SB 373

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 373 (Senators Middleton and Klausmeier)
Finance

Gas and Electric Companies - Use of Trade Name or Trademark - Royalties

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This bill requires an affiliate of a gas and electric company that provides certain services and uses the trade name or trademark of the gas and electric company as part of its own trade name or trademark to pay specified royalties for the privilege of using the trade name or trademark. The royalties are remitted to the gas and electric company which then pays them to the Comptroller to be placed in the electric universal service program fund to be used for the Electric Universal Service Program (EUSP) administered by the Department of Human Resources (DHR). The Public Service Commission (PSC) is required to verify the annual gross receipts of an affiliate subject to the bill and that appropriate royalties have been collected by the gas and electric company and paid to the Comptroller.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues increase, potentially significantly, due to the collection of royalties. The actual amount of collections, however, is uncertain. *For illustrative purposes only*, if royalties are equal to 2% of annual gross receipts of an affiliate, special fund revenues increase each year by $100,000 for every $5 million in annual gross receipts. Special fund expenditures increase correspondingly for EUSP.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill specifies that an affiliate of a gas and electric company that provides heating, ventilation, air conditioning, or refrigeration services, and uses the trade name or trademark of a gas and electric company as part of its own trade name or trademark, must remit royalties each year to the gas and electric company in return for the privilege of using the gas and electric company's trade name or trademark. The royalties must be equal to 2% of the affiliate's annual gross receipts or an amount determined by PSC to be appropriate, based on the value of the trade name or trademark.

The royalties must be paid by the gas and electric company to the Comptroller, who must then place the revenue into the EUSP fund to be used for EUSP. Each year, PSC must verify the annual gross receipts of a gas and electric company affiliate required to pay royalties under the bill and verify that appropriate royalties have been collected by the gas and electric company and paid to the Comptroller.

Current Law: EUSP assists electric customers with annual incomes at or below 175% of the federal poverty level. The components of the program include bill assistance, low-income residential weatherization, and retirement of arrearages under specified circumstances (once every seven years per customer).

DHR, through the Office of Home Energy Programs, is responsible for administering the bill assistance and arrearage retirement components of the program, and the Department of Housing and Community Development administers the low-income residential weatherization component. PSC has oversight responsibility for the bill assistance and arrearage retirement components of the program.

The EUSP fund receives revenue from a surcharge collected by each electric company from electricity customers. PSC is required to determine a fair and equitable allocation for collecting the charges among all customer classes. A specified amount of $37 million is required to be collected each year, $27.4 million from the industrial and commercial classes and $9.6 million from the residential class. The General Assembly may also appropriate supplemental funds.

Background:

Electric Universal Service Program

EUSP was created in 1999 and is administered by DHR's Office of Home Energy Programs. DHR indicates that EUSP, along with the federal Low Income Home Energy Assistance Program, which is operated as the Maryland Energy Assistance Program, function as an integrated process, providing benefits to low-income Marylanders with the intended purpose of helping to make electricity and heating more affordable for income-vulnerable families. In addition to revenue from the electricity surcharge, EUSP has also been funded in recent years with a portion of the proceeds from carbon dioxide allowances auctions under the Regional Greenhouse Gas Initiative.

DHR, in its fiscal 2011 *EUSP Annual Report* to PSC, indicated that EUSP faces a fundamental challenge of more individuals and families seeking help with their home energy costs in a time of limited resources. The report shows that the number of households receiving benefits has been increasing, the average benefit amount decreasing, and that the availability of sufficient funding to meet demand is a concern. After receiving and considering DHR's report, and receiving other comments, PSC has recently decided to undertake a comprehensive review of Maryland's energy assistance programs and has scheduled a public conference for March 20, 2012, to address various items, including funding sources and the amount of funding necessary for the programs.

Affiliates' Use of Utility Trade Name or Trademark

The issue of the use of a utility's trade name or trademark by an affiliate has been addressed in past PSC proceedings, including in Case No. 8820 ("In the Matter of the Investigation into Affiliated Activities, Promotional Practices and Codes of Conduct of Regulated Gas and Electric Companies") initiated in 1999. In that proceeding, PSC found it appropriate to require that a royalty be paid by an affiliate for the use of the name or logo of a gas or electric company. PSC's order in the case, however, was overturned by the Court of Appeals on procedural grounds.

PSC subsequently adopted regulations in 2006 addressing affiliates of gas and/or electric companies and generally regulating the interaction between and conduct of the utilities and their affiliates. The stated purpose of the regulations is to promote competitive markets and ensure that an electric or gas utility does not subsidize its affiliates. The regulations do not address royalties for use of a gas and/or electric company's trade name or trademark by an affiliate, but do require a disclaimer in an advertisement by an affiliate that uses the company's trade name or trademark stating that the affiliate "is not the same company as (utility name), a regulated utility."

Examples of gas and/or electric company affiliates that use the company's trade name or trademark are BGE Home (BGE), Washington Gas Energy Services (Washington Gas Light Company), and Pepco Energy Services (Potomac Electric Power Company or "Pepco"). The bill appears to apply only to BGE Home, however, since it refers to an affiliate of a "gas *and* electric company." BGE Home provides "heating, ventilation, air-conditioning, or refrigeration services."

There is currently an open PSC case (Case No. 9235) regarding the affiliate practices of BGE and BGE Home. In response to a petition filed by a trade organization of heating, air conditioning, plumbing, electrical, and appliance contractors and other energy service-related businesses operating in the State and an individual ratepayer, PSC initiated an investigation regarding the practices of sharing resources by BGE and BGE Home and whether BGE is in compliance with specified provisions of State law. The investigation is delegated to PSC's Hearing Examiner Division and concerns, among other things, compliance by BGE with State law provisions relating to the EmPower Maryland program and electric companies' utilization of heating, ventilation, air conditioning, or refrigeration service providers in connection with programs or services proposed and implemented under EmPower Maryland.

State Fiscal Effect: Special fund revenues increase, potentially significantly, as a result of royalties paid by an affiliate of a gas and electric company specified in the bill that are placed in the electric universal service program fund. As mentioned above, the bill appears to only apply to BGE Home, whose gross annual receipts are not publicly available. Accordingly, a reliable estimate of the special fund revenue increase cannot be made at this time.

For illustrative purposes only, assuming the royalties are determined based on 2% of an affiliate's annual gross receipts and not another amount determined by PSC, for every $5 million in annual gross receipts of an affiliate, $100,000 accrues to the fund each year. This assumes the continued use by an affiliate of a gas and electric company's trade name or trademark.

Special fund expenditures from the electric universal service program fund within DHR increase accordingly.

PSC can handle the requirement that the commission verify an affiliate's annual gross receipts and that appropriate royalties have been paid with existing resources. The Comptroller can also implement the bill with existing resources.

Small Business Effect: Depending on what effect requiring BGE Home to pay royalties for the use of the BGE name and logo would have on the competitive market for services BGE Home provides, small business competitors may benefit. Any such impact, however, is uncertain.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Public Service Commission, Department of Human Resources, Comptroller's Office, Office of People's Counsel, Maryland Energy Administration, Department of Legislative Services

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