HB 771

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 771 (Delegate Davis)
Economic Matters Finance

Electric Companies and Gas Companies - Customer Accounts and Information

This bill requires each distribution utility other than a cooperative, on request, to provide competitive suppliers with specified customer account information for its residential and small commercial customers under specified conditions. Each distribution utility must provide notice to its customers and grant each customer the opportunity to "opt-out" of having their customer information shared with competitive suppliers. The competitive supplier may only use the information for marketing its electric or gas services and may not resell or otherwise disclose the information. The Public Service Commission (PSC) must allow each distribution utility to recover its prudently incurred costs to provide the information, as determined by PSC, directly from the requesting competitive supplier.

A violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions, in addition to penalties and enforcement by PSC. PSC may coordinate enforcement efforts with the Office of the Attorney General.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: PSC can implement the bill with existing budgeted resources. The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. Assuming the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: "Distribution utility" means an electric company, a gas company, or an electric and gas company. "Competitive supplier" means an electricity supplier or gas supplier. "Small commercial customer" for purposes of the bill does not include (1) an owner or authorized agent of a residential or commercial multiple-occupancy building serviced on any commercial or industrial electric or gas tariff; or (2) any electric or gas distribution account serving a common area or amenity in a residential or commercial multiple-occupancy building.

Each distribution utility must provide the account name, the billing and service address, rate class, type of service, load profile, and energy consumption of its customers to a competitive supplier that requests the information. Customer information must be transmitted in electronic form and must be updated at least four times each year.

Each distribution utility must notify new and existing customers of the intent to share customer information and allow each customer the opportunity to opt-out of having that information shared with competitive suppliers. New customers must receive written notice at the time of enrollment, and existing customers must receive written notice through a bill insert. The bill establishes other provisions related to the authorization to share information. At any time, a customer may withdraw its authorization and an electricity supplier must redact that customer's information from its records and refrain from contacting that customer directly by mail or telephone. A competitive supplier may only use customer information obtained from distribution utilities to market electricity or gas supply services; the bill specifically prohibits competitive suppliers from selling or providing the information to any other person.

PSC must allow the distribution utility to recover directly from the competitive supplier the prudently incurred costs of providing the information. PSC determines whether the costs are prudently incurred.

A competitive supplier cannot transfer to its own supply a customer of another competitive supplier or the default supplier without obtaining the prior authorization of the customer. The competitive supplier must maintain evidence of a customer's request to transfer for the period the supply is transferred. Records are subject to PSC inspection. PSC must adopt orders or regulations to implement these provisions, in consultation with the Office of Attorney General.

Current Law: PSC defines a small commercial or industrial customer as one whose demand is less than or equal to 25 kilowatts, a mid-sized commercial industrial customer as one whose demand is more than 25 kilowatts but less than 600 kilowatts, and a large commercial or industrial customer as one whose demand is greater than or equal to 600 kilowatts.

Under current regulations, electricity suppliers may not share customer account or billing information without authorization from the customer, except for the sole purpose of facilitating billing, bill collection, and credit reporting. Rulemaking 17, initiated in 2005, sought to address customer protections and initially included proposed regulations for the sharing of customer information between electric companies and electricity suppliers. The sharing of customer information was not included in the final adopted regulations, however.

The Electric Customer Choice and Competition Act of 1999 (Chapters 3 and 4) facilitated the restructuring of the electric utility industry in Maryland. The Act required electric companies to divest themselves of generating facilities or to create a structural separation between the unregulated generation of electricity and the regulated distribution and transmission of electricity. Some electric companies created separate entities to operate unregulated and regulated businesses under a single holding company structure and other companies divested generation facilities. The resulting system of customer choice allows the customer to purchase electricity from a competitive supplier or continue receiving electricity under standard offer service (SOS). Default SOS electric service is provided by a customer's *electric company*. Competitive electric supply is provided by competitive *electricity suppliers*.

A competitive market for supply of natural gas has been available to large industrial customers since the 1980s. Maryland was one of the first states to consider deregulating natural gas markets for residential and small commercial customers. In 1996 the competitive market was expanded to these classes of customers as a pilot program. Chapter 669 of 2000 granted PSC the same licensing authority of gas suppliers as over electricity suppliers. Default SOS natural gas service is provided by a customer's *gas company*. Competitive natural gas supply is provided by competitive *gas suppliers*.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division of the Office of the Attorney General is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

The maximum civil penalty that may be imposed against a person who violates specified provisions or an outstanding direction, order, rule, or regulation of PSC is $25,000 per violation. Civil penalties are paid into the general fund. An individual who knowingly aids or abets a public service company in violating PSC rules, orders, and regulations is guilty of a misdemeanor and unless a different punishment is specified, on conviction is subject to a fine of up to $1,000 for a first offense and up to $5,000 for a subsequent offense.

Background:

Electric Customer Choice

During the initial transition period from July 1, 2000, through June 30, 2004, rate caps were imposed for residential customers in the PEPCO and Delmarva service territories. Rate caps in the BGE and Allegheny Power service territories expired June 30, 2006, and December 31, 2008, respectively. In both the BGE and Allegheny Power service territories, PSC allowed many customers to mitigate the increases through a rate stabilization plan. The rate caps, which aimed to give the electric industry time to switch to a competitive market, resulted in electricity suppliers being unable to compete with the below-market SOS rates in effect under the residential rate caps. Prior to the expiration of rate caps, the potential savings for residential customers offered by customer choice were limited as few competitive suppliers had offered rates lower than SOS. Since the expiration of rate caps, competitive electricity suppliers are offering retail electric at rates lower than SOS in the State's largest service territories. **Exhibit 1** shows the number of competitive electricity suppliers in each service territory, the current price to compare, and the number of offers.

Exhibit 1
Residential Electric Choice
February 2012 Survey

Service Area	SOS Price (per kWh) to Compare	Competitive Suppliers	Number of Offers
BGE	$0.0922	25	58
Delmarva	0.0867	10	21
PEPCO	0.0877	16	48
Potomac Edison	0.0781	8	12

Source: Office of the People's Counsel

Most alternative plans to SOS require a fixed-length contract of at least 12 months and have cancellation fees that range between $150 and $200; however, some suppliers are now offering month-to-month supply options. The majority of these alternative plans also include a portion of renewable energy, which may add additional cost. **Exhibit 2** illustrates the number of residential customers that are currently served by competitive electricity suppliers in each service territory.

Exhibit 2
Residential Customers Served by Competitive Electricity Suppliers
December 2011

Distribution Utility	Customers Served by Competitive Suppliers	Total Accounts	Percent of Total
Allegheny Power	16,200	221,288	7.3%
BGE	260,911	1,116,401	23.4%
Delmarva	17,459	173,650	10.1%
PEPCO	100,798	487,642	20.7%
Total	**395,368**	**1,998,981**	**19.8%**

Source: Public Service Commission

Since the removal of rate caps for residential customers, the number of residential customers receiving competitive service has increased; however, the majority of residential customers still procure electricity from SOS. Since 2006, the number of residential customers receiving competitive service has increased from 55,024 to 395,368, and the number of nonresidential customers has increased from 57,103 to 92,636. As shown in **Exhibit 3**, the percentage of customers receiving competitive service has increased significantly since December 2007.

Exhibit 3
Percentage of All Customers Served by Electricity Suppliers

Customer Class	December 2007	December 2008	December 2009	December 2010	December 2011
Residential	2.8%	2.8%	5.0%	13.5%	19.8%
Small Commercial & Industrial	22.5%	17.3%	23.2%	27.9%	33.1%
Mid Commercial & Industrial	52.8%	47.0%	50.9%	54.4%	56.8%
Large Commercial & Industrial	89.0%	87.0%	88.6%	88.2%	91.5%
Total	**5.3%**	**5.1%**	**7.6%**	**15.7%**	**21.8%**

Source: Public Service Commission

Exhibit 4 shows the recent increase in the number of residential electric customers receiving competitive electric service in selected major distribution territories.

Exhibit 4
Residential Electric Customers
Receiving Competitive Electric Supply

Distribution Utility	December 2009	December 2010	December 2011
Allegheny Power	2,743	11,763	16,200
BGE	53,126	179,801	260,911
Delmarva	2,463	12,759	17,459
PEPCO	40,267	64,335	100,798
Total	**98,599**	**268,658**	**395,368**

Source: Public Service Commission

Competitive Supply of Natural Gas

Competitive supply of natural gas initially saw greater implementation for residential customers than competitive electric supply; however, recent increases in competitive electric supply have resulted in similar levels of participation in customer choice. **Exhibit 5** shows each natural gas customer class and the percentage of customers that are currently receiving natural gas from a competitive supplier. Between December 2010 and 2011, the number of residential customers receiving natural gas from a competitive supplier increased from 167,947 to 177,868.

Exhibit 5
Percentage of Eligible Customers Served by Competitive Natural Gas Supply
December 2011

Distribution Utility	Residential	Firm Service Commercial and Industrial	Daily-metered and Interruptible	Total
BGE	16.8%	27.5%	89.7%	17.5%
Chesapeake Utilities	NA	95.4%	0.0%	95.4%
Columbia Gas, Maryland	2.9%	5.2%	45.1%	3.4%
Elkton Gas	NA	0.0%	0.0%	0.0%
Washington Gas	18.1%	41.0%	100.0%	19.7%
Total	**16.9%**	**31.6%**	**82.8%**	**18.0%**

Source: Public Service Commission

Small Business Effect: Small businesses that are not currently aware of competitive electricity or natural gas supply options could benefit from an increased awareness of lower priced electric and natural gas supply as a result of the bill. Small businesses that provide competitive electricity or natural gas supply also stand to benefit from the bill; sharing customer information will allow competitive suppliers to direct marketing efforts more efficiently.

Additional Information

Prior Introductions: HB 596 of 2011 and HB 1340 of 2010, similar bills, passed the House and were heard in the Senate Finance Committee. No further action was taken on either bill.

Cross File: None.

Information Source(s): Public Service Commission, Office of People's Counsel, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2012
mc/lgc Revised - House Third Reader/Clarification - March 22, 2012

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510