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BILL NO.:	**Senate Bill 660** **Electric Industry – Community Choice Aggregation**
COMMITTEE:	**Senate Finance**
HEARING DATE:	**March 5, 2019**
SPONSORS:	**Senator Washington**
POSITION:	**Informational**

Senate Bill 660 would allow a county or municipal corporation, individually or as a group, create a community choice aggregation that would procure electricity for all customers within the county or municipality except those served by an energy supplier or those who affirmatively opt out of the aggregation. The governing body of the county or municipality is required to give 60 days notice to customers of the plan to aggregate. If a customer does not opt out of the aggregation, the customer is deemed to have given permission to the county or municipal corporation to act on the customer's behalf for electricity supply. A county or municipal corporation that becomes an aggregator is not an electricity supplier under PUA §7-507A. (Page 8, §7-510.2(I)). The bill would also give the county or municipal corporation the ability to access data on the usage of all customers in the county or municipal corporation once it decides to become a community choice aggregator. (Page 8, §7-510.2(K)). The Commission would establish at least one 2-month period during the calendar year during which the community choice aggregator may award supply contracts. (Page 8, §7-510.2(J)).

Some retail competition states have community choice aggregation programs, including California, Illinois, Ohio, Massachusetts, New Jersey, New York, and Rhode Island. Maryland does not have such a program. Instead, Maryland has a strong utility-provided Standard Offer Service (SOS) program that serves about 80% of residential customers and the majority of small business customers. In effect, SOS acts as a large aggregation pool for the small customers in a service territory. From a price perspective, the Office of People's Counsel (OPC) is not persuaded that community choice aggregation, which will likely aggregate fewer customers than SOS, will produce lower price electricity supply than SOS. Of course, a county or municipality may have other reasons for an aggregation program, including support of renewable energy. Today, electricity customers buy electricity supply either from their local electric utility, a service that is called standard offer service (SOS), or from an electricity supplier. For SOS customers, the electric utilities conduct a bid solicitation process twice a year to buy electricity supply. During each process, the utility buys about 25% of the power needed by these customers. The Commission oversees each solicitation process, and bids are obtained from multiple suppliers. The least cost supply is selected in the process. These procurements result in a laddered portfolio of supply contracts, so that at any one time, the price for SOS is a blend of the price for power procured in four bid solicitations over two years. The Commission approved this system to achieve electricity supply at least cost, while protecting customers from price volatility, as required by PUA §7-510((c)(4)(ii). Approximately 80% of residential customers of the electric utilities are on SOS. The other 20% have entered into contracts with retail energy suppliers.

OPC has identified several areas of concern with the bill. First, OPC has concerns about the types of notice and customer understanding of the nature of these programs. Almost 20 years after deregulation, we know that many residential customers do not fully understand retail competition, and there is an abundance of confusion in the marketplace. The introduction of an aggregation program can increase the confusion unless the notices are clear, easy to understand, and available through a variety of avenues. This is especially critical because the bill proposes an opt-out program. OPC has generally been concerned about opt-out programs because customers may be switched to a new supplier, perhaps at a higher price, with no actual knowledge of the switch occurring, and without giving affirmative consent.

It is not clear from the bill whether customers can leave the community choice aggregation once it has begun, either to go back to SOS or go to an electricity supplier. The bill has a provision that states that the new section of the code may not be construed to prevent a customer from choosing to enter into a contract with an electricity supplier. (Page 7, §7-510.2(G)). However, it is not clear that this provision allows a customer to switch to an electricity supplier once the community choice aggregation has begun. In addition, there is no provision concerning customers choosing to go to SOS during the term of the community choice aggregation. Finally, the bill provides that a customer with an energy supplier contract will automatically default into the aggregation program unless the customer gives written notice to the aggregator that he or she declines such enrollment. (Page 7, §7-510.2(F)(2)).

The bill also raises questions about the impact of the program on SOS prices, given that a community choice aggregation could be a sizeable portion of a utility's load. If the program imposes risk on the suppliers of SOS power, the prices for SOS will be impacted, putting upward

pressure on SOS prices. The bill includes a provision that would limit the risk caused by the possibility of a community choice aggregation. The Commission would establish at least one 2-month period during the calendar year during which the community choice aggregator may award supply contracts. (Page 8, 7-510.2(J)). If this time period is coordinated with the dates for the SOS bid solicitation, this provision would allow bidders on SOS supply contracts to know if community choice aggregation programs would result in a reduction in total SOS supply needed for a one-year period. However, even if there was no community aggregation in the first year of the supply contract, there would still be a risk of a community supply aggregation resulting in a reduction of load in the second year of the wholesale supply contracts. This type of risk can impact the SOS price because electricity suppliers make arrangements for the power to for the length of the contract. If the amount of load being served under a contract drops, the supplier may have made arrangements for power that it no longer needs. This risk could be reduced if the Commission created a two-month window every two years.

The community choice aggregation program can also create risk for SOS with respect to the end of the aggregation period when the SOS load may suddenly increase. If the SOS load significantly increases during the term of an SOS supply contract, the contract used by the electric utilities typically provides that the power needed to serve the additional load will be procured through the short-term, or spot, wholesale electricity market by the utility. The costs of that procurement will be passed on to all SOS customers, which would include both the customers returning from the aggregation and the customers on SOS who were never in the aggregation. The bill does not have any restrictions on when an aggregation can terminate. The bill also does not allow the Commission to establish a mechanism to assign the additional supply costs caused by

the customers returning to the SOS to those customers. The risk of rate increases for customers who were not in the aggregation could be reduced by adding a provision that allows the Commission to create a separate rate class or implement a charge to assign costs created by the return of customers from a community choice aggregation.

The bill states that a county or municipal corporation that becomes an aggregator is not an electricity supplier under PUA §7-507A. (Page 8, §7-510.2(I)). It is not clear that there would be a licensed electricity supplier serving the customers of the community aggregation. If not, the Commission would have no licensing authority over any supplier for the customers in the aggregation. Because the applicable consumer protections regulation are written in terms of what licensed electricity suppliers must do in contracting with customers and what they are prohibited from doing, customers in a community aggregation would not have the same benefit of these consumer protections as other customers in the State.

The bill would also allow a county or municipal corporation to have access to the individual electricity usage and billing data for every customer in its jurisdiction and there are no restrictions on the use of this data. (Page 8, §7-510.2(K)). OPC has opposed the release of individual customer usage data by utilities without the affirmative consent of the customer; the release of such personal information to a governmental unit should be similarly protected. This provision would raise data privacy concerns for customers within these jurisdictions. It is also not clear that there would be value for individual customer data, particularly for small customers. The needs of the community aggregation may be able to be met with data on rate classes within the jurisdiction as a whole.

OPC has identified specific provisions of Senate Bill 660 that would benefit from further definition, clarification or enhancement, if community choice aggregation is adopted. These provisions are identified in the Attachment to this testimony.

ATTACHMENT
OPC TESTIMONY ON SENATE BILL 660
SENATE FINANCE COMMITTEE
RECOMMENDATIONS FOR DEFINITIONS AND CLARIFICATIONS

1. **Renewable component of portfolio.** On page 6, lines 18-20, the bill requires the second notice to include certain information, including "the total renewable component" of the supplier's portfolio. "Renewable" is a general term, and could mean a variety of resources or renewable energy certificates (RECs). The notice should be required to provide "THE SOURCE OF THE RENEWABLE POWER, INCLUDING A DESCRIPTION OF WHETHER THERE ARE ANY GEOGRAPHIC RESTRICTIONS ON THE LOCATION OF THE SOURCE OF THE RENEWABLE POWER."

2. **Ability to be served by SOS.** Customers should have the ability to return to SOS after the aggregation begins. On page 7, a new section (H) could be added: "CUSTOMERS IN THE JURISDICTION OF THE COUNTY OR MUNICIPAL CORPORATION MAY CHOSE TO BE SERVED BY STANDARD OFFER SERVICE AT ANY TIME DURING A COMMUNITY CHOICE AGGREGATION."

3. **Fee for aggregation**. These fees are referred to on page 7, lines 29-31 and page 8, lines 1-7. The language on page 8, which is subsection (3), is unclear and should be struck.

4. "**Based on a determination of the mitigation of volumetric risk**." This phrase is used on page 8, lines 14- 15. It is not a readily understandable phrase. A possible replacement is "TO MITIGATE VOLUMETRIC RISK RELATED TO STANDARD OFFER SERVICE."

Additionally, in order to prevent costs incurred because of customers returning to SOS at the end of a community choice aggregation being shifted to SOS customers who were not in the aggregation, a section should be added: "THE COMMISSION MAY IMPOSE A FEE OR RATE ON CUSTOMERS RETURNING TO STANDARD OFFER SERVICE AFTER THE TERMINATION OF A COMMUNITY CHOICE AGGREGATION TO RECOVER ADDITIONAL SUPPLY COSTS INCURRED TO SERVE THOSE CUSTOMERS."

5. **Customer usage data.** As written, subsection (K), page 8, would allow the county or municipal corporation to obtain individual usage data for all customers in the jurisdiction. To avoid the privacy issues raised by this provision, subsection (1) should be struck and subsection (2) should be amended to add "ON A RATE CLASS, AND NOT AN INDIVIDUAL CUSTOMER, BASIS."

6. **EUSP Bill credits**. The bill proposes that the Commission establish procedures for EUSP bill assistance credits to be applied on behalf of aggregation customers, on page 8, lines 32-33 to page 9, lines 1-3. OPC believes that this section is meant to ensure that EUSP customers can participate in community choice aggregation without penalty (i.e. get the energy assistance benefits credited). OPC recommends a clarification to include LIHEAP (MEAP) benefits as well.

On page 9, at line 2, after assistance, add “OR ARREARAGE ASSISTANCE” and at line 3, after “subtitle” strike “.” and add “,ANY OTHER FEDERAL AND STATE BILL AND ARREARAGE ASSISTANCE ADMINISTERED BY THE OFFICE OF HOME ENERGY PROGRAMS.”

7. **Consumer Protections**. On page 9, lines 10-13, the bill refers to “standards and procedures to protect the consumer rights of residential customers” receiving services from an "electricity supplier selected by the aggregator." Since community choice aggregators are not to be considered suppliers, subject to the Commission’s licensing and consumer protections, it is not clear what consumer protections are intended to be included, or the basis for Commission regulatory oversight over these aggregators to enforce the protections. A new section should be added to explicitly provide for this oversight responsibility by the Public Service Commission.