

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY

PETITION OF:

Sierra Club

FOR JUDICIAL REVIEW OF THE DECISION OF:

The Maryland Public Service Commission

IN THE CASE OF:

Complaint of the Office of People’s Counsel Against Washington Gas Light Company And WGL Energy Services, Inc.

(Case No. 9673)

PETITION OF:

Maryland Office of People’s Counsel

FOR JUDICIAL REVIEW OF THE DECISION OF:

The Maryland Public Service Commission

IN THE CASE OF:

Complaint of the Office of People’s Counsel Against Washington Gas Light Company And WGL Energy Services, Inc.

(Case No. 9673)

* * * * *

CIVIL ACTION:

No. C-15-CV-22-002082

CONSOLIDATED CASES

CIVIL ACTION:

No. C-15-CV-22-001977

REPLY MEMORANDUM OF PETITIONER SIERRA CLUB

October 19, 2022

Susan Stevens Miller
Attorney ID Number: 87010110071
Earthjustice
1001 G St. NW, Ste. 1000
Washington, DC 20001

Counsel for Sierra Club

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. ARGUMENT..... 3

A. The Commission fails to address Sierra Club’s contention that the Commission’s unexplained conclusion that OPC’s Complaint fails to demonstrate a violation of state law or regulation is arbitrary and capricious..... 3

B. The Commission failed to address Sierra Club’s contention that the Commission’s resolution of material facts in the absence of any evidence is arbitrary and capricious5

C. The Commission’s conclusion that it could not investigate OPC’s Complaint without addressing the broader issues raised by natural gas and its role in greenhouse gas emissions is arbitrary and capricious. 8

D. The Commission’s fails to address Sierra Club’s contention that the Commission’s unsupported conclusion that WGL has a right to self-certification is arbitrary and capricious 12

III. CONCLUSION 13

TABLE OF AUTHORITIES

Cases	Page(s)
<u>Maryland Cases</u>	
<i>Balt. Gas & Elec. Co. v. Pub. Serv. Comm’n of Md.</i> , 75 Md. App. 87 (Ct. Spec. App. 1988)	3, 4
<i>Broadwater v. State</i> , 303 Md. 461 (1985)	6
<i>Faya v. Almaraz</i> , 329 Md. 435 (1993)	5
<i>Heaps v. Cobb</i> , 185 Md. 372 (1945)	7
<i>Kennerly v. Mayor and City Council of Baltimore</i> , 247 Md. 601 (1967)	7
<i>King v. Bankerd</i> , 303 Md. 98 (1985)	6
<i>Morris v. Osmose Wood Preserving</i> , 99 Md. App. 646 (1994), <i>rev’d on other grounds</i> , 340 Md. 519 (1995)	6, 7
<i>Office of People’s Counsel v. Maryland Pub. Serv. Comm’n</i> , 246 Md. App. 388 (Ct. Spec. App. 2020)	4
<i>Rideout v. Dep’t of Pub. Safety and Corr. Serv.</i> , 149 Md. App. 649 (2003)	7
<i>Undeck v. Consumer’s Discount Supermarket</i> , 29 Md. App. 444 (Ct. Spec. App. 1975)	7
<i>United Steelworkers of Am. Local 2610 v. Bethlehem Steel Corp.</i> , 298 Md. 665 (1984)	3
Maryland Statutes and Legislation	
Md. Code Ann., Pub. Util. § 2-115	5
Md. Code Ann., Pub. Util. § 3-102	5
S.B. 323, Reg. Sess., Ch. 11 (Md. 2016)	11

S.B. 528, Reg. Sess. (Md. 2022).....11

Commission Orders

Order No. 90057, Order Dismissing Complaint (Feb. 7, 2022), ML# 2389841, 4, 8, 13

Order No. 90175, Order Denying Rehearing (Apr. 20, 2022), ML# 240270.....1, 6, 8

Sierra Club submits this Reply Brief in response to the briefs filed by the Maryland Public Service Commission (“the Commission”), Washington Gas Light Company (“WGL” or “Company”) and WGL Energy Services, Inc. (“WGL Energy”).

I. INTRODUCTION

Sierra Club has appealed Order No. 90057¹ and Order No. 90175² issued by the Commission because of the Commission’s unprecedented decision to ignore misleading and false statements by a monopoly provider subject to the Commission’s jurisdiction. In its own words, “the Commission simply has no interest in opening a proceeding to investigate a short statement on Washington Gas’s residential bills” and “the Commission has no interest in this policy dispute.”³

Aside from the Commission’s asserted lack of interest in protecting *captive* residential ratepayers from receiving false and misleading information, the Commission devotes significant

¹ See Order No. 90057, Order Dismissing Complaint (Feb. 7, 2022), ML# 238984 (“Order No. 90057” or “Initial Order”), DE 15.

² See Order No. 90175, Order Denying Rehearing (Apr. 20, 2022), ML# 240270 (“Order No. 90175” or “Rehearing Order”), DE 19.

³ Maryland Public Service Commission’s Memorandum of Law, at 1, 9 (Oct. 3, 2022) (“Commission Memorandum”).

virtual ink to arguing that solar is not clean energy,⁴ and disputing whether this court can fashion a remedy.⁵

Remarkably, the Commission has failed to address the issues raised by the Office of People’s Counsel (“OPC”) and Sierra Club. In its initial brief, Sierra Club argued that:

- 1) The Commission’s decision is arbitrary and capricious because the Commission failed to sufficiently inform OPC and Sierra Club of the basis of its decision;⁶
- 2) The Commission applied the incorrect legal standard when determining whether to grant the motions to dismiss—and the application of the incorrect legal standard led to the Commission’s resolution of material facts without any evidence, thus rendering the decision arbitrary and capricious;⁷
- 3) The Commission’s conclusion that the OPC complaint could not be investigated without addressing the broader issues raised by natural gas and its role in greenhouse gas emissions was factually incorrect, because two very

⁴ *Id.* at 9–10. Sierra Club finds it deeply disturbing that the Commission chose to rely on the statements of known climate change deniers to support its irrelevant argument that solar should not be viewed as clean energy. *See id.* at 9 n.17, 10 n.18. The Commission cites Paul Driessen, who has stated, “As to climate change, numerous studies demonstrate that there is no credible evidence that manmade carbon dioxide is causing dangerous global warming.” Paul Driessen, *Trumping Hydrocarbon Fuels and Consumers*, Townhall (Jan. 29, 2016), <http://web.archive.org/web/20161021001245/http://townhall.com/columnists/pauldriessen/2016/01/29/trumping-hydrocarbon-fuels-and-consumers-n2111504>. Similarly, Steven Koonin, a former chief scientist for BP, has stated that “the first thing to do is to cancel the climate crisis, namely to tell people there is no emergency here.” James Pethokoukis & Steven E. Koonin, *5 Questions for Steven Koonin on Climate Science*, American Enterprise Institute (Jan 11, 2022), <https://www.aei.org/economics/5-questions-for-steven-koonin-on-climate-science/>. He argues that the impact of human influence on the climate is too uncertain, and may be too small, to merit costly action to reduce fossil fuel use. Society, he says, will be able to adapt to warming. Marianne Lavelle, *A New Book Feeds Climate Doubters, but Scientists Say the Conclusions are Misleading and Out of Date*, Inside Climate News (May 4, 2021), <https://insideclimatenews.org/news/04052021/a-new-book-feeds-climate-doubters-but-scientists-say-the-conclusions-are-misleading-and-out-of-date/>.

⁵ Commission Memorandum at 8.

⁶ Initial Memorandum of Petitioner Sierra Club, at 12–14 (Aug. 29, 2022) (“Sierra Club Initial Memorandum”).

⁷ *Id.* at 15–18.

specific statements in the misleading bill paragraph could be examined without addressing any broader issues;⁸ and

4) WGL does not have the right to self-certify.⁹

Rather than respond to the contentions actually raised by Sierra Club, the Commission instead chooses to fixate on what constitutes “clean energy” and what any remedy might entail. The Commission’s failure to respond to the issues presented should be interpreted by the Court as a concession on these issues by the Commission.

II. ARGUMENT

A. The Commission fails to address Sierra Club’s contention that the Commission’s unexplained conclusion that OPC’s Complaint fails to demonstrate a violation of state law or regulation is arbitrary and capricious.

Pursuant to Maryland Code, Public Utilities Section 3-113 (a) (3), a decision or order of the Commission in a contested proceeding is required to state the grounds for the conclusions of the Commission. The Maryland Courts have interpreted this provision to require that the Commission must articulate findings (i) sufficient to inform a losing party the reason why it lost; (ii) which explain to the parties the basis for the decision; and (iii) that are sufficient to facilitate judicial review of the Commission’s decision.¹⁰ A fundamental principle of Maryland administrative law is that a court may not uphold the final decision of an administrative agency on grounds other than the findings and reasons set forth by the agency.¹¹ Well-articulated findings of fact and conclusions of law are necessary to allow a reviewing court to “understand

⁸ *Id.* at 19–20.

⁹ *Id.* at 20–21.

¹⁰ *Balt. Gas & Elec. Co. v. Pub. Serv. Comm’n of Md.*, 75 Md. App. 87, 98 (Ct. Spec. App. 1988) (quoting B. Schwartz, *Administrative Law* § 140 (1976)).

¹¹ *United Steelworkers of Am. Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984).

the agency's action."¹² The Court must be able to follow the path of the [Commission's] reasoning in reaching its decision.¹³

In its initial memorandum, Sierra Club argued that in Order No. 90057 the Commission's bald conclusion that OPC's Complaint fails to demonstrate a violation of State law or regulation does not meet these standards, stating:

the Commission does not even explain which laws and regulations it is relying on, nor does it offer any rationale for why it concluded that OPC failed to demonstrate a violation of this unknown law. In a cryptic footnote, the Commission merely states that "Public service companies regulated by the PSC are exempt from the Consumer Protection Act. Comm. Law Art. §13-104(2)."¹⁴

The Commission not only failed to provide the reasons why it concluded that OPC's Complaint fails to demonstrate a violation of State law or regulation, the Commission failed to even discuss which statute or statutes it relied upon to reach its conclusion that no statutes were violated. The Commission's order does not inform OPC or Sierra Club the reason why they lost and does not explain to the parties the basis for the decision.

While WGL responds to this argument, WGL distorts the Commission's rationale in an attempt to avoid the ramifications of the Commission's failure to explain its decision. It is undisputed that the Commission stated "the complaint fails to adequately demonstrate a violation of state law or regulation"¹⁵ without stating the law or regulation it is relying upon. The remainder of this statement: "in support of its broad allegations regarding the environmental attributes of natural gas," does not alter this fact.¹⁶

¹² *Balt. Gas*, 75 Md. App. at 98.

¹³ *Office of People's Counsel v. Maryland Pub. Serv. Comm'n*, 246 Md. App. 388, 413 (Ct. Spec. App. 2020).

¹⁴ Sierra Club Initial Memorandum at 13 (citing Order No. 90057 at 6 n.13).

¹⁵ Order No. 90057 at 6, ¶ 17.

¹⁶ *Id.*

Finally, while WGL argues that the Commission's decision to dismiss OPC's complaint was discretionary,¹⁷ and the Commission baldly asserts that it has discretion,¹⁸ the Commission certainly does not have the discretion to ignore the requirement that it provide the well-articulated findings of fact and conclusions that are necessary to allow a reviewing court to understand the agency's action.

In its memorandum, the Commission fails to respond to Sierra Club's contentions. The Court should find that the failure of the Commission to provide any explanation for its conclusion renders the PSC's decision arbitrary and capricious.

B. The Commission failed to address Sierra Club's contention that the Commission's resolution of material facts in the absence of any evidence is arbitrary and capricious

The statute governing complaints at the Commission and the Commission's regulations contain no standard for dismissing a complaint.¹⁹ However, Section 2-115 requires the Commission to initiate and conduct any investigation necessary to execute its powers or perform its duties.²⁰ In the absence of a formal Commission standard, the Commission should apply the standards adopted by the Maryland courts.

When a motion to dismiss is filed pursuant to Maryland Rule 2-322, that motion is decided on the pleadings. In determining whether to grant a motion to dismiss, the courts "accept as true all well-pleaded facts and allegations in the complaint[], together with reasonable inferences properly drawn therefrom."²¹ Dismissal is proper only if the facts and allegations so viewed would fail to give plaintiff relief as a matter of law.²² Thus, a motion to dismiss is proper

¹⁷ WGL's Answering Memorandum, at 16 (Oct. 3, 2022).

¹⁸ Commission Memorandum at 2.

¹⁹ Md. Code Ann., Pub. Util. § 3-102.

²⁰ *Id.* § 2-115(a).

²¹ *Faya v. Almaraz*, 329 Md. 435, 443 (1993).

²² *Id.*

only when there is no “justiciable controversy [.]”²³ The Maryland courts have held that it is clearly inappropriate in the context of a motion to dismiss for the judge to make a finding of fact.²⁴

OPC’s Complaint raised issues of material fact regarding which company was responsible for the bill message and which ratepayers received that message.²⁵ These issues were not resolved by WGL’s ever-changing explanations concerning the bill message.²⁶

The Commission apparently accepted WGL’s changing story as true, despite the fact that there is no evidence in this record upon which the Commission could make such a determination.²⁷

Acceptance of WGL’s unsubstantiated claims constitutes reversible error, particularly in light of the fact that the Commission relied upon the multiple misstatements of WGL in Order No. 90057. WGL failed to correct these misstatements until after the Commission Order was issued—and then, inexplicably, the Commission simply accepted these new statements as true in its decision to deny rehearing, despite WGL’s apparent confusion over its own billing practices. Acknowledging “the frustration of continually changing factual predicates” is not enough and demonstrates that the Commission was well aware of the issues of material fact.²⁸

²³ *Broadwater v. State*, 303 Md. 461, 467 (1985).

²⁴ *Morris v. Osmose Wood Preserving*, 99 Md. App. 646, 658 (Ct. Spec. App. 1994), *rev’d on other grounds*, 340 Md. 519 (1995).

²⁵ A material fact is a fact the resolution of which will somehow affect the outcome of the case. *King v. Bankerd*, 303 Md. 98, 111 (1985) (citing *Lynx, Inc. v. Ordnance Prods., Inc.*, 273 Md. 1, 8 (1974)).

²⁶ WGL’s changing story regarding the billing statement is set forth in Sierra Club’s Initial Memorandum at 15–16.

²⁷ For example, Commissioner Linton expressly noted that only a certain number of customers (103, 934) received the bill message. Order No. 90175 at 5, Comm’r Linton concurrence (citing WGL’S Opposition to the Request for Rehearing of Order No. 90057 by the OPC, at 2–3 (Mar. 16, 2022) (“WGL’s Opposition”), ML# 239620, DE 17).

²⁸ Commission Memorandum at 1.

There must be sufficient evidence before the agency to support its finding.²⁹ In this instance, no evidence was submitted in the proceeding. Pleadings are not evidence.³⁰ WGL did not even submit affidavits to support its evolving stories regarding the bill message. In contrast, OPC did submit an affidavit to support its contention that the bill message was not sent to every customer that received a consolidated bill.

The Commission's determination is also contrary to the traditional standard applied to motions to dismiss. In this instance, the Commission should have assumed the truth of all matters asserted by OPC. Instead, the Commission apparently did the opposite and assumed the truth of all of WGL's contentions.

In its memorandum, the Commission fails to respond to Sierra Club's contention that the traditional Court standard for a motion to dismiss should be applied by the Commission.³¹ The Commission also fails to respond to Sierra Club's contention that the Commission's resolution of material facts in the absence of any evidence is arbitrary and capricious.³²

The Commission's determination of the truth of the matters asserted by WGL in the absence of **any** evidence is arbitrary and capricious.³³ To make an essential finding without supporting evidence is an arbitrary action.³⁴ Thus, the Court must reverse the Commission's order.

²⁹ See *Rideout v. Dep't of Pub. Safety and Corr. Serv.*, 149 Md. App. 649, 656 (Ct. Spec. App. 2003).

³⁰ *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 605 (1967); *Undeck v. Consumer's Discount Supermarket*, 29 Md. App. 444, 449 (Ct. Spec. App. 1975).

³¹ See Sierra Club Initial Memorandum at 17.

³² See *id.* at 18.

³³ See *Morris v. Osmose Wood Preserving*, 99 Md. App. at 658 (citations omitted).

³⁴ *Heaps v. Cobb*, 185 Md. 372, 378 (1945).

The Court also should find that the Commission’s denial of OPC’s request for rehearing was arbitrary and capricious. The Commission found that no new facts or evidence was submitted. The Commission reached this conclusion even though WGL essentially conceded that the new information it provided regarding who receives the bill message constitutes facts not presented in the original hearing, including facts arising after the date of the original hearing, thus meeting the standard set forth in the rehearing statute.³⁵

C. The Commission’s conclusion that it could not investigate OPC’s Complaint without addressing the broader issues raised by natural gas and its role in greenhouse gas emissions is arbitrary and capricious.

In rejecting OPC’s request for an investigation, the Commission mischaracterized OPC’s Complaint as raising “broad allegations regarding the environmental attributes of natural gas,”³⁶ and based on this mischaracterization the Commission concluded that “a complaint against one utility is an inappropriate forum to address the broader issues raised by natural gas and its role in greenhouse gas emissions.”³⁷

The Commission devotes the vast majority of its very terse memorandum to an irrelevant argument regarding what is clean energy. The Commission fails to address Sierra Club’s contention that specific statements in the bill message can and should be reviewed without resorting to any policy determinations.

³⁵ Order 90175 at 3, ¶ 6. In their opposition to OPC’s Request for Rehearing, WGL states that “to take advantage of the opportunity afforded by PUA § 3-114(a)(1),” they “provide[] the foregoing updated data regarding autopay customers for the record. Obviously, the fact that relatively few Maryland customers received the marketing statements reduces the scope of alleged (and unproven) “harms” argued by OPC.” WGL’s Opposition at 3.

³⁶ Order No. 90057 at 6, ¶ 17.

³⁷ *Id.* at 6, ¶ 18.

The bill message at issue states:

Natural gas is a [sic]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.³⁸

Among other things, OPC's Complaint addresses two very specific statements contained in the bill message. The Complaint addresses the claim that "[c]onverting 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." This statement is an incredibly specific assertion and WGL can either establish that it is true, or it cannot. If WGL cannot prove that the statement is true than the statement is false and misleading. Contrary to the Commission's erroneous assertion, investigating the truth of this statement does not require an examination of the entire gas industry.

Similarly, OPC's Complaint takes issue with the statement that "[n]atural gas cost[s] 1/3 less than electric, which makes it a smart decision for the environment and your wallet." Once again, WGL can either establish that natural gas is 1/3 less than electric or it cannot. With regard to these statements, WGL's very specific statements are at issue, not the entire gas industry and not the effect of fossil-fuel gas on greenhouse gas emissions.

Thus, the environmental attributes of various energy resources when compared to gas are irrelevant to the determination of whether specific statements in WGL's bill message are false.

³⁸ Complaint of MD OPC Against Washington Gas and WGL Energy, at 3 (Nov. 24, 2021), ML# 237960, DE 1 ("OPC's Complaint").

Moreover, the Commission's refusal to examine these issues violates its statutory mandate. Maryland Code, Public Utilities Section 2-113(2) states that in supervising and regulating public service companies, the Commission *shall* consider:

(v) the preservation of environmental quality, including protection of the global climate from continued short-term and long-term warming based on the best available scientific information recognized by the Intergovernmental Panel on Climate Change; and

(vi) the achievement of the State's climate commitments for reducing statewide greenhouse gas emissions, including those specified in Title 2, Subtitle 12 of the Environment Article.

Thus, it is irrelevant whether other parties or stakeholders disagree with the conclusions of the Intergovernmental Panel on Climate Change ("IPCC"): the Maryland General Assembly has determined that it agrees with those conclusions and has directed that Commission to apply the scientific information recognized by the IPCC in examining actions of public service companies.

Moreover, Section 2-113(a)(2) requires the Commission to consider the achievement of the State's climate commitments for reducing statewide greenhouse gas emissions when rendering decisions addressing the actions of public service companies. The Commission "interest" in resolving the issue is irrelevant.

While in its memorandum the Commission states that the issue of whether natural gas is clean energy should be decided by the General Assembly,³⁹ the Commission ignores the fact that the General Assembly has already made this determination. In order to address the greenhouse gas emissions crisis, the Maryland General Assembly passed, and Governor Hogan signed, the Greenhouse Gas Emissions Reduction Act ("GGRA") of 2016. This law renewed the 2009

³⁹ Commission Memorandum at 6 n.10.

Maryland law that set a goal to reduce climate-polluting greenhouse gas emissions statewide by 25 percent by 2020.⁴⁰ The 2016 reauthorization bill also further extended the goal to a 40 percent reduction by 2030, requiring long-term cuts in pollution.⁴¹ During the most recent legislative session, the General Assembly passed the Climate Solutions Now Act of 2022.⁴² This law increased the greenhouse gas emissions reduction goal to a 60 percent reduction by 2031⁴³, requiring even more significant cuts in pollution. The new Climate Solutions Now Act also requires the State to achieve net-zero statewide greenhouse gas emissions by 2045.⁴⁴

The Maryland Department of the Environment’s (“MDE”) 2030 GGRA Plan, which is the State’s plan for achieving the greenhouse gas reductions required by the law, calls for reducing emissions from buildings through energy efficiency and by converting fossil fuel heating systems to electric heat pumps.⁴⁵

It is uncontested that natural gas consumption results in greenhouse gas emissions. Thus, the Maryland General Assembly has determined that natural gas is not clean energy and that the State must take steps to end its reliance on this fossil fuel. The Commission’s refusal to implement the policy directives of the General Assembly renders its decision arbitrary and capricious.

⁴⁰ MDOT, *MDOT Greenhouse Gas Reduction Act (GGRA) Plan*, <https://www.mdot.maryland.gov/tso/pages/Index.aspx?PageId=88> (last visited Oct. 15, 2022).

⁴¹ S.B. 323, Reg. Sess., Ch. 11, at 3 (Md. 2016), http://mgaleg.maryland.gov/2016RS/chapters_noln/Ch_11_sb0323T.pdf.

⁴² S.B. 528, Reg. Sess. (Md. 2022), <https://mgaleg.maryland.gov/2022RS/bills/sb/sb0528E.pdf>. This bill became law pursuant to Article II, Section 17(b) of the Maryland Constitution and is codified as Maryland Chapter of Laws, Chapter 38.

⁴³ *Id.* at 29.

⁴⁴ *Id.* at 7, 28–29.

⁴⁵ MDE, *2030 GGRA Plan*, at XIX (Feb. 19, 2021), <https://mde.maryland.gov/programs/air/ClimateChange/Documents/2030%20GGRA%20Plan/HE%202030%20GGRA%20PLAN.pdf>.

The Commission’s conclusion that the Commission would be required to resolve any issues surrounding Maryland’s natural gas usage and the State’s greenhouse gas reduction goals is a flawed determination regarding how OPC’s Complaint should be resolved. Moreover, the Commission failed to respond to Sierra Club’s contention that the Commission could have considered the two specific statements contained in the bill message without examining natural gas policy generally. The environmental attributes of various energy resources when compared to gas are irrelevant to the determination of whether the specific contentions contained in WGL’s bill message are false. The Commission’s conclusion that the Commission would be required to resolve any issues surrounding Maryland’s natural gas usage and the State’s greenhouse gas reduction goals is a flawed determination regarding how OPC’s Complaint should be resolved. Therefore, the Commission’s dismissal of OPC’s Complaint on this basis was arbitrary and capricious.

D. The Commission fails to address Sierra Club’s contention that the Commission’s unsupported conclusion that WGL has a right to self-certification is arbitrary and capricious

In support of its motion to dismiss, WGL claimed it had the “right” to self-certification, citing a Commission order pertaining only to electric utilities and electricity suppliers and governing how those companies would comply with the Commission’s emissions disclosure requirements.⁴⁶ WGL provided no support for the contention that gas utilities can self-certify advertising claims.

⁴⁶ WGL Opposition and Request for Dismissal with Prejudice of the Complaint of OPC Against Washington Gas and WGL Energy, at 23–24 (Jan. 7, 2022), ML# 238461 (“WGL Request for Dismissal”), DE 9 (citing *In the Matter of the Commission’s Inquiry into the Provision and Regulation of Electric Service*, Case No. 8738, Order No. 72938 (Oct. 10, 1996), ML# 54059 and *In the Matter of the Commission’s Inquiry into the Provision and Regulation of Electric Service*, Case No. 8738, Order No. 77412 (Dec. 11, 2001) (“Order No. 77412”)).

As discussed in Sierra Club’s initial memorandum, thus, the Commission did not create a generic self-certification process for any issue that might be raised against a public service company. The self-certification process adopted by the Commission pertained solely to emissions disclosures electric companies and electricity suppliers are required to make by statute.

In Order No. 90057, the Commission baldly states “Maryland has allowed self-certification of marketing claims.”⁴⁷ Tellingly, the Commission does not state that the “Commission” has allowed self-certification of marketing claims. Moreover, the Commission fails to cite any statute or regulation which would establish or permit the self-certification it claims exists.

The Commission must explain and supports its conclusions. The Commission once again failed to respond to Sierra Club’s argument regarding self-certification. In this instance, the Court should find that the Commission’s bald assertion renders this aspect of the order arbitrary and capricious.

III. CONCLUSION

This appeal is about the failure of the Commission to protect captive ratepayers from false advertising and the failure of the Commission to require that a public service company operate in the public interest. In failing to grant the relief OPC requested, the Commission allows for the continuation of misleading statements on customer utility bills, which Washington Gas continues to disseminate. Moreover, the Commission has failed to respond to the vast majority of the arguments raised by Sierra Club in its Initial Memorandum. Thus, the Commission must be viewed as conceding that Sierra Club’s position on those issues is correct.

⁴⁷ Order No. 90057 at 6, ¶ 17.

WHEREFORE, for the reasons stated herein and in Sierra Club's Initial Memorandum, Sierra Club requests that this Honorable Court should vacate the Commission's orders and remand the matter to the Commission for further proceedings not inconsistent with its decision.

Respectfully submitted,

A handwritten signature in blue ink that reads "Susan Stevens Miller". The signature is written in a cursive style and is positioned above a horizontal line.

Susan Stevens Miller, Esq.

Earthjustice

1001 G Street NW, Ste. 1000

Washington, D.C. 20001

(443) 534-6401

(202) 667-2356 (fax)

smiller@earthjustice.org

Counsel for Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October 2022, a copy of the foregoing Reply Memorandum of Petitioner Sierra Club was served by electronic mail on the parties listed below:

John Dodge, Esq.
Washington Gas Light Company
1000 Maine Avenue, S.W. Suite 700
Washington, D.C. 20024
jdodge@washgas.com

David S. Lapp, Esq.
Michael Sammartino, Esq.
Maryland Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, MD 21202
davids.lapp@maryland.gov
michael.sammartino@maryland.gov

Lisa Brennan, Esq.
Associate County Attorney
Montgomery County
101 Monroe Street, Third Floor
Rockville, Maryland 20850-2580
lisa.brennan@montgomerycountymd.gov

Telemac Chryssikos, Esq.
WGL Energy Services, Inc.
8614 Westwood Center Drive, Ste. 1200
Vienna, VA 22182
telemac.chryssikos@washgas.com

Todd R. Chason, Esq.
Lauren E. Lake, Esq.
Maxwell T. Cooke, Esq.
Gordon Feinblatt LLC
1001 Fleet Street Suite 700
Baltimore, MD 21202
tchason@gfrlaw.com
llake@gfrlaw.com
mcooke@gfrlaw.com

Joseph M. English, Esq.
Assistant General Counsel, Office of General Counsel
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202
joseph.english@maryland.gov

/s/ Maya DeGasperi
Maya DeGasperi
Litigation Assistant, Earthjustice
mdegasperi@earthjustice.org