

**STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL**

Paula M. Carmody, People's Counsel

6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
410-767-8150; 800-207-4055
www.opc.maryland.gov

BILL NO.: SB540

COMMITTEE: Senate Finance

HEARING DATE: February 25, 2020

SPONSORS: Senators Hershey, Carozza, Eckardt and Gallion

POSITION: Oppose

The Office of People's Counsel (OPC) respectfully opposes SB540, Member Regulated Cooperatives-Establishment (Rural Broadband for the Eastern Shore Act of 2020). The bill is identified as a rural broadband bill. However, SB540 seeks to allow the Board of Directors of the Choptank Electric Cooperative (Choptank), an electric cooperative that distributes electricity to customers in nine counties on Maryland's Eastern Shore, to remove the Cooperative from the jurisdiction of the Public Service Commission (Commission). Under SB540, Choptank would become a member-regulated cooperative, as newly defined in the Corporations and Associations Article, upon unanimous vote of the Board. While the bill purports to subject the member-regulated cooperative to provisions of the Public Utilities Article (page 6, lines 7-21),¹ the bill

¹ These PUA provisions primarily relate to exercise of franchises generally, electric company powers, payment of environmental surcharges for the Power Plant Research Program, siting of generating facilities and transmission lines, and meter inspection and testing. The only exception is PUA §5-303 (Standards of Service). As discussed in OPC's testimony, given the removal of jurisdiction, none of these exceptions allow the Commission to maintain the existing oversight over rates, safety and reliability, and consumer protections for Choptank's customers.

effectively removes Commission jurisdiction, and therefore any authority, over Choptank. Most importantly, the bill would allow the removal of external oversight over the rates, fees and services provided by Choptank to its electricity customers, and the safety and reliability of Choptank's distribution system. Importantly, Choptank's residential customers would lose the benefits of the Commission's detailed consumer protection regulations governing service to those customers. The result is that Choptank's approximate 54,000 customers will be treated differently than all other electricity customers in the State including the customers of Southern Maryland Electric Cooperative (SMECO), the other electric cooperative in Maryland.

Under the current system, Choptank, when it seeks to change its rates for electricity, files an application with the Commission similar to those filed by investor owned utilities, other cooperatives and municipal utilities throughout the state. Since Choptank is not an investor-owned electric company, rate of return issues or the profit margin of investor owned utilities are excluded from the proceeding. Similarly, given the reduced size of the cooperative as compared to investor owned utilities, the overall examination is streamlined in the review. The Staff of the Commission and OPC review the costs, assets, facilities and revenues of Choptank in providing safe and reliable electric services to the customers along with any proposed changes in rates, and provide recommendations to the Commission. The Commission then reviews the assessments by Choptank, Commission Staff, and OPC to determine whether the costs incurred by the Cooperative are proper and prudent, the services provided are reliable and safe and the rates charged are just and reasonable. This review is undertaken by Staff accountants and

engineers, as well as OPC and its outside consultants. Due to the relatively small size of Choptank, as with municipal utilities, these proceedings often are streamlined.

Under SB540, when Choptank is removed from Commission jurisdiction, the rate setting review and approval will be performed by Choptank's Board of Directors. This body is also the entity that reviews and approves the rate application to the Commission under the current system. While the bill requires that the Cooperative provide financial and operational information about the Cooperative and its functions to the customer-members of Choptank, this review will lack the independent scrutiny employed by the Commission's Staff and OPC's consultants. Under the bill, if Choptank seeks to change the rates for electric service, Choptank must provide notice of the rate change and an opportunity for its members to offer comments on the proposed rates. However, these comments are submitted to Choptank's Board of Directors, the entity which devised the rate change proposal and ultimately approves it.

SB540 provides that after Choptank is removed Commission's overall jurisdiction, the Cooperative will remain subject to some provisions of the Public Utilities Article. This structure seems to be an attempt to create a hybrid jurisdictional structure. However, at a minimum, it creates uncertainty about what role or oversight the Commission would have, and how it would exercise even that limited oversight. More importantly, the specific exceptions from the "no jurisdiction" provision (page 3, line 33 to page 4, line 2) are very limited, and specifically do not extend to financial review and rate setting, regulatory safety, reliability and service standards, and the Commission's consumer protection requirements.

Of particular concern to OPC, the Cooperative is required now to establish policies regarding service applications, security deposits, bill responsibility, as well as termination of service, and restrictions thereon, to residential customers, consistent with the Commission's regulations. Customers also have access to the Commission's independent complaint process. Residential customers will lose these important consumer protection benefits under Senate Bill 540. OPC regards the protections provided to customers and the procedures to be followed by electric companies in terminating services as an important matter to the customers of the Cooperative. Additionally, it is unclear how the Commission would undertake review and enforcement of regulatory safety, reliability and service standards for an entity that was not fully regulated.

The title of SB540 –Rural Broadband for the Eastern Shore Act of 2020) – identified this bill as a means to deliver rural broadband services to Eastern Shore residents and businesses. Except for the preamble, however, the bill is a Choptank deregulation bill. The bill uses the removal of Choptank from Commission jurisdiction as the means to facilitate the deployment of broadband services in the Choptank service area.

While broadband deployment is not regulated by the Commission, it is subject to FCC oversight. OPC recognizes that broadband deployment in rural areas of the State like the Eastern Shore is an important state policy goal, and is important to residents in underserved areas. Broadband deployment will provide benefits in areas of economic development, educational opportunities, health and social services. OPC is concerned that the separation of Choptank from Commission jurisdiction in the setting of rates for

electricity distribution services, the primary and historic function of the Cooperative is a drastic step that reduces important protections for its electricity customers.

OPC has a specific statutory role to represent the interests of residential electricity customers throughout the State. At present, those customers include Choptank customers. From the point of view of those interests, the customers will lose benefits provided to them under current law. Furthermore, since deployment of broadband will quite likely be a significant investment and enterprise by Choptank, even with potential federal grants, the financial integrity of the Cooperative is a paramount concern. Any unanticipated financial situation resulting from the broadband deployment will directly affect the electric operations of the Cooperative, the main asset of Choptank, and consequently the rates charged to customers.

The issues surrounding rural broadband deployment are real and of serious concern to residents and businesses along the Eastern Shore. However, electric service also is a critical concern to those residents and businesses, and decades ago, Maryland decided that the Public Service Commission, an independent body, should exercise oversight over all electric companies, whether owned by investors, government or cooperative members. The General Assembly has taken into consideration the special circumstances of municipal utilities and cooperatives on numerous occasions, and appropriately exempted them from specific requirements applied to investor-owned companies. In this instance, the well-established regulatory oversight of Choptank should not be abandoned. OPC would urge the General Assembly and the State to address the important goal of broadband deployment throughout the Choptank service area through other means.

For these reasons, OPC respectfully recommends an unfavorable report on Senate Bill 540.