STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL

Paula M. Carmody, People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
410-767-8150; 800-207-4055
www.opc.state.md.us

BILL NO.: **House Bill 770**
Public Service Commission – Electric Companies - New Generation Facilities and Customer Credits

COMMITTEE: **Finance**

HEARING DATE: **April 3, 2012**

SPONSOR: **Delegate Davis**

POSITION: **Oppose**

House Bill 770 would modify the Electric Universal Service Program (EUSP), set forth in PUA § 7-512.1, to add a new section to prohibit the payment "directly to the customers" of any "credit" required in an electric utility merger case.[1] Instead the utility would be required to deposit the credit in the EUSP fund for distribution as required by the Public Service Commission. For the reasons stated below, the Office of People's Counsel recommends an unfavorable report.

The purpose of House Bill 770 is a good one, which is to provide an additional source of funds for energy assistance. However, OPC is concerned that

[1] The requirements for approval of a merger or acquisition of a gas or electric utility are set forth in PUA §6-105. The Bill was amended in the House Committee to remove a retroactivity provision, so it would not apply to the recent First Energy and Exelon mergers.

this Bill would do this in a way that limits remedies for an electric company's residential customers as a whole in a merger case.[2]

The EUSP program, established as part of the Electric Customer Choice and Competition Act, is funded by ratepayers and at times by general funds and funds from the Strategic Energy Investment Fund (SEIF) (through the Regional Greenhouse Gas Initiative (RGGI)). Over the past few years, there has been a significant increase each year (until FY 2012) in the number of applicants and recipients for energy assistance (MEAP and EUSP). At the same time, there has been a decrease in (1) federal funding for heating assistance (LIHEAP), (2) non-ratepayer funding for EUSP and (3) other federal, state and charitable funds for emergency assistance. Fortunately, lower gas (and by extension, electricity) prices and moderate winter weather have helped to modify the negative impacts of reduced funding this year.

The bill affordability problem for low-income customers is real, and OPC believes that longer-term approaches to bill affordability need to be considered.[3] To address the funding problem, House Bill 770 would require rate credits

[2] The Bill is limited to electric companies. Customers of gas companies involved in mergers could receive a rate credit if approved by the Commission.

[3] The Commission held a Public Conference (PC 27) on March 20, 2012 to hear recommendations on longer-term approaches to energy bill affordability. Prior to that conference, OPC held a statewide Summit with over 80 agency representatives to discuss approaches to bill affordability, and reported the highlights of that discussion to the Commission in addition to OPC's own recommendations.

required as a merger condition to be used for energy assistance only. The use of rate credits for all residential customers as a merger condition would be prohibited, despite the fact that rate credits are frequently used to either mitigate harm to customers resulting from a merger or acquisition, or to provide a benefit to those customers.

In 2006 the General Assembly adopted comprehensive requirements for Commission consideration of a merger or acquisition of a gas or electric company. Among other things, PUA § 6-105 requires the Commission to apply a public interest test, including benefits and no harm to customers, in deciding whether to approve the merger. As a result, in recent cases, including the First Energy/Allegheny Power merger and the Exelon/Constellation merger, the Commission has issued orders that require the payment of rate credits to *all* residential customers and separate assistance for low-income customers of the electric utility. In the case of the Exelon merger, the Commission ordered Exelon to make a payment of $113.5 million for a Customer Investment Fund, for use for low-income energy assistance and energy efficiency programs, in addition to the $112 million in rate credits to all residential customers.

By prohibiting the use of rate credits, this Bill would eliminate a common means of ensuring that *all* consumers are protected from harm, or receive benefits, from a merger or acquisition. Low-income customer concerns can and should be separately addressed in these merger cases, but the interests of all of the residential customers affected by the merger must be considered as well. The current merger law allows the Commission to do both, while the prohibition on rate credits will limit the availability of merger conditions to reduce harm or provide direct benefits to all customers.

For these reasons, OPC recommends an unfavorable report.