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OFFICE OF PEOPLE'S COUNSEL**

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BILL NO.: **House Bill 1090**
Public Utilities – Consumer Relations – Tenant
Payment of Landlord Utility Bills

COMMITTEE: **Environmental Matters**

HEARING DATE: **March 7, 2013**

SPONSORS: **Delegates Barnes, *et al.***

POSITION: **Support with Amendments**

House Bill 1090 would address a problem for tenants who are faced with loss of utility service when the owner or landlord is the utility customer and fails to pay for utility service. The bill provides a solution that permits the tenant to pay for utility service and as a result, keep the utility services on and avoid a costly and unnecessary move to another dwelling. The Office of People's Counsel (OPC) supports the tenant's rights provisions of the bill as originally written, and as reflected in the Sponsor's bill amendment to be presented during the Committee hearing. OPC does have two specific concerns with the amended version of House Bill 1090, and proposes amendments to address those concerns.

OPC supports the right of a tenant to establish a utility service account in the tenant's name

OPC is in frequent contact with a variety of legal services and non-profit organizations throughout Maryland. In the past few years, legal services and non-profit service organizations

have informed OPC staff that they encounter situations where tenants lose utility service due to the landlord's failure to pay utility bills, and must relocate because the regulated utility will not permit the tenants to put utility service in their own names. In other instances, a utility has permitted the tenant to become the customer, but only after the tenant pays the past-due bill owed by the landlord. This problem became more visible during the housing and foreclosure crisis for tenants residing in dwelling units that have been foreclosed upon, where the owner has disappeared, or a bank or other entity has taken over the property. While laws have been enacted to protect the tenants' right to remain in the unit during the remainder of the lease,¹ the failure or refusal of the owner or receiver to pay utility bills can result in a *de facto* eviction if the utility will not transfer service to the tenant or otherwise accommodate the tenant. While OPC staff have been able to work out satisfactory resolutions for some tenants in these circumstances, tenants and other legal services or housing organizations have not been able to achieve the same result.

Because of these difficulties, OPC supported similar tenant protection bills during the 2012 legislative session. While those bills did not pass in their original form, a law was passed directing the Public Service Commission ("Commission") to establish a Workgroup to study this problem and make recommendations. OPC participated in that Workgroup (Commission PC30) and contributed to the Workgroup Report which was submitted to the House Economic Matters

¹ See the federal Protecting Tenants at Foreclosure Act of 2009 (PL 111-22); and Md. Code Ann., Real Prop., § 7-105.6. The law requires the person or entity ("successor in interest") that acquires a rental property through foreclosure to honor the lease of any bona fide tenant in the property, or provide 90 day notice to vacate, whichever is longer. However, state law does not address the situation where the person fails to pay the utility bills pursuant to the lease or terminates its utility account, and the tenant is not permitted to put the utility account in her name. In that situation, the only recourse for the tenant is the filing of a Rent Escrow Petition or a complaint in the local District Court. In any event, the tenant may be without utility service for extended periods of time.

Committee and Senate Finance Committee by Commission letter dated November 29, 2012. Since then, while there are no formal agreements or changes in regulations, OPC has noted that some utilities have permitted tenants to apply for and receive utility service, after contact by our agency. However, there is no explicit tenant right to do so, and without intervention by OPC, it is not clear that all regulated utilities consistently apply this policy.

House Bill 1090 would establish the right of a tenant to apply for gas, electric or water utility service in his or her own name when facing a threatened or actual utility service termination due to the landlord's failure to pay past due utility bills. The tenant would be subject to the same eligibility requirements as any other applicant, including creditworthiness and security deposit requirements, but could not be required to pay any portion of the landlord's bill as a condition of opening a new service account. In addition, the tenant would be subject to service termination, like any customer, for failure to pay the tenant's past due bills.

The bill also provides a notice mechanism to alert possible tenants of a pending utility service termination. A separate notice would be mailed in those instances to "Occupant" at the property address, with a clear notice of "utility shut-off pending" on the envelope. OPC notes that gas and electric companies already must provide notice of a pending service termination to tenants in a master-metered building. COMAR 20.31.03.06. House Bill 1090 would extend that notice requirement to protect tenants in single family and other non-master metered dwellings under certain circumstances.

OPC is in full support of the bill's statement of the tenant's right to establish a utility service account in the tenant's name.

OPC Proposed Amendments

1. The cost recovery provision (7-309(g)) should be stricken

The amended version of House Bill 1090 includes a new cost recovery provision which states that in a rate proceeding the Commission shall authorize “the fully and timely cost recovery of a public service company’s costs arising from its obligations under this section.” At best, this provision is unnecessary, because the Public Service Commission Law (Public Utilities Article, Title 4) already provides the appropriate and sufficient mechanism for the utilities to seek recovery of operating expenses in a rate case. At worst, this provision would require the Commission to either (1) establish a separate rate mechanism (that is, a surcharge in addition to current rates) to collect expenses (for example, personnel, IT, and postage expenses) related to compliance; or (2) order payment of these expenses as a separate item in the context of a rate case.

The amended bill would grant special treatment for expenses that are typically incurred by a utility. Utilities must comply with all sorts of state and federal legal requirements in the course of doing business (employment, environment, regulatory), and do not have automatic and line-item cost recovery for those obligations. This is not the way that a utility’s expenses (or revenues) are handled in the rate-setting process. Utility companies have an obligation to “furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economic and efficient...” PUA § 5-303. By law, the PSC is required to determine the “just and reasonable rate” that a utility may charge, and does this in an evidentiary proceeding. PUA §§4-101 *et. seq.* The Commission is able to fully assess the utility’s total revenues, total expenses and appropriate

profit level before deciding the reasonable rates for the utility to carry out its service obligations and have an opportunity to earn the designated profit level. Unfortunately, the amended bill singles out expenses related to a single group of customers (tenants in danger of losing utility service) and requires special treatment of those expenses, whether separate from or within a rate case. This is particularly of concern to OPC, since the impetus for the bill was the failure of utilities to allow tenants to set up customer accounts and maintain essential utility services in the first place.

Proposed Amendment: OPC recommends that Section 7-309(g) be stricken from amended House Bill 1090.

2. The notice provision in House Bill 1090 should be modified to limit the disclosure of unnecessary customer information

Section 7-309(d) and (e) of the amended bill set forth specific requirements for termination notices to be sent to (1) both a billing address and a service address, when they are different, or (2) the service address, when they are the same. OPC has a concern about the phrase “notwithstanding any other provision of law governing the protection of customer data” in reference to the notices. The Commission’s regulations expressly require that termination notices sent to a customer in a dwelling unit include additional information, including the total amount due to the utility, and may include other information at the discretion of the utility. COMAR 20.31.02.06. It appears that the inclusion of this phrase anticipates the disclosure of other information on the customer account.

OPC has been a strong advocate for maintaining the privacy of customer information held by utilities. While the tenant should receive the necessary information – that a service termination is pending due to non-payment of the utility bill for the dwelling – disclosure of

other account information is not necessary. Since the tenant is not responsible for the landlord's past due payments, disclosure of additional customer information, including the amount owed on the landlord's past due account, is not relevant. OPC believes that the inclusion of the phrase in question is too broad and can lead to disclosure of unnecessary information.

Proposed Amendment. To address this concern, OPC recommends that the phrase be stricken from proposed 7-309(d) and (e). Alternatively, if the utilities are concerned about the privacy implications of disclosure of the name of the customer (the landlord) or the pending service termination itself, OPC recommends that Section 7-309(d) be modified to limit the content of the termination notice to the information set forth in proposed Section 7-309(d) (ii).

With these amendments, OPC supports House Bill 1090.