

**IN THE APPELLATE COURT  
OF MARYLAND**

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No. 2033, September Term 2022

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**IN THE MATTER OF THE PETITION OF  
THE MARYLAND OFFICE OF PEOPLE’S COUNSEL**

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On Appeal from the Circuit Court for Montgomery County  
(The Hon. David W. Lease) – Case No. C-15-CV-22-001977

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**INITIAL BRIEF OF APPELLANT  
MARYLAND OFFICE OF PEOPLE’S COUNSEL**

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DAVID S. LAPP  
PEOPLE’S COUNSEL  
CPF# 9903040003

/s/ Michael F. Sammartino  
Michael F. Sammartino  
Assistant People’s Counsel  
[michael.sammartino@Maryland.gov](mailto:michael.sammartino@Maryland.gov)  
CPF# 2112150027

Maryland Office of People’s Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150  
Attorneys for Appellant

July 5, 2023

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## INTRODUCTION

The General Assembly created the Public Service Commission in 1910 to regulate public utility monopolies. The Commission’s duty to regulate and supervise utilities is—in the Maryland Supreme Court’s words—“pervasive.”<sup>1</sup> The General Assembly established the Office of People’s Counsel in 1924 to advocate for residential utility customers in proceedings before the Commission.<sup>2</sup> OPC is “the only entity that enjoys statutory standing” in Commission matters.<sup>3</sup> The 1924 law directed OPC to “appear before the Commission in respect to investigations . . . by or on behalf of or in the interest of the public or in defense of the public interests.”<sup>4</sup> In 1976, the General Assembly modified this affirmative mandate to reflect the substance of current law:

“The Office of the People’s Counsel shall make such investigations and *request the Commission to initiate such proceedings* as that office deems necessary to protect the interests of residential and noncommercial users.”<sup>5</sup>

OPC protects the legal rights not of the office itself, but “of the residential customers that People’s Counsel is statutorily obligated to protect.”<sup>6</sup> OPC’s actions thus serve “to protect the rights of all residential utility customers in Maryland.”<sup>7</sup>

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<sup>1</sup> *Delmarva Power & Light Co. v. Pub. Serv. Comm’n of Md.*, 370 Md. 1, 7 (2002).

<sup>2</sup> 1924 Md. Laws Ch. 534; *see* Md. Code Ann., Pub. Util. Art. (“PUA”) § 2-201 *et seq.*

<sup>3</sup> *Mid-Atl. Power Supply Ass’n v. Pub. Serv. Comm’n of Md.*, 361 Md. 196, 219 (2000) (Harrell, J., dissenting).

<sup>4</sup> 1924 Md. Laws Ch. 534.

<sup>5</sup> 1976 Md. Laws Ch. 756 (emphasis added); *see* PUA § 2-204(a)(3).

<sup>6</sup> *Pub. Serv. Comm’n of Md. v. Md. People’s Counsel*, 309 Md. 1, 10 n.3 (1987).

<sup>7</sup> *Id.*

With this mandate, on November 23, 2021, OPC filed a complaint with the Commission asking it to exercise its regulatory powers to address marketing included in customer bills of Washington Gas Light Company and its affiliate, WGL Energy Services, Inc., which competes with other suppliers to sell gas to retail customers. OPC's complaint alleged the marketing (i) violated the Public Utilities Article ("PUA") because it deceived and misled customers by broadly describing natural gas as "clean energy" and a "smart decision for the environment and your wallet" and (ii) may have violated Commission regulations governing relations between a utility and its competitive affiliate.<sup>8</sup>

Without addressing OPC's legal claims or the facts, the Commission dismissed the complaint.<sup>9</sup> The Commission conducted no investigation, made no independent factual findings, and ignored the substance of Washington Gas's marketing message. Rather than accepting as true the complaint's allegations and inferences, the Commission's order did the opposite, accepting Washington Gas' assertions while disregarding OPC's response and supporting affidavit. The order simply stated that OPC's complaint "is not the proper forum in which to address such broad issues" while, paradoxically, simultaneously rejecting OPC's complaint as too "narrow."<sup>10</sup> On appeal before the circuit court, the

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<sup>8</sup> **E. 043** *et seq.*

<sup>9</sup> Order No. 90057.

<sup>10</sup> *Id.* at 6; *see also* Order No. 90175, Case No. 9673, ML 240270 (Apr. 20, 2022) (Order Denying Rehearing), at 3.

Commission more candidly acknowledged that it dismissed OPC’s complaint because it has “no interest” in it.<sup>11</sup>

The Commission’s order dismissing OPC’s complaint must be vacated. The order unlawfully denies residential customers effective redress for alleged PUA violations, subverts the Commission’s statutory mission to “supervise and regulate” public utilities such that they operate in the public interest, and undermines OPC’s statutory mandate to protect residential utility customers. The order also should be vacated because it violates the Commission’s regulation that allows for dismissal only if a complaint fails to state a claim upon which relief can be granted and because its explanation is incoherent and incomplete, leaving ambiguous the law it is applying and never addressing its statutory obligation to consider climate policy.

### STATEMENT OF THE CASE

The Maryland Office of People’s Counsel seeks judicial review of two Maryland Public Service Commission orders—Order No. 90057 and Order No. 90175. The first order dismisses OPC’s complaint against Washington Gas and WGL Energy, and the second denies OPC’s request for rehearing of that dismissal.

OPC filed its complaint on November 23, 2021, alleging a marketing statement included in certain Washington Gas customer bills violated the PUA. (**E. 042**) The

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<sup>11</sup> **E. 353** (“[T]he Commission simply has no interest in opening a proceeding to investigate a short statement on Washington Gas’s residential bills and using Washington Gas’s arguably true claims to initiate a broad proceeding involving national energy policy”) and **E. 361** (again stating “the Commission has no interest in this policy dispute”).

Commission docketed the case and requested comments from interested parties. **(E. 008)** The Sierra Club, Commission Staff, and Montgomery County filed comments in support of OPC's complaint and recommended the Commission open an investigation into the marketing. **(E. 069, 071, 081)** Washington Gas and WGL Energy opposed OPC's complaint and filed motions to dismiss. **(E. 104, 198)**

On February 7, 2022, the Commission issued Order No. 90057, dismissing OPC's complaint on the grounds that it "fail[ed] to adequately demonstrate a violation of state law or regulation." **(E. 009)** OPC petitioned for rehearing on March 9, 2022. **(E. 318)** The Commission denied OPC's rehearing request in Order No. 90175 on April 20, 2022. **(E. 019)** On May 20, 2022, OPC filed a petition for review of both Order Nos. 90057 and 90175 in the Circuit Court for Montgomery County. **(E. 348)** After holding oral argument, on December 22, 2022, the circuit court affirmed both orders in a bench ruling. **(E. 026)** On January 23, 2023, OPC timely noted an appeal to this Court. **(E. 365)**

### **QUESTIONS PRESENTED**

1. By dismissing OPC's complaint based on the "forum" and accepting as true Washington Gas's representations, rather than addressing the complaint's legal sufficiency, was the Commission's dismissal unlawful and procedurally defective?
2. Did the Commission act arbitrarily and capriciously when it (a) did not address OPC's claims under the Public Utilities Article, and (b) failed to consider how the marketing impacts greenhouse gas emission reductions and State climate goals?

## STATEMENT OF FACTS

Public utilities are among the most heavily regulated industries in Maryland. Through the State’s award of an exclusive franchise, they are authorized to operate within assigned geographical areas insulated from competition.<sup>12</sup> The condition of the State’s franchise award is “extensive government control over the [utility’s] rates, service, and operations.”<sup>13</sup> The law recognizes that, without comprehensive regulation, utilities can misuse their monopolies and take advantage of their captive customers.<sup>14</sup> Within their government-granted exclusive service territories, public utilities provide essential services and have special access to customers. Through their billing services, utilities have a captive audience for messaging.

### 1. The parties.

Maryland law assigns responsibility for regulating public service companies to the **Public Service Commission**.<sup>15</sup> As stated in the PUA, the Commission’s primary responsibility is to “supervise and regulate the public service companies to . . . ensure their operation in the interest of the public and promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination.”<sup>16</sup> This obligation includes setting rates and extends to virtually every aspect of utility services,

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<sup>12</sup> *Delmarva Power & Light Co.*, 370 Md. at 7.

<sup>13</sup> *Id.* at 6; *see also* PUA § 5-201(a).

<sup>14</sup> *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 595–96 (1976) (“[P]ublic utility regulation typically assumes that the private firm is a natural monopoly and that public controls are necessary to protect the consumer from exploitation.”).

<sup>15</sup> PUA §§ 2-101, 2-112, 2-113.

<sup>16</sup> PUA §§ 2-113(a)(1)(i); 5-101.

including utility marketing.<sup>17</sup> The Commission’s oversight of utilities is both legislative and adjudicative in nature. For complaints filed under PUA § 3-102, the Commission serves an adjudicatory role.

**OPC**, a separate, independent state agency, is tasked by statute to represent the interests of residential utility customers in proceedings before the Commission, federal regulatory agencies, and the courts. OPC is mandated, as it considers necessary, to “conduct investigations and request the Commission to initiate proceedings to protect the interests of residential and noncommercial [utility customers].”<sup>18</sup> As the Maryland Supreme Court has explained, OPC protects the legal rights “of the residential customers that People’s Counsel is statutorily obligated to protect.”<sup>19</sup>

**Washington Gas Light Company**—an appellee— is a public service company that distributes natural gas to customers in Montgomery County and Prince George’s County, Maryland. **WGL Energy Services**, also an appellee, is an affiliate of Washington Gas that the Commission has licensed to compete in the retail gas supply market in Maryland. WGL Energy is a “core service affiliate” of Washington Gas as defined in Commission regulations.<sup>20</sup> **(E. 045)**

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<sup>17</sup> *E.g.*, Order No. 82673, 2009 WL 3517697 (Md. P.S.C.) (Case Nos. 9153-55 & 9362, May 12, 2009) (requiring utilities to provide marketing messages for advance Commission review).

<sup>18</sup> PUA § 2-204.

<sup>19</sup> *Pub. Serv. Comm’n of Md.*, 309 Md. at 10 n. 3.

<sup>20</sup> A “core service” is a gas supply service “provided by a utility as a monopoly service.” Code of Maryland Regulations (“COMAR”) 20.40.01.03B(3). A “core service affiliate” means a “person that is controlled by a utility or an entity that controls the utility, directly or indirectly, and that provides a core service.” *Id.* at B(4).

## **2. OPC’s complaint and Washington Gas’s and WGL Energy’s responses.**

In November 2021, a Washington Gas residential customer provided OPC a copy of a gas bill containing an environmental marketing statement. That customer purchased retail gas supply from WGL Energy. The marketing statement promotes alleged environmental and economic attributes of natural gas:

Natural Gas is a [sic] clean, efficient, and reliable energy. Converting an all electric home to natural gas is the equivalent of planting 2.75 acres of trees or driving 26,520 fewer miles each year. In addition, natural gas cost [sic] 1/3 less than electric [sic], which makes it a smart decision for the environment and your wallet. **(E. 045)**

The billing message raised two immediate concerns. First, with growing awareness of the climate impacts of fossil fuel consumption, consumers seeking to minimize their environmental impact may be misled by the broad and unqualified statements regarding the alleged environmental attributes of natural gas—for example, that natural gas is “clean.” **(E. 235, 051, 246, 092, 016)** Though combusting natural gas may be less emissions-intensive than other fossil fuels, natural gas remains a significant source of greenhouse gas emissions. **(E. 047, 237)** Natural gas production and consumption emit more than 1,500 million metric tons (“MMT”) of carbon—about one third of the United States’ total annual carbon emissions. **(E. 047, 094)** Residential end-use consumption accounts for almost 5 percent of annual U.S. greenhouse gas emissions. **(E. 094)** In addition to greenhouse gas emissions, in-home combustion of natural gas emits pollutants that are hazardous to human health. **(E. 094–95)**

Second, customers could be misled into making economically significant decisions detrimental to their long-term interests. A blanket claim that natural gas costs less than electricity is not factually correct under all circumstances. (E. 242, 016–14) Customers making decisions to replace furnaces, stoves, or water heaters—appliances with long service lives—based on this claim may wind up spending significantly more money in the long run. (E. 050–51, 097, 237–39)

OPC contacted Washington Gas to inquire about the marketing statement. (E. 106–07, 221) In response, Washington Gas disclaimed any responsibility for the marketing message, stating that WGL Energy was responsible for billing its Maryland customers and that the affiliate “includes content on its bill of its own choosing.” (E. 106, 223–24) Washington Gas’s lawyer informed OPC in writing that the utility itself “has no control over or connection to this content.” (E. 135)

Commission regulations explicitly prohibit public service companies from “giv[ing] any preference to a core service affiliate” and “engag[ing] in promotions, marketing, or advertising with a core or non-core service affiliate.”<sup>21</sup> Because OPC’s investigation was only able to identify the marketing message on Washington Gas bills for which WGL Energy served as the gas supplier, OPC was concerned that Washington Gas was violating Commission rules by giving WGL Energy preferential access to market on its customer bills. (E. 045)

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<sup>21</sup> COMAR 20.40.02.01B(2), (4).

After its communications with Washington Gas’s counsel, OPC filed a complaint with the Commission under PUA § 3-102. **(E. 042)** The complaint explained the emissions intensity of natural gas combustion and how Maryland law requires significant reductions in greenhouse gas emissions. **(E. 047)** The complaint stated that guidance issued by the Federal Trade Commission and the National Association of Attorneys General advises marketers that describing a product whose production or combustion generates significant emissions as “clean energy” without any qualification is deceptive or misleading. **(E. 048–50)** Pointing to the Consumer Protection Act (“CPA”) as “instructive on the Commission’s assessment of deceptive marketing,” the complaint alleged the marketing message was deceptive on its face as a matter of law and thus harmful to the public interest, in violation of PUA § 2-113(a). The complaint also alleged that the marketing did not “meet the standard of safe, adequate, just, reasonable, economic and efficient service and failed to account for the quality of the environment,” in violation of PUA § 5-303. **(E. 051)** The complaint further detailed Washington Gas’s representations about WGL Energy’s responsibility for the marketing message and alleged that the interaction between Washington Gas and WGL Energy may violate the utility affiliate code of conduct regulations.<sup>22</sup> **(E. 046, 052–53)**

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<sup>22</sup> COMAR 20.40.02.01 prohibits a broad range of utility conduct related to affiliates—for example, utility preferential treatment for affiliates, misrepresenting affiliation as a benefit to customers, and operating the utility and affiliate out of the same location—in order to protect utility customers and the competitiveness of the non-utility market. COMAR Subtitle 20.40 includes numerous restrictions and requirements governing utility-affiliate relations.

For relief, the complaint asked the Commission to order the message’s removal from all customer bills and issue civil penalties. OPC further requested the Commission to open an investigation into Washington Gas’s possible preferential treatment of its retail supply affiliate, WGL Energy. **(E. 054–56)** OPC appended two requests for discovery to the complaint—one to each company—to clarify which company was responsible for the billing statement and the number of customers affected. **(E. 064–68)**

The Sierra Club, Commission Staff, and Montgomery County filed comments supporting OPC’s complaint. **(E. 069, 071, 081)** Both Washington Gas and WGL Energy filed motions to dismiss. **(E. 104, 197)** WGL Energy asserted in its opposition that the marketing message was solely attributable to Washington Gas. **(E. 199)** Washington Gas’s motion stated that its earlier representation to OPC—that WGL Energy was solely responsible for the marketing message—was not correct, and it now took full responsibility for the marketing message, repeatedly stating that the marketing statement appeared on “every utility consolidated bill rendered by Washington Gas.” **(E. 106, 130)**

Washington Gas’s motion to dismiss defended the marketing statements as consistent with federal and state energy policy. **(E. 108–112)** Purporting to substantiate each claim, Washington Gas argued that the marketing statements were not deceptive. **(E. 110–126)** Lastly, Washington Gas argued that the Commission should accept its “self-certification” of the environmental marketing claims. **(E. 127–28)**

OPC’s response to the companies’ motions explained how each assertion in the marketing statements omitted important contextual information and could not be substantiated as correct in all cases for all or even most customers. **(E. 235–247)** For

example, a consumer with an efficient electric heat pump who “converts” her home to an inefficient natural gas unit would not benefit the environment or her financial condition.

**(E.237)** OPC also refuted Washington Gas’s claim that the marketing statement is included on all the consolidated bills of Washington Gas customers served by retail suppliers. **(E. 225–27)** OPC provided an affidavit with an exhibit showing other retail supply consolidated customer bills without the marketing statement. **(E. 252–82)** As a result of the conflicting facts concerning the scope and origin of the marketing, OPC argued that it was “inappropriate to dismiss WGL Energy from the case at [that] time.” **(E. 248)** OPC’s response further reiterated that its claims fell under the PUA’s public interest standard and not the CPA. **(E. 231–34)**

### **3. Dismissal of OPC’s complaint.**

On February 7, 2022, the Commission issued Order No. 90057 (the “Dismissal Order”), dismissing OPC’s complaint. **(E. 009)** The Dismissal Order did not address OPC’s response to the motions to dismiss and accompanying affidavit except for a single sentence in a footnote incorrectly stating that OPC’s response “repeat[s] the allegations in the complaint.” **(E. 013)** Despite the conflicting facts concerning the scope of the marketing campaign, the Commission dismissed OPC’s complaint against WGL Energy as moot, accepting Washington Gas’s assertion that it was solely responsible for the bills and that the message was on all bills of every customer signed up with a retail supplier. **(E. 013–14)** The order also erroneously stated that OPC had not discussed the marketing with Washington Gas prior to filing its complaint and accused OPC of wasting the Commission’s time—even though Washington Gas’s own motion to dismiss included

correspondence between OPC’s counsel and counsel for the utility prior to filing the complaint. **(E.014, E. 133-35)**

The Dismissal Order concluded that OPC’s complaint “fail[ed] to adequately demonstrate a violation of state law or regulation.” **(E. 014)** The conclusion was supported by a footnote stating that “public service companies regulated by the PSC are exempt from the Consumer Protection Act.” **(E. 014)** Adopting Washington Gas’s framing of OPC’s complaint, the order said it raised “broad allegations regarding the environmental attributes of natural gas” and that OPC’s complaint “is not the proper forum in which to address such broad issues.” **(E. 014)** The order appears to accept Washington Gas’s argument regarding “self-certification,” simply stating—without further explanation, supporting citations, or any discussion of whether such “self-certification” is rebuttable—that “[a]s Washington Gas notes, Maryland has allowed self-certification of marketing claims.” **(E. 014)**

Commissioner Michael T. Richard dissented. He found that the marketing statements were “worth investigating” and agreed with OPC and Sierra Club that Washington Gas “should cease using the gas-advertising message in question.” **(E. 016)** He further noted how Washington Gas’s explanations to “legitimate and clear OPC questions have been contradictory and inaccurate,” and that the majority’s decision failed to “adequately address the Company’s culpability for undermining its own credibility or for failing to address the alleged false environmental benefits-claims asserted by OPC.” **(E. 017–18)**

OPC petitioned for rehearing. **(E. 318)** In its response, Washington Gas for the *third* time changed its explanation about the scope of the marketing campaign, now stating that the marketing was only included on the bills of certain “autopay” customers. **(E. 336)**

On April 20, 2022, in Order No. 90175 (the “Rehearing Order”<sup>23</sup>), the Commission denied OPC’s rehearing request. **(E. 021)** In a shift from the Dismissal Order, the Rehearing Order recognized the “narrow” scope of OPC’s complaint—“the inclusion of a message printed on certain customer bills of a single natural gas utility company operating in Maryland.” **(E. 021)** Yet the Rehearing Order stated that any finding on the merits of OPC’s complaint would require “an analysis of broader issues involving greenhouse gases and environmental policy” and that such analysis was “far outside the scope of [OPC’s] narrow complaint.” **(E. 021)** Commissioner Odogwu Obi Linton concurred in the Commission’s judgment to dismiss OPC’s complaint, but incongruently agreed with OPC that the marketing statement was “misleading because of its lack of context or specificity.”<sup>24</sup> **(E. 023)**

#### **4. OPC’s appeal to circuit court.**

On May 20, 2022, OPC filed for judicial review in the Circuit Court of Montgomery County. **(E. 348)** The Commission’s memorandum of law elaborated on its rationale for dismissing OPC’s complaint beyond what was in the Dismissal Order. The

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<sup>23</sup> Except where the context suggests otherwise, future references in this brief to the “Dismissal Order” are inclusive of the Rehearing Order.

<sup>24</sup> Commissioner Richard, having dissented from the initial dismissal, did not take part in deciding the request for rehearing. **(E. 022)**

Commission described OPC’s complaint as raising a “broad proceeding involving national energy policy” that the Commission “has no interest in.” (E. 353) The Commission illustrated this “policy dispute” by stating that “the only ‘clean’ energy is no energy,” and that solar and wind generation cause “extraordinary harm to the environment” and are “quite dirty.” (E. 361–62) Although the Commission never withdrew or amended its circuit court brief, the Chair of the Commission and its legislative director told the General Assembly that the brief—or at least portions of it—did not represent the views of the Commission.<sup>25</sup>

On December 22, 2022, the circuit court issued an oral opinion finding that “the decision by the Public Service Commission was not arbitrary or capricious.” (E. 038) Relying on the Commission’s statements about the environmental characteristics of renewable energy resources, the circuit court judge agreed with the Commission that “what would constitute clean energy or whether or not gas energy is better or sort of more efficient or better for the environment overall than electric-generated energy” was not appropriate for a “single utility case.” (E. 036–37)

OPC noted an appeal to this Court on January 23, 2023. (E. 365)

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<sup>25</sup> See House Transportation and Environment Subcommittee (Feb. 27, 2023), video at <https://www.youtube.com/watch?v=J4ygaATyr68&t=2231s> (time stamp 25:30 to 33:30) (Commission Chair stating that brief did not reflect the views of the Commission). Hearing before Senate Education, Energy and Environment Committee (Jan. 31, 2023), video at <https://www.youtube.com/watch?v=I6EKDrJqeCg> (time stamp 1:42:26 to 1:43:45) Commission legislative director stating similarly).

## STANDARD OF REVIEW

In an appeal from judicial review of an agency decision, this Court reviews the agency's decision rather than the decision of the circuit court, applying the same standard of review as the circuit court.<sup>26</sup> PUA § 3-203 prescribes the scope of review:

Every final decision, order, rule or regulation of the Commission is prima facie correct and shall be affirmed unless clearly shown to be:

1. unconstitutional
2. outside the statutory authority or jurisdiction of the Commission;
3. made on unlawful procedure;
4. arbitrary or capricious;
5. affected by other error of law; or
6. if the subject of review is an order entered in a contested case after a hearing, unsupported by substantial evidence on the record considered as a whole.

The standard of review does not depend on whether a court would reach the same conclusions as the Commission, but on whether the Commission's decision or process is affected by the specified defect. For questions "on which a court does not typically defer to an agency—general questions of law, jurisdiction and constitutionality—PUA § 3-203 requires no greater deference to the Commission than any other agency," as "[s]uch legal questions 'are completely subject to review by courts.'"<sup>27</sup> On questions where courts "typically accord some degree of deference to administrative agencies—*i.e.* findings of fact, mixed questions of law and fact, and the construction of particular statutes administered, and regulations adopted, by the agency," a court should "be particularly

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<sup>26</sup> *Md. Off. of People's Counsel v. Md. Pub. Serv. Comm'n*, 461 Md. 380, 391 (2018).

<sup>27</sup> *Id.* at 394 (quoting *Commc'ns Workers of Am. v. Pub. Serv. Comm'n of Md.*, 424 Md. 418, 433-34 (2012)).

mindful of the deference owed to the Commission.”<sup>28</sup> A court “may not uphold the agency order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.”<sup>29</sup>

Agency acts of discretion are reviewed under the arbitrary and capricious standard.<sup>30</sup> Though courts may show deference to the Commission with respect to a claim that a Commission’s decision was arbitrary and capricious,<sup>31</sup> that deference is not without limit. An agency’s decision may be found to be “arbitrary and capricious” and reversed if a party challenging the decision shows “that the agency exercised its discretion unreasonably or without a rational basis.”<sup>32</sup> A court may consider such things as the agency’s expertise, policy goals stated in pertinent statutes or regulations, consistency with the agency’s past decisions, and whether it is possible to follow the path of the agency’s reasoning.<sup>33</sup>

## ARGUMENT

### **I. The Dismissal Order unlawfully abdicates the Commission’s regulatory responsibilities and violates its own procedures.**

The Commission has no discretion to dismiss a procedurally lawful complaint within the Commission’s jurisdiction without addressing whether the alleged conduct violates the Public Utilities Article. Such dismissal of a proper complaint without ruling

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<sup>28</sup> *Id.* at 393-94.

<sup>29</sup> *United Steelworkers of Am. AFL-CIO, Local 2610 v. Bethlehem Steel Corp*, 298 Md. 665, 679 (1984).

<sup>30</sup> *Comm’ns Workers of Am.*, 424 Md. at 434.

<sup>31</sup> *Md. Off. of People’s Counsel*, 461 Md. at 396.

<sup>32</sup> *Id.* at 399.

<sup>33</sup> *Id.* at 405.

on its substance is unlawful because it conflicts with the General Assembly’s mandate in PUA § 3-102 that the Commission adjudicate complaints. In addition, the Dismissal Order departs from the Commission’s procedural regulations and prejudices OPC’s ability to perform its statutory duties. These legal and procedural infirmities of the Dismissal Orders do not warrant deference and are cause for vacatur.

**A. The Commission lacks discretion to dismiss procedurally valid complaints without determining whether the conduct alleged complies with the PUA.**

The limits of an agency’s discretion and authority lie in its organic statute, such that an agency cannot act in a way that is inconsistent with the statute it administers.<sup>34</sup> The Public Utilities Article sets the limits of the Commission’s discretion.

The PUA does not afford the Commission discretion to dismiss complaints alleging harm in violation of the PUA without addressing the complaint’s legal sufficiency. PUA § 2-113(a) obligates the Commission to “supervise and regulate” public service companies to “ensure their operation in the interest of the public.” PUA § 3-102(a) affords a general right to “any person” to file a complaint with the Commission. PUA § 3-102(f) then provides three different courses of “final action” the Commission may take after a complaint is filed: (1) dismiss the complaint; (2) direct full or partial satisfaction of the complaint; or (3) direct any action that the Commission considers to be warranted.

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<sup>34</sup> *Bd. of Liquor License Comm’rs for Balt. City v. Hollywood Prod., Inc.*, 344 Md. 2, 10–11 (1996) (stating that the scope of an agency’s powers “turns on the General Assembly’s intent in empowering the agency and the statutory scheme under which the agency acts”).

While the Commission has discretion to determine which action is appropriate, PUA § 3-102(f) must be read consistent with the Commission’s “extensive . . . control over the rates, service, and operations” that is intended to ensure that public service companies operate in the public interest.<sup>35</sup> If the Commission determines the conduct alleged in a complaint would not be contrary to the public interest and would not otherwise violate the PUA, dismissal for failure to state a claim would be proper.<sup>36</sup> But, if the Commission believes the alleged conduct *could* violate the public interest, the PUA requires the Commission to act.

The Commission certainly has discretion as to how it addresses a complaint short of dismissal. It could issue an order requiring the implicated public utility to fully or partially satisfy the complaint.<sup>37</sup> It could allow discovery and hold an evidentiary hearing for further fact finding.<sup>38</sup> Or it could open a more robust docket to address the issues raised in the complaint.<sup>39</sup> Any of these forums would be consistent with the

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<sup>35</sup> *Delmarva Power & Light*, 370 Md. at 6. *See also* PUA § 2-113 (stating the Commission’s obligation to “supervise and regulate the public service companies . . . to ensure their operation in the interest of the public”).

<sup>36</sup> *E.g., Metromedia Energy, Inc. v. Wash. Gas Light Co.*, 94 Md. P.S.C. 430 (2003) (“As I have found the record reveals no error by WGL in its security demand . . . , the Complaint must be dismissed and the request for emergency relief denied.”).

<sup>37</sup> PUA § 3-102(f)(2).

<sup>38</sup> *E.g., Complaint of the Staff of the Pub. Serv. Comm’n of Md. against SFE Energy Md., Inc.*, Order No. 90558, 2023 WL 2772308 (Md. P.S.C.) (Case No. 9690, March 27, 2023) (finding further proceedings warranted because of the insufficient record to resolve complaint against retail energy supply company).

<sup>39</sup> *E.g., Notice Initiation Proceeding and Request for Data, Investigation into the Competitiveness of Centralized Propane Distrib. in Md.*, Case No. 9263, Maillog No. 129160 (March 11, 2011) (opening investigation into competitiveness of centralized propane distribution in response to consumer complaints), available at <https://webpsc.psc.state.md.us/DMS/maillogsearch>.

Commission’s discretion to address the complaint as it deems most appropriate. And customers would have an opportunity to obtain the relief sought in the complaint.

But the Commission does not have discretion to simply dismiss a complaint that states a legal claim for which it can grant relief. Here, the complaint alleged a violation of the PUA—the statute that the Commission is charged with administering and enforcing.<sup>40</sup> Instead of addressing the merits of OPC’s allegations that Washington Gas’s marketing message was deceptive and misleading, or opening a proceeding to determine the metes and bounds of deceptive environmental marketing, the Commission dismissed the complaint due to the “inappropriateness” of the “forum” where OPC filed its complaint. **(E. 014)**

The Dismissal Order exposes customers to the continued harm of deceptive marketing while indefinitely foreclosing any opportunity for relief. The marketing intends to influence customer purchases of furnaces, stoves, or water heaters—appliances with long service lives—that will cause them to spend significantly more over the long run. **(E. 050–51, 097, 237–39)** OPC alleged that Washington Gas’s unqualified marketing claims—among others, that natural gas is “clean” and “cost[s] 1/3 less than electricity”—is not unqualifiedly true for all customers and could lead many customers into making decisions adverse to their economic interests. **(E. 242, 016–14)** Beyond a complaint filed with the Commission under PUA § 3-102, customers have no readily available forum to seek protection when a public utility allegedly deceives consumers in violation the

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<sup>40</sup> PUA § 2-113.

PUA.<sup>41</sup> With OPC’s complaint dismissed, customers have no recourse. The Dismissal Order abdicates the recourse the General Assembly directed the Commission to use and contravenes the public interest that the Commission is charged with protecting. This Court should therefore vacate the Dismissal Order.

**B. The Dismissal Order violated the Commission’s regulation that limits its dismissal of complaints to those that fail to state a claim upon which relief can be granted.**

Administrative agencies such as the Commission are generally required to follow their own established rules, regulations, and procedures.<sup>42</sup> Except for good cause shown,<sup>43</sup> the Commission cannot waive, suspend, or disregard those rules.<sup>44</sup> When an agency acts contrary to its own rules, the action is invalid and must be struck down. This rule, known as the *Accardi*<sup>45</sup> doctrine, is a longstanding principle of federal and state administrative law.<sup>46</sup> The *Accardi* doctrine has three requirements: (1) the agency must have violated its own procedural rules or regulations; (2) the rule or regulation at issue must “affect individual rights and obligations” or confer “important procedural benefits”

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<sup>41</sup> The Consumer Protection Act exempts public utilities “to the extent [their] services and operations are regulated by the [Commission].” Md. Code Ann., Com. Law Art. § 13-104(2). OPC waives no rights it may have under that Act.

<sup>42</sup> *Md. Transp. Auth. v. King*, 369 Md. 274, 285 (2002) (recognizing general rule that “with some exceptions, an administrative agency is required to follow its own procedures or regulations”); *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 455 (2002).

<sup>43</sup> COMAR 20.07.01.01-1.

<sup>44</sup> *Md. Transp. Auth.*, 369 Md. at 282 (citing *Hopkins v. Md. Inmate Griev. Comm’n*, 40 Md. App. 329, 335 (1978)).

<sup>45</sup> See *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

<sup>46</sup> *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463 (2003).

and must not merely be a “procedural rule adopted for the orderly transaction of agency business”; and (3) the complainant must show prejudice from the violation.<sup>47</sup>

The Dismissal Order violated the *Accardi* rule by failing to abide by the Commission’s regulation governing dismissal of complaints. COMAR 20.07.03.03A(3) provides that the Commission may only dismiss a complaint when the complaint “fails to state a claim upon which relief can be granted.” A dismissal that violates COMAR 20.07.03.03A(3) is procedurally defective. Here, the Dismissal Order failed to adhere to the Commission’s complaint dismissal regulation rule in two ways. *First*, it dismissed the complaint’s marketing claim because a complaint proceeding was not the right “forum.” *Second*, it dismissed the complaint’s allegations about possible violations of affiliate relations rules by assuming the truth of the pleadings of the wrong party. Each is discussed in the two subsections below, after which the two other *Accardi* requirements are addressed.

**1. The Dismissal Order violated Commission regulations by dismissing OPC’s complaint because of the “forum.”**

The Dismissal Order states that OPC’s complaint “fails to state a claim on which relief can be granted” (E. 014) without applying COMAR 20.07.03.03A(3). The order states that a complaint against a single utility is the “improper forum” in which to raise broader issues concerning natural gas. (E. 014–15) The Rehearing Order further restates the Dismissal Order’s conclusion that “the Commission does not find that this complaint regarding a bill message is the proper forum to address broad environmental and

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<sup>47</sup> *Id.* at 503–04.

economic issues related to the use of natural gas,” but does not mention whether OPC’s complaint failed to state a claim on which relief can be granted. **(E. 021)**<sup>48</sup> The Dismissal Order does not apply the facts to the law. It only vaguely references any law, and it mentions only a few facts, getting some of those facts wrong—including its erroneous conclusion that OPC did not communicate with the utility before filing its complaint. Like the Dismissal Order, the Commission’s circuit court brief makes no mention of the insufficiencies of OPC’s complaint or the Commission’s ability to provide relief, focusing solely on the “improper forum” rationale and the fact that the Commission had “no interest” in OPC’s complaint. **(E. 360-63)**

Whether a complaint proceeding is the “proper forum” does not depend on whether the allegations could raise general policy issues. A complaint’s implications for broader policy are irrelevant to the legal sufficiency of the complaint, just as they would be in circuit court. Here, it cannot seriously be disputed that the Commission has power in a complaint proceeding to grant customer relief from deceptive utility marketing.<sup>49</sup> OPC’s complaint required the Commission to decide whether the unqualified use of the term “clean energy” and other claims in billing marketing statement could confuse or

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<sup>48</sup> The Rehearing Order makes no mention of “self-certification.” **(E.021)** The Dismissal Order itself fails to address why OPC’s complaint would not rebut any such “self-certification.” Of course, any *irrebuttable* “self-certification” of a marketing claim would be an abdication of the Commission’s statutory obligation to “regulate and supervise” public utilities under PUA § 2-213 and other PUA provisions.

<sup>49</sup> *E.g.*, PUA § 2-113 (Commission general regulatory and supervisory powers over public utilities); PUA § 5-303 (requiring utilities to furnish services that are safe, adequate, just, reasonable, economical, and efficient”); *Delmarva Power & Light Co.*, 370 Md. at 6 (explaining that a condition of a public utilities exclusive franchise award is “extensive government control over the rates, service, and operations”).

mislead customers and whether that confusion or deception violated the public interest. OPC’s complaint contends that decision depends on whether the marketing material in question has the *tendency to deceive*<sup>50</sup> (E. 048–49, 231–34) and whether “*all* reasonable interpretations” of the marketing are “truthful, not misleading, and supported by a reasonable basis.”<sup>51</sup> (E. 232) The question may be answered narrowly without (or at least without *necessarily*) addressing broader policy matters, or by addressing broader issues of energy policy. But either way, the fact that a narrow complaint may implicate broader policy concerns is immaterial; the complaint can only be dismissed if it “fails to state a claim upon which relief can be granted.”

Simply put, the “appropriateness” of the issues “for a complaint proceeding” is not a basis for dismissal if the complaint states a claim for which the Commission can grant relief. Here, by dismissing OPC’s complaint for reasons irrelevant to its regulations, the Commission violated its own procedural rules.

**2. The Dismissal Order’s dismissal of WGL Energy was unlawful because it assumed the truth of Washington Gas’s factual assertions.**

Commission regulations prescribe the same standard used by Maryland courts when determining whether to grant a motion to dismiss a civil complaint. Like COMAR 20.07.03.03A(3), Maryland Rule 2-322(b)(2) allows parties to move to dismiss a

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<sup>50</sup> See *Green v. H&R Block*, 355 Md. 488, 524 (1999); *Golt v. Phillips*, 308 Md. 1, 11 (1986).

<sup>51</sup> 16 C.F.R. § 260.2; see Federal Trade Comm’n, Policy Statement Regarding Substantiation (Nov. 23, 1984), <https://www.ftc.gov/public-statements/1984/11/ftc-policy-statement-regarding-advertising-substantiation> (emphasis added).

complaint for “failure to state a claim upon which relief can be granted.” Just like a trial court ruling on a motion to dismiss for failure to state a claim, the Commission must assume the truth of all well-pleaded and relevant facts and the inferences that can be drawn from them.<sup>52</sup> Dismissal is proper “‘if the alleged facts and permissible inferences, viewed’ ‘in a light most favorable to the non-moving party . . . would, if proven, nonetheless fail to afford relief to the plaintiff.’”<sup>53</sup> A Commission administrative law judge recently articulated this standard, stating, “For purposes of a motion to dismiss, [the complainant’s] allegations must be taken as true.”<sup>54</sup> Only if the allegations, when applied to the law, fail to afford the requested relief, may the Commission properly dismiss a complaint.

OPC’s complaint set forth facts sufficient to support the legal basis of OPC’s complaint of possible violations of the Commission’s affiliate relations regulations.<sup>55</sup> From the limited facts OPC was able to gather—some of them from Washington Gas’s own counsel—it appeared that Washington Gas may be unlawfully providing its core services affiliate, WGL Energy, preferential treatment or unique joint marketing privileges. The complaint identified the factual basis for the allegations and sought further discovery. **(E. 046, 046–68)** The undisputed record shows that Washington Gas’s

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<sup>52</sup> *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 476 (2004).

<sup>53</sup> *Sanders v. Bd. of Educ. of Harford Cnty.*, 477 Md. 1, 15 (2021) (quoting *Sprenger v. Pub. Serv. Comm’n of Md.*, 400 Md. 1, 21 (2007)).

<sup>54</sup> Ruling on Motion to Dismiss and Notice of Procedural Schedule, Maillog No. 303389, *Formal Complaint of Alfred C. Carr Jr. v. Potomac Elec. Power Co.* (Case No. 9706, June 23, 2023), available at <https://webpsc.psc.state.md.us/DMS/maillogsearch/>.

<sup>55</sup> OPC’s complaint specifically identified violations of COMAR 20.40.02.01 and 20.40.02.02. **(E. 053)**

pleadings included three different stories regarding the customers that received the marketing message. Washington Gas initially told OPC that WGL Energy was responsible for the billing message. (E. 135) Then, after OPC filed its complaint, the utility took full responsibility for the billing statement, stating that the marketing statements are included on “every” utility consolidated bill regardless of the customer’s retail supplier. (E. 129-30) Faced with OPC’s sworn affidavit showing bills that lacked the marketing message, Washington Gas introduced a *third* explanation—that the statements were only included on bills sent to “autopay” customers—in responding to OPC’s request for rehearing. (E. 336-37)

That response was the last pleading before the Commission, and without further investigation, neither OPC nor the Commission can be sure whether Washington Gas provided—or is providing—preferential treatment to its affiliate. But rather than viewing the complaint “in the light most favorable” to OPC, the Dismissal Order unquestionably accepted as true every representation in Washington Gas’s pleadings, even though those representations changed. (E. 013-14, 020)

The purpose of a motion to dismiss for failure to state a claim is to test the sufficiency of the pleadings.<sup>56</sup> The Dismissal Order fails to properly consider the pleadings. Rather than accepting as true the “allegations and permissible inferences” of

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<sup>56</sup> See *Ricketts v. Ricketts*, 393 Md. 479, 491 (2006) (“A motion to dismiss for failure to state a claim tests the sufficiency of the pleadings.”) (quoting *Afamefune ex rel. Afamefune v. Suburban Hosp., Inc.*, 385 Md. 677, 683 n.4 (2005)).

the non-moving party,<sup>57</sup> the Dismissal Order does the opposite, accepting Washington Gas’s assertions while disregarding OPC’s brief and affidavit. For an administrative agency acting in an adjudicatory role, such an erroneous application of the legal standard governing dismissal of a procedurally valid complaint is unlawful.

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The dismissal of OPC’s affiliate relations and marketing complaint allegations easily meet the remaining two requirements of the *Accardi* doctrine—the creation of important rights and benefits and the prejudice resulting from the violation of the regulation.

COMAR 20.07.03.03A(3) is not merely a “procedural rule adopted for the orderly transaction of agency business.”<sup>58</sup> It materially impacts the rights of parties, including “the residential customers that People’s Counsel is statutorily obligated to protect.”<sup>59</sup> By requiring decisions based on the complaint’s legal sufficiency,<sup>60</sup> the regulation provides, as the Maryland Supreme Court aptly stated, “some assurance against arbitrary and capricious conduct on the part of the agency.”<sup>61</sup> And finally, it helps reviewing courts

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<sup>57</sup> *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011); *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003) (“A defendant asserts in such a motion that, *despite the truth of the allegations*, the plaintiff is barred from recovery as a matter of law.”) (emphasis added).

<sup>58</sup> *Pollock*, 374 Md. at 503.

<sup>59</sup> *Pub. Serv. Comm’n of Md.*, 309 Md. at 10 n.3 (1987).

<sup>60</sup> *See Ricketts*, 393 Md. at 491.

<sup>61</sup> *Calvert Cnty. Planning Comm’n v. Howlin Realty Mgmt., Inc.*, 364 Md. 301, 322 (2001).

determine “whether, in application, an error of law or procedure otherwise occurred at the administrative level.”<sup>62</sup>

Residential customers are prejudiced by the Commission’s failure to follow its dismissal rule. Prejudice is “anything [that] places the person affected in a more unfavorable or disadvantageous position than [they] would otherwise have occupied.”<sup>63</sup> Here, the Commission’s deviation from its complaint regulations prejudices OPC’s ability to obtain redress for Washington Gas customers subject to Washington Gas’s marketing. More generally, the Commission’s failure to follow its own regulations prejudices OPC’s ability to investigate and prosecute PUA violations, including deceptive utility marketing and affiliate code-of-conduct requirements. The Dismissal Order leaves unanswered multiple questions regarding future gas marketing and whether deceptive environmental marketing constitutes a PUA violation. Importantly, it begs the question as to what forum *would* be appropriate for raising complaints against a utility for deceptive marketing.

Instead, the order introduces a new discretionary doctrine for dismissing complaints that undermines the complaint right that the General Assembly provided in PUA § 3-102<sup>64</sup> as well as OPC’s own statutory obligation “to request the Commission to

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<sup>62</sup> *Engineering Mgmt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 235–36 (2003) (concluding agency decision was procedurally unlawful due to its failure to define “summary disposition” or “to set forth by what standards and under what conditions it is appropriate that a summary disposition may be sought or granted, or what procedures will be utilized . . . to make such a determination”).

<sup>63</sup> *Balt. City Detention Ctr. v. Foy*, 461 Md. 627, 647-48 (2018) (quoting *Motor Vehicle Admin. v. Shrader*, 324 Md. 454, 470 (1991)).

<sup>64</sup> *See Moore v. State*, 388 Md. 446, 453 (2005) (A statute is “construed as a whole so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory.”).

initiate proceedings to protect the interests” of residential customers.<sup>65</sup> A party’s statutory right to file a PUA § 3-102 complaint would be useless whenever the Commission takes “no interest” in the complaint, as it has candidly admitted here.<sup>66</sup> Further, the discretion the Commission seeks here would be effectively unreviewable, allowing the Commission to avoid its statutory mission for purely arbitrary reasons.

**II. The Dismissal Order is arbitrary and capricious because it is not possible to follow the Commission’s reasoning and the order conflicts with State policy.**

PUA § 3-113 requires all Commission decisions and orders in a contested proceeding to (1) be based on consideration of the record, (2) be in writing, and (3) state the grounds for its conclusions.<sup>67</sup> This Court has observed that these statutory requirements are “essential for judicial review, because a court generally may not uphold an agency’s decision ‘unless it is sustainable on the agency’s findings and for the reasons stated by the agency.’”<sup>68</sup> Stated otherwise, to be properly upheld by a reviewing court, Commission orders “must at least be sufficiently detailed to apprise the parties as to the basis for the agency’s decision.”<sup>69</sup> Meeting this standard means that a reasoning mind must be able to arrive at the same conclusion and “follow the path” of the agency’s

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<sup>65</sup> PUA § 2-204(a)(3).

<sup>66</sup> **E. 353** (“[T]he Commission simply has no interest in opening a proceeding to investigate a short statement on Washington Gas’s residential bills...”) and **E. 361** (“[T]he Commission has no interest in this policy dispute...”).

<sup>67</sup> PUA § 3-113(a).

<sup>68</sup> *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Md. Pub. Serv. Comm’n*, 227 Md. App. 265, 285 (2016) (quoting *Balt. Gas and Elec. Co. v. Pub. Serv. Comm’n of Md.*, 75 Md. App. 87, 99 (1988)); *Bethlehem Steel Corp.*, 298 Md. at 679.

<sup>69</sup> *Id.*

reasoning.<sup>70</sup> The Maryland Supreme Court has further observed that the Commission “is required to articulate the standards through which it applied the applicable law to the relevant facts in reaching its decision in a contested proceeding.”<sup>71</sup>

The Dismissal Order’s explanations fail in two major respects. *First*, it never clearly articulates the law under which relief cannot be provided. *Second*, it altogether fails to consider—as the Commission is required to by statute—the impact of the environmental marketing on State efforts to curtail greenhouse gas emissions.

**A. The Dismissal Order’s explanation for OPC’s failure to state a claim does not identify the law under which OPC’s complaint was dismissed.**

At a minimum, PUA § 3-113 requires the Commission to identify the law it applied to reach its decision. Here, the applicable law was the Public Utilities Article—the law that directs the Commission to “supervise and regulate” utilities to ensure they operate consistent with the “interest of the public.”<sup>72</sup> OPC’s complaint requested that the Commission address Washington Gas’s operations that were not “in the interest of the public” because “deceptive advertising practices that mislead customers are not in the public interest.” (E. 048) The complaint states that the CPA “is *instructive* on the Commission’s assessment of deceptive marketing and consumer and consumer protection violations.” (E. 048) OPC reiterated this point in its response to Washington Gas’s and

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<sup>70</sup> *Md. Off. of People’s Counsel*, 461 Md. at 405; *see also Commc’ns Workers of Am.*, 424 Md. at 433.

<sup>71</sup> *Balt. Gas and Elec. Co. v. Pub. Serv. Comm’n of Md.*, 305 Md. 145, 167 (1986).

<sup>72</sup> PUA § 2-113.

WGL Energy’s motions to dismiss. **(E. 231)**<sup>73</sup>

But the Dismissal Order incorrectly states that “OPC’s complaint alleges that Washington Gas and WGL Energy violate . . . the Consumer Protection Act,”<sup>74</sup> fails to address the PUA at all, and never specifically identifies any law that it is applying to dismiss OPC’s complaint. A footnote implies that its ruling was premised on the CPA partial exemption for public utilities, simplistically stating that “public service companies regulated by the PSC are exempt from the Consumer Protection Act.” **(E. 014)** But the Dismissal Order never addresses the PUA, which OPC cited in making its complaint.

Instead of addressing the legal insufficiency of OPC’s complaint—necessary for granting a motion to dismiss—the Dismissal Order contends that “a complaint against one utility is an inappropriate forum to address the broader issues raised by natural gas and its role in greenhouse gas emissions.” **(E. 014)** This rationale for dismissal—repeated almost verbatim as the sole explanation for dismissal in the Rehearing Order **(E. 021)**—fails entirely to address the factual allegations of deception and the law the complaint relied on as prohibiting that deception. OPC’s complaint concerned a specific Washington Gas marketing message included on actual bills to its customers. Indeed, a complaint against one utility is the *only* forum to address a utility’s violation of the PUA. That the issues raised could have broader implications is irrelevant to determining whether the law, as applied to the alleged facts, could support the complainant’s requested relief.

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<sup>73</sup> Other parties to the case understood that OPC’s cause of action arose under the PUA. See **(E. 073)** (Public Service Commission Technical Staff); **(E. 087)** (Sierra Club) **(E. 127)** (Washington Gas).

<sup>74</sup> **E. 009.**

A court cannot sustain an agency’s decision if the legal basis of that decision is uncertain or if the decision avoids the facts and law at issue. Here, beyond a conclusory statement supported by an offhand reference to the CPA, there is no “path” for a court to follow the Commission’s reasoning. The Dismissal Order thus violates PUA § 3-113(a)(3) and is arbitrary and capricious, warranting reversal by this Court.

**B. The Dismissal Order is unlawful and arbitrary and capricious because it conflicts with State climate policy and the General Assembly’s statutory directives.**

In performing its supervisory and regulatory functions, PUA § 2-113(a)(v) and (vi) require the Commission to consider “the preservation of environmental quality, including protection of the global climate from continued short-term and long-term warming” and “the achievement of the State’s climate commitments for reducing statewide greenhouse gas emissions.” State law requires significant reductions in greenhouse gas emissions.<sup>75</sup>

OPC alleged that Washington Gas’s marketing language directly conflicts with State climate policy and efforts to reduce statewide greenhouse gas emissions. Contrary to State policies seeking to encourage a shift away from gas use, the utility’s marketing message claims that continued gas consumption is environmentally beneficial and encourages customers to switch from electricity to gas. **(E. 045)** But the Dismissal Order altogether fails to consider the climate impact of the messaging. **(E. 014–15)**

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<sup>75</sup> When OPC filed its complaint, State law required 40 percent reduction in GHG emissions from 2006 levels by 2030. Md. Code Ann., Env’t, § 2-1204.1 (2022). As of June 1, 2022, State law required a 60 percent reduction in GHG emissions by 2031 and achievement of net zero-GHG emissions by 2045. *Id.* §§2-1204.1, .2.

The Commission provided more explanation for its decision in its circuit court brief than appears in the Dismissal Order, expressing general skepticism of energy sources the General Assembly has sought to promote to address climate concerns. The Commission’s circuit court brief states:

Is natural gas “clean energy”? Taken literally, the only “clean” energy is no energy. Once one’s activist inclinations are put aside, solar and wind generation are quite “dirty.” (E. 361-62)

This *post hoc* explanation draws an equivalency between the environmental impact of natural gas and wind and solar. It was not offered in the Dismissal Order, yet it served as the rationale for the circuit court’s decision affirming the order.<sup>76</sup> (E.034) Even assuming the equivalency rationale was the basis for the Dismissal Order, such a rationale—considering the environmental impact of wind and solar, on the one hand, and gas, on the other to be equivalent—would be contrary to the Commission’s mandate to consider “the achievement of the State’s climate commitments” and “protect[ing] 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.”<sup>77</sup>

In any event, the Dismissal Order altogether failed to address OPC’s allegation that the marketing message was contrary to the legislature’s instruction to the Commission to take climate change into account when regulating public service

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<sup>76</sup> By accepting the *post hoc* explanation provided in the Commission’s brief, the circuit court improperly accepted reasons not provided in the Dismissal Order. *See Bethlehem Steel Corp*, 298 Md. at 679 (A court “may not uphold the agency order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.”).

<sup>77</sup> PUA § 2-113.

companies. **(E.034-35)** Indeed, deceiving consumers concerned about climate change is a central issue raised in OPC’s complaint. Because natural gas consumption causes greenhouse gas emissions, marketing gas as “clean energy” without qualification is likely to confuse many customers that seek to reduce their greenhouse gas footprint. Regardless of the Commission’s decision on the merits, the General Assembly required the Commission to consider the effect of such broad and unqualified marketing statements on State efforts to reduce GHG emissions. Failing to do so is arbitrary and capricious and warrants reversal.

### **CONCLUSION**

This Court should vacate the Dismissal Order and the Rehearing Order because they unlawfully abdicate the Commission’s core regulatory responsibilities, putting customers at risk of deceptive marketing practices and violations of Commission regulations intended to protect customers from harmful affiliate relations. The orders violate the Commission’s own regulation governing dismissal of complaints, ultimately undermining the role of the Office of People’s Counsel along with other potential complainants. The incoherence of the orders also warrants vacatur. One cannot read the orders and know what law was applied or even what facts the Commission considered in arriving at its decision. Finally, the orders fail to consider what the General Assembly required the Commission to consider—the effect of its decision on State climate policy.

For these reasons and others stated above, we respectfully request the Court to VACATE Commission Order Nos. 90057 and 90175 and REMAND to the Commission for further proceedings.

Respectfully submitted,

DAVID S. LAPP  
PEOPLE'S COUNSEL

/s/ Michael F. Sammartino  
Michael F. Sammartino  
Assistant People's Counsel  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150  
michael.sammartino@maryland.gov  
CPF# 2112150027

Attorneys for Appellant

July 5, 2023

## **REQUEST FOR ORAL ARGUMENT**

Pursuant to Maryland Rule 8-504(a)(8), the Maryland Office of People's Counsel requests oral argument on the issues presented in this Appeal.

/s/ Michael F. Sammartino  
Michael F. Sammartino  
Assistant People's Counsel  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150  
michael.sammartino@maryland.gov  
CPF# 2112150027

**Statement regarding type and font size:**

This brief has been prepared in proportionally spaced type, in Times New Roman font with a 13-point font size.

**CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112**

1. This brief contains 8,847 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Michael F. Sammartino  
Michael F. Sammartino  
Assistant People's Counsel  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150  
michael.sammartino@maryland.gov  
CPF# 2112150027

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of said certificates outstanding, and also to meet and redeem so much of the principal in each of said years as may be represented by certificates redeemable in each year, respectively, as herein specified in Section 2 of this Act.

SEC. 8. *And be it further enacted*, That this Act shall take effect from and after the first day of June, 1924.

Approved April 9, 1924.

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#### CHAPTER 534.

AN ACT to repeal Section 2 of Article 13, sub-title "Department of Public Utilities" of Chapter 29 of the Acts of 1922; and to repeal and re-enact with amendments Section 414 of Article 23 of the Annotated Code of Maryland, title "Corporations," sub-title "Public Service Commission," as said Section 414 was repealed and re-enacted by Chapter 713 of the Acts of 1916; and to repeal and re-enact with amendments Section 417 of said Article 23 under said title and sub-title; and to repeal and re-enact with amendments Section 418 of said Article 23 under said title and sub-title, as said Section 418 was repealed and re-enacted by Chapter 563 of the Acts of 1912; and to repeal and re-enact with amendments Section 419 of said Article 23 under said title and sub-title; so as to abolish the office of General Counsel to the Public Service Commission and the office of Assistant or Assistants to said General Counsel; providing for the appointment of People's Counsel and prescribing his duties and fixing his salary; and appointing the Attorney General the legal adviser and representative of the Public Service Commission.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Section 2 of Article 13, sub-title "Department of Public Utilities" of Chapter 29 of the Acts of 1922, be and the same is hereby repealed.

SEC. 2. *And be it further enacted*, That Section 414 of Article 23 of the Annotated Code of Maryland, title "Corporations," sub-title "Public Service Commission," as said Section 414 was repealed and re-enacted by Chapter 713 of the Acts of 1916, and Section 417 of said Article 23 of the same title and sub-title, and Section 418 of said Article 23 of the same title and sub-title, as said Section 418 was repealed and re-enacted by Chapter 563 of the Acts of 1912, and Section 419 of said

Article 23 of the same title and sub-title, be and the same are hereby repealed and re-enacted with amendments, so that said Sections 414, 417, 418 and 419 shall read as follows:

414. There shall be a Public Service Commission, and the same is hereby created and established, which said Public Service Commission shall be vested with and possessed of the powers and duties in this sub-title specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this sub-title.

The said Public Service Commission shall consist of three members, all of whom shall be appointed by the Governor, and one of whom shall be designated by the Governor to be and, upon being so designated, shall be the chairman of said commission.

Each commissioner, at the time of his appointment and qualification, shall be a resident of the State of Maryland, and shall have resided in said State for a period of at least five years next preceding his appointment and qualification, and he shall also be a qualified voter therein and not less than twenty-five years of age.

One of said commissioners shall hold office for two years from the beginning of his term of office until his successor shall qualify; one of said commissioners shall hold office for four years from the beginning of his term of office and until his successor shall qualify; and one of said commissioners shall hold office for six years from the beginning of his term of office and until his successor shall qualify. The term of office of each commissioner shall begin on the first Monday of May, in the year nineteen hundred and ten (1910), and the appointment of each of said commissioners shall be made and announced by the Governor not less than ten days before said first Monday of May, nineteen hundred and ten. The Governor, at the time of making and announcing the appointment of said three commissioners, as well as in the commission issued by him to each of them, shall designate which of said commissioners shall serve for the term of two years, and which shall serve for the term of four years, and which shall serve for the term of six years, as aforesaid, and also which shall be the chairman of said commission.

Upon the expiration of each of said terms, the term of office of each commissioner thereafter appointed shall be six years from the time of his appointment and qualification and until his successor shall qualify. Vacancies in said commission shall be filled

by the Governor for the unexpired term. Each commissioner shall be eligible for reappointment, in the discretion of the Governor.

In the event that the term of office above ascertained and prescribed for each of said commissioners, shall in respect to any of said commissioners be held and decided by the courts, and particularly by the Court of Appeals of Maryland, to be in excess of the period or term of office allowed or permitted by the constitution of Maryland, then, in such event, the term of office of each of said commissioners, shall, and this subtitle hereby declares and determines that the term of office of each of them shall be for the period of two years from and after the first Monday of May, in the year nineteen hundred and ten (unless removed from office) and until their successors, respectively, qualify according to law.

The Governor may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel, in his own defense, upon not less than ten days' notice. If such commissioner shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner, and his findings thereon, together with a complete record of the proceedings.

The salary of the chairman of the said Public Service Commission of Maryland shall be six thousand dollars (\$6,000) per annum and the salary of each of the other two commissioners shall be five thousand dollars (\$5,000) per annum.

The Governor is authorized to appoint, and remove at pleasure, an experienced and qualified attorney-at-law of this State, to be known as Peoples Counsel, who shall receive an annual salary of forty-five hundred (\$4,500) dollars.

The said commission shall have a secretary, to be appointed by it and to hold office at its pleasure. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the commission, of all books, maps, documents and papers ordered filed by the commission, and of all orders made by each of the commissioners, and of all orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to it for the safe custody and preservation of all such documents at its office. Under the direction of the commission, the secretary shall have general charge of its office, superintend the clerical business and perform such other

duties as the commission may prescribe. He shall have power and authority to administer oaths in all parts whatsoever of the State, so far as the exercise of such power is properly incidental to the performance of his duties or that of the commission. The secretary shall designate from time to time one of the clerks appointed by the commission to perform the duties of secretary during his absence, and during such time the clerk so designated shall, at the office, possess the powers of the secretary of the commission. The annual salary of the secretary shall be three thousand dollars (\$3,000).

The commission shall have the power, subject to the approval, in writing, by the Governor, in each and every instance, to employ such officers, clerks, stenographers, typewriters, inspectors, experts and employees as it may deem necessary to carry out the provisions of this sub-title or to perform the duties and exercise the powers conferred by law upon the commission; no person, however, shall be appointed or employed by the commission in any position whatsoever, unless the commission shall certify to the Governor that it deems such appointment or employment, and the compensation or annual salary which it proposed shall be paid in each instance, actually necessary for carrying out the purposes and requirements of this sub-title, and unless the Governor shall thereupon approve in writing such appointment or employment, and such compensation or annual salary or salaries. If in any case the commission cannot ascertain in advance the value of any service to be rendered to it or the proper compensation to be paid therefor, it shall certify such fact to the Governor, who may authorize the employment or acquisition of the service in question, leaving the value or compensation thereof to be ascertained by subsequent agreement or adjustment.

Each commissioner and each person appointed to office or employment by the Governor or by the commission, with the approval of the Governor, shall before entering upon the duties of his office or employment, take and subscribe to the constitutional oath of office. No person shall be eligible for appointment or shall hold the office of commissioner, or be appointed by the commission, to or hold any office or position under the commission, who holds any official relation to any common carrier, railroad corporation, street railroad corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water company, heat and refrigerating company, transportation of property or freight company, or other public service corporation subject to any of the provisions of this sub-

title, or who owns stocks or bonds therein, or who has any pecuniary interest therein.

417. The salaries of the commissioners, People's Counsel and the secretary to the commission, shall be paid monthly by the State Treasurer upon the warrant of the Comptroller of the Treasury, out of the funds provided therefor. The commissioners, Peoples Counsel, the secretary of the commission and its officers and clerks, inspectors, experts and other employees shall have reimbursed to them, by the State Treasurer, upon the warrant of the Comptroller, all actual and necessary traveling and other expenses and disbursements incurred or made by them in the discharge of their official duties. The salaries or compensation of all other officers, clerks, inspectors, members and employees of the commission, shall be fixed by the commission, subject to the written approval in every case of the Governor.

The sum of seventy-five thousand dollars (\$75,000) annually, or so much thereof as may be necessary annually for the maintenance of said commission and the payment of the salaries of the commissioners, the People's counsel, secretary, clerks, inspectors and all other employees whatsoever of the commission, and for investigations and hearings and all its necessary and incidental expenses, is hereby appropriated, and shall be payable on the order or orders of said commission, drawn upon the Comptroller at monthly intervals and at such other times as the commission may deem necessary, and upon such order or orders of the commission, the Comptroller shall draw his warrant upon the Treasurer of the State, at the end of each month, and at such other times as the commission may deem necessary, as aforesaid, for such amounts as the said commission may certify to be due and payable for all the said salaries, costs and expenses of the said commission as aforesaid, not exceeding, however, the amount herein appropriated therefor.

418. Whenever application, protest or other form of complaint is made to the Commission of or concerning any act or omission, any service, regulation, equipment, appliance or facilities, or the adequacy or quality thereof, any preferences or advantage or any prejudice, disadvantage or any discrimination, any rates, tolls, fares or charges, or any regulations or practices with respect thereto, or of or concerning any other matter or thing done, permitted, maintained or omitted to be done by any person, firm or corporation, subject to the jurisdiction of the Commission, with respect to any of the requirements imposed

by the public Service Commission Law, by any other law, by any charter, franchise or ordinance, by any order of this Commission or otherwise, it shall be the duty of said People's Counsel, upon a prima facie case, or otherwise, to participate in the preparation or reforming of the pleadings before the Commission, if need be, or investigating or further investigating the facts or evidence upon which the application, complaint or protest is based or may be based and to appear before the Commission in respect to investigations or in support of applications or complaints by or on behalf of or in the interest of the public or in defense of the public interests when involved and the services of the experts employed by said Commission as well as the records and other facilities of the Commission shall be availed of by said People's Counsel in the performance of these public duties; provided that nothing herein contained shall be construed to prevent any party or interest in any proceeding before said Commission from appearing in person or from being represented by counsel.

All actions and proceedings under this sub-title, and all actions and proceedings commenced and prosecuted by order of the Commission, and all actions and proceedings to which the Commission may be a party and in which any question arises under this sub-title, or under or concerning any order or action of the Commission, shall be preferred over all other civil causes except election causes, in all the Courts of the States of Maryland, and shall be heard and determined in preference to all other civil business pending therein, excepting election causes, irrespective of position on the dockets of said Courts. The same preference shall be granted upon application of the People's Counsel to the Commission in any action or proceedings in which the People's Counsel may be allowed to intervene.

The Attorney General shall be the legal adviser and representative of the Public Service Commission, and he shall advise the Commission and each Commissioner, when so requested, in regard to all matters in connection with the powers and duties of the Commission and of the members thereof, and perform all duties and services as attorney and counsel to the Commission which the Commission may reasonably require of him. The Attorney General is authorized to assign to his assistants, and to each of them, the performance, subject to his direction and control, of any of the duties required of him by this Section.

419. Every commissioner, the People's Counsel, the secretary of the commission and every person employed or appoint-

ed to office under, in the service or in connection with the said commission, is hereby forbidden and prohibited to solicit, suggest, request or recommend, directly or indirectly, to any common carrier, railroad corporation, street railroad corporation, gas company, electric light company, telephone company, telegraph company, water company and refrigerating company, or any other company or corporation subject to this sub-title, or to any of the provisions thereof, or to any officer, attorney, agent or employee thereof, the appointment of any person to any office, place, position or appointment. And every common carrier, railroad corporation, street railroad corporation, gas corporation, electrical corporation, telephone company, telegraph company, water company and all other companies or corporations subject to this sub-title, or any of the provisions thereof, and every officer, attorney, agent and employee thereof is hereby forbidden and prohibited to offer to any commissioner, People's Counsel, to the secretary thereof, or to any person employed by the commission, any office, place, appointment or position, or to offer to give to any commissioner, to the People's Counsel, to the secretary thereof or to any officer employed or appointed to office, or to any person employed in the service of the commission or in connection with the work of said commission, any free pass or transportation or any reduction in fares, to which the public generally are not entitled or any free carriage for freight or property, or any present, gift or gratuity of any kind. If any commissioner, People's Counsel, the secretary thereof, or any person employed or appointed to office or in the service of the commission shall violate any provision of this sub-title, the Governor shall remove him from the office held by him. No commissioner and no employee or official engaged in the service of or in any manner connected with the said commission shall hold any office or position, or be engaged in any business or avocation, the duties of which are incompatible with the duties of his office or employment as commissioner, or in the service of or in connection with the work of the said commission.

Approved April 9, 1924.

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#### CHAPTER 535.

AN ACT to repeal Section 230D of Article 18 of the Code of Public Local Laws of Maryland, title "Queen Anne's County", sub-title "Roads", as said section was enacted by Chapter 35 of the Acts of 1910, and to repeal and re-enact with amendments Sections 230C, 230E, 230F, 230H and

setting forth the improvements being constructed, the property owners affected, and all material terms of the annual benefit or front foot assessments levied to pay the cost of [said] THE improvements, or any reasonable portion thereof, as determined by the County Roads Board; provided that no assessment shall exceed ten per centum (10%) of the assessed value of the property after giving effect to benefits accruing thereto from the improvement for which assessed].

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

Approved May 17, 1976.

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CHAPTER 756

(House Bill 1361)

AN ACT concerning

Public Service Commission

FOR the purpose of clarifying and revising certain powers, duties, responsibilities, operations and salaries of the Public Service Commission and the People's Counsel [[; providing procedures for the appointment of Commission members]]; and generally relating to the Public Service Commission.

BY repealing

Article 78 - Public Service Commission Law  
Section 5, 5A, 15, 16, and 20  
Annotated Code of Maryland  
(1975 Replacement Volume and 1975 Supplement)

BY repealing and reenacting, with amendments,

Article 78 - Public Service Commission Law  
Section 2(1), 6, 7, 12, 14, 15B, 25, 28(c), 56, 62,  
77, 82, 85(a), 86, and 101(b)  
Annotated Code of Maryland  
(1975 Replacement Volume and 1975 Supplement)

BY adding to

Article 78 - Public Service Commission Law  
Section 5, 15, 16, 16A, 20, 59A, 62A, and 82A  
Annotated Code of Maryland

(1975 Replacement Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 5, 5A, 15, 16, and 20 of Article 78 - Public Service Commission Law, of the Annotated Code of Maryland (1975 Replacement Volume and 1975 Supplement) be and they are hereby repealed:

Article 78 - Public Service Commission Law

5.

[The Commission shall consist of three commissioners, appointed by the Governor with the advice and consent of the Senate. Each commissioner must be at least 25 years of age, must be a registered voter resident in Maryland when he is appointed and when he qualifies, and must have been a resident of Maryland for at least five years next preceding his appointment. The Governor shall designate one of the commissioners as chairman, and the chairman shall serve in that capacity until expiration of his term as commissioner. Commissioners shall be eligible for reappointment.]

5A.

[The Governor may appoint with the advice and consent of the Senate a substitute commissioner, who shall serve for a term of six years. The qualifications set forth in § 5 hereof and the provisions for tenure and removal set forth in § 6 and § 8 hereof shall apply to the substitute commissioner, and his compensation shall be as provided in the annual budget. Upon assignment by the chairman of the Commission, the substitute commissioner is authorized to sit in the absence of a regular commissioner, and shall, in such instances, have the authority of a regular commissioner. He shall also be eligible for designation by the Governor as the State's representative on the Washington Metropolitan Area Transit Commission.]

15.

[The people's counsel shall have the following powers and duties:

(1) He shall appear before the Commission, and the courts on behalf of the interests of the public in general in any matter or proceeding, of which the Commission has original jurisdiction and in which he may deem the public interest to be involved, including but not limited to proceedings with regard to the rates, service, or practices of any public service company or any violation of the provisions of this article. He shall have, in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object,

to be heard, and to appeal. The people's counsel may appear before the Interstate Commerce Commission in cases where applications for potential excess or abandonment of rail lines are in dispute.

(2) He shall make such investigations as he may deem necessary to the intelligent performance of the duties imposed by subparagraph (1) of this section.

(3) He shall have full access to the Commission's records, shall be entitled to call upon the assistance of the Commission's experts, and shall have the benefit of all other facilities or information of the Commission in carrying out his duties.

(4) He may intervene or participate in proceedings before federal agencies on behalf of Maryland consumers in matters in which the Public Service Commission has jurisdiction including, but not limited to, the Federal Power Commission, the Federal Energy Office, and the Federal Communications Commission.]

16.

[(a) No personnel of the Commission shall, during their service, hold any official relation or connection with any public service company, or have any pecuniary interest therein, whether as the holder of stock or other securities or otherwise.

(b) No personnel of the Commission shall hold any office or position, or be engaged in any business or avocation which is incompatible with the duties of their office or employment with the Commission.

(c) No personnel of the Commission shall solicit, suggest, request or recommend directly or indirectly to any public service company the appointment of any person to any office or place of employment.

(d) No personnel of the Commission shall accept from any public service company, its officers, agents or employees, any present, gift, or gratuity, or any special consideration of any kind whatsoever.

(e) No personnel of the Commission shall divulge to any person any fact or information learned during the course of inspection of the plant, or the examination of the records, of any public service company, except in so far as may be directed by the Commission or a court, or as may be authorized by law.

(f) No personnel of the Commission shall violate any of the provisions of this article.]

20.

[A majority of the Commission shall constitute a

quorum. The Commission may delegate to any commissioner the authority to conduct any proceeding within its jurisdiction, and to any personnel of the Commission which it deems qualified the authority to act as a hearing examiner and to submit findings and recommendations to the Commission. No decision in any matter in which authority has been delegated under this section shall be effective until made or confirmed, and ordered filed, by the Commission in its principal office.]

SECTION 2. AND BE IT FURTHER ENACTED, That Sections 2(1), 6, 7, 12, 14, 15B, 25, 28(c), 56, 62, 77, 82, 85(a), 86, and 101(b) of Article 78 - Public Service Commission Law, of the Annotated Code of Maryland (1975 Replacement Volume and 1975 Supplement) be and they are hereby repealed and reenacted, with amendments, to read as follows:

Article 78 - Public Service Commission Law

2.

(1) "Personnel of the Commission" includes commissioners, [people's counsel,] general counsel, officers and employees of the Commission.

(JJ) "FAMILY" IN THE CASE OF COMMISSIONERS, THE PEOPLE'S COUNSEL, THE GENERAL COUNSEL AND HEARING EXAMINERS MEANS SPOUSE, DEPENDENT CHILD, PARENT, BROTHER OR SISTER AND IN THE CASE OF OTHER PERSONNEL OF THE COMMISSION AND OF THE OFFICE OF THE PEOPLE'S COUNSEL MEANS SPOUSE OR DEPENDENT CHILD.

(KK) "RELATIVE" MEANS ANY PERSON RELATED BY BLOOD OR MARRIAGE.

6.

(A) The term of each commissioner shall be six years from the expiration of his predecessor's term. A commissioner, INCLUDING THE CHAIRMAN, shall continue in office after his term expires until his successor has qualified, but without lengthening his successor's term. Vacancies shall be filled by the Governor for [the] ANY unexpired term IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 5.

(B) THE TERMS OF EACH COMMISSIONER APPOINTED HEREUNDER SHALL COMMENCE ON JULY 1, 1976. WITH RESPECT TO THE INITIAL APPOINTMENTS ONLY, THE TERM OF ONE COMMISSIONER (WHO SHALL BE FULLTIME) SHALL EXPIRE ON JUNE 30, 1978, THE TERM OF THE SECOND COMMISSIONER SHALL EXPIRE ON JUNE 30, 1979, THE TERM OF THE THIRD COMMISSIONER (WHO SHALL BE FULLTIME) SHALL EXPIRE ON JUNE 30, 1980, THE TERM OF THE FOURTH COMMISSIONER SHALL EXPIRE ON JUNE 30, 1981, AND THE TERM OF THE CHAIRMAN (WHO SHALL BE FULLTIME) SHALL EXPIRE ON JUNE 30, 1982.

7.

The compensation of the chairman [shall be \$16,000 per year and that of each of the other commissioners shall be 14,000 per year] AND OTHER COMMISSIONERS SHALL BE AS PROVIDED IN THE BUDGET BUT IN NO CASE SHALL BE LESS THAN \$40,000 PER YEAR FOR THE CHAIRMAN AND \$35,000 PER YEAR FOR EACH OF THE OTHER FULLTIME COMMISSIONERS. Members shall be reimbursed for expenses incurred while engaged in the performance of their duties, in accordance with the standard travel regulations.

12.

The general counsel of the Commission shall be an attorney-at-law of this State and shall be appointed by, AND SERVE AT THE PLEASURE OF, the [Governor upon the recommendation of the] Commission. His compensation shall be as provided in the annual State budget. [His term of office shall be two years, and he shall be eligible for reappointment. Vacancies shall be filled for the unexpired term in the same manner as original appointments are made. He may be removed by the Governor for the same reasons, and in the same manner as commissioners.]

14.

The people's counsel shall be an attorney-at-law of this State. He shall be appointed by the Governor WITH THE ADVICE AND CONSENT OF THE SENATE and shall hold office at the pleasure of the Governor. HE SHALL SERVE FULL-TIME. He shall receive an annual salary as provided in the budget WHICH MAY NOT BE LESS THAN \$35,000 PER YEAR. HE SHALL BE RESPONSIBLE FOR THE OPERATIONS OF THE OFFICE OF THE PEOPLE'S COUNSEL.

15B.

THE ANNUAL BUDGET SHALL PROVIDE SUFFICIENT FUNDS FOR THE OFFICE OF people's counsel [may] TO hire [from time to time, as needed, in connection with specific proceedings before the Commission,] SUCH STAFF AS IS DEEMED NECESSARY IN ADDITION TO THAT PROVIDED UNDER THE PROVISIONS OF § 15(C) TO PERFORM ITS DUTIES. THE OFFICE OF PEOPLE'S COUNSEL MAY HIRE, OR MAY RETAIN FROM TIME TO TIME AS REQUIRED FOR A PARTICULAR MATTER, experts in the utility regulation field including but not limited to economists, cost of capital experts, rate design experts, [and, to the extent Commission personnel cannot be utilized,] accountants, engineers, [and] transportation specialists, LAWYERS, AND ANY OTHER EXPERTS CONSIDERED NECESSARY TO DISCHARGE ITS RESPONSIBILITIES. [An aggregate sum of not less than twenty-five thousand dollars (\$25,000.00) for compensation and/or expenses of these experts shall be provided in the budget, and if not used for this purpose, shall revert to the treasury; nothing] NOTHING contained herein precludes the people's

counsel from applying to the Board of Public Works for additional funds to be allotted from the General Emergency Fund for the purposes expressed herein if the budgetary appropriation FOR THE OFFICE OF PEOPLE'S COUNSEL is insufficient to [meet the people's counsel's expenses] PERMIT IT [in representing the people of Maryland] TO PERFORM ITS DUTIES.

25.

No public service company (or any officer or employee or agent thereof) shall offer to any personnel of the Commission [any office, place, appointment or position, or] OR OF THE OFFICE OF THE PEOPLE'S COUNSEL, OR TO MEMBERS OF THE FAMILY OF SUCH PERSONNEL any present, gift, or gratuity or any special consideration of any kind whatsoever. THESE PROVISIONS DO NOT PRECLUDE AN OFFICER OR EMPLOYEE OF A PUBLIC SERVICE COMPANY FROM OFFERING A GIFT TO A RELATIVE.

28.

Every public service company shall, in addition to such other duties as may be specifically imposed by this article:

(c) Furnish instrumentalities, utilities, services, and facilities which are safe, adequate, just, [and] reasonable, ECONOMICAL, AND EFFICIENT, GIVING CONSIDERATION TO THE CONSERVATION OF NATURAL RESOURCES AND THE QUALITY OF THE ENVIRONMENT.

56.

The Commission shall supervise and regulate all public service companies subject to its jurisdiction[, and] TO ASSURE THEIR OPERATION IN THE INTEREST OF THE PUBLIC AND TO PROMOTE ADEQUATE, ECONOMICAL, AND EFFICIENT DELIVERY OF UTILITY SERVICES IN THE STATE WITHOUT UNJUST DISCRIMINATION, GIVING CONSIDERATION TO THE PUBLIC SAFETY, THE ECONOMY OF THE STATE, THE CONSERVATION OF NATURAL RESOURCES, AND THE PRESERVATION OF ENVIRONMENTAL QUALITY. TO THESE ENDS, THE COMMISSION shall enforce compliance by such companies with all the requirements of law, including, but not limited to requirements with respect to financial condition, capitalization, franchises, plant, manner of operation, rates, and service. The powers and duties enumerated specifically in this subtitle are not intended to limit the scope of the general powers and duties of the Commission provided for by this article.

62.

(A) The Commission shall institute and conduct any proceedings reasonably necessary and proper to the exercise of any of its powers, or the performance of any of its duties. The Commission, any commissioner, [the

secretary to the Commission,] or any hearing examiner shall have the power to [administer oaths,] examine witnesses, [and] conduct hearings and [any authorized personnel of the Commission may] perform any other acts necessary to the conduct of proceedings. THE COMMISSION, ANY COMMISSIONER, THE SECRETARY TO THE COMMISSION, OR ANY HEARING EXAMINER SHALL HAVE THE POWER TO ADMINISTER OATHS.

(B) IN ALL MATTEPS BEFORE THE COMMISSION, UNLESS THE COMMISSION DETERMINES THE PUBLIC INTEREST WOULD NOT BE SERVED THEREBY, THE STAFF OF THE COMMISSION SHALL [[ACT AS THE ADVOCATE FOR THE PUBLIC INTEREST]] MAKE AN EVIDENTIARY PRESENTATION REFLECTING THE STAFF'S ANALYSIS OF THE ISSUES AND ITS RECOMMENDATIONS [[WITH RESPECT TO THE INTEREST OF THE PUBLIC AS A WHOLE]]. IN MAKING ITS ANALYSIS AND RECOMMENDATIONS, THE STAFF SHALL BE GOVERNED BY THE CONSIDERATIONS SET FORTH IN SECTION 56. TO DISCHARGE THIS RESPONSIBILITY IT SHALL HAVE ALL RIGHTS OF A PARTY TO THE PROCEEDING, INCLUDING BUT NOT LIMITED TO THOSE SPECIFIED IN § 82, AND, TO THE EXTENT IT DEEMS NECESSARY IN A PARTICULAR CASE, IT SHALL PRESENT DIRECT AND REDIRECT CASES OF ITS OWN, CROSS-EXAMINE, SUBMIT BRIEFS, AND ENGAGE IN ORAL ARGUMENT TO INSURE THAT THE COMMISSION HAS A COMPLETE RECORD ON ALL RELEVANT ISSUES.

77.

(b) If any complaint is filed with the Commission which concerns the illuminating power, purity or pressure of gas; or the initial efficiency of the electric incandescent lamp supply; or the regulation of the voltage of the said supply system or the price of gas or electricity, and the complaint is signed by the PEOPLE'S COUNSEL, THE chief executive or local legislative bodies of any municipality or county in which any gas or electric company is authorized to operate, or by not less than 100 customers of the gas or electric company, whose names and addresses by street and number, if any, are set out in the complaint, the Commission shall not take final action thereon without itself conducting an investigation of the matters complained of.

82.

Any party to any [hearing] PROCEEDING shall have, in addition to any other rights to which he may be entitled:

(a) The right to summon witnesses, present evidence with respect to the issues involved, and present argument to the commissioners who are to render or approve the decision.

(b) The right of cross-examination and the right to submit rebuttal evidence.

(c) The right to take depositions within or without the State of Maryland, in accordance with the procedure

provided by law or rule of court with respect to actions at law, subject to regulation by the Commission to prevent undue delays.

[ (d) The right to require that the commissioners responsible for final decision personally consider the record in the case, or such portions thereof as may be cited by the parties. ]

85.

(a) Every decision and order of the Commission in any contested proceeding SHALL BE BASED UPON A CONSIDERATION OF THE RECORD, shall be in writing and shall state [concisely] the grounds for the Commission's conclusions.

86.

(a) Any party in interest may apply to the Commission for rehearing within 30 days after service upon it of a final order. Action on such application shall lie in the discretion of the Commission. If a rehearing is granted, the case shall be decided within 30 days after the case on rehearing is finally submitted.

(b) Unless the Commission otherwise orders, neither the rehearing nor the application therefor shall stay the enforcement of any Commission order, or excuse the persons affected by it for failure to comply with its terms.

(c) The Commission may consider on rehearing facts not presented in the original hearing, including facts arising after the date of the original hearing, and may by new order abrogate, change, or modify its original order.

(D) THE COMMISSION SHALL HAVE THE AUTHORITY, ON ITS OWN MOTION, TO REHEAR ANY FINAL ORDER OR TO CONDUCT ANY FURTHER PROCEEDINGS IT DEEMS NECESSARY FOLLOWING THE FILING OF A PROPOSED ORDER.

101.

(b) All personnel of the Commission OR THE OFFICE OF THE PEOPLE'S COUNSEL who are convicted of violating § 16A of this article, prohibiting certain conduct by personnel of the Commission, shall, in addition to other penalties, be removed or discharged from office.

SECTION 3. AND BE IT FURTHER ENACTED, That new Sections 5, 15, 16, 16A, 20, 59A, 62A, and 82A be and they are hereby added to Article 78 - Public Service Commission Law, of the Annotated Code of Maryland (1975 Replacement Volume and 1975 Supplement) to read as follows:

## Article 78 - Public Service Commission Law

5.

[[ (A) ]] THE COMMISSION CONSISTS OF FIVE COMMISSIONERS, APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, ONE OF WHOM SHALL BE THE CHAIRMAN. THE COMMISSION SHALL BE BROADLY REPRESENTATIVE OF THE PUBLIC INTEREST, AND SHALL BE COMPOSED OF PERSONS WITH DIVERSE TRAINING OR EXPERIENCE [[ IN ONE OR MORE OF THE FOLLOWING: ECONOMICS, RESOURCE PLANNING, UTILITY REGULATION AND OPERATION, ENGINEERING, LAW, ACCOUNTING, FINANCE AND OTHER AREAS OF SPECIALIZATION CONNECTED WITH PUBLIC SERVICE COMPANY REGULATION]]. EACH COMMISSIONER UPON TAKING OFFICE SHALL BE OR PROMPTLY BECOME A RESIDENT AND REGISTERED VOTER OF MARYLAND AND SHALL REMAIN SUCH DURING HIS TERM OF OFFICE. THREE OF THE COMMISSIONERS SHALL SERVE FULL-TIME. THE REMAINING TWO COMMISSIONERS NEED NOT BE FULLTIME. THE OFFICE OF CHAIRMAN SHALL BE FILLED INITIALLY, AT THE EXPIRATION OF EACH TERM, AND UPON AN EARLIER VACANCY IN THE OFFICE, BY A PERSON NOMINATED AS SUCH BY THE GOVERNOR AND CONFIRMED BY THE SENATE. COMMISSIONERS SHALL BE ELIGIBLE FOR REAPPOINTMENT.

[[ (B) A PERSON MAY NOT BE ELIGIBLE FOR APPOINTMENT TO THE COMMISSION WHO, WITHIN THE PREVIOUS TWO YEARS, HAS BEEN EMPLOYED BY A PUBLIC SERVICE COMPANY REGULATED UNDER THE TERMS OF THIS ARTICLE OR, WAS A PARTNER OF OR EMPLOYED BY A LAW FIRM, TRADE ASSOCIATION, ACCOUNTING FIRM, ENGINEERING FIRM OR OTHER BUSINESS WHICH HAS DERIVED MORE THAN 50 PERCENT OF ITS REVENUE FROM REGULATED FIRMS.

(C) THE SENATE SHALL CONDUCT PUBLIC HEARINGS TO DETERMINE THE COMPETENCY AND IMPARTIALITY OF THE GOVERNOR'S APPOINTEE PRIOR TO CONFIRMATION.]

15.

(A) THE OFFICE OF PEOPLE'S COUNSEL SHALL EVALUATE ALL MATTERS PENDING BEFORE THE COMMISSION TO DETERMINE IF THE INTERESTS OF RESIDENTIAL USERS OF GAS, ELECTRICITY, TELEPHONES, OR WATER AND SEWERAGE OR OF NONCOMMERCIAL USERS OF OTHER REGULATED SERVICES (HEREINAFTER REFERRED TO AS RESIDENTIAL AND NONCOMMERCIAL USERS) ARE AFFECTED. IT SHALL APPEAR BEFORE THE COMMISSION AND THE COURTS ON BEHALF OF THOSE USEPS IN ALL MATTERS OR PROCEEDINGS [[OF]]OVER WHICH THE COMMISSION HAS ORIGINAL JURISDICTION AND IN WHICH THE OFFICE OF PEOPLE'S COUNSEL DEEMS THEIR INTEREST TO BE INVOLVED INCLUDING, BUT NOT LIMITED TO, PROCEEDINGS WITH REGARD TO THE RATES, SERVICE, OR PRACTICES OF ANY PUBLIC SERVICE COMPANY OR ANY VIOLATION OF THE PROVISIONS OF THIS ARTICLE. [[HE]]IT SHALL HAVE, IN SUCH APPEARANCES, ALL THE RIGHTS OF COUNSEL FOR A PARTY TO THE PROCEEDING, INCLUDING BUT NOT LIMITED TO THOSE SPECIFIED IN § 82. THE PEOPLE'S COUNSEL MAY APPEAR BEFORE ANY FEDERAL OR STATE AGENCY AS NECESSARY TO

PROTECT THE INTERESTS OF RESIDENTIAL AND NONCOMMERCIAL USERS.

(B) THE OFFICE OF PEOPLE'S COUNSEL SHALL MAKE SUCH INVESTIGATIONS AND REQUEST THE COMMISSION TO INITIATE SUCH PROCEEDINGS AS THAT OFFICE DEEMS NECESSARY TO PROTECT THE INTERESTS OF RESIDENTIAL AND NONCOMMERCIAL USERS.

(C) CONSISTENT WITH THE PROVISIONS OF ANY APPLICABLE FREEDOM OF INFORMATION ACT, THE OFFICE OF PEOPLE'S COUNSEL SHALL HAVE FULL ACCESS TO THE COMMISSION'S RECORDS AND, EXCEPT AS HEREINAFTER PROVIDED, SHALL HAVE THE BENEFIT OF ALL OTHER FACILITIES OR INFORMATION OF THE COMMISSION IN CARRYING OUT ITS DUTIES. THE OFFICE OF PEOPLE'S COUNSEL SHALL BE ENTITLED TO CALL UPON THE ASSISTANCE OF THE COMMISSION STAFF IF THE [[COMMISSION]]STAFF DETERMINES THAT THIS IS CONSISTENT WITH THE [[COMMISSION'S]] STAFF'S RESPONSIBILITIES AND IF THE [[COMMISSION]]STAFF AND THE OFFICE OF PEOPLE'S COUNSEL AGREE THAT THE SHARING, IN A PARTICULAR MATTER, IS CONSISTENT WITH [[THE INTERESTS OF RESIDENTIAL AND NONCOMMERCIAL USERS]] THEIR RESPECTIVE INTERESTS .

(D) THE OFFICE OF PEOPLE'S COUNSEL MAY RECOMMEND TO THE GENERAL ASSEMBLY LEGISLATION ON ANY MATTER WITHIN OR RELATED TO THE COMMISSION'S JURISDICTION WHICH IN ITS JUDGMENT WOULD AFFECT THE INTERESTS OF NONCOMMERCIAL OR RESIDENTIAL USERS.

16.

(A) THE ANNUAL BUDGET SHALL PROVIDE SUFFICIENT FUNDS FOR THE COMMISSION TO HIRE, DEVELOP, AND ORGANIZE A STAFF TO PERFORM ITS FUNCTIONS UNDER THIS ARTICLE, INCLUDING BUT NOT LIMITED TO THE ANALYSIS OF ALL DATA SUBMITTED TO THE COMMISSION AND THE PREPARATION OF A STAFF POSITION IN MATTEPS PENDING BEFORE THE COMMISSION. THE STAFF SHALL INCLUDE BUT NOT BE LIMITED TO ECONOMISTS, COST OF CAPITAL EXPERTS, RATE DESIGN EXPERTS, ACCOUNTANTS, ENGINEERS, TRANSPORTATION SPECIALISTS, LAWYERS, AND ANY OTHER EXPERTS DEEMED NECESSARY TO MEET THE NEEDS OF THE COMMISSION. THE COMMISSION MAY, FROM TIME TO TIME, RETAIN ADDITIONAL EXPERTS AS REQUIRED FOR A PARTICULAR MATTER. THOSE LAWYERS WHO REPRESENT THE COMMISSION STAFF IN PROCEEDINGS BEFORE THE COMMISSION SHALL BE ORGANIZED AND OPERATE INDEPENDENTLY OF THE OFFICE OF GENERAL COUNSEL.

(B) THE COMMISSION SHALL HIRE HEARING EXAMINERS TO THE EXTENT REQUIRED. HEARING EXAMINERS SHALL CONSTITUTE A SEPARATE ORGANIZATIONAL UNIT REPORTING DIRECTLY TO THE COMMISSION AND SHALL PERFORM NO OTHER STAFF FUNCTIONS THAN THOSE RELATING TO HEARINGS.

(C) THE COMMISSION SHALL HIRE PERSONAL STAFF FOR THE COMMISSIONERS TO THE EXTENT REQUIRED TO ADVISE COMMISSIONERS, DRAFT PROPOSED ORDERS AND RULINGS, AND

PERFORM OTHER PERSONAL STAFF FUNCTIONS.

(D) SUBJECT TO THE RESTRICTIONS OF §20, THE COMMISSION MAY DELEGATE TO ANY COMMISSIONER OR PERSONNEL OF THE COMMISSION THE AUTHORITY TO PERFORM ANY ADMINISTRATIVE FUNCTION NECESSARY TO THE EXECUTION OF THE COMMISSION'S DUTIES UNDER THIS ARTICLE.

16A.

(A) NO PERSONNEL OF THE COMMISSION OR OF THE OFFICE OF PEOPLE'S COUNSEL OR THE FAMILY OF ANY SUCH PERSONNEL, SHALL, DURING THEIR SERVICE, HOLD ANY OFFICIAL RELATION OR CONNECTION WITH ANY PUBLIC SERVICE COMPANY, OR HAVE ANY PECUNIARY INTEREST THEREIN, WHETHER AS THE HOLDER OF STOCK OR OTHER SECURITIES OR OTHERWISE.

(B) NO PERSONNEL OF THE COMMISSION OR OF THE OFFICE OF PEOPLE'S COUNSEL SHALL HOLD ANY OFFICE OR POSITION, OR BE ENGAGED IN ANY BUSINESS OR AVOCATION, WHICH IS INCOMPATIBLE WITH THE DUTIES OF THEIR OFFICE OR EMPLOYMENT WITH THE COMMISSION.

(C) NO PERSONNEL OF THE COMMISSION OR OF THE OFFICE OF PEOPLE'S COUNSEL SHALL SOLICIT, SUGGEST, REQUEST OR RECOMMEND DIRECTLY OR INDIRECTLY TO ANY PUBLIC SERVICE COMPANY THE APPOINTMENT OF ANY PERSON TO ANY OFFICE OR PLACE OF EMPLOYMENT. NO COMMISSIONER, PEOPLE'S COUNSEL, GENERAL COUNSEL, OR HEARING EXAMINER SHALL REPRESENT A PUBLIC SERVICE COMPANY IN ANY WAY OR APPEAR BEFORE THE COMMISSION ON BEHALF OF ANY PARTY TO A COMMISSION PROCEEDING OR ON ANY MATTER [[WITH]] WITHIN THE JURISDICTION OF THE COMMISSION UNTIL AT LEAST [[FIVE]] TWO YEARS AFTER THAT PERSON HAS LEFT THE EMPLOYMENT OF THE COMMISSION.

(D) NO PERSONNEL OF THE COMMISSION OR OF THE OFFICE OF PEOPLE'S COUNSEL, OR THE FAMILY OF ANY SUCH PERSONNEL, SHALL ACCEPT FROM ANY PUBLIC SERVICE COMPANY, ITS OFFICERS, AGENTS OR EMPLOYEES, ANY PRESENT, GIFT, OR GRATUITY, OR ANY SPECIAL CONSIDERATION OF ANY KIND WHATSOEVER.

(E) NO PERSONNEL OF THE COMMISSION OR OF THE OFFICE OF PEOPLE'S COUNSEL SHALL DIVULGE TO ANY PERSON ANY FACT OR INFORMATION LEARNED DURING THE COURSE OF INSPECTION OF THE PLANT, OR THE EXAMINATION OF THE RECORDS, OF ANY PUBLIC SERVICE COMPANY, EXCEPT INsofar AS MAY BE DIRECTED BY THE COMMISSION OR A COURT, OR AS MAY BE AUTHORIZED BY LAW.

(F) NOTHING CONTAINED HEREIN SHALL PRECLUDE AN EMPLOYEE OF THE COMMISSION OR THE OFFICE OF PEOPLE'S COUNSEL FROM ACCEPTING A GIFT FROM A RELATIVE.

(G) NO PERSONNEL OF THE COMMISSION OR OF THE OFFICE OF THE PEOPLE'S COUNSEL SHALL VIOLATE ANY OF THE PROVISIONS OF THIS ARTICLE.

20.

(A) THE COMMISSION SHALL CONDUCT ITS PROCEEDINGS EN BANC OR IN PANELS OF NOT LESS THAN THREE COMMISSIONERS. HOWEVER, THE COMMISSION MAY, AT ITS DISCRETION, PROVIDE THAT ONE HEARING EXAMINER BE INCLUDED ON A PANEL, IN LIEU OF A THIRD COMMISSIONER, IN ORDER TO CONSTITUTE A PANEL OF THREE.

(B) THE COMMISSION MAY DELEGATE TO A HEARING EXAMINER THE AUTHORITY TO CONDUCT ANY PROCEEDING WITHIN ITS JURISDICTION. IN EACH DELEGATED PROCEEDING, THE HEARING EXAMINER SHALL CONDUCT THE HEARING AND ANY OTHER PROCEEDING THAT HE MAY DEEM NECESSARY AND PREPARE AND FILE WITH THE COMMISSION A PROPOSED ORDER, INCLUDING FINDINGS OF FACT, WHICH SHALL BECOME FINAL UNLESS APPEALED AS PROVIDED IN PARAGRAPH (C). THE PROPOSED ORDER SHALL BE SERVED ON ALL PARTIES TO THE PROCEEDING SIMULTANEOUSLY WITH ITS BEING FILED WITH THE COMMISSION.

(C) ORDERS OF A PANEL CONSTITUTED UNDER SUBPARAGRAPH (A) SHALL BE FINAL. A PROPOSED ORDER OF A HEARING EXAMINER SHALL BECOME FINAL UNLESS, WITHIN 30 DAYS OF THE FILING OF THAT ORDER WITH THE COMMISSION, AN APPEAL IS NOTED WITH THE COMMISSION BY ANY PARTY TO THE PROCEEDING. FOLLOWING THE NOTING OF AN APPEAL, THE COMMISSION PROMPTLY SHALL CONSIDER THE MATTER ON THE RECORD BEFORE THE HEARING EXAMINER, CONDUCT ANY FURTHER PROCEEDINGS (INCLUDING THE FILING OF BRIEFS AND THE HOLDING OF ORAL ARGUMENT), IT DEEMS NECESSARY AND, THEREAFTER, ISSUE A FINAL ORDER IN THE MATTER.

59A.

THE COMMISSION SHALL REQUIRE ALL PUBLIC SERVICE COMPANIES SUBJECT TO ITS JURISDICTION WITH THE EXCEPTION OF TAXICABS, RADIO COMMON CARRIERS, POWER BOAT COMPANIES, TOLL BRIDGES, AND TOWING AND LIGHTERING COMPANIES TO FORMULATE AND, AFTER APPROVAL, TO IMPLEMENT LONG-RANGE PLANS FOR THE PROVISION OF SERVICE. THE COMMISSION SHALL REVIEW PLANS FOR ADEQUACY UNDER THE GENERAL STANDARDS OF § 56, GIVING ATTENTION TO THE INTERRELATIONSHIP OF SERVICES OF OTHER PUBLIC SERVICE COMPANIES AND TO PROVISIONS FOR RESEARCH AND DEVELOPMENT TO ASSURE ADEQUATE SERVICE. UNLESS THE AUTHORITY TO REVIEW AND APPROVE SUCH PLANS HAS BEEN GRANTED TO ANOTHER AGENCY OF THE STATE BY ANOTHER PROVISION OF LAW, THE COMMISSION SHALL REQUIRE ANY REVISIONS TO THOSE PLANS IT DEEMS APPROPRIATE. AS PART OF THIS REVIEW, AND SUBJECT TO THE EXCEPTIONS PROVIDED IN ANY APPLICABLE FREEDOM OF INFORMATION ACT, THE COMMISSION SHALL CONSULT WITH OTHER AGENCIES OF THE STATE AND PROVIDE OPPORTUNITY FOR PUBLIC COMMENT.

62A.

THE COMMISSION SHALL INITIATE AND CONDUCT ANY INVESTIGATION NECESSARY TO THE EXECUTION OF ITS POWERS OR

THE PERFORMANCE OF ITS DUTIES UNDER THIS ARTICLE.

82A.

ANY PERSON MAY APPLY TO INTERVENE IN ANY PROCEEDING BEFORE THE COMMISSION IF THE APPLICATION THEREFOR IS TIMELY FILED. LEAVE TO INTERVENE SHALL BE GRANTED UNLESS THE COMMISSION CONCLUDES THAT THE INTEREST OF THE PERSON SEEKING TO INTERVENE IS ADEQUATELY REPRESENTED BY PARTIES TO THE PROCEEDING OR THAT THE ISSUES SOUGHT TO BE RAISED ARE IRRELEVANT OR IMMATERIAL. INTERVENORS SHALL HAVE ALL THE RIGHTS OF A PARTY TO THE PROCEEDING.

SECTION 4. AND BE IT FURTHER ENACTED, That until such time as three commissioners have assumed office hereunder, the members of the Public Service Commission in office immediately prior to July 1, 1976 shall continue to hold office and perform their duties pursuant to the laws in existence immediately prior to July 1, 1976, and at such time as three Commissioners have assumed office hereunder, the offices held by the incumbent members of the Public Service Commission on ~~[[July]]~~ June 30, 1976 are abolished.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~[[June 30]]~~ July 1, 1976.

Approved May 17, 1976.

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CHAPTER 757

(House Bill 1365)

AN ACT concerning

Police and Correctional Training Schools

FOR the purpose of authorizing the Police and Correctional Training Commissions to conduct and operate approved police and correctional training schools as defined.

BY repealing and reenacting, with amendments,

Article 41 - Governor - Executive and  
Administrative Departments

Section 70A(d) and 70B(e)

Annotated Code of Maryland

(1971 Replacement Volume and 1975 Supplement)

## **TEXT OF CITED STATUTES**

### **Maryland Annotated Code, Commercial Law Article, §13-104, Exemptions**

This title does not apply to:

- (1) The professional services of a certified public accountant, architect, clergyman, professional engineer, lawyer, veterinarian, insurance company authorized to do business in the State, insurance producer licensed by the State, Christian Science practitioner, land surveyor, property line surveyor, chiropractor, optometrist, physical therapist, podiatrist, real estate broker, associate real estate broker, or real estate salesperson, or medical or dental practitioner;
- (2) A public service company, to the extent that the company's services and operations are regulated by the Public Service Commission; or
- (3) A television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising who broadcasts, publishes, or prints an advertisement which violates this title, unless the station, publisher, or printer engages in an unfair or deceptive trade practice in the sale of its own goods or services or has knowledge that the advertising is in violation of this title.

**Maryland Annotated Code, Environment Article, §2-1204.1, Reduction of greenhouse gas emissions by State by 2031**

The State shall reduce statewide greenhouse gas emissions by 60% from 2006 levels by 2031.

**Maryland Annotated Code, Environment Article, §2-1204.2, Net-zero emissions by 2045**

The State shall achieve net-zero statewide greenhouse gas emissions by 2045.

**Maryland Annotated Code, Public Utilities Article, §2-101, Public Service Commission**

In general

(a) There is a Public Service Commission.

Independent unit in Executive Branch

(b) The Commission is an independent unit in the Executive Branch of State government.

Functions assigned by law

(c) The Commission shall carry out the functions assigned to it by law.

**Maryland Annotated Code, Public Utilities Article, §2-112, Jurisdiction and powers of Commission**

Jurisdiction

(a)(1) Except as provided in paragraph (2) of this subsection, to the full extent that the Constitution and laws of the United States allow, the Commission has jurisdiction over each public service company that engages in or operates a utility business in the State and over motor carrier companies as provided in Title 9 of this article.

(2) Except as provided in Title 5, Subtitle 6, Part VI of the Corporations and Associations Article, the Commission does not have jurisdiction over a member-regulated cooperative as defined in § 5-601 of the Corporations and Associations Article.

Powers of Commission

(b)(1) The Commission has the powers specifically conferred by law.

(2) The Commission has the implied and incidental powers needed or proper to carry out its functions under this division.

Liberal construction of powers

(c) The powers of the Commission shall be construed liberally.

**Maryland Annotated Code, Public Utilities Article, §2-113, Duty of Commission to supervise and regulate public service companies**

In general

(a)(1) The Commission shall:

(i) supervise and regulate the public service companies subject to the jurisdiction of the Commission to:

1. ensure their operation in the interest of the public; and
2. promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination; and

(ii) enforce compliance with the requirements of law by public service companies, including requirements with respect to financial condition, capitalization, franchises, plant, manner of operation, rates, and service.

(2) In supervising and regulating public service companies, the Commission shall consider:

- (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; and
- (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.

Construction with other powers and duties

(b) The powers and duties listed in this title do not limit the scope of the general powers and duties of the Commission provided for by this division.

**Maryland Annotated Code, Public Utilities Article, §2-201, Residential and noncommercial users defined**

In this subtitle, “residential and noncommercial users” means:

- (1) residential users of gas, electricity, telephones, or water and sewerage; and
- (2) noncommercial users of other services regulated by the Commission.

**Maryland Annotated Code, Public Utilities Article, §2-204, Duties of People's Counsel**

Evaluation of matters, investigations, and proceedings

(a)(1)(i) The Office of People's Counsel shall evaluate each matter pending before the Commission to determine if the interests of residential and noncommercial users are affected.

(ii) In determining whether the interests of residential and noncommercial users are affected, the Office of People's Counsel shall consider the public safety, economic welfare, and environmental interests of the State and its residents, including the State's progress toward meeting its greenhouse gas emissions reductions goals.

(2) If the Office of People's Counsel considers the interest of residential and noncommercial users to be affected, the Office of People's Counsel shall appear before the Commission and courts on behalf of residential and noncommercial users in each matter or proceeding over which the Commission has original jurisdiction, including a proceeding on the rates, service, or practices of a public service company or on a violation of this division.

(3) As the Office of People's Counsel considers necessary, the Office of People's Counsel shall conduct investigations and request the Commission to initiate proceedings to protect the interests of residential and noncommercial users.

Administration of office

(b) The People's Counsel shall administer and operate the Office of People's Counsel.

**Maryland Annotated Code, Public Utilities Article, §3-102, Complaints, investigations, and hearings**

Complaints filed with Commission

- (a)(1) Any person may file a complaint with the Commission.
- (2) The complaint shall be in writing and set forth circumstances that allege a violation of this division by a public service company.

Explanation for complaint

(b) If a complaint filed under subsection (a) of this section states on its face a violation of this article or if the Commission determines that the complaint deserves an explanation, the Commission shall:

- (1) serve a copy of the complaint on the public service company; and
- (2) issue an order that requires the public service company to satisfy or answer the complaint in writing within a specified time.

Right to hearing

(c) A person that is the subject of a complaint filed by any person or the Commission is entitled to a hearing in a contested case that results from the complaint.

Matters requiring investigation

(d)(1) Subject to paragraph (2) of this subsection, the Commission must conduct an investigation of the matters in a complaint filed under this section if the complaint concerns the following:

- (i) the quality or reliability of gas supply or electric power supply; or
- (ii) the price of gas or electricity.

(2) In order to be entitled to an investigation under paragraph (1) of this subsection, the complaint shall be signed by:

- (i) the People's Counsel;
- (ii) the chief executive or local legislative body of a municipal corporation or county in which a gas or electric company is authorized to operate; or
- (iii) not less than 100 customers of the gas company or electric company, with the names and addresses of the customers set out in the complaint.

## Complaints filed by Commission

(e)(1) The Commission shall begin proceedings on its own motion against a person by filing a complaint.

(2) The complaint filed under paragraph (1) of this subsection for the first time in a proceeding shall be served on the person that is the subject of the complaint before any hearing on the matter.

## Final actions by order

(f) Unless a complaint is voluntarily satisfied, the Commission shall take final action on each complaint by issuing an order that:

(1) dismisses the complaint;

(2) directs full or partial satisfaction of the complaint; or

(3) directs any action that the Commission considers to be warranted.

**Maryland Annotated Code, Public Utilities Article, §3-113, Orders and notice of receipt of service**

Form and contents of orders

- (a) A decision and order of the Commission in a contested proceeding shall:
- (1) be based on consideration of the record;
  - (2) be in writing;
  - (3) state the grounds for the conclusions of the Commission; and
  - (4) in the case of a complaint proceeding between two public service companies, be issued within 180 days after the close of the record.

Terms of order

- (b) An order of the Commission shall take effect within a reasonable time that the Commission prescribes, and shall continue in force according to the terms of the order unless vacated, suspended, modified, or superseded by further order of the Commission or by a court of competent jurisdiction.

Notice of receipt of service

- (c)(1) A person served with an order of the Commission shall promptly notify the Commission in writing of receipt of service.
- (2) For notification by a corporation under paragraph (1) of this subsection, a person authorized to accept service for the corporation shall sign the notice.
- (3) The Commission may require in an order that notice be provided to the Commission:
- (i) within the time specified in the order;
  - (ii) in the same manner as notice provided in paragraph (1) of this subsection; and
  - (iii) describing if, and to what extent, the order is accepted and will be obeyed.

Finality of orders

- (d)(1) An order of a panel constituted under § 3-104(a) of this subtitle is final.
- (2)(i) A proposed order of a commissioner or public utility law judge under § 3-104(d) of this subtitle becomes final unless a party to the proceeding notes an appeal with the Commission within the time period for appeal designated in the proposed order.

(ii) The time period for appeal designated in the proposed order is 30 days unless the order specifies a shorter period of at least 7 days.

(3) On appeal, the Commission promptly shall:

(i) consider the matter on the record before the commissioner or public utility law judge;

(ii) conduct any further proceedings that it considers necessary including requiring the filing of briefs and the holding of oral argument; and

(iii) issue a final order.

#### Implementation of article

(e) Notwithstanding the Administrative Procedure Act, unless a provision of this article specifically requires the Commission to act through regulation, the Commission may implement any provision of this article by either order or regulation as the Commission deems necessary and proper.

**Maryland Annotated Code, Public Utilities Article, §5-101, Regulations relating to standards for public service companies or gas master meter operators**

Authority of Commission to regulate services

(a) After providing notice and an opportunity for interested parties to be heard, the Commission may adopt regulations that prescribe standards for safe, adequate, reasonable, and proper service for any class of public service company or gas master meter operator.

Promotion of security or convenience

(b) The standards adopted under subsection (a) of this section shall best promote, in the opinion of the Commission, the security or convenience of:

- (1) the public;
- (2) those employed in furnishing services; and
- (3) those to whom services are rendered.

Enforcement and adjustments to standards

(c) The Commission may:

- (1) enforce the standards adopted under this section; and
- (2) by order, as the Commission considers necessary, require changes and additions in the service of any public service company or gas master meter operator, including:
  - (i) repairs or improvements in plant;
  - (ii) increase in motive power; and
  - (iii) change in schedule or manner of operations.

## **Maryland Annotated Code, Public Utilities Article, §5-201, Franchises**

### Authorization by Commission

(a) A public service company may not exercise a franchise granted by law except to the extent authorized by the Commission.

### Documents filed with Commission

(b) A public service company may not exercise a franchise unless it files with the Commission:

(1) a certified copy of its charter; and

(2) a statement by its president and secretary, signed under oath, that the appropriate local authorities have provided the required consent for the exercise of the franchise.

**Maryland Annotated Code, Public Utilities Article, §5-303, Equipment, services, and facilities furnished by public service companies**

A public service company shall furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical, and efficient, considering the conservation of natural resources and the quality of the environment.

## TEXT OF CITED RULES

### **Maryland Rule 2-322, Preliminary motions**

(a) **Mandatory.** The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

(b) **Permissive.** The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, (4) discharge in bankruptcy, and (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) **Disposition.** A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

(d) **Motion for More Definite Statement.** If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 15 days after entry of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) **Motion to Strike.** On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous

matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

(f) Consolidation of Defenses in Motion. A party who makes a motion under this Rule may join with it any other motions then available to the party. No defense or objection raised pursuant to this Rule is waived by being joined with one or more other such defenses or objections in a motion under this Rule. If a party makes a motion under this Rule but omits any defense or objection then available to the party that this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defenses or objections so omitted except as provided in Rule 2-324.

## **TEXT OF CITED REGULATIONS**

### **16 C.F.R. 260.2, Interpretation and substantiation of environmental marketing claims**

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions. See FTC Policy Statement on Deception, 103 FTC 174 (1983). To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims. See FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984). In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

**COMAR 20.07.01.01-1, Waivers of regulations**

A regulation in this subtitle may be waived by the Commission for good cause shown.

### **COMAR 20.07.03.03, Complaint procedures**

A. When a complaint is received, the Commission may:

- (1) Conduct an ex parte investigation;
- (2) Issue a satisfy or answer order to the public service company complained of, in a manner prescribed by the Commission; or
- (3) Dismiss the complaint if it fails to state a claim upon which relief can be granted.

B. If the Commission issues a satisfy or answer order, the public service company shall respond within 20 days or a time period prescribed by the Commission.

C. A public service company shall promptly notify the Commission if it satisfies a complaint before the time allowed in a satisfy or answer order.

D. After investigation or expiration of the time allowed for satisfaction or answer, the Commission may:

- (1) Determine whether relief should be granted based on the information submitted by the complainant and the public service company; or
- (2) Conduct hearings as necessary.

### COMAR 20.40.01.03, Definitions

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Asset” means property of a type included in the rate base of a utility.

(2) “Asymmetric pricing” means the transfer of an asset:

(a) From a utility to an affiliate recorded at the greater of book cost or market value; or

(b) From an affiliate to a utility recorded at the lesser of book cost or market value.

(3) “Core service” means a gas or electric supply service that was provided to the public in Maryland by a utility as a monopoly service, within the utility’s distribution territory, before the introduction of customer choice programs.

(4) Core Service Affiliate.

(a) “Core service affiliate” means a person that is controlled by a utility or an entity that controls the utility, directly or indirectly, and that provides a core service.

(b) “Core service affiliate” includes a person that provides core and non-core service.

(5) “Cost allocation manual (CAM)” means a compilation of policies and procedures for the allocation and assignment of costs, which are shared between a utility and its affiliate.

(6) “Emergency” means:

(a) A natural disaster, including a hurricane, tornado, or snow storm, that impacts utility service;

(b) Any national or State-declared state of emergency or condition resulting in federal, State, or local government closing its respective offices;

(c) An abnormal utility system condition requiring manual or automatic action to:

(i) Maintain system frequency; or

(ii) Prevent loss of firm load, equipment damage, disconnection of system elements that could adversely affect utility service, the reliability of a utility electric system or natural gas system, or the safety of persons or property; or

(d) Acts of others including riots, sabotage, acts of terrorism, insurrections, nationalization, or wars, which adversely affect utility service or the reliability of a utility electric system or natural gas system.

(7) “Image advertisement” means a corporate public announcement that does not include core or non-core service affiliate contact information.

(8) “Non-core service” means any service offered or provided to the public in Maryland that is not a core service.

(9) “Non-core service affiliate” means a person that is controlled by either a utility or a person that controls the utility, directly or indirectly, and that provides only non-core services to the public in Maryland.

(10) Operational Personnel.

(a) “Operational personnel” means an employee, contractor, consultant, or agent of an electric or gas utility who conducts distribution system operations or reliability functions, including those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing, or carrying out distribution-related operations.

(b) “Operational personnel” does not include support personnel or field and maintenance employees of a utility.

(11) “Standard offer service (SOS)” has the meaning stated in COMAR 20.52.01.02B(8).

(12) “Utility” means an electric or gas company as defined in Public Utilities Article, §1-101, Annotated Code of Maryland.

### **COMAR 20.40.02.01, Prohibited utility conduct with affiliate**

A. This regulation does not apply to the practice of a utility holding company advertising companies within the utility holding company corporate family.

B. Services Generally. A utility may not:

(1) Represent to a customer or potential customer that any advantage or superior service will accrue because of the relationship between the utility and a core service affiliate or non-core service affiliate;

(2) Give any preference to a core service affiliate, or non-core service affiliate, or a customer of either in providing regulated utility service;

(3) Condition or tie the provision of regulated utility service to any other product or service;

(4) Except as provided in Regulation .02 of this chapter, engage in promotions, marketing, or advertising with a core or non-core service affiliate;

(5) Except with the informed consent of the customer and in compliance with the Commission's consumer protection regulations, disclose any customer-specific information obtained in connection with the provision of regulated utility service;

(6) Offer discounts, rebates, fee waivers, penalty waivers, or other special provisions for a tariff service to an affiliate or a customer of an affiliate, unless it makes the offer available to all similarly situated persons, and makes the offer in a manner designed to allow all an equal ability to utilize the offering;

(7) Except as provided in Regulation .02 of this chapter, market or promote its standard offer service;

(8) Provide sales leads to its core or non-core service affiliate; or

(9) Circumvent the provisions of this subtitle through the use of an affiliate as a conduit between the utility and its core service affiliate.

C. Core Service. A utility may not:

(1) Initiate a joint sales call with its core service affiliate, except when requested by a customer or when the customer has a contractual relationship with the utility and its core service affiliate;

(2) Operate from the same physical location used by a core service affiliate;

- (3) Share core service information with a core service affiliate that could provide a competitive advantage in a discriminatory manner;
- (4) Unless a utility has sufficient safeguards in place to prevent a core service employee from gaining access to utility information that it is prohibited from sharing under this subtitle, share electronic databases or electronic files with its core service affiliate; or
- (5) Speak or appear to speak on behalf of its core service affiliate.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of July 2023, the foregoing Brief of Appellant Maryland Office of People's Counsel and the accompanying Joint Record Extract were served electronically via the MDEC system on all those listed herein.

Two copies of the Brief and Joint Record Extract were mailed first-class, postage prepaid to the following parties:

John C. Dodge, Associate General  
Counsel  
Spencer S. Nichols, Assistant General  
Counsel  
*Washington Gas Light Company*  
1000 Maine Avenue, SW  
Washington, DC 20024  
E-mail: [jdodge@washgas.com](mailto:jdodge@washgas.com)  
[snichols@washgas.com](mailto:snichols@washgas.com)

Susan S. Miller, Esq.  
Earthjustice  
1625 Massachusetts Ave., NW  
Suite 702  
Washington, DC 20036-2212  
E-mail: [smiller@earthjustice.org](mailto:smiller@earthjustice.org)  
*Counsel for Appellant Sierra Club*

H. Robert Erwin, General Counsel  
Joseph M. English, Assistant General  
Counsel  
*Maryland Public Service Commission*  
6 St. Paul Street, 16th Floor  
Baltimore, Maryland 21202  
E-mail: [robert.erwin@maryland.gov](mailto:robert.erwin@maryland.gov)  
[joseph.english@maryland.gov](mailto:joseph.english@maryland.gov)

Todd R. Chason, Esq.  
Lauren E. Lake, Esq.  
Maxwell T. Cooke, Esq.  
Gordon Feinblatt LLC  
1001 Fleet Street Suite 700  
Baltimore, MD 21202  
E-mail: [tchason@gfrlaw.com](mailto:tchason@gfrlaw.com)  
[llake@gfrlaw.com](mailto:llake@gfrlaw.com)  
[mcooke@gfrlaw.com](mailto:mcooke@gfrlaw.com)  
*Counsel for Appellee WGL Energy  
Services, Inc.*

/s/ Michael F. Sammartino  
Michael F. Sammartino

Assistant People's Counsel  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150  
michael.sammartino@maryland.gov  
CPF# 2112150027