



February 15, 2022

Chair Delores G. Kelley
Members of the Senate Finance Committee

Re: **Opposition** to SB 423:
Natural Gas - Strategic Infrastructure Development and Enhancement - Surcharge
and Plans (STRIDE Act of 2022)

Earthjustice,¹ the Chesapeake Climate Action Network Action Fund, and the Climate Justice Wing of the Maryland Legislative Coalition strongly oppose the passage of SB 423 and urge an unfavorable report by this Committee. SB 423 would remove a vital ratepayer protection by requiring infrastructure project costs collected under a gas infrastructure replacement surcharge to be included in base rates as part of rate adjustments made yearly under a multi-year rate plan (MRP) rather than having the prudence of these expenditures review by the Public Service Commission (Commission) in a base rate case prior to those costs being recoverable through rates. The process proposed by SB 423 differs greatly from the process set forth in the current STRIDE law, which provides only that a utility may move “eligible infrastructure project costs” into base rates after appropriate review in a base rate case. A prudence review is an important ratepayer protection which this Committee should preserve.

Overview of STRIDE Law

In 2013, the General Assembly enacted the STRIDE law to incentivize the replacement of aging gas distribution infrastructure by providing gas distribution utilities with advance recovery of the costs of the replacement projects through a surcharge mechanism for gas distribution utilities to promptly recover *reasonable and prudent* costs of investments in these projects separate from base rate proceedings.

The STRIDE law permits gas distribution utilities² to submit 5-year infrastructure replacement plans to the Commission. Specifically, the STRIDE law allows utilities to include a monthly surcharge on customer bills to recover the estimated costs of such projects contemporaneously with, or even before, the execution of the projects. The amount of the monthly surcharge for a given calendar year is based on the work planned in that year and its estimated cost and is capped at \$2.00/month on residential customer bills.

¹ Earthjustice is a non-profit public interest environmental law organization that represents other non-profits free of charge. Earthjustice uses the power of law and the strength of partnerships to advance clean energy, combat climate change, protect people’s health and preserve magnificent places and wildlife.

² Three Maryland gas distribution utilities have gas infrastructure replacement plans under STRIDE – Baltimore Gas and Electric Company (BGE), Washington Gas Light Company (Washington Gas), and Columbia Gas of Maryland, Inc. (Columbia).

If a gas distribution utility reaches the \$2.00 surcharge cap, that does not mean that the utility will be unable to recover the costs of its gas infrastructure replacement investments. Rather, for those costs above the cap, the gas distribution utility must wait until its next base rate case to begin recovering them. The current STRIDE law provides that within five years of the implementation of a STRIDE plan, a utility must file a base rate case. When a gas distribution utility with a STRIDE plan files a base rate case, all the STRIDE investments included in the STRIDE surcharge are reviewed for prudence. If the Commission determines that the investments were prudent, the costs are moved out of the surcharge and into the utility's rate base. This movement of costs from the surcharge to rate base has the effect of reducing the STRIDE surcharge, which makes it less likely that a STRIDE utility will hit the surcharge caps.

SB 423 Ends an Important Ratepayer Protection and Greatly Limits the Transparency of the STRIDE program.

When the Commission approves a multi-year rate plan, it approves up to three years of rates, with the rate levels increasing after each year to reflect projected increased utility spending. SB 423 would *automatically* move all a utility's STRIDE gas infrastructure spending from the STRIDE surcharge to base rates whenever rates change within an MRP (essentially each year).

Currently, when a utility moves STRIDE infrastructure investments into base rates in a base rate case, the costs are first reviewed for prudence by the Commission. The STRIDE law provides that within five years of the implementation of a STRIDE plan, a utility must file a base rate case. In a base rate case, all a utility's costs and expenses are reviewed. When a utility with a STRIDE plan files a base rate case, all the STRIDE investments included in the STRIDE surcharge are reviewed for prudence. If the Commission determines that the investments were prudent, the costs are moved out of the surcharge and into the utility's rate base. If the Commission finds that a project was imprudent, cost recovery for that project is denied. As such, the *approved* project costs are now prudently incurred capital costs. Under SB 423, no prudence review would occur prior to the costs inclusion in base rates. The costs would move from the STRIDE surcharge to base rates automatically without any quantitative or qualitative review. SB 423 would deprive stakeholders of their only opportunity to review STRIDE costs before they are included in a utility's rate base.

SB 423 also negates the transparency which is so vital to a program of this nature. An important feature of the STRIDE law is the transparency it provides to customers with respect to how much they are paying for the program. This transparency is promoted through the surcharge. The surcharge informs consumers of the utility's specific expenditures for gas distribution infrastructure replacements.

Importantly, this Committee should note that BGE recently requested that the Commission permit yearly recovery of BGE's STRIDE costs above the surcharge BGE's recently approved MRP. Specifically, BGE sought to include all STRIDE costs up to the cap in the surcharge, but then recover any amounts over the cap through base rates during the MRP adjustment. The Commission rejected this proposal on the basis that it lacked transparency. In

reaching this conclusion, the Commission expressly stated that “Placing STRIDE projects directly into the base rate circumvents that transparency by requiring the Commission to approve advanced recovery of STRIDE projects with no visibility to customers, instead mixing STRIDE costs inextricably with all the other elements of BGE’s rates.”³ If infrastructure project costs are annually moved from the surcharge to base rates, this action will hide the total amount of STRIDE costs in rates and make it far less clear to customers how much they were paying for STRIDE projects. SB 423 removes the transparency that the STRIDE surcharge provides. Moreover, the effect of this yearly removal of infrastructure project costs out of the surcharge will be that a utility will be able to collect STRIDE charges in excess of the cap from customers, through a combination of the surcharge and base rates.

REVIEW OF STRIDE

While STRIDE’s infrastructure replacement incentive mechanism has been used in Maryland for approximately seven years, the impact of the STRIDE law has never been assessed. Any alteration of the program should not occur without a thorough review of the effects the STRIDE program has had in the years since its adoption and an assessment regarding whether the program should continue.

The Committee should bear in mind that utilities have a core responsibility of ensuring the safety and reliability of their infrastructure. The Stride program is not a safety and reliability program. STRIDE did not alter the utilities safety or reliability obligations in any respect. The STRIDE law is merely a cost recovery mechanism. To the extent any utility identifies high risk infrastructure for replacement, the utility has a legal obligation to prioritize and replace that infrastructure and the company may seek recovery for such work in its next base rate case. Speedy recovery of costs should not be permitted to determine if or when a necessary infrastructure project is executed and completed. Moreover, the fact that the utilities’ current infrastructure replacement plans extend nearly 20 years belies any contention that safety concerns are the drivers of their replacement effort.

The Committee also should be aware of the magnitude of the costs associated with this infrastructure replacement program. For example, in 2018, BGE received Commission approval to spend more than \$720 million in infrastructure replacement over a five year period.

Rather than give SB 423 a favorable report, the Committee should require the Commission to perform a study to quantify and examine the STRIDE program and to assess whether the program should continue or, if continued, whether the program needs to be altered to ensure that ratepayers are benefitting from the program.

One issue to be examined is whether STRIDE actually provides the wrong incentive. Repairing gas infrastructure often is a lower-cost alternative to replacement. But repairing infrastructure is not profitable for the utilities, because repairs are operational costs, not capital investments on which utilities earn a profit. Because STRIDE only allows accelerated cost

³ Maryland Public Service Commission Order 89678 (Case No. 9645) Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan (December 16, 2020) at ¶ 60.

recovery for capital projects that earn a return, it has further disincentivized utilities from repairing pipes rather than replacing them. Any study should examine this disincentive and determine if the utilities are making unwarranted replacements when repairs would be sufficient and less costly.

Finally, any study should examine how STRIDE shifts the significant risk to ratepayers of substantial climate-induced stranded costs.

In order to address the greenhouse gas (GHG) emissions crisis, the Maryland General Assembly passed the Greenhouse Gas Emissions Reduction Act (GGRA) of 2016. This law renewed the 2009 Maryland law that set a goal to reduce climate-polluting GHG emissions statewide by 25 percent by 2020. The 2016 reauthorization bill also further extended the goal to a 40 percent reduction by 2030, requiring long-term cuts in GHG emissions.⁴

To help the State achieve these goals, the Maryland Department of the Environment (MDE) was required to adopt plans for the 2020 and 2030 greenhouse goals.⁵ The plans were to be “developed in recognition of the finding by the Intergovernmental Panel on Climate Change that developed countries will need to reduce greenhouse gas emissions by between 80% and 95% from 1990 levels by 2050.”⁶ MDE recognized the need to move away from GHG emitting fuels in its 2019 Greenhouse Gas Reduction Act Draft Plan. In this plan, MDE proposed “to begin incentivizing increased deployment of efficient electric heat pumps to heat homes in Maryland, including in homes that currently use a different fuel for heat, in order to improve the efficiency of residential heating systems, and to transition the energy source for home heating toward increasingly clean electricity.”⁷ In the final Greenhouse Gas Reduction Plan, MDE proposes that Maryland begin incentivizing increased deployment of efficient electric heat pumps to heat homes and businesses, including in buildings that currently use a different fuel for heat to transition the energy source for building heating to increasingly clean electricity.⁸

Maryland has established GHG emissions reduction goals and MDE has proposed regulatory strategies for reducing climate pollution from the energy sector. As evidenced by MDE’s new state energy policy plans building electrification – or converting energy end uses in buildings from fossil fuels to cleaner electricity – is a core strategy to achieve Maryland’s GHG emissions reduction targets.

⁴ S.B. 323, Ch. 11 (Md. 2016), <https://perma.cc/PG8T-T94Y>.

⁵ Md. Code, Env’t § 2-1205(c) (2020).

⁶ *Id.* It should be noted that under the Commission’s new statutory mandate the Commission is required to consider 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” Md. Code, Pub. Util. § 2-113 (a)(2)(v) (2021).

⁷ MDE, *GGRA: 2019 GGRA Draft Plan*, at VI (Oct. 2019), <https://perma.cc/8T9N-YRDT>.

⁸ MDE, *GGRA: 2030 GGRA Plan* (Feb. 19, 2021), <https://perma.cc/9JJ5-ZTUG> (“2030 GGRA Plan”) at 52..

Gas infrastructure replacements will be added to the utilities' rate base, where all ratepayers will continue to pay off this investment for approximately the next 40 years. Reducing gas use in buildings will ultimately lead to a reduction in the gas customer base and a diminished need for the state's gas infrastructure. Aside from the emissions benefits from reduced gas consumption, there are several financial implications to the reduction, including the risk that some gas assets will no longer be "used and useful". If not addressed proactively, "stranded" gas assets can complicate the effort to transition the state away from excessive reliance on gas and its incompatibility with Maryland climate goals. At the core of these complications are potential reductions in overall utility investment, and rate increases for remaining gas customers.

The STRIDE law should not be permitted to exacerbate this dilemma. Based on Maryland's public policy goals, Maryland should recognize that future investments in new replacement infrastructure is no longer prudent. Any study should examine whether STRIDE should continue at all or whether the STRIDE program should be significantly scaled back to avoid excessive stranded costs in the future. Alternatives to replacing the entire gas infrastructure, such as beneficial electrification, have yet to be considered and should be examined in any study of STRIDE.

Earthjustice, the Chesapeake Climate Action Network Action Fund, and the Climate Justice Wing of the Maryland Legislative Coalition oppose Senate Bill 423 and request an unfavorable committee report.

Thank you in advance for your support. Should you have any questions, please contact me at smiller@earthjustice.org.

Respectfully submitted,

A handwritten signature in blue ink that reads "Susan Stevens Miller". The signature is written in a cursive style.

Susan Stevens Miller
Senior Attorney, Clean Energy Program
Earthjustice