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People's Counsel

March 24, 2023

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

Re: 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*

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceeding, please find the Motion of the Office of the People's Counsel, Earth Justice on behalf of Sierra Club, and the Apartment and Office Building Association of Metropolitan Washington for expedited relief concerning Order No. 21582 or, in the Alternative, for Leave to File Surrebuttal Testimony, and to Suspend the Procedural Schedule.

Sincerely,

/s/ Elizabeth Beltran
Elizabeth Beltran
Assistant People's Counsel

Enclosure

cc Parties of record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

In the Matter of	§	
	§	
THE APPLICATION OF	§	
WASHINGTON GAS LIGHT	§	**Formal Case No. 1169**
COMPANY REQUEST FOR	§	
AUTHORITY TO INCREASE	§	
EXISTING RATES AND CHARGES	§	
FOR GAS SERVICE		

MOTION OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA AND THE APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON FOR EXPEDITED RELIEF CONCERNING ORDER NO. 21582 OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE SURREBUTTAL TESTIMONY, AND TO SUSPEND THE PROCEDURAL SCHEDULE

Pursuant to Rule 105.8 and of the Commission's Rules of Practice and Procedure[1] and D.C. Code § 34-604(b) the Office of the People's Counsel for the District of Columbia ("OPC"), the statutory representative of District of Columbia ("District" or "D.C.") ratepayers with respect to utility matters,[2] and the Apartment and Office Building Association of Metropolitan Washington ("AOBA") (collectively, "Movants") hereby request reversal of the Commission's March 14, 2023, Order No. 21582. The Commission's determination not to hold an evidentiary hearing in this proceeding is unlawful, unsupported, and unwise. The Commission should reverse that decision and set dates for the conduct of an evidentiary hearing. Alternatively, if the Commission

[1] 15 DCMR §§ 105.8, 140.1 (2022).

[2] D.C. Code § 34-804 (2022 Supp.).

declines to hold an evidentiary hearing, then it should permit OPC and the intervenors[3] to submit surrebuttal testimony and establish a deadline for doing so that is no sooner than four weeks from the date on which this alternative request is granted. Finally, given the nature of this request, Movants ask that the Commission (1) suspend the current procedural schedule; (2) set a deadline of March 31 for the submission of any responses to this filing; and (3) grant the requested relief on an expedited basis.

I. BACKGROUND

On April 4, 2022, Washington Gas Light Company ("WGL" or "Company") filed an application for authority to increase gas service rates in the District.[4] On June 22, 2022, AOBA, GSA, and the Sierra Club filed a proposed procedural schedule that included a date for the submission of surrebuttal testimony by OPC and the intervenors.[5] OPC supported that request.[6] On August 12, 2022, the Commission set the procedural schedule in this proceeding.[7] The schedule did not include a surrebuttal testimony date.[8] WGL filed supplemental testimony and workpapers on September 2, 2022, OPC and the Intervenors filed direct testimony on November 4, 2022, and all parties filed rebuttal testimony on January 6, 2023.[9] On January 11, 2023, OPC

[3] "Intervenors" are AOBA, the District of Columbia Government ("DCG"), the U.S. General Services Administration ("GSA"), and the Sierra Club.

[4] 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, filed Apr. 4, 2022 ("WGL Application").

[5] Formal Case No. 1169, Order No. 21420 ¶ 65, rel. August 12, 2022.

[6] Order No. 21420 ¶ 65.

[7] *Id.* Att. A

[8] *Id.* The Commission did not explain why it failed to include the option to file surrebuttal testimony in the procedural schedule, stating only that it has a "great deal of discretion" to "control the pace of proceedings through its calendar." *See Id.* ¶¶ 72-73.

[9] *Id.*

and the Intervenors submitted a motion to modify the procedural schedule,[10] which the Commission granted in Order No. 21565.[11] Order No. 21565 set February 10 as the date for the submission of "Lists of Material Issues of Fact in Dispute," and included March 20, 21, and 24, 2023 as the dates for evidentiary hearings.[12]

On February 10, OPC and the Intervenors submitted their Issues Lists.[13] On February 17, 2023, Commission staff held a Prehearing Conference to discuss material issues of fact in dispute in this proceeding that may warrant an evidentiary hearing.[14] During the Prehearing Conference, OPC and the intervenors discussed some[15] of the specific material factual issues in dispute that warrant an evidentiary hearing.[16] On March 14, 2023, the Commission issued Order No. 21582, in which it determined that there were no material issues of fact in dispute and declined to hold an evidentiary hearing in this proceeding.[17] Instead of an evidentiary hearing, the Commission stated

[10] *Formal Case No. 1169*, Office of the People's Counsel for the District of Columbia, the District of Columbia Government, the General Services Administration, the Apartment and Office Building Association of Metropolitan Washington, and the Sierra Club's Joint Motion to Modify the Procedural Schedule, filed January 11, 2023.

[11] *Formal Case No. 1169*, Order No. 21565, rel. January 20, 2023.

[12] *Formal Case No. 1169*, Order No. 21565 ¶ 6.

[13] *Formal Case No. 1169*, List of Material Issues of Fact in Dispute of the Office of the People's Counsel for the District of Columbia ("OPC List of Material Issues of Fact"), filed February 10, 2023; Formal Case No. 1169, Joint Statement of Issues of Material Fact in Dispute of the Apartment and Office Building Association of Metropolitan Washington, the General Services Administration, and the Sierra Club ("Joint List of Material Issues of Fact"), filed February 10, 2023; *Formal Case No. 1169*, District of Columbia Government's List of Material Issues of Fact in Dispute ("DCG List of Material Issues of Fact"), filed February 10, 2023.

[14] *See Formal Case No. 1169*, Transcript of February 17, 2023 Prehearing Conference Held in Formal Case No. 1169 ("Tr."), rel. February 23, 2023.

[15] During the Prehearing Conference, Commission staff limited discussion of the items contained in the lists of material issues. *See* Tr. 40:1-5 (PSC General Counsel: "I'm not sure if I want to hear any more from you right now . . . " OPC outside counsel: "Sure. I have other issues, though.") and 59:5-8 (PSC General Counsel: "So give me your one big material issue of fact that you think we need to hear based on your perspective, D.C. Government's perspective.").

[16] *See Formal Case No. 1169*, Joint Pre-Hearing Statement at 1-2, filed February 27, 2023.

[17] *Formal Case No. 1169*, Order No. 21582, rel. March 14, 2023.

that it intends to convene a legislative-style hearing with timing and procedures to be determined at a future date.[18]

II. THE COMMISSION SHOULD HOLD AN EVIDENTIARY HEARING OR SET A DATE FOR THE SUBMISSION OF SURREBUTTAL TESTIMONY

Order No. 21582 errs in finding that an evidentiary hearing is unnecessary because there are no material issues of fact in dispute. The Commission's determination is contrary to both the governing law and the evidentiary record. Order No. 21582 should be reversed.

A. Order No. 21582 errs in suggesting that "policy" determinations can be made without the support of a full and complete administrative record.

Order No. 21582 finds (at ¶ 10) that all of the matters at issue in this case are "policy" questions that are left to the PSC's discretion and, because they do not raise material factual issues, can "be resolved by briefing and without a hearing." These issues include whether certain charges are "proper," "prudent," or "reasonable." *Id.* While Order No. 21582 consists almost entirely of a recitation of the parties' issues lists, the Commission says very little—if anything—about *why* those lists raise no material and disputed factual questions.[19] With limited exception, Order No. 21582 fails to show how the Commission could ascertain whether any of the dozens of identified issues raise disputed issues of fact and whether such disputes are genuine and material.

But even if the Commission's erroneous characterization of the issues were correct, the PSC's exercise of its discretionary authority must still be based upon and consistent with the evidentiary record. And that record must itself have been compiled in a manner that accords with

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[18] Id. ¶ 87.

[19] In place of analysis, Order No. 21582 offers conclusory statements. For example, after listing (Order No. 21582, ¶ 27) the parties' concerns with WGL's ratemaking adjustments, the Commission concludes that "[w]hile some of these issues seek determinations of whether WGL has presented sufficient information to support its positions, testimony or data request responses that can be entered into the record contain the information necessary to resolve these questions." Order No. 21582 nowhere explains the basis for this finding. The bald assertion that sufficient information is already in the record—where Movants and the intervenors have had no opportunity to challenge WGL's rebuttal case—is meaningless.

the parties' due process rights. A PSC decision will be reversed where it is not supported by "reliable, probative, and substantial evidence."[20] And a decision cannot meet that standard where the "record" evidence on which the decision is based is by design incomplete, as would be the case if OPC and the intervenors are afforded no reasonable opportunity to confront the Company's rebuttal case.[21]

Order No. 21582 cites (at ¶ 9) *Potomac Elec. Power Co. v. Pub. Serv. Comm'n of D.C.*, 457 A.2d 776 (D.C. 1983) ("*Pepco*") for the proposition that an evidentiary hearing is not necessary where there are no material facts in dispute. But the instant case is nothing like *Pepco.* In fact, it is the other way around: the result in that case demonstrates the Commission's error in this one.

Pepco involved a request for emergency rate relief, which was the subject of a hearing at which the PSC "took testimony from PEPCO officials and heard oral argument on motions to dismiss filed by intervenors Washington Metropolitan Area Transit Authority, the General Services Administration, the Office of People's Counsel, and the Commission staff." *Id*. at 781-2. The Commission subsequently granted those motions, finding that the Company had "failed to demonstrate the extraordinary circumstances necessary to establish a *prima facie* case for emergency relief." *Id*. at 782. Pepco then filed a second application, which was dismissed without a hearing. The Company appealed that ruling, but the court affirmed the Commission, finding that

[20] D.C. Code § 2-509(e). See *Potomac Elec. Power Co. v. Pub. Serv. Comm'n of D.C.*, 457 A.2d 776, 782 (D.C. 1983) (citing cases) (Commission must be affirmed "if there is substantial evidence to support the Commission's findings and conclusions and the Commission has given reasoned consideration to each of the pertinent factors[.]").

[21] While the Commission has "sole responsibility for balancing consumer and investor interests in designing rate structures and approving specific charges[,]" a reviewing court "must ascertain that, in striking a balance between the competing consumer and investor interests, 'the Commission has given reasoned consideration to each of the pertinent factors[.]'" *Potomac Elec. Power Co. v. Pub. Serv. Comm'n of D.C.*, 457 A.2d 776, 782 (D.C. 1983), *quoting People's Couns. v. Pub. Serv. Comm'n, D.C.*, 399 A.2d 43, 45-6 (1979). But Order No. 21582 results in an inherently "unbalanced" record. The Commission cannot demonstrate that it has fairly balanced competing interests where it has unreasonably truncated the ability of consumers to present their side of the story.

"[i]f PEPCO's second application relied on the same facts and legal contentions considered by the Commission in dismissing the first application, the Commission has the power to dismiss it without a hearing." *Id* at 789.

The instant case involves nothing of the sort. WGL seeks permanent—not emergency—rate relief, and its request has obviously not been the subject of a prior hearing. In fact, the *Pepco* court highlighted the differences between emergency and permanent rate relief requests, noting the need for a more searching inquiry in the latter situation:

> Permanent ratemaking requires the Commission to set new rates, after detailed consideration of the appropriate test year, the property to be included in the rate base, and the fair and reasonable rate of return, that will be effective for an indeterminate future period. In deciding an emergency rate application, the Commission is merely deciding whether or not the utility's financial situation warrants granting a portion of a permanent rate request in advance of actually establishing new permanent rates.

Id. at 784. The PSC cannot reasonably claim to have engaged in the requisite "detailed consideration" of the issues where it refuses to afford OPC and the intervenors a fair chance to rebut the Company's case.

Along the same lines, while the Court of Appeals has stated that its review of PSC decisions is deferential, that deference is not limitless. As explained in the court's recent decision in *Office of the People's Counsel v. D.C. Pub. Serv. Comm'n*, 284 A.3d 1027, 1032-33 (D.C. 2022):

> We defer to the Commission's "findings of fact . . . unless it shall appear that such findings are unreasonable, arbitrary, or capricious." *Apartment & Off. Bldg. Ass'n of Metro. Wash. v. Pub. Serv. Comm'n of D.C.*, 203 A.3d 772, 777 (D.C. 2019) (ellipsis omitted) (quoting D.C. Code § 34-606). And we will affirm the Commission's orders "if there is substantial evidence to support [its] findings and conclusions and the Commission has given reasoned consideration to each of the pertinent factors" under the circumstances. *Id.* (brackets and internal quotation marks omitted). In short, our deference is contingent on the Commission "fully and clearly explain[ing] what it does and why it does it." *Id.* (quoting *Potomac Elec. Power Co. v. Pub. Serv. Comm'n of D.C.*, 457 A.2d 776, 783-

> 84 (D.C. 1983)); *accord Off. of the People's Couns. v. Pub. Serv. Comm'n of D.C.*, 163 A.3d 735, 739 (D.C. 2017) ("To permit meaningful judicial review, we require the Commission to explain its actions fully and clearly." (brackets omitted)).

The Commission will be hard-pressed to show that its rulings in this proceeding are supported by "substantial evidence" where the Company is able to submit its entire case, including its rebuttal case, into the record uncontested by cross-examination, while OPC and the intervenors are prohibited from putting their opposing evidence into the record.

B. Order No. 21582 errs by denying OPC and the intervenors their statutory right to respond to evidence.

The decision to proceed without an evidentiary hearing ignores that parties have a statutory right to respond to evidence. D.C. Code Section 2-509(b) provides that each party to a "contested case" has the "right to present . . . his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts." The right to submit rebuttal evidence in PSC proceedings can be satisfied by allowing OPC and the intervenors to (1) file surrebuttal testimony, or (2) cross-examine the Company's witnesses at an evidentiary hearing. Order No. 21582 wrongly rejects both options.[22]

With respect to the former, the Commission's General Counsel asked the parties at the February 17 prehearing conference why they did not seek authorization to submit surrebuttal, noting that "we have in the past allowed it." Tr. 23:19-20. The intervenors explained that they had proposed that the procedural schedule include a date for the submission of surrebuttal testimony,

[22] The Court of Appeals has held that a public utility's application for a rate increase is subject to the contested case provisions of the District of Columbia Administrative Procedure Act. *United States v. Pub. Serv. Comm'n of D.C.*, 465 A.2d 829, 833 (D.C. 1983) (citing D.C. Code § 1-1509(b) (1981), the DC APA statutory predecessor to D.C. Code § 2-509(b). Although Order No. 21582 provides for a legislative hearing, the order does not purport to change Formal Case 1169's status as a contested case within the meaning of D.C. Code § 2-509(b) and the DC APA nor could it.

but the Commission denied the request. Tr. 24:9-11.[23] During the February 17 Prehearing Conference, AOBA counsel stated that AOBA would welcome the chance to file surrebuttal and would need four weeks to produce it. Tr. 41:16-21. Counsel also noted her belief that doing so would "narrow the issues . . . significantly" Tr. 41:21-42:1.[24] The General Counsel responded, "You just talked yourself out of that." Tr. 42:2-3.[25] Order No. 21582 does not mention this exchange, and reflects no consideration of providing OPC and the intervenors a right to submit surrebuttal in lieu of an evidentiary hearing.

The failure to provide for either an evidentiary hearing or surrebuttal testimony is particularly damaging to OPC and the intervenors' due process rights because the Company's rebuttal filing is massive and includes several new witnesses who did not file direct or supplemental testimony. Much of the Company's rebuttal testimony addresses novel and significant matters such as the Company's proposed Climate Progress Adjustment ("CPA"), proposed Climate Action Recovery Tariff ("CART"), and proposed methodology for projected weather normalization. Here, as in many other PSC proceedings, substantial—if not essential—evidence in support of the utility's positions did not appear until the submission of rebuttal testimony. Counsel for the Attorney General explained at the June 29 Status Conference that the opportunity to submit surrebuttal testimony is needed:

> because what we've seen in the past many times is that the, you know, the company will wait until the parties put out their direct

[23] The intervenors' proposed schedule, which is included in Order No. 21420 at ¶ 65, includes a date for surrebuttal. The Commission set a schedule that did not provide for the filing of surrebuttal testimony and thus denied the request without explanation.

[24] Similarly, during the Commission's June 29, 2022 Status Conference in this proceeding (*Formal Case No. 1169*, Transcript of the June 29, 2022 Status Conference ("Status Conf. Tr."), rel. July 11, 2022) AOBA counsel had responded to concerns about streamlining hearings by observing that "the one thing that we find streamlines the case more than anything else is the filing of surrebuttal testimony." Status Conf. 79:10-12. She pointed out "that's where you substantially cut down on hearings." *Id*. at 79:14-15.

[25] The General Counsel did not explain why a slight scheduling delay to allow OPC and the intervenors due process was rejected out of hand.

> testimony. They'll wait till their rebuttal testimony to put the real case in, you know, responding to the direct testimony of other parties, and then we have a whole -- essentially a whole new application that we don't have an opportunity to respond to.

Status Conf. Tr. 85:11-18. There was no way for OPC and the intervenors to address the Company's rebuttal case before it was filed, as they cannot address what they have not seen. By the same token, the Commission cannot rely on what they have not heard. OPC and the intervenors need either the opportunity to file surrebuttal testimony or the right to cross-examine WGL witnesses if they are to have a fair opportunity to make their case, and the Commission is to compile the requisite record to decide these matters.

C. Order No. 21582 errs in finding that cross-examination is not needed to assess opinion testimony.

Order No. 21582 discounts the value of an evidentiary hearing, finding without citation (at ¶ 9) that "[t]here is little need to have [one] … so each party can cross-examine a witness on their opinion. The Commission can decide, based on the written testimony, which opinion to credit." While the Commission must of course consider written testimony, cross-examination can be an invaluable aid to the process by eliciting facts that may undermine (or bolster) the credibility of a witness, or the reliability of their methodology or opinions.[26] Order No. 21582 offers no basis to find otherwise. The accuracy, reliability, and probative value, if any, of the underlying facts upon which an opinion is based is critical to any assessment of a witness's opinion. Indeed, it is not hyperbole to suggest that the Commission's flat assertion that it does not need cross-examination

[26] *Selk v. D.C. Dept. of Emp. Servs.,* 497 A.2d 1056, 1059 (D.C. 1985) ("Testimony that is not subject to cross-examination cannot be considered 'reliable, probative, and substantial evidence.'") As support for this proposition, the Court cites D.C. Code § 1-1509(b), now D.C. Code § 2-509(b).

to decide which witness' opinion to credit is at odds with the foundations of American jurisprudence.[27]

D. Order No. 21582 imposes improper evidentiary burdens on OPC and the intervenors.

Order No. 21582 justifies dispensing with the evidentiary hearing by imposing an unreasonable burden on OPC and the intervenors. The Commission applies (Order No. 21582, ¶ 7) a summary judgment standard, referring (*id*.) to the shifting of the burden from the party moving for summary judgment to the nonmoving party where the movant has made a *prima facie* case. Using this analysis, the PSC concludes that OPC and the intervenors must demonstrate the presence of material issues of fact that are in dispute. But there is no basis to impose that framework here, as no party has sought summary judgment, no *prima facie* showing has even been attempted, and none of the procedural protections related to such a request have been provided to the opposing party. Instead, Order No. 21582 presumes that a *prima facie* showing was made, and reverse-engineers matters by demanding that OPC and the intervenors rebut it.

Had WGL sought summary disposition, it would have been obliged to identify the facts not in dispute, and OPC and the intervenors would have had the right (if not obligation) to demonstrate the contrary, including (if necessary) through the submission of affidavit testimony.[28] In addition, all of the evidence in the case would have to be viewed in the manner most favorable

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[27] Cross-examination has been described as the "greatest legal engine ever invented for the discovery of truth." 5 J. Wigmore, Evidence § 1367, p. 32. *See also Cal. v. Green*, 399 U.S. 149, 158 (1970) (same).

[28] OPC and Sierra Club sought a summary ruling that the proposed Climate Progress Adjustment and Climate Action Recovery Tariff should be considered in Formal Case No. 1167. WGL opposed both motions, and the Commission rejected them, finding (in Order No. 21420) that summary judgment was not appropriate because the CPA raised a host of fact issues that needed to be resolved in this proceeding, ¶ 56, noting that "[t]his case can proceed like any other rate case[.]" *Id.* at ¶ 57. Order No. 21582 fails to explain what has changed in the interim and why there is no longer a need to resolve disputed factual issues concerning these novel proposals.

to the non-moving party.[29] Order No. 21582 is not consistent with any of this. Here, the Commission held a prehearing conference, asked OPC and the intervenors to demonstrate that there were material factual issues in dispute, and then decided without meaningful analysis that there were none.[30]

E. Order No. 21582 errs in finding that there are no material issues of fact in dispute.

The best evidence that this matter is rife with material factual disputes has been provided by WGL itself. The Company's 2,700-plus page rebuttal presentation, which includes the testimony and exhibits of *eighteen* separate witnesses—including three witnesses that did not submit direct testimony—refutes any contention to the contrary. Phrased differently, if the Company needs nearly 3,000 pages to show that there are no factual disputes, then this case plainly presents a multitude of significant factual disagreements to be addressed at hearing. Moreover, OPC and other intervenor counsel provided examples at the Prehearing Conference of several material and disputed issues. Order No. 21582 notes (at ¶ 5) that the Conference was held, but does not cite to or address any of the information addressed there. The failure to do so is unreasonable; the Commission has no authority to ignore the Conference it held for the very purpose Order No. 21582 addresses: to determine whether this case presents material issues of fact. We highlight

[29] *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255 (1986) ("[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.").

[30] We note that WGL's opportunistic support for dispensing with an evidentiary hearing is of recent vintage. The Company's proposed procedural schedule included four days for evidentiary hearings. Order No. 21420 at ¶ 66 (the evidentiary hearings were proposed for the period January 31, 2023-February 2, 2023). By the February 17 Prehearing Conference, however, WGL had become a full-throated advocate for shutting down further process, arguing both that there were no disputed material issues, and that it would be unfair to permit OPC and the intervenors to file surrebuttal testimony, as the Company has the burden of proof. Tr. 78:17-19. The locus of evidentiary burdens should have no bearing on whether all parties have the right to present their sides of the case.

those and other specific examples *infra*, but, to be clear, our list is in no way intended to be exhaustive.[31]

F. Order No. 21582 errs in providing inadequate substitutes for an evidentiary hearing.

The PSC's suggestions for how the intervenors can confront the Company's rebuttal without the right to cross-examine or file surrebuttal fail. The option of attaching a data response to a brief is not a substitute for questioning a witness about the content of that request, which would of course include probing the validity of any statements contained within the response. And the suggestion that challenges to the content of a response can be advanced on brief ignores that statements of counsel are not evidence.[32] Worse, this practice encourages parties to provide self-serving or otherwise inadequate data responses, as the responding party will know that they will not be questioned about the content of their answers at hearing and they will be submitted into evidence without opportunity for objection. The Commission's procedure also presumably permits WGL to submit additional data request responses with its brief, even if OPC and the intervenors would not have sought to include those responses in the record. In short, the Commission's procedure is an invitation to flood the record with information that is either untested or unwanted. More broadly, data responses that have not been subject to cross-examination or whose admission into the record is by stipulation cannot be considered record evidence upon which the Commission can rely in making any determination.

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[31] By way of example, WGL's James Wagner asserted at the February 17 Prehearing Conference that there was no need for additional testimony on weather normalization issues because WGL rebuttal witness Paul Raab "in his rebuttal has 69 pages whereby he goes in and tells you exactly why Witness Dismukes is wrong based on what he did." Tr. 84: 7-10. Far from showing that no evidentiary hearing is needed, Mr. Wagner's characterization of witness Raab's rebuttal testimony demonstrates the opposite. While Mr. Raab apparently needed 69 pages to explain why OPC witness Dismukes is wrong, the Office is not to be afforded even 69 seconds to question Mr. Raab about the bases for his claims.

[32] *Najafi v. United States*, 866 A.2d 103, 105 n.3 (D.C. 2005) ("counsel's statements are not evidence").

Similarly, the Commission's stated intention (Order No. 21582, ¶ 87) to hold a "legislative hearing" is not an adequate replacement, especially where the Commission offers no clues as to how this "hearing" will be conducted. [33] If past such sessions are any indication, there will be neither an opportunity for OPC and the intervenors to question WGL witnesses, nor perhaps for any OPC or intervenor witness even to appear.[34] This procedure cannot reasonably take the place of an evidentiary proceeding.[35]

G. Order No. 21582 errs in failing to provide an adequate process for consideration of issues so central to the public interest.

The General Counsel advised the parties at the February 17 Prehearing Conference that the "Commissioners are not going to sit in front of parties just to be hearing things that's not material. That's protocol going forward for all our rate cases, and for most of our proceedings." Tr. 101:5-7. Whether this "protocol" would be sensible in any PSC proceeding, it should certainly not be utilized here. The Company is seeking a more than *20 percent* increase in residential rates and a 25 to 30 percent increase from commercial and apartment building owners. But the impact of this

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[33] The suggestion is also contradictory. If the PSC truly believes that there are no material factual issues in this proceeding, then it would seem that no hearing of any kind, including the proposed "legislative" hearing, is needed.

[34] *See* Order No. 22028 *issued in* General Docket No. 2019-03 at ¶ 4, rel. September 26, 2019 ("As this is a legislative-style, informational hearing, and not an evidentiary hearing, no other persons will be permitted to present statements or submit information or question Pepco at the hearing.").

[35] The Court of Appeals has characterized a legislative hearing as relating to

> 'the making of a rule for the future.' As distinguished from a judicial inquiry, it is a non-adversary proceeding which seeks to devise broad policy applicable to the public generally, or a substantial segment thereof, rather than to individual parties. In such hearings, 'it is not necessary that the full panoply of judicial procedures be used.' While fact finding may to some extent be involved in the process, the due process requirements of confrontation and cross-examination, the hallmarks of the judicial inquiry are not necessarily present.

Chevy Chase Citizens Ass'n. v. D.C. Council, 327 A.2d 310, 314 (D.C. 1974) (citations omitted). This procedure designed for a "non-adversary proceeding" seems ill-suited for the extant circumstances and departs from the Court of Appeals' pronouncement that "in the District of Columbia an application for a rate increase by a public utility requires that a[n] [evidentiary] hearing be held before the Commission." *United States v. Pub. Serv. Comm'n of D.C.*, 465 A.2d at 833.

proceeding goes far beyond dollars and cents—it also raises profound questions about the future of gas service in the District.

The legislature has mandated that the Commission "shall consider . . . [the] effects on global climate change and the District's public climate commitments," in exercising its regulatory ratemaking authority over the Company.[36] Consistent with that proviso, District citizens have made clear to the Commission that whatever actions are taken in this proceeding must advance achievement of the District's climate goals, and not simply guarantee that WGL can maintain revenues.[37] As explained by a speaker at the Commission's Second Community Hearing, WGL's proposals are aimed in the wrong direction:

> The writing is on the wall. And planning [for] further investments in gas infrastructure is incompatible with our children's health and sustainable future. The rate increase is also incompatible with D.C.'s climate commitments, which call for carbon neutrality and full phasing out of fossil combustion by 2045. I don't understand how further investments in gas in any form are compatible with phase-out. And I wonder where is the early proactive and coordinated planning around the phase-out.
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> * * *
>
> Trying to ensure the economic viability or even the profitability of our gas utility not only is at odds with the climate commitment goals of the District or the health of its residents. It's a fool's errand. There is no world in which it makes sense to perpetuate the burning of fossil fuels in our buildings, our homes, or our schools.

Formal Case No. 1169, Transcript of the Community Hearing, held at the Lamond-Riggs Library, on February 8, 2023, at 6:00 p.m. at 10:9-11:15, rel. February 13, 2023 ("Second Community Hearing Tr."). Another citizen voiced similar concerns:

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[36] D.C. Code § 34-808.02.

[37] The Company is seeking through the combination of its "Climate Progress Adjustment" and "Climate Action Recovery Tariff" proposals to be paid to implement measures that will purportedly reduce gas consumption and emissions while also being paid for revenues lost as a result of any gas consumption reductions.

> We don't owe Washington Gas a living. It's up to Washington Gas to change and to figure out how to serve our community as our understanding, needs, and options change. It's up to the Public Service Commission to deliver this message and to represent D.C. residents' interests, which at this juncture are minimizing investment in gas infrastructure that needs to be replaced and is playing a very important role in speeding our transition to cleaner, far healthier, non-combustion energy sources with Washington Gas' involvement or without it.

And another citizen sees WGL's proposals as locking the District into a failed paradigm:

> Frankly, it's a little insane to ask D.C. residents to shoulder a 20 percent rate increase so that Washington Gas can keep its exact same business model in place, selling the same unhealthy and climate warming fuels and locking all of us into decades of fossil fuel dependence. The fact that they label these rate increases climate progress adjustment and climate action recovery tariff while doing absolutely nothing to solve the problem of climate change borders on infuriating. And it made me realize they don't think we're paying attention. They don't think you, with all due respect, our Commissioners, are paying attention. It almost feels like we are being, dare I say, gaslit.

Id. at 29:11-30:4.[38]

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[38] The Office voiced similar concerns in briefs OPC filed recently in Formal Case No. 1167, which were submitted in response to the Commission's call for filings on the question of whether the PSC can order electrification. As explained in OPC's reply brief, the

> sworn testimony of AltaGas/WGL in Formal Case No. 1142 included acknowledgments by senior executives and expert advisors that the District was moving toward carbon-neutrality, and accepted that doing so would require Washington Gas to change fundamentally its role in the provision of utility services to District consumers. Far from asserting that a diminution in gas service would be a "taking" or breach of a "compact," AltaGas testified that it recognized and embraced the District's climate goals, understood that the "transformation" of the gas company was inevitable, and asserted that AltaGas was best positioned to make the City's climate goals a reality. When asked to explain why AltaGas was seeking under these circumstances to buy WGL, the Company's CEO responded that WGL would replace lost gas business revenues by engaging in the development of needed renewable projects. Following the hearing, AltaGas memorialized its understandings in a set of settlement terms that made clear its acceptance of the need for WGL to "evolve its business model" in response to the District's climate goals.

Reply Brief of OPC filed October 27, 2002 in *Formal Case No. 1167*, *In the Matter of the Implementation of Electric and Natural Gas Climate Change Proposals*, at 13. We did not understand then—and do not accept now—that WGL's "transformation" should include the imposition of tariff mechanisms designed to keep the Company whole even as its reason for being diminishes and gas consumption in the District declines.

At this juncture, Movants' purpose in highlighting these statements of concern is less about convincing the Commission of the correctness of positions on the merits. We here seek instead to highlight the importance to the consuming public of ensuring that whatever outcome occurs in this proceeding is preceded by a full and fair evidentiary process—one in which all viewpoints are fully aired and considered. Beyond the Commission's legal obligations, the sheer significance of the matters at issue to the public interest demands nothing less.

H. The Office shares the Commission's interest in ensuring that evidentiary hearings are conducted in a time- and resource-efficient manner.

The Commission's General Counsel referred repeatedly at the February 17 Prehearing Conference to the unwillingness of the Commissioners to "sit" through evidentiary hearings, apparently out of concern that they may be obliged to listen to questioning on points that one or more of the Commissioners do not consider relevant or may find repetitive.[39] To state the obvious, Movants have no interest in asking questions for the sake of doing so, and plan to focus cross-examination on key witnesses and material points of disagreement with the Company. Should the Commission find that our cross-examination falls short of this objective, then the PSC of course has the option to cut off questioning that it considers irrelevant or duplicative, whether in response to an objection or *sua sponte*.[40] And Movants obviously share the Commissioners' interest in running the hearing in an efficient fashion. If doing so will expedite matters, Movants

[39] Tr. 11:17-20 (General Counsel: "The Commissioners have made it clear that they do not want to sit in a hearing and hear everything that's in written testimony[.]"); Tr. 21:9-13 (General Counsel: "so I'm not sure if this is such a material issue that we need to have the Commissioners sit there in front of you all to have a cross-examination about what those costs should really be"); Tr. 65:13-15 (General Counsel: I'm not sure if the Commissioners need to sit there and hear it all again about how people are opposed to the CART."); Tr. 66:12-15 (General Counsel: "I'm not sure I need to have you all say much about it in front of the Commissioners, that it's such a material issue that they must sit there and hear this"); and Tr. 101:5-9 (General Counsel: "The Commissioners are not going to sit in front of parties just to be hearing things that's not material. That's protocol going forward for all our rate cases, and for most of our proceedings.").

[40] *See* 15 DCMR § 134.3 ("The Commission may, in its discretion, limit the cross-examination of any witness").

stand ready to work with the Company and the parties to seek to stipulate to the admission of the various parties' testimony and data responses. But the goal of "streamlining" does not justify truncating the parties' statutory and due process right to compile a complete record. From the Office's perspective, the "cost" to the Commissioners of participating in a few days of trial is far outweighed by the benefit of ensuring that OPC and the intervenors—including the ratepayers that we represent and that the Public Service Commission serves—are afforded a fair and open process, and that the Commission's ultimate decisions in this matter are based upon a full, fair, and reliable record.

I. The record shows that there are material facts in dispute which necessitate an evidentiary hearing.

The Commission's determination not to hold an evidentiary hearing is predicated upon the solitary finding that "none of the questions on the Parties' Issues Lists present material issues of fact in dispute." Order No. 21582 ¶ 88. That finding is clearly erroneous. Measured against Order No. 21582's own standards, the various "Issues Lists" identify a plethora of disputed issues of material fact. Indeed, Order No. 21582 concedes the existence of factual controversies, such as the accuracy of WGL's witness calculations or the existence of information sufficient to support the Company's case. Order No. 21582, ¶¶ 28, 33, 36, 39, 41, 51, 71, 81, 85. As explained more fully below, a review of selected items on the Issues Lists negates Order No. 21582's excuses for foregoing an evidentiary hearing and establishes beyond reasonable doubt that there are disputed issues of material fact fundamental to the proper resolution of this case.[41] The Commission should reverse Order No. 21582 and convene an evidentiary hearing, or, at a minimum, establish an appropriate deadline for the submission of surrebuttal testimony.

[41] This list is not intended to be an exhaustive list of disputed issues of material fact.

1. Disputes Concerning the Reliability of the Company's Expert Testimony

As noted earlier, the Commission's decision in this proceeding must be based upon "reliable, probative, and substantial evidence." D.C. Code § 2-509(e). Much of the evidence in this proceeding, like other ratemaking cases, is in the form of expert testimony. As with all the evidence underlying the Commission's ultimate decision in this case, expert testimony must be reliable. *Id. Cf.* Fed. R. Evid. 702 (expert testimony must be based on sufficient facts and data and the product of reliable principles and methods).[42]

The Court of Appeals has held that the test of reliable expert testimony includes consideration of several factors, including whether the expert's opinion is predicated upon a "theory or technique [that] has been tested, whether it 'has been subjected to peer review and publication,' 'the known or potential rate of error,' and 'the existence and maintenance of standards controlling the technique's operation.'"[43] Additional considerations include whether the expert's methodology has been generally accepted elsewhere,[44] as well as a determination of whether "the expert has reliably applied the principles and methods to the facts of the case."[45]

The parties' Issues Lists identify these very concerns with respect to critical aspects of WGL's case. Order No. 21582 notes OPC's specific questions as to whether WGL's proposed and

[42] Pursuant to 15 DCMR § 134.1, the Commission must apply the Federal Rules of Evidence unless it informs the parties that it intends to "relax those rules [when] . . . the ends of justice would be better served by so doing." But even where those rules are relaxed, the need to ensure a reliable record by means of rebuttal evidence and cross-examination remains. "[T]he more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. . . . All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Interstate Com. Comm'n v. Louisville & Nashville R.R. Co.*, 227 U.S. 88, 93 (1913).

[43] *Motorola, Inc. v. Murray,* 147 A.3d 751, 754 (D.C. 2016) (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593-94 (1993).

[44] *Id.*

[45] *Id.* at 757 (quoting Fed. R. Evid. 702(d)).

alternative methods of test year weather normalization "permit transparency and replicability[.]"[46]OPC counsel explained at the February 17 Prehearing Conference that these questions bear directly on whether the methodology proposed by WGL's expert witness "is a reliable predictor of future weather, whether it is an accurate predictor of future weather."[47] Other parties have identified kindred reliability concerns,[48] including whether WGL's methodology has been tested (and whether it can be tested), the known potential rate of error, and whether and where the methodology has been adopted elsewhere. All of these are questions of fact, and, judged by Order No. 21582's own measure, are all "who, what, when, and how" questions. *Id.* ¶ 8. The reasons behind the decision by WGL's witness to adopt this methodology, and whether it is likely to result in increased Company revenues over time, are likewise legitimate areas of factual inquiry, as each relates to the overarching issue of the accuracy and reliability of WGL's proposed methodology.[49] And questions about the appropriateness of the methodology go to an issue that is plainly material. OPC Witness Dismukes has "proposed a $7.8 million reduction based on the differences in . . . what we believe is an appropriate methodology and what the company believes is an appropriate methodology."[50]

Beyond weather normalization, the Issues Lists are replete with references to factual disputes concerning the reliability of WGL's expert testimony. A sample of these issues include:

> "Are WGL's costs and synergy savings per Merger Commitment 41 related to the merger reasonable, appropriate, consistent with the merger conditions, and reasonable in light of the related calculation methodology used by WGL?" Order No. 21582, ¶ 32.a.

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[46] Order 21582, ¶ 49.a & b.

[47] Tr. 34:9-11.

[48] "Has the Company demonstrated precedents in other gas utility regulatory proceedings for the ARCH/GARCH methodology that WG Witness Raab uses to estimate Normal Weather HDDs for the District of Columbia?" Order No. 21582, ¶ 50.b.

[49] The Commission held in Order No. 21420, ¶ 32, that WGL's proposed "new [weather normalization] methodologies need to be fully supported for the Commission to adopt them."

[50] Tr. 34:1-5.

> "Does the proxy group used by WG Witness D'Ascendis reflect the risk and return requirements for Washington Gas' regulated distribution utility operations?" *Id.* ¶ 44.d.
>
> "What is the appropriate methodology to use for the purposes of benchmarking the performance of PROJECT*pipes* in reducing leaks relative to other gas utilities?" *Id.* ¶ 47.b.
>
> "Are Witness Raab's estimates of COVID-19 impacts on Base Gas use reliable?" *Id.* ¶ 50.d.i.
>
> "Are Witness Raab's estimates of "trends" in Base Gas use reasonable and reliable?" *Id.* ¶ 50.d.ii.
>
> "Are the Company's estimates of customer growth through the end of the rate effective period reliable?" *Id.* ¶ 50.g.1.

Viewed more broadly, WGL's case, including its 18 unanswered pieces of rebuttal testimony, three of which are from witnesses who testified for first time on rebuttal, are replete with opinion testimony that is the proper subject of cross-examination intended to test the reliability of the proffered opinions therein.

Order No. 21582 provides no procedural safeguards to ensure that the Commission fulfills its obligation to decide this matter based on reliable expert testimony. Order No. 21582 dismisses (¶ 9) the "need to have an evidentiary hearing so each party can cross-examine a witness on their opinion." The Commission's contention that it "can decide, based on the written testimony, which opinion to credit[,]" *Id*., presumes away the issue of the reliability of the proffered testimony. As the Commission does not subject expert testimony to a *Daubert* hearing to evaluate whether the expert's opinions are admissible, the only vehicles for assessing the reliability of WGL's rebuttal testimony are surrebuttal testimony or cross-examination, both of which have been rejected. The Court of Appeals has held in the specific context of expert testimony that "[v]igorous cross-examination [and] presentation of contrary evidence . . . are the traditional and appropriate means

of attacking shaky but admissible evidence." *Motorola, Inc.*, 147 A.3d at 754 (quotation omitted).[51] Given the novel and important issues in this proceeding, such as the Company's proposed weather normalization methodology and new rate mechanisms that purportedly address the COVID-19 pandemic and the District's climate objectives,[52] the parties must be afforded an evidentiary hearing in order to test the reliability of WGL's expert opinions.

2. Disputes Concerning the Existence or Absence of Supporting Documentation

Order No. 21582 concedes that "some of the issues on the Issues Lists ask about the existence of facts in the testimony and data request responses." Order No. 21582, ¶ 10. These are some of the most important issues in the case, including the propriety of the Company's charges and payments as the service company for some 27 AltaGas affiliates, and WGL's proposed revenue requirement given this radically new corporate structure. *See e.g.,* Order No. 21582, ¶ 64, b. & c.

OPC expressed concerns with WGL's affiliate transaction issues at the February 17 Prehearing Conference: "a new witness was presented by the company on rebuttal . . . . We have not had a chance to rebut his testimony on the record. So there is a significant evidentiary gap that is not available to us . . . we believe that when there are differences and what we believe are inconsistencies, the Commission would benefit to understand the witness' position and make a determination based on [] a full evidentiary hearing." Tr. 22:19-23:4. AOBA counsel expressed similar concerns, asserting: "With the absence of more information regarding the costs that Washington Gas provides for services to affiliates, and what affiliates send back to Washington

[51] As discussed elsewhere, trial by means of the Company's self-serving discovery responses is not an adequate substitute for cross-examination or surrebuttal testimony.

[52] Tr. 15:21-16:5. As AOBA counsel explained at the February 17 Conference, "projections of normal weather therm use are fundamental to this case. They are used to determine revenues at present rates, revenues at proposed rates, allocations of costs among jurisdictions, and customer class, and also rate design." Tr. 43:17-22.

Gas, the Commission can't determine what the costs of operation are of Washington Gas." *Id.* at 44:15-20. Counsel went on to explain that the issue was disputed because WGL contends that the requisite information is set forth in the WGL Cost Allocation Manual ("CAM"), including Schedule F. *Id.* at 86. WGL Counsel confirmed the existence of the dispute: "Schedule F does show you the level of costs that are being charged." *Id.* at 82:22-83:2. The Commission cannot properly decide this issue without a full evidentiary vetting and cross-examination of WGL's witnesses on how WGL determined its proposed revenue requirement net of affiliate transactions, whether the proper records exist to substantiate that amount, whether WGL has properly implemented its CAM to do so, and whether ratepayers are instead improperly cross-subsidizing AltaGas affiliates.

Order No. 21582 dismisses this and other issues concerning the absence of supporting evidence as matters to be briefed. "The response to those questions is a simple response that the fact is either present or absent." Order No. 21582, ¶ 10. This contention elides the problem of the volume of evidence in this case—literally thousands of pages of Company testimony, thousands of pages of worksheets and spreadsheet files, and hundreds if not thousands of data responses. The parties should be entitled to confront WGL's witnesses on the stand and have them answer whether a piece of supporting evidence exists in the record, and, if the answer is "yes," to ask follow-on questions to determine whether the identified matter is in fact what the witness purports it to be. The record will plainly be incomplete absent an opportunity to probe these important questions.

3. Disputes Concerning the Company's Calculations

Order No. 21582 contends that there are no material issues of fact in dispute concerning WGL's contested calculations in this case. That is false, if not absurd. For example, and as discussed above, the issue of whether "WG's test-year revenues, therms, and proposed adjustments

to revenues and therms [are] accurately computed" is a disputed issue of material fact that depends on the resolution of numerous subsidiary factual issues. Order No. 21582, ¶ 50.[53]

Seeking to avoid an evidentiary hearing on the myriad number of disputed calculations at issue, Order No. 21582 contends (at ¶ 51 and elsewhere) that this is a matter for briefing: "To the extent that the questions seek determinations of whether WGL's calculations are accurate, this information can be determined based on testimony and data request responses that can be entered into the record." As the foregoing shows, many of the calculations at issue are expert opinion testimony based upon assumptions and modelling and the selection of data sets. They are not inherently reliable. Again, it is prejudicial for the parties to have to litigate this case without the ability to rebut WGL's rebuttal case through cross-examination or the submission of surrebuttal testimony.

4. Issues of Policy and Ratemaking Discretion

Order No. 21582 improperly invokes the Commission's authority to decide issues of policy and law as a device to airbrush the numerous disputed issues of material fact. *Id.* ¶¶ 10, 86. The ultimate policy issues in this proceeding, such as whether a particular element of WGL's proposals is just and reasonable, rests upon a foundation of facts, and, as Order No. 21582 itself observes, the "presumption is that there is a disagreement between the opposing parties on facts legally relevant to a claim." *Id.* ¶ 8. The parties in this case are entitled to develop a full and fair record of the underlying factual issues that they believe are material to the ultimate policy determinations at issue. Order No. 21582 adopts a procedure that is impermissibly to the contrary.

[53] The Issues List is replete with material factual disputes that fall under the rubric of Company calculations, including whether "WGL [has] properly identified and removed the significant increase in COVID-19 costs caused by the Call Center's failure for a significant period of time to meet service quality standards." *Id.* ¶ 37.a. The call center issue concerns disputed issues of fact relevant to a proposed $1.8 million amortization expense. *Id.*

The controversies surrounding WGL's proposed CART are apt examples of the unfairness inherent in the process approved in Order No. 215821. At the February 17 Prehearing Conference, the Commission's General Counsel questioned why "the Commissioners need to sit there and hear it all again about how people are opposed to the CART." Tr. 65:13-15. The reason is that the parties have the right to rebut WGL's testimony and make their record concerning the CART. Sierra Club counsel explained that the testimony of its witness "disputed some of the underlying abilities of for the fuel sources identified in some of the climate plans to translate to emissions reductions." *Id.* at 72:22-73:3. WGL has had the opportunity to file testimony rebutting that contention, but under the current schedule, Sierra Club has no meaningful ability to counter WGL's rebuttal. And the Commission's apparent disinterest in hearing anything more about the CART is not the controlling standard. Whether WGL's proposed fuel sources translate into emissions reductions, and to what degree, is plainly material to the Commission's decision on whether to adopt the CART. A failure on the part of the Commission to address that issue—whatever decision is ultimately reached--would be arbitrary and capricious.

At bottom, Order No. 21582 is replete with conclusions but devoid of the requisite factual underpinnings. Order No. 21582 nowhere shows how the Commission determined that a particular matter on the Issues Lists is or not disputed. It is unclear how the Commission would even make such a determination at this stage of the proceeding. As noted earlier, WGL has not provided a detailed statement of material facts not in dispute (and the other parties, of course, were not directed to respond with a counter-statement). Indeed, the Commission acknowledges (Order No. 21582, ¶ 85) that it does not know if there is a factual dispute as to whether WGL has documented its plans for lowering its unaccounted-for gas percentages—but still goes on to find that there is no such dispute by recharacterizing this is a policy issue. It is also the case that Order No. 21582

fails to explain why the myriad number of matters identified in the Issues List are not material. Issues such as whether "WG's test-year revenues, therms, and proposed adjustments to revenues and therms [are] accurately computed" are plainly relevant to the ultimate issue of whether WGL's proposed weather normalization methodologies are just and reasonable.[54]

III. IF THE COMMISSION DOES NOT CONVENE AN EVIDENTIARY HEARING, THEN IT SHOULD ALLOW FOR THE SUBMISSION OF SURREBUTTAL TESTIMONY

The Commission's General Counsel referenced during the February 17 Prehearing Conference the Commission's desire to "streamline the proceedings if we do have a hearing." Tr. 2:21-22. In furtherance of that objective, and should the Commission not change course from its determination in Order No. 21582, Movants request that they and the intervenors be afforded the opportunity to file surrebuttal testimony. Doing so would be consistent with the parties' statutory and due process rights to rebut the Company's case, and in particular its rebuttal testimony.

As the General Counsel noted at the Prehearing Conference, the Commission has previously "allowed" the submission of surrebuttal testimony.[55] And although the Commission denied prior requests to file surrebuttal in this proceeding, the procedural posture of this matter has changed fundamentally with the decision in Order No. 21582 to forego an evidentiary hearing. Given the need to shift course in preparation, and given the numerous matters identified in the parties' Issues List, the Commission would need to afford the parties several weeks to file surrebuttal. OPC likewise recognizes that WGL may seek to conduct discovery on the surrebuttal, and that the Commission may set a date for the commencement and completion of that phase of

[54] Order No. 21582, ¶ 50. Other such examples include whether "the Company demonstrated that the proposed CPA (1) promotes energy efficiency ("EE")," *id.* ¶ 12.a.

[55] *Id.* at 23. *See also Formal Case No.* 1156, In the Matter of the Application of Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia, Order No. 20349, rel. May 20, 2020 (providing for the submission of surrebuttal testimony to what extent the COVID-19 pandemic related events affect the evaluation of Pepco's MRP proposal).

the proceeding. Once discovery is completed, the Office suggests that the Commission could move ahead with briefing. Although far from ideal, this structure would be a radical improvement over the process laid out in Order No. 21582.

IV. CONCLUSION

Order No. 21582 fails to justify the findings that there are no material issues of fact in dispute, and that all of the myriad of pending issues can be adequately resolved through briefs (and after an undefined legislative hearing).

WHEREFORE, for the foregoing reasons, Movants urge that the Commission reverse the ruling in Order No. 21582 that a hearing is unnecessary. The Commission should either provide for the conduct of an evidentiary hearing, or set a date for the submission by the parties of surrebuttal testimony. If the latter, then the Commission should establish a deadline for submitting such testimony that is no sooner than four weeks from the date on which this request is granted.

Finally, given the nature of this request, Movants ask that the Commission (1) suspend the current procedural schedule; (2) set a deadline of March 31 for the submission of any responses to this filing; and (3) grant the relief requested here on an expedited basis.

Respectfully submitted,

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March 24, 2023

CERTIFICATE OF SERVICE

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*

I certify that on March 24, 2023, a copy of the Motion of the Office of the People's Counsel's, Earth Justice on Behalf of Sierra Club, and the Apartment and Office Building Association of Metropolitan Washington for expedited relief concerning Order No. 21582 or, in the Alternative, for Leave to File Surrebuttal Testimony, and to Suspend the Procedural Schedule was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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