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BILL NO.: House Bill 904  
Public Utilities - Energy Efficiency and Greenhouse Gas  
Emissions Reductions - Alterations and Requirements

COMMITTEE: Economic Matters

HEARING DATE: March 2, 2023

SPONSOR: Delegates Qi, Barve, Embry, Foley,  
Fraser-Hidalgo, Stewart, Vogel, Watson, and Wu

POSITION: Favorable

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The Office of People's Counsel ("OPC") supports House Bill 904, the Energy Savings Act, with the sponsor's amendments. In amended form, HB 904 will drive greenhouse gas ("GHG") reductions through energy efficiency, demand response, and beneficial electrification while giving the Public Service Commission authority and discretion to prevent burdensome bill increases. HB 904 will harmonize Maryland's utility-run energy efficiency and conservation programs with the Climate Solutions Now Act ("CSNA"), advance beneficial electrification in Maryland, as the Maryland Commission on Climate Change ("MCCC") has recommended,<sup>1</sup> and cost-effectively lower greenhouse gas ("GHG") emissions.

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<sup>1</sup> The MCCC has recommended that EmPOWER encourage fuel-switching from fossil fuels appliances to efficient electric appliances for three consecutive years. See MCCC, *2022 Annual Report* at 16 (citing similar recommendations from 2021 and 2022) [https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/2022%20Annual%20Report%20-%20Final%20\(4\).pdf](https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/2022%20Annual%20Report%20-%20Final%20(4).pdf). Additionally, a study by Energy + Environmental Economics (E3) for the MCCC found that electrification of residential homes (including the replacement of "almost all fossil fuel heaters with heat pumps in existing homes by 2045" and the construction of new buildings without fossil fuel-powered space and water heating) was the lowest cost pathway of the different scenarios that it modeled to meet the State's climate goals. See MCCC, *Building Energy Transition Plan: A Roadmap for Decarbonizing the Residential and Commercial Building Sectors in Maryland* at 4 (November 2021) <https://mde.maryland.gov/programs/Air/ClimateChange/MCCC/Documents/2021%20Annual%20Report%20Appendices%20FINAL.pdf>.

## Background

The EmPOWER statute was enacted in 2008 through the passage of the “EmPOWER Maryland Energy Efficiency Act.” The legislature found that “energy efficiency is among the least expensive ways to meet the growing electricity demands of the State”<sup>2</sup> and established requirements for Maryland’s gas and electric companies to develop and implement programs that promote energy efficiency and conservation. Energy efficiency provides direct benefits to customers by saving them money on their gas and electric bills and helps reduce GHG emissions from the combustion of fossil fuels, including in the generation of electricity.

The EmPOWER statute currently mandates that electric companies reach specific electricity reduction targets, measured in megawatt-hours (“MWh”). Gas companies do not have statutorily mandated targets. Similarly, programs for limited-income ratepayers,<sup>3</sup> administered by the Department of Housing and Community Development (“DHCD”), do not currently have statutorily mandated targets.

A Public Service Commission Work Group, the Future Programming Work Group, began meeting in 2021 and was charged with considering multiple proposals and topics regarding the next cycle of EmPOWER. The work group was widely attended by stakeholders, including the utilities, OPC, Commission Technical Staff, the Maryland Energy Administration, DHCD, Maryland Energy Efficiency Advocates, as well as other governmental agencies and organizations, including trade organizations, all of whom have a stake in the EmPOWER process. In the spring of 2022, the work group recommended that EmPOWER transition from MWh reduction goals to a GHG reduction goal.<sup>4</sup> The passage of the Climate Solutions Now Act of 2022, which sets GHG reductions goals for Maryland to mitigate climate change, further highlighted the importance of this transition. After the enactment of the CSNA, the Commission agreed with the work group that EmPOWER should transition to a GHG reduction target and—based on its view that it could not do so without changing the EmPOWER statute—made this recommendation to the General Assembly.<sup>5</sup>

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<sup>2</sup> Md. Code Ann., Pub. Util. § 7-211(b)(1).

<sup>3</sup> For purposes of EmPOWER programs, limited-income households are currently considered to be those that earn 250% or less of the Federal Poverty Level on an annual basis.

<sup>4</sup> Maryland Public Service Commission, Public Utility Law Judge Division, *Future Programming Work Group Report* at 1 (April 15, 2022). This report can be found at <https://webpsc.psc.state.md.us/DMS/maillogsearch> by performing a search for MailLog number 240203.

<sup>5</sup> Public Service Commission of Maryland, *Recommendations on the Future of EmPOWER Maryland* at 5 (July 1, 2022) [https://www.psc.state.md.us/wp-content/uploads/EmPOWER-Recommendations-to-General-Assembly\\_Final.pdf](https://www.psc.state.md.us/wp-content/uploads/EmPOWER-Recommendations-to-General-Assembly_Final.pdf).

## Comments

HB 904 replaces the current electricity savings targets (expressed as reductions of MWh) in section 7-211 of the Public Utilities Article (the “EmPOWER statute”) with GHG reduction targets. Specifically, HB 904 directs the Commission to: (1) establish a statewide greenhouse gas reduction target for electric and gas company programs designed to achieve average annual reductions of 1.8 percent from 2024 to 2031, or a cumulative reduction of 14.4 percent, and (2) determine an individual GHG reduction target for each electric and gas company for each EmPOWER cycle. While converting energy savings targets to GHG reduction targets is not a straightforward task, based on the information available at this time, our analysis suggests that the 1.8 percent GHG target in HB 904 will require roughly the level of EmPOWER spending required to meet the energy savings targets in current law.<sup>6</sup>

Most of the other changes that HB 904 makes to the EmPOWER statute re-orient electric and gas company efficiency programs toward GHG reductions and establish the necessary mechanisms to implement, achieve and measure progress toward those targets. For example, following a recommendation in the MCCC’s 2021 *Building Energy Transition Plan*,<sup>7</sup> the bill enables the inclusion of beneficial electrification programs in electric company plans, along with energy efficiency and demand response programs. The electricity savings goals currently in the EmPOWER statute do not facilitate beneficial electrification because beneficial electrification programs reduce greenhouse gases through the decreased use of fossil fuels while increasing electricity use.

HB 904 also prohibits gas and electric companies from continuing to offer incentives for fossil fuel appliances, except in commercial and industrial settings where there is no viable electric alternative. Ending such incentives would be consistent both with a 2022 MCCC recommendation<sup>8</sup> and with OPC’s recent technical report on the financial implications of Maryland’s climate goals for the State’s gas utilities and its petition filed with the Commission for near-term actions and long-term planning for Maryland’s gas companies.<sup>9</sup> Other jurisdictions are taking similar action. For example, last year the District of Columbia directed its Sustainable Energy Utility to cease offering

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<sup>6</sup> One of the key determinants of the cost to achieve a certain amount of savings – whether MWh or tons of GHG – is the proportion of savings achieved in limited income households. For estimating rough equivalency, we assumed status quo for limited income savings; however, we note this is the subject of separate legislation.

<sup>7</sup> *Building Energy Transition Plan at 5* (November 2021).

<sup>8</sup> MCCC, *2022 Annual Report* at 16 (citing a similar recommendation from 2021)  
[https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/2022%20Annual%20Report%20-%20Final%20\(4\).pdf](https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Documents/2022%20Annual%20Report%20-%20Final%20(4).pdf).

<sup>9</sup> Maryland Office of People’s Counsel, *Petition of the Office of People’s Counsel for Near-Term, Priority Actions and Comprehensive, Long-Term Planning for Maryland’s Gas Companies* at 40 (Feb. 9, 2023)  
<https://opc.maryland.gov/Gas-Planning-Petition>.

incentives for natural gas appliances, regardless of the energy efficiency rating of those appliances.

HB 904 includes a provision regarding the counting of GHG savings on a lifecycle basis, an important consensus recommendation by the Work Group that will prioritize total GHG savings over time, not merely short-lived savings.<sup>10</sup> Additionally, the bill establishes a minimum level (85 percent) of EmPOWER-funded, behind-the-meter measures that will be used to achieve the GHG abatement goal. This is consistent with EmPOWER’s longstanding emphasis on encouraging customers to take action on their side of the utility’s meter—that is, within their homes or businesses rather than on the utility side of the meter—through rebate and other programs.

The bill maintains the provision in current law to authorize “reasonable financial incentives” for utility companies in “appropriate circumstances” and also authorizes the Commission to impose penalties in “appropriate circumstances,” such as utility under-performance. This important balancing of rewards and penalties is symmetrical and therefore fair to both customers and utilities.

HB 904 also improves EmPOWER by (i) leveraging any federal and state rebates and tax credits for electrification through customer promotional and educational programming, (ii) using the cost-effectiveness test developed by the Future Programming Work Group<sup>11</sup> and approved by the Commission,<sup>12</sup> and (iii) clarifying the standards the Commission must use to evaluate and approve, disapprove, or modify utility EmPOWER plans. The bill should enable Maryland both to reduce emissions and improve energy affordability, and do so in a transparent, verifiable manner. Finally, planning for the 2024-26 EmPOWER cycle is already underway at the Commission, and passage of HB 904 would provide important, timely guidance for the Commission, electric and gas companies, and customers concerning greenhouse gas reduction targets and program design.

**Recommendation:** OPC requests a favorable report from the Committee on HB 904 with the sponsor’s amendments.

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<sup>10</sup> *Future Programming Work Group Report* at 9 (April 15, 2022).

<sup>11</sup> *Future Programming Work Group Report* at 49.

<sup>12</sup> Maryland Public Service Commission, *Order No. 90261* at 33 (June 15, 2022). This order can be found at <https://webpsc.psc.state.md.us/DMS/maillogsearch> by performing a search for MailLog number 241115.