

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

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BILL NO.: **House Bill 781**
Electricity Suppliers-Residential Electricity
Supply Contracts-Information and Customer
Relations

COMMITTEE: **Economic Matters**

HEARING DATE: **February 23, 2012**

SPONSOR: **Delegates Carr *et al.***

POSITION: **Support with Amendments**

House Bill 781 establishes specific requirements for residential electricity supply contracts and customer service contact information. Among other things, the Bill requires a supplier to provide:

- A clear disclaimer that “historical savings do not guarantee future savings” in the marketing materials or website information of a supplier, if the supplier makes any claim that the contract “will or may” result in future savings based upon historical performance
- Notice of a rate change at least 30 days in advance if the price term in a contract is a variable rate or subject to change
- Clear and conspicuous disclosure of an automatic renewal clause, with customer initials required for acceptance, in a contract offer

- Clear and conspicuous disclosure of an early termination fee, penalty or cancellation fee, with customer initials required for acceptance, in a contract offer
- A specified time, up to 30 days prior to a renewal, for a customer to refuse a contract renewal
- An electronic mail address to be provided to customers to cancel or refuse renewal of contracts

Additionally, the Bill modifies the definition of broker, and the definitions of electricity supplier and gas supplier. The Office of People's Counsel (OPC) supports the Bill with certain amendments.¹

The Office of People's Counsel has continued to maintain a monthly review of supplier contract offers to residential customers since May 2007.² All, or almost all, of these contracts contain automatic renewal clauses and early termination clauses. The clauses are typically listed in the small print of contract terms on the second page, and are not disclosed clearly and conspicuously. OPC has been contacted by customers who assert that they were not aware of automatic renewal or cancellation fee terms of their supplier contracts, and ended up with contract roll-overs. Jay Hancock recently highlighted these

¹ OPC had supported a similar bill (HB 1080) with amendments in 2011. That bill received an unfavorable vote in committee and was withdrawn by the sponsor. HB 781 incorporates OPC's recommendations regarding HB 1080's automatic renewal and early termination fees by requiring clear and conspicuous disclosure of the terms, and customer acknowledgement of those terms. However, HB 781 also includes certain definition changes unrelated to these contract provisions.

² The Public Service Commission website now contains a web portal, as required by enrolled SB244/HB704, so that customers can do a search of supplier offers in their service territory. This search typically links to a supplier contract form or a price term sheet.

automatic renewal terms and the consequences of failing to respond to renewal notices in his February 6, 2012 column in the *Baltimore Sun*.

Additionally, in monitoring the early termination fees, OPC has observed that most fees are fixed, and fall in the \$150 to \$250 range. However, some supplier contracts have fees that decline through the contract term. In the case of 2 to 3 year contracts, cancellation fees could run up to several hundred dollars if customers cancel the contract in the early months of a three year contract.

The bill requirements for clear and conspicuous disclosure of automatic renewal and early termination fee terms and customer acknowledgement of these terms with their initials (either written or electronic) would help to draw the customer's attention to these important and potentially costly contract terms.

OPC supports all of the above provisions in the Bill since they will assist consumers by drawing attention to supply contract terms that have caused confusion for customers.

The Bill also includes amendments to the definitions of "broker," "electricity supplier," and "gas supplier" contained in Section 1-101 (definitions) of the Public Utilities Article. For example, the definition of broker would be modified in Section 1-101(c) (2) to include an entity or individual that "has the ability to directly enroll customers in a contract" with a supplier, but who is not an employee of the supplier. The definitions of electricity and gas suppliers are also modified to exclude a person who "promotes an electricity supplier or who refers customers to a supplier," but does not have the ability to directly enroll

customers” and “does not receive compensation for the promotion . . . or the referral.”

OPC is aware of a number of companies that use independent representatives or a multi-level marketing (MLM) model to market supplier offers. The MLM model can include persons who reach out to family, friends, neighbors and associates to actively “promote” or solicit customers for suppliers. In addition to the independent marketers, affinity groups (for example, churches and synagogues, civic clubs, alumnae associations and veterans organizations sometimes bring in businesses (including energy suppliers) to membership meetings to discuss the benefits of their products or services to the members.

The Public Service Commission has a pending case (PSC Case No. 9245) considering whether and how to exercise oversight over the independent representatives, who are contractors and not employees of brokers or suppliers. Since these representatives are compensated in some fashion, OPC believes that these individuals should be subject to licensing requirements as brokers (who are included in the definition of supplier). In other circumstances, where the affinity group or its spokesperson or representative is not receiving any direct or indirect compensation for making a “promotion” or “referral,” a license may not be necessary. However, the exclusionary language in the bill is overly broad and it is unclear exactly who is being excluded.

Since the Commission has a pending proceeding on this matter, OPC recommends that the Bill be amended to delete the modifications

to the “broker,” “electricity supplier,” and “gas supplier” definitions found in Section 1-101 of the PUA.