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**BILL NO**: **Senate Bill 974**
**Electric Companies and Electric Cooperatives – Standard Offer Service – Service Rights Auctions**

**COMMITTEE**: **Finance**

**HEARING DATE:** **March 20, 2012**

**SPONSORS:** **Senators Pugh, et al.**

**POSITION:** **Oppose**

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Senate Bill 974 would require the Public Service Commission (Commission or PSC) to study and make recommendations regarding auctioning the right to serve standard offer service (SOS) customers of investor-owned utilities and electric cooperatives. The Commission would be required to report its recommendations to the General Assembly by December 31, 2012.

The Commission has reviewed similar proposals over the past few years and declined to adopt them.[1] The adoption of such a model would not be consistent with certain fundamental requirements of the electric restructuring

[1] *In the Matter of the Commission's Investigation of Investor-Owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland, Case No. 9117*; *In the Matter of the Merger of FirstEnergy Corp. and Allegheny Energy, Inc., Case No. 9233.*

law, as modified in 2006, and would represent a fundamental change in the direction of state policy on retail competition.

Maryland law regarding SOS for residential and small commercial customers, as implemented by the Commission, makes available to all customers an electric supply service that is not fully exposed to the volatility of the wholesale electricity market and is offered at terms and conditions overseen by the Commission. The proposal that would be studied under this Bill would eliminate the protection that the amended electric restructuring law provides for them. For example,

1. Section 7-507(g)(1) states that "[a]n electricity supplier or any person or governmental unit may not , without first obtaining the customer's permission ... make any change in the electricity supplier for a customer ..."[2]
2. As a result of amendments made in the Special Session in 2006, the utilities have an ongoing obligation to provide SOS in their service territories. *See* Section 7-510(c)(3)(ii).
3. Section 7-510(c) (2) (iv) states that "a customer is considered to have chosen the standard offer service if the customer...does not choose an electricity supplier..."

[2] Section 7-507(g) (2) requires the Commission to "adopt regulations or issue orders establishing procedures to prevent the practices prohibited under paragraph (1) of this subsection." The Commission has issued such regulations in COMAR 20.53.07.08B (1) ("A supplier may not enroll a consumer using a process that does not require affirmative confirmation by the consumer.").

An auction of the right to provide SOS would necessarily require that SOS customers be switched to the supplier that won the auction, without obtaining permission from the customers. If the customer's permission to switch suppliers is not obtained, the law states that the customer remains on SOS, which is supplied by the utility. The auction proposal would result in SOS customers being switched to the winner of the auction without obtaining the permission of those customers. This is not permitted under PUA, Section 7-507(g) (1) and Section 7-510(c) (3) (ii).

These provisions provide an important consumer protection in the electric industry by ensuring that all residential and small residential customers will have electricity service available to them that is overseen by the PSC. Because the investor-owned utilities (IOUs) and electric cooperatives have an obligation to serve SOS customers that does not have a definite end point, the Commission can implement a procurement mechanism for SOS such as the current laddered contract approach. This provides for customers an SOS that is not fully exposed to wholesale market prices at any one time. Once SOS customers are auctioned off to an alternate supplier, SOS as it currently exists, and the protections it provides, would no longer exist. The auction proposal that is the subject of HB974, would result in SOS contractual arrangements that have a starting and ending point, which means that SOS customers would be fully exposed to wholesale market conditions at the end of one of those arrangements. This type of exposure precipitated the large increase in rates for Baltimore Gas and Electric residential customers in 2006.

If the requirements of SB974 are imposed, the Commission will have to undertake a proceeding to receive input from interested parties on an auction of the right to provide SOS. This will require interested parties, such as OPC and the Commission's Technical Staff, to use their resources to participate in that process and respond to the proposal. The Commission would have to spend its resources to conduct such a proceeding, decide whether to make recommendations regarding such a proposal, and then produce a report.

OPC does not support the auction model for providing service to Standard Offer Service (SOS) customers that is contemplated by this Bill. The Commission already has considered such proposals and declined to adopt them, and the current electric restructuring law provides important protections and benefits to residential customers, while permitting the growth of voluntary participation in the competitive retail market. Therefore, the Office of People's Counsel requests an UNFAVORABLE REPORT.