

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N. W., WASHINGTON, D.C. 20005

ORDER

January 30, 2002

GT97-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, FOR AUTHORITY TO AMEND ITS TARIFF, Order No. 12315

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") grants Washington Gas Light Company, District of Columbia Division's ("WGL") request to modify the Small Commercial Aggregation Pilot Program ("Pilot Program"). As a result, small commercial firm delivery service will be implemented on a full-scale basis in the District of Columbia.

I. BACKGROUND

2. On April 5, 1999, in Order No. 11345, the Commission approved WGL's request to offer firm delivery service under a two-year Pilot Program to commercial customers using less than 40,000 therms of natural gas per year.¹ The Pilot Program allows small non-residential customers to purchase natural gas from suppliers other than WGL. Participation in the Pilot Program is limited to firms that have an aggregate total usage per day of 3,000 dekatherms ("Dth") of the Daily Contract Quantity ("DCQ") for the first year and 6,000 Dth of the DCQ for the second year. In Order No. 11345, the Commission also adopted an Open Season enrollment period to begin on August 1st and to end on October 1st of each year.² However, at the request of WGL, the Commission subsequently expanded the Open Season period from August 1st to December 31st of each year.³ Subsequently, the Commission approved WGL's request to expand the Pilot Program to permit an indefinite open enrollment period so that businesses could enroll with third-party suppliers at anytime after April 2000.⁴

¹ See, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3, Order No. 11345, rel. April 5, 1999.*

² *Id.*

³ See, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3, Order No. 11490, rel. September 15, 1999.*

⁴ See, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3, Order No. 11608 at 3, rel. February 16, 2000.*

3. On October 24, 2001, WGL filed an application with the Commission to modify the Pilot Program to permit full-scale implementation.⁵ WGL's Application would essentially eliminate the "Pilot" designation from the Program. In support of its modification, WGL states that because all District of Columbia small commercial customers are currently eligible, its request will not alter or otherwise affect the provision of small commercial delivery service.⁶ WGL states that Commission approval will signify that the Pilot Program is in the public interest and should be made a permanent program.⁷

4. On November 5, 2001, the Commission in Order No. 12228 extended the Pilot Program for an additional 90 days, *nunc pro tunc*, from the date of the expiration of the Pilot Program (November 1, 2001).⁸ On November 16, 2001, the Commission published a Notice of Proposed Rulemaking in the D.C. Register that invited public comment on WGL's Application.⁹

5. On December 17, 2001, the Office of the People's Counsel ("OPC") filed a motion requesting an extension of time until December 19, 2001, to file comments regarding WGL's request.¹⁰ In support of its request, OPC stated that on November 30, 2001, data requests were sent to WGL regarding the level of participation in the programs in the District of Columbia, Maryland and Virginia.¹¹ OPC stated that it did not receive WG's responses until Friday, December 14, 2001.¹² As a result, OPC requested additional time to analyze WGL's data responses, in order to provide the Commission with a comprehensive response.¹³ WGL did not oppose OPC's Motion.

⁵ *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3, Application of the Washington Gas Light Company, filed October 24, 2001 ("WGL Application").* Also, attached to WGL's Application is WGL's Commercial Customer Choice Pilot Program Status Report, Year-two (the "Customer Choice Report").

⁶ WGL's Application at 1.

⁷ *Id.*

⁸ *See, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3, Order No. 12228 rel. November 5, 2001.*

⁹ 48 D.C. Reg. 10457.

¹⁰ *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3, Motion for Extension of Time of the Office of the People's Counsel, filed December 17, 2001 ("OPC Motion").* Comments on WGL's Application were due on December 17, 2001.

¹¹ OPC Motion at 1.

¹² *Id.* at 1.

¹³ *Id.* at 2.

II. PARTIES' COMMENTS

A. OPC's Comments

6. On December 19, 2001, OPC filed comments in this proceeding.¹⁴ In its comments, OPC requests that the Commission consider the following four recommendations before approving WGL's Application: (1) the Commission should investigate whether alternative suppliers are engaging in discriminatory marketing practices, (2) the Commission should investigate whether WGL needs to revise its Customer Choice Program strategy in the District of Columbia given the stagnant level of participation, (3) the Commission should direct WGL to revise its customer education program so that customers can make intelligent and informed decisions, and (4) the Commission should monitor the highly concentrated natural gas markets in the District and adopt a code of conduct for WGL and its affiliates.¹⁵

7. First, OPC states that the Commission should investigate whether alternative suppliers are engaging in discriminatory marketing practices.¹⁶ OPC makes this recommendation based upon WGL's year two status report, which suggests that "while a majority of non-participants were aware of the choice program, a majority of these customers report not receiving any solicitations from alternative suppliers."¹⁷ OPC suggests its findings may show that alternative suppliers have made selective offers to certain consumers.¹⁸ Thus, OPC recommends that the Commission investigate the marketing practices of alternative suppliers and determine whether they are engaging in unlawful discriminatory practices such as "redlining," which would be harmful to a pilot program.¹⁹

8. Second, OPC states that the Commission should investigate whether WGL should revise its Customer Choice Program strategy in the District of Columbia given the stagnant level of participation.²⁰ OPC states that while the number of District of Columbia commercial customers compared favorably to Maryland and Virginia at the commencement of each jurisdiction's customer choice program, enrollment in the

¹⁴ *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3*, Comments of the Office of the People's Counsel, filed December 19, 2001 ("OPC Comments").

¹⁵ OPC Comments at 1-2.

¹⁶ *Id.* at 4.

¹⁷ *Id.*; See also, WGL Customer Choice Report, Section V, p. 2 and p. 3. The Customer Choice Report specifically indicates that while 65% of the non-participants were aware of the choice program, 54% of these customers reported not receiving any solicitations from alternative suppliers.

¹⁸ OPC Comments at 4.

¹⁹ *Id.* at 4-5.

²⁰ *Id.* at 1-2.

District's pilot program declined from 33% in the first 12 months of the program to 31% in the second 12 months of the program.²¹ Consequently, OPC suggests that the Commission should investigate this specific issue.²²

9. Third, OPC states that WGL should revise its customer education program so that customers can make intelligent and informed choices.²³ OPC argues that WGL's Customer Satisfaction Survey ("Survey") results show that WGL has failed to implement an effective education program that assists customers in making informed decisions.²⁴ OPC states that the Survey shows that while significant numbers of customers are aware of the program, more than fifty percent of participants and non-participants do not believe WGL provided enough information about how to participate in the program.²⁵ According to OPC, these results suggest that WGL's current outreach efforts regarding customer education are less than effective.²⁶ Thus, OPC requests that WGL be directed to revise its customer education program before the Pilot Program becomes full scale.²⁷

10. Finally, OPC states that the Commission should "monitor the highly concentrated natural gas market in the District and adopt a code of conduct for WGL and its affiliates."²⁸ OPC states that the Herfindahl-Hirschman Index suggests that the retail natural gas industry in the District of Columbia is highly concentrated.²⁹ OPC states that based upon the data WGL provided in Section IV of the Year Two Status Report, the four largest alternative suppliers in October 2001, served over ninety-seven percent of all commercial customers taking firm delivery service.³⁰ As a result of this high market concentration, OPC recommends that the Commission monitor the activities of firms offering retail natural gas in the District of Columbia, and establish a monitoring mechanism for that purpose similar to that which is in place for the Potomac Electric

²¹ *Id.* at 5; *See also* WGL Application at 2.

²² OPC Comments at 5.

²³ *Id.* at 6.

²⁴ *Id.* at 7.

²⁵ *Id.*; *See also*, WGL Customer Choice Report, Section V, p. 8. The Survey figures specifically show that 51% of participants and 53% of non-participants of the program do not believe WGL provided enough information about how to participate in the program.

²⁶ OPC Comments at 7.

²⁷ *Id.* at 2.

²⁸ *Id.* at 8.

²⁹ *Id.*

³⁰ *Id.*

Power Company.³¹ Additionally, OPC recommends that the Commission adopt a code of conduct for WGL and affiliates.³²

B. WGL's Reply Comments

11. On December 31, 2001, WGL filed reply comments in response to OPC's Comments.³³ In its reply, WGL states that the Commission should reject OPC's four recommendations because the recommendations are currently being considered as part of other Commission proceedings.³⁴

12. First, WGL replies that the GT96-3 Working Group ("Working Group") is currently addressing the issue of suppliers' marketing practices.³⁵ WGL states that in an effort to inform the Commission about suppliers that may want to offer services in only a portion of the District of Columbia, the Working Group proposed the adoption of a supplier licensing application. The proposed application would require each applicant for a gas supplier license to state whether it intends to offer services only in specific areas.³⁶ This proposed feature of the application is intended, according to WGL, to provide the Commission with the ability to review the potential marketing territory of that supplier.³⁷ In addition, WGL asserts that this feature of the application provides the Commission with an explanation as to why it may be limiting its service offerings. Also, WGL asserts that the Working Group filed proposed license regulations which would authorize the

³¹ *Id.* at 9; *In the Matter of the Investigation Into Electric Service Market Competition and Regulatory Practices, Formal Case No. 945, Order No. 12071, rel. July 31, 2001*, the Commission directed the Potomac Electric Power Company to provide the Commission with monthly information on the number of customers that switched suppliers, the number of suppliers, the customer load in terms of (kw) hours, and customer demand.

³² *Id.*

³³ *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its Tariff, GT97-3, Reply Comments of Washington Gas Light Company, filed December 31, 2001 ("WGL Reply Comments")*. WGL did not file initial comments in response to the Notice of Proposed Rulemaking.

³⁴ WGL Reply Comments at 6.

³⁵ *Id.* at 2.

³⁶ *Id.*; See also, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Authority to Establish a New Rate Schedule No. 1A, GT96-3, Proposed Supplier Licensing Procedures Report, filed June 1, 2001 at Attachment 1, page 11.*

³⁷ WGL Reply Comments at 3.

Commission to take action regarding a licensee for just cause.³⁸ As proposed, just cause might be found in instances where a supplier discriminates against certain customers.³⁹

13. Second, WGL states that the decline in the number of customers participating in the second year of the Pilot Program can be attributed to the fact that several suppliers' gas price offering rates were much higher than the customer's original contract prices.⁴⁰ However, WGL suggests that the number of customers participating will increase as more commercial customers become educated about the benefits of the customer choice program.⁴¹ WGL states that the Commission should not investigate this issue in this proceeding, because on June 1, 2001, the Working Group filed a consumer education report that outlined future consumer education and communication efforts that could possibly improve customer education in the Natural Gas Delivery Service Program.⁴² WGL states that the Working Group examined various education vehicles and submitted recommendations to the Commission for its consideration on a customer education plan.⁴³ In the report, the Working Group recommended that the Commission should consider the inclusion of a paid media component in WGL's customer education effort, which would include television, print and radio advertisement.⁴⁴ WGL asserts that such efforts would reach a broader residential and commercial audience than current practices, thereby increasing customer education and awareness.⁴⁵ WGL asserts that as a result of this increased awareness, more commercial customers may be enticed to participate in the customer choice program.⁴⁶ In addition, WGL states that it has requested funds in Formal Case 989, for the collection of costs to be incurred in managing such an expanded education program.⁴⁷

³⁸ *Id.*; See also, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Authority to Establish a New Rate Schedule No. 1A, GT96-3, Proposed Supplier Licensing Procedures Report*, filed June 1, 2001 at Attachment 2, page 8.

³⁹ *Id.*

⁴⁰ WGL Comments at 4.

⁴¹ *Id.*

⁴² *Id.* at 4; See also, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Authority to Establish a New Rate Schedule No. 1A, GT96-3, Improved Consumer Education Report*, filed June 1, 2001 page 2.

⁴³ *Id.* at 5; See also, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Authority to Establish a New Rate Schedule No. 1A, GT96-3, Improved Consumer Education Report*, filed June 1, 2001.

⁴⁴ WGL Reply Comments at 4.

⁴⁵ *Id.*

⁴⁶ *Id.* at 4-5.

⁴⁷ *Id.* at 5.

14. Finally, WGL states that the Commission should reject OPC's recommendation that the Commission adopt a code of conduct for WGL in this proceeding, because the Commission has designated the issue of a code of conduct for WGL as an issue in Formal Case No. 989.⁴⁸ WGL states that pursuant to the Commission Order and Report issued on December 21, 2001, in Formal Case No. 989, WGL will be filing a new proposed code of conduct and all parties, including OPC, will have an opportunity to comment.⁴⁹

III. DISCUSSION

A. OPC's Motion

15. In the instant matter, the Commission finds there is good reason to grant OPC's Motion and to accept its late filed comments in response to WGL's Application. The Commission finds by accepting OPC's Comments, the Commission will have a complete record on which to base its decision in this matter. Thus, the Commission finds that no party will be prejudiced by our acceptance of OPC's comments inasmuch as a complete record would benefit the intended beneficiaries of the District's gas customer choice program.

B. OPC's Recommendations

16. The Commission believes that it is unnecessary to investigate whether alternative suppliers are engaging in discriminatory practices in connection with their participation in the Pilot Program. Alternative suppliers are not required under the Pilot Program, or by the Commission to serve all small commercial customers, that are covered under the WGL Application. Our concerns regarding the prospect for discrimination in the small commercial segment are minimal, given that all of the District's small commercial customers are currently eligible to participate in the Pilot Program, and would continue to be eligible under the proposed program. Nonetheless, the Working Group has developed and proposed licensing procedures for natural gas suppliers that address this issue.⁵⁰ Specifically, the Working Group submitted a proposed supplier license application, which requires each supplier to state whether it intends to offer service District-wide or only to limited areas with just cause.⁵¹ This proposal is

⁴⁸ *Id.* at 5-6; *See also, In the Matter of the Office of the People's Counsel's Complaint for a Commission-Ordered Investigation into the Reasonableness of Washington Gas Light Company's Rates; and In the Matter of Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service, Formal Case No. 989, Attachment III, Issue 8 (b), rel. Order No. 12274 December 21, 2001.*

⁴⁹ WGL Reply Comments at 6.

⁵⁰ *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Authority to Establish a New Rate Schedule No. 1A, GT96-3, Proposed Supplier Licensing Procedures Report, at 3-5 filed June 1, 2001.*

⁵¹ *Id.* at Attachment 1, page 11-12.

designed to help the Commission identify as early as possible, those suppliers who are providing service to only a portion of the District. Further, the Working Group proposed additional licensing regulations, which include a recommendation that the Commission exercise its authority to modify, suspend, or even terminate a license for just cause.⁵² As further proposed by the Working Group, just cause could be shown in instances where a supplier has been found to have discriminated against customer classes.

17. The Commission will not investigate WGL's customer choice strategy. Fluctuations in the level of customer participation in new choice-type programs occur as a matter of course. This is also true for the Pilot Program, which has been in existence for less than three years. The Commission cannot be expected to mount a full investigation of WGL's business strategy based merely on unavoidable rises and dips in participation that are attributable to market related and technological factors. If, however, the Commission were to receive information showing a persistent decline in enrollment or that some dominant factor was responsible for decreases in participation, an investigation might be warranted. In this matter, OPC did not provide any such information. Therefore, the Commission finds that existing circumstances do not warrant an investigation of WGL's customer choice strategy at this time.

18. Further, the Commission will not address WGL's Customer Education Program in this proceeding. OPC, has not provided any evidence, which suggests that small commercial customers require an education effort that is vastly different than the one proposed by the Working Group for residential customers. In the GT 96-3 proceeding, the Working Group submitted recommendations to the Commission for its consideration on a customer education plan for residential customers.⁵³ The Working Group submitted a consumer education report outlining future consumer education and communication efforts that should be implemented to improve residential customer education in the Natural Gas Delivery Service Program.⁵⁴ The consumer education report was proposed to improve the education of residential customers in the Firm Delivery Service Program. However, the Commission believes that due to the natural nexus between the customers in the residential and commercial delivery service programs, the recommendations of the consumer education report will actually benefit both customer classes. For example, consider a residential customer working in or owning a small commercial establishment. If that person is exposed to a residential customer education program communication or activity, the customer may become interested in changing both the commercial and the residential natural gas supplier. Thus, the Commission believes that this positive externality (spillover) from the proposed residential customer education program should eliminate the need to establish a separate consumer education program for small commercial customers, beyond what is currently

⁵² *Id.* at Attachment 2, page 8.

⁵³ *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Authority to Establish a New Rate Schedule No. 1A, GT96-3, Improved Consumer Education Report, filed June 1, 2001.*

⁵⁴ *Id.* at 2.

in place or as recommended by OPC. However, if in the future, evidence of poor participation rates continue, the Commission, at that time, can revisit this issue.

19. In addition, the Commission will not implement a code of conduct for WGL and its affiliates in this matter. This issue has already been designated in Formal Case No. 989.⁵⁵ In Formal Case No. 989, the Commission is expecting WGL to file a proposed code of conduct, which the parties in that proceeding, including OPC, will have an opportunity to adjudicate. Therefore, in light of the above, the Commission will not resolve this issue in this proceeding as well.

20. Further, the Commission will not address OPC's allegation of market concentration in the retail natural gas industry in the District of Columbia at this time, because OPC has not provided any evidence of market power abuse. OPC has not provided any information showing that a supplier is exercising market power because of this alleged concentrated situation. The Commission is of the view, however, that it should continue to monitor the Customer Choice market to detect evidence of market concentration and distortions and to discern market trends. To that end, the Commission directs WGL to submit a monthly report to the Commission showing the aggregate numbers of commercial and residential customers in the Customer Choice program and their sales in therms by customer class. The report should also include information showing the number of suppliers, and their associated customer and therm sales. WGL should specifically include historical information showing the therm sales figures by each supplier, as of the implementation of daily balancing in the spring of 2001.

C. WGL's Application

21. The Commission finds that WGL's Application to implement small commercial delivery service on a full-scale basis is in the public interest. WGL has provided information in its Customer Choice Report, which shows that customer knowledge of and satisfaction with the Pilot Program appears to be high. Specifically, WGL's Customer Choice Report shows: (1) that approximately 4,200 or thirty-one percent of District of Columbia commercial customers now participate in the Pilot Program; (2) that approximately forty-nine million annual therms, or thirty-three percent of District of Columbia firm customer usage had unbundled as of March 2001; and (3) that there are currently 12 participating commercial suppliers in the program.⁵⁶ In addition, the results of WGL's Survey indicate that participants are in favor of the Pilot Program and believe it is easy to enroll. In addition, awareness among non-participants is fairly high at sixty-five percent of all commercial customers.⁵⁷ The Commission finds

⁵⁵ *In the Matter of the Office of the People's Counsel's Complaint for a Commission-Ordered Investigation into the Reasonableness of Washington Gas Light Company's Rates; and In the Matter of Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service, Formal Case No. 989, at Attachment III, Issue 8 (b), Order No. 12274 rel. December 21, 2001.*

⁵⁶ WGL Application at 2.

⁵⁷ *Id.* at 2 and WGL Customer Choice Report, Section V.

that each statistic is a strong indicator that the Pilot Program has been accepted, and is serving the interest of the public.

22. In addition, the Commission finds that WGL's Application is in the public interest because its Application will not alter or otherwise affect the provision of small commercial delivery service. Neither WGL's revenue requirement nor the charges to the District's natural gas customers will be affected as a result of implementing the Pilot Program on a full-scale basis. In addition, all District of Columbia small commercial customers will continue to be eligible to participate in the small commercial firm delivery service program. Based on the record and the findings herein, the Commission concludes that approval of the WGL Application is in the public interest.

THEREFORE, IT IS ORDERED THAT:

23. OPC's Motion for Extension of Time is **GRANTED**;

24. WGL's Application to permit full-scale implementation of Small Commercial Firm Delivery Service is **APPROVED**;

25. WGL shall submit a monthly report to the Commission showing the number of commercial and residential customers in the Customer Choice program and their sales in therms. The report should also include information showing the number of suppliers and their associated customer and therm sales. As part of the report, WGL shall include historical information showing therm sales figures by each supplier, as of the implementation of daily balancing in the spring of 2001;

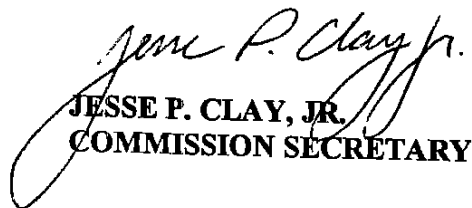
26. The Commission Secretary shall cause a Notice of Final Rulemaking to be published in the D.C. Register; and

27. The Tariff referenced in WGL's Application shall become effective upon the date of publication of the Notice of Final Rulemaking in the D.C. Register.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK


JESSE P. CLAY, JR.
COMMISSION SECRETARY