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EARTHJUSTICE

March 21, 2025

VIA ELECTRONIC FILING

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

Re: **Formal Case No. 1179*, In the Matter of the Investigation into Washington Gas Light Company's Strategically Targeted Pipe Replacement Program***

Dear Brinda Westbrook-Sedgwick:

Attached for filing please find the *Joint Petition for Reconsideration of Order No. 22367* on behalf Sierra Club and District of Columbia Government.

Thank you for your attention to this matter. Should you have any questions, please contact me at toberleiton@earthjustice.org.

Sincerely,

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Counsel for Sierra Club

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF	**)**	
THE INVESTIGATION INTO	**)**	**Formal Case No. 1179**
WASHINGTON GAS LIGHT COMPANY'S	**)**	
STRATEGICALLY TARGETED PIPE	**)**	
REPLACEMENT PROGRAM	**)**	

JOINT PETITION FOR RECONSIDERATION
OF ORDER NO. 22367

Pursuant to Rule 140.1, *et seq.* of the Public Service Commission for the District of Columbia ("Commission") Rules of Practice and Procedure ("Rules"), Sierra Club and District of Columbia Government (collectively, "Joint Petitioners") submit the instant *Application for Reconsideration of Order No. 22367*.[1]

I. INTRODUCTION

Order No. 22003 represented a crucial turning point in the Commission's review of gas utility programs in light of the District's climate laws and policies. Almost two years ago, the Commission declared that it planned "to use its full statutory authority to reduce GHG emissions from WGL's operations" (despite finding it was prohibited from directly limiting or prohibiting the sale of natural gas).[2] The Commission later verified that it would use its "authority to the fullest extent possible—short of interfering with an Act of Congress—to help the District meet its climate goals."[3] By dismissing Washington Gas Light Company's ("WGL" or the "Company") Project*pipes* 3 application, and requiring WGL to resubmit a program application consistent with a new set of requirements intended to align with the District's climate goals—in

[1] *Formal Case No. 1179*, *In the Matter of the Investigation into Washington Gas Light Company's Strategically Targeted Pipe Replacement Program* ("*Formal Case No. 1179*"), Order No. 22367, rel. February 19, 2025.

[2] *Formal Case No. 1167, In the Matter of the Implementation of Electric and Natural Gas Climate Change Proposals,* Order No. 21593, ¶ 9, rel. April 6, 2023.

[3] *Id.,* Order No. 21631, ¶ 13, rel. June 1, 2023.

particular the requirements that WGL describe its methodology for tracking greenhouse gas (GHG) emissions reductions and minimizing the risk of stranded assets—the Commission conformed to its intent to regulate GHG emissions and help the District meet its climate goals.

In an abrupt reversal lacking adequate explanation, Order No. 22367 significantly undercut the Commission's prior policy declarations. Without sufficient explanation or indication of a shift in policy, the Commission arbitrarily decided *ex post facto* to strike its requirement that WGL describe the Company's methodology for tracking GHG emissions reductions or the Company's strategy for minimizing stranded assets. Moreover, after repeatedly denying WGL's requests to extend the Project*pipes* 2 program and surcharge through the end of the 2025 due to needed reforms to the Project*pipes* program, the Commission again without warning or sufficient explanation or indication of a shift in policy *sua sponte* determined to extend the Project*pipes* 2 program and surcharge for nearly a year. Along with this arbitrary decision to extend Project*pipes* 2, the Commission also *sua sponte* added additional rounds of testimony and discovery to the procedural schedule that no party requested with the overall effect of prolonging decision of this dispute well beyond its initial schedule that called for a final order to have already been issued. No explanation is given for this action either, or the fact that all these actions were undertaken in the absence of any record evidence. In short, the Joint Petitioners are gravely concerned that, through its Order No. 22367, the Commission is backsliding on previous policy statements concerning its intent to help the District achieve its climate goals.

Joint Petitioners submit that the Commission made several errors of law in Order No. 22367 yielding arbitrary and capricious results that not only severely prejudice Joint Petitioners in this proceeding but are also contrary to the public interest. Further, the conclusions of the

Order are in several key instances unsupported by the record. Specifically, the Joint Petitioners aver that the Commission acted arbitrarily and capriciously in the following ways:

- The Commission acted arbitrarily and capriciously in extending its approval for *ad hoc* Project*pipes* 2 replacement activity and related surcharge recovery by WGL to December 31, 2025, and further did not provide sufficient reasoning as to why beyond merely stating that the extension was "in the public interest . . . to maintain the continued safety and reliability of the gas distribution system."[4]

- The Commission erred in holding that it "will not require WGL to provide further surrebuttal testimony to comply with our directives in paragraphs 51(h), (j), (n), (o), (q), and (r) of Order No. 22003 at this time."[5] The Commission's decision to change the showing required of WGL in its so-called District Strategic Accelerated Facility Enhancement ("District SAFE") plan application was in effect an impermissible reconsideration based solely on contentions from WGL that "some of the requested elements lack established industry standards or clear regulatory benchmarks."[6] Changing the requirements on WGL midstream in this case prejudices the parties who sought discovery and submitted testimony on those issues. Further, the Commission failed to cite precedent—controlling or persuasive—that the lack of "industry standards or clear regulatory benchmarks" relieves a regulated utility from oversight on very specific requirements from this Commission. Finally, the Commission reached this key determination regarding the alleged absence of industry standards and regulatory benchmarks without seeking input from the parties, rendering its decision arbitrary, capricious, and in violation of due process.

- The Commission erred in removing the requirement in Order No. 22003 that WGL incorporate the nineteen (19) recommendations from the Continuum Audit Report in the company's District SAFE plan. The Commission stated that it "recognizes that because the District SAFE Plan's objectives are different from the original accelerated pipes plans, some of the criteria set forth in the Audit Report assessing PIPES 2 would apply during the implementation of WGL's SAFE Plan if approved"[7] without substantiating what those differences are and why those support a further relaxation of the requirements of WGL's required showing in this case.

- The Commission erred in failing to document or support how "WGL's application encompasses a sufficient number of the directives from Order No. 22003,"[8] to justify denial of the Joint Petitioners' Motion to Dismiss.

[4] Order No. 22367 at ¶ 29.

[5] *Id.* at ¶ 22.

[6] *Id.* at ¶ 22.

[7] *Id.* at ¶ 23.

[8] *Id.* at ¶ 20.

- The Commission erred in granting two additional rounds of comments and discovery, further dragging out a proceeding that was meant to be expedited in light of the extensive meetings between the parties prior to WGL's filing of its new application.

II. PROCEDURAL HISTORY

On November 20, 2025, WGL filed an Application for Partial Reconsideration of Order No. 22317,[9] taking issue with the Commission's exercise of authority in managing the schedule of this case. The Application otherwise rehashed the Company's usual arguments that temporary funding increments of ad-hoc Project*pipes* 2 work is disruptive to the operation of its replacement activities. On November 27, 2024, OPC and Sierra Club filed an opposition to WGL's Request.[10] In Order No. 22344, the Commission rejected WGL's alarmist warnings of calamity, finding that WGL was indeed "simply reasserting the same argument that has already been considered and rejected by the Commission."[11]

On January 2, 2025, WGL filed a *Motion for a Finding and Determination that Formal Evidentiary Hearings are Necessary to address Material Disputed Issues of Fact and to establish Procedures and Matters to be addressed at the Prehearing Conference* ("WGL's Motion for Hearing").[12] On January 7, 2025, WGL filed voluminous rebuttal testimony,[13] vastly outsizing both their direct testimony in support of its initial application for approval of Project*pipes* 3 and that filed in support of its "District SAFE" plan.

[9] *Formal Case No. 1179*, WGL's Application for Partial Reconsideration, filed November 20, 2024.

[10] *Formal Case No. 1179*, OPC's Response, filed November 27, 2024; Formal Case No. 1179, Sierra Club's Response, filed November 27, 2024.

[11] *Formal Case No. 1179*, Order No. 22344, ¶ 7, rel. December 18, 2024.

[12] *Formal Case No. 1179*, WGL's Motion for Hearing, filed January 2, 2025.

[13] *See generally*, *Formal Case No. 1179*, WGL Rebuttal Testimony, filed January 7, 2025.

On January 9, 2025, Joint Petitioners, OPC, and AOBA filed a *Joint Response to WGL's Motion for Hearing and Joint Motion to Dismiss Due to Noncompliance with Order No. 22003*.[14] In the Motion to Dismiss, Joint Petitioners pointed out the numerous ways in which WGL's Commission-compelled "District SAFE" application failed to address the core requirements of Order No. 22003.[15] The Joint Petitioners also requested a brief extension of outstanding deadlines in this case—all of which would have been achievable prior to the April 30, 2025 surcharge expiration deadline.[16] Sierra Club further urged the Commission to not extend ad hoc Project*pipes* 2 replacement activities or extend the surcharge beyond April 30, 2025, pointing out the ways in which WGL was responsible for undue delays in this matter.[17] On January 13, 2025, WGL filed (1) WGL's motion for leave to reply and reply to the Joint Intervenor's Response to WGL's Motion for Hearing; (2) WGL's response to the Joint Intervenor's Motion to Dismiss; and (3) WGL's Motion for Further Extension of the Project*pipes* 2 program.[18]

On February 11, 2025, the D.C. Council filed a letter calling on the Commission to reject WGL's "District SAFE" plan,[19] highlighting the clear directives from Order No. 22003 with which WGL failed to comply. This was the second letter from the D.C. Council regarding

[14] *Formal Case No. 1179,* Joint Intervenor Response to WGL's Motion for Hearing and Motion to Dismiss, filed January 9, 2025.

[15] *Formal Case No. 1179,* Joint Intervenor Motion to Dismiss at 3 – 6.

[16] *Id*. at 7 – 9.

[17] *Formal Case No. 1179,* Sierra Club's response to WGL's Motion for Evidentiary Hearing, filed January 13, 2025.

[18] *Formal Case No. 1179*, WGL's *Motion for Leave to Reply and Reply, Response, and Motion for further Extension of the* Project*pipes 2 Program*, filed January 13, 2025.

[19] *Formal Case No. 1179*, Council of the District of Columbia Letter re: Gas Infrastructure Replacmenet During the Clean Energy Transition, filed February 11, 2025.

WGL's pipeline replacement proposals programs, the first being the Councils letter on February 8, 2024[20] regarding WGL's initial Project*pipes* 3 Application.

On February 19, 2025, the Commission entered Order No. 22367. On the same day, Commissioner Beverly filed his dissent from Order No. 22367.

Joint Petitioners hereby file their Application for Reconsideration of Order No. 22367.

III. STANDARD OF REVIEW

The Commission has wide discretion to manage its own case dockets, and to choose the procedures that are best suited for examining the issues before it.[21] An application for reconsideration is proper when a final order on an issue has been issued. [22] An issue is judicially reviewable where, even if not in the final dispositional order of the matter, its resolution has had an impact sufficiently direct and immediate on the parties.[23] The purpose of an application for

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[20] *Formal Case No. 1175, In the Matter of Washington Gas Light Company's Application for Approval of Projectpipes Plan* ("*Formal Case No. 1175*"), Council of the District of Columbia Letter re: The Future of the District's Gas Distribution Network, filed February 8, 2024.

[21] *Formal Case No. 1076, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 15864 (citing *FCC v. Pottsville Broadcasting,* 309 U.S. 134, 142-143 (1940) (opinion states that agencies have reasonable power "to control the range of investigation" and "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties"); *Ammerman v. DC Rental Accommodations Comm'n,* 375 A.2d 1060, 1063 (D.C. 1977) ("No principle of administrative law is more firmly established than that of agency control of its own calendar." "Agencies must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate."). *Cf. Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 543-545 (1978) (absent constitutional constraints, administrative agencies "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties").

[22] *Formal Case No. 1175,* Order No. 22257 at ¶ 10, rel. Aug. 7, 2024; 15 DCMR § 140.1 (1982). *See* D.C. Code § 34-604(b) (2001). A final agency order is one that is subject to immediate judicial review if it denies a right and the impact of the order is sufficiently direct and immediate as to render the issue appropriate for judicial review. A relevant consideration is whether the process of administrative decision making has reached a stage where judicial review will not disrupt the ongoing proceedings before the Commission. In addition, another consideration is "whether postponing review will cause irreparable harm to the interests of the party seeking review." *See Office of the People's Counsel v. Public Service Commission*, 21 A.3d 985, 989-990 (June 23, 2011) (internal citations omitted).

[23] *Id.*

reconsideration is to identify errors of law or fact in the Commission's initial order so that they can be corrected.[24] Reconsideration is not a vehicle for the losing party to rehash the same arguments that were previously 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.[25]

IV. DISCUSSION

A. The Commission Erred in Extending Ad-Hoc Project*pipes* 2 Pipeline Replacement Activity and the Surcharge

The Commission's Order No. 22367 was arbitrary and capricious because its abrupt reversal on prior Commission decisions lacked adequate explanation. It is well-established that administrative tribunals like the Commission have a duty to adequately explain their decisions.[26] But the Commission failed to adequately explain in Order No. 22367 why it decided to approve Project*pipes* 2 for an additional 10 months. In fact, recent Commission decisions on Project*pipes* 2 would counsel against any additional extensions of that program.

Order No. 22003, issued in June 2024, mandated a change from the *status quo* under Project*pipes* 2. In dismissing WGL's Project*pipes* 3 proposed program, the Commission found that it was essentially a continuation of Project*pipes* 2, and that there was little evidence or actual

[24] *Id*.; D.C. Code § 34-604 (b) states in pertinent part: Any public utility or any other person or corporation affected by any final order or decision of the Commission, may within 30 days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration

[25] *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.

[26] *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n of D.C.*, 514 A.2d 1159, 1163 (D.C. 1986); M*iranda v. D.C. Dep't of Emp. Servs.*, 257 A.3d 467, 471 (D.C. 2021); F*ed. Commc'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021)

data to back up WGL's assertions that Project*pipes* 2 increased the safety and reliability of WGL's system while reducing GHG emissions.[27] The Commission also determined that WGL's slower than expected rate of pipe replacement establishes that it will take the Company longer than the 40-year projected timeline to complete all needed replacements. [28] Based on these considerations, the Commission rejected WGL's Project*pipes* 3 Application.

In its Order No. 22344, issued in December 2024, the Commission reaffirmed these points from its earlier determination not to extend the Project*pipes* 2 program and surcharge. Order No. 22344 was issued in response to WGL's Petition for Partial Reconsideration in which the Commission remarked that "WGL's request for reconsideration essentially seeks the same relief that it has repeatedly sought before: an extension of Project*pipes* 2 until December 31, 2025." [29] Finding WGL's arguments to be merely rehashed versions of the Company's prior arguments for surcharge extension, the Commission rightly rejected WGL's reconsideration request.

Similarly, WGL's arguments in its January 2025 extension request are rehashed versions of the Company's prior arguments on the issue of extending the Project*pipes* 2 program and surcharge until December 31, 2025. However, despite the repetitiveness of the Company's previously-rejected arguments, the Commission granted WGL's surcharge extension request, stating that it "believes it is in the public interest to approve the extension while evaluating the SAFE Plan in order to maintain the continued safety and reliability of the gas distribution system."[30]

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[27] *Formal Case No. 1179,* Order No. 22003 at ¶ 44.

[28] *Id.*

[29] *Id.* at ¶ 5 (*rel.* December 18, 2024).

[30] *Formal Case No. 1179*, Order No. 22367, at ¶29.

While the Commission pointed to "the litigious nature of this case, combined with new directives for additional discovery and the remaining supplemental testimony" as reasons for why "the Commission feels compelled to extend PIPES 2" through December 31, 2025,[31] the Commission did not explain how these factors now justified granting the Project*pipes* 2 surcharge and program extension this time.

This case has been litigious from the outset, yet the PSC did not consider this fact relevant in its decisions prior to Order No. 22367. The Commission also fails to explain how the additional discovery and remaining supplemental testimony that it created *sua sponte* justifies a further extension of the Project*pipes* 2 surcharge and program.

In sum, the Commission should have stayed the course and again rejected WGL's Project*pipes* 2 surcharge and program. Joint Petitioners cannot decipher a reasoned explanation for the Commission to find the Project*pipes* 2 surcharge to "be in the public interest" at least until December 31, 2025. Accordingly, the Commission should reverse its decision in Order No. 22367, and revert to the April 30, 2025 surcharge expiration date.

B. The Commission made arbitrary, capricious, and premature rulings on matters in this case without due process

The Commission's holding that it "will not require WGL to provide further surrebuttal testimony to comply with our directives in paragraphs 51(h), (j), (n), (o), (q), and (r) of Order No. 22003 at this time"[32] was arbitrary and capricious. The Commission's decision to change the showing required of WGL in its "District SAFE" plan was in effect an impermissible reconsideration based solely on contentions from WGL that "some of the requested elements lack established industry standards or clear regulatory benchmarks."[33] Changing the

[31] *Id.*

[32] *Formal Case No. 1179*, Order No. 22367 at ¶ 22.

[33] *Formal Case No. 1179*, Order No. 22367 at ¶ 22.

requirements on WGL midstream in this case prejudices the parties who sought discovery and submitted testimony on those issues. Further, the Commission failed to cite precedent—controlling or persuasive—that the lack of "industry standards or clear regulatory benchmarks" relieves a regulated utility from oversight on very specific requirements from this Commission.

It appears that the Commission instead made a premature, substantive ruling on the District SAFE application in finding that WGL need not make certain showings in this case. In Order No. 22003, the Commission had listed well-reasoned and critical items that it expected to see in WGL's revised application:

- ¶ 48 - minimizing the stranded assets as the District continues to undergo the energy transition.
- ¶ 51(h) - Provide the basis for the proposed annual budgets for the three-year period
- ¶ 51(j) - For proposed planned replacements for the next three years, provide a method for tracking estimated leak reductions and GHG emissions reductions that considers the actual condition, previous leaks, and material type of the pipes actually replaced (in contrast to the current approach for calculating fugitive emissions, which relies on general assumptions based on the pipe material). Figures shall be reported as annual reductions from each year of work, not cumulative totals, and shall include detailed explanations of the methodology used to calculate the avoided leaks and GHG emissions
- ¶ 51(n) - Explain how "normal" replacements will be differentiated from targeted "accelerated" replacements under the new program. Identify criteria beyond material type(s) and potential program qualification that will be used by WGL when categorizing whether a replacement is "normal" or "accelerated;"
- ¶ 51(o) - Explain and demonstrate the need for a surcharge recovery mechanism for the new restructured pipe replacement program
- ¶ 51(q) - Provide the results of the formal assessment on internal versus external crew usage
- ¶ 51(r) - Provide any results from WGL's industry peer review on construction execution best practices begun in 2023, including explaining the impacts on cost and schedule of any unique construction conditions in the District

Notably, proposed strategies to minimize stranded assets, tracking estimated leak reductions, and tracking GHG emissions reductions are critical to the Commission's stated

paradigm shift toward balancing safety, climate, and aligning with Federal and District climate initiatives. On a more fundamental level, it would be inappropriate, given the concerns previously expressed by the Commission, to stop requiring WGL to provide a basis for its program budgets (51(h)), examine critical operational questions like "normal" versus "accelerated" replacements (51(n)), engage in any analysis regarding use of internal versus external crews (51(q)), nor any analysis of industry peer review (51(r)). Further, and despite noting that "prior to receiving surcharge recovery for pipe replacement, the Company replaced more miles of main, at a lower cost, using their capital expenditure budget," the Commission has absolved WGL from having to justify why it requires surcharge recovery to fulfill its obligation to maintain the safety and reliability of its system. Without further explanation, these rulings are arbitrary, capricious, and contrary to Order No. 22003 and should be reversed.

Even more egregiously, the Commission appears to have made these premature rulings based solely on WGL's position in its rebuttal testimony rather than the contents of WGL's Application. For example, in Order No. 22003 paragraph 51(j), WGL was required to provide a method of tracking GHG emissions. Joint Intervenors pointed out in direct testimony and their *Motion to Dismiss* that WGL completely failed to comply with that provision of Order No. 22003, and that the District SAFE application merely proposed the Company's current estimates of GHG reductions. In rebuttal testimony of Witness Wayne Jacas, on page 9, WGL merely stated "[t]he Company does not have the capability to identify actual GHG emissions reductions without the completion of further industry research on how to calculate GHG reductions as requested by the Commission in Order No. 22003."[34] It appears that based on that assertion alone, the Commission was convinced by WGL's argument that an alleged lack of industry

[34] *Formal Case No. 1179*, Exhibit WG(2C) Jacas Rebuttal at 9:11-13.

standard on how to measure GHG emissions should relieve WGL of that requirement. This was an inappropriate decision on the merits and should be reversed.

The Commission also appears to have made a predetermination on the issue of stranded assets set out in Order No. 22003 by relieving WGL of the requirement of paragraph 48. This appears based on WGL's direct testimony of Witness Jessica Rogers and the rebuttal testimony of a brand new witness, Witness Cyndee Fang, that there is "no evidence in the record showing that [sic] District is at an increased risk of stranded assets that could provide any basis for a Commission conclusion in this proceeding."[35] This is problematic for several reasons. First, it appears to be another example of the Commission making a premature ruling on the merits regarding a core aspect of this case. Second, it appears that it is based on WGL representations in witness testimony, particularly on Witness Fang's mischaracterization of Witness Rogers' testimony, and without considering other evidence in the record. As to WGL's testimony, contrary to Witness Fang's assertion, Witness Rogers did not testify that there is no evidence in the record for stranded asset risk in the District. Witness Rogers testified, in passing, "I would note that the Company is not currently aware of any data on its system that indicates there is a threat posed by stranded assets."[36] The most reasonable inference that can be drawn from Witness Rogers' statement is that WGL is not aware of data on its system because WGL has self-servingly not studied the possibility of stranded assets. Further, Witness Fang's independent conclusory statement that there is no evidence in the record is inappropriately being made for the first time on rebuttal and is completely misplaced given the evidence on the issue in the record put forward by Joint Intervenors' witnesses. For example, DCG Witness Hopkins speaks at length about how WGL's business as usual approach to replacements will result in stranded asset

[35] *Formal Case No. 1179*, Exhibit WG(G) Fang Rebuttal at 18:17 to 19:5.

[36] *Formal Case No. 1179*, Exhibit WG(A) Rogers Direct at 11:13-16.

risk,[37] as well as financial risk compared to other system maintenance alternatives.[38] Sierra Club Witness Pierce (1) highlights trends in electrification uptake, specifically in the District, showing that WGL's business as usual approach is a driver of stranded asset risk;[39] (2) offers evidence of other utilities across the country acknowledging stranded asset risk and changing their approach to system management;[40] (3) demonstrates how "economics, consumer preferences, and public policy are reducing demand for methane gas—and thereby reduce WGL's per-customer usage and overall customer base—[that] system delivery costs will be spread across fewer ratepayers;"[41] and (4) speaks to how District policy is advancing electrification, and showed how the cost of WGL's replacement program in DC is one of the highest in the country and exacerbating the magnitude of cost associated with stranded asset risk.[42] In light of this competing facts and testimony in the record, WGL's testimony should not be solely relied upon for a premature ruling on the merits by this Commission in the form of relieving WGL of its requirements to such a core aspect of this case.

Accordingly, the Commission should reinstate the requirements that the Commission struck in paragraph 22 of Order No. 22367.

[37] *Formal Case No. 1179*, Exhibit DCG(A) Hopkins Direct at 44:10 to 52:22.

[38] *Id*. at 41:6 to 44:9

[39] *Formal Case No. 1179*, Exhibit SC(A) Pierce Direct at 11:12 to 12:11

[40] *Id*. at 12:12 to 13:12.

[41] *Id*. at 14:17-19.

[42] *Id*. at 15:3-14.

C. The Commission erred in relieving WGL of the requirement to incorporate the 19 Continuum Audit requirements and insufficiently explained its reasoning for ordering same

The Commission erred in absolving WGL from having to appropriately manage its accelerated pipeline replacement as documented through two (2) audits. In Order No. 22003, the Commission recounted the audits of WGL's program,[43] the latest of which was the Continuum Capital Audit for the first two years of Project*pipes* 2. The Commission accepted various recommendations of the Continuum Capital Audit, all of which the Commission recognized could be achieved "in addition to more narrowly targeted replacements of the highest-risk segments of the aging, leak-prone pipe."[44] Despite previously stating that those 19 recommendations would be applicable in tailoring WGL's new operations with the other requirements of Order No. 22003, the Commission made an unsupported declaration that "the District SAFE Plan's objectives are different from the original accelerated pipes plans . . . [.][45] The Commission failed to explain what was "different," let alone why those differences should absolve WGL from meeting independent, Commission-approved recommendations for basic management of its APRP activities.

For these reasons, the Commission should reverse its decision and, to the extent WGL engages in APRP activities, order that the Company adhere to the recommendations of the Liberty Management Audit and the Continuum Capital Audit.

D. The Commission did not sufficiently explain its denial of the Joint Petitioners' Motion to Dismiss

The Commission's denial of the Joint Intervenor's Motion to Dismiss was erroneous because it was unsupported by an adequate explanation. The Commission denied the Joint

[43] *Formal Case No. 1179*, Order No. 22003 at ¶¶ 2 & 3.

[44] *Id.* at ¶ 52, and Table 1.

[45] *Formal Case No. 1179*, Order No. 22367 at ¶ 23.

Petitioners' *Motion to Dismiss* on the basis that "WGL's application encompasses a sufficient number of the directives from Order No. 22003."[46] In Attachment A of Commissioner Beverly's Dissent to Order No. 22367, Commissioner Beverly provides a thorough analysis of all the directives in Order No. 22003 and WGL's compliance or non-compliance with each.[47] Commissioner Beverly rightly notes that WGL did not fully comply with many of these directives, and connects each conclusion to evidence and citations from WGL's filings. For example, on the directive for program budgets (51(h)), Commissioner Beverly notes that, "WGL provides an annual budget with no justification, instead stating: 'The Company will use its currently implemented risk model (e.g., JANA Lighthouse) to prioritize and establish the annual project list that can be accomplished within the annual program budget identified in Table 4.'"[48] Yet in claiming that the District Safe Plan "encompasses a sufficient number of directives," the Commission did so without citation to WGL's application, witness testimony, or other source of evidence. It is unclear if the Commission has another analysis that demonstrates WGL's compliance with Order No. 22003's objectives.

Indeed, this Commission acknowledged that WGL had not provided sufficient information on a number of topics in its application where it issued two sets of data requests on the company with questions specifically asking WGL to substantiate their claims. For example, in DR 1-16 and DR 1-17, Commission Staff asked WGL to provide all their work on non-pipe alternatives as was directed by paragraph 51(p) of Order No. 22003. For those requirements that the Company did not address, the Commission, as discussed above, relieved WGL of the obligation to do so. Beyond Joint Intervenors' arguments above regarding the error in relaxing

[46] *Formal Case No. 1179*, Order No. 22367 at ¶ 20.

[47] *Formal Case No. 1179*, Commissioner Beverly's Dissent to Order No. 22367, Attachment A.

[48] *Id.* at 9

substantive requirements of Order No. 22003, Joint Intervenors contend that Order No. 22367 insufficiently addresses Joint Intervenors' *Motion to Dismiss* because it does not provide any explanation for denial of all the Joint Intervenors' Motion.

As such, if the Commission does not reverse its decision on Joint Petitioners Motion to Dismiss or otherwise reverse its decision to reinstated requirements of Order No. 22003 on WGL, Joint Petitioners request that the Commission provide sufficient explanation for its denial of Joint Petitioners' *Motion to Dismiss* because it does not provide any explanation for denial of all the Joint Intervenors' Motion.

E. The Commission erred in granting two additional rounds of comments and discovery, further dragging out a proceeding that was meant to be expedited in light of the extensive meetings between the parties prior to WGL's filing of its new application and failing to hold public hearings

The Commission should reverse its erroneous decisions to include additional rounds of testimony and discovery in this case, and not include public hearings. Joint Petitioners did not ask for supplemental testimony or the need for related discovery. Although the Commission noted the litigious nature of this case, the discovery disputes that preceded the suspension of the procedural schedule have been resolved, and parties have filed their discovery on WGL's rebuttal testimony. In their *Motion for Enlargement of Time*, Joint Petitioners asked for the minimum due process ability to issue discovery in order to scrutinize the voluminous rebuttal testimony filed by WGL, which included testimony from new witnesses. Contrary to WGL's assertions in its January 13, 2025 filing, it was WGL's actions that necessitated such a *Motion*. Joint Petitioners are cognizant of the need for determination on WGL's revised APRP Application to preserve the Commission's scarce resources and promote administrative efficiency. WGL seemingly agrees with this position in that it similarly did not request additional testimony or discovery, and sought a schedule that would have set resolution for this matter in March of 2025. Joint Petitioners contend that additional testimony and discovery will not yield a

more fulsome record, but will unnecessarily impede resolution of this case. As such, the Commission should enter a shortened procedural schedule.

Further, the Commission also erred in not ordering public hearings in this case. The Commission routinely holds public hearings to allow DC residents and ratepayers to have public input into proceedings. Given the important nature of this proceeding, Joint Petitioners contend that public input in the form of in-person or virtual public hearings is paramount to the proper adjudication of this case and is also in the public interest.

V. CONCLUSION

WHEREFORE Joint Petitioners respectfully request that the Commission reconsider Order No. 22367, reverse its decision to extend Project*pipes* 2 activity to December 31, 2025, require WGL to comply with the initial showings required in Order No. 22003, and adjust the procedural schedule as described in this petition to ensure the efficient determination of this matter.

Dated: March 21, 2025

Respectfully submitted,

FOR SIERRA CLUB

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st of March, 2025, a copy of the foregoing was served on the following parties by electronic mail:

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