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July 17, 2020

By Electronic Filing

Ms. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005

RE: OPC2020-02-G

Dear Secretary Westbrook-Sedgwick:

Enclosed for filing in the above-referenced docket, please find the Comments of the Retail Energy Supply Association.

Please feel free to contact me should you have any questions regarding this filing.

Respectfully Submitted,

/s/ Brian R. Greene

Brian R. Greene

cc: Service List

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

In the Matter of *
*
Office of the People’s Counsel for the * **OPC2020-02-G**
District of Columbia’s Motion to Compel *
Discovery Response from Washington Gas *
Light Company *

* * * * *

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

On March 19, 2020, the Office of People’s Counsel (“OPC”) filed a motion (“Motion”) to compel Washington Gas Light (“WGL”), seeking an order directing WGL to respond to certain data requests (“DRs”). The DRs seek information such as the identification of residential customers’ third-party natural gas suppliers and the customers’ usage, pricing, as other information. On June 26, 2020, the Retail Energy Supply Association (“RESA”)¹ submitted a letter to the Commission requesting that it be granted the opportunity to submit comments in response to OPC’s Motion and an extension of time until July 17, 2020 to do so. On July 15, 2020, the Commission granted RESA’s request.

RESA, by counsel, respectfully submits these comments in response to OPC’s Motion and requests that the Commission deny the motion because: (a) OPC lacks authority to obtain supplier pricing information under D.C. Code § 34-804(d)(4) and D.C. Code § 34-1118(c); (b)

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

the information OPC seeks could be used to draw misleading comparisons and conclusions; and
(c) the information OPC seeks is competitively sensitive and should be kept confidential.

II. Comments

a. OPC’s Motion to Compel should be denied because OPC does not have authority to obtain supplier pricing information under D.C. Code § 34-804(d)(4) and D.C. Code § 34-1118(c).

i. OPC lacks statutory authority to investigate unregulated retail suppliers under D.C. Code § 34-804(d)(4).

D.C. Code § 34-804(d)(4) authorizes OPC to investigate utilities, not retail suppliers.

D.C. Code § 34-804(d)(4) provides that OPC “[m]ay investigate independently, or within the context of formal proceedings before the Commission, the services given by, the rates charged by, and the valuation of the properties of *the public utilities under the jurisdiction of the Commission.*”²

OPC admits that it is not investigating a “public utility.” Specifically, OPC’s Motion asserts that OPC has authority to conduct a study of retail natural gas suppliers under D.C. Code § 34-804(d)(4).³ The statute does not apply to retail suppliers because they are not “public utilities under the jurisdiction of the Commission.”⁴ OPC acknowledges that the supplier pricing data it seeks to obtain “is not [WGL’s] own.”⁵ Thus, OPC has no authority to investigate supplier pricing and services under D.C. Code § 34-804(d)(4).

ii. OPC lacks statutory authority to obtain supplier pricing information under D.C. Code § 34-1118(c).

OPC’s reliance on D.C. Code § 34-1118(c) for authority to access retail supplier information is misplaced. That section creates a limited right to obtain information “reasonably

² D.C. Code § 34-804(d)(4) (emphasis added).

³ OPC Motion at 2.

⁴ *See, e.g.*, D.C. Code § 34-214 (definition of “public utility”).

⁵ *Id.* at 8.

relevant and material” to the investigation of a regulated public utility under D.C. Code § 34-804(d)(4):

In connection with any investigation or proceeding under § 34-804(d)(1), (3), or (4), as amended by the Utility Regulatory Assessment Clarification Act of 1984, the Office shall have the right to obtain from the public utility investigated all information and documents reasonably relevant and material to the investigation or proceeding.⁶

Thus, to obtain information under D.C. Code § 34-1118(c), the information must be sought in connection with an investigation into a public utility’s rates, services or valuation under D.C. Code § 34-804(d)(4). Here, there is no investigation into WGL’s rates, services or valuation – therefore, D.C. Code § 34-1118(c) does not apply. By its own admission, OPC invoked D.C. Code § 34-804(d)(4) “for [the] purposes of conducting a study examining the energy bill impact, quality of services, and viability of [retail suppliers]”⁷ – rather than WGL.

OPC argued that, because customer billing is a “service” offered by WGL, it is allowed to “inquire about anything related to customer billing **pertaining to its [retail supplier] study.**”⁸ However, the Commission has repeatedly stated that D.C. Code § 34-1118(c) does not allow OPC to engage in “fishing expeditions”:

[I]t has been the policy of the Commission to narrow the scope of discovery requests to that information which specifically relates to issues being litigated in a given proceeding." We will not allow open-ended discovery that is not relevant to the limited issue, but instead we may limit information requests to encompass only relevant documents specifically relating to the designated issues, or relied upon by witnesses, or created by the utility within some reasonable number of past years. Furthermore, we follow the principle that "although Courts should read 'relevance' broadly, they should not endorse 'fishing expeditions,' discovery abuse and inordinate expense involved in overbroad and far-ranging discovery requests."⁹

⁶ D.C. Code § 34-1118(c) (emphasis added).

⁷ OPC Motion at 2 (emphasis added).

⁸ *Id.* at 6 (emphasis added).

⁹ See e.g. Order No. 20272, *In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, 2019 D.C. PUC LEXIS 511, *11-12 (D.C.P.S.C. December 20, 2019) (internal citations omitted).

Even if OPC *did* seek to investigate WGL’s customer billing “service,” the supplier pricing information it seeks has no impact on the process or cost of providing that service. Accordingly, RESA requests that the Commission reject OPC’s attempt to obtain supplier-related information from WGL, and that the Commission deny OPC’s Motion to Compel.

b. The supplier pricing data OPC seeks in Data Requests 1-1 through 1-4 would not provide a useful comparison between shopping and non-shopping District customers and could be used to draw misleading comparisons and conclusions.

Even assuming that the supplier data OPC seeks is “reasonably relevant and material” for the purposes of D.C. Code § 34-1118(c), RESA is concerned that the information requested by OPC would not provide a useful comparison between shopping and non-shopping District customers and could be used to draw misleading comparisons and conclusions. If OPC seeks to collect data to serve “as the basis for recommendations on how to better monitor and improve the services [retail suppliers] provide to the District’s energy consumers,”¹⁰ it should do so independently of this docket – rather than relying on a Motion to Compel to obtain data that is too limited to provide a meaningful basis for comparison.

For each supplier for which WGL renders bills to residential customers, Data Requests 1-1 and 1-2 request “the total therms billed for each supply rate,” “the supply rate (per therm) charged” and “the total dollar amount billed (before application of any applicable discounts) for each supply rate” for each month in the most recent 24-month period available.¹¹ Data Request 1-1 seeks this information regarding residential customers who participate in the RAD program,¹² while Data Request 1-2 seeks the same information regarding residential customers who do not participate in the program.¹³ In a separate tab, OPC seeks the “total therms billed”

¹⁰ OPC Motion at 2.

¹¹ OPC Set 1 to WGL at DR 1-1 and DR 1-2.

¹² *Id.* at DR 1-1.

¹³ *Id.* at DR 1-2.

and “total dollar amount billed” for customers receiving natural gas service from WGL pursuant to its sales service rate.¹⁴

Supplier pricing cannot be directly compared to utility supply rates. In today’s market, more and more “green” or “environmentally-friendly” products and services are included in supplier offerings. District customers may choose a retail energy supply product that includes carbon offsets or other environmental benefits.¹⁵ These kind of environmental benefits have value that is not reflected in the “supply rate (per therm) charged” or “the total dollar amount billed (before application of any applicable discounts) for each supply rate” sought by OPC.¹⁶

Moreover, the supplier pricing data OPC seeks does not reflect the value of price stability. A customer may select a long-term fixed price energy supply product to lock in their price, allowing them to budget their energy costs more effectively. In a given month, this fixed supply price may be higher than the utility rate – but this basic analysis does not recognize that the fixed-price product can protect consumers from increases in rates charged by the utility over the long term. While Data Requests 1-1 and 1-2 seek monthly pricing information over a 24-month period, the predictive value of such a brief window of data is limited. Data Requests 1-3 and 1-4 provide an even more limited basis for comparison, as they only seek supplier pricing

¹⁴ *Id.* at DR 1-1 and DR 1-2.

¹⁵ For example, all of Viridian Energy’s fixed and variable price residential natural gas offerings within the District mitigate 25% of customer usage through carbon offsets. See Customer Enrollment, Viridian Energy, <https://enroll.viridian.com/select-service?p=aTADdTKJ57Q%3d&v=637305160353002803> (for residential enrollment offers for zip code 20005) (last visited Jul. 16, 2020). WGL Energy offers two fixed price residential natural gas options that match 100% of customer usage with “CleanSteps Carbon Offsets.” See Help Me Choose, WGL Energy, <https://www.wglenergy.com/help-me-choose?ref=residential> (enter zip code “20005” and press “Continue,” then select “Carbon Offsets Matched to Natural Gas Usage” and press “Next” to display residential enrollment offers for zip code 20005) (last visited Jul. 16, 2020). For each CleanSteps Carbon Offset purchased, WGL Energy also invests in new projects to improve regional air and water quality. See Frequently Asked Questions – Carbon Reduction, WGL Energy, <https://www.wglenergy.com/faq?category=%7BA0C6FF07-74D4-48C6-ADC4-6491F329D0CF%7D> (last visited Jul. 16, 2020).

¹⁶ OPC Set 1 to WGL at DR 1-1 and DR 1-2.

data for the most recent month available.¹⁷ Looking only at price ignores the differences between supplier pricing and WGL's regulated supply rate.

c. The supplier pricing information OPC seeks is competitively sensitive and should be kept confidential.

The supplier pricing information OPC seeks is competitively sensitive and should be kept confidential. The supplier pricing information OPC seeks is considerably more detailed than the information that is publicly available on the internet or otherwise. For example, Data Requests 1-3 and 1-4 seek the number of residential accounts in a given zip code that are billed at each unique rate offered by a supplier and the total therms billed for each rate.¹⁸ This competitively sensitive information could be used by other suppliers to evaluate market trends and tailor future product offerings. Moreover, D.C. Code § 34-1118(c) does not support OPC's allegation that retail suppliers "would have waived any confidentiality protections once they provided this data to WGL without [a valid non-disclosure, confidentiality, proprietary, or similar agreement]."¹⁹ Rather, D.C. Code § 34-1118(c) affords the Commission discretion to issue a protective order governing information sought by OPC "when necessary to protect the disclosure of trade secrets and other confidential research, development, or commercial information." There is no reference in D.C. Code § 34-1118(c) to existing confidentiality agreements. Simply put, retail suppliers did not waive any confidentiality rights, and D.C. Code § 34-1118(c) does not support OPC's view.

III. Conclusion

Wherefore, for the reasons stated herein, RESA respectfully requests that the Commission deny OPC's Motion.

Respectfully submitted,

¹⁷ See OPC Set 1 to WGL at DR 1-3 and DR 1-4.

¹⁸ *Id.*

¹⁹ OPC Motion at 8.

RETAIL ENERGY SUPPLY ASSOCIATION

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Counsel for the Retail Energy Supply Association

Date: July 17, 2020

CERTIFICATE OF SERVICE

OPC2020-02-G, In the Matter of Office of the People’s Counsel for the District of Columbia’s Motion to Compel Discovery Response from Washington Gas Light Company

I certify that on July 17, 2020, a copy of the Retail Energy Supply Association’s Comments was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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