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BILL NO.:	House Bill 1419 – Electric Distribution System Support Services – Cost Recovery and Energy Storage
COMMITTEE:	Education, Energy, and the Environment
HEARING DATE:	April 3, 2025
SPONSOR:	Delegate Fraser-Hidalgo
POSITION:	Informational

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The Office of People's Counsel ("OPC") respectfully offers the following informational comments on House Bill 1419. As drafted, HB 1419 sought to add two new provisions to the Distributed Renewable Integration and Vehicle Electrification Act of 2024 ("DRIVE Act"). One of the provisions, proposed subsection 7-1007(b), would have unnecessarily increased the cost of DRIVE Act programs by requiring the use of regulatory assets for the recovery of all program costs. OPC appreciates the opportunity to work with the sponsor on the bill and supports the amendment adopted by the House to remove subsection 7-1007(b), which would have enabled the utilities to make use of regulatory asset treatment for all DRIVE program costs, to the detriment of customers. Our comments below make further suggestions to improve HB 1419 by making it more compatible with the interests of customers.

Background

The DRIVE Act was enacted in 2024 as House Bill 959 and is codified at Title 7, Subtitle 10 of the Public Utilities Article. Section 7-1005 of the Act requires the Public Service Commission ("PSC") to develop a program for Maryland's investor-owned electric utilities to establish a pilot program or temporary tariff to compensate owners and aggregators of distributed energy resources ("DER") for electric distribution system support services. Compensation is to be made "through an incentive mechanism determined by the Commission." Section 7-1006 authorizes the PSC to approve or require utilities to offer upfront incentives or rebates to customers to acquire and install renewable on-site generating systems if the customer enrolls in utility programs or temporary tariffs and allows their system to be used for support services for a period of not less than five years. Section 7-1007 of the Act provides for utility cost recovery of DRIVE Act program costs. In present form it states that electric utilities "may recover all reasonable costs incurred in: (1) participating in and administering a program under § 7-1005 of this subtitle; and (2) offering an upfront incentive or rebate under § 7-1006 of this subtitle."

The PSC is in the process of implementing the DRIVE Act.[1] On July 11, 2024, the PSC issued Order No. 91218, which among other things directed investor-owned electric companies to submit proposed pilot programs or temporary tariffs by July 1, 2025. Order No. 91218 also solicited comments on the advisability of requiring an electric utility incentive or rebate for renewable on-site generating systems to supplement other available state and federal incentives. On October 25, 2024, the PSC issued Order No. 91391, which among other things authorized—but did not require—utilities to propose DRIVE Act incentive programs. Order No. 91391 also stated that any ratepayer-funded DRIVE Act program should "include a rate design that avoids both imposing program costs on LMI customers and using regulatory assets."[2]

On December 19, 2024, Baltimore Gas and Electric Company ("BGE"), Potomac Electric Power Company ("Pepco"), and Delmarva Power & Light Company ("Delmarva") requested clarification of Order No. 91391. Specifically, the utilities requested clarification of "whether the Commission intended for the avoidance of the use of a regulatory asset only for incentives or whether the Commission intended that the entirety of a proposed DRIVE Act program should avoid the use of a regulatory asset."[3] On January 31, 2025, the PSC issued a notice clarifying that its proscription against the use of regulatory assets "applies to DRIVE Act *incentive* programs and not necessarily all DRIVE Act programs themselves. Utilities may request the use of regulatory assets for *non-incentive* DRIVE Act programs when they submit their program proposals. The PSC will evaluate any such requests when it evaluates DRIVE Act program proposals."[4]

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[1] *See* Administrative Docket Number: PC 44, *In the Matter of Transforming Maryland's Electric Distribution Systems to Ensure that Electric Service is Customer-Centered, Affordable, Reliable, and Environmentally Sustainable in Maryland, available at* https://webpscxb.psc.state.md.us/DMS/pc/pc44.
[2] PSC Order No. 91391 at 4.
[3] PC 44, Docket Entry No. 396 at 2.
[4] PC 44, Docket Entry No. 404 at 3 (emphasis added).

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Comments

I. OPC supports removing proposed subsection 7-1007(b) from HB 1419, as this provision would have unnecessarily increased the cost of DRIVE Act programs for utility customers.

OPC opposed subsection 7-1007(b) as proposed. While the bill was amended in the House to drop this subsection, the burden it would have imposed on ratepayers nevertheless merits elaboration. Contrary to Order No. 91391, the subsection would have required the PSC to allow utilities to use regulatory assets to recover all of their DRIVE Act program costs, including the cost of rebates and other incentives. This mandate, which has no precedent in any existing PUA statute, would needlessly increase the cost of DRIVE Act programs without providing any benefits for utility customers.

Regulatory assets are an accounting mechanism whereby non-capital expenditures are deferred on the utility's books for recovery in the future—typically on an amortization schedule over a period of years—rather than recovered in the year they are incurred, or "expensed." Expensing is the general rule for utility operating and maintenance costs and other non-capital expenditures. Historically, the PSC has sometimes approved the use of regulatory assets for extraordinary and non-recurring expenditures, such as expenditures in response to the COVID-19 pandemic. After the PSC determines that the expenditures recorded to a regulatory asset are reasonable and prudent, the regulatory asset often is moved into a utility's rate base—i.e., it is capitalized. As a result of the capitalization, the utility often is permitted to receive its authorized return on the non-capital expenditures recorded to the regulatory asset as though they were physical assets like electricity poles and wires or gas pipelines.

In prohibiting the use of regulatory assets for DRIVE Act incentives, the PSC acted in a manner consistent with its 2022 decision[5] to end utilities' use of regulatory assets to recover EmPOWER costs—a decision ratified by the General Assembly in House Bill 864 of 2024. The basis of both decisions is that allowing regulatory asset treatment for regularly recurring expenses like customer incentives unnecessarily increases the cost of the incentive program, and therefore customer bills. Continually deferring incentives and other program costs to regulatory assets is like charging those costs to a credit card and making the minimum payment every month. The result in the EmPOWER program was that unamortized balances continued to grow despite serving no purpose except to generate utility profits. Using regulatory assets for DRIVE Act incentives would have the same result.

Requiring the PSC to allow utilities to capitalize the cost of DRIVE Act incentives would also be inappropriate because there is virtually no risk in providing PSC-approved

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[5] *See* PSC Order No. 90456.

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incentives to customers pursuant to a PSC-approved program. A utility's PSC-authorized rate of return is supposed to approximate the return earned by investors in businesses that operate in competitive markets and present similar levels of investor risk. Investing in a capital asset involves some level of risk. By contrast, if a utility provides a DRIVE Act incentive, it will be because the PSC has approved the utility's incentive program, in which case there is virtually no risk of non-recovery. Any profits (beyond the time value of money) that a utility is allowed to earn on incentives would therefore be windfall profits.

In Order No. 91391, the PSC reasonably disallowed the use of regulatory assets to recover the cost of DRIVE Act incentives. This decision was clearly permitted under the Act and protects utility customers from unnecessarily and unreasonably high costs for DRIVE Act programs.

II. Subsection 7-1005(g) would unnecessarily deprive the PSC of jurisdiction to establish licensing requirements for third-party DER aggregators.

Proposed section 7-1005(g), which was added through House amendments, provides that a third-party aggregator of DERs that participates in a pilot program established pursuant to the DRIVE Act is not an "electric company" or "electricity supplier," as defined in PUA § 1-101. It is OPC's understanding that this amendment is intended to prevent the PSC from requiring aggregators to apply for a license to operate—a course of action the PSC is currently considering in its ongoing DRIVE Act proceedings. Opponents of licensing believe that it could prove burdensome to aggregators and deter their participation in DRIVE Act programs.[6]

In the PSC proceedings, OPC has supported the licensing of third-party aggregators because aggregators interact directly with customers in the same way that third-party retail suppliers do, and these interactions could—in the absence of PSC oversight—result in the same kinds of customer deception and abuses that some third-party suppliers have perpetrated in Maryland. At this early stage in the implementation of the DRIVE Act, OPC does not have a settled opinion on this matter and is open to hearing reasons why that licensing is in fact unnecessary for aggregators. But OPC does not support depriving the PSC of jurisdiction to make this decision, as subsection 71005(g) would do. Rather, the General Assembly should allow the PSC to decide the issue in the current DRIVE Act proceedings after careful consideration of all relevant information and comments.

[6] https://mgaleg.maryland.gov/cmte_testimony/2025/ecm/1MLf-vCEaSfgbgazHbr7OcjPA3bqnJMD4.pdf

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III. Proposed subsection 7-1005(h) is unnecessary.

Proposed subsection 7-1005(h) states that nothing in PUA § 7-1005 "may be construed to prohibit an electric company, private entity, or aggregator of distributed energy resources from offering energy storage to residential customers separate from the pilot program or temporary tariff." This provision is not necessary because when section 7-1005 is read in the context of other sections of the PUA, it is clear that it cannot be construed to include such a prohibition. PUA § 7-223(e) clearly authorizes utilities to propose storage incentives through their EmPOWER programs, and PUA § 7-216.1, which requires that the PSC establish targets for the Maryland Energy Storage Program, also allows for storage programs and incentives outside of the DRIVE Act. Moreover, as far as OPC is aware, no party has interpreted section 7-1005 as preventing utilities and non-utility companies from offering storage outside of the Act.

IV. In proposed subsection 7-1005(i), "shall" should be changed to "may" to ensure that the PSC retains discretion to deny alternative metering proposals for DERs that do not meet regulatory criteria.

Proposed subsection 7-1005(i) requires the PSC to approve an electric company's request to use "usage data and production data collected from customer-owned [DERs] for the administration of the pilot program or temporary tariff established pursuant to the DRIVE Act. It is OPC's understanding that this provision is intended to enable Potomac Edison to operate a pilot program without requiring the deployment of alternative metering infrastructure, also known as "smart meters" or "AMI," across the company's service territory. In lieu of smart meters, Potomac Edison seeks to use "non-standard metrology" installed in customer-owned equipment like EV charging systems, power walls, power inverters, etc. as the company currently does for its EV-Only Time-of-Use Rate as part of the PSC's EV Pilot Program.[7]

OPC supports enabling Potomac Edison to administer DRIVE Act programs without the system-wide deployment of smart meters and therefore supports Potomac Edison's having an opportunity to seek waivers of PSC metering regulations for the use of "non-standard metrologies." But OPC does not support proposed subsection 7-1005(i) as written, because it would remove the PSC's discretion to deny waivers for alternative metering proposals that do not ensure accurate metering or are otherwise problematic. The General Assembly could address this concern by changing "shall" in line 26 to "may." With this change, OPC would support subsection 7-1005(i).

OPC appreciates the opportunity to provide these comments on HB 1419.

[7] https://mgaleg.maryland.gov/cmte_testimony/2025/ecm/1nJ66JUwbpCxBEthZKshOBKBSspfQzXa6.pdf

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