

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

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BILL NO.: **House Bill 596**
Electric and Gas Companies-Customer
Account Information

COMMITTEE: **Economic Matters**

HEARING DATE: **February 23, 2011**

SPONSOR: **Delegate Davis**

POSITION: **Oppose**

House Bill 596 would require regulated electric and gas utilities to provide certain customer specific information to competitive electricity or gas suppliers upon the written request of a supplier and without affirmative consent of the customer. The regulated utility would be required to release not only the customer's name and address, but more specifically, information regarding the customer's utility account number, load profile and twelve months of historic energy usage. The Bill indicates that this personal information would not be released to competitive suppliers "without the prior authorization of the customer." However, the Bill "deems" a customer to have consented to release of this private information if they do not opt-out in 45 days after notice is given to them. This opt-out provision eliminates any notion of real, informed consent on the part of the customer. For this reason, the Office of People's Counsel (OPC) urges an UNFAVORABLE report on House Bill 596.

OPC has consistently opposed the release of personal information of residential customers by a regulated utility without affirmative consent. While the Public Service Commission previously agreed to the release of basic name, address and telephone number information, the Commission has explicitly declined to authorize release of other personal information, such as account numbers and usage information, without the express permission of customers.

Consumer concerns about release of household energy usage information have been heightened in the face of deployment of so-called "smart meters," which both BGE and PEPCO will do in the next few years. Utilities collect such information for billing purposes and to ensure that customers' energy demands can be met. However, detailed usage information can reveal not just aggregate usage, but daily household usage patterns and eventually, the use of specific appliances or equipment in the household. Third parties, including energy suppliers and other commercial entities, do not have a right to such information. Consumers should be able to control access to this type of information, and allow such access to third parties only if and when they want to.

The national "smart grid" discussion has produced greater recognition of the importance of ensuring that the consumers control, in an affirmative and transparent way, the access to this information, particularly as we proceed with deployment of digital meters. The Department of Energy has recognized the validity of these concerns by seeking comments about the privacy issues related to access to usage information. In its October 5, 2010 Report on "Data Access and Privacy Issues Related to Smart Grid

Technologies,”¹ DOE observed that “[s]tudies conducted by utilities and consumer advocates have consistently shown that privacy issues are of tremendous import to consumers of electricity” and found substantial consensus on the following privacy principles:

- Utilities should not disclose consumer information to third parties without affirmative consent of the customer, through an opt-in process that reflects and records the informed consent of the customer;
- The opt-in process should require the third parties to identify the purpose for access to the data, the term for the consent, and the means for customer withdrawal of that consent;
- The third parties should be required to protect the privacy and security of the information and use it only for the designated purposes.

Id. at 3, 14-16. The Maryland Commission has not yet taken up the specifics of privacy rules for smart meter deployment, as stakeholder working groups have focused on consumer education and performance metrics. However, Public Service Commissions in states like Colorado and California, which have proceeded with smart meter deployment, are considering detailed rules to address issues of consumer data privacy and access to the data, including affirmative consent rules.

Unfortunately, in contrast to this growing consensus, House Bill 596 would elevate the interests of third parties in getting access to personal information over the rights of the consumer in protecting personal information. The “opt-out” requirement

¹ Available at: http://www.gc.energy.gov/documents/Broadband_Report_Data_Privacy_10_5.pdf.

places the burden on the customer to say “no” to release of information. From a consumer perspective, this subordinates privacy interests to the business interests of suppliers. A person or business seeking utility service has no choice but to apply for and receive such service (at least distribution service) from the regulated utility. They have no expectation that their personal information, such as account numbers and energy usage, will be given or sold to other businesses without their express permission. Further, while this Bill may decrease the cost of marketing for suppliers, customers may find that information that they wish to keep private is being disseminated to companies with whom they have sought no relationship. OPC believes that this is not good consumer protection policy.

House Bill 596 states that the information cannot be released without prior authorization by the customer. However, the bill provides no assurance that the authorization reflects knowing and express consent. The notice provisions are crafted so that a customer is presumed to agree to release of information if the customer does not “opt-out” within 45 days of receiving notice about the possibility of release of account information. The Bill provides that “notice” will be given to existing customers via “bill insert” and to new customers with the written material supplied to them at application. In OPC’s experience, customers frequently miss or ignore information in bill inserts due to a variety of factors, including the press of busy daily living, illness, hospitalization, vacations or extended business trips. This type of negative “check-off” does not benefit the consumer.

For these reasons, OPC recommends an UNFAVORABLE report.