Bill No: **HB 561 – Electric Industry – Community Choice Energy**

Committee: **Economic Matters**

Date: **2/13/20**

Position: **Oppose Unless Clarified and Amended**

The Apartment and Office Building Association of Metropolitan Washington ("AOBA") represents members that own or manage more than 23 million square feet of commercial office space and 133,000 rental units in Montgomery and Prince George's counties. The majority of AOBA members purchase electric supply in a competitive market. As such, AOBA opposes House Bill 561 – "Electric Industry – Community Choice Energy" ("HB 561"), unless clarified and amended.

HB 561 allows local governments to form a Community Choice Aggregator for purposes of negotiating the purchase of electric generation services for electric customers in their jurisdiction or providing electric power from Community Choice Aggregator owned generation. HB 561 purportedly applies to "Residential Electric Customers," including "Mastered Metered Multiple Occupancy Residences" and "Small Commercial Electric Customers. AOBA's testimony does not address the legislation's application to Residential customers and we take no position on this bill regarding Residential customers.

AOBA does, however, oppose HB 561 unless clarified and amended for the following reasons:

1. <u>The Bill's Application and Customer Enrollment is Unclear</u>

As proposed, Section 1-101 (F) of HB 561, beginning at page 3, line 33 would apply to "RESIDENTIAL ELECTRIC CUSTOMERS, INCLUDING MASTER METERED MULTIPLE OCCUPANCY RESIDENCES AND SMALL COMMERCIAL ELECTRIC CUSTOMERS, AS DEFINED IN SECTION 7-510.3." While the substance of HB 561 appears to apply to "Residential Electric Customers and Small Commercial Electric Customers," AOBA notes that subpart (F), page 3, line 34 also references "master metered multiple occupancy residences." Master metered multiple occupancy residences, however, are typically not Small Commercial electric customers as defined in Section 7-510.3. Master metered multiple occupancy buildings rather are Medium and Large Commercial electric customers. An individually metered apartment within a multiple occupancy building is a Residential customer.

HB 561, thus, is inconsistent. Specifically, if HB 561 is intended to apply to **individually metered apartments** within an apartment house or multiple occupancy building, then the reference to master metered multiple occupancy residences is superfluous and should be deleted.

AOBA, accordingly, respectfully requests that HB 561 be amended to clarify that the legislation applies to "individually metered apartments" within a multiple occupancy building, and that all references to "MASTER METERED" be deleted.

2. **The Bill Compromises the Privacy and Protection of Customer Data**

Absent affirmative steps by the customer (including written customer consent), HB 561 would allow local government aggregators to obtain a Residential and Small Commercial customer's private confidential electric data and other "pre-enrollment usage data and other appropriate billing and electrical load data." Section 7-510.3 (L), (1) and (2), pages 12-13.

Customers, however, have an expectation that their account information is private and not for sale. Utility companies have historically refused to disclose customer account information without the prior written consent of the customer.

Further, and importantly, Section 7-510.3 (L) (3), pages 12-13, of HB 561 provides that "An Electric Company shall provide" to a County or Municipal Choice Aggregator "Any customer-specific data after the aggregation plan is approved" Section 7-510.3 (L), (II), pages 13. While AOBA notes that Section 7-510.3, (D) requires 60 days notice to opt-out of the aggregation, the customer's data is provided to the municipal aggregator immediately after the aggregation plan is approved by the Commission. There is no provision in Section 7-510.3 (L), for customers to prevent their "customer-specific data" from being provided to a community choice aggregator. Additionally, there is nothing in this bill that prevents the County or Municipal Choice Aggregator from selling the "customer-specific data" to any third party.

HB 561 also contradicts current Maryland law. Specifically, Section 7-505(b)(6) of the Public Utilities Article provides:

> "The Commission shall issue orders or regulations to prevent an electric company and an electricity supplier from disclosing a retail electric customer's billing, payment, and credit information without the retail electric customer's consent, except as allowed by the Commission for bill collection or credit rating reporting purposes."

AOBA, accordingly, respectfully requests that HB 561 be amended to require written customer consent prior to the disclosure of any specific customer account information or alternatively eliminate Small Commercial customers and master metered apartment buildings from HB 561.

3. The Bill Does Not Accurately Reflect the Type of Accounts Maintained by Owners/ Managers of Master Metered Apartments and Commercial Buildings

HB 561 would also affect – literally – thousands of Small Commercial electric accounts within master metered apartment buildings and office buildings. These buildings also contain Medium and Large Commercial accounts. Specifically, many AOBA members either own and/or operate large apartment communities, which often contain small, medium or large size commercial electric accounts or a combination of such accounts. These Small Commercial accounts may be for laundry rooms, lobbies, party rooms, hallway lights and other common areas. Likewise, an office building that is classified as a Large Commercial electric account may also contain several Small Commercial electric accounts, for uses such as hallway lighting, exercise facilities, lobbies and/or garage fans.

AOBA respectfully recommends, therefore, that HB 561 be amended to remove Small Commercial electric customers that are contained within a property that also contains a Medium and/or Large Commercial account.

4. The Bill Is in Conflict with Automatic Name Change Programs for Apartment House Communities with Individually Metered Residential Customers

There is another issue that specifically pertains to apartment house communities with individually metered apartments, (i.e., Residential customers), that participate in Automatic Name Change Programs. Many AOBA members that own/operate apartment buildings containing individually metered apartments participate in Pepco's automatic name change program.

That program allows an automatic switch of an individually metered apartment, (i.e., a Residential customer) into the management companies name each time a tenant moves out so that the management company can keep 'the lights and heat' on. AOBA members have thousands of electric accounts that utilize this program and are switched into the management companies name automatically each time a resident moves out and then switched into the new resident's name when they move in.

This has not been addressed in the legislation. AOBA respectfully recommends that HB 561 be amended to provide that any building that participates in an automatic name change program be exempt from HB 561.

5. The Bill Is Unfair to Customers and Competitors

Since the enactment of legislation to promote a competitive electricity market, electricity suppliers have competed for customers in Maryland and customers have selected suppliers that best meet their energy needs. Large customers, including many of AOBA's members, have actively exercised customer choice, with over 83% of Large Commercial and Industrial accounts, over 53% of Medium Commercial accounts and approximately 33% of Small Commercial accounts electing a competitive electricity supplier. Within AOBA's membership, the percentage of Small Commercial accounts currently using a

competitive supplier is higher, because most are associated with Medium and Large Commercial accounts at the same location.

If enacted, HB 561 would unwind two decades of market competition and customer choice. Specifically, under HB 561 and, importantly, by the opt-out mechanism set out in the legislation, local governments would now be permitted to: (i) effectively eliminate customer choice for Small Commercial customers and (ii) effectively eliminate the data privacy protections currently accorded Small Commercial customers.

The "opt out" mechanism included in HB 561 is unfair and would place significant additional burdens on building owners and managers who would be forced to regularly protect their accounts from unwanted capture by the Community Choice Aggregator. AOBA members who have thousands of Small Commercial accounts already using competitive electricity supply services, will have to commit unproductive time and energy to "opt out" each of those accounts each time their competitive supply contracts expire or approach expiration or risk having those accounts captured by a local government's Community Choice Aggregation.

The inclusion of provisions in HB 561 that would automatically capture accounts into a Community Choice Aggregation without the customer's prior affirmative consent represents an admission by local governments who intend to operate Community Choice Aggregations that they are unwilling or unable to compete against existing electricity suppliers in the marketplace.

AOBA respectfully recommends that HB 561 be amended to provide, as is the case in New Jersey, that Small Commercial customers must opt-in to the Community Choice Aggregation or that they be eliminated from HB 561 entirely.

For all of these reasons set forth above, AOBA urges an unfavorable report on HB 561, unless the above amendments and clarifications are adopted.

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