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BILL NO.: Senate Bill 1069
**Public Utilities-Application for Certificate
of Public Convenience and Necessity-Public
Notice**

COMMITTEE: Senate Finance

HEARING DATE: March 15, 2016

SPONSOR: Senator Middleton

POSITION: Support

Senate Bill 1069 would modernize the public notice requirements to provide for public comment when a company seeks a certificate of public convenience and necessity (CPCN) at the Public Service Commission (PSC or Commission) to build a generating station or certain overhead transmission lines. The Commission currently is required to advertise in a newspaper of general circulation in the local jurisdiction each of the four weeks immediately prior to the hearing to provide an opportunity for public comment on a CPCN application. In addition to that requirement, the Bill would require notice on two types of social media and on the Commission website. Additionally, the Bill would require that before a public hearing, the PSC must coordinate with the governing body of the county or municipality in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located to

identify additional options for providing notice of the public hearing through other types of media that are familiar to the residents of the county or municipality. Finally, the Bill requires that on the day of a public hearing, an informational sign must be posted prominently at or near each public entrance of the building in which the public hearing will be held. The sign must state the time, room number, and subject of the public hearing and be at least 17 by 22 inches in size.

Because of concerns raised by local residents and the Bill's provision of additional common sense means for citizens to become aware of and participate in Public Service Commission proceedings, the Office of People's Counsel (OPC or People's Counsel) recommends a FAVORABLE report.

Background

The Office of People's Counsel (OPC) is required to represent the interests of all residential customers in CPCN proceedings before the PSC. The PSC must approve a CPCN for any generating facility (with some limited exceptions) or overhead transmission lines that a company plans to construct. Prior to the passage of the 1999 restructuring law, these facilities were built by regulated electric utilities and the Commission was required to consider (1) the need for generating plant or transmission lines to serve electricity demand; (2) the existing and projected reliability of the electricity plant and transmission lines, and (3) the cost of the project, since the costs would be borne by ratepayers. With the passage of the restructuring law, need for the facilities and ratepayer cost considerations for generating facilities are no longer at issue in the CPCN generating facility proceedings. The 1999 law removed the requirement that the Commission consider "the need to meet existing and future demand for electric service" when taking final action on a CPCN for a

generating facility. PUA § 7-207. Second, since the generating facilities are built by private, non-regulated entities, residential utility customers are no longer directly responsible for the costs of these facilities. In contrast, the CPCN law continues to require an assessment of need for overhead transmission lines, as they continue to be built by regulated utilities. PUA § 7-207(f).

Since the issues of need for and cost of generating facilities are no longer addressed in these proceedings, the role and responsibility of OPC in CPCN proceedings has become limited. The Commission Technical Staff, DNR's Power Plant and Research Program (PPRP) and related agencies are the active agency parties on engineering, environmental and other factors, while OPC essentially monitors the proceedings and provides information to consumers and groups.¹

The adequacy of the current notice requirements and opportunities for public or community participation in the CPCN proceedings has been questioned in a number of proceedings, particularly by citizens who own or use property closest to the facilities in question. Generally, the citizens may express concerns about air quality, other environmental, health and safety issues, and property values. Increasingly, the citizens have expressed concerns that notice has been inadequate.

¹ Section 7-207(e) of the Public Utilities Article only expressly requires the Commission to look at the following factors in determining whether to grant a CPCN to an applicant:

- Stability and reliability of the electric system;
- Economies;
- Esthetics;
- Historic sites; and
- Aviation safety;
- When applicable, air and water pollution; and
- The availability of means for the required timely disposal of waste produced by any generating station

OPC has had concerns about the adequacy of the notice requirements under the Public Utilities Article, not only for these proceedings, but all proceedings before the Commission. While in years past, published notice in papers of general circulation may have been adequate, a number of changes in the media industry and media consumption have made these published notices less effective and in some cases entirely obsolete. Several local papers have either closed or reduced their number of publications; and from the Washington Post to the Baltimore Sun to the Calvert Recorder, all have reduced the amount of space and resources available to community news. Although social media has been exploding as a news delivery mechanism, those outlets are not an adequate substitute for other types of notice.

Current PSC law requires only that notice of the initial application be given to certain parties, including local governing bodies, certain members of the General Assembly and the Department of Planning, and other interested persons. Notices of the public hearings must be placed in newspapers of general circulation where the facility is to be located.

This Bill would be a very good first step in increasing notice. However, the Committee may wish to consider whether some other processes would be useful as well. For example, one possible method is direct mail notice to individual residents in a certain proximity to the physical location of a generating facility site under review. Some provision for notice to certain community associations or organizations may also be helpful. Additionally, physical notice at the site could also be required, stating the time and location of the Public Service Commission proceedings, similar to local zoning proceedings notices. Borrowing from other recent proceedings, some companies have

developed limited websites for purposes of delivering information regarding their transmission line applications or plans. While those websites may include public relations information, companies could be required to provide the basic notice and case information there, as well.

For the reasons stated above, the Office of People's Counsel recommends a **Favorable Report** on SB 1069.