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Elizabeth A. Noël
People's Counsel

January 30, 2009

Ms. Dorothy Wideman
Commission Secretary
Public Service Commission of the
District of Columbia
1333 H Street, NW, 2nd Floor, West Tower
Washington, D.C. 20005

Re: Formal Case No. 874
(2008 Gas Procurement Report)

Dear Ms. Wideman:

Enclosed please find for filing an original and fifteen (15) copies of the "Comments of the Office of the People's Counsel Regarding the 2008 Gas Procurement Report of Washington Gas Light Company" (Pubic Version) in the above-referenced proceeding.

Please contact the undersigned if you have questions regarding this matter.

Sincerely yours,

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

Enclosures
cc: All parties of record

[CONFIDENTIAL INFORMATION OMITTED]

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

In the Matter of the Gas Acquisition	)	
Strategies of the District of Columbia	)	
Natural Gas, a Division of Washington	)	Formal Case No. 874
Gas Light Company	)	**(PUBLIC)**

COMMENTS OF THE OFFICE OF THE PEOPLE'S COUNSEL REGARDING THE 2008 GAS PROCUREMENT REPORT OF WASHINGTON GAS LIGHT COMPANY

Pursuant to Rule 2315.5 of the District of Columbia Public Service Commission's ("Commission") Rules of Practice and Procedure,[1] and the Commission's November 6, 2008 order in this proceeding,[2] the Office of the People's Counsel of the District of Columbia ("OPC" or "Office") respectfully submits its comments concerning the 2008 Gas Procurement Report ("GPR" or "Report") filed by Washington Gas Light Company ("WG" or "Company") on November 17, 2008.

I.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

OPC has identified the following areas of concern and requests Commission action on these matters to ensure WG's gas procurement activities are reasonable and yield the lowest reasonable costs to District consumers. Specifically, OPC urges the Commission to:

- Undertake a thorough investigation of WG's gas procurement and asset optimization activities through the rigor of an evidentiary proceeding to assess the effect of those activities on the gas cost rates paid by District consumers. At a minimum, the evidentiary hearing should address: (a) whether WG's gas procurement strategies are reasonable and whether WG is pursuing a least-cost

[1] 15 D.C.M.R. § 2315.5.

[2] *In the Matter of the Gas Acquisition Strategies of District of Columbia Natural Gas, a Division of Washington Gas Light Company*, Formal Case No. 874, Order No. 15105 (November 6, 2008).

gas procurement strategy for its retail consumers; (b) evaluate WG's asset optimization activities and WG's internalization of the asset optimization functions; (c) investigate WG's valuation of gas costs; (d) investigate WG's efforts relating to capacity release transactions and evaluate the effect of the Company's policy on the PGC rate paid by District ratepayers.

- Reconsider the current 50/50 net revenue sharing percentages earned from asset management activities and increase the share allocated to District ratepayers.

- Require several revisions to the GPR Reporting Format to avoid some of the issues concerning the lack of transparency in the GPR.

- Expeditiously issue an order to address unresolved 2004 and 2006 gas procurement issues, including (a) asset optimization activities (modified in these comments to focus on the costs included in base rates for undertaking asset optimization transactions now that WG has internalized these functions); (b) information related to capacity release efforts; (c) the 50% limitation on mandatory release of capacity to Competitive Service Providers ("CSP"); and (d) potential Hampshire Gas Storage over-earnings.

OPC's detailed comments on these issues are addressed in the comments below.

II.

BACKGROUND AND SUMMARY OF THE 2006 REPORT

WG submitted its 2008 GPR on November 17, 2008. The GPWG, consisting of WG, the Commission Staff, and OPC Staff, lawyers and consultants, met on December 16, 2008 to discuss the Report. During that conference, WG provided verbal responses to a number of questions posed by OPC and its consultant, Mr. Charles King. On December 23, 2008 WG provided OPC responses to several outstanding questions and copies of a gas supply agreement and several asset management contracts that OPC had requested and that WG had entered into with third-party asset managers in 2007. On January 14, 2009, WG provided OPC with responses to certain requests for data posed by OPC at the December 16 conference. The responses included **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]**

The GPR addresses the two major components of gas procurement – the acquisition of the gas supply as well as the transportation and storage of gas that is delivered to WG's city gate and ultimately to WG's customers. The 2008 GPR provides a summary recapitulation of the demand and cost of acquiring, transporting, and storing gas for WG's system requirements and its District of Columbia customers for the annual periods ending August 2007 and August 2008 (the two most recent fiscal years). The Report also quantifies the current estimate of the probable costs of purchased gas and demand for the next two fiscal years (the annual periods ending August 2009 and August 2010), as well as a forecast of the balance of supply and demand over the next five years.

For example, the GPR identifies the monthly volumes and dollar expenditures by pipeline separated among base load gas, "swing" gas, and spot purchases at WG's city gate. It also identifies peaking gas to the extent it is required to meet peak day loads. The GPR describes and presents monthly data on the volumes, costs and unit costs from each of its sources of gas, both historically and prospectively. The GPR also presents data on the Company's demand for gas by jurisdiction, type of customer, and firm vs. interruptible service. It reports the extent of delivery service penetration into both the firm and interruptible markets.

In short, the GPR provides an overview of WG's gas procurement activities by reference to aggregated monthly data, but provides little transparency into the prudence of WG's management of those activities. Aside from the presentation of dollar, volume and per-dekatherm costs, the GPR devotes relatively little description to details regarding WG's gas purchasing decisions and portfolio management during the annual periods ending August 2007 and August 2008, particularly the important asset optimization activities.

[CONFIDENTIAL INFORMATION OMITTED]

[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.][3] WG began contracting with third-party asset managers in 1997 to optimize the use of the pipeline transportation capacity, storage capacity and gas supply that it procures.[4] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**[5] **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]**[6]

[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.][7] **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]**[8] **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]**[9]

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[3] 2008 GPR, Section VI.A – Washington Gas Light Energy Acquisition, 2009 – 2013 Portfolio Plan at 23 (November 3, 2008) ("2009 – 2013 Portfolio Plan").
[4] *In the Matter of the Office of the People's Counsel's Complaint for a Commission-Ordered Investigation into the Reasonableness of Washington Gas Light Company's Existing Rates, Formal Case No. 989*, Order No. 12589 at P 97 (October 29, 2002) (hereinafter "Order No. 12589").
[5] 2009 – 2013 Portfolio Plan at 23.
[6] *Id.*
[7] Formal Case No. 874, Gas Procurement Working Group, December 16, 2008 Transcript at 5-6 ("December 16 Transcript" or "December 16 Tr.").
[8] *Id.*
[9] December 16 Tr. at 5-6.

There is little transparency in the supporting tables and data included in the Report about these transactions. There are no tables summarizing these asset transactions and no comprehensive data providing details on the system-wide or jurisdictional gains and losses garnered through these transactions. OPC's comments on WG's 2008 GPR primarily focus on the lack of transparency and the prudence of WG's asset optimization activities and the effect of those activities on PGC rates paid by District of Columbia ratepayers.

III.

DISCUSSION

A. The Commission Should Undertake a Thorough Investigation of WG's Asset Optimization Activities.

The primary purpose of the Gas Procurement Report is to provide the Commission and OPC sufficient information to evaluate whether WG is pursuing a least-cost gas procurement strategy for its retail customers in the District of Columbia.[10] While the Report provides substantial data relating to WG's historical purchases of pipeline transportation and storage capacity and gas supply, including volumes and costs, as well as projections future volumes and costs of capacity and supply for the next two years, the accounting data presented is not transparency, and therefore impedes an assessment and determination of the prudence or reasonableness of WG's gas procurement strategies. Additional data is needed to thoroughly evaluate the question of whether WG is pursing a least-cost gas procurement strategy for its retail customers. These comments analyze areas where additional information and investigation are required to make this assessment and urge the Commission to initiate an investigation into these matters.

[10] *Washington Gas Light Co.*, Formal Case No. 874, Order No. 9793, 12 D.C.P.S.C. 494, (August 21, 1991) (The purpose of the reporting requirement is to monitor WGL to ensure that it is "aggressively seeking low cost gas supplies" and has taken "full advantage of recent opportunities to maximize the reduction of the cost of its gas purchases.")

1. A Change in Circumstances Warrants a Thorough Evaluation of WG's Asset Optimization Functions.

A dramatic change in circumstances has occurred since the Commission last reviewed WG's gas procurement activities – **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]** This is a sharp departure from WG's long standing policy of using a third party asset manager. Historically, WG has turned over its pipeline transportation capacity, storage capacity and gas suppliers to a third-party asset manager that used those assets, the costs of which were included in rates paid by retail consumers, to undertake asset optimization transactions. The Company outsourced these activities to a third-party asset manager on the argument that these activities required a level of expertise, contacts and experience that WG did not have in-house but that the third-party asset manager was able to provide.[11] In Order No. 12589 in Formal Case No. 989, the Commission approved this arrangement, including the 50/50 sharing of net revenues between shareholders and ratepayers, over OPC's objection in order to provide WG an incentive "to retain a good outside asset manager" and "to engage in beneficial management of WG's upstream capacity."[12]

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission

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[11] Order No. 12589 at P 112; *see also* Formal Case No. 989, Testimony of Adrian P. Chapman, Exhibit WG (F) at 26 and Rebuttal Testimony of Adrian P. Chapman, Exhibit WG (3F) at 70.
[12] *Id.* at p. 119.

ruling on contention at any time in this proceeding.][13] **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]**[14] **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]**[15]

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.] WG has provided no information in the 2008 GPR regarding (1) this change in circumstances, (2) **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]** As WG testified in Formal Case No. 989, the Company initially outsourced these functions to "utilize the flexibility of gas supply resources and delivery obligation embedded in the agreement to extract value through gray market transactions and financial trading."[16] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

[13] December 16 Tr. at 47-49.
[14] December 16 Tr. at 5-11.
[15] *Id.* at 8, 11.
[16] Order No. 12589 at 112.

This Commission and the District of Columbia Court of Appeals have long ruled that a change in circumstances warrants reconsideration of the Commission's approach to ratemaking. In Formal Case No. 874, the Commission granted a petition filed by OPC to initiate an investigation into the reasonableness of WG's base rates, agreeing with OPC that "there have been significant changes both internal to WGL and in the financial markets since 1994."[17] The Commission therefore initiated Formal Case No. 989 to investigate the reasonableness of WGL's base rates, concluding that "the only way to determine whether WGL's actual ROE is reasonable, in light of WGL's cost of service and current economic conditions, is through a base rate proceeding."[18] The Commission also requires parties seeking summary judgment to demonstrate that changed circumstances or new legal arguments exist in cases where the Commission has previously resolved an issue at hand.[19] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

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[17] *In the Matter of the Office of the People's Counsel's Complaint for A Commission-Ordered Investigation into the Reasonableness of Washington Gas Light Company's Existing Rates*, Formal Case No. 989, Order No. 11952 at p. 12 (March 21, 2001).

[18] *In the Matter of the Office of the People's Counsel's Complaint for A Commission-Ordered Investigation into the Reasonableness of Washington Gas Light Company's Existing Rates; In the Mater of the Application of Washington Gas Light Company, District of Columbia Division, For Authority to Increase Existing Rates and Charges for Gas Service; and In the Matter of the Gas Acquisition Strategies of Washington Gas Light Company, District of Columbia Division*, Formal Case Nos. 989 and 874, Order No. 12274 at p. 4 (December 21, 2001).

[19] *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Increase Existing Rates and Charges for Gas Service*, Formal Case No. 1016, Order No. 12715 (April 25, 2003).

The Maryland Public Service Commission, at the request of its Staff, adopted this view and initiated an investigation into this matter, inquiring into the reasonableness of WG's decision to internalize asset optimization functions, the effect of this decision on Maryland ratepayers and the continued reasonableness of Maryland's approach to sharing the net revenues produced by asset optimization transactions.[20] The Maryland Public Service Commission Staff requested that the Maryland Commission "initiate an investigation to (1) review WG's policy change in its asset management program to ensure it is in the public interest; (2) to set an appropriate incentive ratio for WGL's off-system sales program that is just and reasonable; and (3) to determine whether WGL's pricing proposal for its ratable fill method is consistent with Public Utility Companies Article § 4-402, *Annotated Code of Maryland*."[21] The Maryland Staff argued that WG had initially sold the proposal for outsourcing of these activities to the Maryland Commission on the basis that the Company did not have the expertise to undertake such activities in-house and that WG is now saying that its internal staff has the ability to obtain greater net revenues than the third-party asset managers WG had been using.[22] The Maryland Staff also argued that reconsideration of the sharing ratios for the net revenues produced by the asset optimization transactions is required to assess the on-going reasonableness of the ratios in light of WG's internalization of this function.[23] Moreover, the Maryland Staff argued that WG's continued use of the ratable fill method in lieu of the actual payments for that gas to value the cost of storage gas in the PGC should be reconsidered in light of the change in the manner in which that gas is acquired.[24] The Maryland Commission established a formal procedural

[20] Staff of the Public Service Commission's Petition for Investigation of Washington Gas Light Company's Gas Purchasing Practices, Letter Order dated August 8, 2008 (directing WG to respond to Staff's Petition).
[21] *Id.*
[22] Maryland Staff Petition at 3-4.
[23] *Id.* at 8.
[24] *Id.* at 9-10.

schedule for the filing of testimony and scheduled a hearing to investigate the Maryland Staff concerns.[25]

OPC encourages this Commission to do the same. The asset optimization function lies at the heart of the Company's management of its gas procurement activities. As WG witnesses testified when seeking approval to outsource this function, asset optimization provides an opportunity to minimize overall purchased gas costs for retail consumers by utilizing the capacity and supply for off-system sales during periods when they are not needed to serve retail consumers and generating revenues from these off-system sales to offset the cost of holding these resources for use during peak demand periods. However, the level of net revenues depends directly on critical decisions made by WG to oversee these functions, including decisions on what pipeline transportation capacity and storage capacity to acquire; **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, that material is omitted.]***;* and other issues to be discussed in greater detail below. **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

OPC's review of WG's responses and data produced in this proceeding, discussed in detail in these comments below, illustrate these concerns and justify the investigation into the matters requested by OPC in these comments.

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[25] *In the Matter of the Petition of the Commission's Staff for an Investigation into Washington Gas Light Company's Asset Management Practices and Cost Recovery of Natural Gas Purchases*, Case No. 9158, "Notice of Procedural Schedule" (October 1, 2008).

2. WG's Data Responses Relating to the 2008 GPR Raise More Questions and Concerns than They Resolve.

WG provided data on January 14, 2009 in response to OPC's requests for information at the December 16 technical conference. These responses provide some of the data requested, but fail to provide the requested details. OPC's review of this data indicates that the responses raise substantially more questions than they resolve. OPC has attached WG's January 14, 2009 Responses to OPC's Questions as Appendix A to these comments for the Commission's convenience.

<u>Data Response to Question 1</u>

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However, without additional data concerning this exhibit, it is difficult to ascertain for certain how this gas is valued. The lack of transparency with respect to this data makes it difficult for the Commission and OPC to evaluate the Company's valuation of gas for purposes of the PGC rate or the calculation of the net revenue sharing amounts.

Data Response to Question 2

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[26] December 16 Tr. at 135.

[27] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

Again, the lack of transparency in the data makes evaluation of WG's asset optimization activities extremely difficult.

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<u>Data Response to Question 3</u>

Issues associated with WG's Response to Question No. 3 are addressed in section III.A.3 of these comments, *infra*.

<u>Data Response to Question 4</u>

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]

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[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.] It is difficult to tie these transactions to each other, to calculate totals from these transactions, or even to evaluate whether such linkages are appropriate. Thus, it is difficult to evaluate what these data signify. Substantial follow-up discovery and possible questioning of WG staff would be required to draw any conclusions from this data. The lack of transparency associated with this data further compels thorough investigation of WG's asset optimization activities through an evidentiary hearing.

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While this data is not reflected in the gas purchase transactions for the annual period ending August 2008 covered by the 2008 GPR, this data will be reflected in the results for WG's next biennial GPR. More importantly, this data underscores the need for a more thorough review of WG's asset optimization practices is justified.

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Again, while these transactions are associated with a month beyond the window of the 2008 GPR, they are indicative of WG's management practices and justify further in-depth inquiry by the Commission into WG's asset optimization and capacity release management practices.

3. The Commission Should Investigate WG's Valuation of Gas Costs in the PGC Rate.

[This portion contains information which Washington Gas alleges to be proprietary. Therefore, this material is omitted.][28] **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, this material is omitted.]**[29] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**[30] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**

[28] December 16 Tr. at 74.
[29] *See, e.g.*, December 23, 2008 WG Response to Question No.2, Attachment A, p. 19 **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]** and Attachment B, p. 11 **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**
[30] *Id.*

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][31] [This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]

[31] December 16 Tr. at 96 – 98.

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[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][32] and has recently received authorization from this Commission for a hedging pilot program.[33] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

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[32] 2008 GPR, Section VI.A at 21-22.

[33] *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Amend its General Service Provisions*, Gas Tariff 01-1, Order No. 15095 (October 20, 2008). WG submitted compliance tariff sheets on December 19, 2008. However, the Commission rejected the filing by Order No. 15169 dated January 26, 2009, finding that it included language allowing the costs of hedged physical purchases of storage gas to be included in the PGC contrary to Order No. 15095. The Commission invited WG to submit further tariff sheets that comport with the October 20, 2008

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The lack of transparency in WG's 2008 GPR and the data provided in response to OPC questions at the December 16 technical conference warrant a thorough investigation by this Commission in the context of a full-blown evidentiary rate proceeding. WG's asset optimization activities are bound to have significant effects on the PGC rate paid by WG's ratepayers; however, the nature of those effects, be they positive or negative, can not be gleaned from the data provided in the 2008 GPR or in WG's responses to OPC's questions on that Report. **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**, the Commission should investigate whether the gas procured by WG for sale to its retail customers in the District of Columbia should be priced at its actual cost and whether WG is properly accounting for net revenues on asset optimization transactions in PGC rates.

4. The Commission Should Investigate WG's Efforts Relating to Capacity Release Transactions.

WG has at least two options for managing its gas supply portfolio to optimize the transportation capacity, storage capacity and gas supply included therein for the purpose of providing service to retail customers in the District of Columbia at the lowest reasonable cost: off-system sales through asset optimization transactions and release of capacity without the sale of gas through the interstate pipelines' capacity release programs. It is clear from the 2008 GPR that WG does undertake some capacity release transactions, as reflected on Section III, Schedule A, Statement B of both the 2007 and 2008 Historical Gas Cost Monthly Data exhibits in the 2008 GPR. Those reports reflect the total system monthly receipts of capacity release revenues, as well as the jurisdictional amounts for Maryland, Virginia and the District of Columbia. For example, in the 2008 annual period, total system capacity release revenues were $10.8 million as compared to total system purchased gas demand expense of $153.7 million (7% of the system total).[34] Of that amount, $1.4 million in capacity release revenues is associated with capacity release transactions in the District of Columbia as compared to $25 million in purchased gas demand cost expense allocated to the District.[35] District capacity release revenues amount to 5.6% of total purchased gas demand costs for the District of Columbia jurisdictional operations.

However, what isn't clear from these reports is the extent to which WG is actively engaging in capacity release transactions beyond the capacity WG is required to release to competitive service providers in its service territories. **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**[36] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination.**

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[34] 2008 GPR, Section III, Schedule A, Statement B at 1.
[35] *Id.* at 2.
[36] 2008 GPR, Section VI.A at 15.

Parties may seek a Commission ruling on contention at any time in this proceeding.][37] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**[38] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**[39]

[This portion contains information which Washington Gas alleges to be proprietary and is omitted.] ignores the Federal Energy Regulatory Commission's ("FERC's") recent rulemaking lifting the price cap on capacity release transactions in an effort to encourage greater market efficiency, especially during peak periods.[40] FERC found that allowing the prices of short-term capacity release transactions to reflect short-term variations in the market value of that capacity would "enable shippers to better integrate capacity with the underlying gas transactions" and "permit more flexible methods of pricing capacity to better reflect the value of that capacity as revealed by the market price of gas at different trading points."[41]

FERC's decision to lift the price caps on capacity release transactions reflects the potential that short-term releases of capacity could be profitable throughout the year, particularly during the peak periods if the Company has more capacity under contract than it requires to meet the peak day demands of retail customers. **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an**

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[37] December 16 Tr. at 12 **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**
[38] *Id.* at 14 **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.].**
[39] *Id.* at 13.
[40] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 30 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008).
[41] *Id.*

appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][42] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**

The lack of transparency with respect to WG's efforts, or lack thereof, to release capacity makes it impossible for the Commission to evaluate the prudence of the Company's actions in this regard. Just as FERC requires pipelines to post information on capacity release transactions in order to provide greater transparency for the market,[43] so too should this Commission require greater transparency in WG's capacity release efforts.

In prior GPR proceedings, OPC argued that WG should provide historical, present and future utilization of pipeline transportation and storage capacity in the GPRs, including information related to released capacity for both delivery service customers and other third parties.[44] WG contended the 2004 GPR contained the requested data in Schedule B. The DC Commission Staff recommended deferring this issue to the GPWG. As discussed above, even if the previously requested data is found in the current GPR format, the data currently included in the GPR is insufficient to allow thorough a evaluation of the Company's management of capacity release transactions.

Considering FERC's recent move to lift price caps on capacity release transactions in an effort to provide greater market efficiency even during peak periods, capacity release in today's environment could afford WG an opportunity to offset the cost of holding excess capacity for

[42] December 16 Tr. at 14.
[43] Order No. 712 at p. 31 ("Further, we have required informational postings of capacity release transactions that will provide transparency . . . .").
[44] Formal Case No. 874, "Staff Report on Washington Gas Light Company's 2004 and 2006 Gas Procurement Reports" at 9 ("Staff Report").

serving retail customers during both peak and non-peak periods. However, the different treatment of capacity release revenues as compared with asset optimization revenues (100% flowthrough of capacity release revenues in rates[45] as compared to 50% flowthrough of asset optimization net revenues in rates) provides WG a disincentive to fully explore capacity release opportunities. While adoption of OPC's recommended changes to the sharing percentages for asset optimization transactions could go a long way toward redressing this disincentive, greater transparency on WG's management of capacity release would afford the Commission a better opportunity to evaluate those activities.

Consequently, the Commission should require WG to include the following specific monthly data in the GPR with respect to capacity release transactions:

- capacity released to CSPs;
- capacity released to non CSP parties;
- a list of all postings of available capacity for release on each pipeline's electronic bulletin board;
- a description and list of all efforts to undertake bilateral arrangements for the release of capacity to third parties;
- a description of the terms in each posting or bilateral arrangement, including
    - term,
    - recall rights,
    - requested price and floor price;
- a listing of third-party offers received for the purchase of WG's capacity in response to the postings or bilateral efforts;
- a list of transactions successfully concluded; and
- a list offers to WG that were rejected by the Company and a description of why transactions were not undertaken if offers were received but rejected.

It may well be the Commission's requirement that WG flow through to retail customers 100% of the revenues received from capacity release revenues explains **[This portion contains**

[45] *Office of the People's Counsel v. District of Columbia Public Service Commission*, 845 A.2d 1128, 1130 (DC CA 2004) (in which the District of Columbia Court of Appeals recognized that "[a]ll agree that WGL's tariff, last reviewed by the Commission in 1994, requires that the revenues received from conventional release of capacity to third parties be credited to WGL's ratepayers as an offset to the Purchase Gas Adjustment (PGA) originally charged to them.")

information which Washington Gas alleges to be proprietary. Therefore, this material is omitted.]

in which it retains none of the revenues does not excuse the Company's apparent failure to investigate the potential benefit of capacity release for its retail customers. The Commission should set the question of the prudence of the Company's approach to capacity release transactions for thorough investigation in an evidentiary hearing to explore the effect of the Company's policy on the PGC rate paid by ratepayers in the District of Columbia.

5. The Commission Should Reconsider the Net Revenue Sharing Percentages and Increase the Share Allocated to Ratepayers.

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][46] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**[47] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][48]

[46] December 16 Tr. at 27.
[47] *Id.* at 25, 34.
[48] *Id.* at 34.

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][49]

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][50] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**[51] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**[52] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**, the time has come for this Commission to reconsider its revenue sharing approach.

In Order No. 12589, the Commission rejected OPC's argument that asset management transactions should be treated the same as capacity release transactions where net revenues are

[49] *Id.*
[50] January 14, 2009 WG Response to Question No. 4, Attachment C, p. 1.
[51] *Id.*
[52] *Id.*

flowed through 100% to consumers. The Commission reasoned that "WG's initiative in selecting and utilizing outside 'asset managers' has created new value, different from the value of capacity release credits, which would not otherwise exist."[53] WG had argued that asset management transactions are not limited to, or defined by, capacity release. However, the change in circumstances **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]** requires reconsideration of the Commission's prior ruling on the net revenue sharing percentages.

There are compelling reasons to flow through to District of Columbia ratepayers a significantly higher percentage of the net revenues produced from asset optimization transactions. **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**, the Company is obligated to manage its gas supply portfolio in a manner to provide gas service to its retail customers at the lowest reasonable cost. Thus a failure to pursue asset optimization and capacity release transactions in today's markets where such opportunities abound would not comport with the statutory obligation to manage the asset portfolio in a manner that produces the lowest overall cost for consumers.

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[53] Order No. 125890 at P 119.

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.][54] **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]

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[54] Note that in the December 16 Transcript at 10, **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

Third, the Commission should reduce WG's share of net revenues received from asset optimization transactions in order to eliminate the incentive that exists for the Company to prefer asset optimization transactions over capacity release transactions under the Commission's differing approaches to the sharing of net revenues from these transactions. If these two types of transactions were treated more comparably, the Commission could reduce the inherent bias in favor of asset optimization transactions.

If the Commission considers the evidence in this proceeding to date insufficient to warrant an immediate change in the revenue sharing percentages for the reasons discussed above, a reasonable alternative may be the 80/20 split approach used in Maryland.[55] While Maryland currently restricts that approach to transactions using ratepayer-funded assets, Maryland is reassessing that approach in light of the change in circumstances associated with WG's internalization of asset optimization functions. **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]** While the Commission could, and perhaps should, set the question of the appropriate sharing percentages

[55] WG may argue for a greater share of net revenues from Company-funded assets in exchange for providing ratepayers a greater share of net revenues from ratepayer-funded assets. In WG's testimony filed in pending Maryland Case No. 9158, WG argued that an 80/20 split of ratepayer-funded asses compels comparable treatment for WG's company-funded assets, *i.e.*, WG should receive 80% of the net revenues for those transactions. Maryland Public Service Commission Case No 9158, Direct Testimony of Paul S. Buckley at 22, ll. 15. However, the fact that WG may be using ratepayer funded infrastructure to undertake these trades argues heavily against the reasonableness of such an approach.

for an evidentiary hearing along with the prudence issues discussed in these comments, **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]**

require

an immediate change in the net revenue sharing percentages pending further review in an evidentiary hearing.

B. The Commission Should Require Several Revisions to the GPR Reporting Format Recommendations.

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.] In prior GPR proceedings, OPC requested that the GPR include information regarding specific asset optimization agreements and activities undertaken by third parties on behalf of WG.[56] WG opposed this recommendation, and the DC Commission Staff noted that WG provided the underlying contracts with the asset managers, as well as detailed information on these activities, to the GPWG. Staff recommended that the GPWG discuss and develop the information to be included in future reports. **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission**

[56] Staff Report at 7.

ruling on contention at any time in this proceeding.][57] **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**

[This portion contains information which Washington Gas alleges to be proprietary. Therefore, this material is omitted.] The Commission should require WG to provide this detailed information, including data related to the use of Company infrastructure, including company computers, software, staff and miscellaneous property, to provide the asset management activities **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**. Similarly, the Commission should require WG to report on its proportionate use of Company contracts and credit facilities (including the Company's credit quality) to support off-system sales and acquire gas for its retail customers. **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]** The information currently included in the GPR regarding asset optimization activities is *de minimis*. In the 2008 GPR **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**[58] and a line item entry reflecting net revenues earned on asset

[57] December 16 Tr. at 48

[58] 2008 GPR, Section VI, Schedule A at 23.

optimization transactions.[59] Indeed, the line item entry for asset optimization net revenues does not even reflect the system-wide total receipt of such net revenues even though the line item entry is identified as such. That entry on Schedule A, Statement B in Sections II and III of the 2008 GPR reflect that WG system-wide net revenues on asset optimization transactions total $3.9 million when in fact the Company earned **[This portion contains information which Washington Gas alleges to be proprietary and is omitted.]**[60] Much more detailed information is required to provide greater transparency in future reports to enable the Commission to adequately evaluate the Company's management of this function and the proper sharing of net revenues with ratepayers

C. The Commission Should Expeditiously Issue an Order to Address Unresolved 2004 and 2006 Gas Procurement Report Issues.

OPC raised a number of issues concerning the format of WG's GPR in its comments submitted on both the 2004 and the 2006 GPRs that remain unresolved. While the Commission Staff issued a report on these matters on February 27, 2008, the Commission has not acted on that report or on OPC's comments. WG reports that several matters were addressed by the GPWG during meetings in preparation for the submission of the 2006 and 2008 GPR.[61] WG further reports that those discussions lead to the following OPC recommendations being included in those Reports:

- inclusion of actual and weather normalized sales and delivery data for the two historical periods in the GPR (Sections II and III, Schedule C);
- inclusion of a narrative description of asset management functions (Section VI, Schedule A);
- inclusion of a narrative description of the GAMES model for the numerical output of the model (Section VI, Schedule B);

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[59] 2008 GPR, Sections II and III, Schedule A, Statement B at 1-2.
[60] December 16 Tr. at 27; *see also* WG Response to Question No. 4, Attachment C.
[61] 2008 GPR, Section 1 at 10-11.

- explanation of the valuation of storage inventory and withdrawals (Section I);
- addition of certain terms to the glossary (Section VII, Schedule 8);
- addition of a further breakdown of "spot purchases" into its components;
- addition of schedules calculating the average revenue per therm (Sections II and III, Schedule C);
- reflection of changes to references to "Consolidated" or "CNG" to "Dominion Transmission, Inc." or "DTI" (throughout GPR);
- inclusion of a separate line item for hedged purchases and reference to WG's hedging report (Sections II and III, Schedule B, Statement A, Page 2);
- addition of a reference by-hand to Sections II and III, Schedule D;
- modification references for Peak Day Base Gas Requirement (Sections II, III, IV and V, Schedule B, Statement B, Page 7); and
- reflection of a change from "firm transportation volumes" to "firm transportation demand billing determinants" (Sections II, III, IV and V, Schedule B, Statement B).

While the 2008 GPR reflects most of these changes, two require further comment. As discussed in detail in Section III.A of these comments, WG's narrative explanation of its asset optimization activities in the2008 GPR is far from adequate to provide this Commission with sufficient information from which to evaluate those activities. Thus, the Commission should require WG to include the additional information requested in these comments with respect to asset optimization activities in future reports.

Moreover, while WG states that it has complied with OPC's recommendation that the GPR include a "further breakdown of the catch-all "spot purchases" category among the elements of which this line is composed," **[This portion contains information which Washington Gas alleges to be proprietary. Therefore, the material is omitted.]** There is no data as to the elements comprising these purchases. The Commission should require

WG to provide this breakdown in a revised 2008 GPR, and to provide this breakdown in future reports. OPC briefly discusses below the remaining unresolved issues and requests that the Commission issue an order on these matters at the earliest opportunity.

1. The Commission Should Require WG to Justify the 50 Percent Limitation on Mandatory Capacity Assignments.

OPC recommended in its 2004 comments that the GPR should require WG to quantify the impact on sales service customers of the 50 percent limitation on mandatory assignment of transportation resources to competitive service providers. Staff agreed that WG should address this issue in the 2008 GPR. However, WG's discussion of the GPWG recommendations included in the 2008 GPR does not include a discussion of this issue. Consequently, the Commission should issue an order addressing this concern.

2. The Commission Should Require WG to Synchronize the Filing Dates for the Annual Reports on the DCA and Balancing Charges.

OPC recommended that the Commission require that the filing dates for the annual Distribution Charge Adjustment and Balancing Charge coincide with the GPR filing. Staff agreed and WG committed to synchronize the filings, but did not want to include the filings in the GPR. Staff recommended only that the issue be revisited in the future if WG does not submit these filings concurrently. The 2008 GPR does not include a discussion of this issue. Consequently, the Commission should issue an order addressing this concern.

3. The Commission Should Investigate Filing A Complaint with the Federal Energy Regulatory Commission Relating to Potential Over-Earnings by Hampshire Gas Company.

OPC recommended that the Commission take action to ensure that ratepayers are not paying excessive rates for storage services provided by WG's affiliate, Hampshire Gas Company. WG argued that this Commission has no authority to consider federal rate matters.

Staff agreed. The question of whether this Commission has authority to change the rate of return embedded in the rates for service from Hampshire Storage is irrelevant because OPC has not requested that relief. Instead, OPC urges the Commission to take action that is well within its jurisdictional authority: to investigate the matter and file an overearnings complaint with the FERC under Section 5 of the Natural Gas Act, 15 USC § 717 *et seq.*, if the investigation so warrants.

The return on equity embedded in Hampshire Storage's FERC-approved cost-of-service rate is 14%. The Commission should note that FERC very recently issued an order for Kern River Pipeline Company, rejecting a settlement offer based on a 12.5% return, and instead requiring an 11.55% return on equity for that pipeline.[62] FERC's order set forth an extensive description of its current policy on calculating rates of return to establish the 11.55% equity return for this interstate pipeline. Should application of FERC's policy on rate of return to Hampshire Gas Storage' operations produce a similar equity return result, this action would reflect a 245 basis point decrease in Hampshire Storage' cost of equity and potentially a significant decrease in rates and costs flowed through the PGC to WG's District of Columbia ratepayers.

IV.

SUMMARY

The GPR provides little transparency as to the actual day-to-day gas acquisition practices and policies employed by WG. The data provided in the GPR is aggregated to such a degree that it provides little opportunity for meaningful evaluation, especially with respect to WG's asset optimization functions and its decision-making processes related to its acquisition of gas supply and capacity releases. The improvements to the GPR recommended in these comments would

[62] *Kern River Pipeline Co.*, Order No. 496-B, 126 FERC ¶ 61,034 at PP 153, 192 (January 15, 2009).

aid in greater transparency to the issues and processes. However, it has been many years since the Commission has undertaken a thorough evaluation of the prudence of WG's purchasing and gas supply portfolio management activities in the context of a full, evidentiary rate hearing. **[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]** further justifies a thorough investigation of WG's purchased gas costs and net revenues flowed through to retail customers considering the critical role asset optimization plays in a least cost procurement practice in today's complex financial and physical gas markets, as well as reconsideration of the appropriate revenue sharing percentages for the net revenues produced by asset optimization transactions.

V.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Office requests the Commission take action with respect to WG's 2008 Gas Procurement Report consistent with the foregoing comments.

Respectfully submitted,

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Dated: January 30, 2009

[CONFIDENTIAL INFORMATION OMITTED]

APPENDIX A

WASHINGTON GAS LIGHT COMPANY'S JANUARY 14, 2009 RESPONSES TO THE OFFICE OF THE PEOPLE'S COUNSEL'S QUESTIONS AT THE DECEMBER 16, 2008 GAS PROCUREMENT WORKING GROUP TECHNICAL CONFERENCE

[This portion contains information which Washington Gas alleges to be proprietary. Please contact Washington Gas for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding.]

CERTIFICATE OF SERVICE

Formal Case No. 874

I hereby certify that on this 30th day of January, 2009, a copy of the foregoing "Comments of the Office of the People's Counsel Regarding the 2008 Gas Procurement Report of Washington Gas Light Company" (Public Version) were served on the following parties of record by hand delivery or first class mail, postage prepaid:

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