SENATE BILL 681 –ELECTRICITY SUPPLIERS AND GAS SUPPLIERS – CONSUMER PROTECTIONS

UNFAVORABLE

SENATE FINANCE COMMITTEE
February 25, 2020

NRG Energy, Inc. ("NRG") submits these comments in **opposition** to **SB 681 –Electricity Suppliers and Gas Suppliers – Consumer Protections.**

NRG is a Fortune 500 company, delivering customer focused solutions for managing electricity, while enhancing energy choice and working towards a sustainable energy future. We put customers at the center of everything we do. We create value by generating electricity and serving more than 3 million residential and commercial customers through our portfolio of retail electricity brands – including here in Maryland, where NRG owns four companies that are licensed by the Public Service Commission to serve retail customers.

NRG strongly opposes SB 681 because it:

- Creates duplicative investigative and enforcement authority over competitive retail suppliers:
    - The Public Service Commission already possesses all the investigative and enforcement authority required to regulate the competitive market and competitive retail suppliers.
    - The OPC already possesses the authority to investigate and request the PSC to initiate proceedings against competitive suppliers when warranted.
- Ignores the fact that the PSC has established a new Compliance and Enforcement unit within its Consumer Affairs Divisions dedicated to more proactive oversight of utilities and competitive retail suppliers to ensure compliance with the PSCs regulations.
- Puts the OPC in the role of regulating competitive supplier prices which will stifle innovation and eliminate the choices available to Maryland consumers.

The General Assembly adopted the Electric Customer Choice and Competition Act of 1999 ("Electricity Competition Act") and Natural Gas Supplier Licensing and Consumer Protection Act of 2000 ("Natural Gas Act") which opened Maryland's electricity and natural gas markets to competition and gave Maryland consumers the right to choose the source of the energy they buy and from whom. These laws deregulated the generation, supply, and pricing of electricity and natural gas and gave the Public Service Commission the statutory authority to license and regulate all competitive electricity and natural gas suppliers. In fulfillment of its duty to implement these laws, the PSC balances the interests of all market participants and stakeholders – including suppliers, utilities, OPC, and others – in promulgating the rules governing Maryland's competitive electricity and natural gas markets. The PSC strikes a necessary balance between ensuring that markets are competitive, consumers are adequately protected.

According to the PSC's website, as of December 2019, approximately 430,000 Maryland electricity customers were taking supply service from competitive retail suppliers, while just over 200,000 natural gas customers had switched to competitive suppliers. As the PSC reported to the legislature in October 2019, of the 1,842 complaints filed against electric and gas utilities and competitive suppliers that it investigated in 2018, less than half were against competitive suppliers. On average, the PSC reported that competitive suppliers have generated just under 600 complaints a year for the past 4 years. This means that **of the 630,000 electricity and natural gas customers that are served by competitive retail suppliers, only 0.1% - 0.2% of them have required assistance from the PSC to address their concerns or problems with their service, and 90% of those concerns were resolved within 60 days**.[1]

Senate Bill 681 proposes to give duplicative investigative and enforcement authority over retail suppliers to the Office of Peoples Counsel that the Public Service Commission already possesses. Moreover, the OPC already has the authority to conduct investigations and request that the PSC initiate proceedings as OPC considers necessary. OPC has exercised this authority and the PSC has responded by opening cases it deems are warranted. The PSC, on its own initiative, has created a new enforcement unit within it's Consumer Affairs Divisions to focus more attention on ensuring the suppliers licensed by the commission are complying with its rules. The PSC must be permitted to retain this authority because the PSC is the regulator of this market, whereas OPC is an interested party representing an important, but narrow interest. As an interested party, OPC has for decades advocated against the competitive retail market and customer choice. The OPC opposes every license application by any company seeking a retail supplier license from the PSC. OPC has for years opposed all efforts to improve Maryland's competitive retail market that would enable the market to deliver more benefits to Maryland consumers.

SB 681 would enable OPC to use its opposition to Maryland's competitive market to stifle innovation and restrict customer choice. The bill includes provisions that would give the OPC the ability to effectively regulate the prices offered by competitive suppliers, which the General Assembly specifically deregulated when it adopted the Competition Act in 1999. The bill would enable the OPC to treat the utility price to compare as a price cap in the market and enforce refunds of any charges that are higher than the utility PTC. The bill would also limit the kinds of products available to customers. In short, SB 681 would empower the OPC to drive all innovation out of the market and turn back the clock 20 years to a time when customers had no choice of their energy supply.

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[1] *Response to 2019 Joint Chairmen's Report on the Fiscal 2020 State Operating Budget (HB 100) and the State Capital Budget (HB 101) and Related Recommendations*, Report of the Public Service Commission of Maryland, October 1, 2019. Note, because the PSC report does not provide a breakdown of complaints against suppliers by electricity or natural gas, we calculate the complaint to sales ratio using the same numerator (600 complaints) for both electricity and natural gas shopping customers. As such, the actual complaint to sales ratios for each group of suppliers are likely lower.

Maryland's energy supply market is competitive and has been growing and evolving for the last 20 years. Competitive suppliers offer customers a variety of value-added products and services, including price stability through fixed price supply plans, renewable and carbon free energy, supply plans that include technology aimed at improving customers' energy efficiency and lowering their overall bills, and a whole host of other products of value to customers that customers freely choose.

The offers available in the competitive market cannot easily be compared to the regulated Standard Offer Service ("SOS") rate, which is procured according to a prescribed plan approved by the PSC and which is fundamentally different than any other product available in the competitive market. Simply put, no competitive suppliers offer customers a pricing option comparable to SOS, where electricity supply for 25% of non-shopping residential load is procured by the regulated utilities under two-year contracts twice annually, and where weighted average rates are determined for a summer period that runs from June 1 to Sept 30 and a non-summer period that runs from Oct 1 through May 31. Because such a product is not available in the competitive market, any comparisons to the resulting SOS rate are inherently flawed. Moreover, it is not at all clear that the utility SOS rates accurately reflect all of the costs associated with the provision of SOS – meaning that SOS is priced below market. Comparing SOS rates to electricity and natural gas supply prices offered by competitive suppliers offering a wide variety of value-added products and services is like comparing apples and cucumbers.

SB 681 ignores the right of consumers to choose the energy supply products and services they want. It seeks to force a comparison of offers from competitive suppliers to the utility SOS rates, to penalize suppliers offering value-added services that may cost more than the plain vanilla utility standard offer service, and harms customers by taking away their choices. The Office of People's counsel is an important and valued stakeholder in the overall regulatory process governed by the Public Service Commission. But its mission is far different than that of the PSC, which has a duty to balance the interests of all stakeholders while fulfilling its mission to implement fair rules that ensure that the competitive energy markets that the General Assembly envisioned are realized, while also fulfilling its duty to protect consumers. The PSC has the independence, expertise and fair regulatory process that allows all stakeholders to make their voices heard and it should continue to do so.

Thank you for the opportunity to share our perspective on SB 681 and for the above reasons NRG urges the Committee give the bill an **unfavorable** report.

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