



**Office of the People's Counsel  
District of Columbia**

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**Elizabeth A. Noël**  
People's Counsel

February 16, 2007

Dorothy Wideman  
Secretary  
Public Service Commission  
of the District of Columbia  
1333 H Street, N.W.  
Second Floor West  
Washington, D.C. 20005

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

Dear Ms. Wideman:

Enclosed for filing in the above-referenced proceeding is an original and fifteen (15) copies of the "The Office of the People's Counsel's Motion for Sanctions Against Washington Gas for Noncompliance with its Tariffs and Request for Refunds for Consumers Who Were Overcharged".

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: Cert list  
Bernice K. McIntyre, Esq.  
Washington Gas Light Company

**BEFORE  
THE DISTRICT OF COLUMBIA  
PUBLIC SERVICE COMMISSION**

<b>In the Matter of the</b>	§	
	§	
<b>Investigation Into</b>	§	<b>Formal Case No. 1041</b>
<b>Washington Gas Light's</b>	§	
<b>Compliance With Its Tariffs</b>	§	

**OFFICE OF THE PEOPLE'S COUNSEL'S MOTION FOR SANCTIONS AGAINST  
WASHINGTON GAS FOR NONCOMPLIANCE WITH ITS TARIFFS AND  
REQUEST FOR REFUNDS FOR CONSUMERS WHO WERE OVERCHARGED**

**I. INTRODUCTION**

Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia's ("Commission") Rules of Practice and Procedures, 15 D.C.M.R. § 105.8 (2005), the Office of the People's Counsel for the District of Columbia ("OPC" or "Office"), the statutory representative of District of Columbia ratepayers and consumers,<sup>1</sup> respectfully files this motion requesting the Commission impose sanctions against Washington Gas ("WG" or "Company") in the form of fines for failing to obey two lawful requirements of the Commission, specifically:

- 1) General Service Provision 15 - by improperly charging 442 consumers for the cost of the meter when calculating the customer contribution charge for service line installations; and
- 2) General Service Provision 13(d) - by using an unapproved methodology to calculate the customer contribution charge for service line installations in 1,875 separate instances.

OPC also respectfully requests the Commission to direct WG to issue refunds to those customers who were overcharged as a result of being charged for the cost of the meter.

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<sup>1</sup> D.C. Code Ann. § 34-804 (2005).

## II. DISCUSSION

The Commission established Formal Case No. 1041 in June 2005 to initiate an investigation of Washington Gas' compliance with its tariffs and the impact of any noncompliance on consumers after WG admitted that it does not always follow the tariff when calculating the customer contribution charge for consumers purchasing a service line installation.<sup>2</sup> The investigation, covering an eight-year period from 1997 to 2005, reveals the Company engaged in an unlawful pattern of behavior causing economic harm to hundreds of District of Columbia consumers.

### A. Evidentiary Basis for Sanctions

In total, there are 2,317 violations of the two aforementioned tariff provisions. The evidentiary basis for proving that WG violated the tariff provisions is detailed in the Office's comments entitled, The Office of the People's Counsel's Comments Regarding Washington Gas' Noncompliance with its Tariffs, filed simultaneously with this motion. OPC submits the Comments contain more than sufficient evidence to determine that WG is not in compliance with its tariffs and thus subject to be fined.

### B. Commission's Statutory Authority To Impose Sanctions

The Commission's statutory authority for imposing a fine on a noncompliant utility company is found in D.C. Code § 34-706. The statute reads as follows:

*If any public utility shall violate any provision of this subtitle, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the Commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such public utility*

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<sup>2</sup> See, Formal Case No. 1041, *In the Matter of the Investigation Into Washington Gas Light's Compliance With Its Tariffs*, Order No. 13616, rel. June 21, 2005, at ¶ 24. See also, CC No. 9075030, *In the Matter of the Complaint of Pamela Khinda et al v. Washington Gas*, Answer of Washington Gas, at 2.

*shall forfeit and pay to the District of Columbia the sum of \$5,000 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility.*<sup>3</sup>

In 1988, in Formal Case No. 870, the Commission imposed the maximum fine amount of \$300 against WG because the Company failed to address three issues in a Commission rate order. The Commission found that WG's failure to address the three issues "made it impossible for the Commission to discharge its statutory responsibilities" and imposed the \$300 fine for each violation for a total fine of \$900.<sup>4</sup> More recently in a case involving Verizon-Washington, DC, ("Verizon"), the Commission did not impose a fine on Verizon because the Commission found that the Company did not violate its tariff; however, the Commission held that if a utility company violated a tariff, the Commission could "pursue sanctions".<sup>5</sup>

In the instant case, the evidence clearly demonstrates that WG violated its tariff numerous times. Accordingly, the Commission should exercise the full breath of its statutory authority and impose the maximum fine of \$5,000 for each violation committed by WG.

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<sup>3</sup> D.C. Code Ann. § 34-706(a).

<sup>4</sup> See, Formal Case No. 870, *District of Columbia Natural Gas, a Division of Washington Gas Light Company*, Order No. 9146, rel. Oct. 28, 1988.

<sup>5</sup> See, Formal Case No. 1051, *In the Matter of the Investigation of Verizon-Washington DC, Inc.'s Weather Forecast Service*, Order No. 14189, at ¶ 25, rel. Jan. 29, 2007.

### C. The Commission Can Impose a \$5,000 Fine For Each Violation

In April 2005, the Council of the District of Columbia raised the amount of the fine for violating a Commission rule, order or statute from \$300 to \$5,000.<sup>6</sup> While most of the violations occurred prior to April 2005, OPC submits the Commission can, based upon well established case law, impose a fine of \$5,000 for each violation.

In *Bonilla v. Liqilux Gas Corp*, the U.S. District Court in Puerto Rico held that,

Where there have been recent changes in the law, the presumption is that the law presently in effect will be applied to actions before the court unless manifest injustice will result, or there is statutory direction or legislative history indicating that the applicable law is the old law. To determine whether the application of a law in existence at the time the court renders its decision will result in "manifest injustice," the court must look at: (1) the nature and identity of parties; (2) the nature of parties' rights; and (3) the impact of the change in the law upon the rights and obligations of the parties.<sup>7</sup>

Applying the factors in *Bonilla*, OPC finds nothing in the legislative history that directs the old fine of \$300 to be applied to violations occurring prior to the change in law that are discovered and addressed after the change in law.

Moreover, there is no manifest injustice as it applies to the three factors outlined in the *Bonilla* case. In this case, Washington Gas is the regulated monopoly provider of natural gas service in the District of Columbia. In the context of this case, as a regulated utility company, WG's rights are defined by the Commission's rules, statutes and orders. The impact of the change in law on WG only increases the amount of money the Company will have to pay for failing to comply with the

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<sup>6</sup> Omnibus Utility Amendment Act of 2004, D.C. Law 15-342 (2005)

<sup>7</sup> *Bonilla v. Liqilux Gas Corp.*, 812 F. Supp. 286, 290-291 1993 U.S. Dist LEXIS 1698 (D.P.R., Feb 9, 1993).

regulations that govern their behavior; it does not change the regulation itself or the requirement for WG to comply with the law. Therefore, because the change in law did not adversely impact WG's obligation to comply with the law, there is no manifest injustice in applying the \$5,000 fine for each violation dating back to 1997.

**D. The Commission Should Direct WG to Reimburse Those Consumers Who Were Charged For the Cost of the Meter**

In GT04-1, the Commission held that Section 302.3 of the Utility Consumer Bill of Rights is "*plain and unambiguous*"<sup>8</sup> and that it "*precludes the Company from charging customers for meter costs associated with the installation of new gas lines or the replacement of existing ones.*"<sup>9</sup> The evidence contained in OPC's comments, in the form of data responses from WG, clearly proves that WG improperly charged 442 consumers for the cost of the meter. Because WG overcharged these consumers, OPC requests the Commission to direct WG to refund those customers the cost of the meter. OPC submits that this request is consistent with the Commission's decision in Formal Case No. 1008, where the Commission directed WG to refund customers who were overbilled by the Company.<sup>10</sup>

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<sup>8</sup> See, GT04-1, *In The Matter of the Application of Washington Gas Light Company To Amend Its General Service Provisions*, Order No. 13802, p. 4, para. 12, (Nov. 3, 2005) and Order No. 13854, p.2, para. 4, (Jan. 9, 2006).

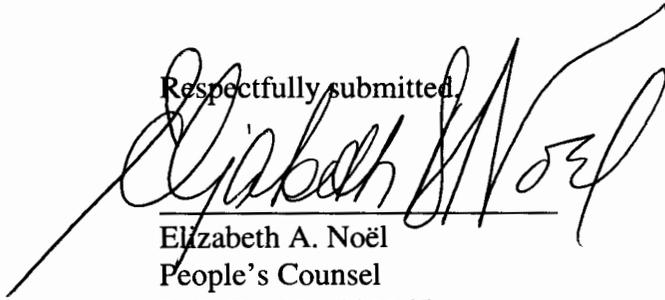
<sup>9</sup> See, GT04-1, *In The Matter of the Application of Washington Gas Light Company To Amend Its General Service Provisions*, Order No. 13861, p. 3, para. 3, (Jan. 25, 2006).

<sup>10</sup> See, Formal Case No. 1008, *In the Matter of the Investigation of Washington Gas Light Company's Billing Systems Practices*, Order No. 13552, rel. Apr. 6, 2005, at ¶ 11.

### III. CONCLUSION

For the foregoing reasons, the Office respectfully requests that the Commission (1) impose sanctions against WG in the form of fines for failing to comply with the Commission's tariffs and (2) issue refunds to those consumers who were charged for the cost of the meter.

Respectfully submitted,



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Dated: February 16, 2006

**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 16<sup>th</sup> day of February 2007, a copy of the "The Office of the People's Counsel's Motion for Sanctions Against Washington Gas for Noncompliance with its Tariffs and Request for Refunds for Consumers Who Were Overcharged" was served on the following parties by hand delivery:

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