

**ORDER NO. 90057**

Complaint of the Maryland Office of  
People’s Counsel against Washington  
Gas Light Company and WGL Energy  
Services, Inc.

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9673  
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**Issue Date: February 7, 2022**

**ORDER DISMISSING COMPLAINT**

1. On November 24, 2021, the Maryland Office of People’s Counsel (“OPC”) filed a complaint against Washington Gas Light Company (“Washington Gas”) and WGL Energy Services, Inc. (“WGL Energy”) seeking specific relief, civil monetary penalties, and an investigation. For the reasons discussed below, OPC’s complaint is dismissed.

2. OPC’s complaint alleges that Washington Gas and WGL Energy violate the Code of Maryland Regulations (“COMAR”) and the Maryland Consumer Protection Act by including the following claims on bills to customers of WGL Energy:

Natural Gas is a clean, efficient, and reliable energy. Converting an all electric home to natural gas is the equivalent of planting 2.75 acres of trees or driving 26,520 fewer miles each year. In addition, natural gas cost 1/3 less than electric, which makes it a smart decision for the environment and your wallet.

3. OPC states that it contacted Washington Gas about this bill message, and that Washington Gas replied that WGL Energy is responsible for the language on its “subscriber-consolidated bills”. As such, Washington Gas informed OPC that it lacked any control over the statements included on these bills. Washington Gas further told OPC

that it had allowed natural gas suppliers to render their own consolidated bills since 2001, as long as the supplier replicated Washington Gas' overall bill format.

4. OPC contends that customers of WGL Energy could reasonably conclude that Washington Gas asserted these marketing claims about natural gas. At best, customers would be unable to ascertain whether Washington Gas or WGL Energy was encouraging customers to purchase more natural gas.

5. Because Washington Gas and WGL Energy are affiliates, OPC contends that these marketing practices violate two provisions of COMAR. COMAR 20.40.02.01(B)(5) prohibits utilities from "engaging in promotions, marketing or advertising with a core or non-core service affiliate."<sup>1</sup> Additionally, COMAR 20.40.02.01(B)(2) prohibits utilities from "giving any preference to a core service affiliate." OPC claims that WGL Energy uniquely benefits from these marketing statements intended to encourage customers to purchase more natural gas. OPC contends that Washington Gas denies this benefit to all other third-party suppliers in violation of these COMAR provisions.

6. OPC further alleges that the substance of these marketing claims constitutes a deceptive marketing practice because natural gas also emits greenhouse gases, albeit less than coal. Citing Maryland's Greenhouse Gas Reduction Act, OPC alleges that the billing statements undermine Maryland's goal of a 40% reduction in statewide greenhouse gas emissions by 2030.<sup>2</sup> OPC also alleges that customers reading this statement may interpret

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<sup>1</sup> Both Washington Gas and WGL Energy are subsidiaries of WGL Holdings, Inc.

<sup>2</sup> Md. Code Env. §2-1204.

it to mean that natural gas does not emit any greenhouse gases, which constitutes an “unfair, abusive, or deceptive trade practice” under the Consumer Protection Act.<sup>3</sup>

7. Based upon the above, OPC asks that the Commission: (1) direct Washington Gas and WGL Energy to remove the marketing statement immediately; (2) direct both companies to answer the complaint; (3) order civil penalties in an amount not less than \$500,000 against each entity; and (4) open an investigation into the transactions of Washington Gas and WGL Energy to ensure compliance with COMAR.

8. Montgomery County, Sierra Club and the Commission’s Technical Staff submitted comments on January 7, 2022.

**Washington Gas and WGL Energy’s Motions to Dismiss**

9. On January 7, 2022, WGL Energy and Washington Gas filed motions to dismiss this complaint “summarily and with prejudice.”<sup>4</sup>

10. In its motion, WGL Energy contends that OPC’s complaint is based upon information that it either misunderstood, was incomplete, inaccurate, or untrue.<sup>5</sup> WGL Energy has used the consolidated billing services of Washington Gas for 20 years. During that time, WGL Energy states, it “had nothing to do with any decision to insert any environmental message on Washington Gas’ bills.”<sup>6</sup>

11. WGL Energy also argues against OPC’s allegation that it “uniquely” benefits from these marketing statements. In support of its position, WGL Energy provides a copy of

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<sup>3</sup> Md. Code Comm. Law Art. §13-301(1) - (4).

<sup>4</sup> Washington Gas motion at 1. COMAR 20.07.03.03(A) authorizes the Commission to dismiss a complaint if it fails to state a claim upon which relief may be granted.

<sup>5</sup> WGL Energy’s motion at 3.

<sup>6</sup> *Id.* at 4.

identical language contained in a bill sent by a different third-party supplier.<sup>7</sup> Further, WGL Energy states that it performs all of its own marketing efforts, and that it has never used Washington Gas (or any other utility in Maryland) to market its products or services. Finally, WGL Energy argues that a complaint against a single utility is not the appropriate proceeding in which to address broad state, national, and even international issues regarding the benefits of natural gas.

12. In its separate motion, Washington Gas identifies what it asserts are the same factual inaccuracies discussed by WGL Energy. Washington Gas maintains that the bills that form the basis for this entire complaint are “utility consolidated bills”, not “supplier consolidated bills”, which it asserts OPC would have known if it clarified why it contacted Washington Gas initially. In its motion, Washington Gas explained that it uses an identical bill message regardless of the retail supplier. In support of this claim, Washington Gas attached to its motion copies of many bills to customers of different suppliers that contain identical bill message language.<sup>8</sup>

13. Washington Gas contends that OPC’s error arises from a miscommunication between OPC counsel and its own counsel in which OPC disclosed only the marketing language at issue and claimed that bills to WGL Energy customers contained the offending language, without providing additional context. Further, Washington Gas states that OPC neglected to provide a copy of the bill in question. Based on this limited information, Washington Gas’ “Customer Service and Customer Choice” team assumed it was a “supplier consolidated bill”. Washington Gas argues that if OPC shared the true

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<sup>7</sup> *Id.* at Exhibit A.

<sup>8</sup> Washington Gas motion at Exhibit 4.

nature of its inquiry as well as a copy of the bill, this misunderstanding could have been avoided. At a minimum, OPC would not have included WGL Energy in its complaint.

14. Additionally, Washington Gas contends that the marketing statements at issue are consistent with Maryland energy policy. Washington Gas also cited various studies and statements by state and national entities in defense of each aspect of its marketing claims.<sup>9</sup> Washington Gas notes that if OPC had clearly explained its concerns, Washington Gas would have worked with OPC to provide information verifying its statements as it has done in other contexts.<sup>10</sup>

15. Washington Gas concludes that it has demonstrated that it has not provided WGL Energy with any preferential treatment, which is the basis for much of OPC's complaint. Washington Gas further submits that it does not have a joint marketing agreement with WGL Energy. In short, it argues, this entire complaint is based upon OPC's failure to do initial due diligence, and should be dismissed, with prejudice.

#### **Commission Decision**<sup>11</sup>

16. After reviewing the pleadings, the Commission dismisses this complaint. The record is clear that Washington Gas generated the utility-consolidated bills that gave rise to this complaint. Thus, WGL Energy should not have been a party to this Complaint and

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<sup>9</sup> *Id.* at 6-23. The Commission will not summarize these authorities here.

<sup>10</sup> Washington Gas cites to Commission Order No. 77412 in Case No. 8738, in which the Commission stated that “[w]ith regard to electric companies and electricity providers making environment statements, the Commission shall permit self-certification and verification.”

<sup>11</sup> OPC and Sierra Club filed responses to the motions to dismiss, but as those motions repeat the allegations in the complaint, the Commission will not address them here.

therefore the Commission dismisses the Complaint against WGL Energy. This also renders the claim of inappropriate affiliate interaction moot.<sup>12</sup>

17. With respect to Washington Gas and the deceptive marketing claim, the complaint fails to adequately demonstrate a violation of state law or regulation in support of its broad allegations regarding the environmental attributes of natural gas.<sup>13</sup> As Washington Gas notes, Maryland has allowed self-certification of marketing claims. If OPC had revealed its concerns with the language included on gas bills to Washington Gas at the outset and requested an explanation, modification or removal of the bill message, the utility would have likely done so - or, at a minimum, a conversation would have occurred. But that did not occur, and now a significant amount of time, resources, and ratepayer dollars have been spent litigating a complaint that fails as a matter of law.

18. Finally, the Commission agrees with WGL Energy and Washington Gas that a complaint against one utility is an inappropriate forum to address the broader issues raised by natural gas and its role in greenhouse gas emissions. The record establishes that Washington Gas did not provide any special benefit to WGL Energy by attaching this marketing language as Washington Gas provided numerous bills from other natural gas suppliers that contained the same language. Given that this was a utility-specific complaint that did not include the other natural gas companies in the State, it is clear that this complaint is not the proper forum in which to address such broader issues, even

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<sup>12</sup> The Commission expects litigants to use best efforts to resolve disputes prior to filing a formal complaint. Unfortunately, it appears this did not occur here. The Commission encourages all parties to avoid extended litigation time and expense and continue the practice of best efforts to resolve disputes.

<sup>13</sup> Public service companies regulated by the PSC are exempt from the Consumer Protection Act. Comm. Law Art. §13-104(2).

acknowledging that the Commission now has a statutory obligation to consider climate change.

**IT IS THEREFORE**, this 7<sup>th</sup> day of February, 2022, in the year of Two Thousand Twenty-Two, by the Public Service Commission of Maryland;

**ORDERED:** (1) That the Office of People’s Counsel’s complaint is hereby dismissed; and;

(2) That the Office of People’s Counsel’s request that the Commission open an investigation into the transactions of Washington Gas and WGL Energy to ensure compliance with COMAR is denied.

*/s/ Jason M. Stanek*  
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*/s/ Anthony J. O’Donnell*  
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*/s/ Odogwu Obi Linton*  
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*/s/ Mindy L. Herman*  
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Commissioners<sup>14</sup>

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<sup>14</sup> Commissioner Richard dissents from this Order and would permit the investigation. His statement is appended to this Order.

**Dissenting Statement of  
Commissioner Michael T. Richard**

I respectfully dissent from the Majority Opinion in this case, and I support OPC, Staff, Montgomery County, Maryland and the Sierra Club’s request for an investigation into the billing relationships in place between WGL and WGL Energy Services, and between WGL and other retail gas suppliers. I also agree with OPC and the Sierra Club that WGL should cease using the gas-advertising message in question.<sup>1</sup> It is—as they argue (and I agree)—worth investigating whether these statements are factual, may be deceptive, could cause customers to take actions contrary to achieving savings, fail to address customers’ environmental concerns, and also whether they are inconsistent with current State policies.

While I agree with my colleagues that it would have been preferable for parties to work to resolve conflicts before resorting to filing complaints, in this case I find that due to WGL’s verbal and written responses to OPC inquiries, legitimate questions about the veracity of WGLs responses, left OPC with few options other than to request that the Commission initiate an investigation—an approach that is shared by Commission Staff.

Rather than try to amicably resolve the confusion left by its initial responses, in its Motion to Dismiss, WGL digs in and—in doing so—attempts to shift the blame to OPC for the inaccurate information that the Company itself provided, complaining that OPC withheld its “the true nature of its inquiry.”<sup>2</sup> Examples of these inaccuracies in WGL’s

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<sup>1</sup> The Sierra Club notes that WGL’s billing statement constitutes an “insidious” type of “greenwashing” that is misleading, comparing it to the practices of the tobacco companies’ practices in the mid-twentieth century. *See*, Sierra Club Comments (Maillog No. 238464) at 3.

<sup>2</sup> WGL Opposition and Request for Dismissal with Prejudice of Office of People's Counsel Complaint (Maillog No. 238461) at 3



response include WGL’s counsel telling OPC it had no control over the billing statements and suggesting it was an issue of “subscriber-consolidated billing.”<sup>3</sup> Both of these responses were incorrect. In providing WGL “utility-consolidated billing” services for WGL Energy Services and other retail suppliers,<sup>4</sup> WGL was solely responsible for the bills provided to both its own customers and those of WGL Energy Services.

As the statutory representative for residential utility customers, OPC is entitled to answers that are accurate and reflect careful consideration. WGL failed to provide such responses, which I believe is a legitimate reason for further inquiry.

Additionally, I am also troubled by the tone used by WGL in its pleadings seeking to dismiss OPC’s Complaint: WGL engages in a long, out-of-place discussion about the relative benefits of natural gas. The Company seems to forget that in total, its answers to legitimate and clear OPC questions have been contradictory and inaccurate. The false advertising claims made by OPC, claims which are also supported by Staff and the Sierra Club, are neither addressed either by WGL nor the Majority. Finally, in dismissing OPC’s Complaint, the Majority Opinion also fails to adequately address the Company’s culpability for undermining its own credibility or for failing to address the alleged false environmental benefits-claims asserted by OPC.

In response to the Majority’s observation that OPC’s complaint against one utility “is an inappropriate forum” to address the broader issues raised regarding WGL’s promotion of natural gas, and the impact of fossil fuels—including natural gas—on

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<sup>3</sup> OPC Complaint at 4.

<sup>4</sup> WGL Opposition and Request for Dismissal at 3.

greenhouse gas emissions; rather than dismissing OPC's Complaint, the Commission could simply expand the investigation to include other utilities.<sup>5</sup>

If the record is as clear as WGL argues and the facts support WGL's preferred explanation, granting OPC's request for an investigation would—in my opinion—clear up the confusion, and fully allay OPC's, Staff's and the Sierra Club's concerns. This begs the questions: why won't the Company simply agree—voluntarily—to cease repeating the unqualified claim that switching from an all electric residence to one using natural gas necessarily results in a cleaner environment and less expensive energy bills.

For these reasons, I believe that an investigation—as OPC, Staff, Montgomery County and the Sierra Club requests—is warranted.

*/s/ Michael T. Richard*  
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Commissioner

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<sup>5</sup> As Montgomery County notes, "[t]he complaint filed by OPC raises serious concerns that merit a thorough investigation by the Commission." Montgomery County Comments (Maillog No. 238453) at 2.