

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1

(Senator Augustine)

Education, Energy, and the Environment

Economic Matters

Electricity and Gas - Retail Supply - Regulation and Consumer Protection

This bill alters regulatory requirements for the marketing and sale of electricity and gas by retail suppliers, utilities, and related entities. Most of the requirements are related to residential service. The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any electricity supply agreement or gas supply agreement that is in effect on or before December 31, 2024. The bill also (1) increases the maximum amount that the Public Service Commission (PSC) may assess public service companies each year to reimburse its expenses and (2) alters the name, purposes, and permissible uses of the Retail Choice Customer Education and Protection Fund. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Special fund expenditures for PSC increase by \$523,300 FY 2025. Future years reflect annualization and the elimination of one-time costs. Special fund revenues increase correspondingly from fees and assessments. PSC can handle the bill’s requirements related to the (renamed) Education and Protection Fund with existing budgeted resources. Increasing the percentage of public service company revenues that PSC may assess each year does not directly affect special fund revenues or expenditures. Enhanced penalties are not anticipated to materially affect special fund revenues.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$523,300	\$382,200	\$398,700	\$415,600	\$433,300
SF Expenditure	\$523,300	\$382,200	\$398,700	\$415,600	\$433,300
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Broadly, in addition to other minor and conforming changings, the bill:

- establishes an energy salesperson license and an energy vendor license, subject to specified requirements;
- updates and aligns licensing requirements for electricity and gas suppliers and enhances related penalties;
- establishes new requirements for residential electricity supplier contracts;
- establishes new reporting requirements for billing entities;
- establishes new requirements on standard offer service (SOS) marketing;
- establishes additional requirements on green power marketing;
- establishes additional requirements for residential energy retailers, as defined;
- states the intent of the General Assembly that PSC establish, staff, and fund a new division focused on retail supply;
- authorizes PSC to impose a one-time \$275,000 special assessment;
- increases the amount that PSC may annually assess each public service company to fund its operations; and
- modifies the purposes and permissible uses of the Retail Choice Customer Education and Protection Fund, renames it the Education and Protection Fund, and allows for it to be used as a funding source for a required training and educational program.

New Licenses

The bill establishes energy salesperson and energy vendor licenses, subject to specified requirements described below. Energy salespersons and energy vendors are also generally integrated into other provisions relating to electricity and natural gas supply, such as those requiring PSC to adopt consumer protection orders or regulations and establishing civil penalties.

Energy Salesperson License

“Energy salesperson” means an individual who is licensed by PSC to sell:

- electricity or electricity supply services to residential retail electric customers on behalf of an electricity supplier as an employee or agent of the electricity supplier; or
- gas or gas supply services to residential retail gas customers on behalf of a gas supplier as an employee or agent of the gas supplier.

It does not include specified governmental entities or an employee or contractor of an electric company when the individual is performing duties specific to SOS.

Beginning July 1, 2025, a person may not engage in the business of an energy salesperson in the State unless the person holds a license issued by PSC. Additionally, a licensed energy salesperson may offer or sell electricity supply agreements or gas supply agreements to customers in the State only if the energy salesperson is associated with a licensed electricity supplier or licensed gas supplier, respectively.

The bill specifies application requirements for an energy salesperson license, including providing proof of association with a licensed electricity or gas supplier, as appropriate, payment of an applicable licensing fee, and proof of compliance with applicable training requirements for customer protection. PSC must also, by regulation or order, require proof of financial integrity and require the licensee to post a bond or similar instrument if, in PSC's judgement, it is necessary to insure the licensee's financial integrity. The term of the license is three years and may be renewed. Terms may be staggered by PSC. The license cannot be transferred without prior PSC approval.

Energy Vendor License

“Energy vendor” means a person that has a contract or subcontract to provide energy sales services to an electricity supplier or a gas supplier that provides electricity supply services or gas supply services, respectively, to a residential customer.

Beginning July 1, 2025, a person may not engage in the business of an energy vendor in the State unless the person holds a license issued by PSC. The bill specifies application requirements for an energy vendor license, including payment of an applicable licensing fee, and additional actions that PSC must take by regulation or order that mirror those for energy salespersons. The term of the license is three years and may be renewed. Terms may be staggered by PSC. The license cannot be transferred without prior PSC approval.

Public Service Commission Licensing and Related Enforcement Activities

Existing provisions related to PSC's authority to license electricity and gas suppliers are updated to incorporate energy salespersons and energy vendors and to authorize PSC to deny an initial license or refuse to renew a license. Additionally, PSC's authority to impose a moratorium on adding or soliciting customers by an electricity supplier for just cause on its own investigation, or on complaint of the Office of People's Counsel (OPC), the Attorney General, or an affected party is expanded to include other specified regulatory actions: licensing, civil penalties, and ordering refunds. The expanded authority for electricity suppliers is mirrored in updated provisions regulating gas suppliers.

The maximum civil penalty for related electricity supplier violations is increased from \$10,000 to \$25,000 and applicability is expanded to include energy vendors. Civil penalty and other PSC enforcement provisions for electricity suppliers are mirrored in updated provisions regulating gas suppliers, including the maximum civil penalty of \$25,000. Energy salespersons are not subject to a civil penalty, but are subject, after a hearing, to specified administrative actions, such as license revocation.

Residential Electricity or Gas Supply Other Than Standard Offer Service

For residential electricity supply other than supply offered through SOS or specified governmental entities, a residential electricity supplier:

- may offer electricity, other than green power, only at a price that does not exceed the trailing 12-month average of the electric company's SOS rate in the electric company's service territory as of the date of agreement with the customer;
- may offer residential electricity supply only for a term up to 12 months at a time and without automatic renewal;
- may, for electricity supply other than green power, automatically renew the term only if the electricity supplier provides notice to the customer 90 days before and 30 days before renewal;
- may offer green power that meets specified requirements, discussed below, but may not automatically renew the term with the customer;
- may not offer a variable rate other than a rate that adjusts for seasonal variation up to two times in a single year (this does not prohibit the offer and use of time-of-use rates that establish different rates for periods within a single day); and
- may not pay a commission or other incentive-based compensation to an energy salesperson for enrolling customers.

Additionally, a residential electricity supplier may not sell to an electric company, and an electric company may not purchase from an electricity supplier, accounts receivable. The above requirements must be construed to apply to all electricity agreements and supply agreements entered into or renewed on or after January 1, 2025.

An electric company and a residential electricity supplier must establish a mechanism for a customer whose account number or customer choice identification number has been compromised to receive a replacement number on request, subject to verification in a manner approved by PSC.

Generally, as approved by PSC by regulation or order, each electric company and each residential electricity supplier must allow a customer to indicate the customer's intention to remain on SOS indefinitely and not to receive directed marketing contacts from

electricity suppliers through the implementation of a “do not transfer” list onto which the customer may request to be placed.

The bill establishes parallel requirements for gas suppliers that supply gas to residential gas customers – although there are no requirements related to green power.

The requirement that PSC establish the definition of “default service” and include information on the transition of SOS to a default service in a recurring report are repealed.

Monthly Data Reporting

By the 15th day of each month, each billing entity, as defined, must submit a report to PSC on customer choice in its service territory for the preceding month, including:

- the total kilowatt-hours distributed, and supply cost charged, to customers purchasing electricity from a third-party electricity supplier, along with the total cost that would have been paid by those customers under SOS;
- the net third-party total cost compared to the net SOS cost;
- the total third-party average rate, the SOS average rate, and the difference between the two;
- various specified third-party average rates for specified customers and types of rates, and the variance between such rates and the SOS average rate; and
- other pertinent information PSC considers appropriate.

The bill establishes parallel requirements billing entities for gas customers.

Marketing and Cost Recovery

Except materials to educate or inform a retail customer about SOS, default gas commodity service, or customer choice, an electric company or gas company may not recover through its rates costs associated with marketing its services.

An electric cooperative may advertise, market, and promote SOS and related products in its service territory in compliance with appropriate consumer protections consistent with those that apply to electricity suppliers under § 7-507 of the Public Utilities Article. An electric cooperative may recover through its rates any costs associated with marketing its services, including the costs associated with materials that educate or inform a retail customer about SOS or customer choice.

Green Power Marketing

Generally, an electricity supplier that supplies electricity to residential electric customers may not market electricity as green power unless:

- the percentage of electricity being offered, or the equivalent number of renewable energy credits (RECs) associated with the electricity marketed as green power, equals or exceeds the greater of 51% or 1% higher than the Renewable Energy Portfolio Standard (RPS) for the year the electricity is provided to the customer; and
- PSC approves the price of the electricity being marketed as green power, subject to specified considerations.

The above requirement does not apply to specified governmental entities or a supplier that supplies electricity to commercial retail electric customers.

Beginning January 1, 2025, an electricity supplier must purchase RECs for each year the electricity supplier offers green power for sale to residential retail electric customers. Over time, the RECs must be increasingly generated in the PJM region, reaching at least 50% beginning July 1, 2035. The RECs must be retired in a PJM Generation Attribute Tracking System reserve subaccount accessible by PSC.

Except for specified governmental entities, an electricity supplier that claims in its marketing materials for residential customers that the customer will be purchasing green power must include in those marketing materials related disclosures about the source of the green power. The bill specifies one disclosure and requires PSC to adopt regulations that explain related concepts. An annual reporting requirement for electricity suppliers is updated to include (1) the amount and types of generation associated with RECs purchased in accordance with the bill during the reporting period and (2) the amount of renewable energy certificates that do not qualify as RECs and related information.

Residential Energy Retailer Disclosures

PSC may adopt regulations to (1) require a “residential energy retailer” to post notices and disclosures required under Title 7 of the Public Utilities Article on the retailer’s website, subject to specified requirements and (2) require or prohibit the use of specific language in a residential energy retailer’s marketing materials, disclaimers, disclosures, and legal documents, as specified. However, PSC must require a residential energy retailer to post on its website the terms and conditions of its residential services and products and an environmental disclosure in clear, unambiguous language. For purposes of these requirements, a “residential energy retailer” means an electricity supplier that supplies electricity to residential retail electric customers, a gas supplier that supplies gas to residential retail customers, an energy salesperson, and an energy vendor. It does not

include specified governmental entities or a gas or electric supplier that supplies gas or electricity to commercial retail customers.

General Assembly Intent That the Public Service Commission Establish, Staff, and Fund a New Division

The bill establishes the intent of the General Assembly that:

- PSC establish a division with the specific responsibility to receive, investigate, and resolve complaints against electricity suppliers, gas suppliers, and energy salespersons for violations with respect to retail customers;
- at least two additional Position Identification Numbers be created and assigned to the new division, in addition to existing PSC personnel in its Consumer Affairs Division, who may be assigned to assist the new division in its responsibilities;
- the functions of the new division be funded by licensing and renewal fees imposed on electricity suppliers, gas suppliers, and energy salespersons; and
- the special assessment on public service companies authorized under the bill be used for initial funding of the new division.

Special Assessment

Notwithstanding any other provision of law, for fiscal 2025 only, in addition to the amounts appropriated in the budget bill for fiscal 2025, PSC may impose up to \$275,000 as a special assessment using the assessment process authorized under § 2-110 of the Public Utilities Article. The assessment must be imposed proportionally, as specified, on the electric companies, electricity suppliers, gas companies, and gas suppliers otherwise subject to PSC's annual assessment. The statutory limit of public service company revenues that applies to PSC's annual assessment does not apply to the bill's special assessment.

The amounts collected under the special assessment may be expended for fiscal 2025 for the support of PSC with an approved budget amendment. Unexpended funds at the end of fiscal 2025 are considered encumbered by PSC and may not be deducted from the fiscal 2026 appropriation.

Staggered Licenses with Maximum Three-year Duration

All new and renewed licenses for electricity suppliers, gas suppliers, and energy salespersons must be for a term of no more than three years.

The licenses of electricity suppliers and gas suppliers that are licensed by PSC as of July 1, 2024, must expire on a staggered basis as determined by PSC such that equal

numbers of licenses expire throughout each of the following three years, but not later than June 30, 2027.

The licenses of energy salespersons who are licensed by PSC on or before June 30, 2027, must expire on a staggered basis as determined by PSC such that equal numbers of licenses expire each year.

Annual Assessment on Public Service Company Gross Operating Revenues

The amount that PSC may assess each public service company to fund its operations each year is increased, from 0.25% to 0.5%, of each company's gross operating revenues derived from intrastate utility and electricity supplier operations in the preceding calendar year. The amount that PSC may assess to fund OPC is unchanged.

Retail Choice and Customer Education Fund

The Retail Choice Customer Education and Protection Fund is renamed the Education and Protection Fund. The purposes and permissible uses of the fund are expanded to include (1) educating customers on energy choices that help meet the State's climate commitments, as specified; (2) protecting customers from unfair, false, misleading, or deceptive practices by energy salespersons and energy vendors (currently, this is only for electricity and gas suppliers); and (3) developing a training and educational program for electricity and gas suppliers, energy salespersons, and energy vendors.

Conforming changes are made to allow funding for the currently required supplier training and educational program to include the Education and Protection Fund as a funding source and to include energy salespersons and energy vendors.

By December 31, 2024, PSC must develop the training and education program and report to the General Assembly on the status of program development.

Current Law:

Retail Customer Choice

Generally

The Electric Customer Choice and Competition Act of 1999 facilitated the restructuring of the electric utility industry in Maryland. The resulting system of customer choice allows the customer to purchase electricity from a competitive supplier or to continue receiving electricity under SOS. Default SOS electric service is provided by a customer's electric company (e.g., Baltimore Gas and Electric Company or Pepco). Competitive electric

supply is provided by competitive electricity suppliers. In either case, the electric company delivers the electricity and recovers the costs for delivery through distribution rates. Gas supply and delivery are similarly restructured, with gas suppliers and gas companies.

In practice, to provide SOS, electric companies solicit bids for electricity through a series of rolling auctions every six months. At any one time, the SOS rate reflects the average of four separate auctions held over two years, which has a moderating effect on rate changes.

Supplier Licensing and Related Enforcement Activities

An electricity supplier must be licensed by PSC before doing business in the State. PSC must adopt regulations or issue orders to protect consumers, electric companies, and electricity suppliers from anticompetitive and abusive trade practices and to establish related consumer safeguards, such as procedures for contracting with customers.

An electricity supplier or person selling or offering to sell electricity in the State in violation of supplier licensing requirements, after notice and an opportunity for a hearing, is subject to a civil penalty of up to \$10,000 or license revocation or suspension.

PSC is required to license gas suppliers and has the same regulatory authority as it does for electricity suppliers. PSC must adopt licensing requirements and procedures for gas suppliers that protect consumers, the public interest, and the collection of all State and local taxes. Penalties for gas suppliers or persons selling or offering to sell natural gas are not separately specified.

Electricity and gas supplier licenses do not expire under current law.

Limitation on Supply Offers to Households Receiving Energy Assistance

Effective July 1, 2023, unless PSC has approved the supply offer, a retail supplier may not offer to provide electricity or gas to households in the State that have received energy assistance from Office of Home Energy Programs within the Department of Human Services during the previous fiscal year or take other similar actions. An approved supply offer must include a commitment to charging at or below SOS for the duration of the offer.

Energy Supplier Contracts

PSC regulations specify minimum contract requirements for [electricity](#) and [gas](#) supply, which are similar but not identical. Broadly, a supply contract may only be executed by the appropriate electricity or gas supplier licensee. A supply contract must contain all material terms and conditions, a statement of contract duration and any rollover provision, a statement that the supplier and the customer may terminate the contract early, renewal

procedures (if any), and the amount of any cancellation fee. Evergreen contracts are permitted, subject to certain disclosure requirements.

Renewable Energy Credits

Generally, a REC is a tradable commodity equal to one megawatt-hour of electricity generated or obtained from a renewable energy generation resource. REC generators and electricity suppliers are allowed to trade RECs using a PSC-approved system known as the Generation Attributes Tracking System, a trading platform designed and operated by PJM, that tracks the ownership and trading of RECs. Generally, to be eligible for compliance with the State RPS, RECs must be created at a facility either in the PJM region or adjacent to the PJM region if the electricity is delivered into the PJM region, and certain sources, like solar, have further geographic restrictions.

Annual Assessment on Public Service Company Gross Operating Revenues

The costs and expenses of PSC and OPC must be borne by the public service companies that are subject to PSC's jurisdiction. The total amount that may be charged to a public service company for a State fiscal year, as a percentage of the company's gross operating revenues derived from intrastate utility and electricity supplier operations in the preceding calendar year may not exceed 0.25% for PSC. PSC is also authorized to assess up to 0.074% for the expenses of OPC. Assessed amounts accrue to the Public Utility Regulation Fund.

Retail Choice Customer Education and Protection Fund

Chapter 134 of 2016 established the Retail Choice Customer Education and Protection Fund in PSC. The purpose of the fund is to provide resources to improve PSC's ability to (1) educate customers on retail electric and gas choice and (2) protect customers from unfair, false, misleading, or deceptive practices by electricity or gas suppliers. The fund may be used only for these purposes. Revenues from specified civil penalties assessed on energy suppliers accrue to the fund, rather than the general fund. The fund consists of (1) the revenues from the related civil penalties; (2) money appropriated in the State budget to the fund; and (3) any other money from any other source accepted for the benefit of the fund.

Supplier Training Program

Chapters 373 and 374 of 2020 required PSC to develop a training and educational program, in consultation with interested stakeholders, for any entity or individual that is licensed by PSC as an electricity supplier or a gas supplier, subject to specified requirements. The program must require that a designated representative of each licensed electricity supplier

or licensed gas supplier demonstrate a thorough understanding of relevant PSC regulations. PSC must conduct an examination at the end of the training and certify that the designated representative has successfully completed the training. PSC may recover the initial costs of the program through its standard assessment and may establish reasonable fees for the program. In practice, the program has yet to be funded.

State Fiscal Effect:

Retail Energy Supply – Regulation and Enforcement

PSC advises that the incremental workload required by the bill cannot be absorbed within existing resources. PSC requires additional staff to review potentially thousands of individual licenses and to develop and enforce ongoing licensure requirements. Additional funds are also required for contractual services to develop automated licensing and citation platforms. There will also be extensive rulemaking as part of implementation. This estimate also reflects the intent of the General Assembly that PSC establish a division with the specific responsibility to receive, investigate, and resolve complaints against electricity suppliers, gas suppliers, and energy salespersons for violations with respect to retail customers; costs may be marginally less if PSC instead hires positions directly into its existing divisions.

Accordingly, special fund expenditures for PSC increase by \$523,296 in fiscal 2025, which accounts for a 90-day startup delay. This estimate reflects the cost of hiring one program manager, one regulatory economist, one administrative specialist, and one staff attorney to administer and enforce the new licensing and related provisions in the bill. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and a one-time programming expense.

Positions	4.0
Salaries and Fringe Benefits	\$282,272
Programming Costs	200,000
Other Operating Expenses	<u>41,024</u>
Total FY 2025 PSC Expenditures	\$523,296

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Generally, PSC is funded through an assessment each fiscal year on the public service companies that it regulates. Under the bill, PSC also (1) collects initial and renewal licensure revenue from energy salespersons and energy vendors beginning in fiscal 2026; (2) collects renewal licensure revenue from energy suppliers beginning in fiscal 2025; and (3) is authorized to impose a one-time special assessment of \$275,000 in fiscal 2025.

Licensure revenues, though unknown, and special assessment revenues are assumed to offset revenues generated from the standard assessment. Accordingly, special fund revenues for PSC increase correspondingly from licensure revenue and assessments imposed on public service companies.

Enhanced penalties are not anticipated to materially affect special fund revenues.

Education and Protection Fund and Education Programs

PSC can handle the bill's requirements related to the (renamed) Education and Protection Fund with existing budgeted resources. PSC advises that special funds (from retail supplier penalties under current law, plus additional penalties under the bill) in the fund will be used as they become available to fund (1) a new climate policy customer education program and (2) the currently required, but unfunded, supplier education program, with modifications for energy salespersons and energy vendors. Funding for retail customer education is expected to remain unchanged. In any particular year, special fund expenditures for PSC may be more or less than they otherwise would have been, as limited funds from retail supplier penalties are used for different purposes under the bill. Annual differences are likely modest, based on recent annual expenditures from the fund of about \$450,000.

Assessment Cap Increase

Increasing the percentage of public service company revenues that PSC may assess each year does not directly affect special fund revenues or expenditures. However, it does increase the likelihood that the assessment can collect a sufficient amount of revenues to fund PSC's budget.

Small Business Effect: Small electricity suppliers must comply with the bill's residential contract and price limitations, in addition to salesperson licensing, REC purchasing, green power marketing, reporting, and disclosure requirements. In particular, the contract limitations and the prohibition against the sale of residential accounts receivable to utilities likely limit the ability of many small suppliers to meaningfully participate in the retail markets in the State. For example, under current practice, many contract offerings are for longer than one year and may include rates higher than SOS. Electric companies also purchase accounts receivable from electricity suppliers and then recoup the funds directly from customers through their utility bills. Generally, prohibiting this practice shifts business risk from electric companies to electricity suppliers. Small residential gas suppliers have similar ongoing requirements related to contract and price limitations, licensing, and the sale of accounts receivable.

Finally, additional restrictions on residential electricity and gas supplier contract terms and prices may result in upward pressure on residential energy prices, which may increase costs for some small businesses that pay residential rates.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 267 (Delegate Crosby) - Economic Matters.

Information Source(s): Public Service Commission; Office of People’s Counsel; Department of Human Services; Office of the Attorney General (Consumer Protection Division); Department of General Services; Maryland Municipal League; Department of Legislative Services.

Fiscal Note History: First Reader - January 23, 2024
km/lgc Third Reader - March 25, 2024
Revised - Amendment(s) - March 25, 2024

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