SB 355

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 355 (Senators Serafini and Astle)

Finance Economic Matters

Gas Companies - Rate Regulation - Environmental Remediation Costs

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This bill generally authorizes the Public Service Commission (PSC), when determining necessary and proper expenses while setting a just and reasonable rate for a gas company, to include all costs reasonably incurred by the gas company for performing environmental remediation of real property in response to a State or federal law, regulation, or order under specified conditions. PSC must balance the interests of a gas company with those of the gas company’s customers when setting the recovery schedule for the environmental remediation costs incurred by the gas company.

Fiscal Summary

State Effect: PSC can handle the bill’s requirements with existing budgeted resources. Previous PSC cases have considered environmental remediation costs, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: PSC may, when determining necessary and proper expenses while setting a just and reasonable rate for a gas company, include all costs reasonably incurred by the gas company for performing environmental remediation of real property in response to a State or federal law, regulation, or order if (1) the remediation relates to the contamination of real property and (2) the real property is or was used to provide manufactured or natural gas directly or indirectly to the gas company’s customers or the gas company’s predecessors.

Environmental remediation costs incurred by a gas company may be included in the gas company's necessary and proper expenses regardless of whether (1) the real property is currently used and useful in providing gas service or (2) the gas company owns the real property when the rate is set.

Environmental remediation costs incurred by a gas company *may not* be included in the gas company's necessary and proper expenses if a court of competent jurisdiction determines that the proximate cause of the environmental contamination is a result of the gas company's failure to comply with a State or federal law, regulation, or order in effect when the contamination occurred.

If a gas company is allowed to recover environmental remediation costs under the bill, any "financial benefit" accruing to the gas company as a result of the remediation of real property must be credited to the gas company's customers in a manner determined by PSC.

"Financial benefit" includes any monetary gain on the conveyance of real property, or any portion of real property that was subject to environmental remediation, to a third party. It also includes any other financial benefit of the property or portion of the property that subsequently inures to the gas company, including income from rentals and tax credits, deductions, or other financial benefits, less any environmental remediation costs relating to the property that the gas company was not allowed to recover from the gas company's customers.

Current Law: PSC is authorized to set a just and reasonable rate of a public service company, as a maximum rate, minimum rate, or both. "Just and reasonable rate" means a rate that:

- does not violate any provision of the Public Utility Article;
- fully considers and is consistent with the public good; and
- except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.

Background: Several PSC rate cases have examined the issue of environmental remediation costs and how they relate to the "used and useful in providing service" requirement for inclusion in base rates. In Case No. 9316, Columbia Gas sought recovery of environmental remediation costs of a site the company owns at the former Hagerstown Manufacturing Gas Plant. Columbia Gas was subject to an enforcement action by the Maryland Department of the Environment to clean up the site. The site is split into two parts – the "service center" and the "Cassidy Property." Columbia Gas sought cost recovery for both parts of the site; however, PSC denied recovery for the Cassidy Property based in part on its finding that the Cassidy Property was not used and useful. Instead, PSC ordered in the decision that the costs for the purchase and remediation of the Cassidy Property should fall wholly upon Columbia Gas' stockholders and not on ratepayers.

Additional Information

Prior Introductions: HB 571 of 2016, a similar bill, passed the House with amendments and passed second reading in the Senate with amendments, but was recommitted to the Senate Finance Committee.

Cross File: HB 414 (Delegates Barkley and W. Miller) - Economic Matters.

Information Source(s): Public Service Commission; Office of People's Counsel; Department of Legislative Services

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Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510