

**STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL**

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BILL NO.: **House Bill 1076**
Poultry Litter—Energy-Generating Cooperative Program

COMMITTEE: **Economic Matters**

HEARING DATE: **February 27, 2014**

SPONSOR: **Delegates Conway, et al.**

POSITION: **Support with Amendments**

Summary of OPC Position

The Office of People's Counsel (OPC) represents residential utility customers, some of whom engage in farming activities and are on residential rate schedules, and may be eligible to become subscriber members of the proposed cooperative. OPC also represents residential customers who are non-subscribers but could be affected by the proposed Bill, to the extent that it removes rate-setting and tariff authority for this service from the Public Service Commission (Commission), which regulates utility service, and also sets a rate for distribution service to be paid by the facility, without benefit of a regulatory process. While House Bill 1076 may have public policy benefits in addressing the poultry litter issue as it relates to the Chesapeake Bay, OPC's primary interest in House Bill 1076 is to ensure that rates to be paid by residential customers are properly and fairly set by the appropriate regulatory body, which is the Commission. OPC's amendments address that concern.

Discussion

House Bill 1076 would provide for mechanisms to create a Poultry Litter Energy Generating Cooperative Program to be administered by the Department of Agriculture in consultation with an Advisory Committee created by the Bill. Under the Bill, a Cooperative organization could be set up to “beneficially own or operate” an energy generating cooperative. The cooperative is defined by the Bill as a renewable energy facility that would generate electricity from the anaerobic decomposition of poultry litter. The cooperative would be required to credit its generated electricity in kilowatt hours to cooperative members (subscribers) on a monthly basis with any unsubscribed energy being transmitted to the electric company at no cost to the electric company in whose territory the cooperative is located. Under the Bill, the Department of Agriculture, the Public Service Commission and an electric company may not change the terms of a contract entered into by a cooperative organization with a third party owning or operating an energy generating cooperative.

Of specific concern to the Office of People's Counsel (OPC), the Bill provides that the Department of Agriculture, rather than the Public Service Commission, would be tasked with the regulation of electricity generated by the cooperative. In addition, the Bill specifically sets a rate to be paid by the cooperative, by providing that the cooperative “shall pay an infrastructure use and distribution rate to the electric company” in an amount equal to “25% of the distribution rate normally charged...to a customer of the same class as the subscriber” without regard to whether that rate is just and reasonable under the law (page 5, lines 13-18). A “subscriber” is a cooperative member, who is defined as a retail customer of the cooperative, and can be either a

residential or business customer (page 3, lines 7-12). The Bill does not alter the distribution rates to be paid by cooperative members to the electric company that serves them.

OPC understands and appreciates the intent of this Bill. The State has a strong public policy interest in encouraging novel ways to protect the environment and the Chesapeake Bay from excess phosphorus. Energy generated from anaerobic decomposition may one day be a partial solution to the State's poultry litter disposal issues. However, as the Fiscal Note acknowledges, this type of energy generation is largely untried in the United States and specifically in Maryland, and there is limited information available internationally on key environmental issues such as resulting emissions, whether anaerobic decomposition will actually reduce nutrient load or whether this is a cost effective way for disposal of poultry litter. The Bill would create a legislative framework for "energy-generating cooperatives" to be established in the event such facilities become a viable means of addressing the poultry litter and phosphorous issue.

OPC's particular interest in the Bill relates to the proposed regulatory scheme and rate structure for the cooperatives. Of concern to the Office of People's Counsel is how to efficiently and economically integrate energy generated by a poultry litter generating cooperative into the existing regulatory scheme. Currently, the Public Service Commission (PSC) is the regulatory body with the authority and expertise to address the rates and services provided by electric companies to all of its customers and customer classes. Since the cooperatives are customers of the electric company, as are the cooperative members, the Bill would effectively remove regulatory oversight of rates charged to certain customers (cooperatives) from the PSC, and grant it to the Department of Agriculture. In doing so, the Bill would preclude the Commission from ensuring that utility costs, and therefore utility rates and fees, are appropriately and equitably

charged to the customer classes and customers, including residential customers, who are not cooperatives. OPC also is concerned that the broad statement that the "regulation of electricity generated by ...cooperatives" shall be vested in the Department of Agriculture (page 9, lines 11-14) seems to remove all regulatory oversight of interconnection, safety and other issues from the Commission.

House Bill 1076 also seems to put the cart before the horse with regard to rates and credits. It creates the ability to allow a cooperative organization to decide how much should be credited to members on a monthly basis without providing the electric company with any clear means to verify the amount. The Bill also purports to determine how much the cooperative will pay to an electric company for "infrastructure use and distribution," without any regard for whether the amount is just and reasonable or properly allocated, as required by Commission law for other customers. See Sections 10-2005 and 10-2006. The Bill reserves resolution of some of these important threshold issues for a subcommittee of an advisory committee which does not include representatives of other customer classes that may be affected by transfers of cost responsibility from the cooperatives. Among other things, the subcommittee would be tasked with making recommendations later on, among other things, appropriate rates and charges, the effect on transmission and distribution line losses and upgrade deferrals and service reliability. While OPC agrees with the Department of Legislative Services that the near-term impact of potential cost-shifting to other ratepayers may be minimal, the Bill would codify a rate calculation for cooperatives that may not sufficiently reflect the appropriate cost contributions of cooperatives towards the electric utility systems. The issues of proper valuation of costs and benefits of renewable systems, aggregated or otherwise, and allocation of utility distribution and transmission costs have become more visible in states like Minnesota, California and Arizona

and in the national discussion in recent years. A proper analysis of these costs and benefits should be conducted in Maryland before programs like energy cooperatives and community energy are established and costs are allocated to customers of the utility.

The overall purpose and intent of House Bill 1076 primarily is to establish another means to clean the Chesapeake Bay and encourage additional sources of renewable energy, from which farmers can benefit (Preamble, page 2, lines 16-30 and 10-2002). OPC believes that these goals can be accomplished without removing oversight authority of the Commission over rates and service interconnection issues related to the facility, and ensuring that the cooperatives provide an appropriate, cost-based contribution to the Commission-approved distribution and transmission rates. Therefore, OPC recommends that House Bill 1076 be amended in the following manner:

1. Maintain Commission regulatory authority over approval of rates to be charged to cooperatives:

- In 10-2006, on page 5 at line 14, delete “infrastructure use and distribution” before **rate**, and add “as determined by the Public Service Commission” after **company**.
- In 10-2006, on page 5, delete lines 15 through 18.
- In PUA, 7-306.1, at page 9, delete lines 11 through 14.

2. Modify the directives to the Advisory Committee to remove responsibility for evaluating and making recommendations on any matter related to valuation of costs and benefits of the cooperatives with regard to the electric company system, establishment of rates and charges to be paid by the cooperatives, and transfer this responsibility to the Commission:

- In 10-2008, delete page 7, lines 24 through 31 and page 8, lines 1 through 19 and transfer those responsibilities to the Commission. As part of the evaluation, the Commission should be required to address both the potential costs and potential benefits of the cooperatives as they pertain to tariff structures and rates paid by the cooperatives. The Commission should be required to conduct this evaluation prior to approval of any rate or fee structure for the cooperatives.
- In 10-2009, on page 8, delete lines 25 through 29 and on page 9, delete lines 1 through 4, and renumber (5) and (6) as (1) and (2), respectively, to remove these rate-related reporting requirements from the joint responsibilities of the Department of Agriculture and the Maryland Energy Administration. Reporting responsibility for those matters could be transferred to the Commission as well.

With these amendments, the Office of People's Counsel supports House Bill 1076.