



Sandra Mattavous-Frye, Esq.
People's Counsel

October 13, 2020

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

Re: Formal Case No. 1157, In the Matter of the Investigation into Washington Gas Light Company's Compliance with the Recommendations of the National Transportation Safety Board

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceeding, please find the *Motion for Leave to Reply and Response of the Office of the People's Counsel for the District of Columbia to Washington Gas Light Company*.

If there are any questions regarding this matter, please contact me at bburton@opc-dc.gov. Thank you.

Sincerely,

/s/ Barbara L. Burton

Barbara L. Burton
Assistant People's Counsel

Enclosure

Cc: All parties of record

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

In the Matter of	§	
	§	
The Investigation into Washington Gas	§	Formal Case No. 1157
Light Company's Compliance with the	§	
Recommendations of The National	§	
Transportation Safety Board	§	

**MOTION FOR LEAVE TO REPLY AND RESPONSE OF THE OFFICE OF THE
PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA TO WASHINGTON GAS
LIGHT COMPANY**

I. INTRODUCTION

Pursuant to Rules 105.8 and 105.9 of the Public Service Commission of the District of Columbia's ("Commission" or "PSC") Rules of Practice and Procedure,¹ the Office of the People's Counsel for the District of Columbia (the "Office" or "OPC"), the statutory representative of District of Columbia utility ratepayers and consumers,² hereby seeks leave to file this response to Washington Gas Light Company's (the "Company" or "WGL") October 2, 2020 *Motion for Leave to Reply to the Office of People's Counsel for the District of Columbia's Response in Opposition to Washington Gas Light's Application for Reconsideration of Order No. 20608*.³

¹ 15 DCMR §§ 105.8. and 105.9 (Lexis 2020).

² D.C. Code § 34-804 (Lexis 2020).

³ *Formal Case No. 1157, In the Matter of the Investigation Into Washington Gas Light Company's Compliance with the Recommendations of the National Transportation Safety Board, ("Formal Case No. 1157") Motion for Leave to Reply to the Office of People's Counsel for the District of Columbia's Response in Opposition to Washington Gas Light's Application for Reconsideration of Order No. 20608, filed October 2, 2020 ("WGL Motion").*

II. BACKGROUND/PROCEDURAL HISTORY

On August 1, 2019, the Commission opened an investigation into WGL's implementation of the April 24, 2019, National Transportation Safety Board's ("NTSB") safety recommendations.⁴ The NTSB Report determined that the probable cause of the 2016 building explosion was:

the failure of an indoor mercury service regulator with an unconnected vent line that allowed natural gas into the meter room where it accumulated and ignited from an unknown ignition source. Contributing to the accident was the location of the mercury service regulators where leak detection by odor was not readily available.

Formal Case No. 1157, NTSB Report 4. The NTSB Report found further that WGL did not have a requirement in place "that technicians verify the connection of vent lines for indoor service regulators" and that "such vent lines could be inadvertently left open following service work."⁵ Based on these findings, the NTSB Report adopted the following five safety recommendations for WGL:⁶

1. Throughout the Washington Gas network, implement an audit program to verify the data on the service forms used to determine the location and condition of mercury service regulators to ensure the accuracy of this safety-critical data.
2. Revise procedures and field forms to require technicians to verify the integrity of vent lines following the testing of indoor service regulators throughout the Washington Gas network.
3. Establish a time frame with specific dates and milestones for the replacement of mercury service regulators throughout the Washington Gas network that

⁴ *Formal Case No. 1157*, Order No. 19982, rel. Aug. 1, 2019 ("Order No. 19982").

⁵ *Formal Case No. 1157*, NTSB Report 40.

⁶ *Formal Case No. 1157*, NTSB Report 43.

recognizes the need to expedite this program and that prioritizes multifamily dwellings where mercury service regulators are located inside the property.

4. Install all new service regulators outside occupied structures.
5. Relocate existing interior service regulators outside occupied structures whenever the gas service line, meter, or regulator is replaced. In addition, multifamily structures should be prioritized over single-family dwellings.

Formal Case No. 1157, NTSB Report 43.

On August 30, 2019, the Company filed its Initial Implementation Plan outlining WGL's proposal for the identification and removal of mercury service regulators ("MSRs") in the District and other responses to the NTSB Report recommendations.⁷ The Initial Implementation Plan included a five-year timeframe for replacing all MSRs in multi-family dwellings⁸ and a projected ten-year process to remove all MSRs from all non-multi-family dwellings.⁹

On December 20, 2019, the Office submitted its comments regarding the Company's Initial Implementation Plan expressing its concern that, *inter alia*, the Company's Initial Implementation Plan did not move quickly enough to address the environmental and operational threat posed by continued use of MSRs in its Washington, DC service territory, some of which, by the Company's own estimation, are over 80-years old.¹⁰

The Company submitted its *Reply Comments* on March 12, 2020, wherein WGL committed to utilize its best efforts to survey all multi-family sites within one year and remove all multi-family MSRs within a three-year period from the commencement of the Company's

⁷ *Formal Case No. 1157*, Washington Gas Light Company's Implementation Plan, filed August 30, 2019 ("Initial Implementation Plan").

⁸ *Formal Case No. 1157*, Initial Implementation Plan 7.

⁹ *Formal Case No. 1157*, Initial Implementation Plan 8.

¹⁰ *Formal Case No. 1157*, Initial Implementation Plan 6-7.

MSR Replacement Plan (“MSRRP”).¹¹ The Company also committed to survey all non-multi-family sites within three years and remove all non-multi-family MSRs within five years of the start of the MSRRP.¹²

On July 7, 2020, WGL filed an Updated Implementation Plan that formally incorporated the Company’s commitments made in WGL’s March 12, 2020 response to OPC as well as in response to certain Commission data requests.¹³

On August 14, 2020, the Commission issued Order No. 20608,¹⁴ which accepted the Company’s Updated Implementation Plan subject to a series of ongoing compliance requirements on the Company. The additional compliance requirements are designed to ensure effective oversight and auditing of the Company’s implementation and execution of its MSR removal plan.

On September 14, 2020, WGL filed an *Application for Reconsideration and/or Modification of Order No. 20608* seeking modification of certain compliance obligations imposed by the Commission in Order No. 20608.¹⁵

On September 21, 2020, OPC filed its *Response in Opposition to Washington Gas Light’s Application for Reconsideration of Order No. 20608*, objecting to WGL’s proposed revision to Paragraph 30 of that order which OPC concluded would exceed what is necessary “to avoid

¹¹ *Formal Case No. 1157*, WGL Reply Comments 3.

¹² *Id.*

¹³ *Formal Case No. 1157*, Washington Gas Light Company’s Updated Implementation Plan, filed July 7, 2020 (“Updated Implementation Plan”).

¹⁴ *Formal Case No. 1157*, Order No. 20608, rel. August 14, 2020 (“Order No. 20608”).

¹⁵ *Formal Case No. 1157*, Washington Gas Light Company’s Application for Reconsideration and/or Modification of Order No. 20608, filed September 14, 2020 (“WGL Application”).

undue delay or lengthy customer service interruptions where the Company encounters a Mercury Service Regulatory ('MSR') in need of immediate removal."¹⁶

On October 2, 2020, WGL filed *Washington Gas's Motion for Leave to Reply to the Office of the People's Counsel for the District of Columbia's Response in Opposition to Washington Gas Light's Application for Reconsideration of Order No. 20608*, wherein the Company concluded that OPC "misread" *WGL's Application*.¹⁷

III. MOTION FOR LEAVE TO REPLY

Consistent with Rules 105.8 and 105.9 of the Commission's Rules of Practice and Procedure, good cause exists to grant OPC leave to submit this *Response*. WGL seems to be confused about the basis for OPC's objection to the Company's *Application for Reconsideration* of Order No. 20608, and, further, does not discuss its specific objection(s) to OPC's opposition. OPC seeks leave to reply to clarify the Office's position for the Commission and WGL.¹⁸ The instant submission will bring into sharper focus the contours of the issues in dispute and, therefore, will provide a more accurate and complete record, which this Commission can then use to inform its decision regarding *WGL's Application*.¹⁹ Moreover, no party would be

¹⁶ *Formal Case No. 1157*, Office of the People's Counsel for the District of Columbia's Response in Opposition to Washington Gas Light's Application for Reconsideration of Order No. 20608 at p.2, filed September 21, 2020 ("OPC Response").

¹⁷ *Formal Case No. 1157*, Washington Gas's Motion for Leave to Reply to the Office of the People's Counsel for the District of Columbia's Response in Opposition to Washington Gas Light's Application for Reconsideration of Order No. 20608 at 3, filed October 2, 2020 ("WGL Motion").

¹⁸ *Formal Case No. 1157*, *Washington Gas Light Company's Application for Reconsideration And/Or Modification of Order No. 20608*, filed September 14, 2020 ("Application").

¹⁹ *See 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. 17528 ¶ 240, rel. July 3, 2014 (granting OPC's Motion to File Reply after finding that "OPC's Reply w[ould] provide additional useful information... [and] no party is prejudiced by the granting of OPC's Leave Motion"). *See also TAC 19*, Petition of Verizon Washington, DC Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Order No. 13162 ¶ 9, rel. April 20, 2004 (granting ATT's Motion to File Reply under Rule 105.9 after finding that "additional argument w[ould] be useful."). *See also Formal Case No. 1031*, *In the Matter of the Complaint of AT&T Communications of Washington D.C., LLC Against Verizon*

prejudiced by the granting of this request. For these reasons, OPC respectfully requests the Commission grant the Office's *Motion*.

IV. RESPONSE TO WGL'S REPLY

In its September 21 response,²⁰ the Office explained that while it was sensitive to the need to avoid compliance obligations that could unreasonably delay the removal of dangerous mercury service regulators on the Company's distribution system, certain aspects of the Company's request went well beyond what was necessary to achieve that goal.²¹ Contrary to the Company's assertion, the Office did not "misread" the Company's *Application for Reconsideration*.²² The Office has reviewed and is fully aware of what the Company's proposed revision of Order No. 20608 would mean for the compliance and oversight obligations the Commission imposed. Attached to this pleading is a comparison between Paragraph 30 from Order No. 20608 and WGL's modified version. This comparison highlights precisely the reasons why the Office opposed the Company's *Application* and shows exactly how the Company has proposed to eliminate certain compliance and oversight obligations without any justification or even comment. Specifically, the Office objected, *inter alia*, to the deletion of the following language from Paragraph 30 of Order No. 20608: "The Company shall file an updated section of its O&M manual that indicates how it has implemented the Operator Qualification

Washington D.C., Inc. Regarding the "Four Line Carve out" ("Formal Case No. 1031"), Order No. 13440 ¶ 2, rel. December 1, 2004 (granting Verizon DC's request to file reply pursuant to Rule 105.9 after finding that its submission would "provide the Commission with a more complete record upon which to base its decision").

²⁰ *Formal Case No. 1157, Office of the People's Counsel for the District of Columbia's Response in Opposition to Washington Gas Light Company's Application for Reconsideration of Order No. 20608*, filed September 21, 2020 ("OPC Opposition").

²¹ *Formal Case No. 1157*, OPC Opposition 2.

²² *Formal Case No. 1157*, WGL Response 3.

(‘OQ’) requirement to regulator function testing for any construction or other adjustment of mercury regulators encountered.”²³

As OPC explained, the “wholesale deletion of this compliance obligation exceeds what is necessary to avoid the purported concerns about delay under certain circumstances.”²⁴ In response, WGL now states that “[t]he Company’s Application by no means seeks avoidance of the Washington Gas’s obligation to have all pipeline tasks required by its Mercury Regulator Replacement Program (“MRRP”) to be performed by operationally qualified personnel.”²⁵ This statement, however, is plainly inconsistent with WGL’s deletion of the requirement that the Company update its O&M manual.²⁶

Similarly, *WGL’s Application* seeks to eliminate the obligation that it modify its Daily Location Sheet to indicate the person that “meets the [Operator Qualification (‘OQ’)] requirement when performing MSR replacement work.”²⁷ The Office views this as an important safeguard to ensure that the Company’s MRRP is performed by operationally qualified personnel and serves to implement the OQ requirement that the Commission included in Order No. 20608. The Company’s revised Paragraph 30 would modify this requirement so that the Company is only obligated to provide the then-current OQ certifications for the individuals performing work on jobs that do not have 5-days advance notice. Specifically, the Company proposes to revise Paragraph 30 of Order No. 20608 to state:

²³ *Formal Case No. 1157*, Order No. 20608 ¶ 30.

²⁴ *Formal Case No. 1157*, OPC Opposition 6.

²⁵ *Formal Case No. 1157*, WGL Response 3.

²⁶ *Formal Case No. 1157*, Order No. 20608 ¶ 30.

²⁷ *Formal Case No. 1157*, *WGL Application* 5.

For locations that do not have requisite 5 days scheduled lead time, upon request, the Company will provide those locations where replacements were completed, including the technician who completed the orders, and the active [Operator Qualifications] for that technician at the time the work was completed.

Formal Case No. 1157, WGL Application at 7.

The Company's proposal is silent on reporting OQ qualifications for locations that do have 5-days scheduled lead time. The Office believes that this latter category represents the vast majority of the work that will be performed under the MRRP, and there is no reason why the Company should not report OQ qualifications for work performed at locations that do have 5-days-or-more scheduled lead time. The Company's proposed added language to Paragraph 30 regarding the submission of a "mercury regulator replacement identifier" on location sheets provided to the Commission's Office of Compliance Enforcement ("OCE") is at best ambiguous and, at worst, designed to eliminate the requirement that the person performing the replacement work has proper operator qualifications. Any revision to Paragraph 30 must not remove this obligation so that the Commission can have adequate oversight of the Company's MRRP, including any audits of the program records necessary to confirm that the work is being performed by properly qualified individuals.

The Office believes that more narrowly tailored revisions to the Commission's compliance directives could address legitimate concerns about the timing for removal of dangerous MSRs under emergency situations without eviscerating Commission oversight and OQ compliance requirements. The Company's wholesale rewrite of Paragraph 30 plainly misses that mark and should be rejected. The Office is concerned that *WGL's Application* is further evidence that the Company does not take the ongoing threat posed by MSRs seriously. Given the decades-long failure of the Company to proactively address the dangerous MSR situation on

its distribution system,²⁸ the Commission must remain vigilant and ensure that MSR removal work is performed by properly qualified technicians and that the Commission has all of the information needed to perform its critical oversight of the MRRP.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Office respectfully requests that the Commission (1) accept this *Motion* and (2) reject *WGL's Application* to the extent it seeks to relieve the Company of the OQ compliance and reporting obligations imposed by the Commission in Order No. 20608.

Respectfully submitted,

/s/ Sandra Mattavous-Frye

Sandra Mattavous-Frye, Esq.
People's Counsel
D.C. Bar No. 375833

Karen R. Sistrunk, Esq.
Deputy People's Counsel
D.C. Bar No. 390153

Laurence Daniels, Esq.
Director of Litigation
D.C. Bar No. 471025

Travis R. Smith, Sr., Esq.
Trial Supervisor
D.C. Bar No. 481129

²⁸ *Formal Case No. 1157*, Affidavit of Rod Walker on behalf of the Office of the People's Counsel ¶¶ 10-14, filed December 20, 2019 ("Walker Affidavit").

Barbara L. Burton, Esq.
Assistant People's Counsel
D.C. Bar No. 430524

OFFICE OF THE PEOPLE'S COUNSEL
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005
(202) 727-3071

Dated: October 13, 2020

CERTIFICATE OF SERVICE

Formal Case No. 1157, In the Matter of the Investigation into Washington Gas Light Company's Compliance with the Recommendations of the National Transportation Safety Board

I certify that on October 13, 2020, a copy of the *Motion for Leave to Reply and Response of the Office of the People's Counsel for the District of Columbia to Washington Gas Light Company* was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
bwestbrook@psc.dc.gov

Cathy Thurston-Seignious
Supervisor, Administrative and
Associate General Counsel
Washington Gas
1000 Maine Avenue, SW, Suite 700
Washington, DC 20024
Cthurston-seignious@washgas.com

Honorable Willie L. Phillips
Chair
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
wphillips@psc.dc.gov

Honorable Richard Beverly
Commissioner
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
rbeverly@psc.dc.gov

/s/ Barbara L. Burton
Assistant People's Counsel

Christopher Lipscombe
General Counsel
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
clipscombe@psc.dc.gov