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## PUBLIC SERVICE COMMISSION

March 5, 2020

Chair Dereck E. Davis  
Economic Matters Committee  
House Office Building, Room 231  
Annapolis, Maryland 21401

### RE: INFORMATION – HB 999 – Member-Regulated Cooperatives – Establishment (Rural Broadband for the Eastern Shore Act of 2020)

Dear Chair Davis and Committee Members:

House Bill 999 would allow regulated electric cooperatives on Maryland's Eastern Shore to convert to "member-regulated" cooperative status and begin offering broadband services.<sup>1</sup> The proposed legislation would largely remove member-regulated cooperatives from the Commission's regulatory authority under the *Public Utilities Article* (PUA) and limit the Public Service Commission's ability enforce existing regulations under COMAR.<sup>2</sup> As such, many of the regulatory processes that currently exist to protect the interests of electric utility customers would be removed, reduced, or modified under the proposed legislation.

The proposed legislation would affect customer-members of an electric cooperative that elects to self-regulate in various ways. **First**, the Commission, its Technical Staff, and the Office of People's Counsel would no longer be involved in a rate setting process which evaluates and balances the interests of the customer, the utility and state policies. **Second**, the Commission would no longer oversee and enforce standards related to service quality and reliability. **Third**, the Commission would no longer have the authority to adjudicate and resolve disputes between customers and the cooperative. **Fourth**, the applicability of certain obligations under the PUA and Commission regulations would be inapplicable, or in some cases unclear, creating additional administrative burdens. **Fifth**, the elimination of Commission assessments on member-regulated cooperatives would require an increase in the assessment amounts for the remaining Commission-regulated companies and effectively subsidize the Commission's continued responsibilities relating to member-regulated cooperatives.

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<sup>1</sup> The legislation provides a process for an electric cooperative to elect member-regulation and re-regulation.

<sup>2</sup> Under HB 999, member-regulated cooperatives would remain subject to an enumerated list of PUA sections that preserve its franchise authority and status as a monopoly distribution utility, among other provisions.

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## **Exemption from the Rate Setting Process**

Currently, electric cooperatives may not change rates or terms of service without Commission approval. Any proposed changes to distribution rates occur in response to the cooperative's filing of a rate case application, which triggers an extensive process where the cooperative submits testimony and documentation demonstrating the basis and need for each proposed rate change for all affected rate classes. The Commission's Technical Staff and the Office of People's Counsel, as well as any other interested parties, submit detailed expert testimony on the proposed rate and tariff changes. Opposing parties review all of the cooperative's actions and spending decisions for prudence and to ensure that customers only pay for items that provide a concurrent benefit.

During a rate case, the Commission considers customer bill impacts, avoidance of rate shock, and impacts on state policies such as energy efficiency. Under the proposed legislation, the process for changing rates would not require external expert analysis and would not be subject to the level of scrutiny and public review currently provided by the Commission's process. In addition, state agencies would no longer play a role in reviewing or limiting rate increases or encouraging rate designs that align with state policies, as established by the Maryland General Assembly.

An additional function of the Commission, Technical Staff, and other parties is to ensure that electric distribution rates do not recover unrelated costs (*e.g.*, costs relating to transmission, broadband, or other affiliate functions.) In the absence of Commission oversight and state agency expertise in reviewing an electric cooperative's revenues and expenses, electric-only customers may subsidize customers receiving broadband service if sufficient accounting restrictions are not in place and monitored regularly.

## **Service Quality and Reliability**

At present, electric cooperatives in Maryland are subject to comprehensive service quality and reliability standards under PUA §7-213 and the Commission's regulations. The Commission tracks utility performance based on a variety of metrics to ensure customers receive adequate electric service. The Commission also sets minimum standards regarding the duration and frequency of service outages and interruptions. In addition, the Commission tracks utility performance during major weather events, declared states of emergency and other impacts to the electric distribution system.

The Commission also ensures that the utilities maintain customer service and responsiveness standards. For example, one responsiveness standard requires a utility to respond to a report of a downed electric wire in a certain amount of time. This standard was implemented to limit the strain on public safety first-responders when they likely would be needed elsewhere, such as in a severe weather event or other emergency. This standard, and the attendant utility performance, would likely no longer be tracked or enforced by the Commission under this bill.

The proposed legislation appears to exempt a member-regulated cooperative from §7-213 and the associated minimum reliability standard regulations. Without Commission oversight, the cooperative would not be subject to annual reliability reporting, and its members could not seek Commission assistance regarding service quality issues.<sup>3</sup>

### **Consumer Protection and Customer Complaints**

The Commission has established consumer protection standards related to starting and stopping utility service, disconnections and general disputes. For example, the Commission's regulations specify the maximum amount for customer deposits for utility service, standards for late payments and associated utility charges, and require utilities to distribute customer rights pamphlets to their customers. The Commission also regulates service termination including limitations, notification, and restrictions during extreme weather conditions, or for health and safety reasons. Finally, the Commission has standards for billing requirements, investigation requests, and record keeping.

In contrast to these regulations, the proposed legislation would allow a member-regulated cooperative to set its own standards for these activities independent of the existing COMAR requirements, which would no longer apply to a member-regulated cooperative. Additionally, under the proposed legislation, a customer of a member-regulated cooperative would be unable to access the Commission's administrative processes and regulatory protections.

In lieu of the Commission's regulations, the proposed legislation outlines the creation of a binding, formal dispute resolution process that a member-regulated cooperative would establish to adjudicate customer complaints. The proposed legislation outlines an escalation process that could raise a complaint up to the level of the electric cooperative's chief executive and board of directors. While the Commission's Consumer Affairs Division would no longer play any role in disputes between the customer and a member-regulated cooperative, the Maryland Office of the Attorney General's Consumer Protection Division may have some jurisdiction over certain complaints brought by customers of a member-regulated cooperative.

### **Administrative Burden and Limited Commission Authority**

While the PUA prescribes the obligations of electric utilities beyond providing safe and reliable distribution service, the statute also establishes and governs programs relating to energy efficiency (*i.e.*, EmPOWER), renewable portfolio standards, net metering, electric

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<sup>3</sup> The proposed legislation subjects a member-regulated cooperative to certain parts (*i.e.*, Parts I & II) of PUA Title 7, Subtitle 5 ("Electric Industry Restructuring"). Among the sections in Title 7, Subtitle 5, §7-506(c), requires a utility to maintain reliability and incorporates by reference §7-213 ("Service quality and reliability"). This reference may reflect the intent to subject a member-regulated cooperative to all of the Commission's reliability standards. The Committee may wish to resolve any ambiguity regarding the applicability of §7-213 and the associated regulations.

vehicle charging infrastructure, and community solar. If a member-regulated cooperative seeks to subject itself to selected provisions under the PUA, there is potential for confusion regarding the applicability of Commission orders and regulations, particularly those related to electric reliability. Any remaining ambiguities in the statute have the potential to impose administrative burdens on the PSC and other Maryland agencies, as outlined above, relating to consumer protections.

Finally, in those areas where the Commission retains jurisdiction over a member-regulated cooperative, the Commission would have significantly fewer options for enforcement. The Commission typically does not issue financial penalties against cooperatives for violations of the PUA, as this simply punishes the cooperative's members. Additionally, without rate setting authority, the Commission's tools to correct violations of the remaining statutory sections are severely limited.

### **Exemption from Commission Assessment**

The Commission and the Office of People's Counsel are funded through assessments paid by regulated public service companies. The proposed legislation would exempt member-regulated cooperatives from Commission assessments.<sup>4</sup> However, the Commission would still be required to devote fiscal and operational resources to member-regulated cooperatives for remaining regulatory obligations, without an ability to collect assessments from those same entities. The lost assessment revenue would be recovered by increasing the assessments of the remaining public service companies. Thus ratepayers of the remaining regulated public service companies would subsidize the Commission's residual oversight of member-regulated cooperatives.

### **Conclusion**

The Commission's regulations and processes that are used to protect electric cooperative ratepayer interests may be removed, reduced, or modified, under the proposed legislation. As a result, HB 999 would subject certain cooperative members on the Eastern Shore to monopoly service without the protection afforded by, and ability to appeal to, an independent regulatory authority.

Thank you for your consideration of this information. Please contact Lisa Smith, Director of Legislative Affairs, at 410-336-6288 if you have any questions.

Sincerely,



Jason M. Stanek, Chairman

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<sup>4</sup> For example, Choptank Electric Cooperative's FY20 assessment was \$310,281.90.