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OFFICE OF PEOPLE'S COUNSEL**

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**BILL NO.:** **Senate Bill 1043**  
**Renewable Energy Portfolio Standard**  
**Requirements-Standard Offer Service**

**COMMITTEE:** **Senate Finance**

**HEARING DATE:** **March 21, 2017**

**SPONSORS:** **Senator Feldman**

**POSITION:** **Unfavorable Report**

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Senate Bill 1043 requires electric companies, commonly known as distribution companies, to enter into long-term contracts for renewable energy credits and electricity generated from Tier 1 renewable sources to meet at least 25% of each year's mandatory renewable portfolio standard (RPS) for electricity provided to standard offer service (SOS) customers. The Bill requires electric companies to solicit bids for renewable energy credits using a competitive procurement process. The Bill requires the term of the contracts entered into to be at least 10 years and not more than 20 years in duration. Finally, the Bill provides that electric companies may recover costs associated with compliance, including "lost revenue," in distribution rates in a base rate case. While the current (and new) RPS standard of 25% renewables by 2020 applies to all electricity suppliers, including electric companies, in Maryland, this bill imposes a mandatory REC procurement requirement only on electric companies serving SOS customers.

The General Assembly has addressed the RPS standard numerous times over the past decade or so, and most recently made adjustments to the RPS standard to increase it to the 25% by 2020 standard. This standard has consistently applied to *all* suppliers of electricity in Maryland, and has not differentiated that obligation based on the identity of the supplier of that electricity. The purpose of the bill's imposition of this procurement requirement solely on SOS customers is unclear to OPC, since it does not by itself increase the mandated purchase of renewable energy – but it could have unintentional and unnecessary adverse cost consequences for customers.<sup>1</sup> Any changes to current state policy on renewable energy standards should apply to all suppliers, and therefore, all customers in Maryland.

The Office of People's Counsel also has specific concerns regarding the Bill. In the past, OPC has supported the *concept* of considering the use of contracts, including contracts for renewable energy, as part of a strategy to procure diverse electricity products needed to supply SOS customers. Under the right circumstances, long-term purchases may be cost-effective and useful as part of an overall procurement strategy to balance lower costs and price stability. In fact, current law already provides the Public Service Commission (PSC) with authority to order distribution utilities to enter into long term contracts as part of a portfolio of blended wholesale supply contracts if those contracts meet demand for SOS electricity *in a cost-effective manner*.<sup>2</sup> However, the Bill, as drafted, removes the PSC's ability to determine whether the competitive procurement process for at least one quarter of each company's RPS requirements for SOS

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<sup>1</sup> The Fiscal Note notes the uncertainty as to the Bill's price impacts on SOS customers. FN, p. 4. In addition to a potential additional cost for customers, there is the question whether these additional costs would be distributed to all customer classes or allocated only to SOS customers, if recovered through base rates. The vast majority of SOS customers are residential and very small commercial ("mom and pop" shop) customers.

<sup>2</sup> See Public Utilities Article, § 7-510 (c) (4) (ii) (2).

customers is cost-effective. This determination of cost-effectiveness by the PSC is important because under a long term purchased power contract, ratepayers face the possibility that they could be locked into rates that are higher than the market price of renewable energy during the term of the contract.<sup>3</sup>

Further, the Bill allows electric companies to recover the costs associated with procuring the energy and “lost revenue” to be recovered in distribution rates in a base rate case. This cost recovery approach is in conflict with the manner in which energy supply costs have been recovered from electricity (and gas) customers for decades, and confuses recovery of supply costs with distribution system costs. Assuming this approach was acceptable to the legislature, the Bill removes the PSC’s ability to examine the costs of entering into a long-term contract for renewable energy credits through evidence at a hearing and to determine whether they are just and reasonable expenses under the law. As a matter of due process, affected parties such as the Office of People’s Counsel should have the opportunity to challenge all or part of the costs that the electric companies seek to recover through distribution rates.

For these reasons, the Office of People’s Counsel respectfully requests an UNFAVORABLE report.

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<sup>3</sup> Of course, the market price for renewable energy in any year over the duration of the contract could be affected by a number of factors including demand for renewable energy, the availability of other sources of cheaper renewable energy, technological improvements, and changes in law (for example, the availability of tax credits for forms of renewable energy).