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BILL NO.: House Bill 864 – Energy Efficiency and Conservation Plans

COMMITTEE: Economic Matters

HEARING DATE: February 29, 2024

SPONSORS: Delegates Crosby and Qi

POSITION: Favorable – with amendments

The Office of People's Counsel ("OPC") supports House Bill 864 with amendments. HB 864 makes important updates to the EmPOWER program and establishes greenhouse gas ("GHG") reduction goals for these important programs administered by the Department of Housing and Community Development ("DHCD") and the electric and gas utilities.

HB 864 includes measures that advance the interests of residential utility customers. It ensures that EmPOWER remains a program that primarily serves residential customers through "behind-the-meter" projects; it ensures the elimination of the massive unamortized balance from which the utilities have been profiting at great cost to customers; and it mandates moving to a full expensing model for EmPOWER programs that will generate significant customer savings every year forward.

In addition to requiring greenhouse gas reductions through energy efficiency, conservation, and demand response, HB 864 also requires beneficial electrification measures. With these changes, EmPOWER can help Maryland meet its climate goals while continuing to deliver energy bill savings to utility ratepayers. The bill's establishment of GHG reduction goals will remove barriers to both electrification and the prioritization of fuel-switching. It is imperative that the EmPOWER statute evolve to meet the needs of utility customers while consistent with Maryland's climate policy goals.

OPC has sought to coordinate with the Maryland Public Service Commission (“Commission”) and other state agencies on potential amendments to improve and clarify aspects of the bill. OPC looks forward to working with the sponsors on these improvements.

Background

The EmPOWER statute was enacted in 2008 through the passage of the 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”¹ and established requirements for Maryland’s 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 also helps reduce greenhouse gas emissions from the generation of energy.

The EmPOWER statute currently mandates that electric companies reach specific energy savings targets, measured in megawatt-hours (“MWh”). Gas companies do not have statutorily mandated targets. Until last year, programs for limited-income ratepayers,² administered by the Department of Housing and Community Development (“DHCD”), did not have statutorily mandated targets. This changed last year with the passage of HB 169. DHCD now has statutorily mandated energy savings targets.³

A Public Service Commission Work Group, the Future Programming Work Group, began meeting in 2021 and was charged with evaluating multiple 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

¹ Md. Code Ann., Pub. Util. § 7-211(b)(1).

² For purposes of DHCD’s EmPOWER programs, limited-income residential households are currently considered to be those that earn either 250% or less of the Federal Poverty Level (“FPL”) on an annual basis, or 80% of Area Median Income (“AMI”), whichever is higher (or whichever was used to qualify the individual through another, outside program). For multi-family buildings, the income threshold is 80% AMI. More information is available here: <https://dhcd.maryland.gov/Residents/Pages/lieep/default.aspx>.

³ Md. Code Ann., Pub. Util. § 7-211(b)(1).

⁴ Maryland Public Service Commission, Public Utility Law Judge Division, *Future Programming Work Group Report*, 1 (April 15, 2022). This report can be found at

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—recommended that the General Assembly change the target.⁵

The Commission released its GHG Abatement Potential Study in December 2022.⁶ The study demonstrated that EmPOWER programs have enormous potential to reduce, in a cost-effective manner, GHG emissions in Maryland.⁷ The study further demonstrated a significant opportunity for cost-effective fuel-switching from fossil fuel end-uses to efficient electric heat pump technology.⁸

Legislation that would have transitioned the EmPOWER program to a GHG reduction goal failed to pass in the 2023 legislative session.

The Commission ordered the EmPOWER utilities to model various levels of GHG reductions, based on the results of the GHG Abatement Potential Study. After accepting stakeholder comments and holding a hearing, the Commission ordered revised goals for the EmPOWER utilities on December 29, 2023.⁹ However, as noted above, the EmPOWER statute’s current energy savings goal continues to stymie efforts, in part, to prioritize fuel-switching from fossil-fuel end uses to efficient electrification under EmPOWER.

Comments

OPC strongly supports HB 864’s goal of updating the EmPOWER statute to advance customer interests and ensure consistency with Maryland’s climate goals.

The bill will advance the interests of residential utility customers. For

<https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 240203.

⁵ Public Service Commission of Maryland, *Recommendations on the Future of EmPOWER Maryland*, 5 (July 1, 2022) https://www.psc.state.md.us/wp-content/uploads/EmPOWER-Recommendations-to-General-Assembly_Final.pdf.

⁶ Applied Energy Group, *Maryland GHG Abatement Study – Final Results* (Case No. 9648, December 8, 2022). This document can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 300426.

⁷ Maryland Office of People’s Counsel, *Office of People’s Counsel Comments on The Greenhouse Gas Abatement Potential Study* (Case No. 9648, December 30, 2022) at 2. This document can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 300687.

⁸ *Id.* at 2.

⁹ Maryland Public Service Commission, *Order No. 90957* (Case No. 9705, December 29, 2023). This order can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 306928.

example, HB 864 requires the inclusion of beneficial electrification in plans to achieve GHG reductions. Requiring beneficial electrification programs will save customers money on their utility bills. 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 fuels—was the lowest cost pathway to meet the State’s climate goals.¹⁰ The E3 study is confirmed by analyses by OPC and other entities.

HB 864 also conforms the EmPOWER program to the recommendations made by EmPOWER’s Future Programming Work Group, described above, to change the existing statute’s energy savings goals to greenhouse gas reduction goals. This change is important to supporting electrification that is beneficial to residential customers, as well as the State’s efforts to meet its climate goals. Electrification can cause electric consumption to rise—even as gas consumption declines—while lowering customer bills and reducing overall GHG emissions.

It is important that EmPOWER continues to focus on primarily behind-the-meter programs. The GHG Abatement Potential Study focused entirely on behind-the-meter programs and found significant opportunities for GHG reductions.¹¹ HB 864 would require that at least 80 percent of the GHG emissions reductions that count towards the utilities’ goal achievement come from behind-the-meter programs, which OPC supports.

HB 864 protects utility customers by requiring the paydown of EmPOWER’s unamortized balance—on which the utilities currently earn returns—and instead, allowing for reasonable financial performance incentives and penalties for investor-owned utilities. The utilities currently earn returns without regard for their goal achievement. Similarly, HB 864 requires a transition to a full expensing model to avoid the continued accrual of the unamortized balance.

While we support the overall bill, we have identified various improvements. For example, we are concerned that the 1.8 percent annual reduction assumes an improper baseline. We suggest language that would have the Commission establish the GHG targets

¹⁰ MCCC, *Building Energy Transition Plan: A Roadmap for Decarbonizing the Residential and Commercial Building Sectors in Maryland*, 4 (November 2021) <https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Commission/Building%20Energy%20Transition%20Plan%20-%20MCCC%20approved.pdf>

¹¹ Maryland Office of People’s Counsel, *Office of People’s Counsel Comments on The Greenhouse Gas Abatement Potential Study* (Case No. 9648, December 30, 2022) at 11. This document can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 300687.

that correspond to the energy savings targets in the Climate Solutions Now Act. We also have suggestions for addressing the transition to the new targets from the current three-year cycles of EmPOWER. Our office is engaged with the Commission and others on these and other potential improvements and commits to working with the bill sponsor.

Recommendation: OPC requests a favorable report from the Committee on an amended version of HB 864, which would encompass the amendments described above and the amendments that have been agreed upon by multiple state agencies, including OPC.