

OPC Testimony HB0914 in the Senate - Favorable.pdf

Uploaded by: David Lapp

Position: FAV

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BILL NO.: House Bill 914
COMMITTEE: Education, Energy, and the Environment
HEARING DATE: March 28, 2023
SPONSOR: Delegate Jackson
POSITION: Favorable

The Office of People’s Counsel (“OPC”) supports House Bill 914, which clarifies the State circuit court in which a party or person in interest may seek judicial review if dissatisfied with a final decision or order of the Maryland Public Service Commission. Specifically, the bill updates the language of Public Utilities Article (“PUA”) § 3-204(a) to state that venue is proper in: (1) the circuit court for any county in which the public service company “that was a party in the proceeding” before the Commission “provides service;” or (2) the Circuit Court for Baltimore City.

The bill, which OPC believes clarifies but does not change existing law, will preserve judicial economy and ratepayer dollars by making clear that a person or entity other than a public service company—a term defined under Maryland law—may not institute review of a Commission decision or order in any court other than the Circuit Court for Baltimore City. Specifically, the bill will curtail forum shopping by non-utilities, a practice that impairs judicial efficiency by generating unnecessary court disputes over proper venue. Forum shopping also wastes the finite resources of OPC and the Commission, both of which are funded through customers’ utility bills, are located across the street from Baltimore City Circuit Court, and otherwise must travel to participate in judicial review of petitions filed across the state by entities other than public service companies.

The term “public service company” is defined under PUA § 1-101(z)(1) to mean “a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies.” Despite the definition, several retail suppliers of electricity and

gas—which do not dispute that they are not public service companies, do not own physical facilities or infrastructure, and often do not have customer relations personnel in the State, let alone the counties—recently have filed petitions for judicial review of Commission decisions in circuit courts other than Baltimore City. The litigants have argued that their proceedings before the Commission “involved” a public service company under PUA § 3-204(a)(1), even when no public service company appeared in the litigation before the Commission, because public service companies deliver retail suppliers’ energy via the utility’s pipes (gas) or wires (electricity) to consumers. Retail suppliers therefore have maintained that they can initiate judicial review of Commission decisions in any county in which a public service company delivers their product.

Circuit courts in Montgomery County, Anne Arundel County, and Baltimore City have issued mixed rulings on whether retail suppliers may properly seek review of a Commission decision in a court other than the Circuit Court for Baltimore City.¹ The Circuit Court for Baltimore City, for example, moved venue in one such case and retained it in another, as did the Circuit Court for Anne Arundel County.²

By updating the language of § 3-204(a)(1) to clarify that venue is only proper in a circuit court other than Baltimore City if a “public service company” was “a party in the proceeding” before the Commission, this bill would provide clarity to State courts on the meaning of PUA § 3-204(a), curtail forum shopping, and preserve judicial efficiency and ratepayer resources.

Recommendation: OPC requests a favorable report from the Committee for HB 914.

¹ See *In the Matter of U.S. Gas & Electric and Energy Servs. Providers, Inc., d/b/a Md. Gas & Electric*, Cir. Ct. for Balt. City, Case No. 24-C-22-003561 (order denying motion to transfer venue to Cir. Ct. for Anne Arundel Cty., Dec. 21, 2022); accord, *In the Matter of U.S. Gas & Electric and Energy Servs. Providers, Inc., d/b/a Md. Gas & Electric*, Cir. Ct. for Anne Arundel Cty., Case No. C-02-CV-22-001400 (order transferring venue to Cir. Ct. for Balt. City, Nov. 2, 2022). But see, *In the Matter of Direct Energy Servs., LLC*, Cir. Ct. for Anne Arundel Cty., Case No. C-02-CV-22-000856 (order denying motion to transfer venue to Balt. City Cir. Ct.) (July 29, 2022); *In the Matter of Direct Energy Servs., LLC*, Balt. City Cir. Ct. Case No. 24-C-22-002543 (order granting motion to transfer venue to Cir. Ct. for Anne Arundel Cty., Aug. 8, 2022); *In the Matter of SmartEnergy Holdings, LLC*, Cir. Ct. for Montgomery Cty., Case No. 485338-V (order denying motion to transfer venue, May 21, 2021).

² See *id.*

HB 914 - Testimony - Favorable EEE (1).pdf

Uploaded by: Jason Stanek

Position: FAV

STATE OF MARYLAND



OFFICE OF THE CHAIRMAN

JASON M. STANEK

PUBLIC SERVICE COMMISSION

March 28, 2023

Chair Brian Feldman
Education, Energy and Environment
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

RE: FAVORABLE – HB 914 – Public Service Commission – Judicial Review – Proceedings

Dear Chair Feldman and Committee Members:

I write today in support of HB 914 – Public Service Commission – Judicial Review – Proceedings. HB 914 proposes amended language to PUA § 3-204 that limits the venue for a party seeking judicial review of a Commission decision¹ to the county in which the public service company that was a party in the proceeding provides service or the Circuit court for Baltimore City.

Currently, retail suppliers, not public service companies, that operate across utility franchise territories and jurisdictional boundaries divert Office of General Counsel (“OGC”) resources across the Circuit Courts of the Maryland in an effort to gain favorable and fractured Circuit Court holdings. HB 914 will likely generate time and cost savings based on efficiencies created by reducing the need for OGC travel while simultaneously reducing the risk for inconsistent circuit court decisions.

The plain language of PUA § 3-204 does not enable electric or gas suppliers to file appeal in whatever circuit court they see fit, however, multiple circuit court denials of Commission’s motions to transfer venue suggest that the statute needs to be amended to explicitly state that the proper venue, unless the party to a proceeding is a public service company, is the Baltimore City Circuit Court.² This expansive holding is counter to the intent of the venue statute, and ignores the distinctions provided by definitions of public service company and electric/ gas supplier under the PUA.³

¹ PUA § 3-202 (a)

² The suggested amendments clarify the intent and purpose of the venue statute by replacing the words “involved” and “operates.”

³ PUA § 1-101(z)(1) defines public service company; PUA § 1-101(l)(1)(i)(1-4) defines electricity supplier; and PUA § 1-101(p)(1)(i)(1-3) defines gas supplier.

For these reasons, I support House Bill 914 and urge a favorable report. Thank you for your consideration of this information Please contact Lisa Smith, Director of Legislative Affairs, at (410) 336-6288 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason M. Stanek". The signature is fluid and cursive, with the first name "Jason" being the most prominent.

Jason M. Stanek
Chairman

RJR-(MDRESA) HB914 Letter (OPPOSED) - Senate E3 Co

Uploaded by: Richard Reinhardt

Position: UNF



Senator Brian Feldman, *Chair*
Senate Education, Energy, and Environment Committee
11 Bladen Street, Miller Senate Office Building, 2 West
Annapolis, Maryland 21401

Re: *House Bill 914: Public Service Commission – Judicial Review – Proceedings - OPPOSE*

March 28, 2023

Dear Chairman Feldman and Committee Members:

On behalf of our client, the Maryland Retail Energy Supplier Association (MDRESA), I write this letter of opposition to House Bill 914, entitled *Service Commission – Judicial Review – Proceedings*.

The Retail Energy Supply Association (RESA) is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail electricity and natural gas markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. RESA is devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets for residential and industrial consumers.

As written, HB914 alters the current law wherein a certain proceeding for judicial review of a final decision or order by the Public Service Commission may be instituted in a circuit court.

Under current Maryland law, a proceeding for judicial review shall be instituted in the circuit court in equity for any county in which the public service company *involved* in the proceeding *operates*; or in the Circuit Court in equity for Baltimore City.

This bill, put simply, is aimed at limiting fairness and choice, disguised as a legislation that provides necessary “clarification” and economic stewardship to ratepayers. The impetus for HB 914 stems from cases where the Public Service Commission has lost their motions to transfer venue following energy and gas suppliers filing judicial review in various circuit courts across Maryland.

As cited in the written testimony by the Office of People’s Counsel, jurisdictions such as Montgomery County, Anne Arundel County, and even Baltimore City have made “mixed” rulings on whether retail energy suppliers may properly see review of Commission decision in a court other than Baltimore City Circuit Court. As a result, the Commission is now making a unilateral power-play to override these rulings held in other circuit courts and dictating their own “ruling” by forcing a single jurisdiction to determine similar cases in the future.

Forum/venue shopping is a common practice in both criminal and civil cases – it’s a tactical option exercised by a party to leverage a positive outcome for their case. The current statute, at issue, is an example that gives a public services company the discretion to choose the venue to hear their petition of judicial review.

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We concede that retail suppliers are not defined as “public service company” under PSU article. However, public service companies deliver energy suppliers’ products to consumers through gas lines and wires. For these reasons, we maintain that suppliers have the same right to petition for judicial review in any county in which a public service company delivers the suppliers’ energy. As noted above, circuit courts in various jurisdictions across Maryland have recognized and agreed with the suppliers.

For these reasons, we oppose HB914 and respectfully urge this committee to give this legislation an **UNFAVORABLE** report.

Sincerely,

A handwritten signature in cursive script that reads "Richard J. Reinhardt, II".

Richard J. Reinhardt, II, *Partner*
Percy Public Affairs, LLC