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APPLICATION OF

WASHINGTON GAS LIGHT COMPANY **CASE NO. PUE000407**

For approval of special rates pursuant to Virginia Code § 56-235.2

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

March 14, 2001

Virginia Code § 56-235.2 authorizes the Commission to approve special rates for individual customers upon a finding that such rates are in the public interest. In this case, Washington Gas seeks approval of special area development rates ("ADRs") for an unserved section of Loudoun County, Virginia. Washington Gas has designed its ADRs to increase the base rates paid by customers within the development areas to permit recovery of associated infrastructure costs.

HISTORY OF THE CASE

On July 28, 2000, Washington Gas Light Company ("Washington Gas" or "Company") filed with the Commission an application pursuant to § 56-235.2 of the Code of Virginia for approval of special ADRs applicable to a defined area within its service territory in Loudoun County, Virginia. On August 24, 2000, the Commission issued an Order for Notice and Hearing which, among other things, established a procedural schedule for the filing of prefiled testimony and exhibits and scheduled a public hearing for November 8, 2000.

On October 16, 2000, Northern Virginia Electric Cooperative ("NOVEC") filed a Motion for Leave to Accept Late Filing. NOVEC requested that its Notice of Protest and Protest be accepted for late filing. Pursuant to the Commission's Order for Notice and Hearing, Notices of Protest were due to be filed by September 22, 2000, and Protests were due to be filed by October 6, 2000. In addition, NOVEC asked for an extension of the October 6, 2000, filing date for Protestant's testimony.

On October 18, 2000, Company filed a Motion to Amend Procedural Schedule, requesting a two-day extension for Staff testimony and a one-day extension for the Company's rebuttal testimony. Further, Washington Gas filed a response to NOVEC's Motion stating that any delay in the established procedural schedule would be highly prejudicial to Washington Gas. By Hearing Examiner's Ruling dated October 19, 2000, NOVEC's Notice of Protest and Protest were accepted for late filing and a revised schedule for the prefiling of testimony was adopted. No change was made regarding the scheduled November 8, 2000 public hearing date.

On October 30, 2000, Roanoke Gas Company ("Roanoke") filed a Motion to Late File Notice of Protest and Protest as well as its Notice of Protest and Protest. In its motion, Roanoke

sought permission to file testimony in rebuttal to the Staff on November 1, 2000. In a responsive pleading, Staff opposed Roanoke's request to file testimony stating that "[s]uch an 'eleventh hour' filing would likely be prejudicial to the Staff."[1] By Hearing Examiner's Ruling dated October 31, 2000, Roanoke's Notice of Protest and Protest were accepted for late filing, and Roanoke's request to file rebuttal testimony was denied. On October 31, 2000, Roanoke filed a Motion for Immediate Certification of Hearing Examiner's Ruling to the State Corporation Commission seeking review of the Hearing Examiner's denial of its request to file rebuttal testimony. On November 1, 2000, the Hearing Examiner certified the ruling to the Commission. On November 1, 2000, the Commission entered its Order on Motion for Certification in which it granted Roanoke's motion to file rebuttal testimony.

On November 2, 2000, Staff filed a Motion for Continuance of Hearing Date and Other Relief. In light of the testimony filed by Roanoke, Staff sought additional time to prepare for hearing and to evaluate whether it was necessary to propound discovery. By Hearing Examiner's Ruling dated November 3, 2000, the evidentiary hearing was rescheduled to 10:00 a.m., November 13, 2000. The original hearing date of November 8, 2000, was retained for the sole purpose of receiving comments from public witnesses. Finally, Roanoke was directed to respond to any discovery requests propounded by Staff within 48 hours of service.

The November 8, 2000, hearing was convened as scheduled; no public witnesses appeared. Nonetheless, on November 8, 2000, a letter was received from Randy Collins, president of the Loudoun County Chamber of Commerce, supporting the Company's proposed ADR proposal.

The evidentiary hearing in this matter was convened on November 13, 2000. Representing Washington Gas was Donald R. Hayes, Esquire. M. Renae Carter, Esquire, appeared on behalf of the Northern Virginia Electric Cooperative and Malfourd W. Trumbo, Esquire, appeared on behalf of Roanoke. C. Meade Browder, Jr., Esquire, represented the Staff. Post-hearing briefs were filed on January 9, 2001. Filed with this Report are transcripts from each of the hearings.

SUMMARY OF THE RECORD

In its application, Washington Gas states that the purpose of its proposed ADRs "is to provide the Company a method to collect, and customers to pay, other than by lump sum payment as provided under its existing General Service Provision No. 14, the excess of the life cycle cost of facilities installed to provide service within the defined geographic area over the life cycle revenues from such service."[2] In other words, Washington Gas desires to extend facilities into an area of Loudoun County expected to be the site of more than 17,500 new residential units and 6.4 million square feet of new commercial development.[3] Following its current tariff, Washington Gas believes that before its system can be extended to meet anticipated new growth, the Company must project associated life cycle revenues and life cycle

[1] Staff Response to Motion of Roanoke Gas at 2.
[2] Application of Washington Gas at 1.
[3] Exhibit GEC-1, at 5.

costs. If the projected life cycle costs exceed projected life cycle revenues, then Washington Gas interprets its tariff to require it to collect any excess costs in advance before extending its system. For the targeted area of Loudoun County, such up-front recovery of costs likely would eliminate gas as an option for developers. Consequently, Washington Gas proposes establishing an ADR to provide alternative means of recovering costs.

Under the Company's proposal, each customer receiving service within the ADR area will have two payment options. The customer may pay the ADR amount as a monthly charge on his or her bill for twenty years, or the customer may pay the ADR as a lump sum, discounted at the Company's currently authorized return on equity of 11.5%.[4] As currently proposed, the monthly ADR charges, by customer type are as follows:[5]

Customer Type	Monthly ADR Charge
Single Family Detached	$11.05
Townhouse	$6.83
Individually-Metered Apartment	$5.53
Commercial	$36.36

In addition to the above charges, Washington Gas proposes to assess "lot charges" in accordance with its tariff as follows:[6]

Customer Type	Monthly ADR Charge
Single Family Detached	$500
Townhouse	$250
Individually-Metered Apartment (per meter)	$90
Commercial	$600

Furthermore, Washington Gas proposes that the ADR term of twenty years be flexible. If Washington Gas is able to recover the applicable capital costs sooner than anticipated, then the Company offers to terminate ADR charges in less than twenty years.[7] On the other hand, the ADR charges will not be extended beyond twenty years unless extended by the Commission at the Company's request.[8]

The proposed ADR would apply to service within an area in Loudoun County, designated by Loudoun County as the Dulles South Planning Area.[9] More specifically, Washington Gas defines the Dulles South Planning Area as falling within the following boundaries:

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[4] Application of Washington Gas at 3.
[5] Exhibit FJD-17, at 3.
[6] *Id.*
[7] Application of Washington Gas at 6.
[8] *Id.*
[9] *Id.* at 4.

North

The northwestern boundary of the ADR area is the northwestern boundary of the property included within the "Brambleton" real estate development. The northeastern boundary of the ADR area crosses Beaverdam Reservoir along a line roughly concurrent with the extension of the alignment of Virginia Route 645 (Croson Lane) west of VA Route 772 (Ryan Road).

East

North of U.S. Route 50, the eastern boundary of the ADR area is formed by the western boundary of the Columbia Gas of Virginia franchise area adjacent to Dulles International Airport.

Between U.S. Route 50, and VA Route 620 (Braddock Road) the eastern boundary follows the western and southern boundaries of the "South Riding" community.

South of VA Route 620 (Braddock Road) the boundary follows the eastern boundary of the property included within the planned "Ticonderoga Farms" real estate development.

South

The southern boundary of the rate area continues to follow the property included within the planned "Ticonderoga Farms" real estate development until it intersects VA Route 659 (Gum Spring Road) on the west. It then follows VA Route 659 to the north until it intersects the southern boundary of the property included within the planned "Kirkpatrick Farms" real estate development (a portion of which was once called the "M.J. Loudoun Limited Partnership" tract).

West

South of VA Route 620 (Braddock Road) the boundary follows the western boundary of the property included within the planned "Kirkpatrick Farms" real estate development.

North of VA Route 620 (Braddock Road) to U.S. 50, the boundary follows the western boundaries of the property included within the planned "Kirkpatrick Farms" and "Stone Ridge" real estate developments.

North of U.S. Route 50, the western boundary follows VA Route 616 (Fleetwood Road) to its intersection with VA Route 621 (Evergreen Mills Road); thence along VA Route 621 such that it includes the planned Randolph D. Rouse "Red Hill Farm" real estate development.

> From this point it again intersects the northwestern boundary of the "Brambleton" property to complete the boundary of the ADR area.[10]

A copy of a map of the ADR area filed with the Company's Application is provided as Attachment A to this Report.

Washington Gas supported its Application with the testimony of three witnesses. Allen Schiffenbauer, department head of customer information and planning of Washington Gas, described the Company's ADR strategy.[11] More specifically, Mr. Schiffenbauer addressed the following topics: (i) the ADR area, (ii) the determination of ADR charges, (iii) the need and benefits of an ADR, (iv) administrative processes to be used to implement the proposed ADR, (v) plans for customer notification, and (vi) a description of the commitments among developers, builders, customers, and Washington Gas regarding the ADR. Francis J. Donnelly, director of financing of Washington Gas, sponsored the financial analysis upon which the Company based its proposed ADR charges.[12] This analysis consisted of projected life cycle revenues and costs associated with the ADR area developed in accordance with General Service Provision No. 14 of the Company's tariff.[13] James B. Wagner, area head of regulatory affairs of Washington Gas, described the tariff changes and accounting and regulatory implications associated with implementing the Company's proposed ADR rates.[14] In addition, Mr. Wagner explained how Washington Gas plans to administer the ADR and how the Company plans to reconcile and to terminate the ADR.

NOVEC filed the testimony of Burnice C. Dooley, a partner in the firm of Dooley & Vicars, Certified Public Accountants, L.L.P.[15] Mr. Dooley asserted that Company's proposed plan for implementing the ADR rate fails to provide adequate notification and information concerning the total cost of selecting gas over other energy alternatives.[16] Also, Mr. Dooley raised concerns that the ADR would add to the administrative costs of Washington Gas.[17]

Roanoke Gas filed the testimony of John B. Williamson, III, chairman and CEO for Roanoke Gas.[18] Mr. Williams supported the concept of area development rates and encouraged the Commission to set a precedent in this proceeding that will have no negative effect on the policy of area development.

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[10] Exhibit GEC-2.
[11] Exhibit GEC-1. At the hearing, Mr. Schiffenbauer's prefiled direct testimony was adopted by George E. Chastka.
[12] Exhibit FJD-5.
[13] *Id.* at 3; Exhibit FJD-6.
[14] Exhibit JBW-W-7.
[15] Exhibit BCD-11.
[16] *Id.* at 3-4.
[17] *Id.* at 4-5.
[18] Exhibit JBW-R-10.

Staff filed the testimony of two witnesses. John A. Stevens, a utilities engineer with the Commission's Division of Energy Regulation, discussed several concerns with the Company's proposal.[19] These concerns included: (i) the likelihood that some potential customers will not be informed of the ADR charges prior to choosing gas service, (ii) the proposed ADR charges represent a substantial increase over existing customer charges, (iii) the benefits gained from implementing the ADR charges may not outweigh the costs of deviating from average rates, (iv) the undesirable aspect of having numerous different ADR charges throughout the state, and (v) the potential for the proposal to be anti-competitive.[20] Based on these concerns, Staff did not support the Company's proposed ADR. In the event the Commission adopts the Company's application, Mr. Stevens recommends increasing builder charges and reducing the monthly ADR charge.[21]

Farris M. Maddox, a principal financial analyst in the Commission's Division of Economics and Finance, examined the Company's life cycle analysis.[22] By varying assumptions within reasonable limits, Mr. Maddox finds that the life cycle analysis "could indicate that no ADR is necessary."[23] Finally, Mr. Maddox observed that "[i]f [Washington Gas] is unwilling to commit the resources to serve a prime area of development in Northern Virginia, then perhaps [the Company's] franchise on that area should be released for other potential companies who would be willing and able to serve it."[24]

Washington Gas prefiled rebuttal testimony for three witnesses. George E. Chastka, director of sales and new market development in the Business Development Department of Washington Gas, adopted the direct testimony of Mr. Schiffenbauer and responded to several concerns expressed by Staff witnesses Stevens and Maddox, and NOVEC witness Dooley.[25] In response to the testimony of Staff witness Stevens, Mr. Chastka: (i) defended the Company's communication plan to inform prospective homebuyers about the ADR; (ii) revised the specific lot and ADR charges proposed by Washington Gas; (iii) supported the competitive aspects of the ADR; (iv) advised the Commission to review each proposed ADR on its own merits; and (v) contended that the Company's line extension policy is mandatory and is intended to prevent the addition of new customers that over the long run would adversely impact the rates of existing customers.[26] In response to Staff witness Maddox, Mr. Chastka affirmed that the Company is willing to serve the ADR areas and that this willingness is demonstrated by its proposed ADR.[27] Concerning NOVEC witness Dooley, Mr. Chastka emphasized that its communication plans should enable prospective customers to make an informed decision regarding gas service.[28]

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[19] Exhibit JAS-12.
[20] *Id.* at 15.
[21] *Id.* at 16.
[22] Exhibit FMM-15.
[23] *Id.* at 1.
[24] *Id.* at 12.
[25] Exhibit GEC-16.
[26] *Id*. at 3-11.
[27] *Id.* at 11-12.
[28] *Id.* at 12-15.

In his rebuttal testimony, Company witness Donnelly addressed six issues raised by Staff witness Maddox.[29] First, the Company's life cycle analysis used assumptions representing the Company's best estimates based on experience in similar projects.[30] Second, Mr. Donnelly submitted that the twenty-year length of the ADR period was designed to balance the interests of customers and the Company, not reduce risk to the Company.[31] Third, Mr. Donnelly commented that Mr. Maddox's suggestion of adding the NPV shortfall to the Company's rate base would affect adversely all other customers.[32] Fourth, Mr. Maddox's recommendation of financing the NPV shortfall with 100% debt is contrary to the Commission's ratemaking policy and contrary to the Company's financing plan which does not allocate capital from a specific source to a specific project.[33] Fifth, Mr. Donnelly supported use of the midpoint of the Company's authorized range for cost of equity in this case as consistent with the determination of revenue requirements in the Company's previous rate case.[34] Finally, in regards to the level of risk inherent in the project, Mr. Donnelly asserted that the ADR placed upon the Company the risk of accuracy of projections of customer build-out.[35]

The rebuttal testimony of Company witness Wagner addressed concerns raised by Staff witness Stevens and NOVAC witness Dooley.[36] Mr. Wagner maintained that the ADR did not represent a substantial increase over current customer charges because the ADR is not a base rate, but is an alternative way to pay line extension charges mandated by the Company's tariff.[37] In addition, Mr. Wagner argued that the ADR is consistent with the policy of uniform rates for similarly situated customers because the ADR customers are new customers, defined as a separate group by their location.[38] Also, Mr. Wagner stated that if actual build-out proves to be faster than projected by Washington Gas, the ADR period will be reduced.[39] The reverse is subject to Commission approval.[40] Finally, Mr. Wagner averred that implementing the ADR will not result in significant additional administrative expenses.[41]

DISCUSSION

Washington Gas seeks approval of its ADR charges pursuant to the special rate provisions of Virginia Code § 56-235.2. Specifically, § 56-235.2 authorizes the Commission to approve special rates, contracts or incentives for "individual customers or classes of customers

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[29] Exhibit FJD-17.
[30] *Id.* at 2-3.
[31] *Id.* at 4-5.
[32] *Id.* at 5-6.
[33] *Id.* at 6-7.
[34] *Id.* at 7.
[35] *Id.* at 7-9.
[36] Exhibit JBW-W-18.
[37] *Id.* at 2.
[38] *Id.* at 3.
[39] *Id.* at 4.
[40] *Id.*
[41] *Id.* at 5.

where it finds such measures are in the public interest."[42] Furthermore, before approving any special rates, this section requires the Commission to:

> ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable . . . service.[43]

Thus, the threshold issue in this case is whether the Company's proposal fits within the statutory framework for special rates. If the Company's proposed ADR charges are found to be consistent with Virginia Code § 56-235.2, then the focus of the discussion shifts to whether Washington Gas has proven that its proposal meets the three statutory requirements of § 56-235.2 C.

Applicability of § 56-235.2.

To date, the Commission has approved three applications for special rates under § 56-235.2. Two of these cases involved special electric and gas rates offered to induce a large specialty steel company to locate a manufacturing plant in Virginia.[44] In these cases, the special rate provision of § 56-235.2 was used as means of furthering economic development that was found to be in the public interest.[45] In the third case, the Commission approved special rates offered by Washington Gas in order to retain a large industrial customer that threatened to leave its system.[46] The Commission found that it was in the public interest to maximize the use of existing facilities and keep the customer on the Company's system.[47] In all of these cases, the special rates represented a discount from currently authorized rates that was directed towards specifically identified customers.

In contrast, in this case the Company's proposed ADR charges represent an increase over existing rates and are directed generally to any customer that may choose gas service within a defined geographic area. Moreover, in this case the anticipated 17,000 residential units and 6.4 million square feet of commercial development are not contingent upon the availability of gas service.[48] Nor does this case involve the use of existing facilities. Indeed, the purpose of the

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[42] Va. Code § 56-235.2 A.
[43] Va. Code § 56-235.2 C.
[44] *Application of Virginia Electric and Power Company for approval of a special rate contract pursuant to § 56-235.2 of the Code of Virginia*, Case No. PUE980333, 1999 S.C.C. Ann. Rep. 419 ("New Electric Customer Case"); and *Application of Columbia Gas of Virginia, Inc. for approval of a special rate and contract*, Case No. PUE990781, Final Order (July 12, 2000) ("New Gas Customer Case").
[45] New Electric Customer Case at 423.
[46] *Application of Washington Gas Light Company for approval of special rates and contract*, Case No. PUE000353, Final Order Approving Special Rate and Contract (November 30, 2000) ("Existing Gas Customer Case").
[47] Existing Gas Customer Case at 3-4.
[48] Wagner Tr. at 93.

ADR is to recover a portion of the cost of new facilities that will be constructed to serve the expected new customers. Accordingly, the facts surrounding this case do not fit the pattern supporting any of the other special rates adopted by the Commission.

Notwithstanding the basic differences between this proposed use of the special rate provisions of § 56-235.2 and those previously approved by the Commission, no party to this case argues that the Company's proposal falls outside the language of the statute. As Washington Gas points out on brief, the Commission has found that "[t]he language of the special rate statute does not limit its use solely to inducing new businesses to locate in Virginia."[49] Though Staff recommends against approving this application, it nevertheless concludes that "the plain language of § 56-235.2 does not seem to prohibit [the Company's] proposal as a matter of law."[50] Similarly, NOVEC questions only whether the proposed ADR meets the requirements of § 56-235.2 C.[51]

I agree with the parties that the special rate language of § 56-235.2 may permit ADR-type proposals. Section 56-235.2 A states that "special charges shall not be limited by the provisions of § 56-235.4." Generally, § 56-235.4 prohibits multiple rate increases by a utility within a twelve-month period. Therefore, it appears that the General Assembly contemplated and approved of special rates, such as the ones proposed by Washington Gas in this case, which represent an increase over current rates. If the General Assembly had meant to limit special rates to discounts offered to attract new economic development or retain existing customers, then it would not have needed to exclude special rates from the prohibitions against multiple rate increases of § 56-235.4. Consequently, I find that, subject to the requirements of § 56-235.2 C, a utility may propose pursuant to § 56-235.2 a higher rate for a designated area designed to promote extensions of utility service. Whether such rate should be adopted by the Commission will hinge upon a weighing of the specific facts and circumstances in accordance with the requirements of § 56-235.2 C. Thus, the remainder of this discussion will focus on whether the ADR proposal of Washington Gas: (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable service.

Public Interest

Section 56-235.2 C(i) directs the Commission to ensure that any special rate "protects the public interest." The statute does not define "public interest," thus leaving such determinations to the judgment of the Commission. Such a determination requires a weighing of the benefits or detriments to the public if the proposed special rates are adopted. Consequently, determinations of the public interest under § 56-235.2 C(i), by nature, are dependent upon the unique facts and circumstances presented in each case.

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[49] Existing Gas Customer Case at 3.
[50] Staff Brief at 4.
[51] NOVEC Brief at 7-8.

In this case Washington Gas claims that its proposed ADR charges are necessary for the Company to make gas service widely available throughout the ADR area.[52] According to Washington Gas, absent its proposed ADR charges, the Company is required to follow the line extension provisions found in the General Service Provisions of its tariff.[53] In this regard, Washington Gas contends that General Service Provision No. 14 requires that before it extends facilities, it must conduct a life cycle cost benefit analysis and collect any excess costs in advance.[54] Specifically, General Service Provision No. 14 (a) states:

> Where it is necessary to extend or enlarge its facilities to supply gas service to a customer or group of customers, the Company will perform a life cycle cost analysis, comparing the incremental life cycle cost of the extension or enlargement to the anticipated life cycle revenues as a result of the extension or enlargement, to determine whether the customer or group of customers will be required to place a deposit with the Company. . . . The amount of the deposit will be equal to the difference between (1) the life cycle cost of the extension or enlargement, and (2) the anticipated life cycle revenues as a result of the extension or enlargement . . . .[55]

Further, General Service Provision No. 14 (d) directs:

> A deposit will be required if the net present value is negative. The required deposit (if any) will be equal to the amount by which life cycle costs must be reduced to equate the net present value of the costs and the net present value of the life cycle margins.

Washington Gas contends that if it follows General Service Provision No. 14 for extending gas service to the ADR area, then the first developer would be required to pay deposits to cover revenue shortfalls associated with constructing the gate station and the gas main from the gate station to the development.[56] The greater the distance between the first development and the gate station, the greater the deposit required from the first developer. If the first developer refuses to pay the deposit, then neither the gate station, nor the gas main will be constructed. Separate negotiations and calculations would be required for each subsequent developer. Washington Gas witness Chastka observed that if the Company were successful in negotiations with the first developer and the second developer located along the main built to serve the first developer, "you would have a very difficult time in trying to negotiate any money out of the second builder/developer because the facilities now were put right in front of their property . . . ."[57]

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[52] Washington Gas Brief at 13-15.
[53] *Id.* at 7-11.
[54] Exhibit GEC-1, at 3-5.
[55] Exhibit JAS-14.
[56] Exhibit GEC-1, at 4-6; Chastka, Tr. at 200-01.
[57] Chastka, Tr. at 201.

Washington Gas maintains that its proposed ADR charges would be an alternative to General Service Provision No. 14 for collecting excess life cycle costs from both builders and all gas customers located within the ADR area over a twenty-year period.[58] Thus, Washington Gas avers that its proposed ADR benefits the public interest by providing a viable means for the Company to offer gas service as a competitive energy alternative for the entire ADR area.[59]

Staff disagrees that the Company's proposed ADR is in the public interest. First, Staff asserts that General Service Provision No. 14 is neither applicable nor mandatory.[60] Second, Staff submits that the proposed ADR would confuse customers and limit customer choice.[61] Third, Staff contends that the proposed ADR violates the public policy favoring uniform rates.[62] Finally, Staff argues that Washington Gas failed to produce sufficient cost justification for its proposed ADR charge.[63] Each of these concerns is addressed below.

1. General Service Provision No. 14.

As discussed above, Washington Gas casts General Service Provision No. 14 as a barrier to it offering gas service to the ADR area on an economic or competitive basis. In contrast, Staff argues that General Service Provision No. 14 is optional and does not apply to the situation presented by the ADR area.[64] On brief, Staff points out that the Company's General Service Provision No. 13 specifies the circumstances under which Washington Gas will conduct the cost analysis prescribed by General Service Provision No. 14.[65] General Service Provision No. 13 (a) applies the Company's line extension requirements to:

> (1) customers for original service to a premises not currently or previously served, and (2) customers for whom existing main capacity is insufficient to supply new demand put upon it and additional investment in facilities to serve those customers is required.[66]

Staff contends that the Company's line extension requirements apply only to customers "that actually receive gas service."[67] According to Staff, "builders are not 'customers' of [Washington Gas] under this tariff and thus it appears the tariff does not trigger Commission jurisdiction over this Company/builder relationship."[68] Moreover, Staff claims that the

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[58] Exhibit GEC-1, at 7.
[59] Exhibit JBW-W-7, at 4.
[60] Staff Brief at 4-8.
[61] *Id.* at 11.
[62] *Id.* at 9.
[63] *Id.* at 10.
[64] *Id.* at 5.
[65] *Id.*
[66] Exhibit JAS-14.
[67] Staff Brief at 6.
[68] *Id.*

Company's line extension requirements are optional based upon General Service Provision No. 13 c, which states that "the Company may require a deposit from the applicant."[69]

In Case No. PUE940031, the Commission directed Washington Gas to make its line extension policy mandatory. In that case, the Senior Examiner held:

> I further find that the new line extension policy should be mandatory. The Company's current practice of waiving extension costs is disturbing for two reasons. First, when extension costs are waived for new customers, existing customers may be required to foot the bill of the new extension. . . . This practice is not only unfair to existing customers, but it also violates a fundamental principle of cost causation holding that those customers who cause the Company to incur additional costs should bear primary responsibility for the costs.
>
> In addition, the Company's practice of waiving extension fees appears to promote discriminatory conduct in violation of Virginia Code § 56-234. This section of the Code requires utilities to treat similarly situated customers in a uniform and non-discriminatory manner. The ability of the Company to waive extension fees for some customers while charging others appears to sanction the very conduct which Virginia Code § 56-234 is designed to prevent. Accordingly, the Company's extension charges should be mandatory, not optional.[70]

In its Final Order, the Commission found that "The Company's rate design and terms and conditions of service should be modified in accordance with the recommendations contained in the Senior Hearing Examiner's Report; . . ."[71]

In this case, Washington Gas must install facilities because existing main capacity is insufficient to supply the new demand put upon it. Therefore, I find that the Company's line extension provisions apply. The language of General Service Provision No. 13 (a) applies the Company's line extension provisions to customers. This language does not prohibit builders from paying deposits in the place of customers. Nor does this language relieve customers from paying deposits simply by hiring or buying from a builder.

Furthermore, I find the language of General Service Provision No. 14 to be mandatory, as ordered by the Commission in Case No. PUE940031. Any ambiguity that may exist within the

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[69] *Id.* at 5; Exhibit JAS-14.

[70] *Application of Washington Gas Light Company, Virginia Division, for a general increase in its rates and to revise its tariffs*, Case No. PUE940031, Report of Glenn P. Richardson, Senior Hearing Examiner, at 66 (May 26, 1995).

[71] *Application of Washington Gas Light Company, Virginia Division, for a general increase in its rates and to revise its tariffs*, Case No. PUE940031, 1995 S.C.C. Ann. Rep. 301, 302.

language of the Company's tariff must be resolved in favor of implementing the Commission's directive. Therefore, I find that the Company's proposed ADR provides a necessary alternative to the line extension requirements of General Service Provision No. 14 that will permit Washington Gas to offer gas service as an option to the new customers within the ADR area.

2. Customer Confusion and Choice

Washington Gas recognized that for the proposed ADR to be successful, prospective customers must be informed about the ADR prior to their decision to move into the ADR area.[72] To accomplish this, Washington Gas agreed to take the following steps:[73]

- Provide builders with printed materials and obligate builders to inform potential customers about the ADR as part of the sales process.
- Conduct special meetings with builders to announce the builder and ADR charges.
- Inform builders that they have the option of paying ADR charges in a lump sum.
- Inform real estate agents of the ADR boundaries and charges and encourage them to communicate this information to prospective residents.
- Encourage builders to display ADR educational materials in model homes.
- Include ADR boundary and cost information in bill inserts and customer newsletters.
- Show ADR charges as separate line items on all bills.
- Train its own employees to be able to respond to any inquiry concerning the ADR.

Both Staff and NOVEC questioned the adequacy of the Company's communication plan. Staff witness Stevens reviewed the Company's proposed communication and notification plan and faulted it for relying "almost exclusively on developers, builders, and realtors."[74] Mr. Stevens observed that "[n]one of these groups has a vested interest in ensuring that customers are properly notified of the ADR charges prior to choosing gas service or purchasing a home with

[72] Exhibit GEC-3.
[73] *Id.*
[74] Exhibit JAS-12, at 8.

gas service."[75] Furthermore, Mr. Stevens testified that Washington Gas was unwilling to agree to a requirement that it maintain a signed written statement from each of its ADR customers stating that the customer was informed of the ADR prior to choosing gas service or purchasing the home.[76] Finally, Mr. Stevens concluded that without adequate information concerning the ADR, customers will be unable to evaluate properly the total cost of gas versus alternative energy supplies.[77] Thus, Mr. Stevens is concerned that the Company's communications plan regarding its ADR has the potential to be anticompetitive.

NOVEC echoed Staff's position that failure to provide prospective residents with adequate information concerning the ADR "may lead a customer to make an energy choice he or she otherwise would not have made."[78] NOVEC emphasizes the need for full disclosure for both the initial homeowner and for subsequent purchasers of homes within the Company's ADR area.

On rebuttal and during the hearing, Washington Gas agreed to bolster its communication plan. Company witness Chastka testified that the Company would modify its bill form to include an explanation of the ADR charge.[79] Further, Mr. Chastka stated that Washington Gas would add information regarding the ADR area and rates to its Internet site.[80] Finally, Mr. Chastka declared that Washington Gas would incorporate ADR information into builder disclosure forms, which are signed by buyers of new homes along with the purchase agreement.[81] Nonetheless, Mr. Chastka declined to accept Staff's proposed condition that would require Washington Gas to produce a signed disclosure form if a customer later complains that he or she was not "properly informed" of the ADR charges.[82] Under Staff's proposed condition, if the Company is unable to produce a signed disclosure form, Washington Gas would no longer be able to impose ADR charges on the complaining customer.

As discussed above, § 56-235.2 authorizes the Commission to approve special rates only where it finds such measures are in the public interest. In this case, the primary benefit attributed to the proposed ADR is that it will enable Washington Gas to offer gas service to customers it would otherwise not be able to serve. Staff and NOVEC maintain that customer confusion or the failure to inform customers adequately of the costs of gas service in general, and of the ADR in particular, serves to erode, and even eliminate, any benefits associated with this proposal. Washington Gas designed its ADR proposal to be an additional charge for the very customers it intends to benefit. Thus, I find that absent assurances of adequate notice and information to prospective homeowners Washington Gas fails to meet the statutory public interest standard.

As pointed out by both Staff and NOVEC, the weak link in the Company's proposed communications plan is the fact that Washington Gas must rely on others at critical times to

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[75] *Id.*
[76] *Id.* at 9; Stevens, Tr. at 119.
[77] Exhibit JAS-12, at 13
[78] NOVEC Brief at 3.
[79] Chastka, Tr. at 199.
[80] Exhibit GEC-16, at 6.
[81] *Id.*
[82] Chastka, Tr. at 210.

inform prospective residents about the intricacies of the ADR. I agree with Staff and NOVEC that Washington Gas must be willing to assume the risk of properly informing prospective residents of the ADR. Consequently, if the Commission approves the Company's proposed ADR, Washington Gas must be willing to produce a signed disclosure form if a customer complains that he or she was not "properly informed" of the ADR charges. During the hearing Company witness Chastka was unwilling to make such a commitment.[83] However, on brief, Washington Gas was less clear.[84]

> [T]he Company has identified a mechanism for notice of the ADR to be incorporated into a disclosure form used by builders. A copy of these disclosure forms would be provided to the purchaser and a copy would be retained by the builder as part of the settlement documents. Washington Gas could obtain a copy of a signed disclosure form from a builder if necessary.

The condition of requiring proof of disclosure should only apply to the initial purchase from builders or developers. This is where decisions to install or not to install natural gas are likely to be made. Though Staff and NOVEC raised several concerns regarding communications to purchasers of existing homes subject to the ADR, Staff witness Stevens conceded that because such customers should have access to gas bills from Washington Gas for the property under consideration, "resales" were not of "primary concern."[85] Assuming the bills provide an adequate description of the ADR, such customers should be aware of the additional charges related to the Company's ADR.

3. Uniformity of Rates

Staff witness Stevens criticized the Company's proposal stating that it conflicts with public policy requiring utilities to treat similarly situated customers in a uniform and non-discriminatory manner. The General Assembly embodied this policy in § 56-234, which states in part:

> It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. It shall be their duty to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions.

Mr. Stevens testified that a typical residential customer of Washington Gas pays a monthly customer charge of $9.00.[86] In contrast, Mr. Stevens pointed out that a similarly situated ADR customer will pay total monthly customers charges of more that twice that

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[83] *Id.*
[84] Washington Gas Brief at 19.
[85] Stevens, Tr. at 148.
[86] Exhibit JAS-12, at 10.

amount.[87] Mr. Stevens concluded that "a rate differential of this magnitude could be difficult to explain to ADR customers and potentially create significant customer confusion and anger."[88] On brief, Staff illustrates this point by posing a situation where two customers "could be back-door neighbors" yet pay different rates if only one of the customers resided within the ADR area.[89]

Further, Mr. Stevens raised a concern that Washington Gas and other utilities may seek approval of other ADR charges within their service territories.[90] According to Mr. Stevens, multiple ADR charges would undermine policies designed to promote the convergence of rates for merging utilities.[91] In addition, Mr. Stevens believes that utilities may use multiple ADR surcharges as a means of "increasing rates without opportunity for scrutiny of the Company's cost of service by the various stakeholders."[92]

The special rate provisions begin with "[n]otwithstanding § 56-234."[93] This signals that the General Assembly intended the special rate provisions of § 56-235.2 to be an exception to the uniform rate policy codified in § 56-234. The analysis for the Commission in this case is not whether the proposed ADR charges deviate from the principle of uniformity of rates, but rather whether the proposal is in the public interest.

Nor do I give significant weight to the other uniformity-of-rates problems raised by Mr. Stevens. Each ADR application should be reviewed on its own merits. Thus, I find that little or no weight should be given to the prospect of multiple ADRs. Further, § 56-235.2 does not limit the processes or procedures available to the Commission for reviewing a utility's cost of service. Indeed, § 56-235.2 permits approval of special rates "in the context of or apart from a rate proceeding." Therefore, I find no evidence to support the contention that multiple ADR requests will permit Washington Gas to increase rates without scrutiny of its cost of service.

Accordingly, I find that uniformity-of-rate concerns raised by the Staff have no impact on determinations of the public interest of the Company's proposed ADR.

4. Cost Justification.

Underlying the Company's proposed ADR charges is its financial analysis consisting of projected life cycle revenues and costs associated with providing gas service to the ADR area.[94] According to Company witness Donnelly, the financial analysis complies with the requirements of General Service Provision No. 14 of the Company's tariff, and incorporates assumptions of

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[87] *Id.*
[88] *Id.*
[89] Staff Brief at 9.
[90] Exhibit JAS-12, at 14.
[91] *Id.*
[92] *Id.* at 15.
[93] Va. Code § 56-235.2 A.
[94] Exhibit FJD-6.

build-out, revenue, and costs based on the Company's experience with similar projects.[95] Washington Gas used results from its analysis to conclude that it could not proceed with providing service to the ADR area without either advance payments as required by General Service Provision No. 14, or institution of the ADR charges. In addition, Washington Gas used the results of the financial analysis to calculate the ADR charges.

Staff questioned the reasonableness of the assumptions upon which Washington Gas constructed its life cycle analysis, and questioned whether the Company's financial analysis, even if accurate, justified the imposition of ADR charges.[96]

Regarding the reasonableness of the Company's assumptions, Staff witness Maddox testified that changes in the timing, amount, and discount rate applicable to cash flows could have an impact on results of the life cycle analysis.[97] Though Staff did not submit an adjusted study, Mr. Maddox testified that under more reasonable build-out, revenue, and cost assumptions, the financial analysis could yield the opposite result, eliminating the need for ADR charges.[98] Mr. Maddox pointed to several factors that could result in either higher revenues or lower costs. For example, Mr. Maddox observed that the Company's financial analysis included only thirty years of revenue, while Washington Gas anticipates the useful life of the installed facilities to be thirty-eight years.[99]

The procedures for projecting future revenues and expenses as prescribed by the Company's General Service Provision No. 14 are, by nature, estimates with varying degrees of uncertainty. In this case, Washington Gas has been careful to structure its proposed ADR to place the Company, rather than customers, at risk for the uncertainty of its estimates. If the Company's life cycle analysis is correct, then the ADR will be in effect for twenty years.[100] If actual results are better than the Company anticipated in its analysis, then the ADR will automatically end in less than twenty years.[101] If actual results are worse than the Company anticipated in its analysis, Washington Gas will be unable to extend the ADR, unless otherwise approved by the Commission.[102] Therefore, based on the record, I find the Company's financial analysis provides sufficient basis for its proposed ADR.

Furthermore, Staff argued that Company's projected revenue shortfalls, even if accurate, would be too small to have a significant impact on rates.[103] For example, Mr. Maddox testified that his calculations showed that Washington Gas could absorb the net present value of the revenue shortfall without having its overall return fall below the Company's authorized range.[104]

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[95] Exhibit FJD-5, at 3; Donnelly, Tr. at 68.
[96] Staff Brief at 10-11.
[97] Exhibit FMM-15, at 7.
[98] Maddox, Tr. at 182.
[99] Exhibit FMM-15, at 8.
[100] Application of Washington Gas at 6; Exhibit JBW-W-18, at 4.
[101] *Id.*
[102] *Id.*
[103] Exhibit JAS-12, at 11-12; Exhibit FMM-15, at 10-11.
[104] Exhibit FMM-15, at 11.

On the other hand, Mr. Stevens calculated that the cost of providing service to the ADR area, if spread to the Company's other customers would increase the average customer's bill by only fifteen cents per month.[105] However, under either of Staff's calculations, extension of service to the ADR area without the proposed ADR charges will increase revenue requirements for all other customers. This is precisely why General Service Provision No. 14 was designed to be mandatory. Given the relative size of most line extensions, few if any projects on a stand-alone basis are likely to have a significant impact on rates. Washington Gas would again have discretion to waive extension fees. Thus, the Company could require existing customers to shoulder the cost of new extensions and treat similarly situated customers differently by collecting connection fees from some and waiving connection fees from others.

In summary, I find the Company's tariff provisions governing line extensions to be mandatory and applicable to the extension of gas service to the ADR area. Moreover, the Company's current line extension provisions likely create a financial barrier to extending gas service to the ADR area. Washington Gas based its ADR charges on a financial analysis constructed in accordance with its tariff. The ADR charges provide a workable alternative to its existing line extension requirements and should enable Washington Gas to offer gas as an alternative energy choice to prospective customers located in the ADR area. In order for prospective customers to have a realistic choice, however, the Company must design its communication plan to give prospective customers timely notice and information concerning the ADR and its costs. As more fully described above, to ensure the adequacy of the Company's communication plan, Washington Gas must be willing to assume the risk of failure to provide customers with proper information. Only if Washington Gas is willing to assume such risk, does its proposed ADR "protect the public interest."

Prejudice Customers

Section 56-235.2 C(ii) directs the Commission to ensure that any special rate "will not unreasonably prejudice or disadvantage any customer or class of customers." Washington Gas claims that its proposed ADR charges are intended to prevent any adverse impact on the rates of the Company's existing customers.[106] As discussed above, Washington Gas instituted its current line extension policies in order to insulate existing customers from the cost of extending service to new customers. Though the ADR offers an alternative means of funding the extension of service into the ADR area, the ADR continues to collect any projected revenue shortfalls from the customers living in the ADR area. Thus, the customers at risk of being prejudiced or disadvantaged by the Company's ADR proposal, are the prospective customers living within the ADR area. This serves to highlight the importance of the Company's communication plan and of giving prospective customers adequate notice and opportunity for choice.

Nonetheless, Staff raised one other issue indicating the potential for customers living within the ADR area to be prejudiced or disadvantaged by the Company's proposal. Staff witness Stevens testified that the infrastructure facilities used to serve the ADR area also may be

[105] Exhibit JAS-12, at 11-12; Stevens, Tr. at 151-52.
[106] Washington Gas Brief at 15.

used to provide service to Washington Gas customers living outside the ADR area.[107] In support, Mr. Stevens produced a map of the Company's planned distribution projects.[108] This map shows a proposed project to connect the gate station serving the ADR area with neighborhoods outside the ADR area and the interconnection of mains from the ADR area with mains outside the ADR area.[109] On rebuttal, Company witness Chastka explained that Washington Gas did not have specific plans related to the projects depicted on Exhibit JAS-13.[110]

Under the Company's existing General Service Provision No. 14, amounts paid by customers to secure line extensions are treated as deposits. Within five years of making a deposit, such amounts may be refunded "as a result of the extension or enlargement from each additional customer served directly from the extension, or a further extension beyond the one which the deposit covers."[111] By contrast, the Company-designed ADR charges are not deposits, subject to refund.[112] Thus, as proposed, it is possible that customers within the ADR area will be funding the cost of infrastructure facilities that also benefit the Company's other existing customers. Mr. Stevens testified that such uncertainty is one reason to reject the Company's ADR proposal.[113]

If Washington Gas were to implement its ADR proposal, and subsequently extend the infrastructure facilities to non-ADR areas, customers living within the ADR area and paying additional monthly ADR charges, would be funding the cost of assets now serving customers not subject to ADR charges. Accordingly, there is the potential for the Company's ADR proposal to prejudice or disadvantage customers living within the ADR area. Consequently, I find that Washington Gas should be required to modify its ADR proposal to end all ADR charges if the Company extends the infrastructure used to serve the ADR area to also serve non-ADR customers.

Reliable Service

Section 56-235.2 C(iii) directs the Commission to ensure that any special rate "will not jeopardize the continuation of reliable service." There is nothing in the record indicating that the Company's ADR proposal may jeopardize the continuation of reliable service. Indeed, part of the infrastructure Washington Gas proposes to build to serve the ADR area is a new gate station on the Columbia Gas Transmission Corporation's interstate transmission pipeline.[114] This will permit Washington Gas to serve the ADR area without any impact on its existing system or customers. Therefore, I find that the Company's ADR proposal will not jeopardize the continuation of reliable service.

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[107] Exhibit JAS-12, at 12; Stevens, Tr. at 123-25.
[108] Stevens, Tr. at 123-25, Exhibit JAS-13.
[109] *Id.*
[110] Chastka, Tr. at 202-03.
[111] General Service Provision No. 14 (e); Exhibit JAS-14.
[112] Wagner, Tr. at 86.
[113] Exhibit JAS-12, at 12.
[114] Exhibit JBW-W-7, at 5.

FINDINGS AND RECOMMENDATIONS

In conclusion, based on the evidence received in this case, I find that:

(1) The special rate language of § 56-235.2 permits special rate proposals similar to the Company's ADR proposal;

(2) The Company's ADR proposal protects the public interest only if Washington Gas is willing to assume the risk of failure to provide prospective customers with notice of the ADR charges;

(3) Staff's proposed condition requiring the Company to produce a customer-signed disclosure form to continue to impose ADR charges on a customer who complains he or she was not properly informed of the ADR charges, is reasonable and should be adopted;

(4) The Company's ADR proposal will not unreasonably prejudice or disadvantage any customer or class of customers if Washington Gas agrees to cease collecting ADR charges if it extends the infrastructure used to serve the ADR area to also serve non-ADR customers;

(5) The Company's ADR proposal will not jeopardize the continuation of reliable electric service; and

(6) The Company's ADR proposal should be approved if in its comments to the Commission, Washington Gas explicitly agrees to the above conditions and modifications.

I therefore **RECOMMEND** that the Commission enter an order that:

(1) **ADOPTS** the findings in this Report;

(2) **APPROVES** the Company's ADR proposal as modified herein; and

(3) **DISMISSES** this case from the Commission's docket of active cases and passes the papers herein to the file for ended causes.

COMMENTS

The parties are advised that pursuant to Rule 5:16(e) of the Commission's Rules of Practice and Procedure,[115] any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within fifteen days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a

[115] 5 VAC 5-10-420 F.

certificate to the foot of such document that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

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Alexander F. Skirpan, Jr.
Hearing Examiner