

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005**

ORDER

July 27, 2023

**FORMAL CASE NO. 1169, IN THE MATTER OF THE APPLICATION OF
WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO INCREASE EXISTING
RATES AND CHARGES FOR GAS SERVICE, Order No. 21885**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) reviews the issues list presented by the Office of the People's Counsel for the District of Columbia (“OPC”) in its Identification of Material Issues of Fact in Dispute in Surrebuttal Testimony of the Office of the People's Counsel for the District of Columbia (“OPC Surrebuttal Issues List”).¹ The Commission finds that none of the issues on OPC’s Surrebuttal Issues List identify material issues of fact in dispute; therefore, there will be no evidentiary hearing. However, the Commission will convene a hearing on September 13, 2023, to allow Parties to present oral arguments before the Commissioners regarding the issues that the Parties believe are fundamental to the Commission’s decisions in this proceeding following the process set forth in this Order. Parties seeking to present oral argument at the September 13 hearing shall file a limited brief identifying the issues to be discussed, including arguments and references to testimony. The limited briefs are to be filed no later than September 1, 2023. Because the September 13 hearing will not be an evidentiary hearing, witnesses will not need to appear.

II. BACKGROUND

2. On April 4, 2022, Washington Gas Light Company (“WGL” or “Company”) filed an Application requesting authority to increase existing rates and charges for natural gas service in the District of Columbia.² The requested rates are designed, if fully granted, to collect approximately \$226.4 million in total annual revenues, which represents an increase in the Company’s weather-normalized annual revenues of no more than \$53.0 million, including a transfer of \$5.3 million associated with costs from the natural gas system upgrades currently paid by customers through the PROJECTpipes monthly surcharge, resulting in a net increase of \$47.7 million in new revenues. These new revenues reflect an overall increase of approximately 20.4% over and above current bills.

¹ *Formal Case No. 1169, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service (“Formal Case No. 1169”), Identification of Material Issues of Fact in Dispute in Surrebuttal Testimony of the Office of the People's Counsel for the District of Columbia, filed May 19, 2023.*

² *Formal Case No. 1169, Application, filed April 4, 2022.*

3. The Company also proposes a Climate Progress Adjustment (“CPA”) in its proposed rate structure that the Company alleges will benefit customers and the Company. According to WGL, the proposed CPA stabilizes customers’ annual bills for the delivery of energy while also allowing WGL the opportunity to recover its approved revenue requirement, notwithstanding reduced customer consumption in direct alignment with the District’s climate goals. The Company is also proposing a Climate Action Recovery Tariff (“CART”), a regulatory mechanism to allow the Company to timely recover costs associated with the Company’s efforts to support the District’s climate goals.

4. In Order No. 21602, the Commission granted the parties the opportunity to file surrebuttal testimony. The Commission also directed the parties to identify any material issues of fact in dispute that could warrant an evidentiary hearing in the surrebuttal testimony.³ OPC filed its Surrebuttal Issues List with its Surrebuttal Testimony on May 19, 2023. No other party submitted a surrebuttal issues list.

III. DISCUSSION

5. According to OPC, its Surrebuttal Testimony identifies several material issues of fact in dispute that should be addressed in an evidentiary hearing. The first issue that OPC identifies is the weather normalization methodology to be used in this proceeding. OPC argues that WGL claims that the National Oceanic and Atmospheric Administration (“NOAA”) “endorses” the use of autoregressive conditional heteroskedasticity (“ARCH”)/generalized autoregressive conditional heteroskedasticity (“GARCH”) (collectively, “ARCH/GARCH methodology”), which WGL proposes to use, in weather normalization.⁴ However, OPC argues that NOAA does not use the ARCH/GARCH methodology for weather normalization in regulatory proceedings, even though NOAA uses the methodology for other purposes. OPC also claims that NOAA used its traditional methodology when calculating normal weather for the period 1991-2020. OPC argues that the difference between WGL and OPC on which weather normalization methodology NOAA uses is a specific issue of fact in dispute, and this difference is material because the weather normalization methodology used impacts WGL’s normalized test year non-gas revenues, and thus, the revenue requirement.⁵

6. OPC also disputes the accuracy of the ARCH/GARCH methodology.⁶ OPC claims that this dispute is material because it relates to the determination of the correct weather normalization methodology to use in this proceeding, which relates to the revenue requirement.⁷

³ *Formal Case No. 1169*, Order No. 21602, rel. April 24, 2023.

⁴ OPC Surrebuttal Issues List at 3, citing Exhibit WG (2N) Raab at 16.

⁵ OPC Surrebuttal Issues List at 3-4.

⁶ OPC Surrebuttal Issues List at 4.

⁷ OPC Surrebuttal Issues List at 5.

7. Regarding the CPA, OPC disputes whether WGL's proposed +/- 10% cap will mitigate month-to-month volatility in customer bills. WGL asserts that this cap will reduce customer bill volatility, while OPC argues that such a cap will not reduce customer bill volatility. OPC claims that this dispute is material because the Commission has expressed concerns in previous cases that a decoupling mechanism could add month-to-month volatility to customer bills. OPC also notes that the Commission's review of previously proposed decoupling mechanisms included factual determinations.⁸

8. OPC also disputes WGL's claim that the Company is experiencing financial pressure due to a lack of a decoupling mechanism, the CPA. OPC asserts that WGL contests OPC's findings in Exhibit OPC (A)-3 regarding lost revenues due to the lack of a decoupling mechanism. OPC argues that this dispute is material because the Commission has indicated that evidence of financial pressure is a requirement for approval of a decoupling mechanism.⁹

9. For the CART, OPC argues that there are material issues of fact in dispute regarding the criteria to be used to approve CART trackers and whether WGL has met those criteria. OPC claims that WGL's proposed three (3) criteria for approving trackers have not been approved by any regulatory commission or supported by any documents from the National Association of Regulatory Utility Commissioners.¹⁰ On the other hand, OPC presents alternative tracker criteria derived from a National Regulatory Research Institute report and believes the issues are material because the choice of criteria by the Commission will affect the way WGL collects climate program costs from ratepayers.¹¹

10. OPC also contends that there are material issues of fact in dispute regarding how the climate proposals in WGL's proposed CART will advance the District's climate goals and fit in the District's decarbonization pathway. OPC argues that WGL has failed to present sufficient climate proposals in this proceeding, and the analysis of proposals under any cost-benefit analysis developed in *GD2019-04-M* would necessitate factual inquiry. Additionally, OPC identifies the ICF Technical Study mentioned by WGL Witness Raab as presenting other factual issues.¹² OPC contends that these issues present material issues of fact in dispute and should be addressed in an evidentiary hearing.¹³

11. Regarding the revenue requirement, OPC identifies a material issue of fact in dispute in Adjustment 20. OPC argues that WGL Witness Tuoriniemi's Direct Testimony indicates that Adjustment 20 is a non-labor inflation adjustment, but WGL's responses to OPC

⁸ OPC Surrebuttal Issues List at 6.

⁹ OPC Surrebuttal Issues List at 7-8.

¹⁰ OPC Surrebuttal Issues List at 8-9.

¹¹ OPC Surrebuttal Issues List at 9.

¹² OPC Surrebuttal Issues List at 10.

¹³ OPC Surrebuttal Issues List at 11.

data requests show that Witness Tuoriniemi concedes that Adjustment 20 is not an inflation adjustment. OPC argues that this conflicting information presents an issue of fact in dispute, and the issue is material because it supports OPC's position that all non-labor inflation expense adjustments should be removed.¹⁴

12. Another material issue of fact in dispute identified by OPC is whether WGL has financial performance metrics in place. OPC contends that while WGL argues that it does not have financial performance metrics, OPC was able to calculate a financial performance metric from WGL's 2021 Value Driver Scorecard. OPC also argues that two (2) of WGL's witnesses present contradictory evidence on the issue of the existence of financial performance metrics; thus, there is a factual issue in dispute. OPC argues that this dispute is material because this dispute affects the Short-Term Incentive expense that OPC is seeking to reduce.¹⁵

13. OPC also contends that there are material issues of fact in dispute relating to WGL's operational performance and the peer group of companies that should be used to evaluate that performance. OPC contends that WGL and OPC have selected different peer groups to benchmark WGL's operational performance, so this difference is an issue of fact in dispute. OPC also argues that WGL and OPC differ on whether the Grade 1 leak performance is adequate and whether Grade 3 leaks are being properly reported.¹⁶

14. For *PROJECTpipes*, OPC challenges WGL's assertion that WGL could not control outside factors affecting replacement activities. OPC claims that it presented evidence to challenge WGL's assertion that its costs per mile of replacement activity are lower than Consolidated Edison's ("ConEd") costs. OPC argues that these issues are material because they are highly relevant to an assessment of *PROJECTpipes* relative to other gas utility programs.¹⁷

15. OPC also identifies what it believes to be several material issues of fact in dispute regarding cost of capital issues. OPC indicates that OPC has raised questions concerning the proper implication of cost of equity ("COE") models and the proper way to determine the appropriate regulatory capital structure. OPC contends that there are disputes about the appropriate method of determining the growth rate component of the DCF model and how current capital market conditions are affecting WGL's COE. If the CPA is adopted or if substandard system performance is found, OPC contends that there are material issues of fact relating to the appropriateness of the application of a business risk adjustment, credit risk adjustment, or any return on equity adjustment.¹⁸

¹⁴ OPC Surrebuttal Issues List at 11-12.

¹⁵ OPC Surrebuttal Issues List at 12-13.

¹⁶ OPC Surrebuttal Issues List at 14-15.

¹⁷ OPC Surrebuttal Issues List at 15.

¹⁸ OPC Surrebuttal Issues List at 16-17.

IV. DECISION

16. Generally, a genuine issue of material fact is a legal term often used as the basis for a motion for summary judgment. A summary judgment is proper if there is no genuine issue of material fact, and the movant is entitled to a judgment as a matter of law. Such a motion will be granted if the party making the motion proves there is no genuine issue of material fact to be decided. When the moving party makes a *prima facie* showing that no genuine issue of material fact exists, the burden shifts to the nonmoving party to rebut the showing by presenting substantial evidence creating a genuine issue of material fact.¹⁹

17. The presumption is that there is a disagreement between opposing parties on facts legally relevant to a claim. For purposes of adjudicating a dispute among parties, “[a]djudicatory facts answer the questions of who did what, where, when, how, why, and with what motive or intent and are the type of facts that go to a jury in a case tried before a jury.”²⁰ Additionally, a factual issue is “genuine” if it is not capable of being conclusively foreclosed by reference to undisputed facts. Although there may be genuine disputes over certain facts, a fact is “material” when its existence facilitates the resolution of an issue in the case. Material facts tend to prove or disprove a disputed fact that is relevant to the outcome of a case. The presumption is that there is a disagreement between opposing parties on facts legally relevant to a claim. The disagreement must be “genuine” in the sense that it must be plausible (e.g., one cannot logically dispute a contract date without also alleging that a copy of a contract with that date inaccurately reflects the agreement). A genuine issue of material fact, which, as stated above, involves a dispute over a material fact upon which the outcome of a legal case may rely and which, therefore, must be decided by a judge or jury and precludes summary judgment.

18. A hearing is not necessary where no material facts are in dispute or where the disposition of claims turns not on the determination of facts but on inferences and legal conclusions to be derived from facts already established.²¹ There is little need to have an evidentiary hearing so each party can cross-examine a witness on their opinion. The Commission can decide, based on the written testimony, which opinion to credit. If, however, there is a dispute as to whether a matter is true or false and it is material to the Commission’s decision, it may rise to a genuine issue of material fact in dispute.²²

¹⁹ *Formal Case No. 1156, In the Matter of the Application of Potomac Elec. Power Co. for Auth. to Implement a Multiyear Rate Plan for Elec. Distribution Serv. in the D.C.*, Order No. 20368, ¶¶ 10-11, rel. June 18, 2020; *Formal Case No. 1126, In the Matter of the Off. of the Peoples Counsels’ Complaint against Washington Gas Light Co. Regarding the Unlawful Comp. of Competitive Serv. Providers in Violation of Its Rate Schedule No. 5*, Order No. 18008, ¶¶ 36-37, rel. October 27, 2015; *Formal Case No. 1116, In the Matter of the Application for Approval of Triennial Underground Infrastructure Improvement Projects Plan*, Order No. 17627, ¶ 71, rel. September 9, 2014.

²⁰ *Formal Case No. 1102, In the Matter of the Investigation into the Continued Use of Verizon Washington, DC, Inc.’s Copper Infrastructure to Provide Telecommunications Services*, Order No. 17314, ¶ 15, rel. December 9, 2013.

²¹ *Potomac Elec. Power Co. v. Public Service Comm’n of Dist. of Columbia*, 457 A.2d 776, 789 (D.C Ct. App. 1983).

²² *See Formal Case No. 1154, In the Matter of Washington Gas Light Company’s Application for Approval of PROJECTpipes 2 Plan*, Order No. 20615, ¶¶ 5-6, rel. August 20, 2020.

19. In reviewing OPC's Surrebuttal Issues List, the Commission finds that none of the listed issues present material issues of fact in dispute. Regarding weather normalization, WGL and OPC present different estimates of normal weather.²³ Additionally, WGL, OPC, and Apartment and Office Building Association of Metropolitan Washington present contrasting opinions regarding the use of the ARCH/GARCH methodology. There is little need to have an evidentiary hearing so each party can cross-examine a witness on their opinion. The Commission can decide, based on the written testimony, which opinion to credit in determining the weather methodology to be used in this proceeding.

20. Regarding the CPA, OPC has identified differences in the WGL and OPC testimony relating to the issues of the effect of the +/- 10% cap on the CPA and whether WGL is experiencing revenue losses that would be corrected by the CPA.²⁴ These two issues relate to the criteria identified in Order No. 18712 for evaluating a decoupling proposal: that a decoupling proposal should promote energy efficiency; better align rates and costs; and provide more stable and predictable bills.²⁵ The decision on whether to approve the CPA disposition of claims turns not on the determination of facts but on inferences and policy conclusions regarding a decoupling mechanism.

21. In the CART, both WGL and OPC have proposed different trackers; WGL's proposed trackers are new, while OPC's trackers are based on NRRI trackers.²⁶ However, the decisions that the Commission would make regarding the trackers (if the CART is adopted, a decision that the Commission does not make here) would be policy decisions regarding the most appropriate trackers to credit in establishing the CART. Thus, the choice of trackers to establish if the CART is adopted is a policy determination, not a factual one. Likewise, the decision regarding whether WGL's climate proposals will advance the District's climate goals and fit in the District's decarbonization pathway does not turn on a factual determination but on inferences and legal conclusions to be derived from facts already established.

22. From reviewing the filings, it appears that there is contradictory information in the record regarding whether Adjustment 20 is a non-labor inflation adjustment. OPC contests WGL's statement that Adjustment 20 is a non-labor inflation adjustment²⁷ and argues that WGL Witness Tuoriniemi conceded in data request responses that Adjustment 20 was not an inflation adjustment.²⁸ In his rejoinder testimony, WGL Witness Tuoriniemi rejects the assertion that he

²³ See Exhibit WG (2N) (Raab) 3-5, 16-17, 20-21, Exhibit OPC (3A) (Dismukes) at 21.

²⁴ See Exhibit WG (N) (Raab) at 38; Exhibit WG (2N) (Raab) at 41; Exhibit OPC (3A) (Dismukes) at 15-16.

²⁵ *Formal Case No. 1137, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service*, Order No. 18712, ¶¶ 224-229, rel. March 3, 2017.

²⁶ See Exhibit WG (2M) (Yardley) at 2-9; Exhibit OPC (3A) (Dismukes) at 7-13.

²⁷ See Exhibit WG (D) (Tuoriniemi) at 98.

²⁸ See Exhibit OPC (2B) (Ostrander) at 40-44.

conceded that Adjustment 20 is not an inflation adjustment.²⁹ Resolving this issue relies on an examination of the testimony already filed to determine whether a concession has or has not been made by a witness. Since the issue can be resolved from the pleadings, an evidentiary hearing is not necessary.

23. There also appears to be a dispute regarding whether WGL has financial performance metrics in place as part of the Value Drivers Scorecard. OPC Witness Ostrander calculates such a metric,³⁰ which WGL disputes as without basis.³¹ In surrebuttal testimony, Witness Ostrander supports his proposed metric,³² while Witness Gibson defends his previous assertions in his rejoinder testimony.³³ This is another difference of opinion that can be resolved through examination of the pleadings; an evidentiary hearing is not necessary.

24. For operational performance, OPC identifies two issues in dispute: the methodology for choosing the peer group lists and whether WGL is reporting leak performance accurately. WGL and OPC evaluate WGL's operational performance with two different peer groups, and each party contends that the other's methodology for selecting the peer group is incorrect.³⁴ The choice of a methodology for selecting an appropriate peer group necessitates judgments regarding which methodology is more appropriate, involves policy determinations, not factual determination.

25. OPC also questions WGL's leak reporting for Grade 1 and Grade 3 leaks, including whether WGL reports Grade 3 leaks to federal authorities.³⁵ WGL argues that its leak reporting is accurate, questioning OPC's analysis of the leak reporting.³⁶ These issues present the question of whether WGL's leak reports are adequate. Such a determination can be determined on the record and does not warrant an evidentiary hearing.

26. Regarding PROJECT*pipes*, OPC claims that it presented evidence contradicting WGL's testimony relating to costs in the program. OPC's Witness Walker challenges WGL's cost calculations in WGL's comparison of ConEd pipe replacement costs with PROJECT*pipes* costs.³⁷ In rejoinder testimony, WGL Witness Townsend argues that WGL's cost comparison to ConEd's

²⁹ See Exhibit OPC (5D) (Tuoriniemi) at 18-20.

³⁰ See Exhibit OPC (B) (Ostrander) at 57-58.

³¹ See Exhibit WG (2E) (Gibson) at 5-6.

³² See Exhibit OPC (2B) (Ostrander) at 45-48.

³³ See Exhibit WG (3E) (Gibson) at 2.

³⁴ See Exhibit WG (2G) (Townsend) at 2, 4, 38-39; Exhibit OPC (2C) (Walker) at 6-8.

³⁵ See Exhibit OPC (2C) (Walker) at 10-11.

³⁶ See Exhibit WG (3G) (Townsend) at 9-11.

³⁷ See Exhibit OPC (2C) (Walker) at 17-20.

costs is accurate.³⁸ Resolving this type of cost comparison is not a factual dispute but merely a difference of opinion on how WGL developed its comparison. The record is sufficient to allow the Commission to decide this matter.

27. OPC contends that there are several material issues of fact in dispute regarding the cost of capital. For example, OPC argues that the “proper implication of the ... COE[] models and the proper way to determine the appropriate regulatory capital structure” is in dispute, as is “the appropriate method of determining the growth rate component of the DCF model.”³⁹ Further, OPC contends that another issue is “how current capital market conditions are impacting WGL’s COE.”⁴⁰ OPC also argues that “whether it is appropriate to apply a business risk adjustment, credit risk adjustment, or any ROE adjustment for substandard system performance or if the CPA mechanism is approved” is a material issue of fact in dispute. However, all of these issues require the Commission to determine “appropriateness,” which involves policy determinations, not factual determination. Thus, these issues are not material issues of fact in dispute requiring an evidentiary hearing. Because the Commission finds there are no material issues of fact in dispute, an evidentiary hearing is not required.

28. However, the Commission will convene a hearing on September 13, 2023, to allow Parties to present oral arguments before the Commissioners regarding the issues that the Parties believe are fundamental to the Commission’s decisions in this proceeding. Parties seeking to present oral argument at the September 13 hearing shall file a limited brief of no more than 20 pages identifying the issues to be discussed, including arguments and references to testimony. The limited briefs are to be filed by September 1, 2023. Each party will have 30 minutes for oral argument, proceeding in the following order: WGL; OPC; and the other parties in alphabetical order. WGL can reserve no more than 10 minutes of its 30 minute presentation to respond to other Parties’ arguments at the conclusion of the oral argument. Commissioners may ask questions during the oral argument. Because the hearing will not be an evidentiary hearing, witnesses will not need to appear.

³⁸ See Exhibit WG (3G) (Townsend) at 6-9.

³⁹ OPC Surrebuttal Issues List at 16.

⁴⁰ OPC Surrebuttal Issues List at 16.

THEREFORE, IT IS ORDERED THAT:

29. The September 13, 2023, hearing in this proceeding will follow the process outlined in paragraph 28 and will convene at 10:15 a.m.; and

30. Limited briefs of no more than 20 pages addressing the issues that the Parties will discuss at the September 13 hearing are due by September 1, 2023.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

CHIEF CLERK

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**