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Sandra Mattavous-Frye, Esq.
People's Counsel

October 23, 2020

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

Re: Formal Case No. 1154, In the Matter of the Application of Washington Gas Light Company for Approval of PROJECTpipes2 Plan

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceeding, please find the *Office of the People's Counsel for the District of Columbia's Initial Brief.*

If there are any questions regarding this matter, please contact me at 202.727.3071.

Sincerely,

/s/ Thaddeus J. Johnson

Thaddeus J. Johnson
Assistant People's Counsel

Enclosure

cc: Parties of record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

Application of	**)**	
Washington Gas Light Company	**)**	**Formal Case No. 1154**
for Approval of PROJECTpipes 2 Plan	**)**	

INITIAL BRIEF

OF THE

OFFICE OF THE PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA

October 23, 2020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

Application of	**)**	
Washington Gas Light Company	**)**	**Formal Case No. 1154**
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INITIAL BRIEF
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Pursuant to Rule 137 of the Public Service Commission of the District of Columbia's ("Commission" or "PSC") Rules of Practice and Procedure,[1] and the procedural schedule established by Order No. 20333 as extended by Order No. 20639, the Office of the People's Counsel for the District of Columbia ("OPC" or "Office"), the statutory representative of District of Columbia ratepayers and consumers,[2] respectfully submits the *Initial Brief of the Office of the People's Counsel for the District of Columbia* ("Initial Brief") in which the Office, for the reasons discussed herein, *infra*, opposes the Application for Approval of PROJECTpipes 2 Plan ("Application") filed with the Commission by Washington Gas Light Company ("WGL" or the "Company") on December 7, 2018, as supplemented on April 23, 2020. In support of its position, the Office states as follows:

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1 15 D.C.M.R. § 137 (Lexis 2020).

2 D.C. Code § 34-804 (Lexis 2020).

I. INTRODUCTION

As the consumer advocate for District of Columbia residents who use natural gas, electric and local telephone services, OPC has been steadfast in advocating to protect the District ratepayers' fundamental rights to the provision of high quality, safe, reliable, affordable and environmentally sustainable utility service. Accordingly, utilities must make prudent infrastructure investment decisions that make efficient use of ratepayer funds. In addition to balancing safety, reliability, and the economic concerns of utilities and their ratepayers, the Commission must now also consider the "conservation of natural resources, and the preservation of environmental quality, including effects on global climate change and the District's public climate commitments."[3] Further, because the Commission has committed to modernizing the District's "energy delivery system" to make it, among other things, more reliable, efficient, and cost-effective,[4] new infrastructure investment decisions must support – not impede, the Commission's modernization vision.

In Order No. 17431, the Commission conditionally approved WGL's first natural gas distribution accelerated pipe replacement program ("APRP") ("PROJECT*pipes* 1").[5] The Company's PROJECT*pipes* 1 program addressed the Commission's conclusion "that the safety of the public in accelerating replacement of gas pipelines that are leak prone or of such age to be

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3 D.C. Code § 34-808.02 as amended by the CleanEnergy DC Omnibus Amendment Act of 2018, DC Act 22-583 § 103 (effective date March 22, 2019).

4 *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability* ("*Formal Case No. 1130*"), Order No. 17912, ¶ 5, rel. June 12, 2015.

5 *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* ("*Formal Case No. 1093*") and *Formal Case No. 1115, Washington Gas Light Company's Request for Approval of a Revised Accelerated Pipe Replacement Program* ("*Formal Case No. 1115*"), Order No. 17431, rel. March 31, 2014 ("Order No. 17431").

subject to increased risk of leaks and/or failure is of paramount importance,"[6] and "that the District would benefit from a pipeline replacement program that targets the pipe with the highest risk and the highest leak rates."[7]

The Company's PROJECTpipes 2 Application seeks approval of its second five-year APRP. The importance of this proceeding cannot be overstated. As OPC has explained previously, "leaking pipes not only pose a safety risk, they impact (i) customers' rates, as ratepayers must compensate WGL for the cost of lost gas, and (ii) the environment, as leaks emit (among other things) methane, a potent greenhouse gas that both affects the climate and can cause health issues."[8] As OPC has previously explained:

> [H]azardous leaks on gas pipeline systems are generally classified as Grade 1 or Class 1 leaks, those that are so serious that the representative who reports the leak must remain on site until the leak has been repaired. Grade 1 leaks also emit larger amounts of methane. Grade 2 and Grade 3 leaks are less serious and require only repair or reinspection during future time periods.[9]

Further, OPC Witness McGee illustrates that "[t]he number of hazardous leaks on both mains and services on the Company's system is shown in Exhibit OPC (2A)-6. This exhibit shows that the number of hazardous leaks repaired by the Company for each year from 2012 through 2019 is still increasing."[10]

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6 *Formal Case No. 1115*, Order No. 17789, ¶ 63, rel. January 29, 2015 ("Order No. 17789").

7 *Formal Case No. 1093*, Order No. 17132, ¶ 254, rel. May 15, 2013 ("Order No. 17132").

8 *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*"), Office of the People's Counsel for the District of Columbia's Initial Comments Regarding Washington Gas Light Company's PROJECTpipes 2 Application, filed March 22, 2019 ("OPC Initial Comments") at 3.

9 *Formal Case No. 1154*, OPC Initial Comments at 15 (citations omitted).

10 *Formal Case No. 1154*, Direct Testimony of Edward A. McGee at 16, lines 11-14.

While it is imperative that WGL continue to replace its aging and leaking gas distribution infrastructure, it is also critical that the Commission bear in mind all relevant concerns. The imposition of an APRP on WGL's limited customer base will place significant financial pressure on District ratepayers at a time when utilities and consumers are faced with economic pressures as a result of the coronavirus pandemic emergency. This proceeding must also consider the District's aggressive environmental goals. While the Company's PROJECT*pipes* plan forecasts replacing pipe through 2044 under an accelerated timeline, the District's environmental policies require greenhouse gas reductions by 2032 and carbon neutrality by 2050.[11]

The Company's PROJECT*pipes* 2 Application must also be guided by experience gained in PROJECT*pipes* 1, current leakage trends and predictive analysis of future pipe condition. In PIPES 1, the Company experienced significant project delays and cost overruns, and failed to meet certain additional reporting requirements and milestones. The PROJECT*pipes* 2 program should address and avoid the problems experienced in PIPES 1.

With all of these considerations in mind, OPC has conducted a thorough review of the Company's PROJECT*pipes* 2 Application. OPC submitted Initial Comments in this proceeding, supported by the accompanying affidavit of Edward A. McGee, a professional engineer with over 30 years of experience in the gas utility industry. In its Initial Comments, OPC demonstrated that the PROJECT*pipes* 2 Plan as presented is not in the public interest. OPC provided a series of

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[11] Mayor's Order 2013-09, Sustainable DC Transformation Order § VIII. C (mandating the Department of the Environment [now the Department of Energy and the Environment, or DOE] "develop a Comprehensive Energy Plan . . . to achieve a District-wide energy consumption reduction of fifty percent (50%) by 2032 from baseline energy consumption in 2012."); Executive Office of the Mayor, Mayor Bowser Commits to Make Washington, DC Carbon-Neutral and Climate Resilient by 2050, released December 4, 2017, https://mayor.dc.gov/release/mayor-bowser-commits-make-washington-dc-carbon-neutral-and-climate-resilient-2050, last accessed Oct. 22, 2020.

recommendations to ensure that the Application is in the public interest and requested that the Commission order WGL to revise its PROJECT*pipes* 2 Plan accordingly.

OPC has also thoroughly reviewed the Company's revised PROJECT*pipes* 2 proposal, as presented in its Supplemental Direct Testimony in this proceeding.[12] The Application still is not in the public interest. In some respects, such as the specific replacement programs and the Company's proposal to abandon its commitment to replace the top-3 from its OPTIMAIN risk analysis, the Company's PROJECT*pipes* 2 proposal includes new and unwarranted proposals. In several other critical aspects, the Company's Application for PROJECT*pipes* 2 seeks to continue the status quo from PIPES 1. An example is the Company's proposal to continue with the current surcharge mechanism.

OPC urges the Commission against "blind faith" in this regard. In PIPES 1, the Commission stated that it would "assess WGL's performance at the end of [the initial 5-year] period and determine whether [PROJECTpipes] is accomplishing what it promised, to ensure that the work is being completed timely and on budget, and to work out any problems with [PROJECT*pipes*] that have emerged."[13] This proceeding, and the Company's PROJECT*pipes* 2 Application, present the Commission the opportunity to undertake the review and remediation of WGL's APRP as the Commission pledged in Order No. 17431.

Consistent with the Office's and the Commission's statutory mandate to consider environmental and climate change in policy decisions, the issues in this proceeding should be reviewed within this prism. Accordingly, OPC respectfully submits that PROJECT*pipes* 2 should

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12 *Formal Case No. 1154*, Washington Gas Light Company's Supplemental Direct Testimony, filed April 23, 2020.

13 *Formal Case No. 1115,* Order No. 17431, ¶ 66.

not be approved unless it is shorter, more targeted and more cost-effective. The District's COVID emergency has put many more ratepayers in dire financial circumstances, which may make meeting basic expenses challenging for years to come. Any additional surcharge should, therefore, be kept as low as possible by eliminating the proposed Transmission Program and reducing the $110 million budget for Distribution Program 1 (Bare Steel and/or Unprotected Wrapped Steel Services). Moreover, PROJECT*pipes* 2 should not be approved for five years, but should instead be capped at three years to limit the District's overall financial commitment.

This shorter timeframe is important in light of the District's climate change commitments. The Office is committed to the District's goal of being carbon neutral by 2050 and any ratepayer expended funds should advance that important goal. The transition away from fossil fuel must be achieved in a way that is safe and equitable, and given ongoing proceedings to develop details about this transition and tools to achieve it, it is critical to develop a mechanism to reevaluate investments in fossil fuel infrastructure shortly after the conclusion of the currently docketed proceedings before this Commission. In particular, the recently initiated Formal Case No. 1167, *In the Matter of the Implementation of the Climate Business Plan* may help develop a near and mid-term vision for that transition and GD-2019-04-M, *In the Matter of the Implementation of the 2019 Clean Energy DC Omnibus Act Compliance Requirements* should give the Commission a quantified analytical approach to evaluate any proposal to continue the project after the next three-year phase.

II. SUMMARY OF OPC'S POSITION AND RECOMMENDATIONS

As detailed in OPC's *Initial Comments, Direct Testimony* and *Rebuttal Testimony* in this proceeding, the Company's PROJECT*pipes* 2 Application as filed and supplemented is not in the public interest. OPC recommends the following:

1. The Commission should retain the PIPES 1 criteria for program eligibility for APRP and funding.

2. The Commission should reject WGL's proposed revision to add the phrase "including Contingent Main and Affected Services" to proposed Distribution Programs 2, 3 and 4 or, in the alternative, limit the amount of contingent main allowed in PROJECT*pipes* 2 to four (4) percent of the total replacements each year.

3. WGL's proposed Distribution Program 10, Work Compelled by Others, should be excluded from PROJECT*pipes* 2.

4. The Commission should reject the Company's proposal to abandon its commitment to replace the OPTIMAIN top-3 prioritized mains, and instead direct the Company to replace the OPTIMAIN top-3 main segments for the duration of PROJECT*pipes* 2.

5. The Commission should reject the Company's Transmission Programs.

6. The Commission should direct the Company to include in PROJECT*pipes* 2 a program for replacement of small-diameter cast-iron mains.

7. The Commission should adopt the Liberty Audit Report recommendation for a performance-based funding mechanism. Specifically, the Commission should establish a minimum required reduction of two percent of outstanding leaks per year in the Company's leak inventory, starting with the base figure of 149 leaks at year-end 2019. Further, the Commission

should establish procedures to determine the portion of cost recovery the Company will forfeit if it fails to meet the annual targeted reduction in its outstanding leaks.

8. As a condition to approval of the PROJECT*pipes* 2 Plan, WGL should be required to provide a detailed plan that: (1) remedies the current restoration backlog in an expedited way that does not unduly impact the surcharge calculations; (2) ensures that restoration work is performed in a timely, sustainable way in the future; and (3) includes detailed information about the restoration backlog and the work being performed to address the backlog in WGL's Annual Project List and Annual Completed Projects Reconciliation Report submissions. Further, the Commission should allow interested parties to file comments on the proposal, after which the Commission should direct the Company to make any changes needed to correct its current restoration practices.

9. The Commission should clarify that mercury service regulator costs cannot be recovered through the PIPES 2 Program.

10. With respect to the Company's Advance Leak Detection ("ALD") pilot program, the Commission should direct that (a) no costs associated with ALD during mobile unit trips that are not for use in PROJECT*pipes* can be recovered through the PROJECT*pipes* funding mechanism; (b) the Company must file with the Commission its annual report on ALD; and (c) the selection of vendors for the pilot program be qualified based on their prior usage and success with ALD at other utilities or, in the alternative the Company must identify the criteria it has used or will use to select ALD vendors, with past experience at other utilities being one of the criteria.

11. The budget for PROJECT*pipes* 2 should be revised as follows: (a) the proposed budget for Distribution Program 4 (Cast Iron Main) should be increased; (b) the budget of $80 million for Program 10 (Work Compelled by Others) should be redirected to establish a reasonable level of funding for Distribution Program 4 (Cast Iron Main); and (c) the $110 million proposed budget

for Distribution Program 1 (Bare Steel and/or Unprotected Wrapped Steel Services) should be minimized because the contemplated services can be replaced at significantly lower cost in Programs 2, 3, and 4.

12. The Company should be directed to schedule a management audit during the third year of PROJECT*pipes* 2.

13. The term of PROJECTpipes 2 should be reduced to three years.

III. PROCEDURAL BACKGROUND

On December 7, 2018, the Company filed its PROJECT*pipes* 2 Application. On December 14, 2018, the Office filed a Motion for Enlargement.[14] On December 31, 2018, the Company filed a response to OPC's Motion for Enlargement.[15] On January 16, 2019, the Commission issued Order No. 19798, an order granting in part and denying in part OPC's Motion for Enlargement.[16]

On March 19, 2019, the Office filed a Motion for Special Appearance Under Rule 110.3 and Request for Partial Waiver Thereof.[17]

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[14] *Formal Case No. 1154,* Office of the People's Counsel for the District of Columbia Motion for Enlargement, filed December 21, 2018.

[15] *Formal Case No. 1154*, Washington Gas Light Company's Response to the Office of the People's Counsel for the District of Columbia's Motion for Enlargement of Time, filed December 31, 2018.

[16] *Formal Case No. 1154,* Order No. 19798, rel. January 16, 2019.

[17] *Formal Case No. 1115* and *Formal Case No. 1154*, Motion for Special Appearance Under Rule 110.3 and Request for Partial Waiver Thereof., filed March 19, 2019.

On March 22, 2019, the following parties each filed Initial Comments: OPC, the Apartment and Office Building Association of Metropolitan Washington ("AOBA"), Department of Energy and Environment ("DOEE"),[18] and DC Climate Action ("DCCA").[19]

On April 8, 2019, the Commission issued Order No. 19890, granting OPC's Motion for Special Appearance Under Rule 110.3 and Request for Partial Waiver Thereof. [20] On April 8, 2019, OPC and WGL each filed Reply Comments.[21]

On May 3, 2019, the Commission issued Order No. 19919 establishing a procedural schedule in this proceeding and directing that petitions to intervene be filed no later than May 10, 2019.[22] AOBA filed its Notice and Petition to Intervene on May 7, 2019. [23] On May 10, 2019, Environmental Defense Fund ("EDF"), DCCA and District of Columbia Government ("DCG") each filed Petitions to Intervene.[24] On May 15, 2019, the Company filed its Opposition to EDF's Petition to Intervene.[25] EDF filed a Motion for Leave to Respond and Response on May 17,

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[18] *Formal Case No. 1154*, Comments of the Department of Energy and Environment, filed March 22, 2019.

[19] *Formal Case No. 1115 and Formal Case No. 1154,* DC Climate Action's Initial Comments, filed march 22, 2019.

[20] *Formal Case No. 1115, Formal Case No. 1154 and PEPACR-2019-01*, Order No. 19890, rel. April 8, 2019.

[21] *Formal Case No. 1154*, Office of the People's Counsel of the District of Columbia's Reply Comments Regarding Washington Gas Light Company's PROJECT*pipes* 2 Plan Application, filed April 8, 2019 and *Formal Case No. 1154*, Washington Gas Light Company's Reply Comments, filed April 8, 2019.

[22] *Formal Case No. 1154*, Order No. 19919, rel. May 3, 2019.

[23] *Formal Case No. 1154*, Apartment and Office Buildings Association of Metropolitan Washington Notice and Petition to Intervene, filed May 7, 2019.

[24] *Formal Case No. 1154*, Environmental Defense Fund's Petition to Intervene, filed May 19, 2019; DC Climate Action's Notice and Petition to Intervene, filed May 10, 2019; DC Government's Petition to Intervene, filed May 10, 2019.

[25] *Formal Case No. 1154*, Washington Gas Light Company's Opposition to the Environmental Defense Fund's Petition to Intervene, filed May 15, 2019.

2019.[26] On May 21, 2019, OPC filed a Motion Requesting Leave to Respond and Limited Response to Washington Gas Light Company's Opposition to the Environmental Defense Relief Fund's Petition to Intervene.[27] On May 30, 2019, the Commission issued Order No. 19944 granting Petitions to Intervene of AOBA, District Government, EDF and DCCA.[28]

On June 3, 2019, OPC filed an Application for Reconsideration of Order No. 19919, Request for Stay, and Request for Expedited Consideration.[29] On June 6, 2019, the Commission issued Order No. 19953, suspending the procedural schedule in this proceeding and scheduling a Status Conference to be held on June 17, 2019.[30]

On June 21, 2019 WGL filed its Proposed Procedural Schedule and Recommendations.[31] On the same date, a Proposed Expedited Procedural Schedule was submitted by OPC, AOBA, DCG, DCCA, and EDF.[32]

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[26] *Formal Case No. 1154*, Environmental Defense Fund's Motion for Leave to Respond and Limited Response in Formal Case No. 1154 Regarding Washington Gas Light Company's PROJECTpipes 2 application, filed May 17, 2019.

[27] *Formal Case No. 1154*, Motion Requesting Leave to Respond and Limited Response to Washington Gas Light Company's Opposition to the Environmental Defense Relief Fund's Petition to Intervene, filed May 21, 2019.

[28] *Formal Case No. 1154*, Order No. 19944, rel. May 30, 2019.

[29] *Formal Case No. 1154*, Office of the People's Counsel of the District of Columbia's Application for Reconsideration of Order No. 19919, Request for Stay, and Request for Expedited Consideration, filed June 3, 2019.

[30] *Formal Case No. 1154*, Order No. 19953, rel. June 6, 2019.

[31] *Formal Case No. 1154*, Washington Gas Light Company's Proposed Procedural Schedule and Recommendations, filed June 21, 2019.

[32] *Formal Case No. 1154*, OPC/Intervenors Proposed Expedited Procedural Schedule, filed June 24, 2019.

On July 2, 2019, the Commission issued Order No. 19970, tolling the deadline for action on the merits of the Application for Reconsideration of Order No. 19919, Request for Stay and Request for Expedited Consideration.[33]

On July 31, 2019, WGL submitted its Cost Benefit Analysis[34] and its Merger Commitment No. 72 Compliance Filing.[35]

On August 1, 2019, the Commission issued Ordre No. 19985, tolling the deadline for action on the merits of the Application for Reconsideration of Order No. 19919, Request for Stay and Request for Expedited Consideration for an additional 30 days.[36]

On August 15, 2019, the Baltimore Washington Construction and Public Employees Laborer' District Council ("BWLDC") filed a Petition to Intervene Out-of-Time.[37] On August 21, 2019, WGL filed comments in response to Commitment No. 54 and the PROJECT*pipes* Cost Benefit Analysis filed on July 31, 2019.[38]

On September 5, 2019, the Commission issued Order No. 20213, granting the Company's Application for Approval of Revisions to Year 5 Annual Project List of WGL's Accelerated Pipe Replacement Plan, extending the PIPES 1 period by an additional six months, allowing WGL to

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33 *Formal Case No. 1154*, Order No. 19970, rel. July 2, 2019.

34 *Formal Case No. 1154* and *Formal Case No. 1142*, *In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.*, ("*Formal Case No. 1142*"), Washington Gas Light's Cost Benefit Analysis, filed July 31, 2019.

35 *Formal Case No. 1154* and *Formal Case No. 1142*, Washington Gas Light Company – Commitment No. 72 – Compliance Filing, filed July 31, 2019.

36 *Formal Case No. 1154*, Order No. 19985, rel. August 1, 2019.

37 *Formal Case No. 1154*, Baltimore Washington Construction and Public Employees Laborer' District Council Petition to Intervene Out-of-Time, filed August 15, 2019.

38 *Formal Case No. 1142* and *Formal Case No. 1154*, Comments of Washington Gas Light Company – Commitment No. 54, filed August 12, 2019.

continue the PIPES 1 Plan in an amount not to exceed $12.5 million, and directing the parties to hold a settlement conference and file a settlement conference report.[39] Order No. 20213 also denied as moot OPC's Request for Reconsideration of Order No. 19919 and granted BWLDC's Petition to Intervene Out-of-Time.[40]

On September 13, 2019, WGL submitted the PROJECTpipes Cost Benefit Analysis prepared by Jacobs Consultancy.[41] On September 26, 2019, OPC filed a Request for Leave to Reply and Reply to WGL's Comments Addressing the PROJECT*pipes* Cost Benefit Analysis.[42]

On February 14, 2020, WGL filed a Final Settlement Conference Report.[43] Also on February 14, 2020, WGL filed a Motion to Further Extend PROJECT*pipes* 1 Plan and Proposed Procedural Schedule for PROJECT*pipes* 2 Plan.[44]

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39 *Formal Case No. 1115, Formal Case No. 1142*, and *Formal Case No. 1154*, Order No. 20213, rel. September 5, 2019.

40 *Id.*

41 *Formal Case Nos. 1142, 1115 and 1154*, PROJECTpipes – Cost Benefit Analysis, filed September 13, 2019.

42 *Formal Case No. 1115, Formal Case No. 1142* and *Formal Case No. 1154*, Office of the People's Counsel for the District of Columbia's Request to Reply and Reply to WGL's Comments Addressing the PROJECT*pipes* Cost Benefit Analysis, filed September 26, 2019.

43 *Formal Case No. 1115, Formal Case No. 1142* and *Formal Case No. 1154*, Final Settlement Conference Report, filed February 14, 2020.

44 *Formal Case Nos. 1115 and 1154*, Washington Gas Light Company's Motion to Further Extend PROJECT*pipes* 1 Plan and Proposed Procedural Schedule for PROJECT*pipes* 2 Plan, filed February 14, 2020.

On April 23, 2020, WGL submitted Supplemental Direct Testimony.[45] On April 27, 2020, OPC filed a Motion for Clarification or, in the Alternative, Application for Reconsideration of Order No. 20314.[46]

On February 26, 2020, AOBA, DCG and Sierra Club filed a Statement of Issues and proposed Order of Procedure.[47] On June 15, 2020, the following parties filed Direct Testimony and Exhibits: OPC, AOBA, EDF, BWLDC, Sierra Club, DCCA, and DC Government. On July 14, 2020, the following parties filed Rebuttal Testimony and Exhibits: OPC, DCCA, WGL, and Sierra Club.

A status conference was held on July 27, 2020. On August 4, 2020, WGL filed a Joint Stipulation and Request for Admission into the Record. On August 6, 2020, the Commission issued a Notice of Procedural Schedule Change[48]. On August 11, 2020, the Commission issued Notice Cancelling August 13, 2020 Prehearing Conference and suspending the procedural schedule.[49] On August 20, 2020 , the Commission issued Order No. 20615 addressing the Joint List of Material Issues of Fact in Dispute and determining that an evidentiary hearing is not warranted.[50] On September 10, 2020, the Commission issued Order No. 20621 accepting the Joint

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45 *Formal Case Nos. 1154, 1115 and 1142*, WGL's Supplemental Direct Testimony and Accompanying Exhibits of Company Witnesses Wayne A. Jacas, Aaron C. Stuber, Andrew Lawson and Stephen Price, filed April 23, 2020.

46 *Formal Case Nos. 1115, 1142, 1154 and 1162*, Office of the People's Counsel of the District of Columbia's Motion for Clarification or, in the Alternative, Application for Reconsideration of Order No. 20314, filed April 27, 2020.

47 *Formal Case Nos. 1162, 1115, 1142 and 1154*, Statement of Issues and Proposed Order of Procedure, filed February 26, 2020.

48 *Formal Case No. 1154*, Notice of Procedural Schedule Change, rel. August 6, 2020.

49 *Formal Case No. 1154*, Notice Cancelling August 13, 2020 Prehearing Conference.

50 *Formal Case No. 1154*, Order No. 20615, rel. August 20, 2020.

Stipulation and Request for Admission into the Record, granting in part and denying in part OPC's and Intervenors' Stipulation, establishing a procedural schedule, and extending the PIPES 1 Plan and surcharge for an additional 90 days.[51] On October 1, 2020, the Commission issued Order No. 20639 granting the Joint Movants' Non-Unanimous Motion for Enlargement of Briefing Schedule and establishing October 23, 2020 as the due date for briefs.[52]

IV. APPLICABLE LEGAL STANDARD AND BURDEN OF PROOF

As the Applicant in this proceeding, the Company bears the burden of establishing by substantial evidence that its PIPES 2 Application is just and reasonable.1 OPC has submitted record evidence in the form of Initial Comments, as well as an affidavit, Direct and Rebuttal Testimony, and exhibits by OPC Witness McGee, demonstrating that the Company has failed to meet its burden of proof with respect to the PROJECTpipes 2 Application in several respects. In each instance where the Company's Application fails to satisfy this burden, OPC has recommended remedial measures so that the Commission can permit WGL's APRP to continue as needed to ensure high-quality, safe, reliable and affordable service to District ratepayers. This Initial Brief presents the aspects of the Company's Application that cannot be approved as submitted, as well as recommendations for revisions in order to make the Application just, reasonable, and in the public interest.

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[51] *Formal Case Nos. 1115 and 1154*, Order No. 20621, rel. September 10, 2020.

[52] *Formal Case No. 1154*, Order No. 20639, rel. October 1, 2020.

V. OVERVIEW OF WGL'S PROPOSED PROJECT*pipes* 2

A detailed overview of the Company's initial PROJECT*pipes* 2 proposal, as supplemented on April 23, 2020, is provided in OPC Witness McGee's Direct Testimony.[53] In its initial PROJECT*pipes* 2 Application, the Company proposed eight (8) Distribution Programs and five (5) Transmission Programs. By contrast, PIPES 1 included three Distribution Replacement Programs and no Transmission Replacement Programs.[54] The proposed budget in the Company's PIPES 2 Application was $305.3 million.[55]

In its Supplemental Direct Testimony, the Company further increased the programs and budget for PIPES 2. Specifically, the Company proposed two additional Distribution Programs – Program 9 - Advanced Leak Detection (budget $2 million), and Program 10 – Work Compelled by Others (budget $80 million). The budget increased from $305.3 million to $374.0 million, which represents a 177% increase.

The proposed programs and budget are as follows:

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[53] *Formal Case No. 1154*, Exhibit OPC (2A) at 11, line 5 – 13, line 5.

[54] *Id.* at 11, lines 10-15.

[55] *Formal Case No. 1154*, Washington Gas's Application at 2.

Program Number	Program Description		Program Budget ($Mill.)
Distribution Programs:			
1	Bare Steel and/or Unprotected Wrapped Steel Services	$	110.1
2	Bare and/or Unprotected Wrapped Steel Main and Services (including Contingent Main and Affected Services)	$	51.1
3	Vintage Mechanically Coupled Main and Services (including Contingent Main and Affected Services)	$	53.5
4	Cast Iron Main (including Contingent Main and Affected Services)	$	12.6
5	Copper Services	$	16.9
6	Distribution Gauge Lines	$	2.1
7	Regulator Station Enhancements	$	10.0
8	Low-Pressure Service Replacements/ Transfers	$	11.8
9	Advanced Leak Detection	$	2.0
10	Work Compelled by Others	$	80.0
Transmission Programs:			
1	Transmission and High-Pressure Pipe Replacement	$	14.1
2	Remote Control Valves	$	2.4
3	Transmission and High-Pressure Block Valve Replacement	$	1.1
4	Transmission and High-Pressure Valve Riser Replacement	$	0.1
5	Replacement of Components of DOT Transmission and High-Pressure Pipes to Enable the Use of In-line Inspection Tools	$	6.2

In addition to the proposed Programs and budget for PIPES 2, the Company has explained revisions in program management and other aspects of the PIPES program, including in response to the Liberty Management Audit.

VI. ARGUMENT

A. The Commission should retain the PIPES 1 criteria for program eligibility for accelerated replacement and funding.

In the PIPES 1 proceeding, the Commission expressed its view that "the District would benefit from a pipeline replacement program that targets the pipe with the highest risk and the highest leak rates . . ."[56] To that end, the Commission stated the "objective of funding the accelerated replacement of high risk pipe through an accelerated funding mechanism as opposed to through base rates where the prudent costs have already been expended and reviewed."[57] The Commission adopted specific criteria for PIPES 1 projects, as follows:

(a) The project is started on or after June 1, 2014;
(b) Project assets are not included in WGL's rate base in its most recent rate case;
(c) The Project does not increase revenues by directly connecting the infrastructure replacement to new customers; and
(d) The Project is needed to reduce risk and enhance safety by replacing aging, corroded or leaking cast iron mains, bare and/or unprotected steel mains and services and black plastic services in the distribution system.[58]

The Commission made clear that "[p]rojects that do not satisfy all of these criteria must be funded through base rates with the recovery of the project costs established through a traditional rate case proceeding.[59]

In its PROJECTpipes 2 Application, the Company seeks sleight-of-hand revisions to the Commission's criteria for projects as adopted in PIPES 1 that would expand PROJECTpipes beyond its fundamental purpose without showing benefits to District ratepayers enough to warrant

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56 *Formal Case No. 1115*, Order No. 17789, ¶ 63, rel. January 29, 2015 ("Order No. 17789").

57 *Id.*

58 *Formal Case No. 1115*, Order No. 17431, ¶ 68.

59 *Id.*

such significant changes. Specifically, the Company proposes that the Commission abandon the prescribed types of material and projects that qualify for the APRP – those that replace "aging, corroded or leaking cast iron mains, bare and/or unprotected steel mains and services and black plastic services in the distribution system" – and instead adopt a boundless criteria whereby a project would qualify for the APRP and surcharge if they are simply shown "to reduce risk and enhance safety."[60] The Company proposes this unwarranted change so that it can broaden PROJECTpipes from its core distribution system-based programs to now include transmission facilities as well. As discussed in greater detail below in this *Initial Brief*, the Commission should reject the Company's attempt to change the PROJECTpipes criteria beyond the basis upon which the Commission determined that an APRP and surcharge mechanism are in the public interest.

The Company also proposes a program-specific revision to the PROJECTpipes 2 criteria. Specifically, WGL proposes an unreasonable revision to add the phrase "including Contingent Main and Affected Services" to proposed distribution programs 2, 3 and 4.[61] To be clear, there was no such criteria for PIPES 1. As OPC Witness McGee explained, "contingent mains are usually smaller sections of piping materials that are not the same as the material targeted for replacement in a particular replacement program but are part of the continuous piping being replaced."[62] The Company claims that where contingent main materials are encompassed within the bounds of program-eligible materials, those contingent main materials are logically grouped with Program-eligible mains for replacement.[63]

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60 *Formal Case No. 1154*, Washington Gas' Application, Exhibit WG (B) (Stuber) 4:3-18.

61 *Formal Case No. 1154*, Application, Exhibit WG (A) at 13 (Jacas); Exhibit (2A) at 4-5 (Jacas).

62 *Formal Case No. 1154*, Exhibit OPC (2A) at 53, lines 14-16.

63 *Formal Case No. 1154,* Application, Exhibit WG (A) at 13 (Jacas).

OPC Witness McGee explained that while he does not take issue with inclusion of the phrase "affected services," the Company's proposal to add contingent mains to proposed distribution programs 2, 3 and 4 would increase the amount of non-qualifying pipe replacements that would be subject to accelerated cost recovery. As such, inclusion of contingent mains as posed by the Company would allow a limitless amount of good piping to be replaced, despite the fact that by the Company's own explanation, such piping does not meet PIPES program criteria and, therefore, should not be funded by ratepayers as part of the PROJECTpipes 2 surcharge mechanism.

If the Commission does not reject the addition of contingent mains for PROJECTpipes 2 distribution programs 2, 3 and 4, then the Commission should at least limit the opportunity for potential abuse in using this category to include in PROJECTpipes 2 replacement of good piping that would not otherwise qualify for the program. Since the Company estimated contingent main to be approximately 4% of the total miles of main to be replaced in PROJECT*pipes*, OPC recommends that if the Commission does not reject the addition outright, then the Commission should limit the amount of contingent main allowed in PROJECTpipes 2 to 4% of the total replacements each year.[64]

B. The Company has not demonstrated that its PROJECT*pipes* 2 Application is in the public interest.

1. Proposed distribution Program 10, Work Compelled by Others, should be excluded from PROJECT*pipes* 2.

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[64] *See Formal Case No.* 1154, Exhibit OPC (2A) at 54, lines 16-20. At the very least, if the Commission permits the Company its unfettered ability to include non-program eligible contingent mains in PROJECTpipes 2 distribution programs 2, 3 and 4, then the Commission should adopt the requirement that as part of its program reporting, the Company report on the actual miles of main retired, by material type. OPC notes that the Company is amenable to such a reporting requirement. *See Formal Case No. 1154,* Exhibit WG (3A) at :10, lines 11-14.

In its Supplemental Direct Testimony, the Company proposed a new distribution Program 10: Work Compelled by Others. WGL Witness Jacas testified that the DC Power Line Undergrounding ("DC PLUG") program and the Potomac Electric Power Company's Capital Grid Project ("PEPCO GRID") related work involves PROJECT*pipes* eligible materials approved by the Commission.[65] The Company proposes to include in Program 10 (1) DC Department of Transportation ("DDOT") Advance of Pavement ("AOP"), DC PLUG and PEPCO GRID projects that the Company represents "intersect the Company's facilities."[66] The proposed Program 10 budget is $80 million, which makes Program 10 the second most expensive of all of the Company's proposed distribution and/or transmission PROJECT*pipes* 2 programs.[67]

The Commission should direct the Company to exclude the new Program 10 from PROJECT*pipes* 2 in its entirety. As explained by OPC witness McGee, these projects are not appropriate for inclusion in the APRP and surcharge mechanism. First, although the Company maintains that Program 10 will only include PIPES-eligible material, the Company currently performs replacements and/or remediations involved work compelled by others under its normal replacement program.[68] Because the Company uses separate crews for its normal replacements and its PIPES work, inclusion of the work compelled by others' projects in PROJECT*pipes* 2 means the crews that could otherwise be available for necessary PROJECT*pipes* 2 projects will be diverted to Program 10 projects. Moreover, since Program 10 replacements will be dictated solely by material type and DDOT and Pepco's respective construction schedules, Program 10

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[65] *Formal Case No. 1154*, Exhibit WG (2A) (Jacas) at 7, lines 1-3.

[66] *Id.* at 7, lines 5-9.

[67] *Formal Case No. 1154*, Exhibit OPC (2A)-3 (McGee).

[68] *Formal Case No. 1154*, Exhibit No. OPC (2A) (McGee) at 75, lines 7-9.

replacements will not be based on the risk/prioritization consideration that is used for all other PIPES projects.[69] As OPC wWitness McGee testified, Program 10 projects will take precedence over PROJECT*pipes* 2 projects even when PROJECT*pipes* 2 projects are in more urgent need of replacement, as determined based on the Company's risk-prioritization protocols.[70] In order to ensure the timely replacement of individual PROJECT*pipes* projects with the highest risk rankings and/or prioritizations, the Company should be required to continue to undertake projects for work compelled by others under its normal replacement program, as it did before and during PIPES 1. The underperformance experience in PIPES 1 should be improved for PROJECT*pipes* 2 and one way to achieve such improvement is for PROJECT*pipes* 2 to target projects based not only on eligibility of materials, but also on the basis of risk/prioritization protocols – not the construction schedules of third parties.[71]

Second, the Commission should reject the Company's reliance on the Commission's statement in PIPES 1 affording general flexibility with respect to "normal" replacement and AOP projects. In its Order No. 17602, the Commission stated, in part, as follows:

> WGL is, therefore, correct when it argues that if a high risk pipe is identified for replacement (based on risk assessment criteria), it can be accelerated for faster replacement and will no longer be considered normal replacement. We took this position because we want high risk pipes to be replaced proactively regardless of whether they were originally slated for normal replacement or not and we have given WGL the flexibility to move mains and services that would otherwise be "normal replacement" or "AOP-related projects" into the APRP bucket if they are pipes that meet the APRP criteria. We also expect WGL to keep low risk normal replacement projects and AOP projects that do not satisfy the APRP criteria in their

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69 *Id.*

70 *Id.* at 75, lines 16-18.

71 *See Formal Case No. 1154*, Exhibit No. OPC (2A) (McGee) at 76, line 17 – 22, line 2.

normal replacement cycle and to be paid for through base rate under the normal process.[72]

WGL Witness Jacas testifies that since the Work Compelled by Others projects meet the criteria for inclusion in PROJECT*pipes*, and in light of the above-quoted determination in Order No. 17602, "Program 10 meets the requirements set forth by the Commission for inclusion in the PROJECT*pipes* Plan."[73] The Commission should not permit its general determination in Order No. 17602 to be used as *carte blanche* for the Company to create an entire program around Work Compelled by Others. The Commission made the determination in Order No. 17602 during PIPES 1 at a time when there was no separate program dedicated entirely to these sorts of replacements dictated by work being performed by third parties. Order No. 17602 was also issued before the experience we have now gained with PIPES 1, where (1) leaks on the Company's system have continued to increase; (2) actual replacements of mains and services was only 45% and 47%, respectively, of initial replacement expectations, (3) both the Company and the independent management audit performed by Liberty Consulting[74] have identified serious mismanagement problems during the course of PIPES 1; and (4) Washington Gas has deferred 42 of its PIPES 1 projects.[75] These changed circumstances and actual experience in PIPES 1 should inform the Commission's application of the statements made in Order No. 17602. As discussed here and in the testimony of OPC Witness McGee, the Company's proposed new Program 10 is not in the public interest and should be rejected.

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[72] *Formal Case No. 1115*, Order No. 17602 ¶ 50, rel. Aug. 21, 2014 ("Order No. 17602") (citations omitted).

[73] *Formal Case No. 1154*, Exhibit WG (2A) (Jacas) at 9, lines 21-23.

[74] *Formal Case No. 1115*, The Liberty Consulting Group's Final Report Management Audit of PROJECT*pipes*, filed April 19, 2019 ("Liberty Audit Report").

[75] *Formal Case No. 1154*, Exhibit No. OPC (2A) (McGee) at 76, lines 9-20.

Finally, OPC reiterates that the projects contemplated for the new Program 10 are not "proactive" replacements. Instead, as OPC Witness McGee testified, the replacement or support of mains and service, and any other work contemplated for the new "Work Compelled by Others" program, is work that the Company has to perform for safety reasons and, therefore, would undertake regardless whether there is an APRP.[76] PROJECT*pipes* 2 should be reserved for projects that are over and above such normal replacements.

2. The Company should not be permitted to abandon its voluntary commitment to replace the top-3 OPTIMAIN projects.

For the PIPES 1 program, WGL selected and prioritized projects based on the results of its mandatory Distribution Integrity Management Plan ("DIMP") as well as the Company's OPTIMAIN software. OPTIMAIN has been relied upon by the Company and other operating companies as a risk-assessment model. As OPC Witness Mr. McGee testified, OPTIMAIN is "an industry-leading model . . . to facilitate risk-assessment analysis for proposed Program 2 (unprotected steel mains) and proposed Program 4 (cast-iron mains), including at-risk services on each main segment."[77]

Previously, the Company volunteered that it "expects to include and commits to replacing the top three Optimain projects *each year*."[78] The Commission relied on this representation by the Company when the Commission granted conditional approval of the Company's revised APRP, as follows:

> WGL also committed in its Request that the Revised Plan would include on an annual basis the three top projects on Optimain. With these representations from

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[76] *Formal Case No. 1154*, Exhibit No. OPC (2A) (McGee) at 77, lines 3-12.

[77] *Formal Case No. 1154,* Exhibit No. OPC (2A) (McGee) at 42, lines 15-18.

[78] *Formal Case No. 1093*, Washington Gas's Request for Approval of a Revised Accelerated Pipeline Replacement Plan 5, filed August 5, 2013 (emphasis added).

> WGL, and with the conditions that we address later in this Order, the Commission has decided to grant conditional approval for the first five-year phase of WGL's Revised Plan so the necessary task of replacing the District's aging gas infrastructure in an accelerated manner can move forward.[79]

The Company did not live up to its commitment in PIPES 1,[80] and now proposes in PROJECT*pipes* 2 to abandon its commitment to replace the top-3 main segments identified by OPTIMAIN.[81] Instead, the Company proposes to only include the top three OPTIMAIN prioritized mains when they meet the metric of risk reduced per dollar spent better than the other projects, and will rely solely on pipe selections from OPTIMAIN when specific projects also meet a risk-reduction metric of risk reduced per dollar spent.[82]

The Commission should reject the Company's proposal to abandon its commitment to replace the OPTIMAIN top three prioritized mains. As OPC Witness McGee testified, requiring the Company to replace the top-3 OPTIMAIN selected main segments each year remains an effective replacement requirement for PROJECT*pipes* 2 for several reasons. The Company proposes to dedicate only a small portion of its PROJECT*pipes* 2 distribution program budget on Program 4 (Cast Iron Main), despite the fact that the majority (84%) of the remaining pipe to be replaced is cast iron.[83] Additionally, the vast majority (96%) of the "most-risky" pipe segments on the Company's OPTIMAIN top-fifty list are cast iron.[84] Cast-iron mains are generally the

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79 *Formal Case No. 1115*, Order No. 17431 at ¶ 65.

80 *See Formal Case No. 1154*, Exhibit No. OPC (2A) (McGee) at 48, lines 7-12.

81 *Formal Case No. 1154*, Exhibit WG (A) (Jacas) at 20, lines 5-13.

82 *Formal Case No. 1154*, OPC Initial Comments at 16, citing Exhibit OPC (A) (McGee) at ¶ 36.

83 *Formal Case No. 1154*, Exhibit No. OPC (2A) (McGee) at 50, line 18 – 51, line 1; Exhibit OPC (2A)-27.

84 *Id.* at 51, lines 1-3; Exhibit OPC (2A)-28.

oldest piping on the system and two of the segments on the Company's OPTIMAIN "most-risky" list represent cast-iron piping more than 130 years old.[85] Unfortunately, WGL's District utility is last in a comparison of the percentage removal of cast-iron piping over the last decade.[86]

Further, the cast-iron main replacements are relatively short replacements, all of which are slated for replacement during PROJECT*pipes*. Therefore, they will have to be replaced during the project regardless their relative replacement costs. As such, the Commission should reject WGL's argument that the OPTIMAIN top-3 segments are sometimes more expensive to replace.

In this regard, the Liberty Audit Report observed that "replacing large-diameter mains proves more costly, often leaving little of a replacement budget for the smaller mains that can be many time more likely to cracking."[87] The Liberty Audit Report recommended that the Company "prepare for stakeholder dialogue a proposal to eliminate the 'Optimain top-3' component of replacements, employing a prioritization method that emphasizes small-diameter pipes subject to much higher failure rates."[88] OPC notes that aside from the PROJECT*pipes* 2 Application, the Company has not prepared a proposal for any "stakeholder dialogue" around its plan to abandon the OPTIMAIN top-3 component of replacements. In any event, for the reasons discussed here and in the testimony of OPC Witness Mr. McGee, the Company should continue its commitment to replace the OPTIMAIN top-3. Mr. McGee also supports a program focused on replacement of small-diameter pipes, as discussed in Section 4, *infra*.

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85 *Id.* at 51 lines 5-8; Exhibit (2A)-29.

86 *Id.*at 51, lines 3-5; Exhibit (2A)-29.

87 *Formal Case No. 1115*, Liberty Audit Report at 23.

88 *Id.*

The Company's proposal to abandon its commitment to replace the OPTIMAIN top-3 projects currently makes no sense. For all of these reasons, the Commission should direct the Company to continue in PROJECT*pipes* 2 its commitment to replace the top-3 main segments identified by OPTIMAIN.

3. Transmission projects do not meet the criteria for inclusion in PIPES 2 and, in any event, most of the proposed Transmission Programs have not been shown to provide safety benefits to District ratepayers.

For the first time, the Company proposes to include in PROJECT*pipes* five transmission projects with an estimated cost to District ratepayers of $23.9 million.[89] The Company attempts to justify injecting transmission replacement projects into PROJECT*pipes* on the basis that the proposed transmission projects "reduce risk and enhance the safety and reliability of the Company's transmission system which serves District of Columbia customers."[90] Its proposal should be rejected as an unreasonable expansion and change to the fundamental purpose of the APRP.

As discussed in Section A above, the Commission adopted specific criteria for PIPES 1 projects which require, among other things, that "the Project is needed to reduce risk and enhance safety <u>by replacing aging corroded and leaking cast iron mains, bare and/or unprotected steel mains and services, and black plastic services in the distribution system</u>."[91] The Company proposes to gut this fundamental aspect of the PIPES program, by replacing this criterion to simply state as

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[89] *Formal Case No. 1154*, Exhibit WG (B) (Stuber) at 3, lines 9-12; *Formal Case No.* 1154, Washington Gas Light Company's Response to OPC Data Request No. 7-16, included as Exhibit OPC (2A)-21.

[90] *Formal Case No. 1154*, Exhibit WG (B) (Stuber) at 3, lines 9-12.

[91] *Formal Case No. 1115*, Order No. 17431, ¶ 68 (emphasis added).

follows: "the Project is needed to reduce risk and enhance safety."[92] Company Witness Mr. Stuber attempts to characterize this change as reflecting "minor distinctions" between transmission plant and distribution plant.[93] However, that is far from the case. Such a broad expansion of the criteria for PROJECT*pipes* would mean that most infrastructure replacement projects and all regular pipe replacement activities qualify, since they arguably reduce risk and enhance safety. Yet surely not all such replacement activities and projects should be subject to accelerated replacement and cost recovery. The Company's proposal is contrary to the purpose of PROJECT*pipes* to supplement, not supplant, normal replacement activities.

Even if the Commission were inclined to expand the scope of PROJECT*pipes* to include transmission projects, the Company has not demonstrated that the specific programs in its PROJECT*pipes* 2 Application benefit District ratepayers. To the contrary, as OPC Witness Mr. McGee demonstrated, most of the proposed Transmission Programs are not located in the District. Indeed, only two of the Company's five transmission projects would be sited *partially* in the District. Moreover, **91.6%** of the Company's total proposed transmission budget of $23.9 million is for projects located entirely outside of the District.[94] As Mr. McGee concludes, "given that the primary justification for accelerated pipeline replacement programs such as PROJECT*pipes* is the potential danger to the surrounding public, the transmission projects located wholly outside of the District do not pose such a potential danger to District ratepayers and, therefore, cannot be justified

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92 *Formal Case No. 1115*, Exhibit WG (B) (Stuber) at 4, line 3.

93 *Id.*

94 *Formal Case No. 1115*, Exhibit OPC (2A) at 46, lines 6-13.

for inclusion in the PIPES 2 Plan on that basis."[95] General reliability benefits to be gained from these transmission projects should be recovered through the Company's base rates.

4. PIPES 2 should include a program that replaces small-diameter cast-iron mains.

In a cost-benefit analysis, the Company's consultant, Jacobs Consultancy, recognized the need for a policy of replacing small-diameter cast-iron main.[96] As discussed above, the Liberty Audit Report also supported a program to emphasize small-diameter pipes. According to the Liberty Audit Report, "small-diameter mains prove more likely to crack because of their thinner walls means that it takes less wall loss over time to weaken them to the point of failure."[97]

In order to address the need to replace the OPTIMAIN top-3 "most-risky" segments and also address the threat to safety and reliability posed by small-diameter cast-iron mains, the Commission should direct the Company to implement a Program to replace small-diameter, cast-iron mains. As OPC Witness Mr. McGee explains, the program would sequentially replace cast-iron mains having a diameter less than or equal to two-inch diameter; followed by up to four-inch diameter cast-iron mains, then six-inch cast iron mains, and perhaps proceed with larger small-diameter mains as necessary.[98]

5. The Commission should adopt the Liberty Audit Report recommendation for a performance-based funding mechanism.

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95 *Id.* at 46, lines 13-17.

96 *Formal Case No. 1154* and *Formal Case No. 1142*, Washington Gas Light Company – Commitment No. 54 – Cost Benefit Analysis 5, filed July 30, 2019 ("Cost Benefit Analysis").

97 *Formal Case No. 1115*, Liberty Audit Report at 23.

98 *Formal Case No. 1115*, Exhibit OPC (2A) at 53:1-7.

For PIPES 1, the Company is authorized to recover its allowable, prudently-incurred construction costs through an APRP Surcharge. The current APRP Surcharge resulted from a Settlement Agreement in Formal Case No. 1115.[99] The Commission approved the Settlement Agreement, including the APRP Surcharge, based on its finding that the Settlement met the objective of "funding the accelerated replacement of high risk pipe through an accelerated funding mechanism as opposed to funding through base rates where the prudent costs have already been expended and reviewed."[100]

OPC's submissions in this proceeding have demonstrated that the Company's PIPES 1 performance has failed in several respects, including failure to meet replacement targets and problems with project delays, capital expenditure forecasting, and overspending.[101] For example, OPC Witness McGee included a comparison of current target versus actual miles replaced or remedied which shows the Company failed to meet target replacements or remediations each year for the first four years of PIPES 1.[102] Mr. McGee also discussed the Company's problems with cost overruns during PIPES 1.[103] Based on the issues discussed by Mr. McGee as well as several "cost drivers" identified by Company Witness Mr. Jacas, OPC concluded that "the level of project delays, cost overruns, and overall deficiencies in WGL's replacement of pipes under PIPES 1 is

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99 *Formal Case No. 1115*, Joint Motion for Approval of Unanimous Agreement of Stipulation and Full Settlement and attached Unanimous Agreement of Stipulation and Full Settlement, filed Dec. 10, 2014 ("Settlement Agreement"). The Settlement Agreement was approved by order issued January 29, 2015. *Formal Case No. 1115*, Order No. 17789 ¶ 1, rel. January 29, 2015 ("Order No. 17789").

100 *Formal Case No. 1115*, Order No. 17789 ¶ 63.

101 *See Formal Case No. 1115*, OPC Initial Comments at 21-26.

102 *Formal Case No. 1115*, OPC Initial Comments, Exhibit OPC (A) ¶ 20 (McGee).

103 *Id.*

cause for serious concern that the Company will not be able to manage the timelines, cost and scope of its PROJECT*pipes* 2 plan."[104]

The Liberty Audit Report made a similar finding and recommended a performance-incentive mechanism, as follows:

> Project expenditures have run at anticipated annual rates, but high-risk pipe removal has proceeded much slower. Many projects remain in progress as project years come and go. **We believe it has therefore become appropriate to consider the establishment of a performance condition to qualification of expenditures for accelerated recovery.** We understand that longer projects proceed in stages, with new pipe being gassed in and customers re-connected with new services in groupings that cross sometimes longer project durations. We considered a method for tying expenditure recovery to customers gassed in, but have concern that such an approach could incent sub-optimal work planning and performance. **We therefore consider a holdback of a percentage of costs incurred, pending project completion.**[105]

Thus, the Liberty Audit Report is consistent with OPC's concerns that action must be taken in PROJECT*pipes* 2 to address the Company's failures in PIPES 1. The Liberty Audit Report recommendation for a performance-based rate incentive for PROJECT*pipes* 2 is also consistent with industry trends. As OPC Witness Mr. McGee testified, existing state mechanisms include performance-incentive requirements for accelerated infrastructure replacement cost recovery mechanisms.[106]

In consideration of Company's deficiencies in PIPES 1, and consistent with the recommendations in the Liberty Audit Report, OPC Witness McGee recommends that for PROJECT*pipes* 2, the Commission establish a minimum required reduction of two percent of

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104 *Formal Case No. 1115*, OPC Initial Comments at 23.

105 *Formal Case No. 1115*, Liberty Audit Report at 40 (emphasis added).

106 *Formal Case No. 1115*, Exhibit OPC (2A) at 62, line 14 – 63, line 2.

outstanding leaks per year in the Company's leak inventory, starting with the base figure of 149 leaks at year-end 2019.[107] In the event the Company fails to meet the annual targeted reduction in its outstanding leaks, then there should be a rebuttable presumption that the Company forfeits a portion of its cost recovery under the APRP Surcharge mechanism, in an amount to be determined by the Commission. As part of its annual reporting requirement, the Company should be required to file with the Commission and make available to all parties in this proceeding, a comparison of the targeted versus actual reductions in outstanding leaks. If the Company falls short of the 2 percent target, then the Commission should provide the Company and parties an opportunity to suggest the appropriate portion of cost recovery to be forfeited by the Company.

The Company has predictably rejected any performance-based rate mechanism for the APRP Surcharge Mechanism in PROJECT*pipes* 2. Instead, the Company points to Commitment 72 in the Settlement Agreement from *Formal Case No. 1142.*[108] Commitment No. 72 provides, in relevant part, as follows:

> Washington Gas will calculate, on annual basis, the average costs from the prior two (2) years of replacing/remediating the necessary infrastructure to reduce leaks within its PROJECTpipes program . . . . Washington Gas will not be allowed to recover any replacement/remediation expenditures for completed program work incurred post-Merger close (Fiscal Year 2019 and beyond) in the surcharge tracker mechanism that are above 120 percent of the rolling two year annual average program cost (calculated from program years 2017 and 2018) of the per unit and per program material replacement/remediation cost, hereafter referred to as 'excess costs'; provided, for cast iron replacement/remediation costs, 'excess costs' shall be defined as costs above 120% of the Class 3 estimates for such projects until such time as Washington Gas has sufficient data to establish average costs of cast iron replacements/remediation by pipe diameter.[109]

[107] *Id.* at 65, lines 8-10.

[108] *Formal Case No. 1142*, Consent Motion to Reopen the Record in Formal Case No. 1142 to Allow for Consideration of Unanimous Full Settlement Agreement and Stipulation, and to Waiver Hearing on the Proposed Settlement, filed May 8, 2018 ("Settlement Agreement").

[109] *Formal Case No. 1142*, Order No. 19396, Appendix A 26, rel. June 29, 2018 ("Order No. 19396").

Merger Commitment No. 72 further provides that "excess costs" during PROJECT*pipes* "will be reviewed by the Commission and stakeholders in a prudence review in Washington Gas's next base rate case to determine if the costs were prudently incurred and are appropriate for recovery through base rates."[110] As OPC Witness McGee explained, Merger Commitment No. 72 is a cost-containment measure, it is not a performance-incentive mechanism. Based on the plain language of Merger Commitment No. 72, the Company is entitled to recover 100% of its costs through surcharge recovery, a base rate case, or both.[111] A performance-incentive mechanism, on the other hand, "seeks to induce a certain performance level by putting full cost recovery at risk when performance metrics are not met . . ."[112] Merger Commitment No. 72 simply does not provide the performance incentive recommended by the Liberty Audit Report, and necessary in light of the Company's performance during PIPES 1.

6. WGL should be required to provide a detailed plan to address restoration backlogs.

OPC Witness McGee discussed the backlog of restoration projects that exists from the first five years of PROJECT*pipes* and the need for this restoration work to be completed concurrent with PROJECT*pipes* 2 construction work.[113] In order to address this issue, OPC recommends that as a condition to approval of the PROJECT*pipes* 2 Plan, WGL should be required to provide a detailed plan that: (1) remedies the current restoration backlog in an expedited way that does not unduly impact the surcharge calculations; (2) ensures that restoration work is performed in a

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110 *Id*, Appendix A 26-7.

111 *Formal Case No. 1154*, Exhibit OPC (2A) at 64, lines 12-18.

112 *Id.* at 64, lines 18-20.

113 *Id.* at 65, line 15 – 68, line 20.

timely, sustainable way in the future; and (3) includes detailed information about the restoration backlog and the work being performed to address the backlog in WGL's Annual Project List and Annual Completed Projects Reconciliation Report submissions.[114] Further, OPC recommended that the Commission should allow interested parties to file comments on the proposal, after which the Commission should direct the Company to make any changes needed to correct its current restoration practices.[115]

The Company did not offer any substantive basis for rejecting OPC's request. Its Witness Mr. Jacas broadly asserted that "[w]hile other policy goals may be considered by the Commission in the context of this proceeding, such as D.C. climate goals, a reduction in leak backlogs, and Optimain Top 3 requirements, safety must be paramount and the primary driver behind the Commission's decisions."[116] OPC acknowledges the paramount need to replace the Company's aging and leaking gas distribution infrastructure. However, doing so is not mutually exclusive with policies that will avoid undue burden on District residents. Moreover, Company Witness Jacas indicated agreement with OPC Witness McGee's testimony regarding the need to complete restoration work, and stated that the Company "is amenable to discussing how to offer more information about the status of restoration and paving work as appropriate with the parties through a technical conference or other means."[117] OPC's detailed proposal for a condition to approval of the Company's PROJECT*pipes* 2 Plan to address restoration backlog, is a reasonable and appropriate means to resolve this issue.

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114 *Formal Case No. 1154,* Exhibit OPC (2A) at 68, lines 14-20.

115 *Formal Case No. 1154*, OPC Initial Comments at 35.

116 *Formal Case No. 1154*, Exhibit WG (2A) (Jacas) at 4, lines 16-21.

117 *Id.* at 13, line 23 – 24, line 3.

7. The Commission should clarify that mercury service regulator costs cannot be recovered through the PIPES 2 Program.

In its Mercury Regulator Replacement Program ("MRRP") Implementation Plan, filed in *Formal Case No. 1157,* the Company estimated that there are approximately 2,800 mercury service regulators that are located at sites where the service will be replaced.[118] The Company indicated that it plans to replace those 2,800 mercury service regulators as part of PROJECT*pipes* activities.[119]

In Order No. 20313, the Commission directed the Company to file Supplemental Direct Testimony in this *Formal Case No. 1154* to address, among other things, "the interdependency of the mercury regulatror replacement program (in *Formal Case No. 1157*) and the PIPES 2 Plan.[120] In response, WGL Witness Price provided testimony regarding the interdependence of the MRRP and PROJECT*pipes* 2. In light of this testimony, OPC Witness McGee noted that it is not clear whether the Company proposed to recover the costs it incurs replacing the mercury service regulators through the cost recovery mechanism adopted in this PROJECT*pipes* 2 proceeding.[121] Mr. McGee further explained why such costs should not be recovered thorugh the PROJECT*pipes* 2 program.[122]

In Rebuttal Testimony, WGL Witness Price unequivocally states that "the Company is not proposing to include the cost of MRRP in the PIPES 2 surcharge. Testimony setting forth the

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[118] *Formal Case No. 1157*, *In the Matter of Investigation into Washington Gas Light Company's Compliance with Recommendations of the National Transportation Safety Board* ("*Formal Case No. 1157"*), Washington Gas Light Company's Implementation Plan, filed August 30, 2019, Exhibit WG (D) (Price) at 7, line 25 – 8, line 2.

[119] *Formal Case No. 1154*, Exhibit WG (D) (Price) at 8, lines 5-7.

[120] *Formal Case No. 1115*, Order No. 20313, ¶ 25, rel. March 26, 2020 ("Order No. 20313").

[121] *Formal Case No. 1154*, Exhibit WG (2A) (McGee) at 71, line 11 – 73, line 6.

[122] *Id.*

intersection between the two programs is intended only to state the co-existence of the two programs, both of which will result in the replacement of mercury regulators."[123] In order to clarify this matter, OPC requests that the Commission direct that mercury service regulator costs are not to be recovered through the PROJECT*pipes* surcharge mechanism.

8. The Company's use of ALD should be limited in this proceeding, and further clarified.

As a general matter, OPC believes that ALD should be used in conjunction with, rather than in lieu of, WGL's current leak-detection techniques. OPC Witness McGee's Rebuttal Testimony explains the problems with the proposals by some parties in this proceeding to base pipe replacements solely on ALD technology. OPC reiterates its support of ALD as an additional tool to be used in conjunction with current leak detection techniques.[124]

In Order No. 20313, the Commission indicated its expectation that the Company's Supplemental Testimony would address reduction in greenhouse gas emissions and alternative ALD.[125] The Company's Supplemental Direct Testimony described its proposal to implement ALD in PROJECT*pipes* 2, including recovery of the ALD cost. OPC Witness McGee identified two concerns with the Company's ALD proposal.[126] First, because the mobile units that will be equipped with Global Positioning Systems ("GPS") will provide the Company with data that is not strictly for use in the PROJECT*pipes* programs, any leak detection costs associated with

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123 *Formal Case No. 1154*, Exhibit WG (D) (Price) at 8, lines 7-13.

124 *Formal Case No. 1154*, Exhibit OPC (3A) (McGee) at 7, line 10 – 11, line 3.

125 *Formal Case No. 1115*, Order No. 20313 n. 75.

126 *Formal Case No. 1154*, Exhibit OPC (2A) (McGee) at 78, line 9 – 80, line 16.

activities during mobile unit trips that are not for use in PROJECT*pipes* programs should not be recovered through the PROJECT*pipes* funding mechanism.[127]

In response to Mr. McGee, Company Witness Price testified that "Washington Gas is not proposing an expansion of the pilot beyond its use for prioritization of pipe replacement, and therefore is not proposing to recover costs associated with the use of ALD technology outside of the pilot program through the PIPES surcharge."[128] In order to clarify the cost recovery associated with ALD through the PROJECT*pipes* surcharge, OPC requests that the Commission direct that no such costs can be recovered through the PROJECT*pipes* surcharge. Additionally, in order to allow parties and the Commission to consider the costs and other aspects of the ALD pilot program, OPC requests that the Commission direct WGL to file with the Commission its annual report on ALD.[129]

Second, OPC Witness McGee raised a concern over risks with the Company's ALD pilot program. In order to minimize risks, Mr. McGee recommended that the selection of vendors for the pilot program be qualified based on their prior usage and success with ALD at other utilities.[130] Alternatively, OPC Witness McGee recommends that the Company be required to identify the criteria it has used or will use to select ALD vendors, with past experience at other utilities being one of the criteria.[131] OPC requests that the Commission include this requirement for the PROJECT*pipes* 2 program.

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[127] *Id.* at page 78, lines 12-19.

[128] *Formal Case No. 1154*, Exhibit WG (2D) (Price) at 3, line 23 – 4, line 1.

[129] *Formal Case No. 1154*, Exhibit OPC (2A) at 80, lines 3-9.

[130] *Id.* at 79, lines 9-11.

[131] *Id.* at 79, lines 14-16.

9. The budgets for PROJECTpipes 2 programs should be revised.

Based on OPC Witness McGee's analysis of the PROJECT*pipes* 2 programs as proposed by the Company, the budget for specific programs should be modified. First, as discussed above with respect to retention of the Optimain top-3 commitment, cast-iron mains constitute the overwhelming majority of piping to be replaced by WGL and the vast majority of the "most risky" pipe segments. Therefore, the proposed budget of only $12.6 million for proposed Distribution Program 4 (Cast Iron Main (including Contingent Main and Affected Services)), which is only 3.6% of the total proposed distribution budget, is unreasonably small.[132]

Second, as discussed above, the proposed Program 10 (Work Compelled by Others) should be rejected in its entirety. In such an event, the $80 million proposed budget for Program 10 should be redirected to establish a reasonable level of funding for Distribution Program 4 (Cast Iron Main (including Contingent Main and Affected Services)).[133]

Third, the $110 million proposed budget for Distribution Program 1 (Bare Steel and/or Unprotected Wrapped Steel Services) should be minimized because the contemplated services can be replaced at significantly lower cost in Programs 2, 3, and 4.[134]

10. The Company should be directed to schedule a management audit during the third year of PROJECTpipes 2, which should be its final year.

OPC Witness McGee testifies that given the Company's sub-par performance in PIPES 1, and in consideration of the continuing critical need to replace aging and leaky pipes in the District, another management audit should be scheduled in the third year of PROJECT*pipes* 2. He further

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132 *Formal Case No. 1154*, Exhibit OPC (2A) at 80, lines 12-18.

133 *Id.* at 81, lines 4-7.

134 *Id.* at 81, lines 1-3.

testifies that the third year should be the final year for the Company's PROJECT*pipes* 2 program, as opposed to a five-year term. This shorter term would allow an audit at the end of the program. It would also permit the Commission an opportunity to review progress with PROJECT*pipes* 2 and implement future improvements before too many years continue under a failing program.

C. The Company has not demonstrated implementation of certain Liberty Audit Report Recommendations

The Liberty Audit Report period for PROJECTpipes covered Year 1 (June 1, 2014 – September 30, 2015) through Part of Year 4 (June 20, 2018). OPC Witness McGee reviewed the Report and described the "substantial evidence of major problems in multiple areas of the PROJECTpipes Program"[135] as documented in the Audit Report. In its Audit Report Comments, OPC requested that the Commission adopt several recommendations based on the Liberty Audit Report.[136] In his Direct Testimony, OPC Witness McGee identified aspects of the Liberty Audit Report recommendations that have not been followed by the Company. He also provided a list of 14 Liberty Audit Report recommendations that the Company either has not implemented, has failed to provide sufficient detail to demonstrate implementation or an intention to do so, or has no readily apparent intention of implementing.[137]

In his Rebuttal Testimony, Company Witness Jacas responds to each of the 14 recommendations from the Liberty Audit Report that were raised by OPC Witness McGee.[138] OPC

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135 *Formal Case No. 1154*, Exhibit OPC (2A) (McGee) at 17, line 9 – 19, line 19.

136 *Formal Case No. 1115*, Initial Comments of the Office of the People's Counsel for the District of Columbia Regarding the Liberty Consulting Group's Management Audit Report 4-6, filed August 8, 2019; *see also Formal Case No. 1154,* Exhibit OPC (2A) (McGee) at 20, line 14 – 22, line 5.

137 *Id.* at 25, line 10 – 40, line 10.

138 *Formal Case No. 1154,* Exhibit WG (2A) (Jacas) at 18, line 18 – 29, line 22.

has reviewed the Company's response. It appears that the Company has provided some explanation regarding most of the recommendations raised by OPC Witness McGee. It remains to be seen whether in practice, the Company will indeed implement the Liberty Audit Report recommendations.

However, there are two specific Liberty Audit Report recommendations that Mr. McGee raised, and the Company has not adequately addressed. First, Mr. McGee raised a concern that the Company had not implemented Liberty Audit recommendation 4: Enhance efforts already underway to provide a full and accurate identification of the types and materials employed in underground infrastructure. Specifically, Mr. McGee noted the importance of this issue and the lack of specificity from the Company regarding how, or when, its ongoing efforts will adequately address 'the need to continue aggressive efforts to identify all failing materials and their locations."[139] In rebuttal, the Company again provided an unspecific and uncertain explanation that it "performs continuous data and records clean up."[140] The Commission should direct the Company to provide a plan for how and when it will identify all failing materials and their locations, as part of this PROJECTpipes 2 proceeding.

Second, OPC witness McGee noted that the Company had not fully addressed Liberty Audit Report recommendation 13: Evaluate elimination of Class 3 Cost Estimate requirements on smaller projects, to exclude most of Program 1 projects and those in other two Programs with comparatively very low costs and standard execution requirements.[141] Mr. McGee noted the

139 *Formal Case No. 1154*, Exhibit OPC (2A) (McGee) at 27, line 8-16.

140 *Formal Case No. 1154*, Exhibit WG (2A) (Jacas) at 22, lines 16-18.

141 *Formal Case No. 1154*, Exhibit OPC (2A) (McGee) at 33, lines 18-22.

Liberty Audit Report recommended that WGL "promptly develop a specific proposal, with objective dimensions separating projects proposed to be excluded from Class 3 cost estimates" and "the proposal should describe estimating and cost control measures applicable to the excluded projects."[142] However, the Company inexplicably intends to delay filing the results of the Class 3 estimates until April 2021, when the Commission will likely have already issued its Order on the PROJECTpipes 2 Application.[143]

In response to Mr. McGee's concern, WGL Witness Jacas states that "the Company is amenable to further discuss the criteria for the projects exempted from Class III estimates."[144] OPC requests that the Commission require the Company, as a condition to approval of the PROJECT*pipes* 2 Plan, to "develop a specific proposal, with objective dimensions separating projects proposed to be excluded from Class 3 cost estimates," which describes "estimating and cost control measures applicable to the excluded projects."[145]

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, OPC requests that the Commission accept the recommendations and requests made herein and grant such other relief as the Commission deems appropriate.

Respectfully submitted,

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142 *Formal Case No. 1115*, Liberty Audit Report at 69.

143 *Id.* at 33, line 23 – 34, line 4.

144 *Formal Case No. 1154*, Exhibit WG (2A) at 25, lines 6-7.

145 *Formal Case No. 1115*, Liberty Audit Report at 69.

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CERTIFICATE OF SERVICE

Formal Case No. 1154, In the Application of Washington Gas Light Company for Approval of PROJECTpipes 2 Plan

I certify that on October 23, 2020, a copy of the *Office of the People's Counsel for the District of Columbia's Initial Brief* was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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