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

COMMITTEE: **Economic Matters**

HEARING DATE: **March 15, 2012**

SPONSOR: **Delegate Davis**

POSITION: **Oppose**

House Bill 770 has two separate components. First, the Bill would modify the 2006 amendments to the electric restructuring law[1] by eliminating the Commission's authority to *require* an investor-owned electric company to "construct, acquire, or lease and operate, its own generating facilities." (Proposed amendment to § 7-510(c) (6)). Second, the Bill would modify the Electric Universal Service Program (EUSP), set forth in PUA § 7-512.1, to add a new section to prohibit the payment of any "credit to the customers" and instead require that the credit amount be deposited 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.

[1] The Electric Customer Choice and Competition Act of 1999 (the "1999Act").

Amendment to Section 7-510(c) (6)

The 1999 Act required the sale or transfer of generating facilities by the electric companies, and prohibited future ownership. In general the Act prevented regulation of the "generation, supply, and sale of electricity" with no exception even for regulatory actions to maintain reliability or to react to a failure of the electricity markets. The Act also set a July 1, 2003 limit on the electric companies' obligation to provide Standard Offer Service (SOS), unless the Commission made certain findings on an annual basis. In 2006 the General Assembly substantially modified the electric restructuring law during a special session.[2] The comprehensive changes authorize the Commission to permit *or require* electric companies to build or acquire generating facilities, require the electric companies to provide SOS indefinitely, and establish new standards for procurement of electricity for SOS customers for residential and small commercial customers. In enacting these changes, the General Assembly restored much of the regulatory authority over the electric industry that was removed by the 1999 Act. The current regulatory framework maintains retail choice for customers while allowing (or requiring) electric companies to sell electricity to their customers under SOS either from their own power plants or from electricity bought with wholesale contracts.

Since 2006, the Commission has relied on the 2006 changes to its regulatory authority to consider various options to both maintain reliability of the

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[2] Senate Bill 1 (Chapter 5, Acts 2006 Sp. Sess.)

electricity system and provide electricity supply to Maryland consumers at more reasonable cost. Most recently, the Commission "invoked" Section 7-510(c) to require the electric companies to issue RFPs for generating capacity resources (capacity and energy) in Southwest MAAC, stating that it is "in the best interests of Maryland ratepayers and may promote long-term electric reliability" in the State.[3] While the bids have been received and are being currently reviewed, the order makes clear that the Commission is not required to approve the proposals; if approved, the electric company will then enter into an agreement with the bidder.

OPC believes that the 2006 amendments provide significant benefits to Maryland electricity customers by eliminating the prohibition on utility ownership of generating plants and enhancing the authority of the Commission to order or permit certain actions to ensure the reliability of our electricity system and the availability of reasonably priced electricity. Neither the Federal Energy Regulatory Commission (FERC) nor PJM, the operator of the regional grid, have such a responsibility for Maryland and its customers. While the Commission has not used its authority to order the electric companies to build or acquire generating facilities, OPC believes that Maryland customers benefit from the availability of this "tool" in the regulatory toolbox in case it is deemed the most appropriate way to address reliability and other needs of customers in the future. House Bill 770 would remove this tool.

[3] Md. PSC Case No. 9214, September 29, 2011 Notice of Approval, p. 3.

Amendments to the EUSP Law

House Bill 770 also modifies the EUSP law to provide an additional source of funds for the EUSP Fund. The EUSP program, established as part of the 1999 Act, is funded by ratepayers and provides $37 million for direct bill assistance, arrears assistance and weatherization[4] to low-income electricity customers. At times, the ratepayer monies have been supplemented by general funds and by funds from the Strategic Energy Investment Fund (SEIF) (through the Regional Greenhouse Gas Initiative (RGGI)).

Over the past few years, we have experienced significantly higher unemployment and underemployment rates in Maryland (although the current rate is 6.5%), and not surprisingly 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, the federal funding for heating assistance (LIHEAP) has decreased, as well as the EUSP funds, and other federal, state and charitable funds for emergency assistance. Lower gas (and by extension, electricity) prices and moderate winter weather have helped to modify the potential negative impacts of a combined greater need and reduced funds (and benefits) available.

In light of these trends, OPC, as well as the Department of Human Resources and the Commission Technical Staff, have recommended to the Commission that more comprehensive approaches to energy assistance and bill

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[4] EUSP funds have not been allocated to weatherization in the past few years due to the availability of stimulus funds, RGGI funds and EmPower Maryland funds.

affordability be considered. The Commission has established a Public Conference on March 20, 2012 to hear recommendations from stakeholders.

The need for more options for low-income customers is real, and OPC agrees that it should be addressed. However, this Bill proposes to do this in a way that has potentially negative impacts for an electric company's residential customers. House Bill 770 would prohibit the use of rate credits for customers of an electric company involved in a merger. While there is frequent debate about the appropriate level of credits for customers, rate credits frequently are used to either mitigate harm to customers resulting from a merger or acquisition, or to provide a benefit to customers.

Senate Bill 1 established comprehensive requirements for Commission consideration of a merger or acquisition of a gas or electric company. Among a number of significant requirements, PUA Section 6-105 requires the Commission to apply a public interest test, including benefits and no harm to customers, in deciding whether to approve the order. 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. In both cases, additional provisions have been made for low-income customer assistance. 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. While OPC agrees that low-income customer concerns are significant, and should be separately addressed in these cases, the interests of all of the residential customers affected by the merger must be considered as well. The prohibition on rate credits can limit the availability of merger conditions to reduce harm or provide direct benefits to the customers.

Specific Comments

Section 7-512.1(g)

1. Page 3, line 30: The reference to "agreement" with the Commission is not clear. Typically, some or all parties to a merger case may enter into an agreement in a Commission case. While the PSC is not a party to the agreement, the agency will consider the agreement and any remaining issues, but still must determine if the merger, with the agreement conditions or with additional conditions, meets the requirements of the Public Service Commission law. The conditions are then set out in the PSC Order.

2. Section 3: This appears to apply the rate credit prohibition to the recently approved merger of Exelon and Constellation Energy Group in PSC Case No. 9271 and possibly the merger between FirstEnergy Corporation and Allegheny Energy, Inc. In its February 17, 2012 Order, the Commission ordered both a $100 rate credit per residential customer and the

establishment of a $113 million community investment fund. The diversion of the rate credits, intended for all BGE residential customers, to the EUSP Fund would have significant implications for the "benefits" to BGE customers from the merger. In any event it is not clear that such a requirement could be applied retroactively to alter the Exelon-Constellation merger conditions set forth in the Order.

This past Monday, March 12, 2012, Exelon Corporation completed its acquisition of Constellation Energy, after the Federal Energy Regulatory Commission issued an order approving the takeover on March 9. In addition, the Commission has issued a Notice of a March 27, 2012 Status Conference to set a procedural schedule for the $113.5 million Customer Investment Fund, to be invested by Exelon over a period of three years for energy and energy efficiency assistance for BGE customers. This Fund is in addition to the $100 rate credit to be provided to each BGE residential customer. OPC and other stakeholders will participate in that CIF process.