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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

September 12, 2007

FORMAL CASE NO. 1041, IN THE MATTER OF THE INVESTIGATION INTO WASHINGTON GAS LIGHT'S COMPLIANCE WITH ITS TARIFFS, Order No. 14571

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") directs Washington Gas Light Company ("WGL" or "Company") to pay the sum of \$25,000.00 to the Treasury of the District of Columbia within thirty (30) days from the date of the Order. This matter shall be deemed closed, once WGL has paid the fine and the 30-day period for seeking reconsideration has passed.

II. BACKGROUND

2. In proceedings before the Commission, WGL admitted that it has sometimes calculated the contribution charge by using the Net Present Value ("NPV") test even though this test is not part of the Company's approved Tariff, Section 13d.¹ As a result of WGL's admission, the Commission initiated this proceeding to determine whether, and to what extent, the use of the NPV test may have negatively impacted ratepayers.² The Commission specifically directed WGL to respond to seven questions regarding the Company's application of its tariff provision involving customer contributions required for new service installations from 1997-2005.³

3. On October 11, 2005,⁴ WGL responded to the Commission's questions. The questions and answers are set forth below:

¹ See, CC9075030, *In the Matter of the Complaint of Philip and Pamela Khinda, Ridgeway and Anne Hall, John and Joan Bray, and Michael Klisch v. Washington Gas Light Company*, Decision, rel. April 25, 2005 ("Khinda Case").

² *F.C. 1041, In the Matter of the Investigation Into Washington Gas Light's Compliance with its Tariffs ("F.C. 1041")*, Order No. 13616, rel. June 21, 2005, Order No. 13616 at 1.

³ *Id.* at 8-10.

⁴ The Commission granted WGL's request for an extension of time until October 11, 2005 to file its response to the Commission questions in Order No. 13616. *F.C. 1041*, Order No. 13769, rel. September 30, 2005. In a prior Order, the Commission had granted WGL's request to file its answers by September 21, 2005.

Question (1) For the years 1997-2005, please indicate the number of instances when WGL calculated both the two year revenue test and the NPV test to determine whether a contribution charge for new services installation was necessary.

Answer: WGL states that out of a total of 2,221 projects, there were 74 projects for which both the 2-year Test and an NPV test were used to calculate a customer charge. The Company states that it also identified 155 projects, of the total, for which its records are incomplete;

Question (2) For the year 1997-2005, please indicate the number of instances when WGL calculated only the two year revenue test to determine whether a contribution charge for new services installation was necessary.

Answer: Out of the 2,221 projects, 117 projects for which only the 2-year test was used to calculate a customer charge;

Question (3) For the year 1997-2005, please indicate the number of instances when WGL calculated only the NPV test to determine whether a contribution charge for new services installation was necessary.

Answer: Out of a total of 2,221 projects, 1,875 projects for which only an NPV test was used to calculate a customer charge;

Question (4) For each instance, please indicate the result of the calculations.

Answer: WGL attached spreadsheet with attached calculations;⁵

Question (5) For each instance, please indicate the amount that was charged to each customer.

Answer: WGL attached a spreadsheet with calculations;

Question (6) Please indicate when WGL determined that it was using the incorrect test to determine the contribution amount. When did WGL change its procedures? What actions did WGL take to correct its procedures?

Answer: WGL states that around March 2004, the Company realized that it was not in full compliance with its District of Columbia tariffs. WGL states that it stopped using the NPV test and only used the 2-year revenue test by May 2004; and

⁵ The data showed that when the Company used the NPV test those customers customer contribution charge was lower then the customers who were evaluated by the 2-year revenue test.

Question (7) Are there any other tariffs for which WGL has determined that it was not following the procedures outlined in the tariff? If so, please describe how WGL's procedures did not comply with the tariff, when this noncompliance was discovered, and what steps, if any, WGL took to come into compliance with the tariff.

Answer: WGL states that it has not identified any other tariff violations.

4. We also invited interested persons having knowledge of WGL's noncompliance regarding Section 13d, or any other tariff section, to file information regarding the noncompliance with the Commission.⁶ In response, the Office of the People's Counsel ("OPC") alleged that WGL violated not only Tariff Section 13d but also Section 13f (governing customer charges on connection service requests for existing service lines) and Section 15 (governing customer charges for the cost of the meter when initiating service).⁷ OPC also requested that we impose sanctions against WGL for its repeated violations of its tariffs.⁸

III. DISCUSSION

5. Section 13f of WGL's Tariff states as follows:

When, in the opinion of the Company, an existing service is insufficient to supply new demands put upon it and additional investment in facilities is warranted by the revenue, the Company will enlarge the facilities as necessary at no cost to the customer.

OPC argues that although the tariff allows WGL discretion when making a determination about the need to enlarge the facilities to meet new demand, that discretion is not unfettered.⁹ According to OPC, the Company must at a minimum apply an objective standard that measures whether there is an increased demand for natural gas.¹⁰ OPC claims that it has evidence of WGL

⁶ *F.C. 1041*, Order No. 13616 at 9.

⁷ *F.C. 1041*, OPC's Initial Comments at 3-6. On February 16, 2007, OPC filed Supplemental Comments. Also, accompanying its Supplemental Comments, OPC filed a Motion for leave to file comments out of time in that the Commission had previously granted OPC's request to file its supplemental comments by February 14, 2007. OPC states that due to inclement weather on February 14, 2007 it was unable to file its comments on that day. OPC states that it contacted WGL's attorney and that WGL does not oppose OPC's request to file out of time. We find that OPC's request is reasonable; therefore, we will accept OPC's comments out of time.

⁸ *F.C. 1041*, Office of the People's Counsel Motion for Sanction Against Washington Gas for Noncompliance with its Tariffs and request for Refunds for Consumers Who Are Over charged, filed February 16, 2007.

⁹ *F.C. 1041*, OPC's Initial Comments at 4.

¹⁰ *Id.*

charging a customer a contribution charge for upgrading the service line even though the customer claims that he did not place an increased demand on the existing line.¹¹

6. Section 15 of WGL's Tariff, states in pertinent part:

Any relocation or alteration of Company owned facilities to furnish gas service to customers for the convenience and benefit of the Company shall be paid by the Company; however, any such changes occasioned or necessitated by any action of customer, or owner of the property if...may be made only after prior approval of the Company, and shall be at the expense of the customer or owner responsible....

Additionally, Section 302.3 of the Commission's regulations states:

Whenever a new gas service line is installed or an existing gas service is replaced, the meter shall be placed outdoors at utility cost. Meter relocation and house piping costs incurred for the convenience of the customer shall be at customer expense.¹²

OPC points out that, although the Commission has previously interpreted the above sections and held that the Company is precluded from charging customers for meter costs associated with the installation of new gas lines or the replacement of existing ones,¹³ the Company has nevertheless charged 442 customers for meter costs when extending lines.¹⁴ WGL, on the other hand, asserts that the Commission has never reached the question of whether it is appropriate to charge meter costs for line extensions and only determined that it was improper to charge customers for meter costs associated with replacing and installing new lines.¹⁵

7. OPC's allegations regarding Sections 13f and 15 are distinguishable from the situation regarding Section 13d. Section 13f is, on its face, a provision that allows WGL discretion to impose the charge in question. Although OPC may believe that WGL may be abusing its discretion in a given instance, the Company is not automatically acting improperly simply because it exercises the broad discretion permitted under the tariff. Additionally, the evidence of overcharging on which OPC relies is an isolated instance in a consumer complaint where the customer ultimately agreed to pay a customer contribution charge of \$1,688.02.¹⁶

¹¹ *Id.*

¹² 15 DCMR § 302.3 (1979).

¹³ See GT04-1, *In the Matter of the Corrected Revised Application of Washington Gas Light Company to Amend its General Service Provision Nos. (13 and 14) ("GT04")*, Order No. 13802, rel. November 3, 2005; See also, GT04-1, Order No. 13861, rel. January 25, 2006.

¹⁴ F.C. 1041, OPC's Supplemental Comments at 5.

¹⁵ F.C. 1041, WGL's Answer at 5. The Commission notes that WGL is correct on this point. See GT04-1, Order No. 13802 at 4.

¹⁶ F.C. 1041, OPC's Initial Comments at 5.

With regard to Section 15, the Commission determined that WGL could not charge customers for meter costs when installing new lines or replacing existing ones but did not reach the question of whether customers can be charged for meter costs when extending lines. Nor will we reach that question here and prefer, instead, to limit our inquiry to those instances in which WGL has knowingly violated its own tariff.¹⁷

8. Turning now to Section 13d of the Company's Tariff, WGL states that the NPV approach results in a lower charge to the customer than the 2-year approach and that, as a result, these customers were not adversely impacted.¹⁸ OPC argues that the impact on customers is irrelevant and that WGL should be fined \$5000.00, pursuant to D.C. §34-706, for each act of noncompliance with its tariff.¹⁹

9. WGL states that it improperly used the NPV test to calculate the customer contribution for 1,875 customers between 1997 and 2004.²⁰ D.C. Code §34-706 (a) currently states:

If any public utility shall...fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided... for every such violation, failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of \$5,000.00 for each such offense.

WGL does not dispute that applying the wrong NPV test is a failure or refusal to perform a duty enjoined upon it within the meaning of D.C. Code §34-706.

10. However, the amount of the forfeiture under §34-706 was not increased to \$5,000.00 until April 2005.²¹ Prior to that time, the amount was \$300.00. A statute is not given retroactive effect unless such construction is required by explicit language or by necessary

¹⁷ We note that, in *F.C. 1054* (the WGL rate case), OPC attempted to designate a separate issue that asked "Does the inclusion of the cost of the meter in the Company's calculations of contributions-in-aid-of-construction charged to consumers harm ratepayers"? We also recognize that the Commission disallowed treating this as a separate issue, in part, because WGL asserted that the harm to ratepayers aspect was being addressed in *F.C. 1041* and, in part, because OPC could explore rate implications under already designated issues concerning the reasonableness of WGL's rate base. Our decision to limit our inquiry in *F.C. 1041* to instances in which WGL knowingly violated its tariff does not preclude OPC from pursuing its interpretation of Section 15 in an appropriate consumer complaint case or pursuing rate implications under other designated issues in the current rate case.

¹⁸ *F.C. 1041*, WGL's Response at Question No. 6. WGL also states in its data response that around March 2004, it realized that it was not in full compliance with its District of Columbia tariffs, specifically Section Tariff 13. The Company states that it was in full compliance with 2-Year Revenue test by May 2004.

¹⁹ *F.C. 1041*, OPC's Supplemental Comments at 10-11.

²⁰ *F.C. 1041*, WGL's Response at Question No. 3.

²¹ See Omnibus Utility Amendment Act of 2004, D.C. Law 15-342 (2005).

implication.²² The Courts also have held that “[S]tatutes are disfavored as retroactive when their application would...increase a party’s liability for past conduct...”²³ There is no indication that the legislature intended to make this provision retroactive. Therefore, WGL is subject to a maximum amount of \$300.00 per violation. Inasmuch as the Company states that there were 1,875 separate violations, the Company is subject to an automatic forfeiture of \$562,500.00 (1,875 customers x \$300.00).

11. Any civil penalty, which we construe to include monetary forfeitures, may be compromised at the discretion of the Commission. Specifically, D.C. Code §34-706 (c) states:

Any such civil penalty may be compromised by the Commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.²⁴

There are no material issues of fact in this case.²⁵ The Company has conceded that it used an unauthorized NPV test and has never asserted that it did so inadvertently or in good faith. However, the seriousness of the violation is mitigated by WGL’s uncontradicted representation that customers were not financially harmed and, in fact, benefited from a test that resulted in lower customer contributions. Under the circumstances, the Commission concludes that a penalty of \$562,500.00 would be excessive and we reduce it to \$25,000.00. Therefore, the Company is directed to pay to the District of Columbia the sum of \$25,000.00 within 30 days from the date of this Order.

12. Finally, OPC requests that the docket remain open so the parties can continue to inform the Commission about WGL’s noncompliance.²⁶ It was never the intent of the Commission to keep this docket open indefinitely. The Commission initiated this proceeding only to determine whether, and to what extent, the use of the NPV test may have negatively impacted ratepayers and to determine if there were any other tariffs WGL was not following. This inquiry is at an end. As a result, this matter will close after the time period for filing an application for reconsideration has passed and WGL has paid the sum of \$25,000.00 to the District of Columbia. If any additional instances of WGL’s noncompliance with its tariffs are

²² See *Fernandez-Vargas v. Gonzales*, 126 S. Ct. 2422 (2006); *Mayo v. District of Columbia Department of Employment Services*, 738 A.2d 807 (1999).

²³ See *Fernandez-Vargas v. Gonzales*, 126 S. Ct. 2422 (2006).

²⁴ OPC notes in its comments that the Commission has the discretion to lower the fine as outlined in subsection (c) of §34-706. *F.C. 1041*, OPC’s Supplemental Comments at 12.

²⁵ See *Watergate East, Inc. v. District of Columbia Public Service Commission*, 662 A.2d 881 (D.C. 1995), for the proposition that an agency is not required to hold an evidentiary hearing if there is no dispute concerning a material fact. 662 A.2d at 890.

²⁶ *F.C. 1041*, OPC’s Supplemental Comments at 3.

discovered after this case is closed, OPC is free to request that the Commission open another investigation.

THEREFORE, IT IS ORDERED THAT:

13. The Commission **GRANTS** OPC's Motion for Leave to File Comments out of Time;

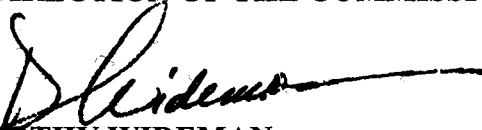
14. WGL is **DIRECTED** to pay the sum of **\$25,000.00** to the Treasury of the District of Columbia for violating Section Tariff 13d within thirty (30) days from the date of the Order and to provide the Commission with proof of its payment;²⁷ and

15. This matter will be deemed **CLOSED** after the time period for filing an application for reconsideration has passed and WGL has paid the amount of the forfeiture to the District of Columbia.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK


DOROTHY WIDEMAN
COMMISSION SECRETARY

²⁷ On February 16, 2007, OPC filed a Motion for Sanctions against WGL for noncompliance with its tariffs. OPC recommends that WGL should be sanctioned for violating Tariff Section 13d and 15. Inasmuch as we are penalizing WGL the sum of \$25,000.00 for violating Tariff Section 13d, OPC's Motion is now moot and need not be further considered.