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**BILL NO.:** House Bill 914

**COMMITTEE:** Education, Energy, and the Environment

**HEARING DATE:** March 28, 2023

**SPONSOR:** Delegate Jackson

**POSITION:** Favorable

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The Office of People's Counsel ("OPC") supports House Bill 914, which clarifies the State circuit court in which a party or person in interest may seek judicial review if dissatisfied with a final decision or order of the Maryland Public Service Commission. Specifically, the bill updates the language of Public Utilities Article ("PUA") § 3-204(a) to state that venue is proper in: (1) the circuit court for any county in which the public service company "that was a party in the proceeding" before the Commission "provides service;" or (2) the Circuit Court for Baltimore City.

The bill, which OPC believes clarifies but does not change existing law, will preserve judicial economy and ratepayer dollars by making clear that a person or entity other than a public service company—a term defined under Maryland law—may not institute review of a Commission decision or order in any court other than the Circuit Court for Baltimore City. Specifically, the bill will curtail forum shopping by non-utilities, a practice that impairs judicial efficiency by generating unnecessary court disputes over proper venue. Forum shopping also wastes the finite resources of OPC and the Commission, both of which are funded through customers' utility bills, are located across the street from Baltimore City Circuit Court, and otherwise must travel to participate in judicial review of petitions filed across the state by entities other than public service companies.

The term "public service company" is defined under PUA § 1-101(z)(1) to mean "a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies." Despite the definition, several retail suppliers of electricity and

gas—which do not dispute that they are not public service companies, do not own physical facilities or infrastructure, and often do not have customer relations personnel in the State, let alone the counties—recently have filed petitions for judicial review of Commission decisions in circuit courts other than Baltimore City. The litigants have argued that their proceedings before the Commission “involved” a public service company under PUA § 3-204(a)(1), even when no public service company appeared in the litigation before the Commission, because public service companies deliver retail suppliers’ energy via the utility’s pipes (gas) or wires (electricity) to consumers. Retail suppliers therefore have maintained that they can initiate judicial review of Commission decisions in any county in which a public service company delivers their product.

Circuit courts in Montgomery County, Anne Arundel County, and Baltimore City have issued mixed rulings on whether retail suppliers may properly seek review of a Commission decision in a court other than the Circuit Court for Baltimore City.<sup>1</sup> The Circuit Court for Baltimore City, for example, moved venue in one such case and retained it in another, as did the Circuit Court for Anne Arundel County.<sup>2</sup>

By updating the language of § 3-204(a)(1) to clarify that venue is only proper in a circuit court other than Baltimore City if a “public service company” was “a party in the proceeding” before the Commission, this bill would provide clarity to State courts on the meaning of PUA § 3-204(a), curtail forum shopping, and preserve judicial efficiency and ratepayer resources.

**Recommendation:** OPC requests a favorable report from the Committee for HB 914.

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<sup>1</sup> See *In the Matter of U.S. Gas & Electric and Energy Servs. Providers, Inc., d/b/a Md. Gas & Electric*, Cir. Ct. for Balt. City, Case No. 24-C-22-003561 (order denying motion to transfer venue to Cir. Ct. for Anne Arundel Cty., Dec. 21, 2022); accord, *In the Matter of U.S. Gas & Electric and Energy Servs. Providers, Inc., d/b/a Md. Gas & Electric*, Cir. Ct. for Anne Arundel Cty., Case No. C-02-CV-22-001400 (order transferring venue to Cir. Ct. for Balt. City, Nov. 2, 2022). But see, *In the Matter of Direct Energy Servs., LLC*, Cir. Ct. for Anne Arundel Cty., Case No. C-02-CV-22-000856 (order denying motion to transfer venue to Balt. City Cir. Ct.) (July 29, 2022); *In the Matter of Direct Energy Servs., LLC*, Balt. City Cir. Ct. Case No. 24-C-22-002543 (order granting motion to transfer venue to Cir. Ct. for Anne Arundel Cty., Aug. 8, 2022); *In the Matter of SmartEnergy Holdings, LLC*, Cir. Ct. for Montgomery Cty., Case No. 485338-V (order denying motion to transfer venue, May 21, 2021).

<sup>2</sup> See *id.*