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**TESTIMONY BEFORE THE
JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE AND
LEGISLATIVE REVIEW
IN SUPPORT OF PUBLIC SERVICE COMMISSION REGULATIONS
COMAR 20.31.01.02 AND 20.31.03.03-06
Regarding Terminations of Utility Service**

February 17, 2010

The Office of People's Counsel supports adoption of the emergency regulations issued by the Public Service Commission regarding service terminations for residential utility customers during periods of extreme weather.

I. BACKGROUND

During the 2009 Legislative Session the Maryland General Assembly passed legislation expanding the temporary prohibition on residential terminations of service by a public utility company during extreme weather conditions.¹ On June 9, 2009 the Commission initiated proceedings and gave Notice of a Rulemaking session to consider whether to publish proposed amendments to COMAR 20.31, as proposed by the Commission's Technical Staff. Following the written comment period the Commission held two public meetings at which the Commission heard from a broad range of interested parties. At their January 15th meeting the Commission unanimously approved

¹ House Bill 453; Ch. 345, Laws of Maryland (2009).

the regulations the Committee is considering today on both an emergency basis and for publication in the Maryland Register for permanent adoption. OPC supported the legislation that underlies these regulations and the regulations as issued by the Commission as a reasoned and reasonable response to the health and safety threat to Maryland residents posed by extreme weather conditions.

II. THE PROPOSED AMENDMENTS TO COMAR 20.31 SHOULD BE ADOPTED AS HEALTH AND SAFETY MEASURES

1. The Use of the 72 Hour “Extreme Weather Period”

The most controversial issue in the proposed amendments is the use of a 72 hour forecast period for defining the “extreme weather period” during which the utility companies would be prohibited from terminating customers for non-payment on a 24 hour rolling basis. The Commission considered two proposed definitions of “Extreme Weather Period,” (one with a 72 hour length, one with a 48 hour length) for use in determining when the termination restrictions will be in effect. The Commission decided to adopt the 72 hour forecast period because the intent of the statute is to protect MD residential ratepayers’ health and safety. As noted in OPC’s previous comments to the Commission and those of the Energy Advocates (See PSC RM 38, Docket No. 3, July 6 2009 and No. 4, July 7, 2009 respectively), postponing terminations for non-payment for twenty-four hours when it is likely that extremely hot or cold weather is imminent over the next 72 hours provides the most protection from the threat to public health and safety in the least restrictive manner.

The utilities have noted their disagreement and suggested that the current restriction period based on the weather forecast for each day is sufficient, and that a

longer period would needlessly interfere with their operations. They argue that restricting their ability to terminate customers for non-payment allows customers to accrue even larger arrearages and increases their costs. They assert that they have the ability to reconnect promptly, which further vitiates the need for using a restriction period of more than one day. OPC believes the utility companies are missing the point of these regulations and ignoring the realities of what payment troubled customers experience when service is terminated.

The link between extreme weather and health and safety threats has been established in numerous epidemiological and heat assistance program studies.² The CDC has determined that air conditioning is the number one protective factor against heat related illness and death.³ Epidemiological studies have established that deaths often occur a day or two after the initial onset of the high temperature event.⁴ OPC believes that using a longer forecast period will be effective in minimizing the risk to Maryland residential utility customers and could prevent what is certainly everyone's worst fear, injuries or deaths due to exposure to excessive heat or cold, or from accidents such as fire or carbon monoxide poisoning when citizens are left with no access to safe heating or cooling sources and lighting.

In most cases when a customer is facing termination for non-payment there are likely a number of factors contributing to the situation. Perhaps there is a crisis such as

² OPC refers the Committee to the Comments filed with the Commission in Rulemaking 38 by AARP on January 12, 2010, Docket Item #33, citing "Impact of Heat Waves on Mortality – Rome Italy, June-August, 2003", CDC.MMWR, May7, 2004, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5317a5.htm> and 2008 National Energy Assistance Survey, National Energy Assistance Directors Association (NEADA), <http://www.neada.org/communications/press/2009-04-28.htm> . http://webapp.psc.state.md.us/Intranet/AdminDocket/CaseAction_new.cfm?RequestTimeout=500

³ <http://www.cdc.gov/features/ExtremeHeat/>

⁴ Braga AL, Zanobatti A., Schwartz J., The time course of weather-related deaths, *Epidemiology* 2001; 12:662-7.

illness, unemployment or other loss of income that has resulted in an inability to stay current on energy bills. Regardless of the reason the customer is behind on their bills, once service is terminated, restoration can often take several days to accomplish. Fragmentation of available resources for energy bills continues to be a significant and critical issue. It often takes inordinate amounts of time and effort for customers to obtain funds or commitments from all entities necessary, e.g., DSS ,Fuel Fund, family, friends and private charities. Programs are often housed in different locations with different eligibility requirements and different processing procedures.

In addition to the issues the benefits system faces under normal circumstances, the current economic crisis has created a new vulnerability to termination for customers who are making every effort to pay past due bills. The Office of Home Energy Programs (OHEP), the agency that administers the MEAP and EUSP programs, is experiencing a significant multi year trend of rising numbers of applications for assistance. (See MD Dept. of Human Resources/OHEP FY 2010 Proposed Operations Plan, Docket Item No. 345, and OPC Comments in Response to PSC’s Notice of Hearing and Opportunity to Comment (on OHEP’s 2010 FY Plan) Docket Item No. 347, PSC Case No. 8903.) Local Aid Agencies (LAA’s) in numerous jurisdictions (e. g., Baltimore City, Baltimore County, Howard County, Harford County, Montgomery County, Shore Up, and Tri-county) are reporting delays in application certifications of up to 90-120 days. The effect is that the protection against termination while an application is pending, commonly referred as the “55 day rule,” often expires, and the customer is again subject to termination on short notice before the agency has processed the application.

The utilities have posited that they have the ability to restore service almost immediately once the bill is paid. However, for customers who are not immediately able to meet the conditions necessary for restoration (i.e., full payment of bill and reconnection deposit, approved energy assistance commitment, or other resolution), the reality is that it can take several days for customers to raise the necessary funds, leaving them vulnerable to extreme effects of weather in the interim.

2. “Weather Station Area” Definition and Designation

OPC supports the language adopted by the Commission defining “weather station area” and requiring PSC approval of the weather station area filings by the companies. OPC believes the regulation provides the opportunity for the utilities to give appropriate consideration to the variation of weather conditions within their service territories and to propose reasonably homogeneous geographic areas for use in determining whether the termination restriction would apply to a given customer in the service territory. The requirement that the Commission approve the company’s submission ensures that public input can be provided if necessary.

3. Emergency Adoption of These Regulations is warranted.

OPC recommended that the Commission seek emergency adoption of the Proposed Regulations incorporating a 72 hour forecast period for the termination restriction. We already know, from the actual and predicted increases in assistance applications reported in the OHEP Proposed Operations Plan for EUSP, that more and more Maryland residents are having difficulty meeting rising energy costs. In the aftermath of unusually high number of customers accumulating arrearages in the 2008-

2009 heating season, the utility companies pointed to the unusually cold weather as a principle cause. Weather forecasters' predictions of similarly cold weather for this winter have come to fruition. A review of recent temperature records maintained by the U.S. Weather Service for Baltimore Maryland indicates that between December 1, 2009, and February 15, 2010, the high temperature has been 32 degrees or below on thirteen days, December 19th and 30th, January 2nd, 3rd, 8th, 10th, 29th and 30th, and February 6th, 7th, 8th, 10th and 13th. Baltimore Gas and Electric recently recognized the likelihood of conditions similar to last winter by issuing warnings to customers regarding energy use (and resulting higher bills) because of the cold weather. (The Sun, "BGE warns of high heating bills because of cold weather" Jan. 6, 2010.)

The combination of increasing numbers of Maryland residents having difficulty paying rising energy bills and the expected colder than usual weather creates the reasonable likelihood that Maryland residents will be exposed to serious health and safety conditions in the remaining months of this winter. This risk makes proceeding with emergency adoption of the proposed regulations appropriate and necessary.

OPC appreciates the opportunity to provide comments regarding the Public Service Commission's proposed emergency regulations to restrict utility service terminations in extreme weather conditions. We respectfully request that you approve the emergency regulations as adopted by the Public Service Commission.