

People's Counsel urging rehearing on Washington Gas rate case

By: Special to The Daily Record Julia Arbutus July 27, 2021

A dispute between the Office of the People's Counsel and Washington Gas Light Company over a proposed utility rate increase is at a standstill as both wait for a response from the Public Service Commission, which will soon decide whether to rehear its decision approving the increase.

The Office of the People's Counsel appealed the Maryland utility regulator's final decision in May, after the Commission reviewed a Public Utility Law Judge's proposed decision and upheld it.

In its appeal, the OPC contended that the commission abdicated its responsibility to regulate utility spending by failing to find rate prudence. Additionally, it argues that the final order undermines the commission's role over Maryland utility acquisitions by accepting at face value that Washington Gas had met conditions of its 2018 merger with Alta Gas.

"The Public Utility Law Judge did not make a decision based on evidence," said People's Counsel David S. Lapp. "It dismissed arguments without providing rationale."



People's Counsel David S. Lapp. (Submitted photo)

An order addressing OPC's appeal is pending, said Tori Leonard, communications director for the PSC, but hasn't been issued yet. The PSC is not required by Maryland statute to rehear its final decision.

Washington Gas first applied for a rate increase in August 2020, asking for a \$28.4 million increase in annual base rate revenues to keep up with higher operation and maintenance costs. This increase would have been equivalent to a 5% increase in the average monthly residential heating and cooling bill.

In April, the PSC approved Washington Gas to increase its Maryland natural gas distribution rate by just under \$12 million, raising the average monthly residential heating and cooling bill by 2.15%, less than half of the utility company's proposed increase.

Washington Gas has applied for base rate increases before in 2018 and 2019.

The OPC is fighting this decision – not because of the rate increase, but because of the precedent the office believes this decision introduces, both in the way of determining rate reasonability and in upholding merger agreements.

The OPC says the PSC relied on an "incorrect prudence standard" by which it evaluated the rate increase, using the possibility a factfinder "could" find prudence as the equivalent to finding prudence. The PSC is instead required,

states the OPC, to make a decision on prudence.

The OPC is further arguing that Washington Gas has not met the terms of its merger agreement with Alta Gas. When Washington Gas merged with Alta in 2018, the PSC approved the merger with certain commitments, namely that Washington Gas would provide at least \$4 million in synergy savings to customers as a result of the merger, or \$800,000 a year for five years, and that the company would show that those savings were being accomplished.

The OPC stated in its petition for rehearing that while those savings were never explained by Washington Gas and the evidence the company did provide was "largely incomprehensible," the PSC accepted Washington Gas's statement that the synergy savings occurred.

"If no one is enforcing merger commitments, they're pretty much meaningless," Lapp said.

The OPC also recalled a January 2021 investigation by the Office of Legislative Audits at the Maryland General Assembly into the PSC's ability to ensure compliance broadly.

The audit, which spanned Feb. 9, 2016, to Mar. 11, 2020, found that the PSC "did not have an adequate process in place to ensure that utility companies complied with all requirements of PSC orders approving merger transactions."

The OLA reviewed 142 merger conditions, and found that for 64 the PSC did not ensure compliance; for the remaining 78, the PSC did not formally document conditions were met.

Washington Gas has disputed these claims in a brief in opposition to the OPC's appeal, calling it "long on hyperbole but completely lacking in a demonstration of legal error or other grounds to justify rehearing."

"The OPC's arguments are not in line with prior PSC decisions or the record of evidence compiled in this case," said Bernie Tylor, a Washington Gas spokesperson.

The OPC's addition of the PSC audit felt "misplaced" to Washington Gas, which stated that the audit addressed merger commitments not base rate increases like the filing that is under dispute.

Washington Gas argued that the final order issued by the PSC did not diminish the commission's ability to determine prudence, as it cites the evidentiary record "nearly 30 times" and recalls precedents set in previous commission cases.

Additionally, the utility company asserted that it provided direct evidence regarding synergy savings through testimony from the company's chief regulatory accountant, evidence that was accepted by the PULJ in its proposed order, and then by the PSC in the final order.

Washington Gas stated that it had met its annual net benefit of \$800,000 and would "demonstrate continued compliance through July 6, 2023, or in Washington Gas' next rate case filing, whenever that occurs," according to Tylor.

[Tweet](#)[Email](#)[Share 0](#)[Share](#)[Print](#)