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BILL NO.: **House Bill 683**
Electricity – CGES Pilot Program - Extension

COMMITTEE: **Economic Matters**

HEARING DATE: **February 14, 2019**

SPONSORS: **Delegates Clippinger, et al.**

POSITION: **Support with Amendments**

House Bill 683 provides for certain limited modifications to the Community Generating Systems (CSEG) Pilot Program, which was established by the General Assembly in 2015. Since 2015, the Public Service Commission (Commission) established a Work Group of stakeholders to engage and put forward proposals to the Commission, promulgated regulations, and overseen the implementation of the pilot program. The Work Group continues to meet to address ongoing implementation issues. The Office of People's Counsel (OPC) supported the 2015 bill with amendments that were adopted, and has actively participated in every stage of the development of the CGES pilot program. Based upon these three years of experience with the program implementation, OPC believes that the modifications in general are appropriate, and supports House Bill 683 with the attached amendments.

First, House Bill 683 would amend the current law to prohibit any cap on the maximum number of individual subscribers a CSEGS facility could subscribe. OPC supports this provision.

The CGES law only requires at least two subscribers, with no cap. However, as a result of stated concerns from the large utilities about their ability to handle a large number of individual subscribers per facility without an automated system, the Commission adopted a regulation to limit the subscriber number to 350 customers, unless the electric company develops an automated billing function. The bill effectively would repeal that cap.

Since the adoption of the CSEG regulations in July 2016, and the start of the program implementation in mid-July 2017, the Commission has granted limited waivers to a few CSEG subscriber organizations, and denied others. The large utilities have indicated ongoing work to establish the automated billing function. The limit on the number of subscribers has become a concern by certain developers, who identify it as an impediment to meeting the requirements for low and moderate income (LMI) customer participation.

While the cap was a reasonable response to initial concerns, it seems to OPC that sufficient time has passed for the necessary billing functions to be put in place. Further, elimination of the cap would remove an apparent impediment to LMI participation. If the cap removal as of the effective date is considered too precipitous, perhaps another "no later than" date could be set for the cap removal.

The Bill would extend the length of the pilot program from 3 years to 7 years, but no sooner than December 31, 2024. OPC supports this extension.

The current law provides for the pilot to end at the end of 2019. However, there have been delays in the operational dates of the CSEG facilities, and the first facilities are only now coming online in 2019. While there may be other reasons for the extension of the pilot, the fact is that the current sunset date for the pilot would result in only a limited amount of data available by the end of 2019, and any evaluation of the program would be of limited value. OPC believes that an extension is reasonable (to at least 2022), in order to capture sufficient information and data to ensure a proper assessment of community solar, as the CSEG law requires.

The Bill would add language requiring the Commission to set annual capacity limits for each program category, and further, increase the amount of capacity available each year throughout the duration of the program. OPC proposes to strike this language.

The current CSEG law directs the Commission to limit the pilot program in “such a way as to permit meaningful study of the pilot program and its results.” PUA §7-306.2(d) (15). The Commission adopted regulations to set a cap on the statewide capacity of the CSEG projects. As the Fiscal Note states, this cap translates into approximately 200 megawatts of capacity. The regulations also set annual caps on capacity for the current 3-year program, to avoid a “frontloading” of project applications in year one of the program.

House Bill 683 extends the capacity limits in conjunction with extension of the program duration. The bill expressly requires the Commission to set annual capacity limits for each program category (which is not an express requirement in the current law, although in the current regulations), and more specifically states that each annual capacity limit “**should increase**

throughout the duration of the program.” (Page, 5, lines 5-6). OPC is not certain how this impacts the scheme in the current regulations, but the import is clear – it would require the Commission to allow additional capacity beyond the original 200+ megawatts cap, which the Commission established to meet the “meaningful study” limitation in the law. The proposed language has the potential to conflict with this requirement, as it requires annual increases in capacity for the program categories, without regard for that existing limitation.

In 2015, OPC submitted testimony on the original version of House Bill 1087. In that testimony, OPC highlighted the importance of both a pilot program and a detailed study for any community solar initiative. In particular, since community solar has the potential to exponentially increase the development of solar facilities in Maryland, and has virtual net metering (currently paid at the full retail rate as rooftop solar), OPC emphasized the need for a deliberative process to “assess system reliability and integration issues and to properly evaluate the benefits and costs, individual and system-wide, with these types of programs.” The current law addresses those concerns with a pilot program limited in scale and scope to allow a “meaningful study,” as well as a detailed study requirement and report to the General Assembly.

Amendment. OPC believes that the existing size of the pilot program, established after significant vetting by the Commission, comports with that requirement and that this bill language regarding additional capacity is not necessary and may be at cross purposes with the purpose of the pilot program and study. OPC proposes the attached amendment striking that language.

The bill would change the dates for the Commission’s mandated report to the House Economic Matters and Senate Finance Committees from July 1, 2019 to Jul 1, 2022. An extension of the reporting date makes sense. The implementation of this pilot program has been

more complicated than was perhaps anticipated in 2015. The facilities participating in the year 1 queue of the program are just now coming online, and the year 2 queue only recently opened up. A 2019 report would lack the required information and data on the operation of the CSEG program, and be of little value in assessing whether to make the community solar program permanent, as required by current law.

Amendment: OPC notes that the July 1, 2022 date precedes by two years the 2024 sunset date for the program. OPC proposes a second report to the General Assembly in 2024, to capture the data from the additional years of the pilot program, as set forth in the Attachment. This would be valuable for purposes of informing the legislative decision on whether to make the program permanent, modify the program, or allow it to sunset.

With these comments, OPC recommends a FAVORABLE report on House Bill 683, if the amendments set forth in the Attachment are accepted.

**ATTACHMENT
OPC TESTIMONY ON HOUSE BILL 683
ECONOMIC MATTERS COMMITTEE
PROPOSED AMENDMENTS**

1. Amendment to §7-306.2(d)(15)(ii) (page 5)

Purpose: To preserve Public Service Commission’s authority to limit the amount of generation capacity available during the pilot in such a way that the Commission may conduct a meaningful study of the pilot program and its results.

STRIKE, Page 5, Line 4, beginning with **AND** and ending with Line 6 **PROGRAM**.

2. Amendment to Chapter 346 of the Acts of 2015 (page 5)

Purpose: To require the Public Service Commission to make a final report on the pilot program six months after the program’s sunset date.

ADD, Page 5, Line 11, “AND JULY 1, 2025”

3. Amendment to Chapter 347 of the Acts of 2015 (page 5)

Purpose: To require the Public Service Commission to make a final report on the pilot program six months after the program’s sunset date.

ADD, Page 5, Line 17, “AND JULY 1, 2025”