Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 267 (Delegate Crosby)
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 and utilities. 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 takes effect July 1, 2024.**

Fiscal Summary

State Effect: Special fund expenditures for the Public Service Commission (PSC) increase by $689,800 in FY 2025. Future years reflect annualization and the elimination of one-time costs. Special fund revenues increase correspondingly from fees and assessments. Enhanced penalties are not anticipated to materially affect special fund revenues. State expenditures for electricity may increase beginning in FY 2025, as discussed in the Additional Comments section below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	$689,800	$450,000	$469,400	$489,300	$510,100
SF Expenditure	$689,800	$450,000	$469,400	$489,300	$510,100
Net Effect	$0	$0	$0	$0	$0

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

Local Effect: Local government expenditures for electricity may increase beginning in FY 2025, as discussed in the Additional Comments section below. The bill is not anticipated to affect municipal electric utilities. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Broadly, the bill (1) establishes an energy salesperson license, subject to specified requirements; (2) allows investor-owned utilities to market electric standard offer service (SOS); (3) establishes new requirements for electricity supplier contracts; (4) establishes new reporting requirements for electric companies; (5) updates and aligns licensing requirements for electricity and gas suppliers and enhances related penalties; (6) establishes additional requirements on green power marketing by electricity suppliers; (7) states the intent of the General Assembly that PSC establish, staff, and fund a new division focused on retail supply; and (8) authorizes PSC to impose a one-time $275,000 special assessment.

Energy Salesperson License

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

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

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 salespersons 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.

Standard Offer Service Marketing

An investor-owned electric company may market SOS to customers 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.

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.

Electricity Supply Other Than Standard Offer Service

For electricity supply other than SOS, an electricity supplier:

- may offer electricity 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 electricity supply only for a term up to 12 months at a time and without automatic renewal;
- 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);
- may not pay a commission or other incentive-based compensation to an energy salesperson for enrolling customers;
- may not impose on a customer a fee for cancellation or early termination of an electricity supply agreement; and
- may not offer or provide electricity supply to a customer who receives energy assistance through the Electric Universal Service Program or the Energy Assistance Program.

Additionally, an 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 an 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.

As approved by PSC by regulation or order, each electric company and each 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.

Monthly Data Reporting

By the 15th day of each month, each electric company 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.

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 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, 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. 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.

Green Power Marketing

Beginning January 1, 2025, an electricity supplier must purchase renewable energy credits (RECs) for each year the electricity supplier offers "green power," as defined in the bill, for sale to residential retail electric customers. The RECs must be (1) generated in the PJM Environmental Information Services, Inc. (PJM) region or outside the PJM region if the electricity is delivered into the PJM region and (2) retired in a PJM Generation Attribute Tracking System reserve subaccount accessible by PSC.

The electricity supplier must include a related disclosure about the source of the green power in its marketing materials. An annual reporting requirement for electricity suppliers is updated to include the amount and types of generation associated with RECs purchased in accordance with the bill during the reporting period.

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 0.25% 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.

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 Renewable Energy Portfolio Standard, 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.

State Fiscal Effect: 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 energy salesperson licenses and to develop and enforce ongoing licensure requirements. Additional funds are also required for contractual services to develop automated licensing and citation platforms. 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.

Accordingly, special fund expenditures for PSC increase by $689,778 in fiscal 2025, which accounts for the bill's July 1, 2024 effective date. This estimate reflects the cost of hiring two program managers, two administrative specialists, 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	5.0
Salaries and Fringe Benefits	$440,898
Programming Costs	200,000
Other Operating Expenses	48,880
Total FY 2025 PSC Expenditures	**$689,778**

Future year expenditures reflect 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; (2) collects renewal licensure revenue from energy suppliers; 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.

The effect on State expenditures for electricity is discussed in the Additional Comments section below.

Small Business Effect: Small electricity suppliers must comply with the bill's contract limitations, in addition to salesperson licensing, REC purchasing, reporting, and disclosure requirements. In particular, the contract limitations and the prohibition against the sale of accounts receivable to an electric company likely limit the ability of electricity suppliers to meaningfully participate in the retail electricity market 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.

The prohibition on offering or providing electricity supply to certain customers receiving energy assistance has no practical effect at this time, as no suppliers are currently authorized to provide electricity supply to such customers under current law.

Small gas suppliers also have new ongoing licensing requirements, although those are less significant than the contract limitations for electricity suppliers.

The effect on small business expenditures for electricity is discussed in the Additional Comments section below.

Additional Comments:

Electricity Prices

Additional restrictions on electricity supplier contract terms and prices may result in upward pressure on energy bills for commercial customers, including the State government, local governments, and many small businesses. Commercial SOS rates change annually, twice per year, quarterly, or even hourly, depending on the size of the customer. As a result, retail suppliers that are required to not exceed the trailing 12-month SOS rate may not be able to make offers if energy market commodity prices are increasing. Other restrictions may limit marketplace participation more generally and reduce competition. The impact on any particular government or small business is unquantifiable. For context, about 34% of commercial and industrial customers are currently served by electricity suppliers.

Government Entities and Electricity Suppliers

Under Chapter 95 of 2023, the Department of General Services (DGS) must issue a competitive sealed procurement solicitation and may enter into at least one contract for a power purchase agreement to procure up to 5.0 million megawatt-hours annually of offshore wind energy and associated RECs. After using the energy procured to meet the State government's energy needs, DGS must sell the remaining energy and/or RECs – effectively becoming an electricity supplier. This analysis does not include any effect of the bill on the ability of DGS to do so or any change in resulting revenues.

Chapter 449 of 2021 established the Community Choice Aggregation Pilot Program and authorized Montgomery County to form a community choice aggregator, beginning December 31, 2023. As a community choice aggregator, the county is allowed to own generation assets and/or enter into contracts with electricity suppliers on behalf of persons within its jurisdiction. This analysis does not include any effect of the bill on the ability of the county to do so.

Additional Information

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

Designated Cross File: SB 1 (Senator Augustine) - Education, Energy, and the Environment.

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.

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