STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL
Paula M. Carmody, People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
410-767-8150; 800-207-4055
www.opc.state.md.us

BILL NO:	**House Bill 662** **Gas Companies-Infrastructure Replacement Surcharge**
COMMITTEE:	**Finance**
HEARING DATE:	**March 29, 2012**
SPONSORS:	**Delegates Barkley *et al.***
POSITION:	**Oppose**

House Bill 662 would amend the Public Utilities Article (PUA) to allow the Maryland Public Service Commission (PSC) to approve gas utility surcharges up to $2 per month per residential customer ($24.00 per year) without the benefit of a traditional rate review. This Bill is the cross-filed version of Senate Bill 541, which the Office of People's Counsel (OPC) opposed, and which failed in the full Senate on second reading. The Office of People's Counsel (OPC) **OPPOSES** House Bill 662.

The type of surcharge sought by this Bill is not consistent with long-standing principles of ratemaking law and policy. The use of trackers to collect distribution costs denies the Public Service Commission, and ratepayers, the benefit of a full assessment of the utility's revenue and expenses before deciding the reasonable rates for the utility to carry out its business responsibilities and have an opportunity to earn the designated profit level, and affects the balance of interests of the utility shareholders and ratepayers in setting rates. While the Bill is framed as a safety measure, in fact it is a revenue measure favoring the gas utilities.

The Bill states that "the purpose of this section is to *accelerate* gas infrastructure improvements in the State by establishing a mechanism for gas companies to promptly recover investments in eligible infrastructure replacement." §4-210 (B). However, there is no indication anywhere that gas companies are not already doing necessary improvements without having the ability to impose a surcharge on customers, or that gas utilities are not recovering prudently incurred costs for infrastructure investments.[1] If the utility rates are

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[1] For example, in WGL's recently concluded rate case, OPC expert witness Dr. Dismukes established that WGL was doing a very good job in maintaining safety and reliability <u>under traditional regulation</u>. Dr. Dismukes undertook a comparative analysis of mains and service line replacements and leak trend comparisons for WGL and other regional gas utilities. From that analysis, Dr. Dismukes concluded that there is no need for a special regulatory mechanism to recover pipeline replacement investments. In short, his analysis showed that WGL "has one of the lowest, if not the lowest, share of leak-prone pipe (mains and services) among comparably-sized Mid-Atlantic gas utilities. Second, the Company has exhibited replacement trends for leak-prone mains and service lines that are relatively comparable, if not better, than other regional utilities. Third, to the Company's credit, its long-run corrosion-related leak-improvement performance has been good over the past two decades, reducing mains and service line leaks from peak 1992 levels by over 50 percent. These reductions have occurred without a unique investment cost recovery rider that can lead to regulatory risks and ratemaking challenges." Dr. Dismukes prepared a similar analysis for weld related leak trends for service lines and mechanically coupled pipe and reached a similar conclusion. While he acknowledged that WGL had some "challenges" in 2004 through 2006, when the flow of liquefied natural gas (LNG) was expanded on the distribution system, his analysis shows that WGL had *improved* its leak performance since then under *traditional* regulatory cost recovery. See generally, Dismukes Direct Testimony, OPC Exh.38, pp.16-26.

not adequate, the utility always has the ability to request a rate increase. What it cannot do is fail to maintain a safe and reliable system.

That is illustrated by the PSC's recently completed rate case involving Washington Gas Light (WGL) where these principles were discussed.[2] In rejecting WGL's request for a surcharge mechanism, the Commission noted that WGL agreed that it had been able to get appropriate rates approved by the Public Service Commission (PSC) in the past and that those rates allowed it to meet its obligation to provide safe and reliable facilities.[3] The PSC approved implementation of the plan, considering it a "proactive" way to manage risk in the normal course of infrastructure improvements; however, the PSC found that a surcharge was not needed to address any reliability or financial concerns of the company, and that cost recovery for those improvements should properly be addressed in future rate cases.

The Bill also presents practical utility ratemaking problems. First, if passed, the surcharge would arguably make gas utilities less risky as an investment. However, the Bill provides for no mechanism for the Commission to reflect immediately, as it should, the reduction in risk through a reduced authorized rate of return. Even with the amendments to proposed PUA §4-210

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[2] Re Washington Gas Light Company, __Md. PSC __ (Case No. 9267) (Order No. 84475, November 14, 2011).

[3] WGL witness Chapman agreed that even with the challenges of necessary repairs and replacements inherent in the gas business under a traditional form of regulation and ratemaking, the "company has managed its reliability and safety responsibilities well over that period of time." Mr. Chapman also acknowledged that, in general, the Company has been able to gain appropriate rate increases at the Commission such that it could continue to meet its obligations. See Transcript pp.97-99, Case No.9267.

(D)(6) regarding the return on equity, the Bill does not allow the Commission to reflect any reduction in risk in rates until the company files its next rate case, which could be up to five years after approval of a plan and surcharge.

A gas utility's core responsibility is to provide safe and reliable service, and to operate and maintain its system accordingly. Thus, the infrastructure safety and reliability improvements contemplated by this Bill are not new or unique. In fact, they are the *sine qua non* of providing gas distribution service: on-going and routine expenditures. Federal and State regulations require gas companies to maintain a safe and reliable system, and any increase in expenses can be accommodated within the existing structure for setting distribution rates. This can be done even if a gas utility faces a major and sudden need for reliability or safety improvements (and there is no evidence of such a problem in Maryland).

In the past few years, gas and electric utilities in Maryland and other states have sought surcharges and other direct pass-through mechanisms for a variety of expenses – infrastructure improvements, pension costs and uncollectible expenses, for example. OPC believes that approval of this bill would open the door for other utilities to seek surcharge recovery for other expenses, and undermine the ratemaking process that has served both customers and shareholders by requiring the PSC to balance their interests.

For these reasons, OPC recommends an **UNFAVORABLE** report.