

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



BRIAN L. SCHWALB
ATTORNEY GENERAL

Public Advocacy Division
Housing and Environmental Justice Section

ELECTRONIC FILING

March 25, 2024

Ms. Brinda Westbrook-Sedgwick
Public Service Commission
Of the District of Columbia Secretary
1325 G Street, NW, Suite # 800
Washington, DC 20005

**Re: Formal Case No. 1154 – In the Matter of Washington Gas Light Company’s
Application for Approval of a PROJECTpipes 2 Plan,**

Dear Ms. Westbrook-Sedgwick:

On behalf of the District of Columbia Government, please find its Petition for Reconsideration of Order No. 21960 in the above-captioned proceeding. If you have any questions about this filing, please contact me.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General

By: /s/ Brian Caldwell
BRIAN CALDWELL
Assistant Attorney General
(202) 727-6211 – Direct

Email: brian.caldwell@dc.gov

cc: Service List

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

IN THE MATTER OF:)	
)	
The Application of Washington Gas)	Formal Case No. 1154
Light Company for Approval of)	
a PROJECTpipes 2 Plan.)	

**DISTRICT OF COLUMBIA GOVERNMENT’S
PETITION FOR RECONSIDERATION OF ORDER NO. 21960**

Pursuant to D.C. Code § 34-604(b) and Rule 140.1¹ of the Public Service Commission of the District of Columbia’s (Commission) Rules of Practice and Procedure, the District of Columbia Government (DCG or the District), through the Office of the Attorney General, petitions the Commission for reconsideration of Order No. 21960 granting Washington Gas Light Company’s (WGL or Company) Motion for Extension of the PROJECTpipes 2 (Pipes 2) Plan (Motion). Reconsideration of Order No. 21960 is necessary to correct significant errors underpinning the Commission’s determination that extending Pipes 2 is justified and ultimately in the public interest.

I. INTRODUCTION AND BACKGROUND

Pipes 2 is the second iteration of WGL’s proposed 40-year Accelerated Pipe Replacement Plan intended to replace all the aging, leak-prone pipes on the Company’s natural gas distribution system in the District of Columbia by 2054. As set forth in the Commission’s order approving Pipes 2, WGL was authorized to collect \$150 million in surcharge recovery from ratepayers to fund

¹ 15 D.C.M.R. § 140.1

the accelerated replacement of 14.3 miles of aging and leak-prone main pipe and 4,242 service pipes over a three-year period *only* (2021 through 2023).²

In approving Pipes 2, the Commission shortened the original five-year duration of Pipes 1 to three years reasoning that a shorter program duration would strike a more appropriate balance between managing the safety risk posed by WGL’s aging, leak-prone infrastructure, while also accounting for new policies and laws in the District. Such laws include the Climate Commitment Amendment Act of 2018, which requires the Commission to consider the District’s clean energy transition and climate goals in its regulatory decision-making.³ The Commission found that the rapid evolution in thinking about the impact of fossil fuel use on the climate in the District of Columbia over the five years of Pipes 1 warranted approval of a shorter program duration that “will better serve the District” by allowing the Commission to revisit the efficacy of Project Pipes more frequently.⁴ Citing to its then recently initiated docket to consider utility climate change proposals, the Commission also stated that a three-year program duration for Pipes 2 would facilitate its ability “to work with WGL and interested stakeholders to address issues related to WGL proposals that seek to advance the District’s climate goals.”⁵ Therefore, in bounding the effective period of Pipes 2, the Commission directed WGL to file its third iteration of Project Pipes by no later than January 1, 2023, for potential approval no earlier than January 1, 2024.⁶

² Formal Case No. 1154, *In the Matter of Washington Gas Light Company’s Application for Approval of PROJECTpipes 2 Plan* (F.C. 1154), Order No. 20671, ¶ 90 (*rel. Dec. 11, 2020*).

³ *Id.* at ¶ 34 (*citing* D.C. Code §34-808.02 (2019))

⁴ *Id.* at ¶ 35.

⁵ *Id.* (*citing* Formal Case No. 1167, *In the Matter of the Implementation of Electric and Natural Gas Climate Change Proposals*).

⁶ *Id.* at ¶ 36

Accordingly, on December 22, 2022, the Company filed its application for approval of a *PROJECTpipes 3 Plan* (Pipes 3).⁷ In its Pipes 3 application, WGL requests that the Commission return to a five-year program cycle to authorize approximately \$671.8 million in surcharge recovery.⁸ Since the filing of its Pipes 3 Application, however, the Commission has not acted on, or set a procedural schedule to address, the merits of Pipes 3 (other than directing one round of initial comments from the parties on the application).

But rather than acting on WGL’s Pipes 3 application, in Order No. 21960, the Commission instead granted a motion filed by WGL on November 6, 2023, seeking a 1-year extension of Pipes 2.⁹ In granting WGL’s motion, the Commission authorized WGL to collect an additional \$50 million in surcharge recovery from ratepayers to fund 12 months of accelerated pipe replacement activity through February 28, 2025. The Commission stated that during this one-year extension period, it expected WGL to replace 4.72 miles of main and an estimated 1,428 service pipes, either remediated or transferred.¹⁰ Order No. 21960, therefore, effectively converted Pipes 2 from a very intentionally limited three-year program into a four-year program.

In its original order approving Pipes 2, the Commission also determined it should conduct an independent audit covering WGL’s management of the first two years of Pipes 2, similar to an earlier management audit of Pipes 1 performed by Liberty Consulting¹¹. The Commission reasoned that the audit would assist stakeholders “at evaluating the Company’s performance in implementing *PROJECTpipes* in a manner that increases the District’s safety and reliability in a

⁷ Formal Case No. 1175, *In the Matter of Washington Gas Light Company’s Application for Approval of a PROJECTpipes 3 Plan*.

⁸ *Id.* Pipes 3 Application, at pg. 7.

⁹ Order No. 21960.

¹⁰ *Id.* at ¶ 14.

¹¹ F.C. 1154, Order No. 20671, ¶ 37 (*rel.* Dec. 11, 2020).

cost-effective manner.¹² Accordingly, an audit of Pipes 2 was performed by the selected auditor Continuum Capital who submitted an audit report on WGL’s management of Pipes 2.¹³ Among other things, the Continuum audit report contains 21 specific recommendations for improving the Project Pipes program. And while the parties, including the District, have submitted comments on the audit report, the Commission has yet to act on the report or otherwise substantively address it.

As mentioned, on November 6, 2023, WGL filed its Motion seeking a one-year extension of the Pipes 2 plan.¹⁴ WGL’s primary argument for extending Pipes 2 in the absence of an order granting its Pipes 3 application was its asserted inability to retain qualified contractor crews if surcharge recovery was not maintained.¹⁵ With the support of the District and the Apartment and Office Building Association (AOBA), the Office of the People’s Counsel (OPC) opposed the Motion.¹⁶ On December 19, 2023, the Philadelphia-Baltimore-Washington Laborers’ District Council (PBWLDC), the union that represents WGL’s contractor crews, filed a brief supporting WGL’s Motion warning that failure to extend Pipes 2 by January 1, 2024, could result, and indeed is already resulting in, layoffs of contractor crew that will be difficult if not impossible to replace should the Commission later decide to restart Project Pipes.¹⁷

On December 20, 2023, the Commission issued its initial order on the Company’s Motion.¹⁸ In that order the Commission determined that “it is not possible for the Commission to grant the Company’s Motion” due to a lack of data and information on the record from WGL

¹² *Id.*

¹³ F.C. 1154, Continuum’s Independent Management Audit of PROJECTpipes 2.

¹⁴ Motion, at ¶ 6.

¹⁵ *Id.* at ¶ 7.

¹⁶ F.C. 1154, OPC Opposition to WGL’s Motion for Enlargement of Time, (filed Nov. 16, 2023). *See*, pg. 1 fn 3.

¹⁷ F.C. 1154, Brief of PBWLDC in Support of Washington Gas Light Company’s Motion to Extend Project Pipes 2 Plan.

¹⁸ F.C. 1154, Order No. 21940.

to support the Motion.¹⁹ Consequently, the Commission found that WGL failed to meet its burden of proof to justify an extension of Pipes 2.²⁰ But rather than taking the next logical step of rejecting WGL’s motion based on the Company’s failure to meet its burden of proof, the Commission did something quite extraordinary – the Commission held WGL’s motion in abeyance and directed WGL to provide specified “supplementary information” and arguments that, if provided, might support the Company’s Motion.²¹ The Commission took this remarkable step due to the equally remarkable rationale that it was not “inclined” to reject the Company’s Motion “under the circumstances.”²² The Commission held that the Company’s Motion would remain in abeyance until WGL submitted the supplementary information that might justify extending Pipes 2 for another year.²³

Acknowledging significant issues raised by OPC and AOBA concerning Pipes 2’s performance and the efficacy of Pipes 2 in achieving its objectives, the Commission directed WGL to produce information for three discreet time periods: (1) 2005 to 2014 (Pre-Pipes); (2) 2015 – 2020 (Pipes 1); and (3) 2021 – 2023 (Pipes 2).²⁴ For each period, the Commission directed WGL to produce information on the following metrics:

- (1). The number of miles of pipe replaced under normal operations each year and in total;
- (2). The cost to ratepayers of pipe replacement under normal operations each year and in total;
- (3). The number of miles of pipe replaced under any other program each year and in total;

¹⁹ Order No. 21940, ¶ 15 (*rel.* Dec. 20, 2023).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at ¶ 19-20.

²⁴ *Id.* at ¶ 16.

- (4). The cost to ratepayers of pipe replacement under each additional program each year and in total;
- (5). The number of Grade 1, 2, and 3 leaks discovered on the system each year and in total; and
- (6). The number of Grade 1, 2, and 3 leaks repaired on the system each year and in total.²⁵

Regarding just the Pipes 1 and Pipes 2 period, the Commission also directed the Company to provide:

- (7). The number of miles of pipe replaced under the accelerated pipe replacement plant (“APRP”) and in total; and
- (8). The cost to ratepayers of pipe replacement under the APRP each year and in total.²⁶

On January 4, 2024, WGL submitted the supplementary information required by Order No. 21940.²⁷ On the same day, Commissioner Richard Beverly separately issued a “Notice of Communication” informing the parties and the public that he had reached out to counsel for PBWLDC to request any written correspondence from WGL to PBWLDC informing the union of imminent layoffs if Pipes 2 is not extended.²⁸ Commissioner Beverly’s Notice goes on to state that counsel for PBWLDC informed him that the communication he received was not from WGL, but rather from NPL Construction, a WGL contractor who issued a “form letter” forwarded to Commissioner Beverly notifying NPL Construction’s employees of potential furloughs in December 2023 resulting from one of NPL Construction’s clients cancelling work for the rest of the month.²⁹ Beverly’s Notice goes on to state that he then reached out to NPL

²⁵ *Id.* at ¶ 15.

²⁶ *Id.*

²⁷ F.C. 1154, WGL’s Response to Order No. 21940.

²⁸ F.C. 1154, Notice of Communication of Commissioner Beverly (*rel.* January 4, 2024) (Beverly’s Notice).

²⁹ *Id.*

Construction and was informed that the company does not have any crews in the District of Columbia and the furloughs at issue were not related to WGL.³⁰

On January 8, 2024, the Commission issued a Public Notice soliciting comments from the parties on WGL's supplementary information.³¹ Pursuant to the Public Notice, the District submitted comments and attached an analysis performed by the District's consultant on Project Pipes issues, Synapse Energy Economics (Synapse). OPC, AOBA and PBWLDC also submitted comments.³² The District's analysis by Synapse included several charts illustrating the main takeaways from WGL's supplementary information.³³

As presented in the District's comments, the primary takeaway from Synapse's analysis was that, under almost every metric of performance, Pipes 2 is underperforming compared to earlier pipe replacement programs and is becoming increasingly ineffective at accomplishing its objective of replacing pipe on an accelerated basis, or even on a normal basis. In fact, the Synapse analysis found that, due to the surcharge recovery feature of Project Pipes that allows WGL to be compensated up front for pipe replacement activity, virtually all of the pipes WGL currently replaces in the District of Columbia are inappropriately being funded through the Project Pipes surcharge, including normal replacement of actively leaking pipes, instead of through base rates.

For example, Synapse concluded that under Pipes 2:

- The average miles of pipe replaced is less than under either Pipes 1 or pre-Pipes;

³⁰ *Id.*

³¹ F.C. 1154, Public Notice (*rel.* Jan. 8, 2024).

³² F.C. 1154, the Office of People's Counsel's Comments on Washington Gas Light Company's Response to Order No. 21940 (January 22, 2024); Comments of the Apartment and Office Building Association of Metropolitan Washington in Response to the Commission's Public Notice of January 8, 2024 (January 23, 2024); and Philadelphia-Baltimore-Washington Laborers' District Council's Response to January 8th Notice (January 23, 2024).

³³ F.C. 1154, District of Columbia Government's Comments in Response to Public Notices Issued on December 22, 2023, and January 8, 2024 (January 22, 2024).

- The miles of pipe with active leaks replaced under normal operations has declined significantly below pre-Pipes and Pipes 1 levels;
- While the average number of service lines replaced is higher than pre-Pipes levels, it is still lower than Pipes 1 levels;
- Pipe replacement costs for both main and service pipe have increased by many orders of magnitude compared to pre-Pipes levels and is significantly higher than Pipes 1 levels, while at the same time, the miles of main pipe and number of service lines replaced are below Pipes 1 levels.
- The average spend per mile of main pipe replacement has increased 70% on average over Pipes 1 levels, while the average spend per mile under Pipes 1 more than doubled from pre-Pipes levels.
- The cost per service line replacement increased 75% over Pipes 1 levels, while the same service line replacement cost under Pipes 1 increased by 65% over pre-Pipes levels.

In short, according to the Synapse analysis, WGL's Pipes 2 performance data does not establish that the program is meeting its objective of accelerating main or service pipe replacement – at least not relative to prior years and programs. Moreover, Synapse concludes that the efficacy (measured by cost) at which WGL is replacing both main and service pipe under Pipes 2 has declined significantly from prior years as pipe replacement costs have risen dramatically compared to both the Pipes 1 and pre-Pipes eras, even when adjusted for inflation.

On February 7, 2024, the Council of the District of Columbia (DC Council) filed a letter with the Commission in the Pipes 3 docket expressing concern that the Project Pipes program could prolong the District's dependence on fossil fuels and needlessly waste ratepayer funds on soon-to-be obsolete infrastructure.³⁴ The DC Council's letter encourages the Commission to explore alternative forms of heating technology to help the District achieve carbon neutrality.³⁵

³⁴ Formal Case No. 1175, *In the Matter of the Washington Gas Light Company's Application for Approval of PROJECTpipes 3 Plan*, Council of the District of Columbia Comments, filed February 7, 2024.

³⁵ *Id.*

On February 9, 2024, the Commission responded to DC Council’s letter with its own letter containing assurances that the Commission “understands the critical role it plays in the District’s clean energy transition and we take this responsibility quite seriously.” Moreover, the Commission’s letter states “we understand the prerogatives of the Climate Commitment Amendment Act of 2022 and its various mandates and will continue to take them into consideration as we supervise and regulate the utilities under our purview.” In addition, on February 13, 2024, OPC filed a Petition for an Investigation into WGL’s natural gas infrastructure following a high-profile gas explosion on WGL’s system in Southeast D.C. on January 18, 2024.³⁶

Against the foregoing backdrop, the Commission issued Order No. 21960 on February 23, 2024, granting WGL’s Motion to extend Pipes 2 until February 28, 2025, at a ratepayer-funded budget of \$50 million for 12 months. The Commission’s decision begins by acknowledging that it received “extensive” comments from the public and parties in response to WGL’s Motion that were overwhelmingly opposed to extending Pipes 2.³⁷ The Commission also acknowledges some negative statistics cited from WGL’s supplementary information, including the fact the number of Grade 1 and 2 repaired leaks reported by WGL to the federal Pipeline Hazardous Materiel Safety Administration (PHMSA) has declined 30% since prior to the start of Pipes 2.³⁸ As a result, the Commission admits that the Project Pipes program requires adjustment.³⁹

³⁶ GD-2024-01-G (filed February 13, 2024).

³⁷ F.C. 1154, Order No. 21960, ¶ 12.

³⁸ *Id.* at ¶ 12.

³⁹ *Id.* at ¶ 13.

The Commission cites to just one statistic from the supplementary information WGL provided in response to Order No. 21949 to support extending Pipes 2: that during the first 2 years of Pipes 2, WGL exceeded its target of replacing 9.2 miles by replacing “approximately” 11 miles of main pipe, while simultaneously falling short of its 2,600 two-year service pipe replacement target by 404 service pipes.⁴⁰ Aside from the foregoing “mixed” statistic, the Commission cites to no other supportive statistic from the Company’s supplemental information filing. The balance of the Commission’s decision appears to rest on the following statements found in the “Decision” portion of Order No. 21960:

- “[T]he Commission notes that service remediation and replacement has been a vital and mission-critical element of the PROJECT*pipes* initiative since the inception of the program, and the work on services cannot be disaggregated from the miles of main replaced.”⁴¹
- “We also note that the proactive replacement of high-risk vulnerable main and service pipes reduces future greenhouse gas (“GHG”) emissions.”⁴²
- “The Commission continues to believe that ‘the safety of the public in accelerating replacement of gas pipelines that are leak-prone or of such age as to be subject to increased risk of leaks and/or failure is of paramount importance.’”⁴³

Finally, as to the matters of (1) WGL’s Pipes 3 Application, (2) action on the Continuum audit report, and (3) OPC’s Petition for an infrastructure investigation, the Commission stated it will address those outstanding related issues in future separate orders.

Appended to Order No. 21960 is a dissenting opinion from Commissioner Beverly, who echoes the concerns about Pipes 2 expressed by DCG, OPC and AOBA. The District timely files this Petition for Reconsideration.

⁴⁰ *Id.* at ¶ 12.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at ¶ 13 (citing, F.C.1115, *In the Matter of Washington Gas Light Company’s Request for Approval of a Revised Accelerated Pipe Replacement Plan*, Order No. 17789, ¶ 63 (rel. January 29, 2015)).

II. STANDARD OF REVIEW

Review of PSC orders is “limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious.”⁴⁴ The Court of Appeals “in reviewing a Commission order, must determine whether [the order’s] overall effect is just and reasonable, and . . . has applied the correct legal standards to its substantive deliberations.”⁴⁵

Moreover, the Court of Appeals 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; in short, the Court of Appeals’ deference is contingent on the Commission fully and clearly explaining what it does and why it does it.⁴⁶ This is required so the court “can be confident that missing facts, gross flaws in agency reasoning, and statutorily irrelevant or prohibited policy judgments will come to a reviewing court’s attention.”⁴⁷

III. SPECIFICATION OF ERRORS

Pursuant to Commission Rule 140.2,15 Joint Parties respectfully submit that Order No. 21960 contains the following unlawful, erroneous, unsubstantiated, and/or arbitrary and capricious findings and conclusions:

- Order No. 21960 errs, and is arbitrary and capricious, in that it fails to identify or explain what specific new facts or information WGL provided in its supplementary production that caused the Commission to approve WGL’s Motion when Order No. 21940 held that WGL failed to justify its extension request.

⁴⁴ D.C. Code § 34-606.

⁴⁵ *Washington Gas Light Co. v. Pub. Serv. Comm’n*, 465 A.2d 1098, 1104 (2004) (internal citations and quotation marks omitted).

⁴⁶ *Office of the People’s Counsel v. Pub. Serv. Comm’n*, 284 A.3d 1027, 1032 (2022).

⁴⁷ *Great Lakes Gas Transmission Ltd. P’ship v. FERC*, 984 F.2d 426, 432 (D.C. Cir. 1993).

- Order No. 21960 errs, and is arbitrary and capricious, in that it fails to explain how WGL met its burden of proof to justify continuing Pipes 2 for another year despite substantial information to the contrary concluding that Pipes 2 is inefficient and underperforming especially as compared to pre-Project Pipes replacement activities.
- Order No. 21960 errs, and is arbitrary and capricious, to the extent the decision to extend Pipes 2 is grounded in WGL's representations that it will be unable to retain qualified contractor crews when the need for WGL's pipe replacement work will continue unabated.
- Order No. 21960 errs, and is arbitrary and capricious, to the extent that it bases its decision on a GHG emissions reduction attributable to Pipes 2 when the Commission has not quantified the expected GHG emissions reduction from extending Pipes 2 for 12 months.
- Order No. 21960 errs, and is arbitrary and capricious, in that it defers consideration of issues pertinent to its decision to extend Pipes 2.

IV. ARGUMENT

The Commission correctly held that WGL, as the proponent of extending surcharge cost recovery under Pipes 2, has the burden of proof to show that the extension is justified.⁴⁸ But despite the Commission's efforts in Order No. 21940 to assist WGL in building a record sufficient to grant WGL's Motion, Order No. 21960 lacks factual support to justify extending Pipes 2 for another year. Further, Order No. 21960 ignores or downplays relevant opposing facts, and inappropriately defers consideration of matters relevant to acting on WGL's Motion to subsequent orders. Therefore, Order No. 21960 should be reconsidered and reversed.

A. The Commission Fails to Identify any New Facts or Data in WGL's Supplementary Production to Justify Extending Pipes 2.

It is unclear what new facts from WGL's supplementary information led the Commission to approve WGL's Motion in Order No. 21960. The Commission stated in Order No. 21940 that

⁴⁸ F.C. 1154, Order No. 21949, ¶ 15. See also, D.C. Code § 2-509(b), and *Potomac Elec. Power Co. v. Public Service Com'n of District of Columbia*, 661 A.2d. 131, 143 (D.C.C.A. 1995).

“without this information it is not possible to grant the Company’s Motion.”⁴⁹ But Order No. 21960 contains only scant reference to WGL’s supplementary information and does not explain what specific new information justified granting WGL’s Motion.

To the extent the supplementary information is referenced at all in Order No. 21960, the information establishes negative or, at best, mixed Pipes 2 performance results. For example, the Commission cites to the supplementary information to acknowledge that the amount of Grade 1 and Grade 2 leaks reported as repaired to PHMSA declined by 30 percent during Pipes 2.⁵⁰ The Commission also cites to the supplementary information to note that, in the first two years of Pipes 2, WGL was on pace to exceed its target level of main pipe replacement, but was falling short of its service pipe replacement target.⁵¹ How this new information contributes to justify an extension of Pipes 2 is not explained by the Commission.

Indeed, the Commission largely ignores the previously indispensable Pipes 2 performance data in its justification for granting WGL’s Motion. Instead, the Commission relies on immutable statements of the importance of pipeline safety untethered from the actual performance or efficacy of Pipes 2. For instance, the following statement or some variation thereof appears several times in the “Decision” section of Order No. 21960: “the safety of the public in accelerating replacement of gas pipelines that are leak-prone or of such age to be subject to increased risk of leaks and/or failure is of paramount importance.”⁵² The foregoing statement is a quote from an order approving the original Project Pipes program in 2015 when there was little performance data on the subject to evaluate. And while public safety is obviously

⁴⁹ At ¶ 15.

⁵⁰ Order No. 21960, at ¶ 12.

⁵¹ *Id.*

⁵² *Id.* at ¶ 13, quoting Formal Case No. 1115, *In the Matter of Washington Gas Light Company’s Request for Approval of a Revised Accelerated Pipe Replacement Plan*, Order No. 17789, ¶ 63 (rel. January 29, 2015).

a legitimate interest for the Commission to consider when approving a utility proposal, the Commission fails to adequately explain how WGL met its burden of proof to justify extending Pipes 2 based solely on public safety concerns given the actual performance and efficacy data for Pipes 2. This aspect of Order No. 21960 is arbitrary and capricious and justifies reconsideration.

B. The Commission Ignores or Fails to Adequately Address Comments from Parties Raising Significant Negative Facts from WGL’s Supplementary Information.

The Commission must reconsider Order No. 21960 because the Commission largely omits discussion of, or fails to adequately consider, comments from the parties pointing to significantly negative facts from WGL’s supplementary information. By Public Notice, the Commission solicited comments from the parties to Pipes 2 on the supplementary information produced by WGL in response to Order No. 21940. In response, the District submitted an analysis performed by Synapse concluding that Pipes 2 is inefficient and underperforming, especially as compared to pre-Project Pipes replacement activities. The Synapse analysis demonstrated that Pipes 2 (1) is not accelerating pipe and service replacement; (2) is expensive and not cost-efficient; and (3) is not well-designed or managed. But nowhere in Order No. 21960 is the Synapse analysis even mentioned.⁵³ This glaring omission from Order No. 21960 requires reconsideration.

The Commission cherry picks a couple of statistics from WGL’s supplementary information out of context to imply that Pipes 2 has been an effective pipe replacement program worthy of extension. As discussed earlier, to imply effectiveness of the program, the Commission says it set a target for WGL to replace “9.2 miles of main and 2,605 services during the first two years” of Pipes 2. However, WGL “replaced approximately eleven (11) miles of

⁵³ Appended to Order No. 21960 is a dissent from Commissioner Richard Beverly who discusses the Synapse analysis at length.

main and remediated/replaced about 2,200 services” over that same time period. But the Commission omits from Order No. 21960 any mention or discussion of the charts contained in the Synapse analysis showing that the miles of replaced pipes under Pipes 2 is actually less on average than before the Project Pipes program started.

On the topic of safety and reliability, the Commission states:

[T]he replacement of services is imperative to the overall safety and reliability of the gas system, as WGL maintains a significant number of high-risk services in the District. In addition to a risk-based accelerated mains replacement program, the Commission notes that service remediation and replacement has been a vital and mission-critical element of the PROJECTpipes initiative since the inception of the program, and the work on services cannot be disaggregated from the miles of main replaced.

But absent from this assertion is an explanation as to how the importance of service pipe replacement squares with Synapse’s finding that the annual average amount of service pipes replaced declined from Pipes 1 to Pipes 2. The Commission also fails to address the fact raised by Synapse that this decline in service pipe replacement occurred at the same time the cost to replace service pipes increased under Pipes 2 as compared to Pipes 1. Furthermore, during Pipes 1, service pipe replacement costs more than doubled as compared to pre-Project Pipes. The Commission fails to explain why it is in the public interest to extend Pipes 2 if, under the program, the amount of service pipe replaced is declining – particularly if, as the Commission stated, “service remediation and replacement has been a vital and mission-critical element of the PROJECTpipes initiative since the inception of the program.”

A related metric the Commission also does not address is the spend per service replaced from 2005 to 2023. The average annual cost per service increased by 65 percent from pre-Pipes to the Pipes 1 era, and 75 percent from Pipes 1 to Pipes 2. At the current average cost of over \$18,000 per service replacement, which, as Synapse points out, is comparable to the cost of a

heat pump installation, the Commission provides no rationale to support its conclusion that extending Pipes 2 for another year at a cost of \$50 million is preferable to less costly home heating options such as heat pump installation accompanied by service pipe retirement. Substituting replacement of service pipe with heat pumps would also be consistent with Commission's duty under D.C. Code § 34-808.02 to consider the District's climate goals as well as the D.C. Council's desire for the Commission to explore alternative forms of home heating.

Another metric of Pipes 2 performance derived from WGL's supplementary information that Synapse addresses is cost per mile of replacement. "The average annual spend per mile more than doubled from pre-Pipes to Pipes 1 and increased by nearly 70 percent from Pipes 1 to Pipes 2. While there has been some economy-wide inflation over this period, spending per mile and per service has risen substantially even in inflation-adjusted terms." The Commission does not address this metric at all in Order No. 21060.

Moreover, as OPC observes in its comments on WGL's supplementary information, between 2006 through 2013, the cost per mile for pipe replacement stayed close to \$4 million. OPC goes on to state: "In recent years, particularly over the course of Pipes 2, the costs have risen to over four times that amount. This is not a slight or gradual increase but a dramatic one that began to take shape in 2014 when the first phase of PROJECTpipes, Pipes 1, was approved. While costs decreased briefly from 2019 to 2021, they still remained much higher than in the years preceding PROJECTpipes.""

In sum, the comments from parties in response to WGL's supplementary information support the conclusion that, by granting WGL's Motion, the Commission is simply throwing good money after bad. The Commission must reconsider Order No. 21960 based on the foregoing comments in response to WGL's supplementary information.

C. The Commission Erred to the Extent it Based its Decision to Grant WGL’s Motion on Concerns that WGL Would be Unable to Retain Qualified Contractor Crews to Perform Pipe Replacement Work.

As recited in Order No. 21960, WGL claimed it would lose most of its qualified contractor workforce if Pipes 2 was not extended, which would allegedly result in a 168% increase in replacement costs if and when WGL decides to re-hire crew. Therefore, in addition to the supplemental information on pipe replacement program performance data, Order No. 21940 directed WGL to “include all information and arguments that support its position on the need to maintain work crews at a particular level under an extension of Pipes 2.” Finally, WGL asserted that “[a]ny delay in approval of an extension of the Pipes 2 Plan would prohibit the continued replacement of higher risk pipe which enhances the safety of the gas distribution system and reduces greenhouse gas emissions from leaking pipe.”⁵⁴

The decision portion of Order No. 21960 is largely silent on the issue of the need to maintain WGL’s qualified contractor crews, so it is unclear how important this factor was in the Commission decision to grant WGL’s Motion. But the Commission did direct WGL to provide information and arguments related to this claim by WGL if Pipes 2 were to be extended.⁵⁵ And, as mentioned above, the issue was important enough to cause Commissioner Beverly to reach out to PBWLDC’s counsel and NPL Construction in an effort to substantiate WGL’s claims that it would be shedding its qualified contractor crews if Pipes 2 was not immediately extended.

To the extent the Commission considered the need to maintain WGL’s qualified contractor workforce at certain levels under a Pipes 2 extension, the Commission did not expressly consider whether WGL would need to maintain its qualified contractor crews if Pipes 2

⁵⁴ Order No. 21940, *citing* WGL Motion at pg. 5.

⁵⁵ *Id.*, at ¶ 15.

was not renewed. However, accelerated surcharge recovery for pipe replacement costs, including contractor workforce costs, is not a prerequisite for implementing a pipe replacement program. In the absence of surcharge recovery, the Company can always seek recovery of its pipe replacement costs through a base rate proceeding (albeit on a longer cost recovery timeframe than with surcharge recovery).

Moreover, as the Synapse analysis found, there is no shortage of pipe replacement work to be done in the District of Columbia. As the number of Grade 1 and Grade 2 leaks increases and the number of reported leaks repaired decreases, WGL will always have a demand for qualified contractor crews. Indeed, the Project Pipes program is fairly recent with Pipes 1 being initiated in 2014. Prior to Pipes 1, all pipe replacement activity was funded through base rate proceedings. However, despite the delay in cost recovery prior to Project Pipes, the Synapse analysis shows that the annual amount of pipe replaced prior to Project Pipes was actually greater than the amount of pipe being replaced under Project Pipes. Thus, to the extent the Commission considered the need for WGL to maintain qualified contractor crews to perform pipe replacement activities in its decision to grant WGL's Motion, the Commission should reconsider and reverse this aspect of the order.

D. The Commission Failed to Adequately Quantify the Expected Amount of GHG Emissions Reductions that Would Result from Extending Pipes 2 by 12 Months or Assess the Overall Reasonableness of the GHG Emissions Reductions as Compared to Other Options.

As further justification for granting WGL's Motion the Commission states, "we also note that the proactive replacement of high-risk vulnerable main and service pipes reduces future greenhouse gas ("GHG") emissions." Aside from this general statement, however, the Commission does not attempt to quantify the GHG emissions avoided purportedly due to

extending Pipes 2 for 12 months, nor does it “use a methodology to estimate those [GHG] impacts” or to otherwise explain why it did not need to do so.⁵⁶

In its order initially authorizing Pipes 2, the Commission did attempt to quantify the amount of GHG emissions avoided that would result from three years of Pipes 2 pipe replacement activity.⁵⁶ However, the fact that the Commission attempted to quantify GHG emissions reductions initially does not, standing alone, justify the reasonableness of granting WGL’s Motion.⁵⁶ In fact, the unexplained absence of a quantified amount of GHG emissions reductions for the 12-month extension period for Pipes 2 stands in stark contrast to the Commission’s earlier efforts to make this quantification. The Commission has stated that “we will use our authority to the fullest extent possible (short of interfering with an Act of Congress) to help the District meet its climate goals.”⁵⁷ But as Commissioner Beverly noted in his dissent to Order No. 21960, “I have not seen evidence that the cumulative avoided GHG emissions from this program represent a meaningful reduction in WGL’s overall footprint, nor that the GHG Synapse reasons that heat pump installations would have the effect of reducing GHG emissions more effectively in terms of both cost and amount of emissions as compared to service pipe replacement. Thus, the Commission erred in failing to quantify the GHG emissions reductions resulting from 12 additional months of Pipes 2 replacement activity, and to the extent that this amount can be derived from the Commission’s initial attempt to do so at the outset of Pipes 2, the Commission erred by failing to consider the reasonableness of the cost and amount of

⁵⁶ *Vecinos Para El Bienestar de la Comunidad Costera, et. al. v. Federal Energy Regulatory Commission, et al.* 6 F.4th 1321, 1329 (D.C. Cir. Aug. 3, 2021) (“Because the Commission failed to respond to significant opposing viewpoints concerning the adequacy of its analyses of the projects’ greenhouse gas emissions, we find its analyses deficient under NEPA and the APA.”)

⁵⁷ F.C. 1167, Order No. 21631, ¶ 13 (June 1, 2023).

avoided GHG emissions as compared to other available options. The Commission should reconsider and reverse this aspect of Order No 21960.

E. The Commission Inappropriately Defers to Subsequent Orders Consideration of Matters Relevant to Action Upon WGL’s Motion.

As mentioned above, the Commission stated that it would be issuing orders in the future on related issues relevant to WGL’s Motion, including (1) WGL’s Pipes 3 Application, (2) action on the Continuum audit report, and (3) OPC’s Petition for an infrastructure investigation. The Commission erred in failing to issue orders on these related matters prior to acting on WGL’s Motion because these matters are all interrelated and an order on one related matter will likely impact the positions parties take with respect to WGL’s Motion.

For example, in Order No. 20671 authorizing Pipes 2 the Commission also determined that a management audit should be performed by an independent third-party auditor similar to the Liberty audit that was performed in Pipes 1. The Commission reasoned that another audit would be “beneficial for the Company, the Commission, and stakeholders at evaluating the Company’s performance in implementing PROJECT*pipes* in a manner that increases the District’s safety and reliability in a cost-effective manner.”⁵⁸ On December 12, 2023, Continuum filed its audit report with the Commission. On December 22, 2023, the Commission issued a Public Notice soliciting comments from parties and interested persons on the Continuum audit report.

⁵⁸ F.C. 1154, Order No. 20671, ¶ 37 (*rel.* Dec. 11, 2020).

On January 4, 2024, WGL filed its supplementary information in response to the Commission's directives in Order No. 21940. Among other things, WGL cites the Continuum management audit as justification for why Pipes 2 should be extended for one year.

Further, Continuum's recently filed independent audit report on the Pipes 2 Plan concluded, *inter alia*, that "WGL implemented PROJECTpipes 2 in a way that reduced risk and enhanced safety in its Washington D.C. service area" and that "WGL has demonstrated prudence in implementing PROJECTpipes 2 projects regarding the reasonableness of actual costs. WGL implemented PROJECTpipes 2 in a way that reduced risk and enhanced safety in its Washington D.C. service area" and that "WGL has demonstrated prudence in implementing PROJECTpipes 2 projects regarding the reasonableness of actual costs."⁵⁹

However, pursuant to the Commission's Public Notice, OPC filed Comments on January 22, 2024, that highlighted very different aspects of the Continuum audit report. For example, OPC states:

Continuum's Audit Report highlights several of WGL's failures in operating and managing PROJECTpipes, including but not limited to, being far behind schedule in completing repairs, irregularities in the invoice submission process, inaccuracies in calculating project costs, failure to develop a master schedule and poor workforce management.⁶⁰

On February 23, 2024, the Commission issued its order approving WGL's Motion, however, the Commission has not yet acted on Continuum's audit report. In the absence of an order on the Continuum audit report, the parties are deprived of a key piece of information that could inform their positions. Other examples abound such as whether the Commission will

⁵⁹ F.C. 1154 Response of WGL to Commission Order No. 21940, at pg. 5 (filed January 4, 2024) *citing* Continuum Audit.

⁶⁰ F.C. 1154, OPC's Comments on Continuum Capital's Audit Report on Washington Gas Light Company's Project Pipes 2 Program.

adopt some or all of the 21 specific recommendations in the audit report, and if only some recommendations are adopted, which ones they should be.

Similarly, granting and completing OPC's Petition for an Infrastructure Investigation in advance of acting on WGL's Motion would also be informative to the parties and Commission. Much of the Commission's rationale for granting WGL's Motion is grounded in safety concerns, but the Commission has not acted on OPC's request for an investigation to find out the extent to which WGL's system is safe (or unsafe). If the investigation were to reveal that WGL's pipeline system is irreparably leaky, for example, such information would be directly relevant to deciding whether the Pipes 2 program should be extended, modified, replaced with WGL's Pipes 3 application, or if Project Pipes should be scrapped altogether in favor of non-pipes solutions, such as electrification combined with decommissioning of pipe. Of course, such an investigation could take many months or even years to complete. But if the Commission deems it important enough, the Commission could hold WGL's Motion in abeyance until the investigation is complete. In any event, the Commission's determination to address closely related Pipes 2 matters down the road in separate orders is inappropriate. This foregoing aspect of Order No. 21960 should be reconsidered and reversed.

V. CONCLUSION

WHEREFORE, for the reasons stated herein, the Commission should reconsider and reverse its decision in Order No. 21960 granting WGL a 12-month extension of its Pipes 2 program.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General

JENNIFER JONES
Deputy Attorney General
Public Advocacy Division

WILLIAM STEPHENS
Assistant Deputy Attorney General

ARGATONIA WEATHERINGTON
Chief, Housing and Environmental Justice Section

/s/ Brian Caldwell
BRIAN CALDWELL (D.C. Bar No. 979680)
Senior Assistant Attorney General
400 Sixth Street NW, 10th Floor
Washington, D.C. 20001
(202) 727-6211
Brian.caldwell@dc.gov

March 25, 2024

Attorney for the District of Columbia Government

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March 2024, I caused true and correct copies of the District of Columbia's Petition for Reconsideration of Order No. 21960 to be emailed to the following:

Christopher Lipscombe
General Counsel
Public Service Commission
1325 G Street, N.W.
Suite No. 800
Washington, D.C. 20005
[LWalt@psc.dc.gov](mailto:lwalt@psc.dc.gov)

Ankush Nayar
Assistant People's Counsel
Office of the People's Counsel
1133 15th Street, N.W.
Suite 500
Washington, D.C. 20005
anayar@opc-dc.gov

Cathy Thurston-Seignious
Washington Gas Light Company
1000 Maine Ave. SW
Washington, D.C. 20024
cthurston-seignious@washgas.com

Nina Dodge
DC Climate Action
6004 34th Place N.W.
Washington, D.C. 20015
ndodge342@gmail.com

Frann G. Francis
Apartment and Office Building Assoc.
1025 Connecticut Avenue NW, Ste. 1005
Washington, DC 20036
ffrancis@aoba-metro.org

Erin Murphy
Environmental Defense Fund
1875 Connecticut Ave. NW Ste. 600
Washington, DC 20009
emurphy@edf.org

Brian J. Petruska, Esq.
LIUNA Mid-Atlantic Region 11951
Freedom Drive, Suite 310
Reston, VA 20190
bpetruska@maliuma.org

Susan Stevens-Miller, Esq.
Earthjustice
1625 Massachusetts Ave. N.W., Ste 702
Washington, DC 20036
smiller@earthjustice.org

/s/ Brian Caldwell
Brian Caldwell