CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

IN THE MATTER OF MARYLAND *

OFFICE OF PEOPLE'S COUNSEL, *et al.** **Case No: 17-C-15-019974**

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MEMORANDUM OPINION and ORDER

In these now consolidated actions, the petitioners, the Maryland Office of People's Counsel, Sierra Club and Chesapeake Climate Action Network, and Public Citizen, Inc. ("petitioners") seek for judicial review of a decision of the Maryland Public Services Commission ("PSC" or "Commission").[1] That decision (PSC Order #86990), issued on May 5, 2015, approved the proposed merger between Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("Pepco") and Delmarva Power, Inc. ("Delmarva"), *inter alia*, subject to certain conditions. The Court held a hearing on August 7, 2015 regarding petitioners' motion for stay, which was subsequently denied by order, entered August 12, 2015. The parties were again before the Court for a hearing on the merits in this matter on December 8, 2015, oral argument having been received from petitioners and respondents. The Court has thoroughly considered the substantial pleadings submitted by all petitioners and respondents, a voluminous administrative agency record, as well as the arguments voiced at the December 8, 2015 hearing.

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STANDARD of REVIEW

Upon a petition for judicial review, the Court will decline to set aside a decision of an administrative agency where it is supported by substantial evidence in the record. Conversely, if substantial evidence to support the decision does not exist, the Court will reverse the decision as arbitrary, capricious and a denial of due process of law. *See Ocean Hideaway v. Boardwalk Plaza*, 67 Md. App. 650 (1986). Specifically regarding Orders of the Public Service Commission, the Court of Appeals has held that the standard of review for the Commission is "consistent with the standard applicable to all administrative agencies." *Office of People's Counsel v. Maryland Pub. Serv. Comm'n*, 355 Md. 1, 15 (1999).

The limited scope of judicial review for Commission decisions is set out in *MD CODE ANN.*, Public Utilities Article, §3-203 (2010, 2015 Supp.) as follows:

> Every final decision, order, or regulation of the Commission is prima facie correct and shall be affirmed unless clearly shown to be:
> (1) unconstitutional;
> (2) outside the statutory authority or jurisdiction of the Commission;

[1] Case Nos. 19974, 19976, and 19998 respectively.

(3) made on unlawful procedure;
(4) arbitrary or capricious;
(5) affected by other error of law; or
(6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole.

Since a final decision of the Commission is *prima facie* correct, it "will not be disturbed on the basis of a factual question except upon clear and convincing evidence that it was unlawful and unreasonable." *Office of People's Counsel*, 355 Md. at 14. So long as reasoning minds could reasonably reach the decision made by the Commission based on the facts presented, the decision will remain undisturbed by the Court. *Liberty Nursing Center, Inc. v. Department of Health and Mental Hygiene*, 330 Md. 433, 442-3 (1993).

DISCUSSION and OPINION

Petitioners, Chesapeake Climate Action Network ("CCAN"), the Sierra Club, the Office of People's Counsel ("OPC or People's Counsel) and Public Citizen,[2] ask the Court to vacate, or, in the alternative, remand PSC Order 86990 to the Commission. Respondents providing memoranda of law in support of their position include Montgomery County, Prince George's County, the PSC and Exelon.

In sum, the collective petitioners present a total of five[3] questions for the Court's review. They are:

1. Does the Commission's unexplained conclusion that allegations of harm to the distributed generation and renewable energy markets were "speculative" render that decision arbitrary and capricious?

2. Did the Commission violate the procedural due process rights of Petitioners by basing its decision on an OHEP report that was not part of the record?

3. Whether the Maryland Public Service Commission made an error of law or acted arbitrarily or capriciously by failing to apply the statutory requirement that the Acquisition must result in no harm to customers?

4. Whether the Maryland Public Service Commission made an error of law or acted arbitrarily or capriciously by failing to address all of the harms resulting from the transaction that the parties raised and failing to resolve conflicting evidence on all of the harms resulting from the transaction?

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[2] While Public Citizen supports the positions of CCAN, the Sierra Club and OPC, it declined to file a substantive memorandum, as "its fellow petitioners are far more able to raise" the substantive issues of alleged error to the Court's attention." *See* docket entry #55.

[3] Questions one and two are forwarded by CCAN and the Sierra Club, while questions three, four and five originate in the papers of OPC.

5. Whether the Commission's failure to consider the acquisition premium in assessing the "no harm," "benefits," and "public interest" requirements of the Public Utilities article constitute an error of law?

Turning to each of the questions presented in turn:

1. Does the Commission's unexplained conclusion that allegations of harm to the distributed generation and renewable energy markets were "speculative" render that decision arbitrary and capricious?

Petitioners note that §6-105(g)(3)(i) of the Public Utilities Article requires the following:

> If the Commission finds that the acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers, the Commission shall issue an order granting the application.

Here, petitioners claim the PSC offended §6-105(g)(3)(i) because the Commissioners failed properly to assess the risk of harm to alternative energy generation methods, emerging technology and the development of new, decentralized energy grids. Specifically, petitioners allege that they presented evidence below to support their claim that the merger would lead to Exelon's discouragement of alternative energy development in order to maximize profits from their current nuclear generation system.

Petitioners admit that the PSC addressed the requirements of §6-105(g)(3)(i) in footnote 186 of their decision in Order No 86990. The footnote is reproduced below:

> We find the concerns that Exelon will discourage development of renewable or distributed generation in Maryland, that it will press the Maryland General Assembly for legislation favoring it's generation interests, and that Exelon may encourage BGE, Delmarva, and Pepco to be resistant to other new grid developments, to be little more than speculation, and they do not rise to the level of "harms."[4]

Petitioners assert that the foregoing is arbitrary and capricious, as it does not comport with §3-113(a)(3) of the Public Services Article, requiring that the PSC "state the grounds for the conclusions of the Commission." Petitioners further cite *Forman v. Motor Vehicle Admin.*, 332 Md. 201, 220 (1993), for its holding that the purpose of such statutory provisions "is to provide the parties, and ultimately a reviewing court, with the ability to understand the basis for the decision." Specifically, citing *Balt. Gas and Elec. Co. v. Pub. Serv. Comm'n*, 75 Md. App. 87, 97 (1988), petitioners point out that the Commission's "findings must be at least sufficiently detailed as to apprise the parties as to the basis for the agency's decision." Petitioners add to this the dictate that an agency finding must be more than a conclusory statement, citing various Maryland cases in support, chiefly *Ocean Hideaway Condominium Assn v. Boardwalk Plaza Venture, supra* at 660-61 (1986). In sum, petitioners claim that the PSC made no findings to support its conclusion that the instant acquisition would cause no harm to distributed generation

[4] Order No. 86990 of the Public Services Commission, at p. 39.

or new grid developments, while at the same time, somewhat paradoxically, citing footnote 186 as referenced above.

Finally, petitioners note that in their view the statute "requires us to ensure that ratepayers are protected against any increased risk of harm."[5] According to petitioners, the "speculative harms" referenced in the instant PSC order do rise to that level of harm(s) and should have been addressed by conditions or the denial of the application. Conversely, the PSC notes that the "structured not to harm ratepayers" language used in Order 86990 has been used in prior merger decisions.[6] Second, the PSC asserts that the "no harm" standard requires them to ensure that no new harms will befall ratepayers as a result of any acquisition, not protect against every speculative harm that a party might raise. Exelon also joins the PSC in its contention that each harm identified by petitioners was weighed by the PSC in reaching its conclusions with which petitioners do not agree.

The Court's review confirms that the PSC did explain its conclusion in regards to allegations of harm to the distributed generation and renewable energy markets. First, the PSC addressed the issues, as conceded by petitioners, in footnote 186. Footnote 186 does explain the Commission's "no harm" conclusion, noting any harms alleged were based upon speculation and conjecture. Looking more closely at Order 86990, the Court notes that the footnoted passage points out the PSC's further explanation that "the evidence in this case fails to demonstrate" that Exelon will order the acquired Pepco companies "to be less compliant with Commission orders and regulations."[7] Further, the PSC specifically found that "the Commission will be readily able to direct" the post-acquisition Exelon "where sufficient initiatives are not being proposed."[8] The PSC heard evidence in the testimony of Dr. Willig that Exelon would not oppose distributed generation post-merger, and that Order 86990 requires post-merger Exelon to fund a "Green Sustainability Fund" and a direct investment in solar technology.[9] Regarding harms related to purported conflict of interest due power generation and distribution under the same umbrella, Exelon notes that the PSC actually found that this could be a benefit to consumers by compelling Exelon to build 15 megawatts of new solar generation.[10] Thus, it is clear that the PSC properly and objectively considered evidence regarding consumer harms associated with distributed generation and renewable energy markets, concluding that any alleged harm was simply speculation, particularly in light of the PSC's own powers to address any issues with the post-acquisition Exelon. This is in accord with the earlier decisions of the PSC related to its duty to ensure that ratepayers are protected against any increased risk of harm. As such, the Commission's decision was based on conclusions drawn from the evidence presented and sufficiently apprises the parties with respect thereto and is neither arbitrary nor capricious. It follows that the Court will not disturb PSC Order 86990 in regards to the Commission's

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[5] Order No. 84698 of Public Service Commission, at p. 37-38.
[6] Specifically *In the Matter of the Application of the Merger of the FirstEnergy Corp. and Allegheny Energy, Inc.*, 102 Md. PSC 11 (2011), *inter alia.*
[7] Order 86990 of the Public Services Commission, at p. 39.
[8] Id.
[9] Order 86990, Appendix A, conditions 6 and 7.
[10] Order 86990 at p. 79-80.

conclusion that allegations of harm to the distributed generation and renewable energy markets were speculative and not a sufficient basis for disapproval.

2. Did the Commission violate the procedural due process rights of Petitioners by basing its decision on an OHEP report that was not part of the record?

Petitioners claim that there is no record evidence to support the PSC's finding that the Electric Universal Service Program ("EUSP") funding is adequate, further claiming the PSC relied on extra-record evidence in reaching this conclusion.

In support of their position, petitioners cite §7-512.1(g)(1) of the Public Utilities Article, which provides, as follows:

> (g)(1) If a party to a merger or acquisition of an electric company or an affiliate of an electric company is required to distribute a credit to the customers in the electric company's service territory under an agreement with the Commission in connection with the merger or acquisition, the Commission shall consider the adequacy of the current funding of the electric universal service program in providing assistance to customers who qualify under this section.

Here, the PSC's decision required Exelon to provide a $100 rate credit for Delmarva Power and Pepco residential customers.[11] As such, petitioners point out that the PSC was therefore required to consider the adequacy of the current funding of the electric universal service program. In support of their position, petitioners claim that no party presented any evidence of the adequacy of the EUSP in this case. Petitioners further claim that the PSC relied upon extra record evidence provided by the Office of Home Energy Programs ("OHEP").[12] Petitioners point out that the Office of Home Energy Program has never been a party to the instant case. Because the report was not properly before the Commission, petitioners argue that their rights to procedural due process, confrontation, and rebuttal were abridged.

Petitioners cite §3-107(2) of the Public Utilities Article, prescribing a party's ability to "conduct cross examination and submit rebuttal evidence." Petitioners cite for support the Court of Appeals' holding in *Rogers v. Radio Shack*, 271 Md. 126 (1974). In *Rogers*, a Board of Appeals relied on a report of an investigation that was not submitted into evidence. Although finding the error in *Rogers* harmless, the Court of Appeals held that with "no opportunity for cross-examination or rebuttal, fundamental fairness would preclude reliance upon the report by an administrative agency or a reviewing court." *Id.* at 129. Petitioners point to the dissent in PSC Order 86990, which notes that the report "was not discussed in our hearings or even submitted in this record."[13]

Petitioners direct the Court's attention to §3-111(b) of the Public Utilities Article, as follows:

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[11] Order No 86990 of Public Service Commission, at p. 50.
[12] Id. at 71-72.
[13] Order No. 86990, at D-28.

(b)(1) Any evidence, including records possessed by the Commission that the Commission or a party in a proceeding before the Commission desires to use, shall be offered and made part of the record.

(2) Factual information or evidence not made part of the record may not be considered in the determination of a case.

Conversely, respondents contend that the PSC properly considered the adequacy of the funding of the EUSP. Here, the PSC notes that §7-512.1(g)(1) Of the Public Utility Article governing the EUSP adequacy has not been incorporated into §6-105(g)(2)'s factors that the PSC is required to consider. The PSC goes farther to claim that this also relieves the applicants of their burden of proof under §6-105(g)(5). The PSC claims they need only have stated that the EUSP was considered and found adequate to meet the dictate of §7-512.1(g)(1). It follows, the PSC asserts, that since no party has a burden of proof, no amount of evidence can be insufficient. Further, the PSC claims the OHEP report in question was an annual report to the PSC required by law that simply meant that the PSC went above and beyond requirements to make an appropriate finding. Finally, the respondents note that petitioners failed to raise this issue before filing the instant pleadings.

For multiple reasons, the Court agrees with respondents. First, since the petitioners did not raise the issue of the extra-record evidence until the instant proceedings, it is not properly before the Court. In *Brodie v. Motor Vehicle Administration of Maryland*, 367 Md. 1, 4 (2001), the Court of Appeals held that because a challenge to an "administrative decision was based on an issue not raised before the agency, the Circuit Court should have affirmed the administrative decision without reaching the issue." Since a circuit court "may not pass upon issues presented to it for the first time on judicial review," the Court will not reach the issue of extra-record evidence as petitioners raise it for the first time in the instant proceedings. *Id.* at 4.

Even if the Court were to reach the issue of extra-record evidence, it would find no grounds for remand here. Put most simply, the error, if one occurred, was clearly harmless. The Court concurs with the PSC's position that §7-512.1(g)(1) governing the EUSP adequacy has not been incorporated into §6-105(g)(2)'s factors that the PSC is required to consider, and the PSC need only have stated that the EUSP was considered and found adequate to meet the statutory requirement. The Court notes that the language of 7-512.1(g)(1) differs from the "no harm" standard and imposes no mandatory factors for consideration. As such, the PSC need only have noted its consideration of the EUSP to satisfy 7-512.1(g)(1). Since the PSC was able to meet this statutory requirement without considering the OHEP report at all, any reliance thereupon was harmless. The Court concludes that the issue of extra-record evidence is not properly before the Court, and constitutes harmless error even if justiciable; consequently, the Court will not disturb Order 86990 on this issue.

3. Whether the Maryland Public Service Commission made an error of law or acted arbitrarily or capriciously by failing to apply the statutory requirement that the acquisition must result in no harm to customers?

People's Counsel points out that §6-105(g)(5) of the Public Utilities Article makes clear that "the applicant bears the burden of showing that granting the acquisition is consistent with public interest...". People's Counsel claims that the Order 86990 paraphrases the actual statutory requirement rather than parroting it. Specifically, Order 86990 references the transaction being "structured not to harm the utility's ratepayers.[14]" Petitioners claim this "relieved the applicants of their burden to demonstrate that that the transaction would case "no harm" to customers as required by §6-105(g)(4)[15]." Continuing, petitioner(s) finds this offensive:

> ...by rephrasing the standard in this way, the Commission is looking for some action or decision by the Applicants intended to harm customers instead of whether the change in circumstances resulting from the transaction presents a risk of harm to customers."[16]

In response, respondents suggest that under the petitioner's definition of the "no harm" standard, no proposed acquisition could ever survive scrutiny.

The Court determines that there was no impermissible burden shifting in the PSC's application of the "no harm" standard. The PSC's language here reflects that of earlier decisions considered under the same standard. A review of the exhaustive, 86 page decision, complemented by 47 pages of appendices, satisfies the Court that there was no "burden shifting" on this issue by the PSC. Indeed, the very fact that the decision lists no fewer than 46 conditions imposed upon Exelon post-merger supports the proposition that respondents did indeed bear the burden of proof below. The decision states that the "evidence demonstrates" that the affected companies "will be better utilities after the merger."[17] The plain language of the foregoing supports a conclusion that access to "better utilities" will cause no harm to consumers. The PSC clearly stated as much when it noted that the acquisition would cause "no harm" to consumers, was "consistent with the broader public interest," and meets statutory requirements.[18] It follows that the Court will not disturb the underlying PSC decision in regards to claims of impermissible burden shifting in its application of the "no harm" requirement of §6-105(g)(4).

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[14] Order 86990 at p. 33.
[15] Memorandum of Law of the Office of People's Counsel at p. 10.
[16] Id. at p.10.
[17] Order 86990 of the Public Services Commission, at p. 3.
[18] Id. at p.2.

4. Whether the Maryland Public Service Commission made an error of law or acted arbitrarily or capriciously by failing to address all of the harms resulting from the transaction that the parties raised and failing to resolve conflicting evidence on all of the harms resulting from the transaction?

Having found the PSC properly applied the "no harm" requirement of §6-105(g)(4), the Court turns to People's Counsel's related allegation that the PSC reached this conclusion in error by failing to address each of the harms raised by the opponents below. With the exception of distributed generation and renewable energy markets, already discussed at length *supra*, and the acquisition premium, to be discussed on a stand-alone basis *infra*, the Court will address each of the allegedly raised but unresolved harms.

Inadequacy of Ring Fencing Provisions

Petitioner asserts that the "ring-fencing"[19] controls imposed by the PSC in the instant case are inadequate, noting certain technicalities should Exelon or one of its subsidiaries enter bankruptcy. People's Counsel suggests there is no protection for consumers from the possible harm of an Exelon bankruptcy.

The PSC adequately discussed and considered concerns relating to the "ring fencing" of the post-merger companies. Indeed, pages 42-45 of Order 86990 are devoted to a discussion of the ring fencing provisions. The PSC recognized their duty to review the ring fencing provisions and acknowledged that existing provisions "must be expanded to ensure that no harm is realized by ratepayers."[20] The PSC went on to note that the transaction had been conditioned upon annual equity ratios for the target entities post-merger as a key ring fencing measure.[21] Further, the PSC required that Delmarva and Pepco "maintain separate existences and separate finances" as well as "separate books and records."[22] Finally, the PSC referenced the "platinum standard" ring fencing provisions of an earlier merger, calling the instant provisions "even more robust."[23]

Petitioner's specific argument regarding bankruptcy here continues its theme that Exelon may be so powerful that it could overcome the regulatory commission charged with its oversite. Additionally, at oral argument, petitioner OPC guided the Court through more than one hundred years of electrical power monopoly history. As to bankruptcy, the PSC did note that even post-merger, the target companies would maintain separate existences with "separate debt", as well as "their own corporate and debt ratings" in such an event.[24] The PSC carefully considered the ring fencing provisions and concurs with respondents in their assessment that People's Counsel's concerns regarding the bankruptcy of Exelon are "essentially an exercise in crystal ball

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[19] Roughly speaking, "ring fencing" refers to those measures necessary to keep separate publicly regulated portions of the new entity from non-regulated portions.
[20] Order 86990 of the Public Services Commission at p. 43.
[21] Id. at p. 44.
[22] Id. at p. 45.
[23] Id. at p. 44.
[24] Id at p. 45.

gazing."[25] The Court will not disturb Order 86990 in regards to inadequacy of the' ring fencing provisions.

Rate Increases/Corporate Profiteering

Petitioner OPC cites various market concerns emanating from the merger, namely that Exelon will attempt to maximize profits and attempt to raise its dividend from the revenues of Delmarva and Pepco. Finally, petitioners, while admitting that the Order states "greater economies of scale" will result in synergy savings, claim the PSC failed to address evidence of increased rates to consumers as a result of the proposed acquisition. The Commission directly addressed increased rates when it found that "Exelon has a proven track record in Maryland of realizing project synergy savings," calculating that such savings would amount to $37 million dollars.[26]

The PSC also addressed concerns that the post-merger Exelon would seek to maximize profits at the expense of the target entities. Specifically, the PSC found that the "record does not demonstrate...any evidence that Exelon will seek to loot the earnings[27] of the target companies. The PSC retains regulatory control over all entities post-merger. Since the PSC examined the record and came to the reasoned conclusion that the proposed merger will cause no harm to the public, the Court will not disturb Order 86990 in regards to increased rates or corporate profiteering.

Post-Merger Diminishment of PSC Regulation Power

People's Counsel claims that by endorsing the creation of such a large post-merger Exelon, the PSC failed to consider the harm to consumers caused by the diminishing of its own influence. People's Counsel claims it presented evidence that the merger would cause harm to customers by causing an increased risk of the effectiveness of the PSC's ability to regulate the new entity.

Conversely, the PSC claims that it addressed the allegation. The PSC notes the language of its own Order 86990, which states:

> ...BGE, Pepco and Delmarva will continue to operate separately with separate operating companies, and will be separately regulated by the Commission following the merger, we do not find that our ability to compare and contrast performance between the three operating utilities will be hampered, and therefore does not constitute a harm.[28]

Further, the PSC notes that it had before it testimony that "nothing about this merger would change the inherent authority of policy making entities in Maryland...[29]" As a result, the

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[25] PSC Answering Memo, at p. 16.
[26] Order 86990 of the Public Services Commission at p. 66.
[27] Id. at p. 43.
[28] Id. at 35.
[29] PSC Answering Memo at p. 12-13.

PSC claims it has sufficiently addressed any concerns about its own loss of regulatory power due to the instant merger.

The Court agrees that the PSC did address concerns that it would lost regulatory power by allowing the merger. Petitioner may disagree with the PSC's conclusions, but the Court concludes that there was substantial evidence to support its claim and that it is reasonable to conclude that the PSC will continue to enjoy its regulatory position post-merger. PSC Order 86990 also makes clear that the Commission considered the implications of the merger on the regulatory environment in regards to possible consumer harms. In sum, because the PSC addressed allegations of consumer harm related to its own diminished regulatory power post-merger, the Court will not disturb its decision on these grounds.

5. Whether the Commission's Failure to Consider the Acquisition Premium in Assessing the "No Harm," "Benefits," and "Public Interest" Requirements of the Public Utilities Article Constitutes an Error of Law?

People's Counsel contends that the PSC erred in failing to consider Exelon's "above book" purchase price for the shares of the companies to be acquired as a possible harm to consumers and against the public interest. The thrust of petitioner's argument here seems to be that this overpaying was not linked to the actual value of the acquired companies and thereby created a windfall to shareholders that runs *contra* to the public interest. Specifically, Mr. Hempling offered testimony that the acquisition premium represented an auction, rather than being awarded to the best performer. In Hempling's view, this alone creates a cost to ratepayers "even if it never enters the rates."[30] In reality, according to petitioner, the added value of the acquisition premium should be passed on to ratepayers, not stockholders.

On the other hand, the PSC insists that it addressed and made findings in regard to potential harms related to the acquisition premium. First, the PSC cites §6-105(g)(2)(v), requiring that "the projected allocation of any savings that are expected to the public service company between stockholders and rate payers" must be considered by the PSC prior to any acquisition. The PSC notes that its decision did just that, finding, *inter alia*, that "Exelon has a proven track record in Maryland of realizing project synergy savings," and further that such savings would amount to $37 million dollars.[31] The PSC further notes that there is no requirement that it address the acquisition premium to shareholders as a potential harm under §6-105, even though it did so.

The Court concludes that the PSC properly considered the acquisition premium as a potential harm. The PSC clearly determined that the acquisition premium would not constitute a harm to ratepayers, finding instead that allowing Exelon to consolidate would result in a multi-million dollar consumer savings. Analyzing any similar windfall to shareholders in the acquired utilities is a different task, and one not required of the Commission or this Court. Further, the PSC considered the testimony of Hempling but determined that the opponents of the merger

[30] Petitioner People's Counsel's Memo of Law at p. 28.
[31] Id at p. 66-67.

failed to "articulate concrete examples"[32] of harms resulting from the merger. As the PSC properly considered impacts to the rate-paying public resulting from the acquisition premium, the Court will not disturb decision 86990 on these grounds.

CONCLUSION

The Court has reviewed the record, the parties' pleadings, and the arguments advanced at the December 8, 2015 hearing, and found no grounds upon which to disturb Order 86990 of the Public Services Commission. The Court's scrutiny has revealed Order 86990 to be the product of substantial evidence supporting the conclusions and was clearly a rational review of the evidence by reasoning minds. As such, by way of an accompanying separate Order, petitioners' petition for judicial review will be denied, and PSC Order 86990 will be affirmed.

[32] Order 86999 of the Public Services Commission at p. 44.

CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

IN THE MATTER OF MARYLAND *

OFFICE OF PEOPLE'S COUNSEL, *et al.** **Case No: 17-C-15-019974**

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ORDER

Having reviewed the record, the parties' pleadings, and the arguments advanced at a December 8, 2015 hearing, it is this 8 day of January, 2016, by the Circuit Court for Queen Anne's County;

ORDERED, that, for the reasons discussed in the accompanying memorandum, the consolidated petitions for judicial review be, and hereby are, denied, and PSC Order 86990 is thereby **AFFIRMED**.

Thomas G. Ross, Judge