

**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 921**
Clean Energy Jobs – Renewable Energy Portfolio
Standard Revisions

COMMITTEE: **Finance**

HEARING DATE: **March 8, 2016**

SPONSORS: **Senator Pugh *et al.***

POSITION: **Oppose ONLY as to Inclusion of New Section 7-703.1**

Senate Bill 921 seeks to achieve a number of goals including: establishing the Clean Energy Workforce Account , increasing the renewable energy portfolio standard percentages (including the percentage derived from solar energy) consistent with the State's Greenhouse Gas Reduction Plan; and altering the compliance fees for electricity suppliers that fail to comply with certain renewable energy portfolio standards. The Bill also adds a new Section 7-703.1 to the Public Utilities Article requiring that electric companies must "contract for renewable energy credits and electricity generated from emissions-free nonsolar Tier 1 renewable sources to meet a portion of an electricity supplier's renewable energy portfolio standard." The Office of People's Counsel (People's Counsel or OPC) does not oppose the changes made to the overall renewable portfolio standard percentage requirements; nor does OPC take a position on the creation and

funding of the labor and job training aspects of the Bill.¹ However, the proposed addition of Section 7-703.1 creates a number of complications for electricity commodity procurement in Maryland and has an unknown but potentially significant effect on customer rates. Additionally, the inclusion of the new section 7-703.1 does not appear to be necessary to meet the otherwise salutary purposes of the Bill. Therefore, OPC recommends that the entire Section 7-703.1 be stricken from the Bill.² If that section remains, OPC must respectfully oppose the Bill.

OPC opposes the inclusion of proposed new Section 7-703.1 primarily because we cannot at this time determine whether the requirement to enter into long term contracts for RECs and electricity generated from emissions free Tier 1 Nonsolar renewable sources will prove beneficial to residential customers. As drafted, the new section clearly appears to be meant to provide support to the onshore wind industry.³ Under the new section, the length of a contract must be for at least 10 years and may not exceed 20 years. The costs of the contract, including any utility lost revenue, may be recovered from customers through rates. However, OPC cannot determine the impact such long term contracts might have on customers at this time.⁴

Soliciting bids for electricity generated by “emissions free nonsolar Tier 1 renewable sources” under a long term contract changes the product that the utilities and suppliers must provide for customers and introduces another element of uncertainty into the retail supply market. In other words, this type of bidding and contracting may affect the price of not only the “emissions free nonsolar Tier 1” source but it may have a price effect on other sources of supply

¹ As proposed, \$40 million related to the Public Service Commission's approval of the Cove Point LNG export facility will be transferred from the Strategic Energy Investment Fund (SEIF) to two new accounts (the Clean Energy Workforce Account and the Clean Energy Business Development Account) to fund these purposes.

² Senate Bill 921 is listed as cross-filed with House Bill 1106. It should be noted that HB 1106 is not identical to Senate Bill 921 as HB1106 does not include the proposed new Section 7-703.1.

³ The definition appears to include geothermal and small hydropower projects as well, although they seem less likely as a source of a long term contract.

⁴ The Fiscal Note indicates that the Department of Legislative Services was likewise unable to determine a reliable estimate of the effect of the long term contracts. See Fiscal Note SB 921, p.9.

in the market. Those costs of supply, whether to meet the renewable portfolio standards (RPS) or the costs to procure power for standard offer service, are recovered through rates charged to residential and commercial customers. The introduction of another element of uncertainty as a result of the new Section 7-703.1 may be reflected in the market as increased risk which eventually gets reflected as increased prices.

Furthermore, as written, it appears that the onus of bidding and contracting for this supply rests solely with electric companies even though they will have to contract for a portion of an “electricity supplier’s” RPS requirements. This aspect deserves further scrutiny as there may be a constitutional issue with requiring one company (the utility) to contract for a portion of the supply needed by another, separate company (an electric supplier). Additionally, this requirement introduces unnecessary confusion and complexity into the procurement process and blurs the distinction between electric companies and energy suppliers that arose with the deregulation bill in 1999. By its very nature, the new section will change a fairly well functioning procurement process for standard offer service supply⁵ by adding this complicated bidding and contracting process for supply three years out without any real guarantee that the supply will actually be placed in service.

⁵ For the majority of customers who receive electricity supply from their electric companies, the supply procurement is subject to the requirements of Maryland law and Commission law and regulations. The Commission is required to establish a procurement process that is designed to obtain the “best price for residential and small commercial customers in light of market conditions at the time of procurement and the need to protect these customers from excessive price increases.”⁵ Since 2005, this Commission-approved process for “Standard Offer Service (SOS)” has consisted of a competitive bid solicitation process that is conducted two times a year for laddered 2-year contracts with competitive suppliers. The Commission has retained a consultant to assist in the review of the bidding process and results, and conducts a proceeding within a few days of the bid solicitation to verify that the process and result were competitive and reasonable. The Office of People’s Counsel also reviews the process and results for any pricing anomalies.

The proposed Section 7-703.1 suffers from additional problems. First, it would require the recovery of generation costs in distribution rates. Second, there is no requirement that the nonsolar facilities be in Maryland. Third, there is no contingency process if the renewable energy facility under the contract is not placed into service within three years after the date of the solicitation.

Finally, to the extent an argument can be made that the use of a long term purchased power contract for emissions free non-solar renewable resources is more cost effective than other ways of procuring that resource, such an argument needs to be carefully studied by the Public Service Commission. The proponents of a change to the procurement process should demonstrate the strength of their assumptions and demonstrate that no harm will befall customers as a result of a change to the existing standard offer service procurement process under Section 7-510(c). If the Committee is interested in an examination of the SOS procurement process (although this is not the object of the proposed 7-703.1 section), OPC proposes that the Committee ask the Public Service Commission to guide such a study and report back to the General Assembly by December 31, 2017. That should give the Commission sufficient time to draft an RFP, hire any necessary consultants, get input on data and assumptions, perform a study and draft a report.

For all the above reasons, OPC respectfully requests that Senate Bill 921 receive a favorable report only if the Bill is amended to remove Section 7-703.1.