the form of adding the CWIP balance to rate base, such that the utility is earning the rate of return as established in the formula rate on the CWIP balance. The rate of return determined in the formula rate utilizes long-term debt and common equity. This method results in a higher return compared to the Commission's approach to determining the AFUDC rate which assumes that short-term debt is the first source of construction funds, before permanent long-term sources of capital are utilized.[25] This inconsistency between CWIP and AFUDC erodes the proposition that ratepayers should be indifferent to the recovery method of construction period financing costs[26] and, in fact, this design imperfection can have measurable consequences for ratepayers.

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[24] Exhibit BGE-1 at 19:7-9.
[25] Order No. 561 at *608.
[26] For example, *see* Exhibit No. BGE-1 at 16:10-15 and at 17: 9-12.

In the context of BGE, it appears that in addition to paying the "return on" for transmission facilities that are not yet used and useful, ratepayers are also paying an additional premium as a result of this design imperfection. In particular, BGE's rate of return is 7.53% based on its 2024 true-up Attachment H-2A. In contrast, according to details in its 2024 FERC Form No. 1 report, it may borrow under its revolving credit facility at an interest rate of Secured Overnight Financing Rate ("SOFR") plus 0.90%.[27] The average 2024 calendar year SOFR rate was approximately 5.15% and the average January through July 2025 SOFR rate was approximately 4.33%,[28] which would result in short-term debt rates of approximately 6.05% and 5.23%, respectively. These rates are meaningfully lower than BGE's rate of return. Furthermore, as part of MPC's review of the BGE 2024 true-up, through discovery we determined that the quarterly AFUDC effective rates ranged from 5.9% to 6.54%, which is significantly lower than the rate of return. BGE's filing did not address this concern and the analysis advanced by BG&E's witness assumed simplified or stylized assumptions that overlooked this phenomenon.

If the Commission grants the CWIP incentive to BGE, it should limit the rate that can be charged to be no higher than what would be produced under BGE's AFUDC rate.

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[27] Baltimore Gas & Electric Company, 2024 FERC Form No.1 report, Notes to Financial Statements, 10. Debt and Credit Agreements, Short-Term Borrowings, Revolving Credit Agreements.
[28] SOFR rates were sourced from https://www.newyorkfed.org/markets/reference-rates/sofr.

CONCLUSION

For the reasons stated above, MPC respectfully requests that the Commission deny BGE's request for the CWIP incentive, or, in the alternative, set this matter for evidentiary hearing.

Respectfully submitted,

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Dated: August 20, 2025

<u>CERTIFICATE OF SERVICE</u>

I HEREBY CERTIFY that, on this 20th day of August 2025, the foregoing "Protest and Request for Evidentiary Hearing of the Maryland Office of People's Counsel" was either hand-delivered, e-mailed or mailed first-class, postage prepaid to all parties of record to this proceeding.

Respectfully submitted,

<u>/electronic signature/</u>
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