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BILL NO.:	Senate Bill 905 Electric Companies, Gas Companies, and the Department of Housing and Community Development – Energy Efficiency and Conservation Plans
COMMITTEE:	Education, Energy, and the Environment
HEARING DATE:	March 14, 2023
SPONSOR:	Senator Feldman
POSITION:	Favorable with amendments

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The Office of People's Counsel (OPC) supports the intent of Senate Bill 905 to harmonize the next cycle of Maryland's utility-run energy efficiency and conservation programs with the Climate Solutions Now Act ("CSNA"). OPC has a number of concerns with the bill as drafted, however. Those concerns, include, among others, that the bill changes the EmPOWER cost recovery mechanisms in ways that will dramatically increase customer costs, eliminates the energy savings targets currently in the EmPOWER statute[1] without setting statutory greenhouse gas ("GHG") reduction targets, fails to incorporate existing elements of the EmPOWER statute, and changes the current EmPOWER statute to mandate that utility customers pay the utilities financial incentives for merely complying with their performance obligations. OPC therefore asks the Committee to adopt the important and necessary changes discussed below.

[1] Md. Code Ann., Pub. Util. Art. ("PUA") § 7-211. This statute is referred to as the "EmPOWER statute," and the suite of programs that have been developed to implement this statute are referred to as "EmPOWER programs." EmPOWER programs operate in three-year cycles, with a new cycle beginning on January 1, 2024.

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"[2] 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[3], 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 (FPWG), 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.[4] 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.[5]

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[2] PUA § 7-211(b)(1).

[3] 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.

[4] 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.

[5] 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

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Comments

Although SB 905 includes the recommended transition to a GHG reduction target, it lacks multiple provisions that would contribute to actual achievement of GHG reductions and includes provisions that are detrimental to customers.

OPC has identified the following non-exhaustive list of specific concerns with SB 905:

- SB 905 removes the energy savings targets in current law without adding a minimum statutory GHG reduction target. We concur with the recommendations of the FPWG that the EmPOWER statute should change the current energy savings targets to GHG reduction targets. For implementation purposes, a minimum GHG target is preferable because it is more readily adaptable to electrification, as reflected in the work group recommendation. A study by Energy + Environmental Economics ("E3") for the Maryland Commission on Climate Change ("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 to meet the State's climate goals.[6]

- SB 905 does not include language requiring the measurement of GHGs on a gross lifecycle basis, which is contrary to a consensus recommendation made by the Commission's Work Group.[7]

- SB 905 does not require a minimum level of EmPOWER-funded, behind-the-meter measures and programs that will be used to achieve the GHG abatement target. Even Commission Technical Staff recommends a minimum of 80 percent,[8] while OPC has recommended 85 percent.

- SB 905 does not require the gas companies, the electric companies, or DHCD to promote fuel-switching from fossil fuels to electric. The promotion of fuel-switching is consistent with E3's analysis for the MCCC.[9] The

[6] 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/Commission/Building%20Energy%20Transition%20Plan%20-%20MCCC%20approved.pdf

[7] *Future Programming Work Group Report* at 9.

[8] Maryland Public Service Commission, Public Utility Law Judge Division, *Future Programming Work Group Report Phase II - Goal Structure and DHCD-Specific Greenhouse Gas Abatement Goal* at 8 (January 13, 2023). This report can be found at https://webpsc.psc.state.md.us/DMS/maillogsearch by performing a search for MailLog number 300881.

[9] *Building Energy Transition Plan* at 4.

Commission has thus far declined to require fuel-switching as part of the utility EmPOWER programs.

- SB 905 does not end incentives for gas appliances through EmPOWER. The MCCC has made this recommendation two years in a row.[10] The Commission has refused to end gas appliance incentives despite its authority to do so.

- SB 905 authorizes base rate recovery of EmPOWER costs, which would be a departure from current practice that would, as the PSC itself recently stated, cause "dramatic" increases in customer rates and reduce transparency "to the benefit of no one."[11] As a general matter, OPC opposes the recovery of EmPOWER charges through utility base rates for multiple reasons, including the significantly increased cost impacts to pay the utility's rate of return, the regressive nature of funding policy objectives through utility customer rates, the availability of lower-cost alternatives, the extension of the utility monopoly into the competitive financial lending business, and the reduced transparency for customers.

- SB 905 would require "reasonable financial incentives" for the utilities, including "the authorized rate of return." This requirement for financial incentives would be a significant change to the current EmPOWER statute, which only authorizes the Commission to provide "reasonable financial incentives" in "appropriate circumstances" without defining the form of those incentives. Requiring financial incentives for utilities would prove costly for customers. The utilities have performance obligations and generally should not be paid "incentives" for simply meeting their obligations under the law. In any case, any incentives should be subject to the Commission's discretion, both as to whether they are appropriate and as to the appropriate level, as under current law.

- SB 905 is asymmetrical in its incentive language; it would reward utilities regardless of their performance—imposing costs on customers—but it fails to benefit customers by penalizing the utility for poor performance. Any financial incentive language should also authorize or direct the Commission to impose penalties for poor performance. Where performance metrics are used to incentivize performance, the standard practice is to establish a range of performance for which no incentives or penalties are applied and above which

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[10] 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

[11] Commission Order No. 90456 (Dec. 29, 2022).

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the utility may obtain incentives and below which the utility is penalized. That allows for symmetry between the utility's investors and utility customers, depending on how the utility performs.

- SB 905 eliminates the use of the Total Resource Cost Test ("TRC") in comparing Maryland program targets with the results of those in other jurisdictions and requires instead the use of the undefined "Primary State Jurisdiction–Specific Test, as developed, updated or approved by the Commission" for cost-effectiveness. OPC supports the use of the "Primary Maryland Jurisdiction-Specific Test" for cost-effectiveness testing, which was developed by the Future Programming Work Group and previously approved by the Commission.

In sum, although OPC supports the intent to reform the EmPOWER program during its next cycle, we are concerned that, as drafted, SB 905 would be costly for customers and would not be effective in meeting the very GHG abatement goals that the bill prescribes. OPC, therefore, recommends the following changes:

- **Greenhouse gas reduction targets**. Rather than giving the Commission total discretion regarding GHG reduction targets, SB 905 should require the Commission to establish targets for electric and gas companies that will, starting in 2024, achieve no less than the amount of GHG reductions that would result from: (1) achievement of the current electricity savings targets in the EmPOWER statute, and (2) continued achievement of the current gas savings targets set by the Commission. OPC's calculations indicate that this means GHG reductions averaging 1.8 percent annually. GHG reductions should be measured on a lifecycle basis using marginal emissions rates.

- **Behind-the-meter measures and programs**. SB 905 should require at least 80 percent of the GHG emissions reductions achieved by electric and gas company plans come from behind-the-meter programs and services. This is the minimum behind-the-meter percentage recommended by the Commission's technical staff in ongoing EmPOWER proceedings at the Commission; OPC previously recommended a minimum of 85 percent.

- **Beneficial electrification**. While OPC believes that the EmPOWER statute should be interpreted now as accommodating beneficial electrification, SB 905 should require that EmPOWER plans include beneficial electrification programs and services, and that electric companies, gas companies, and the DHCD be required to promote fuel-switching from fossil fuels to electric. However, SB 905 should prohibit GHG emissions reductions associated with electric vehicle (EV) adoption and utility EV programs to count toward achievement of GHG reduction targets.

- **Incentives for gas appliances**. SB 905 should be amended to end incentives for gas appliances through EmPOWER.

- **Utility cost-recovery, financial incentives, and penalties.**
    - SB 905 should be amended to protect ratepayers by prohibiting the recovery of EmPOWER costs through utility base rates.
    - SB 905 should be amended to remove the provision — not found in the current EmPOWER statute — that would *require* "reasonable financial incentives" for the utilities, including "the authorized rate of return." The Commission should be authorized to provide "reasonable financial incentives" in "appropriate circumstances", as is the current practice.
    - SB 905 should be amended to increase fairness to ratepayers by specifically allowing the utilities to be subject to penalties for failing to meet their performance obligations under the law.

- **Cost-effectiveness.** SB 905 should be amended to allow for the continued use of the Total Resource Cost Test ("TRC") for purposes of comparisons with other jurisdictions and should also require the use of the "Primary Maryland Jurisdiction-Specific Test" for cost-effectiveness testing, which was developed by the Future Programming Work Group and previously approved by the Commission.

OPC respectfully requests that the Committee adopt these recommended changes to SB905, which are critical to ensuring that the bill harmonizes the EmPOWER program with the CSNA, advances beneficial electrification in Maryland, and cost-effectively lowers greenhouse gas GHG emissions.

Recommendation: OPC requests a favorable Committee report on SB 905 as amended.

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