

ORDER NO. 89550

In the Matter of an Investigation of
Washington Gas Light Company
Regarding a Building Explosion and
Fire in Silver Spring, Maryland on
August 10, 2016

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

Case No. 9622

Issue Date: April 29, 2020

NOTICE OF EVIDENTIARY HEARING

1. On August 10, 2016, a natural gas-fueled explosion and fire partially collapsed a 14-unit apartment building located at 8701 Arliss Street in Silver Spring, Maryland. This accident caused the deaths of seven residents and injuries to 65 others, including three firefighters.

2. The National Transportation Safety Board (“NTSB”) investigated this accident and issued its formal “Pipeline Accident Report” (“Report”) on June 19, 2019, which includes its findings as to the probable cause of the explosion as well as several safety recommendations directed towards Washington Gas Light Company (“WGL”), a public service company operating in Maryland subject to the jurisdiction of the Maryland Public Service Commission (“Commission”).¹ In its Report, the NTSB concluded that the probable cause of the accident was a failure by one of WGL’s mercury service regulators.

WGL disputes the NTSB’s conclusions regarding the probable cause of the accident.

¹ One of these recommendations by the NTSB was that WGL would relocate all new service regulators (whether mercury or spring-loaded) outside occupied structures. NTSB Report at 5. WGL has agreed to comply with this recommendation, which is different than its commitment in 2003 to replace all mercury regulators on its system (whether located inside or outside), as discussed below.

3. On September 5, 2019, the Commission issued a show cause order to WGL. That order referenced a commitment by WGL in its 2003 rate case (Case No. 8959) to replace all of its existing mercury service regulators over 10 years.² Additionally, the order observed that the Commission had approved an upward adjustment to WGL's test year expenses of \$654,000 for the replacement program, which was reflected in the company's revenue requirement.³ Because the record in Case No. 8959 and subsequent filings with the Commission did not provide evidence of the extent to which WGL complied with this commitment, the Commission ordered WGL to show cause as to why it should not impose a civil penalty pursuant to PUA § 13-201 or any other appropriate remedy. The Commission also ordered WGL to show cause as to why the Commission should not conclude that the August 10, 2016 explosion resulted from WGL's failure to take reasonable care to protect the safety of the public.

4. On October 18, 2019, WGL filed its "Response to Order to Show Cause", regarding its Mercury Regulator Replacement Program, in which WGL stated that it had been actively removing mercury regulators from its system since at least 2001.⁴ It estimated that it replaced approximately 29,000 regulators in Maryland between 2004 and 2013.⁵ WGL challenged whether it had received \$654,000 in rates per year for 10 years to replace these regulators, as suggested by the show cause order.⁶ WGL conceded that it did fail to file the required annual status reports regarding this program after 2003 as

² Direct Testimony of Hardeep S. Rana, Case No. 8959 (March 31, 2003) at 12-14.

³ 94 Md. PSC 329, 366-67 (2003).

⁴ Maillog No. 227198 ("Response") at 3.

⁵ Response at 4.

⁶ *Id.*

previously ordered in Case No. 8920.⁷

5. The Commission’s Technical Staff (“Staff”) and several intervenors replied to WGL. On November 18, 2019, Staff submitted its reply regarding the Commission’s show cause order. Staff observed that WGL had provided varying estimates over different time frames for both the number of mercury regulators that exist on its system and the number it has replaced.⁸ Staff contended that WGL should have notified the Commission if it intended to re-prioritize the funds approved for the Mercury Regulator Replacement Program.⁹ Staff concluded that WGL fell “notably short” of its commitment in Case No. 8959 and may have violated COMAR 20.55.09.01A.¹⁰

6. On November 18, 2019, Montgomery County also submitted its reply, noting that it was concerned that “Washington Gas does not have a list of the location of in-service regulators.”¹¹ Based upon WGL’s list of potential locations for regulators by zip code and building type, Montgomery County estimated that the County might contain approximately 400 mercury regulators within multi-family dwellings.¹² Based upon the prevalence of this aging equipment, Montgomery County urged the Commission to require WGL to complete its 2003 program as quickly as possible, while prioritizing regulators located inside multi-family dwellings.¹³

7. On November 18, 2019, the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) also filed a reply. AOBA did not recommend that

⁷ *Id.*

⁸ Maillog No. 227538 (“Staff Reply”) at 12.

⁹ Staff Reply at 14.

¹⁰ *Id.* at 16.

¹¹ Maillog No. 227526 (“County Reply”) at 2, citing Washington Gas Response to Data Request 1-2.

¹² County Reply at 2.

¹³ *Id.* at 3.

the Commission impose a specific amount of penalty, but it did urge the Commission to require WGL and its shareholders to bear the cost of replacing all remaining mercury service regulators within its Maryland service territory.¹⁴ AOBA challenged WGL’s characterization of the goals of its replacement program as “aspirational”, citing the Commission’s Order No. 78041, which stated that the 2002 stipulation by WGL reflected “[a]n agreement that the change-out of regulators containing mercury is in the public interest and an acknowledgement that WGL intended to complete the change-out.”¹⁵ AOBA also echoed Staff’s observation that WGL should have notified the Commission if it intended to re-prioritize approved funds based upon unforeseen safety issues.¹⁶

8. Finally, the Office of People’s Counsel (“OPC”) also submitted a reply on November 18, 2019. Like AOBA, OPC noted that WGL’s commitment to replace all of its mercury regulators began in its 2002 base rate case, Case No. 8920. WGL included post-test year adjustments in its initial filing in Case No. 8920 to account for the costs to replace 6,679 regulators per year for ten years.¹⁷ Subsequently, in Case No. 8959, WGL notified the Commission that it was adjusting its 10-year replacement rate to 4,275 annually, rather than 6,679 annually, based upon its determination that the number of remaining regulators in Maryland was much lower than initially estimated.¹⁸ OPC urges the Commission to require WGL and its shareholders to bear the entirety of the cost of

¹⁴ Maillog No. 227539 (“AOBA Reply”) at 11.

¹⁵ AOBA Reply at 7, citing Order No. 78041 at 6-7. AOBA further observed that WGL committed to the complete replacement of these inside regulators in two separate proceedings, Case Nos. 8920 and 8959. *Id.* at 14.

¹⁶ *Id.* at 13.

¹⁷ Maillog No. 227550 (“OPC Reply at 2”). These post-test year adjustments included a \$506,000 increase in average rate base and \$1,327,000 in operating expenses.

¹⁸ WGL reduced its estimate of remaining regulators in Maryland from 66,793 to 42,745. OPC also notes that WGL currently estimates that there may be as many as 77,860 mercury regulators still on its system. OPC Reply at 3.

replacing all remaining mercury service regulators. Additionally, OPC urges that the Commission impose a civil penalty of \$25,000 per day for each day that any mercury regulators remain on WGL's system.¹⁹

9. On December 2, 2019, the Commission scheduled a public comment hearing which was held on December 17, 2019 in Silver Spring, Maryland.

10. Following the public comment hearing, the Commission granted WGL's request for leave to file rejoinder comments. WGL filed these comments on March 2, 2020 and proposed to accelerate its mercury regulator replacement program from the proposal in its initial response to the show cause order. WGL promised to make its best efforts to identify all mercury regulators located inside multi-family dwellings within one year and replace these regulators within three years.²⁰ Additionally, WGL committed to identify all mercury regulators in non-multi-family dwellings within three years and replace these regulators within five years.²¹ WGL intends to issue a request for proposals to conduct this replacement program. Therefore, it could not provide the Commission with the associated cost at this time. WGL proposed to provide annual reports to the Commission, detailing the progress of the program.²² With regard to its failure to file the reports required by Case No. 8959, WGL "agrees the existing record would justify a penalty in the amount of \$146,000 (\$36,500 x 4 years)."²³

11. WGL's rejoinder also points out that federal law prohibits the Commission from

¹⁹ *Id.* at 5.

²⁰ Maillog No. 228888 ("WGL Rejoinder") at 4.

²¹ WGL Rejoinder at 4.

²² *Id.* at 5.

²³ *Id.* at 17-18.

considering the NTSB report in this proceeding.²⁴ 49 U.S.C. §1154(b) provides: “No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.”

12. The NTSB conducted an extensive three-year investigation into the cause of the explosion. The Commission, as noted above, is not permitted to use the NTSB findings as evidence in any proceeding. Although the Commission’s engineering staff routinely investigates gas explosions and collaborates regularly with the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) with regard to both interstate pipeline safety matters in Maryland, Congress granted the NTSB preeminent responsibility for investigating disasters of the type that occurred in the Flower Branch incident. WGL has stated that all claims related to the incident have been settled, and that it is performing all of the NTSB recommendations. Therefore, the Commission will not conduct further investigation into the cause of the explosion.

13. The Commission has reviewed the filings and positions of the parties and concluded that an evidentiary hearing is required to resolve the following outstanding issues:

- (1) Whether WGL met its stated commitments in Case Nos. 8920 and 8959 to replace all mercury regulators located within its Maryland service territory over a 10-year period;
- (2) The conflicting estimates by WGL as to:
 - a. the number of mercury regulators that existed within its Maryland service territory in 2003;

²⁴ *Id.* at 7.

- b. the number of mercury regulators WGL has installed on its system since 2003;
 - c. the number of mercury regulators that WGL has replaced since 2003; and
 - d. the number of mercury regulators that remain within WGL's Maryland service territory currently since 2003.
- (3) Whether funds collected from ratepayers expressly for this purpose were so used;
- (4) Whether the implementation program outlined in WGL's rejoinder comments adequately addresses the need to replace all remaining mercury regulators in Maryland, the likely cost of the proposed implementation program, and the appropriate recovery for these costs (including whether cost recovery should be deferred until a future rate case);
- (5) Whether WGL should be assessed a civil penalty for failure to complete its mercury regulator replacement program approved in 2003 and whether WGL should be assessed a penalty for failing to file reports regarding its replacement program;
- (6) Any other issues regarding WGL's mercury regulator replacement program addressed by the parties in their briefs submitted subsequent to the Commission's show cause order.

14. Accordingly, the Commission will schedule an evidentiary hearing to receive evidence and testimony related to these issues. A future notice will provide the dates on which the Commission will conduct this hearing. Any party wishing to intervene and participate in these hearings shall notify the Commission on or before May 29, 2020.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary