

November 13, 2023

VIA ELECTRONIC FILING

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

Re: Sierra Club's and Chesapeake Climate Action Network's Joint Memorandum in Support of Appeal in the Matter of Washington Gas Light Company's Application for Approval of a New Gas System Strategic Infrastructure Development and Enhancement Plan and Accompanying Cost Recovery Mechanism, Case No. 9708

Dear Mr. Johnston:

Attached for filing in the above-captioned case, please find Sierra Club and Chesapeake Climate Action Network's Joint Memorandum in Support of Appeal in the above-referenced matter.

Please contact us if you have any questions. Thank you for your attention to this matter.

Sincerely,



Timothy R. Oberleiton, Esq.
Earthjustice
1001 G Street, NW, Suite 1000
Washington, D.C. 20001
(202) 667-4500
toberleiton@earthjustice.org



Sari Amiel, Esq.
Sierra Club
50 F St. NW, Eighth Floor
Washington, D.C. 20001
(301) 807-2223
sari.amiel@sierraclub.org

*Counsel for Chesapeake Climate
Action Network*

Counsel for Sierra Club

BEFORE THE MARYLAND PUBLIC SERVICE COMMISSION

**WASHINGTON GAS LIGHT
COMPANY'S APPLICATION FOR
APPROVAL OF A NEW GAS SYSTEM
STRATEGIC INFRASTRUCTURE
DEVELOPMENT AND ENHANCEMENT
PLAN AND ACCOMPANYING COST
RECOVERY MECHANISM**

Case No. 9708

JOINT MEMORANDUM IN SUPPORT OF APPEAL

I. INTRODUCTION

As the Maryland Public Service Commission (“Commission”) contemplates the significant ratepayer investments that will be required to advance Maryland’s statutory clean energy and climate goals, it can ill afford to saddle ratepayers with hundreds of millions of dollars in unnecessary gas pipeline replacements. Under its STRIDE 3 Application, Washington Gas Light Company (“WGL” or “the Company”) seeks to spend \$495 million on installing new pipes aimed at enabling the continued delivery of methane gas for over a century—decades beyond Maryland’s 2045 requirement to reach net-zero greenhouse gas emissions. Nevertheless, the Public Utility Law Judge (“PULJ”) arbitrarily reduced WGL’s investment by only \$165 million, leaving ratepayers on the hook for the remaining \$330 million in expenditures on new pipes that are set to become stranded assets.

In this appeal, Sierra Club and the Chesapeake Climate Action Network (“CCAN”) contend that the PULJ’s approval of two-thirds of the Company’s requested expenditures on new gas pipes—without providing any rationale for selecting this particular proportion—was arbitrary and capricious. Indeed, the Company failed to provide any analysis of how its proposed expenditures on new gas pipes meet the requirements in Maryland’s climate laws, failed to

consider the many cost-effective alternatives to wholesale pipeline replacements, and failed to account for the enormous risk that new pipelines will become stranded assets. In these regards, the Company unequivocally failed to meet its burden of showing that its STRIDE 3 Application is reasonable, prudent, or consistent with public safety in the long term, which should have led the PULJ to reject WGL’s STRIDE 3 Application in its entirety.

Accordingly, the Commission should reject the PULJ’s recommendations and deny WGL’s STRIDE 3 Application at this time. In the alternative, the Commission should decline to rule on WGL’s STRIDE 3 application until the conclusion of the gas planning process requested in Case No. 9707, and should order WGL to prioritize its leakiest pipes for repair—instead of replacement—pursuant to its normal maintenance obligations.

II. STANDARDS OF REVIEW

A. The Commission’s Review of WGL’s Application

In fulfilling its mandate to ensure that the “operation” of Maryland’s public utilities is “in the interest of the public,”¹ the Commission must consider the following factors:

- (i) the public safety;
- (ii) the economy of the State;
- (iii) the maintenance of fair and stable labor standards for affected workers;
- (iv) *the conservation of natural resources;*
- (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;*
- (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; and*
- (vii) the protection of a public service company’s infrastructure against cybersecurity threats.²

¹ MD. CODE ANN., PUB. UTIL. § 2–113(a)(1)(i).

² MD. CODE ANN., PUB. UTIL. § 2–113(a)(2) (emphases added).

Under the STRIDE program, the Commission *may*—but is not required to—approve proposed expenditures on accelerated pipeline replacements only when a number of conditions are *all jointly* met. The statute provides:

The Commission *may* approve a plan if it finds that the investments and estimated costs of eligible infrastructure replacement projects are:

- (i) reasonable *and* prudent; *and*
- (ii) designed to improve public safety or infrastructure reliability over the short term and long term.³

In this case, the burden of proving that a proposal is both reasonable and prudent, and designed to improve safety or reliability in both the short term and long term, rests squarely on WGL, the party seeking to recover its costs from ratepayers.⁴

B. The Commission’s Review of A PULJ’s Proposed Decision

On appeal, in reviewing a PULJ’s findings, “the Commission affirms findings that are: (1) supported by substantial evidence; (2) within the Commission’s statutory authority or jurisdiction; (3) not arbitrary or capricious; and (4) not affected by any error of law.”⁵ With respect to “PULJ recommendations, it is within the Commission’s discretion to adopt or reject such recommendations as long as the Commission’s decision is not arbitrary or capricious or unreasonably discriminatory.”⁶

III. Relevant Statutory Background

Maryland’s “climate commitments for reducing statewide greenhouse gas emissions” were most recently articulated in the Climate Solutions Now Act (“CSNA”), which requires the state to “reduce statewide greenhouse gas emissions by 60% from 2006 levels by 2031” and

³ MD. CODE ANN., PUB. UTIL. § 4–210(e)(3) (emphases added).

⁴ MD. CODE ANN., PUB. UTIL. § 3–112(b) (“In a proceeding involving a temporary or permanent new rate, or a temporary or permanent change in rate, the burden of proof is on the proponent of the new rate or change in rate.”).

⁵ Case No. 9695, *The Potomac Edison Company’s Application for Adjustments to its Retail Rates for the Distribution of Electric Energy*, Order No. 90847 at 4 (issued Oct. 18, 2023).

⁶ *Id.*

(2) “achieve net-zero statewide greenhouse gas emissions by 2045.”⁷ The CSNA also requires the Maryland Department of the Environment to “develop building emissions energy performance standards for covered buildings” in order to effectuate (1) “a 20% reduction in net direct greenhouse gas emissions on or before January 1, 2030, as compared with 2025 levels for average buildings of similar construction,” and (2) “net-zero direct greenhouse gas emissions on or before January 1, 2040.”⁸ The General Assembly has made clear that it anticipates meeting those requirements to reduce greenhouse gas emissions through *electrifying* Maryland’s buildings, which will obviate the need for supplying methane gas to them. The CSNA provides: “the General Assembly supports *moving toward broader electrification* of both existing buildings and new construction as a component of decarbonization.”⁹ Further, the CSNA explicitly requires the Building Codes Administration to “develop recommendations for an *all-electric* building code for the State”¹⁰ and “develop recommendations regarding efficient cost-effectiveness measures for the *electrification* of new and existing buildings.”¹¹

The Maryland Commission on Climate Change (“MCCC”), a state governmental body charged with developing proposals for implementing the CSNA’s steep emission reduction requirements, was even clearer about the CSNA’s stark implications for Maryland’s gas system. In its 2022 Annual Report, the MCCC recommended that the General Assembly require the Commission to plan for “[a]ppropriate gas system investments/abandonments for a shrinking customer base and reductions in gas throughput in the range of 60 to 100 percent by 2045.”¹²

⁷ MD. CODE ANN., ENVIR. §§ 2–1204.1, 2–1204.2.

⁸ MD. CODE ANN., ENVIR. § 2–1602(a).

⁹ S.B. 528, Ch. 38 § 10(a)(1) (emphasis added).

¹⁰ *Id.* § 10(b)(1)(i) (emphasis added).

¹¹ *Id.* § 10(b)(1)(v) (emphasis added).

¹² Maryland Commission on Climate Change, *2022 Annual Report* [hereinafter “MCCC Report”] at 17, [https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/2022%20Annual%20Report%20-%20Final%20\(4\).pdf](https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/2022%20Annual%20Report%20-%20Final%20(4).pdf).

III. ARGUMENT

A. **The Commission Must Disapprove WGL’s Recovery of \$330 Million for Accelerated Pipeline Replacements Because It Contravenes Binding Climate Law.**

The Commission must disapprove the PULJ’s recommendation to grant two-thirds of WGL’s requested expenditures on the construction of new methane gas pipelines. Left uncorrected, the PULJ’s recommendation would enable the Company to sink \$330 million into new gas infrastructure, which is wholly inconsistent with the CSNA’s requirements to reduce greenhouse gas emissions 60% by 2031 and reach net-zero emissions by 2045.¹³ WGL’s STRIDE 3 proposal is divorced from the reality of the future of Maryland’s gas system, as dictated by state climate policies.¹⁴ WGL intends to continue installing new pipelines through 2043, which is only two years before Maryland’s 2045 deadline for reaching net-zero emissions, pursuant to the CSNA.¹⁵ Meanwhile, the new gas pipelines that WGL seeks to install in the next five years would be amortized and are intended to remain in service for *over a century*.¹⁶ Put simply, WGL’s investment makes no financial sense, and will impose costs directly on WGL’s customers, who will be stuck paying for these pipelines for decades, even after they cease to be used and useful.

While the Commission generally has discretion over adopting a PULJ’s recommendations, the Commission may *not* adopt a recommendation that is arbitrary or capricious, such as the PULJ’s present recommendation to approve WGL’s expenditure of \$330

¹³ MD. CODE ANN., ENVIR. §§ 2–1204.1, 2–1204.2.

¹⁴ The Office of People’s Counsel’s November 2023 report on gas utility spending estimated that, if the Commission permits utilities to maintain their business-as-usual levels of spending on new gas infrastructure, Maryland ratepayers would sink over \$41 billion into new gas investments in the coming decades—despite the fact that state policies dictate a decline in gas consumption. See Maryland Office of People’s Counsel, *Maryland Gas Utility Spending* at 4, 30 (Nov. 2023), <https://opc.maryland.gov/Portals/0/Files/Publications/Reports/GasUtilitySpending%2011-5-23%20FINAL.pdf?ver=QdfdqphWg8P8SSpjtB29YQ%3d%3d>.

¹⁵ See Md. Pub. Serv. Comm’n, *Case No. 9708 - Washington Gas Light STRIDE 3 - Evidentiary Hearing*, YOUTUBE [hereinafter “Hearing Video”] at 2:11:01 to 2:11:33.

¹⁶ *Id.* at 54:59 to 55:06.

million on new gas pipelines.¹⁷ The PULJ recognized that approving WGL’s Application in full would *not* “take into account preservation of environmental quality and global warming and climate change.”¹⁸ However, the PULJ provided no support for her arbitrary decision to cut off only one-third of WGL’s requested recovery. In reviewing whether agency actions are arbitrary and capricious, Maryland courts have looked to whether the agency “exercised its discretion unreasonably or without a rational basis,”¹⁹ and whether the agency decision was “contrary to or inconsistent with an enabling statute’s language or policy goals.”²⁰ In this case, the PULJ articulated no basis, let alone a reasonable and rational basis, for approving two-thirds of WGL’s requested recovery, rather than any other amount (such as zero). It is completely unclear why \$165 million of WGL’s expenditures on pipeline replacements were deemed unreasonable for their incompatibility with environmental quality and climate change, yet the remaining \$330 million were simply deemed reasonable. There is no clear attribute of two-thirds of the hypothetical future projects that makes them compatible with Maryland climate law, or that sets them apart in any way from the one-third of future projects that the PULJ has asked the Commission to disapprove.

Approving roughly \$330 million in spending on new gas pipelines is additionally arbitrary and capricious when considering statutes governing the PSC’s authority. The Maryland legislature has mandated that the PSC must consider the “conservation of natural resources;” 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

¹⁷ See *supra* note 5.

¹⁸ Case No. 9708, *In the Matter of Washington Gas Light Company’s Application for Approval of a New Gas System Strategic Infrastructure Development and Enhancement Plan and Accompanying Cost Recovery Mechanism*, Proposed Order of Public Utility Law Judge [hereinafter “Proposed Order”] at 47 (issued Oct. 25, 2023).

¹⁹ *Balt. Police Dep’t v. Open Justice Balt.*, 485 Md. 605, 660 (2023) (quotation marks and citation omitted).

²⁰ *Harvey v. Marshall*, 389 Md. 243, 302 (Md. Ct. App. 2005).

by the Intergovernmental Panel on Climate Change;” and “the achievement of the State’s climate commitments for reducing statewide greenhouse gas emissions.”²¹ The methane gas that WGL’s new pipes would supply is an inherently polluting substance whose combustion endangers public health,²² as well as a potent greenhouse gas with approximately “80 times the warming power of carbon dioxide over the first 20 years after it reaches the atmosphere.”²³

Disapproving WGL’s STRIDE 3 investment proposal will not jeopardize public safety. STRIDE is simply an *accelerated* pipeline replacement program, which enables WGL to recover hundreds of millions of dollars *in advance* for the expected costs of anticipated pipeline replacement projects. Even if it does not receive advance permission to blanketly replace pipelines in an accelerated manner, WGL can still continue its existing practice of repairing or replacing pipelines outside of the STRIDE program.²⁴ Moreover, WGL has assured the Commission that its gas system will remain safe for its customers even if its STRIDE 3 program is disapproved.²⁵ All in all, WGL produced no specific evidence that some portion of its system is so aged, leaky, or risky to *necessitate* advance replacements beyond its normal maintenance activities—which it has an obligation to perform.

The STRIDE statute in no way mandates approval of WGL’s proposal. The PULJ mistakenly implied that her authority to disapprove proposed STRIDE expenditures was

²¹ MD. CODE ANN., PUB. UTIL. § 1-113(a)(2)(iv)-(vi).

²² See Agency for Toxic Substances and Disease Registry, U.S. Centers for Disease Control and Prevention, *ToxFAQs for Nitrogen Oxides*, <https://www.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=396&toxid=69> (listing nitrogen oxide pollution, which is emitted by methane combustion, as a toxic substance, which even in low doses can cause irritation of the “eyes, nose, throat, and lungs” and “shortness of breath, tiredness, and nausea”).

²³ See Environmental Defense Fund, *Methane: A crucial opportunity in the climate fight*, <https://www.edf.org/climate/methane-crucial-opportunity-climate-fight>.

²⁴ By its own admission, WGL has replaced miles and miles of pipelines *outside* of STRIDE, including “41.6 miles of main and 5,291 services for the five-year period (2009-2013) immediately prior to STRIDE 1.” The Company continued replacing pipelines outside of STRIDE even after the program began, replacing 21.4 miles of main and 1,192 services from 2014-2018 outside of STRIDE 1, and an additional 16.8 miles of main and 435 services outside of STRIDE 2. WGL Resp. to Bench Data Request Nos. 1, 3 (Oct. 6, 2023).

²⁵ WGL Ex. 3, Murphy Direct Test. at 15:13–14.

constrained by statute by stating, “the Commission can review WGL’s STRIDE 3 Plan if/when the General Assembly modifies the STRIDE statute.”²⁶ As noted above, the STRIDE statute *authorizes*, but by no means *requires*, the Commission to approve utilities’ requests to recover the costs of pipeline replacements under STRIDE. In fact, if these proposed expenditures are not reasonable, or not prudent, or not “consistent with the public safety in both the short term and long term,” the Commission is *prohibited* from approving them.²⁷ The PULJ’s determination that some expenditures on STRIDE are inconsistent with Maryland climate law should be logically extended to bar all of WGL’s requested expenditures on STRIDE. Further, the Commission should bear in mind that the STRIDE statute became law in 2013, before the passage of the CSNA, before the Maryland government’s pronouncements in favor of building electrification, and before the technology for building electrification became more feasible and cost-effective.²⁸ The STRIDE statute would not prevent the PSC from reasonably deciding that, given Maryland’s climate law ecosystem, any accelerated pipeline replacements are now inherently unreasonable.

In sum, the Commission should disapprove the Company’s request for advance approval to spend \$330 million on new gas pipelines, which would force ratepayers to prop up climate-warming infrastructure that is soon to be obsolete, rather than investing in an electrified future.

B. The Commission Must Disapprove WGL’s STRIDE 3 Application in Its Entirety Because It Would Impose Unreasonable and Financially Imprudent Costs on Ratepayers.

In seeking recovery for \$495 million for pipeline replacements, WGL failed to meet its burden of proving that investment is reasonable and prudent, as it considered neither the stranded asset risk it seeks to create, nor the feasibility of less costly alternatives to pipeline replacements.

²⁶ Proposed Order at 47.

²⁷ MD. CODE ANN., PUB. UTIL. § 4-210(e)(3).

²⁸ See *supra* Part III; see also Inflation Reduction Act (“IRA”), Pub. L. No. 117-169 (2022).

The PULJ’s arbitrary decision to approve \$330 million out of WGL’s requested \$495 million does not cure any of those defects, and only serves the purpose of highlighting just how inconsistent wholesale gas pipeline replacements are with Maryland’s transition to clean energy, which has already begun. Accordingly, the Commission should exercise its discretion not to adopt the PULJ’s recommendation and should instead disapprove WGL’s recovery of *any* funds spent on brand-new gas pipeline replacements.

The PULJ’s decision to approve two-thirds of WGL’s requested spending on new gas pipelines is arbitrary and capricious—and it would be arbitrary and capricious for the Commission to adopt this recommendation—because of the high stranded asset risks they carry. WGL and the PULJ alike failed to consider the substantial risk that the new pipelines WGL seeks to construct will soon become “stranded” due to lack of use, at which point WGL customers will still be on the hook for financing the steep costs of that infrastructure. As WGL’s customer base dwindles, it is low-income customers who are more likely to bear the ever-rising costs of funding the Company’s stranded assets.²⁹ It is unreasonable for WGL to omit this stranded asset risk in its calculation of pipeline replacements, and it was arbitrary and capricious for the PULJ to approve WGL’s recovery of two-thirds of the costs of its Application without considering this stranded asset risk. Likewise, it would be arbitrary and capricious—and harmful to ratepayers—if the Commission were to approve any of WGL’s requested recovery for pipeline replacements.

Maryland’s climate laws and agency pronouncements calling for reduced greenhouse gas emissions and increased electrification, as well as the ample economic incentives for

²⁹ OPC, *Climate Policy for Maryland’s Gas Utilities - Financial Implications* at 4 (Nov. 2022), https://opc.maryland.gov/Portals/0/Files/Publications/Reports/MDFutureGasReport%20FINAL.pdf?ver=QG5ojVZA5h_SZZkyh8vE_Q%3d%3d.

electrification,³⁰ point toward one clear outcome: a reduction in the number of gas customers and the corresponding need for gas infrastructure in Maryland. Company Witness Jacas even stated at the evidentiary hearing that he is “aware of” the MCCC’s recent recommendation that the PSC should plan for “[a]ppropriate gas system investments/ abandonments for a shrinking customer base and reductions in gas throughput *in the range of 60 to 100 percent by 2045*”³¹—yet WGL is not projecting any shrinkage in its customer base. In contrast, Baltimore Gas & Electric (“BGE”) cites in its multi-year rate case a report that projects gas sales will decrease “between 54% and 70% in 2045 relative to 2020,” and “[f]ocusing just on all gas delivered via BGE’s pipeline, gas throughput declines [will be] 60%-78% in 2045 relative to today.”³² The writing is on the wall for Maryland’s gas companies, and WGL cannot steer the Commission’s attention away from the dubious future of gas in Maryland by failing to face these facts.

This stranded asset risk is particularly pronounced because of the complete temporal disconnect between the 22-year timetable for transitioning away from gas under Maryland law and the roughly 130-year timespan over which WGL plans to keep the new pipelines that it replaces under STRIDE in service.³³ By completely failing to consider those inconsistent timelines, WGL failed to meet its burden of proving that pipeline replacements under STRIDE 3 are either reasonable or prudent. In keeping with its mandate to protect ratepayers, approve only just and reasonable expenditures on pipeline replacements, and disapprove arbitrary and capricious expenditures, the Commission should disapprove WGL’s recovery of all expenditures on its pipeline replacements.

³⁰ See IRA, Pub. L. No. 117-169 (2022).

³¹ Hearing Video at 53:31 to 53:50; see also MCCC Report at 17 (emphasis added).

³² Case No. 9692, *In the Matter of Baltimore Gas and Electric Company’s Application for an Electric and Gas Multi-Year Plan*, OPC Ex. 1, BGE Integrated Decarbonization Strategy Report at 25 (Oct. 2022), https://www.ethree.com/wp-content/uploads/2022/10/BGE-Integrated-Decarbonization-White-Paper_2022-11-04.pdf.

³³ Hearing Video at 54:59 to 55:06.

As outlined in Sierra Club and CCAN’s Joint Post-Hearing Brief, ample evidence demonstrates that alternatives to pipeline replacements—such as targeted gas pipeline repairs, non-pipeline alternatives, energy efficiency, electrification, and demand-side management measures—are more cost-effective and less prone to creating stranded asset risks than pipeline replacements. WGL unreasonably failed to mention electrification as an alternative to building new gas pipelines—despite the CSNA’s vision of electrification as a key climate strategy³⁴—let alone analyze the cost-effectiveness of electrification.³⁵ Similarly, WGL failed to consider the alternative of energy efficiency measures, which back-of-the-envelope calculations reflect would be 84 times as cost-effective as a greenhouse gas reduction measure than wholesale gas pipeline replacements.³⁶ Additionally, WGL failed to consider pipeline repairs, which were found to be ten to *one hundred* times cheaper than pipeline replacements in a 2022 study conducted by the D.C. Department of Energy and Environment (“DOEE”) within WGL’s service territory.³⁷

Other alternative strategies that could have been more cost-effective than WGL’s requested pipeline replacements, and would not create the financial risk of stranded assets, include advanced leak detection, methane capture, demand response, thermal storage, behavioral changes, liquefied natural gas peaking storage, and mobile pipeline injection.³⁸ WGL has no financial incentive to consider methane leak reduction strategies that are more cost-effective

³⁴ See Sierra Club Ex. 1, WGL Resp. to Sierra Club Data Request Question No. 1-13, at 14.

³⁵ Sierra Club Ex. 1, WGL Resp. to Sierra Club Data Request Question No. 1-13, at 14.

³⁶ See Case No. 9708, *Sierra Club’s and Chesapeake Climate Action Network’s Joint Post-Hearing Brief in the Matter of Washington Gas Light Company’s Application for Approval of a New Gas System Strategic Infrastructure Development and Enhancement Plan and Accompanying Cost Recovery Mechanism* at 17 n.43 (filed Oct. 16, 2023) for more detailed calculations of this figure, based on WGL’s 2024-2026 EmPOWER program filing.

³⁷ D.C. Pub. Serv. Comm’n Case No. FC 1175, *WGL’s Application for Approval of PROJECTpipes 3 Plan*, D.C. Dep’t of Energy & Env’t, *Strategic Electrification in Washington, D.C.: Neighborhood Case Studies of Transition from Gas to Electric-based Building Heating* (Dec. 14, 2022).

³⁸ See Straten, “A Review of Consolidated Edison and Orange & Rockland’s Initial Long-Term Plan” at 24 (Aug. 2023), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B4064188A-0000-C513-B893-D7066B2F00CF%7D>.

when WGL can earn a guaranteed rate of return on its “Cadillac” option of pipeline replacements. However, the Commission bears a responsibility to correct for this misalignment of financial incentives and protect ratepayers from bearing the unreasonable and imprudent costs of pipeline replacements.

C. If the Commission Does Not Reject WGL’s STRIDE 3 Application at This Time, the Commission Should Defer Issuing a Decision Until the Conclusion of a Future-of-Gas Docket.

If the PSC decides not to reject WGL’s STRIDE 3 Application in its entirety at this point in time, it should wait to issue a decision in this docket until a future-of-gas docket—such as the one pending before the Commission in Case No. 9707—completes an analysis of the prudence of continued investments in gas infrastructure. Fulfilling the Commission’s mandate to protect ratepayers and ensure that spending on accelerated gas pipeline replacements is reasonable and prudent requires the Commission to plan for the high likelihood that methane gas will significantly decline—and potentially become obsolete—as a source of fuel in Maryland’s buildings in the next one to two decades. Allowing the proposed five-year tranche of spending under STRIDE 3 would guarantee a substantial amount of stranded assets and wasteful spending prior to the conclusion of the Commission’s gas planning proceeding.

In its Application, WGL made no mention of Maryland’s greenhouse gas emission reduction requirements or Case No. 9707, which calls for a critical evaluation of spending on gas infrastructure in order to protect ratepayers from bearing the costs of stranded assets.³⁹ Tellingly, WGL mentioned Maryland’s robust body of climate laws only in the abstract, alluding to a “transition to a cleaner energy future”⁴⁰ without mentioning *any* Maryland policies that call for

³⁹ See Case No. 9707, *In the Matter of the Petition of the Office of People’s Counsel for Near-Term, Priority Actions and Comprehensive, Long-Term Planning for Maryland’s Gas Companies*, Petition of the Office of People’s Counsel (filed Feb. 9, 2023).

⁴⁰ WGL Ex. 3, Murphy Direct Test. at 21:3–5.

building electrification. Electrifying Maryland's buildings, which is an essential step for complying with the CSNA, is completely incompatible with continued gas usage. The Maryland Office of People's Counsel, and multiple environmental and ratepayer protection organizations in Maryland, emphasized this point in Case No. 9707. The PULJ also referred to the potential of Case No. 9707 to render gas investments obsolete, explaining:

Future developments in Case No. 9707, or in the State's climate policy and laws, could mean that an investment of a project or cost of a project is no longer prudent and the Commission could alter or rescind approval of all or a portion of WGL's STRIDE 3 Plan. Similarly, should Case No. 9707 reveal that some replacement projects can safely be postponed until retirement is possible through electrification, the Commission can subsequently alter or rescind approval of such projects.⁴¹

It would be arbitrary and imprudent to approve massive expenditures on new gas infrastructure when the Commission is on the cusp of opening a docket specifically aimed at assessing the prudence of gas investments—including those contemplated in STRIDE—in light of Maryland's clean energy future. The Commission should not enable WGL to recover any expenditures under STRIDE until it has issued a decision in Case No. 9707, and has put guardrails in place for future investments in the gas system.

IV. CONCLUSION


For the above reasons, Sierra Club and CCAN urge the Commission to reject the PULJ's recommendation and instead disapprove WGL's requested recovery under its STRIDE 3 Application. In the alternative, given the incompatibility of building new gas pipelines with Maryland's binding climate laws, the Commission should wait until the conclusion of a gas planning process, ideally in Case No. 9707, before approving any additional expenditures under the STRIDE program.

⁴¹ Proposed Order at 47.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2023, I electronically filed a copy of the above Joint Memorandum in Support of Appeal in the Matter of Washington Gas Light Company's Application for Approval of a New Gas System Strategic Infrastructure Development and Enhancement Plan and Accompanying Cost Recovery Mechanism, Case No. 9708, with the Maryland Public Service Commission. Copies were electronically served on the service list for this proceeding.

Respectfully submitted,



Sari Amiel, Esq.
Sierra Club
50 F St. NW, Eighth Floor
Washington, DC 20001
(301) 807-2223
sari.amiel@sierraclub.org