

1 **Q: Please state your name, occupation, and business address.**

2 A: My name is Jonathan F. Wallach. I am Vice President of Resource Insight, Inc.,
3 5 Water Street, Arlington, Massachusetts.

4 **Q: Are you the same Jonathan F. Wallach that filed direct testimony in this**
5 **proceeding?**

6 A: Yes.

7 **Q: On whose behalf are you testifying?**

8 A: I am testifying on behalf of the Office of People's Counsel ("OPC").

9 **Q: What is the purpose of your rebuttal testimony?**

10 A: This rebuttal testimony responds to direct testimony by C. Shelley Norman on
11 behalf of the staff of the Public Service Commission ("Staff") regarding the
12 Company's proposal to recover increased Baltimore City conduit fees through a
13 new surcharge. Specifically, my rebuttal testimony addresses Dr. Norman's
14 recommendation that incremental conduit fees be recovered solely from
15 Baltimore City residents.

16 **Q: Please summarize the Company's proposal with regard to the recovery of**
17 **Baltimore City conduit fees.**

18 A: The Company has filed suit against Baltimore City, challenging an increase in
19 Baltimore City conduit fees on the grounds that the new conduit fee is set at a
20 level that exceeds the cost to maintain and upgrade the conduit system and that
21 revenues from the fee increase are being used for purposes other than
22 maintaining the conduit. Given that the outcome of litigation is uncertain, BGE
23 proposes to recover incremental expenses from the fee increase in a separate
24 surcharge and to continue to recover expenses attributable to the old fee through
25 base distribution rates. The Company further suggests two options for

1 recovering surcharge costs from BGE ratepayers. If the Commission finds that
2 revenues from the fee increase will be used for something other than
3 maintaining the conduit system, BGE recommends that the fee increase be
4 recovered solely from Baltimore City ratepayers. On the other hand, if the
5 Commission finds that the fee increase will be used solely to maintain and
6 upgrade Baltimore City's conduit system, then BGE recommends that the fee
7 increase be recovered from all distribution customers.

8 **Q: Which option for recovering the fee increase does Dr. Norman**
9 **recommend?**

10 A: Dr. Norman recommends that the fee increase be recovered solely from
11 Baltimore City ratepayers.

12 **Q: Is Dr. Norman's recommendation based on a finding that revenues from**
13 **the fee increase will be used for something other than maintaining the**
14 **conduit system?**

15 A: No. To the contrary, Dr. Norman states that Staff is unable at this time to
16 determine whether conduit fees have been increased by more than the amount
17 needed to maintain the conduit system:

18 The uncertainties regarding the nature of, need for and benefits of the work
19 the City may undertake to improve the conduit system given the suddenly
20 increased revenues from conduit leasing are significant. Additionally, the
21 reasoning for and methodology underlying the prioritizing of different
22 kinds and locations of work on the conduit system, and the degree to which
23 it reflects utility needs rather than other purposes of the City, is unclear.
24 Despite extensive discovery, information and resource constraints mean
25 Staff is unable at this time to provide a satisfactory estimate of the amount
26 of the increase, if any, that is appropriately linked to utility conduit needs
27 and suitable for recovery in base rates.¹

¹ *Public Direct Testimony and Exhibits of C. Shelley Norman, PhD., on behalf of the Staff of the Public Service Commission of Maryland, Case No. 9406, February 8, 2016, p. 39.*

1 Instead, Dr. Norman recommends recovery solely from Baltimore City
2 ratepayers simply because she “must allow for the possibility that some portion
3 of this rate increase is related to purposes extending beyond those of the
4 provision of utility service.”²

5 **Q: Is Dr. Norman’s recommendation reasonable?**

6 A: No. If Dr. Norman’s recommendation is accepted and the Courts rule in the
7 City’s favor, finding that the conduit fee increase is based on the costs of
8 maintaining the conduit system, Baltimore City ratepayers would suffer a
9 substantial financial burden. In that case, Baltimore City ratepayers alone would
10 have unreasonably paid for previously incurred conduit expenses that should
11 have been recovered from all BGE ratepayers. Moreover, according to Dr.
12 Norman, Staff would oppose reversing this misallocation of conduit expenses
13 after the fact on the grounds that such a reversal would constitute retroactive
14 ratemaking.³

15 In contrast, if the fee increase were recovered from all ratepayers through
16 the proposed surcharge mechanism, then all ratepayers would be held harmless
17 regardless of the Court’s ruling. If the Courts were to find that the fee increase
18 was needed to maintain the conduit system, then the Company’s conduit
19 expenses incurred to that point would have already been appropriately allocated
20 to and recovered from all ratepayers. On the other hand, if the Courts were to
21 find that the fee increase exceeded the cost to maintain the conduit system, then
22 any refunds of excess charges would be appropriately credited to all ratepayers
23 through the surcharge true-up mechanism.

² *Id.*

³ Staff Response to OPC Data Request No. 1-4. A copy of this response is provided as Attachment JFW-4.

1 **Q: What do you recommend with regard to the allocation of incremental**
2 **conduit expenses?**

3 A: The Commission should reject Dr. Norman's recommendation to recover the fee
4 increase solely from Baltimore City ratepayers. Instead, as I concluded in my
5 direct testimony, conduit fees should continue to be recovered from all
6 ratepayers.

7 **Q: Does this conclude your rebuttal testimony?**

8 A: Yes.

Case No. 9406 - In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to its Electric and Gas Base Rates

**Office of People's Counsel Data Request No. 1 to Staff
Request Date: February 12, 2016**

**Staff Response to OPC DR No. 1 to Staff
Response Date: February 22, 2016**

1-4. If the Commission agrees with witness Norman's recommendation that "a rider be allowed for customers within the City of Baltimore," and then subsequently the Circuit Court for Baltimore City finds that the entire conduit fee increase is attributable to the cost of maintaining the conduit system for utility purposes:

- a. Would witness Norman propose that City customers be partially refunded the amounts that they alone paid towards the conduit fee increase? If your answer is in the affirmative, please describe in detail how such refunds would be calculated and how they would be credited back to City customers. If your answer is in the negative, please explain your answer in detail.
- b. If your answer to part (a) is in the affirmative, state whether witness Norman would propose that non-City customers be billed the amounts refunded to city customers, explaining how such amounts would be calculated and how they would be billed to non-City customers.

STAFF RESPONSE:

It is not possible to answer this question definitively without knowing the circumstances and facts of Commission, and Court decisions in reaching settlements or conclusions, but in general we cannot support retroactive rates which would change the rates that were previously charged under an existing tariff. It is possible the City and the Company might reach an agreement that operates to compensate City ratepayers to some extent via the true up mechanism in the proposed Rider, but failing that Staff would recommend that costs incurred for utility purposes be socialized across the service territory once a court decision, a settlement between the Parties, or some other conclusion has been reached, without regard to previous recovery.

SPONSOR: Dr. C. Shelley Norman