

**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.state.md.us

BILL NO.: **House Bill 864**
Electricity – Community Energy – Generating
Facilities and Net Energy Metering

COMMITTEE: **Economic Matters**

HEARING DATE: **March 8, 2012**

SPONSORS: **Delegates Stein *et al.***

POSITION: **Informational**

House Bill 864 would amend the State's current net metering law to allow owners of renewable energy generating facilities, referred to as a "community energy-generating facility," to allocate some or all of the output of the generating facility to other electric utility customers, referred to a "subscribers." The allocated electricity would be subtracted from the subscriber's electricity usage for purposes of billing by the utility. In effect, this would permit the aggregation of electricity customers to "purchase" the output of such a facility, and reduce or offset the electricity supply purchased from their distribution utility or electricity suppliers. The Office of People's Counsel has supported the development of net metering, and is supportive of the concept underlying House Bill 864. However, as discussed below, these types of facilities may expand the scale of net metering

in a way that has cost implications for customers not participating in net metering or community energy initiatives.

Briefly, this is how the "community energy" would work. If a renewable energy developer built a 1 MW renewable energy facility that was expected to produce 150,000 kilo-watt hours (kWh) of electricity every month, the developer could seek 150 subscribers who would pay a rate set by the developer for 1,000 kWh of electricity every month. The subscriber would have 1,000 kWh of electricity subtracted from his usage every month. Similar to a net energy metering customer who has a generating facility on his property, if the subscriber used more than 1,000 kWh for the month, he would be charged the applicable supply and volumetric distribution rate for the usage over 1,000 kWh; if he used less than 1,000 kWh for the month, the difference would be rolled over as kWh that would be applied against his usage the next month and he would only be charged the customer charge.

The concept of customer aggregation came up in discussions during the 2010 Legislative Session. The General Assembly passed bills that require the Public Service Commission to consider aggregation.¹ As a result, the Commission has created a Net Metering Working Group, led by the Commission's Technical Staff, that has been developing a pilot program for net metering aggregation. The investor-owned utilities as well as the Southern Maryland and Choptank Electric Cooperatives have filed proposed tariffs with the Commission to implement pilot programs allowing certain types of customers (agricultural, non-profit, and

¹ Senate Bill 355 and House Bill 801 were enrolled as Chapters 438 and 437 of the Laws of Maryland 2010.

municipal) to credit additional accounts for electricity generated by an on-site generation facility at one of its accounts. The utilities have begun to develop systems to accomplish this crediting of accounts, but this is being pursued as a pilot program in order to determine what unknown issues or problems arise in technical implementation. OPC expects the Commission to consider these proposals in late March 2012. House Bill 864 would mandate immediate implementation of the same type of system but on a much wider scale, and available to all customer groups.

OPC is not opposed to the concept of a renewable energy developer selling the electricity from its facility directly to customers. However, there are important implementation details to be worked through, which may be done most efficiently through the pilot program process.

House Bill 864 also creates the framework for significant net metering participation. The State's public policy supports such expansion. However, as participation levels increase significantly, so do issues related to cost responsibility for the distribution system. For a month in which they generate all (or more than) the electricity they use, net metering customers currently pay only the fixed customer charge towards the total distribution costs of the utility. The part that is not paid in that month is the consumption-based (volumetric) distribution charge, which represents the largest portion of the distribution costs. This is so, even though the net metering customer is connected to, and reliant upon, the utility distribution system.

When only a relatively small number of customers are net metering customers, the cost impact on non-net-metering customers has likely been *de minimus*. While the proposed projects could not exceed 2 MW in size, the current limit for eligible net metering customers, the Bill would *not* apply the current statutory limit of 1,500 MW of capacity for net energy metering in the entire State to community energy-generating facilities; the limit would be an amount determined by the Commission. As community energy-generating facilities increase in number, and the number of “subscribers” increase, the reduction in volumetric distribution costs paid by subscribers at some point will have a cost impact on non-subscribers, if those costs are re-allocated to non-subscribers. This would not be equitable, particularly so in the case of “subscribers” who are clearly using the distribution system in the same manner as non-subscribers.

A subscriber would be buying energy from the community energy-generating facility and should not have to pay the energy, or commodity, portion of the bill, which is entirely consumption-based. However, there are other charges on customers' utility bills that are based on the amount of the customer's consumption during a month. Residential customers pay part of their distribution charge as a fixed customer charge, but for the typical customers most of the distribution charge is consumption-based (volumetric). The EmPower Maryland surcharge, the Electric Universal Service Program charge (for commercial and industrial customers), the Environmental Surcharge, and the franchise and local taxes also are charged on a consumption basis.

The systems contemplated to be community energy-generating facilities would not reduce the actual costs of the utility distribution system. The cost of the distribution system includes substantial embedded costs for poles and wires and other equipment, as well as operating and maintenance expenses. The community energy-generating facility would be connected to the grid and needs distribution facilities to export power away from the generating site. The subscribers to a community energy-generating facility would still be connected to the distribution system and would still use the distribution system to the same extent as they did before becoming subscribers. However, the amount of electricity allocated to them as a subscriber would, unless it was determined otherwise, reduce not only the subscriber's generation, or commodity, portion of the bill, but also all of the consumption based charges, including the distribution portion of the bill. OPC is not aware of any analysis or study showing this type of community energy arrangement would reduce the overall cost of the distribution system.

In sum, the amount of distribution costs that are avoided by the subscriber may have to be covered by other customers in the future. Furthermore, subscribers may avoid all of the other consumption-based charges (distribution charge, Empower Maryland charge, Electric Universal Service Program charge, Environmental Surcharge, and franchise and local taxes) on a utility bill. These potential rate impacts will need to be addressed in a manner that maintains the revenue stream for those programs and equity among all customers.

Comments on Specific Sections of the Bill.

1. Consumer protections and disputes. The Bill provides that the generating facility and subscriber organization are not regulated by the Public Service Commission as a utility or an electricity supplier, and that the utility is not responsible for resolving disputes between a subscriber and the facility. Therefore, despite the fact that this arrangement is being carried-out under PSC regulations and through the electric utility bill, the PSC will not have clear, and perhaps not any, authority over the facility's billing practices or other matters involving the subscribing customers. The subscribers' only recourse may be complaints to the Office of Attorney General or suits in small claims court. This could be confusing to consumers, and it may be less so if the Commission was granted dispute authority. (Proposed §1-101(h) (2) (iii) on p.2; §1-101(j) (3) (iii) on p. 3; §7-306(l) on p. 9).

2. Utility ownership of a "community energy-generating facility." The Bill states that a "community energy-generating facility" can be "owned by a public service company or any other person, including a subscriber organization." The implications of utility (not just affiliate) ownership of such a facility are not clear, particularly for ratepayers. (Proposed §7-306(a) (4) (iii) on p. 4).

3. Different service territories. The Bill does not require that the subscribers be in the same electric service territory as the community energy-generating facility. The accounting and communications necessary for the utilities to allocate the electricity produced between multiple utilities would undoubtedly create additional costs. Also, it could result in cross-subsidization, as non-subscriber customers in one service territory may incur increased distribution costs as a result of a community-energy-generating facility in another service territory. (Proposed §7-306(a) (10) on p. 5).

4. "Beneficial" ownership or operation is not defined. The Bill states that the "subscriber organization" will beneficially own or operate the facility, but also states that the organization can be any for-profit or non-profit entity. While the term "beneficial" seems to indicate an intention to limit the purpose of the owner or operator, there is no indication of how that would be accomplished. (Proposed §7-306(a) (11)).

5. Relationship between the subscriber and owner/operator of facility. The Bill states that "'subscription' means an interest in a community energy-generating facility," However, the rest of the bill reads as if the subscribers would have a contractual relationship with the project, not an ownership interest. (Proposed §7-306(a) (12)).

6. Meter installation. The Bill would require the utility to install a meter capable of running backwards for a subscriber; however, such a meter would not be necessary because there would not be a generating facility on the subscriber's premises. (Proposed §7-306(c) on p. 5).

7. Payment for excess generation. The Bill would require the utility to purchase electricity generated by the facility but not allocated to subscribers "at the wholesale price of electricity." There is no requirement to allocate a minimum level of the electricity to subscribers so this could be a significant amount of electricity. Excess generation produced by the facility should be compensated under a Cogeneration and Small Power Production Tariff. (Proposed §7-306(f) (5) on p. 6).

8. Costs for upgrades. The Bill states that the generating facility would be responsible for costs associated with interconnecting the facility to the grid. While it is also common for new generating facilities to cause the need for upgrades to the grid, it appears that the facility owner would not be responsible for these costs. (Proposed §7-306(g) (2) on p. 8).