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People's Counsel Asks Public Service Commission to Revisit Decision Eroding Its Role in Setting Rates and Regulating Acquisitions

(May 10, 2021) — The Maryland Office of People's Counsel today asked the Public Service Commission to reconsider its decision last month authorizing a rate increase for customers of Washington Gas Light Company. If left unchanged, the Commission's decision will undermine two fundamental components of utility regulation, OPC's filing said, including the Commission's role in reviewing the reasonableness of ratepayer-funded utility costs and its responsibility to ensure that acquisitions of Maryland utilities serve the public interest.

“The Commission is responsible for making sure utility costs are reasonable, but its Washington Gas order undermines that responsibility,” said People's Counsel David S. Lapp. “The order also subverts a key ratepayer benefit that was used to justify and approve AltaGas's 2018 acquisition of Washington Gas. The Commission should reconsider both aspects of its order.”

The merger issue relates to the promise of AltaGas to reduce rates for Washington Gas's Maryland customers annually by \$800,000 for five years, through so-called “synergy” savings. The Commission erred by accepting Washington Gas's unsupported assertion that it has achieved the required savings, according to OPC's filing. Undisputed evidence showed that since the acquisition closed the corporate costs that Washington Gas allocates to its customers—a key source of “synergy” savings—have increased at an annual rate of more than \$18 million across the three jurisdictions Washington Gas serves, OPC's filing said. The Commission's order also rendered meaningless one of the merger conditions intended to ensure compliance with the savings promise, OPC said.

“The Commission needs to step up to the plate to ensure that Maryland utilities like Washington Gas—and the out-of-state holding companies that acquire them—meet the conditions the Commission found necessary to approve the mergers as consistent with the public interest,” Lapp said. “Here, the evidence is strong that AltaGas has not complied with promises of ratepayer benefits, and the Commission’s order has failed to examine that evidence and render a decision on the facts.”

Outside of its merger authority, the Commission is the ultimate bulwark for protecting consumers from exorbitant utility spending. It is the sole regulatory authority with the power to control ratepayer-funded utility expenditures. The Commission performs this task in rate proceedings where it reviews historic costs—called a “prudency” review—and sets the customer rates under which the utility recovers those costs. It is tasked under the law with ensuring that customer rates are just and reasonable.

Yet, in the Washington Gas order OPC asks it to reconsider, the Commission denigrated its own ability to conduct a prudency review, describing the task as “difficult, if not impossible” absent “egregious” circumstances. It made these statements in summarily rejecting detailed evidence that OPC had put forward showing systemic problems with 14 capital projects. OPC had recommended prudency disallowances totaling more than \$5 million—a figure representing just a portion of the total costs Washington Gas sought for the projects.

Aside from denigrating its authority to review cost reasonableness, the order failed to fulfill the Commission’s responsibility to actually decide whether the costs are reasonable, according to OPC’s filing. Rather, the Commission said there was evidence upon which prudency “could” be found.

“This failure to actually decide whether the costs were prudent—or imprudent, as OPC showed at the evidentiary hearing—was a failure of the Commission to fulfill its statutory responsibility, a responsibility fundamental to protecting ratepayers from monopoly utilities,” Lapp said.

The Maryland Office of People’s Counsel is an independent state agency that represents Maryland’s residential consumers of electric, natural gas, telecommunications, private water and certain transportation matters before the Public Service Commission, federal regulatory agencies, and the courts.

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