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OFFICE OF PEOPLE'S COUNSEL**

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BILL NO.: **House Bill 1065**
Public Service Commission – Public Service
Companies and Contractors – Customer Protection
– Personal Information

COMMITTEE: **Economic Matters**

HEARING DATE: **March 5, 2020**

SPONSORS: **Delegates Charkoudian, et al.**

POSITION: **Support**

House Bill 1065 is a consumer protection bill to ensure the privacy and security of personally identifiable information (PII) and energy usage data of customers of regulated utilities. The bill does not inhibit the use of contractors by utilities to carry out the public service obligations of those utilities. It merely codifies an important consumer protection by prohibiting a regulated utility, or a utility contractor carrying out public service functions of the utility, from providing access to, selling, or disclosing personal information to a third party unless:

- required by federal or state law;
- required by a criminal warrant; or
- on written request of the customer “explicitly stating the purpose and scope of the disclosure.”

The Office of People's Counsel (OPC) believes that the bill provides important protections to consumers, and fully supports House Bill 1065.

OPC has consistently opposed the release of any personal information, including energy usage data, of residential customers by a regulated utility without the customer's affirmative

consent. The Public Service Commission has explicitly declined to authorize release of customer information, such as account numbers and energy usage data, without the express permission of the customer. In addition, the electric utilities have existing policies against disclosure of such information without customer consent. The only exception is the necessary disclosure of customer information to utility contractors that are carrying out public service functions of the utility. For example, utilities frequently use contractors for tree trimming, distribution system maintenance and replacement, billing services, and certain EmPOWER Maryland activities. Those contracts limit the use of that information to specified utility purposes, and prohibit the contractors from sale or release of the information. However, there are no laws or regulations expressly prohibiting the disclosure of a customer's personal information or energy usage data without the customer's permission. House Bill codifies the protection of this information and ensures that the consumer is in the driver's seat and controls who gets access to the information and for what uses.

There should be no doubt that consumers are experiencing heightened concerns about unauthorized access to their personal information. They want more control over who gets access, and a better sense of control in light of the numerous security breaches. This may seem a daunting task in the current era, but House Bill 1065 represents a common sense example of a concrete way to provide that consumer control of personal information and data collected by regulated utilities.

Furthermore, consumer concerns about release of household energy usage data have been heightened in the face of deployment of "smart meters" in Maryland and elsewhere. Utilities collect such information for billing purposes and to ensure that customers' energy demands can be met. However, detailed usage data can not only be used for marketing and solicitation purposes by a company, it can reveal both aggregate usage and daily household usage patterns, and

eventually, the use of specific appliances or equipment in the household. Consumers should be able to control access to this type of information, and allow such access to third parties, including energy suppliers, 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 informed and transparent way, the access to this information, particularly as we proceed with deployment of digital meters. Ten years ago, in its Privacy Report¹, the Department of Energy (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.

Those principles are equally applicable today.

The importance of customer privacy and control over release of customer information and data also has been recognized by national organizations of consumers, utility regulators and utilities. For example, the Critical Consumer Issues Forum (CCIF), a joint initiative of the National Association of Regulatory Utility Commissions (NARUC), the National Association of State Utility Consumer Advocates (NASUCA), and the Electric Edison Institute (EEI) (an association of regulated utilities), representatives of these groups achieved an agreement on a

¹ DOE, Data Access and Privacy Issues Related to Smart Grid Technologies, October 5, 2010, pages 3, 14-16.
Available at:

https://www.energy.gov/sites/prod/files/gcprod/documents/Broadband_Report_Data_Privacy_10_5.pdf

number of principles related to smart meters and modernization of the electricity grid, and specifically agreed:

Utilities and utility contractors must have *affirmative consent* of consumers prior to disclosure of a consumer's personally identifiable energy usage data to any third party.²

The customer consent requirement does not prevent competitive businesses from getting access to this information, once the customer gives permission. Currently, retail energy suppliers must have customer permission to access such data. With that permission, other energy and technology companies offering services to consumers may be able to access that information. For example, OPC has been working within a Commission Work Group to develop protocols to allow such access through utility websites, once consent is given.

It is important to keep in mind that a person or business needing utility service has no choice but to apply for and receive such service (at least distribution service) from the regulated distribution utility. Historically gas and electric utilities have protected the customer information and data they collect in order to provide service and bill for it. Utility consumers therefore have no expectation that their personal information or usage data will be given or sold to other businesses by their utilities without their express permission. House Bill 1065 codifies this expectation and current practice with regard to personal information and energy usage data.

²CCIF Report, "*Grid Modernization Issues with a Focus on Consumers (July 2011)*", Principle 12, p. 4 at <http://www.criticalconsumerissuesforum.com/wp-content/uploads/2011/09/CCIF-Grid-Modernization-Report-July2011-Final.pdf>.