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October 22, 2014

By Electronic Filing

Joel H. Peck, Clerk
State Corporation Commission
1300 East Main Street – 1st Floor
Richmond, VA 23219

RE: PUE-2014-00091

Dear Mr. Peck:

Attached for Electronic Filing in the above referenced matter please find the Comments and Hearing Request of The Retail Energy Supply Association, NOVEC Energy Solutions, Inc., and Stand Energy Corporation.

Should you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brian R. Greene', is written in a cursive style.

Brian R. Greene

C. Service List

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

APPLICATION OF)	
)	
WASHINGTON GAS LIGHT COMPANY)	
)	CASE NO. PUE-2014-00091
For authority to revise Rate Schedule Nos.)	
4, 7, 9, and 11 of its tariff, VA S.C.C. No. 9)	

**COMMENTS AND HEARING REQUEST OF
THE RETAIL ENERGY SUPPLY ASSOCIATION,
NOVEC ENERGY SOLUTIONS, INC., AND STAND ENERGY CORPORATION**

I. INTRODUCTION AND BACKGROUND

On September 3, 2014, Washington Gas Light Company (“WGL” or “Company”) filed with the Commission its Application for Authority to Revise Rate Schedule Nos. 4, 7, 9, and 11 of its Tariff, VA S.C.C. No. 9 (“Application”). In the Application, the Company requested approval to amend its tariff to “clarify and enhance terms and conditions” for Interruptible Service (Rate Schedule No. 4), Interruptible Delivery Service (Rate Schedule No. 7), Firm Delivery Service Gas Supplier Agreement (Rate Schedule No. 9), and Interruptible Delivery Service Gas Supplier Agreement (Rate Schedule No. 11). The claimed purpose for the proposed changes was to enable the Company to “enhance service to all Virginia customers and to maintain the integrity of the Company’s distribution system.” The Company also requested expedited approval of the proposed revisions, to become effective in November, 2014.¹

¹ Application at 1.

The Retail Energy Supply Association (“RESA”),² NOVEC Energy Solutions, Inc. (“NES”), and Stand Energy Corporation (“Stand Energy”) (together, the “Joint Suppliers”) by counsel, submit these comments and request a hearing pursuant to Ordering Paragraphs (6) and (7) of the Order for Notice and Comment issued by the Commission on September 25, 2014, and Ordering Paragraph (3) of the Order Granting Extension issued by the Commission on October 14, 2014. The Joint Suppliers object not only to the substantive tariff changes but also to WGL’s request for expedited treatment of the proposed changes. As explained below, the proposed changes would introduce new and significant rules, many of which are unclear, that would substantially alter the way many retail suppliers and customers operate with respect to natural gas deliveries in the Commonwealth. The changes would also subject suppliers and customers to new and increased excessive monetary penalties for non-compliance. The Joint Suppliers recommend that changes of this magnitude, if warranted, be the product of a collaborative process that includes all stakeholders, and not unilateral proposals by the utility. The Joint Suppliers stand ready to participate in such a collaborative process and believe that WGL’s failure to reach out to stakeholders before filing its unilateral tariff amendments demonstrates an unconscionable lack of cooperation on WGL’s part.

Moreover, the fact that WGL is proposing similar tariff changes for its Maryland and District of Columbia service territories, and the need for consistency throughout the three jurisdictions with respect to firm and interruptible natural gas delivery, transportation, and

² RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

banking and balancing services, underscores the need for more dialogue and cooperation among and between all stakeholders, and not unilateral utility filings that are afforded expedited treatment and that will dramatically impact all natural gas market participants, including Virginia customers. Even more, there is no evidentiary record in this case on which the Commission can rely to support the need for or reasonableness of these proposed tariff changes and penalties. To approve such significant tariff changes with no stakeholder dialogue and no factual record, on an expedited or even temporary basis, is not in the public interest nor would it be consistent with basic principles of fairness and due process.

The Joint Suppliers share the Company's stated goal of enhancing natural gas service to Virginia customers and maintaining the integrity of the Company's distribution system. However, the Company's proposed revisions are onerous, anticompetitive, and, if adopted, are anticipated to have significant adverse impacts on Competitive Service Providers ("CSPs") and their customers. Two of the most significant changes included in the Application are the addition of the Company's Pipeline Delivery Matrix (the "Delivery Matrix") and a new mandatory capacity assignment provision. Along with these two additions, as discussed below, the Application includes a series of new duplicative, punitive penalties against CSPs and customers.

Moreover, WGL has not demonstrated any system reliability need for these penalties, which will instead serve to stifle natural gas supply competition, to the detriment of Virginia customers. The Company's current tariff provisions provide the Company the tools it needs to ensure system reliability and customer service, therefore the proposed revisions in the Application are unnecessary, punitive, and anticompetitive. Indeed, the discovery responses received to date in this case show that the extremely cold 2013-2014 winter – which serves as the basis for WGL's proposals – did not cause any operational or reliability issues with WGL's

distribution system, yet WGL is seeking to impose sweeping changes on a fast track timeline. Furthermore, there are certain existing tariff provisions that lack clarity and should be updated, yet the Company has failed to propose such updates. In 2006, the Commission, in implementing the current version of the Company's Virginia tariff, stated that the Company's tariff is not a "model of clarity."³ For example, there is no clear definition of "Operational Flow Order" or an explanation of how OFOs will be communicated to CSPs.⁴ Rather than seek to clarify the existing tariff, WGL's proposals here would implement new provisions, including new penalties, and also increase existing penalties against CSPs and customers.

In addition to concerns about due process and the proposed substantive tariff changes, the Company is proposing to restrict or limit existing services, to implement new services not in the current tariff, and to increase existing penalties and to impose new penalties against CSPs. At the same time, the Company proposes to charge the same basic rates for these services, with the exception of increased penalties that are highly excessive, without presenting any data relating to these proposals' impacts on the Company's costs or revenues. There is Commission precedent, explained below, directly on point that prohibits a utility from reducing the level of existing services or introducing new services while continuing to charge the same basic rate. The lack of any cost-related data renders WGL's proposals unreasonable and subject to dismissal.

Simply put, there are no facts on which the Commission can rely to approve such sweeping changes, even on a temporary basis, nor would it be fair to do so. Because of both the number of changes and the potential negative impacts on natural gas supply competition and customers in Virginia if adopted, expedited treatment of the Application is not appropriate, and the Joint Suppliers request a hearing.

³ See Order, Va. State Corp. Comm'n, Case No. PUE-2004-00085 (Oct 16, 2006).

⁴ Rate Schedule No. 5, First Revised Page No. 27D.

II. OVERVIEW OF PROPOSED TARIFF CHANGES

WGL's proposed changes will have a significant impact on CSPs, and their customers, operating pursuant to both WGL's interruptible and firm service rate schedules.

a. Firm Service

WGL proposed a series of changes to its Firm Delivery Service Gas Supplier Agreement, Rate Schedule No. 9. The proposed changes include:

- (1) a new requirement that CSPs comply with the Company's Pipeline Delivery Matrix;
- (2) a non-cost-based, punitive penalty for failure to adhere to the Delivery Matrix;
- (3) an additional non-cost-based, punitive and duplicative penalty when a CSP's imbalance account runs out and the CSP fails to deliver the WGL-specified Daily Required Volumes ("DRV");
- (4) another non-cost-based punitive penalty for failure to comply with an Operational Flow Order;
- (5) provisions to allow the Company, at its sole discretion, to disqualify CSPs, then require a burdensome new security deposit before the CSP may requalify;
- (6) a new requirement that CSPs accept WGL-designated mandatory capacity assignments, with a new onerous and non-cost-based penalty for any such capacity not accepted; and
- (7) a three-month advance notice requirement for a CSP to exit the Company's firm delivery service program.

The Joint Suppliers are concerned that the Company has not fully analyzed the potential impacts of these changes, nor the interplay between the various provisions.

b. Interruptible Service

WGL proposed revisions to its interruptible service rate schedules, Rate Schedule Nos. 4 and 7, as well as its Interruptible Delivery Service Gas Supplier Agreement, Rate Schedule No. 11. First, the revisions to Rate Schedule Nos. 4 and 7 address: (1) contact information and communications between WGL and its customers; (2) authority to conduct inspections and annual interruption tests; (3) authority to terminate customers for noncompliance with interruption notices, and procedures for requalification; (4) new onerous penalties for noncompliance with interruption notices, which would not be subject to waiver. Second, the revisions to Rate Schedule No. 11 include: (1) changes the “Monthly Imbalance” to base “banked” volumes on metered usage, rather than “cash out” volumes; (2) adding a new requirement that CSPs comply with the Company’s Pipeline Delivery Matrix and new onerous penalties for noncompliance with the Matrix as detailed in the below Firm Service discussion; (3) a requirement that CSPs provide the Company three months’ notice before exiting the Interruptible Service program.

As discussed below, the proposed modifications to both the Firm and Interruptible tariff provisions are significant, onerous, and will have a major impact on CSPs’ operations if adopted.

III. WGL HAS NOT DEMONSTRATED THAT THE PROPOSED TARIFF CHANGES ARE REASONABLE, NECESSARY, OR IN THE PUBLIC INTEREST

WGL has the burden to affirmatively support its Application and to demonstrate that its proposed tariff changes are necessary, reasonable, non-discriminatory, in the public interest, and will not unfairly impede retail natural gas competition in Virginia.⁵ The Company has not affirmatively demonstrated a need for these new provisions and penalties, nor has the Company demonstrated that they are reasonable, non-discriminatory, and in the public interest.

⁵ Va. Code Ann. §§ 56-235, 56-236, 56-237 (2014).

The Commission previously discussed the need to have cost data and analyses supporting similar changes proposed by Columbia Gas of Virginia to its natural gas rate schedules. Supporting data is necessary in such cases for the Commission to determine whether these proposals are just and reasonable.⁶ Importantly, the utility must provide cost and revenue data associated with proposed services, as well as analysis of the cost and risk impacts on the applicable customer classes.⁷ WGL has not provided such data.

Also, there is no factual support to show that these new proposed provisions are linked to periods when WGL's system is stressed or facing reliability issues, or that the current tariff cannot address whatever system issues WGL is attempting to address with these changes. As an example, WGL would require suppliers to deliver gas to the city gate according to a Delivery Matrix, and impose monetary penalties for non-compliance even on days when there is no system reliability problem.⁸ The Application discusses "increased demand" on the WGL system during the 2013-2014 winter season caused by unusually low temperatures,⁹ and the Company also states that, in at least one instance during that time period, "approximately 50%" of the Company's interruptible customers did not comply with interruption notices.¹⁰ The Company proposes to "hold Interruptible customers accountable" for complying with interruption notices going forward.¹¹ Yet, "Washington Gas did not incur any operational problems as a result of some Interruptible customers failing to comply with ... interruption notices" nor upstream penalties.¹² If 50% of customers did not comply with an interruption notice and WGL suffered

⁶ *Application of Columbia Gas of Virginia, Inc., to Change Rates, Charges, Rules, and Regulations*, Case No. PUE-2001-00587 (Order issued Oct. 3, 2003) ("CGV 2003 Order").

⁷ *See id.* at 11.

⁸ *See* Rate Schedule No. 9, First Revised Page No. 46a, Third Revised Page No. 47.

⁹ Application at 2.

¹⁰ Application at 2.

¹¹ Application at 3.

¹² *Washington Gas's Responses to NOVEC Energy Solutions, Inc.*, Data Request No. 1, Question Nos. 11-12 (attached as Exhibit 2).

no actual operational or reliability issues as a result, it raises the factual question of whether the interruption was warranted to begin with.¹³ Furthermore, it may very well be that more and better communications with interruptible customers would resolve this alleged issue of interruptible customers not interrupting, and not the proposals offered by WGL.

Moreover, a significant number of CSPs did not comply with the heretofore non-mandatory Delivery Matrix, yet “Washington Gas did not experience any operational problems as a result of Virginia CSPs not adhering to the Pipeline Delivery Matrix since January 1, 2013, nor did the Company “experience any upstream penalties during the period.”¹⁴ Despite these admissions by WGL that it incurred no system operational problems relating to suppliers’ deliveries last winter relating to the Delivery Matrix, WGL would have this Commission believe that the Matrix must be made mandatory every day, with stiff penalties for non-compliance even on days when there is no system problem. WGL has not proven that its proposals are reasonable and necessary.

Before any draconian changes and penalties are authorized that will negatively impact the retail natural gas market, WGL should demonstrate that it can accurately determine when its system is facing reliability issues. WGL should be required to demonstrate that its current tariff does not already adequately address the very issues it is seeking to address in this filing.

Assuming the Company can do that in a proceeding, it should also be required to demonstrate

¹³ For example, if the January 2014 interruption notices were the first such notices in a lengthy period of time, the problem could very well be customers’ unfamiliarity with interruptions and the resulting consequences for failing to interrupt. This could be addressed by additional training and testing of interruptible customers’ ability to interrupt, which WGL should be doing anyway, as opposed to significantly increased penalties. WGL’s proposal in this case to modify the tariff to include annual interruption testing is a reasonable first step to educate interruptible customers of potential interruptions. See Rate Schedule No. 7, Third Revised Page No. 35.

¹⁴ *Washington Gas’s Responses to NOVEC Energy Solutions, Inc.*, Data Request No. 1, Question Nos. 6-7 (attached as Exhibit 3).

that the changes it seeks to impose are just and reasonable. Further, any new obligations must address the specific problem at hand, and only penalize CSPs for deliveries that may actually jeopardize system integrity. As it now stands, however, WGL's filing is woefully deficient, and WGL has not satisfied its burden of proof. Mere conclusory statements and repeated references to the Polar Vortex are not enough to carry the day.

For these reasons, the Company in its Application has not satisfied its burden of proving that the proposed tariff changes are necessary, reasonable, or in the public interest.

IV. WGL'S PROPOSALS SHOULD BE DENIED, OR A HEARING SCHEDULED, BECAUSE WGL HAS FAILED TO PRESENT COST-RELATED DATA TO SUPPORT THE JUSTNESS AND REASONABLENESS OF ITS PROPOSALS.

The Commission has previously determined that reducing the number of units of service while maintaining the same previously specified charge is, in effect, a rate increase.¹⁵ In this case, WGL proposes to decrease the level of certain current services and to continue to charge the same basic rates, and to impose new penalties for non-compliance. WGL has not presented any cost data to support these changes in services or penalties. As a result, WGL's case should be dismissed, without prejudice, or the Commission should grant a hearing and direct WGL to submit relevant and adequate cost data in its pre-filed testimony.

The Commission in Case No. PUE-2001-00587 held that a utility cannot, without supporting cost data, reduce the level of a service and keep the same basic rate. More specifically, Columbia Gas of Virginia ("CGV") sought to impose a daily balancing requirement for suppliers to deliver between 80% and 120% of actual usage every day, or pay daily balancing fees. The Commission rejected CGV's proposal because it "requires customers to pay more for the same service that they previously were receiving. That is, the Company is seeking to assess a

¹⁵ CGV 2003 Order; *see also Virginia Tel. Ass'n*, 1990 S.C.C. Ann. Rpt. 241.

new charge for a service that was included in a previously approved tariff.”¹⁶ The Commission also rejected another proposal by CGV to incorporate new provisions into the tariff regarding balancing service restrictions (“BSRs”). The Commission found that this proposal also amounted to a rate increase because the transportation service restrictions contemplated by the proposed BSRs represented “a reduction in the level of banking and balancing service provided to transportation customers, while continuing to charge those customers the same basic rate.”¹⁷

WGL’s proposals should suffer the same fate as CGV’s. WGL is proposing to restrict current services and also to incorporate new services not in the current tariff, with no supporting cost data. For example:

- WGL’s current tariff does not mandate the Delivery Matrix, which would require suppliers every day to deliver a percentage of their volume on certain pipelines. Just as CGV’s tariff did not mention BSRs, WGL’s tariff does not mention a Delivery Matrix. Even though suppliers would be required to pay the same basic charges for these services, they would no longer be allowed to deliver via pipelines of their choosing (or use the capacity assignments if such assignments differed from the Matrix percentages). Deliveries over or under the percentages on each pipeline would be subject to penalties. The Delivery Matrix is a brand new requirement that restricts suppliers’ ability to deliver gas to the city gate on a daily basis while charging penalties for non-compliance. WGL’s Matrix represents a reduction in service while continuing to charge the same basic rate or, with its penalty component, the Matrix could be viewed as a rate increase. Either way, WGL’s Application is deficient because the Company presents no cost data in support of its Matrix proposal.
- WGL’s current tariff affords suppliers serving interruptible customers a 15% tolerance band for deliveries, with penalties imposed for deliveries outside of that band.¹⁸ The proposed tariff would (1) eliminate that band, limiting the current service dramatically, and (2) increase the penalties applicable to both over- and under-deliveries.¹⁹ The Commission deemed CGV’s proposal to reduce an unlimited daily delivery service to a restricted service with its 80%-120% band a “new charge for a service that was included in the previously approved tariff.” For its part, WGL proposes to take a 15% tolerance band down to zero. The band was approved previously and allows for flexibility in deliveries. WGL would remove that

¹⁶ CGV 2003 Order at 8-9.

¹⁷ CGV 2003 Order at 9.

¹⁸ Rate Schedule No. 11, Original Page No. 57G.

¹⁹ Rate Schedule No. 11, Revised Page No. 57G.

flexibility and impose penalties for non-compliance. WGL's proposal is similar to CGV's and should be rejected because it represents a reduction in services while continuing to charge the same rate, yet WGL has not presented any cost data.

- For firm deliveries, WGL is now proposing to require suppliers to accept mandatory monthly capacity assignments or face stiff monetary penalties. Once again, WGL proposes to restrict an existing service and impose penalties, yet has presented no cost data to support its proposal.

WGL has not presented any cost data to support any of its proposals, including the three identified above. More importantly, the Commission in the CGV 2003 Order determined that it needed to be able to assess the impact of CGV's specific proposals on CGV's entire operations, including its aggregate revenues and costs and overall cost of service. In doing so, the Commission directed CGV to file the relevant cost data and held that:

[CGV's] proposals cannot be adequately considered outside of a proceeding where all rate case information is provided and rates can be adjusted as necessary considering the individual rates and costs as well as aggregate revenues and costs. In sum, we cannot conclude, based on this record, that the Company's proposed transportation schedules, including daily banking and balancing, revised bank volumes, BSRs, and NRs, are just and reasonable. In addition, based on the interrelated nature of these services, we find that we need cost data that is absent in this proceeding in order to evaluate whether the new proposals, taken as a whole, are just and reasonable. We cannot adequately assess, based on the case currently before us, the impact of the various new tariffs on each other and the benefits and costs to customers and to the Company's operation as a whole.²⁰

WGL, like CGV, should not be allowed to proceed without supporting cost data as outlined in the CGV 2003 Order.

V. A HEARING IS REQUIRED PURSUANT TO VA. CODE § 56-237.2

Whenever a utility files a change to any of its rates, charges, or schedules, as required under Va. Code §56-236, a hearing is required if "a protest or object thereto is filed by or on behalf of the lesser of 150 or five percent of the customers or consumers or other persons subject

²⁰ CGV 2003 Order at 12-13.

to such rate, toll or charge...”²¹ The Company has stated that there are 30 CSPs participating in its Virginia Customer Choice Program,²² which will be subject to the tariff changes in the Application. NES and Stand Energy are two such CSPs, crossing the five percent hearing threshold. In addition, RESA’s membership includes many other CSPs licensed in Virginia, such as: Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Integrys Energy Services, Inc.; and Interstate Gas Supply, Inc. d/b/a IGS Energy.²³ In addition, there are ten CSPs serving interruptible customers within the Company’s Virginia service territory as of September 2014, one of which is Stand Energy.²⁴ Thus, more than five percent of CSPs serving firm delivery customers are requesting a hearing; more than five percent of CSPs serving interruptible delivery customers are requesting a hearing; and more than five percent of all CSPs on the WGL system are requesting a hearing. Any way you slice it, more than five percent of the “other persons subject to” the proposed tariff changes in the Application object to and protest such changes, and a hearing is required.

VI. COMMENTS AND CONCERNS REGARDING PROPOSED TARIFF CHANGES

The Joint Suppliers are concerned that the proposed tariff changes would alter the playing field on which CSPs must compete and subject CSPs to new, significant, and duplicative penalties for non-compliance. The proposed revisions also do not address communications by WGL to CSPs that could very well resolve issues regarding compliance with OFOs and other actions required of CSPs. The Joint Suppliers’ comments and concerns regarding the

²¹ Va. Code § 56-237.2.

²² See *Response of Washington Gas Light Company to Formal Complaint*, Case No. PUE-2014-00095 at 19 (Oct. 10, 2014).

²³ See FN 1.

²⁴ *Washington Gas’s Responses to NOVEC Energy Solutions, Inc.*, Data Request No. 1, Attachment A (attached as Exhibit 1). There are twenty CSPs serving firm customers, some of which overlap with the ten interruptible CSPs. *Id.*

Application and WGL's proposed tariff changes are discussed below, beginning with the proposed Firm Service provisions, followed by Interruptible Service.

The Joint Suppliers offer the following comments not only in opposition to the proposed changes themselves, but also in opposition to the manner in which WGL chose to bring these proposals to the various commissions (Virginia, Maryland, and the District of Columbia). As expressed above, WGL proposed these tariff changes without reaching out to the CSP community and then sought expedited treatment. Assuming a hearing is granted, the Joint Suppliers reserve their right to raise additional issues at such hearing, or in any future proceeding relating to the proposed tariff changes.

a. Changes Impacting Both Firm and Interruptible Service

(1) *Pipeline Delivery Matrix and Associated Penalties*

The Joint Suppliers have significant concerns with the Company's proposed Pipeline Delivery Matrix requirements. The Matrix allocates CSP deliveries to each of the interstate pipelines that feed into the Company's distribution system.²⁵ While the Company has been sending such matrices as guidelines to CSPs for some time, WGL only began seeking penalties from CSPs that delivered inconsistent with the matrix earlier this year. Now, in the Application, the Company is proposing language to specifically authorize the Matrix, allowing the Company to prospectively penalize CSPs for noncompliance.²⁶ However, the Company has not explained if or how, under the proposed tariff revisions, the Matrix would be related to the Company's actual operational ability to accept gas at a specific delivery point.

²⁵ Rate Schedule No. 9, First Revised Page No. 46a; Rate Schedule No. 11, First Revised Page No. 57C.

²⁶ Rate Schedule No. 9, First Revised Page No. 46a - Third Revised Page No. 47; Rate Schedule No. 11, First Revised Page No. 57C – Revised Original Page No. 57G.

In addition to the operational issues raised by the Matrix and the fact that the percentages in the Matrix are unexplained, the Joint Suppliers are very concerned about the penalties that WGL seeks to impose upon suppliers who delivery outside of the percentages. The Delivery Matrix noncompliance penalty the Company proposes is \$25 per Dth for both under- and over-deliveries relative to the Matrix percentage allocations.²⁷ It appears that this provision would allow the Company to double-penalize CSPs that, for whatever reason, do not deliver the prescribed minimum percentage on one pipeline, and in an effort to ensure delivery of their aggregate DRV, over-deliver on another pipeline. In such a scenario, the same volume of gas could be penalized both as an under and over-delivery. WGL intends to stack other penalties on top of the Matrix penalties, including (1) failure to deliver the aggregate DRV; (2) “Failure to Deliver the Commodity;”²⁸ (3) failure to comply with an OFO if applicable; and (4) failure to accept mandatory capacity even though suppliers must also adhere to the Matrix and the capacity might not be needed.²⁹ Some of these penalties include new increased penalties calculated based on “the volume consumed per Dth *at the highest incremental commodity purchase rate for that gas day times three* (3) ...”³⁰ These onerous Matrix penalties, and the duplicative, punitive and anticompetitive nature of the penalties, creates uncertainty, would alter existing operational practices for most if not all CSPs, and should be more closely analyzed in a working group and supported by testimony from the Company.

Without a doubt, the Matrix provision and associated penalties would impact the competitive market by imposing additional obligations and significant penalties on suppliers that

²⁷ Rate Schedule No. 9, Third Revised Page No. 47; Rate Schedule No. 11, Revised Original Page No. 57G.

²⁸ Rate Schedule No. 9, Third Revised Page No. 47.

²⁹ Rate Schedule No. 9, Third Revised Page No. 51.

³⁰ *See, e.g.,* Rate Schedule No. 9, Third Revised Page No. 47.

are much different than those that exist today. Requiring that suppliers utilize the Matrix at all times throughout the year will restrict suppliers' options to more efficiently serve their customers. As it now stands, there is simply no basis on which the Commission can conclude that the use of the Matrix, the percentages therein, and the resulting non-compliance penalties are necessary or reasonable, especially given the additional burden these requirements will place on the market.

As to WGL's proposed penalties in general, from an economic efficiency standpoint, a strong argument can be made that penalties for a supplier's breach of a tariff term or condition should be reasonably linked to the damages incurred by other affected parties as a result of the breach. In the case of WGL, those affected parties include WGL's shareholders and WGL's non-participating ratepayers. Speaking generally about fundamental contract law as it would apply here, in the event of a breach, the breaching supplier would be liable for damages but the damaged party (WGL) would have a duty to mitigate damages. In this matter, contract law principles require that WGL mitigate any damages and that penalties be equal to such damages. WGL has not presented proof of any relationship between a supplier's or customer's actions in failing to adhere to a particular tariff provision(s) and the actual harm incurred by WGL as a result of that action. The basic tenets of contract law should temper the notion that WGL's excessive penalties are appropriate, no matter how high, merely because WGL claims that the penalties preserve system operating integrity.³¹

³¹ Moreover, if WGL's argument is that interruptions are hugely important for system integrity, then WGL should treat them as such. As stated above in these comments, annual testing is a good start, as are communication protocols and so forth. However, merely slapping and stacking excessive monetary penalties unrelated to actual harm is not a reasonable solution and will thwart the development of Virginia's competitive natural gas retail market. In the case of last winter, and as explained above, WGL incurred no damages or operating troubles as a result of any actions of suppliers on its system, yet WGL is seeking to impose millions of dollars in penalties. Moreover, if there are bad actors, the answer is to

Finally, the Company included language allowing a CSP to send a “written request” to WGL to waive the percentages in the Delivery Matrix.³² It is unclear, however, when and how such written request should be submitted, or the criteria the Company would use in evaluation and granting, or denying, such request. Given that the proposed language would grant the Company discretion to waive such penalties, the Company should provide additional clarity regarding the circumstances under which a waiver may be granted.

(2) *Operational Flow Order Penalties*

The Company’s current tariff includes a requirement that CSPs comply with Operational Flow Orders (“OFOs”), issued at times when the Company determines that a CSPs deliveries “may impact the operation of the Company’s distribution system.”³³ For Firm Service, the tariff also includes three penalties for noncompliance with an OFO: (1) a non-cost-based penalty of \$25 per Dth; (2) any penalty, fine, charge or cost incurred by the Company as a result of the CSP’s OFO noncompliance; and (3) an additional penalty for any over- or under-deliveries “at TRANSCO’s Zone 6, Non-New York commodity rate.”³⁴ The Company’s tariff currently includes similar OFO provisions for Interruptible Service.³⁵

WGL proposed to modify the third OFO noncompliance penalty to “the highest incremental commodity purchase rate for that day times three (3).”³⁶ The proposed language is significant and non-cost-based, and will at least *triple* the third penalty for OFO noncompliance.³⁷ There is no explanation to support removing the TRANSCO Zone 6 Non-New

take action such as disqualification against those actors and not subject all CSPs to unreasonable penalties.

³² Rate Schedule No. 9, Third Revised Page No. 47.

³³ Rate Schedule No. 9, Second Revised Page No. 48.

³⁴ *Id.*

³⁵ Rate Schedule No. 11, Original Page No. 57G.

³⁶ Rate Schedule No. 9, Third Revised Page No. 48.

³⁷ *Id.*

York commodity rate and replacing it with triple the highest rate for that day. WGL has not indicated why the penalties that exist today, including those referenced above and the \$50/Dth under-delivery and \$25 over-delivery penalties that apply during a Critical Day³⁸ – all of which are substantial – are insufficient.

Firm Delivery Service Changes

(3) Failure to Deliver the Commodity

WGL proposed a new penalty, specific to Firm Service, for “Failure to Deliver the Commodity” when a CSP with a zero balance in its imbalance account does not deliver its DRV and, as a result, the CSP’s customers consume WGL’s gas.³⁹ Rather than a cost-based penalty, WGL proposes a punitive penalty of triple the “highest incremental commodity purchase rate” for gas that day *in addition to* any penalties or damages incurred by the Company. However, it appears that the Company may impose the “Failure to Deliver the Commodity” penalty even absent any operational, system, or reliability issues caused by the CSPs trading practices. The Company tariff, Rate Schedule 9, Page No. 46, currently includes end-of-month imbalance trading provisions, and the Company has not identified any problems or issues it is seeking to address with the proposed additional imbalance account provision and penalty. It is also unclear how CSPs’ storage assets will play into the proposed “Failure to Deliver the Commodity” provision. While the penalty calculation is specific, it is not in any way tailored to the CSP’s action leading to disqualification or the impacts of such actions on the Company or its system.

Importantly, the Company’s tariff already includes “Creditworthiness” and “Collateral Requirements” provisions.⁴⁰ These provisions include a CSP security deposit,⁴¹ however the

³⁸ Rate Schedule No. 9, Second Revised Page No. 48.

³⁹ Rate Schedule No. 9, Third Revised Page No. 47.

⁴⁰ Rate Schedule No. 9, Page No. 50-50b.

⁴¹ Rate Schedule No. 9, Page No. 50-50a.

methodology used to calculate the existing security deposit is completely different from the proposed new, additional security deposit. The security deposit calculation also does not match the current requalification deposit requirement in the “CSP’s Responsibility to Cooperate with the Company” provision in Rate Schedule 9.⁴² The Company has not explained why an additional, more onerous security deposit is necessary.

(4) *Mandatory Capacity Assignment*

The Company proposes to make its 100% capacity assignments binding upon CSPs.⁴³ Specifically, each CSP would be “required to accept all assigned capacity on each pipeline before the start of the effective date of the capacity release.”⁴⁴ If a CSP does not accept the capacity assignment, WGL would penalize the CSP \$25 per Dth for the volume not accepted. The Joint Suppliers’ chief concerns with these new provisions are: (1) conflict between assigned capacity allocations and Pipeline Delivery Matrix allocations; (2) the non-cost-based nature of the \$25 per Dth penalty. The Company did not address or resolve the potential conflict between mandatory capacity assignments and the Pipeline Delivery Matrix pipeline allocations.

The Joint Suppliers’ concern is that if it accepts WGL’s mandatory 100% capacity assignments, and later the Company issues a Pipeline Delivery Matrix with different allocations, the CSPs would be caught in the untenable position of having to choose which tariff provision to violate, and which penalty to incur. In such a scenario, assuming the CSP chose to honor its capacity assignments, it could then be double-penalized under the Pipeline Delivery Matrix provisions, as discussed above, both for its over-delivery on one pipeline and under-delivery on another. Importantly, the proposed tariff revisions include no requirement that the Company

⁴² Rate Schedule No. 9, Page No. 50c.

⁴³ Rate Schedule No. 9, Third Revised Page No. 51.

⁴⁴ *Id.*

issue pipeline delivery matrices consistent with its mandatory capacity assignments, nor that it provide any penalty exemptions or waivers if it issues a matrix inconsistent with a capacity assignment.

(5) Disqualification, Requalification, Deposit Requirement and Three-Month Notice to Exit the Program

The Company proposed a new section allowing the Company to disqualify a CSP that the Company, in its sole discretion, determines to have failed to “cooperate” with Company.⁴⁵ The proposed language is vague, lacking clarity regarding what types of actions would constitute a failure to cooperate. The proposed requirement simply refers to a “written warning,” but does not detail what the contents of such a warning would be or how the warning would be communicated to the CSP, or whether it would specifically address potential disqualification.⁴⁶

When the Company determines that a CSP has not “cooperated,” WGL would then be able to disqualify the CSP from firm service.⁴⁷ To requalify, the CSP would have to apply and pay a very significant security deposit,⁴⁸ which may make requalification prohibitively expensive for small volume CSPs. To calculate the security deposit, WGL would compute the product of: “(1) the Supplier’s maximum DRV during the prior twelve month period; (2) 60 days and (3) the Purchased Gas Charge ...”⁴⁹ The Company would then hold the security deposit for one year following requalification. However, the Company has not provided any testimony to support the reasonableness of this new security deposit or the methodology used to calculate the deposit. It does not appear to be cost based, because it would cover the highest historical DRV for 60 days,

⁴⁵ Rate Schedule No. 9, Third Revised Page No. 48.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

whereas there is no requirement that the Company wait 60 days to disqualify a CSP that fails to “cooperate.”

b. Interruptible Service-Specific Changes

(1) *Penalties for noncompliance with Interruption Notices*

WGL proposes to eliminate the current “Overrun Penalty” provision in Rate Schedule 4 – mirrored in Rate Schedule 7 – in exchange for more onerous and punitive penalties for customers that do not interrupt when called upon by the Company.⁵⁰ First, the Company would double the current \$15 per Dth penalty to \$3.00 per therm for noncompliance with an interruption notice. On top of that penalty, the Company would charge an “unauthorized consumption gas charge rate of the highest incremental cost purchase for the gas day times three (3).” Second, the Company’s current tariff penalizes customers the greater of (1) the \$15 per Dth fine or (2) “the amount of any penalty, fine, or charge incurred by the Company as a result of any unauthorized use of gas by the customer.”⁵¹ Instead, the Company proposes to stack these two penalties, so customers would incur both.⁵² Third, the Company would also impose an “unauthorized consumption of gas charge rate of the highest incremental cost purchased for the gas day time three (3).”⁵³ The proposed revisions also make these penalties “not subject to waiver.”⁵⁴

⁵⁰ Compare Rate Schedule No. 4, Third Revised Page No. 28; Rate Schedule No. 7, Second Revised Page No. 36, with Rate Schedule No. 4, Fourth Revised Page No. 28; Rate Schedule No. 7, Third Revised Page No. 36.

⁵¹ Rate Schedule No. 7, Third Revised Page No. 36.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ It is unclear from WGL’s proposed language whether all the penalties would not be subject to waiver, or only the “damages, penalty, fine and/or other charge incurred by the Company in whole or in part attributable to violating the interruption order.” *Id.*

(2) Authority to Terminate Customers for Noncompliance with Interruption Notices, and Procedures for Requalification

WGL seeks authority to terminate Interruptible Service for failing to comply with “any of the requirements” under Rate Schedule No. 7.⁵⁵ After WGL terminates a customer, the customer may switch to Firm Service. However, if a customer switches to Firm Service, he or she must remain on Firm Service for “a minimum of one year,” potentially longer at WGL’s discretion, before being able to switch back to Interruptible Service. WGL has not provided any factors on which it will decide how long a customer must remain on Firm Service. The Joint Suppliers are concerned that there is no such guidance, nor any opportunity for the customer to: (a) expedite the process; (b) cure whatever issue led WGL to determine that the customer had “failed to comply”; or (c) dispute the Company’s termination decision.

(3) Requirement to Build new WGL Infrastructure

WGL proposed a new provision requiring Interruptible Customers that have been terminated from Interruptible Service, as discussed above, to pay for “additional infrastructure” that the Company determines is “needed in order to maintain system integrity due to the customer now being a firm customer.”⁵⁶ The Company has not explained why this requirement is necessary, considering the Company’s current line extension policies in the General Provisions of its tariff. The Joint Suppliers are concerned that this provision may have the effect of giving WGL additional leverage over interruptible service customers, without any limiting language, effectively increasing the risk-based costs associated with taking Interruptible Service from the Company. Customers that otherwise may be able to efficiently participate in Interruptible Service under the Company’s tariff may be forced, economically, to take Firm Service, at greater

⁵⁵ Rate Schedule No. 7, Third Revised Page No. 34.

⁵⁶ Rate Schedule No. 7, Original Page No. 35A.

cost. The result would be an increase in costs to businesses, to the detriment of Virginia's economy and the citizens of the Commonwealth.

VII. CONCLUSION

For the reasons discussed above, the Joint Suppliers respectfully request that the Commission (1) not proceed on an expedited basis as requested by the Company and (2) either: (A) set an evidentiary hearing, with pre-filed testimony, to afford stakeholders an opportunity to more fully analyze the impacts of the Application's proposed tariff modifications, or (B) dismiss the application and establish a working group to identify problematic issues to be resolved and to discuss solutions to any such issues, and to submit a report to the Commission regarding its progress, including consensus and non-consensus items that would be the subject of an evidentiary hearing at a later date.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION
NOVEC ENERGY SOLUTIONS, INC.
and
STAND ENERGY CORPORATION

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Dated: October 22, 2014

CERTIFICATE OF SERVICE

I certify that on this 22nd day of October, 2014, I sent a true and correct copy of the foregoing Comments and Hearing Request of The Retail Energy Supply Association, NOVEC Energy Solutions, Inc., and Stand Energy Corporation, by email and first-class mail, to the following persons:

Meera Ahamed, Esq.
Associate General Counsel
Office Of The General Counsel
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Brian R. Greene

CONFIDENTIAL-ATTACHMENT A1: In response to NOVEC ENERGY SOLUTIONS, INC., DATA REQUEST QUESTION 2												
	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12
The number of CSPs serving the Company's Virginia interruptible customers	11	11	11	11	11	11	11	11	10	10	10	10
The number of CSPs serving the Company's Virginia interruptible customers that failed to adhere to the Pipeline Delivery Matrix, and the amount of any penalties levied by WGL for those CSPs' failure to adhere to the Matrix	0	0	0	0	0	0	0	0	0	0	0	0
	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13
The number of CSPs serving the Company's Virginia interruptible customers	9	9	9	9	9	9	9	9	8	8	8	9
The number of CSPs serving the Company's Virginia interruptible customers that failed to adhere to the Pipeline Delivery Matrix, and the amount of any penalties levied by WGL for those CSPs' failure to adhere to the Matrix	0	0	0	0	0	0	0	0	0	0	0	0
	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14			
The number of CSPs serving the Company's Virginia interruptible customers	9	9	9	9	10	10	10	10	10			
The number of CSPs serving the Company's Virginia interruptible customers that failed to adhere to the Pipeline Delivery Matrix, and the amount of any penalties levied by WGL for those CSPs' failure to adhere to the Matrix	7	7	3	0	0	0	0	0	0			
Amount of Penalty for these CSPs	\$ 346,940.05	\$ 267,222.60	\$ 139,682.25									

CONFIDENTIAL ATTACHMENT A2: In response to NOVEC ENERGY SOLUTIONS, INC. DATA REQUEST QUESTION 2												
	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12
The number of CSPs serving the Company's Virginia firm customers	17	17	17	17	17	17	17	17	18	18	18	18
The number of CSPs serving the Company's Virginia firm customers that failed to adhere to the Pipeline Delivery Matrix, and the amount of any penalties levied by WGL for those CSPs' failure to adhere to the Matrix	0	0	0	0	0	0	0	0	0	0	0	0
	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13
The number of CSPs serving the Company's Virginia firm customers	18	18	19	19	19	19	18	18	18	18	18	19
The number of CSPs serving the Company's Virginia firm customers that failed to adhere to the Pipeline Delivery Matrix, and the amount of any penalties levied by WGL for those CSPs' failure to adhere to the Matrix	0	0	0	0	0	0	0	0	0	0	0	0
	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14			
The number of CSPs serving the Company's Virginia firm customers	18	18	18	18	20	20	20	21	21			
The number of CSPs serving the Company's Virginia firm customers that failed to adhere to the Pipeline Delivery Matrix, and the amount of any penalties levied by WGL for those CSPs' failure to adhere to the Matrix	7	7	6	0	0	0	0	0	0			
Amount of Penalty for these CSPs	\$ 701,941.65 \$ 482,866.54 \$ 98,657.47											

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

CASE PUE-2014-00091

WASHINGTON GAS'S RESPONSES TO
NOVEC ENERGY SOLUTIONS, INC.

DATA REQUEST NO. 1

QUESTION NO. 11

- Q. Describe any operational problems incurred by WGL as a result of Interruptible customers' failing to comply with the Company's interruption notice this past winter.

WASHINGTON GAS'S RESPONSE

OCTOBER 20, 2014

- A. Washington Gas did not incur any operational problems as a result of some Interruptible customers failing to comply with the Company's interruption notice this past winter. The Company did however modify its planning efforts this past winter when Interruptible customers failed to comply with the Company's interruption notices. Importantly, the Company's Commission-approved tariff provides for the assessment of penalties for failure to comply with notices of interruption.

SPONSOR: Victoria Opoku
Supervisor – Capacity Administration

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

CASE PUE-2014-00091

WASHINGTON GAS'S RESPONSES TO
NOVEC ENERGY SOLUTIONS, INC.

DATA REQUEST NO. 1

QUESTION NO. 12

- Q. Describe and itemize any upstream penalties incurred by WGL as a result of Interruptible customers' failing to comply with the Company's interruption notice this past winter.

WASHINGTON GAS'S RESPONSE

OCTOBER 20, 2014

- A. Washington Gas did not incur any upstream penalties as a result of some Interruptible customers failing to comply with the Company's interruption notice this past winter. The Company did however modify its planning efforts this past winter when Interruptible customers failed to comply with the Company's interruption notices. Interruptible customers are charged a significantly lower rate per therm than firm customers and have agreed to comply with interruption notices to be on an interruptible tariff. Importantly, the Company's Commission-approved tariff provides for the assessment of penalties for failure to comply with notices of interruption.

SPONSOR: Victoria Opoku
Supervisor – Capacity Administration

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

CASE PUE-2014-00091

WASHINGTON GAS'S RESPONSES TO
NOVEC ENERGY SOLUTIONS, INC.

DATA REQUEST NO. 1

QUESTION NO. 6

- Q. Describe any operational problems incurred by WGL as a result of Virginia CSPs' failure to adhere to the Delivery Matrix since January 1, 2013.

WASHINGTON GAS'S RESPONSE

OCTOBER 20, 2014

A. Washington Gas did not experience any operational problems as a result of Virginia CSPs not adhering to the Pipeline Delivery Matrix since January 1, 2013. The Company does, however, modify its planning efforts whenever Virginia CSPs do not deliver according the Pipeline Delivery Matrix guidelines. Importantly, the Company's Commission-approved tariff provides for the assessment of penalties for failure to deliver the DRV or for non-compliance with operational flow orders issued by the Company.

SPONSOR: Victoria Opoku
Supervisor – Capacity Administration

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

CASE PUE-2014-00091

WASHINGTON GAS'S RESPONSES TO
NOVEC ENERGY SOLUTIONS, INC.

DATA REQUEST NO. 1

QUESTION NO. 7

- Q. Describe and itemize any upstream penalties incurred by WGL as a result of Virginia CSPs' failure to adhere to the Delivery Matrix since January 1, 2013.

WASHINGTON GAS'S RESPONSE

OCTOBER 20, 2014

- A. The Company did not experience any upstream penalties during the period. The Company does, however, modify its planning efforts whenever Virginia CSPs do not deliver according the Pipeline Delivery Matrix guidelines. Importantly, the Company's Commission-approved tariff provides for the assessment of penalties for failure to deliver the DRV or for non-compliance with operational flow orders issued by the Company

SPONSOR: Victoria Opoku
Supervisor – Capacity Administration