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BILL NO.:	House Bill 1035 Electric Companies, Gas Companies, and the Department of Housing and Community Development – Energy Efficiency and Conservation Plans
COMMITTEE:	Economic Matters
HEARING DATE:	March 2, 2023
SPONSOR:	Delegate Wilson
POSITION:	Unfavorable

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The Office of People's Counsel (OPC) opposes House Bill 1035. The bill eliminates the energy savings targets currently in the EmPOWER statute[1] without setting statutory greenhouse gas ("GHG") reduction targets, fails to make important improvements to 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.

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

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[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.

[2] PUA § 7-211(b)(1).

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, 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]

Comments

Although HB 1035 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 the following specific concerns with HB 1035:

- HB 1035 removes the energy savings targets in current law without adding a minimum statutory GHG reduction target, giving the Commission sole discretion to establish a target. In our view, the EmPOWER statute should contain a baseline minimum of either energy savings or GHG reductions. For

[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

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]

- HB 1035 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]

- HB 1035 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.

- HB 1035 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 Commission has thus far declined to require fuel-switching as part of the utility EmPOWER programs.

- HB 1035 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.

- HB 1035 authorizes base rate recovery, subject to Commission approval. As a general matter, OPC opposes the recovery of EmPOWER charges through utility base rates for multiple reasons, including the significantly increased cost

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[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.

[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

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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.

- HB 1035 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.
- HB 1035 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 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.

In sum, we are concerned that HB 1035 would be costly for customers and would not be effective in meeting the very GHG abatement goals that it prescribes.

Recommendation: OPC requests an unfavorable Committee report on HB 1035.