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BILL NO.:	**House Bill 771** **Electric and Gas Companies-Customer Account Information**
COMMITTEE:	**Economic Matters**
HEARING DATE:	**February 23, 2012**
SPONSOR:	**Delegate Davis**
POSITION:	**Oppose**

House Bill 771 requires regulated electric and gas utilities to provide certain customer specific information to competitive electricity and gas suppliers upon the written request of a supplier and without affirmative consent of the customer. The regulated utility would be required to release not only the customer's name and address, but more specifically, information regarding the customer's utility account number, load profile and twelve months of historic energy usage. The Bill indicates that this personal information would not be released to competitive suppliers "without the prior authorization of the customer." However, the Bill "deems" a customer to have consented to release of this personal information if they do not opt-out in 45 days after notice is given to them. This opt-out provision eliminates any notion of informed consent on the part of the customer. For this reason, the Office of People's Counsel (OPC) respectfully requests an unfavorable report on House Bill 771.

OPC opposes the release of personal information of residential customers by a regulated utility without affirmative consent. While the Public Service Commission previously agreed to the release of basic name, address and telephone number information, the Commission has explicitly declined to authorize release of other personal information, such as account numbers and usage information, without the express permission of customers.

Information privacy is important to consumers, even in this age of smart phones, Google and social media. With rapid technology changes, attempts to "catch-up" to these changes with consumer protection rules have been slow. This is changing, however. In the last 24 hours, we have seen the following announcements in the press:

- The majority of Attorneys General, led by Maryland's Attorney General Douglas Gansler, have sent a stern letter to the CEO of Google highlighting their concerns that Google's new privacy policies will violate consumer privacy.[1]
- The White House presented a new Consumer Privacy Bill of Rights, a blueprint for privacy protection with new information technologies.

In November 2011, the Federal Trade Commission (FTC) secured a major settlement with Facebook based on charges that Facebook had deceived consumers regarding the privacy of their information. The settlement included a requirement that Facebook obtain consumers' affirmative express consent before making any changes to override a consumer's security preferences.

[1] www.oag.state.md.us

Similar concerns about the privacy of information collected by regulated utilities can be addressed by maintaining current utility policies, which require customers' express consent before information is released to third parties, including suppliers. Consumer concerns about release of household energy usage information have been heightened in the face of deployment of so-called "smart meters," which both BGE and PEPCO are doing. Utilities collect such information for billing purposes and to ensure that customers' energy demands can be met. However, detailed usage information can reveal not just aggregate usage, but daily household usage patterns and eventually, the use of specific appliances or equipment in the household. Consumers should be able to control access to this type of information, and allow such access to third parties, including energy suppliers, only if and when they want to.

The national "smart grid" discussion has produced greater recognition of the importance of ensuring that the consumers control, in an informed and transparent way, the access to this information, particularly as we proceed with deployment of digital meters. In its Privacy Report[2], the Department of Energy (DOE) observed that "[s]tudies conducted by utilities and consumer advocates have consistently shown that privacy issues are of tremendous import to consumers of electricity" and found substantial consensus on the following privacy principles:

- Utilities should not disclose consumer information to third parties without affirmative consent of the customer, through an opt-in process that reflects and records the informed consent of the customer;

[2] DOE, Data Access and Privacy Issues Related to Smart Grid Technologies, October 5, 2010, pages 3, 14-16. *Available at*: http://www.gc.energy.gov/documents/Broadband_Report_Data_Privacy_10_5.pdf.

- The opt-in process should require the third parties to identify the purpose for access to the data, the term for the consent, and the means for customer withdrawal of that consent;
- The third parties should be required to protect the privacy and security of the information and use it only for the designated purposes.

The importance of customer privacy and control over release of customer information and data also has been recognized by national organizations of consumers, utility regulators and utilities. For example, the Critical Consumer Issues Forum (CCIF), a joint initiative of the National Association of Regulatory Utility Commissions (NARUC), the National Association of State Utility Consumer Advocates (NASUCA), and the Electric Edison Institute (EEI) (an association of regulated utilities), representatives of these groups achieved an agreement on a number of principles related to smart meters and modernization of the electricity grid, and specifically agreed:

> Utilities and utility contractors must have affirmative consent of consumers prior to disclosure of a consumer's personally identifiable energy usage data to any third party.[3]

The Maryland PSC currently requires a utility to get customer consent before releasing customer information to suppliers without express consent of the customer. Once the customer agrees to the release, however, the utility is required to provide the information to the supplier.[4] The Maryland Commission's approach is fully consistent with new rules adopted in California and Colorado, and with the Federal Trade

[3]CCIF Report, "*Grid Modernization Issues with a Focus on Consumers (July 2011),* Principle 12, p. 4 at http://www.criticalconsumerissuesforum.com/wp-content/uploads/2011/09/CCIF-Grid-Modernization-Report-July2011-Final.pdf. NARUC also passed a resolution on smart grid principles which recognized the need for consumers' informed consent and authorization for release of utility data. See page 3 at http://www.naruc.org/Resolutions/Resolution%20on%20Smart%20Grid%20Principles.pdf.

Commission's (FTC) Fair Information Practice (FIP) principles and the North American Energy Standards Board (NAESB)'s voluntary Model Business Practices for Third Party Access to Data.

A person or business needing utility service has no choice but to apply for and receive such service (at least distribution service) from the regulated distribution utility. Historically gas and electric utilities have protected the customer information and data they collect in order to provide service and bill for it. Utility consumers have no expectation that their personal information will be given or sold to other businesses by their utilities without their express permission.

Unfortunately, the "opt-out" feature of House Bill 771 removes the ability of utility consumers to knowingly control who gets access to their personal information. The "opt-out" requirement places the responsibility on the consumer to say "no" to release of information, and hampers the consumer's ability to decide whether the information should be given to a third party such as a supplier. An "opt-out" authorization provides no assurance that the authorization reflects informed consent of the customer. In contrast, existing Commission rules allow a customer to protect her information from unwanted disclosure or alternatively, allow a supplier to get access to information by giving consent. This approach provides the right balance of customer and business interests.

For these reasons, OPC recommends an unfavorable report.

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[4] COMAR 20.53.03.01 and .02.