

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

ORDER

April 24, 2024

FORMAL CASE NO. 1154, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S APPLICATION FOR APPROVAL OF PROJECTPIPES 2 PLAN, Order No. 21982

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) denies the District of Columbia Government’s (“DCG”) request for reconsideration of Order No. 21960 extending PROJECTpipes 2 (“PIPES 2”).

II. BACKGROUND

2. PIPES 2 is the second phase of Washington Gas Light Company’s (“WGL” or “Company”) proposed 40-year Accelerated Pipe Replacement Plan to replace all aging, leak-prone pipes in WGL’s distribution system in the District. WGL filed a Motion to extend the scheduled end date of the PIPES 2 Program beyond December 31, 2023.¹ By Order No. 21940, the Commission held-in-abeyance WGL’s requested extension and directed the Company to file supplemental information to support the requested PIPES 2 extension.² On January 4, 2024, WGL filed the supplemental information.³ Pursuant to the Commission’s Public Notice⁴ soliciting comments on WGL’s filing, DCG, the Office of the People’s Counsel for the District of Columbia (“OPC”), the Apartment and Office Building Association of Washington Metropolitan Area (“AOBA”), and Philadelphia-Baltimore-Washington Laborer’s District Council filed comments.⁵

¹ *Formal Case No. 1154, In the Matter of Washington Gas Light Company’s Application for Approval of PROJECTpipes 2 Plan (“Formal Case No. 1154”), Washington Gas Light Company’s Motion for Extension of PIPES 2, filed November 6, 2023 (“WGL’s Extension”).*

² *Formal Case No. 1154, Order No. 21940, rel. December 20, 2023 (“Order No. 21940”).*

³ *Formal Case No. 1154, Washington Gas Light Company’s Supplemental Information, filed January 4, 2024 (“WGL’s Supplemental”).* On the same date, Commissioner Beverly issued a Notice of Communication noting his contact with counsel for Philadelphia-Baltimore-Washington Laborer’s District Council and NPL Construction.

⁴ *Formal Case No. 1154, Public Notice, rel. January 8, 2024.*

⁵ *Formal Case No. 1154, District of Columbia Government’s Comments in Response to Public Notices Issued on December 22, 2023, and January 8, 2024, filed January 22, 2024; Formal Case No. 1154, Office of the People’s Counsel for the District of Columbia’s Comments on Washington Gas Light Company’s Response to Order No. 21940, filed January 22, 2024; Formal Case No. 1154, Apartment and Office Building Association of Metropolitan Washington’s Comments in Response to the Commission’s Public Notice of January 8, 2024, filed January 23, 2024;*

3. In Order No. 21960, the Commission granted WGL's Motion for Extension of PIPES 2 through February 28, 2025, with a one (1) year spending cap of \$50 million.⁶ The Commission directed that during the extension period, WGL is expected to replace 4.72 miles of main and remediate or replace an estimated 1,428 service pipes.⁷

4. On March 25, 2024, DCG filed a Petition for Reconsideration of Order No. 21960.⁸ WGL filed a response to the Petition for Reconsideration on April 1, 2024.⁹

III. DISCUSSION

A. DCG's Specifications of Errors

5. DCG argues the Commission's decision to extend PIPES 2 for an additional year was in error and was arbitrary and capricious because the Commission: 1) fails to explain what specific new facts in WGL's supplemental information that the Commission relied upon in approving the extension; 2) fails to explain how WGL met its burden of proof for the extension request; 3) relied upon WGL's representation about its inability to retain qualified contractor crews if the extension is not granted; 4) did not quantify the greenhouse gas ("GHG") reduction for the extension; and 5) deferred consideration of certain issues that were pertinent to the decision.¹⁰

B. WGL's Response

6. WGL states that DCG's specifications of error all lack merit and fail to meet the legal standard for review. WGL contends that much of the DCG's Petition rehashes arguments raised in its opposition to the Company's request to extend PIPES 2.¹¹ According to WGL, the Commission is required to fully explain its decision and evaluate the totality of the record. It is not required to identify any specific fact that influenced its decision. WGL argues that contrary to DCG's assertions, the Commission fully explained why it granted the PIPES 2 extension.

and, *Formal Case No. 1154*, Philadelphia-Baltimore-Washington Laborers' District Council's Response to January 8th Notice, filed January 23, 2024 .

⁶ *Formal Case No. 1154*, Order No. 21960, rel. February 23, 2024 ("Order No. 21960").

⁷ *Formal Case No. 1154*, Order No. 21960, ¶ 14.

⁸ *Formal Case No. 1154*, District of Columbia Government's Petition for Reconsideration of Order No. 21960, filed March 25, 2024 ("DCG's Petition").

⁹ *Formal Case No. 1154*, Washington Gas Light Company's Response to the District of Columbia Government's Petition for Reconsideration of Order No. 21960, filed April 1, 2024 ("WGL's Response"). The Commission notes Earthjustice's untimely letter filed in support of DCG's Petition for Reconsideration. See *Formal Case No. 1154*, Earthjustice's Letter in Support of District of Columbia Government's Petition for Reconsideration of Order No. 21960, filed April 22, 2024.

¹⁰ DCG's Petition at 11-22.

¹¹ WGL's Response at 2.

According to WGL, substantial evidence in the record supports the continuation of PIPES 2 for the reasons the Commission articulated.¹²

7. In addition, WGL notes that the Commission did not make any findings regarding the availability of contractor crews to perform PIPES 2 construction work and the impact on the program's performance. Therefore, DCG's claim that the decision is grounded in WGL's representations regarding contractor crew availability is speculative at best and not an error of fact or law that serves as the basis for reconsideration. WGL also contends that no legal precedent requires the Commission to quantify expected GHG emissions reduction from PIPES 2. Moreover, according to WGL, the Commission previously determined that PIPES 2 reduces GHG emissions, will assist the Company in complying with the District's carbon neutrality goals, and that continuing the program would further reduce GHG emissions. Lastly, WGL states that deferring a decision on an issue is within the Commission's discretion because it has wide latitude in managing its dockets and setting its calendar. In sum, WGL argues that DCG has presented no grounds for reconsidering any legal or factual determination.¹³

B. Decision

8. The Commission denies DCG's petition for reconsideration. The standards governing applications for reconsideration of Commission Orders are well settled. The sole "purpose" of an application for reconsideration "is to identify errors of law or fact in the Commission's initial Order so that they can be corrected."¹⁴ It is not a vehicle for the losing party to rehash the same arguments that we previously considered and rejected, nor is it an opportunity to raise new issues and arguments that, with due diligence, could have been raised and addressed earlier in the case.¹⁵ If there is substantial evidence in the record to support the decision of the Commission, that decision is not erroneous simply because there is substantial evidence that could support a contrary conclusion.¹⁶ The party seeking reconsideration bears the heavy burden of

¹² WGL's Response at 1-3.

¹³ WGL's Response at 6-8.

¹⁴ *Formal Case No. 1142, In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.*, Order No. 21650, ¶ 5, rel. June 26, 2023; *Formal Case No. 1156, In the Matter of the Application of the Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, Order No. 21541, ¶ 4, rel. October 18, 2022.

¹⁵ *See Formal Case No. 1137, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates for Gas Service*, Order No. 18768, ¶ 5, rel. May 12, 2017 (footnote omitted); and *Formal Case No. 977, In the Matter of the Investigation into the Quality of Service of Washington Gas Light Company, District of Columbia Division*, In the District of Columbia, Order No. 15129, ¶ 8, rel. November 26, 2008.

¹⁶ *Formal Case No. 945*, Order No. 15883, ¶ 8, rel. July 16, 2010, *citing Formal Case No. 1053*, Order No. 14832, rel. June 13, 2008, *citing State of New York v. United States*, 880 F.Supp. 37 (D.D.C. 1995) and *Washington Gas Light Company v. District of Columbia Public Service Commission*, 856 A.2d 1098, 1104 (D.C. 2004).

showing that the challenged portions of the Order were “unreasonable, arbitrary, or capricious by demonstrating clearly and convincingly a fatal flaw in the action taken.”¹⁷

9. In its application for reconsideration, DCG argues that the Commission’s decision is arbitrary and capricious because it does not adequately explain the reasons for granting WGL’s requested extension of the PIPES 2 program.¹⁸ WGL urges the Commission to reject DCG’s application because it rehashes arguments raised and denied and because none of the issues raised on reconsideration meet the requisite legal standard. Therefore, it does not demonstrate any error of law or fact.¹⁹

10. The Commission believes that DCG’s Petition for Reconsideration regarding WGL’s PIPES 2 extension mostly rehashes its arguments in its opposition to the Motion to Extend PIPES 2. We addressed those arguments and found them to be unpersuasive. An application for reconsideration is not a vehicle for losing parties to rehash previously considered and rejected arguments.²⁰ In addition, there is substantial evidence noted in Order No. 20961 to support our decision. DCG primarily contends that the arguments and evidence that it presented should have convinced the Commission to deny WGL’s extension request. However, we found that WGL had met its burden in persuading the Commission to grant the extension. As we have announced many times, a Commission’s decision is not erroneous simply because there is evidence supporting a contrary conclusion.²¹ As discussed below, the Commission’s decision was based on substantial evidence in the record.

11. By Order No. 21940, we held-in-abeyance WGL’s request to extend PIPES 2 until WGL filed specific data.²² After reviewing WGL’s supplemental submissions, we granted the extension, highlighting the fact that in initially approving PIPES 2, we required WGL to replace 9.2 miles of main and 2,605 services during the first two years of PIPES 2 but that WGL had exceeded our directives and replaced around 11 miles of main while remediating about 2,200 services or about 85% of the high-risk services.²³ We also found persuasive that WGL’s Grade 1

¹⁷ *Formal Case No. 1144, In the Matter of the Potomac Electric Power Company’s Notice to Construct Two 230kV Underground Circuits from the Takoma Substation to the Rebuilt Harvard Substation, and from the Rebuilt Harvard Substation to the Rebuilt Champlain Substation (Capital Grid Project)*, Order No. 20235, ¶ 9, rel. October 11, 2019. *See also*, D.C. Code § 34-606 (2001). *Bell Atl. Washington, D.C., Inc. v. Pub. Serv. Comm’n*, 655 A.2d 1231, 1233 (D.C. 1995).

¹⁸ DCG’s Petition at 11-12.

¹⁹ WGL’s Response at 2-3.

²⁰ *See, e.g.*, D.C. Code § 34-604(b); *see also, Formal Case No. 1119*, Order No. 18243, ¶¶ 20-21, rel. June 17, 2016; *Formal Case No. 1103*, Order No. 17539, ¶ 4, rel. July 10, 2014.

²¹ *Formal Case No. 945*, Order No. 15883 ¶ 8, rel. July 16, 2010, internal citations omitted.

²² *Formal Case No. 1154*, Order No. 21940, ¶¶ 16-17, 20.

²³ *Formal Case No. 1154*, Order No. 21960, ¶ 12 *citing* Washington Gas Light Company’s Response to Order No. 21940, filed January 4, 2024 at Attachment A; *See also, Formal Case No. 1154*, Washington Gas Light Company’s Annual Reconciliation Report for 2021, filed March 31, 2022; and *Formal Case No. 1154*, Washington Gas Light Company’s Amended Year 8 Annual Project Reconciliation Report for 2022, filed April 13, 2023.

and 2 leaks reported to PHMSA had declined by 30% since 2019.²⁴ We assessed these critical achievements as warranting a continuation of the PIPES 2 initiative. Moreover, we specifically noted that while the Continuum audit made recommendations for improvement of the PIPES 2 program, the audit confirmed that PIPES 2 reduced risk and enhanced the safety of the gas distribution system, buttressing our decision to extend PIPES 2 for an additional 12 months.²⁵

12. For the first time on reconsideration, DCG ventures that the Commission's extension was grounded on WGL's representations regarding contractor crew availability. However, DCG's conjecture does not amount to an error in fact or law since the Commission made no findings speculating on crew availability in granting or denying an extension, given WGL's statutory obligation to maintain the safety and reliability of the gas distribution system.

13. Lastly, DCG alleges that the Commission inappropriately deferred consideration of the Continuum Audit Report, the PIPES 3 Application, and OPC's Petition for an infrastructure investigation filing in this case. In managing the Commission's caseload, we decided to address WGL's extension of time request for the PIPES 2 Program first, reasoning that the extension would allow the Commission to evaluate how we appropriately move forward with WGL's (PIPES 3) request to continue replacing high-risk leak-prone aging infrastructure subject to increased risk of leaks and/or failure (OPC's investigation request). As we explained above, while not fully addressing the Continuum audit, we recognized that the audit confirmed that PIPES 2 reduced risk and enhanced the safety of the gas distribution system, which supported our decision to extend PIPES 2 for an additional 12 months.²⁶ In any event, we reject DCG's alleged error because deferring other case filings in this docket is a reasonable exercise of our broad discretion in managing our caseload.²⁷

14. The Commission finds no errors in law or fact in its decision and that DCG has not demonstrated that there was a fatal flaw in our decision to extend PIPES 2. The Commission continues to believe that extending PIPES 2 is warranted in addressing the District's aging gas infrastructure, which is most susceptible to pipe failure that could result in safety and reliability issues as well as increased GHG emissions. Moreover, the extension provides the Commission additional time to deliberate on the future of a pipe replacement program that ensures safety and reliability, addresses the risks of stranded assets resulting from electrification, and facilitates

²⁴ *Formal Case No. 1154*, Order No. 21960, ¶ 12. *See also*, Washington Gas Light Company's Response to Order No. 21940, filed January 4, 2024.

²⁵ *See Formal Case No. 1154*, Order No. 21960, n. 33.

²⁶ *See Formal Case No. 1154*, Order No. 21960, n. 33.

²⁷ *See Formal Case No. 1150, In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 19263, ¶ 10, n. 14, rel. February 2, 2018. Policy decisions pertain to the determination of the precise balance of goals to be obtained in ratemaking, *see, e.g., D.C. Answering Service Comm. v. Public Service Comm'n*, 476 A.2d 1113, 1124 (D.C. 1984). Well established principles of administrative law support the Commission's authority to manage its own cases and to select the issues that are appropriate for hearing in a particular case. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543-545 (1978); *FCC v. Schreiber*, 381 U.S. 179, 290 (1965).

WGL's contributions to achieving the District's climate goals. Therefore, DCG's request for reconsideration is denied.

THEREFORE, IT IS ORDERED THAT:

15. The District of Columbia Government's Petition for Reconsideration is **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**

COMMISSION ACTION

FORMAL CASE NO. 1154, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S APPLICATION FOR APPROVAL OF PROJECT PIPES 2 PLAN,

Date 4/24/24 Formal Case No. 1154 Tariff No. Order No. 21982

| | Approved by Roll Call Vote | Disapprove Initial & Date | Abstain Initial & Date |
|---------------------------------|-------------------------------|------------------------------|---------------------------|
| Chairman Emile Thompson | <u>ET/CL 4/24/24</u> | _____ | _____ |
| Commissioner Richard A. Beverly | _____ | <u>RAB/CL 4/24/24</u> | _____ |
| Commissioner Ted Trabue | <u>TT/CL 4/24/24</u> | _____ | _____ |

Certification of Action

C. Lipscombe
General/Deputy General Counsel

Kimberly Lincoln-Stewart
OGC Counsel/Staff