



January 7, 2022

VIA ELECTRONIC FILING

Andrew S. Johnston
Executive Secretary
Maryland Public Service Commission
6 Saint Paul Street, 16th Floor
Baltimore Maryland 21202-6806

Re: Complaint of the Office of People's Counsel Against Washington Gas Light Company and WGL Energy Services, Inc., Case No. 9673

Dear Mr. Johnston:

Attached for filing in the above-referenced case, please find the Comments of Sierra Club.

In accordance with the Commission's March 16, 2020, Notice of Waiver and Relaxed Filing Requirements, Sierra Club will not provide paper copies of this filing. Please contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

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BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

COMPLAINT OF THE OFFICE OF
PEOPLE’S COUNSEL AGAINST
WASHINGTON GAS LIGHT COMPANY
AND WGL ENERGY SERVICES, INC.

Case No. 9673

COMMENTS OF SIERRA CLUB

On November 24, 2021, the Maryland Office of People’s Counsel (“OPC”) filed a complaint against Washington Gas Light Company (“Washington Gas” or “WGL”) and WGL Energy Services, Inc. (“WGL Energy”) (jointly, “the Companies”) alleging that Washington Gas is sending customers billing statements that include broad and misleading claims of environmental benefits from natural gas use.¹

On November 24, 2021, the Maryland Public Service Commission (“Commission”) issued a Notice Initiating a New Docket and Request for Comments.² The Commission requested comments from interested parties regarding the complaint by Friday, January 7, 2022. Accordingly, Sierra Club hereby respectfully submits these comments.

I. INTRODUCTION

Human activities that release greenhouse gasses (“GHG”), particularly the burning of fossil fuels, contribute substantially to global warming and climate change.³ The science is now completely clear: climate change is a real emergency that is already impacting all of our

¹ Complaint of MD OPC Against Washington Gas and WGL Energy, at 1 (Nov. 23, 2021), ML# 237960 (“OPC Complaint”).

² Notice Initiating a New Docket and Request for Comments (Nov. 24, 2021), ML# 237969 (“Commission Notice”).

³ World Health Organization (“WHO”), *Climate Change and Health* (Oct. 30, 2021), <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.

communities.⁴ In the face of this environmental crisis, consumers are increasingly interested in more sustainable and eco-conscious products or alternatives. Many consumers wish to purchase eco-friendly or green products in an effort to do their part to alleviate climate change or other potentially adverse environmental effects.

It seems every company is rushing to be “green” in the hopes of capitalizing on environmentally savvy consumers and their purchasing power. However, instead of changing their practices to become more environmentally friendly and mitigate climate change, some companies only promote the appearance of being eco-friendly by engaging in “greenwashing.” “Greenwashing” is the act of misleading consumers regarding the environmental benefits of a product or service so as to cover up that company’s actual poor practices or environmentally poor product performance.⁵ Greenwashing misleads consumers into buying products based on the erroneous belief that the products have some environmental benefit.⁶

Greenwashing is particularly insidious because the practice takes advantage of consumers who desire that their purchases have the added effect of improving the environment. These deceptive advertising tactics confuse consumers about whether a company is really “green.”

⁴ EPA., *Climate Change Indicators: U.S. and Global Temperature*, <https://www.epa.gov/climate-indicators/climate-change-indicators-us-and-global-temperature> (last updated Apr. 2021); U.N. Intergovernmental Panel on Climate Change (“IPCC”), *AR6: Climate Change 2021*, The Physical Science Basis (Oct.15, 2021), <https://www.ipcc.ch/report/ar6/wg1/>.

⁵ *City of Hoboken v. Exxon Mobil Corp.*, 2021 WL 4077541, at *2 (D.N.J. Sept. 8, 2021) (where the City of Hoboken alleged “Greenwashing refers to [a] strategy to make consumers think that Defendants are committed to combatting climate change when, in fact, Defendants have not made any changes to their fundamental, core business of extracting and producing fossil fuels. . . [and] “are cover for their accelerating extraction, production, marketing and sale of fossil fuels—the actual cause of climate change.”).

⁶ *See Commonwealth v. Exxon Mobil Corp.*, 2021 WL 3493456, at *13 (Mass. Super. June 22, 2021) (where the Commonwealth defined greenwashing as “advertising and promotional materials designed to convey a false impression that a company is more environmentally responsible than it really is, and so to induce consumers to purchase its products.”).

Consumers are particularly susceptible to being tricked by companies making dubious environmental claims because “the environment” is something in which consumers have a demonstrable interest⁷ but consumers generally cannot substantiate environmental claims on their own. The government has a duty to the public to regulate deceptive or misleading claims that individuals cannot themselves easily substantiate. As consumers become more environmentally conscious and companies tout their “green” credentials in marketing and branding efforts, companies must be held accountable for their misleading and false statements.

WGL’s billing statement constitutes this insidious type of greenwashing. In the billing statement, WGL claims that 1) natural gas is clean energy; 2) natural gas costs 1/3 less than electric; and 3) 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.⁸ These statements are misleading and cannot be substantiated (because they are false). Moreover, the statements are designed to trick unsuspecting customers, who are interested in making environmentally sensitive investments, into making a costly purchase which they will not be able to replace for years.

The misleading practices of WGL are similar to the tobacco companies’ practices in the mid-twentieth century. Like the tobacco industry, the fossil fuel industry knows of the harmful effects of their activities but falsely denies those effects. WGL’s greenwashing is designed to influence consumers’ actions in a manner similar to tobacco companies: both use deceptive

⁷ For example, in a recent poll conducted for the Maryland League of Conservation Voters (“MD LCV”), 72% of Marylanders support policies requiring utility companies in Maryland to generate 100% of their electricity from renewable sources by 2030, 74% of Marylanders support policies requiring fossil fuel companies to pay a fee on their carbon pollution. MD LCV, *Maryland Voters Support Action on Climate and Transportation* (Feb. 22, 2021), <https://www.mdlcv.org/climate-change/maryland-voters-support-action-on-climate-and-transportation>.

⁸ OPC Complaint at 3.

advertising to encourage consumers to buy their products by denying and downplaying the negative effects of these products.

Sierra Club agrees with OPC's request that civil penalties be imposed upon the Companies. However, civil penalties are not enough to mitigate this behavior. WGL is a public service company which was granted a monopoly franchise in exchange for operating in the public interest. Certainly, providing false and misleading information to its captive ratepayers cannot be viewed as operating in the public interest. In addition to imposing civil penalties, the Commission should institute a proceeding which will result in the design of an education program to inform the public of the negative effects of fossil fuel use and require WGL to fund that program.

Finally, the Commission should find that a case-by-case approach to preventing greenwashing fails to prevent the harms of this misleading advertising. The Commission should institute a rulemaking proceeding to develop boundaries for legitimate environmental claims.

II. DISCUSSION

A. Background

On November 24, 2021, the OPC filed a complaint against Washington Gas and WGL Energy pursuant to the Public Utilities Article ("PUA") §§ 2-204, 2-113, 3-102, 5-303, 7-604; and COMAR 20.40.02.01, 20.40.02.02, and 20.59.07.07.⁹

According to the OPC complaint, Washington Gas is sending customers billing statements that include broad and misleading claims of environmental benefits from natural gas use.¹⁰ "In October and November 2021, Washington Gas sent customers enrolled with its

⁹ OPC Complaint.

¹⁰ *Id.* at 1.

affiliated gas supplier, WGL Energy, bills that include a marketing statement—unattributed to either the gas distribution company or supplier—describing natural gas as ‘a clean energy’ that is less emissions intensive and more environmentally beneficial than an all-electric home.”¹¹

Specifically, the bill inserts at issue state:

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.

OPC objected to statements included in WGL bill inserts, contending that the billing statements deceive and mislead utility customers about the emissions attributes of natural gas.¹²

OPC asserts that the billing statement consists consist of “unfair, abusive, or deceptive trade practices” as defined under Commercial Law Article § 13-301¹³ and violates PUA § 2-113 and § 5-303.¹⁴ Among other things, OPC requests that the Commission issue an order: (1) directing Washington Gas and WGL Energy to immediately remove the deceptive marketing claim from all billing statements; (2) levying civil penalties against Washington Gas of at least \$500,000 and against WGL Energy of at least \$500,000; and (3) to open an investigation into the billing practices of Washington Gas and WGL Energy to determine the scope of state law violations.¹⁵

¹¹ *Id.*

¹² *Id.* at 2.

¹³ Md. Code, Com. Law § 13-301 (2021).

¹⁴ *See* OPC Complaint at 6–10.

¹⁵ *Id.* at 13–14.

B. The Commission Should Find that the WGL Billing Statement Violates Maryland Law and the Federal Trade Commission Guidelines

1) The Misleading Statements in the WGL Billing Statement Violates Maryland Law and the Federal Trade Commission's Green Guidelines

Pursuant to Maryland law, the Commission is required to ensure public service companies operate “in the interest of the public”¹⁶ When regulating public service companies, the Commission must consider the “preservation of environmental quality” including “protection of the global climate from continued short-term and long-term warming” and “achievement of the State’s climate commitments for reducing statewide greenhouse gas emissions.”¹⁷ The Commission has the implied and incidental powers needed or proper to carry out its functions.¹⁸

With regard to gas suppliers, the Commission was required by the General Assembly to adopt regulations that protect consumers from discriminatory, unfair, deceptive, and anticompetitive acts and practices in the marketing, selling, or distributing of natural gas.¹⁹ Thus, the General Assembly has determined that authorizing the Commission to protect consumers from unfair or deceptive marketing practices is in the public interest. Certainly, the public interest standard should not be less for a monopoly public service company than it is for a competitive gas supplier.

The Commission should rely on both the Maryland Consumer Protection Act (“CPA”) and the Federal Trade Commission’s (“FTC”) Section 5 standards to determine if the billing statement is unfair and deceptive. The CPA prohibits a person from engaging in any unfair

¹⁶ Md. Code, Pub. Util. § 2-113(a)(1)(i)(1) (2021).

¹⁷ *Id.* § 2-113(a)((2)(v) and (vi).

¹⁸ *Id.* § 2-112(b)(2).

¹⁹ *Id.* § 7-604(a)(1).

abusive or deceptive trade practice in the sale or offer of sale of consumer goods.²⁰

Disparagement of the goods, realty, services, or business of another by a false or misleading representation of a material fact also constitutes an unfair or deceptive trade practice under the CPA.²¹ An “unfair or deceptive trade practice” includes any false or misleading statement or representation which has the capacity, tendency, or effect of deceiving or misleading consumers.²² The definition of an unfair or deceptive practice also includes 1) representations that a consumer good or service has a benefit which they do not have;²³ 2) failure to state a material fact if the failure deceives or tends to deceive;²⁴ and 3) deception with the intent that the consumer rely on the same in connection with the promotion or sale of any consumer goods or services.²⁵

Finally, in interpreting the CPA, the Consumer Protection Division adopted the FTC advertising substantiation policy. That policy requires that advertisers possess a reasonable basis for their advertising claims. The CPA demonstrates intent to cover any possible way that a merchant might take advantage of consumers or induce them to purchase something that might not otherwise have been purchased.

Importantly, under the CPA liability extends to one who is not the direct seller.²⁶ A deceptive practice committed by someone not the seller that is integral to and so infects the sale or offer of sale to a consumer that it would be deemed to have been a practice committed “in” the

²⁰ Md. Code, Com. Law § 13-303(1) and (2).

²¹ *Id.* § 13-301(4).

²² *Id.* § 13-303(1).

²³ *Id.* § 13-301(2)(i).

²⁴ Md. Code, Com. Law § 13-301(3).

²⁵ *Id.* § 13-301(9)(i).

²⁶ *MRA Prop. Mgmt, Inc. v. Armstrong*, 43 A.3d 397, 412–13 (Md. 2012).

sale or offer for sale is a deceptive trade practice violative of the CPA.²⁷ Thus, even if only WGL Energy is viewed as the “seller”, the Commission should find that WGL played such an integral role in the deception that both companies’ actions constituted unfair and deceptive trade practices.

The General Assembly expressly directed that in construing the phrase “unfair or deceptive trade practices,” the decisions of the Federal Trade Commission and federal courts interpreting the Federal Trade Commission Act (“FTCA”) should be given “due consideration and weight.”²⁸ The Commission should look to interpretations of the CPA by the Maryland Attorney General’s Consumer Protection Division because this division has significant expertise in interpreting the unfair and deceptive standards of the CPA. Similarly, the Commission should rely on FTC interpretations because the General Assembly has recognized this agency’s expertise in the area of misleading advertising.²⁹

Congress enacted the FTCA to prevent unfair trade practices. Section 5 of the FTCA prohibits “unfair or deceptive acts and practices.”³⁰ The FTCA has three basic rules for advertising: advertisers (1) must tell the truth and not mislead consumers; (2) must substantiate product claims before making them; and (3) must not engage in unfair practices or advertising

²⁷ *White v. Kennedy Krieger Inst., Inc.*, 110 A.3d 724, 754–55, *cert. denied*, 443 Md. 237 (Md. Ct. Spec. App. 2015).

²⁸ Md. Code, Com. Law § 13-105.

²⁹ *See, e.g., Luskin’s Inc. v. Consumer Prot. Div.*, 726 A.2d 702, 716 (1999) (determination of whether the term “free” is deceptive should be decided by applying FTC regulations, including those set forth in the FTC Free Guidelines).

³⁰ 15 U.S.C. § 45.

that causes “substantial, unavoidable consumer injury without offsetting benefits to competition or consumers.”³¹

The FTC has found that an action is deceptive if there is “a misrepresentation, omission, or other practice, that misleads the consumer acting reasonably in the circumstances, to the consumer’s detriment.”³² A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers’ decisions.³³ To determine if an advertisement is deceptive, marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims.³⁴

The FTC’s “Guides for the Use of Environmental Marketing Claims”³⁵ or “Green Guides,” as they are commonly known, provide guidance as to how the FTC interprets Section 5 of the FTCA with regard to environmental advertising and marketing practices. The Green Guides protect consumers by establishing environmental-marketing criteria for American products. The Green Guides help set the “rules of the road” for what advertisers can (and cannot) assert about certain environmental attributes of products, and they set forth the evidence companies must be able to produce if they intend to make such green-marketing claims.

³¹ David Gibson, *Awash in Green: A Critical Perspective on Environmental Advertising*, 22 Tul. Envtl. L.J. 423, 428 (2009), <https://journals.tulane.edu/elj/article/view/2230> (citing Terry Calvani, *Advertising and Unfair Competition: Other Views*, in American Law Institute - American Bar Association Continuing Legal Education 573, 582 (2001)).

³² *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, at *50 (1984).

³³ See FTC, *FTC Policy Statement on Deception* (1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (appended to *In re Cliffdale Assocs., Inc.*, 103 FTC 110, 174 (1983)).

³⁴ See FTC, *FTC Policy Statement Regarding Advertising Substantiation* (1984) (“FTC Statement on Substantiation”), <https://www.ftc.gov/public-statements/1984/11/ftc-policy-statement-regarding-advertising-substantiation> (appended to *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984)).

³⁵ 16 C.F.R. pt. 260.

The Green Guides establish these General Principles:

An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit. Marketers should not state or imply environmental benefits if the benefits are negligible [and]...comparative environmental marketing claims should be clear to avoid consumer confusion about the comparison. Marketers should have substantiation for the comparison.³⁶

Essentially, claims comparing the environmental attributes of competing products must be clear and substantiated to avoid consumer confusion or deception.³⁷

Pursuant to the Green Guides, the FTC advises that when marketing a product or service's general environmental benefits, "all reasonable interpretations" of the claim should be truthful, not misleading, and capable of being substantiated.³⁸ Comparative environmental claims should avoid confusing consumers, and environmental benefits or attributes of a product or service should not be overstated.³⁹

FTC policy provides a legal requirement of advertising substantiation— sellers must have a reasonable basis for advertising claims before they are disseminated. Sellers must substantiate express and implied claims, however conveyed, that make objective assertions about the item or service advertised.⁴⁰ According to the FTC, objective claims for products or services represent explicitly, or by implication, that the seller has a reasonable basis supporting these claims.⁴¹ These representations of substantiation are material to consumers.⁴² That is, consumers would be less likely to rely on claims for products and services if they knew the advertiser did not have a reasonable basis for believing them to be true. Therefore, a firm's failure to possess and rely

³⁶ 16 C.F.R. §§ 260.3(c), (d).

³⁷ *Id.* § 260.3(d).

³⁸ *Id.* § 260.2.

³⁹ *Id.* §§ 260.3(c), (d).

⁴⁰ FTC Statement on Substantiation.

⁴¹ *Id.*

⁴² *Id.*

upon a reasonable basis for objective claims constitutes an unfair and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.⁴³

The FTC requires advertisers to substantiate product claims with reasonable evidence. In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.⁴⁴

2) The Commission Should Find That Several Aspects of WGL's Billing Statement are Misleading

a) Natural Gas is not "clean energy"

The WGL billing statement asserts that natural gas is a clean energy. This statement falsely implies that the burning of natural gas does not result in the emission of greenhouse gases and other harmful emissions and also misleads customers about the harmful health effects of using natural gas in his or her home. The Commission should find that this statement asserts that natural gas has a benefit which it does not actually have and therefore the statement is deceptive and misleading.

The continued reliance on fossil fuels come with grave consequences for Marylanders' health and Maryland's climate future. Burning fossil fuels, particularly gas, causes climate

⁴³ *Id.*

⁴⁴ 16 C.F.R. § 260.2.

change through the release of greenhouse gases, including carbon dioxide (CO₂) and methane (CH₄). Greenhouse gases warm the Earth by absorbing energy and slowing the rate at which the energy escapes to space; they act like a blanket insulating the Earth.⁴⁵ From 2011 to 2020, the United States experienced its hottest decade on record.⁴⁶ Droughts in the Southwest and heat waves (periods of abnormally hot weather lasting days to weeks) everywhere are projected to become more intense,⁴⁷ hurricanes are becoming stronger and more destructive,⁴⁸ and record-breaking floods are becoming the new normal.⁴⁹

Methane is a particularly powerful contributor to climate change. The direct effect of methane is about 84 times stronger than the same mass of carbon dioxide over a 20-year time frame.⁵⁰ To put it another way, any methane molecule released today is 100 times more heat-trapping than a molecule of carbon dioxide, or potentially even higher.

A recent study demonstrates that emissions from the gas supply chain were sixty percent higher than previous estimates.⁵¹ Similarly, a subsequent study found much higher rates of

⁴⁵ EPA, *Understanding Global Warming Potentials*, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials> (accessed on Jan. 6, 2022).

⁴⁶ EPA, *Climate Change Indicators: U.S. and Global Temperature*, <https://www.epa.gov/climate-indicators/climate-change-indicators-us-and-globaltemperature> (last updated Apr. 2021).

⁴⁷ NASA, *The Effects of Climate Change, Facts*, <https://climate.nasa.gov/effects/> (accessed Nov. 18, 2021).

⁴⁸ Jeff Berardelli, *How climate change is making hurricanes more dangerous*, Yale Climate Connections (July 8, 2019), <https://yaleclimateconnections.org/2019/07/how-climate-change-is-making-hurricanes-more-dangerous/>.

⁴⁹ Niklas Hagelberg, *How climate change is making record-breaking floods the new normal*, UN Env't Programme (Mar. 3, 2020), <https://www.unep.org/news-and-stories/story/how-climatechange-making-record-breaking-floods-new-normal>.

⁵⁰ IPCC, *AR5 Synthesis Report, Chap. 8: Anthropogenic and Natural Radiative Forcing*, at Appendix 8.A (2013), https://ar5-syr.ipcc.ch/resources/htmlpdf/WG1AR5_Chapter08_FINAL/.

⁵¹ Ramon A. Alvarez et al., *Assessment of Methane Emissions from the U.S. Oil and Gas Supply Chain*, 361 *Science*, Issue 6398, at 186 (2018), https://www.science.org/doi/10.1126/science.aar7204?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed. According

methane leakage than previously estimated in six East Coast Cities, including Baltimore.⁵²

Residential use of gas is itself a significant contributor to Maryland’s GHG emissions. According to the data from Maryland’s most recent GHG inventory, residential GHG emissions are overwhelmingly from burning gas in homes.⁵³

In addition to the greenhouse gas emissions and associated climate impacts, combustion of natural gas for heating and cooking emits nitrogen dioxide (NO₂), nitric oxide (NO_x), sulfur oxides (SO_x), particulate matter (PM), carbon monoxide (CO), and formaldehyde (CH₂O).⁵⁴ Referring to natural gas as a clean energy ignores the negative health impacts⁵⁵ caused by burning gas to power stoves, furnaces and other heating systems, water heaters, and other appliances. The use of natural gas cooking appliances can be detrimental to indoor air quality, particularly with respect to NO₂ pollution. Residences with natural gas stoves have between 50 percent to over 400 percent higher average NO₂ concentrations than homes with electric stoves.⁵⁶

to The Gas Index.org, Baltimore alone has 343 grams of methane per Mcf of gas; including 61 grams from distribution, 22 from gas meters; 69 from buildings. The Gas Index, *The United States’ natural gas system has a serious problem: It leaks* (Dec. 15, 2020), <https://thegasindex.org/>.

⁵² Genevieve Plant et al., *Large Fugitive Methane Emissions From Urban Centers Along the U.S. East Coast*, 46 *Geophysical Research Letters* 8500 (2019), <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2019GL082635>.

⁵³ Maryland homes burned 79,376 billion Btu of gas in 2017 resulting in 4.2 MMtCO₂e, which is nearly 80% of Maryland’s residential GHG emissions. Similarly, 76% of commercial GHG emissions stem from the use of gas in commercial buildings. Maryland Dep’t of the Env’t, *State of Maryland 2017 Greenhouse Gas Emission Inventory Documentation*, 35–37 (July 26, 2019), <https://mde.maryland.gov/programs/Air/ClimateChange/Documents/MD%202017%20Periodic%20GHG%20Emissions%20Inventory%20Documentation.pdf>.

⁵⁴ Wendee Nicole, *Cooking Up Indoor Air Pollution: Emissions from Natural Gas Stoves*, 122 *Env’t Health Persp.* 1 (Jan. 1, 2014) (“Indoor Air Pollution Report”), <https://ehp.niehs.nih.gov/doi/10.1289/ehp.122-a27>.

⁵⁵ WHO, *Ambient Air Pollution*, <https://www.who.int/airpollution/ambient/health-impacts/en/> (accessed on Jan. 6, 2022).

⁵⁶ EPA, *Integrated Science Assessment for Oxides of Nitrogen – Health Criteria*, at 2-38 (July 2008), <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=194645>.

Recent research from Lawrence Berkeley National Laboratory and Stanford University demonstrates that when natural gas is burned without proper ventilation via range hoods, gas cooking can generate levels of CO and NO₂ inside homes that are *in excess* of federal and state standards for ambient outdoor air quality.⁵⁷

Decades of scientific research demonstrate that gas stoves release toxic pollutants that can damage human health. The Rocky Mountain Institute (“RMI”) recently released a new report on the impact of gas stoves on indoor air pollution and public health.⁵⁸ It synthesizes the last two decades of health research to reach several key findings. These findings include:

- Gas stoves are a primary source of combustion (burning) pollution inside the home. Cooking on gas can spike emissions of nitrogen dioxide and carbon monoxide to levels that would violate outdoor pollutant standards.⁵⁹
- Homes with gas stoves can have nitrogen dioxide concentrations that are 50–400 percent higher than homes with electric stoves. The US EPA recently found a causal relationship between short term exposures and respiratory effects.⁶⁰
- Certain populations are more susceptible to the risks of gas stove pollution. For example, children are more vulnerable to air pollution due to several factors including their developing lungs and smaller body size. Children in a home with a gas stove have a 24–42 percent increased risk of having asthma.⁶¹

The Commission should find that WGL’s statement that natural gas is “clean energy” is misleading and deceptive and that including this statement in ratepayers billing statements violated the public interest.

⁵⁷ Indoor Air Pollution Report.

⁵⁸ Brady Seals and Andee Krasner, *Gas Stoves: Health and Air Quality Impacts and Solutions*, RMI (2020), <https://rmi.org/insight/gas-stoves-pollution-health/>.

⁵⁹ *Id.* at 11.

⁶⁰ *Id.* at 10–11.

⁶¹ *Id.* at 13.

b) Natural Gas is not the lowest cost option

In the same billing statement, WGL also asserts that natural gas costs 1/3 less than electricity. This statement is false because, as studies have demonstrated, all-electric homes cost less to construct and operate than mixed-fuel homes. This statement is also a deceptive, misleading comparative statement which may confuse consumers as to the actual environmental benefits of converting to natural gas.

The Commission should find that this statement is deceptive and misleading because it is a representation that natural gas has a benefit (1/3 lower cost) which it does not have.⁶² Moreover, the Commission should adopt the legal requirement of advertising substantiation and require that WGL establish that the Companies had a reasonable basis for this claim *before* they disseminated the information. The Companies' failure to possess and rely upon a reasonable basis for objective claims constitutes an unfair and deceptive act or practice. If the Companies cannot establish that natural gas actually costs 1/3 less than electricity then the Commission must find that this statement is deceptive and misleading.

With regard to the costs of an electric home as compared to a mixed fuel home, the Maryland Department of the Environment ("MDE") recently studied this issue for the Maryland Commission on Climate Change. MDE worked with Energy + Environmental Economics ("E3") to conduct a Maryland Building Decarbonization Study ("E3 Maryland Study"). Among other things, the E3 Maryland Study found that all-electric new buildings typically have the lowest construction and operating costs. Specifically:

- For single-family homes, all-electric homes cost less to construct than new mixed-fuel homes.

⁶² Md. Code, Com. Law § 13-301(2)(i).

- For multifamily buildings, all-electric buildings cost about the same to construct as mixed-fuel buildings.
- For multifamily buildings, the cost of installing heat pumps can be significantly less than the cost of replacing existing air conditioning and gas systems. At current utility rates, annual energy costs are comparable between housing units with heat pumps and units with gas heating.

All-electric new buildings of all types—residential and commercial—have the lowest total annual costs (including equipment, maintenance, and energy costs).⁶³

E3 estimated annualized lifecycle consumer costs—including costs for equipment, operations and maintenance, and utility bills—for several types of buildings and found that, given continued improvement in the cost and performance of electric space and water heating equipment and projected increases in natural gas rates by 2035, most all-electric buildings will have lower lifecycle costs than mixed-fuel alternatives. The exception is an existing, large, mixed-fuel commercial building where the cost to retrofit it into an all-electric building could result in higher annualized costs.⁶⁴

Importantly, the E3 Maryland Study also found that gas consumption is projected to decrease between sixty-two and ninety-six percent by 2045.⁶⁵ Thus, according to the E3 Maryland Study, gas delivery rates could increase more than twenty-times the current rate for consumers left on the gas system.⁶⁶ The practical result of this abandonment of fossil fuel gas is that the newer customers, who cannot leave because of their recent investment in a gas heating system, will bear more and more of the fixed costs.

⁶³ Maryland Commission on Climate Change, *Appendix A: Building Energy Transition Plan*, at 7–8 (Nov. 2021), <https://mde.maryland.gov/programs/Air/ClimateChange/MCCC/Documents/2021%20Annual%20Report%20Appendices%20FINAL.pdf>.

⁶⁴ *Id.* at 15.

⁶⁵ *Id.* at 9.

⁶⁶ *Id.*

Other recent analyses have reached the same conclusion as the E3 Maryland Study. For example, in April 2020, E3 prepared an extensive modeling study on behalf of the California Energy Commission (“CEC”) examining several options to achieve California’s decarbonization goals.⁶⁷ The California Study evaluated scenarios that achieve an 80 percent reduction in California’s GHG emissions by 2050 from 1990 levels.⁶⁸

The California Study concluded that in all the long-term GHG reduction scenarios it evaluated, electrification of buildings, and particularly the use of electric heat pumps for space and water heating, leads to lower energy bills for customers in the long run.⁶⁹ Similarly, building electrification was found to lower the total societal cost of meeting California’s long-term climate goals.⁷⁰ Finally, the California Study recommends avoiding gas system expansion.

As noted by the study, gas system investments come with long lifetimes. Making such investments in the context of declining throughput—an outcome that occurs in all of E3’s mitigation scenarios—will increase the average cost of gas service.⁷¹ Once acquired, gas customers will be forced to remain gas customers for decades. Even if the consumer learns that they were misled and regrets choosing natural gas over other options, the customer will be trapped and forced to continue using a fossil fuel because of the significant upfront investment.

⁶⁷ CEC Energy Research and Development Division, *The Challenge of Retail Gas in California’s Low-Carbon Future*, CEC-500-2019-055-F (Apr. 2020) (“California Study”), <https://ww2.energy.ca.gov/2019publications/CEC-500-2019-055/CEC-500-2019-055-F.pdf>.

⁶⁸ *Id.* at iii.

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

⁷¹ *Id.* at 58.

In addition, another recent RMI report demonstrates the positive economics of home electrification.⁷² This 2018 Report found that air source heat pumps are better options economically and for the climate in multiple regions in the country. The closest geographic area to Maryland analyzed in the RMI Report was Providence, Rhode Island. In Providence, where winters are significantly colder than in Maryland, it is already less expensive to build new homes with air source heat pumps rather than build with gas, oil, or propane heating systems.

- c) The statement “Converting an all electric home to natural gas is equivalent to planting 2.75 acres of trees or driving 26,520 fewer miles each year” lacks context and overstates the environmental attributes of natural gas

Finally, in the same billing statement, WGL states that “Converting an all electric home to natural gas is equivalent to planting 2.75 acres of trees or driving 26,520 fewer miles each year.”⁷³ This comparative statement is deceptive and misleading. Comparative environmental claims should avoid confusing consumers, and environmental benefits or attributes of a product or service should not be overstated.⁷⁴ Claims comparing the environmental attributes of competing products must be clear and substantiated in order to avoid consumer confusion or deception.⁷⁵ Once again, the Commission should require that WGL establish that the Companies had a reasonable basis for this claim *before* they disseminated the information. The Companies’ failure to possess and rely upon a reasonable basis for objective claims constitutes an unfair and deceptive act or practice. If the Companies cannot establish the factual accuracy of the statement

⁷² RMI, *The Economics of Electrifying Buildings: How Electric Space and Water Heating Supports Decarbonization of Residential Buildings* (2018) (“RMI Report”), <https://rmi.org/insight/the-economics-of-electrifying-buildings>.

⁷³ OPC Complaint at 3.

⁷⁴ 16 C.F.R. §§ 260.3(c), (d).

⁷⁵ *Id.* § 260.3(d).

that “converting an all electric home to natural gas is equivalent to planting 2.75 acres of trees or driving 26,520 fewer miles each year” then the Commission must find that this statement is deceptive and misleading.

Moreover, disparagement of the goods, realty, services, or business of another by a false or misleading representation of a material fact also constitutes an unfair or deceptive trade practice under the CPA.⁷⁶ This statement disparages all-electric homes by falsely implying that a mixed fuel home is better for the environment than an all-electric home. As discussed above, natural gas has a significant detrimental effect on the environment which WGL is attempting to gloss over with this statement. The Commission should find that this statement is also misleading and deceptive.

- 3) In addition to imposing civil penalties on the Companies, the Commission should require a WGL-funded education program and institute a consumer protection rulemaking

OPC has requested that the Commission impose civil penalties on the Companies pursuant to PUA § 13-201. Sierra Club agrees with OPC’s request and agrees with the assertion that each customer who received the misleading billing statement constitutes a separate violation and that this violation has continued for sixty days. Thus, the Commission should impose civil penalties separately on WGL and WGL Energy Services totaling at least \$500,000.⁷⁷

While civil penalties are an important tool to hopefully prevent this type of behavior in the future, these penalties are not enough to cure the damage caused by customers’ receipt of the misleading and deceptive information. To counteract the potentially harmful effects of WGL’s

⁷⁶ Md. Code, Com. Law § 13-301(4) (2021).

⁷⁷ The exact amount of the civil penalty cannot be calculated until the Companies provide the information to the Commission and the parties regarding how many customers received the billing statement.

intentional dissemination of the false and deceptive information, the Commission should institute a work group to design an educational program to inform the public of the negative effects of fossil fuel use and give the public correct, unbiased environmental information. WGL should be required to fund this educational program.

Finally, Sierra Club notes that the Commission has adopted regulations that protect consumers from discriminatory, unfair, deceptive, and anti-competitive acts and practices in the marketing, selling, or distributing of natural gas. However, these regulations only apply to gas suppliers. The Commission should find that a case-by-case approach to preventing greenwashing fails to prevent the harms of that misleading advertising. The Commission should institute a rulemaking proceeding to develop boundaries for legitimate environmental claims.

III. CONCLUSION

WGL is inappropriately using its position as the monopoly gas distribution company to persuade customers to purchase gas through misleading and deceptive statements. This form of egregious conduct cannot continue. The Companies conduct was intentional and directly harms customers who have a right to make purchasing decisions based on correct information.

As requested by OPC, the Commission should:

- a. direct both Washington Gas and WGL Energy to immediately remove the billing statement at issue from further customer bills;
- b. direct both Washington Gas and WGL Energy to satisfy this complaint within 30 days by:
 1. answering the allegations contained in OPC's complaint;
 2. responding to OPC's data requests included in Appendix B; and
 3. showing cause as to why they should not be subject to civil penalties under PUA § 13-201;

- c. issue an order levying civil penalties against Washington Gas for at least \$500,000 and WGL Energy for at least \$500,000, subject to revision resulting from further investigation; and
- d. issue an order opening an investigation into the transactions of Washington Gas and WGL Energy to determine whether Washington Gas is violating the utility code.

In addition to granting OPC's requests, the Commission also should:

- a. institute a rulemaking to draft regulations for public service companies designed to protect consumers from discriminatory, unfair, deceptive, and anti-competitive acts and practices in the marketing, selling, or distributing of natural gas with specific emphasis on boundaries for legitimate environmental claims;
- b. institute a work group to develop a WGL funded education program to provide Maryland residents with accurate information regarding climate change, fossil fuel use and other environmental issues.

Dated: January 7, 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2022, a true and correct a copy of the foregoing was e-served on this date to the parties of record in Case No. 9673 with the Maryland Public Service Commission. Copies were electronically served on:

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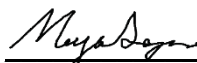
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