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PUBLIC SERVICE COMMISSION

December 29, 2006

Honorable Thomas M. Middleton
Chairman
Senate Finance Committee
3 East Miller Senate Building
Annapolis, Maryland 21401

Re: ***Report of the Public Service Commission on Recommendations for the Adoption and Feasibility of Appropriate Mitigation Programs***

Dear Chairman Middleton:

Pursuant to Section 11(c) of Senate Bill No. 1, Ch. 5, Acts 2006 Sp. Sess., the Public Service Commission is required to report to the Senate Finance Committee and to the House Economic Matters Committee on recommendations for the adoption and feasibility of appropriate mitigation plans in response to rising fuel prices upon residential energy consumers. The Commission's Report is attached.

By Direction of the Commission,

O. Ray Bourland/nw

O. Ray Bourland
Executive Secretary

Attachment

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PUBLIC SERVICE COMMISSION
OF MARYLAND

REPORT TO THE SENATE FINANCE COMMITTEE AND THE HOUSE ECONOMIC MATTERS COMMITTEE OF THE GENERAL ASSEMBLY OF MARYLAND

MITIGATION OF THE IMPACT OF RISING FUEL COSTS ON LOW-INCOME RESIDENTIAL CUSTOMERS

SUBMITTED PURSUANT TO SECTION 11, CHAPTER 5, 2006 MARYLAND LAWS, 1ST SPECIAL SESSION

DECEMBER 31, 2006

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I. Statutory History

After meeting in Special Session, the Maryland General Assembly enacted Chapter 5, 2006 Maryland Laws, 1st Special Session ("SB 1") for the purpose of considering various issues related to electric industry restructuring. Section 11 of SB 1 provides as follows:

> (a) The Public Service Commission shall study:
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> (1) the impact of the costs of rising fuel prices on residential consumers by obtaining on a monthly basis, for electric and gas customers, for each category of service:
>
> (i) the number of residential utility turn-off notices issued in Maryland;
>
> (ii) the number of residential customer turn-offs in Maryland;
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> (iii) the number of residential reconnections established in Maryland; and
>
> (iv) the gross amount of residential customer arrearages for each class of customers in Maryland; and
>
> (2) potential programs to mitigate the impact of these costs on low-income residential customers, including:
>
> (i) percentage of income plans; and
>
> (ii) tiered rate structure plans.
>
> (b) On or before October 1 of 2006 through 2010, the Commission shall report the information obtained under subsection (a)(1) of this section to the Senate Finance Committee and the House Economic Matters Committee in accordance with § 2-1246 of the State Government Article and shall publish the report for the benefit of the public.
>
> (c) On or before December 31, 2006, the Public Service Commission shall submit to the Senate Finance Committee and the House Economic Matters Committee a report of its recommendations for the adoption and feasibility of any appropriate mitigation programs studied under subsection (a)(2) of this section and shall publish the report for the benefit of the public.

Pursuant to the requirements of Section 11 of SB 1, the Public Service Commission of Maryland ("Commission") docketed Case No. 9074[1] and gathered the information specified in Section 11(a)(1). The Commission submitted an initial report to the Senate Finance Committee and the House Economic Matters Committee on September 28, 2006. This document represents the Commission's report to the Senate Finance Committee and the House Economic Matters Committee of the Maryland General Assembly under Section 11(c) of SB 1.[2]

II. THE COMMISSION'S REGULATION OF COMMODITY PRICES

The price of fuel represents a significant portion of the cost of both electric service and natural gas service. A customer may receive retail electricity supply from the regulated electric company which offers the service in the form of standard offer service ("SOS") or from a licensed competitive retail electricity supplier. The electric company in turn purchases the electricity supply from participants in the wholesale electricity market under a carefully supervised, competitive auction process from those companies offering the lowest prices.[3] Residential customers in service territories offering retail customer choice are free to select a licensed competitive supplier for their electricity supply.

Municipal electric companies are not required to offer their retail customers access to the competitive retail market.[4] The customers of the municipalities receive electricity supply from the regulated municipal electric entity, which usually purchases its supply from wholesale

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[1] *In the Matter of the Investigation Required by Section 11, 2006 Maryland Laws, 1st Special Session, Public Service Commission – Electric Restructuring.*

[2] An evidentiary proceeding was also conducted for the purpose of gathering comments from interested parties. On December 13, 2006 a Commission Hearing Examiner issued a Proposed Order ("POHE"). The POHE was timely appealed by Commission Staff, Columbia Gas of Maryland, Inc., and Washington Gas Light Company. This Report provides the factual information gathered by the Commission pursuant to the applicable provisions of SB 1.

[3] The competitive auctions were established under the rubric of Case No. 8908, *In the Matter of the Competitive Selection of Electricity Supplier/ Standard Offer Service.* In that proceeding, the Commission reviewed and accepted Settlement Agreements entered into by a broad spectrum of electricity industry stakeholders, including the Office of People's Counsel, other consumer representatives, utilities, suppliers, and State agencies.

[4] Public Utility Companies Article ("PUC Article"), *Annotated Code of Maryland,* § 7-510(a)(2)(ii).

merchant generators, the cost of which is directly passed through to the municipal's retail customers.[5]

All major gas companies serve as providers of last resort ("POLR") to their firm customers and offer POLR or sales service. Although many residential customers purchase their gas supply from the regulated utility as sales service, licensed competitive retail suppliers sell natural gas in all major service territories, and gas choice programs are used by over eleven percent of residential customers. Unlike electricity, natural gas can be, and is, stored by gas distribution companies and competitive suppliers alike as a means of assuring availability and lowering its retail price. As with electricity supply, the price of the gas commodity is established in a competitive market, and it is generally passed through to customers at cost by gas distribution companies.[6]

In short, the price of electricity and the price of natural gas generally represent a passthrough of the company's wholesale commodity costs on a dollar for dollar basis. In other words, the customer's cost at retail is the equivalent of the utility's wholesale rate. With the exception of the small return allowed on SOS, the utility earns no return on commodity costs. Although the Commission does not set commodity rates, it does monitor charges to customers in order to ensure that retail commodity prices do not exceed the utilities' wholesale costs.

III. EXISTING ENERGY ASSISTANCE PROGRAMS IN MARYLAND

There are three Statewide energy assistance programs in Maryland. These are the Commission's Universal Service Protection Program ("USPP"), the federally funded Maryland

[5] PUC Article § 4-402.

[6] PUC Article § 4-402. One exception to the at cost pass through is BGE which has a market-based rate incentive program ("MBR"), which is based on performance and limits the company to a specific monetary recovery. Even though BGE's recovery of gas commodity costs is not on a strict dollar for dollar basis, BGE's rates per therm are the lowest of any major Maryland gas company.

Energy Assistance Program ("MEAP"), and the Electric Universal Service Program ("EUSP").[7] In addition, each gas and electric company offers various programs and payment plans targeted toward lowering energy costs, including the costs of fuel, for its customers. Most of the utility programs focus on weatherization and discounts for timely and complete payment of gas and electric bills including budget billing and arrearages. Together, the combination of Statewide and utility-specific programs operate to lower energy costs to the consumer, reduce fuel consumption, and manage arrears for low-income customers.

MEAP is a federally funded energy assistance program targeted toward low-income customers' winter heating needs, regardless of fuel source. MEAP benefits are available not only for utility-based SOS and POLR service but also for propane, oil, and even for those using wood as a fuel source. In that sense, MEAP is specifically intended to mitigate the impact of fuel costs for low-income customers' winter heating needs.

For utility-provided heating service, the Maryland Department of Human Resources' Office of Home Energy Programs ("OHEP"), which administers MEAP, pays an annual benefit to the utility for SOS and POLR service that is allocated to the customer's account at the utility's tariffed rate. This benefit is not currently available to competitive suppliers that offer a lower rate than the utility. Vendors of non-utility alternative fuel sources are expected to enter an agreement with OHEP for a discounted rate, after which OHEP will pay the vendor an annual benefit on behalf of a MEAP participant. Regardless of heating source, the MEAP benefit is based on federal guidelines regarding gross household income adjusted for family size. EUSP and USPP are pegged to the same income eligibility guidelines.

[7] The EUSP originated as an integral part of electric restructuring in Maryland, comprising a portion of Maryland's Electric Customer Choice and Competition Act of 1999 ("*1999 Act*"). *See*, PUC Article §§ 7-501 *et seq.*

In Maryland, MEAP is available to persons whose gross annual income is at or below 150 percent of the federal poverty level ("FPL"). Through specially appropriated State funds, MEAP-like assistance is available to persons with income above 150 percent, but at or below 200 percent FPL. For FY 2007 there are five MEAP income categories. Level I (0 – 75 percent FPL) includes persons whose gross household income ranges between $0.00 and $1,887.50 per month for a family of seven, with an additional allowance of $212.50 for each additional person in the household. The maximum income for a family of four in Level I is $1,250.00 per month, or $15,000 per year.

The other Levels are comprised of income ranges between 75 percent of FPL and 200 percent of the FPL. Accordingly, Level II (>75 percent - 110 percent FPL) includes persons whose gross household income ranges between $612.51 and $2,768.33 with an additional allowance of between $212.50 and $311.67 for each additional person in the household. The maximum income for a family of four is $1,833.33 per month, or $22,000 per year. Level III (>110 percent - 150 percent FPL) includes persons whose gross household income ranges between $898.34 and $3,775.00 with an additional allowance of between $311.67 and $425.00 for each additional person in the household. The maximum income for a family of four is $2,500 per month, or $30,000 per year. Level IV (>150 percent - 175 percent FPL) includes persons whose gross household income ranges between $1,225.01 and $3,908.33 with an additional allowance of between $425.00 and $495.83 for each additional person in the household. The maximum income for a family of four is $2,500 per month, or $30,000 per year, the same as for Level III. Level V (>175 percent - 200 percent FPL) includes persons whose gross household income ranges between $1,429.18 and $5,033.33 with an additional allowance of between

$495.83 and $566.67 for each additional person in the household. The maximum income for a family of four is $3,333.33 per month or $40,000 per year.[8]

In FY 2006, 89,108 households received MEAP benefits. The average bill assistance benefit from MEAP was $413.

As noted earlier in this Report, the EUSP was created by the General Assembly as part of the *1999 Act.* By its provisions, the EUSP is intended to assist low-income electric customers with arrearage retirement, bill assistance, and weatherization.[9] Section 7-512.1 of the PUC Article authorizes the Commission to establish the program, make it available to low income electric customers Statewide, and provide administrative oversight to OHEP, which is responsible for program delivery. Funding for the EUSP comes from a surcharge on all classes of customers receiving electricity distribution services.

Since its inception, the EUSP has been funded at a fixed level of $34,000,000, and is available to assist customers with gross annual household income at or below 150 percent FPL. SB 1 increased the level of the EUSP Fund from $34,000,000 to $37,000,000 annually and expanded eligibility to include customers at or below 175 percent FPL.

In FY 2006, 83,853 Maryland households received an average EUSP bill assistance benefit of $410. This benefit is separate and distinct from the MEAP benefit described above. During FY 2006, OHEP utilized income levels or bands for EUSP as follows: 0-75 percent FPL; 76-110 percent FPL; and 110-150 percent FPL, with a fourth level for applicants residing in subsidized housing.

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[8] Electric Universal Service Program Proposed Operations Plan for FY 2007 (revised) at 27-28.

[9] Following amendments to § 7-512.1, weatherization services are now provided through the auspices of the Department of Housing and Community Development ("DHCD").

Based on utility-provided information, OHEP calculates the estimated annual cost of electricity for each EUSP participant. The EUSP participant's usage and estimated annual cost of electricity based on service territory is considered together with income level. By using customer-specific information in the benefits matrix, OHEP customizes the EUSP benefit for each eligible participant.

According to OHEP, during FY 2006 the income group at 0-75 percent FPL received a benefit equal to approximately 75 percent of the their estimated annual bills. Participants at 76-110 percent FPL received a benefit equal to approximately 60 percent of their estimated annual bills, and the group at 111-150 percent FPL received a benefit equal to approximately 50 percent of their estimated annual bills. When the housing subsidy factor is considered, households living in subsidized housing that do not heat with electricity receive a benefit that is 14.5 percent of the estimated annual electricity cost.

MEAP recipients who heat with electricity received an additional 15 percent of their estimated annual bill such that participants at 0 percent to 75 percent FPL had 90 percent of their total electric bill paid. MEAP customers who heat with electricity located in the remaining four bands received concomitant adjustments.[10]

During the current year, EUSP will provide benefits according to the MEAP poverty levels I through IV described above. In addition to bill payment assistance, EUSP provides $1,5000,000 for arrearage retirement assistance and $1,000,000 to DHCD for low-income weatherization.

Based on FY 2006 program year experience, the expansion of eligibility to households up to 175 percent FPL, the commencement of market-based electricity rates in various utility

[10] Electric Universal Service Program Proposed Operations Plan for FY 2007 (revised) at 20.

service areas, and other factors, OHEP believes that increased funding will become necessary to achieve the EUSP program goal.[11] During FY 2006 OHEP expended the $34,000,000 collected from ratepayers for EUSP as well as nearly $1,600,000 in deficiency fund appropriations. The Commission's recommendations regarding OHEP's requested increase are contained in its report to the General Assembly provided under PUC Article § 7-512.1(c).

The Commission's Utility Service Protection Program ("USPP") was adopted under PUC Article § 7-307. The USPP is described at Section 20.31.05 of the Code of Maryland Regulations ("COMAR"). Each utility is required to operate a USPP for its MEAP-eligible customers.[12] In devising a USPP participant's annual payment plan, the utility is required to include the participant's MEAP benefit. USPP participants who make timely, minimum payments are protected from winter terminations. A USPP participant is also given certain notice regarding payments due and arrearage arrangements. The names of USPP participants in the lowest income category (<50 percent FPL) with usage in excess of 135 percent of the system average are forwarded to the DHCD Weatherization Program in order that they might be given priority in scheduling weatherization. The Commission files an annual report regarding arrearages and disconnections associated with USPP after the close of each winter heating season.

IV. COMMENTS OF PARTIES IN CASE NO. 9074

A variety of opinions and options were expressed by a number of parties in Commission Case No. 9074. One example was the proposal to implement a gas universal service program.

[11] Section 7-512.1(a)(2)(i) of the PUC Article states that the bill assistance provisions of the EUSP are intended at a minimum to meet 50 percent of the determined need.
[12] Special requirements pertain to municipal utilities. *See*, COMAR 20.31.05.01C.

Similar proposals have been presented to the General Assembly in prior sessions but have not been passed.

Some of the gas companies were in favor of programs that mirror existing programs they have in place in other jurisdictions. They state that this will allow them to use their existing programming, staff expertise and shared resources to get the aid programs up and running in Maryland without excessive delay and without unreasonable costs beings placed on each gas company. One gas company wanted a Statewide program as opposed to one that is service territory specific. The company asserts that a Statewide program is more easily monitored by the Government, and can be put in place uniformly to cover all gas consumers equally.

Staff conducted a survey of percentage of income, tiered rate, and other low-income programs in other restructured states. In its analysis, Staff observed – as to electric service assistance – that there is no evidence that the Maryland programs and utility company programs which assist low-income residential customers in paying their utility bills are not working efficiently. Staff made no recommendation regarding alternative gas percentage of income plans ("PIP") or tiered rate structure plans ("TRSP"). In summary, Staff recommended that no new program(s) should be put in place absent proof of need.

Baltimore Gas and Electric Company ("BGE") made two significant recommendations for adoption by the Legislature. Since the utility burden on low-income customers is but a small part of the overall poverty issue affecting low-income consumers, BGE recommends that a "one-stop shop" model be created to consolidate all assistance resources for low-income consumers within a single State agency. This "one-stop shop" could be a single source for introduction to all social service benefits, such as energy assistance, welfare benefits, childcare assistance, food stamps, and all other types of social aid. With the correct computer programming, a one-time comprehensive aid application could be used to determine all types of benefits for which a consumer qualifies. This could improve the delivery of all types of social service aid by removing operational inefficiencies and barriers.

Others noted that this type of "one-stop shop" model is very hard to implement due to the different standards funding sources applicable to local, state and federal programs. The difficulty of its implementation should not be a veto of the benefits such a model could provide.

Washington Gas and Light Company ("WGL") wants each gas company to run its own in-house program. It uses its pilot program, Residential Essential Services, as an example. It states that the different demographics, geography and needs of each service territory make a utility-specific program a better model to follow. WGL raised the issue of the legality of a rate discount to low-income customers under PUC Article § 4-503, which prohibits discriminatory ratemaking. WGL also stated that any directed Statewide program would require each utility to reprogram computers, which is a large, expensive, and a very time consuming process.

Columbia Gas also wants a company-specific program as opposed to a "one size fits all" Statewide program. It wants to follow a program based upon the one it runs in other jurisdictions. It also wants a weatherization component and proposes to provide programmable thermostats for the working poor to be included in a company specific gas assistance program.

OHEP stated that any new PIP would cost between $6 million to $12 million to implement, and it would take over two years to test and implement such a program. OHEP did state that a gas universal service program ("GUSP") would be much less costly to create and much quicker to place in service, if it could be designed to mirror the existing EUSP. It should be noted that a gas universal service program has come before the Legislature on two occasions without it being enacted.

The Office of People's Counsel ("OPC") offered the most extensive and wide-ranging suggestions for consideration. Its expert witness suggested that PIP and TRSP plans do not define the entire universe of structures that should be considered. OPC stated that the type of program that is correct for Maryland is a policy issue for the Legislature's consideration. Either type, or a hybrid type, could be useful. OPC stated that in the considering this issue the Legislature must answer three basic questions. The first one is whether it should take any action. If answered in the affirmative, then the Legislature must secondly decide what form the program should take; i.e., whether it should be a TRSP or PIP plan.

The policy issue is whether the program should be company-specific or Statewide. OPC would not recommend a TRSP structure for Maryland, but supports a fixed-credit program with an affordability aspect to it (as with the EUSP). Since OPC states that there is a large unmet need in Maryland, it recommends Maryland enact a GUSP to be based on a fixed charge per metered customer as the means to pay for the GUSP. OPC also wants an increase in weatherization programs and the requirement that all new residential construction in Maryland be built to a higher energy efficiency standard.

Since the Potomac Edison Company d/b/a Allegheny Power's ("Allegheny's") prices are capped until December 31, 2008, its customers have not yet been affected by the rising costs affecting others in Maryland. Allegheny's position is that existing aid programs are working well.

The Potomac Electric Power Company ("Pepco") and Delmarva Power & Light Company ("DPL") (collectively referred to as "PHI") also agree that existing programs are sufficient, although it may be that the EUSP may need additional funding for arrearage retirement due to its enlarged target population. The PHI companies supports the "one-stop shop" for benefit applications, as proposed by BGE. Pepco favors a company-specific solution as opposed to a Statewide program.

The one area of consensus was the factor that the inability to pay for utility services is but a small part of the overall poverty problem. Looking at solutions to the affordability of utility services cannot be effective without the big picture poverty issue as an omnipresent given. Practical issues such as who pays for the program, who oversees it, how quickly it can be in place and the cost and effectiveness of any new program must also be addressed.

V. PERCENTAGE OF INCOME AND TIERED RATE PROGRAMS AND THEIR APPLICATION TO MARYLAND

As noted above, § 11 of SB 1 directs the Commission to study percentage of income programs and tiered rate programs. PIPs are designed to deliver to eligible utility customers a benefit that is sufficient to limit the customer's utility payment obligation to a percentage of the customer's gross annual household income. The customer's obligation takes into account benefit payments from various sources. Two examples from other states are New Jersey's limit of energy costs for program participants of six percent of household income, and Ohio's 15 percent. A common approach is the offer of a fixed credit.[13]

A TRSP approach pays a percentage of the customer class's average bill based on income. For example, under a typical tiered rate approach, 75 percent of a qualifying average bill could be paid for those at or below 75 percent FPL. Customers with higher income levels would receive smaller benefits, such as 60 percent of the average bill could be covered for those with incomes between 75 and 100 percent FPL; 50 percent of utility bills could be met for those

[13] Colton, Roger, *Home Affordability in Maryland: Necessary Regulatory and Legislative Action* (2006) at 20.

with incomes between 100 and 125 percent FPL; and 35 percent of the average bill for those with incomes between 125 and 150 percent FPL could be paid.[14]

In practice, then, EUSP is operated as a hybrid of a TRSP and a PIP. The use of specific electric use information for each EUSP participant in combination with a more generic adjustment based on utility service territory and a benefit that varies in percent of the bill paid as a function of FPL customizes the EUSP benefit much as specific income information would do. In fact, when Maryland's EUSP benefit is combined with Maryland's MEAP benefit the result approximates that offered in New Jersey. In New Jersey, the average benefit is $445 per year for electricity as compared with $410 in Maryland where electricity prices are somewhat lower. The median combined universal service benefit in New Jersey for which households are eligible is $701.[15] In Maryland the average combined benefit is $823 (taking into account EUSP and MEAP benefits).

VI. RECOMMENDATIONS AND CONCLUSIONS

The current low income assistance programs in Maryland have elements of, or can be equated to, both percentage of income and tiered rate structure plans. Given the level of resources available, in general, the methods used to allocate MEAP and EUSP funds appear to serve the State well as a fair way to provide meaningful assistance to as many families in need as is possible.

The level of assistance provided has been fixed by the General Assembly, reflecting its judgment as to the appropriate level of funding. The appropriate level of funding in the future, given the current level of fuel costs, is an important social matter that the Legislature would do

[14] *Id.* at 26.

[15] *Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Service Fund*, Applied Public Policy Research Institute for Study and Evaluation (April 2006) at vi.

well to revisit. Funding considerations by the General Assembly reflect Maryland's social responsibility objectives, tempered by budget constraints and fiscal discipline.

Agencies such as the Commission and OHEP carryout the legislative objectives and see to it that funds are spent wisely and programs are administered efficiently. The State's major programs are continually evaluated throughout the year for their effectiveness, and receive thorough review on an annual basis. As high energy costs will likely represent a significant and increasing share of family budgets for the foreseeable future, the agencies responsible for overseeing these programs need to continue devoting time and attention to improving service delivery and adapting programs to meet new economic challenges facing low income Marylanders.