

PETITION OF: MAYOR AND CITY
COUNCIL OF BALTIMORE

*

IN THE

*

CIRCUIT COURT

FOR JUDICIAL REVIEW OF THE
DECISION OF THE MARYLAND
PUBLIC SERVICE COMMISSION

*

FOR

*

BALTIMORE CITY

IN THE CASE OF THE COMMISSION'S
INVESTIGATION INTO A RESIDENTIAL*
ELECTRIC RATE STABILIZATION AND
MARKET TRANSITION PLAN FOR
BALTIMORE GAS AND ELECTRIC
COMPANY
CASE 9052

*

Part 20

*

Case No.: 24-C-06-003976

ORDER

This matter having come before the Court on the motion of the Mayor & City Council of Baltimore to stay implementation of Public Service Commission Order No. 80764 (issued April 28, 2006), the Court having considered the memoranda of law submitted by counsel for the respective parties and the exhibits attached thereto and having heard the arguments of counsel, it is this 10th day of May, 2006, by the Circuit Court for Baltimore City, Part 20

ORDERED as follows:

1. The Public Service Commission (“PSC”) has challenged the Mayor & City Council’s (“City’s”) standing to seek judicial review of PSC Order No. 80764. Having granted the City’s motion to intervene in PSC Case No. 9052, the Court is of the view that the PSC has conferred upon the City all the rights of a party to that proceeding, including the right to seek judicial review of any order emanating from that proceeding. Md. Code Ann., Public Utility Companies Art., §§ 3-106(c) and 3-202(a). Accordingly, the

Court finds that the City has standing to bring the present action.

2. The parties opposing the City's petition for judicial review argue that this Court lacks jurisdiction to consider it in light of the requests for rehearing docketed by the PSC after the issuance of Order No. 80764. While it is true that Md. Code Ann., Public Utility Companies Art., § 3-204(c) extends the time for filing a petition for judicial review upon the application for rehearing of a Commission order, there is nothing in the statutory scheme which expressly prohibits the Court from assuming jurisdiction over a petition for judicial review while a rehearing is pending before the Commission. Under normal circumstances, notions of administrative finality and exhaustion would dictate that the Court permit the administrative agency to finalize its order before entertaining a petition for judicial review. In the present case, however, the date of July 1, 2006 looms very large and the requests for rehearing relate to a discreet issue (the Baltimore Gas and Electric Company's ("BGE's") request to preserve for a later proceeding the issue of how BGE will recoup the costs associated with the deferred payments under the "stabilization" plan), an issue not directly related to those raised by the City in the present case. It appears, therefore, that the Court must assume jurisdiction over the case before it now in order to provide the City with a meaningful judicial review. The alternative of waiting until the rehearing process has played itself out would be unduly harmful to the interests of the City residents on

whose behalf the present challenge is brought. In light of the Court's finding that the City is entitled to seek judicial review of PSC Order No. 80764, the Court establishes the following expedited schedule for the disposition of this matter:

The PSC shall file and serve the administrative record by Friday, May 12, 2006.

The City shall file its memorandum of law in support of its petition for judicial review by Friday, May 19, 2006.

Any party to this proceeding may file a memorandum of law in opposition to the City by Friday, May 26, 2006.

The Court shall conduct a hearing on the City's petition for judicial review at 2:00 p.m. on Tuesday, May 30, 2006 in Courtroom 4, Room 230 Courthouse East.

3. The City has moved for a stay under Md. Rule 7-205 to preserve the status quo during the pendency of its petition for judicial review. The request is aimed at the "external communications" from BGE directed at residential customers concerning the stabilization plan, as modified by PSC Order No. 80764. All the other parties which appeared before the Court oppose the City's request for a stay. Those parties insist that the City bore the burden of establishing evidence to convince the Court of the irreparable harm caused by the continued consumer information and the interests of the public in putting even a temporary stop to the information provided by BGE on the stabilization plan. The City asserts that there is sufficient confusion in the public domain as to the application of the stabilization plan that the Court should impose a temporary halt until these expedited proceedings are complete. The Court does not doubt that a great deal of

expense and effort will be required in order to inform the public adequately and in a timely fashion of its option to defer payments, in the event that the stabilization plan as amended in PSC Order No. 80764 ultimately takes effect. The Court is mindful also of the extremely limited time available to the parties to resolve their disputes and to serve the public interest with adequate information before the July 1, 2006 deadline. It makes little sense, however, to have the parties continue to issue public information which may or may not turn out to be accurate upon the conclusion of these proceedings. Even the competitors who appeared in this case have a need for a final and accurate statement of the stabilization plan in order to approach residential customers competitively with alternative payment plans. While it may have been preferable to have these matters resolved long ago privately among the parties, in the legislative process or before the administrative agency, the Court cannot shirk its responsibility to provide the parties with a fair proceeding, while attempting to do no additional disservice to the public. For these reasons, the Court has today adopted an expedited schedule for the management of this case and, pursuant to Md. Rule 7-205, the Court will stay the implementation of PSC Order No. 80764 to the extent that it permits implementation by any of the parties to this action with respect to initiating communications with residential customers until final disposition of this case or further Order of the Court.

/s/ Albert J. Matricciani, Jr.

ALBERT J. MATRICCIANI, JR.

Judge

cc: All Counsel of Record (via e-mail)