

1041-G-5

Office of the People's Counsel District of Columbia

1133 15th Street, NW • Suite 500 • Washington, DC 20005-2710
202.727.3071 • FAX 202.727.1014 • TTY/TDD 202.727.2876



Elizabeth A. Noël
People's Counsel

July 21, 2005

Freda A. James
Acting Commission Secretary
Public Service Commission
of the District of Columbia
1333 H Street, N.W.
Second Floor West
Washington, D.C. 20005

05 JUL 21 PM 4:43
CHIEF CLERK
PUBLIC SERVICE COMMISSION
DISTRICT OF COLUMBIA

Re: Formal Case No. 1041, In The Matter of The Investigation Into Washington Gas Light's Compliance With Its Tariffs

Dear Ms. James:

Enclosed for filing in the above-referenced proceeding is an original and fifteen (15) copies of the "Office of the People's Counsel Response Pursuant to Commission Order No. 13616."

If there are any questions regarding this matter, please contact me at (202) 727-3071.

Sincerely,

Laurence C. Daniels
Assistant People's Counsel

Enclosure

cc: Bernice K. McIntyre, Esq.
Washington Gas Light Company

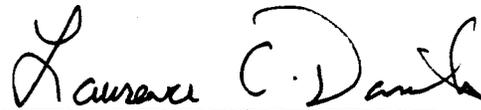
CERTIFICATE OF SERVICE

Formal Case No. 1041, In The Matter of The Investigation Into Washington Gas Light's Compliance With Its Tariffs

I hereby certify that on this 21st day of July, 2005, a copy of the "Response of Office of the People's Counsel Pursuant to Commission Order No. 13616" was served on the following parties by hand delivery:

Richard Beverly, Esq.
General Counsel
Public Service Commission of the
District of Columbia
1333 H Street, N.W., 7th Floor East
Washington, D.C. 20005

Bernice K. McIntyre, Esq.
Department Head-Regulatory
Washington Gas Light Company
101 Constitution Avenue, N.W.
Washington, D.C. 20080



Laurence C. Daniels
Assistant People's Counsel

BEFORE
THE DISTRICT OF COLUMBIA
PUBLIC SERVICE COMMISSION

05 JUL 21 PM 4:43
CHIEF CLERK
PUBLIC SERVICE COMMISSION

In the Matter of the

§
§
§
§
§

Investigation Into
Washington Gas Light's
Compliance With Its Tariffs

Formal Case No. 1041

**INITIAL RESPONSE OF THE OFFICE OF THE PEOPLE'S COUNSEL
PURSUANT TO COMMISSION ORDER NO. 13616**

I. PREFACE

As the statutory representative of the ratepayers of the District of Columbia,¹ the Office of the People's Counsel for the District of Columbia ("OPC" or "Office") respectfully files its Initial Comments pursuant to Commission Order No. 13616.

II. INTRODUCTION

This matter arose out of an appeal filed by the Office, on behalf of four Complainants, to the Hearing Officer's decision filed on April 25, 2005 (*Khinda et. al. v. Washington Gas*). The Commission's Order No. 13616, granted in part and denied in part Complainants' appeal. In addition, said Order initiated Formal Case No. 1041, "to determine the extent of Washington Gas' ("WG") noncompliance with its tariff and the effect said noncompliance has had on ratepayers." The Order further delineated and directed WG to answer seven (7) questions within fifteen (15) days of the issuance of the Order and solicited comments from interested persons who have knowledge of WG's noncompliance with section 13(d) and any other tariff sections. On July 1, 2005, WG filed a Motion for Extension of Time to file its responses to the Commission's questions on September 21, 2005.

¹ D.C. Code, 2001 Ed. § 34-804(d).

OPC respectfully reserves the right to supplement the record in this case in response to WG's answers to the Commission's responses and OPC's continued investigation.

III. DISCUSSION

At the outset, OPC commends the Commission for initiating this proceeding to investigate the effect on ratepayers caused by WG's admitted noncompliance with the Commission approved tariff.² An investigation of this nature is necessary to ensure that the public interest is protected and to otherwise ensure that utilities do not engage in unilateral and unlawful acts that violate the public utility statutory and regulatory provisions in the District of Columbia.

During the course of OPC's investigation into and litigation of WG's application of its tariff provisions governing the installation of natural gas service lines, the Office became aware that WG was not in compliance with the tariff regarding the installation of natural gas service pipes and connections for consumers residing in or planning to reside in the District of Columbia. In addition to the Company's noncompliance with section 13(d), OPC found WG to be in non compliance with two other tariff sections, specifically, 13(f) and 15.

- I. In direct contravention of 13(f), the Company charged consumers a contribution charge for the installation of service pipes and connections for existing homes by charging consumers a contribution charge.
- II. Similarly, WG fails to comply with WG D.C. Tariff Section 15 by charging consumers initiating service for the cost of a meter.

OPC submits the Commission has the statutory authority to conduct an investigation and convene a hearing pursuant to D.C. Code, 2001 Ed. § 34-709, D.C. Code, 2001 Ed. § 34-908, D.C. Code, 2001 Ed. § 34-914 and D.C. Code, 2001 Ed. § 34-915. Specifically, D.C. Code §34-908 requires the Commission to hold a formal evidentiary hearing before making a final determination.

² See, Consumer Complaint No. 9075030, *In the Matter of Pamela Khinda et. al. v. Washington Gas*, Commission Order No. 13616, p. 9, (June 21, 2005).

OPC submits, given WG's admitted noncompliance with published tariff schedules and regulations, a formal hearing is required in order to develop a full evidentiary record before the Commission can make a final determination or take formal action against WG.

IV. ANALYSIS

This matter arose out of a consumer complaint, *Khinda et. al. v. Washington Gas*, concerning the installation of natural gas pipes and connections into four homes on Ordway Street, NW. The record reflects and WG admits that it failed to comply with section 13(d) in that case.³ In addition to that instance of noncompliance, OPC is aware of additional tariff provisions where WG is not in compliance. Specifically, OPC learned during its independent investigation that WG is also not in compliance with Section 13(f) and Section 15 of its tariff.

A. WG Fails to Comply with Section 13 (f) of its WG D.C. Tariff by Imposing a Customer Charge on Connection Service Requests for Existing Service Lines.

The Company fails to comply with WG D.C. Tariff Section 13(f) by requesting a customer contribution charge when a consumer initiates service at a service address with existing service lines. Section 13(f) of WG D.C. Tariff states:

When, in the opinion of the Company, an existing service is insufficient to supply new demands put on it and additional investment and facilities is warranted by the revenue, the Company will enlarge the facilities as necessary at no cost to the customer.⁴

OPC has been contacted by a customer who was required by WG to pay a customer contribution charge when initiating service at a service address with an existing service line.

³ See, CC No. 9075030, *In the Matter of Khinda v. Washington Gas*, WG's Answer pp. 2, (May 17, 2004). See also, Consumer Complaint No. 9075030, *In the Matter of Pamela Khinda et. al. v. Washington Gas and In the Matter of the Investigation Into Washington Gas Light's Compliance With Its Tariff*, Commission Order No. 13616, pp. 9, (June 21, 2005).

⁴WG D.C. Tariff Section 13(f).

According to the customer, he did not add new appliances that would increase the demand for natural gas at his home.

Although the tariff allows WG discretion when making a determination about the need to enlarge the facilities to meet new demand, that discretion is not unfettered. The Company must at a minimum apply an objective standard that measures whether there is an increased demand for natural gas. By using an objective standard, WG will be in compliance with statutory law that requires rates to be applied in a non discriminatory fashion.⁵ As the record currently exists, however, WG has provided no evidence to support its decision to assess the customer contribution charge. In the absence of an objective standard, WG's actions can be characterized as arbitrary and capricious and an abuse of discretion.

According to the customer, WG informed him that the customer contribution charge is necessary to replace or upgrade the service lines due to new gas demands by the customer.

1. Everett Catlin

In March 2004, Mr. Catlin purchased a home that had previously been supplied natural gas service by WG. Mr. Catlin renovated the home, but did not increase the square footage or number of gas appliances serving the home. Shortly after moving into the home, Mr. Catlin requested initiation of natural gas service. 5126 Call Place, S.E. WG initially demanded approximately \$9,000.00 for the replacement of gas service lines due to new demands. After Mr. Catlin contacted the Mayor's Office regarding the amount requested by WG, WG reduced the amount by \$7,000.00. After OPC filed a compliant on behalf of Mr. Catlin on March 10, 2005, WG again reduced the customer contribution charge to \$1,688.02. The cost of the meter was included in the

⁵ D.C. Code, 2001 Ed. § 34-1101.

total cost.⁶ The reason given by WG for the customer contribution charge was “to meet the new gas demands by the customer.”⁷

Although Mr. Catlin was represented by OPC in the matter, the Commission’s Office of Consumer Services contacted Mr. Catlin to request he appear at an informal proceeding with Washington Gas representatives. Mr. Catlin agreed to pay the amount WG requested after he was told by Patricia Walker, Supervisory Consumer Specialist in the Commission’s Office of Consumer Services, that he could still proceed with his complaint against WG challenging the amount of the contribution charge. On April 15, 2005, Linda Jordan, Director of the Commission’s Office of Consumer Services, returned the complaint to OPC thereby obviating WG’s responsibility to explain on the record the basis for requiring the customer contribution charge.

B. WG Fails to Comply with WG D.C. Tariff Section 15 by Charging Consumers the Cost of the Meter When Initiating Service.

Pursuant to WG’s tariff and Commission regulation, the cost of the meter should not be included when a new gas line is or an existing gas line is installed for the Company’s convenience or benefit. WG D.C. Tariff Section 15 states,

Any relocation or alteration of Company-owned facilities to furnish gas service to customers for the convenience and benefit of the Company shall be paid for by the Company; however, any such changes occasioned or necessitated by any action of customer, or owner of the property if the customer is a lessee, may be made only after prior approval of the Company, and shall be at the expense of the customer or owner responsible therefore; provided, however, that the Company may bear that portion of the cost of such charges in facilities which, in

⁶ See, Washington Gas’ Answer to Complaint of Everett Catlin, Respondent Exhibit B.

⁷ See, WG Data Response 1-1, (March 31, 2005).

the Company's opinion, is justified under the circumstances.⁸
[Emphasis added].

OPC submits that the meters in question were placed for the "convenience and benefit of the Company" as defined by the tariff. Consistent with Commission regulations, the meters were placed outdoors where they are readily accessible for the Company's meter reading personnel to take monthly readings which are used to generate bills. WG has itself recognized the value of meters being placed outside in order to facilitate meter reading. Tariff provision 15 is consistent with Commission regulation 302.3 which states:

Whenever a new gas service line is installed or an existing gas service line is replaced, the meter shall be placed outdoors *at utility cost*. Meter relocation and house piping costs incurred for the convenience of the customer shall be at customer expense.⁹

The first sentence of this provision unambiguously applies to installations related to new installations and replacement of existing gas lines. The second sentence applies to instances where meter relocation and pipes in the home are altered for the personal convenience of the customer, *i.e.* a customer request to move the meter from inside the home to outside. Therefore, the second sentence does not apply to the installation of new service pipes.

In addition to Mr. Catlin who had an existing gas line replaced at his home and was charged for the cost of the meter, numerous other consumers have been charged for the cost of meters where new pipes and connections were installed for newly constructed homes.

⁸ WG D.C. Tariff Section 15.

⁹ 15 D.C.M.R. §302.3 (2004)(emphasis added).

1. Philip and Pamela Khinda, Ridgway and Anne Hall, John and Joan Bray, and Michael Klisch

Philip and Pamela Khinda, Ridgway and Anne Hall, John and Joan Bray, and Michael Klisch each reside on Ordway Street, N.W. Each Complainant was having a new home built by Gibson Builders and was charged \$7,940.00 by WG for the installation of new service pipes and connections. The \$7,940.00 included the cost of the meters.¹⁰ Each paid under protest.

2. Caroline James and Stephen Altschul

Caroline James and Stephen Altschul are building a new home at 3025 Gates Road, N.W. WG informed the Complainants' builder that the installation of new service pipes would cost \$13,705.00, which they paid under protest. The \$13,705.00 included the cost of the meter.¹¹

OPC submits that pursuant to WG's tariff provision 15 and pursuant to Commission Regulation 302.3, none of the aforementioned customers should have been charged for the cost of the meter.

V. RELIEF SOUGHT

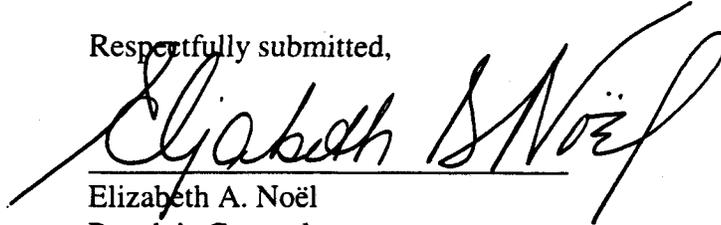
For the reasons stated above, OPC requests the Commission to promptly initiate a full evidentiary hearing into WG's practices and policies that result in its noncompliance with WG D.C. Tariff Sections 13(f) and 15. OPC has demonstrated that WG is imposing, in contravention of tariff provisions, a customer contribution to install natural gas service pipes and connections for existing service addresses. OPC submits that WG's actions are not in the public interest and are otherwise unjust and unreasonable. Furthermore, WG is imposing the cost of the meter on all consumers who have either existing natural gas lines replaced or new gas lines installed, also in contravention of tariff

¹⁰ See, CC No. 9075030, WG Data Response 1-9.

¹¹ See, *James v. Washington Gas*, WG's Data Response to Data Request 1-8.

provisions. OPC further requests the Commission grant any other relief permitted by law including granting refunds to District consumers for unreasonable charges WG obtained from District consumers for the installation of natural gas pipes and connections in excess of existing rates and any amounts received that are greater than that permitted under the WG D.C. Tariff discussed herein.

Respectfully submitted,



Elizabeth A. Noël
People's Counsel
D.C. Bar No. 288965

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

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

Jennifer L. Emma
Assistant People's Counsel
D.C. Bar No. 481853

Laurence C. Daniels
Assistant People's Counsel
D.C. Bar No. 471025

Brian O. Edmonds
Assistant People's Counsel
D.C. Bar No. 475869

OFFICE OF THE PEOPLE'S COUNSEL
OF THE DISTRICT OF COLUMBIA
1133 Fifteenth Street, N.W., Suite 500
Washington, D.C. 20005-2710
(202) 727-3071

Dated: July 21, 2005

H:\GAS\FC-1041\initialresponse_order13616.wpd