

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

**ORDER**

**June 24, 2025**

**FORMAL CASE NO. 1180, IN THE MATTER OF THE APPLICATION OF  
WASHINGTON GAS LIGHT COMPANY FOR THE AUTHORITY TO INCREASE  
EXISTING RATES AND CHARGES FOR GAS SERVICE, Order No. 22446**

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) reviews the lists of material issues of fact in dispute filed by the Parties (“Issues Lists”) to this proceeding. Because the Commission finds material issues of fact in dispute on the Issues Lists, the Commission schedules an evidentiary hearing for August 5, 2025. The revised procedural schedule is included as Attachment A.

**II. BACKGROUND**

2. On August 5, 2024, Washington Gas Light Company (“WGL”) filed an Application requesting authority to increase existing rates and charges for gas service in the District of Columbia (“District”).<sup>1</sup> The requested rates are designed to collect approximately \$257.2 million in total revenue, representing a \$45.6 million increase in weather-normalized annual revenue. This includes the transfer of \$11.7 million in costs associated with natural gas system upgrades previously approved by the Commission (PROJECT*pipes*). The net increase in new revenues is \$33.9 million, reflecting an approximate 11.9% increase over current rates.

3. Pursuant to the directive in Order No. 22366,<sup>2</sup> the General Services Administration (“GSA”) filed a letter in lieu of a list of material issues of fact in dispute, indicating that GSA had no such material issues of fact in dispute as of the date of the filing.<sup>3</sup> On May 23, 2025, WGL,<sup>4</sup>

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<sup>1</sup> *Formal Case No. 1180, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service (“Formal Case No. 1180”), Application to Increase Existing Rates (“Application”),* filed August 5, 2024.

<sup>2</sup> *Formal Case No. 1180, Order No. 22366, rel. February 19, 2025 (“Order No. 22366”).*

<sup>3</sup> *Formal Case No. 1180, Letter to Brinda Westbrook-Sedgwick, Commission Secretary, from Kristi Singleton, Assistant General Counsel, GSA, filed May 22, 2025.*

<sup>4</sup> *Formal Case No. 1180, Washington Gas Light Company’s Comments on Material Issues of Fact in Dispute (“WGL Comments”),* filed May 23, 2025.

the Office of the People’s Counsel for the District of Columbia (“OPC”),<sup>5</sup> the Apartment and Office Building Association of Metropolitan Washington (“AOBA”),<sup>6</sup> the District of Columbia Government (“DCG”),<sup>7</sup> and Sierra Club<sup>8</sup> filed their Comments or Issues Lists. WGL asserts that there are no material issues of fact in dispute that warrant an evidentiary hearing and proposes a procedural schedule for either a legislative-style or an evidentiary hearing. OPC, AOBA, DCG, and Sierra Club each identify specific issues that they argue are material issues of fact in dispute. They also support the Issues Lists filed by the other parties. On May 29, 2025, AOBA filed a Response to WGL’s Comments, with different proposals regarding the future procedural schedule.<sup>9</sup>

### **III. DISCUSSION AND DECISION**

#### **A. Material Issues of Fact in Dispute**

4. The Commission applies established legal precedent to determine when evidentiary hearings are required, ensuring consistent application of due process protections while promoting regulatory efficiency. Although there is a statutory requirement that an Order affecting rates cannot be entered by the Commission without a formal hearing, the D.C. Court of Appeals has held that a formal hearing is unnecessary when there is no dispute over material facts, and if the only disputes involve law or policy.<sup>10</sup> Genuine factual issues, for trial, are those that “properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.”<sup>11</sup> As Order No. 22366 stated, a fact is something that can be proven true or false through objective evidence. However, the interpretation of law or the establishment of a policy usually rests on an opinion, and an opinion cannot be verified as true or false.<sup>12</sup>

5. Generally, a “genuine issue of material fact” is a term of art often used as the basis for a motion for summary judgment. Summary judgment is proper if there is no genuine issue of

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<sup>5</sup> *Formal Case No. 1180*, List of Material Issues of Fact in Dispute of the Office of the People’s Counsel for the District of Columbia (“OPC Issues List”), filed May 23, 2025.

<sup>6</sup> *Formal Case No. 1180*, Statement of Issues of Material Fact in Dispute of the Apartment and Office Building Association of Metropolitan Washington (“AOBA Issues List”), filed May 23, 2025.

<sup>7</sup> *Formal Case No. 1180*, District Of Columbia Government’s List Of Material Issues Of Fact In Dispute (“DCG Issue List”), filed May 23, 2025.

<sup>8</sup> *Formal Case No. 1180*, Sierra Club’s List of Issues of Material Fact (“Sierra Club Issues List”), filed May 23, 2025.

<sup>9</sup> *Formal Case No. 1180*, Response of the Apartment and Office Building Association of Metropolitan Washington to the Washington Gas Light Company’s Request for a Procedural Schedule (“AOBA Response”), filed May 29, 2025.

<sup>10</sup> *Watergate East v. Public Service Comm’n of Dist. Of Columbia*, 662 A.2d 881, 290 (D.C. Ct. App. 1985).

<sup>11</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

<sup>12</sup> Order No. 22366, ¶ 4.

material fact and the movant is entitled to a judgment as a matter of law. Such a motion will be granted if the party making the motion proves there is no genuine issue of material fact to be decided. When the moving party makes a *prima facie* showing that no genuine issue of material fact exists, the burden shifts to the nonmoving party to rebut the showing by presenting substantial evidence creating a genuine issue of material fact.<sup>13</sup>

6. The Commission's application of this standard must be consistent across proceedings to avoid arbitrary and capricious decision-making subject to judicial review. Material facts require objective evidence that can be examined through documentary review, witness testimony, and cross-examination. Pure policy preferences, legal interpretations, or expert opinions without factual foundation do not constitute material facts requiring evidentiary resolution. The Commission has carefully distinguished between verifiable factual disputes and matters of regulatory judgment or legal construction in previous Orders and here.

7. Central to this analysis is the presumption that there is a disagreement between opposing parties on facts legally relevant to a claim. For purposes of adjudicating a dispute among parties, "[a]djudicatory facts answer the questions of who did what, where, when, how, why, and with what motive or intent and are the type of facts that go to a jury in a case tried before a jury."<sup>14</sup> Additionally, a factual issue is "genuine" if it is not capable of being conclusively foreclosed by reference to undisputed facts. Although there may be genuine disputes over certain facts, a fact is "material" when its existence facilitates the resolution of an issue in the case. Material facts tend to prove or disprove a disputed fact that is relevant to the outcome in a case. The disagreement must be "genuine" in the sense that it must be plausible (*e.g.*, one cannot logically dispute a contract date without also alleging that a copy of a contract with that date inaccurately reflects the agreement). A genuine issue of material fact, which, as stated above, involves a dispute over a material fact upon which the outcome of a legal case may rely and which, therefore, must be decided by a judge or jury and precludes summary judgment.

8. As mentioned, a hearing is not necessary where no material facts are in dispute or where the disposition of claims turns not on the determination of facts, but inferences and legal conclusions to be derived from facts already established.<sup>15</sup> There is little need to have an evidentiary hearing so each party can cross-examine a witness on their opinion. The Commission can decide, based on the written testimony, which opinion to credit. If, however, there is a dispute

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<sup>13</sup> See, *Formal Case No. 1156, In the Matter of the Application of Potomac Elec. Power Co. for Auth. to Implement A Multiyear Rate Plan for Elec. Distribution Serv. in the D.C.*, ("Formal Case No. 1156") Order 20368, ¶¶ 10-11, rel. June 18, 2020; *Formal Case No. 1126, In the Matter of the Off. of the Peoples Counsels Complaint Against Washington Gas Light Co. Regarding the Unlawful Comp. of Competitive Serv. Providers in Violation of Its Rate Schedule No. 5*, ("Formal Case No. 1126") Order 18008, ¶¶ 36-37, rel. October 27, 2015; *Formal Case No. 1116, In the Matter of the Application for Approval of Triennial Underground Infrastructure Improvement Projects Plan*, ("Formal Case No. 1116") Order 17627, ¶ 71, rel. September 9, 2014.

<sup>14</sup> *Formal Case No. 1102, In the Matter of the Investigation into the Continued Use of Verizon Washington, DC. Inc.'s Copper Infrastructure to Provide Telecommunications Services*, ("Formal Case No. 1102") Order No. 17314, ¶15, rel. December 9, 2013 ("Order No. 17314").

<sup>15</sup> *Potomac Elec. Power Co. v. Public Service Comm'n of Dist. Of Columbia*, 457 A.2d 776, 789 (D.C. Ct. App. 1983).

as to whether a matter is true or false and it is material to the Commission's decision, it may rise to a genuine issue of material fact in dispute.<sup>16</sup>

**B. Decision on Material Issues of Fact in Dispute**

9. After reviewing the Issues Lists, the Commission finds that some of the issues listed present material issues of fact in dispute. Specifically, these include:

**From OPC's Issues List (citations omitted):**

**Net Operating Loss Carryforward ("NOLC") and Tax Normalization**

12. Are the facts in the three Internal Revenue Service ("IRS") private letter rulings cited by the Company identical to the facts in WGL's case, as claimed by WGL (in support for its assertion that a tax normalization violation has occurred for the Company) and disputed by OPC? Are the three IRS private letter rulings non-binding and non-precedent[ial] as claimed by OPC and disputed by WGL?

WGL and OPC dispute whether three IRS private letter rulings ("PLR") involve factual circumstances identical to WGL's situation for tax normalization purposes. This constitutes a genuine material factual dispute because resolution requires objective comparison of the specific documented facts underlying each PLR against WGL's actual tax circumstances and corporate structure. PLRs are written statements issued to a taxpayer that interpret and apply tax laws to the taxpayer's represented set of facts, making the factual circumstances documented in each ruling objectively verifiable through examination of the ruling documents and WGL's corresponding tax records. The dispute involves determining whether factual elements such as corporate structure, tax sharing arrangements, regulatory treatment, and specific tax positions are materially identical between the rulings and WGL's case. We believe that this factual comparison can "be proven true or false through objective evidence" by examining the documented circumstances in each ruling alongside WGL's actual tax filings, corporate agreements, and regulatory submissions. Because the outcome of this factual comparison directly affects whether WGL's proposed tax normalization treatment complies with IRS requirements, the existence of identical or materially different factual circumstances facilitates the resolution of an issue in the case, making this a material fact requiring evidentiary resolution.

10. Unlike policy disagreements or legal interpretations that can be resolved through written submissions, this factual dispute requires credibility determinations and examination of complex documentary evidence that can only be adequately tested through cross-examination of witnesses familiar with the specific circumstances documented in each ruling and WGL's corresponding situation. The Commission cannot make reliable factual findings about the similarity of these circumstances without the procedural protections that evidentiary hearings provide. Conversely, we note that PLRs, by their nature, do not constitute binding legal

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<sup>16</sup> *Formal Case No. 1154, In the Matter of Washington Gas Light Company's Application for Approval of PROJECTpipes 2 Plan, ("Formal Case No. 1154"), Order 20615, ¶ 5-6, rel. August 20, 2020 ("Order 20615").*

precedent;<sup>17</sup> accordingly, that aspect represented as the second question in this issue presents a legal or policy question for the Commission, rather than a factual dispute requiring an evidentiary hearing.

#### 11. Depreciation Expense Issues

24. Is WGL Witness White's proposed use of the 55-R4 survivor curve to set the depreciation rate for Account 376.20 contrary to the actuarial life analyses constructed from WGL's property data for the account?
25. Does OPC Witness Andrews' recommended use of the 67-R3.5 survivor curve better fit the actual property data and produce a depreciation rate for Account 376.20 that aligns with the doctrine of reasonableness?
26. Is WGL Witness White's proposal to use the 55-L2 survivor curve to set the depreciation rate for Account 380.20 contrary to the actuarial life analyses constructed from WGL's property data for the account?
27. Does OPC Witness Andrews' recommended 65-R2.5 survivor curve better fit the actual property data and produce a more accurate and reasonable depreciation rate for Account 380.20?

WGL and OPC witnesses propose different survivor curves (55-R4 versus 67-R3.5) for depreciation analysis of specific property accounts, creating a genuine dispute of material fact that requires evidentiary resolution. This dispute constitutes a factual issue because determining which survivor curve produces results closer to actual property data requires objective analysis of historical retirement patterns, statistical curve-fitting methodologies, and documented property performance data. This dispute also involves examining "actual property data" to determine which methodology better fits the objective evidence, making this a factual determination that can be "proven true or false through objective evidence," rather than a matter of policy preference or expert opinion. Further, this factual comparison requires analysis of technical data including historical retirement-date information, actuarial retirement rate methodology, and statistical matching of proposed curves to documented property performance. The issue is material because determination of which survivor curve accurately reflects actual property characteristics directly affects the accuracy of WGL's depreciation study, which in turn impacts rate calculations and the Commission's regulatory decisions regarding cost recovery. Resolution of this dispute requires examination of objective documentary evidence and technical analysis that can only be adequately tested through cross-examination of witnesses familiar with the specific methodologies and underlying data.

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<sup>17</sup> See U.S.C. § 6110(k)(3) (2025) (stating that PLRs "may not be used or cited as precedent."); see also *Lucky Stores, Inc. & Subsidiaries v. Comm'r*, 153 F.3d 964, 955 n.5 (9th Cir. 1998) ("Taxpayers other than those to whom such rulings or memoranda were issued are not entitled to rely on them.") (citations omitted); *Liberty Nat. Bank & Trust Co. v. United States*, 867 F.2d 302, 304-05 (6th Cir. 1989) ("[P]rivate letter rulings are directed only to the taxpayer who requested the ruling [and] . . . may not be used or cited to as precedent.").

## 12. Capital Expenditure Issues

38. With respect to Project ILI Readiness-Strip 24-Launcher:

- b. Did the Prince George's County Maryland, Department of Permitting, Inspections and Enforcement requirements lead to roadway improvements and permitting delays that required the Company to complete the work in winter when construction costs are higher, as the Company claims?

WGL and OPC dispute whether Prince George's County permitting requirements caused construction delays and higher winter construction costs for specific PROJECT*pipes* projects, creating a genuine dispute of material fact requiring evidentiary resolution. This dispute constitutes a factual issue because determining the actual causes of project timing requires objective examination of documented evidence including permit application dates, approval timelines, construction schedules, seasonal cost differentials, and project completion records. The factual determination involves analyzing the facts that led to the timing of the completion of the identified project, which can be “proven true or false through objective evidence” by examining permit records, construction documentation, weather impact studies, and cost allocation data. This factual comparison requires analysis of chronological evidence including permitting submission dates, regulatory response times, construction activity logs, and seasonal cost variations that affected actual project expenditures. The issue is material because the determination of whether delays were caused by government permitting requirements rather than utility mismanagement directly affects which PROJECT*pipes* costs should be included in rate base for customer cost recovery. Under established rate base principles, utilities may only recover costs that are just and reasonable as well as known and certain for construction that was used and useful,<sup>18</sup> making the factual determination of delay causation essential to determining appropriate cost recovery. Resolution of this dispute requires examination of objective documentary evidence and chronological analysis that can only be adequately tested through cross-examination of witnesses familiar with the specific permitting processes, construction timelines, and cost allocation methodologies.

13. The Commission understands that WGL's PROJECT*pipes* program involves substantial ratepayer costs.<sup>19</sup> The Commission's determination of which specific project costs are recoverable directly impacts customer rates and utility profitability. Unlike policy disagreements about appropriate cost recovery levels or legal interpretations of rate base inclusion standards, this factual dispute requires credibility determinations about the actual sequence of events that caused project delays and associated cost increases. The Commission cannot make reliable factual

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<sup>18</sup> *Bluefield Waterworks & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679 (1923). See also, *Formal Case No. 1093, In the Matter of the Investigation into the Reasonableness of Washington Gas Light Company's Existing Rates and Charges for Gas Service*, Order No. 17132, ¶ 78, rel. May 15, 2013.

<sup>19</sup> See, e.g. WGL (A) at 1:13-17 (Steffes Direct Testimony). See also, *Formal Case No. 1154, In the Matter of Washington Gas Light Company's Application for Approval of PROJECTPIPES 2 Plan*, Washington Gas Light Company's Updated PIPES 2 Project List, filed March 6, 2025.

findings about delay causation and its impact on construction costs without the procedural protections that evidentiary hearings provide, including the ability to examine witnesses under oath about specific permitting timelines, construction decisions, and cost allocation methodologies.

**14. From AOBA's Issues List:**

**Affiliate Transactions and Cost Allocation Transparency**

7. Has Washington Gas demonstrated that all of the Company's affiliate charges properly assess the costs incurred by Washington Gas for services the Company has provided to each of its affiliates?

WGL and AOBA dispute whether affiliate transaction charges assessed by WGL properly reflect the actual costs incurred by WGL in providing services to its affiliates, creating a genuine dispute of material fact requiring evidentiary resolution. This dispute constitutes a factual issue because determining whether affiliate charges contain actual costs incurred requires objective examination of documented cost allocation methodologies, expense records, and billing calculations that can be "proven true or false through objective evidence." Unlike a general policy debate over cost allocation, this disagreement centers on concrete accounting evidence that can be objectively verified. This factual determination involves analyzing specific cost components, allocation methods, and documentation to verify whether charges reflect genuine expenses versus inflated allocations that could subsidize non-regulated affiliates at ratepayer expense. This issue is material because accurate affiliate cost allocation directly affects rate base calculations and ensures that ratepayers are not improperly subsidizing WGL's unregulated activities, making this factual verification essential to proper ratemaking determinations. The Commission believes that resolution requires examination of objective cost records, allocation manuals, and billing methodologies that can only be adequately tested through cross-examination of witnesses familiar with WGL's specific cost allocation practices and affiliate pricing structures.

**15. From Sierra Club's Issues List:**

15. Whether Washington Gas is using ratepayer funds for legal expenses associated with federal actions to invalidate D.C. law.
16. Whether Washington Gas is using ratepayer funds for lobbying efforts in D.C. and other jurisdictions.

Sierra Club and WGL dispute whether WGL uses ratepayer funds for specific legal expenses and lobbying activities, creating a genuine dispute of material fact requiring evidentiary resolution. This dispute constitutes a factual issue because determining whether and to what extent WGL actually uses ratepayer funds for the identified expenses requires objective examination of documented cost allocation methods, accounting records, and expense tracking systems that can be "proven true or false through objective evidence." While WGL provided information in response to Sierra Club's data request indicating the accounts in which these expenses are included, Sierra Club disputes the accuracy of the amounts reported and has filed a Motion to

Compel in this proceeding on this issue,<sup>20</sup> creating a genuine factual dispute about the actual allocation and recovery of these specific costs from ratepayers. This factual determination involves analyzing specific accounting entries, fund source documentation, expense categorization methods, and verification of actual cost allocations to determine whether ratepayer funds are improperly used to subsidize WGL's legal and lobbying activities. Federal and state utility regulations prohibit utilities from recovering lobbying expenses and certain legal costs from ratepayers, with most jurisdictions requiring that such expenses be funded from shareholder profits rather than customer bills.<sup>21</sup> The issue is material because accurate verification of expense allocation directly affects rate base calculations and ensures that ratepayers are not improperly subsidizing WGL's political and legal activities that primarily benefit shareholders rather than customers, making this factual verification essential to proper ratemaking determinations. Resolution requires examination of objective accounting records, expense allocation manuals, and cost tracking methodologies that can only be adequately tested through cross-examination of witnesses familiar with WGL's specific expense categorization practices and fund allocation procedures.

16. Further, the Commission believes that this material issue creates a classic scenario requiring evidentiary resolution where parties dispute the accuracy of the amounts provided, rather than merely disagreeing on policy. Indeed, even though WGL provided responses to the Sierra Club's data requests indicating the accounts in which these expenses are included, reasonable minds could still differ on whether these responses are accurate. In fact, as mentioned, the Sierra Club has already filed a Motion to Compel additional responses on this issue. We find, here, that live, witness testimony will better inform us concerning this situation.

### **C. Discussion and Decision on Other Issues Raised by Parties**

17. The Commission finds that the other issues on the Issues Lists pertain to prudence, reasonableness, fairness, justification, impact, or alignment with Commission or District policy goals, which are policy considerations for the Commission.<sup>22</sup> The Commission has determined that issues that require policy determinations do not raise material issues of fact in dispute.<sup>23</sup> Other issues seek determination of whether there is compliance with a *Formal Case No. 1142* Merger Term, Commission Order, or the D.C. Code, which are legal questions for the Commission to

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<sup>20</sup> See, *Formal Case No. 1180*, Sierra Club's Motion to Compel Washington Gas Light Company's Response to Follow-Up Data Request Nos. 2-1 To 2-4, 2-7, 2-8, 2-16 And 2-17, filed June 17, 2025. The Commission has not come to any conclusions on the Motion to Compel yet—but will do so soon.

<sup>21</sup> 18 C.F.R. Part 101, USofA, Accounts 426.12-426.13.

<sup>22</sup> See, OPC Issues List, 1, 2, 7, 8, 9, 10, 11, 14-16, 18, 19, 28, 29-37, 38a, 39-42; AOBA Issues List, 8, 10-12; DCG Issues List 1-6; Sierra Club Issues List 1-4, 6, 11-14.

<sup>23</sup> *Formal Case No. 1169*, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service ("Formal Case No. 1169"), Order No. 21582, ¶ 14, rel. March 14, 2023 ("Order No. 21582").



determine.<sup>24</sup> While some issues relate to “accuracy,”<sup>25</sup> the Commission has determined that accuracy can be determined by reference to testimony and data requests that are entered into the evidentiary record.<sup>26</sup> Some issues question whether WGL has met its burden of proof,<sup>27</sup> which is a legal decision for the Commission. Cost of capital issues<sup>28</sup> are inherently policy decisions, so any issues related to cost of capital are policy questions.<sup>29</sup> Thus, these issues do not present material issues of fact in dispute. The Commission discusses the issues presented by the parties in turn below.

### 1. OPC’s List of Material Issues of Fact in Dispute (citations omitted)

18. In addition to the issues that the Commission has determined to be material issues of fact in dispute, OPC raises the following additional issues.

19. **OPC #1-8.**<sup>30</sup> OPC recommends that the Commission reject the usage of the Weather Normalization Adjustment (“WNA”) that WGL proposes to eliminate weather variability and provide stability in customer bills.<sup>31</sup> OPC argues that there is no evidence “demonstrating WGL is experiencing long-term financial harm without the WNA or that the WNA will provide rate stability to customers.”<sup>32</sup> OPC proposes the following questions surrounding WGL’s usage of the WNA:

1. Will the WNA harm District ratepayers over time, as claimed by OPC and disputed by WGL?
2. Will WGL’s proposed cap on the WNA protect ratepayers from bill instability as claimed by WGL and disputed by OPC?
3. Is the WNA factually akin to income tax and the tax adjustments resulting from the Tax Cuts and Jobs Act (“TCJA”) as claimed by WGL and disputed by OPC?

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<sup>24</sup> See, OPC Issues List, 13; AOBA Issues List, 5.

<sup>25</sup> See, AOBA Issues List, 1-4; Sierra Club 7-10.

<sup>26</sup> Order No. 21582, ¶ 33.

<sup>27</sup> See, AOBA Issues List, 6.

<sup>28</sup> See, OPC Issues List, 23-26.

<sup>29</sup> Order No. 21582, ¶ 46.

<sup>30</sup> OPC Issues List at 3-4.

<sup>31</sup> OPC Issues List at 3.

<sup>32</sup> OPC Issues List at 3.

4. Do the two quarterly earnings examples provided by WGL demonstrate how the lack of a WNA has impacted the long-term financial health of the Company, the significance of which is disputed by OPC?
5. Does WGL's poor earnings performance in winter provided by WGL demonstrate how the lack of a WNA has impacted the long-term financial health of the Company, the significance of which is disputed by OPC?
6. Do WGL's Purchase Gas Charge and PROJECT*pipes* surcharge reduce the Company's financial risk, as claimed by OPC and disputed by WGL?
7. Does WGL have tools available to mitigate the impact of weather as claimed by OPC and disputed by WGL?
8. Is weather insurance not an economically viable option for the Company as claimed by WGL and disputed by OPC?

20. **OPC #9.**<sup>33</sup> OPC also recommends that the Commission reject WGL's proposed increase in customer charges.<sup>34</sup> In relevant part, OPC argues that the proposed increases would negatively impact public policy goals of promoting energy efficiency and burden low-use customers.<sup>35</sup> The specific question is below:

9. Is the Company's examination of the percentage of tariff rate revenue recovered by Customer Charges a factually accurate analysis demonstrating the Company's proposal to increase the customer charge by 25% [] consistent with energy efficiency and fair to lower use customers as claimed by WGL and disputed by OPC?

21. **OPC #10, 11, & 13-19.**<sup>36</sup> Based on the revenue requirement details provided by WGL, OPC urges that the Commission reduce the requested rate increase to just \$9.42 million-\$10.10 million.<sup>37</sup> OPC argues that WGL's revenue request is inflated by the inclusion of inappropriate and excessive costs.<sup>38</sup> The specific questions follow:

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<sup>33</sup> OPC Issues List at 4.

<sup>34</sup> OPC Issues List at, 4.

<sup>35</sup> OPC Issues List at 4.

<sup>36</sup> OPC Issues List at 5-7.

<sup>37</sup> OPC Issues List at 5.

<sup>38</sup> OPC Issues List at 5.

10. Does the Company's proposal to include post-test period plant additions of \$47.20 million through December 31, 2024 result in a revised revenue requirement, as claimed by OPC and disputed by WGL?
11. Is the Commission's treatment of Vintage Mechanical Coupling Replacement ("VMCR") factually akin to treatment of PROJECT*pipes* plant balances as claimed by WGL and disputed by OPC, such that the Commission's treatment of VMCR supports WGL's PROJECT*pipes* post-test year adjustments?
13. Does WGL's NOLC and Tax Sharing Agreement adjustment violate Merger Commitment No. 44, and disputed by WGL42?
14. What factual circumstances justify using the five-year average method, as WGL claims that using such method is only appropriate when costs vary year-over-year, whereas OPC disagrees and states that the five-year average method is used "if there are unexplained and unsupported cost increases for one or more years, if the future level of costs are not known and measurable . . . or if there are unreasonable incentives for a company to increase its costs to unjustified and unsupported levels?"
15. Did WGL sufficiently explain the changes in affiliate expenses (*i.e.*, changes in AltaGas costs allocated to WGL) as claimed by WGL and disputed by OPC?
16. How does AltaGas' location in Canada impact the affiliate expenses allocated to WGL, as WGL's Witness Block claims that the higher cost of Canadian inflation is a significant contributing factor for greater AltaGas affiliate expenses allocated to WGL, whereas WGL's Witness Baryenbruch claims AltaGas' location in Canada contributes to a lower cost of living and lower affiliate costs allocated from AltaGas to WGL?
17. Has WGL's Witness Baryenbruch's lower of cost or market ("LCM") methodology and A&G expenses per customer comparison never been rejected in any case, as claimed by WGL, and disputed by OPC?
18. Are WGL affiliate billing rates (with no profit margin) comparable to an outside provider's billing rate (with a profit margin), as claimed by WGL, and disputed by OPC?
19. Does WGL's LCM study's comparison of the billing rates for WGL accounting-related personnel to those for Certified Public Accountant firms and for other outside professionals, such as attorneys and IT professionals, represent a factually accurate and analogous comparison, as claimed by WGL and disputed by OPC?

22. **OPC #20-23.**<sup>39</sup> OPC disputes WGL's requested overall rate of return of 7.874%, which also includes a ROE of 10.50%.<sup>40</sup> OPC states, "WGL's proposed ROE is inappropriately inflated because it based on a flawed cost of common equity analysis, that used a non-utility proxy group that is not comparable in risk to WGL, [and] excessively relied on analysts' forecasts, instead of readily available capital market data."<sup>41</sup> The specific questions follow:

20. Is WGL Witness D'Ascendis' Non-Price Regulated Proxy Group Comparable to WGL as claimed by WGL or are they not comparable due to differences in operational characteristics as asserted by OPC?
21. Are equity return expectations published by major financial institutions such as J.P. Morgan and Charles Schwab showing expected returns as WGL claims or returns as asserted by OPC?
22. Are stock options representative of the expectations of long-term sophisticated utility investors as OPC claims or are they not representative of such investments and therefore inapplicable to cost of common equity calculations as asserted by WGL?
23. Does their significantly larger return year to date evidence that gas utility stocks are being viewed as more favorable by investors due to their reduced exposure to global trade disruptions caused by federal tariffs as set forth by OPC or are gas utility stocks viewed less favorably as claimed by WGL?

23. **OPC #29-35.**<sup>42</sup> OPC recommends that the Commission disallow recovery of \$16.7 million of PROJECTpipes expenditure cost overruns for 2023, which exceed the historical PROJECTpipes expenditure rate on a dollar per mile and dollar per service replacement basis in 2023.<sup>43</sup> OPC also argues that the Commission should disallow \$4.8 million in non-PROJECTpipes expenditure based on inefficient performance and cost overruns.<sup>44</sup> The specific questions follow:

29. Were the capital expenditures related to PROJECTpipes plant additions prudently incurred? Did the Company efficiently manage the PROJECTpipes projects and related spending? Do the PROJECTpipes plant additions provide useful service for the benefit of the District customers, and are they otherwise just and reasonable?

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<sup>39</sup> OPC Issues List at 7-8.

<sup>40</sup> OPC Issues List at 7.

<sup>41</sup> OPC Issues List at 7.

<sup>42</sup> OPC Issues List at 10.

<sup>43</sup> OPC Issues List at 9.

<sup>44</sup> OPC Issues List at 9.

30. Has the Company justified the substantial cost increases in PROJECT*pipes* spending on a dollar-per-mile basis and dollar-per-service basis? Are the Company's significant cost overruns and delays a result of poor project management?
31. Is the Company's cost per mile to replace main reasonable when compared to peer utilities? Who are the appropriate peer utilities to compare and assess the Company's cost per mile to replace distribution main?<sup>7a</sup> Is using Manhattan, NY as a cost benchmark for evaluating the Company's replacement work in the District reasonable as claimed by WGL Witness Morrow? Do the service territories in the District and Manhattan have substantial differences in scale, population density, and urban structure?
32. Are restrictive work permitting concerns in the District and D.C. Department of Transportation ("DDOT") policies the reason for the increased cost of WGL's infrastructure replacement activity? Are permit conditions in the District a primary cost driver impacting capital costs in the District? Do permit conditions in the District directly increase the capital cost of, and slow the pace of, the Company's replacement work?
33. When did the DDOT policies cited by the Company go into effect? When did DDOT start enforcing the policies that the Company claims elevated cost of replacement work? Does (or has) DDOT selectively applied said policies to WGL as opposed to other utilities operating in the District?
34. Is the Company overly reliant on external work crews in performing PROJECT*pipes* activities? Are internal crews more efficient than external crews? Are the cost escalations associated with the growing demand for qualified underground contractor crews a result of overreliance on external crews?
35. Does the uniformity of WGL's construction procedures in the District, Maryland, and Virginia impact its ability to comply with DDOT policies?

24. **OPC #36-40.**<sup>45</sup> OPC also opposes the inclusion of non-*pipes* capital expenditures. The specific questions follow:

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<sup>45</sup>

OPC Issues List at 11.

36. Do the Company's proposed non-pipes capital expenditures provide useful service for the benefit of District customers? Were they prudently incurred and otherwise just and reasonable?

37. Has the Company justified its cost increases in this proceeding as claimed by WGL's Witness Morrow?

38. With respect to Project ILI Readiness-Strip 24-Launcher:

a. Does having to complete the work in winter justify the project cost variance?

39. Are DDOT policies the reason for cost variances for projects ABAND GAS SERV AT MAIN – 705 4TH. AND DC AOP - CLEVELAND PARK STREETSCAPE – G007NW – WARD 3? Did WGL ignore DDOT policies when executing these projects?

40. Is the cost variance a result of changes in project scope for project STREETSCAPE – G007NW – WARD 3? Did WGL complete more work than originally planned?

25. **OPC #41-42.**<sup>46</sup> Lastly, OPC proposes material issues of fact pertaining to system performance and leak rates. The specific questions follow:

41. Is unplanned outage an appropriate metric to assess the Company's reliability performance?

42. What is the appropriate peer group to assess WGL's leak rate performance and system reliability relative to other utilities? Is Consolidated Edison an appropriate utility to include in the WGL peer group analysis? Does the Company's revised analysis demonstrate its system leak performance is satisfactory?

26. **Decision.** The Commission determines that OPC's remaining thirty-six (36) issues are inappropriate for an evidentiary hearing because they primarily involve legal interpretations, policy judgments, and accounting methodologies that can best be handled by the Commission through evaluation of written testimony, exhibits, and discovery responses. These issues do not rise to genuine factual disputes requiring witness testimony and cross-examination. The WNA issues center on regulatory policy questions because they ask WGL to demonstrate sufficient "financial harm" to justify the adjustment mechanism and whether the proposed methodology meets regulatory standards. Both OPC and WGL cite the same financial results in evidence;<sup>47</sup> they disagree only on the significance of those results (*i.e.*, whether the financial results demonstrate

<sup>46</sup> OPC Issues List at 11-12.

<sup>47</sup> Application at 4; Exhibit OPC (A) (Dismukes) at 3:27-4:11.

“harm”). No party has introduced contrary factual data about WGL’s finances, only differing interpretations; as such, the Commission determines that there is no adjudicative fact in dispute requiring live testimony on the WNA in this context. The customer charge disputes involve established accounting principles and allocation methodologies, rather than factual uncertainties. Regarding OPC’s affiliate transaction questions, they differ from AOBA’s factual issue in that they require the Commission to choose methodologies and weigh the sufficiency of evidence presented. Further, OPC’s challenges to WGL’s requested overall rate of return and return on equity involve the application of financial methodologies to market data, rather than to disputed facts. OPC’s challenges to PROJECT*pipes* overruns involve policy judgments about prudent utility management, rather than disputed facts about the expenditures themselves. Lastly, OPC’s concerns about system performance metrics and leak issues involve the interpretation of established operational data, rather than factual disputes about the underlying performance measurements. As such, these thirty-five issues (other than OPC’s issues we have identified earlier in this Order) are not material issues of fact in dispute and as such do not rise to the level of discussion at an evidentiary hearing.

## **2. AOBA’s List of Material Issues of Fact in Dispute**

27. In addition to the issues that the Commission has determined to be material issues of fact in dispute, AOBA raises the following additional issues.

### **28. AOBA #1-4: Weather Normalization Analyses<sup>48</sup>**

1. Do WG’s computations of base (non-weather-sensitive) gas usage by rate class accurately represent actual customer behavior?
2. Do WG’s estimates of Base Gas Use, particularly a 178.9% increase for Small C&I Heating/Cooling customers and 27.0% for Large C&I Heating/Cooling customers, accurately portray gas use by those District ratepayers?
3. Do WGL’s calculated Base Gas contributions to Peak Day demand accurately portray class Peak Day demands, particularly for the Small C&I Heating/Cooling class?
4. Has WGL provided necessary and adequate demonstration of the impacts of the use of 5-year HDDs on its revenue requirements, cost allocations, and rate design proposals in this proceeding?

### **29. AOBA #5-6: Affiliate Transactions and Cost Allocation Transparency<sup>49</sup>**

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<sup>48</sup> AOBA Issues List a 5.

<sup>49</sup> AOBA Issues List at 5-6.

5. Has WGL fully complied with Order No. 22311, which requires the Company to submit detailed supplemental testimony addressing affiliate cost allocations and executive oversight charges?
6. What is the dollar value/cost to District ratepayers of WGL's provision of services to unregulated affiliates, and has WGL demonstrated that District ratepayers are not subsidizing the operations of such unregulated affiliates?

30. **AOBA #8-9: Capital Investments**<sup>50</sup>

8. Are WGL's current and projected cast iron main replacements justified in light of the District's preference for electrification, the comparative economics of converting customers served from cast iron mains to all electric service, and the customer attrition that would result?
9. Do WGL's proposed capital investments incorporate the mandates of the Green Buildings Act and CleanEnergy DC, including expected declines in gas demands in the District?

31. **AOBA #10-12: Rate Impacts and Affordability**<sup>51</sup>

10. Does WGL's proposed 30.3% rate increase and capital investment plans align with maintaining the affordability of gas service for customers across rate classes?
11. Does WGL's proposed Weather Normalization Adjustment ("WNA") serve to reduce risk for the Company, and what is impact of the WNA on the costs for which ratepayers must compensate the Company?
12. Is the substantially above system average revenue increase that WG proposes for Small (< 3075 therm) C&I Heating/Cooling customers justified if the Company's estimates of Base Gas Use and Annual and Peak Day gas use for that class are not accepted?

32. **Decision.** In contrast to the issue identified in paragraph 14 of this Order, AOBA's remaining list of eleven (11) issues fundamentally involve legal interpretations and policy determinations, rather than genuine factual disputes requiring witness testimony. The issues predominantly concern regulatory standards for utility decision-making, such as whether WGL's weather normalization analyses "accurately portray gas use by those District ratepayers" and whether capital investments "incorporates the mandates" of District climate laws—questions that require legal interpretation of regulatory compliance, rather than factual development through

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<sup>50</sup> AOBA Issues List at 6.

<sup>51</sup> AOBA Issues List at 6.



cross-examination. Further, AOBA's and OPC's overlapping concerns regarding weather normalization methodology do not hinge on any disputed historical usage data; they challenge whether the methodology is "appropriate" or "accurate," which is a matter best determined through the written record. Further, issues regarding affiliate transaction transparency, cost allocation methodologies, and the reasonableness of utility planning decisions are more appropriately addressed through legal briefing and policy arguments based on the written record.

### 3. DCG's List of Material Issues of Fact in Dispute

33. **DCG #1.<sup>52</sup> Presumption of Prudence for WGL as Utility.** To what extent was each significant investment by WGL during the test year the product of sound decision-making principles? What were those decision-making principles and how were they applied to each such significant investment decision made (or not made) during the test year? Do these investment decisions cumulatively support a presumption that WGL selects its investments prudently?

34. **DCG #2.<sup>53</sup> Use of Non-Pipeline Alternatives (NPAs).** Has WGL demonstrated that it uses NPAs to avoid replacement of assets? To what extent?

- a. What examples exist or do not exist to demonstrate the extent to which WGL prudently engages in electrification-focused NPAs?
- b. What level and type of customer engagement regarding electrification as an alternative to replacement is necessary to evaluate customer interest in electrification?
- c. Would a \$15,000 incentive to electrify offered by WGL result in a safer gas system, lower rates, building systems consistent with District policy, and/or a lower stranded asset risk? Would a \$15,000 incentive to electrify offered by WGL ultimately save WGL and its ratepayers money compared to traditional pipeline replacement?

35. **DCG #3.<sup>54</sup> WGL Pipeline Replacement on Overall System Risk.** Will WGL's investments in replacing aged assets result in an overall reduction of risk across the system?

- a. Is the risk from remaining assets increasing faster than the rate that WGL can replace or retire assets? If so, at what rate is risk outpacing replacement/retirement? If not, at what rate is replacement/retirement outpacing risk? What level of investment would achieve equilibrium?

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<sup>52</sup> DCG Issues List at 2.

<sup>53</sup> DCG Issues List at 2-3.

<sup>54</sup> DCG Issues List at 3.

- b. Are WGL's in-house workforce levels sufficient to replace or retire assets at a rate that outpaces the mounting risks associated with leak prone pipes? Does WGL have access to sufficient outside contractor labor resources to support reducing risk? Is it more cost effective to supply labor in house vs. use of third-party contractors (or vice versa)?
  - c. Is electrification a path to faster retirement of risky assets and lower overall risk? If so, how much electrification is needed to support / supplement WGL's replacement activities?
  - d. What is the role of system monitoring and repair on mitigating the safety risk of WGL's gas system?
36. **DCG #4.<sup>55</sup> WGL's Gas Planning.** Does WGL track all the information required to conduct comprehensive and prudent gas planning?
- a. To what extent does WGL track services that are not used and useful? To what extent does this tracking, or lack thereof, indicate that WGL has a clear picture of its business to be conducting comprehensive and prudent planning?
  - b. To what extent is WGL's capital planning actually performed and executed according to its own selection and prioritization processes?
  - c. What considerations, if any, support a finding that prudent gas planning necessitates WGL to engage in capital planning that looks out more than 5 years?
  - d. Does WGL analyze the financial risks of stranded assets on its system in the course of its capital planning? What examples, if any, evidence consideration of these risks? What is the extent of the financial risks of stranded assets on WGL's system? To what extent does a prudently-run utility analyze its stranded asset risk?
  - e. Does WGL's project prioritization occur without a planning process that considers competitive position vis-à-vis electrification, rates and climate policy?
  - f. What evidence has been supplied to support a finding that WGL is entitled to the presumption of prudence? What evidence has been supplied to support a finding that WGL is not entitled to a presumption of prudence?
37. **DCG #5.<sup>56</sup> WGL's Decisions Regarding DC Climate Policy and Goals.** To what extent, does WGL consider DC's climate goals and energy policies in its capital decisions?

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<sup>55</sup> DCG Issues List at 3.

<sup>56</sup> DCG Issues List at 3-5.

- a. Does WGL consider competition from electrification when planning capital investments proposed for inclusion in base rates?
- b. Would a prudently-run utility consider competition from electrification when planning capital investments proposed for inclusion in base rates?
- c. To what extent do WGL's capital investments align with DC's climate goals and policy?

38. **DCG #6.<sup>57</sup> WGL's Decisions Regarding its Competitive and Policy Context and its Proposed Rate Increase.** Does WGL account for its competitive and policy context when making capital decisions?

- a. To what extent will sales erosion from electrification harm WGL's competitive position?
- b. To what extent will WGL's requested rate increase harm WGL's competitive position?
- c. To what level will WGL's requested rate increase negatively impact or not impact WGL's customer base?
- d. To what extent will gas rates and bills rise if WGL continues to invest heavily in its system?
- e. To what extent does WGL risk creating stranded assets if it continues to invest heavily in gas infrastructure without considering the shift towards electrification and stringent climate policies? What other factors contribute to the risk of stranded assets?
- f. To what extent, if any, will public policy in DC lead to sales and customer reductions for WGL?
- g. To what extent has WGL evaluated its current and future competitive position? Has WGL considered the state of competition between WGL's services and electrification? To what extent do rising rates increase the competitiveness of electrification?
- h. If WGL does not account for its competitive and policy context of rising rates when making capital and operational decisions, what level of impact will this have for the utility itself and its customers?

39. **Decision.** The Commission determines that DCG's issues are policy or legal matters, which do not require an evidentiary hearing. The Commission previously defined material facts in dispute as those that "can be proven true or false through objective evidence." DCG's

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<sup>57</sup>

DCG Issues List at 4.

issues substantively involve questions of prudence and alignment with the District's policy goals of reducing climate change and other policy mandates. Some questions even asked about legal presumptions on utility management. Therefore, as opposed to issues that must be tested through evidentiary hearings, DCG's issues are ones of policy or legal judgment that can be decided based on the written record.

#### **4. Sierra Club's List of Material Issues of Fact in Dispute**

40. The Commission has already determined that two (2) of Sierra Club's sixteen (16) issues qualify as material issues in dispute. The Commission addresses each of the fourteen (14) issues below.

##### **41. Sierra Club Issues #1-14<sup>58</sup>**

1. Whether Washington Gas sufficiently analyzed how the District's binding climate laws and policies affect the Company's distribution assets, including spending directly and indirectly related to the maintenance and expansion of those assets proposed for recovery in this proceeding.
2. What is the quantity of, and forward trend for GHG emissions impacts from Washington Gas' operations as supported by spending and rates proposed in this proceeding?
3. What is the quantity of, and forward trend for GHG emissions impacts from AltaGas' plans for Washington Gas to deliver "at least 10% of fuel from lower-carbon sources by 2030"?
4. What is the quantity of GHG emissions impacts proposed in Washington Gas' Climate Change Action Plan?
5. Whether Washington Gas' Weather Normalization Adjustment proposal increases gas use and GHG emissions and the analytical basis for those projections.
6. What is the quantity of GHG emissions impacts of Washington Gas' proposed Weather Normalization Adjustment proposal and the analytical basis for those projections?
7. Whether the weather assumptions in Washington Gas' Weather Normalization Adjustment proposal are accurate.
8. Whether Washington Gas' witnesses' representations about the economic impact of the Weather Normalization Adjustment proposal are accurate.

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<sup>58</sup>

Sierra Club Issues List at 1-3.

9. Whether Washington Gas' return on equity proposals are based on accurate assumptions and data.
10. Whether Washington Gas is accurately defining risk and appropriately weighing risk for the purpose of its rate proposals.
11. Given that there is a serious risk of pipe replacement programs resulting in stranded assets, which this Commission recognized in its denial of PROJECT*pipes* 3 proposal in Formal Case No. 1175, whether it is just and reasonable for Washington Gas to move \$11.7 million in PROJECT*pipes* spending into base rates.
12. Whether Washington Gas has shown that its PROJECT*pipes* 2 spending is prudent.
13. What is the quantity of GHG emissions reduced by Washington Gas' accelerated pipeline replacement activities?
14. What is the GHG emissions impact of Washington Gas' proposed depreciation expense?

42. **Decision.** In contrast to the issues identified in paragraphs 15 and 16 of this Order, the Sierra Club's list of the remaining fourteen (14) material issues of fact in dispute fundamentally involve legal interpretations and policy determinations and make speculative assessments, rather than genuine factual disputes requiring witness testimony and cross-examination. These issues consistently concern regulatory compliance with the District's climate laws, the application of established environmental assessment methodologies to undisputed data, and forward-looking policy judgments about infrastructure prudence. These matters are more appropriately resolved through legal briefing and policy determinations based on an extensive written record already developed in this proceeding.

#### **D. Decision on the Procedural Schedule**

43. In its Comments, WGL proposes similar procedural schedules for a legislative-style or evidentiary hearing, differing only in the dates for Commission action to establish the procedural schedule. For both types of hearings, WGL proposes one or two days during the week of July 14, 2025, with briefs due August 7, 2025, and reply briefs due September 5, 2025. WGL also proposes parameters for each type of hearing, so for the evidentiary hearing, WGL proposes that the hearing be in-person, be limited to the issues identified in this Order, and limit the time for cross-examination.<sup>59</sup>

44. AOBA objects to WGL's proposed procedural schedule. AOBA argues that evidentiary hearings are necessary, but should the Commission decide not to hold evidentiary

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<sup>59</sup> WGL Comments at 3.

hearings, no legislative-style hearing is necessary, so the case should move directly to briefing. AOBA also argues that WGL's request for two briefs contradicts the earlier procedural schedules in this proceeding, which required only one brief. Additionally, should an evidentiary hearing be held, AOBA objects to WGL's proposal to place time limits on cross-examination.<sup>60</sup> AOBA also indicates that one of its witnesses is unavailable the week of July 14, 2025. AOBA requests that the Commission permit the parties to meet to develop a procedural schedule for an evidentiary hearing and briefs.<sup>61</sup>

45. Because the Commission has identified material issues of fact in dispute, the Commission will hold an in-person evidentiary hearing on the issues identified as a material issue of fact in dispute in this Order. The Commission expects parties to be efficient in their cross-examinations, so the Commission will not impose time limits on cross-examination. The evidentiary hearing will be scheduled for August 5, 2025, in the Commission Hearing Room.

46. To prepare for the evidentiary hearing, the parties need to develop stipulations and pre-file a joint list of stipulations. Additionally, the parties, led by WGL, need to develop a Joint Witness Cross Examination Matrix, which will identify the witnesses who need to testify. The parties also need to identify admissions and authenticated documents that will be introduced. By July 29, 2025, the Parties shall file: (a) a list of the Parties' stipulations; (b) the number of witnesses as well as the nature of their testimony in a Joint Witness Cross Examination Matrix; (c) admissions; and (d) a list of authenticated documents.

47. After the evidentiary hearing, motions to correct the transcript will be due August 18, 2025. One post-hearing brief will be due August 26, 2025, at which point the evidentiary record will close. The revised procedural schedule is included as Attachment A.

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<sup>60</sup> AOBA Response at 3.

<sup>61</sup> AOBA Response at 4.

**THEREFORE, IT IS ORDERED THAT:**

48. The Commission shall hold an evidentiary hearing related to the identified material issues of fact in dispute on August 5, 2025;

49. Parties shall file the information in paragraph 46 by July 29, 2025;

50. Parties shall file motions to correct the transcript from the evidentiary hearing by August 18, 2025;

51. Post-hearing briefs shall be filed by August 26, 2025; and

52. The procedural schedule is **AMENDED** as provided in Attachment A.

**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**

**Attachment A - Order No. 22446**

1.	Order Adopting Procedural Schedule Issued	October 16, 2024
2.	WGL Supplemental Testimony and Workpapers (if necessary)	November 4, 2024
3.	Deadline for Data Requests to WGL Regarding Application, Direct and Supplemental Testimony	November 12, 2024
4.	WGL Responses to Data Requests	December 3, 2024
5.	Deadline to Submit Follow-Up Data Requests	December 10, 2024
6.	Responses to Follow-Up Data Requests	December 17, 2024
7.	Direct Testimony and Exhibits of OPC and Intervenors	January 24, 2025
8.	Deadline for Data Requests Regarding OPC and Intervenors Testimony	February 7, 2025
9.	Order on Issues of Material Fact Issued	February 19, 2025
10.	All Responses to Data Requests Regarding Intervenor Testimony	February 21, 2025
11.	Deadline for Follow-Up Data Requests on OPC and Intervenor Testimony	February 28, 2025
12.	Responses to Follow-Up Data Requests Regarding OPC and Intervenor Testimony	March 7, 2025
13.	Rebuttal Testimony and Exhibits	March 25, 2025
14.	Settlement and Stipulation Conference	April 3, 2025
15.	Deadline to Submit Data Requests Relative to Rebuttal Testimony	April 8, 2025
16.	Parties Report on Settlement and Stipulation Conference	April 10, 2025
17.	Responses to Data Requests Relating to Rebuttal Testimony	April 21, 2025
18.	Surrebuttal Testimony and Exhibits	May 2, 2025
19.	Rejoinder Testimony and Exhibits	May 19, 2025
20.	Issues List	May 23, 2025
21.	Community Hearings	April 10, 2025, April 21, 2025, & April 29, 2025
22.	Pre-Hearing Filings	July 29, 2025
23.	Evidentiary Hearing	August 5, 2025
24.	Motions to Correct the Transcript	August 18, 2025
25.	All Post-Hearing Briefs (One Brief)	August 26, 2025



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

**June 24, 2025**

**FORMAL CASE NO. 1180, IN THE MATTER OF THE APPLICATION OF  
WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO INCREASE EXISTING  
RATES AND CHARGES FOR GAS SERVICE,**

**DISSENT OF COMMISSIONER BEVERLY TO ORDER NO. 22446**

In Order No. 22366, we issued some guidance on separating differences of opinions from issues of fact. Issues of fact are disagreements over a specific point of evidence. Facts can be proven with objective evidence, while an opinion is a belief that cannot be definitively proven true or false. Interpretations are opinions, not facts. Opinions can be based on facts, but facts are not based on opinion.

To me, the majority has simply created a separate category for differences of opinion rather than identified actual issues of fact. As such, it's not clear to me why the majority's "issues of fact" are any more actual issues of fact than those proposed by the parties. I'll explain further by addressing each of the majority's issues of fact separately.

**The IRS Private Letter Ruling.** WGL asserts that 3 letter rulings involving companies other than WGL contain facts similar enough to the facts in this case to warrant a Commission determination that the tax rulings apply to WGL as well. A ruling in WGL's favor would result in adjustments that increase the rate base by \$26 million. However, the majority simply assumes that it has jurisdiction to even entertain the question, when in fact it clearly does not. No statute gives this Commission authority to interpret federal tax law, let alone the authority to expand the application of an IRS letter ruling. Nor can the Commission vest itself with jurisdiction by trying to twist the issue into a factual dispute.

According to information on the IRS website, a private letter ruling is an interpretation by the IRS that applies the tax law to the specific taxpayer who requested it based on the unique facts and circumstances provided by that taxpayer. The IRS clearly states that the letter ruling does not establish a general rule, and the Commission cannot make it a general rule to cover anybody other than the taxpayer who requested it. If WGL wants a tax ruling, then the appropriate place to obtain it is the IRS, not this Commission.

**Depreciation Expense.** The parties dispute whether one depreciation curve is better than the other in getting closer to the actual property data for the two accounts that drive the majority of the increase in the depreciation expense requested in this case. This is a math problem and both the Company and OPC have done the math. Just because two sides disagree on which curve is better doesn't turn our role of making a subjective assessment into a factual dispute.

**Capital Expenditure Issue.** This issue is a prudency determination twisted into an issue of fact. OPC is challenging the reasonableness of a 67% cost overrun for work in Maryland. According to OPC, this expense is unreasonable because WGL could have done the work in the summer as they had initially planned instead of in the winter when the cost is much higher.

The first problem is that the Commission hasn't made a preliminary determination that D.C. ratepayers should pay for any work in Maryland, regardless of the reasonableness of the cost. If D.C. ratepayers shouldn't be charged for the work, then the issue of fact (as articulated by the Commission) is immaterial. Second, a decision on the reasonableness or prudency of a project is a subjective determination, not a factual dispute. It's also unclear to me why this particular issue of prudency is separated from a general prudency review for all other plant that WGL is putting in ratebase.

**Affiliate Transaction Costs.** AOBA asks whether WGL demonstrated that all the Company's affiliate charges properly assess the costs incurred by WGL for services the Company has provided to each of its affiliates. This issue is really the conclusion to be drawn from the facts rather than an issue of fact itself. There may be particular charges that AOBA thinks were not properly incurred but this "issue of fact" as articulated in the order doesn't identify them.

**Lobbying and Legal Expenses.** The Sierra Club wants to know whether DC ratepayers are funding WGL's lobbying and litigation expenses that are challenging DC's climate initiatives. This is just a simple discovery question and the Sierra Club's inability to get an answer highlights a potential problem with our discovery process.

Many of the "issues of fact" proposed by the parties strike me like interrogatories. Unlike courts and many other commissions, interrogatories are not expressly included in our discovery practice. That may have led to some confusion as to whether and to what extent interrogatories can be included in data requests. I don't want to turn the hearing into a discovery process where interrogatories pose as issues of fact, nor do I want to prevent parties from asking legitimate questions because they thought the only place to pose the question is the hearing and we decide not to hold one.

This problem is compounded by a lack of clarity in the process as to the appropriate relief for a failure to comply with a discovery order. We can always enforce our orders with fines pursuant to D.C. Code §34-704 but we have other inherent options like those set forth in DC Court Rule 37 which include: 1) directing that the matters embraced in the order or other designated facts be taken as established for the purpose of the action, as the prevailing party claims; 2) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; 3) striking the pleadings in whole or in part; 4) staying further proceedings until the order is obeyed; 5) dismissing the action or proceeding in whole or in part; 6) rendering a default judgment against the disobedient party; or 7) treating as contempt of court the failure to obey any order. Obviously, some of these sanctions are not appropriate in our cases but others would help ensure that the parties get the information they need *before* a hearing.

In this instance, and in the absence of a rule governing interrogatories, I think the discovery process should be extended to allow the parties to revise their “issues of fact questions” in the form of interrogatories, where appropriate. This process may lead to legitimate issues of fact and, if so, then I would support revisiting whether to hold an evidentiary hearing to resolve the dispute.

However, this entire material issues of fact exercise may be premature if the rate case application fails to comply with our prior directives. For instance, in his direct testimony, AOBA Witness Oliver states that the Company has not provided an explicit detailing of its affiliate transactions as Order No. 21939 required it to do. Instead, according to Oliver, the Company only provided costs incurred by WGL and left out the value of services rendered by WGL to the affiliates. The witness goes on to state that the Company applied the Modified Massachusetts Formula to a set of factors which are different than the factors in the Company’s most recent CAM filing, and then further obfuscates detailed cost information by aggregating costs into pools.<sup>1</sup> As a result, Witness Oliver said that it’s impossible to tell exactly what AltaGas (the parent company) is doing other than, as he surmises, leveraging the financial attributes of WGL and placing an undue burden on DC ratepayers. If we don’t determine whether the ACOSS is adequate, as a threshold issue, it has the effect of making it difficult, if not impossible, for AOBA to determine whether or not it has material issues of fact on the ACOSS.

AOBA’s issue raises a different kind of enforcement problem where the parties may think that the Commission is proactively monitoring whether the Company is adhering to an order, but the Commission is often assuming that the Company is complying with the order unless advised otherwise by a party. Even when a party advises the Commission that the Company is not following an order, there’s no particular method of doing so in our rules. If this were a judicial proceeding, a party could petition the court to hold the Company in contempt, but our rules do not address contempt. Instead, AOBA brought the problem to our attention by weaving it into testimony. Although nothing prohibits AOBA from handling the problem this way, it risks that the Commission may not focus on the problem until after determining whether there are material issues of fact in dispute. Other parties may have been similarly disadvantaged and I invite them to bring such enforcement problems to the Commission’s attention as soon as possible in a separate filing titled “WGL’s Failure to Comply.”

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<sup>1</sup> AOBA’s Direct Testimony of Witness Oliver at 38.

**COMMISSION ACTION**

**FORMAL CASE NO. 1180, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR THE AUTHORITY TO INCREASE EXISTING RATES AND CHARGES FOR GAS SERVICE,**

Date 6/24/25 Formal Case No. 1180 Tariff No. \_\_\_\_\_ Order No. 22446

	Approve Initial & Date	Disapprove Initial & Date	Abstain Initial & Date
Chairman Emile Thompson	<u>ET/JP 6/24/25</u>	_____	_____
Commissioner Richard A. Beverly	_____	<u>RB/JP 6/24/25</u>	_____
Commissioner Ted Trabue	<u>TT/JP 6/24/25</u>	_____	_____

Certification of Action

*Jamond D. Perry*  
General/Deputy General Counsel

Lara Walt  
OGC Counsel/Staff