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BILL NO.:	**Senate Bill 355** **Gas Companies – Rate Regulation – Environmental Remediation Costs**
COMMITTEE:	**Senate Finance**
HEARING DATE:	**February 8, 2017**
SPONSORS:	**Senators Serafini and Astle**
POSITION:	**Oppose**

Senate Bill 355 permits the Public Service Commission (Commission) to authorize a gas company to recover the costs of environmental remediation of real property, even if the company does not own the property or the property is not being used to provide service to the customers who will pay the costs. The Bill is the same as the version of House Bill 571 favorably considered with amendments by the Senate Finance Committee during the 2016 General Assembly session. While there was discussion of House Bill 571 on the floor of the Senate last year, the Senate did not vote on the bill.

The Office of People's Counsel (OPC) appreciates that the amendments to the Bill that were introduced last year, and reflected in Senate Bill 355, are intended to address some of the consumer concerns that were raised during the 2016 General Assembly session. However, even with these modifications, we still come to the conclusion that the Bill fundamentally challenges long-standing, nationally accepted ratemaking principles at an unnecessary cost to gas company customers. Therefore, OPC cannot support the Bill.

The 2016 bill preceding Senate Bill 355 was described as legislation to clarify that gas companies could recover environmental remediation costs under certain circumstances. However, OPC believes that there is no need for clarification on this point. Historic ratemaking principles and prior Commission decisions allow for the recovery of environmental remediation costs for gas and electric companies (including manufactured gas costs), but only when the affected property is being used to serve customers (the "used and useful" standard in Public Utilities Article, §4-101). In fact, the Commission authorized cost recovery for clean-up of a manufactured gas facility in a seminal 1989 Chesapeake Utilities Corporation rate case, stating *"[f]or ratemaking purposes, the important fact about this site is that it is the location of a currently operating gas distribution facility."* This Bill would allow the Commission to ignore that salient "used and useful" fact in future cases. Unfortunately for customers, successful challenges to recovery of environmental remediation costs in rate cases have been based on evidence that the property to be remediated is not being used to provide services to customers. While the Bill uses the permissive "may" regarding Commission action, the Bill removes the primary reason for rejecting recovery of these types of costs –when the property is not being used for customer service.

Whether intended or not, the consequence of the Bill is the rejection of long-standing ratemaking principles a decades long history of Commission decisions and an adverse decision based on unique facts,[1] to allow a gas company the ability to collect from ratepayers the costs of remediating real property – no matter that the property is not being used for service to its customers. The Bill would permit recovery even if the property is not "currently used and useful" for gas services, and even if the gas company does not own the property when the rate is set. (SB355, p. 2, lines 10-16).

The only exception to the permissive rule is a very narrow one – *if a court has determined* that the cause of the contamination is a result of the utility's non-compliance with state or federal laws, regulations or agency orders. This places a high burden on parties in a rate case. It is unclear to OPC how this issue of non-compliance would be addressed by a court in a timely fashion within the time constraints of a rate case (particularly since OPC or Commission Staff do not have the authority to seek such determinations in state or federal courts).

[1] The Attachment provides a discussion of the Commission case, upheld on appeal, that is the genesis of this Bill.

The Bill's "financial benefit" provision has been identified as a benefit to gas company customers because it might be helpful to future customers as a potential mitigation measure *if* the property in question is ever sold and *if* parties are able to establish an actual monetary gain directly attributable to customer-funded remediation. However, it does not address our fundamental concern that the Bill opens the door for gas companies to recover environmental costs from customers that under historic principles and Commission decisions, they would not be permitted to recover today.

OPC believes it is not just a question that ratemaking principles, Commission orders, and court decisions lead to the conclusion that it is "unjust and unreasonable" for a utility to recover costs from customers that have no relation to utility services. It is a matter of basic fairness to those customers. OPC therefore respectfully requests an UNFAVORABLE REPORT.

Columbia Gas of Maryland Rate Case
MD PSC Case No. 9316
Columbia Gas of Maryland v. Public Service Commission,
No. 0835, September Term 2014, 224 Md. App. 575 (2015),
Petition for Writ of Certiorari denied

The Public Service Commission addressed the circumstances relevant to Senate Bill 355 in a rate case order, which was upheld in appellate decisions that were unfavorable to Columbia Gas of Maryland. In 2013, Columbia Gas filed a base rate case with the Commission. As part of that rate case, Columbia Gas asked the Commission to allow recovery of certain environmental remediation costs regarding two of its properties. The record at the Commission showed that Columbia purchased the Cassidy property in 2013 and that since its purchase it had not been used in any way to provide utility service to current Columbia customers. In fact, the parcel of land in question had no connection with anything utility related since the 1920s when it was sold by Hagerstown American Light and Heat Company to the Cassidy Trucking Company. Based on the facts in the record, the Commission's Chief Public Utility Law Judge rejected Columbia's request to recover the expenses to remediate the Cassidy property in rates. The Company appealed the decision through multiple levels – the Commission, the Circuit Court, and the Court of Special Appeals (CSA). In a reported decision, the Court of Special Appeals upheld the Commission's decision. The Court of Appeals subsequently rejected Columbia Gas' Petition for Writ of Certiorari.

The facts of the case were set out in the CSA opinion. The Court stated that the ultimate issue in the case was "whether the [Cassidy] property for which environmental remediation cost recovery was sought, is "used and useful" in providing service to current utility customers."[1] Quite simply, should a regulated utility be allowed to collect environmental remediation costs from ratepayers to clean up a property that is not currently used to provide utility service to those customers? The Commission and the Courts said no.

[1] *Columbia Gas of Maryland v. Public Service Commission*, No. 0835, September Term 2014, 224 Md. App.575, 201, p. 6.