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BILL NO.: Senate Bill 423
Natural Gas
Strategic Infrastructure Development and Enhancement
Surcharge and Plans

COMMITTEE: Senate Finance

HEARING DATE: February 15, 2022

SPONSOR: Senator Hayes

POSITION: Oppose

The STRIDE law (Public Utilities Article § 4-210) gives utilities a way of recovering their infrastructure spending from customers that is much faster than usual cost recovery methods. Senate Bill 423 would amend the STRIDE law to make cost recovery even easier for utilities with multi-year rate plans. It would enable a utility to move “eligible infrastructure project costs collected previously under a surcharge” into base rates at the time of its multi-rate plan annual rate change. This amendment does not benefit consumers, and the Office of People’s Counsel opposes this change to the STRIDE law.

Overview of the STRIDE Law

Enacted in 2013, the STRIDE law permits Maryland’s gas distribution utilities to submit five-year infrastructure replacement plans to the Maryland Public Service Commission. The law is intended to incent the replacement of aging gas distribution infrastructure by providing utilities with advance cost recovery. Specifically, the STRIDE law allows utilities to include a monthly surcharge on customer bills to recover the estimated costs of replacement projects contemporaneously with, or even before they begin work on, the projects. The amount of the monthly surcharge is determined shortly before the beginning of each calendar year and, with some limited exceptions, remains

the same for each month in the following calendar year. The monthly surcharge amount is based on the work planned in that year and its estimated cost.

The STRIDE law provides that the surcharge may not exceed \$2.00/month on residential customer bills. The law sets the surcharge limits for other customer classes proportional to the residential customer surcharge based on a utility's total distribution revenues. Thus, the \$2.00/month residential surcharge cap also has the effect of limiting the monthly STRIDE costs that other customer classes pay.

The STRIDE statute's surcharge provision promotes transparency. The General Assembly required the surcharge to be visible on customer bills.

The surcharge cap does not limit the utilities' ability to recover the costs of its STRIDE investments. Rather, it means only that for those costs above the cap, the utility must wait until its next base rate case to begin recovering them.

The STRIDE law requires utilities to file a base rate case within five years of the implementation of a STRIDE plan. In a base rate case, a utility's rates are set to reflect recent historic cost data, with certain adjustments.

Although the surcharge allows utilities with STRIDE plans to recover costs early, the rate base process is when all the STRIDE investments are reviewed for prudence.¹ 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.

At present, four Maryland gas distribution utilities have gas infrastructure replacement plans under STRIDE—Baltimore Gas and Electric Company (BGE), Washington Gas Light Company, Columbia Gas of Maryland, Inc., and Elkton Gas Company. Currently, only one gas utility with a STRIDE plan—BGE—is operating under a multi-year plan.²

Comments

1. SB 423 will weaken the surcharge cap's consumer protections.

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 spending from

¹ The prudence test is "whether a prudent utility would have made the decision [in question] under all of the circumstances that were known, or should have been known, at the time the decision was made." Commission Order No. 68268, *Re Potomac Edison Co.*, 79 Md. P.S.C. 422 (Case No. 8523C, 1988).

² The other three Maryland gas utilities with STRIDE plans, however, could also apply to the Commission for an MRP.

the STRIDE surcharge to base rates whenever rates change within a multi-year rate plan. This movement of cost recovery from the surcharge to rate base would have the effect of reducing the STRIDE surcharge, making it less likely that a STRIDE utility will hit the surcharge caps.

Customers still pay costs that move out of the surcharge and into base rates. The costs are added to the pool of all other utility costs. Thus, while SB 423 would allow utilities to avoid hitting the cap, it would remove the surcharge's cost-control effect. By easily and automatically shifting costs from a capped program to uncapped base rates, it will encourage *additional* spending that will immediately result in higher bills for customers by allowing the utility to raise rates *and* raise the surcharge in the middle of the multi-year plan.

SB 423 will effectively raise the monthly residential surcharge cap to \$6.00/month over the course of a multi-year plan. It will permit a utility to make investments resulting in a new \$2.00 monthly surcharge in each of the three years of a multi-year plan. Stated differently, when a gas utility cumulatively makes investments in STRIDE year-over-year, the revenue necessary to recover those investments continues to grow and will eventually bump up against the cap. By allowing an automatic reset of the surcharge amount every year, SB 423 encourages utilities to spend in each year what they would otherwise be likely to spend over three years.

In this regard, SB 423 is inconsistent with the purpose and the spirit of the STRIDE law's key consumer protection—the monthly surcharge cap.

2. SB 423 will remove transparency of the costs of the STRIDE program.

The STRIDE law promotes transparency, and the Commission has cited “added transparency” as one of the drivers behind its adoption of multi-year rate plans. SB 423 is inconsistent with that goal because it would allow STRIDE-program costs to be hidden in rate base.

SB 423's inconsistency with the goal of transparency is illustrated by BGE's 2020 multi-year rate case before the Commission. 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. BGE projected that it would exceed the cap in 2022 and 2023. The Commission rejected BGE's proposal on the basis that it lacked transparency because it would mix the costs of STRIDE projects with other BGE costs:

The Commission further finds that BGE's proposal to place some or all of its STRIDE costs in the [multi-year rate plan] MRP lacks transparency. The General Assembly required that the surcharge be visible to customers. 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

Similar to what BGE proposed and the Commission rejected, SB 423 would mask STRIDE costs in customer bills with other costs in their rates. Throughout the course of a multi-year rate plan, the customers of gas companies with STRIDE programs would have a line item on their bills showing the STRIDE surcharge amount. But if “eligible infrastructure project costs collected previously under a surcharge” were annually moved to base rates by operation of law, as SB 423 allows, the total STRIDE costs collected from customers in rates would be hidden. In the words of the Commission, STRIDE costs would be mixed “inextricably with all the other elements of BGE's rates.” SB 423 would remove the customer “visibility” that the STRIDE surcharge provides.

It is true that the Commission can and has moved STRIDE charges into base rates *during a rate case*. This allows the surcharge to be reset, which could mean that the base rates plus new STRIDE charges impose a burden greater than \$2 per month per residential ratepayer. But SB 423 would shift costs automatically from the surcharge to base rates every 12 months—far more frequently than the typical utility rate case filing schedule. Thus, by encouraging additional spending, SB 423 would make it easier for utilities to burden customers with costs that exceed the \$2 per month per residential customer in current law.

3. SB 423 will eliminate stakeholders' and the Commission's ability to review STRIDE project costs for prudence before they are added to base rates.

When a utility applies for Commission approval to move STRIDE plant into base rates in a base rate case, stakeholders and the Commission review the costs for prudence. The Commission will only allow STRIDE costs to be moved into rate base upon a finding that the STRIDE investments were prudent. STRIDE costs that have undergone prudence review take on a different status. They are no longer “eligible infrastructure project costs collected previously under a surcharge.” They are now prudently incurred historic capital costs.

With SB 423, no prudence review would occur before the costs hit base rates. STRIDE costs would move from the STRIDE surcharge to base rates automatically without any qualitative review. Allowing any utility investments into base rates without a prudence review is in direct conflict with the Commission's role as the Maryland Court of Appeals has defined it—“the Commission's role is to determine what rates the utility

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) p. 29, ¶ 60.

should be allowed to charge in future years to *cover prudent expenses* and earn a reasonable profit.”⁴

While the Commission and stakeholders could still conduct a prudency review of these costs at the end of the multiyear plan, the effectiveness of such a review will be impaired. To use the words of the Commission, by that point the costs will be linked “inextricably with all the other elements of BGE’s rates.” Moreover, the review process at the end of an MRP will include a review of all utility spending over the course of multiple years.

In sum, by amending the STRIDE law to move “eligible infrastructure project costs collected previously under a surcharge” into base rates at the time of each annual rate change within a multi-year rate plan, SB 423 weakens consumer protections, is inconsistent with the Commission’s transparency goals, and eliminates an essential step in the ratemaking process.

Recommendation: OPC requests an unfavorable report on Senate Bill 423.

⁴ *Office of People’s Counsel v. Maryland Pub. Serv. Comm’n*, 355 Md. 1 (1999) (emphasis added).