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BALTIMORE CITY COUNCIL LEGISLATIVE INVESTIGATIONS COMMITTEE

Mission Statement

The Committee on Legislative Investigations is responsible for studying the continuing operations, efficiency, and functions of the departments, bureaus, commissions, boards and agencies of the Mayor and City Council of Baltimore and investigate complaints or allegations of faulty operations, inefficiency, or malfunctioning in any of these departments, bureaus, commissions, boards, and agencies.

Beginning February 6, 2023, the *Committee on Legislative Investigations* was convened to investigate Baltimore City's plans and management for our underground conduit system and the Committee will continue that focus until they receive satisfactory responses from the administration and relevant stakeholders.

**The Honorable Eric T. Costello
Chairman**

PUBLIC HEARING

**THURSDAY, FEBRUARY 23, 2023
5:00 PM**

COUNCIL CHAMBERS

Legislative Oversight #LO 23-0031

Baltimore City's Analysis on the Sale or Control of Conduit System

RECONVENING HEARING

CITY COUNCIL COMMITTEES

ECONOMIC AND COMMUNITY DEVELOPMENT

(ECD)

Sharon Green Middleton, Chair

John Bullock – Vice Chair

Mark Conway

Ryan Dorsey

Antonio Glover

Odette Ramos

Robert Stokes

Staff: Jennifer Coates

WAYS AND MEANS (W&M)

Eric Costello, Chair

Kristerfer Burnett

Ryan Dorsey

Danielle McCray

Sharon Green Middleton

Isaac “Yitzy” Schleifer

Robert Stokes

Staff: Marguerite Currin

PUBLIC SAFETY AND GOVERNMENT

OPERATIONS (SGO)

Mark Conway – Chair

Kristerfer Burnett

Zeke Cohen

Erick Costello

Antonio Glover

Phylicia Porter

Odette Ramos

Staff: Matthew Peters

EDUCATION, WORKFORCE, AND YOUTH (EWY)

Robert Stokes – Chair

John Bullock

Zeke Cohen

Antonio Glover

Sharon Green Middleton

Phylicia Porter

James Torrence

Staff: Marguerite Currin

HEALTH, ENVIRONMENT, AND TECHNOLOGY

(HET)

Danielle McCray – Chair

John Bullock

Mark Conway

Ryan Dorsey

Phylicia Porter

James Torrence

Isaac “Yitzy” Schleifer

Staff: Matthew Peters

RULES AND LEGISLATIVE OVERSIGHT

(OVERSIGHT)

Isaac “Yitzy” Schleifer, Chair

Kristerfer Burnett

Mark Conway

Eric Costello

Sharon Green Middleton

Odette Ramos

James Torrence

Staff: Richard Krummerich

LEGISLATIVE INVESTIGATIONS

Eric Costello, Chair

Sharon Green Middleton, Vice Chair

Isaac “Yitzy” Schleifer, Chair

Robert Stokes

Danielle McCray

Staff: Marguerite Currin



LEGISLATIVE OVERSIGHT

Committee: Legislative Investigations

Legislative Oversight # LO 23-0031

Baltimore City’s Analysis on the Sale or Control of Conduit System

Purpose:

For the purpose of discussing the deal with Baltimore Gas and Electric regarding the city’s conduit system and to obtain information from the executive administration about the City’s plan for the maintenance, capital improvements, or any other terms of the duties under the franchise agreements related to the underground conduit system.

Agencies/Organizations Reporting

| |
|------------------------------|
| Mayor’s Office |
| Baltimore Gas and Electric |
| Department of Public Works |
| City Solicitor’s Office |
| Comptroller’s Office |
| Department of Transportation |
| Department of Finance |

Analysis

Current Law

Baltimore City Code - Article 1

§ 1-4. Committee on Legislative Investigations.

(a) Committee established.

A standing committee of the City Council is established, to be known as the Committee on Legislative Investigations.

(b) Composition.

- (1) The Committee comprises 5 Councilmembers, to be appointed from time to time by the Council President, with the approval of the City Council.
- (2) The President, with the approval of the Council, shall designate 1 member as the Committee’s Chair and another member as the Committee’s Vice-Chair.

(c) General functions

On its own motion or at the request of any person, the Committee may:

- (1) study the continuing operations, efficiency, and functions of the several departments, bureaus, commissions, boards, and agencies of the Mayor and City Council of Baltimore; and
- (2) investigate complaints or allegations of faulty operations, inefficiency, or malfunctioning in any of these departments, bureaus, commissions, boards, and agencies.

(d) Oaths and subpoenas.

(1) In undertaking any study or investigation under this section, the Committee may:

- (i) on motion approved by a majority of its members, issue subpoenas:
 - (A) to compel the attendance of witnesses;
 - (B) to compel the production of any relevant papers, books, accounts, records, documents, and testimony; and
 - (C) to cause the deposition of witnesses to be taken, in the manner provided by law for taking depositions in a civil case; and
- (ii) administer oaths to all witnesses.

(2) For purposes of paragraph (1) of this subsection, papers, books, accounts, records, documents, and testimony are considered relevant if they:

- (i) refer or relate to the matters under study or investigation;
- (ii) assist in assessing the credibility of a witness;
- (iii) contradict or corroborate the testimony of a witness; or
- (iv) demonstrate the existence of undue influence on a witness.

(e) Service of subpoena.

A subpoena issued under this section shall be served: (1) in the manner provided by law for service of a subpoena in a civil action;

(2) at least 10 calendar days before the time that the subpoena sets for attendance or for the production of papers, books, accounts, records, or documents; and

(3) with the following:

- (i) a statement of the subject of the study or investigation to which the subpoena relates;
- (ii) if the subpoena requires the appearance of a person, notice that the person may be accompanied by counsel; and
- (iii) a copy of this section and of any rules adopted by the Committee under this section.

(f) Enforcement of oaths and subpoenas.

(1) If a person subpoenaed under this section fails to comply with the subpoena or fails to testify on any matter on which the person may be lawfully interrogated:

- (i) the Committee may petition the Circuit Court of Baltimore City to order compliance with the subpoena; and
- (ii) on petition, the Court may:
 - (A) pass an order directing compliance with the subpoena or compelling testimony; and
 - (B) enforce its order by proceedings for contempt.

(2) False swearing by a witness before the Committee is subject to the penalties of perjury.

(g) Committee rules.

(1) The Committee may adopt rules to govern its procedures under this section, including the conduct of hearings under this section.

(2) These rules may not be inconsistent with the provisions of this section or of any other applicable law.

(h) Reports and recommendations.

On completion of a study or investigation under this section, the Committee shall report to the members of the City Council, the Mayor, and the Board of Estimates:

- (1) the results of that study or investigation; and
- (2) any recommendations it may have for:
 - (i) the more effective operation of any of these departments, bureaus, commissions, boards, and agencies;
 - (ii) legislative, administrative, and budgetary improvements; and
 - (iii) if the Committee has reasonable grounds to believe that a criminal offense has been committed, referral to the appropriate prosecuting authority.

§ 1-5. Agencies to provide budget status reports.

(a) Reports required. On or before November 1, February 1, May 1, and August 1 each year, the City agencies so requested shall file quarterly budget status reports with the Budget and Appropriations Committee of the City Council.

(b) Contents. Each report shall contain the information required by the Committee and be in the format requested.

(c) Public hearing. The Committee may hold a public hearing for those agencies not reporting or those showing a projected deficit for the fiscal year.

(d) "City agency" defined. The words "City agencies" include the City trustees and all City sponsored and financed nonprofit corporations.

§ 1-6. Agencies to provide legislative information.

It shall be the duty of the head of every City department or bureau established by the Baltimore City Charter or by ordinance to provide all technical materials, plats, drawings, and information that are requested by any member or the President of the City Council for the purpose of introducing legislation into the Council.

§ 1-7. Disorderly conduct prohibited.

(a) Prohibited conduct.

No person shall act in a disorderly manner to the disturbance of the public peace at any meeting or committee meeting of the Baltimore City Council, whether the Baltimore City Council be meeting at Baltimore City Hall or at any other location.

(b) Penalties.

(1) Any person who continues to violate the prohibitions of this section after a request for order by the presiding officer shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than \$500 or be confined in jail for a period of not more than 60 days or be both fined and imprisoned in the discretion of the court.

(2) Any person violating the provisions of this section after having been convicted of a prior violation of this section occurring within the preceding 12 months shall be fined not less than \$100 for each violation and may be imprisoned for not more than 10 days if the fine is not paid.

Background

On February 9, 2023, agency representative(s) and others came before the Committee to discuss and/or respond to concerns regarding the status, sale and/or control of the City's conduit system. Public testimony was also received where persons made comments and/or expressed concerns regarding same.

The hearing was called to recessed.

Attached are copies of:

- Information (via memorandum) requested by the Committee from the executive administration
- Various news articles related to the matter at hand.

On Thursday, February 23, 2023 the hearing will reconvene.

Additional Information

Fiscal Note: None

Information Source(s): Baltimore City Code, Google search and any reports or documentation reviewed or received before or after the February 9, 2023 meeting.

Marguerite M. Currin

Committee Staff: Marguerite M. Currin
Direct Inquiries to: (443) 984-3485

Date: February 21, 2023

**REQUEST(S)
FOR
INFORMATION/DATA**

SEE ATTACHED

CITY OF BALTIMORE

Nick J. Mosby, President, Baltimore City Council



Baltimore City Council

100 Holliday Street, Suite 400
Baltimore, Maryland 21202

February 10, 2023

Solicitor Ebony Thompson, Dept. of Law
Interim Director Corren Johnson, DOT
Director Michael Moiseyev
City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Committee on Legislative Investigations Subpoena and Public Information Act
Request

Dear Colleagues,

I am writing to you on behalf of the Committee on Legislative Investigations in our promised follow up request for additional documents and information you and your agencies were not able to provide last night during our investigative hearing. Pursuant to Baltimore City Code Art. 1, Sect. 1-4 and the Maryland Public Information Act, please find the enclosed subpoena and requests for documents and written responses based on the questions from the Committee and other Councilmembers in attendance. I am also including a letter from an interested group of current conduit users and industry professionals. We respectfully request that you provide the requested documents and written responses on or before February 21, 2023 at 4:00pm. Please also find the notice for our hearing which we recessed last night to resume on **FEBRUARY 23, 2023 at 5:00PM**. If you have any questions or would like to discuss this at all, please contact Aaron DeGraffenreidt at a.degraffenreidt@baltimorecity.gov.

Respectfully,

Eric Costello, Chair
Committee on Legislative Investigations

Cc: Baltimore City Council
Mayor Brandon Scott
Comptroller Bill Henry
DPW Director Jason Mitchell

BALTIMORE CITY COUNCIL COMMITTEE ON LEGISLATIVE INVESTIGATIONS
SUBPOENA REQUEST FOR PRODUCTION OF DOCUMENTS AND WRITTEN RESPONSES

To: Solicitor Ebony Thompson, Dept. of Law
Interim Director Corren Johnson, Dept. of Transportation
Director Michael Moiseyev, Dept. of Finance

From: Baltimore City Council Committee on Legislative Investigations

INSTRUCTIONS

- a. In responding to these requests, we request that you furnish all documents, however obtained, available to, known by, or in possession of you, your agents, and/or your attorneys.
- b. In responding to these requests, we request that you conduct a reasonably diligent investigation, and your responses to these requests contain all documents that you possess as a result of a reasonably diligent investigation.
- c. If you cannot respond to the following requests in full after exercising reasonable and due diligence to secure all documents to do so, so state in your response, and respond to the extent possible, setting forth your inability to respond to the remainder, stating whatever information or knowledge you have concerning the unanswered portion, and detailing what you have done in an attempt to secure the unavailable documentation.
- d. These requests are continuing in character so as to request you to serve supplementary responses if you obtain further or different documentation after the proposed agreement with BGE is finalized.
- e. In the event that you claim that any document responsive to any request is privileged, we request that you articulate the privilege that you claim, and identify the document fully in writing without disclosing the material affected by the claimed privilege.
- f. In responding to these requests, please produce all documents as they are kept in the usual course of business, or to organize and label them to correspond with the categories in these requests.
- g. If any document requested was, but is no longer in your possession, custody, or control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed, (3) transferred voluntarily or involuntarily to others and, if so, to whom, or (4) otherwise disposed of.
- h. If you refuse any requests, or part of a request, we request that you state the reasons for your refusal. If the refusal relates to part of an item or category, please specify the part to which the refusal relates.

DEFINITIONS

As used herein, the following terms have the meanings indicated below.

- a. "Document" means any printed, typewritten, handwritten, or otherwise recorded matter of whatever character, including, without limitation, letters, purchase orders, memoranda, telegrams, electronic mail, notes, catalogs, brochures, diaries, reports, calendars, inter-office communications, statements, announcements, photographs, tape recordings, computer printouts, computer readable data compilations, motion pictures, video tapes and any carbon, magnetic photographic, or any other form of copies of any such materials.
- b. "Person" includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability

partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity.

- c. "City" shall mean the municipal corporation of Baltimore City government agency personnel including heads of executive departments, their subordinates, the Mayor and staff to the various offices under the Mayor's authority as outlined in the Baltimore City Charter.
- d. "FMI" shall mean FMI Capital Advisors, Inc. located at 44 Cook Street, Suite 900, Denver, CO 80206 including Dan Shumate, Managing Director.
- e. "BGE" shall mean the Baltimore Gas & Electric Company, a Maryland Corporation whose mailing address is at P.O. Box 1475 Baltimore, MD 21203

REQUESTS

1. All communications between the City and FMI including any emails, letters, or notes from conversations.
2. All reports from FMI has generated related to their work for the City including models, projections, conclusions, assumptions, comparable systems, and estimated future monetization factors included.
3. The 2016 settlement agreement between BGE and the City that settled BGE's claims against the City related to its requested rate increase.
4. A spreadsheet of all operating expenses and capital expenses the City's Department of Transportation has spent on the City's underground conduit system from January 1, 2016 to present. This should show the total amount the City has spent on the conduit system in that time period.
5. A spreadsheet of all rental income from all leases of the City's underground conduit system from January 1, 2016 to present. This should show the total amount paid by each user or lessee in the time period.
6. Any amounts currently remaining in the enterprise utility fund and any documentation for the sources of that funding. Please provide a quarterly breakdown of the funding for the enterprise utility fund including the sources of that funding. That time period should cover January 1, 2016 to present.
7. A list or spreadsheet of all projects completed by the City's Department of Transportation on the City's underground conduit system from 2016 to present. Please identify the number of projects completed for each lessee or end user beneficiary. Please also identify the number of projects completed by geographical breakdown.
8. A list or spreadsheet of all projects currently ongoing and being performed by the City's Department of Transportation on the City's underground conduit system.
9. Any documentation in your possession to establish the Public Service Commission's requirement on BGE for them to include minority and women owned businesses as subcontractors on their work.
10. A detailed breakdown of the equations that would determine how utility rates would be affected by the proposed agreement between the City and BGE.
11. Exact number of ratepayers and the geographical location of BGE customers who would see a rate increase as a result of this agreement.
12. A detailed breakdown of the equations that would determine how utility rates would be affected if the City and BGE proceeded with a lease arrangement where BGE's lease would be comparable to similarly sized utilities in similarly sized municipalities.

February 9, 2023

The Honorable Brandon M. Scott
Mayor, City of Baltimore
City Hall - Room 250
100 N. Holliday St, Baltimore, MD 21202
mayor@baltimorecity.gov

Re: Questions/Concerns about BGE Agreement for Control of City-Owned Conduit

Dear Mayor Scott:

The undersigned are users of the City's underground conduit system pursuant to various agreements with the City. It has recently come to our attention that the City has reached an [agreement](#) with Baltimore Gas & Electric ("BGE") that will significantly alter how the City's conduit is managed, upgraded, and maintained. The agreement will also result in other material changes to the terms and conditions of BGE's use of the City's conduit.

As you might expect, any meaningful change in control over the City's publicly-owned conduit is of direct interest and concern to us.

The agreement was reached without our involvement. We have thus not had an opportunity to discuss and better understand the agreement and its effect on us and the Baltimore residents that depend on the telecommunications, Internet access, and other services we provide. Given these circumstances, it is important to identify some threshold questions which must be considered before the City cedes control over these aspects of the conduit to BGE.

We hope these initial questions, along with more technical questions we can discuss in person, can be addressed and satisfactorily resolved before the City enters into a definitive conduit control agreement with BGE or any other party.

Questions and Concerns:

1. Although "capital improvements" and "maintenance" are vaguely defined in the agreement, there is insufficient information included in the definitions to practically distinguish between the two. For example, do capital improvements include the replacement or betterment of crushed or damaged conduit? Further, the definitions of the terms do not appear to take any users/occupants of the conduit system other than BGE into account.
2. The agreement appears to allow BGE to fulfill its capital contribution requirement with any projects "in support of and connected with the Facilities." The term "Facilities" is not defined, and the 2016 settlement agreement's definition does not limit this term to facilities located in the City-owned conduit. For this reason, this provision could be read to encompass any project that is "connected with" BGE's City-wide electricity distribution system. It is unclear why the scope of such projects is not expressly limited to those in support of and connected with the *conduit system*.
3. Given that the agreement appears to give BGE the final say on any capital improvement projects, how can the City ensure such investments are made equitably and in the interest of all conduit users, their customers, and the citizens of Baltimore?

4. Given that management of capital improvements can have a significant impact on subsequent maintenance costs, how has the City accounted for the risk that BGE's oversight of capital improvements may result in an increase in maintenance costs, which would remain the City's responsibility?
5. How would other conduit users request conduit replacement or betterment from BGE where they identify a need for capital improvements? In making such requests, how would a conduit user determine whether to contact the City or BGE?
6. The agreement indicates that the City reserves the option to make capital improvements to the conduit system. Assuming the City does so, how will that activity be coordinated with BGE, and who will determine which entity (BGE or the City) is taking on a particular project?
7. Will other conduit users be permitted to repair their existing facilities, or will we be reliant on BGE to make repairs? If so, is there a fee schedule and are there any controls over it?
8. The agreement would permit BGE to conduct its own maintenance to the conduit. Will other users enjoy the same right, or would they be reliant on the City (or BGE) for all conduit repairs?
9. What impact will the agreement have on other conduit users' existing access to the conduit system? Will other users need to coordinate with BGE, the City, or both for access? Under what circumstances and protocols?
10. Would BGE, when planning its capital improvements, and/or the City, in reviewing such plans, be required to coordinate with other conduit users to avoid any conflicts or delays in the permitting and timing of any deployment projects other conduit users may already have planned?
11. What if BGE damages other conduit users' facilities while performing capital improvements? How is this resolved both operationally, financially, and legally among other conduit users, BGE and the City? Such damage could result in outages of critical services (e.g., 9-1-1 connectivity), but the agreement is silent on how quickly such repairs should be made and who bears the associated costs. (An "FAQ" document provided by the City states that "BGE will be liable for any system failures caused by it or as a result of any of its improvements or work in the conduit," but neither this language nor any comparable provision appears in the agreement.)
12. How will BGE preserve other conduit users' rights to competitively neutral and nondiscriminatory access to the conduit? How would BGE notify other users of capital improvements that affect their ability to use the conduit, e.g., adding a new conduit expansion that makes another portion obsolete because the route is modified?
13. The agreement requires BGE to obtain the City's consent before accessing ducts used by other users, but it does not require the City or BGE to obtain consent from — or even provide notice to — the affected conduit users. Why is there no requirement for advance notice to other providers of such work, which could result in damage to their facilities and potentially a loss of services to Baltimore residents? Why is the notice-and-consent provision limited only to projects for which BGE will *access* another user's duct, given that many other types of conduit work may likewise affect other users' facilities and/or disrupt service to residents?

14. How will BGE's capital investment commitment impact the rates paid by Baltimore residents for their electricity service? To what extent does the agreement depend on the Public Service Commission's approval of an increase in BGE's rates?
15. Less than two months ago, the Board of Estimates approved a \$50,000 consulting contract whose stated purpose is to explore the City's options for future management of the conduit. Doesn't this agreement with BGE preempt the report of the consultant, which is yet to be delivered and may reach a different conclusion regarding next steps?
16. Last year, the City undertook an audit of its conduit, requiring by law that users provide certain information about their facilities. We have never seen the results of that audit. Is it complete? If so, how does it affect the change in conduit control?
17. Given that the agreement would impact the way communications providers deliver service to their customers using the public rights-of-way, what analysis has the City undertaken regarding whether the arrangement complies with federal communications law?

We look forward to discussing these questions and other concerns at your earliest convenience, so we can make informed decisions as to whether the BGE agreement should be supported as consistent with the best interests of the public and the other conduit users and future conduit users. Given the importance of these issues to our continued ability to provide high quality services to Baltimore residents and businesses, it is essential that they be discussed and adequately addressed before the City enters into a binding agreement with BGE or any other party.

Sincerely,

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cc:

Hon. Nick Mosby, City Council President

Eric Costello, Committee Chair

Hon. Bill Henry, Comptroller

Ebony Thompson, Esq., City Solicitor

Jason Mitchell, Director, Department of Public Works

Corren Johnson, Interim Director, Department of Transportation

Ola Olamide, P.E., Conduit Division Chief

*Recent
News
Articles*

See attached

**RECENT
NEWS ARTICLES
BALTIMORE CITY
CONDUIT SYSTEM**

SEE ATTACHED

Council members complain about transparency over fate of city's conduit system

by Jeff Abell

Monday, February 6th 2023

BALTIMORE (WBFF) — City Council members complain they were never advised about talks with BGE over the fate of the city's conduit system.

"There's been no transparency. There's been no information," said Councilman Isaac "Yitzy" Schleifer.

The city is negotiating with the utility over a proposal which would give BGE almost exclusive control over the conduit system.

The 700-mile underground system carries electric and other utility cables.

Right now, BGE pays \$28 million a year to occupy the system.

However a draft agreement calls for BGE to no longer pay rent and, in turn, spend more than \$130 million to improve the system.

"I think it's a slap in the face to the voters of Baltimore City," said former Mayor Jack Young after voters approved a measure in November calling for the city to maintain ownership of the conduit system.

On Thursday, the city council will open an investigative hearing into the draft agreement.

"I think the biggest part is trying to really understand the motivation of the administration. What factors are they pulling together to say 'we really need to do this now,'" said Council President Nick Mosby.

Thursday's hearing will attempt to shed light on 'who' stands to benefit the most from the agreement.

"BGE has increased rates for ratepayers over the past few years yet they're still enjoying low cost use of our conduit system and benefitting from the city. " said Schleifer.

"So the question here is, 'what's in it for the taxpayers'?" asked Schleifer.

(16:55:43)(SCHLEIFER) "THEY'RE ABLE TO MAKE A DECISION CUT A DEAL AND NOBODY KNOWS ABOUT IT AND WHAT THE COMMITTEE WILL BE ASKING IS FOR DETAILS WHICH WE SHOULD HAVE HAD A MONTH AGO."

COUNCIL MEMBERS HAVE CALLED FOR AN INVESTIGATIVE HEARING ON THURSDAY.....AS THEY STRUGGLE TO UNDERSTAND 'WHO' STANDS TO BENEFIT THE MOST....

(16:54:35) (SCHLEIFER) "BGE HAS INCREASED THE RATES FOR RATE PAYERS OVER THE PAST FEW YEARS YET THEY'RE STILL ENJOYING LOW COST USE OF OUR CONDUIT SYSTEM AND BENEFITING FROM THE CITY. SO THE QUESTION HERE IS...WHAT'S IN IT FOR THE TAXPAYERS?"

Baltimore City, BGE amend conduit use agreement amid fears of selling

Photo by: WMAR

By: [Ryan Dickstein](#)

Posted at 4:12 PM, Feb 07, 2023

BALTIMORE — Baltimore City and BGE have amended a 2016 agreement for the use of its underground conduit system.

Part of the revised agreement requires BGE to pay the City an annual \$1.5 million maintenance fee through at least December 31, 2026.

BGE will also be responsible for up to \$120 million in Capital Improvement projects throughout the length of the agreement.

Under the agreement, the City maintains full ownership of the 700-mile conduit system which contains critical electric and fiber-optic cables that powers a majority of the city.

BGE also takes on liability for any system failures during their work on the conduit.

The City's Board of Estimates still has to approve the agreement, which they will review on February 15.

“The proposed agreement with BGE allows for a shared responsibility in increased improvement efforts to the 700-mile capital structure, ultimately reducing the amount of money that the City pays year after year for conduit maintenance,” said Mayor Brandon M. Scott. “This is a

sensible agreement that gives the City an opportunity to demonstrate good stewardship over this valued and vital asset.”

There had been some fear that the City would sell the conduit, despite residents voting against that possibility in last November's General Election.

City Council President Nick Mosby recently called on the Scott Administration to provide analysis on their future plans for the conduit system at a February 9 legislative oversight hearing.

"[Scott] and other members of his administration have confirmed that they have been working on an agreement to give near full control over our conduit system to BGE," said Mosby in a recent letter to his constituents. "While BGE is a great partner to have, we cannot allow a for-profit company to make unilateral decisions on our public infrastructure. His administration has even retained a consultant to help make the best decision possible but the consultant has not even had a chance to complete their work and make recommendations."

Read the entire agreement with BGE - see attached.

**AMENDMENT
TO SETTLEMENT AGREEMENT**

THIS AMENDMENT TO SETTLEMENT AGREEMENT (this “**Amendment**”), as of February ___, 2023, is entered into by and between Baltimore Gas and Electric Company, a Maryland corporation (“**BGE**”), and the Mayor and City Council of Baltimore, a municipal corporation of the State of Maryland (the “**City**”), as an amendment to that certain Settlement Agreement by and between BGE and the City approved on November 30, 2016 (the “**2016 Settlement Agreement**”). BGE and the City shall be referred to collectively as the “**Parties**” and individually as a “**Party**.” Any capitalized term used in this Amendment but not defined hereunder shall have the meaning ascribed to such term in the 2016 Settlement Agreement.

Recitals

WHEREAS, the Parties entered into the 2016 Settlement Agreement regarding, in part, BGE’s use of the Conduit System and the City’s maintenance of the Conduit System; and

WHEREAS, the Parties desire to amend the 2016 Settlement Agreement to provide that BGE shall be responsible for capital expenditures related to Conduit System capital improvement projects pursuant to the terms set forth in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree, as follows:

1. **Effective Date**. This Amendment shall be subject to the approval of the Board of Estimates of Baltimore City and, following receipt of such approval and being executed by both Parties, shall be effective as of the date of such approval (the “**Effective Date**”).
2. **Definitions**. The following terms shall have such meanings as are set forth in this Section 2:
 - a. “**Capital Improvements**” shall mean any construction, restoration, alteration, addition, improvement, renovation, or other physical changes or modifications of any nature (excluding Maintenance) in, on, or to the Conduit System, including, without limitation, structural alterations, modifications or improvements to any expansion of the Conduit System, in each case, to the extent that the costs of such activity are or would be capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
 - b. “**Maintenance**” shall mean all maintenance, repairs, non-capital replacements, and related inspections necessary to maintain the Conduit System in good order and proper working condition and suitable for BGE’s provision of safe, reliable, and efficient electric service to customers throughout its service territory.

3. Initial Term; Responsibility for Conduit System Capital Improvement Projects. Beginning on the Effective Date and continuing for a term ending on December 31, 2026 (the “**Initial Term**”), and subject to the terms and conditions of this Amendment, BGE shall be responsible for, and undertake itself and through its contractors, capital expenditures related to Capital Improvements (“**Capital Improvement Projects**”), up to an aggregate cost of One Hundred Twenty Million Dollars (\$120,000,000) during the Initial Term (“**BGE’s Initial Term CIP Obligation**”). The City, in its discretion, may undertake additional Capital Improvements and may continue Capital Improvements that the City began prior to the Effective Date.

4. Maintenance Payments. BGE shall pay (i) an annual fee of Fourteen Million Dollars (\$14,000,000) for the calendar year ending December 31, 2023 and (ii) an annual fee of One Million Five Hundred Thousand Dollars (\$1,500,000) for each subsequent calendar year during the Initial Term (each such annual fee payment, a “**Maintenance Payment**”), to the City for Maintenance of the Conduit System to be performed by the City and which Maintenance Payments shall be used in accordance with Section 10 of the 2016 Settlement Agreement. The Maintenance Payment shall be an annual, non-refundable payment made to the City within ten (10) days following the Effective Date and within ten (10) days following the first day of each of the subsequent three (3) calendar years. The need for Maintenance and the means and methods of performing Maintenance work shall be determined solely by the City in a manner consistent with the City’s past practices in determining the need for Maintenance and the means and methods of performing Maintenance, and the City will consider in good faith any reasonable request by BGE for the performance of Maintenance.

In the event that BGE does not spend the entire amount of either BGE’s Initial Term CIP Obligation or BGE’s Extended Term CIP Obligation (as defined in Section 5 below), all amounts not expended, or not otherwise earmarked and committed for Capital Improvement Projects then under construction, shall be paid to the City by BGE as an additional Maintenance Payment or an additional Extended Term Maintenance Payment (as defined in Section 5 below), as applicable, and in each case shall be expended by the City for the benefit of the Conduit System as determined by the City; provided, that all such amounts shall be expended by the City to perform Maintenance or Capital Improvements to the Conduit System; and provided, further, that any such payments under this paragraph shall not reduce the amount of the Maintenance Payment or Extended Term Maintenance Payment, as applicable, required under this Section 4. Unspent funds may be considered earmarked only if a contract has already been awarded by BGE for such work and such work has commenced as of the expiration of the Term or the Extended Term, as the case may be. Any such funds not expended by the City in any year shall be carried over to the next year and committed to the payment for Maintenance of the Conduit System or for City-funded Capital Improvements.

5. Extended Term. This Amendment shall automatically renew for a succeeding term of three (3) years (such succeeding term referred to herein as the “**Extended Term**”) unless either Party delivers written notice of its intent not to renew to the other Party at least one hundred eighty (180) days prior to the expiration of the Initial Term. During the Extended Term,

and subject to the terms and conditions of this Amendment, BGE shall (a) be responsible for, and undertake itself and through its contractors, Capital Improvement Projects up to an aggregate cost of Ninety-Two Million Dollars (\$92,000,000) (“**BGE’s Extended Term CIP Obligation**”) and (b) pay an annual fee of One Million Five Hundred Thousand Dollars (\$1,500,000) for each subsequent calendar year during the Extended Term (each such annual fee payment, an “**Extended Term Maintenance Payment**”) to the City for Maintenance of the Conduit System to be performed by the City and which Maintenance Payments shall be used in accordance with Section 10 of the 2016 Settlement Agreement. Any Capital Improvement Project begun before the expiration of the Initial Term or the Extended Term must be completed regardless of when the Initial Term or the Extended Term expires, which obligation survives the expiration of this Amendment. At the request of the City at least two hundred seventy (270) days prior to the expiration of the Initial Term, the City may propose and the Parties shall thereupon discuss potential changes in BGE’s Extended Term CIP Obligation or the Extended Term Maintenance Payment.

6. Prioritization and Scope of Conduit System Capital Improvement Projects. BGE and the City shall work in good faith to prioritize and define the scope of work of potential Capital Improvement Projects, including those programs set forth in the Department of Transportation, Conduit Division’s FY 2023-2027 Conduit Capital Improvements Program. All such projects undertaken by BGE shall be designed to enhance the Conduit System in a manner that will help improve its safety, efficiency, and reliability for all users of the Conduit System. The Parties recognize that BGE occupies space throughout the entire Conduit System, and thus, as a general proposition, any Capital Improvement Project will help improve the safety, efficiency, and reliability of BGE’s electric distribution system. Notwithstanding the foregoing, (a) the Capital Improvement Projects shall be in support of and connected with the Facilities and (b) BGE shall determine in its reasonable judgment whether to pursue any specific Capital Improvement Project.

Upon the completion of each Capital Improvement Project by BGE, BGE shall provide the City with “as-built” plans prepared in adherence to City requirements. BGE will submit its inspection results to the City for its review and approval. BGE’s work shall not be deemed to have been accepted until such plans have been received and approved and all inspections have been satisfactorily completed (such plan approvals and inspections not to be unreasonably withheld by the City).

7. Blanket Permit; Expedited Permitting. On the Effective Date, BGE has authorization to conduct any work in the Conduit System permitted by this Amendment. To the extent any additional City permits are required, the City shall make all reasonable efforts to prioritize, escalate and expedite the process for any such permits and shall endeavor to grant any such permit no later than fifteen (15) business days after the date of application or written request from BGE (provided that the permit application is in material compliance with the City’s published written instructions and procedures that are in place as of the Effective Date). If any such permit is delayed, withheld, or withdrawn by the City, BGE’s failure to perform the work for which such permit is required shall not be deemed a breach or derogation of its obligations under this Amendment. The terms and conditions of any blanket permit and any other permits or approvals issued to BGE (including, without limitation, any cure

periods therein) shall not be less favorable to BGE than the City's standard terms and conditions applicable to such permits and approvals. The City shall implement a usual and customary capital inspection fee (the "**Capital Inspection Fee**") to be assessed annually under BGE's blanket permit pursuant to this Section 7; provided, however, that the annual Capital Inspection Fee shall be funded solely by BGE's Initial Term CIP Obligation or BGE's Extended Term CIP Obligation, as the case may be.

8. Review of Capital Improvement Programs. At least one hundred twenty (120) calendar days prior to the start of each City Fiscal Year, the City shall submit to BGE a plan of potential Capital Improvements ("**City Capital Improvement Programs**") that BGE shall consider in good faith for construction during the upcoming City Fiscal Year. Notwithstanding the foregoing, BGE shall determine in its sole discretion whether to pursue any City Capital Improvement Programs and will notify the City regarding same. BGE and the City shall continue to meet monthly and discuss BGE's Capital Improvement Projects, as they have done in accordance with Section 13 of the 2016 Settlement Agreement.
9. Emergency. BGE and the City shall coordinate and cooperate with each other in the event that emergency repairs to the conduit system are necessary. Generally, the City, in furtherance of its Maintenance obligations, shall undertake all emergency repairs. In the event, however, of an emergency that requires Capital Improvement(s) to the City's conduit system involving Facilities, BGE, in furtherance of its obligations related to Capital Improvement(s) pursuant to this Amendment, shall undertake said emergency repairs; provided, however, that all costs associated with any such emergency repairs shall be funded solely by BGE's Initial Term CIP Obligation or BGE's Extended Term CIP Obligation, as the case may be. Notwithstanding the foregoing, if BGE believes that an emergency poses a threat of imminent harm or to any of its Facilities or is necessary to promptly address a BGE customer service request, upon timely notice to the City, under its blanket permit (subject to Section 7 above), and to the extent not prohibited by law, BGE may access the Conduit System to ameliorate the threatened harm. In addressing such BGE customer complaints, BGE shall prioritize service calls based upon its assessments of emergencies and in accordance with its customer service protocols. Notwithstanding anything to the contrary in this Amendment, in connection with BGE's performance of any actions under this Section 9, BGE shall not be liable for any Losses arising as a result of any act or omission of the City, its elected or appointed officials, employees, and agents, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise.
10. Operation and Maintenance. The City shall continue to be responsible for the operation and Maintenance of the Conduit System as set forth in this Amendment and in the 2016 Settlement Agreement.
11. Conduit System Rental Fee. BGE shall not be assessed any rental or other fees for BGE's use of the Conduit System during this Amendment and any Extended Term. BGE shall be obligated to pay its rental fee for July 1, 2022 through December 31, 2022 of fiscal year 2023.

12. Portions of Conduit System Used by other Users. Except as otherwise contemplated in this Amendment, BGE shall not enter or otherwise access any duct within the Conduit System that is used by other users (and is not used by BGE) without prior written consent from the City which shall not be unreasonably withheld (and, if and as required by the City, the other user).
13. Indemnification. BGE shall indemnify, defend and hold harmless the City, its elected and appointed officials, employees, and agents (the “**Indemnified Parties**”) from any and all claims, demands, liabilities, losses, damages, fines, fees, penalties, costs, expenses, suits, and actions (including reasonable attorneys’ fees and court costs incurred in connection therewith) by a third party, to the extent attributable to bodily injury, death, or destruction of property (collectively, “**Losses**”), brought against the Indemnified Parties, arising as a result of any act or omission of BGE, its officers, directors, employees, or agents in connection with the performance of this Amendment that constitutes negligence, willful misconduct, or gross negligence, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise; provided, however, that BGE shall not be required to indemnify the Indemnified Parties for any Losses arising out of any act or omission of the Indemnified Parties that constitutes negligence, willful misconduct, or gross negligence, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise.

BGE shall have the right to control the defense of all such claims, lawsuits, and other proceedings and, upon written request from the City, shall provide the City with status updates regarding such proceedings. In no event shall BGE settle any such claim, lawsuit, or proceeding without the City’s prior written approval (not to be unreasonably withheld, delayed, or conditioned); provided, however, that the City’s prior written approval shall not be required if the settlement (i) contains no finding or admission of liability with respect to the City, (ii) involves only monetary relief which BGE has agreed to pay, and (iii) includes an unconditional release of the City. In the event of any claim for Losses against BGE, its officials, employees and agents, BGE shall not seek to join the Indemnified Parties in such action or hold such persons responsible in any way, except to the extent the Losses arise out of any act or omission of the Indemnified Parties that constitutes negligence, willful misconduct, or gross negligence, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise. The obligations of this section shall survive the expiration or earlier termination of this Amendment.

14. Warranty. BGE warrants to the City as set forth below in this Section 14 with respect to all work by BGE on any Capital Improvement Project completed by BGE during the Term, for a period of two (2) years after the date of acceptance of the work by the City or such longer warranty period as may be provided by a BGE contractor, (such period, the “Warranty Period”):
- a. That all materials and equipment installed to construct the Conduit will be new, unless otherwise specified and all work performed by BGE will be of good quality and free from faults and material defects.

- b. That all work shall be performed, in all material respects, in accordance with the requirements of all required permits, plans, specifications, the City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures, Issue of 2006, and any and all Amendments thereto, the City of Baltimore, Department of Public Works, Book of Standards, and any and all Amendments thereto, and all other applicable codes, rules and regulations in effect at the beginning of the Effective Date of this agreement (collectively, the "Applicable Standards").
- c. That all equipment and systems and each and every part thereof, shall operate in a satisfactory and efficient manner, and in accordance with the Applicable Standards.
- d. That every component and structure shall be watertight and leak proof, as specified in the Applicable Standards.
- e. That BGE shall, upon receipt within the Warranty Period of written notice from the City, replace with proper workmanship and materials, and re-execute, correct, or repair, without cost to the City, all work which may be finally determined ~~to be~~.
- f. That no use by the City of any work by BGE or any part thereof, nor any failure to use the same, nor any repairs, adjustments or corrections made by the City in accordance with Section 14(g) due to BGE's failure to comply with any of its obligations under this Amendment and the Applicable Standards, shall impair in any way the warranty obligations assumed by BGE under this Amendment.
- g. If BGE refuses to make such repairs as are reasonably necessary to bring any Capital Improvement in compliance with the Applicable Standards upon written demand delivered by the City to BGE during the Warranty Period, the City may undertake such repairs as are reasonably necessary to cause such Capital Improvement to comply with the Applicable Standards at the cost and expense of BGE, including reasonable compensation if required for additional professional services, to the extent finally determined that such Capital Improvement was not in accordance with Applicable Standards. BGE shall also bear the expense of making good all work of others destroyed or damaged by BGE's correction, removal, repair, or replacement of any defective work.
- h. All equipment, systems and other work performed by BGE shall be fully operational at the beginning of the warranty period. Upon determination by the City that an item of work is defective, the City will notify BGE in writing, prior to the expiration of the Warranty Period, of the existence and extent of such defect, and shall establish a reasonable time for BGE to inspect, renew or repair the item of work. If BGE satisfactorily renews or repairs the item within the stipulated time period, the Warranty Period will be unaffected. If BGE fails to satisfactorily renew or repair the defective item within the stipulated time period, the Warranty Period shall be extended by the amount of time beyond the stipulated time period until the item is

fully and satisfactorily operational. The intent of this requirement is that the City receives full and satisfactory use of all items of work for the full Warranty Period.

Except as set forth in Section 14(h) above, all representations and warranties in this Section 14 will survive for the length of the Warranty Period, and will immediately thereafter terminate along with any associated right of indemnification and any associated remedies provided for in this Amendment.

15. Minority and Women's Business Opportunity Requirements. While the Parties acknowledge that the provisions of Article 5, Subtitle 28 of the Baltimore City Code do not apply to this Amendment because the work is being performed by BGE at its expense and no City funds are being expended, both the City and BGE acknowledge the importance of contractor diversity. BGE agrees that it shall make every good faith effort to equitably utilize the services of minority business enterprises ("MBE's") and women's business enterprises ("WBE's"). In identifying available MBE's and WBE's, BGE is encouraged to use the MBE/WBE Directory online at <https://baltimorecity.diversitycompliance.com/>. Notwithstanding anything in this Section 15, BGE shall continue to meet the diverse supplier goals set forth in its Memorandum of Understanding with the Public Service Commission.

16. Deletion of Specific Sections of the 2016 Settlement Agreement. The following provisions of the 2016 Settlement Agreement are hereby deleted in their entirety:

- a. Section 6 (Billing)
- b. Section 7 (True-up of Conduit System Rental Fees Paid by BGE)
- c. Section 8 (Future Conduit System Rental Fee)

For avoidance of any doubt or misunderstanding, the Parties recognize that upon the expiration of the Initial Term or the Extended Term, as the case may be, this Amendment and the Settlement Agreement shall have been terminated except for any obligations surviving such termination.

17. Conflict of Terms. To the extent the provisions of this Amendment are inconsistent with the terms of the 2016 Settlement Agreement or to the "Current Agreements" to which the 2016 Settlement Agreement refers, the terms of this Amendment shall control. All other terms and conditions of the 2016 Settlement Agreement shall remain in full force and effect.

18. Binding Effect; Assignment. This Amendment shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto. Neither Party shall assign any part of this Amendment without the prior written consent of the other Party, which may be withheld in such Party's sole discretion.

19. No Waiver. Unless otherwise stated in this Amendment, the Parties recognize, acknowledge, and agree that the failure by either Party to enforce any term of this Amendment shall not constitute a waiver of any rights or deprive either Party of the right to insist thereafter upon strict adherence to that or any other term of this Amendment, nor shall a waiver of any breach of this Amendment constitute a waiver of any proceeding or succeeding breach. No waiver of any of the provisions of this Amendment, unless expressly stated otherwise in this Amendment, shall be valid and binding unless it is in writing and signed by the Party against whom it is sought to be enforced.
20. Governing Law. The validity and construction of this Amendment or any of its terms or provisions shall be determined under the laws of the State of Maryland, regardless of any principles of conflicts of laws or choice of laws of any jurisdiction. The Parties further agree that the courts of the State of Maryland shall have exclusive jurisdiction to resolve disputes hereunder that may arise between the Parties.
21. Rules and Regulations. Subject to any limitations imposed by law or unless modified by this Amendment, BGE shall continue to abide by and adhere to the City's Rules and Regulations governing the use of the Conduit System, as amended from time to time, adopted pursuant to the Baltimore City Code. If BGE is not able to comply with any Rule or Regulation due to State or Federal law, BGE will give notice to the City and promptly confer with the City so that the Parties can make a good faith effort to address the City's concerns, as reflected in the new or amended Rule or Regulation, in a lawful manner.
22. Reservation of Rights. BGE reserves all rights and abilities that are necessary to its satisfactory compliance with any duties, requirements, obligations, or responsibilities that may exist under applicable law, including, but not limited to, any rule, regulation, or decision issued by the Commission. Notwithstanding anything in the foregoing to the contrary, BGE represents to the City that none of BGE's duties, requirements, obligations, or responsibilities under this Amendment are prohibited, conditioned, limited, or restricted by any applicable law any rule, regulation, or decision issued by the Commission, as such applicable law, rules, regulations, and decisions now stand. In this respect, BGE shall promptly advise the City of any proposed rule or regulation or pending case that could result in any rule, regulation, or decision that would prohibit condition, limit, or restrict BGE's duties, requirements, obligations, or responsibilities under this Amendment. Should any such rule, regulation, or decision frustrate the purpose of this Amendment or the ability of BGE to perform hereunder, the Parties agree to meet and confer in good faith on potential remedies and whether the City or BGE should be able to modify or terminate this Amendment, whereupon if no mutually acceptable accommodation or amendment is reached, the City may terminate this Amendment.
23. Conflicts of Interest. No member, official, representative, or employee of the City shall have any personal interest, direct or indirect, in this Amendment, nor shall any member, official, representative, or employee participate in any decision relating to this Amendment that affects such person's personal interest or the interests of any corporation, partnership, or association in which such person is, directly or indirectly, interested.

24. Interpretation. In the event of an ambiguity or question of intent or interpretation arises, this Amendment shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Amendment. Whenever the word “including” is used in this Amendment, it shall be deemed to be followed by the words “without limitation.”
25. Severability. This Amendment shall be enforceable to the fullest extent allowed by law. If any provision of this Amendment shall be found to be null, unlawful, void, or inoperative for any reason, such provisions shall be struck from this Amendment and otherwise the Amendment shall continue in full force and effect.
26. Counterparts; Electronic Delivery. This Amendment may be executed in multiple counterparts, each of which when executed shall be deemed to be an original, but all of which together shall constitute one and the same agreement. Execution and delivery by facsimile or other electronic means shall be deemed to be, and shall have the same legal effect as, execution by an original signature and delivery in person.
27. Entire Agreement; Modification; Interpretation. This Amendment and the 2016 Settlement Agreement, together, with the “Current Agreements” to which the 2016 Settlement Agreement refers, constitute the entire agreement and understanding between the Parties and supersede all prior agreements, understandings, whether written or oral, relating to the subject matter of this Amendment. This Amendment may be amended or modified only by a written instrument executed by each Party and, in the case of the City, approved by its Board of Estimates. The language of all parts of this Amendment shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties, notwithstanding any statutory or common law provisions that would suggest otherwise.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, BGE and the City have caused this Amendment to Settlement Agreement to be executed by their respective officers as of the Effective Date.

WITNESS:



BALTIMORE GAS AND ELECTRIC COMPANY

By: 

Name: David M. Vahos

Title: Chief Financial Officer, BGE

Date: _____

[SEAL]
ATTEST:

Custodian of the City Seal

MAYOR AND CITY COUNCIL OF BALTIMORE

By: 

Name: Brandon Scott

Title: Mayor

APPROVED FOR FORM AND LEGAL SUFFICIENCY

Name: _____

Title: _____

APPROVED BY THE BOARD OF ESTIMATES

Deputy Controller

Date: _____

Baltimore City Council committee to subpoena documents on conduit proposal with BGE: ‘How can we trust what you say?’

By Emily Opilo
Baltimore Sun

•

Feb 10, 2023 at 7:51 am

Workers impacted by the contracts one way or the other sit in the audience as Baltimore City Council's new investigative committee meets for the first time to begin a probe into the city's conduit agreement with BGE. (Karl Merton Ferron/Baltimore Sun)

A Baltimore City Council committee investigating a proposed management agreement with Baltimore Gas and Electric Co. for the city's conduit system has agreed to issue several subpoenas after voicing concerns about the proposal.

The subpoena vote came at the end of a hearing that lasted more than four hours Thursday night — the first meeting since the committee was established in response to the [swiftly moving proposal](#). Council members lamented the lack of communication from Mayor Brandon Scott's administration about the proposal — many learned of the deal via media — and a lack of analysis about what it might do to customer rates.

“If it's the right thing to do, the analysis should be completed,” City Council President Nick Mosby said. “If it's the right thing to do, we should see the findings that lead us this way. If it's the right thing to do, let's take our time and do it right.”

Corren Johnson, interim director of the Baltimore City Department of Transportation, holds examples of conduit while testifying about the conduit agreement between the city and BGE. (Karl Merton Ferron/Baltimore Sun)

Scott proposed signing an agreement to shift maintenance of the 700-mile subterranean utility system to BGE in exchange for a reduction in annual rent payments that the company pays for using the conduit. As proposed, BGE would invest \$134 million in capital improvements to the system over four years, as well as paying a \$1.5 million annual “occupancy fee.”

Currently, Baltimore pays to maintain the system, which is more than 100 years old. BGE pays rent to occupy 76% of the conduit's space. Under that agreement, which expired in June, BGE has paid no more than \$28 million annually, said Ebony Thompson, the city's solicitor.

Under the proposed agreement, BGE would invest \$34.5 million annually, Thompson said.

The proposal, which officials said was not finalized until this week, is on the agenda for consideration Wednesday by the city's Board of Estimates. Scott sits on the five-member board and appoints two additional members, giving him control. The two remaining members, Comptroller Bill Henry and Mosby, have expressed concerns about the plan.

Mosby convened the council's legislative investigations committee Monday with unanimous approval from his fellow council members.

Over the course of the multihour hearing, committee members peppered officials with the city's law department and Department of Transportation with questions about the advantages and disadvantages of the deal and the pace at which it is moving.

Council Vice President Sharon Green Middleton chastised administration officials for not being forthcoming with information about the proposal, drawing suspicion, she said.

"How can we trust what you say?" Middleton said. "I'm tired of getting stuff in the last minute. To me, it shows you're hiding something."

Mayor announces conduit deal with BGE; critics insist 'the math doesn't add up'

by Jeff Abell

Tuesday, February 7th 2023

3

BALTIMORE (WBFF) — One day after Baltimore city council members called for an investigative hearing on proposed changes to the conduit system, Mayor Brandon Scott announced that the deal is done.

"We know it's a good deal for the city. We're very confident of that," said Mayor Scott.

The agreement gives BGE broad control over the city's underground conduit system, which houses 700 miles of utility cables.

In November, voters passed a charter amendment that bars the city from selling the system, which, Mayor Scott insists, is not happening.

"We're not selling the conduit," insisted Mayor Scott after announcing the agreement with BGE.

Former Mayor Jack Young, however, accuses the Mayor of violating the will of voters and agreeing on a bad deal for city taxpayers.

"The math doesn't add up for me," said Young.

"Mayor Scott is saying we'll have complete ownership, in my opinion, in name only because BGE can do what they want, how they want," said Young.

On Monday, city council members [complained they were never informed about negotiations with BGE](#) and called for an investigative hearing on Thursday.

"I think the biggest part is trying to really understand the motivation of the administration," said City Council President Nick Mosby.

"They're able to make a decision, cut a deal and nobody knows about it," complained City Councilman Isaac "Yitzy" Schleifer.

The proposal is expected to sail through Baltimore's Board of Estimates since the Mayor and his Appointees on the Board have the majority of votes.

Baltimore City Council launches investigative committee to look into proposed conduit deal

By Emily Opilo
Baltimore Sun

•

Feb 06, 2023 at 7:11 pm

Baltimore City Council has formed an investigative committee to study Mayor Brandon Scott's plan to sign a management agreement for the city's underground conduit utility system with Baltimore Gas and Electric Co.

The committee, which is authorized by city code and has subpoena powers, was announced Monday by Council President Nick Mosby during the group's virtual lunchtime meeting. The council voted unanimously Monday evening in favor of creating the committee.

The committee will be chaired by Councilman Eric Costello and include council members Sharon Green Middleton, Robert Stokes, Isaac "Yitzy" Schleifer and Danielle McCray — all Mosby's selections. Scott, Mosby and all of the council members are Democrats.

The council had already announced a hearing Thursday by the new committee for 5 p.m.

Mosby has raised objections to the administration's plan for the conduit. It calls for BGE to stop making payments for its use of the conduit in exchange for covering annual maintenance costs for the system. Baltimore's conduit includes more than 700 miles of terra cotta pipe to carry utility lines beneath the city.

BGE is the biggest user of the system, which dates to 1898, occupying 76% of the conduit. Currently, the city government pays to maintain the system and leases space inside to various utilities. Other notable users include cable company Comcast.

Scott's administration fast-tracked the deal, announcing the proposal will be considered by the Board of Estimates at its next meeting on Feb. 15. Scott sits

on that five-member board and controls two additional seats. That means the measure should be approved — unless the mayor changes course.

Scott's plan would require BGE to undertake \$134 million in capital improvements over the next four years and pay \$1.5 million annually for maintenance. About \$34.5 million is expected to be invested by the utility annually — \$6.5 million more than BGE is currently pays to rent space in the system, according to the administration.

If BGE does not spend \$134 million in four years, the city would get the remainder in a lump sum, according to Scott's spokesman.

Mosby, who sits on and chairs the Board of Estimates, has raised concerns about the deal violating the spirit of a charter amendment passed by city voters in November. That amendment bars the sale or lease of the conduit system.

“It is clear that the administration is set to disregard the clear directive from our voters,” Mosby wrote in an email Monday to city residents. He urged residents to attend Thursday's hearing.

During the council's midday Monday meeting, Mosby argued forming the committee was a “good action to take” in light of the proposed conduit agreement.

“While BGE is a great partner to have, we cannot allow a for-profit company to make unilateral decisions on our public infrastructure,” Mosby told residents in his email.

Baltimore code calls for the legislative investigations committee to be a standing or permanent committee. However, the committee has never been staffed by Mosby since he took office in December 2020.

City code allows the legislative investigations committee to look into complaints of inefficiency and other problems within the city's departments, bureaus and commissions. The committee has the power to issue subpoenas, which means it can compel witnesses to attend meetings and produce documents, including books, accounts and records.

Mosby said Monday he felt that subpoena power was necessary to thoroughly investigate the conduit agreement. The council president said he learned of the proposal through media reports rather than communication from the mayor's office.

Scott argued last week the deal under consideration is neither a lease nor a sale. Asked if he believes a maintenance agreement would violate the spirit of the charter amendment, he reiterated that he is neither leasing nor selling the system.

Scott's staff did not respond to a request for comment.

Discussions about alternatives for the conduit system began last year, just ahead of the passage of the charter amendment. City officials argued the cost of maintaining the system has ballooned beyond the revenue it generates and said the city is losing \$7 million annually on the system.

In November, Scott's administration proposed hiring a consultant for \$50,000 to explore the "best and highest use" of the system. A vote on the contract was delayed until after the election at Mosby's request, then approved in mid-November. Work on that contract is incomplete.

Politics and power > Local government

Baltimore council members subpoena BGE conduit deal details: 'How can we trust what you say?'

By **Emily Sullivan**

Published on: February 09, 2023 8:21 PM EST | **Updated on:** February 10, 2023 9:13 AM EST



Council President Nick Mosby speaks during a Baltimore City Board of Estimates meeting inside City Hall on Oct. 5, 2022. (Ulysses Muñoz/The

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A Baltimore City Council committee created to examine Mayor Brandon Scott's new conduit deal with Baltimore Gas and Electric slammed the proposal at their fiery first hearing Thursday night, where City Council President Nick Mosby questioned the administration's rush to proceed with the agreement.

The Democrat's criticism boils down to a lack of details about how the administration settled on a new contract that would change how maintenance is administered on the city-owned conduit, a 741-mile underground network of wires that power street lights, traffic signals and phone and internet services.

"The concern of this body has just been about transparency in general," Mosby said as he opened the multi-hour hearing.

The committee voted unanimously to issue subpoenas for several documents they say the administration did not share with them, including an accounting of maintenance fees and revenue produced by the conduit.

The mayor published the contract in a news release on Tuesday. It calls for nixing BGE's current fees — \$2.20 per foot, amounting to about \$28 million a year — in exchange for the private company paying for \$134 million in improvements to the conduit over the next four years, plus \$1.5 million in fees to the city each year. The proposal is slated to go before the Board of Estimates next week, which is stacked in favor of the mayor.

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BGE representatives did not attend the hearing.

Acting solicitor Ebony Thompson addressed what she described as a “strong misconception” that the deal would lessen the city’s control over the conduit. Other Scott administration officials walked a similar line.

BGE “is not going to be able to just decide the location of their projects and do the work without approvals,” said Department of Transportation interim director Corren Johnson.

“I just don’t see that in the details,” Mosby replied. “I see vague language throughout the contract, language like ‘good faith.’ This provides them a Pandora’s box to open up and do whatever they really want in the name of capital improvement.”

Thompson noted that BGE’s current conduit contract expired in June 2022 and that negotiations stalled several times after the city and company repeatedly hit an impasse on fees.

Nonpoliticians questioned the timing and specifics of the deal. A group of other entities that lease conduit space — including Comcast — delivered a letter to the mayor shortly before the hearing that spelled out concerns about the agreement being reached without their involvement.



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“We thus have not had an opportunity to discuss and better understand this agreement and its effect on them or Baltimore City residents that depend on telecommunications, Internet access and other services that they provide,” the letter reads.

The council members agreed to issue a subpoena for 17 questions posed by the signatories in the letter, including what impact the agreement will have on non-BGE conduit users.

The president of the company currently contracted by the city to maintain the conduit contested the administration’s assertion that the city loses \$7 million annually on the system after maintenance costs are compared to the network’s revenue.

“We’ve spent the last six years literally in the trenches, figuring out the best way to get this work done, how to stand up a conduit division that we would say is second to none,” said Ron Adolph, president of Commercial Utilities.

Johnson, of DOT, said that no city workers would be laid off as a result of the contract.

Mosby also questioned the administration’s decision to seek a contract with FMI Capital Investors, a consulting firm that advises on conduit and telecom evaluations, weeks before a ballot measure that asked if the city should ban the sale or privatization of the conduit was set to go before voters.

The contract stipulated payment as an upfront flat fee of \$50,000 and a

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a future deal, should it be able to identify a profit-making venture that the City accepts,” an arrangement that Mosby, Comptroller Bill Henry and former Mayor Jack Young took issue with.

Young, who created the ballot measure, took the dramatic step of criticizing the contract at a city spending board meeting, arguing the terms incentivized FMI to recommend selling the network. Mosby deferred a vote on the contract until after the election; city voters overwhelmingly approved the measure with 77% support.

A representative from FMI noted that the consulting firm had been working with the administration since the summer. Mosby asked if the company was rushed to issue the report before Election Day.

“We sought to move quickly to provide the city the best options prior to the charter amendment,” Dan Shumate, FMI’s managing director, replied. The unfinished FMI report played no role in the proposed contract with BGE.

After more than two hours of questioning from different council members, it was Council Vice President Sharon Green Middleton’s turn. The Democrat threw her hands up.

“How can we trust what you say?” she asked administration officials. For two years — Scott’s tenure thus far — the council has been disrespected, she said. “But this is the limit.”

“I’m tired of getting stuff at the last minute,” she said. “To me, it shows that you’re hiding something.”

Councilwoman Odette Ramos questioned why the contract does not prevent BGE from passing along the cost of maintaining the conduit to city residents.

Dan Goldberg, the finance department's director of corporate and revenue compliance, replied that BGE would pass any potential rate hikes incurred from the contract along to the entire Maryland customer base, not just Baltimore.

"That doesn't make me feel better," Ramos said.

The committee will meet again on Feb. 23.

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Baltimore Councilman proposes abolishing Board of Estimates following BGE conduit "debacle"

Proposal to end Board of Estimates after BGE Conduit debacle

By: [Ryan Dickstein](#)

Posted at 4:02 PM, Feb 16, 2023

BALTIMORE — Wednesday's Board of Estimates vote giving BGE more control over Baltimore City's underground conduit system has one councilman calling for the committee to be abolished.

Zeke Cohen says he plans to introduce a bill that would authorize a task force that could recommend democratizing or abolishing the Board of Estimates.

The proposal comes one day after Council President Nick Mosby and City Comptroller Bill Henry skipped out on a vote in hopes of preventing the BGE agreement from going through.

Mayor Brandon Scott played an instrumental role in ushering in the deal, which keeps the conduit under City ownership.

"A former Council President once wisely warned us of this bad outcome while leading the fight to democratize the Board of Estimates," says Cohen. "That Council President was Brandon Scott. The debacle over the BGE conduit deal is a brutal indictment of our Strong Mayor system of government in Baltimore."

Prior to the board approving the BGE agreement, some had been worried Scott was in talks of selling the conduit.

Now that concern has moved onto whether or not the deal gives BGE too much power.

That's Mosby and Henry's reason for skipping out on the vote.

"The proposed underground conduit system agreement with BGE, which we believe allows BGE to reduce its fee structure and receive complete control of capital improvements, warrants time for public discussion and a thorough explanation as to the full impact this will have on the people of Baltimore now and in the future," Mosby and Henry said in a joint statement.

Scott meanwhile says it's a good deal for the City, as it will bring millions in fees paid by BGE.

"When I was elected Mayor, I made a commitment to always do what is in the best interests of the residents of this City," said Scott following the vote.

Mayor Scott calls BGE conduit contract criticism part of 'political silly season'

by Mikenzie Frost | mbfrost@sbgvtv.com

Thursday, February 16th 2023

BALTIMORE (WBFF) — After a state lawmaker unleashed criticism about a contract Mayor Brandon Scott backed between the city and Baltimore Gas and Electric for the city's underground conduit system, the mayor fired back, turning up the pressure on the issue.

State Sen. Mary Washington, D-Baltimore City, was critical of the deal between the city and BGE – the same deal that City Council President Nick Mosby and City Comptroller Bill Henry protested approval by skipping the Board of Estimates meeting. On Twitter, Washington said she is “officially done with watching this Mayor destroy any credibility left in the Office of the Mayor of Baltimore City.”

“Enough is enough,” Washington wrote on Twitter, followed by a thread of her reasons.

After not answering questions Thursday morning about Washington's comments, Mayor Scott was asked again in Annapolis at a different event. Mayor Scott doubled down on his commitment to the deal, which has been described by critics as rushed, made behind closed doors, and gives BGE control over the city's conduit. Mayor Scott said Sen. Washington was “unfortunately misinformed” and wished she would have picked up the phone and called him with her concerns rather than going public.

RELATED | BOE approves conduit deal with BGE despite absence of two board members

“When you go straight to Twitter, to me that's more about clout chasing,” When you speak about things you know not of, you get yourself into a lot of trouble.”

Sen. Washington did not respond to questions sent by FOX45 News about her comments or respond to requests for an interview. She previously ran for mayor and Mayor Scott said the attacks were political.

“We know this is political silly season and folks are going to say political silly things but that's not a fight I'm not going to get into,” Mayor Scott said.

When asked what he stands to gain personally from the deal that has captured intense controversy, Mayor Scott scoffed at the question and said his ethics have never been called into question. He said he wouldn't put his personal benefit before the wellbeing of the residents of Baltimore.

The state senator isn't alone in her concerns. Councilman Zeke Cohen also took to Twitter Thursday and said he felt the agreement had been rushed, and called for reform on the Board of Estimates, which is the city's spending board tasked with approving contracts.

Wednesday, Council President Mosby and Comptroller Henry called on Attorney General Anthony Brown to investigate the contract, and potential lawsuits have been discussed given the contract between Baltimore and BGE was approved with three members of the BOE – since Mosby and Henry skipped in protest.

“We will see what happens with that but good luck to them both,” Scott said when questioned about the investigation request and potential litigation.

The contract allows BGE to have access to the more than 700-mile conduit system underground in Baltimore City. Under the contract, BGE would pay Baltimore \$134 million for system improvements between 2023 and 2027. On top of the improvements, BGE would be on the hook to pay Baltimore \$1.5 million annually in maintenance fees.

RELATED | [Mayor announces conduit deal with BGE; critics insist 'the math doesn't add up'](#)

In November 2022, Baltimore voters approved a charter amendment prohibiting the sale of the city's conduit. Mayor Scott has said the deal he's supported doesn't flout the will of the voters since Baltimore City would still own the conduit.

Rev. Al Hathaway, a community activist, said the mayor's response is playing semantics with the will of the voters, noting the contract gives BGE control over the conduit, and could raise rates for city taxpayers.

"I think it's quite unfortunate that the mayor took it upon himself to use the power of his office" to get the deal done, Hathaway said. "I think the pressure from the corporate interests should not exceed the pressure for the Baltimore of what is the best deal."

Mayor Scott was questioned by FOX45 News if he would go work for BGE if he lost re-election in 2024; the mayor again scoffed and said he won't lose re-election.

"I'm never going to work for BGE, I'm a public servant," Scott said. "That's how I live my life."

BOE approves conduit deal with BGE despite absence of two board members

by Maxine Streicher

Wednesday, February 15th 2023

BALTIMORE (WBFF) — Two chairs sat empty at the Baltimore City Board of Estimates meeting Wednesday as City Council President Nick Mosby and Comptroller Bill Henry decided to sit out in protest on a vote that would give BGE broad control of the city's underground conduit system.

However, Mayor Brandon Scott and the board's two other members, which are appointed by him, went ahead and voted anyways approving the deal.

"When I was elected as the mayor of this city I made a commitment to always do what's in the best interest of the residents of Baltimore. That's it. Nothing else. No political games. No political showmanship, just what's in the best interest of the citizens of Baltimore and this proposed contract is just that," said Mayor Scott.

ALSO READ | [Mayor announces conduit deal with BGE; critics insist 'the math doesn't add up'](#)

The comptroller, city council president, and several city council members gathered hours later in opposition claiming the board broke the rules of the city charter when voting without two of its members.

"Mayor Scott appears to be fine conducting business in a manner that abuses the power of which the people entrusted him for a transparent open and accountable government," said Mosby.

They're now calling on Attorney General Anthony Brown to intervene and determine the legality of the board's actions.

"If the mayor does not show a willingness to defer an item when the council president or I asked for that in the middle of a meeting, then the mayor is going

to have to live with that in terms of how the people of Baltimore see that kind of behavior and whether the people of Baltimore want to see that type of behavior in the person in whom they've invested such extraordinary power," said Henry.

The deal with BGE has been highly controversial.

Just last November city residents voted overwhelmingly to maintain the city's control of the conduit system.

Last week, city council held a hearing grilling leaders over the agreement which the Department of Transportation has said works in BGE's favor in all aspects.

Local firms even complained they were never allowed to bid on the system.

Mosby and Henry said not enough consideration has been given to the proposal, and are asking for more information and more time for public discussion on how this will impact Baltimore.

"This is a precious city owned asset that we need to take our time and have real recommendations and real options on the table," said Mosby.

Mayor Brandon Scott has seemingly been determined to get the deal done despite running on a platform of transparency.

He's even called in the past to limit the mayor's power on the board.

Scott is insistent this deal is nothing short of transparent.

"Transparency is one of my personal standards of integrity," said Scott.

Most are saying something with this deal just isn't right.

"This situation is yet another example of an administration failing to lead in a manner that is grounded in respect for others," said Mosby.

Mayor Scott's office later released a statement, calling this agreement a "historic deal."

The statement said in part:

This morning, the Board of Estimates (BOE) approved the City's agreement with Baltimore Gas and Electric (BGE) over the use of the City's conduit. This is a historic deal that results in millions of dollars of additional investment into the conduit while also ensuring the City retains 100% ownership over every inch of the conduit system.

"I am here today to reaffirm my intention of moving the agreement with BGE forward," said Mayor Brandon M. Scott. "When I was elected Mayor, I made a commitment to always do what is in the best interests of the residents of this City."

"We are committed to moving forward with our city business despite the absence the City Council President and the Comptroller. Neither the City Charter provisions nor the rules of the BOE allow that detrimental result." said Acting City Solicitor Ebony Thompson, "We will continue to follow the BOE rules and regulations, and ensure that all necessary steps are taken to ratify contracts and obtain the required seals from the Department of Finance."