

ORDER NO. 89303

IN THE MATTER OF THE APPLICATION
OF WASHINGTON GAS LIGHT COMPANY
FOR AUTHORITY TO INCREASE ITS
EXISTING RATES AND CHARGES AND
TO REVISE ITS TERMS AND CONDITIONS
FOR GAS SERVICE.

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BEFORE THE
PUBLIC SERVICE
COMMISSION OF MARYLAND

CASE NO. 9605

September 30, 2019

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

I. Executive Summary

Washington Gas Light Company (“Washington Gas” or the “Company”) is a regulated domestic corporation that provides natural gas retail sales and delivery service to Maryland customers in Calvert, Charles, Frederick, Montgomery, Prince George’s and St. Mary’s Counties. On April 22, 2019, the Company filed an application seeking authority for a \$35.9 million increase in annual base rate revenues, authority to implement a Safety Response Tracker (“SRT”) for certain safety-related costs, and authority to make certain other changes to its terms and conditions of service. The Company’s last base rate case, Case 9481, was decided by the Commission in December 2018 following the Company’s July 6, 2018 merger with Alta Gas Ltd.¹ As described in detail below, on September 3, 2019, all parties that previously filed testimony in this proceeding filed a Joint Motion to Approve Settlement along with a Stipulation and Agreement (the “Stipulation”) that resolved all issues. Having

¹See, *In the Matter of the Merger of Alta Gas Ltd., and WGL Holdings, Inc.*, Case No. 9449, Order No. 88631 (issued April 4, 2018).

reviewed the application and updates as well as the pre-filed testimony of all parties, and considering comments made at the public hearings, I find that the Stipulation and Agreement is reasonable and hereby grant the Joint Motion without modification. Accordingly, I authorize the Company to file tariffs designed to generate an additional \$27.0 million in base rates to be allocated among classes as set forth in the Stipulation.² The Stipulation stated an overall rate of return (“ROR”) of **7.42%**, established a return on equity (“ROE”) of 9.70%, and stated a common equity ratio of 53.5% for the Company’s hypothetical capital structure. The Stipulation limited the applicability of these stated percentages, however, by providing that the amounts “set no precedent” and “have no broader applicability.” Based on normal weather average consumption, acceptance of the Stipulation will result in an overall base rate increase to the delivery service portion of the average residential heating customer’s monthly bill of \$3.06 or 8.3%; the total bill increase will be approximately 4.1%.

II. Background and Procedural History

On April 22, 2019, Washington Gas filed an application for authority to increase its annual base rate revenues and to revise certain terms and conditions applicable to gas service in Maryland. As filed, the application proposed to increase the Company’s annual base rate revenues by \$35.9 million, or 6.64% based on a test year ending March 31, 2019. In a June 10, 2019 supplemental filing, the Company updated its

² Pursuant to Order No. 89142 issued in this docket on June 3, 2019, the Commission suspended the effective dates of the proposed tariff pursuant to § 4-204(b) of the Pub. Util. Art., *Ann. Code of Md.* to Nov. 18, 2019. The parties consented to a shortened 14-day appeal period for the Proposed Order of Public Utility Law Judge (“PULJ”), and this provision was included in the Notice of Procedural Schedule dated May 1, 2019.

financial data to include actual results through March 31, 2019. The Company's revenue requirement increased to \$40.1 million as a result of the supplemental filing, however, the Company did not seek a further increase to the \$35.9 million requested in its initial application. The Company's application was based on a proposed overall ROR of 7.85%, including a return on common equity of 10.40%.

The Company's last base rate increase of \$28.6 million, which was approved by the Commission on December 11, 2018, resulted in a 5.69% increase to the total average monthly residential heating customer's bill.³ The current application was filed less than four months later. The Company asserted that despite the recent rate increase, its overall ROR for the test year on a *pro forma* basis was 5.5%, well below the 7.30% authorized ROR that the Commission approved in December 2018 and below the return needed to attract capital on reasonable terms. Taking into account growth in the Company's rate base, increases in its operation and maintenance costs, increased leak management costs, regulatory requirements and the prevailing cost of capital, the Company asserted that its current rates are not just and reasonable.⁴

The Company sponsored the testimony of John D. O'Brien, Executive Vice President, Strategy and Public Policy, who summarized the rate request and generally described the proposals made by other witnesses; Douglas I. Bonawitz, Senior Vice President, Chief Financial Officer, and Treasurer, who discussed the Company's

³ *In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges and to Revise its Terms and Conditions of Gas Service*, Case No. 9481, Order No. 88944 (Dec. 11, 2018).

⁴ The \$35.9 million increase requested included \$5.1 million in costs currently being collected through the Strategic Infrastructure Development and Enhancement ("STRIDE") plan surcharge. The Company asserted that the incremental amount of the increase in base rates would be \$30.8 million if the application were granted in full.

capital structure, cost of capital and financing strategy, and post-merger developments; Aaron B. Gibson, Director of Regulatory and Utility Revenue Accounting, who sponsored the Company's Normal Weather Study, labor and labor-related adjustments, and two Class Cost of Service Studies ("COSSs"), the first using the class coincident peak and the second using the class non-coincident peak; Nekole N. Johnson, Director of Marketing, who discussed the Company's marketing program; James B. Wagner, Assistant Vice President of Rates and Regulatory Affairs, who supported the Company's rate design proposals; Robert E. Tuoriniemi, Chief Regulatory Accountant, who sponsored the Company's test year amounts, rate making adjustments and calculation of the requested rate increase; Stephen J. Price, Assistant Vice President of Safety, Quality and System Protection, who testified in rebuttal concerning labor costs and leak response management; Wayne A. Jacas, Director of Construction Program Strategy and Management, who testified in rebuttal on issues related to the STRIDE program, and Frederick John Morrow, III, Director of Construction for Maryland and the District of Columbia, who testified on rebuttal concerning management and oversight of the STRIDE plan costs. The Company also sponsored the testimony of Robert B. Hevert, an analyst with the firm ScottMadden, Inc., who provided ROE analysis for the Company.

The Office of People's Counsel ("OPC") presented testimony from four witnesses. David J. Effron, an independent consultant, calculated OPC's proposal for base rates and presented rate base and operating income adjustments; Brendan Larkin-Connolly, a Principal analyst DHInfrastructure LLC, testified concerning the Company's proposal for STRIDE plant additions to rate base and Company's proposal for a Safety Recovery Tracker ("SRT") mechanism; Jerome D. Mierzwa, a Principal and Vice

President with Exeter Associates, Inc., reviewed the Company's cost of service studies ("COSS") and rate design proposals; and J. Randall Woolridge, a Professor of Finance and Fellow in Business Administration at the University Park Campus of Pennsylvania State University, provided his cost of equity recommendation and a critique of the Company's cost of equity analysis.

The Apartment and Office Building Association of Metropolitan Washington ("AOBA") provided testimony from Bruce R. Oliver, President of Revilo Hill Associates, Inc., who testified about the Company's gas system safety and the proposed SRT mechanism. AOBA witness Timothy Oliver, an analyst with Revilo Hill Associates, testified about the Company's capital structure, ROE, COSS, and rate design.

The Staff of the Public Service Commission ("Staff") provided testimony from the following witnesses: Jason A. Cross, Assistant Director of the Telecommunications, Gas and Water Division, who testified about Company's capital structure, cost of equity and ROR proposals; Negussie Tesfaye, a gas pipeline safety engineer, who commented on the Company's SRT proposal and STRIDE issues; Margaret Tubridy, a regulatory economist, who provided rate design analysis and commented on the Company's proposed tariff revisions; and David L. Valcarenghi, Assistant Director of the Staff Accounting Division, who provided rate base and operating income analysis. Staff also sponsored the testimony of Scott J. Rubin, an independent consultant and attorney, who provided a COSS and commented on the two COSSs sponsored by the Company.

In addition to the direct testimony filed with the Company's application, the Company filed supplemental direct testimony on June 10, 2019 to update its initial

testimony with actual data for the full test year ending March 31, 2019.⁵ OPC, AOBA and Staff filed direct testimony on July 19, 2019. Parties filed rebuttal testimony on August 6, 2019. On August 13, 2019, the Company filed an update to Washington Gas witness Tuoriniemi's attachment RET-R2 to show updated STRIDE and safety-related plant adjustments through July 2019.⁶ OPC, AOBA, and Staff filed surrebuttal testimony on August 19, 2019. In addition, on August 23, 2019, Staff filed an errata to the surrebuttal testimony of Staff witness Valcarengi replacing several schedules, and on August 26, 2019, OPC witnesses Larkin-Connolly and Effron filed updated surrebuttal testimony.

Two evening public hearings were conducted; one was held in Montgomery County and the other in Prince George's County on July 29, 2019 and August 6, 2019, respectively. On August 23, 2019, Staff filed a Comparison Chart reflecting the final positions of the parties with regard to the Company's revenue deficiency.⁷

On August 27, 2019, Washington Gas, OPC, Staff and AOBA (the "Settling Parties") informed me that an agreement in principle had been reached to settle all issues. On August 30, 2019, Washington Gas, on behalf of the Settling Parties, filed a Joint Motion for Approval of Stipulation and Agreement (the "Joint Motion"), along with

⁵ An errata to the supplemental testimony of Company witness Tuoriniemi was filed on July 1, 2019.

⁶ WGL Exhibit 31, ML # 226401.

⁷ Bench Ex. 1.

an executed copy of the Stipulation and Agreement (the “Stipulation”).⁸ Washington Gas witness Wagner,⁹ and Staff witnesses Valcarengi and Cross¹⁰ filed testimony in support of the Stipulation and Agreement (jointly, the “Settlement Witnesses”).

Montgomery County, Prince George’s County and the U.S. Department of General Services (“GSA”) intervened in the proceeding but did not file testimony. These parties are not signatories to the Stipulation. Counsel for Montgomery County appeared at the hearing and stated that the County had no objection to the terms of the Stipulation. Prince George’s County did not object to the Stipulation and did not appear at the hearing.

Counsel for GSA appeared at the hearing after the Settlement Witnesses had testified. GSA objected to the percentage of the overall rate increase allocated to the Interruptible class.¹¹ GSA Counsel recognized that under Washington Gas’s COSS, the Interruptible class ROR is below the system average and that under the two-step allocation method, which was utilized by the Commission in Case 9481, the Interruptible class warrants an increase that is higher than the average increases allocated to the other classes. GSA’s objection is that the base rate increase to the Interruptible class is more than 1.7 times the system average rate increase. GSA argued that the Stipulation should

⁸ The Joint Motion and Stipulation and Agreement were admitted as WGL Exhibit 32. Exhibit 1 to the Stipulation and Agreement, consisting of the cover page and page 9 of the NiSource Capital Governance Policy effective March 1, 2016, was inadvertently left out of the filed document. With leave to do so, WGL subsequently filed Exhibit 1 on Sept. 3, 2019 with ML # 226644.

⁹ WGL Exhibit 33. Revised tariff sheets showing an effective date of October 15, 2019 are attached to Mr. Wagner’s settlement testimony, however, date is not part of the Stipulation. Rather, the Stipulation provides that revised tariffs reflecting the terms of the settlement will become effective “for service rendered or [sic] [on] and after the date of the Commission’s final order in this matter.”

¹⁰ Staff Exhibit 12.

¹¹ Tr. at 41-42.

be modified to limit the base rate increase to the Interruptible class to no more than 1.5 times the average increase for all classes.¹²

Washington Gas Witness Wagner was recalled to respond to GSA. Mr. Wagner pointed out that the Company's initial application requested rates for the Interruptible class that, if approved, would have been higher than the stipulated rates for that class yet, the GSA did not take the opportunity to put on a witness in this proceeding. Mr. Wagner further stated that under Washington Gas witness Gibson's COSSs, the Interruptible class was the lowest earning of all the classes. Mr. Wagner further stated that the allocation method agreed on by the Stipulation is consistent with the Commission's December 2018 Order in Case 9481 and moves the Interruptible class closer to parity.

As discussed below, after thoroughly reviewing the testimony filed by all parties, including comments received at the public hearings, I conclude that the Joint Motion should be granted and that rates designed to increase the Company's gross annual non-gas commodity operating revenue by not more than \$27.0 million should be approved in accordance with the terms of the Stipulation, as discussed below. Further, I find that the revenue allocation agreed upon by the Settling Parties is appropriate and that the rates produced are just and reasonable rates for all classes.

A. Summary of Public Comments

While no members of the public spoke at the evening public hearing in Montgomery County, several commenters spoke at the Prince George's County public hearing. A lead organizer for CASA, Inc. an immigrant advocacy organization and two

¹² Tr. at 42.

representatives of the Flower Branch Tenant Association provided comments about the effects of the gas explosion on the Flower Branch Community of Montgomery County. The explosion happened on August 10, 2016, killing seven people, injuring dozens and causing widespread trauma, displacements and property damage. These commenters noted that Washington Gas's request to increase rates was filed around the same time that the National Transportation Safety Board ("NTSB") concluded its investigation into the cause of the explosion and just as the trial looking into culpability nears its conclusion. These commenters argued that it would be unjust to allow Washington Gas to shift the responsibility of its litigation and penalty costs on to members of the public through a rate hike, particularly a rate hike on the low income members of the Flower Branch community. Another member of the public who is retired stated that her property tax and electric bills have sky-rocketed and that with the gas bill also going up, she will not be able pay all of her bills.

B. Summary of Terms and Condition of Stipulation

The Settling Parties have agreed that the Company's rate schedules for gas delivery service should be amended in order to allow Washington Gas the opportunity to increase its gross annual operating revenues by not more than \$27.0 million. The rates would become effective on the date of the Commission's final order in this proceeding. The Stipulation sets the overall ROR at 7.42% but restricts the use of the agreed-upon ROR to the following purposes: computing carrying charges on storage gas costs for the calculation of Washington Gas's Purchased Gas Adjustment ("PGA"), calculating the recovery on investment for interruptible service, and calculating the STRIDE surcharge

going forward.¹³ The Stipulation establishes the Company's ROE at 9.70% and sets a common equity ratio for its capital structure at 53.5%, but with the proviso that these percentages set "no precedent" and have "no broader applicability."¹⁴ The Stipulation further provides that the revenue increase will be allocated in a manner consistent with the methodology utilized by the Commission in Case 9481¹⁵ and as expressed by Washington Gas witness Wagner in his Direct testimony. Accordingly, the Stipulation states that a 15% Step 1 allocation will be applied to the two under-earning classes, i.e., the Commercial & Industrial above 3000 therms and Non-Firm (also referred to as "Interruptible"). The Stipulation also increases the Company's System Charges for the Residential class by 2.5% and for the Non-Residential class by 5%.

The Settling Parties also stipulated that:

- the Safety Response Tracker ("SRT") proposed by the Company will not be implemented in this proceeding but no party is prohibited from petitioning the Commission to approve such a tracking mechanism in a future proceeding.
- the Company's proposal to use a 5-year amortization (\$800,000) of its Merger Condition 11B funding to increase the baseline it would have used to compare actual costs in connection its SRT proposal is not adopted in this Stipulation.
- The Most Favored Nations ("MFN") Adjustment proposed by Staff to transfer the cumulative balance in the Commission's mandated reserve balance account to rate base and to concurrently stop accrual of carrying costs into the reserve account balance¹⁶ is not adopted. The Settling Parties agree that Washington Gas will maintain the MFN funds in a regulatory liability account and that the MFN funds will be applied in a future rate case once the Company adds gas expansion projects to rate base under Merger Condition 10A.

¹³ Stipulation at 4 (prohibiting the use of the 7.42% ROR for "broader purposes" and stating that it does not set a precedent).

¹⁴ Stipulation at 5.

¹⁵ Order 88944 at 126.

¹⁶ Valcarengi Direct at 16.

- The following uncontested regulatory asset amortizations are included in the revenue requirement: (1) the amortization of environmental costs shown in Washington Gas witness Tuoriniemi's Supplement Direct as Adjustment 23, (2) the uncontested amortization for the SAP (billing system), and (3) amortization of STRIDE Audit Fees Expense. Adjustment 26 to Washington Gas witness Tuoriniemi's Supplemental Direct testimony contains the SAP and STRIDE Audit Fee adjustments.¹⁷
- The Company's proposal for capitalizing cloud computing projects for ratemaking purposes consistent with Accounting Standard Codification Topic 350-40 is adopted.
- The amount of STRIDE-related costs transferred into rate base and removed from the Company's 2019 STRIDE surcharge is as shown in Washington Gas witness Tuoriniemi's update to attachment RET-R2

OPC and Washington Gas agreed as part of the Stipulation to collaborate to develop protocols and procedures designed (1) to document positive cost variances and to mitigate or avoid positive cost variances, and (2) provide the Commission, OPC and interested parties additional information about the causes and management of positive cost variance. The Stipulation sets forth agreements concerning how often OPC and the Company will meet and the topics to be discussed. Other parties to the instant proceeding and to Case 9486¹⁸ will be given the opportunity to participate in this process. Under the Stipulation, a report describing the outcome of these meetings is required to be filed in the docket for Case 9486 within 210 days of the Stipulation.

¹⁷ The amortization of Business Process Outsourcing ("BPO 2.0"), which is shown as part of Adjustment 26, is not approved. At the Settlement hearing, WGL witness Tuoriniemi stated this amortization adjustment was denied by the Commission in Case 9481. *See*, Order 88944 at 51-61 (denying the amortization but stating that WGL would not be precluded from seeking recovery in a future rate case upon a showing that the BPO outsourcing costs had actual and verifiable benefits to WGL's customers).

¹⁸ *In the Matter of the Application of Washington Gas Light Company for Approval of a New Gas System Infrastructure Development and Enhancement Plan and Accompanying Cost Recovery Mechanism.*

The Stipulation also describes the steps that will be taken if a material mistake is discovered prior to Commission approval of the Stipulation or after Commission approval but prior to the approval of the compliance filing. Each of these scenarios requires the Company to waive the statutory suspension period for its proposed tariff in order to allow the parties' time to renegotiate or proceed with hearings. If the mistake is discovered after approval of the compliance filings, certain restrictions apply that would prevent the Company from taking actions inconsistent with the settlement until the next rate case.

The Stipulation contains terms that are standard in settlements before the Commission, including a provision that the terms are not severable and that no provision will become effective unless the Commission approves the Stipulation without change or condition. The Stipulation also provides that acceptance of the settlement by the Commission will not be deemed as a determination on the merits of any of the contentions or allegations in the case, that the Stipulation represents a compromise of divergent positions, and that no party to the Stipulation "shall be deemed to have approved, agreed, or consented to any rate of return, ratemaking or tariff principle or any method of cost determination, cost allocation or rate design underlying or supposed to underlie any of the matters in the Stipulation."¹⁹

C. Testimony in Support of the Stipulation

Washington Gas witness Wagner and Staff witnesses Cross and Valcarengi filed testimony in support of the settlement.

¹⁹ Stipulation at 8.

Washington Gas witness Wagner stated that the Settling Parties arrived at an agreement after extensive discovery and several rounds of testimony were filed. According to Mr. Wagner, approving the settlement at this stage of the proceeding is in the public interest because it is a comprehensive resolution of all issues reached by parties representing the various divergent interests of all customer groups and approval will conserve resources by eliminating the need for hearings and post-hearing briefings. Mr. Wagner stated that while the precise details leading to the settlement are not included, this is not unusual for regulatory settlements. Mr. Wagner noted that the Commission's Case 9481 decision, which was rendered in December 2018, can be used as a benchmark to gauge the relative strengths and weaknesses of this Stipulation. Mr. Wagner described the settlement terms, including the apportionment of the increase, the adjustment to the Company's System Charge for the residential and non-residential classes, and the ROR and ROE stated in the agreement. Mr. Wagner also described how the additional \$472,000 in base revenues, which were authorized by the Commission on appeal in Case 9481, were incorporated as the Company's new present rates from which the stipulated proposed rates were derived.²⁰ Mr. Wagner further noted that the Settlement places no restriction or limitation on the filing of future rate cases.²¹

In live testimony Mr. Wagner stated that despite the provision that restricts use of the agreed 7.42% overall ROR for use in computing the PGA, STRIDE surcharges and recovery of interruptible investment, if approved, 7.42% will be considered the latest Commission-approved ROR for the Company. Mr. Wagner further stated that litigation

²⁰ Wagner Testimony in Support at 5. *See*, Case 9481, Order No. 89170, Order on Rehearing issued June 25, 2019.

²¹ Wagner Testimony in Support at 5.

and other expenses related to the August 10, 2016 gas explosion in the Flower Branch complex are being accounted for in a regulatory asset account and are not included in customer rates in this case. The regulatory asset treatment for these costs was approved by the Commission in Case 9481.²²

In their joint testimony filed in support of the settlement, Staff witnesses Cross and Valcarengi noted that the settlement is a “black box” agreement that represents a reasonable compromise by the parties. Staff’s settlement testimony summarized the Stipulation and stated that, if approved, the average residential customer’s monthly bill will increase by \$3.06, a 4.10% increase from current rates for the total bill and an 8.30% increase for the distribution-only portion of the bill. During the heating season, the average residential customer’s total bill will increase by \$5.05, resulting in a 4.12% total bill increase and an 8.98% increase in the distribution-only portion.²³ The Staff settlement testimony also noted that the agreed-upon 7.42% is two basis points above Staff’s filed position and is close to the midpoint of the recommendations filed by the various parties, which ranged from 6.93% to 7.85%. The stipulated ROE of 9.70% was Staff’s filed position and fell within the filed position range from the 8.70% low to the 10.40% high. In its direct testimony, Staff recommended that rates be based on a hypothetical capital structure reflecting 53.07% common equity.²⁴ The Stipulation establishes a common equity ratio of 53.50% for ratemaking purposes, which is 43 basis points higher than Staff’s filed recommendation. Regarding the

²² Order No. 88944 at 92-94 (referred to as the “Arliss Street incident”).

²³ Staff Settlement Testimony at 4-5.

²⁴ Staff witness Cross Direct at 43.

increase in System Charges for Washington Gas,²⁵ the Stipulation provides for a 5% increase for Non-residential classes and a 2.5% increase for Residential classes. The Staff's filed position would have increased the System Charge for all classes by 5%.²⁶ The Staff settlement testimony opined that the system charges agreed upon are reasonable. Staff witnesses noted that Non-Residential customers are less sensitive to fixed charges than Residential customers because the Non-Residential customers tend to use higher volumes of gas, and thus have a higher volumetric component.²⁷

III. Findings

The goal of any ratemaking proceeding is for the Commission to ensure that the rates approved for a public utility to charge customers for regulated service are just and reasonable. Public Utilities Article Section 4-101 defines a "just and reasonable rate" as a rate that:

- (1) does not violate any provision of this article;
- (2) fully considers and is consistent with the public good; and
- (3) except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.²⁸

When reviewing the terms of an uncontested settlement in a ratemaking proceeding, the Commission has acknowledged that a settlement represents a

²⁵ The System Charge is WGL's term for the customer fixed monthly charge.

²⁶ Staff witness Tubridy Direct at 9.

²⁷ Staff Settlement testimony at 6.

²⁸ *Md. Code Ann.*, Pub. Util. § 4-101.

compromise among parties that normally have adverse interests.²⁹ That parties with divergent interests are able to reach an agreement is an indication that the terms of the overall agreement are reasonable.³⁰ In reviewing earlier settlements, however, the Commission has noted that the mere fact of settlement does not end the Commission's responsibility. The Commission must ensure that the rates established by the Settling Parties are indeed just and reasonable.³¹ In addition, rates proposed in a settlement cannot unduly burden one class of customers more than another.³²

One party, GSA, has objected to the settlement's proposed rate for the Interruptible class. While that objection was voiced belatedly and without evidentiary support, in order to adopt the proposed settlement rates, all proposed rates for all classes must be supported by the record and found reasonable. As discussed below, I find that the allocation method utilized by the Settling Parties results in just and reasonable rates for all classes, including the Interruptible class, moves classes closer to parity and does not violate the principle of gradualism for any class.

²⁹ *In the Matter of the Application of Delmarva Power & Light Co. for an Increase in Its Retail Rates for the Distribution of Elec. Energy in the Matter of the Application of Delmarva Power & Light Co. for an Increase in Its Retail Rates for the Distribution of Elec. Energy*, Case No. 9249, Order No. 84170, 102 Md. P.S.C. 236, 240 (2011)(stating that “[h]istorically, a settlement that is submitted by parties who normally have adverse interests is an indication that the overall agreement reached is a reasonable one.”). *See also, Re Delmarva Power & Light*, Case No. 8795, Order No. 75680, 90 Md. P.S.C. 115 (1999).

³⁰ *Re. Delmarva Power & Light*, 102 Md. P.S.C. at 240.

³¹ *Delmarva Power & Light*, 102 Md. P.S.C. at 240.

³² *In the Matter of the Application by Columbia Gas of Maryland, Inc. for Auth. to Increase Rates & Charges*, Case No. 9417, 107 Md. P.S.C. 587, 594 (2016).

A. Revenue Requirement, Rate of Return, and Capital Structure

The Stipulation adopts an overall revenue requirement that falls squarely within the range of the filed positions of the parties. The table below sets forth the parties' final positions:

Comparison of Parties' Positions³³

<i>Party</i>	<i>Proposed Revenue Requirement (Million)</i>	<i>Proposed Adjusted Rate Base (Million)</i>	<i>Proposed Adjusted Net Operating Income (Million)</i>	<i>Proposed Overall ROR</i>
Washington Gas	\$38,552	\$1,082,458	\$57,909	7.85%
Staff	\$24,993	\$1,074,136	\$61,947	7.40%
OPC	\$17,936	\$1,076,292	\$61,635	6.90%
AOBA	\$33,700	Not stated	Not stated	7.43%

Staff, OPC and AOBA each conducted their own analysis of the Company's revenue requirement and each concluded that the Company was entitled to a rate increase. OPC's filed position showed a revenue shortfall of \$17.9 million, AOBA's filed position showed a \$33.7 million shortfall and Staff showed a \$24.9 million shortfall. The ROE recommendations made by the Settling Parties ranged from a low of 8.7% (OPC's alternative position using the Company's actual capital structure at the end of the test year that included 54.57% common equity) to the Company's high of 10.40% (also using the actual capital structure at the end of the test year of 54.57% equity).³⁴ The stipulated ROE of 9.70% and hypothetical capital structure containing 53.5% common equity each fall within the range of these recommendations. Although the parties have expressly stated agreements with respect to the ROE and percentage of common equity in

³³ Staff Comparison Chart ML # 226549, Bench Exh. 1.

³⁴ OPC's primary position was based on a hypothetical capital structure of 50.00% equity with a cost of equity of 9.00%.

the capital structure, the Stipulation limits the applicability of these agreed-upon amounts to the settlement in this case by stating that these agreements have “no broader applicability.”

With regard to the stipulated overall ROR of 7.42%, Washington Gas witness Tuoriniemi and Staff witness Valcarengi confirmed that, despite the statement that the use of the stipulated 7.42% is limited to calculating the PGA, the STRIDE surcharge and the recovery of investment on interruptible service, this amount will be considered the Company’s current authorized ROR going forward.³⁵ In his Testimony in Support of Settlement, Washington Gas witness Wagner stated that the stipulated ROR “is not indicative of acceptance by any party of the appropriate cost of capital and was not utilized to determine the level of the increase in rates agreed upon by the parties to this proceeding.”³⁶ The 7.42% stipulated ROR falls within the range of ROR’s recommended by the parties in their filed positions. The ROR approved by the Commission in its last litigated case, Case 9481, was 7.30%, based on the same 9.70% ROE, but with a somewhat lower percentage of equity in the capital structure (51.69%), a lower cost of long-term debt, and a somewhat higher cost of short-term debt.³⁷

As a “black box” settlement, the Settling Parties did not set forth most of the accounting adjustments underlying the agreed-upon \$27.0 million revenue

³⁵ Tr. at 20-21. Mr. Tuoriniemi stated that the three calculations set forth in the Stipulation are the only items in the Company’s tariff that are tied to carrying costs but that other calculations outside the tariff, such as AFUDC, would also use the stipulated ROR.

³⁶ WGL Exh. 33 at 5.

³⁷ Order No. 88944 at 100. In his Supplemental Direct Testimony, Company witness Bonawitz made a downward adjustment to the Company’s cost of short-term debt to eliminate the fee increase and interest rate increase that occurred due to the drop in the Company’s credit rating following the merger. The adjustment was made to comply with Merger Commitment No. 41, requiring that ratepayers be held harmless from the cost increases due to the merger. WGL Exh. 13 at 5-6. *See, In the Matter of the Merger of Alta Gas Ltd., and WGL Holdings, Inc.*, Case No. 9449, Order No. 88631 at Appendix A-17.

requirement. Most of the contested adjustments to operating income, such as Washington Gas's inflation adjustment, Staff's adjustment to cash working capital to reflect revenues from new multi-family connections, and OPC's adjustment to reduce post-test year STRIDE plant due to excessive variance in cost estimates, are not addressed in the Stipulation. As is the case with most settlements, the Stipulation provides that unless explicitly stated otherwise, acceptance of the settlement terms does not constitute a determination on the merits of any of the Settling Parties' filed position on that issue.

Certain uncontested adjustments are explicitly set forth in the settlement. The uncontested regulatory asset amortization of environmental costs and the SAP (billing system) and STRIDE Audit fee adjustments set forth in Washington Gas witness Tuoriniemi's Supplemental Direct Testimony are explicitly approved,³⁸ as is the Company's proposal for capitalizing cloud computing projects for ratemaking purposes consistent with Accounting Standard Codification Topic 350-40.³⁹ It is appropriate for the Settling Parties to seek approval of these on-going adjustments, none of which were uncontested by any party. Similarly, the Stipulation establishes the amount of STRIDE-related costs transferred to rate base and removed from the 2019 STRIDE surcharge based on the Company's Updated Plant Adjustment filing through July 2019.⁴⁰ Allowing post-test year STRIDE-related costs follows the Commission's past practice and is appropriate for this case.

³⁸ Stipulation at 5-6 approving WGL witness Tuoriniemi's Adjustments 23 and 26 as set forth in his Supplemental Direct Testimony, WGL Exh. 14 at RET-Supp. 4.

³⁹ Stipulation at 6.

⁴⁰ ML # 226401.

B. Flower Branch Explosion Litigation Expense

While not specifically set out in the Stipulation, Settlement Witnesses Wagner and Valcarengi each stated that the litigation costs incurred by Washington Gas related to the explosion at Flower Branch were not included in the development of the \$27.0 million revenue requirement. Washington Gas witness Wagner noted that several parties removed this adjustment in their filed positions and speculated that if the issue had been litigated, the amount would not have been allowed to be included in the revenue requirement.⁴¹ Staff witness Valcarengi agreed that the Flower Branch costs were pulled out of the revenue requirement.⁴² In Case 9481, the Commission directed the Company to track these litigation costs in a regulatory asset until the litigation is completed, the total costs are known and can be reviewed for prudence.⁴³ That regulatory asset treatment will not change as a result of the approval of the Stipulation. Review of these costs will occur in a future rate proceeding after litigation is complete.

C. Merger Provisions

The Stipulation provides that the Company's proposed SRT and related 5-year amortization of its \$4 million commitment under Merger Condition 11B⁴⁴ are not included in the agreement and that any party can petition the Commission for approval of the tracking mechanism in a future proceeding. Washington Gas witness Wagner confirmed that the Company is not going to take the position in a future proceeding that it

⁴¹ Tr. at 11-12.

⁴² Tr. at 38-39.

⁴³ Order No. 88944 at 94.

⁴⁴ See, Order No. 88631 at A-8.

has satisfied Condition 11B through rates set in this case.⁴⁵ Similarly, the Stipulation provides that the Most Favored Nations (“MFN”) provision proposed by Staff witness Valcarengi to transfer the cumulative balance in the Commission-mandated reserve account to rate base and stop the accrual of carrying charges into the reserve balance is not being adopted. Accordingly, Washington Gas will continue to maintain the MFN funds in a regulatory liability account, which will be applied in a future rate proceeding once the Company adds gas expansion projects to rate base under Merger Condition 10A.⁴⁶

As such, approval of the Stipulation should not impact the Commission’s ability to make any appropriate decision in a future proceeding to ensure that Washington Gas has satisfied these merger conditions. Such decision can be made without reference to the adjustments proposed in the instant case related to these merger conditions.

D. Cost of Service and Rate Design

The Stipulation provides that revenue allocation among classes will follow Washington Gas witness Wagner’s methodology, which is based on the Commission decision in Case 9481.⁴⁷ In Case 9481, the Commission employed a two-step methodology with a Step 1 allocation of 15% to the under-earning classes and a Step 2 allocation of the remaining 85% to all classes based on adjusted revenues.

GSA objection that the overall 16% increase in rates for Interruptible class is unreasonable is not supported. Each of the COSSs presented in the direct testimony of

⁴⁵ Tr. at 21-22.

⁴⁶ Order No. 88631 at A-7.

⁴⁷ Order No. 88944 at 126 (adopting a first-step allocation of 15% to the two classes with a UROR below 1.0 (the Interruptible class was shown to be under-earning) and a second-step allocation of to all classes based on adjusted revenues). .

the Settling Parties shows that the Interruptible (“Non-Firm”) and Commercial & Industrial above 3000 therms are under-earning, with the Interruptible Class having the lowest unitized rate of return (“UROR”) in all of the COSSs presented.⁴⁸ The Stipulation’s provisions to use a two-step allocation and to allocate 15% to the Interruptible and Commercial & Industrial classes in Step 1 are supported by the results of the filed COSSs, as counsel for GSA has acknowledged.⁴⁹ The GSA’s request to modify the allocations in order to limit the base rate increase to 1.5 times the average increase for all customers, and thus reduce to allocation to Interruptible Class is denied. While the principle of gradualism guides the Commission in all ratemaking cases, it has not adopted a rule that would limit an increase to 1.5 times the average increase for all classes or would limit any increase by a stated percentage. In this case, given the overall amount of the revenue requirement and considering the amount by which the Interruptible Class is under-earning, I find the Stipulation’s allocation to that class appropriate.⁵⁰

With regard to rate design, Residential System Charges would increase by 2.5% and Non-Residential System Charges would increase by 5.0% under the Stipulation. This approach to increasing fixed charges is in line with the Commission’s Case 9481 decision that “[i]t is important that customers who cause certain costs incur those costs, but the principle of gradualism applies” and that “policy concerns... such as

⁴⁸ Staff witness Tubridy Direct at 7, OPC witness Mierzwa Direct at 6-7, AOBA witness T. Oliver Direct at TBO-6, Washington Gas witness Gibson Supp. Direct at ABG Supp.-5 and ABG Supp.-6, Washington Gas witness Wagner Supp. Direct at JBW-Supp. 1, Sch. C

⁴⁹ Tr. at 41-42.

⁵⁰ GSA’s objection that the proposed tariffs were not available until a few days before the hearing on the settlement ignores the fact that all of the elements that produced the rates have been at issue since the date the application was filed, yet GSA provided no testimony and voiced its objections for the first time after the hearing on the settlement was all but complete.

energy conservation incentives and the effect of an increased surcharge on low income customers” apply.⁵¹ While Washington Gas and Staff each recommended in Direct testimony that more of the increase go towards Washington Gas’s system charge for residential customers in order to recover more of the fixed cost, the stipulated increases are acceptable.

IV. Conclusion

Having considered the entire record in this proceeding, including all of the filed testimony, public comments, and the Joint Motion and Stipulation, and comments made during the September 3, 2019 hearing, I find the Stipulation, as submitted, should be accepted without change. I also specifically find the Stipulation is reasonable, and that the terms and final rates are within a range of reasonableness that might have been adopted had the agreed upon issues been fully litigated. I further find that the resulting rates will not induce rate shock, are just and reasonable, and will not unduly burden any one class of customers. Furthermore, I find that approval of the Stipulation to be in the public interest, as lengthy evidentiary hearings, briefs and potential appeals will be avoided, thereby saving all Parties time, effort, and further litigation costs.

IT IS, THEREFORE, this 30th day of September, in the year Two Thousand Nineteen,

ORDERED: (1) That the Application filed by Washington Gas Light Company filed on April 22, 2019, is hereby denied.

⁵¹ Order No. 88944 at 126-27.

(2) That the Joint Motion to Approve Settlement is hereby granted, and the Stipulation and Agreement, attached hereto and incorporated by reference, is approved without modification.

(3) That Washington Gas is hereby authorized, pursuant to § 4-204 of the Public Utilities Article, Annotated Code of Maryland, to file tariffs to increase rates for the delivery of natural gas by no more than \$27.0 million and that such rates shall become effective for service rendered on and after the date of the Commission's final order in this matter.

(4) That Washington Gas shall file clean tariff pages consistent with this Proposed Order of Public Utility Law Judge, subject to acceptance by the Commission.

(5) That any motions or requests not granted herein shall be denied.

(6) That this Proposed Order will become a final order of the Commission on October 15, 2019, unless before that date an appeal is noted⁵² with the Commission by any party to this proceeding as provided in Section 3-113(d)(2) of the Public Utilities Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in Section 3-114(c)(2) of the Public Utilities Article.

Janice M. Flynn
Public Utility Law Judge
Public Service Commission of Maryland

⁵² The memorandum on appeal shall be filed concurrently with the notice of appeal.