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.maryland.gov

BILL NO.:	**Senate Bill 1131** **Electric Cooperatives – Rate Regulation – Fixed Charges for Distribution System Costs**
COMMITTEE:	**Senate Finance**
HEARING DATE:	**March 23, 2016**
SPONSORS:	**Senator Middleton**
POSITION:	**Oppose**

Senate Bill 1131 makes a significant change to the existing ratemaking process used to establish the design of rates for utility customers served by electric cooperatives. The Bill adds a new Section 4-307, which mandates that the Public Service Commission (Commission) approve a fixed charge as proposed by an electric cooperative under certain circumstances. For the reasons stated in this testimony, the Office of People's Counsel opposes Senate Bill 1131.

A fixed charge is also referred to as a "customer charge" or facilities charge in Maryland. For residential and most commercial customers, a utility rate is divided between a monthly fixed charge and a volumetric rate (which varies by the customer's monthly usage). As part of any rate case, the Commission examines and approves a rate structure for the utility customers, and apportions the costs between the fixed charge and the volumetric rate. The typical kinds of costs allocated to fixed charges are expenses related to removing and setting meters, maintenance and reading of meters, services expense and maintenance thereof, meter reading, customer records, billing and accounting, and some portion of the distribution system, and may also include depreciation related expense associated with services and meter plant accounts.

The Bill imposes a legislatively mandated result for the Commission to follow in designing rates for utility customers and limits the Commission's discretion to minimize potentially negative rate design impacts on customers. First, the Bill defines "fixed charge" as a charge that recovers a fixed cost through a fixed dollar amount" (Bill, page 2, lines 1-2). Second, the Bill defines "fixed costs" to include "*all costs* associated with an electric cooperative's distribution system that do not vary by kilowatt hour," (Bill, page 2, lines 3-4), and lists certain examples of these costs. The electric cooperative cannot seek an increase greater than 25% of the current fixed charge within a one-year time period of the effective date of the current fixed charge. (Bill, page 2, lines 29-31). An increase in the fixed charge can be proposed in a base rate case or "a revenue-neutral rate design filing." (Bill, page 3, lines 1-3), and shall include "appropriate cost of service data" and "set a reasonable charge". (Page 3, lines 6-7). Ultimately, the Commission "*shall* approve a proposed fixed charge" if the proposal meets the requirements of the new Section (Page 3, lines 10-11).

By definition, "all" non-varying fixed costs associated with the distribution system must be accepted by the Commission in establishing fixed rates. This is contrary to the manner in which rate structures have been designed in Maryland and elsewhere. Further, the definition of fixed costs includes a variety of cost categories that either are not clear, are overly broad (e.g. direct customer expenses; administrative and general expenses), or fail to reflect that some types of costs are typically recovered only in part through fixed charges. Ultimately, this severely limits the ability of customers and their representatives, like OPC, to present analyses and arguments about what is an appropriate and reasonable rate design for the customers.

The Bill also precludes the Commission from considering other factors that it has taken into account when approving rate structures for utilities. Consistent with the decisions of a large number of Commissions in other states, the Maryland PSC has looked at other factors in addition to the cost of services studies when determining the rate structure to collect the approved revenue requirements. These factors include Maryland's public policy goal of reducing energy usage through energy efficiency and conservation, and well-recognized principles of gradualism, which were applied in recent rate cases, including those of SMECO and Choptank.[1]

The Bill is limited to electric cooperatives in the State (SMECO, Choptank Electric Cooperative). However, under Maryland law, electric cooperatives are fully regulated utilities, and their rates have been set in the same types of proceedings and under substantially similar rules as investor-owned utilities, particularly so when it comes to designing rates for customers. If regulatory decision-making authority regarding rate design is circumscribed in this manner with regard to electric cooperatives, the investor-owned utilities will no doubt seek the same limitation on the Commission's exercise of its authority.

[1] See, e.g., Choptank Rate Case 9386 (Order 86994) in 2015; .Pepco Rate Cases 9217 (Order No. 83516) in 2010 and 9336 (Order No. 86441) in 2014, Delmarva Power Rate Cases 9285 (Order No. 85029) in 2012 and 9192 (Order No. 83085) in 2009.

Rate design issues have usually been the most esoteric of issues in rate cases heard by Commissions. However, on a national level, there has been a new public focus as utilities have sought significant, and in some cases, aggressive, increases in fixed charges. Utilities have been pursuing higher fixed charges for a variety of reasons, asserting that they will lower the companies' risk of lower sales or revenues due to energy efficiency and distributed generation, weather, or economic downturns. In 2015, many of these requests were denied in full, or granted only in small part after evidentiary proceedings.[2]

These issues are of significant concern to consumer advocate organizations that are parties in these rate cases, as reflected in a recent resolution of the National Association of State Utility Consumer Advocates (NASUCA).[3] However, concerns also have been raised by non-typical parties, including those interested in energy efficiency, renewable energy and net energy metering issues. While the interests of consumer groups and environmental groups are not always aligned, there is a general agreement that increases in fixed charges need to be carefully assessed in rate proceedings, and should not be unduly or routinely increased. The primary reasons for concern include the following:[4]

- Reduced incentives for energy efficiency and conservation, as referenced in the Maryland Commission decisions
- Loss of customer control over the bill
- Impact on low-usage customers

[2] Id., p. 26-28.
[3] See NASUCA Resolution 2015-1, "*Opposing Gas and Electric Utility Efforts to Increase Delivery Service Customer Charges*" at www nasuca.org.
[4] See "*Caught in a Fix: The Problem with Fixed Charges for Electricity*" (Synapse Energy Economics, February 9, 2016), pages 14-18, at www.synapse-energy.com.

- Disproportionate impact on low-income customers
- Impact on distributed generation

Another factor to consider is the so-called Bill Stabilization Adjustment (BSA), a revenue decoupling mechanism that the Commission has authorized for BGE, Pepco, Delmarva Power and SMECO, at their request. The BSA generally makes the Utility or cooperative whole for changes in revenue arising from its electric sales. Since fixed charges provide greater revenue stability and reduced risk, the argument that increases in customer charges are needed to assure a degree of utility revenue stability carries little or no weight, particularly when this option has been authorized by the Commission.

Changes in the energy industry may introduce new factors to consider when determining a reasonable rate structure for a utility and its customers. However, these factors can be readily addressed by the Commission within the classic principles of rate design authored by James Bonbright, the author of the still-classic "Principles of Public Utility Rates."[5] Senate Bill 1131 unnecessarily limits the ability of the Commission to apply those principles, even if the bill is limited to electric cooperatives.

For these reasons, OPC respectfully requests an unfavorable report on Senate Bill 1131.

[5] "Principles of Public Utility Rates", 2nd Ed., James Bonbright et al. (1988), pages 383-384; see also "Caught in the Fix" at page 42 for a summary list of the principles.

THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES RESOLUTION 2015-1

OPPOSING GAS AND ELECTRIC UTILITY EFFORTS TO INCREASE DELIVERY SERVICE CUSTOMER CHARGES

Whereas, the National Association of State Utility Consumer Advocates ("NASUCA") has a long-standing interest in issues and policies that ensure access to least-cost gas and electric utility services, which are basic necessities of life in modern society; and

Whereas, in recent years, gas and electric utilities have sought to substantially increase the percentage of revenues recovered through the portion of the bill known as the customer charge, which does not change in relation to a residential customer's usage of utility service, through proposals to increase the customer charge or through the imposition of what have been called Straight Fixed Variable or SFV rates; and

Whereas, these gas and electric utilities have sought to justify such increases by arguing that all utility delivery costs are "fixed" and do not vary with the volume of energy supply delivered to customers, and that reductions in customer usage due to conservation and energy efficiency increase the risk of non-recovery of utility costs; and

Whereas, based on these arguments, these gas and electric utilities have proposed that a greater percentage of utility costs (distribution costs such as electric transformers and poles and natural gas mains, traditionally recovered through volumetric rates) should be collected from customers through flat, monthly customer charges; and

Whereas, gas and electric utilities' own embedded cost of service studies,[1] in fact, show that a substantial portion of utility delivery service costs are usage-related, and therefore, subject to variation based on customer usage of utility service; and

Whereas, increasing the fixed, customer charge through the imposition of SFV rates or other high customer charge structures creates disproportionate impacts on low-volume consumers within a rate class, such that the lowest users of gas and electric service shoulder the highest percentage of rate increases, and the highest users of utility service experience lower-than-average rate increases, and even rate decreases,[2] in some instances; and

Whereas, nationally recognized utility rate design principles call for the structuring of delivery service rates that are equitable, fair and cost-based; and

Whereas, SFV and other high customer charge rate design proposals, in which low-use customers would see greater than average increases, while high-use customers would experience lower-than-average increases and even decreases in their total distribution bill, are unjust and inconsistent with sound rate design principles; and

Whereas, data collected by the U.S. Energy Information Administration show that in a vast majority of regions called "reportable domains,"[3] low-income customers (with incomes at or below 150% of the federal poverty level) on average use less electricity than the statewide residential average and less than their higher-income counterparts;[4] and

Whereas, these data also show that in every reportable domain but one, elderly residential customers (65 years of age or older) use less electricity on average than the statewide residential average and less than their younger counterparts;[5] and

Whereas, these data also show that in a vast majority of reportable domains, minority (African American, Asian and Hispanic) utility customers on average use less electricity than the statewide residential average and less than their Caucasian counterparts;[6] and

Whereas, data from the U.S. Department of Energy's Residential Energy Consumption Survey for the Midwest Census region, show that natural gas consumption increases as income increases, and that higher incomes lead to occupation of larger sizes of housing units,[7] thereby increasing the likelihood of higher gas utility usage, and that natural gas usage increases as income increases in the vast majority of reportable domains throughout the U.S;[8] and

Whereas, given these documented usage patterns, the imposition of high customer charge or SFV rates unjustly shifts costs and disproportionately harms low-income, elderly, and minority ratepayers, in addition to low-users of gas and electric utility service in general; and

Whereas, because the imposition of high customer charge or SFV rates results in a smaller percentage of a customer's utility bill consisting of variable usage charges, customers' incentive to engage in conservation as well as federal and state energy efficiency programs is significantly reduced; and

Whereas, NASUCA supports the adoption of cost-effective energy efficiency programs as a means to reduce customer utility bills, help mitigate the need for new utility infrastructure, and provide important environmental benefits; and

Whereas, given that the imposition of high customer charge or SFV rates means that a smaller percentage of a customer's utility bill is derived from variable usage charges, the imposition of SFV-type rates reduces the ability of utility customers to manage and control the size of their utility bills;

Now, therefore, be it resolved, that NASUCA continues its long tradition of support for the universal provision of least-cost, essential residential gas and electric service for all customers**;**

Be it further resolved, that NASUCA *opposes* proposals by utility companies that seek to increase the percentage of revenues recovered through the flat, monthly customer charges on residential customer utility bills and the imposition of SFV rates;

Be it further resolved, that NASUCA urges state public service commissions to reject gas and electric utility rate design proposals that seek to substantially increase the percentage of revenues recovered through the flat, monthly customer charges on residential customer utility bills – proposals that disproportionately and inequitably increase the rates of low usage customers, a group that often includes low-income, elderly and minority customers, throughout the United States;

Be it further resolved, that state public service commissions should promote and adopt gas and electric rate design policy that minimizes monthly customer charges of residential gas and electric utility customers in order to ensure that delivery service rates are equitable, cost-based, least-cost, and encourage customer adoption of conservation and federal and state energy efficiency programs.

Be it further resolved that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution.

Submitted by Consumer Protection Committee

Approved June 9, 2015
Philadelphia, Pennsylvania

No Vote: Wyoming
Abstention: Vermont

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[1] *See, e.g.,* Illinois Commerce Commission Docket No. 14-0244/0225, *Peoples Gas Light & Coke Co. – Proposed Increase in Delivery Service Rates,* PGL Ex. 14.2, p. 1, lines 8, 14, 38 and 42, col. D; Illinois Commerce Commission Docket No. 13-0384, *Commonwealth Edison Company,* AG Ex. 1.0 at 12-13, *citing* ComEd Ex. 3.01, Sch. 2A, p. 13, col. Tot. ICC, line 248.

[2] ICC Docket No. 14-0224/0225, AG Ex. AG/ELPC Ex. 3.0 at 15, 25.

[3] The U.S. Energy Information Administration's Residential Energy Consumption Survey provides detailed household energy usage and demographic data for 27 states or regions of the U.S. referred to as "reportable domains."

[4] *See* Wis. Pub. Serv. Com'n Docket No. 3270-UR-120, *Application of Madison Gas and Electric Co. for Authority to Adjust Electric and Natur4al Gas Rates,* Public Comments of John Howat, National Consumer Law Center, October 3, 2014, *citing* 2009 U.S. EIA Residential Energy Consumption Survey data by "Reportable Domain" at 5-6.

[5] *Id.* at 7-8.

[6] U.S. Energy Information Administration, 2009 Residential Energy Consumption Survey.

[7] *See* ICC Docket No. 14-0224/0225, *North Shore Gas, Peoples Gas Light & Coke Company – Proposed Increase in Gas Rates*, AG Ex. 4.0 at 11-12; AG Ex. 4.1, RDC-5, p.1-3.

[8] U.S. Energy Information Administration, 2009 Residential Energy Consumption Survey.

RESIDENTIAL "CUSTOMER CHARGES" OR "FACILITIES CHARGES" OR "MINIMUM BILLS" (ELECTRIC)

Source: http://www.psc.state.md.us/electricity/electric-utility-tariffs/

UTILITIES	FIXED CHARGES
A&N Electric Cooperative	$8.00 ($15.25 for Multi-phase Service)
Baltimore Gas and Electric	$7.50
Berlin Municipal	$4.60
Choptank Electric Cooperative	$11.25
Delmarva Power and Light	$7.94
Easton	$5.00
Hagerstown	$4.11
Potomac Edison	$5.00
Potomac Electric Power	$7.39
Somerset Rural Electric Cooperative	$9.00
SMECO	$ 9.50 (Tariff still reflects $8.60 but new charge went into effect 3/1/16)
Thurmont Municipal	$ 3.00
Williamsport	$1.25 (lighting,cooking,water heating) Note: additional increments of $1.00 per month for first horsepower of connected load and $0.50 per HP in in excess of 1HP