

DAVID S. LAPP
PEOPLE'S COUNSEL

WILLIAM F. FIELDS
DEPUTY PEOPLE'S COUNSEL

JULIANA BELL
DEPUTY PEOPLE'S COUNSEL

————— **OPC** —————
OFFICE OF PEOPLE'S COUNSEL
State of Maryland

6 ST. PAUL STREET, SUITE 2102
BALTIMORE, MARYLAND 21202
WWW.OPC.MARYLAND.GOV

BRANDI NIELAND
DIRECTOR, CONSUMER
ASSISTANCE UNIT

CARISSA RALBOVSKY
CHIEF OPERATING OFFICER

BILL NO.: Senate Bill 0756 – Electric Companies, Gas Companies, Gas and Electric Companies, and Water Companies – Periodic Audits

COMMITTEE: Education, Energy, and the Environment

HEARING DATE: February 20, 2025

SPONSOR: Senator A. Washington

POSITION: Favorable with Amendments

The Office of People’s Counsel (“OPC”) supports, with amendments, Senate Bill 756, which would require all of Maryland’s gas, electric, and water utilities to submit audits regarding utility operations, customer usage, and customer billing to the Maryland Public Service Commission (“PSC”) every three years. OPC’s recommended amendments to SB 756 would help ensure that the audits remain independent and provide regulators with the opportunity to thoroughly review the costs allocated to Maryland utilities—and paid by Maryland ratepayers—by utility holding companies or their affiliates.

First, OPC recommends modifying SB 756 to specifically require that the audits be done by either members of the PSC’s staff, or by an independent contractor supervised by the PSC’s staff, rather than being done by the utility company itself and submitted to the PSC as the legislation currently requires. This change would help ensure that the auditors are independent of the utility company, keeping the resulting audit impartial and focused on the public interest.

Second, OPC recommends that the audits be modified to specifically require a review of the allocation of costs from a utility holding company or its affiliate to the Maryland utility itself. Most of Maryland’s major gas and electric distribution utilities are owned by large multistate or multinational holding companies. Baltimore Gas and Electric (“BGE”), Potomac Electric Power Company (“Pepco”), and Delmarva Power

and Light are all owned by Illinois-based Exelon; Potomac Edison is owned by Ohio--based FirstEnergy Corporation; Washington Gas Light Company is owned by the Canadian company AltaGas; and Columbia Gas of Maryland is owned by Indiana-based NiSource, Inc. All of these holding companies own multiple separate distribution utilities across different states. Being part of a larger holding company means that certain of the local distribution utility's corporate functions—such as accounting, cybersecurity, legal, and human resources, among others—often are handled by a holding company affiliate that bills each of the local utilities for services, typically by a distinct entity known as a corporate services company. To pay for the cost of services provided by the corporate services company, each utility company is allocated a certain percentage of the corporate services company's costs. These allocated costs are part of each utility's total cost of service. For example, Exelon's Business Services Company provides corporate services to BGE. In the recent Case No. 9692, BGE estimated that in 2025, it would be allocated over \$206 million in costs from Exelon's Business Services Company.¹

The PSC sets Maryland utility rates in litigated rate cases to pay for the utility's total cost of service, along with the utility's rate of return (or profit).² While each utility's costs are subject to review in a rate case, most rate cases are statutorily required to be completed within 210 days after the utility files its rate case application.³ Reviewing corporate services company cost allocations is a complicated process. That review includes evaluating the prudence of the actual costs incurred by the corporate services company, as well as the methodology by which those costs are allocated to the individual utility. As rate cases contain myriad other issues warranting investigation, it is often difficult, if not impossible, to thoroughly review corporate services company costs within the timeline of a rate case. Additionally, utilities sometimes argue that the PSC cannot have access to documentation underlying service company costs. In the most recent Potomac Edison rate case, Case No. 9695, Potomac Edison argued that documentation providing details about costs allocated to Maryland ratepayers was not in its custody or control but instead held by Potomac Edison affiliates—whether FirstEnergy Services Corp., corporate parent FirstEnergy, or others—and, thus, refused to provide it.⁴ The

¹ Case No. 9692, Direct Testimony of BGE witness David M. Vahos at 48 and 55 (Feb. 17, 2023). Accessible under docket no. 1 at: <https://webpsexb.psc.state.md.us/DMS/case/9692>.

² Technically, the PSC sets rates which provide the utility a reasonable opportunity to recover its costs and earn a reasonable return on investment. This means that rates are set at such a level that the utility recovers its costs and earns a reasonable return, provided the utility appropriately manages its costs.

³ Public Utilities Article (“PUA”) § 4-203(a)(1) requires utilities to provide 30 days’ notice of a new rate going into effect; PUA § 4-204(b)(2)(i) allows the PSC to suspend the implementation of a new rate for an additional 180 days, while PUA § 4-204(b)(2)(ii) allows the PSC to extend the suspension for an additional 90 days if the application is for an alternative form of ratemaking, such as a multi-year rate plan.

⁴ See Application of Potomac Edison Company for Adjustments to its Retail Rates for Electric Energy Distribution, *Post-Hearing Initial Brief of the Maryland Office of People's Counsel* (Md. Pub. Serv.

audits required by SB 756 present an important opportunity to review such costs, outside the time constraints of a rate case. As such, OPC supports SB 756 with the following changes, also outlined in the attached draft amendments:

- replacing subsection 7-108(a) to define “affiliate”;
- moving the triennial audit requirement to subsection 7-108(b) and delineating that it be provided by, or supervised by, PSC staff; and
- making clear in a revised section 7-108(c) that any such audit shall include an audit of costs allocated to the utility.⁵

As modified, SB 756 will help regulators—and other parties such as OPC—review and understand the currently opaque area of allocated corporate costs and ensure that Maryland ratepayers are not paying more than their fair share.

Recommendation: OPC requests a favorable Committee report on SB 756, with the amendments described above and attached.

Comm’n, CN 9695) at 26 (“FE and FESC provide the information of their choosing for regulatory purposes and then deflect a proper vetting of that information by having PE argue that the information sought is outside of its custody and control.”)

⁵ Under OPC’s proposed amendments, section 7-108(c) in the legislation as drafted would become section 7-108(d).

(A) IN THIS SECTION, “AFFILIATE” HAS THE MEANING STATED IN § 7-501 OF THIS ARTICLE.

(AB) COMMENCING ON OR BEFORE DECEMBER 31, 2026, THE COMMISSION SHALL ESTABLISH PROCEDURES TO PROVIDE FOR AN AUDIT EVERY THREE YEARS, PERFORMED BY COMMISSION STAFF, OR AN INDEPENDENT AUDITOR SUPERVISED BY COMMISSION STAFF AND SELECTED BY THE UTILITY FROM A LIST PROVIDED BY THE COMMISSION FOR THE AUDIT, AND EACH DECEMBER 31 EVERY 3 YEARS THEREAFTER, EACH ELECTRIC COMPANY, GAS COMPANY, GAS AND ELECTRIC COMPANY, AND WATER COMPANY SUBMIT TO THE COMMISSION AN AUDIT OF THE UTILITY OPERATIONS, CUSTOMER USAGE, AND CUSTOMER BILLING OF EACH ELECTRIC COMPANY, GAS COMPANY, GAS AND ELECTRIC COMPANY, AND WATER COMPANY.

(BC) THE AUDIT SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE IMMEDIATELY PRECEDING 3 YEARS:

...

(5) A DESCRIPTION OF AND ANY CHANGES TO THE COMPANY’S BILLING PRACTICES AND POLICIES, INCLUDING ANY FORMS USED; AND

(6) A REVIEW OF THE PRUDENCE OF COSTS ALLOCATED TO THE COMPANY BY AN AFFILIATE; AND

(67) ANY OTHER INFORMATION THE COMMISSION REQUIRES.

...