
**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

In the matter of the Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan.

Case No. 9645

**Surrebuttal Testimony of
Cheryl Roberto**

**On Behalf of
Office of People's Counsel**

October 7, 2020

I.	INTRODUCTION AND QUALIFICATIONS.....	1
II.	BGE DOES NOT DISPUTE ITS PATTERN OF UNRELENTING INCREASES IN REVENUE REQUIREMENT	2
	BGE does not dispute that from 2010 through 2019 its revenue requirement increases have outpaced utility inflation.....	2
	BGE rationalizes the increases by claiming customer bill savings entirely unrelated to its service.....	2
	BGE applauds itself for returning money collected for taxes not owed	5
	BGE claims capital investment justifies its revenue requirement increases but incongruously does not acknowledge related savings.....	6
III.	BGE DOES NOT EXPLAIN HOW THE BGE MYP MITIGATES THE PATTERN OF REVENUE INCREASES	7
	BGE asserts that O&M increases will be flatter than inflation and capital spending will decrease below 2019 levels during MYP	7
	BGE’s historical spend casts doubt on its future spending projections	8
	BGE’s MYP reconciliation enables BGE to seek increases above represented spend trajectories	10
IV.	BGE MYP FAILS TO COMPLY WITH COMMISSION ORDER REGARDING FORECASTING METHODOLOGY	11
	BGE does not dispute forecast methodology is internally inconsistent.....	11
	BGE does not dispute BGE forecasts used to increase annual revenue do not comport with recognized MRP revenue escalation methodologies.....	12
	BGE misunderstands or misrepresents testimony on utility cost method	13
	BGE’s application of a “utility cost method” does not meet the Commission’s Order regarding revenue forecasting methodologies	14
V.	WELL-DESIGNED PILOTS ACCOUNT FOR REVIEW AT INITIATION	15

VI. REMAINING ISSUES REQUIRING CORRECTION	18
BGE misses the requirement for materiality in the Off Ramp.....	18
BGE misunderstands or misrepresents testimony on an adder to the return on equity	18
The Commission has not waived 2019 Historic Test Year prudency review.....	20
VII. COMMISSION HAS THE AUTHORITY AND DISCRETION TO MODIFY BGE MYP TO ENSURE JUST AND REASONABLE RATES.....	20

LIST OF ATTACHMENTS

Attachment CR 3: BGE Response to OPC Data Request 34, Item No. OPCDR34-01

Attachment CR 4: BGE Response to OPC Data Request 34, Item No. OPCDR34-03

Attachment CR 5: BGE Response to OPC Data Request 34, Item No. OPCDR34-04-
Attachment1

Attachment CR6: BGE Response to OPC Data Request 34, Item No. OPCDR34-04-
Attachment2

Attachment CR7: BGE Response to OPC Data Request 34, Item No. OPCDR34-05
Attachment1

1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q Please state your name, title, and employer.**

3 **A** My name is Cheryl Roberto. I am employed by Synapse Energy Economics, Inc. as
4 a Senior Principal. My business address is 485 Massachusetts Avenue, Cambridge,
5 MA 02139.

6 **Q Have you previously submitted testimony in this proceeding?**

7 **A** Yes. On behalf of the Office of People's Counsel (OPC) I submitted direct
8 testimony in this proceeding on August 14, 2020.

9 **Q What is the purpose of your surrebuttal testimony?**

10 **A** The purpose of my surrebuttal testimony is to respond to rebuttal testimony
11 submitted on behalf of Baltimore Gas and Electric Company (BGE or the
12 Company). My surrebuttal testimony rebuts several key aspects of testimony from
13 Mr. Vahos and Mr. Case, but it does not attempt to address every instance of
14 disagreement. Thus, silence on any issue should not be interpreted as agreement.

15 **Q What materials did you rely on to develop your testimony?**

16 **A** The sources for my testimony are public documents and responses to information
17 requests, as well as my personal knowledge and experience.

18 **Q Are there any exhibits accompanying your testimony?**

19 **A** Yes. I am sponsoring five exhibits: Attachment CR 3 (BGE Response to OPC Data
20 Request 34, Item No. OPCDR34-01); Attachment CR 4 (BGE Response to OPC
21 Data Request 34, Item No. OPCDR34-03); Attachment CR 5 (BGE Response to
22 OPC Data Request 34, Item No. OPCDR34-04-Attachment1); Attachment CR6
23 (BGE Response to OPC Data Request 34, Item No. OPCDR34-04-Attachment2);
24 Attachment CR7 (BGE Response to OPC Data Request 34, Item No. OPCDR34-05
25 Attachment1).

26 **Q Did you prepare or direct the preparation of this testimony?**

27 **A** Yes.

1 **II. BGE DOES NOT DISPUTE ITS PATTERN OF UNRELENTING**
2 **INCREASES IN REVENUE REQUIREMENT**

3 *BGE does not dispute that from 2010 through 2019 its revenue requirement increases*
4 *have outpaced utility inflation*

5 **Q You previously testified that based upon the revenue requirements granted to**
6 **BGE from 2010 through 2019 BGE has experienced revenue requirement**
7 **growth at a rate that materially exceeds inflation experienced by utilities**
8 **during that same period.¹ Did BGE respond to your assessment?**

9 **A** Yes. Mr. Case acknowledged my testimony but did not contradict the underlying
10 facts or the pattern of revenue requirement increases that I identified. He did,
11 however, offer what I would characterize as a rationalization,² a distraction,³ and an
12 explanation⁴ for this revenue requirement growth.

13 *BGE rationalizes the increases by claiming customer bill savings entirely unrelated to*
14 *its service*

15 **Q What rationalization does Mr. Case offer relating to BGE’s pattern of revenue**
16 **requirement growth in excess of utility inflation?**

17 **A** Mr. Case states “it is important that we keep in mind that even if BGE’s proposed
18 Multi-Year Plan (MYP)⁵ is approved entirely, the total 2023 bill for an average
19 residential electric and gas customer will be 22% lower than in 2008.”⁶

20 **Q How does BGE explain that customer bills will be lower in 2023 than in 2008?**

21 **A** Mr. Case provided no explanation for this statement in his testimony. However,
22 through discovery I was able to confirm that BGE’s calculation is entirely reliant

¹ Roberto Direct Testimony, pp. 5-6, lines 14-4.

² Case Rebuttal Testimony, p. 12, lines 11-14 and p. 13, lines 10-12 (regarding customer bills).

³ Case Rebuttal Testimony, pp. 13-14, lines 22-2 (Tax Cuts and Jobs Act of 2017 response).

⁴ Case Rebuttal Testimony, p. 13, lines 16-20 (AMI/Smart Grid investments); p. 13, lines 13-16 (STRIDE investments).

⁵ For clarity, BGE’s multi-year plan will be referenced using BGE’s abbreviation, “MYP;” reference to other multi-year plans or multi-year plans generically will use the Commission’s abbreviation, “MRP.”

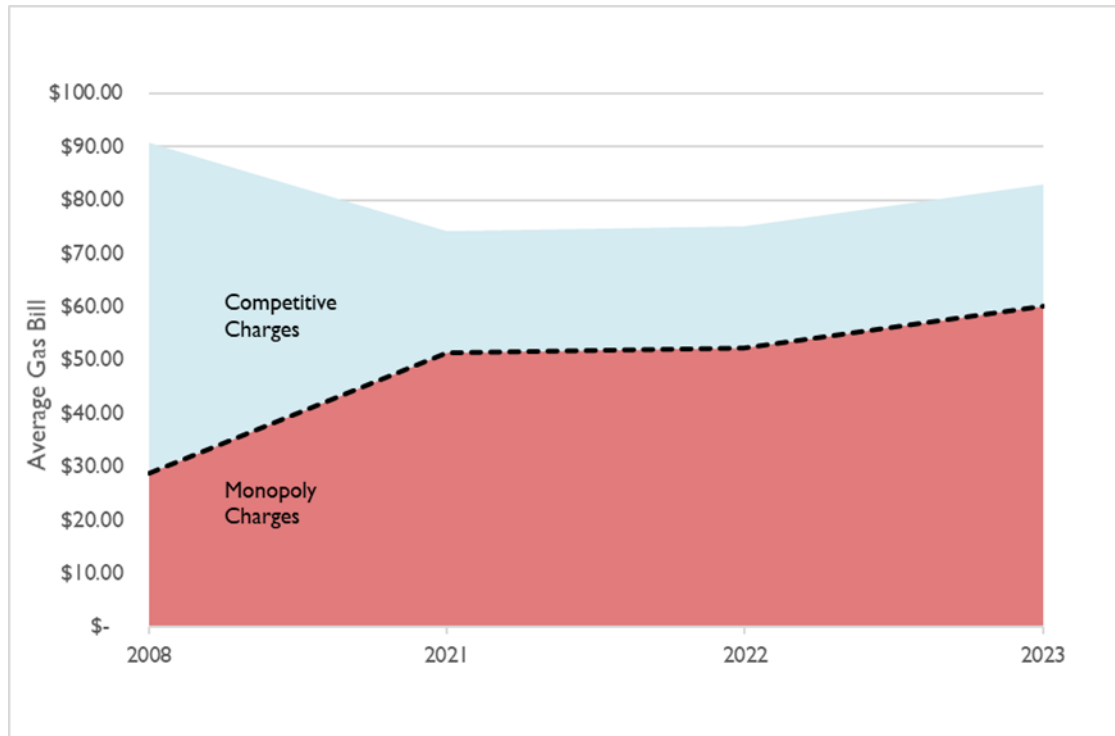
⁶ Case Rebuttal Testimony, p. 12, lines 11-14 and p. 13, lines 10-12.

1 upon the precipitous drop in competitive natural gas prices since 2008 which are
2 reflected in both the commodity price for natural gas and for electricity.

3 **Q How much of the reduction that Mr. Case references is due to the commodity**
4 **price of natural gas and electric?**

5 **A** All of it. Please see Chart 1 and Chart 2 below reflecting BGE’s calculation for
6 average natural gas and electric bills from 2008 through the end of its proposed
7 MYP.⁷ As shown for both natural gas and electric bills, BGE’s monopoly charges
8 continue to rise while the competitive commodity prices fall over this time period.
9 Therefore, while it may be true that overall bills are lower in 2023 than they were in
10 2008, it is not due to any action by BGE. Bills are lower in spite of BGE’s failure to
11 contain costs due to the drop in commodity charges.

12 *Chart 1. Natural Gas Customer Bills*



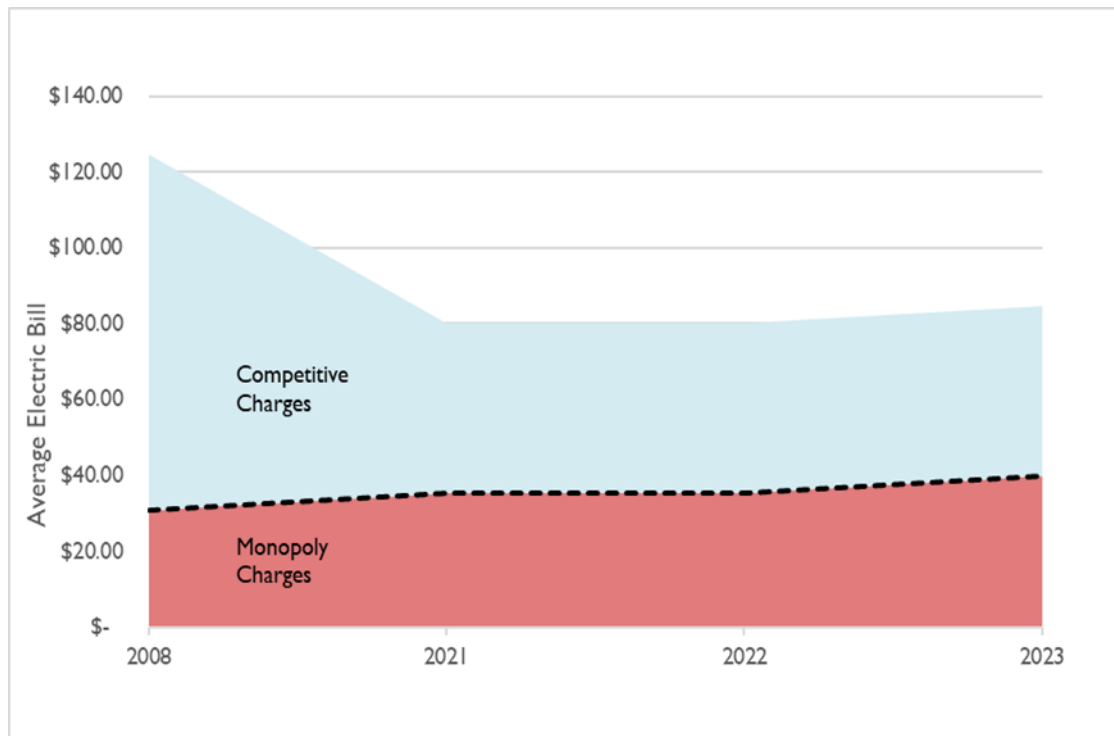
13

14

⁷ See BGE Response to OPC Data Request 34, Item No. OPCDR34-05 Attachment1.

1

Chart 2. Electric Customer Bills



2

3 **Q Why isn't customer bill impact more important than the increasing revenue**
4 **requirements you cite?**

5 **A** Mr. Case is using the precipitous drop in the competitive prices of the commodities
6 of natural gas and electricity to mask the growing costs of BGE's charges to deliver
7 the gas or electric (i.e. the monopoly service). He seems to be suggesting that it is
8 acceptable for BGE to increase the costs of its monopoly service because, as a result
9 of the drop in commodity prices for natural gas and electricity, customers either
10 won't notice or won't mind that BGE is charging them more for the service it
11 provides. At any rate, the customer bill reduction Mr. Case claims is unrelated to,
12 and in fact masks, BGE's dramatically increasing cost of service. In addition, there
13 is no guarantee that commodity prices will remain at their current levels. If or when
14 they begin to rise, customers will be left with even greater rate increases.

1 *BGE applauds itself for returning money collected for taxes not owed*

2 **Q How does Mr. Case offer a distraction from BGE’s pattern of revenue**
3 **requirement growth in excess of utility inflation?**

4 **A** Mr. Case boasts that “it should be noted that BGE was the first utility in the nation
5 to file to reduce base distribution revenues by more than \$100 million following the
6 Tax Cuts and Jobs Act of 2017.”⁸ BGE’s rates were established based upon a
7 federal corporate income tax rate of 35 percent which the Tax Cuts and Jobs Act
8 reduced to 21 percent.⁹ Unaddressed, the tax reduction would lead to an over-
9 collection of taxes that would result in rates becoming unjust and unreasonable.
10 Utilities across the country experienced the same fact pattern and Commissions
11 moved to refund money to customers.¹⁰ BGE did the right thing by moving to
12 remedy the overcollection, but the fact that the Commission was not required to
13 force BGE to do the right thing is not in any way related to BGE’s pattern of
14 revenue requirement growth in excess of utility inflation.¹¹

⁸ Case Rebuttal Testimony, p. 13-14, lines 22-2.

⁹ See FERC Order No. 849, Docket Nos. RM 18-11-000, RP 18-415-000 (Issued July 18, 2018), paragraph 5. Available at https://www.ferc.gov/sites/default/files/2020-04/20180718191720-RM18-11-000_2.pdf.

¹⁰ Lowrey, Dan, *A Deep Dive Into Tax Law Changes And the U.S. Utility Sector* (S&P Global Market Intelligence, March 23, 2018) available at <https://www.spglobal.com/marketintelligence/en/news-insights/research/a-deep-dive-into-tax-law-changes-and-the-u-s-utility-sector>.

¹¹ BGE’s filing was preceded not only by filings of multiple utility consumer advocates around the country, but also by orders from several public service commissions requiring utilities to make such filings (see, e.g., “Petition of the Office of People’s Counsel to Investigate the Regulatory Impacts of the Tax Cuts And Jobs Act of 2017 and Provide for Rate Relief for Customers of Investor-Owned Utilities,” at 2-3, filed by OPC on January 4, 2018, ML# 218408). BGE’s filing to reduce rates as a result of decreased federal income tax rates was not so much of a voluntary initiative to forego revenue as a recognition of the inevitable reduction of rates.

1 *BGE claims capital investment justifies its revenue requirement increases but*
2 *incongruously does not acknowledge related savings*

3 **Q** **What explanation does Mr. Case offer relating to BGE’s pattern of revenue**
4 **requirement growth more than utility inflation?**

5 **A** Mr. Case appears to suggest that increases in the revenue requirement are
6 exacerbated by “significant modernization investments such as AMI/Smart Grid.”¹²

7 **Q** **Would you expect that AMI/Smart Grid investment would push the revenue**
8 **requirement growth rate above utility inflation?**

9 **A** No. When BGE sought approval for the AMI investment in Case No. 9406, Mr.
10 Michael B. Butts testified that “the operational benefit/cost ratio of the Smart Grid
11 Initiative is 1.4, which means that the Smart Grid Initiative is cost-effective solely
12 based upon operational-related benefits.”¹³ Mr. Butts explained that BGE would
13 realize direct operational savings because of the Smart Grid investment in Meter
14 Operations; Storm Restoration Management; Reduction in Uncollectible Write-offs;
15 Avoided Capital Expenditures for storm restoration; avoided transmission and
16 distribution, conservation voltage reduction investment; and reduced theft of energy
17 and consumption on inactive meters.¹⁴ In response to an information request in this
18 case regarding those past claims, BGE explained that it has been five years since it
19 completed the deployment of the Smart Grid investment, and that “[a]s such, the
20 Company and its customers have already been realizing these benefits and will
21 continue to realize them on an ongoing basis. BGE’s operations reflect the
22 efficiencies gained through the deployment of this system as a part of its baseline
23 cost profile and these efficiencies are already reflected in base rate. Said another
24 way, the revenue requirements reflect these savings.”¹⁵ If the revenue requirements
25 reflect the savings from an investment that offered a benefit/cost ratio of 1.4, it

¹² Case Rebuttal Testimony, p.13, lines 16-20.

¹³ Case No. 9406, Direct Testimony of Michael B. Butts, p. 61.

¹⁴ *Ibid.*

¹⁵ BGE Response to OPC Data Request 34, Item No. OPCDR34-01.

1 seems unlikely that investment would be a driver for BGE's pattern of revenue
2 requirement growth in excess of utility inflation.

3 **III. BGE DOES NOT EXPLAIN HOW THE BGE MYP MITIGATES THE**
4 **PATTERN OF REVENUE INCREASES**

5 *BGE asserts that O&M increases will be flatter than inflation and capital spending will*
6 *decrease below 2019 levels during MYP*

7 **Q You previously testified that BGE's MYP continues an unrelenting pattern of**
8 **increases in its annual revenue requirement, which the reconciliations**
9 **authorized in the Pilot Order and as proposed within BGE's MYP could**
10 **further exacerbate. Did BGE respond to your assessment?**

11 **A** Yes. Mr. Vahos and Mr. Case both asserted that BGE's proposed Capital plan has a
12 lower amount of spend in every year of the MYP than in 2019 and also reflects an
13 annual growth rate of 0.5 percent in O&M.¹⁶ Mr. Vahos illustrated these trends in
14 Charts 3 and 4,¹⁷ which I will share here:

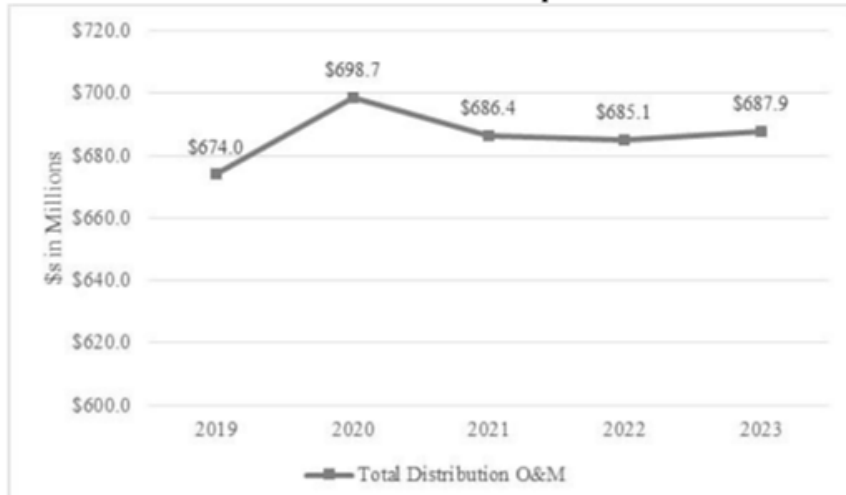
¹⁶ Vahos Rebuttal Testimony, pp. 5-6, lines 18-7; p. 9, lines 1-6; p. 7, lines 15-19; p.10, lines 14-17; and Case Rebuttal Testimony, p. 10, lines 13-22; p. 12, lines 1-2

¹⁷ Vahos Rebuttal Testimony, p.11.

Chart 3 – Trend of Annual Capital Spend⁶



Chart 4 – Trend of Annual Distribution O&M Spend⁷



1

2 *BGE's historical spend casts doubt on its future spending projections*

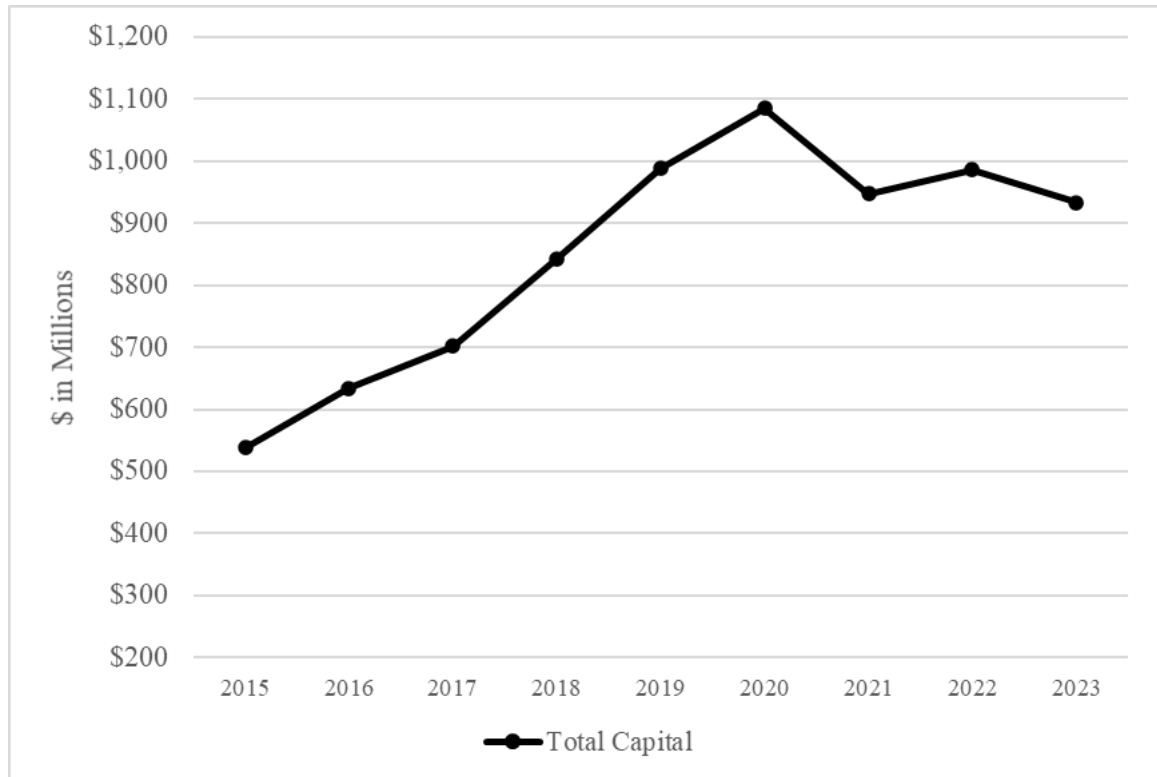
3 **Q Do you find Mr. Vahos' and Mr. Case' representations credible that BGE will**
4 **live within a capital plan that has a lower amount of spend in every year of the**
5 **MYP than in 2019?**

6 **A** No. Unfortunately, I do not. At the request of the OPC, BGE provided the data
7 necessary to provide historical context for the two charts prepared by Mr. Vahos
8 and copied above.¹⁸ The historical capital spending rate is included in Expanded
9 Chart 3, below. By including the capital plan data for prior years, we are able to see

¹⁸ BGE Response to OPC Data Request 34, Item Nos. OPCDR34-04-Attachment1 and OPCDR34-04-Attachment2.

1 that BGE’s historical capital spending growth was a robust 15 percent, compared to
2 an industry utility inflation rate of 1.5 percent. BGE accelerated that growth rate in
3 the two years prior to filing its MYP to 18.7 percent. BGE is asking this
4 Commission to believe that with the initiation of its MYP, BGE will be capable of
5 abruptly reversing its long-term spending patterns.

6 *Expanded Chart 3*



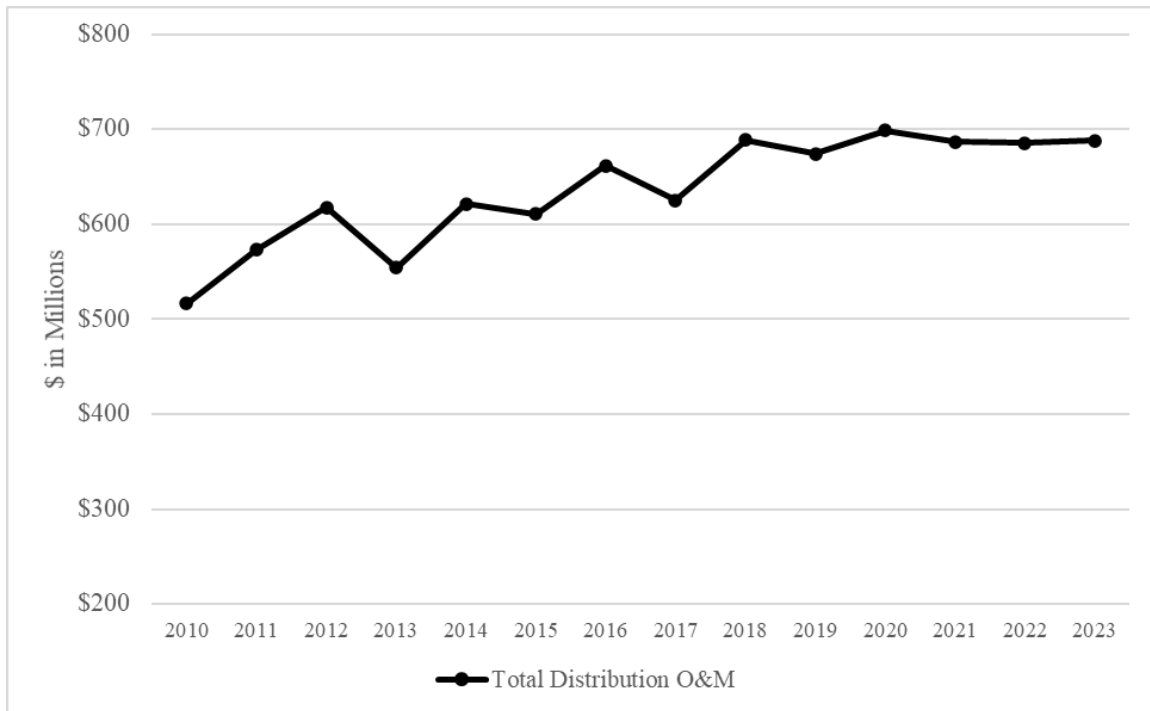
7

8 **Q Do you find Mr. Vahos’ and Mr. Case’ representations credible that BGE will**
9 **live within an O&M budget that reflects an annual growth rate of 0.5 percent?**

10 **A** No. Once again, BGE’s historical performance in O&M spending is at odds with its
11 projected future performance. It would therefore be illogical to expect such an
12 abrupt change. The historical O&M spending is graphed below on Expanded Chart
13 4. From 2010-2020, BGE grew its O&M spend at an annual growth rate of 3
14 percent. This is substantially more than the 0.5 percent projected for the MYP
15 years.

16

1 *Expanded Chart 4*



2

3 *BGE's MYP reconciliation enables BGE to seek increases above represented spend*
4 *trajectories*

5 **Q Does BGE's MYP include a design feature that will prevent BGE from**
6 **continuing its historical trajectories and spending and recovering above the**
7 **spend trajectories represented by Mr. Vahos in Charts 3 and 4?**

8 **A** No. In fact, the reconciliation feature included within the MYP enables BGE to seek
9 increases above the represented spend trajectories.

10 **Q Does BGE claim any part of the MYP will prevent BGE from spending above**
11 **and recovering above the spend trajectories represented by Mr. Vahos in**
12 **Charts 3 and 4?**

13 **A** No. BGE does not claim that any part of the MYP will prevent it from exceeding its
14 projected spending levels. The MYP places the burden of disallowing any of the
15 excess spending on the Commission and stakeholders during the prudency review at
16 the end of the MYP.¹⁹

¹⁹ Vahos Rebuttal Testimony, p. 16, lines 1-4.

1 **IV. BGE MYP FAILS TO COMPLY WITH COMMISSION ORDER**
2 **REGARDING FORECASTING METHODOLOGY**

3 *BGE does not dispute forecast methodology is internally inconsistent*

4 **Q You previously testified that you identified internal inconsistencies in BGE’s**
5 **forecasting methods within its MYP²⁰ despite the Commission’s admonition**
6 **that the pilot utility should be consistent in its forecasting method throughout**
7 **its MYP filing.²¹ Did BGE respond to your assessment?**

8 **A** No, not sufficiently. Mr. Vahos noted my observation that BGE’s forecasting lacks
9 consistency²² but did not contradict it.²³ He also acknowledged that more detail
10 regarding the budget could have been included in the Company’s application.²⁴ Mr.
11 Case acknowledged a single instance of inconsistency that I had identified
12 regarding BGE’s use of two different inflation rates and then explained why BGE
13 opted to use both.²⁵ Neither Mr. Vahos nor Mr. Case disputed the other
14 inconsistencies in the forecasting method that I noted. These included:

- 15 • innovation pilots doubled without explanation;
- 16 • tripling the budget for facilities to include HVAC, elevators, alarms, motors,
17 chillers, boilers, and paving without explanation;
- 18 • 200x historical budget for capital lifecycle projects without explanation;
- 19 • tripling of the historical electricity capacity expansion budget without
20 adequate data-driven explanation and despite falling system demand; and

²⁰ Roberto Direct Testimony, pp. 17-18, lines 2-11 and FN42.

²¹ Roberto Direct Testimony, p. 14, lines 11-19, referring to Order Establishing Multi-Year Rate Plan Pilot, February 4, 2020, Public Service Commission of Maryland Case No. 9618, *In Re: Alternative Rate Plans or Methodologies*, p. 21, paragraphs 41-42.

²² Vahos Rebuttal Testimony, p. 7, lines 12-13.

²³ Vahos Rebuttal Testimony, pp. 7-10, lines 12-9.

²⁴ Vahos Rebuttal Testimony, p. 6, lines 15-20.

²⁵ Case Rebuttal Testimony, p. 19, lines 1-7.

- 1 • 36.5 percent increase in electric new business capital over historical spending
2 despite the economic downturn.²⁶

3 ***BGE does not dispute BGE forecasts used to increase annual revenue do not comport***
4 ***with recognized MRP revenue escalation methodologies***

5 **Q You previously testified that BGE has not proposed increasing its annual**
6 **revenue requirement consistent with any of the three recognized methods as**
7 **described in the U.S. Department of Energy’s paper *State Performance-Based***
8 ***Regulation Using Multiyear Rate Plans for U.S. Electric Utilities: the index***
9 **method, the utility cost forecast method, or the hybrid method.²⁷ Did BGE**
10 **respond to your assessment?**

11 **A Yes. Mr. Case disagreed that any of these methods were applicable to BGE’s MYP,**
12 claiming that the Commission did not agree they were appropriate for Maryland.²⁸

13 **Q Do you agree that the Commission has rejected all three of these methods?**

14 **A No. As I testified previously, the Commission directed that forecasts should begin**
15 with a 12-month historical test year but that it would not require the pilot utility to
16 use a particular forecasting method. The Commission admonished that the utility
17 should be consistent in its method.²⁹ The paper I referenced constitutes a
18 comprehensive examination of revenue escalation methods for multiyear rate plans
19 throughout the United States. The Commission did not reject these methods. In fact,
20 the utility cost forecast method, as detailed in *State Performance-Based Regulation*
21 *Using Multiyear Rate Plans for U.S. Electric Utilities* begins with the utility’s costs
22 and escalates them based upon set percentages each year, functioning much like a
23 rate case with multiple forward test years.³⁰ This construct appears to be aligned

²⁶ Roberto Direct Testimony, pp. 17-18, FN42.

²⁷ Roberto Direct Testimony, p. 16, lines 13-14.

²⁸ Case Rebuttal Testimony, pp. 16-17, lines 17-2.

²⁹ Roberto Direct Testimony, p. 14, lines 14-19.

³⁰ Lowry, MN, J Deason, M Makos, L Schwartz. 2017. *State Performance-Based Regulation Using Multiyear Rate Plans for U.S. Electric Utilities*, U.S. Department of Energy Grid Modernization Laboratory Consortium, Section 4.2
https://eta.lbl.gov/sites/default/files/publications/multiyear_rate_plan_gmlc_1.4.29_final_report071217.pdf*State Performance-Based Regulation Using Multiyear Rate Plans for U.S. Electric Utilities*.

1 with the Commission’s direction as well as the filing requirements developed in the
2 PC51 Interim Report.

3 **Q Did BGE describe its revenue escalation method in its rebuttal testimony?**

4 **A** Yes. Both Mr. Case and Mr. Vahos claimed that BGE had adopted a utility cost
5 forecast method. However, each had their own definition, both of which also varied
6 from the methodology described in *State Performance-Based Regulation Using*
7 *Multyear Rate Plans for U.S. Electric Utilities*.³¹ Mr. Vahos defined a utility cost
8 forecast method to be “the Company’s budgeted costs associated with its
9 workplans.”³² Mr. Case’s definition of utility forecast method was “a revenue
10 requirement based upon the Company’s revenue needs.”³³

11 **Q Does BGE claim that its forecast method is consistent with any of the three**
12 **recognized methods as described in the U.S. Department of Energy’s paper**
13 ***State Performance-Based Regulation Using Multyear Rate Plans for U.S.***
14 ***Electric Utilities?***

15 **A** No. It does not.

16 *BGE misunderstands or misrepresents testimony on utility cost method*

17 **Q In response to a question about observations offered in your Direct Testimony,**
18 **Mr. Case responds “Finally, the idea that utility forecasts are not used as a**
19 **basis for multi-year plans around the country is simply not correct.” Did you**
20 **testify that utility forecasts are not used in multi-year plans?**

21 **A** No, I did not. Mr. Case does not reference any part of my Direct Testimony when
22 he suggests that I made such a statement; therefore, I don’t know how he came to
23 that conclusion. My testimony explicitly offered the utility cost method as one of
24 three recognized methods for revenue escalation.³⁴ I described how the utility cost

³¹ *Ibid.*

³² Vahos Rebuttal Testimony, p. 8, lines 15-19.

³³ Case Rebuttal Testimony, p. 17, lines 9-12.

³⁴ Roberto Direct Testimony, p. 15, lines 1-4.

1 method works³⁵ and provided New York as an example of a jurisdiction that has
2 adopted the utility cost forecast method.³⁶

3 ***BGE’s application of a “utility cost method” does not meet the Commission’s Order***
4 ***regarding revenue forecasting methodologies***

5 **Q If you agree that utility forecasts can be used as a basis for a multi-year plans,**
6 **do you agree that BGE’s revenue forecasting methodology complies with the**
7 **Commission’s order and good regulatory practice?**

8 No. As I describe above, the Commission’s clear litmus test for forecasting was
9 consistency. As I have noted, the Company’s approach to spending forecasting
10 lacks consistency. BGE’s forecasting does not appear to adhere to a cohesive
11 forecasting approach. BGE has described its forecasting method as a product of its
12 prediction of its future needs based upon company -specific work plans, the
13 development of budgets for capital investment and O&M expenses at a project level
14 based upon historical trends in spending,³⁷ and escalation of those budgets by an
15 inflation factor.³⁸ However, it contains inexplicable and unpredictable escalations
16 that neither match to discernable workplans or indices nor offer transparency. In
17 multiple instances, the budgets upon which BGE builds its spending forecast
18 contain placeholders—in other words, dollars for projects that are not defined and
19 do not exist.³⁹ The budgets also contain projects which BGE now knows will not be
20 built.⁴⁰ As for BGE basing its budgets upon historical spends with escalation for

³⁵ Roberto Direct Testimony, p. 16, lines 5-9.

³⁶ Roberto Direct Testimony, p. 16, lines 10-11.

³⁷ Prepared Direct Testimony of David M. Vahos – Part II submitted on behalf of Baltimore Gas and Electric Company, May 15, 2020, pp. 16-29.

³⁸ See Prepared Direct Testimony of A. Christopher Burton submitted on behalf of Baltimore Gas and Electric Company, May 15, 2020, p. 31, line 1 and Company Exhibit ACB-1, pp. 3 of 17, 14 of 17; See also Prepared Direct Testimony of Robert D. Biagiotti, P.E. on behalf of Baltimore Gas and Electric Company, May 15, 2020, p. 20, lines 8 and 20, p. 22, line 8, p. 24, line 2, p. 26, lines 7 and 21, Company Exhibit RDB-1, pp. 2 of 35, 4 of 35, 5 of 35, 24 of 35, 25 of 35.

³⁹ See e.g. Direct Testimony of Brendan Larkin-Connolly, submitted on behalf of the Office of People’s Counsel, August 14, 2020, pp. 46-47, 48, describing placeholders for information technology.

⁴⁰ BGE Responseto StaffDR 74-01(b), August 7, 2020.

1 inflation, as listed above, a review of BGE’s budgets shows multiple instances in
2 which historical budgets were doubled or tripled or more without explanation.⁴¹

3 **V. WELL-DESIGNED PILOTS ACCOUNT FOR REVIEW AT INITIATION**

4 **Q You have previously testified that BGE’s MYP does not address the**
5 **Commission’s requirement that a utility-proposed MYP contain “adequate**
6 **reporting requirements, separate and distinct from the Annual Informational**
7 **Filing that the Commission also required.⁴² Did BGE respond to your**
8 **assessment?**

9 **A** Yes. Mr. Case confirmed that BGE’s plan included annual project lists and Annual
10 Informational Filings, but he offered no proposal to address the Commission’s
11 separate requirement that the Pilot Utility’s plan must demonstrate that it contains
12 adequate reporting requirements.⁴³

13 **Q Do annual project lists and Annual Informational Filings constitute “adequate**
14 **reporting requirements” under Order 89482?**

15 **A** No. Order 89482 Paragraph 4 states that the Pilot Utility must demonstrate that its
16 plan contains an annual projects list, at subsection (1); has an annual informational
17 filing, at subsection (5); and “contains adequate reporting requirements,” at
18 subsection (6). The Commission noted that these requirements present the minimum
19 MRP requirements. It is logical to understand that the Commission intended that the
20 MRP contain reporting requirements in addition to those it listed specifically since

⁴¹ See Direct Testimony of David Effron, submitted on behalf of the Office of People’s Counsel, August 14, 2020, pp. 12-15 for an escalation of minor storm damage line item; See Direct Testimony of Brendan Larkin-Connolly, submitted on behalf of the Office of People’s Counsel, August 14, 2020, pp. 42-43 describing gas tools budget more than doubling without explanation, pp. 50-51 describing fleet budget more than doubling without explanation, pp. 59-60 describing innovation pilots doubled without explanation, pp. 60-61 describing “other capital” more than doubling without explanation, pp. 52-53 describing tripling the budget for facilities to include HVAC, elevators, alarms, motors, chillers, boilers, and paving without explanation, and pp. 53-54 describing an astonishing 200x historical budget for capital lifecycle projects, a gain, without explanation; See Panel Response Testimony of Paul J. Alvarez and Dennis Stephens EE, on behalf of the Maryland Office of People’s Counsel, August 14, 2020, pp. 36-43, describing a tripling of the historical electricity capacity expansion budget without a adequate data-driven explanation and despite falling system demand, pp. 50-52, describing a 36.5% increase in electric new business capital over historical spending despite the economic downturn.

⁴² Roberto Direct Testimony, pp. 10-11, lines 14-13.

⁴³ Case Rebuttal Testimony, p. 15, lines 5-13.

1 the Commission included the minimum requirement that the plan must contain
2 “adequate reporting requirements,” separate and distinct from the projects lists and
3 annual informational filing.

4 **Q You have previously testified that adequate reporting requirements would, at a
5 minimum, include metrics to support a framework for evaluating the pilot
6 MRP effort. Did BGE respond to your recommendation?**

7 **A** Yes. Mr. Case rejected my recommendation. He stated “[t]here is no need for the
8 Commission to determine in its order on rates in this proceeding what should or
9 should not be looked at in that future lessons learned process.”⁴⁴

10 **Q How do you respond to Mr. Case’s dismissal of the need to include metrics at
11 the initiation of the pilot to support a framework for evaluating a pilot?**

12 **A** Well-designed utility pilots include a plan for how to evaluate the pilot at the
13 initiation of the pilot. This Commission found that to be the case when it rejected
14 BGE’s Prepaid pilot proposal.⁴⁵ This would be true even if the Commission had not
15 required “adequate reporting requirements” in the pilot order. My recommendation
16 that BGE’s MRP, at the very least, include metrics to support a post-
17 implementation review of the pilot MRP effort is consistent with best practices for
18 utility pilots. The recently issued *A Handbook for Designing, Implementing, and
19 Evaluating Successful Electric Utility Pilots*⁴⁶ identifies seven steps of critical pilot
20 planning with the first step being to develop an evaluation plan, and that evaluation
21 plan begins with establishing metrics:

22 Based on the objectives (citation omitted) and design (citation omitted) of
23 the pilot, a formal evaluation plan should be developed for the subsequent
24 analysis effort that will be undertaken at one more points after the pilot
25 begins. However, this evaluation plan should be created concurrent with

⁴⁴ Case Rebuttal Testimony, p. 15, lines 16-22.

⁴⁵ Order No. 88438, October 25, 2017, Public Service Commission of Maryland Case No. 9453, *In Re: Request of BGE for Approval of Prepaid Pilot Program*, pp. 19-20.

⁴⁶ Cappers, Peter and C. Anna Spurlock, “A Handbook for Designing, Implementing, and Evaluating Successful Utility Pilots” (Prepared for the Office of Electricity Delivery and Energy Reliability National Electricity Division, U.S. Department of Energy by Ernest Orlando Lawrence Berkeley National Laboratory, September 2020) available at <https://escholarship.org/content/qt27v8g0v0/qt27v8g0v0.pdf?t=qg4pls>.

1 the design of the pilot. Absence of meaningful feedback and interaction
2 between the design and evaluation effort risks not thoroughly and
3 comprehensively addressing the critical issues, research questions, and
4 hypotheses that are to be the pilot’s focus. It is necessary to determine the
5 appropriate evaluation methods and techniques at the same time that the
6 pilot’s design is being undertaken to ensure this problem will not occur.
7 ... The evaluation plan should document, at a minimum, three distinct but
8 connected components, as follows: (1) **Establish metrics for testing**
9 **hypotheses.** ... (2) **Identify data needs and collection methods.** ... (3)
10 **Select analytical evaluation techniques.** (Emphasis in original.)⁴⁷

11 **Q But is this Handbook really intended to be applicable to a pilot MRP?**

12 **A** Yes. The Handbook was designed to identify “a comprehensive process for not only
13 designing and evaluating a pilot, but also implementing, successful utility pilots that
14 provide actionable outcomes upon which more informed decisions can be made.”⁴⁸
15 The type of utility pilots it contemplates includes changes to a utility’s regulatory or
16 business model.⁴⁹

17 **Q Considering Mr. Case’s rebuttal testimony regarding your observations and**
18 **recommendations regarding the BGE MRP’s failure to contain adequate**
19 **reporting requirements, do you stand by your testimony?**

20 **A** Yes. As my Direct Testimony noted and BGE has confirmed, BGE has not
21 addressed the requirement of Order 89482 Paragraph 4(6). There are likely any
22 number of additional reporting requirements that would benefit the MRP but at the
23 very least, the MRP should include reporting requirements for metrics to support
24 evaluation of the pilot MRP such as those outlined in my Direct Testimony.

⁴⁷ *Id.* at pp. 12-13.

⁴⁸ *Id.* at pp. 1-2.

⁴⁹ *Ibid.*

1 VI. REMAINING ISSUES REQUIRING CORRECTION

2 *BGE misses the requirement for materiality in the Off Ramp*

3 **Q Mr. Case has testified that “it is not clear what specifically OPC finds**
4 **inadequate with BGE’s off-ramp proposal as I likewise proposed an off-ramp**
5 **provision that would ‘protect customers and the Company from extraordinary**
6 **circumstances outside the control of the utility that occur during the MYP**
7 **period.’”⁵⁰ Please clarify what you have found to be missing from BGE’s off-**
8 **ramp proposal.**

9 **A** While BGE generally adopts the Commission’s language regarding extraordinary
10 circumstances outside the utility’s control that warrant Commission intervention to
11 modify or terminate the MRP, it did not include the threshold materiality
12 requirement that the impact of the extraordinary circumstance must be such that it
13 “calls into question whether the existing rates are just and reasonable or threaten the
14 fiscal solvency of the utility.” It is for this reason that I had recommended that the
15 Commission modify BGE’s MRP off-ramp proposal to provide that the off-ramp is
16 only available for extraordinary circumstances outside of the control of the utility
17 *that have the potential to cause substantial harm to BGE’s ability to serve*
18 *customers, threaten its fiscal solvency, or results in rates that are unjust or*
19 *unreasonable.*⁵¹

20 *BGE misunderstands or misrepresents testimony on an adder to the return on equity*

21 **Q Mr. Vahos has testified that you have asserted that “public service**
22 **commissions use the authorized ROE as a “stick” but never a “carrot” and**
23 **that this is “factually inaccurate.” Is that your testimony?**

24 No, it is not. This statement mischaracterizes my testimony. As I testified, I am not
25 aware of a circumstance in which a Commission increased an authorized return on
26 equity for *historical* performance. In fact, BGE has acknowledged that “[a] utility’s
27 performance – good or bad – is not an input used in any of the models commonly

⁵⁰ Case Rebuttal Testimony, p. 16, lines 7-11.

⁵¹ Roberto Direct Testimony, p. 13, lines 7-23.

1 used for determining the appropriate return on equity.”⁵² I did state, and reaffirm
2 here, that it is a regulatory practice for a commission to express its displeasure with
3 historical utility performance by reducing an authorized return on equity during a
4 following rate case. I referenced an instance when the Hawaii Public Utilities
5 Commission reduced authorized return on equity for poor historical performance by
6 MECO.⁵³ I also referenced an instance when this Commission did the same in a
7 Pepco rate case.⁵⁴

8 I do agree with Mr. Vahos that a utility’s historical performance can be a factor for
9 a commission to consider in determining where *within* the calculated return on
10 equity range the ROE should be set, but not as an adder, to the selected ROE.⁵⁵

11 I also agree with Mr. Vahos that as part of an adopted performance-based regulation
12 schema a Commission will likely use performance to establish incentives, including
13 incentives potentially linked to ROE. I stated this in my Direct Testimony noting
14 that this Commission is examining just such incentives in Case No. 9618, Phase
15 II.⁵⁶ BGE in some future rate case may be able to participate in such performance
16 incentives.

17 Finally, Mr. Vahos’ reference to FERC ROE adders is misplaced.⁵⁷ Enhanced
18 ROEs to incent certain types of investment at the Federal level do exist, but are
19 unrelated to BGE’s argument for a performance bonus adder in this rate case.

⁵² BGE Response to OPC Data Request 28-01(e), August 7, 2020.

⁵³ *Ibid.*

⁵⁴ Order No. 85028, July 20, 2012, Maryland Public Service Commission Case No. 9286, *In Re: Application of Potomac Electric Power Company for Authority to Increase its Rates and Charges for Electric Distribution Service*, p. 108.

⁵⁵ Case Rebuttal Testimony, p. 22, FN 19; I was able to review the 1983 Alaska case cited which is available at <http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=1aaa8914-1ae5-45f6-ba7d-eee6c68439bd> but the two cases from the mid-1990s in Pennsylvania do not appear to be available on the public website or through the Enerknol subscription service.

⁵⁶ Roberto Direct Testimony, p. 22, lines 3-11.

⁵⁷ Vahos Rebuttal Testimony, p. 21, FN 18.

1 *The Commission has not waived 2019 Historic Test Year prudency review*

2 **Q Mr. Vahos testified in his rebuttal that “[t]he inclusion of 2019 and 2020 in the**
3 **OPC-proposed adjustments should be rejected ... [a]cceptance of any of the**
4 **OPC proposed adjustments should be limited to the 2021-2023 period as**
5 **including 2019 and 2020 amounts is jeopardizing funds already invested for**
6 **customers...this proceeding should not devolve into a referendum on Capital**
7 **expenditures that have already occurred.” Do you agree with his statement**
8 **that the Commission should accept BGE’s 2019 Historic Test Year without**
9 **adjustment?**

10 **A** No. Nothing in the Commission’s Order suggests or implies that it has relinquished
11 its fundamental regulatory responsibility to review historical test year data for
12 prudency in the context of a rate case. BGE’s MYP is a rate case. The
13 Commission’s review is even more important in this matter because the
14 Commission has directed that the MRP be developed from the historical test year. If
15 the test year includes imprudent spending or any other errors, those mistakes will
16 cascade throughout the remaining years of the MRP. For these reasons, I do not
17 agree that the Company’s test year spending or bridge year projections are immune
18 from critique as Mr. Vahos suggests.

19 **VII. COMMISSION HAS THE AUTHORITY AND DISCRETION TO**
20 **MODIFY BGE MYP TO ENSURE JUST AND REASONABLE RATES**

21 **Q Both Mr. Vahos and Mr. Case have characterized testimony by the Office of**
22 **People’s Counsel to be asking the Commission to grant a “redo” on the PC51**
23 **and Case No. 9618 processes⁵⁸ or expressing dissatisfaction with Order No.**
24 **89226, the December 20, 2019 workgroup report and an attempt to “have the**
25 **Commission re-open decisions made in those matters.”⁵⁹ Do you have a**
26 **response to this characterization?**

27 **A** Yes, I do. The witnesses for the OPC have diligently applied the Commission’s
28 Order to BGE’s proposed MYP and have found the MRP wanting in several
29 respects. By identifying those deficiencies within the BGE MYP application,

⁵⁸ Case Rebuttal Testimony, pp. 3-4, lines 21-1; Vahos Rebuttal Testimony, p. 5, lines 18-19.

⁵⁹ Case Rebuttal Testimony, List of Issues and Major Conclusions.

1 highlighting the impact of those deficiencies on BGE’s customers, and
2 constructively offering remedies, the OPC is performing its statutory responsibility.

3 **Q Is there any limitation upon the Commission’s authority to modify BGE’s**
4 **MYP proposal to ensure that it produces just and reasonable rates?**

5 **A** None. The Commission has the discretion to approve, modify and approve, or
6 disapprove BGE’s MYP proposal as it sees fit.

7 **Q Considering the rebuttal testimony provided by Mr. Vahos and Mr. Case and**
8 **the responses to information requests provided by BGE, do you have any**
9 **additional observations for the Commission?**

10 **A** Yes. BGE has presented what appear to be overly optimistic assumptions about its
11 ability to control spending. The MYP, as proposed, places the burden on the
12 Commission and stakeholders to hold BGE to these spending trajectories using a
13 prudence review. Yet, the inconsistency in BGE forecasts call into question whether
14 there is sufficient transparency for the Commission and stakeholders to conduct
15 effective prudence reviews within the time allotted. As a mitigation to these
16 challenges, the Commission may wish to consider the structure of the Minnesota
17 multi-year plan referred to by Mr. Case that also relies upon utility forecasting but
18 includes a one-way downward only reconciliation.⁶⁰ This feature would ensure that
19 customers do in fact receive the benefit of BGE’s spending trajectories.

20 **Q Does this conclude your testimony?**

21 **A** Yes, it does.

⁶⁰ Case Rebuttal Testimony, pp. 8-9, lines 22-1, FN 5.