

**STATE OF MARYLAND  
OFFICE OF PEOPLE'S COUNSEL**

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**BILL NO.:** **SB681 - Electricity Supplier and Gas Suppliers -  
Consumer Protections**

**COMMITTEE:** **Senate Finance**

**HEARING DATE:** **February 25, 2020**

**SPONSORS:** **Senators Washington, Benson and Kelley**

**POSITION:** **Support**

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The Office of People's Counsel (OPC) supports SB681, Electricity Supplier and Gas Suppliers-Consumer Protections, an important consumer protection bill. Senate Bill 681 enhances protections for residential consumers regarding cancellation fees, variable pricing, and supply price comparisons, and provides additional investigatory authority in response to supplier complaints to the Office of People's Counsel. Importantly, the bill also makes explicit provision for restitution when the Public Service Commission (Commission) finds that an energy suppliers' actions have violated Maryland law resulting in financial harm to consumers. As a result of complaints filed by residential customers of retail energy suppliers in the state and recent proceedings before the Commission involving violations of the laws and regulations of the Commission by certain retail energy suppliers, there is a need for additional consumer protection measures in

this industry and OPC urges the General Assembly to adopt the revised and enhanced consumer protections as proposed in SB681.

### **Investigatory Authority of the Office of People's Counsel**

SB681 provides authority to OPC to investigate and seek information regarding the consumer practices and actions of retail energy suppliers licensed by the Commission. At present, a retail energy supplier can refuse to answer information requests from OPC even when residential consumers have complained about the actions of a retail supplier, until the Commission docket a proceeding with the retail supplier.

The Bill would enable OPC to serve information and document requests upon a supplier as part of an investigation, and require the supplier to respond to such requests. OPC must have a reasonable basis to make the request (for example, consumer complaints or documents indicating non-compliance with applicable laws and regulations), and the supplier would have the right to challenge the request in a submission to the Commission. Without this enhancement to OPC's statutory authority, OPC is in a "Catch-22 situation." The agency has a right to submit a petition or complaint to the Commission regarding an energy supplier's actions, but only if it has a reasonable substantive basis for doing so. Since the agency does not represent individual consumers, but utility consumers as a group, OPC does not submit such filings based solely on individual complaints. In the case of retail suppliers, OPC's ability to investigate whether there are "pattern and practice" type actions that would justify the filing of a complaint with the Commission, OPC requires access to documents and other information from the retail supplier.

## **Consumer Protection Enhancements**

### **1. Consent to Variable Rate Changes**

SB681 would end the ability of a retail electricity or natural gas supplier to switch an existing residential retail supply customer from a fixed rate contract to a contract with a variable (month to month) rate without the written consent of the customer. This typically happens upon automatic renewal of a supply contract, or after a “teaser” rate ends. The Commission’s current regulations require retail suppliers to provide notice to an existing customer when the fixed rate for electricity or natural gas is changed, either to a fixed rate or variable rate. However, if the customer takes no action to end the contract, the new rate, including any variable rate, will take effect.

It is clear that residential customers do not appreciate the consequences of this change in the pricing method. In almost all cases observed by, or reported to, OPC, the variable rates increase, and do not decrease, over time. The customer ends up paying a higher price for electricity or natural gas, and those higher rates are imposed as a charge until a customer actually cancels the contract. While the Commission has attempted to partially address this issue by requiring that suppliers provide notice in the original contract and at renewal of “access” to the monthly changes in the contract rate, this has not been sufficient. Otherwise, why would a residential customer continue to pay a higher (and sometimes significantly higher) gas or electricity rate and consequently, higher than necessary, utility bill?

SB681 would require that before a customer with a fixed rate is switched to a variable rate, the retail supplier must obtain the customer’s affirmative consent as

opposed to making the change without any action by the customers. SB681 would prohibit gas and electric suppliers from converting a fixed "teaser" rate to a variable rate or renewing a contract with a conversion of a fixed rate to a variable rate without the express written consent of the customer. This would provide better price transparency, and potentially limit financial harm to a customer whose rates are converted to a variable rate, and changing monthly with an upward swing. It is the variable rate that most frequently results in substantial differentiation between the supplier rate and the utility rate, and can have a substantial impact on a customer's annual utility bill.

## **2. Limitation on Cancellation Fees**

SB681 will create a ceiling of \$50 on early termination or cancellation fees that a retail electric or natural gas supplier can impose on a customer seeking to end a contract. Current regulations allow retail suppliers to charge "reasonable" cancellation fees. These fees can be substantial and inhibit a customer's decision to cancel a contract that allows a rate that is higher than the SOS or the utility gas commodity rate or rates charged by other suppliers. The fees typically are justified as a means to cover the costs of procuring future energy supply for a fixed price contract, but there is no demonstrated connection between these future costs and the fee charged to individual customers. These fees often are used as a bargaining chip to persuade customers not to cancel service.

## **3. Price Comparison Information on Bill**

SB681 requires that any bills for electricity or gas supply<sup>1</sup> contain price comparison information to increase cost transparency.

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<sup>1</sup> Currently, retail energy suppliers are able to bill separately for gas or electricity supply, or use the local utility as the biller. The Commission also has authorized "supplier consolidated billing" in Case No. 9461, which may be

The bill requires the information to be in the format of either a table or chart, to allow the customer to compare the price charged by the retail supplier to the rate charged by the local electric or gas company for utility-provided supply. Next, the chart or table will provide information that compares the total supplier cost to the total cost using the utility-supply costs. Finally, the table or chart will provide the actual price differences between the rate charged by the retail electric supplier and the rate charged by the electric company's standard offer service.

This information gives greater price transparency to individual residential customers, so that they can more easily understand whether they are saving money, or spending more money, with an energy supplier contract. It is clear that residential customers have little understanding of retail competition, retail energy supply contracts and terms, and whether and how they can understand price offers from individual suppliers. This chart provides an easy and understandable way to communicate price information to the customer. Furthermore, if the customer was slammed, it increases the likelihood that the problem will be noticed and rectified. Attachment 1 is an example of a Southern Maryland Electric Cooperative (SMECO) bill that includes this comparison information.

### **Restitution to Address Financial Harm to Consumers**

SB681 requires that any retail electricity or natural gas supplier that is found by the Commission to be in violation of State laws and regulations that result in financial harm to customers must provide financial restitution. This restitution to customers shall

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implemented upon adoption of regulations. SB681 would require either the utility or the supplier, whichever entity bills the customer for supply, to include the price comparison information on the bill.

be the difference between the rate charged by retail electric or natural gas supplier and the rate charged by an electric company for standard offer service or the rate charged by a natural gas company for the natural gas commodity for each month that the customer was enrolled with the retail electric or natural gas supplier. This would strengthen the current remedy provisions in the law, and address the financial harm that results from the actions of the supplier.

While action against the supplier license, the imposition of a civil penalty, or imposition of conditions on the supplier may be appropriate, these remedies do not address the financial harm to customers who have been slammed, subject to deceptive practices, or enrolled by suppliers who have failed to follow the law in Maryland. The enhancement of requiring direct financial restitution to all customers affected by the supplier's violations would benefit the customers harmed by the supplier actions, and serve as a detriment to future similar actions by the same or other suppliers. Current Commission law contains an explicit reference to refunds or a credit as a remedy for violations of law that harm the customers. However, the remedy of restitution has not been uniformly ordered for the group of customers affected by the violations. The Commission's Consumer Assistance Division has required individual refunds in some cases. However, in cases before the Commission, only Xoom Energy has been ordered to provide refunds to affected customers, and in that instance, the customers were required to respond to a Company notice.<sup>2</sup> In other cases, including the most recent one of Smart One Energy, no restitution orders were issued.

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<sup>2</sup> Only 5 to 10 percent of Xoom's residential customers actually received refunds. The active oversight of the Commission over the restitution process, even when carried out by the supplier, is clearly needed.

The Office of People's Counsel recommends that the Finance Committee give a  
**FAVORABLE REPORT** to SB681.

SB681 OPC Testimony - Attachment No. 1

Ways to Pay Account Number: 1234567890



Electronic Check and Credit/Debit Cards accepted. Visit smeco.coop/ways2pay for more details.



<b>Mail</b>  P.O. Box 62261 Baltimore, MD 21264	<b>AutoPay</b>  smeco.coop/autopay	<b>Phone</b>  1-866-528-7757	<b>Online</b>  smeco.coop/ paybillnow	<b>In Person</b>  15065 Burnt Store Rd. Hughesville 23365 Hollywood Rd. Leonardtown	<b>Mobile App</b>  Download the free SMECO 24/7 app.
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SMECO is regulated by the Maryland Public Service Commission, which may be reached at 1-800-492-0474. SMECO's Federal ID number is 52-0492367.



Account Information

HOW CAN WE HELP? 1-888-440-3311 www.smeco.coop

REPORT AN OUTAGE 1-877-74-SMECO 1-877-747-6326

Bill Date 04/27/18  
Account Number 1234567890  
Account Name Sample Smith

ALTERNATE ENERGY SUPPLIER CHARGE

You have chosen ABC Supplier as your alternate energy supplier. If you have questions regarding the supplier portion of your bill, please contact the supplier directly.

Alternate Supplier: **ABC Supplier**  
Supplier Address: **1234 Supplier Ave. Baltimore, MD 21202**  
Supplier Phone Number: **1-800-456-5678**

The rate and total charge from your alternate energy supplier.

Alternate Energy Supplier Charge Details

Billing Period: 03/23/18 - 04/24/18

1228 kWh @ \$0.1052	\$129.19
<b>Supplier Total Charges</b>	<b>\$129.19</b>

Comparing Costs

SMECO's Standard Offer Service (SOS) rate is the cost customers pay for energy if they do not choose an alternate supplier. SMECO provides electricity to members at cost, with no markup.

SMECO's Price to Compare is made up of the Standard Offer Service Energy Charge and the Power Cost Adjustment.

The table below shows your price to compare for this month's usage based on the current SMECO total SOS rate.

SMECO's Price to Compare is \$0.065829

Monthly kWh Usage	SMECO APR 18 Price to Compare
1000 kWh	\$65.83
1100 kWh	\$72.41
1228 kWh	\$80.84
1300 kWh	\$85.58

You would have saved \$48.35 on SMECO's