

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

ORDER

March 18, 2024

**FORMAL CASE NO. 1142, IN THE MATTER OF THE MERGER OF ALTAGAS, LTD.
AND WGL HOLDINGS, INC., Order No. 21969**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) reviews Washington Gas Light Company’s (“WGL” or “Company”) Compliance Filing for Term No. 73¹ of the *Formal Case No. 1142* Merger Settlement Agreement.² The Commission finds that WGL has met the obligations of this Term for Calendar Year 2022, so no noncompliance payment is required. The Commission denies requests from the Office of the People's Counsel for the District of Columbia (“OPC”) and the District of Columbia Government (“DCG”) for additional meetings, technical conferences, and working groups concerning this Term.

II. BACKGROUND

2. On April 25, 2017, the Commission opened this proceeding to review the merger Application filed by AltaGas, Ltd., WGL Holdings, Inc., and WGL (collectively, “Joint Applicants”) pursuant to D.C. Code §§ 34-504 and 34-1001 on April 24, 2017.³ After the filing of testimony and an evidentiary hearing held from December 5-13, 2017, the Joint Applicants filed a Consent Motion, including the Unanimous Agreement of Stipulation and Full Settlement (“Settlement Agreement”). In Order No. 19396, the Commission approved the Settlement Agreement.⁴ The Merger closed on July 6, 2018.⁵

¹ *Formal Case No. 1142, In the Matter of the Merger of AltaGas, Ltd. and WGL Holdings, Inc. “Formal Case No.1142”*), FC 1142 – Washington Gas Light Company – Commitment No. 73 (“WGL Term No. 73 Compliance Filing”), filed May 15, 2023.

² *Formal Case No. 1142*, Consent Motion to Reopen the Record in Formal Case No. 1142 to Allow for Consideration of Unanimous Full Settlement Agreement and Stipulation, and to Waive Hearing on Proposed Settlement, filed May 8, 2018 (“Consent Motion” and “Settlement Agreement”).

³ *Formal Case No. 1142*, Public Notice, rel. April 25, 2017.

⁴ *Formal Case No. 1142*, Order No. 19396, rel. June 29, 2018.

⁵ *Formal Case No. 1142*, Letter to Brinda Westbrook-Sedgwick, Commission Secretary, from Moxila A. Upadhyaya, Counsel for AltaGas, Ltd., filed July 9, 2018.

3. WGL filed its Term No. 73 Compliance Filing for CY 2022 on May 15, 2023. OPC⁶ and DCG⁷ filed comments on June 6, 2023. WGL filed reply comments on June 27, 2023.⁸

III. DISCUSSION

4. Term No. 73 reads in relevant part:

During the first five years after the Merger Close, the Joint Applicants' shall reduce Washington Gas's number of PHMSA⁹-reported Grade 2 Leaks annually to levels below its 2017 annual level (including both mains leaks and service leaks, but excluding leaks due to third party damages), consistent with the following target Grade 2 leak reductions versus the 2017 annual level:

2019:	2%
2020:	4%
2021:	6%
2022:	8%
2023:	10%

If Washington Gas fails to meet an annual leak-reduction target, it will notify the Commission with a filing within 60 days of its failure to comply with this provision with a full explanation of the reasons why this target has not been met. In addition, if Washington Gas fails to accomplish an annual leak reduction target in 2019, 2020, 2021, 2022, or 2023, the Company shall make non-compliance payments as shown in Table 1...¹⁰

5. In its Compliance Filing, WGL represents that it met the leak reduction target for 2022. WGL explains the methodology that it used to make its calculations and describes the calculations to support its contention of compliance.¹¹

6. OPC argues that WGL's leak reporting is inconsistent and lacks transparency. OPC argues that WGL has three different leak reporting systems, not all of which identify the Grade of leaks, while Term No. 73 specifically refers to Grade 2 leaks.¹² OPC argues that the PHMSA

⁶ *Formal Case No. 1142*, Office of the People's Counsel for the District of Columbia's Comments to Washington Gas Light Company's Notice of Compliance in Merger Commitment No. 73, filed June 6, 2023.

⁷ *Formal Case No. 1142*, Letter to Brinda Westbrook-Sedgwick, Commission Secretary, from Brian Caldwell, Assistant Attorney General, filed June 6, 2023.

⁸ *Formal Case No. 1142*, Washington Gas Light Company's Reply Comments, filed June 27, 2023.

⁹ PHMSA stands for the Pipeline and Hazardous Materials Safety Administration.

¹⁰ Order No. 19396, Appendix A, Term No. 73.

¹¹ WGL Compliance Filing at 1.

¹² OPC Comments at 3.

reports do not contain a category for Grade 2 leaks.¹³ Furthermore, OPC argues that WGL has not provided the basis for its methodology for calculating Grade 2 leaks.¹⁴ OPC claims that WGL has not clearly shown that it has complied with Term No. 73. To resolve questions around WGL's methodology and calculations, OPC seeks a meeting with WGL and the parties to develop a clear method of identifying all grades of leaks.¹⁵

7. As a general matter, OPC argues that the number of leaks in WGL's leak distribution system is rising. In support of this contention, OPC asserts that WGL's 2022 PHMSA report indicates that WGL has five times the leak backlog as SEMCO's 2017 backlog. OPC also represents that the PHMSA report shows that WGL's hazardous leaks are 15% higher in calendar year ("CY") 2022 than in CY 2017. OPC alleges that WGL, in repairing Grade 2 leaks, has permitted more hazardous leaks to grow. OPC also contends that the number of overall leaks has increased 3.5% from 2017. For these reasons, OPC argues that an investigation into the process by which WGL identifies and repairs leaks and the establishment of a method to identify all leaks.¹⁶ Additionally, OPC seeks the establishment of a quarterly working group to discuss the inconsistencies between the LIDAROC and PHMSA reports.¹⁷

8. DCG also questions WGL's methodology, asking whether the methodology provided in the Term No. 73 Compliance Filing was the same methodology used in previous years and whether this methodology is the appropriate methodology for calculating compliance. DCG also argues that the source of the data being used in the calculations is unclear. DCG also questions the accuracy of the PHMSA-reported Grade 2 leaks. For these reasons, DCG recommends that the Commission schedule a technical conference for the parties to question WGL experts on WGL's methodology, data sources, and accuracy of PHMSA reporting.¹⁸

9. In its Reply Comments, WGL asserts that it calculated its results for Term No. 73 according to the methodology provided to the Commission as a data request response in 2018.¹⁹ WGL argues that this methodology has not changed during the four years of reporting for this Term.²⁰ WGL also provides further details of the Company's calculations.²¹ WGL provides a

¹³ OPC Comments at 3.

¹⁴ OPC Comments at 4.

¹⁵ OPC Comments at 5.

¹⁶ OPC Comments at 5.

¹⁷ OPC Comments at 6.

¹⁸ DCG Comments at 2.

¹⁹ WGL Reply Comments at 1.

²⁰ WGL Reply Comments at 3.

²¹ WGL Reply Comments at 1-2.

table showing calculations for all four years. Thus, in WGL's view, a technical conference to explain the methodology is not necessary.²²

10. Likewise, WGL argues that OPC's request for a meeting and a quarterly working group should be denied. WGL contends that assertions about LIDAROC are not relevant to Term No. 73 and should be addressed in *Formal Case No. 977*. Similarly, comparisons to SEMCO's distribution system and discussions of overall leak performance are irrelevant to Term No. 73.²³ WGL claims that, as required by Term No. 73, the leak data that it uses to calculate compliance with Term No. 73 is included in publicly available PHMSA reports and is derived from WGL's systems. WGL asserts that it categorizes leaks according to federal and Commission standards, so no further meetings or working groups to explain the categorization are necessary.²⁴

11. WGL contests OPC's allegation that WGL has allowed Grade 1 leaks to grow. WGL argues that WGL repairs Grade 1 leaks by continuous action as they are identified. WGL also contends that OPC's comments regarding Grade 1 leaks are irrelevant to Term No. 73, which only applies to Grade 2 leaks.²⁵

IV. DECISION

12. The goal of Term No. 73 is to improve WGL's performance in repairing PHMSA-reported Grade 2 leaks, requiring escalating noncompliance payments for each year that WGL does not reach a specified reduction target. In its Term No. 73 Compliance Filing, WGL argues that it met Term No. 73 standard for CY 2022, so there is no need for a noncompliance payment. This is the first year that WGL asserts that it has met the Term No. 73 standard.

13. To support its contention of compliance, WGL explains its methodology and calculations. In response to DCG's question about the source of the methodology for calculating the number of PHMSA-reported Grade 2 leaks, WGL indicates that it provided the methodology in response to Commission Data Request No. 3-1, which was filed before the Commission approved the merger.²⁶ The Commission finds that WGL has consistently used this methodology to calculate results in for CY 2019, CY 2020, and CY 2021. After reviewing WGL's Compliance Filing, the Commission finds that WGL has followed the same methodology for every report it has filed under Term No. 73 since its CY 2020 compliance reporting and that WGL's calculations are accurate and demonstrate that WGL has met the standard in Term No. 73 for CY 2022. In reviewing the reported grade 2 leaks for CY 2022, the Commission agrees that the Company has followed the methodology in Applicants Response to Commission Data Request No. 3-1 as

²² WGL Reply Comments at 3.

²³ WGL Reply Comments at 6.

²⁴ WGL Reply Comments at 5.

²⁵ WGL Reply Comments at 6.

²⁶ WGL Reply Comments at 2. *See also, Data Request No. 1142*, Applicants Response to Commission Staff Data Request No. 3-1 to Applicants, filed June 5, 2018.

follows. The CY 2022 total number of leaks reported to PHMSA is 1,260. Subtracting the hazardous (grade 1) leaks of 969, non-hazardous excavation leaks of 0, and grade 2 leaks discovered in CY 2021 but repaired in CY 2022 of 77 from the total number of 1,260 leaks gives a total of 214 grade 2 leaks. This 214 refers to grade 2 leaks that were discovered and repaired in CY 2022. As reported to PHMSA, WGL had a total of 125 known grade 2 leaks in CY 2022 that were scheduled for repair in CY 2023. Adding the 125 leaks to the 214 grade 2 leaks that were discovered and repaired in CY 2022 gives a total of 339 grade 2 leaks discovered in CY 2022. WGL's CY 2022 339 grade 2 leaks reported to PHMSA is less than the established 2022 target of 425 under Term 73. The target of 425 was calculated by multiplying the total CY 2017 grade 2 leaks (461) by the CY 2022 eight percent (8%) reduction goal. Thus, no noncompliance payment is due for CY 2022. Taking the numbers from above, the equation is as follows:

- (1) from Part C of the DOT Annual Report, the Total Leaks from all causes for Mains and Services – the Total of all Hazardous (Grade 1) leaks = the Total number of Grade 2 leaks repaired [1,260 – 969 = 291 in CY 2022];
- (2) less Grade 2 (Non-Hazardous) Excavation Damages from Part C of the Annual Report [0 in CY 2022];
- (3) less the “Number of Known System Leaks Scheduled For Repair” from Part C of the prior year’s Annual PHMSA Report (77 in CY 2021),
- (4) plus the “Number of Known System Leaks Scheduled For Repair” from Part C of the current year’s Annual PHMSA Report (125 in CY 2022) = 339 Grade 2 leaks in CY 2022.²⁷

14. The Commission finds that WGL has used the same methodology as was provided in CY 2018 in Commission Data Request No. 3-1. Furthermore, under this same methodology, WGL has paid fines for noncompliance for the last three years.

15. The Commission also sees no need for a technical conference or other meeting or the establishment of a working group to discuss Term No. 73. Contrary to OPC’s contentions, Grades 1, 2, and 3 leaks are defined in the Commission’s regulations, so there is no need to develop a new method for defining leaks.²⁸ WGL uses federal and Commission standards when preparing its annual PHMSA report.

16. OPC requested an investigation into the process by which WGL uses to identify and repair leaks. This same request was reiterated in a filing made on February 13, 2024. The Commission will address the request for an investigation in a separate order.²⁹

THEREFORE, IT IS ORDERED THAT:

17. Washington Gas Light Company **IS IN COMPLIANCE** with Term No. 73 of the *Formal Case No. 1142 Merger Settlement Agreement*;

²⁷ *Data Request No. 1142*, Applicants Response to Commission Staff Data Request No. 3-1 to Applicants

²⁸ 15 DCMR § 3702.4; 15 DCMR § 3799 (2019).

²⁹ *GD-2024-01-G*, OPC's Petition for An Investigation into Washington Gas Light Company's Natural Gas Infrastructure, filed February 13, 2024.

18. Washington Gas Light Company is **NOT REQUIRED** to make a noncompliance payment under Term No. 73 of the *Formal Case No. 1142* Merger Settlement Agreement; and

19. The requests by the Office of the People's Counsel for the District of Columbia and the District of Columbia Government for a meeting, technical conference, and the establishment of a quarterly working group to discuss Term No. 73 are **DENIED**.

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**

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DISSENT OF COMMISSIONER BEVERLY

The majority believes that WGL has not violated Term No. 73 because, in the majority's view, WGL adequately explained its calculation methodology when it responded to Commission Data Request No. 3-1. Inasmuch as WGL has offered an explanation that the majority deems adequate, the majority sees no need for a working group or technical conference to explore the matter further. However, as I explain below, I think we should do more than take WGL's explanation at face value.

First of all, Term No. 73 does not specify any particular methodology, nor did we adopt one. In the absence of a mandated methodology, WGL created its own. There's nothing inherently wrong with that but OPC is complaining that WGL has not provided sufficient transparency in the leak data itself for anyone other than WGL to tell whether the calculations are accurate. For example, OPC asserts that due to differences in WGL's three separate leak reporting datasets (LIDAROC, NGQSS, and PHMSA), "Neither OPC nor the Commission is provided with how many of the repaired leaks were Grade 2 or Grade 3."¹ OPC points out that although WGL's internal records measure the Grades of leaks, they are not separated out in the PHMSA reporting which simply records leaks as hazardous or non-hazardous. Therefore, the parties must rely on WGL as to whether or not the Company has complied with the Term, and there "is no way to verify that the Company is indeed in compliance with Term 73."²

DCG notes that this is the first compliance filing under Term No. 73 where WGL has offered an explanation of its calculation methods but, according to DCG, the explanation raises more questions than it answers. For instance, DCG states "it is unclear whether the methodology employed by WGL to determine its compliance with Term 73 is the proper measure, and whether this is the same methodology that WGL used in prior years to determine its non-compliance. In addition, it is unclear what numbers are being plugged into the formula described above, and what the source of these numbers are."³ In other words, DCG wants to be able to verify the datasets underlying the calculations and it can't do that without more information.

¹ OPC Comments at 3.

² OPC notes that Grade 1 leaks have increased by 15%, accompanied by a corresponding decrease in Grade 2 leaks, which may be a subtle suggestion that some Grade 2 leaks are being reclassified as Grade 1 to avoid the penalty under Term No. 73. OPC Comments at 5.

³ DCG Comments at 1-2.

This same issue has been and continues to be the subject of OPC Petitions for Investigation filed in 2021, 2022, and 2024. OPC's Petitions in 2021 and 2022 were dismissed out of hand, while the 2024 Petition is still pending. Specifically, in the 2024 Petition, OPC has asked for: "an explanation of WGL's current procedures and protocols for identifying leaks; the classification of leaks (Grades 1, 2 & 3); best practices for recording leak data; accuracy of the LIDAROC database, clarity on the use of leak data sources for analysis (PHMSA data) and WGL's performance of merger commitments 50, 55, 57 & 73."⁴ (emphasis added).

I think the better course of action is to grant OPC's 2024 Petition and hold a decision on compliance with Term No. 73 in abeyance until we can investigate in more detail how WGL measures and records leaks. Accurate measurement of leaks is important, not just for the safety and reliability of the system, but also because methane is a potent greenhouse gas and we need to accurately quantify fugitive methane emissions to determine the impact on the climate and mitigate it. To be clear, everything that WGL is doing may be just fine, but I'd like to have a sound basis for that determination rather than essentially saying that the calculations are accurate just because WGL says they are. Therefore, I respectfully dissent from the majority opinion.

⁴ GD-2024-01-G, Office of the People's Counsel for the District of Columbia's Petition for an Investigation into Washington Gas Light Company's Natural Gas Infrastructure filed February 13, 2024, at 6-7.

COMMISSION ACTION

FORMAL CASE NO. 1142, IN THE MATTER OF THE MERGER OF ALTAGAS LTD. AND WGL HOLDINGS, INC.,

Date 3/18/24 Formal Case Nos. 1142 Tariff No. _____ Order No. 21969

	Approved by Roll Call Vote	Disapprove Initial & Date	Abstain Initial & Date
Chairman Emile Thompson	<u>ET/CL 3/18/24</u>	_____	_____
Commissioner Richard A. Beverly	_____	<u>RAB/CL 3/18/24</u>	_____
Commissioner Ted Trabue	<u>TT/CL 3/18/24</u>	_____	_____

Certification of Action

C. Lipscombe
General/Deputy General Counsel

Lara Walt
OGC Counsel/Staff