

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE	*	
APPLICATION OF BALTIMORE		
GAS AND ELECTRIC COMPANY	*	CASE NO. 9692
FOR AN ELECTRIC AND GAS		
MULTI-YEAR PLAN	*	

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**MOTION TO STRIKE, OR, IN THE ALTERNATIVE, DISMISS, BGE’S
PROPOSED CUSTOMER ELECTRIFICATION PLAN**

Pursuant to Md. Annotated Code, Public Utilities Art. (“PUA”) § 4-101 and 4-102, the Maryland Office of People’s Counsel requests that the Public Service Commission strike, or, in the alternative, dismiss, the “customer electrification plan” (“electrification plan”) proposed by Baltimore Gas and Electric Company (“BGE”) in its Application for a Second Electric and Gas Multi-Year Plan (“MYP 2”).

INTRODUCTION

BGE’s electrification plan is a \$272 million portfolio of three new electrification programs—building electrification, commercial and industrial non-road electrification, and workforce development—that BGE says it has “designed to kickstart building electrification in BGE’s service territory”¹ in order to “support the ambitious goals of the Maryland Climate Solutions Now Act of 2022.”²

¹ Direct Testimony of Mark D. Case at 52.
² Application at 4.

Building electrification is an essential component of reducing greenhouse gas (“GHG”) emissions from buildings in Maryland. But the need to electrify the building sector presents major climate and economic policy questions about how electrification occurs and what the role of public utilities will be in electrification—and these questions should not be decided in a base rate case.

In the MYP, BGE has proposed an electrification strategy that prioritizes the financial interests of its owner, Exelon. Further, by proceeding in a rate case, BGE would limit substantial input on electrification policy to those parties participating in the case, and even those parties would be confined to supporting, opposing, or modifying BGE’s proposal when, in fact, the State has many policy options for pursuing electrification that are likely to have substantially lower overall costs than BGE’s plan, especially for utility customers.

BGE’s proposal carries significant implications for utility customers and the future of Commission regulation. The proposal would radically expand the scope of BGE’s business model to include the financing of customer-owned equipment, a policy largely contrary to standard ratemaking principles that the Commission recently rejected for EmPOWER Maryland. The plan would have a high cost for low-income customers, who do not equitably benefit from rebate programs. And it would lock in a strategy that deepens reliance on fossil fuels, despite the fact that this strategy is likely to be at odds with the State climate plan being developed by the Maryland Department of the Environment.

OPC opposes BGE’s electrification plan primarily for three reasons.

First, consideration of BGE’s plan would require the Commission to make major policy decisions about electrification (and utilities’ role in electrification) in a proceeding that is neither designed for nor suited to such decision-making. On its face, BGE’s electrification plan is a major new policy proposal, one that requires significant public vetting that is not possible in a rate case. It seeks to establish, at scale, programs of a kind that BGE has never administered and the Commission has never reviewed or evaluated in any setting, let alone invited or directed in base rate filings. Full-scale new policy proposals such as BGE’s electrification plan simply have no place in a base rate filing—especially not in a multi-year plan where approval would mean approval *for three years*.

Second, BGE’s electrification plan is improper in the MYP 2 because for all practical purposes, it is an EmPOWER plan—except that here, BGE would rate-base all the costs—approximately 90 percent of which are for rebates for equipment that is owned, operated, and maintained by customers and located on the customer side of the meter—and collect them through base rates instead of a separately stated surcharge. In proposing to rate-base these costs, BGE’s plan is contrary to established ratemaking principles, which authorize utilities to collect a rate of return on property that *they* own and use to provide service to customers. BGE’s plan is also in direct conflict with the Commission’s decision to transition the EmPOWER program to full expensing over the 2024-2026 program cycle.³ To put the costs of the electrification plan into rate base, as

³ Under Commission Order No. 90456, 33 percent of 2024 program costs must be expensed; 67 percent of 2025 program costs must be expensed; and full expensing of program costs will begin in 2026.

BGE proposes, would cause long-term rate increases that are—in the Commission’s recent words—“dramatic.”⁴

Third, BGE’s electrification plan is improper in the MYP 2 because it is untimely and unjustifiably presupposes a major shift in State policy. Under the Climate Solutions Now Act (“CSNA”), the Maryland Department of the Environment (“MDE”) must adopt a State plan that reduces statewide greenhouse gas emissions by 60 percent by 2030 and that “sets the state on a path” toward achieving net-zero statewide greenhouse gas emissions by 2045.⁵ BGE claims that the programs in its electrification plan “represent necessary, prudent steps” for reducing GHG from Maryland buildings “regardless of the pathway that the State ultimately pursues to meet its CSNA goals.”⁶ In fact, it is likely that MDE’s State climate plan will directly conflict with BGE’s electrification plan because BGE’s plan would condition eligibility for rebates for electric heat pumps on customers’ agreement to retain their gas furnaces for back-up heat, an approach that the Maryland Commission on Climate Change (“MCCC”) has determined would have higher costs than an approach in which most residential building end-uses are fully electrified.⁷ If MDE’s State plan embraces a high-electrification strategy, consistent both with the MCCC’s determination and the CSNA,⁸ BGE’s plan will be contrary to State policy—and its implementation will lead to stranded investments and wasted ratepayer money.

⁴ Order No. 90456 at ¶ 47.

⁵ Md. Code Ann., Environ. Art. § 2-1205(c).

⁶ Direct Testimony of Mark D. Case at 48.

⁷ See “Maryland Building Energy Transition Plan: A Roadmap for Decarbonizing the Residential and Commercial Building” at 15, available at <https://bit.ly/MDBuildingEnergyTransitionPlan>.

⁸ See, e.g., CSNA at § 10, stating that “the General Assembly supports moving toward broader electrification of both existing buildings and new construction as a component of decarbonization.”

BACKGROUND

1. Procedural History Regarding BGE's MYP 2

On February 14, 2019, the Commission initiated an investigation concerning “Alternative Forms of Regulation” in Public Conference 51 (“PC51”).⁹ On August 9, 2019, the Commission entered an order finding that the record developed in PC51 supported the use of multi-year rate plans (“MYPs”) as an alternative to traditional ratemaking methods and that “a properly constructed multi-year rate plan based on a historic test year and allowing up to three future test years can produce just and reasonable rates and can be implemented at this time, subject to developing the accommodating processes and procedures.”¹⁰

On February 4, 2020, the Commission entered an order establishing a pilot program framework “for the Maryland utility that is the first to file an MYP application to serve as a ‘Pilot Utility.’”¹¹ On May 15, 2020, BGE became the “Pilot Utility” for the Multi-Year Rate Plan Pilot when it filed its first multi-year plan (“MYP 1”), covering the years 2021-2023.¹²

On December 16, 2020, the Commission entered an order approving BGE's MYP 1 “to acquire experience and develop ‘lessons learned’ relating to MYP filings, with the expectation that regulations regarding MYP filings would eventually be developed and adopted.”¹³ On June 30, 2022, the Commission's Technical Staff issued a “Lessons

⁹ Notice of Technical Conference on Alternative Forms of Ratemaking, ML#223975.

¹⁰ Order No. 89226 at 56.

¹¹ See Order No. 89482.

¹² See Case No. 9645.

¹³ Order No. 90401 at ¶ 3.

Learned” report concerning BGE’s MYP 1.¹⁴ On October 28, 2022, the Commission entered an order addressing the Lessons Learned report,¹⁵ and on January 23, 2023, the Commission issued a supplemental order on the report.¹⁶

On February 17, 2023, BGE filed its MYP 2. The programs and proposed expenditures in MYP 2 are generally similar to those that the Commission approved in MYP 1. One major difference is that the MYP 2 includes BGE’s customer electrification plan, which is the subject of this motion.

2. BGE’S Proposed Customer Electrification Plan

BGE’s electrification plan is a portfolio of three new electrification programs: Building Electrification, Non-Road Electrification, and Workforce Development.¹⁷ BGE proposes to spend approximately \$272 million across the programs during the MYP, to defer the expenditures to a regulatory asset, and to recover the regulatory asset in base rates, at BGE’s authorized rate of return, on a 12.5-year amortization schedule.¹⁸

The Building Electrification program is the largest of the programs, with a proposed 2024-2026 budget of \$261,803,512, or about 96 percent of the total electrification plan budget.¹⁹ According to BGE, the purpose of the program is “to kickstart building electrification in BGE’s service territory with fuel-switching rebates that have historically been offered by Maryland utilities through the EmPOWER

¹⁴ ML#241286.

¹⁵ Order No. 90401.

¹⁶ Order No. 90480.

¹⁷ Application at 4.

¹⁸ See Direct Testimony of Mark D. Case at 63. BGE states that 12.5 years is the average lifetime of the electrification measures supported by the plan.

¹⁹ Direct Testimony of Mark D. Case at 55.

Program.”²⁰ BGE proposes to “offer cash and non-cash incentives,” mostly rebates, “to support customer and trade ally awareness, analysis, training, and other support necessary to support eligible equipment adoption,” focusing on three “key areas”: residential space heating and water heating, residential products, and commercial buildings.²¹ To be eligible for rebates for air-source electric heat pumps (“ASHP”), customers with gas furnaces will be required to retain their furnaces for back-up heat, a condition that BGE claims “will prevent higher winter electric peak events than all electric ASHP systems, thus maintaining high decarbonization, limiting system costs, and supporting a faster, more comfortable and more affordable transition for our customers.”²²

The Non-Road Electrification program has a proposed 2024-2026 budget of \$6,619,921 and “will offer a mix of prescriptive and custom cash and non-cash incentives designed to support opportunities for all customers to reduce emissions by electrifying fossil fuel powered equipment.”²³ Target segments include construction equipment, airport ground support equipment, port and intermodal equipment, forklifts, and industrial process equipment.²⁴

The Workforce Development program has a budget of \$3,095,000 and the stated goal of helping to train 1,238 HVAC mechanics and installers to meet anticipated employer demand in BGE’s service territory.²⁵ According to BGE, the budget was

²⁰ *Id.* at 52.

²¹ Direct Testimony of Mark D. Case, Exhibit MDC-5 at 12.

²² Direct Testimony of Mark D. Case at 53.

²³ *Id.* at 55.

²⁴ *Id.*

²⁵ Direct Testimony of Mark D. Case, Exhibit MDC-5 at 22.

derived from the assumption that the average cost of training a worker would be \$10,000 and that BGE’s program would fund half of this amount, with the balance funded by federal, state, or other grants.²⁶

Across the three programs, approximately \$239 million of the total budget (about 88 percent) would fund rebates for electric equipment that will be purchased, owned, maintained, and operated by customers and located on the customer side of the meter. As noted above, the cost of these rebates—and all program costs—would be recovered through base rates, an unprecedented expansion of the use of regulatory assets to recover non-capital costs. BGE states that the purpose of its electrification plan is to “support the ambitious goals of the Maryland Climate Solutions Now Act of 2022,”²⁷ and it has included with its application a benefit-cost analysis in which the quantified benefits are due to greenhouse gas emissions reductions, while the quantified costs include only BGE’s program expenditures and do *not* include the costs of BGE’s rate of return on these expenditures. With these costs excluded, BGE calculates a cost-effectiveness of 1.02 for the plan.

BGE’s application does not attempt to explain why BGE is proposing the customer electrification plan in the MYP 2, rather than some other docket. Nor does BGE identify any statute, regulation, or Commission order as its basis for including its electrification plan. BGE only asserts that its programs are necessary to decarbonize

²⁶ *Id.*

²⁷ Application at 4.

Maryland’s economy and that BGE and its customers “cannot wait” for the State and its stakeholders to make policy decisions concerning electrification strategy.²⁸

ARGUMENT

I. The Commission should dismiss BGE’s electrification plan from the MYP 2 because it is a major new policy proposal that is not appropriate for a base rate case.

BGE’s electrification plan calls for the Commission to make major policy decisions that are wholly inappropriate in a base rate case, where both the purpose and the timeframe of the proceeding are limited by statute in ways that preclude the detailed fact-finding, public input, and Commission deliberation necessary to evaluate significant policy changes.

BGE promotes its electrification plan as a major new climate policy proposal. Inevitably, any decision to approve, modify, or deny it would entail major decisions by the Commission about electrification policy and the role of electric utilities in pursuing such policy. Among other things, the Commission would have to decide the following questions:

- Should utility electrification programs be designed to entirely replace the use of fossil fuels or to use fossil fuels as back-up for space heating or other uses?
- To the extent that electrification programs are designed to replace the use of fossil fuels, should those programs be designed in tandem with or separate from strategies to move away from the gas system?
- Should utilities be allowed to rate-base the costs of assets they do not own (here for electrification programs)? And if so:

²⁸ Direct Testimony of Mark D. Case at 48.

- Under what circumstances?
 - Do BGE’s electrification programs fit those circumstances?
- What rate of return would be appropriate for non-capital program costs?
- Should electrification programs be implemented through “downstream” engagement with BGE customers, through “midstream” engagement with contractors and equipment suppliers, or both?

Decisions of this kind are wholly inappropriate in a base rate case, whether the case is a standard base rate filing or a multi-year plan. The purpose of a base rate case is to establish just and reasonable rates that provide “a reasonable return on the fair value of the public service company’s property used and useful in providing service to the public.”²⁹ It is not to establish new policies that involve a significant expansion of the utility business model and new program expenditures involving hundreds of millions of dollars of customer money. Here, BGE’s 2024-2026 budget for the customer electrification plan is approximately \$272 million, but because these costs would be deferred to a regulatory asset and amortized over 12.5 years in BGE’s rate base, the total cost of the plan to customers would be approximately \$400 million.

Nor does the Commission’s MYP pilot change the purpose of base rate cases. The Commission initiated the MYP pilot because of the perceived “regulatory lag” of the standard ratemaking process and to make revenues more predictable for utilities, rates more predictable for customers, decrease administrative burdens on regulators, and

²⁹ PUA § 4-101.

promote transparency concerning utility planning processes.³⁰ Although the Commission found that “one or more forms of [alternative forms of regulation] may be helpful, if carefully implemented, in facilitating the achievement of the State’s ambitious goals regarding electrification, renewable development, pipeline replacement, development of new consumer solutions, grid resiliency, and other state goals,”³¹ the Commission did not, in approving the use of MYPs, authorize utilities to use MYPs as vehicles for entirely new programs unrelated to the determination of “the fair value of the public service company’s property used and useful in providing service to the public.”³²

OPC acknowledges that the Commission has allowed utilities to seek recovery in rate cases for the costs of policy-based programs. In such instances, however, the policy programs have been developed and approved in separate dockets that do not, like base rate cases, have statutorily limited timeframes and purposes. These separate dockets enable the Commission to give the policy issues the time, attention, and public input that they require.

BGE’s cost recovery request in the MYP 2 for Phase I of BGE’s electric vehicle (“EV”) pilot program is instructive in this respect. BGE is seeking only cost recovery in the MYP 2, and not also *program approval*, because the program has already been approved in Case No. 9478 following an extensive investigation and public process concerning utility engagement in EV charging and market development. The

³⁰ Order No. 89226 at 52-54.

³¹ *Id.* at 53.

³² PUA § 4-101.

Commission first established an EV working group in Public Conference 44 (“PC 44”)³³; then, after a year of working group proceedings, the leader of the working group submitted a petition to the Commission for implementation of a statewide EV portfolio including BGE’s EV program;³⁴ then, after multiple hearings and public comment opportunities, the Commission approved the pilot programs of BGE and other electric utilities and authorized program costs to be deferred to regulatory assets for potential recovery in future rate cases.³⁵

The Commission followed the process that it did in Case No. 9478 because utility ownership of EV charging stations and utility provision of incentives to spur EV adoption presented novel policy questions that required extensive fact-finding, public input, debate, and Commission deliberation.³⁶ Likewise, the issue of utility engagement in electrification presents novel policy questions that demand a similarly rigorous fact-finding and deliberation process. By filing its customer electrification plan in the MYP 2, BGE has skipped over the fact-finding, public input, and debate, and gone directly to a request for Commission deliberation within the constrained statutory timeframe for a multi-year plan base rate case.

³³ See ML#212176.

³⁴ ML#218613.

³⁵ See Order No. 88997.

³⁶ See, e.g., Commission Notice of Extension of Comment Filing Date, ML#219358 (noting the Commission’s “desire to obtain thorough comments”) and Commission Notice of Initial Hearing, ML#220023 (noting that “an ‘initial’ legislative-style hearing would be beneficial for all parties in order to develop further dialogue between the Commission and interested persons”), and Commission Notice of Further Procedural Schedule, ML#221122 (“We conclude that we need more detailed, granular data to consider the various proposals and any potential impacts to ratepayers associated with any Statewide EV Portfolio that we approve.”).

Electric utilities undoubtedly have a role to play in electrification in Maryland. However, given the myriad important policy issues concerning electrification that the Commission has yet to consider, and the fact that these are issues of statewide importance, building electrification should be addressed in a policy docket of statewide scope where the Commission can hold hearings, accept public comments, and develop a comprehensive record on a timeframe that enables the Commission to make fully informed decisions. This is simply not possible in a base rate case.

For all of these reasons, BGE's inclusion of the customer electrification plan in the MYP 2 is fundamentally improper, and consideration of the plan in this proceeding would be inappropriate.

II. The Commission should dismiss BGE's customer electrification plan because it is an EmPOWER program that should be treated as an EmPOWER program.

The programs in BGE's customer electrification plan are EmPOWER Maryland³⁷ programs in all material respects except the case in which they are filed. Indeed, BGE proposes, among other aspects of its plan, that greenhouse gas emissions reductions from the programs be counted toward any GHG targets established in BGE's next EmPOWER plan,³⁸ that the programs' cost-effectiveness be determined by the Maryland jurisdiction-specific test developed for EmPOWER,³⁹ and that program results be evaluated through

³⁷ The EmPOWER Maryland Energy Efficiency Act of 2008, codified at PUA § 7-211, requires, subject to Commission review and approval, electric and gas companies to develop and implement cost-effective energy efficiency and conservation services. The Commission's current EmPOWER docket, in which utilities are developing their EmPOWER plans for the 2024-2026 program cycle, is Case No. 9648.

³⁸ Direct Testimony of Mark D. Case at 64.

³⁹ *Id.* at Exhibit MDC-5 at 6.

EmPOWER’s evaluation, monitoring, and verification process.⁴⁰ BGE also proposes to use BGE’s current EmPOWER programs as delivery channels for electrification rebates.⁴¹ BGE itself acknowledges that its electrification plan would normally be part of the EmPOWER vetting process, stating that it is based, in part, on “active and collaborative discussions last year with various stakeholders through the Future EmPOWER Working Group [sic] sessions, as well as our formal workforce development review working with the joint EmPOWER utilities.”⁴² This acknowledgement is misleading, however, given that BGE’s electrification plan was not before any of the EmPOWER working groups and BGE only informed the Future Programming Work Group that its MYP would include electrification nearly two years after the work group’s first meeting.

BGE’s application does not directly explain why it has proposed EmPOWER programs in the MYP 2.⁴³ But the reason appears clear enough: in order to reduce total program costs, the Commission has directed EmPOWER to be transitioned from a program in which costs are amortized over five-year periods, with utilities collecting carrying charges on the unamortized balance, to a program in which costs are fully

⁴⁰ *Id.* at 61.

⁴¹ *Id.* at Exhibit MDC-5 at 4, 14.

⁴² *Id.* at 59.

⁴³ It is also not clear whether, in light of the Commission’s Order No. 90546 in Case No. 9648, BGE will also include the electrification plan in an EmPOWER plan for the 2024-2026 program cycle. In that order, the Commission directed BGE and each of the other EmPOWER utilities to file three separate plans for the 2024-2026 program cycle that achieve different levels of greenhouse gas emissions reductions while also meeting the statutory energy savings targets in section 7-211 of the Public Utilities Article. One of the plans must be based on a “maximum achievable” greenhouse gas reduction scenario that includes electrification programs; consequently, BGE is required to include electrification measures in at least its maximum achievable plan.

expensed on an annual basis. No longer able to earn a return on EmPOWER programs in EmPOWER, BGE has responded by seeking a return on its newest proposed EmPOWER program through the MYP.

BGE witness Case claims in his direct testimony that this choice will serve customer affordability, arguing that BGE’s electrification programs “are expected to cost multiples of the energy efficiency programs run by the BGE” and that recovery of the costs through a regulatory asset amortized over 12.5 years is necessary to “ensure customers do not prepay for these longer-life investments” and to maintain “customer affordability.”⁴⁴

BGE’s idea of “affordability” comes at a high cost for utility customers, however. Like the credit card customer who makes minimum payments and then must pay interest on the unpaid balance, BGE’s proposal would drastically increase ultimate costs for customers because customers would pay BGE’s rate of return on the unpaid balance. Further, these high costs disproportionately impact low-income customers. It is well-established that low-income customers face barriers that prevent them from benefitting from energy efficiency programs—such as rebate programs—like more affluent customers.⁴⁵ BGE’s proposal would exacerbate those impacts just when the General

⁴⁴ Direct Testimony of Mark D. Case at 63.

⁴⁵ See Future Programming Work Group Report, Case No. 9648 (April 15, 2022) at 25 (discussing study findings that low-income customers annually contribute about \$49 million to energy efficiency programs but receive only \$28 million in benefits).

Assembly and the Commission are endeavoring to address the inequities in EmPOWER programs.⁴⁶

As the Commission determined in the EmPOWER docket, amortizing program costs over time may lower surcharges in the short term, but it leads to much greater customer costs over time. Amortizing costs “allowed for the monthly surcharge ... to remain relatively steady,” the Commission stated. “However, in exchange for the largely consistent surcharge, uncollected program costs have accumulated. This, when combined with program costs progressively increasing over time, has led to a current combined balance for the utilities of over \$800 million in amortized program costs and interests.”⁴⁷

The Commission addressed the customer impacts of amortizing of EmPOWER program costs in a series of orders in 2022 and 2023. As the Commission explains in these orders, at the inception of the EmPOWER program, the Commission directed electric and gas companies to amortize their program costs over five-year periods and collect carrying charges on their unamortized balances. In Order No. 90306, the Commission found that the continued accumulation of the unamortized balance was not in the public interest, and that it was necessary to transition to full annual expensing of EmPOWER costs while paying down utilities’ accumulated unamortized balances. In Order No. 90456, issued on December 29, 2022, the Commission adopted a plan whereby EmPOWER will transition to the full expensing of program costs by 2026 and

⁴⁶ See Maryland Laws of 2023, Ch. 572 (modifying the EmPOWER program to require low-income energy-savings goals).

⁴⁷ Order No. 90306 at 6-7.

unamortized balances must be paid down by the conclusion of the 2027-2029 program cycle. That order rejected the Exelon utilities' effort to have the Commission reverse its decision to require that EmPOWER programs be recovered on an expense basis by January 1, 2030, declaring that the Exelon utilities' proposal would "caus[e] a later dramatic increase in rates."⁴⁸ Following Order No. 90456, the Exelon utilities, including BGE, once again sought reversal of the move to an all-expensing recovery of program costs, and, in Order No. 90592, the Commission denied that request.

Now, in the MYP 2, BGE proposes an electrification plan that would amortize EmPOWER program costs. In effect, BGE's proposal is a *third* request for rehearing of Commission Order No. 90306's holding that utilities move to an EmPOWER model in which all program costs are expensed. The Commission should reject that effort and reaffirm its conclusion that putting EmPOWER costs into the rate base would impose dramatic increases in rates for customers.

BGE's proposal also undercuts another fundamental and longstanding principle of the EmPOWER program: the transparency that results from the line-item surcharge on customer bills. Since the start of EmPOWER, all program costs have been recovered through that surcharge line-item. The surcharge serves the important purpose of informing customers of the amounts they are paying toward rebate and other related programs that are separate from the utilities' core service of delivering electricity and gas to customer homes. The Commission recognized the transparency benefit of the

⁴⁸ Order No. 90456 at ¶ 51.

surcharge in Order No. 90456 when it rejected the Exelon utilities’ proposal to continue amortizing EmPOWER costs, stating that it “would eliminate the EmPOWER Maryland surcharge line item on customer bills and embed the EmPOWER program costs in base rates, *effectively hiding the cost and presence of the program in distribution rates and to the benefit of no one.*”⁴⁹ BGE’s proposal to embed its proposed electrification plan in base rates would also hide program costs in base rates—to the benefit of no one.

If BGE wishes to pursue its electrification plan, it should include its proposed electrification programs in one or more of its 2024-2026 EmPOWER plans, with a cost recovery proposal consistent with Commission Order No. 90456 and with the transparency provided through the EmPOWER line-item surcharge.

III. The Commission should reject BGE’s proposal to rate-base customer-side equipment because it is contrary to established ratemaking principles and at odds with the monopoly function of regulated utilities.

BGE’s proposal to rate-base the costs of rebates and other non-capital electrification program costs is inappropriate because it would entail a radical and improper expansion of the electric utility business model in Maryland. The primary role of an electric and gas utility is to safely and reliably deliver electricity and gas to customers.⁵⁰ But BGE’s proposal entails putting the cost of rebates—money—into rate base, effectively casting BGE in the role of electrification financier. Specifically, BGE proposes to rate-base (among other expenses) \$239 million in electrification rebates for

⁴⁹ Order No. 90456 at ¶ 51 (emphasis added).

⁵⁰ See PUA § 1-101(i)(1) (“‘Electric company’ means a person who physically transmits or distributes electricity in the State to a retail electric customer.”); *id.* at (m)(1) (“‘Gas company’ means a public service company that . . . transmits, sells, supplies, or distributes artificial or natural gas....”).

equipment that will be owned and maintained by customers and located on the customer side of the meter. Alternatively, one could consider the proposal as putting into rate base the customer appliances that the rebates help customers acquire, but that also would be inconsistent with core ratemaking principles because the utilities do not own customer equipment and cannot depreciate it.

In either case, what BGE proposes—the financing of rebates—is not an appropriate utility service because it is a service that any number of other businesses or governmental entities (including, for example, a green bank) could provide. And, in any event, BGE’s proposal raises significant public policy questions about the role of the utility and whether such a utility program would constitute unfair competition with non-utility market actors in electrification markets. As explained in Part I, such important public policy decisions are inappropriate in a rate case.

BGE’s proposal also violates well-established ratemaking principles. For example, it is well-established that the rate base on which a utility earns a rate of return consists of its prudent investment, net of depreciation, in capital assets used to provide useful utility services to customers.⁵¹ In Maryland, these principles are codified in PUA § 4-101, which provides that just and reasonable rates are those that yield “a reasonable return on the fair value of *the public service company’s property* used and useful in providing service to the public” after reasonable deduction for depreciation and other necessary and proper expenses and reserves.⁵² Here, BGE proposes to receive a return on money—the cost of

⁵¹ See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 364-65 (1986).

⁵² PUA § 4-101 (emphasis added).

rebates—not company *property*. This fact exposes BGE’s proposal as akin to the role of a bank, rather than a utility.

The proposal is also contrary to Commission ratemaking principles concerning regulatory assets. In extraordinary circumstances, the Commission sometimes allows utilities to include expenditures on non-capital assets in their rate bases through the vehicle of “regulatory assets.” When a utility is granted regulatory asset treatment for a class of non-capital expenditures, the utility defers the expenditures to its accounting books. Then, if the Commission determines in the utility’s next rate case that the expenditures were prudent and useful to the utility’s customers, the regulatory asset is moved into the rate base, as though it were a physical asset, and the utility earns a return on it, either at the utility’s authorized rate of return for investments in capital assets or at some alternative rate.⁵³ To qualify for regulatory asset treatment under the Commission’s decisions, a class of expenditures must be both extraordinary, i.e., not a normal utility operating expense, and non-recurring.⁵⁴

Recent examples of Commission authorization of regulatory assets include Case No. 9369, where the Commission authorized utilities to create regulatory assets for expenditures related to the COVID-19 pandemic;⁵⁵ Case No. 9478, where the Commission authorized regulatory assets for utilities’ non-capital expenditures on time-

⁵³ See, e.g., Order No. 89542, where the Commission stated that it would consider in subsequent utility rate cases “issues such as the appropriate period of recovery for the approved amount of the regulatory asset, any amount of carrying costs thereon, and other related matters.”

⁵⁴ See, e.g., Order No. 89542 (authorizing establishment of a regulatory asset for COVID-19-related incremental costs).

⁵⁵ See Order No. 89542.

limited EV pilot programs; and Case No. 9645, BGE’s MYP 1, where the Commission authorized regulatory assets for Major Outage Event Restoration and an Underground Fault Detector Program.

In MYP 2, BGE seeks to create a regulatory asset for, and earn a return on, the costs of its electrification programs. BGE has failed, however, to explain how its proposed spending is extraordinary. Nor has BGE stated that it will end its electrification programs after the three-year term of the MYP. Instead, as noted above, BGE simply argues that if the costs of its electrification programs were expensed in accordance with the Commission’s EmPOWER decisions, they would be unaffordable for BGE’s customers—thereby disregarding the long-term affordability issues the Commission has sought to address in the EmPOWER docket.

COMAR 20.07.04.08 illustrates how BGE’s proposal conflicts with well-established ratemaking policy. That regulation provides that “[r]evenues and expenditures credited or charged to Accounts 415 through and including 418 of the Uniform System of Accounts, as prescribed by the Federal Energy Regulatory Commission, relating to merchandising, jobbing, and contract work will not be allowed for rate making purposes in rate matters.”⁵⁶ Account 416 is described in FERC’s regulation to include expenditures for “[p]remiums given as inducement to buy appliances,”⁵⁷ a category that includes rebates for appliances, which constitute most of the costs that BGE seeks to recover through base rates in this case. In Maryland, customer rebates provided through the

⁵⁶ COMAR 20.07.04.08(A).

⁵⁷ 18 CFR § 367.4160(b)(6).

EmPOWER program and paid for through the EmPOWER surcharge are an exception to this general requirement, but as explained above, BGE’s proposal avoids the EmPOWER process and the transparency of the surcharge.

BGE’s proposed electrification plan would, if approved, significantly expand BGE’s business, effectively transforming it into a bank, while also marking a major change in Commission policy concerning the establishment of regulatory assets—both changes that create new risks for customers. For these reasons, BGE’s plan should be excised from this case.

IV. The Commission should dismiss BGE’s electrification plan because it is based on assumptions that are unlikely to be aligned with pending State plans to meet climate and building code standards.

The Climate Solutions Now Act requires MDE to adopt a State plan that reduces statewide greenhouse gas emissions by 60 percent by 2030 and “sets the state on a path” toward achieving net-zero statewide greenhouse gas emissions by 2045.⁵⁸ The core of the plan will be a set of recommendations for policies to help Maryland meet the CSNA’s emission reduction targets.⁵⁹

In addition, the CSNA requires the Maryland Building Codes Administration to conduct a study that includes recommendations “for the fastest and most cost-efficient

⁵⁸ Md. Code Ann., Environ. Art. § 2-1205(c).

⁵⁹ MDE’s “Climate Change Program” webpage describes the agency’s work as follows: “MDE is leading the effort, with other state agencies and technical assistance partners, to develop policies and programs to reach Maryland’s GHG reduction goals.” This summer and fall MDE will hold public outreach sessions across the state to “ask Marylanders for mitigation ideas that will inform our decisions on the policies to include in Maryland’s GHG Reduction Plan.” *See* <https://mde.maryland.gov/programs/Air/ClimateChange/Pages/index.aspx>.

methods for decarbonizing buildings and other sectors in the State,”⁶⁰ based on the General Assembly’s stated intent “that the State move toward broader electrification of both existing buildings and new construction on completion of the study.”⁶¹

The final MDE State climate plan is due on December 31, 2023. The Building Code Administration’s report is due on December 1, 2023. Together, the plan and the report will create a policy blueprint for the electrification of buildings in Maryland. In the meantime, it is critical for other State agencies not to adopt policies or approve programs that could conflict with the plan and the report or drive policymaking through “facts on the ground” rather than science and informed policy analysis. This is exactly the risk that BGE’s customer electrification plan creates, however, because it is premised on a continuing role for gas that is inconsistent with previous findings of the MCCC.

BGE’s customer electrification plan is based on what BGE calls an “Integrated Energy System,” or “IES” approach to building electrification that relies on the continued use of—and customer payment for—BGE’s gas distribution system.⁶² BGE claims, based on an “Integrated Decarbonization Strategy” analysis prepared for BGE by the consulting firm Energy+Environmental Economics (“E3”), that a “hybrid” IES approach in which new electric heat pump appliances are combined in customers’ homes with gas furnaces will result in lower costs for BGE’s customers than “limited gas” in which the use of gas is mostly eliminated.⁶³

⁶⁰ See CSNA at § 10(b).

⁶¹ *Id.*

⁶² Direct Testimony of Mark D. Case at 47.

⁶³ *Id.* at 52-53.

BGE’s plan is based on several disputed assumptions. According to BGE, electric heat pumps require “back-up” heat in very cold conditions; in an all-electric system, that back-up heat would come from conventional electric resistance heating systems; and the cost of building out BGE’s electric distribution system to meet the demand from that back-up heat would exceed the cost of continuing to operate BGE’s gas system alongside its electric system.⁶⁴ BGE has thus designed its electrification plan to condition the receipt of rebates for electric equipment on customers’ agreeing to retain their gas furnaces, effectively requiring ongoing investments in BGE’s gas infrastructure.

To the extent that the Commission may decide not to grant this motion prior to the hearing in this matter, OPC’s testimony in this case will show that the analysis (by E3 and others) that BGE relied on in developing its electrification plan is seriously flawed. Specifically, the testimony will show, among other things, that:

- In mild climates like Maryland’s, no back-up heating is necessary for advanced heat pumps that are properly sized to meet the full heating load;
- Energy efficiency can significantly reduce the peak electric loads associated with a “limited gas” scenario that includes high levels of electrification and very limited gas usage, and that BGE claims would be unduly expensive due to high peak loads;
- E3’s analysis of gas system operation and retirements for the limited gas scenario is biased toward maintaining the existing gas systems; and
- E3’s estimates for electric system transmission and distribution costs are too high, and its assumptions concerning energy efficiency too conservative.

⁶⁴ *See id.*

For purposes here, however, the critical fact is that based on the work done to date by the MCCC, the “hybrid” electrification approach proposed in BGE’s customer electrification plan is likely to conflict with policies recommended by MDE and the Building Codes Administration pursuant to the analyses they are developing now. Specifically, in November 2021, the MCCC concluded that contrary to BGE’s claims in MYP 2, a strategy of full electrification that does not rely on fossil back-up is likely to be Maryland’s lowest-cost building electrification pathway.⁶⁵

Given this determination, it is reasonable to expect that MDE and Building Codes Administration will propose electrification policies for Maryland that rely on a “limited gas” approach—or even a *no* gas approach—rather than the type of “hybrid” approach embodied in BGE’s electrification plan. However, just the potential for either of these outcomes is grounds for the Commission to strike or dismiss BGE’s plan from the MYP 2. Notwithstanding BGE’s contrary assertion, BGE’s electrification plan is *not* a strategy that will be necessary “regardless of the pathway the State ultimately pursues to meet its CSNA goals.”⁶⁶ Any gas-dependent pathway not only risks imposing unnecessary gas infrastructure costs on customers; it could also lead to stranded assets that need to be replaced at unnecessary cost to utility customers—electric heat pumps appropriate only for warm-weather operation that need to be replaced by cold-climate heat pumps.

⁶⁵ See Maryland Building Energy Transition Plan: A Roadmap for Decarbonizing the Residential and Commercial Building at 15, available at <https://bit.ly/MDBuildingEnergyTransitionPlan>. The MCCC report’s findings are confirmed by the analysis by Synapse Energy Economics in its report for OPC, Climate Policy for Maryland’s Gas Utilities (November 2022), available at <https://bit.ly/MDFutureGasReport>.

⁶⁶ See Direct Testimony of Mark D. Case at 48.

CONCLUSION

Building electrification is an essential component of reducing GHG emissions from buildings in Maryland and electric utilities have an important role to play in electrification. But the nature of that role, and the particular building electrification strategies that utilities should implement, are major policy questions that cannot be adequately addressed in base rate cases. That is because base rate cases have established purposes and statutorily limited timeframes commensurate with those purposes. Electrification issues must instead be addressed in policy proceedings that allow for public comment, broad stakeholder input, hearings, and sufficient time for the Commission to develop a record and make fully informed decisions. For this reason, the Commission should strike, or, in the alternative, dismiss, BGE's customer electrification plan from BGE's MYP 2.

BGE's electrification plan should also be struck or dismissed because it contravenes decisions of the Commission in Case No. 9648, the Commission's EmPOWER Maryland docket, and conflicts with established ratemaking principles. To lower customer costs, the Commission recently ordered EmPOWER to be transitioned from a program in which costs are amortized over time and recovered by utilities with carrying charges, to one in which all program costs are expensed annually. BGE's electrification plan is an attempt to circumvent the Commission's EmPOWER decisions, and its proposal to rate-base several hundred million dollars of program costs—mostly for rebates for electric equipment owned, maintained, and operated by customers—

would, if approved, constitute a radical and expensive expansion of BGE's business model into finance.

Finally, being premised on a significant continuing use of gas and gas infrastructure, BGE's electrification plan is likely to be at odds with the State climate plan being developed by MDE and impose unnecessary costs on consumers for gas infrastructure and possibly for stranded investments. For all these reasons, OPC respectfully requests that the Commission strike, or, in the alternative, dismiss, BGE's electrification plan from this case.

Respectfully submitted,

DAVID S. LAPP
PEOPLE'S COUNSEL

William F. Fields
Deputy People's Counsel

/electronic signature/
Mark C. Szybist
Assistant People's Counsel

/electronic signature/
Michael Sammartino
Assistant People's Counsel

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 20th day of June, 2023, the foregoing Motion to Strike, or, in the Alternative, Dismiss, BGE's Proposed Customer Electrification Plan was e-mailed to all parties of record in this proceeding.

Dated: June 20, 2023

/electronic signature/

Mark C. Szybist

Assistant People's Counsel