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OFFICE OF PEOPLE'S COUNSEL**

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**BILL NO.:** House Bill 1144  
Gas and Electric Companies –Retail Choice  
Customer Education and Protection Fund

**COMMITTEE:** Economic Matters

**HEARING DATE:** February 25, 2016

**SPONSOR:** Delegate W. Miller

**POSITION:** Support

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House Bill 1144 creates a fund to provide resources to improve the Public Service Commission's (PSC or Commission) ability to educate customers on retail electric and gas choice and to protect customers from unfair, false, misleading, or deceptive practices by electricity or gas suppliers. The fund would consist of revenue gained from civil penalties under §13-201(E)(3) of the Public Utilities Article (PUA) as well as other sources of funding. Under current law, any civil penalty imposed on a utility by the Commission pursuant to PUA §13-201 is collected and paid into the State General Fund. The bill would create an exception to that general rule for civil penalties imposed on electric or gas suppliers. Because this change would provide some benefit to the customers who have been harmed by the activities of certain energy suppliers, the Office of People's Counsel (OPC or People's Counsel) urges a FAVORABLE report.

The electric restructuring act, passed in 1999, contained a number of consumer protection provisions that were of great importance to the residential utility customers in Maryland including:

- Licensing requirements for suppliers, brokers and aggregators
- Prohibition of unfair, deceptive and anticompetitive acts and practices
- Provisions for contracting, enrollment and billing practices and procedures

In 2000, the General Assembly passed legislation to apply these general consumer protection provisions to gas suppliers. Of additional importance to residential retail customers, the 1999 and 2000 laws made clear that *all* federal and state consumer protection laws also apply to the marketing, contracting and related business activities to gas and electric suppliers.

Subsequent to the enactment of the 1999 and 2000 Acts, the Public Service Commission issued orders, followed by the adoption of regulations, related to licensing and consumer protection requirements for gas and electricity suppliers. Some consumer protection requirements apply to non-residential customers. However, the Commission's marketing and solicitation, as well as specific disclosure and contracting requirements, primarily apply to residential customers. Furthermore, the State's Consumer Protection Act's prohibitions against deceptive practices, as well as the Door to Door Sales Act and Telephone Solicitations Act do *not* apply to non-residential customers, including small businesses.

About 22% of residential electric customers<sup>1</sup> and 23%<sup>2</sup> of residential gas customers have agreements with retail energy suppliers. However, even with this level of participation,

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<sup>1</sup> Data through December 2015, "Electric Choice Enrollment Report."

<sup>2</sup> Data through September 2015, "Gas Choice Enrollment Report."

based on recently litigated cases against retail suppliers,<sup>3</sup> OPC believes that there continues to be confusion among customers about marketing and solicitation activities, and the transparency of the price and term of services being offered. These can include such things as cancellation policies and fees and monthly fees. In addition, while marketing practices can vary from company to company and from time to time, there has been an increase in door to door sales and “cold call” telephone solicitation marketing by certain energy suppliers. This type of marketing has resulted in complaints of unauthorized enrollment (slamming) and deceptive identification by the supplier agent as a utility representative. Further, while suppliers are required to comply with all of the written contract requirements of the Door to Door Sales Act and Telephone Solicitation Act, OPC knows that suppliers are not always in compliance and that customers are not always aware of their rights in the contracting process.

An additional example of the need for more robust customer education by the Commission is illuminated by the aftermath of the “polar vortex” a couple years ago. As a result of the extreme cold weather and the spikes in wholesale electricity market prices, residential consumers with variable price contracts experienced sharp increases in electricity supply charges from retail suppliers, at least doubling the per unit price. More comprehensive education, making use of the proceeds of civil penalties, might help residential customers avoid the negative experiences described above if, for example, they are informed of the high risk nature of variable price contracts.

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<sup>3</sup> See, for example, the Public Service Commission cases currently being litigated in Case Nos. 9324, 9346 (a) through (c) and numerous supplier enforcement proceedings in Massachusetts, New Jersey, Pennsylvania and other states.