

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

ORDER

August 20, 2020

**FORMAL CASE NO. 1154, IN THE MATTER OF WASHINGTON GAS LIGHT
COMPANY'S APPLICATION FOR APPROVAL OF PROJECTPIPES 2 PLAN, Order No.
20615**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") addresses the Joint List of Material Issues of Fact in Dispute submitted by the District of Columbia Government, on behalf of the Office of the People's Counsel for the District of Columbia ("OPC"), the Apartment and Office Building Association of Metropolitan Washington, DC Climate Action, Environmental Defense Fund, Sierra Club and itself (collectively "Joint Parties") and determines that an evidentiary hearing in this proceeding is not warranted.

II. BACKGROUND

2. On December 7, 2018, Washington Gas Light Company ("WGL" or "Company") filed an Application for Approval of its PROJECT*pipes* 2 Plan ("PIPES 2 Plan").¹ By Order No. 17431, the Commission approved the first five (5) years of WGL's proposed 40-year Revised Accelerated Pipe Replacement Plan ("PIPES 1 Plan").² The Company requests approval of the PIPES 2 Plan and authorization to recover the costs through the surcharge mechanism approved as a part of the Commission's approval of the PIPES 1 Plan. The Commission established a procedural schedule, in Order No. 20333.³

3. Since the commencement of this proceeding, parties have filed comments, submitted testimony and rebuttal testimony, and conducted extensive discovery. To assist the

¹ *Formal Case No. 1154, In the Matter of the Application of Washington Gas Light Company for Approval of PROJECTpipes 2 Plan ("Formal Case No. 1154")*, Washington Gas Light Company's Application for Approval for PROJECTpipes 2 Plan, filed December 7, 2018 ("PIPES 2 Plan").

² *See 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 and Formal Case No. 1115, In the Matter of Washington Gas Light Company's Request for Approval of a Revised Accelerated Pipe Replacement Plan ("Formal Case No. 1115")*, Order No. 17431, ¶ 32, rel. March 31, 2014 ("Order No. 17431"). The Commission notes that the original name of WGL's Accelerated Pipe Replacement Plan was "APRP". However, now it is referred to as "PROJECT*pipes*."

³ *Formal Case No. 1115, Formal Case No. 1142, In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc. ("Formal Case No. 1142")*, *Formal Case No. 1154*, Order No. 20333, rel. April 23, 2020 ("Order No. 20333").

Commission in making a determination on whether an evidentiary hearing is required, parties were directed to meet in conference and prepare a Joint Prehearing Statement identifying the material issues of fact in dispute, if any.⁴ The procedural schedule was later modified through Order No. 20336, and, *inter alia*, directed parties to file their Joint Statement of Stipulation of Facts and Settlement Conference Report on August 4, 2020. On August 4, 2020, WGL filed, on behalf of all parties, the Joint Stipulation and Request for Admission.⁵ Additionally, the Joint Parties filed a Joint List of Material Issues of Fact in Dispute in support of their belief that the Commission should have a formal evidentiary hearing in this proceeding.⁶

III. DISCUSSION AND DECISION

4. While it is true that the Commission has held evidentiary hearings without first specifically identifying material issues of fact, this step is essential if we are to streamline and focus our proceedings to make them more administratively efficient.

5. It is worth noting at the outset that the Commission is not required to hold a formal evidentiary hearing if there are no material issues of fact in dispute and the only disputes concern inferences to be drawn or issues of policy or law.⁷ 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.”⁸ A factual issue is “genuine” if it is not capable of being conclusively foreclosed by reference to undisputed facts. 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). 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 presumption is 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.”⁹ If, on the other hand, the only disputes concern inferences to be drawn are issues of policy or law, the

⁴ Order No. 20333 at ¶9.

⁵ *Formal Case No. 1154*, Joint Stipulation and Request for Admission filed August 4, 2020.

⁶ *Formal Case No. 1154*, Joint List of Material Issues of Fact in Dispute, August 4, 2020 (“Joint Material Issues of Fact in Dispute”).

⁷ See e.g. *Office of the People’s Counsel v. Public Service Commission of the District of Columbia*, 797 A.2d 719, 726 n.9 (D.C. 2002); *Watergate East Inc. v. District of Columbia Public Service Commission*, 662 A.2d 881, 890 (D.C. 1995); and *Moseley v. Second New St. Paul Baptist Church*, 534 A.2d 346, 349 (D.C. 1987), citing *Wallace v. Warehouse Emps. Union No. 730*, 482 A.2d 801, 810 (D.C. 1984).

⁸ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

⁹ *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*, Order No. 17314 ¶15, rel. December 9, 2013.

Commission has the option of convening a formal legislative-style hearing when warranted by the circumstances.¹⁰ In most cases of policy, the dispute can be resolved by written submissions without a hearing. Therefore, a legislative-style hearing should be the exception, not the rule. If convened, it should not be a forum to simply rehash what has already been stated in the comments, written testimony, and discovery responses. Primarily, the Commission will schedule such a hearing when the Commission believes it would be helpful in better understanding particular points in the parties' respective positions.

6. The Commission must decide whether the Joint Parties have identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case that would warrant having an evidentiary hearing is necessary to resolve any of those issues or whether those issues can be resolved based on the pleadings and discovery responses.¹¹ We hold that, as more fully discussed below, the Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case warranting an evidentiary hearing. The Joint Parties identify 31 issues that they assert involve material facts in dispute that require an evidentiary hearing. However, in their filing, it appears that all parties do not necessarily agree. Additionally, several of the identified issues are repetitive in nature or address a central theme. As such, the Commission believes it is best to address them by theme as opposed to individually.

1. Project Prioritization and Planning

7. Joint Parties' issues 1, 8, 9, 13, 20, and 29 address WGL's proposed project prioritization and planning. Issue 1 asks if WGL's removal of Optimain 4 prioritization is "just and reasonable?"¹² Issue 13 asserts that there is a material issue of fact regarding the cost to replace leak-prone Cast Iron pipes.¹³ However, Issue 13 continues to contend that the Commission "must require WGL to prioritize replacement of its most leak-prone pipe based on Optimain scores."¹⁴ Issue 20 poses the question, "Has WGL regularly given greater priority to cost considerations than safety considerations and will its PIPES 2 Plan continue that practice?"¹⁵ Issue 29 asks, "whether a probabilistic approach to repairs is more appropriate and effective than an approach based on detection and quantification of the most hazardous and significant leaks?"¹⁶ Issue 8 asks if "the Company's proposal to replace services by themselves, as opposed to maximizing the replacement of mains and associated services as part of the same replacement project whenever possible, just

¹⁰ *Chevy Chase Citizens Ass'n v. District of Columbia Council*, 327 A.2d 310, 314 (D.C. 1974).

¹¹ *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia*, Order No. 18829 at ¶10, rel. July 7, 2017.

¹² Joint Material Issues of Fact in Dispute at 2.

¹³ Joint Material Issues of Fact in Dispute at 5.

¹⁴ Joint Material Issues of Fact in Dispute at 5.

¹⁵ Joint Material Issues of Fact in Dispute at 6.

¹⁶ Joint Material Issues of Fact in Dispute at 6.

and reasonable?”¹⁷ Issue 9 asks if WGL’s proposal to include “contingent main and affected services” in programs is just and reasonable.¹⁸

8. Again, the Commission acknowledges the inclusion of Optimain 3 prioritization and project planning is an issue in this proceeding. However, the Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case. Most of the identified issues ask for an opinion if WGL’s request is “just and reasonable.” These are issues of policy, not facts. Accordingly, an evidentiary hearing is not warranted on these issues.

2. Surcharge Mechanism and Cost Recovery

9. Issues 4, 5, 11, 12, 14, and 22 address the theme of proper cost recovery and the surcharge mechanism. Issue 4 asserts that the surcharge mechanism is a material issue.¹⁹ In Issue 4, Joint Parties offer questions that they assert are similar to issues that the Commission previously granted an evidentiary hearing for in Order No. 17602. However, Joint Parties erroneously interpret Order No. 17602. First, the history of the proceeding differs. By Order No. 17431, the Commission granted in part WGL’s revised Accelerated Pipe Replacement Program subject to conditions.²⁰ In that Order, the Commission stated that it intended to hold an evidentiary hearing on the proposed surcharge to allow parties an opportunity to raise questions on clarifications the Commission requested regarding the proposed surcharge mechanism.²¹ Subsequently in Order No. 17602, the Commission determined there was a mixed evidentiary record for the mechanics of the surcharge.²² Thus, the Commission determined there was insufficient evidence on the record and an evidentiary hearing was appropriate.²³ In this proceeding, parties are not raising questions to clarify the mechanics of the surcharge. Additionally, while the appropriateness of the recovery mechanism is an issue, the Joint Parties have not identified what material facts tend to prove or disprove a disputed fact relating to the recovery mechanism that is relevant to the outcome of this case. Rather, Issue 4 raises questions that seek to determine the appropriateness of recovery through a surcharge mechanism, reporting requirements, and the reasonableness of the true-up process.²⁴ Issue 4 raises issues of policy rather than facts in dispute. Therefore, the Commission finds that an evidentiary hearing on the surcharge mechanism is not necessary.

¹⁷ Joint Material Issues of Fact in Dispute at 4.

¹⁸ Joint Material Issues of Fact in Dispute at 4.

¹⁹ Joint Material Issues of Fact in Dispute at 3.

²⁰ Order No. 17431.

²¹ Order No. 17431 at ¶58.

²² *Formal Case No. 1115*, Order No. 17602 at ¶78, rel. August 21, 2014 (“Order No. 17602”).

²³ Order No. 17602 at ¶78.

²⁴ Joint Material Issues of Fact in Dispute at 2-3.

10. Issue 5 asks if the cost recovery mechanism for the PIPES 2 Plan should include a performance incentive mechanism, a policy consideration.²⁵ Issue 11 asserts that estimated costs for replacement of Cast Iron and Bare Steel mains are two to three times greater than pipe replacement costs for gas distribution systems that serve other major cities in the Eastern United States.²⁶ Similarly, Issue 12 asserts that WGL's claim that the District has additional factors creates a material issue of fact.²⁷ Again, Issue 14 asserts that replacement costs are excessive and pose the question that if costs cannot be reduced should the Company be required to abandon service to customers currently supplied by "too costly to replace Cast Iron Mains?"²⁸ Further, Issue 22 asks if the District has unique attributes which justify the extremely high estimated costs of replacing cast iron mains.²⁹ The Joint Parties misinterpret the purpose of the cost estimates and setting budgets in this proceeding. In this proceeding, the Commission is not currently conducting a prudency review of the costs associated with proposed programs. Such a prudency review will be completed in WGL's future base rate case that will seek to incorporate these charges into its rate base. Costs set in this proceeding are based on a determination of the appropriateness for accelerating pipe replacement in the District. Accordingly, an evidentiary hearing is not warranted on these issues.

3. Transmission Programs

11. Issue 6 asks if the inclusion of the proposed transmission projects to PIPES 2 Plan are just and reasonable and in the public interest. Issue 6 then lists three policy questions associated with the issue. The Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case. The Joint Parties do not assert any disagreement as to the location, scope, or cost of the transmission programs. Rather, the Joint Parties seek to determine the appropriateness of the inclusion of the programs. The decision to include, or not, these programs is a policy consideration. Policy considerations are legislative facts that do not warrant an evidentiary hearing. Accordingly, an evidentiary hearing is not warranted on this issue.

4. Liberty Consulting Report

12. Issue 7 seeks to determine if the "Company adequately demonstrated implementation or plans for implementation of the Liberty Consulting Report recommendation. Further the Issues raises questions that seek to determine if the Company has satisfied or complied with numerous recommendations posed in the Liberty Audit. Additionally, Issue 6 vaguely asserts that the Commission required WGL to satisfy Recommendation 6 in Order No. 20313. However, Order No. 20313 established a procedural schedule for this proceeding and, *inter alia*, directed

²⁵ Joint Material Issues of Fact in Dispute at 3.

²⁶ Joint Material Issues of Fact in Dispute at 4-5.

²⁷ Joint Material Issues of Fact in Dispute at 5.

²⁸ Joint Material Issues of Fact in Dispute at 14.

²⁹ Joint Material Issues of Fact in Dispute at 6.

WGL to supplement its testimony to address the Liberty Consulting Report.³⁰ The Commission to date has not directed WGL to adopt any specific recommendation. The Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case. Moreover, implementation of recommendations from the Liberty Consulting Report are issues of policy, not fact. The Commission will, after reviewing the evidence and arguments of parties, determine what, if any, recommendations should be implemented. Accordingly, an evidentiary hearing is not warranted on this issue.

5. District Climate Goals and GHG Leak Reduction

13. Joint Parties' Issues 15, 17, 18, 23, 24, 26, 28, 30, and 31 address District Climate Goals and policy. Issue 15 asks "[w]hat are the major factors contributing to the rising leak rates of WGL's District of Columbia Distribution System?"³¹ Issue 15 then continues to pose the two questions. Summarily, if an increase in annual green-house-gas ("GHG") emissions had drained its labor and financial resources and if requiring WGL to replace only its Top 3 main segments based on the Optimain score is sufficient to ensure the on-going safety of WGL's distribution system.³² Issue 23 seeks to determine if there is a viable alternative to total replacement to achieve safety from gas leaks.³³ Issue 31 asks if the "assumption that implementation of PROJECTpipes 2 will result in GHG emissions reduction is reasonable given that these emissions increased during the implementation of PROJECTpipes 1."³⁴ Issue 24 seeks to determine if the use of ALD+ technology will achieve safety from gas leaks quicker and in a less costly manner.³⁵

14. Issue 18 asks if WGL's estimates of GHG emission reductions are sufficient to ensure progress toward DC's Climate Goals.³⁶ Issue 17 directly poses the question, "Has WGL's PIPES 2 Plan reasonably and properly taken into consideration the Districts' climate goals?"³⁷ Issue 26 seeks to determine if there are non-pipes alternatives that should be required considerations prior to pipeline replacement and if WGL will perform alternative analysis.³⁸ Issue 28 raises whether the refurbished or replaced infrastructure will remain used and useful for the

³⁰ *Formal Case No. 1115, Formal Case No. 1142, Formal Case No. 1154 and Formal Case No. 1162, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service*, Order No. 20313 at ¶ 25, rel. March 26, 2020 ("Order No. 20313").

³¹ Joint Material Issues of Fact in Dispute at 5.

³² Joint Material Issues of Fact in Dispute at 5.

³³ Joint Material Issues of Fact in Dispute at 6.

³⁴ Joint Material Issues of Fact in Dispute at 7.

³⁵ Joint Material Issues of Fact in Dispute at 6.

³⁶ Joint Material Issues of Fact in Dispute at 5.

³⁷ Joint Material Issues of Fact in Dispute at 5.

³⁸ Joint Material Issues of Fact in Dispute at 6.

proposed assets cost recovery period in light of the District's climate commitments.³⁹ Finally, Issue 30 seeks to determine if it is appropriate to recover pipeline investments beyond 2050 considering the District's commitment to carbon neutrality by that year.⁴⁰

15. The Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case. While the Commission has a statutory mandate to consider, *inter alia*, the effects on global climate change and the District's public climate commitments in supervising and regulating utility companies, this consideration is one of policy, not facts. Accordingly, an evidentiary hearing is not warranted on these issues.

6. Inclusion of Program 9-ALD Pilot Program

16. Joint Parties' Issues 3, 25, and 27 address this issue. Issue 3 poses the question "[s]hould the Company's PIPES 2 program include recovery of costs for its ALD Pilot program?"⁴¹ Issue 25, seeks to determine if WGL is to reach its 2050 carbon neutrality goals should ALD technology be the guiding methodology for pipe replacement.⁴² Issue 27, more directly seeks to determine if the scope of the ALD pilot program will provide enough information to sufficiently assess the capabilities and benefits of the technology.⁴³

17. The Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case. Similarly, to the issue of inclusion of transmission projects, this is a policy determination. Accordingly, an evidentiary hearing is not warranted.

7. Inclusion of Program 10- Work Compelled by Others

18. Joint Parties' Issues 2, 19, and 21 address other utilities' work that compelled WGL to perform additional pipe replacement initiatives. Issue 2 seeks to determine if the inclusion of this program is appropriate, should work compelled by others be undertaken in normal replacement work, and if this program is consistent with safety priorities.⁴⁴ Similarly, Issue 19 seeks the same information while incorporating prioritization and project planning issues.⁴⁵ Issue 21 seeks to

³⁹ Joint Material Issues of Fact in Dispute at 6.

⁴⁰ Joint Material Issues of Fact in Dispute at 7.

⁴¹ Joint Material Issues of Fact in Dispute at 2.

⁴² Joint Material Issues of Fact in Dispute at 6.

⁴³ Joint Material Issues of Fact in Dispute at 6.

⁴⁴ Joint Material Issues of Facts in Dispute at 2.

⁴⁵ Joint Material Issues of Facts in Dispute at 6.

determine if proposed program 10 is consistent with requirements for the expedited replacement of high-risk pipe.⁴⁶

19. The Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case. The appropriateness, or lack thereof, and safety priorities programs to be included in the PIPES 2 Plan involve issues of policy, not facts. Accordingly, an evidentiary hearing is not warranted on these issues.

8. **PROJECT***pipes*

20. Issue 10 asks, “Has WGL’s Pipes 1 Plan been effective in expediting the Company’s replacement of high-risk mains in the District?”⁴⁷ More generally, Issue 16 asks if, “WGL’s proposed program which would not complete its replacement of cast Iron mains for another 35 years place District residents and business at risk?”⁴⁸ The Joint Parties have not identified what material facts tend to prove or disprove a disputed fact that is relevant to the outcome of this case. Instead, the Joint Parties raise policy questions regarding the underlying appropriateness of an accelerated pipe replacement program. Accordingly, an evidentiary hearing is not warranted on this issue.

THEREFORE, IT IS ORDERED THAT:

21. An evidentiary hearing in this proceeding is not necessary because the Joint Parties have not identified any material issues of fact in dispute that warrant an evidentiary hearing.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

⁴⁶ Joint Material Issues of Facts in Dispute at 6.

⁴⁷ Joint Material Issues of Facts in Dispute at 4.

⁴⁸ Joint Material Issues of Facts in Dispute at 5.