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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Rohit Chopra

STATEMENT OF COMMISSIONER ROHIT CHOPRA

Regarding the FTC EnergyGuide Rule
Commission File No. R611004
December 22, 2020

Summary

- After significant delays due to the unlawful actions by the Department of Energy, the FTC is finalizing a new EnergyGuide rule that will help save families money, promote innovation, and reduce carbon emissions stemming from residential energy use.
- Given the excessive burden of energy costs for low-income families, the FTC should take additional steps to prevent abuses in this industry using authorities granted by Congress that the agency has largely ignored.
- In addition to addressing "slamming" and "cramming," the FTC can also protect consumers and honest businesses by deterring corporate "greenwashing" and halting anticompetitive conduct and mergers in the energy sector.

COVID-19 has exacerbated the longstanding problem of excessive energy burden on low-income families that stems, in large part, from inefficient appliances and climate control devices. In addition to making it harder to afford rent, stay-at-home orders and remote work and learning are leading to greater energy consumption – and higher energy bills – for millions of households. There are worrisome signs that many families may face power shutoffs because they cannot afford heat and electricity.[1]

Today, the Federal Trade Commission is finalizing a rule that will help to reduce the long-term burden of high energy bills on low-income families, promote greater energy efficiency, and reduce carbon emissions from residential housing. This rule has long been delayed due to the uncertainty created by the Department of Energy regarding these new efficiency standards.

After years of unlawful inaction by the Secretary of Energy, portable air conditioners will now be subject to higher efficiency standards and will be sold with EnergyGuide labels to assist purchasers of this product. The Commission's decision to require compliance by 2022, rather than 2025, as originally proposed, is a win that will save millions of dollars in energy costs. This action is an example of how clear rules can promote innovation, efficiency, and other broad benefits.

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[1] *See* Tony Romm, *Millions of Americans risk losing power and water as massive, unpaid utility bills pile up*, WASH. POST (Oct. 1, 2020), https://www.washingtonpost.com/business/2020/10/01/power-water-gas-bills/.

However, this rule is only possible due to private litigation filed by consumer groups, energy efficiency advocates, and state attorneys general that forced the federal government to follow the law. The Secretary of Energy's failure to adhere to the law is deeply troubling, and it will need to play catch-up on many other energy-intensive appliances found in American homes. The FTC and Department of Energy can and should take further steps to reduce the considerable energy burdens for families and to lower carbon emissions.

Excessive Energy Burden for American Families

Many families, particularly those living in rental housing, face higher energy bills stemming from inefficient appliances and products, since many landlords have little incentive to install energy-efficient equipment.[2] One study found that multifamily rentals are the least likely of any type of housing to use energy efficient products, which contributes to greater energy burden for these families.[3]

Congress has long sought to promote energy independence, increase the efficiency of products in the U.S. market, and reduce the environmental impact of household appliances and goods. For example, the Energy Policy and Conservation Act requires the Department of Energy to establish efficiency standards for certain appliances and other products. The Department of Energy is required to update these standards periodically, but is forbidden from weakening them. After the Department of Energy issues any standard, the FTC is tasked with promoting comparison shopping through EnergyGuide labeling and similar programs, which incentivizes innovators to exceed the minimum efficiency standards.

The Department of Energy's Unlawful Delay Tactics

The federal government, including the FTC, has been working since 2015 to implement higher standards and labeling for portable air conditioners, a feature of many apartments without central air conditioning. Portable air conditioning units are particularly energy-intensive. In 2016, new standards that were projected to reduce tens of billions of kilowatt-hours of electricity and save billions in costs for families over a 30-year period were close to being finalized.[4] In 2017, however, the new Secretary of Energy pulled the plug on the process, killing the new efficiency standards on portable air conditioners and other products.

Fortunately, Congress ensured that there was a private right of action to enforce compliance and remedy any lawbreaking by the Secretary.[5] In 2019, a court found in favor of a coalition of state attorneys general, consumer groups, and energy efficiency advocates, ruling that the Department

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[2] *See* Michael Carliner, Reducing Energy Costs in Rental Housing, Research Brief 12-2, Joint Center for Housing Studies of Harvard University (Dec. 2013), https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_carliner_research_brief.pdf. Carliner describes the issue with "split incentives" between renters and landlords where the person offering a property for rent has few incentives to spend more upfront to equip the property with energy efficient products if they are not responsible for covering its energy expenses.

[3] *See* Ariel Drehobl & Lauren Ross, Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, American Council for Energy Efficiency (Apr. 2016), https://assets.ctfassets.net/ntcn17ss1ow9/1UEmqh5l59cFaHMqVwHqMy/e81368fa10d39bbb4b114262aaee5be2/Lifting_the_High_Energy_Burden_0.pdf.

[4] *See* Final Rule, Energy Conservation Program: Test Procedures for Portable Air Conditioners, 81 Fed. Reg. 35,242 (June 1, 2016) (codified at 10 C.F.R. Parts 429 and 430); *see also* Proposed Rule, Energy Labeling Rule, 81 Fed. Reg. 62,681, (Sep. 12, 2016) (to be codified at 16 C.F.R Part 305).

[5] 42 U.S.C. § 6305.

of Energy's termination of the proceeding was unlawful. The court ordered that the rule be finalized.[6]

This year, advocates notified the Department of Energy and the FTC that the government was again unlawfully stalling updates of energy efficiency standards, a delay that is leading to billions of dollars in additional energy burden and enormous amounts of carbon emissions.[7] In October, these organizations sued the government again for its disregard for the law.[8]

Given their substantial benefits, the Department of Energy should update and raise efficiency standards, and the FTC should continue to quickly implement them through the EnergyGuide program.

Opportunities for Additional FTC Action

Given the financial impact on American families, as well as broader public policy goals to reduce carbon emissions and promote environmentally friendly innovation, the FTC should seize opportunities to reduce residential consumers' burdensome energy costs. In addition to working with the Department of Energy on promoting energy efficiency through higher standards and labeling, the FTC can take a number of steps to protect consumers:

(1) Protect energy consumers from unlawful cramming and slamming.

For years, state regulators and consumer advocates have been battling unscrupulous energy suppliers that employ deceptive marketing practices to entice consumers to switch from their local distribution company's services.[9] Some of these players engage in "cramming," where they push undisclosed fees on to customer bills. Consumers have also complained that these companies offered them teaser rates to lock them into a long-term contract and later significantly increased their rates.[10]

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[6] *See* Press Release, Natural Resources Defense Council, NRDC & Other Environmental and Consumer Groups, 11 States & NYC Sue Over Stalled Efficiency Standards (June 13, 2017); *see also Nat. Res. Def. Council, Inc. v. Perry*, 302 F. Supp. 3d 1094 (N.D. Cal. 2018), aff'd sub nom. Nat. Res. Def. Council, Inc. v. James R. Perry, 940 F.3d 1072 (9th Cir. 2019); *Nat. Res. Def. Council, Inc. v. James R. Perry*, 940 F.3d 1072 (9th Cir. 2019).

[7] Press Release, EarthJustice, DOE Inaction Will Cost Consumers at Least $22 Billion and Spew at Least 80 Million Tons of Carbon into the Air (Aug. 10, 2020), https://earthjustice.org/news/press/2020/doe-inaction-will-cost-consumers-at-least-22-billion-and-spew-at-least-80-million-tons-of-carbon-into-the-air.

[8] Compl. for Declaratory and Injunctive Relief, *NRDC et al. v. Dan Brouillette et al.*, 20-cv-9127 (S.D.N.Y. Oct. 30, 2020).

[9] *See, e.g.,* Susan M. Baldwin & Sarah M. Bosley, MARYLAND'S RESIDENTIAL ELECTRIC AND GAS SUPPLY MARKETS: WHERE DO WE GO FROM HERE?, MARYLAND OFFICE OF THE PEOPLE'S COUNSEL, at 4-5 (Nov. 2018) (describing deceptive representations to consumers to entice them to switch from their current service provider during the 2013-2014 polar vortex), http://www.opc.maryland.gov/Portals/0/Publications/reports/APPRISE%20Where%20do%20we%20go%20from%20Here.pdf?ver=2019-09-11-075024-040; Press Release, Greater Boston legal Services, Greater Boston Legal Services Sues SFE Energy For Deceptive Practices in Door to Door Sales of Residential Gas and Electric Services (Apr. 12, 2019) (announcing a class action lawsuit alleging misleading promises of lower costs to trick low-income households of color into enrolling in high-cost contracts), https://www.gbls.org/rafael-fuentes-v-sfe-energy-massachusetts-inc; Jim Donovan, *NJ Sues Third-Party Energy Suppliers For Defrauding Customers*, CBS PHILLY (June 4, 2014) (announcing an enforcement action against five competitive energy suppliers alleging they made deceptive claims), https://philadelphia.cbslocal.com/2014/06/04/nj-sues-third-party-energy-suppliers-for-defrauding-customers/; Eileen Faust, *Pa. AG files complaints against 5 electric suppliers for price spikes*, THE MERCURY (June 20, 2014) (announcing an enforcement action against five third-party energy suppliers who promised consumers low energy rates during telemarketing calls and later spiked their prices), https://www.pottsmerc.com/news/pa-ag-files-complaints-against-5-electric-suppliers-for-price-spikes/article_ea800b93-a560-5f00-bc52-1de315386283.html.

[10] *Id. See also* Elisabeth Leamy, *Should you switch electricity suppliers? Maybe — but do your homework first.*, WASH. POST (June 12, 2018), https://www.washingtonpost.com/lifestyle/home/should-you-switch-electricity-suppliers-maybe--but-do-your-homework-first/2018/06/11/d0493df8-683a-11e8-9e38-24e693b38637_story.html.

Others complain about "slamming," where customers are switched over to a different energy supplier without their knowledge or consent, often at the hands of third-party marketers.[11] Once consumers are enrolled, these companies charge consumers additional fees or make it difficult and expensive for them to cancel their contracts.[12] While state regulators have cracked down on some of these companies, many have crossed state lines to engage in similar wrongdoing.

As noted above, a court found that the Department of Energy failed to adhere to Congressional directives in the energy labeling context. Unfortunately, the FTC has also ignored the new authorities granted by Congress in 2005 to issue rules addressing unfair or deceptive practices like slamming and cramming.[13] At a minimum, given the Commission's experience with cramming and slamming in other contexts,[14] the FTC should consider whether it should codify widely accepted policy and precedent with respect to these practices, which can increase compliance without imposing any new requirements and ensure that bad actors cannot hope from state to state to perpetrate the same scams.

(2) Deter greenwashing and deceptive environmental claims.

Studies have shown that, when it comes to choosing energy suppliers and household appliances, many consumers are willing to pay a premium for environmentally friendly options, and energy efficiency claims are material to their decision to purchase.[15] In the case of energy consumption, consumers must often take the information sellers provide at face value, as they lack the resources to verify the accuracy of their statements independently.

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[11] *See, e.g.,* Baldwin & Bosley, *supra* note 10, at 4-5; Donovan, *supra* note 10 (describing how Starion and Viridian's sales representatives misrepresented their relationship with the local public utility to get consumers to switch suppliers without their knowledge); Jennifer Bosco, Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts, Nat. Consumer L. Center, at 9-10 (Apr. 2018) (describing complaints related to door-to-door marketing and switching customers to a different provider without the customer's authorization), https://www.nclc.org/images/pdf/pr-reports/competitive-energy-supply-report.pdf; Press Release, PUC Urges Consumers to be Conscious of Utility Account Security with Telemarketing Sales Calls, Encourages Continual Review of Bill Statements and Online Account Activity, Pa. Pub. Utility Comm'n (July 11, 2019) (warning consumers about "aggressive" or "intimidating sales calls" where telemarketers calling on behalf third-party energy suppliers pose as representatives from a public utility and threaten to terminate their services if consumers do not switch to a new plan), https://www.puc.pa.gov/press-release/by-id/4234; Andrew Maykuth, *Beware of switching scams by electric telemarketers using 'super high-pressure tactics,' PUC warns*, The Philadelphia Inquirer (July 16, 2019) (warning consumers about slamming and high-pressure marketing tactics by telemarketers pretending to be affiliated with the government or the local utility), https://www.inquirer.com/business/energy/pennsylvania-puc-harassing-threatening-electricity-telemarketers-20190716.html.

[12] *See* Bosco, *id* at 18 (asserting that high cancellation fees "can effectively trap [consumers] in a contract for expensive electricity supply for the entire term of the contract"); Baldwin & Bosley, *supra* note 10, at 25-30; Scott Dance, *Companies promise Maryland residents free electricity, but lock them into expensive contracts, advocate says*, Baltimore Sun (Dec. 3, 2019), https://www.baltimoresun.com/business/bs-bz-energy-supplier-complaints-20191203-bghwu6ornbbyvioiiw6uh4g7jy-story.html.

[13] 42 U.S.C. § 16471.

[14] The Commission has repeatedly condemned "cramming," particularly in the context of mobile phone carriers. *See* Press Release, T-Mobile to Pay At Least $90 Million, Including Full Consumer Refunds To Settle FTC Mobile Cramming Case, Fed. Trade Comm'n (Dec. 19, 2014), https://www.ftc.gov/news-events/press-releases/2014/12/t-mobile-pay-least-90-million-including-full-consumer-refunds; Press Release, AT&T to Pay $80 Million to FTC for Consumer Refunds in Mobile Cramming Case, Fed. Trade Comm'n (Oct. 8, 2014), https://www.ftc.gov/news-events/press-releases/2014/10/att-pay-80-million-ftc-consumer-refunds-mobile-cramming-case.

[15] *See* Abel Gustafson et al., *Who is willing to pay more for renewable energy?*, Yale Program on Climate Change Communication (Jul. 16, 2019), https://climatecommunication.yale.edu/publications/who-is-willing-to-pay-more-for-renewable-energy/; Joseph Chang & Al Greenwood, *Consumers willing to pay more for sustainable products – Accenture*, ICIS (June 4, 2019), https://www.icis.com/explore/resources/news/2019/06/04/10374331/consumers-willing-to-pay-more-for-sustainable-products-accenture.

When companies make false or misleading energy efficiency claims about their products or services, it not only hurts these consumers financially but also increases the environmental impact consumers sought to lessen. It also harms innovation, since it makes it more difficult for legitimate, environmentally friendly products to compete with sellers who engage in deception.

The FTC has clear authority to take enforcement actions against entities that make misleading energy efficiency and environmental claims. Last year, the Commission obtained a significant judgment against Truly Organic, which falsely claimed its products met USDA organic guidelines.[16] In 2016, the FTC challenged Volkswagen for making false claims about "clean diesels."[17] And in 2015, the Commission also halted ECM BioFilms' unsubstantiated claims about the biodegradability of their plastic products.[18]

The Commission can promote innovation and deterrence by triggering penalties, restitution, and damages for unlawful environmental claims. The FTC can restate elements of the FTC Green Guides into a rule, without imposing any new requirements.[19] The agency can also trigger greater sanctions using the FTC's Penalty Offense Authority, when companies have knowledge about a past Commission order that declared an environmental marketing practice to be unfair or deceptive, as in the case of ECM BioFilms.[20]

(3) Condemn anticompetitive mergers and conduct in the energy sector.

Anticompetitive mergers and conduct by energy companies can increase costs for consumers and reduce innovation when it comes to energy efficiency. The FTC plays a key role in maintaining competition and increasing innovation in energy markets, so that companies cannot excessively squeeze household energy budgets. Earlier this year, the Commission successfully blocked an energy company joint venture that would likely have increased prices for many families.[21]

In the natural gas industry, the Commission has taken action to promote affordable access to energy that is cleaner than other fossil fuels.[22] The FTC has also explored competition and

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[16] I have previously advocated that the Commission should restate longstanding legal precedent, such as false affiliation with or certification by government agencies, into a Section 18 rule. Truly Organic's alleged conduct would have violated this rule. *See* Statement of Commissioner Rohit Chopra Regarding the Report to Congress on Protecting Older Consumers, Comm'n File No. P144400 (Oct. 19, 2020), https://www.ftc.gov/public-statements/2020/10/statement-commissioner-rohit-chopra-regarding-report-congress-protecting.

[17] Press Release, Volkswagen to Spend up to $14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles, Fed. Trade Comm'n (June 28, 2016), https://www.ftc.gov/news-events/press-releases/2016/06/volkswagen-spend-147-billion-settle-allegations-cheating.

[18] Press Release, Fed. Trade Comm'n, FTC Concludes ECM BioFilms Made False, Misleading, and Unsubstantiated Claims About the Biodegradability of Plastic Products Treated with Its Additive (Oct. 19, 2020), https://www.ftc.gov/news-events/press-releases/2015/10/ftc-concludes-ecm-biofilms-made-false-misleading-unsubstantiated.

[19] *See* Statement of Commissioner Rohit Chopra Regarding the Report to Congress on Protecting Older Consumers, Comm'n File No. P144400 (Oct. 19, 2020), https://www.ftc.gov/public-statements/2020/10/statement-commissioner-rohit-chopra-regarding-report-congress-protecting.

[20] Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act's Penalty Offense Authority* (Oct. 29, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256. Particularly given challenges to the FTC's 13(b) authority, incorporating a penalty offense strategy can safeguard the Commission's ability to seek strong remedies against lawbreakers.

[21] Press Release, Fed. Trade Comm'n, Statement of FTC Bureau of Competition Director Ian Conner on Peabody Energy Corporation and Arch Coal's Abandonment of Their Proposed Joint Venture (Sep. 29, 2020), https://www.ftc.gov/news-events/press-releases/2020/09/statement-ftc-bureau-competition-director-ian-conner-peabody.

[22] For example, the FTC ordered Kinder Morgan, one of the largest U.S. transporters of natural gas and other energy products, to divest pipelines and other assets to resolve charges that Kinder Morgan's $38 billion acquisition of El Paso Corporation would harm competition. Decision and Order*, In the Matter of Kinder Morgan, Inc.*, Comm'n File No. 121-0014, Docket No. C-4355 (June 12, 2012), https://www.ftc.gov/sites/default/files/documents/cases/2012/06/120614kindermorgando.pdf. *See* FTC Website, Oil and Gas Cases, for a complete listing of FTC competition enforcement matters and other activities in the energy industry. *Oil*

consumer protection issues on solar energy markets.[23] Given excessive energy burden on residential consumers, as well as the climate crisis, the FTC should target its enforcement and policymaking so that incumbents cannot use their power to overcharge families or choke off innovation.

Conclusion

The implementation of the portable air conditioning EnergyGuide labeling rule may seem small, but it will pay significant dividends. Given the burden of energy costs on American families and the increased desire by consumers to make choices that reduce carbon emissions, the Department of Energy should adhere to its Congressional mandate to increase energy efficiency on additional products. At the same time, the FTC can and must continue to build upon today's action by using all of its legal authorities to combat practices that harm consumers, distort competition, and undermine national goals on energy independence and climate change.

I want to thank public commenters for their input and all of the individuals who made this rule a reality.

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and Gas, FED. TRADE COMM'N, https://www.ftc.gov/news-events/media-resources/mergers-competition/oil-gas (last visited on December 11, 2020).

[23] *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, FED. TRADE COMM'N, https://www.ftc.gov/news-events/events-calendar/2016/06/something-new-under-sun-competition-consumer-protection-issues, (last visited on Dec. 10, 2020).

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Competing to Overcharge Consumers:

The Competitive Electric Supplier Market in Massachusetts

April 2018

By

Jenifer Bosco
National Consumer Law Center®

ABOUT THE AUTHORS

Jenifer Bosco is a staff attorney at the National Consumer Law Center (NCLC) with a focus on energy and utility issues that affect low-income consumers. Prior to joining NCLC, she was the first director of the Office of Patient Protection at the Massachusetts Health Policy Commission. Previously, Jen advocated for low-income clients at Health Law Advocates, the Massachusetts Law Reform Institute and Merrimack Valley Legal Services. She also served as an Assistant Attorney General with the Office of the Massachusetts Attorney General and began her legal career as a law clerk for the Massachusetts Superior Court. Jen holds a J.D. from Georgetown University Law Center and a B.A. from Boston College. She is a co-author of *Access to Utility Services* and a contributing author to *Collection Actions* and *Consumer Banking and Payments Law*.

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Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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EXECUTIVE SUMMARY

In 1997, Massachusetts passed the Electric Restructuring Act and deregulated its electric utility companies. Prior to that change in the law, electric utilities (local distribution companies or LDCs) owned the power plants that generate electricity and the local utility poles and lines seen on virtually every street that connect homes and businesses to the electricity customers need. The utility companies also sent the bill, handled customer calls, and maintained the local distribution poles and lines. After the 1997 law was enacted, the electric industry was restructured. The electric utilities were required to sell off their power plants and thus became just distribution companies. They still deliver electricity to customers over local poles and lines, send out bills, and make repairs. But customers now can get the actual electricity they need in one of two ways. First, they can rely on the LDC to buy electricity on behalf of those who do not want to shop elsewhere for their electricity. Second, they can choose a so-called competitive energy supply company (CES company) that sells electricity, which would still be delivered by the LDC. For customers who buy their electricity from a CES company, the LDC acts somewhat like UPS or FedEx does when delivering packages. The LDCs deliver electricity that the consumer has bought elsewhere.

The Massachusetts Department of Public Utilities also adopted regulations that similarly allow customers to choose a third-party competitive gas supplier. Like the current situation with electricity, a gas customer can also simply rely on the local gas distribution company to purchase gas on the customer's behalf. There is no requirement that a customer affirmatively choose a CES company.

Competition in the sale of electricity and gas sounds like it should lead to lower prices and better deals, but in the market for electricity the opposite is commonly true. Customers often end up worse off, paying the CES company more for the same electricity service that their LDC would have provided for a lower price. Equally troubling is the documented extent to which competitive energy suppliers engage in unfair and deceptive sales practices, particularly in low-income communities as well as among older consumers and those who speak English as a second language.

While LDCs are closely regulated, and must seek permission from state government to raise their prices, CES companies can charge any prices at all. CES companies usually attract customers by claiming to offer lower rates. Some advertise benefits like special thermostats or more green energy generated from solar power or wind. But consumers who switch to CES companies often find that they are paying more for the same electricity. Seemingly small overcharges for each customer can add up to millions of dollars, as demonstrated by data collected in Connecticut, Illinois, New York, and, recently in Massachusetts. For the period of June 2016 through May 2017, Connecticut residential customers who purchased electricity through competitive supply companies paid $66,736,598.41 more that they would have paid their regulated public utility companies for the same electric service. In Illinois, residential customers who purchased electricity from competitive supply companies spent an additional $152,108,081 from June 2016 through May 2017 over the prices charged by regulated public utility companies. In New York, residential and some small commercial customers overpaid by $817 million between January 2014 and June 2016, and low-income customers overpaid by almost $96,000,000 during the same period, compared to the prices charged by regulated public utility companies. Massachusetts customers paid $176,800,000 more than what they would have paid for electricity from their utility, during the period of July 2015 through June 2017.

Aggressive salespeople market competitive supply contracts by going door-to-door and by telemarketing. Some of this marketing appears to be concentrated in low-income neighborhoods, where salespeople may pressure vulnerable consumers into contracts based on misinformation and false promises of lower prices. Even consumers who do some research and enter electricity contracts through online sales may be surprised to find that the initial low introductory price for electricity ends after a few months and is replaced by a variable rate without limits.

Vulnerable consumers are disproportionately harmed. A higher percentage of low-income households sign up for competitive supply compared to non-low-income households, so more low-income consumers pay unstable and inflated rates. Higher bills for these consumers may also cause a portion of Massachusetts and federal low-income assistance funds to be absorbed by for-profit competitive supply companies.

States such as Connecticut, New York, and Illinois have taken steps to protect consumers from high prices and deceptive practices. But despite these additional protections, consumers are still paying too much and receiving little or no benefit. Now is the time for the Massachusetts Department of Public Utilities and other Massachusetts regulators policymakers to closely examine the harm to residential ratepayers, and to lead the drive for strong consumer protections and a fair utility marketplace.

Stopping Abusive Energy Sales Practices: Recommendations for Massachusetts

Reconsider the sale of competitive energy supply to individual residential customers
The competitive market for energy is simply not working for residential customers. Consumers pay more for the same electricity, and even states with strong consumer protections have not ended overcharging and abusive marketing practices. In light of this history, states should consider whether competitive suppliers should be limited to the commercial and industrial markets and municipal aggregation.

Limit the ability of energy supply companies to sell to low-income customers
Following the lead of the New York Public Service Commission, states should investigate the harmful impacts on of competitive energy sales on low-income customers and the effect on assistance programs that help low-income customers to keep their heat and lights on. The harm will likely require additional protections for these customers.

Prohibit contracts that lock customers into variable rates
Customers may be fooled by low teaser rates which expire and change to unregulated variable rates. Variable rate contracts should be prohibited, both in new contracts and when a contract is renewed, unless the customer is free to end the variable rate contract at any time without penalties.

Prohibit automatic reenrollment
Energy supply contracts should not renew without the affirmative consent of the customer.

Limit cancellation fees
In Massachusetts, cancellation fees are not limited and have exceeded $200. Cancellation fees should be limited, as in Connecticut where state law caps these fees at $50.

Provide better information
Important information should be included directly on the consumer's utility bill. The electric or gas bill should list the name and contact information for the customer's supply company, the price that the customer is paying, the price that public utility customers are paying for the same service, any additional fees, and the end date of the customer's contract with the supplier.

Prohibit deceptive and aggressive marketing
Use the full authority of the utility commission, attorney general, consumer advocate and other agencies to adopt the strongest possible consumer protections.

Give consumers an easy and binding way to opt out of marketing
Opting out of marketing by competitive energy supply companies or placing a block on utility accounts should be quick and easy for consumers.

Report actual prices paid for the public
Shopping websites describe initial offers for potential customers, but consumers and stakeholders need data that shows how much customers actually pay for competitive energy supply and how those prices compare to the prices charged by public utility companies.

Make data about consumer problems and complaints involving competitive energy supply companies easily accessible to the public

Consumers, regulators, and policymakers should have ready access to a published database of complaints against competitive energy supply companies and their agents including third-party marketers.

Step up enforcement

Strong consumer protections must be backed up with aggressive state enforcement.

Competing to Overcharge Consumers:
The Competitive Electric Supplier Market in Massachusetts

INTRODUCTION

Customers in Massachusetts are paying too much for the electricity they consume, due to the deceptive practices and high-pressure sales tactics of the competitive energy supply (CES) companies that are allowed to compete with local distribution companies (LDCs) for customers. CES companies benefit from a state law that allows them to sell electricity directly to residential customers in most Massachusetts cities and towns. Usually claiming to offer a better deal than the LDCs whose rates are closely regulated by the Massachusetts Department of Public Utilities (DPU), CES companies can charge any price at all for electricity, and can lock customers into confusing and expensive contracts.[1]

Most Massachusetts residents have been on the receiving end of telemarketing, robocalls, door-to-door sales, direct mail marketing, and other sales tactics used by competitive electric supply companies. Since the Massachusetts energy market[2] was partly deregulated in 1997, these companies have been authorized to sell electricity supply directly to residential customers in Massachusetts.[3] Residential customers may choose to continue to buy their power from the regulated public utility company that offers service to the customer's home (the LDC, currently Eversource, National Grid or Unitil, depending on where the customer lives), or from a CES company which is not part of any LDC.[4]

The aim of the deregulation law was to promote competition and reduce electricity rates by allowing private companies to procure electric supply and sell this electricity directly to customers, with the LDC still delivering that electricity to homes and businesses and sending bills to customers. Yet Massachusetts ratepayers are paying inflated prices compared with public utility company rates. Twenty years later, there is reason to look back at deregulation and to ask whether the financial harm and other problems that residential customers experience in the competitive supply market outweigh the hoped-for benefits to consumers.

Glossary of Terms

Basic service: The rate that LDCs charge for electricity, which is usually lower than the rate charged by CES companies

CES: competitive energy supply

Competitive energy supply company or competitive supply company: In Massachusetts, a private company licensed by the Department of Public Utilities to sell electricity or gas service to homeowners or renters for the customer's household use. Competitive supply companies are different from regulated public utilities companies (such as Eversource, National Grid or Unitil)

DPU: The Massachusetts Department of Public Utilities, a state agency that oversees utility companies, setting rates and monitoring quality. According to its website, "The DPU oversees investor-owned electric power, natural gas, and water companies in Massachusetts. In addition, the DPU regulates the safety of bus companies, moving companies, and transportation network companies. We also oversee the safety of natural gas pipelines."

ESCO: Energy Services Company, which is the acronym used in New York for competitive energy supply company

Kilowatt hour: A unit of measure of energy, which may also be written as kWh.

LDC: Local distribution company, which is the regulated public utility company that provides electricity or gas to a designated area of the state. For instance, Eversource is the LDC for electricity service for the city of Boston.

Regulated Public Utility: An investor-owned utility company such as Eversource, National Grid or Unitil, which must follow certain state laws administered by the Massachusetts Department of Public Utilities.

PROBLEMS, COMPLAINTS AND HARM TO CONSUMERS

Sales Pitches That Are Too Good to Be True

Since deregulation, CES companies have become a fixture in Massachusetts, and most consumers are probably contacted by these companies several times per year. While many do sign up to become customers, over the years since deregulation, consumers have steadily reported problems such as aggressive marketing practices, deceptive and misleading sales pitches, unwanted robocalls, confusing contract terms, and prices that dramatically escalate after promotional contract terms expire.

Aggressive and Deceptive Marketing Targets Low-Income, Older Consumers, and Those with Limited English Proficiency

Deceptive and aggressive door-to-door marketing appears to be disproportionately directed towards older consumers, people with limited English proficiency, and low-income communities. A long history of reports from social services providers and low-income advocates supports this observation. It may be that low-income consumers and older customers, whose economic circumstances may motivate them to consider the apparent low price offers, are more likely to be marketed to than are higher income consumers, or are more willing to sign up with a competitive supply company, or are seen by salespeople as less likely to understand the costs and risks of the offer.

2017 data[5] from the Massachusetts Department of Energy Resources (DOER) demonstrate that about half of Massachusetts low-income customers received their electric service from competitive supply companies from January through September 2017. This rate significantly exceeded the rate at which other residential customers chose competitive electric supply, which hovered around 37%-42% for the same time period.

Aggressive and False Marketing in Lynn

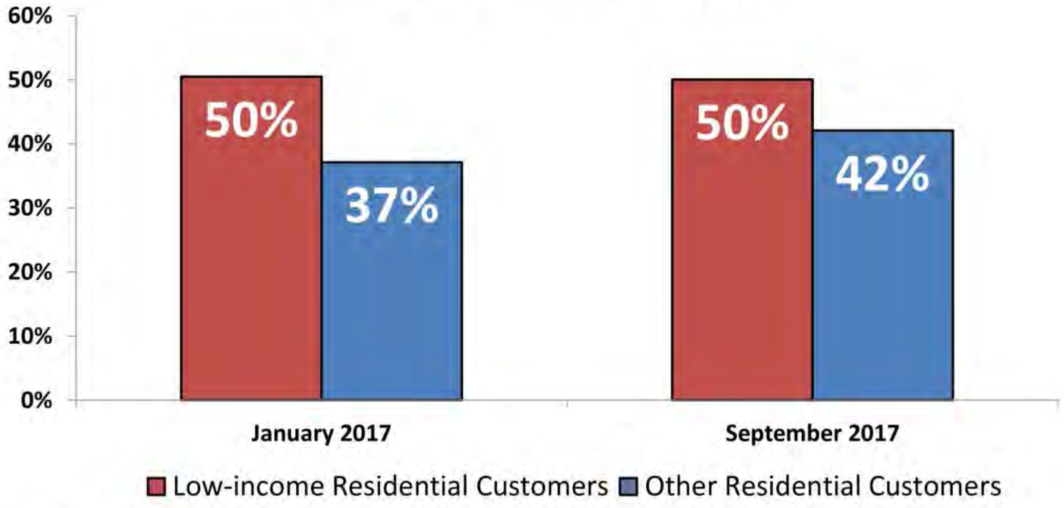
In Lynn, community social services providers reported that competitive supply salespeople gained access to a locked apartment building by dishonestly claiming to work with National Grid. The salespeople then approached building residents, intimidating an older resident. Police were called.

Source: Lynn Economic Opportunity

Chart 1

Percentages of Massachusetts Low-Income Customers and Other Residential Customers Receiving Electric Service from Utility Companies and from Competitive Electric Supply Companies (including municipal aggregation customers)

January 2017 and September 2017



Source: Mass. Dept. of Energy Resources

Complaints about Competitive Electric Supply Companies

Boston Consumer Deceived

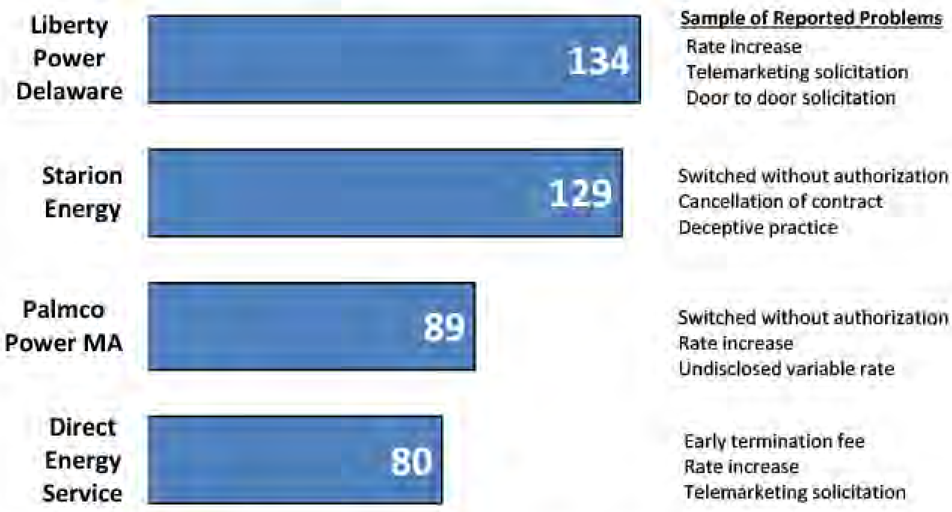
A Mattapan resident signed up with a competitive supply company for gas service after a salesperson came to her door and told her that she could save money on her gas bill. After receiving a surprisingly large bill, the consumer learned that the competitive supply company's salesperson signed her up for gas service, but also switched her electricity service without her knowledge.

Source: National Consumer Law Center

Utility customers who are solicited by or sign up with competitive electric supply companies may file complaints in Massachusetts with the DPU and with other entities. While the DPU collects data on customer-reported problems with CES companies, DPU does not publish these complaints even though consolidating this information and making it readily available would allow the public and policymakers to observe problem areas and trends in complaints.[6] In addition to the DPU, complaints may be directed to other agencies or parties such as the Office of the Attorney General,[7] the utility company, the CES company itself, or non-profit and social services organizations.[8]

Though not a complete catalog of all complaints about competitive electric supply companies, the DPU complaint data provides a snapshot that illustrates the types of problems that consumers encounter. DPU maintains an unpublished database of complaints regarding competitive electric suppliers, which is available by making a public records request.[9] Massachusetts consumers made 1,198 complaints to the DPU about competitive electric supply companies from August 1, 2015 through August 1, 2017. Among the complaints made to the DPU, consumers objected to the marketing practices and prices charged by a number of companies. Liberty Power, Palmco Power, Major Energy Electric, Spark Energy, Verde Energy USA, Clearview Electric, Direct Energy Service, and others were the subject of complaints. Complaints originated throughout Massachusetts and included criticisms about door-to-door marketing, variable rates, and switching the customer without the customer's authorization.[10]

Chart 2
Complaints Against Sample of Large
Competitive Electric Supply Companies by Massachusetts Consumers
August 2015 – August 2017



Source: Massachusetts Department of Public Utilities

State Agencies Can Rein in Abuses

Massachusetts consumers made 1,198 complaints to the DPU about competitive electric supply companies from August 1, 2015 through August 1, 2017.

The DPU has oversight and enforcement authority over the activities of CES companies, which includes licensing and certifying these companies,[11] oversight of certain aspects of marketing and disclosures, handling consumer complaints,[12] investigating possible violations, and taking enforcement actions. The DPU Consumer Division compiles complaint data, which the DPU reviews when deciding whether to grant or renew licenses for competitive energy suppliers.[13] The DPU has not reported any CES license revocations or suspensions. In contrast, DPU exercises more extensive oversight over the rates, business practices, and service quality of regulated public utility companies or LDCs, reviewing most actions by public utility companies in light of its mission to ensure that utility consumers are provided with the most reliable service at the lowest possible cost.

The DPU shares oversight with the Office of the Attorney General, since jurisdiction over certain marketing practices rests with the Attorney General. The Attorney General enforces M.G.L. c. 93A, the Massachusetts law that prohibits unfair and deceptive trade practices, and has created regulations that specifically address the marketing practices of CES companies.[14] The Attorney General has used this authority to obtain settlements with several companies that have violated state law. In a January 2015 settlement, Just Energy agreed to pay $3.8 million to Massachusetts customers in restitution and $200,000 in civil penalties, settling allegations of deceptive sales marketing practices and customer overcharges.[15] In 2008, the Attorney General entered into an agreement with Spark Energy to cease certain deceptive marketing practices such as misrepresenting Spark's relationship with the LDC or misrepresenting customer contract terms and pricing. Spark Energy also agreed to refund certain charges to Massachusetts customers and to pay $55,000 into a consumer aid fund instead of paying of a civil penalty.[16] During April 2017, the Attorney General also issued a civil investigative demand against Starion Energy seeking evidence about the company's rates and whether certain rates consistently exceeded the prices charged by LDCs.[17]

Although the DPU and Office of the Attorney General have created regulations and guidance to police the business practices of CES companies, problems still persist. For instance, existing consumer protections for customers with limited English proficiency include guidance from Massachusetts stating that CES companies cannot sign up residential customers who speak a language other than English until they complete a third-party verification or letter of authorization in the customer's own language, and provide the customer with a contract written in that language.[18] Yet reports of company salespeople selling in a language the consumer cannot understand, without providing a translator, are common.

Deaf Customer in Springfield Pressured to Sign Contract Without Sign Language Interpreter

In western Massachusetts, a salesperson pressured a deaf customer to sign up for competitive supply service without providing a sign language interpreter or other help to answer questions and explain the contract terms. The customer did not understand the agreement and contacted a local social services agency for help. With assistance from an advocate, the customer canceled the contract.

Deceptive representations by marketers are frequently reported.[19] Since 1998, regulations have prohibited the use of "any misleading symbol or representation"[20] in the marketing of retail electricity supply to customers. Yet customers continue to report that salespeople have called or come to their homes, stated that they were "working with" the customer's LDC, and offered to sign the customer up for a lower rate if the customer provides a bill or account number.[21] LDCs and consumer advocates have issued warnings to the public for years, reminding consumers that a legitimate LDC representative will never contact a customer to ask for a utility account number. When a salesperson claims to be working with the LDC but then asks the customer for a utility account number, the salesperson is not an employee or agent of the LDC, and a customer who hands over the account number may find that she has unwittingly signed up with a CES company. Yet these illegal practices persist, despite LDC efforts to warn customers through press releases and social media.

Options exist to shield consumers from some of these practices, although these options are not well-known and information is not readily available. Each LDC is required to maintain a "customer information list" or list of eligible electricity customers, with the following information: the name on the account, mailing and service addresses, monthly meter reading date and rate class. The customer's monthly kilowatt-hour usage (and demand where applicable) for the previous 12 months at the current address will be included.[22] The LDC updates the list on a quarterly basis, and must periodically share this list with CES companies. Customers may opt out of the list by either calling the LDC or filling out an on-line form.[23]

Consumers may request to be removed from the eligible customer list, but it is not clear if many customers are even aware of this option, or how many have taken steps to opt out. The industry association that represents energy supply companies has opposed the creation of additional methods of opting out of marketing by suppliers. In its recent rate case, Eversource asked the DPU for the authority to allow customers to inform Eversource if these customers wanted to be protected from solicitations by competitive supply companies.[24] The Retail Energy Supply Association (RESA), a national association that represents CES companies, opposed this modest consumer protection.[25] The DPU declined to allow this change in the rate case, but will allow Eversource to make the request again in a new proceeding.[26]

Information from the Massachusetts Office of the Attorney General

Do not show a competitive supplier's agent your electricity bill or give him/her your account number unless you have agreed to sign up with the competitive supplier.
A common tactic for a dubious sales agent is to ask to see the customer's utility bill under the pretense of "determining eligibility" or "comparing the rate that you're paying now." Some Massachusetts consumers have complained that they were switched to competitive supply without their authorization after showing a competitive supplier's sales agent their account number or showing the agent their electricity bill.

Your electric utility will NOT contact you about your electricity supply rates.
Your utility will not send representatives to your door, or call you on the phone to talk about electricity supply rates. If a representative contacts you about electricity supply rates, this person most likely works for a competitive supplier.

Source: "FAQs Regarding Competitive Electric Supply for Residential Customer in Massachusetts," at www.mass.gov/ago

The value of even the best list is limited, since it is not clear whether salespeople would regularly consult the list before knocking on the door of a customer's home or calling the customer's phone number.

Consumers in Other States Have Lost Millions of Dollars to Competitive Electric Suppliers

Higher prices, even inflated prices, charged by CES companies are a problem across the many states that allow residential customers to purchase competitive electric supply. Many CES companies operate in multiple states, and higher prices (compared with LDC's prices) have been documented in other states, including Connecticut, Delaware, Illinois, and New York.[27]

In Connecticut, the Office of Consumer Counsel issues periodic reports comparing CES company pricing to the regulated LDC prices. For the period of June 2016 through May 2017, Connecticut residential customers who purchased electricity through CES companies paid $66,736,598.41 more that they would have paid to their LDCs for the same electricity.[28] During December 2017, six out of ten CES customers in Eversource territory and eight out of ten CES customers in United Illuminating territory paid more for competitive supply than the price charged by their LDC.[29]

Worcester Resident Reports Scam by CES Company

"Beware of this company!!! They are mis-leading and will take whatever means possible to get you to switch from your local energy supplier without you even knowing. They're business model is based on a scam. They came by my house, told me they were checking on my rates and that they should have been lowered earlier in the year. They asked me to sign something saying they had talked to me and they would make my rates match the national rates, but in reality, they were switching my account from National Grid to their company. I don't care how low the rates are, if they can't tell me honestly what they are doing, I NEVER want to do business with a company like that. I only hope others avoid getting stuck with this problem too. (It took me days of follow up and being given the run-around to have my account actually remain with my original company)."

Source: Yelp Customer Review of Direct Energy (2012) from Worcester, MA

As calculated by the Illinois Commerce Commission, residential customers who bought electricity from CES companies spent an additional $115,204,320 during the period of June 2014-May 2015, an additional $73,439,971 during the period of June 2015-May 2016, and an additional $152,108,081 from June 2016-May 2017 compared with residential customers who obtained their electricity from the LDC.[30]

The New York Public Service Commission recently prohibited CES companies from selling electricity to low-income customers, after considering the high prices charged to these customers. The Commission stopped these sales after determining that low-income customers were overcharged by almost $96,000,000 from January 2014 through June 2016, and that these overcharges were high enough to diminish the benefits of New York's low income utility assistance programs.[31] Although the competitive electric supply industry associations challenged the low income sales moratorium in court, the New York Supreme Court in Albany county upheld the order in June 2017.[32]

In a Delaware proceeding, the state's Public Advocate stated in comments that there has been no proof that competitive electric supply has saved money for consumers in Delaware or elsewhere.[33]

Enforcement actions by state regulators have also identified overcharges, such as a complaint by the Pennsylvania Office of the Attorney General against a CES company called Blue Pilot. The Pennsylvania Utility Commission found multiple violations of state law and ordered Blue Pilot to refund $2.4 million in overcharges to customers.[34] Palmco Power has also been the target of state enforcement actions, including a $5.28M settlement with the New Jersey Attorney General for alleged deceptive and abusive marketing practices,[35] and a current lawsuit by the Illinois Attorney General for alleged violations of the state law prohibiting unfair and deceptive trade practices.[36]

CES companies usually operate in multiple states. For instance, Liberty Power, Starion Energy, Palmco Power and Direct Energy operate in Massachusetts and also sell electricity to residential customers in other states including Connecticut, Illinois and New York. Massachusetts customers filed hundreds of complaints about these four companies from 2015 through 2017, as shown in Chart 2.

Higher Prices for Massachusetts Consumers

Consumers in other states have lost hundreds of millions of dollars due to competitive electric suppliers' false promises of lower prices. How have Massachusetts consumers fared?

CES companies in Massachusetts are not required to publicly report enough data to enable consumers and others to determine whether customers are overpaying. However, the data we have strongly suggests that consumers in Massachusetts are overpaying by at least as much as those in Connecticut, Illinois, and New York. In a recent report, the Massachusetts Office of the Attorney General found that residential customers in Massachusetts who bought electricity directly from CES companies paid $176.8 million more than they would have paid their utility company, from July 2015 through June 2017. And from July 2016 through 2017, low-income consumers paid $23.6 million more for electricity supplied by CES companies than they would have paid to their utility companies.[37]

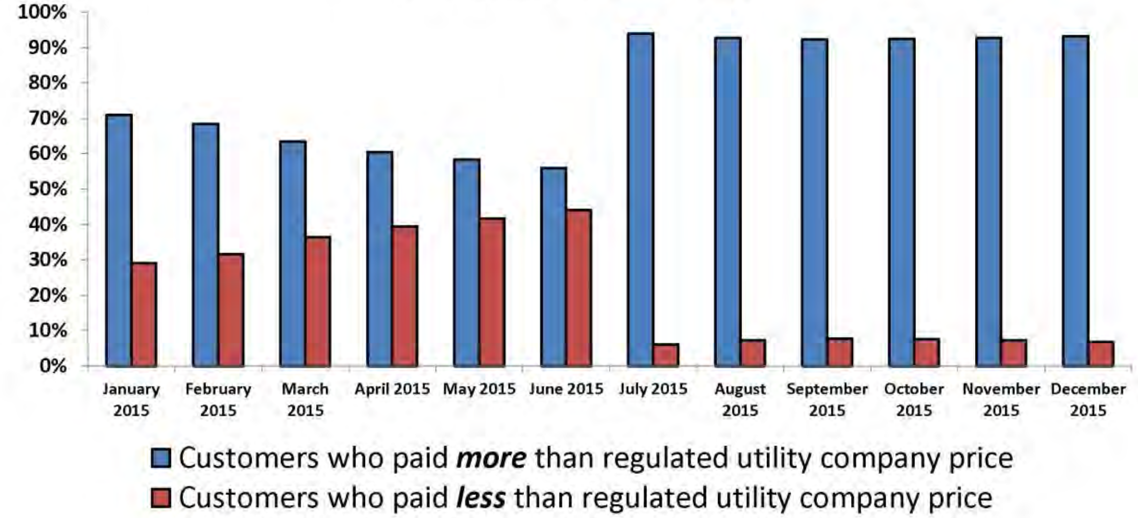
An examination of data from the Eversource eastern Massachusetts territory[38] demonstrates that the residential customers in this region who purchased electricity from CES companies usually paid more for electricity than had they remained with their LDC. The data also shows that competitive electricity supply prices can fluctuate significantly. Even if some consumers paid a fair price for a few months, rates can swing widely and the lack of predictability in pricing only adds to the financial challenges faced by low-income households.

As Charts 3 and 4 show, **during eighteen months in 2015 and 2016, most of Eversource's eastern Massachusetts residential customers paid more for electricity when they contracted with a CES company** than they would have paid if they had remained customers of Eversource.[39]

Chart 3

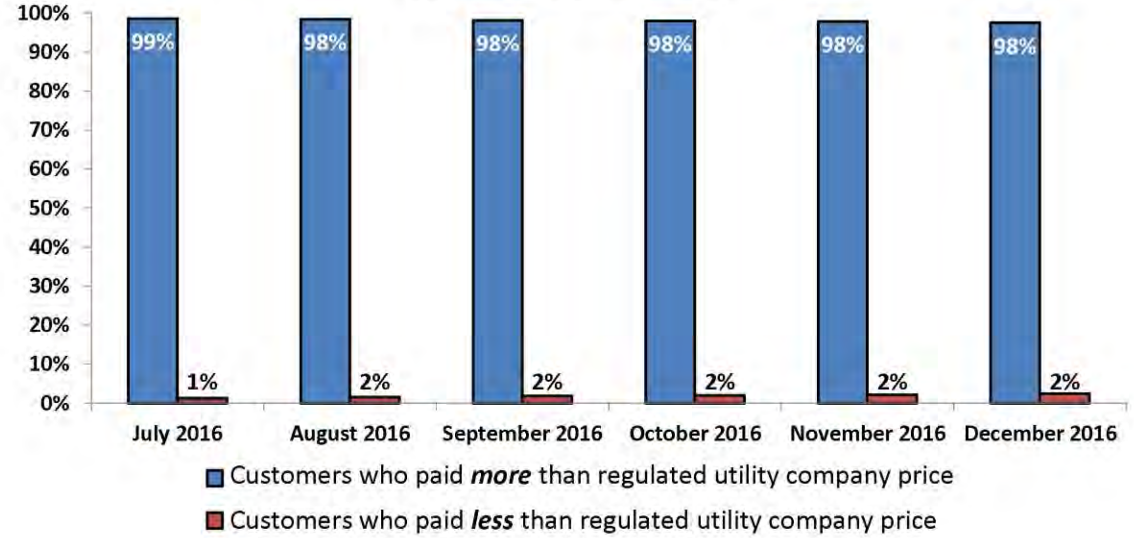
Percentage of Competitive Electric Supply Customers in Eversource Eastern Massachusetts Territory Who Paid More than the Regulated Utility Price

January 2015 – December 2015



Source: Eversource, Inc. Data includes households in cities and towns that have entered municipal aggregation contracts.

Chart 4
Percentage of Competitive Electric Supply Customers in Eversource Eastern Massachusetts Territory Who Paid More than the Regulated Utility Price
July 2016 – December 2016



Source: Eversource, Inc. Data includes households in cities and towns that have entered municipal aggregation contracts.

Customers who signed up with CES companies almost always paid more for their electricity than the LDC's price, and of the customers who paid more, most were charged significantly more, at rates more than $0.01 per kilowatt hour higher. While the price difference might not sound dramatic, it amounts to an increase of about 10% or more. Massachusetts households use an average of about 600 kilowatt hours per month.[40] An increase of even 2 or 3 cents per kilowatt hour above the public utility company price could quickly add up to over one hundred dollars each year for a household depending on their energy usage, and millions of dollars for all customers in a state as shown in Connecticut, Illinois, and New York.[41]

Even though salespersons pitch competitive electric suppliers' contracts as bringing lower prices, electricity supply prices for residential consumers fluctuate and this instability would create additional burdens for low-income customers. The fluctuations are illustrated in the following chart, which show the variations between regulated public utility prices and the competitive electric supply prices over three years, in the Eversource eastern Massachusetts territory.

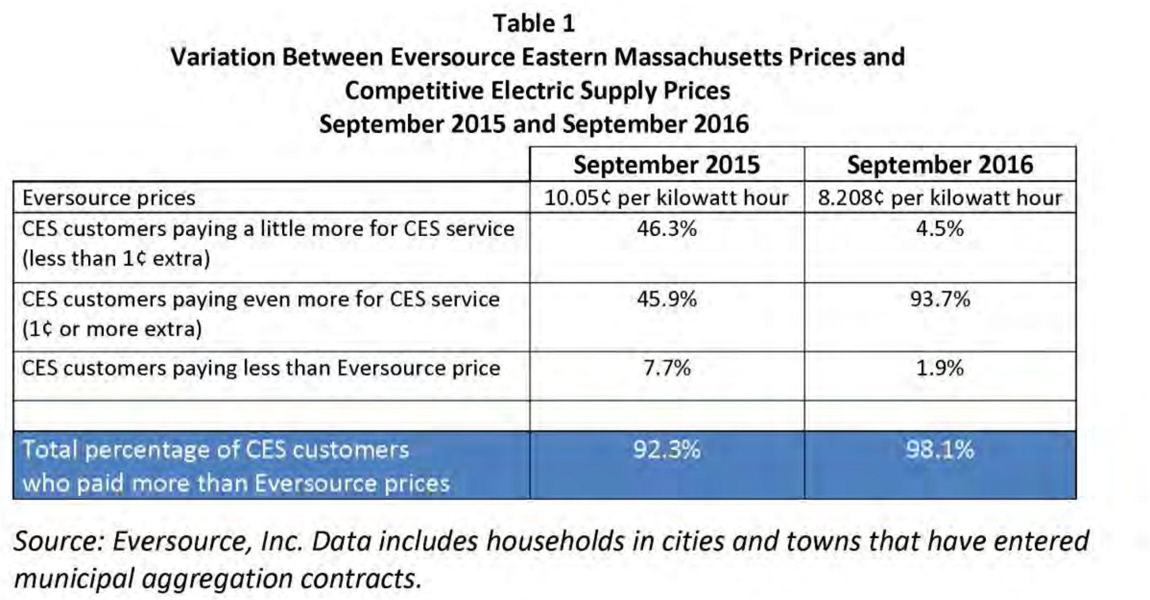


Table 1
Variation Between Eversource Eastern Massachusetts Prices and Competitive Electric Supply Prices
September 2015 and September 2016

	September 2015	September 2016
Eversource prices	10.05¢ per kilowatt hour	8.208¢ per kilowatt hour
CES customers paying a little more for CES service (less than 1¢ extra)	46.3%	4.5%
CES customers paying even more for CES service (1¢ or more extra)	45.9%	93.7%
CES customers paying less than Eversource price	7.7%	1.9%
Total percentage of CES customers who paid more than Eversource prices	92.3%	98.1%

Source: Eversource, Inc. Data includes households in cities and towns that have entered municipal aggregation contracts.

It would be difficult to directly compare 2017 data to prior years because of the rapid increase in residential customers who are part of municipal aggregations. In a municipal aggregation, a city or town contracts with one energy supply company to provide electricity to the town's residents, except for households that opt out and either return to regulated utility company service or switch to another CES company. Municipal aggregations have become more common recently. In the Eversource eastern Massachusetts territory, nine municipalities began their municipal aggregation programs in 2016, and five more began their programs in 2017.[42]

With these limits of the data in mind, the chart indicates that CES prices exceed the prices for service from the LDC. Additionally, of customers who sign up with CES companies and pay a price that is higher than the price charged by the regulated utility company, most pay significantly more (a price difference of more than 1 cent per kilowatt hour, or a price that is usually at least 10% higher than the LDC price).

The deregulation law's stated purpose of "promot[ing] the prosperity and general welfare of its citizens . . . by restructuring the electricity industry in the commonwealth to foster competition and promote reduced electricity rates"[43] has not been achieved for residential customers in Massachusetts. Rather than delivering promised "long-term rate reductions,"[44] deregulation has led to increased confusion and higher prices for consumers.

Consumers Lose with Variable Rate Contracts, High Cancellation Fees, and Automatic Renewal of Contracts

In addition to often offering consumers electricity at higher prices, the competitive electric suppliers offer confusing variable rate contracts that many consumers do not understand. Customers may enroll in a contract with a CES company that offers a fixed introductory price for six or twelve months. For instance, as of October 2017, the price for electricity charged by Eversource in eastern Massachusetts was 10.759¢ per kilowatt-hour. During the same month, a slightly lower rate of 10.25¢ was offered by a CES company called Ambit Energy.[45] The lower rate offered by Ambit Energy would be in effect for the first six months of the contract. After six months elapse, the consumer would be automatically enrolled into a variable-price contract, at a price that would not be disclosed to the customer until the first variable price electric bill arrives.

Variable Rate Contracts

Variable rate contracts are prohibited in Connecticut, but in Massachusetts there are no legal limits on the amount that can be charged under a variable rate contract, or by how much the variable rate can exceed the regulated utility company's prices. After the initial fixed rate expires, the variable rate charged by the CES can skyrocket.[46] Some consumers have tried to challenge excessive variable rates in court and have sued for breach of contract and other contract claims, with mixed results.[47]

High Cancellation Fees

Consumers are also harmed by high cancellation fees, which can add a big expense if the consumer tries to cancel a competitive electric supply contract. While a customer may switch from the LDC's electric service at any time without fees, customers who wish to switch back from the CES company, or who want to switch from one CES company to another, may be charged an expensive cancellation fee. In a review of CES contracts offered in October 2017, cancellation fees ranged as high as a $200 flat fee, or a fee of $12 for each month remaining on the contract term at the time the consumer cancels, which would amount to $276 for a customer who cancelled a 24-month contract after one month.[48] The high cancellation fee can effectively trap the consumer in a contract for expensive electricity supply for the entire term of the contract.

Automatic Renewal

Frequently, contracts for competitive electric supply will automatically renew. A consumer who finds that the low introductory rate has been replaced with a higher variable rate may have few options other than waiting for the contract to expire or paying a cancellation fee to end the contract early. But it is easy for most consumers to lose track of the contract term or miss the date when the contract needs to be cancelled prior to being automatically renewed – in fact, companies may count on this to retain customers. Automatic renewal benefits the company to the detriment of consumers.

STOPPING ABUSIVE ENERGY SALES PRACTICES: RECOMMENDATIONS FOR MASSACHUSETTS

Massachusetts needs to do more to protect consumers from unfair practices in the competitive electricity supply market. Residential customers are being harmed in several ways. Many of these customers are paying too much for electricity. Aggressive marketing practices, which are disproportionately aimed at vulnerable consumers, continue even though Massachusetts has several laws and regulations which are intended to protect consumers from these abuses. Competitive electric supply contracts are confusing, and usually contain terms such as variable rates, high cancellation fees, and automatic reenrollment, which benefit CES companies but harm consumers.

Low-income consumers often reach out to advocates in their communities or to the National Consumer Law Center for help with competitive supply contracts. Usually, consumers were deceived and did not knowingly consent to the contract. When advocates get involved, we are often able to get relief for the individual consumers. But these small victories do not fix the systemic problems that harm a wider group of consumers. We urge Massachusetts to undertake the following reforms.

End Retail Competitive Energy Supply Sales to Individual Residential Customers

Consumers and their advocates rarely see any benefit from the residential competitive electric supply market. As the history of consumer protection issues and high prices shows, consumers and stakeholders are expending money and resources to deal with the same problems over and over again, and only the CES companies appear to benefit. The current scheme of electricity market deregulation is simply not working for the majority of residential consumers.

It is time to end the unsuccessful experiment. The retail competitive energy market is harming residential customers. Evidence of problems continues to mount with no relief in sight for consumers. CES companies continue to profit while consumers continue to suffer. A change to remove CES companies from the residential

A change to remove CES companies from the residential energy market could be made through legislation, or the Massachusetts Department of Public Utilities could open an investigation to begin this process.

energy market could be made through legislation, or the Massachusetts Department of Public Utilities could open an investigation to begin this process. New York is conducting this type of investigation, and is determining whether to end competitive energy supply sales to residential customers entirely. The New York Public Service Commission, in light of the prevalence of consumer problems in the competitive energy market, is considering "whether ESCOs should be completely prohibited from serving their current products to mass-market customers[.]"[49]

Until this step is completed, the following policy changes would help protect consumers. In the short term, as long as the Massachusetts residential electricity market remains deregulated, policy makers and stakeholders must take steps to make the market work more fairly, with adequate protections for consumers. Several other states, including Connecticut, New York, Pennsylvania, and Illinois have responded to consumers' problems with additional consumer protections. Massachusetts has fallen behind these other states. Stronger consumer protections that would help Massachusetts consumers include examination of financial harm to low-income consumers, limits on residential contract terms, rules regarding permissible marketing tactics and third-party marketers, opt-out provisions for customers, and more comprehensive public reporting.

Investigate Harm to Low-Income Consumers and Programs and Make Needed Reforms

As noted, low-income consumers may be disproportionately harmed by higher rates and unfair contracts, and many are struggling to pay their bills even before signing up for CES service. In New York, the state's Public Service Commission (PSC) conducted proceedings and issued an order to halt CES companies' sales to certain low-income customers.[50] The PSC took this step after proceedings in which CES companies failed to show that their services provided any additional service or value compared with LDC electric service, and evidence showed that customers who signed up with CES companies (referred to as ESCOs in New York) overpaid for the same electric service. Further, the PSC found that the higher charges were significant enough to drain crucial funds from taxpayer and ratepayer supported programs that were intended to assist low-income customers.

In Massachusetts, the Attorney General recently reported that a higher proportion of low-income customers by electricity from CES companies than do higher-income customers, low-income customers pay CES rates that are 17% higher on average than those charged to other customers, and low-income customers have paid $23.6 million more from July 2016-June 2017 compared to the prices charged by utility companies.[51] Massachusetts has adopted several programs and protections to assist low-income ratepayers, who receive help from these state programs as well as from the federal Low Income Home Energy Assistance Program[52] (LIHEAP, also called Fuel Assistance) funding which provides crucial support for low-income people during the winter heating season. In light of New York's findings, and evidence of disproportionate harm to low-income Massachusetts customers, the Massachusetts DPU should conduct a similar investigation to determine whether, and by how much, low-income ratepayers overpay for electricity, and whether the inflated prices charged by some CES companies weaken the effectiveness of the state's low-income assistance programs, particularly the low-income discount rate and the Arrearage Management Programs.[53]

Prohibit Variable Rate Contracts and Automatic Reenrollment, and Limit Cancellation Fees

If the competitive electricity market is to function more fairly, then the energy contracts offered by CES companies must be fair to consumers and contain reasonable terms. In light of problems reported by consumers in Massachusetts and other deregulated states, solutions should include prohibiting variable rate contracts unless consumers can exit these contracts without penalties, eliminating or limiting early cancellation fees, and removing "negative option" terms that automatically re-enroll consumers when a contract ends.

Variable rate contracts that lock in customers should be prohibited in Massachusetts, both as initial contracts and when a contract is renewed. As described above, customers may be enticed by an initial fixed rate but cannot know what variable rate they will be charged later. Variable rate contracts are already prohibited in Connecticut.[54] As a weaker alternative, variable rates could be capped at a reasonable percentage (e.g., no more than 10% higher than the introductory price). These protections could be added to Massachusetts law by the Legislature.

Cancellation fees, which as noted above can exceed $200, must be limited to a reasonable amount. For example, Connecticut passed a state law that capped cancellation fees at $50.[55] Indeed, any claim that competitive supply contracts need to provide for any cancellation fees at all is inconsistent with the premise that, as the competitive supply industry association claims, competitive supply allows customers to "take control of their energy costs and benefit from innovative services."[56]

Automatic reenrollment in a contract to purchase goods or services, without the affirmative consent of the consumer, is referred to as a negative option plan. The practice of automatic reenrollment has created problems for consumers who signed up for service without understanding that they could be reenrolled with a higher rate for electricity once the initial contract expired.[57] Negative option billing is meant to restrict customer choice, which is the opposite of the policy reasons behind deregulation. Requiring affirmative consent prior to reenrollment in contracts to purchase electricity or gas would enhance customer choice by allowing consumers to assess new contract terms and prices and make an informed decision before reenrolling. Federal law already prohibits negative option billing for another type of utility service — cable television service.[58] Massachusetts law should be amended to prohibit automatic reenrollment in CES contracts.

More detailed information on electric bills could provide some benefit to consumers, by putting information about their electric supplier in one easily accessible place. Connecticut permits Eversource to list the name and phone number of the customer's competitive supply company on each monthly bill. The bill also contains the rate charged by the CES company, the rate for basic service, the amount of any cancellation fee, the expiration date of the contract, and other information as illustrated. (See Appendix A).

This information, including the comparison between utility company and competitive supplier prices, would be helpful for customers who want to understand the terms of the competitive supply contract and compare prices. If a customer wants to end the contract, the information is readily available. However, providing more detailed information would not be a solution on its own and would not eliminate the risk of financial harm borne by consumers.

Develop Tougher Rules for Third-Party Marketers and Their Sales Practices

Massachusetts law directs the DPU to create a code of conduct for the retail sale of electricity. This code of conduct must, by statute, address "rules and regulations governing the confidentiality of customer records, metering, billing, and information systems, and conformance with fair labor practices."[59] A CES company that violates the code of conduct, the DPU consumer protection regulations,[60] or the Massachusetts Consumer Protection Act[61] may be subject to a civil penalty of up to $5,000,000.[62]

> A CES company that violates the code of conduct, the DPU consumer protection regulations, or the Massachusetts Consumer Protection Act[1] may be subject to a civil penalty of up to $5,000,000.

CES companies that conduct door-to-door marketing campaigns in Massachusetts must first file a form with the DPU to notify the agency before starting a marketing campaign. Some cities and towns also require that door-to-door marketers register with the municipal government before marketing. The DPU requires CES companies to provide some information before beginning a marketing campaign, but it could require more. Currently, the CES company must provide contact information and verification that it has complied with licensing and background check requirements, and has complied with any relevant municipal licensing or notice requirements. There is an optional section where the CES company can choose to tell the DPU where it will conduct marketing and the start and end dates of the marketing campaign, but the DPU does not require that information. The notice rules and the standards of conduct for in-person marketing to consumers are still being developed as part of a DPU proceeding,[63] and DPU should require the CES companies to list the locations and dates of their door-to-door marketing campaigns.[64] Reporting the dates and locations of these campaigns would allow DPU to better monitor CES marketing activities and identify trends of abusive or deceptive sales practices. The information would also help policy makers to determine if vulnerable communities[65] are targeted for excessive marketing of potentially over-priced products.

The DPU should also use the full extent of its authority to adopt the strongest possible consumer protections in its regulations. During July 2017, the DPU stated that it plans to initiate a rulemaking to codify some interim rules and also update the agency's CES regulations. The DPU did not provide a timeline, but noted that "The Department intends on initiating such rulemaking after sufficient time has passed to assess the implementation of the [interim rules]."[66] The DPU should initiate this rulemaking promptly, in light of the long history of problems in this market.

> The DPU should also use the full extent of its authority to adopt the strongest possible consumer protections in its regulations.

The Attorney General also writes regulations that protect consumers from abuses by CES companies. The Attorney General enforces the state law prohibiting unfair and deceptive business practices, and has issued regulations that deal directly with the marketing practices of competitive supply companies.[67] These regulations are now being updated, and the Attorney General released proposed changes that would improve consumer protections. For example, if adopted, the updated regulations would prohibit variable rate contract prices unless the variable rate is first disclosed to the consumer in the contract or is "calculable" using information that the CES company gives to the consumer. The proposed updates would require CES companies to disclose more information to consumers about the details of the contract and the source of the electricity. The CES company could only compare its prices to prices charged by the LDC if the prospective customer specifically asked for the comparison. If a customer asks a CES marketer to stop a sales solicitation, the marketer would have to stop immediately and could not market to that customer for six months unless requested by the customer. While these updates to the regulations would not safeguard consumers from every abusive practice and unfair contract term, the proposed regulations would provide some protection and may discourage bad actors.

Strengthen Customers' Ability to Limit Marketing

Customers have had the ability to opt out of marketing by competitive supply companies since the process was formalized in 2001.[68] However, the constant flow of consumer complaints makes it clear that the existing process is not working adequately. Although no formal survey has been done, it appears that either most customers are not aware of their ability to opt out of the eligible customer list, or that customers who have tried to opt out continue to receive unwanted sales pitches. The DPU should open a new investigation into whether residential consumers would be better served through an opt-in process, where they can affirmatively decide if they want to receive offers from competitive supply companies. The Massachusetts Office of the Attorney General has also voiced support for an examination of whether an opt-in process is now needed.[69]

If an opt-in system is not possible, then customers should be able to easily and effectively opt out of marketing by competitive supply companies. While customers may ask to be removed from the list,[70] the information about how to opt out is not prominently featured online, and few consumers know how to opt out. In the early years of deregulation, utilities were directed by DPU to send information to customers in a bill insert, letting them know how to opt out.[71] They still have the ability and authority to do so.[72] It would benefit consumers if DPU required utility companies to send an annual notice of the right to opt out. In addition, DPU should create stricter requirements prohibiting door-to-door soliciting unless the salesperson has confirmed that the household is not on the "opt-out" list.

As noted earlier, Eversource recently asked the DPU for the authority to create a list of customers who want to be protected from solicitations by competitive supply companies.[73] The Retail Energy Supply Association (RESA), a national association that represents competitive supply companies, opposed this,[74] despite a long history of abuses by the industry.[75]

In addition to opting out of marketing, customers should have the power to place a block on their accounts, since salespersons may still try to contact customers who have tried to opt out. In neighboring Rhode Island, customers have the option of placing a block on an electricity account to prevent being switched to a CES company. Customers must contact their LDC to ask for a block, and information about how to do so is easily found on the Rhode Island Public Utilities Commission website.[76]

Report Violations of the Law and High Prices to the Public, and Pursue Violations

Create a public report of complaints

Currently, complaint data is difficult to track. As noted, CES customers may complain to the DPU, the Office of the Attorney General, the LDC, elected officials, or others when encountering problems with competitive supply companies. Complaint data is not posted online or published for the public, and there is no source for consolidation of complaint date from different sources.

The DPU has the legal authority to require the collection and reporting[77] of complaint data, and to implement other consumer protections, under its broad statutory authority to regulate the retail energy market.[78] It would benefit consumers and all stakeholders to have detailed information about CES company complaints, including the company at issue and the consumer's concern. Massachusetts should consider following the model implemented by Connecticut, which publishes a "Complaints Scorecard" online for the general public.[79] Collection and publication of complaint data from different sources should also be considered.

Create public reporting of prices actually paid by consumers

With stakeholder input, the DPU has developed a shopping website that consumers can use to compare different offers from CES companies, at EnergySwitchMA.gov. The Energy Switch website is helpful as a shopping tool, but does not provide information about the prices that customers will ultimately pay under variable rate contracts or how the CES company prices will compare with LDC rates over time.

Detailed and frequent public reporting of the prices charged by CES companies, including rates paid by customers after any introductory rate expires, is essential for identifying patterns of high charges and protecting consumers. Such reporting would go beyond the information provided on the Energy Switch shopping website. Massachusetts must consider adopting reporting such as that required in Connecticut by the state's Public Utilities Regulatory Authority.[80] Through this reporting, data and analysis of the actual prices paid by consumers (beyond the initial offers of the supply companies) could be made available to stakeholders, policy makers and members the public. Failing to require this data to be reported only encourages companies to make use of variable pricing in order to hide the true costs of their services.

Department of Public Utilities and the Attorney General should actively pursue enforcement, including fines and license revocations, and the Attorney General should continue to pursue bad actors

DPU has jurisdiction over licensing of competitive supply companies. It can take any of the following actions: revoking or suspending the license of a competitive supply company, prohibiting the company from signing up new customers for a specified period of time, placing the company on probationary status, or imposing a remedial plan on the company.[81] The DPU also has the statutory authority to suspend the license for up to one year for "slamming," i.e., if the supplier has intentionally, maliciously or fraudulently switched more than 20 customers to its service within a 12 month period.[82]

Despite this authority, the DPU has not reported license revocations or suspensions. The agency had the authority to do so since the beginning of deregulation but did not adopt regulations for adjudicating enforcement actions until 2017.[83] With the regulations in place, the DPU now has a process for pursuing enforcement. And with over 1,000

Despite the authority, the DPU has not reported license revocations or suspensions. The agency had the authority to do so since the beginning of deregulation but did not adopt regulations for adjudicating enforcement actions until 2017.

consumer complaints[84] filed between August 2015 and August 2017, DPU has an ample set of complaints to investigate.

The Office of the Attorney General has no authority over licensing, but may investigate and pursue violations of the Massachusetts unfair and deceptive business practices law (M.G.L. c. 93A), and has enforcement authority under state law[85] to bring a consumer protection action in response to violations of laws governing competitive supply companies.[86] Both the DPU and Attorney General may investigate a competitive supply company, and both investigations can proceed simultaneously.[87] The Office of the Attorney General has exercised this authority to end abusive and deceptive practices by Just Energy and Spark Energy, to investigate the practices of Starion Energy, and to return millions of dollars to consumers.[88] Consumers have benefitted substantially from the Attorney General's enforcement actions to date. The Attorney General should continue to devote substantial resources to investigating complaints against CES companies, and bringing enforcement actions when merited. The Attorney General should also continue to engage with community groups and others to educate particularly vulnerable populations, such as the elderly and communities that speak English as a second language, about the risks of CES companies, and to solicit complaints that would help inform future enforcement.

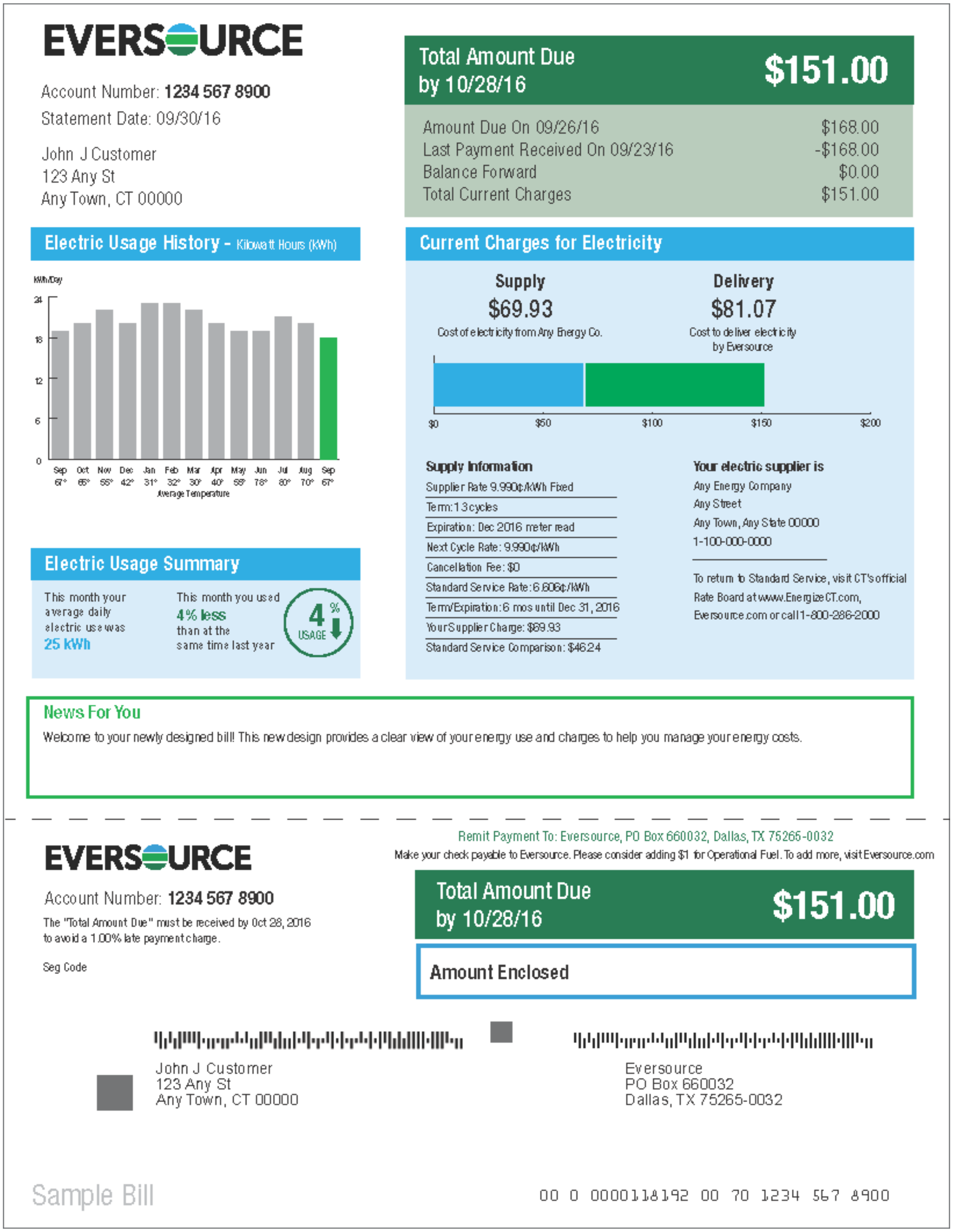
CONCLUSION

Competitive energy suppliers are overcharging Massachusetts consumers for electricity. Faced with aggressive sales pitches and false promises of lower prices, consumers sign contracts with these companies but frequently learn that service is more costly than they originally believed. Low-income households buy competitive electric supply more frequently than other households, but the financial harm caused by high electricity prices adds another burden for these vulnerable families.

Deregulation in Massachusetts began in 1997, but the goals of deregulation -- "promot[ing] the prosperity and general welfare of its citizens . . . by restructuring the electricity industry in the commonwealth to foster competition and promote reduced electricity rates"[89] – have not been achieved. The other deregulated states (for electricity, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, and Texas) have faced similar struggles, and none have found a way to operate a restructured electricity market without financial harm to residential customers.

In the short term, Massachusetts ratepayers urgently need stronger consumer protections from high prices, deceptive sales practices, and contract terms that put consumers at a disadvantage. In the longer term, policymakers must recognize that the deregulated energy market is harming Massachusetts families, and it is time to consider limiting CES companies to commercial and industrial energy markets.

APPENDIX: SAMPLE CONNECTICUT EVERSOURCE ELECTRIC BILL*



EVERSOURCE

Account Number: **1234 567 8900**

Statement Date: 09/30/16

John J Customer
123 Any St
Any Town, CT 00000

Total Amount Due by 10/28/16	**$151.00**
Amount Due On 09/26/16	$168.00
Last Payment Received On 09/23/16	-$168.00
Balance Forward	$0.00
Total Current Charges	$151.00

Electric Usage History - Kilowatt Hours (kWh)

Current Charges for Electricity

Supply	Delivery
$69.93	$81.07
Cost of electricity from Any Energy Co.	Cost to deliver electricity by Eversource

Supply Information

Supplier Rate 9.990¢/kWh Fixed
Term: 13 cycles
Expiration: Dec 2016 meter read
Next Cycle Rate: 9.990¢/kWh
Cancellation Fee: $0
Standard Service Rate: 6.606¢/kWh
Term/Expiration: 6 mos until Dec 31, 2016
Your Supplier Charge: $69.93
Standard Service Comparison: $46.24

Your electric supplier is

Any Energy Company
Any Street
Any Town, Any State 00000
1-100-000-0000

To return to Standard Service, visit CT's official Rate Board at www.EnergizeCT.com, Eversource.com or call 1-800-286-2000

Electric Usage Summary

This month your average daily electric use was **25 kWh**

This month you used **4% less** than at the same time last year

News For You

Welcome to your newly designed bill! This new design provides a clear view of your energy use and charges to help you manage your energy costs.

EVERSOURCE

Remit Payment To: Eversource, PO Box 660032, Dallas, TX 75265-0032

Make your check payable to Eversource. Please consider adding $1 for Operational Fuel. To add more, visit Eversource.com

Account Number: **1234 567 8900**

The "Total Amount Due" must be received by Oct 28, 2016 to avoid a 1.00% late payment charge.

Seg Code

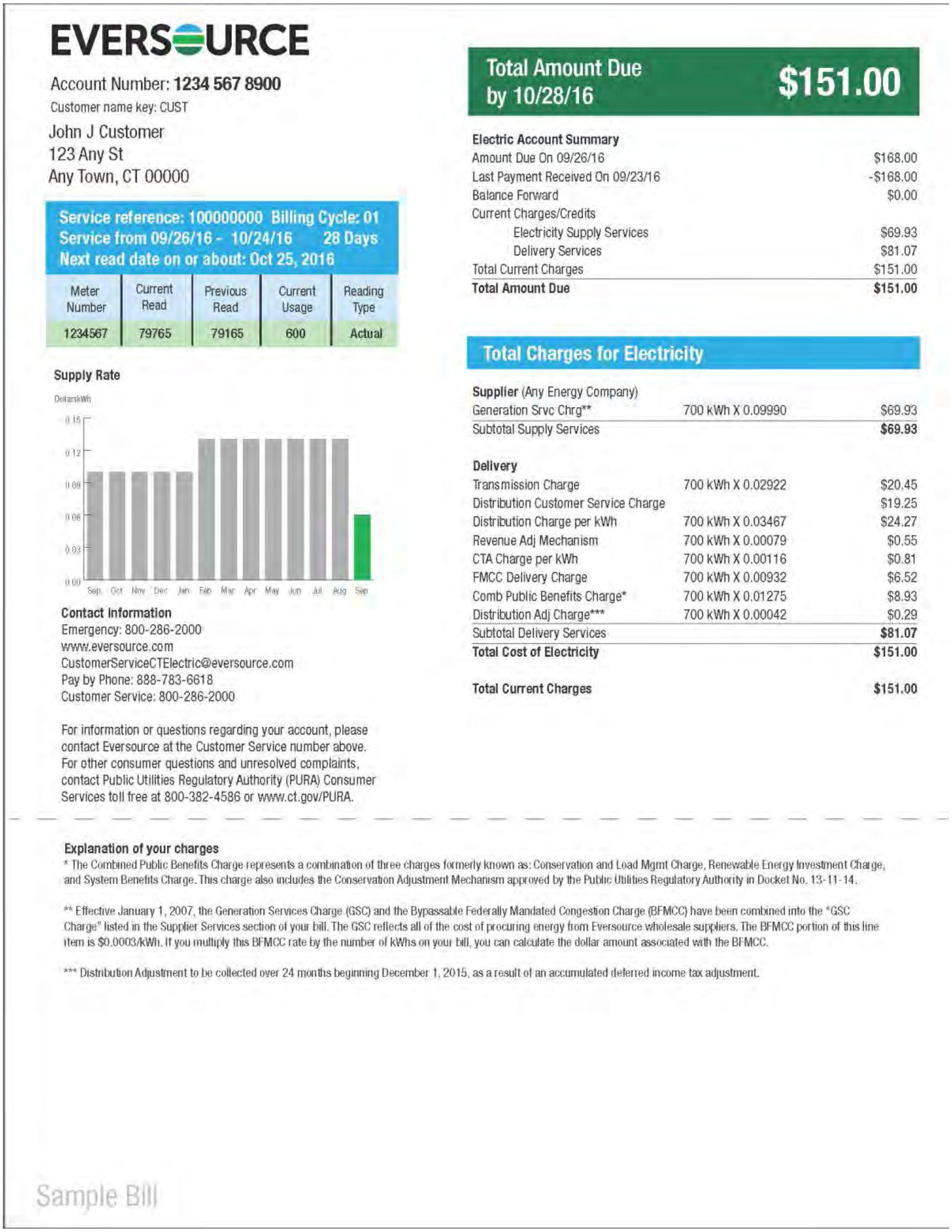
Total Amount Due by 10/28/16	**$151.00**
Amount Enclosed	

John J Customer
123 Any St
Any Town, CT 00000

Eversource
PO Box 660032
Dallas, TX 75265-0032

Sample Bill

00 0 0000118192 00 70 1234 567 8900



EVERSOURCE

Account Number: **1234 567 8900**
Customer name key: CUST

John J Customer
123 Any St
Any Town, CT 00000

Service reference: 100000000 Billing Cycle: 01
Service from 09/26/16 - 10/24/16 28 Days
Next read date on or about: Oct 25, 2016

Meter Number	Current Read	Previous Read	Current Usage	Reading Type
1234567	79765	79165	600	Actual

Supply Rate

Contact Information
Emergency: 800-286-2000
www.eversource.com
CustomerServiceCTElectric@eversource.com
Pay by Phone: 888-783-6618
Customer Service: 800-286-2000

For information or questions regarding your account, please contact Eversource at the Customer Service number above. For other consumer questions and unresolved complaints, contact Public Utilities Regulatory Authority (PURA) Consumer Services toll free at 800-382-4586 or www.ct.gov/PURA.

Total Amount Due by 10/28/16 **$151.00**

Electric Account Summary	
Amount Due On 09/26/16	$168.00
Last Payment Received On 09/23/16	-$168.00
Balance Forward	$0.00
Current Charges/Credits	
Electricity Supply Services	$69.93
Delivery Services	$81.07
Total Current Charges	$151.00
Total Amount Due	**$151.00**

Total Charges for Electricity

Supplier (Any Energy Company)		
Generation Srvc Chrg**	700 kWh X 0.09990	$69.93
Subtotal Supply Services		**$69.93**
Delivery		
Transmission Charge	700 kWh X 0.02922	$20.45
Distribution Customer Service Charge		$19.25
Distribution Charge per kWh	700 kWh X 0.03467	$24.27
Revenue Adj Mechanism	700 kWh X 0.00079	$0.55
CTA Charge per kWh	700 kWh X 0.00116	$0.81
FMCC Delivery Charge	700 kWh X 0.00932	$6.52
Comb Public Benefits Charge*	700 kWh X 0.01275	$8.93
Distribution Adj Charge***	700 kWh X 0.00042	$0.29
Subtotal Delivery Services		**$81.07**
Total Cost of Electricity		**$151.00**
Total Current Charges		**$151.00**

Explanation of your charges

* The Combined Public Benefits Charge represents a combination of three charges formerly known as: Conservation and Load Mgmt Charge, Renewable Energy Investment Charge, and System Benefits Charge. This charge also includes the Conservation Adjustment Mechanism approved by the Public Utilities Regulatory Authority in Docket No. 13-11-14.

** Effective January 1, 2007, the Generation Services Charge (GSC) and the Bypassable Federally Mandated Congestion Charge (BFMCC) have been combined into the "GSC Charge" listed in the Supplier Services section of your bill. The GSC reflects all of the cost of procuring energy from Eversource wholesale suppliers. The BFMCC portion of this line item is $0.0003/kWh. If you multiply this BFMCC rate by the number of kWhs on your bill, you can calculate the dollar amount associated with the BFMCC.

*** Distribution Adjustment to be collected over 24 months beginning December 1, 2015, as a result of an accumulated deferred income tax adjustment.

Sample Bill

*** Source: https://www.eversource.com/content/ct-c/residential/my-account/billingpayments/about-your-bill/understanding-my-bill**

ENDNOTES

[1] Customers of the Massachusetts gas companies National Grid, Eversource, Unitil, Liberty Utilities, Berkshire Gas, Columbia Gas and Blackstone Gas are also able to buy their natural gas from competitive energy suppliers and have it delivered by the LDCs just listed. However, there is much less data and information available regarding whether the prices the CES offer are higher or lower than the prices offered by the LDCs, and whether these gas CES are engaging in unfair and deceptive sales practices. Therefore, this paper focuses primarily on the electric CES.

[2] Customers can also choose a competitive natural gas supplier. 220 Code Mass. Regs. 14.00. Competition in the gas market is newer in Massachusetts and is still limited to a small number of residential customers, so we do not have data yet about customer problems with competitive gas supply, although it would not be surprising to see the same problems emerge.

[3] An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protections Therein (or the "Electric Restructuring Act"), Ch. 164 of the Acts of 1997.

[4] This report focuses on individual consumers and their direct interactions with competitive electric supply companies, but does not address "municipal aggregation" or "community choice aggregation." Another Massachusetts law allows cities and towns to contract with electricity suppliers to purchase electricity through community choice aggregation, and residents of the municipality may accept the service or opt out. M.G.L. c. 164, § 134 ("Any municipality or any group of municipalities acting together within the commonwealth is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries . . . "). While customers in these municipal aggregation cities and towns may at times pay slightly more for their electricity than if they remained customers of the LDC, we are not aware of unfair or deceptive sales practice in those municipalities, nor that customers end up paying substantially more than the prices offered by the LDC.

[5] Mass. Dept. of Energy Resources, 2017 Electric Customer Migration Data, available at https://www.mass.gov/service-details/electric-customer-migration-data.

[6] Connecticut takes a different approach, and posts detailed complaint information on a state website. See Conn. Dept. of Energy & Environmental Regulation, Public Utilities Regulatory Authority, Complaints Scorecard, available at www.ct.gov/pura.

[7] The Massachusetts Office of the Attorney General received over 700 complaints from residential electricity customers about competitive electric supply companies from 2014 through 2017. Massachusetts Attorney General's Office, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts* (March 2018).

[8] In addition, an internet search for customer complaints and reviews yields many results from Massachusetts and elsewhere. For media accounts of Massachusetts consumer complaints, see, Fox 25 News, "AG's office investigates power supply company after complaints over questionable tactics" (Dec. 10, 2015), available at http://www.fox25boston.com/news/fox-25-investigates/ags-office-investigates-power-supply-company-after-complaints-over-questionable-tactics-1/9570281; Boston Globe, "Electricity Switching Risky for Households" (Oct. 19, 2014), available at https://www.bostonglobe.com/business/2014/10/18/for-households-switching-power-suppliers-means-lots-risk-small-rewards/tCiAsYU4Hq5TjZsMFR9uVO/story.html ; Beware of aggressive door-to-door sales people, police warn, Sudbury.com (Sept. 17, 2014), https://www.sudbury.com/police/beware-of-aggressive-door-to-door-sales-people-police-warn-251819

[9] Requests for public documents may be made pursuant to the Massachusetts Public Records Law, M.G.L. c. 66, §10.

[10] Mass. Dept. of Public Utilities, Letter to NCLC and Data Summary attachment (Oct. 13, 2017).

[11] In 2016, DPU reported that 78 competitive suppliers are licensed in Massachusetts. Dept. of Public Utilities, 2016 Annual Report, available at http://archives.lib.state.ma.us.

[12] 220 CMR 11.07; 220 CMR 14.06.

[13] Dept. of Public Utilities, 2016 Annual Report at 2.

[14] 940 CMR 19.00 *et seq*.

[15] Mass. Office of the Attorney General, Press Release, Electricity Supplier to Pay $4 Million Over Alleged Deceptive Marketing and Sales That Overcharged Consumers (January 6, 2015).

[16] In the Matter of Spark Energy, L.P., Assurance of Discontinuance Pursuant to G.L. 93A § 5, Suffolk Superior Ct. (March 11, 2008).

[17] The Commonwealth's Cross-Motion to Compel Starion Energy, Inc. to Comply with the Civil Investigative Demand, In Re Civil Investigative Demand No. 2017-ETD-08 Issued by the Office of the Attorney General, Civ. Action No. 2017-SUCV-01972, Suffolk Superior Ct. (July 6, 2017).

[18] Competitive Supplier and Electricity Broker Frequently Asked Questions, http://www.mass.gov/eea/energy-utilities-clean-tech/electric-power/electric-market-info/frequently-asked-questions.html#22 (website updated Jan. 28, 2016) ("22**. Are there any special requirements regarding enrolling customers who do not speak English?** Yes. If a customer does not speak English, the TPV [third party verification] or LOA [Letter of Authorization] must be completed in the customer's language and the customer must sign a contract in that same language.") (bold in original). The information is posted on the website of the Massachusetts Department of Energy and Environmental Affairs.

[19] In addition to complaints filed through other channels, NCLC has been contacted by consumers with similar complaints. And, like other consumers, NCLC staff members themselves have received similar solicitations.

[20] 940 CMR 19.04 ("It is an unfair or deceptive act or practice for a retail seller of electricity to make any material representation to the public or to any consumer, either directly or through any type of marketing or agreement, or through the use of any misleading symbol or representation, which the seller knows or should know has the capacity or tendency to deceive or mislead a reasonable consumer, or that has the effect of deceiving or misleading a reasonable consumer, in any material respect, including but not limited to representations relating to:
. . . (b) the business relationship between any retail seller of electricity and any distribution company.")

[21] This type of misrepresentation is a problem in other states as well as in Massachusetts. Maryland, for example, has adopted regulations with detailed rules aimed at preventing salespeople from claiming to be utility company representatives. Md. Code Regs. 20.53.08.04.

[22] See D.T.E. 01-54-A, Order Opening Investigation into Competitive Market Initiatives, at 6-7 (June 29, 2001); D.T.E. 01-54-A, Order Re Competitive Market Initiatives, at 17-18 (Oct. 15, 2001).

[23] For example, for Eversource customers this information about how to opt out, including a link to the on-line form, is available at the bottom of the page at

https://www.eversource.com/Content/ema-c/residential/my-account/choose-competitive-alternate-supplier

[24] D.P.U. 17-05, NSTAR Electric Co. and Western Massachusetts Electric Co., each d/b/a Eversource Energy, Ex. ES-RDP-9 at 25 (Jan. 17, 2017).

[25] D.P.U. 17-05, NSTAR Electric Co. and Western Massachusetts Electric Co., each d/b/a Eversource Energy, Initial Brief of Retail Energy Supply Association (July 21, 2017).

[26] D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 747 (Nov. 30, 2017).

[27] CES companies are called "competitive electric supply companies" in Massachusetts, but may go by different names in other states, such as energy supply companies or ESCO's in New York, alternative retail electric suppliers or ARES in Illinois, electric suppliers in Delaware and Ohio, or third party suppliers in New Jersey.

[28] Conn. Office of Consumer Counsel, OCC Fact Sheet: Electric Supplier Market, June 2016 Through May 2017 (June 14, 2017).

[29] Conn. Office of Consumer Counsel, OCC Fact Sheet: Electric Supplier Market, January 2017 Through December 2017 (Feb. 6, 2018).

[30] Office of Retail Market Development, Illinois Commerce Commission, 2017 Annual Report at 33-34 (June 2017).

[31] N.Y. Public Service Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M-0667, Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016), available at http://www.dps.ny.gov. The Public Service Commission may grant a temporary waiver to allow an ESCO to market to low-income customers, but only if the ESCO can show that low-income customers will pay no more than they would have paid for service from the regulated public utility. See, e.g., NY Pub. Svc. Commn, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M-0667, "Order Approving Waiver and Authorizing Utility Expense Reduction, LLC to Serve Low-Income Customers" (Dec. 14, 2017).

[32] *Nat. Energy Marketers Assn. v. N.Y. State Pub. Svc. Commn.*, 60 N.Y.S.3d 760 (Sup. Ct., Albany Cty. 2017).

[33] Delaware Public Service Commission, Docket N. 15-1693, In the Matter of the Review of Customer Choice in the State of Delaware, Comments of the Division of the Public Advocate (April 29, 2016).

[34] Pa. Pub. Utility Commission, Docket C-2014-2427655, Initial Decision, *Comm. of Pennsylvania v. Blue Pilot Energy, LLC*, (July 7, 2016).

[35] *Robert Lougy v. Palmco Power NJ, LLC*, Docket No. MER-C-33-14, Final Consent Judgement (Sup. Ct. NJ, May 23, 2016).

[36] *The People of the State of Illinois v. Palmco Power IL, LLC*, No. 2017CH00099, Complaint for Injunctive and Other Relief (Ill. Cir. Ct., 7th Dist., March 9, 2017).

[37] Mass. Office of the Attorney General, *Are Residential Consumers Benefiting from Electric Supply Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts* (March 2018).

[38] This area generally includes the greater Boston metropolitan area and Cape Cod. https://www.eversource.com/content/ema-c/about/about-us/about-us/communities-we-serve.

[39] NCLC was able to obtain eighteen months of data from 2015 and 2016, including January –December 2015 and the latter half of 2016, but not the complete data for 2016.

[40] Commonwealth Magazine, "Electricity Consumption on the Rise" (May 24, 2016). Massachusetts households tend to consume less electricity than the national average of 897 kilowatt hours per month. U.S. Energy Information Administration, Frequently Asked Questions (Nov. 7, 2017), https://www.eia.gov.

[41] Conn. Office of Consumer Counsel, OCC Fact Sheet: Electric Supplier Market, June 2016 Through May 2017 (June 14, 2017); Office of Retail Market Development, Illinois Commerce Commission, 2017 Annual Report at 33-34 (June 2017); N.Y. Public Service Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M-0667, "Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016), http://www.dps.ny.gov.

[42] This report documents and addresses concerns and problems with competitive energy supply companies that market their services to individual households. The report does not address municipal aggregation.

[43] Ch. 164 of the Acts of 1997, Sec. 1.

[44] Ch. 164 of the Acts of 1997, Sec. 1(k) ("long-term rate reductions can be achieved most effectively by increasing competition and enabling broad consumer choice in generation service, thereby allowing market forces to play the principal role in determining the suppliers of generation for all customers").

[45] Prices and terms posted at www.energyswitchma.gov on Oct. 11, 2017, for Eversource NStar territory, with example usage of 575 kWh per month.

[46] For example, see the brief of the Office of the Attorney General filed during the investigation of Starion Energy, which describes one customer who was charged a rate of 9.99¢ per kilowatt-hour for the first two months of a CES contract, but the price more than doubled over several months to 21.47¢ per kilowatt hour, while the LDC charged a rate of 9.257¢ per kilowatt hour. *The Commonwealth's Consolidated Memorandum Opposing Starion Energy, Inc.'s Motion to Modify the Civil Investigative Demand and Supporting the Commonwealth's Cross-Motion to Compel Starion Energy, Inc. to Comply with the Civil Investigative Demand*, C.A. No. 2017-SUCV-01972 (Sup. Ct., Suffolk Cty., July 6, 2017).

[47] *See, e*.g., *Mirkin v. Viridian Energy, Inc.*, 2016 WL 3661106 (D. Conn. July 5, 2016) (denying Viridian Energy's motion to dismiss breach of contract claim, where contract stated variable rates would be based on wholesale market conditions, but noting differing results in other cases).

[48] Review of terms posted at www.energyswtichma.gov, for National Grid territory, viewed on Oct. 11, 2017. Adera Energy offered a contract with a cancellation fee of $200. Oasis Energy offered a 24 month contract with a cancellation fee of "$12 per month remaining on term."

[49] N.Y. Pub. Svc. Commission, Case Nos. 15-M-0127; 12-M-0476, 98-M-1343, "Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits" (Dec. 2, 2016).

[50] N.Y. Pub. Svc. Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M-0667, "Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016), available at http://www.dps.ny.gov, upheld *by Nat. Energy Marketers Assn. v. N.Y. State Pub. Svc. Commn.*, 2017 NY Slip Op 27223, Supreme Court of N.Y., Albany County (June 30, 2017).

[51] Mass. Office of the Attorney General, Are Residential Consumers Benefiting from Electric Supply Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts (March 2018).

[52] 42 U.S.C. §§ 8621 – 8630.

[53] Arrearage Management Programs (AMP) are programs that are offered by utility companies, with oversight from the state. AMPs are a type of payment program to help residential customers catch up on overdue utility bills. National Consumer Law Center, *Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs (AMP)* (Sept. 2013), https://www.nclc.org.

[54] "(4) On and after October 1, 2015, no electric supplier shall (A) enter into a contract to charge a residential customer a variable rate for electric generation services; or (B) automatically renew or cause to be automatically renewed a contract with a residential customer and, pursuant to such contract, charge such customer a variable rate for electric generation services." Conn. Gen. Stat. Ann. § 16-245o.

[55] Conn. Gen. Stat. Ann. § 16-245o(h)(7).

[56] See website of the Retail Energy Suppliers Association at www.resa.org, viewed on October 11, 2017.

[57] For a discussion of high rates, poor contract terms, and other problems associated with negative option contracts, see Federal Trade Comm., Negative Options, A Report by the staff of the FTC's Division of Enforcement (Jan. 2009).

[58] The Federal Cable Television Consumer Protection and Competition Act, 47 U.S.C. § 543(f).

[59] M.G.L. c. 164, §1F(7).

[60] Regulations promulgated under M.G.L. c. 164, §§1A-1F.

[61] M.G.L. c. 93A.

[62] M.G.L. c. 164, §1F(7); D.P.U. 16-156-A – Competitive Supply Interim Guidelines, Section 8 (4).

[63] D.P.U. 14-140, Second Revised Door-to-Door Marketing Proposal (June 27, 2017).

[64] D.P.U. 14-140, Second Revised Door-to-Door Marketing Proposal (June 27, 2017).

[65] Pennsylvania and Maryland have similarly general reporting requirements for notification prior to door-to-door marketing of competitive supply, and both states require the notification to include a general description of the geographic area. Md. Code Regs. 20.53.08.06; 52 Pa. Code §111.14(a).

[66] D.P.U. 16-156-A, Order Establishing Final Interim Guidelines for Competitive Supply Investigations and Proceedings at 42 (July 6, 2017).

[67] 940 CMR 19.00.

[68] DTE 01-54 and DTE 01-54-A.

[69] D.P.U. 17-05, Petition of NSTAR Electric Company and Western Massachusetts Electric Company, Each d/b/a Eversource Energy, *Reply Brief of the Office of the Attorney General* at 102, fn. 41 (Aug. 18, 2017) (noting that "The AGO's recommendation that the Department adopt the proposed tariff language at issue here should not be interpreted as a recommendation that the Department continue to allow competitive suppliers to access customer identifying information without those customers' affirmative assent. Although the proposed tariff language is a reasonable interim measure, the time is right for the Department to reconsider the general rule in a separate, general proceeding that would include input from all stakeholders.").

[70] D.T.E. 01-54-A, Order Opening Investigation into Competitive Market Initiatives (June 29, 2001); D.T.E. 01-54-A, Order Re Competitive Market Initiatives (Oct. 15, 2001).

[71] D.T.E. 01-54-A, Order Re Competitive Market Initiatives at 26 (Oct. 15, 2001).

[72] D.T.E. 01-54-A, Order Re Competitive Market Initiatives at 26 (Oct. 15, 2001) ("After the initial opt-out period described above, it is appropriate for distribution companies to use periodic bill inserts and messages to remind customers of their ability to opt-out.").

[73] D.P.U. 17-05, NSTAR Electric Co. and Western Massachusetts Electric Co., each d/b/a Eversource Energy, Ex. ES-RDP-9 at 25 (Jan. 17, 2017).

[74] D.P.U. 17-05, NSTAR Electric Co. and Western Massachusetts Electric Co., each d/b/a Eversource Energy, Initial Brief of Retail Energy Supply Association (July 21, 2017).

[75] See D.P.U. 17-05, NSTAR Electric Co. and Western Massachusetts Electric Co., each d/b/a Eversource Energy, Initial Brief of the Low-Income Weatherization and Fuel Assistance Network and Massachusetts Energy Directors Association (July 21, 2017) (describing several legal actions taken to remedy abuses by competitive supply companies).

[76] http://www.ripuc.org/utilityinfo/electric/compfaq.html.

[77]The DPU must file an annual report with the legislature which is to include "the total number of unauthorized switches, enforcement procedures undertaken by the department against such slamming tactics, so-called, the total amount of dollars returned to customers, the total amount of dollars collected in civil penalties pursuant to subsection (c), and the overall impact of the provisions of this section." M.G.L. c. 164, §1F(8)(f).

[78] The legislature provided that "[t]he department shall promulgate rules and regulations to provide retail customers with the utmost consumer protections contained in law," including but not limited to licensing, regulation, and other powers enumerated at M.G.L. c. 164, §1F.

[79] Conn. Dept. of Energy & Environmental Regulation, Public Utilities Regulatory Authority, Complaints Scorecard, available at www.ct.gov/pura.

[80] See, Conn. Public Util. Regulatory Authority, Docket No. 06-10-22.

[81] 220 CMR 11.07; D.P.U. 16-156-A – Competitive Supply Interim Guidelines, Section 8.

[82] M.G.L. c. 164, §1F(8)(e).

[83] 220 CMR 11.07; D.P.U. 16-156-A – Competitive Supply Interim Guidelines, Section 8.

[84] Mass. Dept. of Public Util., Letter to NCLC and Data Summary attachment (Oct. 13, 2017).

[85] M.G.L. c. 164, §102C.

[86] M.G.L. c. 164, §§1B, 1C, 1D, 1E, 1F and 137.

[87] See, D.P.U. 16-156 ("Investigation by the Department of Public Utilities on Its Own Motion to Establish Interim Guidelines for Competitive Supply Formal Investigations and Proceedings"), Reply Comments of the Office of the Attorney General (Oct. 25, 2016) (noting in part that "the Department's authority to investigate Competitive Supply Companies and take necessary remedial action is separate and distinct from the AGO's investigative authority under M.G.L. c. 93A and enforcement authority under M.G.L. c. 164, § 102C(a).").

[88] Massachusetts Office of the Attorney General, Press Release, Electricity Supplier to Pay $4 Million Over Alleged Deceptive Marketing and Sales That Overcharged Consumers (January 6, 2015); In the Matter of Spark Energy, L.P., Assurance of

Discontinuance Pursuant to G.L. 93A § 5, Suffolk Superior Ct. (March 11, 2008); The Commonwealth's Cross-Motion to Compel Starion Energy, Inc. to Comply with the Civil Investigative Demand, In Re Civil Investigative Demand No. 2017-ETD-08 Issued by the Office of the Attorney General, Civ. Action No. 2017-SUCV-01972, Suffolk Superior Ct. (July 6, 2017).

[89] Ch. 164 of the Acts of 1997, Sec. 1.

NCLC®
NATIONAL CONSUMER LAW CENTER®
Advancing Fairness in the Marketplace for All

Boston Headquarters:
7 Winthrop Square
Boston, MA 02110-1245
Phone: 617/542-8010
Fax: 617/542-8028
www.nclc.org

Washington Office:
1001 Connecticut Ave, NW
Suite 510
Washington, DC, 20036
Phone: 202/452-6252
Fax: 202/463-9462

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Position: FAV

National Consumer Law Center

NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

Maryland Senate Finance Committee

Hearing on **SB 31 - Electricity and Gas - Energy Suppliers – Supply Offers**

Testimony of Jenifer Bosco, National Consumer Law Center

January 29, 2021

Position -- SUPPORT

To the Members of the Senate Finance Committee:

Thank you for holding this hearing on Senate Bill 31 **- Electricity and Gas - Energy Suppliers – Supply Offers.** My name is Jenifer Bosco, and I am an attorney at the National Consumer Law Center, where I focus on energy and utility matters and debt collection issues that affect low-income consumers. The National Consumer Law Center or NCLC is a nonprofit organization that, since 1969, has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people. We submit this testimony on behalf of our low-income clients.

NCLC has been actively involved in advocacy for consumers who have been financially harmed by alternative (or competitive) energy supply companies. We have been tracking the consumer experience in the competitive supply market in other states and I have written a report[1] and an issue brief[2] which describe abusive sales practices and inflated prices that have

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[1] National Consumer Law Center, *Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts* (April 2018), at http://bit.ly/2H3ORJJ.

[2] National Consumer Law Center, *Still No Relief for Massachusetts Consumers Tricked by Competitive Electric Supply Companies* (Oct. 2018), at https://www.nclc.org/issues/consumers-tricked-by-competitive-electric-supply-companies.html.

harmed Massachusetts consumers, with a particular emphasis on the unfair and deceptive marketing that has targeted low-income consumers, older adults, and those with limited English language proficiency. There are common issues emerging in the states (see, e.g., the attached FTC memorandum from Commissioner Rohit Chopra). Among other problems, we find:

- Most consumers pay more for competitive supply than they would have paid for service from their utility companies, and some pay much more.
- The very small number of consumers who do manage to save money see only minor savings.
- Signs of targeting the poor: A higher percentage of low-income households were signed up to buy competitive supply and the rates were often higher than other non-poor shoppers.
- Consumers' complaints in other states highlight problems with high prices, involuntary switching or "slamming," unwanted telemarketing or door-to-door marketing, deceptive sales practices, and more.

States that have examined how their low-income consumers have fared in the competitive supplier marketplace have started to take steps to protect their low-income consumers. One common thread emerging in other states is the concern that inflated electric and gas prices paid by low-income energy assistance customers diminish the resources available through rate payer and taxpayer funded energy assistance programs, thus undermining goal of affordability and imposing an unfair burden on the ratepayers and taxpayers. In response, many states have taken recent action to address this harm to low-income customers, ratepayers and taxpayers.

- **Connecticut:** *Prohibits electric third-party suppliers from serving hardship customers.*
    - The Connecticut Public Utility Regulatory Authority found that 78% of hardship customers who had received service from a third-party supplier paid more than they would have on standard service. The commission also found that 69% of the low-income customers that contracted with a third-party supplier paid more than non-low-income customers that contracted with third-party suppliers.[3] On December 18, 2019, the Connecticut Public Utilities

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[3] Conn. Public Utilities Regulatory Authority, Decision, Review of Feasibility, Costs and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. Stat. § 16-245O(M), Docket No. 18-06-02 (Dec. 18, 2019) at p. 17.

  - Regulatory Authority released a Final Decision which directed the state's distribution utilities to transfer low-income customers from third-party electric suppliers back to distribution utility service.[4]
  - "Hardship customers' overpayments substantially reduced the amount of available energy bill assistance funds to the hardship customers and to the social programs that assist their electricity payments. . . .This Authority finds that returning all hardship customers to standard service offers significant cost savings benefits to Connecticut, it is feasible to accomplish, and the costs to accomplish are not unreasonable when compared with the long-term savings accomplished."[5]
- **Illinois**: *Limits the types of competitive supply contracts to low-income customers to plans that guarantee electric and gas supply less than the amount charged by the electric and gas utility.*
  - As of January 1, 2020, alternative suppliers in Illinois must comply with new rules designed to protect low-income utility consumers and funding for essential energy assistance programs, under the Home Energy Affordability and Transparency (HEAT) Act.[6] Suppliers must comply with new price disclosure and marketing rules and will be restricted in the type of plans that can be offered to low-income consumers who participate in low-income utility assistance programs.
  - Alternative suppliers will not be able to change a low-income customer's supplier unless it is to a government aggregation program for electric or to a Commission-approved savings guarantee plan (electric and gas). Suppliers may apply to the Commission to offer a savings guarantee plan that, at a minimum, shall charge customers for a supply amount that is less than the amount charged by the utility. The Commission is required to initiate a proceeding to consider the application.[7]
- **New York**: *Limits the types of competitive supply contracts to residential customers to plans that guarantee customers would pay no more than what he or she would pay to the utility.*
  - In 2016 the NY PSC issued an order to prohibit energy suppliers from contracting with low-income energy assistance customers. Utility companies were to place a block on assistance customer accounts to prevent enrollment with an energy supply company and ESCOs were required to de-enroll energy assistance customers.[8]

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[4] Conn. Public Utilities Regulatory Authority, Decision, Review of Feasibility, Costs and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. Stat. § 16-245O(M), Docket No. 18-06-02 (Dec. 18, 2019).

[5] *Id* at p. 18.

[6] Illinois SB0651, Public Act 101-0590 (Aug. 27, 2019).

[7] Illinois SB0651, Public Act 101-0590 (Aug. 27, 2019) at Sec. 16-115E (alternative retail electric supplier utility assistance recipient) and Sec. 19-116 (alternative gas supplier utility assistance recipient).

[8] N.Y. Pub. Svc. Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M0667, "Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16,

    - "Imposing higher prices on consumers who are already challenged to pay their bills coupled with the fact that these prices automatically diminish the value of subsidies paid for by all utility consumers is, without question, a waste of utility ratepayer dollars which the Commission has an obligation to remedy."[9]
    - The Commission, in its December 2016 low-income order, stated that the "Commission's objective is to obtain the lowest bills possible for [low-income energy assistance customers]. Accordingly, the Commission remains open to reconsidering aspects of the prohibition where ESCOs demonstrate the ability and desire to achieve savings for these customers."[10]
    - On December 12, 2019 the NY Commission issued an Order that limits the suppliers serving new residential customers. Competitive supply contracts must guarantee savings over the utility's price, as reconciled on an annual basis. For fixed-rate contracts, the commodity product must not exceed 5% more than the trailing 12-month average utility supply rate. There are additional restrictions on renewably-sourced products and another proceeding for energy-related products.[11]
- **Ohio:** *Low-income Ohioans participating in the percentage of income payment plan program (PIPP) cannot be switched to competitive supply. The low-income PIPP customers are coordinated exclusively by the Ohio development services agency.*[12]
    - Competitive suppliers are prohibited from knowingly enrolling PIPP customers.[13]
    - Utilities are prohibited from switching customers in PIPP and graduated PIPP (the first 12 month transition for those leaving PIPP).[14]
    - Regular customers on competitive supply who become PIPP Customers or are on graduated PIPP are to be switched to the utility's standard office service.[15]
- **Pennsylvania:** *Currently, PPL Energy and First Energy, which serve roughly 70% of Pennsylvania's low-income customers, limit eligible competitive supply plans for*

2016) at p.10, available at http://www.dps.ny.gov, upheld by Nat. Energy Marketers Assn. v. N.Y. State Pub. Svc. Commn., 2017 NY Slip Op 27223, Supreme Court of N.Y., Albany County (June 30, 2017).

[9] N.Y. Pub. Svc. Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M0667, "Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016) at p.10, available at http://www.dps.ny.gov, upheld by Nat. Energy Marketers Assn. v. N.Y. State Pub. Svc. Commn., 2017 NY Slip Op 27223, Supreme Court of N.Y., Albany County (June 30, 2017).

[10] N.Y. Pub. Svc. Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M0667, "Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016) at p.24.

[11] N.Y. Pub. Svc. Commission, Case Nos. 15-M-0127, 12-M-0476, 98-M-1343, "Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process" (Dec. 12, 2019) at pp.108-109, available at http://www.dps.ny.gov.

[12] See Ohio Admin. Code 4901:1-21-06(B).

[13] *See* Ohio Admin. Code 4901:1-21-06(B)(1).

[14] *See* Ohio Admin. Code 4901:1-10-29(I).

[15] *Id.*; *see also* Ohio Public Utilities Commission, Percentage of Income Payment Plan Plus (PIPP Plus). Available at https://www.puco.ohio.gov/be-informed/consumer-topics/percentage-of-income-payment-plan-plus-pipp-plus/.

customers on the Customer Assistance Program to plans that are at or below the price to compare and may not contain cancellation or early termination fees.[16]

- PPL Energy restricts low-income Customer Assistance Program (CAP) customers who choose to shop with a supplier, to a CAP-Standard Offer Program (CAP SOP). Suppliers choosing to participate in CAP SOP to agree to serve PPL's CAP customers at a 7% discount off of the price to compare at the time of enrollment, with the price remaining fixed for 12 months, and a prohibition on early termination fees.[17]
- The Commonwealth Court, in upholding the Commission's decision, noted "PUC's approval of PPL's CAP-SOP is designed to alleviate harms to access, affordability, and cost-effectiveness resulting from unrestricted CAP shopping."[18]
- FirstEnergy Companies limit the type of competitive supply available to low-income energy assistance customers to plans with rates at or below the utility's price to compare at all time periods of the contract and prohibit early termination fees or cancellation fees.[19]
- On February 28, 2019, the Pennsylvania Public Utility Commission issued for comment a proposed policy statement on electric customer assistance program shopping. The statement sets out a shopping program design for low-income energy assistance customers that the supplier rates must be at or below the utility's price to beat in effect during the duration of the contract and prohibits early termination and cancellation fees and other fees unrelated to the provision of electric generation service.[20]

NCLC's report on the competitive supply market confirmed research done by the Massachusetts Attorney General. The Attorney General determined that Massachusetts

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[16] *See* PA PUC, Motion of Commissioner David W. Sweet, Electric Distribution Company Default Service Plans – Customer Assistance Program (CAP) Shopping, 3006578-CMR, Public Meeting (Dec. 20, 2018)(Proposing unity in CAP shopping practices and requirements to be included in the distribution companies' next default service plans. *E.g.*, that CAP shopping products must be at or below the price-to-compare and prohibition on early termination or cancellation fees).

[17] *See* Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021, Docket No. P-2016-2526627 (Order Entered October 27, 2016). Affirmed by, *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, No. 230 C.D. 2017 (Pa. Commw. Ct. filed May 2, 2018).

[18] *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, No. 230 C.D. 2017, 25-26 (Pa. Commw. Ct. filed May 2, 2018).

[19] *See* Joint Petition of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively, the Companies) for Approval of their Default Service Programs for the Period Beginning June 1, 2019 through May 31, 2023, Docket Nos. P-2017-2637855, et al, (Order Granting reconsideration of September 4, 2018 Opinion and Order entered November 1, 2018).

[20] *See* Pennsylvania Public Utility Commission, *Proposed Policy Statement Order*, Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, M-2018-3006578 (Feb. 28, 2019).

residential consumers paid **$253 million** more to competitive suppliers than they would have paid to their distribution utilities for electric service from July 2015 through June 2018, and that low-income customers are disproportionately harmed.[21] Low-income Massachusetts residents paid **$40 million** more to suppliers than had they remained on the standard offer and overpaid 25% more than their non-low-income neighbors.[22]

Research by NCLC and the Massachusetts Attorney General conclusively demonstrate that the practices of competitive suppliers increase the financial burden for consumers who already struggle to afford their utility bills.

As we have learned from investigations by the Maryland Office of People's Counsel[23] and by analysts for the Abell Foundation,[24] the problems identified in Massachusetts are nearly identical to the problems experienced by Maryland households. Data from several other states are included in Appendix A, attached.

Senate Bill 31 would substantially mitigate the harms to low-income Maryland consumers, the ratepayers and taxpayers supporting the low-income assistance programs and the charitable assistance programs by preventing low-income customers from paying more than they

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[21] Mass. Office of the Attorney General, Are Residential Consumers Benefiting from Electric Supply Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts (March 2018); Mass. Office of the Attorney General, 2019 Update (Aug. 2019), at https://www.mass.gov/competitive-electric-supply.

[22] Mass. Office of the Attorney General, Are Residential Consumers Benefiting from Electric Supply Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts (March 2018) at p16; Mass. Office of the Attorney General, 2019 Update (Aug. 2019) at p.12, at https://www.mass.gov/competitive-electric-supply.

[23] Maryland Office of People's Counsel; Maryland's Residential Electric and Gas Supply Markets: Where Do We Go from Here? (Nov. 2018), at http://www.opc.state.md.us/Portals/0/Hot%20Topics/Maryland%20Electric%20and%20Gas%20Residential%20Supply%20Report%20November%202018.pdf.

[24] Abell Foundation, Maryland's Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies (Dec. 2018), at https://www.abell.org/sites/default/files/files/Third%20Party%20Energy%20Report_final%20for%20web.pdf.

would have under the utility's standard offer. This would ensure that low-income customers do not overpay for essential electric or gas service and protect the cost-effectiveness of the ratepayer and taxpayer funded programs.

In conclusion, NCLC supports Senate Bill 31, to protect the affordability low-income customers' energy bills. If you have questions regarding this testimony, please contact Jenifer Bosco, Staff Attorney, National Consumer Law Center, at jbosco@nclc.org or 617-542-8010.

Sincerely,

Jenifer Bosco, Staff Attorney
National Consumer Law Center, on behalf of our low-income clients

APPENDIX A

Amounts charged by competitive electric supply companies to residential customers for electric supply in excess of utility standard offer rate

STATE	DATES ANALYZED	AMOUNT OF EXCESS PAYMENTS
Connecticut	August 2019-July 2020	$41,023,111
Illinois	June 2019-May 2020	$234,434,643
Maine	2014-2016	$77,670,086
Maryland	2017	$34,138,799
Massachusetts	July 2017- June 2018	$76,208,703
New York	January 2014- December 2016	$1.2 billion

SOURCES:

Conn. Office of Consumer Counsel, *OCC Fact Sheet: Electric Supplier Market, August 2019 Through July 2020* (Oct. 26, 2020), at www.ct.gov/occ

Ill. Commerce Commission, *Office of Retail Market Development 2020 Annual Report* (July 31, 2020)

Maine Public Utilities Commission, *Report on Competitive Electricity Provider and Standard Offer Price Comparisons* (Feb, 15, 2018)

Susan M. Baldwin and Sarah M. Bosley, *On behalf of the Maryland Office of People's Counsel; Maryland's Residential Electric and Gas Supply Markets: Where Do We Go from Here?* (Nov. 2018)

Massachusetts Attorney General's Office (Prepared by Susan M. Baldwin). *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts – August 2019 Update* (Aug. 1, 2019)

State of New York Public Service Commission, In the Matter of Eligibility Criteria for Energy Service Companies, Case 15-M-0127, et al., Initial Brief of the New York Department of Public Service Staff, at 2 (March 30, 2018)

HB 31 testimony with letterhead.pdf

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THE EPISCOPAL DIOCESE
OF MARYLAND

SUPPORT

SB 31

Electricity and Gas - Energy Suppliers Supply Offers

Finance Committee

2/02/2021

Good afternoon Chair Kelley, Vice Chair Feldman and Members of the Finance Committee. My Name is Rev. Linda Boyd and I am representing the Maryland Episcopal Diocese. The Diocese represents 108 parishes and over 45,000 parishioners stretching from Western Maryland to Calvert County. The Maryland Episcopal Diocese supports SB 31.

This Bill requires any third--party energy supplier serving low-income families in Maryland on state energy assistance to charge the same, or lower, electric and natural gas rates as the regulated utility rates.

This is fiscally responsible legislation that:

1. Supports Retail Choice market.
2. Protects $15 million in wasted state energy assistance funds.
3. Most importantly, guarantees the best retail utility pricing for our state's most financially vulnerable families.

Third party electrical and gas suppliers are targeting people on energy assistance and charging them a variable rate that is many times more than that charged by BG&E or Pepco. Many of our parishioners are recipients of energy assistance and are being charged by third party energy suppliers a rate that is many more times than the rate charged by BG&E or Pepco. This bill would protect those parishioners from paying such a high rate.

We respectfully ask for your support of bill SB031.

4 E UNIVERSITY PARKWAY, BALTIMORE, MD 21218-2437
TEL: 410-467-1399 / 800-443-1399 FAX: 410-554-6387
WWW.EPISCOPALMARYLAND.ORG

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THE EPISCOPAL DIOCESE
OF MARYLAND

SUPPORT

SB 31

Electricity and Gas - Energy Suppliers Supply Offers

Finance Committee

2/02/2021

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We respectfully ask for your support of bill SB031.

SB 31 Electricity and Gas - Energy Suppliers - Ass

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Position: FAV

AARP Maryland

200 St. Paul Place, #2510 | Baltimore, MD 21202
1-866-542-8163 | Fax: 410-895-0269 | TTY: 1-877-434-7598
aarp.org/md | mdaarp@aarp.org | twitter: @aarpmaryland
facebook.com/aarpmd

SB 31 Electricity and Gas - Energy Suppliers - Assisted Customers
Senate Finance Committee
FAVORABLE
February 2, 2021

Good Afternoon Chairwoman Kelley and Members of the Senate Finance Committee. My name is Tammy Bresnahan. I am Director of Advocacy for AARP Maryland. As you know, AARP Maryland is one of the largest membership-based organizations, encompassing almost over 850,000 members. AARP MD overwhelmingly support **SB 31 Electricity and Gas - Energy Suppliers - Assisted Customers.** We thank Senator Washington for sponsoring this important legislation.

AARP is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

SB 31 requires the Public Service Commission, by January 1, 2022, to establish an administrative process to approve supply offers for electricity or gas for households in the State that receive energy assistance from the Office of Home Energy Programs. The bill prohibits, Third-party energy supplier serving households on Maryland state energy assistance in the previous 12 month period to charge the same, or lower, electric and natural gas rates as the account's regulated utility. Retail supplier must pre-enroll with the Public Service Commission to participate and guarantee savings for Maryland's most financially vulnerable households.

The presence of third party energy suppliers is a direct result of a wide-sweeping energy deregulation law signed in 1999. This legislation opened the door to energy retail competition and allowed consumers to purchase their electricity or natural gas supply from third-party suppliers, as well as from their local utility. The idea was that a deregulated energy market would provide consumers with choices, spark competition, and save everyone money. That is not happening.

Many vulnerable Marylanders are looking for cheaper utilities because they have limited to fixed incomes. Once the introductory rates expire--variable rates go into effect and for this population, your constituents face turn off notices and may in some cases, even lose their residency if they can't keep the lights on.

If this all seems a bit confusing, imagine what your constituents think. AARP Maryland noticed that our members are being heavily marketed. Worse, we noticed many are paying higher prices for the same electric/gas offered by BGE, Pepco, Delmarva, Potomac Edison or SMECO.

AARP believes that policymakers should ensure consumers have access to reliable, safe, and high-quality utility electric and gas services. Services should be offered at just and reasonable rates. Fair terms and conditions, as well as minimum service standard protections, must be included.

AARP also believes that policymakers should prohibit unfair, deceptive, or abusive acts or practices. These include unfair early termination penalties and misleading marketing practices.

For these reasons, we ask for a FAVORABLE report on SB 31. If you have questions, please contact Tammy Bresnahan at tbresnahan@aarp.org or by calling 410-302-8451.

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Position: FAV

FUEL
FUND
OF MARYLAND

SB 31 FAVORABLE
Hearing: February 2, 2020

Debbie Brown – Director at Fuel Fund of Maryland

Thank you, Chairman Kelley, and members of the Finance Committee. My name is Debbie Brown. I am honored to be the Director at the Fuel Fund of Maryland.

I am here today testifying **in support of SB 31** to establish an administrative process to approve supply offers for electricity or gas for households in the state of Maryland that receive energy assistance through the Office of Home Energy Programs; also known as OHEP.

Since 1981, the Fuel Fund has been a lifeline for our vulnerable Maryland neighbors struggling with a home utility hardship during a financial crisis. As a result of the COVID-19 pandemic, the mission of the Fuel Fund of Maryland has never been greater.

The consequences of an unpaid utility bill **can be disastrous**. Evictions can occur displacing parents and children. Lack of power means children are unable to learn remotely. Health: at any age, may decline further in an unpowered home where refrigerated medications cannot be stored safely, or special medical equipment requires electricity to function.

The mission of the Fuel Fund remains steadfast: to help the most vulnerable families in central MD pay off their BGE bills to avoid termination. As a result of COVID-19, more than 150,000 households will be navigating the energy assistance maze for the first-time.

Every household that the Fuel Fund assists has already received allocated state energy assistance grants. Yet that household still owes a balance to return their balance to $0. More than 80% of Fuel Fund clients "claw and scratch" to pay down their balance to avoid a utility termination.

An average Fuel Fund household has a utility arrearage of over $1,100 and are living paycheck to paycheck. As a result of COVID-19, many of the households we assist have not worked since March 2020 or work a minimum wage paying job.

Unfortunately, these households will continue to struggle today, tomorrow, and beyond because their BGE bill is affordable. They will never be able to break out of this financial crisis. **Therefore, they are perfect "prey" for third party suppliers for a quick fix to their financial utility struggles.**

In a few minutes, you will hear from Laurel Peltier. The BGE data she reports was collected at GEDCO CARES, a Baltimore City nonprofit support agency who assists the Fuel Fund with providing energy assistance to the most vulnerable city residents.

The third-party Fuel Fund energy supplier stats are sobering: About half of the clients are on third-party supply.

- 110 family's bills were collected and spent on average spent $625 more than they would have staying with BGE.

The critical grants Fuel Fund gives are best used when helping to pay down the lowest utility bill possible. Inflated utility bills diminish our impact and financial support in the community.

The Fuel Fund of Maryland wants to be a partner in the solution to protect low-income households on deregulated energy who receive energy assistance. We feel SB 31 is a fiscally responsible solution that supports retail choice and protects not only energy assistance funds, but the most vulnerable as well.

On behalf of the Fuel Fund of Maryland, I respectfully urge a favorable report for SB 31. Thank you for the opportunity to testify. I would be happy to answer any questions.

SB31 letterhead.pdf
Uploaded by: Carter, Cindy
Position: FAV

CANCER SUPPORT FOUNDATION

Cancer Support Foundation, Inc.
8268 Academy Road
Ellicott City, Maryland 21043

Phone: 410.964.9563
Email: info@cancersupportfoundation.org

www.cancersupportfoundation.org

Finance Committee

SB31

Support

Cindy Carter
Cancer Support Foundation

I am Cindy Carter Executive Director of Cancer Support Foundation and here to speak in support of SB31. This is a common sense and compassionate approach to making sure that those who get energy assistance grants are able to get the full benefit from the program.

Every year State and Federal grants are available for those who qualify for energy assistance grants. We are not opposed to allowing people to have choice in who they buy a product, in this case electricity and gas for their homes. However, if that product is sold at a higher than standard rate, grants are diminished in their effectiveness.

Here is an example that illustrates the issue. Two clients have the same usage but one is at standard rate and the other at a higher rate for their electric bill. The client at standard rate has a $600 bill and gets a $1000 grant which leaves them more credit for usage going forward. The other client has a $1000 bill and gets a $1000 grant which leave no credit for usage going forward.

The money paying these grants are State, Federal and yes rate payer funds. This funding needs to be used in a fiscally responsible way to help those who need it the most. When bills still have a balance non-profits step in to help pay. This is a non-sustainable request of non-profits.

SB 31 provides a mechanism for protection of those receiving these grants. It provides for a fiscally responsible use of State, Federal, and non-profit funding. It provides protection for the purpose of the grant program and sustainability of programs that are there to help the most vulnerable.

Cindy Carter

Cindy Carter
Executive Director
Cancer Support Foundation

IPL Testimony on SB 0031 - Electricity and Gas - E

Uploaded by: Lacock-Nisly, Jonathan

Position: FAV

INTERFAITH Power & Light
DC.MD.NoVA
ipldmv.org
Our religious response to climate change.

Interfaith Power & Light (DC.MD.NoVA)
100 Allison St NW
Washington, DC 20011
202-709-7641 • program@gwipl.org

Joelle Novey, Director of IPL-DMV
January 29, 2021

Testimony on SB 0031 –
SB 0031: Electricity and Gas – Energy Suppliers
Finance Committee

Position: Favorable

Interfaith Power & Light (DC.MD.NoVA) supports SB 0031.

As Director of Interfaith Power & Light DMV, I have been working with hundreds of Maryland faith communities for over a decade to support them as individuals and organizations in living out their values by making mindful energy choices.

While the system of energy choice in Maryland should in theory make individual ratepayers feel empowered, too often the reality is that deceptive advertising and exploitative billing have left the communities we work with feeling wary and distrusting of energy suppliers.

The Hebrew Bible forbids us to "put a stumbling block before the blind" (Leviticus 19:14), to use the information one has that others lack to gain advantage or cause them to stumble. Too often, that's exactly how those selling residential energy customers supply contracts behave. Most regular folks don't understand energy markets, and elderly and low-income energy customers are particularly unable to do extensive research. When energy suppliers offer "competitive" rates that don't even save ratepayers money over standard offer service, or imply that they are in fact the utility rather than a supplier, or give elderly or poor ratepayers a low introductory rate while preserving the right to jack up rates later in variable rate contracts, or automatically renew ratepayers at higher rates by sending fine-print reminders they don't understand, all of these constitute putting a stumbling block in front of Maryland ratepayers. It is the opposite of the purpose of a deregulated energy market to ensure transparency and choice for consumers.

While none of this relates directly to our work to encourage clean energy in Maryland faith communities through purchasing Renewable Energy Certificates (RECs) and subscribing to community solar, the accumulated damage caused by unscrupulous energy suppliers makes our work advancing clean energy much harder. For years now, our efforts to invite Marylanders to see their energy choices as a way to do good has been hampered by the fact that so many energy suppliers are not marketing to or renewing ratepayers ethically. Too many folks we work with are now wary of all conversations around energy purchasing and energy choice because of their impression that this "water" is full of "sharks" and that any kind of energy contracting is a scam.

We urge a favorable report on SB 0031, and ask that the legislature support this and all measures that will help restore energy choice in Maryland to its original purpose, of empowering consumers to choose energy suppliers that are offering them the greenest product and the best deal.

SB0031_OPC Support Final.pdf

Uploaded by: Montgomery, Endia

Position: FAV

STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL
David S. Lapp, Acting People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
410-767-8150; 800-207-4055
www.opc.maryland.gov

BILL NO.:	**Senate Bill 0031** **Electricity and Gas – Energy Suppliers - Supply Offers**
COMMITTEE:	**Senate Finance**
HEARING DATE:	**February 2, 2021**
SPONSOR:	**Senator Washington**
POSITION:	**SUPPORT**

****

The Office of People's Counsel (OPC) supports Senate Bill 31 with the sponsor's amendments. In Maryland and other states high supply rates from electricity and gas suppliers are harming low-income customers. This bill would reduce the negative impact of high energy prices on households least able to handle higher bills, stretch public funds to provide more energy assistance, and avoid service terminations. The bill prohibits OHEP-assisted customers from enrolling with gas and electricity suppliers unless those energy suppliers offer a rate that is equal or below the price of energy offered through utility procured processes. The bill requires Public Service Commission approval of the supplier's rate. OPC supports the bill's goals of protecting the most financially vulnerable households and making ratepayer and publicly funded State energy assistance dollars stretch further.

Maryland energy assistance programs are administered through the Office of Home Energy Programs (OHEP). Programs include the federally funded Maryland Energy Assistance Program (MEAP) and the ratepayer and Regional Greenhouse Gas Initiative (RGGI)-funded Electric Universal Service Programs. The OHEP grants for monthly utility bills are fixed; they do not increase when a customer is being charged high rates by an energy supplier. When an OHEP-assisted customer pays a higher rate to a supplier for electricity or gas, the grants do not reduce the financial burden of the customer's utility bills to the extent intended by the programs. OHEP also provides grants for arrearages that have built up over time. Low-income customers that pay high rates to a supplier for electricity or gas build up higher arrearages when they cannot pay their bills. The higher arrearages mean that the limited funds available for these grants help fewer customers.

Evidence shows that utility customers on energy assistance often pay higher rates. For example, Southern Maryland Electric Cooperative (SMECO) voluntarily provided data on the level of charges in its service territory. That data shows that suppliers are charging higher rates to customers on energy assistance than they would pay for utility-procured service. In one month, the average overcharge was over $50 per customer. [1]

OPC supports Senate Bill 31 with the sponsor's amendments.

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[1] Office of People's Counsel's Comments Regarding OHEP's FY 2020 Proposed Operations Plan, Case No. 8903, ML 225829, pp. 25-26 (in March 2019, 437 customers on energy assistance were overcharged $22,929 for an average of $52.47).

SB31-GEDCO-FAVORABLE.pdf

Uploaded by: Neill, Rachael
Position: FAV

GEDCO

Building Caring and Compassionate Communities

Testimony in favor of SB 0031, Electricity and Gas – Energy Suppliers – Supply Offers

I am the Director of Community Services at GEDCO, a non-profit serving Baltimore City. Our CARES program is a food pantry and emergency financial services center located on York Road in the Govans neighborhood. A big part of what we do is utility bill assistance, to prevent gas and electric turn-offs. We are a partner agency of the Fuel Fund of Maryland and we help people apply for Maryland Energy Assistance and other Office of Home Energy Programs (OHEP) benefits.

Every day we see the gas and electric bills of low income community members who have come for help to prevent their power being turned off. Most of the people we work with have trouble paying their utility bills consistently. For a significant number (30% of those we saw in 2020), the bills are more unaffordable than they should be, because they are paying third party providers who are charging much more than the standard offer service price for gas and electric. These companies often charge double the prices of the utility company.

We have never had someone in this situation say that they sought out the third party electric or gas contract. They were all signed up by sales reps who either came to their door, called them, or had set up tables in a public place offering to beat the utility's prices. The customers don't realize that the introductory rate will change to a variable rate. There is notice that the price is going up, and their bills just get higher.

Not only does this hurt the households struggling to pay the higher bills, it wastes state funds that are supposed to be helping low income bill payers. OHEP benefits are going to the energy suppliers when they could be assisting more households meet their energy needs.

SB 0031 offers a simple solution to the problem by requiring any 3rd party energy contract for a household that receives OHEP benefits to be equal to or lower cost than the standard offer price for the utility. It will stop vulnerable citizens from being taken advantage of and it will extend the reach of OHEP funds to be able to help more families keep their power on.

Respectfully submitted,

Rachael Neill

Rachael V. Neill

Director of Community Services

GEDCO Programs

Ascension Homes
CARES
CARES Career Connection
Epiphany House
Gallagher Mansion
Harford House
Micah House
Senior Network of North Baltimore
Stadium Place

Rev. John "Jack" Sharp
(1938-2015)
Founder

Govans Ecumenical Development Corporation
1010 East 33rd Street
Baltimore, Maryland 21218
T: 410-433-2442 F: 410-433-4834
www.gedco.org

2020_p14_PSC_Report on Electric Supplier Pricing a

Uploaded by: Peltier, Laurel

Position: FAV

PUBLIC SERVICE COMMISSION OF MARYLAND

Report on Energy Supplier Pricing and Marketing

Response to 2020 Joint Chairmen's Report
on the Fiscal 2021 State Operating Budget (SB 190)
and the State Capital Budget (SB 191)
and Related Recommendations

December 15, 2020

Prepared for the Senate Budget and Taxation Committee
and House Appropriations Committee

William Donald Schaefer Tower
6 St. Paul Street
Baltimore, Maryland 21202-6806
www.psc.state.md.us

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Appendix A

I. Introduction

The Public Service Commission of Maryland ("PSC" or "Commission") hereby submits this Report in response to the 2020 Joint Chairmen's Report ("JCR") from the Senate Budget and Taxation Committee and House Appropriations Committee (collectively, "Committees"), addressing the Committees' interest in retail energy supplier pricing and marketing in the State. Specifically, the Committees requested that the PSC provide a report on the current offers as posted on the PSC website for energy supplier pricing ("PSC Choice Websites") that contain variable rates and/or termination fees. The JCR requested that the report should describe the use of variable rates in the current retail supply offers posted on the PSC Choice Websites, including: (1) current rates; (2) how the listed rates compare to the Standard Offer Service[1] rate for that period; and (3) the trigger for a change in the variable rates (if available). The report should also include information provided on the PSC Choice Websites about offers that have termination fees in the reported pricing and the structure of those termination fees (if available).

The Committees also requested that the PSC report on the monthly number of electricity customers enrolled with suppliers, by utility service territory, in recent years. The Committees further requested that the PSC provide information on the door-to-door sales activities reported by retail energy suppliers, including the number of suppliers reporting activities by zip code. The PSC responds to the Committees' information request as it pertains to residential customer data, noting where applicable the period that the marketing data covers.

II. Supplier Variable Rate Offers and Termination Fees

During the 2019 legislative session, the Maryland General Assembly enacted two laws that require the PSC to establish customer choice shopping websites for residential electric and natural gas customers. The PSC's electric choice website (www.MDElectricChoice.com) launched in March 2020, and the gas choice website (www.MDGasChoice.com) launched in September 2020. Residential electric choice is offered in the service territories of five electric utilities—Baltimore Gas and Electric Company ("BGE"), Potomac Electric Power Company ("Pepco"), Delmarva Power and Light Company ("DPL"), The Potomac Edison Company ("PE"), and Southern Maryland Electric Cooperative, Inc. ("SMECO"). Residential gas choice is offered in the service territories of two natural gas utilities—BGE and Washington Gas Light Company ("WGL").

Variable-price offers reflect pricing that can change, typically on a month-to-month basis in response to market conditions, or upon the expiration of a promotional offer. By contrast, a fixed-price offer is one where the customer pays the same price per kilowatt hour (kWh) each

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[1] "Standard offer service" is defined as "electric service that an electric company must offer to its customers under § 7-510 of [the Electric Industry Restructuring Subtitle of the Public Utilities Article.]" *Md. Ann. Code*, Pub. Util., Art. §7-501(n). Standard offer service applies to a customer who does not choose an alternative electricity supplier.

month for the entire contract period (i.e. fixed-term). For variable rates, there are factors that can drive suppliers to change their pricing (i.e., "triggers"), although suppliers are not bound by these factors, which include the following:

- Market conditions – when market prices increase or decrease, variable rates typically increase or decrease accordingly;
- Seasonal variations – electricity prices are typically lower in the summer due to increased demand for cooling; gas prices are often lower in the winter due to hedging; in shoulder months, variable prices continue to fluctuate with the changes in supply and demand; however, shoulder months generally see lower demand in both electricity and gas commodities due to reduced heating and cooling usages by customers;
- Use of introductory rates – once the introductory rate expires after a limited period, a new rate takes effect; and
- Changes to supply mix (e.g., higher percentage of renewable energy).

Suppliers are permitted by Maryland law to charge a penalty or cancellation fee if a customer cancels service before the expiration of the contract period. Such cancellation fees are typically included in fixed-term contracts with fixed pricing. Variable-price or month-to-month contracts typically do not contain an early cancellation fee—that is, customers may cancel service at any time without penalty unless they cancel during an active introductory rate, promotional offer, or incentive or if they otherwise violate the terms of their contract. Suppliers are required to include a description of their cancellation fee in the contract.

The tables below were constructed using retail energy supplier offer data for residential customers obtained from the MDElectricChoice.com and MDGasChoice.com websites and are current as of November 2, 2020. Each utility service territory is listed and discussed separately.

A. Retail Electric Choice

1. BGE

Table 1 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the BGE Service Territory as of November 2, 2020

Total Offers	
Offers Available	118
Variable Rates Available	16
• *Variable Rates Higher than Utility's SOS Rate*	8
• *Variable Rates Lower than Utility's SOS Rate*	8
Introductory Rates and Cancellation Fees	
Introductory Rates Available	7
• *Variable Rates with Introductory Rates*	7
Offers with Cancellation Fees Included	68
• *Variable Rates with Cancellation Fees*	1
• *Unlimited Plans*[2] *with Cancellation Fees*	2
• *Fixed Rates with Cancellation Fees*	65

As summarized in the table above, there were 118 offers available in the BGE service territory as of November 2, 2020. The eight variable rates that were higher than BGE's November Standard Offer Service (SOS) rate of **$0.07225/kWh** ranged from $0.081-$0.14/kWh. The majority of offers with introductory rates were for three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 68 offers that indicate a termination or cancellation fee, 24 offers provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

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[2] Unlimited plans usually require the customer to pay a flat fee to the supplier each month in exchange for unlimited electricity (or gas) supply during the contract period.

2. *Pepco*

Table 2 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the Pepco Service Territory as of November 2, 2020

Total Offers	
Offers Available	103
Variable Rates Available	12
• *Variable Rates Higher than Utility's SOS Rate*	6
• *Variable Rates Lower than Utility's SOS Rate*	6
Introductory Rates and Cancellation Fees	
Introductory Rates Available	5
• *Variable Rates with Introductory Rates*	5
Offers with Cancellation Fees Included	62
• *Variable Rates with Cancellation Fees*	2
• *Unlimited Plans with Cancellation Fees*	2
• *Fixed Rates with Cancellation Fees*	58

As summarized in the table above, there were 103 offers available in the Pepco service territory as of November 2, 2020. The six variable rates that were higher than Pepco's November Standard Offer Service (SOS) rate of **$0.07866/kWh** ranged from $0.082-$0.1499/kWh. The majority of offers with introductory rates were for three to four months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 62 offers that indicate a cancellation fee, 23 provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

3. DPL

Table 3 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the DPL Service Territory as of November 2, 2020

Total Offers	
Offers Available	99
Variable Rates Available	10
• *Variable Rates Higher than Utility's SOS Rate*	5
• *Variable Rates Lower than Utility's SOS Rate*	5
Introductory Rates and Cancellation Fees	
Introductory Rates Available	2
• *Variable Rates with Introductory Rates*	2
Offers with Cancellation Fees Included	61
• *Variable Rates with Cancellation Fees*	2
• *Unlimited Plans with Cancellation Fees*	2
• *Fixed Rates with Cancellation Fees*	57

As summarized in the table above, there were 99 offers available in the DPL service territory as of November 2, 2020. The five variable rates that were higher than DPL's November Standard Offer Service (SOS) rate of **$0.07857/kWh** ranged from $0.092-$0.1399/kWh. The offers with introductory rates were for three to four months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 61 offers that indicate a cancellation fee, 24 provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

4. PE

Table 4 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the PE Service Territory as of November 2, 2020

Total Offers	
Offers Available	87
Variable Rates Available	10
• *Variable Rates Higher than Utility's SOS Rate*	4
• *Variable Rates Lower than Utility's SOS Rate*	6
Introductory Rates and Cancellation Fees	
Introductory Rates Available	6
• *Variable Rates with Introductory Rates*	6
Offers with Cancellation Fees Included	52
• *Variable Rates with Cancellation Fees*	4
• *Unlimited Plans with Cancellation Fees*	1
• *Fixed Rates with Cancellation Fees*	47

As summarized in the table above, there were 87 offers available in the PE service territory as of November 2, 2020. The four variable rates that were higher than PE's November Standard Offer Service (SOS) rate of **$0.06858/kWh** ranged from $0.076-$0.089/kWh. The majority of offers with introductory rates were for three to four months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 52 offers that indicate a cancellation fee, 17 provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

5. SMECO

Table 5 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the SMECO Service Territory as of November 2, 2020

Total Offers	
Offers Available	20
Variable Rates Available	4
• *Variable Rates Higher than Utility's SOS Rate*	4
• *Variable Rates Lower than Utility's SOS Rate*	0
Introductory Rates and Cancellation Fees	
Introductory Rates Available	1
• *Variable Rates with Introductory Rates*	1
Offers with Cancellation Fees Included	13
• *Variable Rates with Cancellation Fees*	0
• *Unlimited Plans with Cancellation Fees*	0
• *Fixed Rates with Cancellation Fees*	13

As summarized in the table above, there were 20 offers available in the SMECO service territory as of November 2, 2020. The four variable rates that were higher than SMECO's November Standard Offer Service (SOS) rate of **$0.06065/kWh** ranged from $0.074-$0.1393/kWh. The introductory rate offer was for three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 13 offers that indicate a cancellation fee, six provide a description of the fee and its structure, or provide information on cancellation policies. Only one supplier lists the amount of its cancellation fee, which is $50.

B. Retail Gas Choice

1. WGL

Table 6 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the WGL Service Territory as of November 2, 2020

Total Offers	
Offers Available	34
Variable Rates Available	9
• *Variable Rates Higher than Utility's Default Rate*	4
• *Variable Rates Lower than Utility's Default Rate*	5
Introductory Rates and Cancellation Fees	
Introductory Rates Available	6
• *Variable Rates with Introductory Rates*	6
Offers with Cancellation Fees Included	20
• *Variable Rates with Cancellation Fees*	1
• *Unlimited Plans with Cancellation Fees*	0
• *Fixed Rates with Cancellation Fees*	19

As summarized in the table above, there were 34 offers available in the WGL service territory as of November 2, 2020. The four variable rates that were higher than WGL's November default rate of **$0.4478/therm** ranged from $0.45-$0.719/therm. The majority of offers with introductory rates were for one, two or three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 20 offers that indicate a cancellation fee, four provide information on cancellation policies. None lists the amount of the fee.

2. BGE

Table 7 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the BGE Service Territory as of November 2, 2020

Total Offers	
Offers Available	34
Variable Rates Available	9
• *Variable Rates Higher than Utility's Default Rate*	4
• *Variable Rates Lower than Utility's Default Rate*	5
Introductory Rates and Cancellation Fees	
Introductory Rates Available	6
• *Variable Rates with Introductory Rates*	6
Offers with Cancellation Fees Included	20
• *Variable Rates with Cancellation Fees*	1
• *Unlimited Plans with Cancellation Fees*	0
• *Fixed Rates with Cancellation Fees*	23

As summarized in the table above, there were 34 offers available in the BGE service territory as of November 2, 2020. The four variable rates that were higher than BGE's November default rate of **$0.4009/therm** ranged from $0.499-$0.6999/therm. The majority of offers with introductory rates were for one, two or three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 20 offers that indicate a cancellation fee, eight provide a description of the fee and its structure, or provide information on cancellation policies. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. Only one supplier lists the amount of its cancellation fee, which is $100.

III. Electricity Retail Supplier Customer Enrollments

In 1999, the Maryland General Assembly enacted the Electric Customer Choice and Competition Act of 1999,[3] which provided the statutory framework for restructuring the electric industry in Maryland. Under the Act, the customer can choose to purchase power from an electric retail supplier. Historically, commercial and industrial customers have always been more active in seeking non-utility electricity supply. Residential participation in retail electric choice rose steadily until the winter of 2013-2014, when Maryland experienced the extended cold weather climate phenomenon known generally as the Polar Vortex. In the years since the Polar Vortex, the percentage of residential customers choosing to receive their electricity supply from competitive retail suppliers has fluctuated, although residential customer participation in retail electric choice appears to have fallen in recent years.

Retail electricity supplier enrollments are reported to the PSC on a monthly basis. For purposes of this report, the PSC examined the monthly number of residential customers enrolled with retail electricity suppliers from 2016 to 2020 in every utility service territory where retail electric choice has been offered. These service territories include: PE, BGE, Pepco, DPL, and SMECO. Figure 1 below displays the monthly number of residential electricity customer accounts served by retail suppliers in each service territory from January 2016 through October 2020.[4]

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[3] *See Md. Ann. Code*, Pub. Util. Art. § 7-501 et seq.

[4] Retail choice was not offered in the SMECO service territory until January 2017.

Figure 1 - Residential Electric Supplier Enrollments by Service Territory

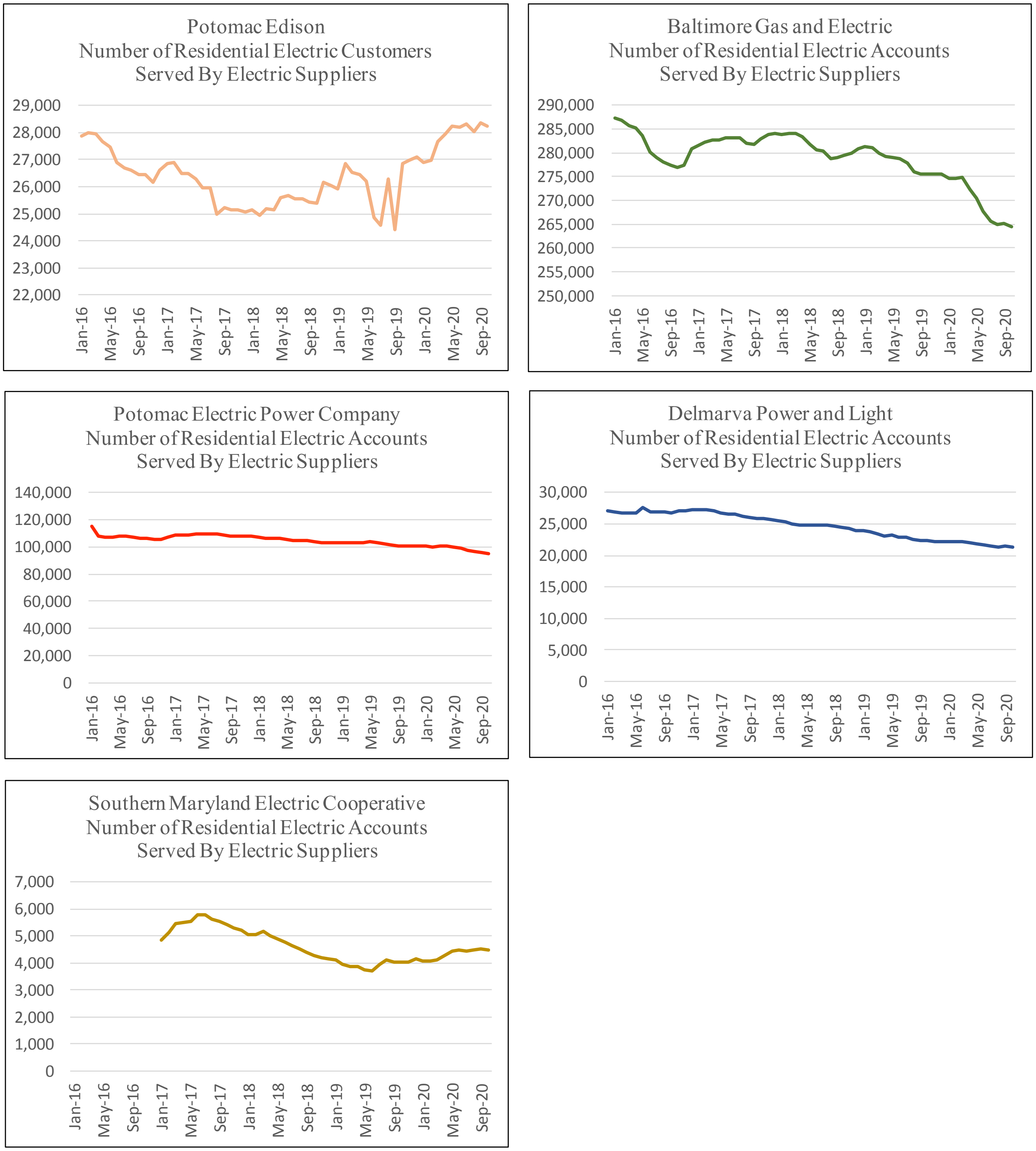
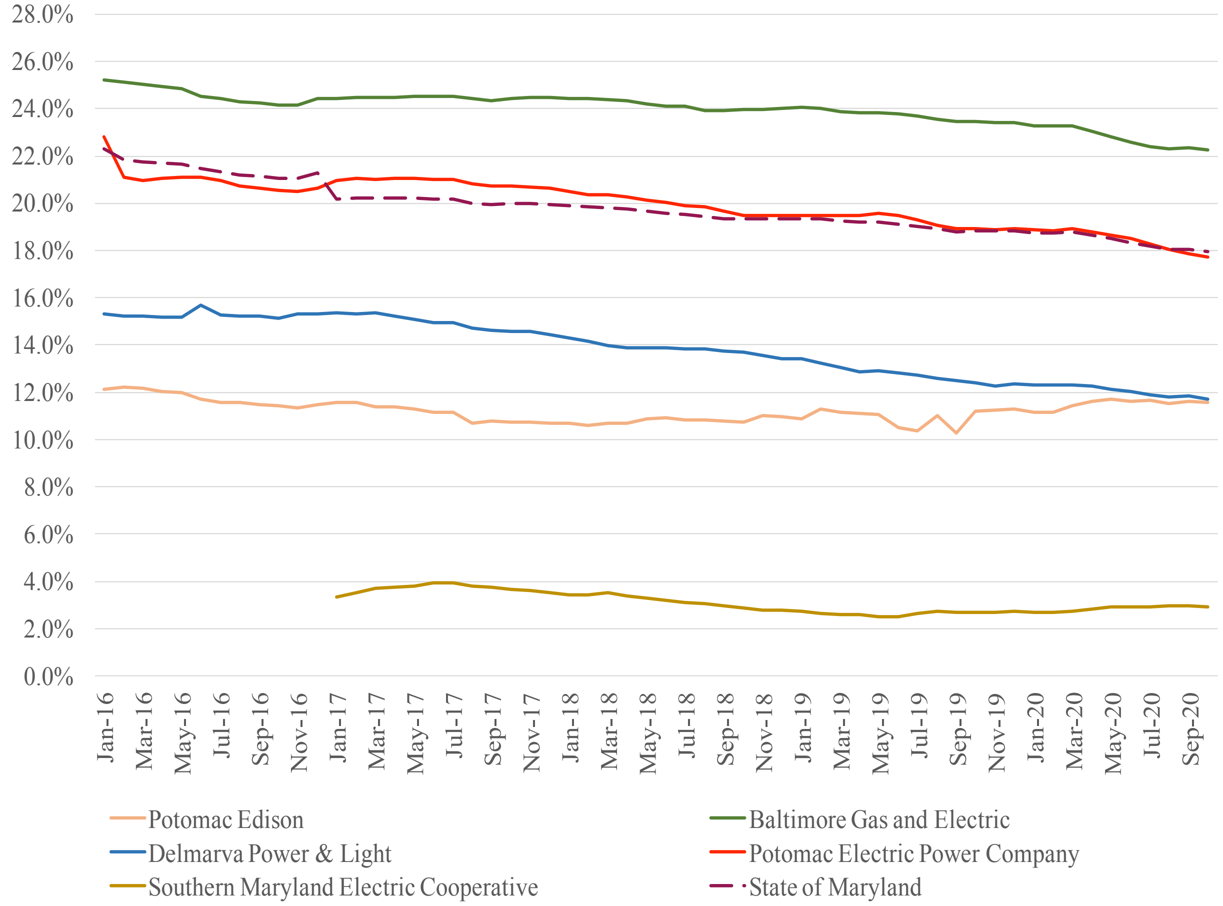


Figure 2 below presents this information as the percentage of residential electricity customers enrolled with retail suppliers for each utility over the four-year period.

Figure 2 - Percentage of Residential Electric Customers Served by Retail Supplier



As shown in Figure 2 above, the percentages of residential utility customers who chose a retail electric supplier decreased from 2016 to 2020 in every Maryland service territory. More specifically, total residential electric choice enrollment in Maryland declined from 22.31 percent (of all utility customers) in January 2016 to 18.05 percent in September 2020. While it appears that fewer residential customers elected to be served by retail electric suppliers over this period, the total number of residential customer accounts also increased in each service territory from 2016 to 2020. A comparison of these two factors—average monthly number of residential accounts served by retail electric suppliers and the average monthly number of utility residential customer accounts—in 2016 and 2020 is outlined in the table below.

Comparison of Avg. Monthly Residential Supplier Accounts and Total Avg. Monthly Residential Accounts, by Service Territory, in 2016 and 2020

Service Territory	Avg. Monthly Number of Residential Accounts Enrolled in Retail Electric Choice (2016)	Avg. Monthly Number of Residential Accounts Enrolled in Retail Electric Choice (2020)*	Avg. Monthly Number of Utility Residential Accounts (2016)	Avg. Monthly Number of Utility Residential Accounts (2020)	Percent change in Residential Accounts Enrolled in Retail Electric Choice (2016-2020)	Percent Change in Total Utility Residential Accounts (2016-2020)
PE	27,062	27,884	230,224	242,394	3.04%	5.29%
BGE	281,577	269,508	1,143,878	1,184,367	-4.29%	3.54%
DPL	26,974	21,780	176,556	180,699	-19.25%	2.35%
PEPCO	107,704	98,637	512,615	534,649	-8.42%	4.30%
SMECO**	5,432	4,346	147,207	152,324	-19.99%	3.48%
State	**443,317**	**422,155**	**2,063,273**	**2,294,433**	**-4.77%**	**11.20%**

* 2020 is the average of the months of January – October, as further data is not yet available.
** Average monthly data for SMECO begins in 2017, when retail choice commenced in the service territory.

Except for PE, the average monthly number of residential accounts enrolled in retail electric choice decreased in all other service territories from 2016 to 2020, while the utilities' total number of residential customer accounts increased. For PE, while the number of residential accounts enrolled in retail choice increased by 3.04 percent, the total number of residential accounts in the service territory increased by 5.29 percent, resulting in an overall *decrease* in the percentage of total accounts enrolled in retail choice.

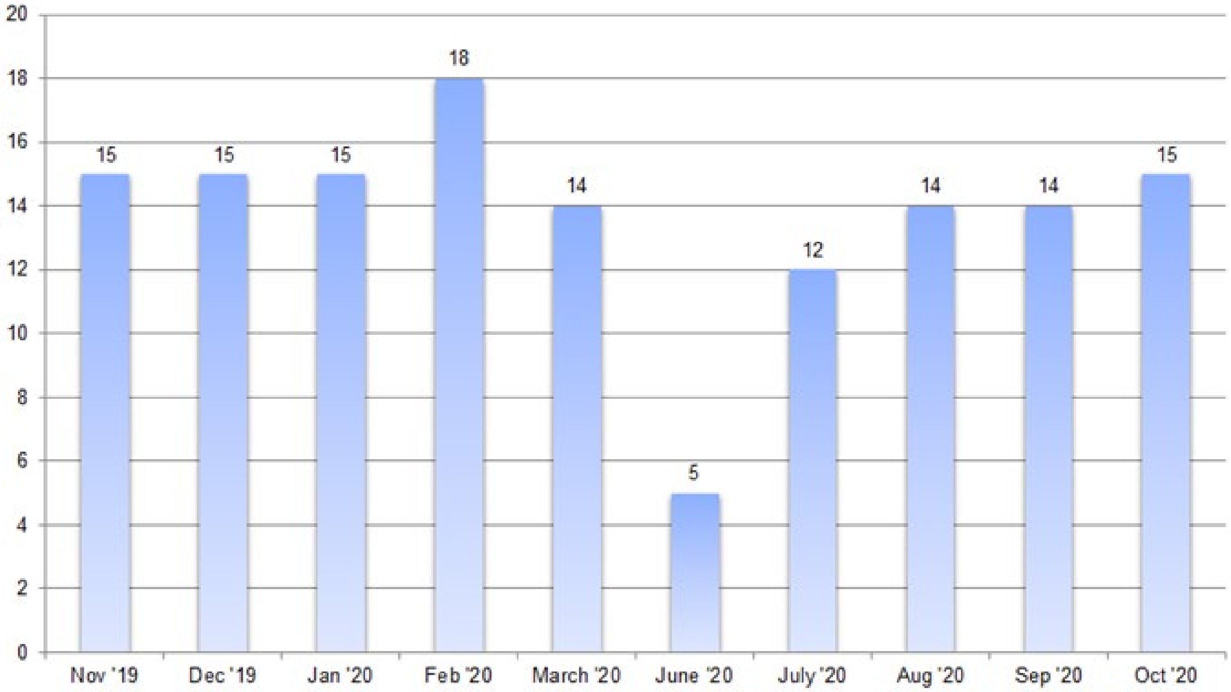
IV. Supplier Door-to-Door Sales Activity

Competitive retail energy supplier door-to-door activity falls under the Code of Maryland Regulations ("COMAR") 20.53.08.07 (electric) and COMAR 20.59.08.07 (gas). Pursuant to these regulations, any supplier engaging in door-to-door sales activity must notify the PSC "no later than the morning of the day that the activity begins." The notification must include, among other things, "the period involved and a general description of the geographical area." Beginning in November 2019, the PSC asked retail energy suppliers to report their door-to-door activities by zip code.

For the reporting period from November 2019 through October 30, 2020, 22 licensed retail suppliers reported their door-to-door sales activities by zip code. Figure 3 below summarizes the total number of suppliers reporting their door-to-door sales activities over the reporting period. No door-to-door reporting was received during the COVID-19 restricted period from March 23, 2020, through June 23, 2020. During this time, Governor Larry Hogan issued an Executive Order and interpretive guidance prohibiting all door-to-door retail sales on

March 23, 2020.[5] Thus, the month of March includes reported sales activities through March 22, 2020, and the month of June includes reported activities from June 24, 2020 onward.

Figure 3 - Total Number of Suppliers Reporting Door-to Door Sales by Month



Before the COVID-19 restricted period, the average number of suppliers reporting door-to-door sales activities was 15. After the COVID-19 restricted period, the average number of suppliers reporting decreased to 11. Notably, for August, September, and October 2020, the average number of suppliers reporting door-to-door sales activities increased to at least 14 and included two additional suppliers—Energy Harbor and Liberty Power.

Figure 4 is a map of the geographical boundaries of Maryland's zip code areas. The map shows data corresponding to reported supplier door-to-door sales activity (shades of blue and grey). The map layer containing the Maryland zip code boundaries was retrieved from the Maryland Geographic Information Systems ("GIS") website.[6] The door-to-door supplier activity data was provided by the PSC's Consumer Affairs Division ("CAD").

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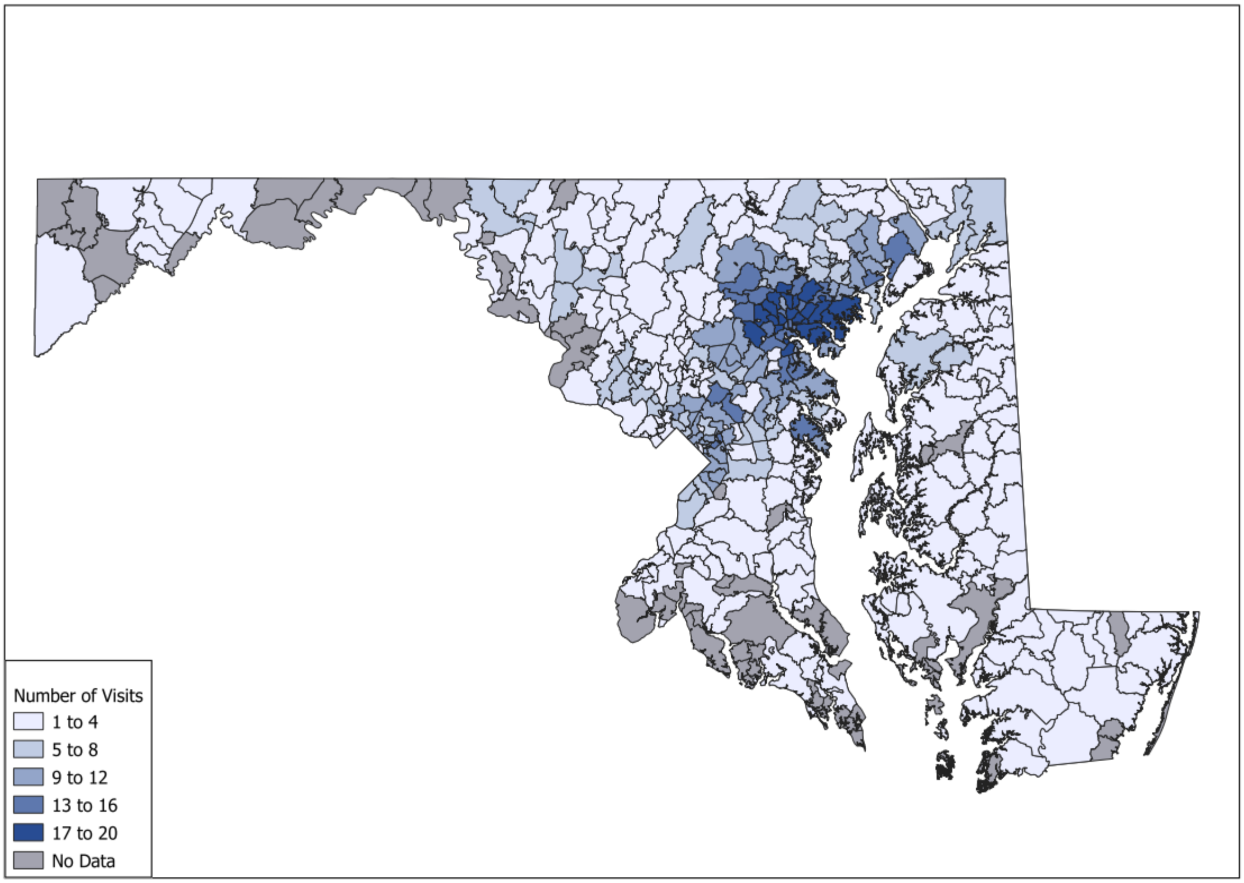
[5] Office of Governor Larry Hogan, Office of Legal Counsel, Interpretive Guidance No. COVID19-04 (Mar. 23, 2020), *available at* https://governor.maryland.gov/wp-content/uploads/2020/03/OLC-Interpretive-Guidance-COVID19-04.pdf (discussing Order of the Governor of the State of Maryland, Number 20-03-23-01, dated March 23, 2020 . . . prohibiting large gatherings and events and closing all non-essential businesses and other establishments).

[6] https://data.imap.maryland.gov/.

Figure 4 – Visual Mapping of Retail Energy Supplier Door-to-Door Sales Activity by Zip Code



* Data sourced from Maryland GIS Data Catalog, IRS Census Data, and the Consumer Affairs Division of the Maryland Public Service Commission.

As shown in the figure above, areas of Baltimore City, including overlapping zip codes within portions of Baltimore County and Anne Arundel County, saw the highest concentration of suppliers reporting door-to-door sales activities over the 12-month reporting period. For 18 Baltimore City zip codes, at least 18 different retail energy suppliers reported engaging in door-to-door sales activities at some point during the reporting period. Seven of these zip code areas—21205, 21206, 21207, 21218, 21222, 21224, and 21225—each had at least 20 retail suppliers engaged in these activities. Three Baltimore County zip codes—21204, 21220, and 21221—had 19, 18, and 20 suppliers, respectively, reporting door-to-door activities during the reporting period. Appendix A to this report includes tally of all suppliers that reported door-to-door sales activity from November 2019 through October 2020, by zip code.

Zip Codes with Highest Numbers of Suppliers Reporting Door-to-Door Activities from November 2019 Through October 2020

Zip Code	Number of Suppliers Reporting Door-to-Door Activities
21205	21
21206	21
21207	20
21209	19
21212	19
21213	18
21215	19
21216	19
21217	19
21218	20
21222	20
21223	18
21224	21
21225	20
21228	18
21234	18
21237	18
21239	19

V. Conclusion

The PSC appreciates this opportunity to provide information on energy supplier variable rate offerings and termination fees, residential customer enrollments with retail electricity suppliers, and retail energy supplier door-to-door sales activity. As a general matter, the PSC takes its enforcement and oversight of retail energy suppliers very seriously, especially with regard to marketing practices and consumer protection. Earlier this year, the PSC established a Compliance and Enforcement Unit within its Consumer Affairs Division. This new unit is dedicated to proactive oversight of utilities and retail energy suppliers to ensure compliance with Commission regulations. Last month, for example, the Commission took significant action against SunSea Energy, LLC, a retail electricity and gas supplier, directing rerates and refunds to customers after finding numerous violations of Maryland law and COMAR.

Due to the dynamic nature of supplier price offerings, the PSC Choice Websites will be updated on an ongoing basis as suppliers make new pricing information available to customers and the PSC. The PSC will continue to monitor customer enrollments with retail electricity suppliers as well as the door-to-door sales activities reported by retail energy suppliers. Customer complaint data received by the Consumer Affairs Division will continue to be posted monthly on the PSC website.

Appendix A

Door to Door Supplier Reporting Totals by Zip Code - November 2019-October 2020

Zip Code	Totals	Zip Code	Totals	Zip Code	Totals	Zip Code	Totals	Zip Code	Totals	Zip Code	Totals	Zip Code	Totals	Zip Code	Totals	Zip Code	Totals
20588	1	20712	7	20765	1	20852	5	21001	14	21060	15	21150	1	21231	16	21411	2
20601	2	20714	3	20767	1	20853	3	21005	3	21061	16	21152	5	21232	1	21502	3
20602	2	20715	6	20768	2	20854	4	21009	11	21062	7	21153	5	21233	4	21503	1
20603	2	20716	8	20769	3	20855	4	21010	6	21065	1	21154	3	21234	18	21504	1
20604	1	20717	2	20770	9	20857	1	21012	6	21071	5	21155	4	21235	4	21521	1
20606	1	20718	2	20771	4	20860	2	21013	5	21074	4	21156	6	21236	16	21524	1
20607	1	20719	2	20772	4	20861	1	21014	13	21075	11	21157	7	21237	18	21529	2
20608	1	20720	5	20773	2	20862	1	21015	12	21076	10	21158	4	21238	1	21532	3
20613	2	20721	4	20774	8	20866	3	21017	7	21077	3	21160	3	21239	19	21536	1
20616	1	20722	4	20775	1	20868	1	21018	4	21078	12	21161	5	21240	3	21539	1
20619	1	20723	9	20776	2	20871	1	21020	4	21082	6	21162	9	21241	4	21543	1
20622	1	20724	11	20777	3	20872	1	21021	1	21084	5	21163	3	21242	1	21545	1
20623	1	20725	3	20778	3	20874	7	21022	4	21085	13	21201	17	21243	1	21550	2
20634	1	20726	3	20779	2	20875	4	21023	3	21087	6	21202	15	21244	15	21560	1
20636	1	20731	2	20780	1	20876	7	21024	1	21090	5	21203	8	21250	3	21562	2
20639	1	20732	4	20781	11	20877	8	21027	3	21092	3	21204	19	21251	3	21601	3
20640	1	20733	2	20782	12	20878	7	21028	4	21093	11	21205	21	21252	4	21607	1
20646	1	20735	3	20783	12	20879	8	21029	5	21094	4	21206	21	21263	2	21610	1
20650	1	20736	2	20784	13	20880	1	21030	12	21101	1	21207	20	21264	2	21612	1
20653	1	20737	10	20785	12	20882	3	21031	5	21102	4	21208	17	21270	2	21613	4
20656	1	20738	3	20787	4	20883	2	21032	2	21104	4	21209	19	21273	2	21617	4
20658	1	20740	6	20788	3	20884	6	21034	4	21105	2	21210	11	21275	1	21619	2
20660	1	20741	3	20791	1	20885	7	21035	2	21106	1	21211	17	21278	2	21620	5
20667	1	20742	2	20792	3	20886	4	21036	2	21108	9	21212	19	21279	3	21622	1
20674	1	20743	10	20793	1	20895	4	21037	4	21111	5	21213	18	21280	1	21623	2
20676	1	20744	5	20794	6	20896	1	21040	15	21113	12	21214	17	21281	3	21624	1
20678	1	20745	8	20812	1	20898	2	21041	4	21114	7	21215	19	21282	3	21625	1
20689	2	20746	11	20814	1	20899	6	21042	11	21117	15	21216	19	21284	3	21628	1
20690	1	20747	9	20815	4	20901	7	21043	13	21120	4	21217	19	21285	3	21629	3
20695	1	20748	8	20816	1	20902	10	21044	12	21122	12	21218	20	21286	15	21631	1
20697	4	20749	1	20817	2	20903	10	21045	13	21128	9	21219	10	21287	2	21632	3
20701	3	20750	2	20818	1	20904	10	21046	10	21130	4	21220	18	21289	1	21635	1
20702	1	20751	2	20830	1	20905	4	21047	4	21131	4	21221	20	21290	1	21636	2
20703	2	20752	2	20832	3	20906	6	21048	4	21132	4	21222	20	21297	1	21638	2
20704	5	20753	4	20833	3	20907	2	21050	7	21133	16	21223	18	21298	1	21639	2
20705	9	20754	2	20837	1	20908	1	21051	6	21134	1	21224	21	21401	14	21640	2
20706	11	20755	1	20841	1	20909	1	21052	2	21136	13	21225	20	21402	5	21641	1
20707	13	20757	2	20847	3	20910	8	21053	4	21137	1	21226	13	21403	12	21643	3
20708	14	20758	2	20848	3	20911	1	21054	6	21139	4	21227	17	21404	4	21644	1
20709	3	20759	2	20849	3	20912	8	21055	2	21140	2	21228	18	21405	3	21645	1
20710	8	20763	6	20850	7	20915	1	21056	2	21144	13	21229	17	21406	1	21647	1
20711	4	20764	4	20851	5	20918	1	21057	6	21146	5	21230	16	21409	4	21648	1

Door to Door Supplier Reporting Totals by Zip Code - November 2019-October 2020

Zip Code	Totals
21649	2
21650	1
21651	1
21652	1
21653	1
21654	1
21655	1
21656	1
21658	3
21659	1
21660	2
21661	1
21662	1
21663	1
21664	1
21665	1
21666	2
21667	1
21668	2
21669	1
21671	1
21673	2
21677	1
21678	1
21690	2
21701	7
21702	5
21703	5
21704	4
21705	3
21706	1
21709	2
21713	1
21716	2
21723	2
21727	1
21734	1
21737	4
21738	3
21740	6
21741	3
21742	6
21743	1
21749	3
21754	1
21755	1
21757	2
21762	1
21765	1
21769	1
21770	2
21771	1
21773	1
21774	2
21776	2
21778	1
21779	1
21782	1
21783	1
21784	3
21787	3
21788	1
21791	3
21793	4
21794	3
21795	2
21797	3
21798	3
21801	2
21802	2
21803	2
21804	4
21811	1
21813	2
21814	1
21817	3
21821	1
21822	2
21826	4
21830	1
21835	1
21836	1
21837	1
21838	1
21840	1
21841	1
21842	3
21843	1
21849	1
21850	2
21851	3
21853	4
21856	1
21861	1
21862	1
21863	2
21865	1
21867	1
21871	1
21872	1
21875	1
21901	5
21902	2
21903	6
21904	4
21911	4
21912	2
21913	4
21914	2
21915	3
21916	4
21917	3
21918	2
21919	4
21920	4
21921	6
21922	4
21924	1
21930	3
Grand Total	**2314**

SB 31 Support Letter 2021.pdf

Uploaded by: Straughn, Karen

Position: FAV

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Fax No.

Writer's Direct Dial No.

410-576-7942
kstraughn@oag.state.md.us
Fax: 410-576-7040

February 2, 2021

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: Karen S. Straughn
Consumer Protection Division

Re: Senate Bill 31 – Electricity and Gas – Energy Supply Offers – Supply Offers (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of Senate Bill 31 submitted by Senator Mary Washington. This bill requires the Public Service Commission to establish a process for approval of offers of gas or electricity by third-party suppliers to households who receive energy assistance through the Office of Home Energy Programs and prevents the charge of a termination fee.

The Consumer Protection Division has received numerous calls and complaints about third-party energy suppliers misrepresenting the savings they claim to offer consumers or signing up consumers without authorization. While low-income consumers who receive energy assistance may seek their gas and electricity through a third-party supplier, the rates may be higher than what they would pay through standard offer service, whether or not the consumer realized this. When energy assistance is being used to pay all or part of the funds, the Public Service Commission has a vested interest in ensuring that the consumer's decision to contract with a third-party supplier is based on accurate information and the rate being charged to the consumers is both reasonable and competitive with standard offer service. By permitting the Commission to establish a process to evaluate these offers, the common good is ensured for all parties involved.

For these reasons, we ask that the Finance Committee return a favorable report on this bill.

cc: The Honorable Mary Washington
Members, Finance Committee

200 Saint Paul Place ♦ Baltimore, Maryland, 21202-2021
Main Office (410) 576-6300 ♦ Main Office Toll Free (888) 743-0023
Consumer Complaints and Inquiries (410) 528-8662 ♦ Health Advocacy Unit/Billing Complaints (410) 528-1840
Health Advocacy Unit Toll Free (877) 261-8807 ♦ Home Builders Division Toll Free (877) 259-4525 ♦ Telephone for Deaf (410) 576-6372
www.marylandattorneygeneral.gov

1. 2021 SB31 Mary Washington Testimony for Fin.pdf

Uploaded by: griffin, christine
Position: FWA

Mary L. Washington, Ph.D
Legislative District 43
Baltimore City

Education, Health, and
Environmental Affairs Committee

Chair
Joint Committee on Ending
Homelessness

Chair
Joint Committee on Children,
Youth, and Families

THE SENATE OF MARYLAND
Annapolis, Maryland 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 102
Annapolis, Maryland 21401
410-841-3145 · 301-858-3145
800-492-7122 *Ext.* 3145
Mary.Washington@senate.state.md.us

TESTIMONY IN SUPPORT OF SB31
Electricity and Gas - Energy Suppliers – Supply Offers

Finance Committee

February 2, 2021

Dear Madame Chair, Vice Chair Feldman and members of the Finance Committee,

SB31 would maximize the efficiency of the limited state energy assistance budget, while protecting low-income households from undue financial harm due to high third-party energy supplier charges.

SB31 offers an option that allows deregulated suppliers to continue to sell to households on energy assistance, but ensures that they charge the same, or even lower, rates as the regulated utility for customers on Maryland Office of Home Energy Program (OHEP). A fiscally responsible bill that ensures Retail Choice's benefits got to our most financially vulnerable families.

The Problems:

1) Wasted ratepayer and taxpayer money.
2) Diluting energy assistance benefits.
3) PSC does not regulate pricing, only MDGA can.

- Federal electricity data showed that on average Maryland households paid 15-26% more when they switched to a third-party electricity supplier, almost $416 million more from 2014 to 2019. We still have no state reporting for gas premiums, just estimates.

- There is ample evidence and data that low-income households are disproportionately harmed by third-party supply options and that their electricity costs are far higher than Standard Offer Service. 110 BGE OHEP accounts from my district paid $650 more per year for deregulated energy as compared to BGE, the regulated utility.

- Ironically, this also means that much of the energy assistance from rate payers and private sources meant to reduce the burden of energy bills for low-income households, is wasted on paying inflated bills and instead goes to out-of-state, third party energy suppliers.

- Massachusetts, Connecticut, Illinois, and New York, where data is available, have released reports that make clear that low-income households are not only paying higher rates than residential customers as a whole, but that low-income households are disproportionately enrolled with third-party energy suppliers. These states have all either banned, or capped, the deregulated energy rates for their energy assistance families.
- Yearly estimate of the amount Maryland wastes: $10,000,000 to $15,000,000 for about 30,000 electric OHEP clients and 20,000 gas clients.

Facts about Energy Assistance:

- 372,000 households in Maryland qualify for Office of Home Energy Programs (OHEP) - up to - 175% of the federal poverty level.
- “OHEP” is under Department of Human Services. OHEP processes applications and sends grants to utility companies to help low-income households pay down utility bills.
- 97,000 households receive OHEP energy assistance grants per year: about 25% of eligible households.
- OHEP’s FY2018 budget was $82M and came from three sources: Regional Greenhouse Fund contribution (RGGI taxpayer funds), a surcharge all MD rate payers pay into, and federal grant funds called LIHEAP.
- OHEP households have very low-income -- about $16,000 per household income per year with average utility bills of about $1,500 per year.
- Evidence collected for the Abell Report and Southern Maryland Electric Coop (SMECO) reported that OHEP clients enrolled with third-party energy suppliers paid about $500 - $600 more per year than their regulated utility after enrolling with suppliers.

The bottom line -- deregulated, third party energy supplier price premiums are a misuse of public monies and undermines the intent of energy assistance.

Thank you and I ask you for a favorable report on SB31.

In Partnership,

Mary Washington, Baltimore City, District 43

2. AARP Booklet PDF.pdf

Uploaded by: griffin, christine
Position: FWA

SB31/HB397

Sponsors: Sen. Washington and Del. Lierman

Low-Income & OHEP Energy Supplier Guaranteed Savings Plan:
Low-income families receiving state utility bill energy assistance grants (OHEP) that enroll with a third-party energy supplier will receive guaranteed electricity and natural gas supply rates that will be lower, or equal to, their utility's prices.

Fiscally responsible legislation that:

- Offers best Retail Choice pricing for most financially vulnerable families.
- Protects $15 million a year in wasted state energy assistance funds.

NEIGHBORHOOD sun

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MCRC
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PHYSICIANS FOR SOCIAL RESPONSIBILITY

NCLC National Consumer Law Center
Fighting Together for Economic Justice

THE EPISCOPAL DIOCESE OF MARYLAND

GEDCO

HB397/SB31 Overview Contents:

Page 2: Coalition members

Page 3: Contents

Page 4:

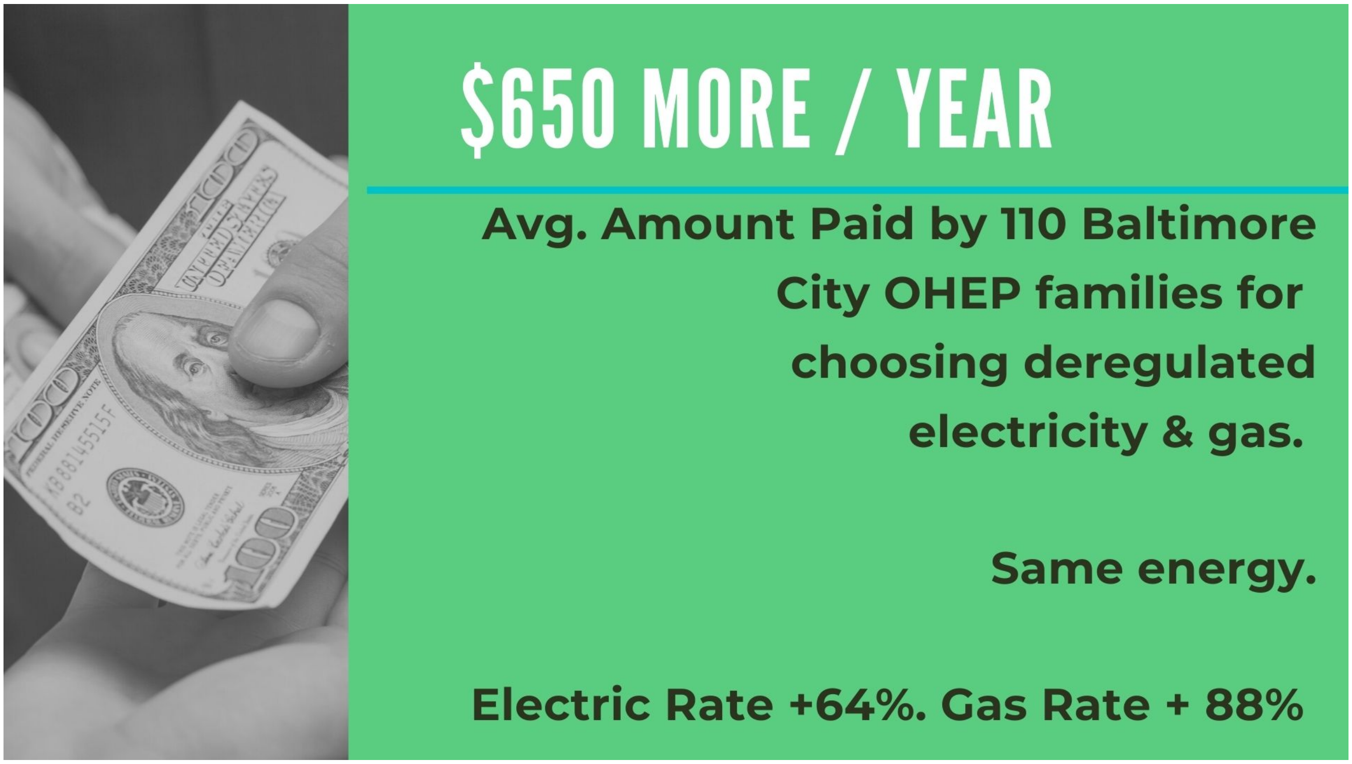
Page 5: HB397/SB31 legislation

Pages 6 & 7: Low-Income Loss equals $15,000,000 wasted energy assistance funds each year.

Pages 8 & 9: 2019 Rates By Supplier. $108 million more than utilities.

Pages 10 & 11: Baltimore Sun Commentary, Lierman & Washington

Pages 12: AARP’s op-ed



$650 MORE / YEAR

Avg. Amount Paid by 110 Baltimore City OHEP families for choosing deregulated electricity & gas.

Same energy.

Electric Rate +64%. Gas Rate + 88%

HOUSE BILL 397 / SENATE BILL 31

1. AN ACT concerning
2 Electricity and Gas – Energy Suppliers – Supply Offers

(A)ON OR BEFORE JANUARY 1, 2022, THE COMMISSION SHALL BY REGULATION OR ORDER ESTABLISH AN ADMINISTRATIVE PROCESS TO APPROVE SUPPLY OFFERS FOR ELECTRICITY OR GAS FOR HOUSEHOLDS IN THE STATE THAT RECEIVE ENERGY ASSISTANCE THROUGH A PROGRAM ADMINISTERED BY THE OFFICE OF HOME ENERGY PROGRAMS.

(B) (1) BEGINNING JULY 1, 2022, AN APPROVED SUPPLY OFFER MAY NOT OFFER TO:

(I) PROVIDE ELECTRICITY OR GAS TO HOUSEHOLDS IN THE STATE THAT HAVE RECEIVED ENERGY ASSISTANCE DURING THE PREVIOUS FISCAL YEAR;
(II) RENEW A CONTRACT TO PROVIDE ELECTRICITY OR GAS TO HOUSEHOLDS IN THE STATE THAT ENROLL THE HOUSEHOLD IN AN ENERGY ASSISTANCE PROGRAM UNLESS THE COMMISSION APPROVES THE SUPPLY OFFER; OR

(III) CHARGE A TERMINATION FEE.

(2) **AN APPROVED SUPPLY OFFER FROM A THIRD–PARTY RETAIL SUPPLIER SHALL INCLUDE A COMMITMENT TO CHARGING AT OR BELOW THE STANDARD OFFER SERVICE RATE OR GAS COMMODITY RATE FOR CUSTOMERS RECEIVING ENERGY ASSISTANCE.**

(3) IF A THIRD–PARTY RETAIL SUPPLIER'S OFFER IS NOT APPROVED BY THE COMMISSION, THE THIRD–PARTY RETAIL SUPPLIER MAY NOT:

(I) RECEIVE FUNDS FROM AN ENERGY PROGRAM ADMINISTERED BY THE OFFICE OF HOME ENERGY PROGRAMS; OR
(II) CHARGE A CUSTOMER RECEIVING ASSISTANCE FROM AN ENERGY PROGRAM ADMINISTERED BY THE OFFICE OF HOME ENERGY PROGRAMS.

(C) THE OFFICE OF HOME ENERGY PROGRAMS MAY ALLOCATE FUNDING TOWARD SUPPLIER CHARGES AS PART OF ARREARAGE ASSISTANCE FOR CONTRACTS THAT PRECEDED A CUSTOMER'S APPLICATION FOR ENERGY ASSISTANCE FROM THE OFFICE OF HOME ENERGY PROGRAMS.

"Here's how this plays out in reality"

If a low-income household on third-party energy supply paid an extra $500 a year for choosing deregulated supply, there's a greater chance they will get behind on their utility bill.

The average OHEP household had about $16,000 in income in 2018. If that household later applied for and received a $500 OHEP grant, that grant was wasted on the premium price paid for utilities and still didn't help the family by making utility costs affordable."

Del. Lierman and Sen. Washington
Baltimore Sun op-ed Sept. 22, 2020

The Challenge - It Turns out Pennies Matter.

When 20% of Maryland families pay 2¢ more per kilowatt hour of electricity and 25¢ more for a therm of natural gas, it adds up. $750 million more since 2014.

Energy suppliers get 70% of their new sales going door-to-door. Commission-only sales agents hyper-focus on zip codes where Maryland's most financially vulnerable households reside. And lower-income households who are strapped for cash, especially now, believe the sales pitches. But there are rarely savings. Suppliers sell low, then bill high.

There are roughly 30,000 Maryland households receiving energy assistance on third-party supply. A recent analysis of 110 BGE bills, all receiving energy assistance grants, revealed that an extra **$650** was paid per year. This is because electricity rates were 64% higher than BGE's regulated rates, and natural gas rates were 88% higher. Unaffordable utility bills lead to Turn-off notices.

To keep power on, families then turn to MD energy assistance which was designed to lower family energy costs. If a utility bill is $650 more due to sky-high deregulated pricing, the state grants are wasted and go to suppliers, instead of making utility bills more affordable.

The solution is SB31/HB397

Low-Income & OHEP Energy Supplier Guaranteed Savings Plan

Low-income families receiving state utility bill energy assistance grants (OHEP) that enroll with a third-party energy supplier would receive guaranteed electricity and natural gas supply rates that would be lower, or equal to, their utility's prices. Suppliers that pre-enroll with the Public Service Commission will guarantee that Retail Choice's benefits go to the neediest families.

- Fiscally responsible legislation that supports Retail Choice.
- Offers best Retail Choice pricing for the most financially vulnerable families.
- Protects **$15 million a year** in wasted state energy assistance funds.

Switching utility companies means many low-income Marylanders paying more | Baltimore Sun COMMENTARY

By BROOKE LIERMAN and MARY WASHINGTON SEP 22, 2020

If you have received a knock on the door or a call on your phone from an energy company other than a main regulated supplier such as BGE or Pepco, then you know that Maryland has a busy third-party retail utility market.

Since the COVID-19 pandemic began, regulators have prohibited utility shut-offs for families unable to pay their bills. However, just as the weather is beginning to turn and as students are staying at home to participate in school, the utility termination moratorium is scheduled to end — on Oct. 1. Although the Office of Home Energy Programs has grant money available for families to help pay their bills, for families who have signed up with third-party energy suppliers, the funds may not be enough to prevent a shut-off.

These third-party suppliers have led consumers into thinking that a switch from their regulated utility supply will save them money. In actuality, on average, households that choose third-party suppliers are paying more, not less, after switching. Maryland's energy market was deregulated under the wide-sweeping 1999 Electric Choice Act. As of July, 418,000 Maryland households, about 18%, have switched from their regulated energy supplier — BGE, Pepco, Delmarva, SMECO or Potomac Edison — to one of the 70 or so deregulated third-party suppliers.

The switch from standard service to a third-party retailer always starts with a promising offer: switch from your current energy supplier for savings and maybe even rewards (maybe free airline miles). If you decide to switch, you may pay a lower rate to start — or if you've signed up for a variable rate — your rate may then spike from the introductory low rate.

Adding to higher utility bills, these deregulated supplier contracts often include sky-high exit fees, which can trap lower-income families into predatory energy contracts. These increased rates do not affect all Marylanders equally. Some 30,000 of these households are extremely low income and are receiving state-funded energy bill assistance through Maryland's Office of Home Energy Programs (OHEP) to help them pay high utility bills.

During the truncated 2020 Maryland legislative session, we introduced the Energy Assistance Protection Act (S.B. 685 and H.B. 1224) to ensure that Maryland taxpayers' energy assistance dollars are not wasted on more expensive third-party energy suppliers. Data conclusively show that third-party suppliers are profiting from millions of state energy assistance dollars rather than fully paying down customer utility bills. The result is a loss for both Maryland consumers and Maryland taxpayers, and a win for third-party suppliers.

From 2014 to 2017, Maryland households lost millions of dollars using third-party suppliers, paying about $255 million more for electricity than if they had simply stayed with their regulated utility provider, according to the Abell Foundation. A survey of households in Southern Maryland found that customers paid on average about $500 more per year using a third-party electric suppliers. In Baltimore City a survey of 40 accounts whose owners had applied for state help paying their energy bills after getting cutoff notices found that their average electricity rate was 51% higher than BGE and their natural gas rate 78% higher.

Some third-party suppliers have targeted low-income consumers through aggressive door-to-door sales and setting up tables outside Department of Social Services offices, where residents apply for energy assistance. Such suppliers are incentivized to target households likely to need energy assistance because they are guaranteed payment, even if their customers don't pay their bills. Maryland regulations put the risk of consumer default on utilities, not on suppliers. The Energy Assistance Protection Act would solve this problem by holding suppliers to their word. It would allow customers to retain a choice of energy suppliers, and would require any third-party supplier who wants to sell to households that receive OHEP funds to guarantee that their net price to consumers be lower than standard rates available through their regulated utility.

Other states, including Ohio, New York and Pennsylvania, have already taken similar action, in some cases designing programs guaranteed to have rates lower than those through the standard regulated utility. Maryland taxpayers should not be on the hook to guarantee profit to third-party energy suppliers who are exploiting low-income residents. Our legislation, when enacted, would guarantee that this exploitative practice would end. We look forward to championing this legislation during the next legislative session.

Delegate Brooke Lierman - District 46

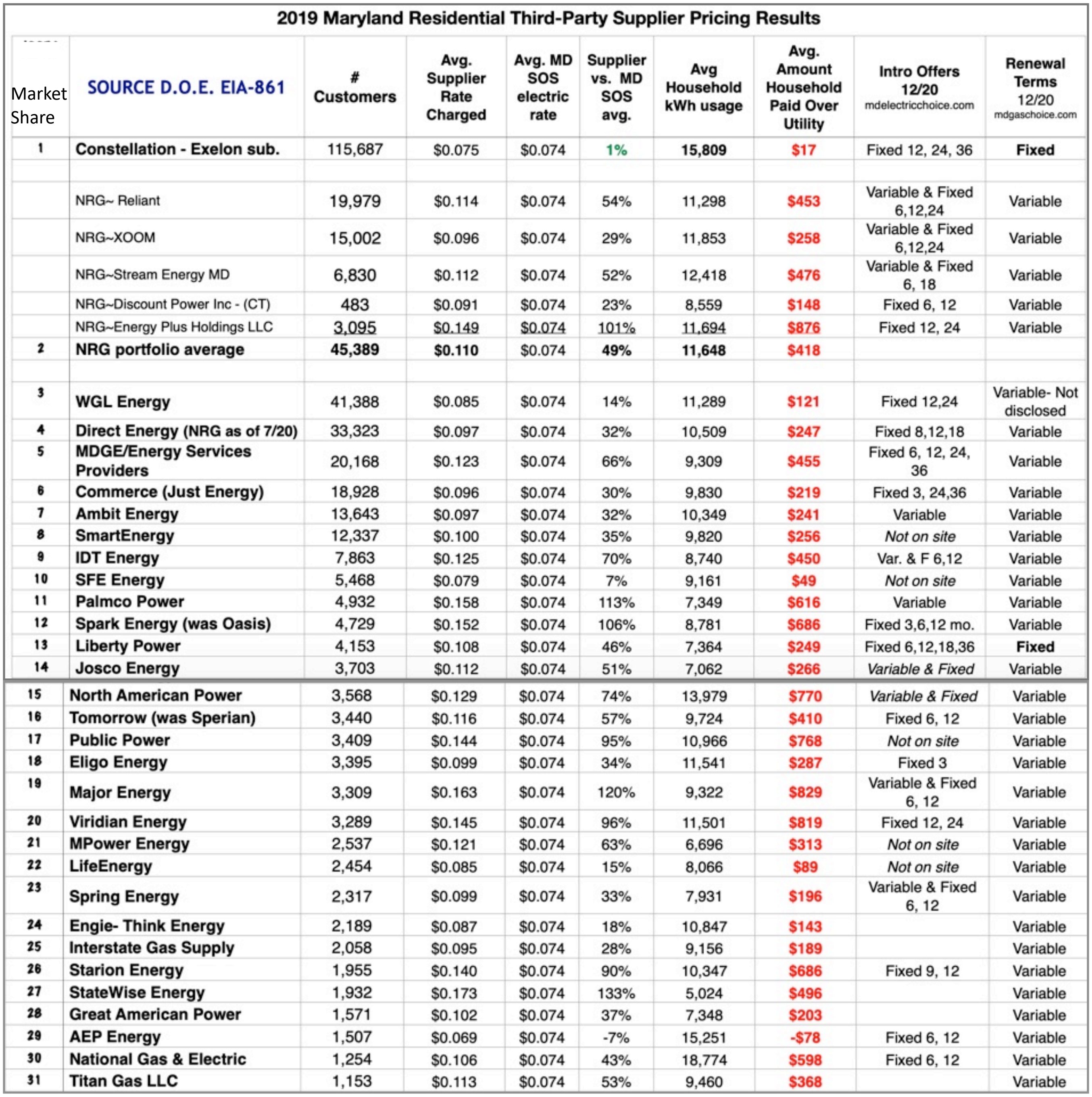
Senator Mary Washington - District 43

In 2019, Consumers Paid $108,355,000 More Than Utilities

How to read this chart across:

Scan down to about line 8. The NRG portfolio of brands was the #2 market share residential energy supplier. NRG's 45,389 customers paid an average 11¢ per kWh electricity compared to the average Maryland regulated "standard" electricity rate of 7.4¢. A 49% mark-up. NRG's average household used 11,648 kWh of electricity, and thus **paid $418 above** utility electricity rates.

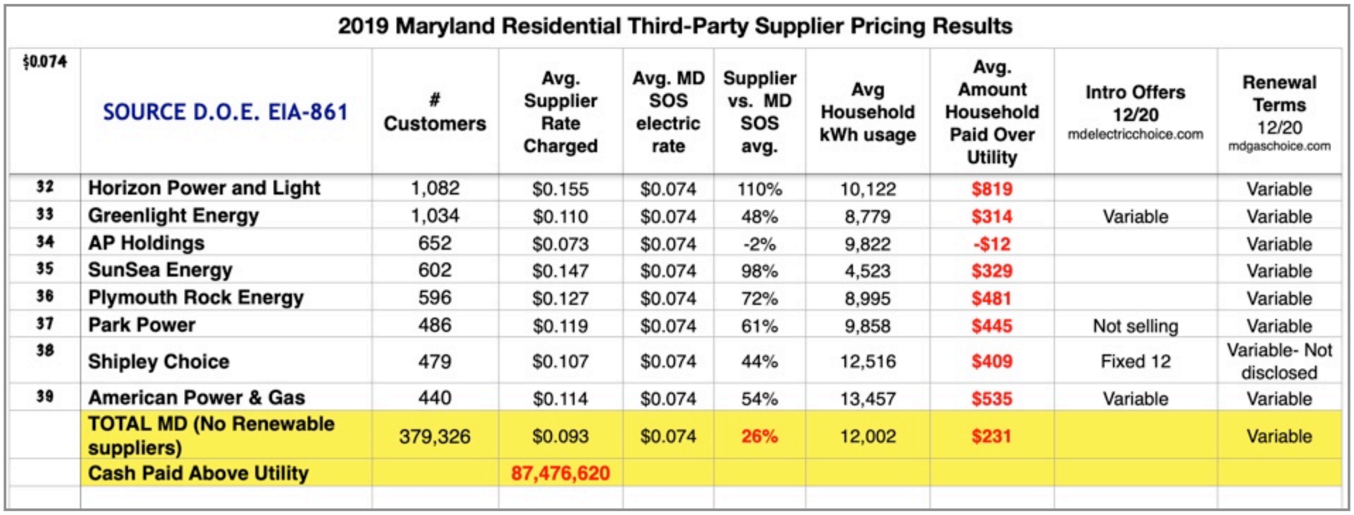
The last two columns on the right explain how the NRG brands initially offer a combo of variable and fixed rate introductory offers that auto-renew to variable rates, as described in their customer contracts.



2019 Maryland Residential Third-Party Supplier Pricing Results

Market Share	SOURCE D.O.E. EIA-861	# Customers	Avg. Supplier Rate Charged	Avg. MD SOS electric rate	Supplier vs. MD SOS avg.	Avg Household kWh usage	Avg. Amount Household Paid Over Utility	Intro Offers 12/20 mdelectricchoice.com	Renewal Terms 12/20 mdgaschoice.com
1	**Constellation - Exelon sub.**	115,687	$0.075	$0.074	1%	**15,809**	$17	Fixed 12, 24, 36	**Fixed**
	NRG~ Reliant	19,979	$0.114	$0.074	54%	11,298	$453	Variable & Fixed 6,12,24	Variable
	NRG~XOOM	15,002	$0.096	$0.074	29%	11,853	$258	Variable & Fixed 6,12,24	Variable
	NRG~Stream Energy MD	6,830	$0.112	$0.074	52%	12,418	$476	Variable & Fixed 6, 18	Variable
	NRG~Discount Power Inc - (CT)	483	$0.091	$0.074	23%	8,559	$148	Fixed 6, 12	Variable
	NRG~Energy Plus Holdings LLC	3,095	$0.149	$0.074	101%	11,694	$876	Fixed 12, 24	Variable
2	**NRG portfolio average**	**45,389**	**$0.110**	$0.074	**49%**	**11,648**	$418		
3	**WGL Energy**	41,388	$0.085	$0.074	14%	11,289	$121	Fixed 12,24	Variable- Not disclosed
4	**Direct Energy (NRG as of 7/20)**	33,323	$0.097	$0.074	32%	10,509	$247	Fixed 8,12,18	Variable
5	**MDGE/Energy Services Providers**	20,168	$0.123	$0.074	66%	9,309	$455	Fixed 6, 12, 24, 36	Variable
6	**Commerce (Just Energy)**	18,928	$0.096	$0.074	30%	9,830	$219	Fixed 3, 24,36	Variable
7	**Ambit Energy**	13,643	$0.097	$0.074	32%	10,349	$241	Variable	Variable
8	**SmartEnergy**	12,337	$0.100	$0.074	35%	9,820	$256	*Not on site*	Variable
9	**IDT Energy**	7,863	$0.125	$0.074	70%	8,740	$450	Var. & F 6,12	Variable
10	**SFE Energy**	5,468	$0.079	$0.074	7%	9,161	$49	*Not on site*	Variable
11	**Palmco Power**	4,932	$0.158	$0.074	113%	7,349	$616	Variable	Variable
12	**Spark Energy (was Oasis)**	4,729	$0.152	$0.074	106%	8,781	$686	Fixed 3,6,12 mo.	Variable
13	**Liberty Power**	4,153	$0.108	$0.074	46%	7,364	$249	Fixed 6,12,18,36	**Fixed**
14	**Josco Energy**	3,703	$0.112	$0.074	51%	7,062	$266	*Variable & Fixed*	Variable
15	**North American Power**	3,568	$0.129	$0.074	74%	13,979	$770	*Variable & Fixed*	Variable
16	**Tomorrow (was Sperian)**	3,440	$0.116	$0.074	57%	9,724	$410	Fixed 6, 12	Variable
17	**Public Power**	3,409	$0.144	$0.074	95%	10,966	$768	*Not on site*	Variable
18	**Eligo Energy**	3,395	$0.099	$0.074	34%	11,541	$287	Fixed 3	Variable
19	**Major Energy**	3,309	$0.163	$0.074	120%	9,322	$829	Variable & Fixed 6, 12	Variable
20	**Viridian Energy**	3,289	$0.145	$0.074	96%	11,501	$819	Fixed 12, 24	Variable
21	**MPower Energy**	2,537	$0.121	$0.074	63%	6,696	$313	*Not on site*	Variable
22	**LifeEnergy**	2,454	$0.085	$0.074	15%	8,066	$89	*Not on site*	Variable
23	**Spring Energy**	2,317	$0.099	$0.074	33%	7,931	$196	Variable & Fixed 6, 12	Variable
24	**Engie- Think Energy**	2,189	$0.087	$0.074	18%	10,847	$143		Variable
25	**Interstate Gas Supply**	2,058	$0.095	$0.074	28%	9,156	$189		Variable
26	**Starion Energy**	1,955	$0.140	$0.074	90%	10,347	$686	Fixed 9, 12	Variable
27	**StateWise Energy**	1,932	$0.173	$0.074	133%	5,024	$496		Variable
28	**Great American Power**	1,571	$0.102	$0.074	37%	7,348	$203		Variable
29	**AEP Energy**	1,507	$0.069	$0.074	-7%	15,251	-$78	Fixed 6, 12	Variable
30	**National Gas & Electric**	1,254	$0.106	$0.074	43%	18,774	$598	Fixed 6, 12	Variable
31	**Titan Gas LLC**	1,153	$0.113	$0.074	53%	9,460	$368		Variable

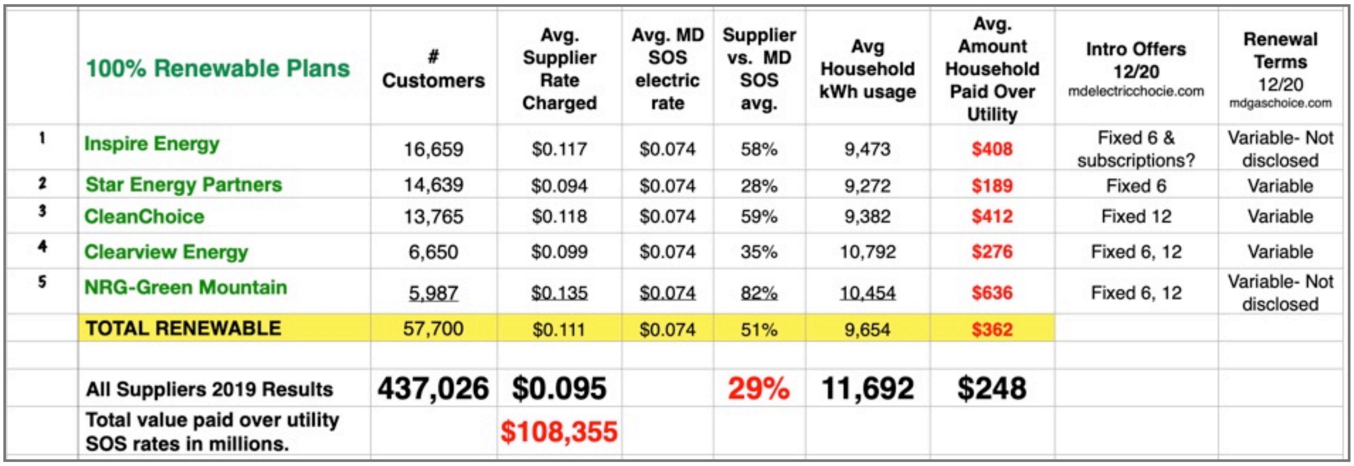
Supplier #32 to # 39 pricing continued…



2019 Maryland Residential Third-Party Supplier Pricing Results

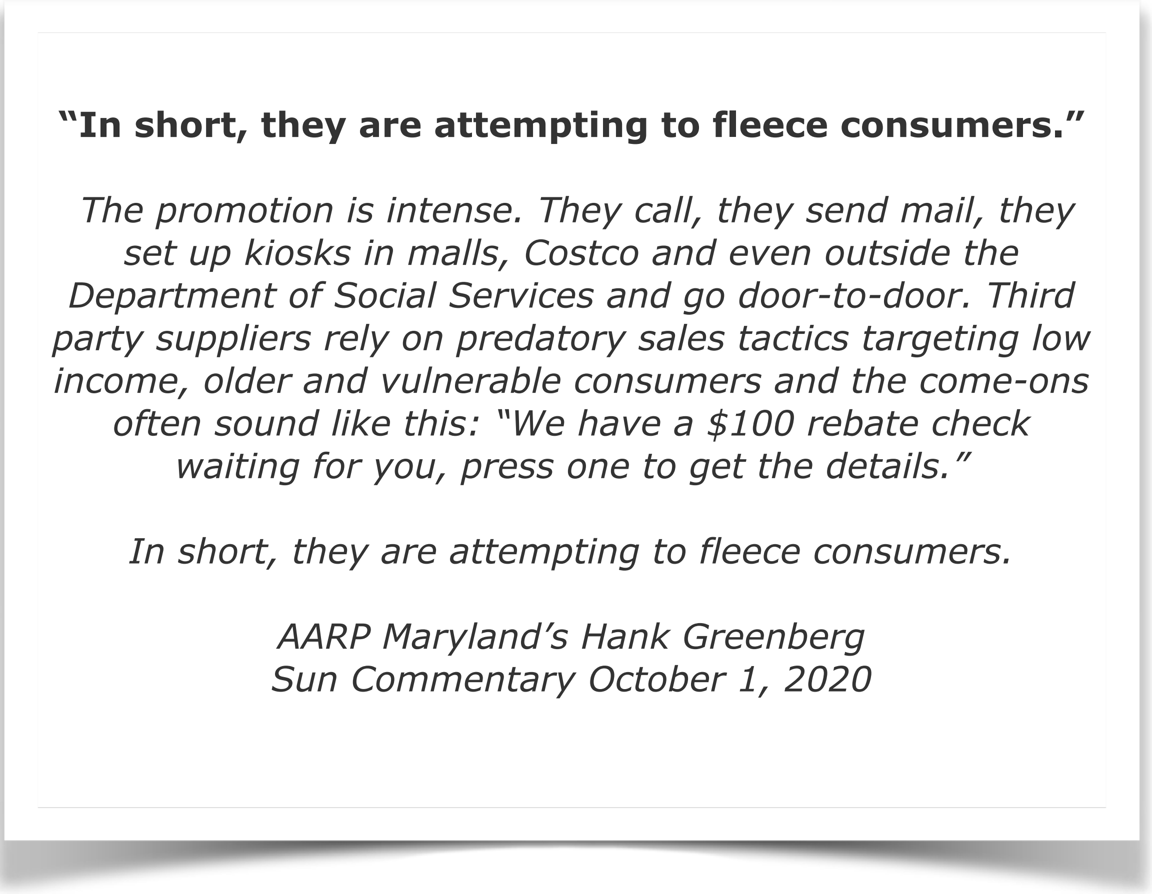
$0.074	SOURCE D.O.E. EIA-861	# Customers	Avg. Supplier Rate Charged	Avg. MD SOS electric rate	Supplier vs. MD SOS avg.	Avg Household kWh usage	Avg. Amount Household Paid Over Utility	Intro Offers 12/20 mdelectricchoice.com	Renewal Terms 12/20 mdgaschoice.com
32	Horizon Power and Light	1,082	$0.155	$0.074	110%	10,122	$819		Variable
33	Greenlight Energy	1,034	$0.110	$0.074	48%	8,779	$314	Variable	Variable
34	AP Holdings	652	$0.073	$0.074	-2%	9,822	-$12		Variable
35	SunSea Energy	602	$0.147	$0.074	98%	4,523	$329		Variable
36	Plymouth Rock Energy	596	$0.127	$0.074	72%	8,995	$481		Variable
37	Park Power	486	$0.119	$0.074	61%	9,858	$445	Not selling	Variable
38	Shipley Choice	479	$0.107	$0.074	44%	12,516	$409	Fixed 12	Variable- Not disclosed
39	American Power & Gas	440	$0.114	$0.074	54%	13,457	$535	Variable	Variable
	TOTAL MD (No Renewable suppliers)	379,326	$0.093	$0.074	26%	12,002	$231		Variable
	Cash Paid Above Utility		87,476,620						

Pricing for “100% Renewable” Suppliers



	100% Renewable Plans	# Customers	Avg. Supplier Rate Charged	Avg. MD SOS electric rate	Supplier vs. MD SOS avg.	Avg Household kWh usage	Avg. Amount Household Paid Over Utility	Intro Offers 12/20 mdelectricchocie.com	Renewal Terms 12/20 mdgaschoice.com
1	Inspire Energy	16,659	$0.117	$0.074	58%	9,473	$408	Fixed 6 & subscriptions?	Variable- Not disclosed
2	Star Energy Partners	14,639	$0.094	$0.074	28%	9,272	$189	Fixed 6	Variable
3	CleanChoice	13,765	$0.118	$0.074	59%	9,382	$412	Fixed 12	Variable
4	Clearview Energy	6,650	$0.099	$0.074	35%	10,792	$276	Fixed 6, 12	Variable
5	NRG-Green Mountain	5,987	$0.135	$0.074	82%	10,454	$636	Fixed 6, 12	Variable- Not disclosed
	TOTAL RENEWABLE	57,700	$0.111	$0.074	51%	9,654	$362		
	All Suppliers 2019 Results	437,026	$0.095		29%	11,692	$248		
	Total value paid over utility SOS rates in millions.		$108,355						

Data Source is Department of Energy, EIA 861 filings.



“In short, they are attempting to fleece consumers.”

The promotion is intense. They call, they send mail, they set up kiosks in malls, Costco and even outside the Department of Social Services and go door-to-door. Third party suppliers rely on predatory sales tactics targeting low income, older and vulnerable consumers and the come-ons often sound like this: “We have a $100 rebate check waiting for you, press one to get the details.”

In short, they are attempting to fleece consumers.

AARP Maryland’s Hank Greenberg
Sun Commentary October 1, 2020

Printed by:

H G Roebuck & Son Inc.
4987 Mercantile Road
Baltimore, MD 21236

During a cold-snap in January 2018, HG Roebuck & Son paid an extra $12,567 to a deregulated natural gas supplier. Accountant had missed the contract renewal and deregulated gas pricing switched to high variable rates. Checked father’s BGE account, a deregulated supplier charged 50% more than BGE for electricity.

3. One Pager SB31HB397 PDF.pdf

Uploaded by: griffin, christine

Position: FWA

ENERGY SUPPLIER REFORM COALITION

ENERGY SUPPLIER LOW-INCOME ACT

SB0031 / HB397

OHEP families would pay same or lower price as utility.

Sponsored by Sen. Washington and Del. Lierman

Pennies matter. When deregulated energy suppliers target Baltimore during a pandemic and charge 2¢ more for each electricity kilowatt hour and **25¢ more** for every therm of natural gas, low-income families wind up paying $500+ more a year. Many get Turn-Off notices.

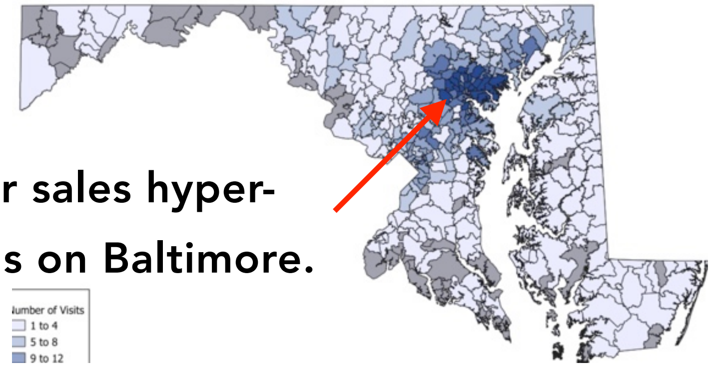
Deregulation was supposed to help, not hurt. (Click on data link in pdf)

About 30,000 families on deregulated energy then turn to Office of Home Energy Programs (OHEP) to pay down their utility bills. OHEP was designed to lower family energy costs. Yet when low-income families pay an extra **$500** a year, **$15,000,000** of energy assistance funds are wasted every year. The free grants are siphoned off to supplier profits and don't pay down bills.

The **solution** is simple: Like 4 other states, protect families on deregulated energy who get energy assistance. Ensure their electricity and gas rates meet, or beat, their utility's supply rates. SB0031/HB397 is a fiscally responsible solution that supports Retail Choice and protects our state's energy assistance funds. Retail Choice's benefits are assured to help low-income families.

70% Supplier Enrollments are Door-to-Door

Door sales hyper-focus on Baltimore.



$15M Wasted Energy Assistance

Suppliers sell low, then bill high.

Electric rates over utility: +70%

Gas rates over utility: +80%

When 20% of Maryland families pay 2¢ more for electricity and 25¢ more for natural gas, it adds up…

$750 million more since 2014.

- Estimated **$12 to $15** million wasted from Maryland Office of Home Energy Programs' energy assistance funds every year.
- Today, it's all legal.
- Higher energy prices lead to sky-high bills and turn-offs.
- Uninformed consumers — skews to seniors — don't know rates & product.
- Suppliers sell low, then bill high. (Click on data link in pdf)
- Door-to-door agents target low-income zip codes in Baltimore City.
- To keep power on, households turn to MD energy assistance.
- Energy assistance grants — designed to lower family energy costs — go to suppliers.

***Energy Supplier Reform Coalition* is a growing list of non-profits, congregations and advocates working to educate and help enact common sense guardrails for families choosing deregulated energy**

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CANCER SUPPORT FOUNDATION

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NCLC National Consumer Law Center
Fighting Together for Economic Justice

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THE EPISCOPAL DIOCESE OF MARYLAND

GEDCO

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Position: FWA

PUBLIC SERVICE COMMISSION OF MARYLAND

Report on Energy Supplier Pricing and Marketing

Response to 2020 Joint Chairmen's Report
on the Fiscal 2021 State Operating Budget (SB 190)
and the State Capital Budget (SB 191)
and Related Recommendations

December 15, 2020

Prepared for the Senate Budget and Taxation Committee
and House Appropriations Committee

William Donald Schaefer Tower
6 St. Paul Street
Baltimore, Maryland 21202-6806
www.psc.state.md.us

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Appendix A

I. Introduction

The Public Service Commission of Maryland ("PSC" or "Commission") hereby submits this Report in response to the 2020 Joint Chairmen's Report ("JCR") from the Senate Budget and Taxation Committee and House Appropriations Committee (collectively, "Committees"), addressing the Committees' interest in retail energy supplier pricing and marketing in the State. Specifically, the Committees requested that the PSC provide a report on the current offers as posted on the PSC website for energy supplier pricing ("PSC Choice Websites") that contain variable rates and/or termination fees. The JCR requested that the report should describe the use of variable rates in the current retail supply offers posted on the PSC Choice Websites, including: (1) current rates; (2) how the listed rates compare to the Standard Offer Service[1] rate for that period; and (3) the trigger for a change in the variable rates (if available). The report should also include information provided on the PSC Choice Websites about offers that have termination fees in the reported pricing and the structure of those termination fees (if available).

The Committees also requested that the PSC report on the monthly number of electricity customers enrolled with suppliers, by utility service territory, in recent years. The Committees further requested that the PSC provide information on the door-to-door sales activities reported by retail energy suppliers, including the number of suppliers reporting activities by zip code. The PSC responds to the Committees' information request as it pertains to residential customer data, noting where applicable the period that the marketing data covers.

II. Supplier Variable Rate Offers and Termination Fees

During the 2019 legislative session, the Maryland General Assembly enacted two laws that require the PSC to establish customer choice shopping websites for residential electric and natural gas customers. The PSC's electric choice website (www.MDElectricChoice.com) launched in March 2020, and the gas choice website (www.MDGasChoice.com) launched in September 2020. Residential electric choice is offered in the service territories of five electric utilities—Baltimore Gas and Electric Company ("BGE"), Potomac Electric Power Company ("Pepco"), Delmarva Power and Light Company ("DPL"), The Potomac Edison Company ("PE"), and Southern Maryland Electric Cooperative, Inc. ("SMECO"). Residential gas choice is offered in the service territories of two natural gas utilities—BGE and Washington Gas Light Company ("WGL").

Variable-price offers reflect pricing that can change, typically on a month-to-month basis in response to market conditions, or upon the expiration of a promotional offer. By contrast, a fixed-price offer is one where the customer pays the same price per kilowatt hour (kWh) each

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[1] "Standard offer service" is defined as "electric service that an electric company must offer to its customers under § 7-510 of [the Electric Industry Restructuring Subtitle of the Public Utilities Article.]" *Md. Ann. Code*, Pub. Util., Art. §7-501(n). Standard offer service applies to a customer who does not choose an alternative electricity supplier.

month for the entire contract period (i.e. fixed-term). For variable rates, there are factors that can drive suppliers to change their pricing (i.e., "triggers"), although suppliers are not bound by these factors, which include the following:

- Market conditions – when market prices increase or decrease, variable rates typically increase or decrease accordingly;
- Seasonal variations – electricity prices are typically lower in the summer due to increased demand for cooling; gas prices are often lower in the winter due to hedging; in shoulder months, variable prices continue to fluctuate with the changes in supply and demand; however, shoulder months generally see lower demand in both electricity and gas commodities due to reduced heating and cooling usages by customers;
- Use of introductory rates – once the introductory rate expires after a limited period, a new rate takes effect; and
- Changes to supply mix (e.g., higher percentage of renewable energy).

Suppliers are permitted by Maryland law to charge a penalty or cancellation fee if a customer cancels service before the expiration of the contract period. Such cancellation fees are typically included in fixed-term contracts with fixed pricing. Variable-price or month-to-month contracts typically do not contain an early cancellation fee—that is, customers may cancel service at any time without penalty unless they cancel during an active introductory rate, promotional offer, or incentive or if they otherwise violate the terms of their contract. Suppliers are required to include a description of their cancellation fee in the contract.

The tables below were constructed using retail energy supplier offer data for residential customers obtained from the MDElectricChoice.com and MDGasChoice.com websites and are current as of November 2, 2020. Each utility service territory is listed and discussed separately.

A. Retail Electric Choice

1. BGE

Table 1 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the BGE Service Territory as of November 2, 2020

Total Offers	
Offers Available	118
Variable Rates Available	16
• *Variable Rates Higher than Utility's SOS Rate*	8
• *Variable Rates Lower than Utility's SOS Rate*	8
Introductory Rates and Cancellation Fees	
Introductory Rates Available	7
• *Variable Rates with Introductory Rates*	7
Offers with Cancellation Fees Included	68
• *Variable Rates with Cancellation Fees*	1
• *Unlimited Plans*[2] *with Cancellation Fees*	2
• *Fixed Rates with Cancellation Fees*	65

As summarized in the table above, there were 118 offers available in the BGE service territory as of November 2, 2020. The eight variable rates that were higher than BGE's November Standard Offer Service (SOS) rate of **$0.07225/kWh** ranged from $0.081-$0.14/kWh. The majority of offers with introductory rates were for three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 68 offers that indicate a termination or cancellation fee, 24 offers provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

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[2] Unlimited plans usually require the customer to pay a flat fee to the supplier each month in exchange for unlimited electricity (or gas) supply during the contract period.

2. *Pepco*

Table 2 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the Pepco Service Territory as of November 2, 2020

Total Offers	
Offers Available	103
Variable Rates Available	12
• *Variable Rates Higher than Utility's SOS Rate*	6
• *Variable Rates Lower than Utility's SOS Rate*	6
Introductory Rates and Cancellation Fees	
Introductory Rates Available	5
• *Variable Rates with Introductory Rates*	5
Offers with Cancellation Fees Included	62
• *Variable Rates with Cancellation Fees*	2
• *Unlimited Plans with Cancellation Fees*	2
• *Fixed Rates with Cancellation Fees*	58

As summarized in the table above, there were 103 offers available in the Pepco service territory as of November 2, 2020. The six variable rates that were higher than Pepco's November Standard Offer Service (SOS) rate of **$0.07866/kWh** ranged from $0.082-$0.1499/kWh. The majority of offers with introductory rates were for three to four months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 62 offers that indicate a cancellation fee, 23 provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

3. DPL

Table 3 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the DPL Service Territory as of November 2, 2020

Total Offers	
Offers Available	99
Variable Rates Available	10
• *Variable Rates Higher than Utility's SOS Rate*	5
• *Variable Rates Lower than Utility's SOS Rate*	5
Introductory Rates and Cancellation Fees	
Introductory Rates Available	2
• *Variable Rates with Introductory Rates*	2
Offers with Cancellation Fees Included	61
• *Variable Rates with Cancellation Fees*	2
• *Unlimited Plans with Cancellation Fees*	2
• *Fixed Rates with Cancellation Fees*	57

As summarized in the table above, there were 99 offers available in the DPL service territory as of November 2, 2020. The five variable rates that were higher than DPL's November Standard Offer Service (SOS) rate of **$0.07857/kWh** ranged from $0.092-$0.1399/kWh. The offers with introductory rates were for three to four months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 61 offers that indicate a cancellation fee, 24 provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

4. PE

Table 4 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the PE Service Territory as of November 2, 2020

Total Offers	
Offers Available	87
Variable Rates Available	10
• *Variable Rates Higher than Utility's SOS Rate*	4
• *Variable Rates Lower than Utility's SOS Rate*	6
Introductory Rates and Cancellation Fees	
Introductory Rates Available	6
• *Variable Rates with Introductory Rates*	6
Offers with Cancellation Fees Included	52
• *Variable Rates with Cancellation Fees*	4
• *Unlimited Plans with Cancellation Fees*	1
• *Fixed Rates with Cancellation Fees*	47

As summarized in the table above, there were 87 offers available in the PE service territory as of November 2, 2020. The four variable rates that were higher than PE's November Standard Offer Service (SOS) rate of **$0.06858/kWh** ranged from $0.076-$0.089/kWh. The majority of offers with introductory rates were for three to four months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 52 offers that indicate a cancellation fee, 17 provide a description of the fee and its structure, or provide information on cancellation policies. The amount of the fee ranges from $45 to $150. One supplier (Constellation NewEnergy) promises no fee if the customer cancels the offer within 90 days.

5. *SMECO*

Table 5 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the SMECO Service Territory as of November 2, 2020

Total Offers	
Offers Available	20
Variable Rates Available	4
• *Variable Rates Higher than Utility's SOS Rate*	4
• *Variable Rates Lower than Utility's SOS Rate*	0
Introductory Rates and Cancellation Fees	
Introductory Rates Available	1
• *Variable Rates with Introductory Rates*	1
Offers with Cancellation Fees Included	13
• *Variable Rates with Cancellation Fees*	0
• *Unlimited Plans with Cancellation Fees*	0
• *Fixed Rates with Cancellation Fees*	13

As summarized in the table above, there were 20 offers available in the SMECO service territory as of November 2, 2020. The four variable rates that were higher than SMECO's November Standard Offer Service (SOS) rate of **$0.06065/kWh** ranged from $0.074-$0.1393/kWh. The introductory rate offer was for three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 13 offers that indicate a cancellation fee, six provide a description of the fee and its structure, or provide information on cancellation policies. Only one supplier lists the amount of its cancellation fee, which is $50.

B. Retail Gas Choice

1. WGL

Table 6 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the WGL Service Territory as of November 2, 2020

Total Offers	
Offers Available	34
Variable Rates Available	9
• *Variable Rates Higher than Utility's Default Rate*	4
• *Variable Rates Lower than Utility's Default Rate*	5
Introductory Rates and Cancellation Fees	
Introductory Rates Available	6
• *Variable Rates with Introductory Rates*	6
Offers with Cancellation Fees Included	20
• *Variable Rates with Cancellation Fees*	1
• *Unlimited Plans with Cancellation Fees*	0
• *Fixed Rates with Cancellation Fees*	19

As summarized in the table above, there were 34 offers available in the WGL service territory as of November 2, 2020. The four variable rates that were higher than WGL's November default rate of **$0.4478/therm** ranged from $0.45-$0.719/therm. The majority of offers with introductory rates were for one, two or three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 20 offers that indicate a cancellation fee, four provide information on cancellation policies. None lists the amount of the fee.

2. BGE

Table 7 – Summary of Total Offers Available, Introductory Rates, and Cancellation Fees for the BGE Service Territory as of November 2, 2020

Total Offers	
Offers Available	34
Variable Rates Available	9
• *Variable Rates Higher than Utility's Default Rate*	4
• *Variable Rates Lower than Utility's Default Rate*	5
Introductory Rates and Cancellation Fees	
Introductory Rates Available	6
• *Variable Rates with Introductory Rates*	6
Offers with Cancellation Fees Included	20
• *Variable Rates with Cancellation Fees*	1
• *Unlimited Plans with Cancellation Fees*	0
• *Fixed Rates with Cancellation Fees*	23

As summarized in the table above, there were 34 offers available in the BGE service territory as of November 2, 2020. The four variable rates that were higher than BGE's November default rate of **$0.4009/therm** ranged from $0.499-$0.6999/therm. The majority of offers with introductory rates were for one, two or three months. Upon expiration of the introductory rate, the pricing would then transition to variable pricing.

For the 20 offers that indicate a cancellation fee, eight provide a description of the fee and its structure, or provide information on cancellation policies. One supplier (Just Energy Solutions, Inc.) will waive the fee if a customer calls the company. Only one supplier lists the amount of its cancellation fee, which is $100.

III. Electricity Retail Supplier Customer Enrollments

In 1999, the Maryland General Assembly enacted the Electric Customer Choice and Competition Act of 1999,[3] which provided the statutory framework for restructuring the electric industry in Maryland. Under the Act, the customer can choose to purchase power from an electric retail supplier. Historically, commercial and industrial customers have always been more active in seeking non-utility electricity supply. Residential participation in retail electric choice rose steadily until the winter of 2013-2014, when Maryland experienced the extended cold weather climate phenomenon known generally as the Polar Vortex. In the years since the Polar Vortex, the percentage of residential customers choosing to receive their electricity supply from competitive retail suppliers has fluctuated, although residential customer participation in retail electric choice appears to have fallen in recent years.

Retail electricity supplier enrollments are reported to the PSC on a monthly basis. For purposes of this report, the PSC examined the monthly number of residential customers enrolled with retail electricity suppliers from 2016 to 2020 in every utility service territory where retail electric choice has been offered. These service territories include: PE, BGE, Pepco, DPL, and SMECO. Figure 1 below displays the monthly number of residential electricity customer accounts served by retail suppliers in each service territory from January 2016 through October 2020.[4]

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[3] *See Md. Ann. Code*, Pub. Util. Art. § 7-501 et seq.

[4] Retail choice was not offered in the SMECO service territory until January 2017.

Figure 1 - Residential Electric Supplier Enrollments by Service Territory

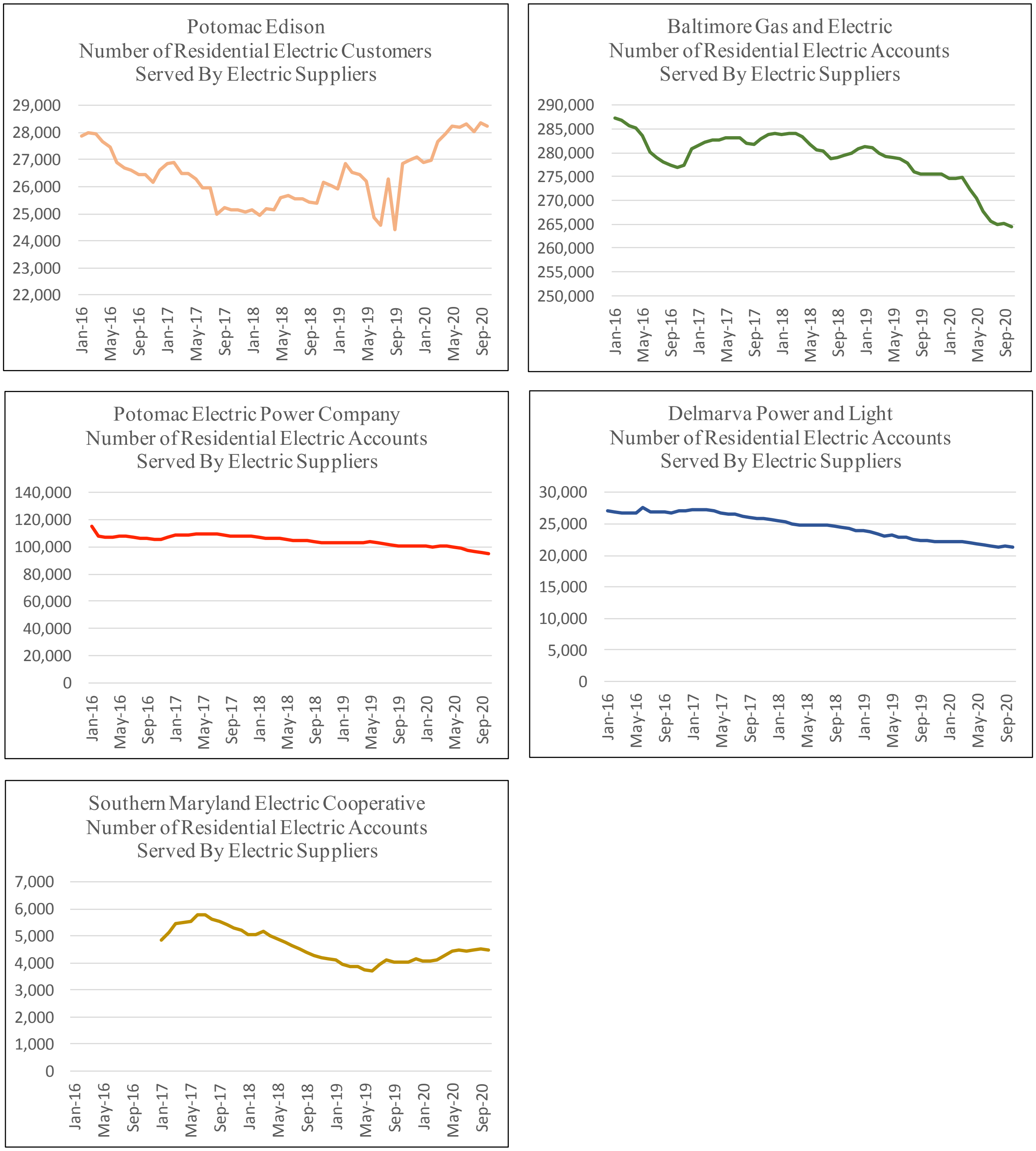
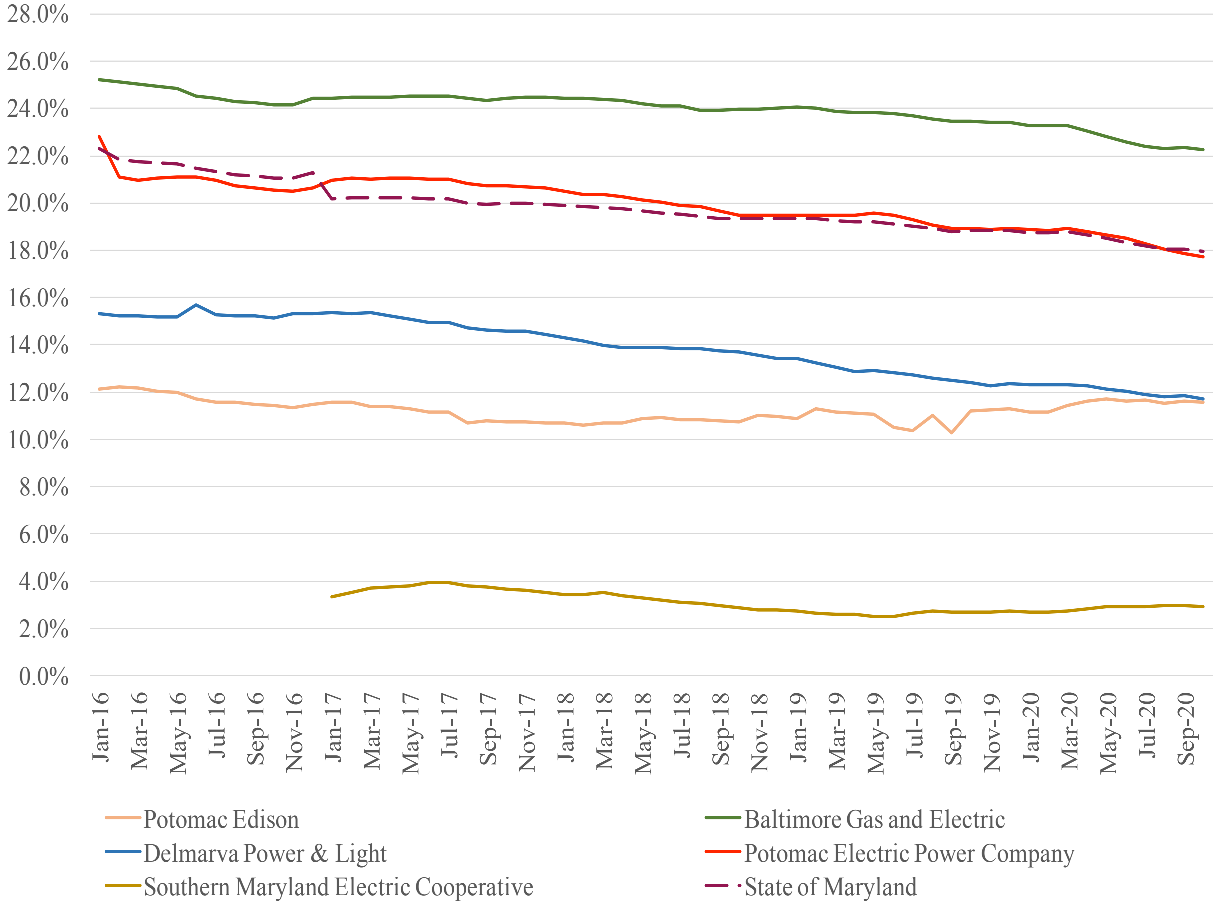


Figure 2 below presents this information as the percentage of residential electricity customers enrolled with retail suppliers for each utility over the four-year period.

Figure 2 - Percentage of Residential Electric Customers Served by Retail Supplier



As shown in Figure 2 above, the percentages of residential utility customers who chose a retail electric supplier decreased from 2016 to 2020 in every Maryland service territory. More specifically, total residential electric choice enrollment in Maryland declined from 22.31 percent (of all utility customers) in January 2016 to 18.05 percent in September 2020. While it appears that fewer residential customers elected to be served by retail electric suppliers over this period, the total number of residential customer accounts also increased in each service territory from 2016 to 2020. A comparison of these two factors—average monthly number of residential accounts served by retail electric suppliers and the average monthly number of utility residential customer accounts—in 2016 and 2020 is outlined in the table below.

Comparison of Avg. Monthly Residential Supplier Accounts and Total Avg. Monthly Residential Accounts, by Service Territory, in 2016 and 2020

Service Territory	Avg. Monthly Number of Residential Accounts Enrolled in Retail Electric Choice (2016)	Avg. Monthly Number of Residential Accounts Enrolled in Retail Electric Choice (2020)*	Avg. Monthly Number of Utility Residential Accounts (2016)	Avg. Monthly Number of Utility Residential Accounts (2020)	Percent change in Residential Accounts Enrolled in Retail Electric Choice (2016-2020)	Percent Change in Total Utility Residential Accounts (2016-2020)
PE	27,062	27,884	230,224	242,394	3.04%	5.29%
BGE	281,577	269,508	1,143,878	1,184,367	-4.29%	3.54%
DPL	26,974	21,780	176,556	180,699	-19.25%	2.35%
PEPCO	107,704	98,637	512,615	534,649	-8.42%	4.30%
SMECO**	5,432	4,346	147,207	152,324	-19.99%	3.48%
State	**443,317**	**422,155**	**2,063,273**	**2,294,433**	**-4.77%**	**11.20%**

* 2020 is the average of the months of January – October, as further data is not yet available.
** Average monthly data for SMECO begins in 2017, when retail choice commenced in the service territory.

Except for PE, the average monthly number of residential accounts enrolled in retail electric choice decreased in all other service territories from 2016 to 2020, while the utilities' total number of residential customer accounts increased. For PE, while the number of residential accounts enrolled in retail choice increased by 3.04 percent, the total number of residential accounts in the service territory increased by 5.29 percent, resulting in an overall *decrease* in the percentage of total accounts enrolled in retail choice.

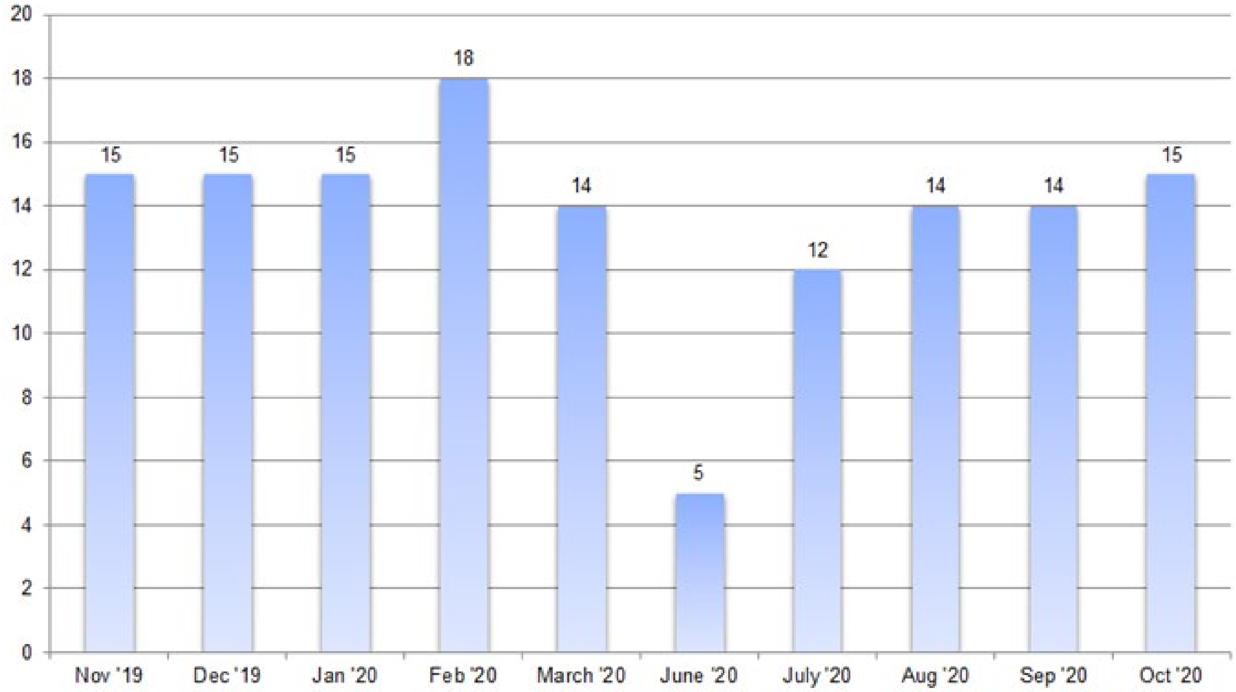
IV. Supplier Door-to-Door Sales Activity

Competitive retail energy supplier door-to-door activity falls under the Code of Maryland Regulations ("COMAR") 20.53.08.07 (electric) and COMAR 20.59.08.07 (gas). Pursuant to these regulations, any supplier engaging in door-to-door sales activity must notify the PSC "no later than the morning of the day that the activity begins." The notification must include, among other things, "the period involved and a general description of the geographical area." Beginning in November 2019, the PSC asked retail energy suppliers to report their door-to-door activities by zip code.

For the reporting period from November 2019 through October 30, 2020, 22 licensed retail suppliers reported their door-to-door sales activities by zip code. Figure 3 below summarizes the total number of suppliers reporting their door-to-door sales activities over the reporting period. No door-to-door reporting was received during the COVID-19 restricted period from March 23, 2020, through June 23, 2020. During this time, Governor Larry Hogan issued an Executive Order and interpretive guidance prohibiting all door-to-door retail sales on

March 23, 2020.[5] Thus, the month of March includes reported sales activities through March 22, 2020, and the month of June includes reported activities from June 24, 2020 onward.

Figure 3 - Total Number of Suppliers Reporting Door-to Door Sales by Month



Before the COVID-19 restricted period, the average number of suppliers reporting door-to-door sales activities was 15. After the COVID-19 restricted period, the average number of suppliers reporting decreased to 11. Notably, for August, September, and October 2020, the average number of suppliers reporting door-to-door sales activities increased to at least 14 and included two additional suppliers—Energy Harbor and Liberty Power.

Figure 4 is a map of the geographical boundaries of Maryland's zip code areas. The map shows data corresponding to reported supplier door-to-door sales activity (shades of blue and grey). The map layer containing the Maryland zip code boundaries was retrieved from the Maryland Geographic Information Systems ("GIS") website.[6] The door-to-door supplier activity data was provided by the PSC's Consumer Affairs Division ("CAD").

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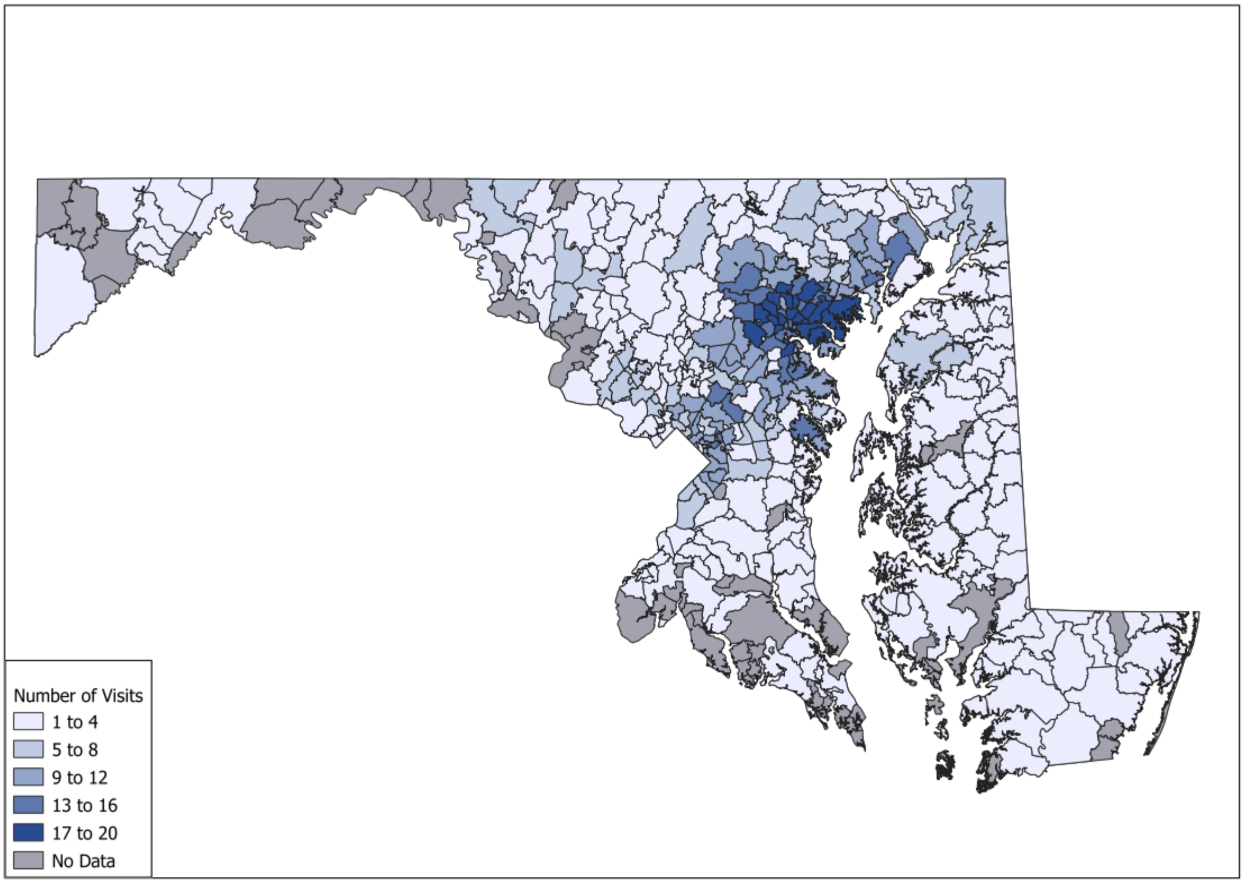
[5] Office of Governor Larry Hogan, Office of Legal Counsel, Interpretive Guidance No. COVID19-04 (Mar. 23, 2020), *available at* https://governor.maryland.gov/wp-content/uploads/2020/03/OLC-Interpretive-Guidance-COVID19-04.pdf (discussing Order of the Governor of the State of Maryland, Number 20-03-23-01, dated March 23, 2020 . . . prohibiting large gatherings and events and closing all non-essential businesses and other establishments).

[6] https://data.imap.maryland.gov/.

Figure 4 – Visual Mapping of Retail Energy Supplier Door-to-Door Sales Activity by Zip Code



* Data sourced from Maryland GIS Data Catalog, IRS Census Data, and the Consumer Affairs Division of the Maryland Public Service Commission.

As shown in the figure above, areas of Baltimore City, including overlapping zip codes within portions of Baltimore County and Anne Arundel County, saw the highest concentration of suppliers reporting door-to-door sales activities over the 12-month reporting period. For 18 Baltimore City zip codes, at least 18 different retail energy suppliers reported engaging in door-to-door sales activities at some point during the reporting period. Seven of these zip code areas—21205, 21206, 21207, 21218, 21222, 21224, and 21225—each had at least 20 retail suppliers engaged in these activities. Three Baltimore County zip codes—21204, 21220, and 21221—had 19, 18, and 20 suppliers, respectively, reporting door-to-door activities during the reporting period. Appendix A to this report includes tally of all suppliers that reported door-to-door sales activity from November 2019 through October 2020, by zip code.

Zip Codes with Highest Numbers of Suppliers Reporting Door-to-Door Activities from November 2019 Through October 2020

Zip Code	Number of Suppliers Reporting Door-to-Door Activities
21205	21
21206	21
21207	20
21209	19
21212	19
21213	18
21215	19
21216	19
21217	19
21218	20
21222	20
21223	18
21224	21
21225	20
21228	18
21234	18
21237	18
21239	19

V. Conclusion

The PSC appreciates this opportunity to provide information on energy supplier variable rate offerings and termination fees, residential customer enrollments with retail electricity suppliers, and retail energy supplier door-to-door sales activity. As a general matter, the PSC takes its enforcement and oversight of retail energy suppliers very seriously, especially with regard to marketing practices and consumer protection. Earlier this year, the PSC established a Compliance and Enforcement Unit within its Consumer Affairs Division. This new unit is dedicated to proactive oversight of utilities and retail energy suppliers to ensure compliance with Commission regulations. Last month, for example, the Commission took significant action against SunSea Energy, LLC, a retail electricity and gas supplier, directing rerates and refunds to customers after finding numerous violations of Maryland law and COMAR.

Due to the dynamic nature of supplier price offerings, the PSC Choice Websites will be updated on an ongoing basis as suppliers make new pricing information available to customers and the PSC. The PSC will continue to monitor customer enrollments with retail electricity suppliers as well as the door-to-door sales activities reported by retail energy suppliers. Customer complaint data received by the Consumer Affairs Division will continue to be posted monthly on the PSC website.

Appendix A

Door to Door Supplier Reporting Totals by Zip Code - November 2019-October 2020

Zip Code	Totals
20588	1
20601	2
20602	2
20603	2
20604	1
20606	1
20607	1
20608	1
20613	2
20616	1
20619	1
20622	1
20623	1
20634	1
20636	1
20639	1
20640	1
20646	1
20650	1
20653	1
20656	1
20658	1
20660	1
20667	1
20674	1
20676	1
20678	1
20689	2
20690	1
20695	1
20697	4
20701	3
20702	1
20703	2
20704	5
20705	9
20706	11
20707	13
20708	14
20709	3
20710	8
20711	4
20712	7
20714	3
20715	6
20716	8
20717	2
20718	2
20719	2
20720	5
20721	4
20722	4
20723	9
20724	11
20725	3
20726	3
20731	2
20732	4
20733	2
20735	3
20736	2
20737	10
20738	3
20740	6
20741	3
20742	2
20743	10
20744	5
20745	8
20746	11
20747	9
20748	8
20749	1
20750	2
20751	2
20752	2
20753	4
20754	2
20755	1
20757	2
20758	2
20759	2
20763	6
20764	4
20765	1
20767	1
20768	2
20769	3
20770	9
20771	4
20772	4
20773	2
20774	8
20775	1
20776	2
20777	3
20778	3
20779	2
20780	1
20781	11
20782	12
20783	12
20784	13
20785	12
20787	4
20788	3
20791	1
20792	3
20793	1
20794	6
20812	1
20814	1
20815	4
20816	1
20817	2
20818	1
20830	1
20832	3
20833	3
20837	1
20841	1
20847	3
20848	3
20849	3
20850	7
20851	5
20852	5
20853	3
20854	4
20855	4
20857	1
20860	2
20861	1
20862	1
20866	3
20868	1
20871	1
20872	1
20874	7
20875	4
20876	7
20877	8
20878	7
20879	8
20880	1
20882	3
20883	2
20884	6
20885	7
20886	4
20895	4
20896	1
20898	2
20899	6
20901	7
20902	10
20903	10
20904	10
20905	4
20906	6
20907	2
20908	1
20909	1
20910	8
20911	1
20912	8
20915	1
20918	1
21001	14
21005	3
21009	11
21010	6
21012	6
21013	5
21014	13
21015	12
21017	7
21018	4
21020	4
21021	1
21022	4
21023	3
21024	1
21027	3
21028	4
21029	5
21030	12
21031	5
21032	2
21034	4
21035	2
21036	2
21037	4
21040	15
21041	4
21042	11
21043	13
21044	12
21045	13
21046	10
21047	4
21048	4
21050	7
21051	6
21052	2
21053	4
21054	6
21055	2
21056	2
21057	6
21060	15
21061	16
21062	7
21065	1
21071	5
21074	4
21075	11
21076	10
21077	3
21078	12
21082	6
21084	5
21085	13
21087	6
21090	5
21092	3
21093	11
21094	4
21101	1
21102	4
21104	4
21105	2
21106	1
21108	9
21111	5
21113	12
21114	7
21117	15
21120	4
21122	12
21128	9
21130	4
21131	4
21132	4
21133	16
21134	1
21136	13
21137	1
21139	4
21140	2
21144	13
21146	5
21150	1
21152	5
21153	5
21154	3
21155	4
21156	6
21157	7
21158	4
21160	3
21161	5
21162	9
21163	3
21201	17
21202	15
21203	8
21204	19
21205	21
21206	21
21207	20
21208	17
21209	19
21210	11
21211	17
21212	19
21213	18
21214	17
21215	19
21216	19
21217	19
21218	20
21219	10
21220	18
21221	20
21222	20
21223	18
21224	21
21225	20
21226	13
21227	17
21228	18
21229	17
21230	16
21231	16
21232	1
21233	4
21234	18
21235	4
21236	16
21237	18
21238	1
21239	19
21240	3
21241	4
21242	1
21243	1
21244	15
21250	3
21251	3
21252	4
21263	2
21264	2
21270	2
21273	2
21275	1
21278	2
21279	3
21280	1
21281	3
21282	3
21284	3
21285	3
21286	15
21287	2
21289	1
21290	1
21297	1
21298	1
21401	14
21402	5
21403	12
21404	4
21405	3
21406	1
21409	4
21411	2
21502	3
21503	1
21504	1
21521	1
21524	1
21529	2
21532	3
21536	1
21539	1
21543	1
21545	1
21550	2
21560	1
21562	2
21601	3
21607	1
21610	1
21612	1
21613	4
21617	4
21619	2
21620	5
21622	1
21623	2
21624	1
21625	1
21628	1
21629	3
21631	1
21632	3
21635	1
21636	2
21638	2
21639	2
21640	2
21641	1
21643	3
21644	1
21645	1
21647	1
21648	1

Door to Door Supplier Reporting Totals by Zip Code - November 2019-October 2020

Zip Code	**Totals**
21649	2
21650	1
21651	1
21652	1
21653	1
21654	1
21655	1
21656	1
21658	3
21659	1
21660	2
21661	1
21662	1
21663	1
21664	1
21665	1
21666	2
21667	1
21668	2
21669	1
21671	1
21673	2
21677	1
21678	1
21690	2
21701	7
21702	5
21703	5
21704	4
21705	3
21706	1
21709	2
21713	1
21716	2
21723	2
21727	1
21734	1
21737	4
21738	3
21740	6
21741	3
21742	6
21743	1
21749	3
21754	1
21755	1
21757	2
21762	1
21765	1
21769	1
21770	2
21771	1
21773	1
21774	2
21776	2
21778	1
21779	1
21782	1
21783	1
21784	3
21787	3
21788	1
21791	3
21793	4
21794	3
21795	2
21797	3
21798	3
21801	2
21802	2
21803	2
21804	4
21811	1
21813	2
21814	1
21817	3
21821	1
21822	2
21826	4
21830	1
21835	1
21836	1
21837	1
21838	1
21840	1
21841	1
21842	3
21843	1
21849	1
21850	2
21851	3
21853	4
21856	1
21861	1
21862	1
21863	2
21865	1
21867	1
21871	1
21872	1
21875	1
21901	5
21902	2
21903	6
21904	4
21911	4
21912	2
21913	4
21914	2
21915	3
21916	4
21917	3
21918	2
21919	4
21920	4
21921	6
21922	4
21924	1
21930	3
Grand Total	**2314**

5. Abell Third Party Energy Report_final for web.p

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Maryland’s Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies

By Laurel Peltier and Arjun Makhijani, Ph.D.

December 2018

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The Abell Foundation
Suite 2300
111 S. Calvert Street
Baltimore, MD 21202-6174

www.abell.org
Phone: 410-547-1300
@abellfoundation

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Maryland's Dysfunctional Residential Third-Party Energy Supply Market: An Assessment Of Costs And Policies

by Laurel Peltier and Arjun Makhijani, Ph.D.

Executive Summary[1]

Maryland's Electric Customer Choice and Competition Act of 1999 opened the door to electric retail competition and allowed a variety of third-party supply companies to sell electricity supply and other services to Maryland's consumers. The regulated utilities continue to provide distribution service to all customers, and they supply service to those customers who do not want to purchase it from competitive suppliers. The idea was that a deregulated energy market would provide consumers with choices, spark competition, and "provide economic benefits to all customer classes."[2] This report examines whether retail competition has benefited residential consumers, especially low-income households. Gas retail competition also is available, subject to the same licensing and consumer protection rules that apply to electric retail competition.

For a variety of reasons, the marketplace for nonregulated suppliers was slow to grow until 2010. The impact, however, during that year was positive: Residential consumers who purchased from non-utility ("third-party") suppliers saved in total about $20 million, as compared to regulated utility supply prices. Between 2011 and 2013, consumers who switched to third-party suppliers came out about even on the whole.

But from 2014 to 2017, Maryland households have been paying tens of millions of dollars more per year in aggregate to third-party electricity suppliers—about $255 million more in all than if they had stayed with their utility's supply offer. This adverse outcome for consumers, despite a large number of suppliers, indicates that Maryland's third-party supply residential market has become dysfunctional[3]; in its current state, it is no longer fulfilling the purpose of the law—to benefit all consumer classes.

Table ES-1: Maryland residential electricity third-party supply summary 2014-2017

Year	# On third-party supply	% Supplier rate over SOS	Total overpayment compared to SOS
2014	477,000	15%	$77 million
2015	441,000	14%	$69 million
2016	418,000	11%	$50 million
2017	400,400	16%	$59 million
Total			**$255 million**

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[1] References for statements in this summary can be found in the body of the report.

[2] Maryland Electric Restructuring Act 1999, 20.

[3] We use the word "dysfunctional" in the sense that price-based competition, with transparency in the market, should in theory produce lower prices on average, but that is not the case for Maryland's residential customers.

In this report, we examine the impact of higher rates on low-income households, with a focus on Baltimore City. There are 383,000 low-income households in Maryland that are eligible for government assistance to help reduce energy bills; 20 percent live in Baltimore City alone. Statewide, in 2016, assisted households had an average income of about $14,700 and average energy bills of about $2,180—15 percent of income. Many more families live under serious financial stress.

For better insight, we collected data and interviewed clients at a Baltimore City agency that provides a variety of services to low-income Baltimoreans, including energy assistance. Most of the people we interviewed were elderly African-American women. We found the following:

- When compared to Baltimore Gas and Electric Company's (BGE) Standard Offer Service (SOS) rates, the 40 low-income account holders we interviewed paid a 51 percent premium for electricity and a 78 percent premium for natural gas.
- The 40 low-income account holders we interviewed have all applied for, and most have received, financial aid through Maryland's Office of Home Energy Programs (OHEP) to help pay their energy bills. We estimated that over half of the low-income clients who visited the Baltimore City agency for energy assistance in May and June were on third-party supply, more than double the statewide average.
- For a sample of nine energy-assistance clients, we analyzed monthly bill-level data, which revealed that 34 percent of energy-assistance money was negated by higher prices of third-party suppliers.

Since 2009, Public Service Commission (PSC) regulations have allowed regulated utilities to purchase the suppliers' receivables at a very small discount, effectively shifting the risk of nonpayment of bills to the utilities—and the ratepayers—rather than the companies that charge the high prices. Yet no state agency actually collects and analyzes the impact of third-party supply rates for Maryland consumers, even though federal electricity supplier reporting is available. More remarkably, no government agency assesses the impact of higher rates on energy burdens, though the harms to low-income families caused by unaffordable utility bills are known to be severe.

The outcomes of these policies for low-income consumers are clear:

- Certain consumers face higher utility bills than the regulated utilities' SOS for electricity and gas supply.
- They are at greater risk of nonpayment of utility bills and utility service termination notices.
- There is a decreased effectiveness of limited energy assistance dollars in reducing high energy costs.
- Third-party suppliers are incentivized to charge high rates because they no longer bear the risk of nonpayment—a phenomenon known in economics as "moral hazard."
- The already-severe economic stresses faced by low-income families are intensified by high energy bills, thereby magnifying the damage to low-income families (e.g., ill health, homelessness, loss of productivity). Maryland also incurs substantial costs in the form of added emergency room visits, shelter for the homeless, and other economic and social losses.

The report offers the following recommendations:

1. The PSC should be required to annually collect and report actual bill-level data for consumers by zip code. These data would reveal the scope of overpayments if they continue to exist, or estimate customer savings, if any, and would verify whether they disproportionately affect low-income households as our data and analyses from other states suggest.
2. Residential customers who want third-party supply should only be served by some form of aggregated supply that would ensure lower costs. We are not recommending the end of third-party supply for the residential sector but are advocating for the end of marketing to and contracting with households for third-party supply on an individual basis with a very restricted exception of 100 percent renewable energy procurement. There are tested approaches to such aggregated contracts. For example, Ohio and Delaware have such programs that guarantee savings to low-income households.
3. A comprehensive program that uses the competitive supply market to ensure lower costs for all low-income households getting assistance should be put into place. All other households, including non-low-income households, should be allowed to opt-in to such programs, if they choose.
4. Variable rate contracts should not be permitted for residential customers.
5. Consumers should be allowed to terminate third-party energy supply contracts without early termination fees.
6. For consumers who choose third-party supply, utility bills should prominently display that the customer saved Y dollars or paid X dollars extra for that month by being on third-party supply.
7. Some marketing practices to low-income households in Baltimore appear to be similar to those condemned by the PSC in 2014. We strongly recommend that the PSC initiate a broad and thorough investigation into marketing practices affecting low-income households and also more actively enforce current regulations.

Unlike many issues facing the state, improving consumer outcomes quickly and effectively seems a realistic goal. Maryland has many good models to study and consider, and we offer a list of common-sense reforms to dramatically improve a marketplace that is currently not functioning to the benefit of Maryland households, especially low-income residents.

Introduction

The utility bill is an essential part of everyday life. When these monthly statements arrive, most people look at the amount due and pay it, rarely glancing at the details. All too often, however, low-income households cannot afford all the bills that are due. Those who fall behind on payment of utility bills can build up a large balance due and thus risk termination of electricity or natural gas supply. They may also be unable to pay for other essentials, like food, medicine, and rent. High residential utility costs can cause a large variety of serious harms to people and also damage the state's economy in the form of lower productivity, loss of time at school and work, and higher medical costs.

In this report, we examine the impact that Maryland's Electric Customer Choice and Competition Act of 1999 (Energy Choice Act) has had on residential electricity and natural gas costs, with a special focus on low-income households. Like other states, Maryland's legislature assumed that increased energy supply competition would lower costs and benefit the economy and people of the state. To examine the results for Maryland's households, we begin with a few basics about the electricity deregulation law.

Electric and gas utilities are subject to extensive regulation of their rates and services by federal and state agencies due to their monopolistic nature. Prior to deregulation, the generation, transmission, and distribution of electricity by Maryland utilities were regulated to ensure safety and reliability, and to prevent excessive profits. Deregulation required Maryland utilities to transfer or sell their generating facilities, and allowed many non-utility supply companies, including those that own generating facilities, to use the utilities' transmission and distribution wires to deliver electricity. The utilities remained under regulation. Electricity supply can be purchased by both competitive suppliers and utilities in the interstate wholesale market administered by a regional transmission operator (RTO) (known as "PJM" in the mid-Atlantic region)[4] to ensure reliability and a level playing field for all wholesale suppliers.

In Maryland, the Public Service Commission (PSC) is the state agency that regulates all electric and gas utilities; the regulation extends to transmission and distribution services, as well as the provision of electricity or gas supply to customers who do not use energy suppliers. The regulated utilities include the larger investor-owned utilities, as well as electric cooperatives and municipal utilities. The Office of People's Counsel (OPC) is an independent state agency that represents Maryland's residential consumers in electricity, natural gas, telecommunications, private water, and certain transportation matters before the PSC, federal regulatory agencies, and the courts.[5]

The regulated utilities acquire electricity and natural gas supply under the purview of the PSC to ensure reasonable prices and reliable supply. Electric utility supply is called "Standard Offer Service." Natural gas utility supply is referred to as "gas commodity service." But Maryland consumers can also choose a different energy supplier—referred to as "third-party suppliers" in this report. The electricity and gas are still brought to consumers' homes and businesses via the same distribution wires and pipes owned by the utilities.

In contrast to Standard Offer Service rates, third-party suppliers' prices are not regulated by the PSC; however, third-party suppliers must be licensed by the PSC before they can sell energy in the state and must agree to comply with extensive consumer protection requirements. It is these unregulated, different prices that can raise or lower consumers' bills compared to the option of just sticking with the prices overseen by the PSC.

This report focuses on two questions:

1. Have residential consumers, in general, benefited from the opening up of the market to third-party suppliers?
2. Within that assessment, have low-income households, specifically, benefited?

We excluded commercial consumers from this analysis because the available data indicate that competition has, on the whole, benefited this sector in the form of lower prices.[6]

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[4] PJM initially stood for Pennsylvania, Jersey, and Maryland. The PJM grid now covers parts or all of many eastern states, with the westernmost point being Chicago, Illinois.

[5] http://opc.maryland.gov/

[6] We examined commercial third-party electricity supply briefly to determine whether this sector also experienced higher Standard Offer Service rates. The data show that, in the aggregate, commercial customers on third-party supply save money. However, it also appears that small commercial customers pay more, on average. While we have not examined this issue in detail, there may be a need to protect small commercial customers as well as residential customers from higher prices.

Third-Party Supply Data

Three of Maryland's four privately owned distribution utilities are owned by the Exelon Corporation: Baltimore Gas & Electric (BGE), Potomac Electric Power Company (PEPCO), and Delmarva Power & Light. These three utilities serve about 83 percent of the state's electricity customers. Exelon is engaged in power generation and competitive energy sales, in addition to its ownership of utilities in several jurisdictions. A fourth utility, Potomac Edison, is owned by First Energy and serves Western Maryland. A fifth, SMECO, is a customer-owned electric cooperative in Southern Maryland, along the western shore of the Chesapeake Bay. Maryland also has seven other small cooperatives and municipal utilities. Washington Gas provides natural gas for the territories of PEPCO and SMECO. There are also several other companies, like Columbia Gas, that provide natural gas to Maryland customers.

Both regulated utilities and third-party suppliers acquire electricity and natural gas through interstate wholesale electricity and gas markets. It is the same energy; only the regulatory circumstances are different. About 20 percent of Maryland homes have switched their electricity to one of the 60 or so third-party suppliers that sell to Maryland households (see Table 1).[7] Similarly, about 20 percent of households with natural gas have switched to a third-party gas supplier.

Table 1: Electricity third-party supplier participation

	Number of households on electricity supply by Utility	Percent of households on electricity supply by Utility	Number of households on third-party electricity supply	Percent of households on third-party electricity supply
BGE	1,163,650	52%	281,697	24%
PEPCO	524,495	23%	105,694	20%
Potomac Edison	235,169	10%	25,580	11%
Delmarva	178,278	8%	24,737	14%
SMECO	148,685	7%	4,906	3%
Total for five utilities	2,250,277	100%	442,614	20%

Source: May 2018 PSC Monthly Reports.

Note 1: All customers on third-party supply include those who subscribe to suppliers that only sell renewable energy plans. In the rest of this report, we do not include these "green" energy suppliers in estimating higher costs because their customers pay more for the specific type of energy they want.

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[7] OPC list 2018.

Table 2: Natural gas third-party supplier participation

	Number of natural gas households by Utility	Percent of households served by Utility	Number of households on third-party natural gas supply	Percent of Utility's households on third-party supply
BGE	630,714	58%	136,021	22%
Washington Gas	449,021	42%	90,686	20%
Total	1,079,735	100%	226,707	21%

Source: May 2018 PSC Monthly Reports.

Note 1: Data for third-party supply for several smaller natural gas utilities are not available.
The total households and percentages here are only for the two utilities shown.

For the 80 percent of households that choose not to buy their home's energy from a third-party supplier, their local utility is automatically assigned as their residence's default electricity and/or gas supplier; this is known as Standard Offer Service.

Electricity usage is measured in units called kilowatt-hours (kWh). Standard Offer Service prices are based on a PSC-approved bid solicitation process that requires the utilities to secure two-year contracts on a staggered basis; each spring and fall, they bid to acquire a portion (25 percent) of their full needs. The bid results are reviewed and approved by the PSC, and are reflected in tariff rates. Natural gas usage is measured in units called therms; natural gas prices change monthly or quarterly, subject to prudency reviews.

Most Maryland households, including those that have switched from utility Standard Offer Service to third-party energy supply, receive one monthly utility bill. But their electricity (and when applicable, natural gas) supply portion of the bill represents the charges by the third-party supplier based on that supplier's price rather than the Standard Offer Service rate.

Figure 1 (next page) is an actual bill from a low-income BGE account holder who switched to a third-party supplier. The section labeled "distribution" is common to all BGE bills and represents getting energy to homes (poles, power lines, service, and billing). The "supply" section is the amount owed to the third-party supplier for the amount of electricity the home used during that invoice cycle.

During January 2018, this customer's electricity supply rate of $0.1559 per kWh was *90 percent more than BGE's Standard Offer Service rate* of $0.08218 per kWh. The higher third-party supply rate added an extra $16.88 to this customer's bill, even though monthly electricity usage was relatively low—229 kWh compared to an average monthly 800 kWh typical of a BGE residence that heats with natural gas.

Figure 1: Low-income household’s BGE invoice for third-party electricity supply

Electric details

ANNUAL ELECTRIC USAGE

2017												2018
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN
0	0	0	308	208	400	440	367	338	290	229	233	229

avg temp 0°not available

avg temp 30°

Residential - Schedule R
Billing Period: Dec 15, 2017 - Jan 18, 2018 Days Billed: 34
Next Scheduled Reading: February 15, 2018

Meter #G160284027 Read on Jan 18

Current Reading 5444 - Previous Reading 5215 = 229 kWh used

ELECTRIC SUPPLY				**$35.70**
[redacted] INC				35.70
BGE ELECTRIC DELIVERY				**$18.33**
Customer Charge				7.90
EmPower MD Chg	229 kWh	x	.0071	1.63
Distribution Chg	229 kWh	x	.03808	8.72
ERI Initiative Chg	229 kWh	x	.00035	0.08
TAXES & FEES				**$1.15**
MD Universal Svc Prog				0.36
Envir Srchg	229 kWh	x	.00015	0.03
Franchise Tax	229 kWh	x	.00062	0.14
Local Tax	229 kWh	x	.002695	0.62
TOTAL				**$55.18**

BGE SUPPLY PRICE COMPARISON INFORMATION

BGE Supply Price Comparison Information: The current price for Standard Offer Service (SOS) electricity is 8.218 cents/kWh, effective through May 31, 2018. SOS electricity will cost 7.701 cents/kWh beginning June 1, 2018 through September 30, 2018. The weighted average price of SOS electricity will be 8.026 cents/kWh through September 30, 2018. The price for SOS from October 1, 2018 through May 31, 2019 will be set in May 2018.

BGE home used 229 kilowatt hours (kWh) electricity in January 2018.

SUPPLY

From 'Electric Supplier Charges' box on Page 3. 229 kWh used multiplied by $0.1559 supply rate.

DISTRIBUTION

Costs by BGE of getting electricity to home, billing, fees and taxes.

BGE SUPPLY RATE TO COMPARE

Standard Offer Service (SOS) electricity was $0.08218 / kWh through May 2018.

Found on Page 3 of BGE bill is Electric Supplier Charges box. Supplier sends this information to BGE to be printed on customer's bill.

Electric Supplier Charges
[redacted]

Billing Period: Dec 15, 2017 - Jan 18, 2018

Energy Charges 229 229 KH x 0.1559	35.70
Total Electric Supplier	**$35.70**

All inquiries on above supplier billing should be directed to [redacted] at [redacted]

Third-Party Supplier View

The third-party suppliers' association, known as RESA, claims that suppliers offer a variety of benefits to consumers. Based on these benefits outlined below, RESA argues that third-party supply rates are not comparable to Standard Offer Service prices:

- Fixed rates over a year or more can insulate the customer from price changes in the Standard Offer Service, which are adjusted twice a year under PSC supervision.
- Customers may choose a "smart thermostat" as an incentive for signing up, allowing them to conserve energy, reduce usage, and lower bills despite a higher rate.
- Retail suppliers provide other benefits like grocery discounts or cash gift cards.
- Some retail suppliers offer renewable energy as part or all of their supply.[8]

We agree that in the case of renewable energy, the principal product, electricity, has attributes that are different. We have, therefore, excluded renewable energy third-party suppliers from our estimates of excess costs.

However, RESA's remaining arguments are not valid on the whole. For instance, Standard Offer Service rates can go down as well as up; in fact, in recent years, they have been declining. Further, many consumers on third-party supply are on variable—not fixed—rates. And finally, the cost of all incentives, such as thermostats or cash incentives, must be recovered by charges that consumers pay. These generally fall into three categories—the supply charge, a monthly fee (in some cases), and in many cases, a termination fee if the customer wants to exit a contract before its expiry. These can be as high as $100 or more. This is a stiff deterrent to choosing another supplier or reverting to Standard Offer Service, especially for low-income consumers when they realize they are paying more for third-party supply.

Growth of Maryland's Third-Party Energy Supplier Market

By 2008, eight years after the Electric Choice Act, only 3 percent of Maryland households had waded into the energy choice pool.[9] That changed in late 2008, however, when the PSC finalized the Purchase of Receivables (POR) rule, which made the market more attractive for third-party suppliers.[10] Before that time, third-party charges were part of utility bills. So if all or part of the bill was unpaid, utilities could transfer past-due amounts back to the supplier, who then bore the cost of collecting the arrears (or not).

Two significant changes came about when POR went into full effect in 2010. Under the rule, Maryland's utilities are allowed to buy the amount owed by customers from the suppliers, unless the utilities want to prorate the revenues received.[11] Third-party suppliers are paid whether or not their customers pay their utility bills. For customers who do not pay, Maryland utility ratepayers have to make up for the arrears because regulated utilities are guaranteed a rate of return on investment.

The impact of the regulation can be clearly seen in Figure 2 (next page) with the rise of third-party residential contracts since the POR rule went into effect.

Third-party suppliers are required to pay something for this POR service. Specifically, under the rule, utilities pay a slightly lower

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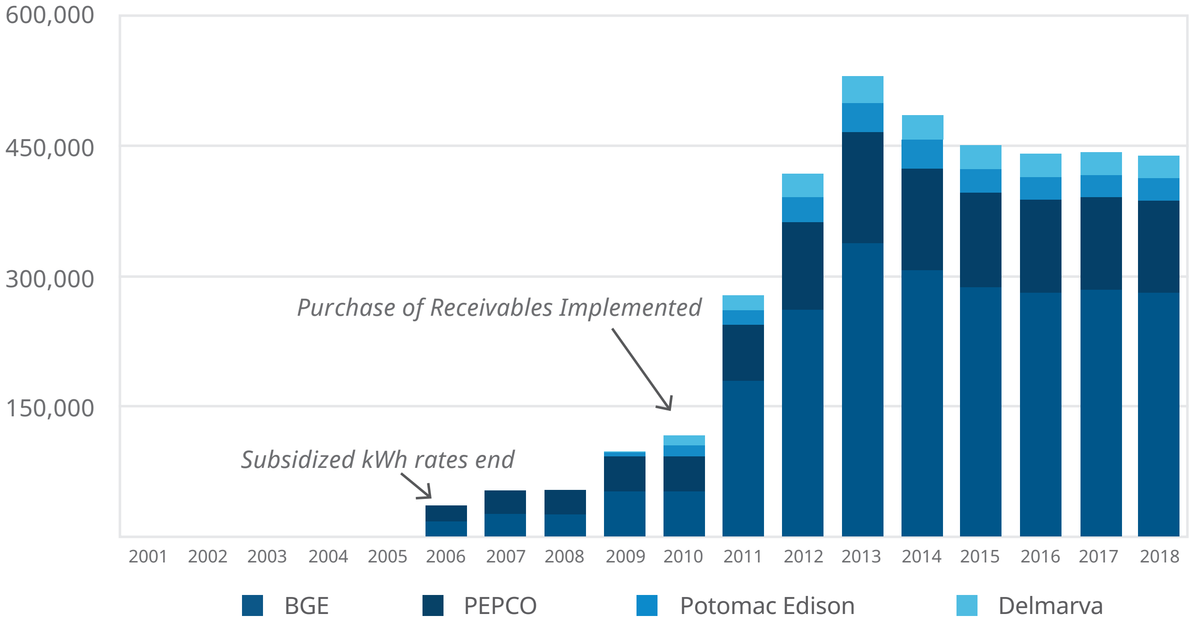
[8] We note that in most cases, "green energy" options do not involve purchases of renewable energy but electric certificates (RECs) representing that energy; the energy itself is sold to other parties. In some cases, RECs are purchased from renewable energy generators in states like Texas and Iowa, where renewable generation greatly exceeds any mandates. Such RECs are typically very cheap relative to premiums paid for renewable energy. In some cases, suppliers do actually purchase the renewable energy.

[9] PSC Monthly Reports. Reports for each year, including 2008, can be found in these monthly reports.

[10] PSC Rule Making # 17. COMAR 20.53.05.06. See COMAR various articles in the reference list.

[11] RESA Glossary.

Figure 2: Maryland households on third-party electricity supply



Source: Public Service Commission Electric Choice: Monthly Enrollment Reports

amount (a "discounted" rate) than the amount due because some bills will be uncollectible. But this "discount" does not take into account the higher risk of default when third-party rates are higher, which they are on average for residential customers. This discounting based on Standard Offer Service insulates third-party suppliers from the effects of uncollected bills that are due to higher prices, as they have been since 2014. In other words, third-party suppliers can charge much higher rates and increase the risk of default without any penalty for the risky practice.

The economic term for such a policy is "moral hazard"—a situation in which one party is freed up to take risks, while another party bears the consequences. **Purchase of Receivables freed third-party suppliers to increase prices to levels that created a greater likelihood of nonpayment of a bill, while reaping guaranteed payment of invoices and transferring the risk of nonpayment to ratepayers** (via the regulated utilities). POR also expanded the marketplace because credit history and inability to pay high bills are no longer relevant risks for third-party suppliers. It is noteworthy that, during the rulemaking process, BGE stressed that the Purchase of Receivables approach would be costly for ratepayers because it would shift cost and risk to them from third-party suppliers.[12]

Maryland's Electricity Choice Pricing Outcomes

Has third-party supply brought benefits to Maryland's residential electricity and gas customers?

Until November 2018, there was no official answer to this rather straightforward and important question. In that month, however, a report commissioned by the Office of People's Counsel concluded that Maryland's residential electricity customers on third-party supply were losing about $34.1 million per year on electricity costs and $20.7 million per year on natural gas costs relative to the costs of Standard Offer Service. To make

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[12] BGE 2009

these estimates, the study relied on published and fixed rates, rather than actual prices from state databases, assuming they were constant.[13] The published prices reflect the initial rate that the consumer would pay at the time of signing up for third-party supply. Yet we know that many third-party suppliers charge variable rates — and that those rates go up after an initial period, such as three months. Fixed rates can be and are adjusted upward after the period of the initial contract expires. Thus, the average actual rate paid over time tends to be higher than published rates.

We found only one reference to Maryland residential results based on actual prices billed. SMECO ran aggregated 2017 billing data and found that its 5,301 electric third-party customers paid $1.9 million over SMECO's Standard Offer Service prices. This amounted to an extra $358 per household that chose a third-party supplier for electricity.[14]

We estimated overpayments based on data that all electricity providers must report to the federal government. These data allow us to estimate the actual annual average prices that consumers paid for both regulated utility and third-party suppliers.

We found that Maryland homeowners on third-party electricity supply:

- Saved about $20 million in 2010 as compared to their utility's offer;
- Came out about even in 2011, 2012, and 2013; and
- **Overpaid about $255 million from 2014 to 2017, ranging from a high of $77 million in 2014 to a low of $50 million in 2016. The overpayment amount was about $59 million in 2017.**[15]

Table 3 (next page) takes a closer look at how many customers, sorted by average supplier overpayment to Standard Offer Service, paid higher and lower rates than SOS. Only about 3 percent of the 387,000 households, on average, came out ahead in 2017. The other 97 percent of households on third-party supply—17 percent of all Maryland households—paid an average of about $154 more for third-party supply as compared to their utility's Standard Offer Service rates. In the worst case, a third-party supplier charged about 5,000 households an average rate that was 76 percent more than the Standard Offer Service rate.

Electric choice outcomes for low-income households in Baltimore City

In this section, we focus on the impact of third-party supply on low-income households. We interviewed 40 people and, with their permission, collected current BGE utility bills at a Baltimore City assistance center known as GEDCO CARES,[16] which also serves as a Fuel Fund of Maryland satellite energy assistance center.[17]

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[13] Office of People's Counsel 2018, vi.

[14] SMECO 2018, 1.

[15] These are approximate estimates. We used the Energy Information Administration Form 861's "Sales_Ult_Cust-XXXX" spreadsheet to compute the actual annual average rate for each third-party supplier; XXXX stands for the year for which data are provided. The EIA 861 spreadsheet is segmented by residential, commercial, industrial, and transportation sectors. To calculate the statewide Standard Offer Service rate and compare the third-party actual rates, we combined data from two publicly available sources. State data for the number of customers on third-party supply by utility are available at PSC Monthly Reports on the Public Service Commission's website. To calculate the statewide weighted average Standard Offer Service rates for each utility, we pulled monthly utility Standard Offer Service rates as reported by the Office of People's Counsel at OPC Price Comparison. Using these data, we were able to derive a weighted average Standard Offer Service rate by month and by utility served. We used a monthly kilowatt-hour usage figure reported by BGE to calculate a yearly weighted average by utility price. We excluded third-party suppliers that sell only 100 percent renewable products (i.e., CleanChoice, Clearview, Inspire, and Green Mountain Energy).

[16] GEDCO CARES provides emergency financial assistance, including energy assistance. It is a program of the parent organization, GEDCO, which provides affordable housing for seniors and formerly homeless men and women. https://gedco.org/what-we-do/community-services/cares/. CARES services Baltimore City zip codes: 21210, 21212, 21218, and 21239 from the city line to 33rd Street.

[17] The Fuel Fund provides resources to vulnerable Maryland families for heat and home utility needs. https://www.fuelfund-maryland.org/about

Table 3: 2017 Residential third-party supply customers sorted by average supplier overpayment premium to SOS

Rate differences from Standard Offer Service (SOS) (Note 1)	Number of homes on third-party supply (rounded)	Percent of third-party customers in category	Average overpayment or savings per customer
30%+ to 76% above SOS	96,000	24%	$365
20%+ to 30% above SOS	50,000	13%	$235
0 to 20% above SOS	241,000	60%	$53
Total accounts on average above SOS	**387,000**	**97%**	**$154**
Accounts on average less than SOS	13,000	3%	-$58
Total on third-party supply	**400,000**	**100%**	**$147**

Note 1: The rate differences are averages, with one percentage representing the average for all customers served by a supplier. Individual customers for each supplier could have rates different than that reflected by the average.

While our CARES interviews do not constitute a statistically random sample, the findings match the negative outcomes reported in other states (notably Massachusetts[18]) and mirror the aggregate federal data cited above. All CARES clients have applied to Maryland's Office of Home Energy Program (OHEP) for energy assistance.

Most of the CARES clients we interviewed were elderly, African-American, and very low-income. Very few had access to a computer, email, or the internet. We were able to determine answers to the following key questions:

- What portion of CARES clients appeared to be enrolled with third-party suppliers?
- What were pricing outcomes compared to BGE's Standard Offer Service rates?
- Were any government energy assistance funds going to suppliers as a result of higher third-party supplier prices?

To determine what portion of CARES clients were enrolled with a third-party supplier, we compiled the yearly energy usage for 127 CARES client who visited the energy assistance

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[18] Massachusetts Attorney General 2018, pp. 13-18

By the Numbers

Cares clients interviewed: 40

- Average percent electricity rate premium to BGE: 51
- Average percent natural gas rate premium to BGE: 78

May & June clients assisted at CARES: 127

- Estimated percent on third-party electricity: 55
- Percent MD homes on third-party electricity: 20

BGE "deep dive" supplier analyses: 9

- Average overpayment to supplier: $479
- Average energy assistance payments*: $1,421
- Percent assistance to third-party overpayment: 34

*MD energy assistance can be: Taxpayer/ratepayer-funded OHEP bill assistance & MEAP arrearages, donor-funded Fuel Fund Payments, and ratepayer BGE/Fuel Fund matching credits

center in May and June 2018. We were able to determine, through BGE data, whether the account was enrolled with a third-party electricity supplier. The majority—55 percent—of these CARES clients were enrolled with third-party suppliers at the time they visited CARES to seek utility bill assistance. Maryland's statewide average is 20 percent.

Aggregating BGE billing data for the 40 low-income clients revealed that these households' rates were on average 51 percent higher for electricity and 78 percent higher for natural gas as compared to BGE's Standard Offer Service rates.[19]

To determine what portion of taxpayer and ratepayer-funded energy assistance is captured by third-party suppliers due to higher prices, we were able to take a "deep dive" into nine CARES clients' BGE monthly bills. With their permission, we analyzed their BGE accounts for the duration of their enrollment with a third-party supplier.[20] We also collected the actual energy assistance funds received by these clients.

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[19] These data, including the average overpayment per households in the box below, are only for the months we looked at and are not annual numbers.

[20] Source: bge.com. This website posts account invoice history for a maximum of 24 months. It appears a few CARES clients were enrolled with suppliers longer than 24 months, but we did not have access to those prior invoices. The range of recorded duration of third-party enrollment for the 24-month period for the nine CARES clients was between five and 24 months.

Table 4: "Deep dive" into nine low-income residential accounts on third-party supply

Client	Months on third-party supply	Supply cost if customer paid SOS	Actual supplier bill	% Supplier Rate Over SOS	Added third-party payment	Total Energy Assistance*	% Energy Assistance paid to Supplier Overpayment
1	24	$2,603	$3,433	32%	$830	$2,902	29%
2	5	$295	$528	79%	$233	$340	69%
3	24	$1,118	$1,677	50%	$559	$1,126	50%
4	24	$1,959	$2,527	29%	$568	$1,853	31%
5	17	$1,103	$1,445	31%	$342	$1,300	26%
6	10	$968	$1,597	65%	$629	$2,147	29%
7	8	$663	$842	27%	$179	$659	27%
8	22	$1,877	$2,534	35%	$657	$1,064	62%
9	20	$1,361	$1,674	23%	$313	$1,403	22%
	17 mo. avg.	**$11,947**	**$16,257**	**36%**	**$4,310**	**$12,794**	**34%**
				per person >	$479	$1,422	

*Note: Bill assistance requires annual applications. Assistance for clearing arrearages can be obtained once every seven years, though exceptions can be made. Often families do not apply every year or come in to CARES when they are in arrears and threatened with a cutoff notice. We have calculated the percent of assistance that goes to third-party supply as a fraction of third-party excess payment to assistance. The results in this column are approximate and indicative rather than definitive.

Table 4 (above) illustrates that low-income households in energy crisis can tap into multiple energy assistance sources.[21] **On average, about one-third of the total energy assistance went into the coffers of third-party suppliers, instead of lowering bills.** In each case, the account holder had no idea that choosing a third-party supplier had a negative impact on their utility bill. Several had turn-off notices.

The CARES data also show that the third-party natural gas rate was $0.79 per therm—78 percent above the average BGE gas rate. As a result, the average CARES client that we interviewed on third-party natural gas supply would pay $329 more per year due to the higher third-party natural gas price based on average usage of 997 therms.

The average assistance provided by OHEP in FY 2017 to households using electricity heat was $959; it was $1,081 for households using natural gas heat.[22] Both values are statewide averages; we do not have Baltimore-specific numbers. We note that both OHEP figures are below the average assistance of $1,178 received by the nine “deep dive” customers from all sources. These indicative data raise the urgent question: **What is the fraction of assistance intended to lower bills of low-income households going to third-party suppliers in the form of higher rates?**

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[21] The assistance sources include the Electric Universal Supply Program, Maryland Energy Assistance Program, the assistance provided by the private non-profits like the Fuel Fund of Maryland, and the matching assistance provided by BGE.

[22] OHEP 2018, Table 9.

Information issues

According to OHEP, the average Maryland family that received energy assistance in 2016 earned just $14,707. Its average utility bill was $2,178, about 15 percent of income. For Maryland, the average utility bill percent of income is between 3 and 4 percent. With finances tight, low-income families looking to shave their budgets may be vulnerable to sales pitches and incentives that appear attractive in the short term but may turn out to be costly over time. Marketing tactics may explain why low-income households appear to enroll with third-party suppliers at higher rates.

We identified four problem areas:

i. **Lack of accurate information and effective price-comparison tools**: Third-party suppliers do not use mass media advertising as a principal tool for marketing to low-income consumers. No one who we interviewed knew what BGE's energy rates were or where to find them. Every CARES client we interviewed assumed they were saving money by switching to a third-party supplier.

ii. **Lack of internet access**: There is some rate information on official websites (PSC, OPC), but very few of the low-income people we interviewed had access to the internet. This is an example of how the digital divide exacerbates poverty. For consumers with internet access, the PSC's official electricity supplier shopping web site is difficult to read and sometimes lists inaccurate pricing. Published information is also incomplete in that it does not inform the consumer of the maximum possible rate or even of the fact there is no actual upper limit to the rate in case of variable rate contracts.

iii. **Complex utility bills**: On the whole, interviewees had little understanding about how to read their BGE bills. This problem is not confined to low-income households. We have also found cases where households with relatively high incomes are paying more—sometimes much more—for electricity but are unaware of this fact. Many weren't even sure if they had switched to a third-party supplier and needed to be shown where to find that information on their BGE invoice.[23]

iv. **Complex pricing plan**s: When consumers enroll with third-party suppliers, they enter into formal business contracts. The pricing plan is a big component of the contract terms and conditions along with early cancellation fees, monthly fees, contract length, and contract renewal terms. Termination fees can be as high as $150. Our interviews indicate that most CARES clients did not understand their supplier contract. There are variable rate plans, in which rates can increase from month to month after an initial promotional period. In principle, the new rate must be made available 12 days before the change, but this requires the consumer to know how to access the information and to check it each month. Rates can increase up to 30 percent per month without explicit notice to the consumer. There are fixed rate plans that automatically become variable rate after the initial contract term ends, unless the consumer takes action to prevent that.

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23 Southwell et al. 2012. Researchers looked at energy literacy in the United States with participants in all income and educational groups (~10 percent had less than a high school education, and one-third had a bachelor's degree or higher). An online survey was used, so unlike the low-income sample in this report, all participants had internet access. In regard to energy bills, the study found that only 27 percent of respondents could correctly answer all three questions; 19 percent could not answer any question. See Table 4 and pages 8-10.

Unfortunately, even after energy assistance is factored in, energy burdens still remain high for most households. On average, energy burdens were almost 15 percent in FY 2018 before assistance and over 10 percent after assistance provided by the Office of Home Energy Programs.

Direct sales agents in low-income neighborhoods

In Baltimore City, especially in urban neighborhoods with dense housing, third-party suppliers often use door-to-door sales tactics. Direct sales agents canvas neighborhoods repeatedly, and sometimes offer gift cards, rebate checks, bill credits, and other incentives to encourage enrollments. Supplier direct sales agents are usually employed by separate marketing companies, and do not work directly for energy suppliers. Agents are usually paid on a sales-per-head, commission-only basis.

Every CARES client who we interviewed self-reported they had enrolled with a third-party supplier through a direct sales agent at their door or in their neighborhood. A pervasive complaint was that too many aggressive energy direct sales agents knocked on their doors at night.

The majority of clients we interviewed self-reported that the direct sales agent offered a gift card that was promised to come in the mail after enrollment, yet the incentive never came. One CARES client did report receiving rebates in the mail that totaled $12 for the year.

In Baltimore, third-party suppliers also market in places frequented by low-income citizens accessing government assistance. Direct sales agents sell energy at the steps to Baltimore City's Social Services office on North Avenue, the Housing office on Pratt Street, and the OHEP office on York Road. Suppliers can often be found marketing at the city's larger MTA bus transfer stations and even next to soup kitchens.

For two days in November 2017, a third-party supplier set up shop across the alley from Paul's Place Outreach Center, which offers services and programs to low-income individuals and families in South Baltimore's Washington Village and Pigtown communities. [24] Ironically, the supplier was offering significant BGE bill credits the same day that the Fuel Fund was hosting its Watt Watcher energy efficiency classes.[25] Offering rebates at locations where there are large numbers of low-income people seeking assistance is problematic because it creates a situation where short-term interests may dominate, even if there are negative long-term consequences. This is precisely the result we observed in the energy data we reviewed. We also received some complaints that, again, the promised incentives never materialized.

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[24] https://paulsplaceoutreach.org/about-us/

[25] Laurel Peltier personal communication and email with Paul's Place Day Programs Coordinator in November 2017 and on-site visit.

The Burdens and Harms Due to Unaffordable Utility Bills[26]

Low-income households in Baltimore live under considerably greater economic stress than the state as a whole. The problem in Baltimore is especially acute because the median income there was just $42,665 in 2014, which is only 56 percent of the median income of $76,067 for the state as a whole.[27]

The term "energy burden" is defined as the fraction of a household's gross income (i.e., before taxes) that is spent on household energy bills, which include utility electricity and natural gas bills, heating fuel oil, and propane bills. They do not include expenditures on transportation fuels.

Energy burdens in Maryland average between 3 and 4 percent. They are much higher for low-income households and can be 10 to 20 percent of income. For the lowest-income households with incomes at 50 percent or less of the federal poverty level, energy burdens are higher than 30 percent of gross income.[28]

Maryland, like other states, has an energy assistance program to help low-income households reduce their energy burdens. Households with incomes of up to 175 percent of the federal poverty level are eligible to get government assistance to pay their electricity and heating bills. About 383,000 Maryland households qualify, with about 20 percent living in Baltimore City. In FY 2018, however, only about 27 percent of those who qualified actually received utility bill assistance. The vast majority do not apply, and an increasing number of those who do are being rejected. Further, the number of households assisted has been declining since 2011.[29]

Unfortunately, even after energy assistance is factored in, energy burdens still remain high for most households. On average, energy burdens were almost 15 percent in FY 2018 before assistance and over 10 percent after assistance provided by the Office of Home Energy Programs. This provides the context for considering the added harm inflicted when third-party supply results in higher bills than would be the case with Standard Offer Service.

Description of harm

Low-income Maryland households often face impossible choices that go under the rubric of "heat or eat." The range of intractable problems is much greater than the phrase implies.[30]

A 2011 national survey of households receiving heating bill assistance at least once in the previous five years found that:

- More than one-third of the households had to forgo medical/dental care and medications because of high energy bills;
- Nearly one in five had someone become ill because their homes were too cold; and
- Six percent were evicted from rental units while another 4 percent faced foreclosure, exacerbating homelessness.

Overall financial stress

Low-income families typically experience economic stresses that can increase quickly due to an unexpected illness or breakdown of a vehicle. "The Report on the Well-Being of U.S. Households in 2017" by the Board of Governors of the Federal Reserve System found that "22 percent of adults expected to forgo payment on some of their bills in the month of the survey," mainly credit card bills. For one-third of them—about 7 percent of all households—the payment conflicts were explicitly between rent or mortgage payment and utility bills. They expected that these bills would be left at least partially unpaid in the month of the survey.[31]

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[26] Unless otherwise stated, this section is based on or taken from Makhijani, Mills, and Makhijani 2015.

[27] Baltimore Facts 2017 and Maryland Facts 2018.

[28] Fisher, Sheehan & Colton 2017.

[29] OHEP Budget 2018, Exhibit 1, 6. There was a slight uptick in 2014 relative to 2013. The downward trend resumed the year after.

[30] Portions of this chapter are taken from Makhijani, Mills, and Makhijani 2015.

[31] Federal Reserve Report 2018, 22.

African-American households face such bill payment conflicts at roughly double the average rate for all households.[32] From this we may infer that about 14 percent of African-American households—about one in seven households—would have faced rent/mortgage and utility bill conflicts during the month of the survey. The greater financial stresses reported by African-Americans in the Federal Reserve survey were likely due to lower incomes and higher unemployment on average because race and income are closely correlated.

These bill payment conflicts occur even without unexpected expenses. An expected bill of $400 increases the fraction of households unable to pay all their bills from 22 percent to almost 35 percent.[33] Coincidentally, $400 is roughly the average overpayment of electricity bills faced by almost 100,000 Maryland households with the most expensive third-party supply contracts in 2017 (see Table 3 on page 11).

For Baltimore, which has a majority African-American population and a high poverty rate, we may infer that on the order of 10 percent of all households—about 24,000—face routine rent/mortgage and utility bill conflicts.[34]

Most people who lose their homes move in with friends or family. A fraction—roughly one-fourth—become homeless. Besides the costs and trauma experienced by the homeless families themselves, there are also costs to society as a whole.

Costs of shelter for homeless families vary a great deal. Data in a 2010 study by the U.S. Department of Housing and Urban Development indicate costs of housing a homeless family for one year range from about $5,000 to well over $40,000.[35]

Homelessness also increases other costs as well, notably health care costs. There is clear evidence that such costs are huge. A study of 6,494 patients in the Boston Health Care for the Homeless Program estimated added costs of $1,468 per month for one person compared to low-income people who live in their homes.[36] Combining the costs of providing shelter and added emergency care for a family of two for seven months, a typical period of homelessness, gives an estimate of $28,000.

There are many other categories of cost once people become homeless. The American Roundtable to Abolish Homelessness estimates that when all costs are taken into account, the range of costs to society of one homeless person is between $35,000 and $150,000 per year;[37] this gives an estimate of $40,000 to $170,000 for total costs per family rendered homeless for a typical period of seven months.

The data we have cited above indicate that a few thousand families in Maryland become homeless each year due to rent/mortgage and utility bill conflicts. This suggests costs on the order of $100 million to $200 million per year. A significant fraction of these costs would be in Baltimore City.

In addition, those families who move in with friends or family also cause the latter to bear added costs, the extent of which is unknown. There are two to four times as many families in this category as there are families who become homeless and need public shelter.

Even when families are able to remain stably housed, there are many health problems attributable to high energy burdens. The 2011 survey by the National Energy Assistance Directors' Association (NEADA) found that about one in eight households receiving

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[32] Federal Reserve Report 2018, Figure 13, 22.

[33] Federal Reserve Report 2018, 22.

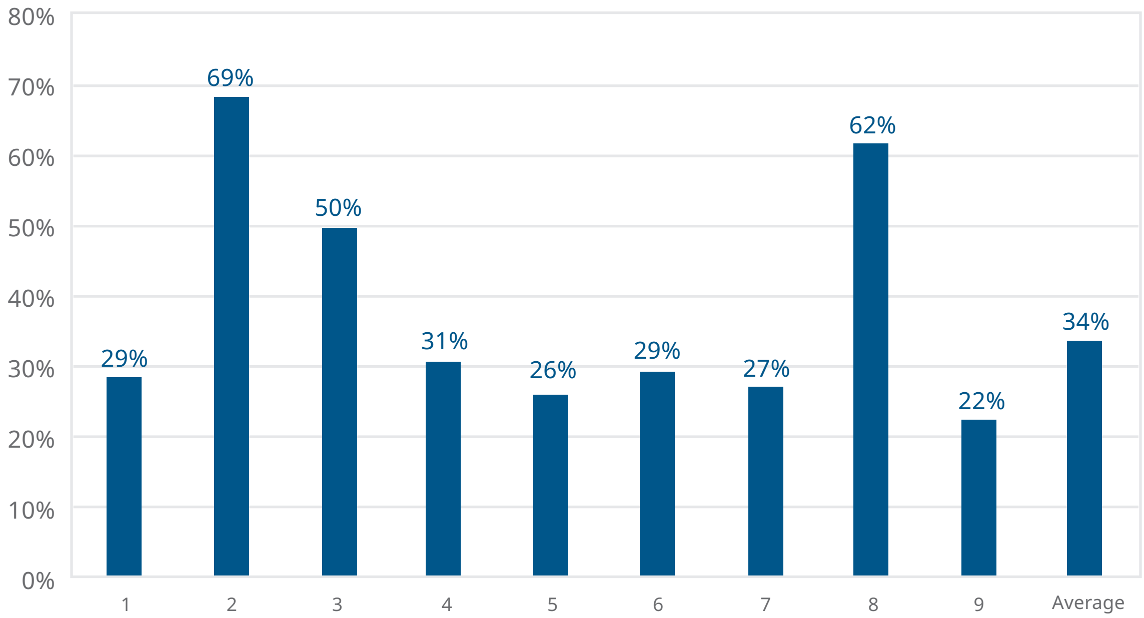
[34] 10 percent is between the 7 percent rent/mortgage and utility bill average conflict rate and the 14 percent rate for African-Americans inferred from the Federal Reserve Report 2018, 22. This rate was chosen as an order of magnitude representation of the problem because of Baltimore's demographic and poverty rate characteristics.

[35] HUD 2010, Exhibit 1, ES-4.

[36] Boston Health Care for the Homeless 2013, S314. 71 percent of the study population were men, S313.

[37] Mangano 2013, slide 18.

Figure 3: Percent of assistance to third-party overpayment



Source: BGE.com for account holders' history, OPC Electricity Retail Price Comparison by Service Area charts, and CARES.

federal heating assistance funds were still so cold that a member of the household became ill enough to have to go to the doctor or to the hospital; among households with at least one child under 18, that figure was 19 percent. In addition, 3 percent of the households also had someone who needed a doctor or hospital visit because the house was too hot.[38] These data indicate that the magnitude of the health problems associated with high energy burdens is considerably greater than the added health care costs associated with homelessness alone. Given the high percentages that face illness and medical bills, it is clear that the number of households involved number in the tens of thousands each year. Even if the added costs of emergency room visits and other assistance amount to $1,000 per year for such families, the social costs of economic stresses would run into tens of millions of dollars per year—quite apart from the costs to the families themselves.

Added economic distress due to higher third-party energy supply rates

The Baltimore data we collected from 40 energy-assistance recipients indicate that low-income households on third-party electricity supply pay 51 percent above the BGE Standard Offer Service rate for the month we checked. Third-party natural gas supply ranged between 8 percent and 210 percent more than the Standard Offer Service rate. The average increase for those on third-party supply was 78 percent more than the Standard Offer Service rate, implying an excess cost of $200 per year.

The nine cases we examined in detail showed average excess payments of more than $479 for electricity and gas. This amounts to about 3 percent of the average annual income of $14,000 of families getting electricity bill assistance in Maryland. We can infer from the Federal Reserve Report data that a significant fraction of low-income families that face such added costs would face conflicts with payment of other bills including rent or mortgage payments.

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[38] NEADA 2011, Tables IV-25A and IV-25B, 43-44.

Another way of looking at the problem is that substantial fractions of energy assistance provided by taxpayers and ratepayers for the purpose of reducing energy burdens is actually captured by third-party suppliers in the form of higher rates for electricity and, in some cases, natural gas supply. Figure 3 (previous page) shows the percentage of assistance used for higher third-party supply costs for each of the nine cases we examined in detail.

Data from Other States

Though publicly available data and media reporting is spotty across the 13 deregulated states for residential third-party results, our review and other data indicate the problem is widespread in deregulated markets. In other words, Maryland's experience of residential-sector third-party overpayments on average is not unique; rather, it appears to be typical. Consumers in several states paid third-party suppliers large sums in excess of the amounts they would have on their utility's electricity offers. The same suppliers use similar sales tactics and sell similar products with similar suboptimal results.

Other deregulated states have taken steps to reform their third-party energy marketplaces. Maine has tightened renewal and disclosure terms.[39] Connecticut publishes consumer pricing results and requires suppliers to publish historical variable rates on their websites.[40] Some deregulated states offer their residents unbiased and official online comparison tools to help households choose the best plan.[41]

In the summer of 2018, Illinois tried to reform energy choice, but the proposed law failed by a few votes. As reported, Exelon Corporation's pushback to the reform legislation was cited as a major reason for the bill's failure. Exelon stated that the reform legislation would have "substantially limited customer choice without enacting additional consumer protection requirements." Similar to Maryland, Exelon also owns the Illinois distribution utility Commonwealth Edison as well as the supplier Constellation Energy Services and Constellation New Energy.[42] Since that time, Illinois' attorney general has called for an end to third-party residential retail supply.[43]

In November 2018, the attorney general's office filed a complaint against a supplier in Cook County Circuit Court, alleging fraudulent and deceitful marketing practices that targeted low-income, mainly African-American households.[44] The lawsuit, one of several complaints filed by the office, was settled on November 19, 2018, with a statement from the attorney general that "alternative retail electric supply industry is rife with fraud and deceit."[45] The provisions include refunds to customers and a ban on the company from the Illinois retail market for two years.

In March 2018, Massachusetts' attorney general published an extensive analysis of the state's energy choice markets and concluded that low-income customers enrolled with third-party suppliers at twice the rate of non-low-income households. Unfortunately, these low-income accounts paid even higher premiums ($252 per household) than non-low-income accounts ($217 per household).

It's also worth noting that only 10 percent of low-income households in Massachusetts were saving money compared to utility offers. Only 12 percent of non-low-income accounts beat their utility Standard Offer Service rates.[46] The Massachusetts legislature's Joint Committee on Telecommunications, Utilities, and Energy had a hearing on May 8, 2018. No legislation was pending as of October 2018.[47]

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[39] Fishell 2018.

[40] Connecticut Consumer Council 2018.

[41] http://www.papowerswitch.com/

[42] Daniels 2018.

[43] Daniels 2018a.

[44] Madigan complaint 2018.

[45] Illinois attorney general 2018.

[46] Massachusetts attorney general 2018.

[47] Jen Bosco, personal email communication 2018.

Those who overpaid in 2017 (97 percent of the total who were on third-party supply) lost an average of about $154 compared to the Standard Offer Service rate.

Ohio, New York, and Pennsylvania have restricted electric choice for their low-income customers.[48] Some states have designed programs that are guaranteed to have rates lower than Standard Offer Service. Delaware offers state-sponsored low-income residential accounts to choose from on a pre-approved list of third-party supplier plans that not only guarantee savings but also mandate added consumer protections.[49] Ohio prohibits households receiving assistance from shopping for electricity individually; the state has designed a program that allows third-party supply by a utility-issued request for proposal if the rate is below the Standard Offer Service price. [50]

Current Status at the Maryland PSC

As previously discussed, those who overpaid in 2017 (97 percent of the total who were on third-party supply) lost an average of about $154 compared to the Standard Offer Service rate. The PSC does not appear to have tracked overpayments by Maryland consumers to third-party electricity suppliers; however, this information is readily deducible from the Energy Information Administration's Form 861 spreadsheet "Sales to Ultimate Customers."

Adding to the puzzle is a stark 2014 case in which the PSC found a Maryland supplier in significant and multiple violations of state law in its marketing practices:

> In this Order, the Maryland Public Service Commission (the "Commission") finds that Starion Energy PA, Inc. ("Starion") engaged in multiple practices that violate State law and Commission regulations. These violations include 122 "slamming" violations against Southern Maryland Electric Cooperative's ("SMECO") customers, thousands of violations of Maryland's Door-to-Door Sales Act, over 200 complaints by customers that Starion employed false and misleading tactics to acquire new accounts, and the failure to obtain a license to market electricity to SMECO customers or Potomac Electric Power Company's ("Pepco") commercial customers.[51]

The PSC found these actions to be intolerable and promised to be vigilant on such issues as part of the Order in Case 9324:

> To be clear, this Commission cannot and *will not tolerate* misleading or deceptive advertising or sales tactics in the retail marketplaces over which we hold jurisdiction. We have and *will continue to proactively monitor retail sales practices* and act firmly when we find that violations have occurred.[52]

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[48] Gabel 2017, iii.

[49] Gabel 2017, 3.

[50] Gabel 2017, 21-22.

[51] Maryland PSC 2014, 1. The PSC defined "slamming" in this document as "a supplier enrolling a customer without the customer's permission or re-enrolling a customer after a customer has terminated service."

[52] Maryland PSC 2014, 3 (italics added).

In the course of this work we collected testimonials from customers that included examples of door-to-door marketing in low-income areas of Baltimore and of customers who are not comfortable with the sales approaches. We have been able to do this with modest investment of time. To the extent that we can determine, the PSC does not appear to be exercising the proactive monitoring promised in 2014.

The publication in November 2018 of the Office of People's Counsel report on third-party supply has partly closed the information gap on costs of third-party supply in the residential sector. The report concluded that third-party supply of electricity and natural gas is resulting in substantial overpayments in the aggregate. The report also noted that data on how much energy bill assistance might be going to third-party suppliers in the form of higher bills is "critically needed."[53]

The Commission did consider the issue of whether data on third-party supply costs should be officially compiled at its August 14, 2018 hearing on the FY 2019 budget of the Office of Home Energy Programs (OHEP). As noted in the Office of People's Counsel report, the PSC "opened the door narrowly to obtaining more information" but did not order its acquisition. It acknowledged that the "topic merits further exploration and discussion."[54] The PSC did not say what might be done to stop the overpayments by low-income households while this "exploration and discussion" is going on, nor did it put a time limit on the exploration.

Recommendations

In an effort to estimate the approximate overall cost to residential consumers of third-party supply, we found that the true extent of the harm can be easily determined through the billing data held by the electric and gas distribution companies. Further, there are ways to report these data that protect privacy as well as suppliers' concerns about proprietary data.

Individual contracts in the residential market are often detrimental and have been so in Maryland to the tune of some $255 million between 2014 and 2017. Our recommendations should be seen in the context of what has become—from the residential consumers' point of view—a dysfunctional residential market. They should also be seen in the context of widespread evidence that the same problems exist in other states and that low-income households suffer disproportionately adverse results.

The zip code analysis of third-party supplier activity in the Massachusetts attorney general's report shows that suppliers target low-income communities. Our limited analysis of Baltimore data indicates the same thing. A thorough analysis by zip code in Maryland therefore appears to be warranted.

Third-party supply can be beneficial and, in some circumstances, it is. This is indicated by the commercial customers who use large amounts of electricity and routinely save large amounts of money by using third-party supply. They have the resources to solicit bids, sort through them, and get a good price. It is notable that even in the commercial context, EIA 861 data indicate that small business consumers often wind up paying more.[55]

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[53] OPC 2018, 7.

[54] PSC 2018, p. 6

[55] We analyzed commercial third-party data in the same manner as residential data. The suppliers whose commercial customers averaged more than 100,000 kilowatt-hours of usage per year had average rates less than Standard Offer Service rates, while those supplying customers with less than 100,000 kilowatt-hours per year had higher rates.

Individual contracts in the residential market are often detrimental and have been so in Maryland to the tune of some $255 million between 2014 and 2017.

Residential third-party supply reforms

1. Residential customers who want third-party supply should only be served by some form of aggregated supply that would ensure lower costs. We are not recommending the end of third-party supply for the residential sector but are advocating for the end of marketing to and contracting with households for third-party supply on an individual basis (except on a restricted basis for 100 percent renewable plans as described below in no. 5). There are tested approaches to such aggregated contracts. For example, Ohio and Delaware have such programs that guarantee savings to low-income households. A program that uses the competitive supply market to ensure lower costs for all low-income households getting assistance should be put into place, with non-low-income households allowed to opt-in to such programs, if they choose. One approach would be for Maryland's Office of Home Energy Programs to competitively procure the third-party supply for all low-income households getting assistance, except those who opt out. Such a program could also be open to other low-income households, or possibly all other Maryland households, on an opt-in basis.

2. Variable rate contracts should not be permitted for residential customers.

3. Consumers should be allowed to terminate third-party energy supply contracts without early termination fees.

4. Utility bills should prominently and clearly state that the customer saved Y dollars or paid X dollars extra during that month by being on third-party supply, as the case may be. The bills should also have simple instructions on how to switch back to Standard Offer Service.

5. Individual third-party supply contracts would be permitted only if customers are (1) procuring 100 percent renewable supply; (2) the contract price is fixed for the duration of the contract; (3) the contract clearly states the premium above the prevailing SOS, if any, that the consumer would pay in percentage terms and per kilowatt-hour for green energy; (4) the contract clearly states whether the renewable energy procurement consists of only the electronic certificates representing renewable energy or whether both the energy and the certificates have been procured on behalf of the customer; (5) there are no termination fees; and (6) the contract price does not increase at the end of the contract term except if the cost of renewable energy procurement has verifiably increased and the documentation is provided to the customer in writing.

Data collection and publication

1. The Public Service Commission (PSC) should be required to annually collect and report actual bill-level data for consumers by zip code level. These data would reveal the scope of overpayments if they continue to exist—or estimate customer savings, if any—and would verify whether they disproportionately affect low-income households as our data and analyses from other states suggest.

2. It is essential that the PSC require electric and natural gas utilities to provide the Office of Home Energy Programs with data of all residential customers who are on third-party supply and compensate the utilities for the effort that would entail. It is also essential for OHEP to have the resources to analyze that data, including calculating overall savings and costs for each third-party supplier relative to Standard Offer Service rates, and estimate the net total or excess costs (or savings) faced by all consumers.

3. For customers who get government energy assistance, OHEP should be required to estimate the amount of energy assistance captured by third-party suppliers due to higher rates, if any. Of course, OHEP should also publish the estimate of overall net savings, should that be the case. The PSC should be required to collect and report yearly actual bill-level data for consumers by zip code. These data would reveal the scope of the problem of overpayments and confirm whether it disproportionately affects low-income households as our data and analyses from other states suggest.

Public Service Commission action

1. Some marketing practices affecting low-income households in Baltimore appear to be disturbingly similar to those condemned by the PSC in 2014. We strongly recommend that the PSC initiate a broad and thorough investigation into marketing practices affecting low-income households and enforce the regulations currently on the books.

Conclusions

Despite the large number of third-party electricity suppliers, there is scant evidence of competition in the form of lower prices. In 2017, 97 percent of residential customers on third-party supply, about 387,000 households in all, had average rates higher than Standard Offer Service. The average overpayment was about $154. Only 3 percent—about 13,600 customers—saved money, roughly $58 per household. Between 2014 and 2017, the overall overpayments, taking into account all those who saved money and those who overpaid, totaled about $255 million.

Our brief examination of the commercial third-party supply indicates that large consumers, presumably with the ability to sort through bids and examine electricity bills, saved money on average. This indicates that aggregation of residential customers under an umbrella with a capacity to sort through bids and get lower prices could be beneficial.

We focused on low-income households in Baltimore, examining 127 of them in varying degrees of detail. This was not a random sample but rather a way of assessing the situation as it appears in one center set up to assist low-income households.

A large fraction of the assistance that low-income households get to pay their electricity bills simply goes to third-party suppliers in the form of higher prices.

The data indicate that low-income households in Baltimore enroll at much higher rates than the Maryland average, and that they typically overpay by amounts that would adversely impact their financial and housing security. A large fraction of the assistance that low-income households get to pay their electricity bills simply goes to third-party suppliers in the form of higher prices. For the nine cases we reviewed, about 34 percent of assistance from up to four different sources went to third-party suppliers. As a result, the core purpose of ratepayer and taxpayer assistance to reduce the financial stresses of high utility bills on low-income households is partially defeated in such cases.

Despite these poor results, there has been a remarkable lack of vigilance on the part of the PSC, to the point that no official agency so much as estimates the overall impact on consumers. The inaction extends to low-income households, despite clear indications that much of the money intended to help low-income households lower their energy bills goes to third-party suppliers in the form of higher prices.

Given the financial stresses faced by hundreds of thousands of Maryland households, the lack of official action to compile and analyze the data needs to be urgently remedied. Options to save low-income households money by using market mechanisms are available and are in place in some states, like Delaware and Ohio. They are even discussed in a report prepared for Maryland's PSC.[56] But no action along those lines is pending in the state.

About the Authors

Laurel Peltier is an independent journalist and publishes the environmental Greenlaurel column at Baltimore Fishbowl. Her work has been published in EcoWatch, *The Baltimore Sun* and CBS Baltimore. Her previous career as a consumer brand manager at PepsiCo and MCI were key in researching the consumer energy supplier marketplace for this report. She is a graduate of the University of Los Angeles and the Darden School of Business - University of Virginia.

Arjun Makhijani is president of the Institute for Energy and Environmental Research (IEER) (www.ieer.org). Since 2012 he and his colleagues have been working on renewable energy in Maryland, including a report on energy equity: Energy Justice in Maryland's Residential and Renewable Energy Sectors (2015). He earned his Ph.D. in 1972 from the Department of Electrical Engineering and Computer Sciences of the University of California at Berkeley. His work has appeared in scientific journals as well as in the mainstream media.

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[56] Gabel 2017

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We are especially thankful for the cooperation of GEDCO CARES because our work with low-income Baltimoreans who get assistance with their bills would not have been possible without it. GEDCO CARES gets written permission from each client to enable collection of data and to share that data with third parties as appropriate. We have had access to data of 127 of those clients to help GEDCO CARES and ourselves analyze and understand the impact of third-party supply on the effectiveness of assistance.

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- Bill Freeman, Director, Office of Home Energy Programs
- Mel Brennan, Former Executive Director, Fuel Fund of Maryland
- Olivia Wein, Attorney, National Consumer Law Center
- Rachael Neill, GEDCO CARES

We deeply appreciate their insights and comments and have benefited from them. Of course, as authors, we alone are responsible for the contents of this report, including its conclusions and recommendations and any errors or gaps that may remain.

A note about scope: this report is limited to an examination of the third-party supply of the residential market for electricity and natural gas in Maryland, mainly the former. Our recommendations are narrowly targeted to remedying the problems of high cost that have characterized the sector since 2014, especially as it concerns low-income households. Overall issues of energy assistance, affordability, efficiency, renewable energy, and many others are all critical, but are not addressed in this report.

Laurel Peltier, independent journalist

Arjun Makhijani, Ph.D., President, Institute for Energy and Environmental Research

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FOUNDATION

111 South Calvert Street, Suite 2300
Baltimore, Maryland 21202-6174

The
Abell Report

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Maryland's Dysfunctional Residential Third-Party Energy Supply Market:
An Assessment of Costs and Policies

By Laurel Peltier and Arjun Makhijani, Ph.D.
December 2018

About the Abell Foundation

The Abell Foundation is dedicated to the enhancement of the quality of life in Maryland, with a particular focus on Baltimore. The Foundation places a strong emphasis on opening the doors of opportunity to the disenfranchised, believing that no community can thrive if those who live on the margins of it are not included.

Inherent in the working philosophy of the Abell Foundation is the strong belief that a community faced with complicated, seemingly intractable challenges is well-served by thought-provoking, research-based information. To that end, the Foundation publishes background studies of selected issues on the public agenda for the benefit of government officials; leaders in business, industry and academia; and the general public.

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6.. Sun Oped -- Switching utility companies means

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Switching utility companies means many low-income Marylanders paying more | COMMENTARY

By BROOKE LIERMAN and MARY WASHINGTON

FOR THE BALTIMORE SUN |

SEP 22, 2020 AT 1:23 PM

Switching utility companies to third party suppliers is costing low-income Marylanders more than they can afford. (Maksim Shchur/iStock/Getty Images Plus)

If you have received a knock on the door or a call on your phone from an energy company other than a main regulated supplier such as BGE or Pepco, then you know that Maryland has a busy third-party retail utility market.

Since the COVID-19 pandemic began, regulators have prohibited utility shut-offs for families unable to pay their bills. However, just as the weather is beginning to turn and as students are staying at home to participate in school, the utility termination moratorium is scheduled to end — on Oct. 1. Although the Office of Home Energy Programs has grant money available for families to help pay their bills, for families who have signed up with third-party energy suppliers, the funds may not be enough to prevent a shut-off.

These third-party suppliers have led consumers into thinking that a switch from their regulated utility supply will save them money. In actuality, on average, households that choose third-party suppliers are **paying more,** not less, after switching. Maryland's energy market was deregulated under the wide-sweeping 1999 Electric Choice Act. As of July, 418,000 Maryland households, about 18%, have switched from their regulated energy supplier — BGE, Pepco, Delmarva, SMECO or Potomac Edison — to one of the 70 or so deregulated third-party suppliers.

The switch from standard service to a third-party retailer always starts with a promising offer: switch from your current energy supplier for savings and maybe even rewards (maybe free airline miles). If you decide to switch, you may pay a lower rate to start — or if you've signed up for a variable rate — your rate may then spike from the introductory low rate.

Adding to higher utility bills, these deregulated supplier contracts often include sky-high exit fees, which can trap lower-income families into predatory energy contracts. These increased rates do not affect all

Marylanders equally. Some 30,000 of these households are extremely low income and are receiving state-funded energy bill assistance through Maryland's Office of Home Energy Programs (OHEP) to help them pay high utility bills.

During the truncated 2020 Maryland legislative session, we introduced the Energy Assistance Protection Act (**S.B. 685** and **H.B. 1224**) to ensure that Maryland taxpayers' energy assistance dollars are not wasted on more expensive third-party energy suppliers. Data conclusively show that third-party suppliers are profiting from millions of state energy assistance dollars rather than fully paying down customer utility bills. The result is a loss for both Maryland consumers and Maryland taxpayers, and a win for third-party suppliers.

From 2014 to 2017, Maryland households lost millions of dollars using third-party suppliers, paying about $255 million more for electricity than if they had simply stayed with their regulated utility provider, **according to the Abell Foundation**. A survey of households in Southern Maryland found that customers paid on average about **$500 more per year** using a third-party electric suppliers. In Baltimore City a survey of 40 accounts whose owners had applied for state help paying their energy bills after getting cutoff notices found that their average electricity rate was 51% higher than BGE and their natural gas rate 78% higher.

Here's how this plays out in reality: If a low-income household on third-party energy supply paid an extra $500 a year for choosing deregulated supply, there's a greater chance they will get behind on their utility bill. The average OHEP household had about $16,000 in income in 2018. If that household later applied for and received a $500 OHEP grant, that grant was wasted on the premium price paid for utilities and still didn't help the family by making utility costs affordable.

Some third-party suppliers have targeted low-income consumers through aggressive door-to-door sales and setting up tables outside Department of Social Services offices, where residents apply for energy assistance. Such suppliers are incentivized to target households likely to need energy assistance because they are guaranteed payment, even if their customers don't pay their bills. Maryland regulations put the risk of consumer default on utilities, not on suppliers. The Energy Assistance Protection Act would solve this problem by holding suppliers to their word. It would allow customers to retain a choice of energy suppliers, and would require any third-party supplier who wants to sell to households that receive OHEP funds to guarantee that their net price to consumers be lower than standard rates available through their regulated utility.

Other states, including Ohio, New York and Pennsylvania, have already taken similar action, in some cases designing programs guaranteed to have rates lower than those through the standard regulated utility. Maryland taxpayers should not be on the hook to guarantee profit to third-party energy suppliers who are exploiting low-income residents. Our legislation, when enacted, would guarantee that this exploitative practice would end. We look forward to championing this legislation during the next legislative session.

Del. Brooke Lierman (brooke.lierman@house.state.md.us) represents District 46 in the Maryland General Assembly. Sen. Mary Washington (mary.washington@senate.state.md.us) represents District 43.

SB 0031_Electricity and Gas_Energy Suppliers_Suppl

Uploaded by: Antonio Soruco, Antonio
Position: UNF

WGL Energy
A WGL Entity

8614 Westwood Center Drive
Suite 100
Vienna, VA 22182-2260
703.333.3900
WGLEnergy.com

Senate Finance Committee
January 29, 2021

Senate Bill 0031 – Electricity and Gas – Energy Suppliers – Supply Offers

POSITION: UNFAVORABLE REPORT

Thank you, Chairman Kelley and members of the Senate Finance Committee, for the opportunity to comment on SB0031.

WGL Energy has served Maryland customers for over 20 years, delivering a full spectrum of customized energy solutions to residential, commercial, and industrial customers, across several utility service territories in the state.

SB0031 seeks to remove a customer's ability to individually shop for an electric or gas supply offer from a retail supplier if such customer has received energy assistance from the Office of Home Energy Programs ("OHEP") during the previous fiscal year. However, this customer class can select an offer from a retail supplier only if the offer is approved by Maryland Public Service Commission ("PSC"), charged at or below the Standard Offer Service ("SOS") rate or Gas Commodity rate.

WGL Energy supports all customers having the individual freedom to choose and access the benefits of retail competition. At the crux of this issue is the ongoing inaccurate comparison between competitive supply products and utility rates proclaimed as an apples-to-apples comparison. These are fundamentally different products and the utility commodity rates do not capture the full costs of the utility providing this supply. The utility rates also change throughout the year to reflect market prices and utility accounting adjustments. This makes it inappropriate to simply try and compare two numbers and make state-wide policy decisions. This must be avoided.

We fully recognize the concern raised by SB0031. While it seeks to ensure that Maryland taxpayers' energy assistance dollars are not spent on more expensive third-party energy suppliers with these new proposed rules, SB0031 is not the answer, as discussed below.

While the competitive market offers much more than lower prices, the competitive market is also where the lowest prices can be found. To provide a few examples, in the Pepco service territory, there are **56** electricity supply offerings below the SOS rate, 38 of which are fixed price offerings between three and thirty-six months.[1] One of the lowest prices posted on the PSC's shopping website in the Pepco service territory is $0.062 per kWh, so customers on SOS are paying a 27.5% premium at $0.07905 per kWh.[2]

In the BGE service territory, there are **39** electricity supply offerings below the SOS rate, 24 of which are fixed price offerings between three and twenty-four months.[3] One of the lowest prices posted on the PSC's shopping website in the BGE service territory is $0.053 per kWh, so customers on SOS are paying a 36% premium at $0.07225 per kWh.[4]

And on the gas side, in the BGE service territory, there are **8** gas supply offerings below the default Gas Commodity rate, 3 of which are fixed price offerings between five and twelve months.[5] The lowest price posted on the PSC's website in the BGE service territory is $0.2990 per therm, so customers on the default Gas Commodity rate are paying a 34.6% premium at $0.4027 per therm.[6]

Thus, for customers who want to shop based solely on lowest price, there are benefits in the market price right now. Yet, these customers generally appear unaware of them. An organized customer education effort would go a long way to informing customers about their right to choose their energy supplier and the products and services available to them today.

Providing educational information on how to shop as well as customer's rights information is critical to advancing the market. WGL Energy supported legislation that resulted in the creation of user-friendly electric and gas shopping websites enabling consumers to get what they need to make an educated decision about their energy provider. WGL Energy also takes this opportunity to provide a sample of its electric and gas contract summaries as seen in the exhibits A and B. The contract summaries are provided in a clear and concise manner for the customer. WGL Energy is also happy to share a sample of its Terms & Conditions upon request.

WGL Energy opposes SB0031 for the simple reason that it denies a large segment of

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[1] See https://www.mdelectricchoice.com/shop/ (for customers with 1,000 kWh monthly usage in the Pepco service territory, as of January 27, 2021).

[2] Note that the $0.062 per kWh offer used in this example is a twelve-month fixed price product.

[3] See https://www.mdelectricchoice.com/shop/ (for customers with 1,000 kWh monthly usage in the BGE service territory, as of January 27, 2021).

[4] Note that the $0.053 per kWh offer used in this example is a six-month fixed price product.

[5] See https://www.mdgaschoice.com/shop/ (for customers with 100 therms monthly usage in the BGE service territory, as of January 27, 2021).

[6] Note that the $0.2990 per therm offer used in this example is a five-month fixed price product.

Maryland customers of the right to choose the source of their energy supply and who supplies it. Furthermore, due to the proposed, severe rule restrictions for suppliers to provide PSC approved products to such customers in this bill, it would likely result in supplier non-participation in the program, effectively ending retail choice for a customer class.

Other neighboring states have similar programs in place for assisted customers and almost no suppliers participate - eliminating a portion of the competitive marketplace. This is happening in Pennsylvania.

WGL Energy is also concerned about the potential implementation of SB0031 and the complications and confusion it will introduce into the marketplace. Suppliers do not have a way to identify the customers who are receiving financial assistance.

- Customer bills do not have any designation to help identify these accounts during the sales process
- Customer list information does not include any designation for these accounts so that marketing efforts could screen them out

Waiting until the supplier seeks to enroll a customer, and then having the utility reject the enrollment only serves to create more confusion and frustration for all involved.

As a result, WGL Energy recommends the PSC and utilities focus on: (1) advancing customer education particularly for customers receiving OHEP assistance; and (2) enhancing the competitive market to enable customers to shop and select the best energy supply products available to meet their individual needs.

We respectfully ask the Committee for an unfavorable report to SB0031.

Thank you for your consideration.

Antonio Soruco, State Regulatory & Legislative Affairs Manager
P 703.287.9468 | **M** 571.612.9802 | Antonio.Soruco@wglenergy.com

8614 Westwood Center Drive
Suite 100
Vienna, VA 22182-2260
703.333.3900
WGLEnergy.com

Exhibit A -WGL Energy Electricity Contract Summary Sample

CONTRACT SUMMARY – WGL Energy Fixed Price Plan	
Electricity Generation Supplier Information	WGL Energy Services, P.O. Box 1997, Chesapeake, VA 23327-9902, www.wglenergy.com, 1-844-4 ASKWGL (844-427-5945) (toll-free) Generation prices and charges are set by WGL Energy.
Price Structure	WGL Energy Fixed Price Plan (Price will not change during the contract.)
Generation/Supply Price	7.9¢/kWh includes 5.0% wind power.
Statement Regarding Savings	WGL Energy does not guarantee this contract will always provide savings over Pepco's rate.
Incentives	4% Cashback Reward: At the end of your one-year contract, you will receive a check equal to 4% of your WGL Energy electricity supply cost for the year. Your supply cost will be identified on your bill separately from utility charges, which are not included in the cashback reward offer.
Contract Start Date	This contract begins on or before the next meter reading performed by Pepco after your enrollment has been processed.
Contract Term/Length	One-Year.
Cancellation/Early Termination Fees	$10 for each month remaining in contract. This fee will be waived if you cancel within the rescission period, during the contract renewal period or if you move.
Renewal Terms	At least 45 days prior to the expiration of your fixed price contract you will receive a Renewal Notice. If you do not reply to the Renewal Notice, your contract will automatically renew under the Renewal Notice terms.

WGL Energy
A WGL Entity

8614 Westwood Center Drive
Suite 100
Vienna, VA 22182-2260
703.333.3900
WGLEnergy.com

Exhibit B -WGL Energy Natural Gas Contract Summary Sample

CONTRACT SUMMARY – WGL Energy Natural Gas Fixed Price Plan

Natural Gas Supplier Information	WGL Energy Services, P.O. Box 1997, Chesapeake, VA 23327-9902, www.wglenergy.com, 1-844-4 ASKWGL (844-427-5945) (toll-free) Commodity prices are set by WGL Energy.
Price Structure	WGL Energy Fixed Price Plan (Price will not change during the contract.)
Supply Price	47.0 ¢ / therm includes CleanSteps® Carbon Offsets, from WGL Energy, matched to 5% of your natural gas usage.
Statement Regarding Savings	WGL Energy does not guarantee this contract will always provide savings over Baltimore Gas & Electric's rate.
Incentives	4% Cashback Reward: At the end of your one-year contract, you will receive a check equal to 4% of your WGL Energy natural gas supply cost for the year. Your supply cost will be identified on your bill separately from utility charges, which are not included in the cashback reward offer.
Contract Start Date	This contract begins on or before the next meter reading performed by Baltimore Gas & Electric after your enrollment has been processed.
Contract Term/Length	One-Year.
Cancellation/Early Termination Fees	$10 for each month remaining in contract. This fee will be waived if you cancel within the 3 day rescission period, during the contract renewal period or if you move.
Renewal Terms	At least 45 days prior to the expiration of your fixed price contract you will receive a Renewal Notice. If you do not reply to the Renewal Notice, your contract will renew under the Renewal Notice terms.

BGE Testimony - SB 31 Electricity and Gas – Energy

Uploaded by: Black, Allyson

Position: UNF

An Exelon Company

Position Statement

OPPOSE
Senate Finance
02/02/2021

SB 31 Electricity and Gas – Energy Suppliers – Supply Offers

Baltimore Gas and Electric Company (BGE) opposes, unless amended, *Senate Bill 31 Electricity and Gas – Energy Suppliers – Supply Offers*. Senate Bill 31 requires the Public Service Commission (Commission) to establish a process to approve supply offers for gas and electricity, below the standard offer service rate, for households receiving energy assistance that would be administered by the Office of Home Energy Programs. It prohibits suppliers from offering to provide electricity or gas to households in the State on energy assistance during the previous fiscal year. It also requires the Commission to create test cases for new enrollments that would be required to be run through each utility's billing and enrollment system on a quarterly basis to verify that suppliers on the approved list are correctly charging households that receive energy assistance.

While the intent of the legislation appears to be an effort to address retail choice consumer protection and provide transparency in contract pricing specific to energy assistance customers, BGE has a specific concern regarding a section of the bill that would require quarterly test cases using the utility's billing and enrollment system. The bill suggests that these test cases will be run to verify if the prices charged by third party suppliers are equal to or below the standard offer service price for customers on energy assistance. The bill would require that the utility provide this information without awareness if such a requirement is actually feasible.

Currently, third-party suppliers generally provide BGE with customer "bill ready" information, which includes the total bill amount assessed to the customer. BGE does not have access to the individual detailed rate data that would be required to obtain the information sought by this bill. Therefore, it is not feasible for the utility to collect and report on this information. The responsibility of providing this supplier rate information should be placed on the supplier offering the rate rather than the utility.

For these reasons, unless Section E of the bill be stricken in its entirety, BGE respectfully requests an unfavorable report by the Committee on this legislation.

SB31_NRG_UNF.pdf
Uploaded by: Fiastro, John
Position: UNF

SENATE BILL 31 – ELECTRICITY AND GAS – ENERGY SUPPLIERS – SUPPLY OFFERS

UNFAVORABLE

SENATE FINANCE COMMITTEE
February 2, 2021

NRG Energy, Inc. ("NRG") submits these comments in **opposition** to **SB 31 – Electricity and Gas – Energy Suppliers – Supply Offers.**

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 6 million residential, commercial, industrial and governmental customers through our portfolio of retail electricity brands – including here in Maryland, where NRG owns several companies that are licensed by the Public Service Commission to serve retail customers. These companies offer customers a range of products ranging from cash back rewards and loyalty points, to charitable giving, to 100% renewable electricity and more.

NRG opposes SB 31 for the simple reason that it restricts the options available to a segment of Maryland customers, denying them of the right to choose the source of their energy supply and who supplies it – a right that all Maryland customers enjoy today.

The General Assembly adopted competition for electricity and gas supplies more than two decades ago which gave all consumers the right to choose. Today, competitive suppliers compete with each other to offer value to consumers, sometimes in the form of savings relative to the utility SOS rate, but more often in the form of some other benefit or value to the customer, be it renewable energy content, loyalty rewards – like airline miles or hotel points – energy efficiency measures aimed at reducing a customers' overall bill – like Nest thermostats – gift cards to local merchants, or by managing the risk of market fluctuations by providing price stability through longer term fixed prices.

When the market opened to competition, the Public Service Commission was allocated $6 million to educate consumers about the transition to competition and their right to choose. It has been more than twenty years since any funds were allocated to help customers understand their choices and how to make good shopping decisions.

Rather than restrict the options available to an entire class of customers and deny them the choice that all other Marylanders enjoy, NRG urges the Committee to instead allocate funding to the PSC to undertake a comprehensive education campaign with a focus on customers that are financially challenged. The PSC should be directed to work with OHEP to educate their clients at the time they enroll for assistance and periodically thereafter. These customers have the right to benefit from the same choices that other customers enjoy and rather than taking away their access to such products, they should be pointed toward products and services aimed at meeting their unique needs.

Thank you for the opportunity to share our perspective on SB 31 and for the above reasons NRG urges the Committee give the bill an **unfavorable** report.

NRG Energy, Inc. Contact Information

Sarah Battisti, Director Government Affairs, NRG Energy, Inc., 804 Carnegie Center, Princeton, NJ 08540, 717-418-7290, sarah.battisti@nrg.com

Leah Gibbons, Director Regulatory Affairs, NRG Energy, Inc., 3711 Market Street, Suite 1000 Philadelphia, PA 19104, 301-509-1508, lgibbons@nrg.com

John Fiastro, Fiastro Consulting, 1606 Broadway Road, Lutherville, MD, 443-416-3842, john@fiastroconsulting.com

Brett Lininger, Old Line Government Affairs, 10 West Pennsylvania Ave., Suite 200, Baltimore, MD 21204, 443-527-4837, blininger@nemphosbraue.com

Joe Miedusiewski, Old Line Government Affairs, 10 West Pennsylvania Ave., Suite 200, Baltimore, MD 21204, 410-321-4580, americanjoe@oldlinelobbying.com

RESA SB31UNF.pdf

Uploaded by: Kress, William

Position: UNF

Comments of the Retail Energy Supply Association
Senate Finance Committee
Hearing on SB0031 – February 2, 2021
Electricity and Gas – Energy Suppliers – Supply Offers

Position – Unfavorable

Thank you, Madam Chair, Mister Vice-Chair and members of the Committee for the opportunity to provide comments on SB 31 by the Retail Energy Supply Association (RESA) [1]. RESA opposes SB 31 and respectfully requests that the committee render an unfavorable report on this legislation.

The purpose of this legislation requires the Public Service Commission (PSC) to establish an administrative process to approve supply offers for electricity or gas for households in the State that receive energy assistance through a program administered by the Office of Home Energy Programs.

At the onset allow us to explain some of the rules, processes and procedures put into place by the PSC that are intended to educate the consumer when making a decision about a supply offer.

Consumers have a variety of protections available to them when enrolling with a third-party retail supplier ("supplier".) There are PSC rules in place that mandate what suppliers must do when marketing, advertising, and soliciting their products.

Additionally, when a consumer enrolls with a supplier, there are requirements that "require affirmative confirmation" that the consumer has consented to the enrollment. Minimum contract requirements exist that suppliers must follow that discloses all

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[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial, and industrial energy customers. Many of RESA's members are licensed electricity and natural gas suppliers in the State of Maryland, who provide products and services to all classes of customers. More information on RESA can be found at www.resausa.org.

material terms and conditions of the contract, the rules around the methods in which suppliers must utilize for contracting and how evergreen contacts are to be handled.

Within the standards of the contract is a section that details the requirements for a contract summary. This summary, also referred to at times as a "Schumer box" is designed around the same concept as the offerings we all get in the mail from credit card companies, which require first and foremost a simple and understandable summary box of the major terms of the agreement. See Exhibit A for an example of what is required in the contract summary.

There are requirements around customer disclosures which focuses on requirements for price disclosures, and the actions that suppliers must take for notifying customers of contract expiration or cancellation, and specific requirements for notices for change in rates.

Also, there is a section of the rules that focuses on supplier agent relations and the responsibilities that suppliers have for their agents, whether they are contractors or employees. This section details out the qualifications and standards for agents, training, identification and conduct expected during a door-to-door solicitations, for all agents and prior notification of sales activity to the jurisdictional utility and the Commissions' Consumer Affairs Division.

To strengthen the consumer protections provided by the Commission, RESA strongly supported legislation last session which requires the Commission to establish an educational and testing website so suppliers looking to obtain a license in Maryland can demonstrate proficiency and knowledge of consumer protections.

In addition to the aforementioned, the Commission last year rolled out new websites for both electricity and natural gas where suppliers must list offers along with the utilities default rate. Customers can sort this website using many different criteria and make the comparisons for the energy products they desire which meets their energy needs. Suppliers have the option to list additional products and services beyond the commodity which provides a variety of offers for consumers to choose.

Finally, the PSC is taking deliberate steps to ensure that suppliers who are found to not be following rules are appropriately penalized for their actions, and steps are taken to ensure that repeat offenses do not occur. For example, in Case # 9613 [2] the commission has recently ordered a supplier to *"desist from adding or soliciting new*

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[2] https://webapp.psc.state.md.us/newIntranet/casenum/CaseAction_new.cfm?CaseNumber=9613

customers in Maryland until further order of the Commission in this matter." This is just one example of the many actions that the Commission has taken is recent times to address the concerns of supporters of SB 31.

To further demonstrate why we believe SB 31 should be given an unfavorable report, a recent review of complaint statistics at the Commission reveals the fact that consumer complaints against suppliers has dramatically declined and have been at low levels in recent months. This fact in-of-itself shows that there is a low level of dissatisfaction with suppliers and the products that they offer.

RESA each month produces an analysis of supplier offers listed on the PSC website which is referred to as the Energy Market Savings Report. The report reveals that if all customers who were not shopping actually took the best deal for electricity as displayed on the PSC's website, the savings to the utility's standard offer service (otherwise known as SOS or the price-to-compare) across the entire state would have been $47 million in the month of December alone. See Exhibit B attached.

Finally, this brings us to the standard offer service, and the requirement in SB 31 that requires suppliers to charge customers receiving energy assistance a price that is at or below the SOS. For supplier prices to be compared to the SOS is an apples-to-oranges comparison since the SOS price does not reflect all of the costs associated with providing SOS service. The comparison is not transparent since suppliers' prices include all of the costs incurred to bring the product to market, and yet the SOS rate has no allocation of indirect or overhead costs allocated to it. This means that the SOS price is an inappropriate benchmark for comparing suppliers offers which are fundamentally different and often include additional products and services beyond electric or gas supply.

In summary, RESA strongly urges the committee to render an unfavorable report on SB 31 since there are sufficient actions being taken by the PSC against suppliers who are not following the requirements, the consumer protection rules that are in place, the newly enhanced websites, the decline in complaint statistics and the unfair comparison to the SOS rate.

Again, RESA appreciates the opportunity to provide these comments, and look forward to a unfavorable report by the committee.

Exhibit A

igsenergy

YOUR ELECTRIC SUPPLY CONTRACT WITH IGS ENERGY®
(Interstate Gas Supply, Inc.)

KEEP FOR YOUR RECORDS V1019

TERM BOX	
Utility	**Baltimore Gas & Electric ("BGE" or "EDC" or "Utility")**
Price Plan	**Base Fixed Rate**
Initial Price & Term	Base Fixed Rate of $0.0899 per KWH through a period of 12 months
Term	Following the Initial Term, this Agreement will automatically renew month to month thereafter at a monthly variable price as described in Renewal Term and Price section of this Agreement.
Early Termination Fee	$99 for Initial Term
Discounting Disclaimer	IGS Energy reserves the right to provide You discounts to the Initial Price listed in the Term Box during the Initial Term. IGS Energy also reserves the right to return Your rate to the Initial Price listed in the Term box if You are no longer eligible for the discounts provided, but in no instance shall Your price exceed the Initial Price listed in the Term Box during the Initial Term.

IGS Energy Contact Info: P.O. Box 9060, Dublin, OH 43017 | 800.280.4474 | IGS.com

Term: This is an Agreement ("Agreement") between Interstate Gas Supply, Inc. ("IGS Energy") and You the Customer (also referred to as: "You", "Your" or "Customer"). The Initial Term of this Agreement is described in the Term Box located at the beginning of this Agreement and will renew as described in the Term Box until canceled by notice as provided by this Agreement. IGS Energy will supply the commodity portion of Your electricity service and BGE will continue to be Your Electric Distribution Company ("EDC"). Due to the volatility of the electric market, IGS Energy reserves the right to discontinue this Agreement any time before enrollment. If You are currently an IGS Energy electric Customer, IGS Energy reserves the right to not accept or rescind this enrollment or to require You to pay the applicable Early Termination Fee for Your existing electric program to be eligible for this program.

Regulatory: The electric program ("Program") pursuant to which You are receiving services hereunder is subject to ongoing Maryland Public Service Commission ("PSC") and BGE jurisdiction and You understand that if the Program is terminated or materially altered, this Agreement may be terminated by IGS Energy without penalty.

Maryland License Number: IGS Energy has been licensed by the PSC to provide the services described in this Agreement. IGS Energy' License Number is IR-2182.

Price: Your price will be as described in the Term Box above. However, if during any fixed price period of this Agreement there is an action or decision by a regulatory body including the Federal Energy Regulatory Commission ("FERC") that impacts wholesale capacity or electric prices or imposes additional cost on IGS Energy in satisfying its obligations under this Agreement, then IGS Energy shall have the right to increase Your price to offset these additional costs.

Your price does not include applicable taxes and/or EDC charges, which will be billed by the EDC. You are responsible for all charges assessed by the EDC for electric transportation and all other applicable EDC charges, which are not included in Your price. Further, You understand that IGS Energy' price is not regulated by the PSC.

Renewal Term and Price: This Agreement will renew as described in the Term Box above, unless IGS Energy provides You with notice of a different term. For each Secondary Term, You are enrolled in a Variable Price Product, Your price may change monthly, up or down, and will be calculated each meter reading schedule based upon costs which include, but are not limited to energy, transmission, capacity, ancillary services, congestion management, renewable energy credits, ISO system fees, utility charges and other factors, plus IGS Energy' costs, expenses and margins, which does not include applicable EDC distribution, administrative and related charges and taxes. IGS Energy complies with Maryland's Renewable Portfolio Standard ("RPS") applicable to all retail electricity suppliers. IGS Energy may retire Tier 1 or Tier 2 renewable energy credits to meet its RPS obligations. The RPS for 2019 is 20.7% from Tier 1 sources, including at least 5.5% from solar energy and up to 2.5% from PSC-directed offshore wind energy, and 2.5% from Tier 2 sources. The RPS for 2020 is 28% from Tier 1 sources, including at least 6% from solar energy and up to 2.5% from PSC-directed offshore wind energy, and 2.5% from Tier 2 sources. The RPS for 2021 is 30.8% from Tier 1 sources, including at least 7.5% from solar energy and a PSC-directed amount of offshore wind energy. Alternatively,IGS Energy may meet its RPS obligation by paying a compliance fee to the Maryland Renewable Energy Fund. The compliance fees for each kWH shortfall are: 3 cents for Tier 1 non-solar (2019 through 2023); 10 cents for Tier 1 solar (2019-2020); 8 cents for Tier 1 solar (2021); and 1.5 cents for Tier 2.

Notice of Change: IGS Energy reserves the right to make changes to the terms of this Agreement, including price and pricing methodology after expiration of the Initial Term. Such notice will be made at least 45 days prior to the changes becoming effective. If You do not cancel the Agreement at that time, this Agreement will continue at Your new noticed price and terms thereafter. IGS Energy reserves the right to lower Your price at any time for any month(s) and thereafter return Your price to the last noticed price, without providing You with notice of either.

Early Termination Fee: If You elect to terminate this Agreement You may be subject to an Early Termination Fee as set forth in the Term Box. You may cancel this Agreement, by contacting IGS Energy in writing or by telephone. Further, either party can cancel this Agreement at any time during any Secondary Term by providing notice to the other of not less than 30 days or as otherwise provided in the renewal notice. If, pursuant to the terms and conditions of this Agreement, IGS Energy elects an early termination of this Agreement, notice of such termination shall be provided by regular mail. Cancellation notices provided after the EDC deadline may result in an additional month(s) of service beyond the contract period at the new price, which You agree to pay, as the effective date of all cancellations are subject to EDC guidelines. You understand that if You switch Your service to another supplier or back to the EDC an EDC switching fee may apply under the EDC's tariff and the EDC may charge a price other than the standard offer service rate.

Billing: For Your convenience You will receive only one bill, which will be issued by the EDC each month and will contain IGS Energy' electric price plus applicable taxes and all of the EDC transportation and other applicable charges, including any late fees assessed by the EDC. You acknowledge that Your billing and payment information may be provided to IGS Energy by the EDC. You agree to continue to pay the EDC for the entire electric bill under the EDC payment terms and conditions. If You pay under the budget bill payment plan, You understand that this service is available and will remain available for BGE utility charges but not IGS Energy commodity charges. If IGS Energy bills You directly for services provided, IGS Energy may terminate this Agreement with notice should You fail to pay the bill or meet any agreed upon payment arrangements. If You fail to timely pay Your invoices which include IGS Energy charges, the EDC may disconnect Your service, according to tariff guidelines. Other than for operation, maintenance, assignment and transfer of Your account or, where IGS Energy is performing billing services, or for commercial collections, IGS Energy will not disclose Your account number to any other third party without Your affirmative written consent or electronic authorization or pursuant to a court or Commission order and that, other than for credit checking and credit reporting, if IGS Energy is performing billing services, IGS Energy will not disclose Your social security number without Your affirmative written consent or pursuant to court order. You authorize IGS Energy to obtain Your billing payment and usage history from the EDC.

Assignment: This Agreement is assignable by IGS Energy without Your consent subject only to required regulatory approvals.

Contact and Dispute Resolutions: In the event of a billing dispute or issues regarding volume or metering, You should contact the EDC at 800.685.0123. For other questions or concerns about pricing, You can contact the IGS Energy Choice department by phone weekdays from 8am to 8pm EST Saturdays 9am to 3pm EST at 888.993.0997, by fax to 800.584.4839, in writing to P.O. Box 9060, Dublin, OH 43017, by visiting IGScom, or sending an email to customersupport@igs.com If Your questions or concerns or complaint are not resolved after You have called IGS Energy, or for general utility information, Residential and small Commercial customers may contact the PSC for assistance at 800-492-0474 or for TTY at 800-201-7165, from 8am to 5pm weekdays, visit psc.state.md.us.com, or mail to 6 St. Paul Street, Baltimore, MD 21202-6806. Residential customers may also contact the Maryland Office of People's Counsel ("OPC") for assistance with complaints and utility issues at 800.207.4055 from 8am to 5pm weekdays or visit opc.state.md.us.

Moving | Termination: You understand that this contract will automatically terminate, without penalty, if You relocate outside the EDC service territory, or if the requested service location is not served by the EDC. Also, You understand that You have the right to terminate this Agreement, without penalty, if You relocate inside the EDC Energy service territory and the EDC does not have contract portability. If You relocate within the EDC service territory and do not exercise Your right to cancel this Agreement, if any, at IGS Energy' option, this Agreement may continue for service at Your new location. You agree that if You do not terminate this Agreement as provided in this paragraph, You grant the EDC the right to provide IGS Energy with Your account and meter number(s) for Your new location and to transfer Your contract to Your new location. If requested by IGS Energy, You will also provide IGS Energy with this information. If IGS Energy does not transfer this Agreement for service at Your new location within 90 days of relocation, this Agreement will automatically terminate. You understand that You are not entitled to the pricing or service from IGS Energy hereunder at Your new location until such time as the EDC accepts Your enrollment with IGS Energy at Your new location and/or transfers Your contract to Your new location and that the pricing hereunder will not be extended for additional month(s) that You were not with IGS Energy, unless agreed to in writing by IGS Energy. Except as provided in this Agreement, if IGS Energy returns You to the EDC sales service, this Agreement will terminate without penalty to You .

Eligibility | Limitation of Liability | Jurisdiction: By entering this Agreement, You represent and agree that the account(s) served by IGS Energy under this Agreement is (are) non-net metered Residential or non-net metered Small Commercial account(s) as defined herein, in the BGE service territory and You are not an existing IGS Energy Customer. IGS Energy reserves the exclusive right, at any time, to not enroll or to terminate service to Customer location(s) that do not meet the preceding criteria and return the Customer to the EDC (or previous IGS Energy product, whichever is applicable) with no penalty to IGS Energy. This limitation applies to related account(s) that individually may not exceed the limit, but collectively may. Furthermore, participation in the Program is subject to the rules of the EDC and customers are sometimes terminated from the residential Program either in error or for being in arrears. In such instances, You can contact the EDC to correct the problem and be reinstated in the residential Program. Regardless of the reason for termination, in no case will the original term be extended for month(s) that You were unable to participate nor will IGS Energy have any liability for any early termination or for any month(s) that You were unable to participate in the program. IGS Energy assumes no liability or responsibility for losses or consequential damages arising from items associated with the EDC including, but not limited to: operations and maintenance of their system, any interruption of service, termination of service, or deterioration of service, nor does IGS Energy assume responsibility or liability for damages arising from any in home or building damages and in addition shall not be responsible for any indirect, consequential, special or punitive damages whether arising under contract, tort (including negligence or strict liability) or any other legal theory. The parties agree that if the Customer is unable to resolve its issues through the PSC as detailed under "Contract and Dispute Resolutions" above or if suit is filed, any legal action involving this Agreement shall be brought only in a court of the State of Ohio sitting in Franklin County, Ohio or the United States District Court sitting in Franklin County, Ohio. You submit to the personal jurisdiction in such courts and irrevocably waive any objections that You have or might have in the future to such courts as the proper forum for any and all actions arising under this Agreement. The parties agree that this Agreement shall be interpreted under the laws of the State of Ohio, regardless of Ohio's choice of law provisions.

RESA
Retail Energy Supply Association

Exhibit B

Energy Market Savings Report

Maryland

By shopping for the best deal for electricity, Maryland consumers could have saved more than **$47 million** in December and benefited from a wide range of value-added products and services by switching to competitive suppliers.

Savings Over	
BGE:	$26,574,141
Delmarva MD:	$4,862,231
Potomac Edison:	$4,252,091
Pepco MD:	$11,377,468
December Potential Market Savings:	**$47,065,931**

December Notable Offers:

PRICE PLANS

$50 worth of shopping rewards per month

ECO-FRIENDLY

One tree planted on the customer's behalf

VALUE ADDED PRODUCTS

Two $25 gift cards

Source: MD PSC – www.psc.state.md.us/electricchoice/shop-and-compare/

Public Service Commission Meeting Notes 2021-01-27

Uploaded by: Nash, Katie

Position: UNF

energy advocacy

Senate Bill 31
Letter of Information

Public Service Commission

Administrative Meeting

10:15 AM January 27, 2021
Sixteenth Floor Hearing Room, William Donald Schaefer Tower
6 St. Paul Street, Baltimore, Maryland 21202-6806
(410) 767-8000

Office of People's Counsel versus SunSea LLC
Case No. 9647 Status Conference

SUMMARY OF PREVIOUS ACTION
On October 7, 2020, the Commission determined Sunsea Energy, LLC violated provisions of the Public Utilities Article and COMAR. SunSea was required to rerate and refund current and former customers it solicited over the phone for the entirety of customers' received service by SunSea. Refunds consisted of the difference between SunSea's supply charges and the applicable Standard Offer Service rate charged by the local distribution utility.

The Commission ordered SunSea to provide a copy of its standard contract for Maryland customers including a description of rate and all terms of service by October 16, 2020. Further, SunSea was ordered to detail the number and amounts of customer refunds by November 6, 2020.

On December 14, 2020, the Commission ordered the parties submit written testimony by January 20, 2021, and that following the Commission's regularly scheduled Administrative Meeting on January 27, 2021, the parties appear for a Status Conference to determine SunSea's compliance with Commission's directives and consider a civil penalty.

PSC MEETING SUMMARY - JANUARY 27, 2020

Chairman Stanek convened the meeting at 10:15 AM and reiterated that this was a review of compliance activities of SunSea and to determine a penalty amount if appropriate and that today was not an evidentiary hearing.

Peter Woolson, on behalf of PSC staff, summarized staff's position that SunSea has met its obligations under the Commission's orders to date. Nevertheless, **staff recommends a substantial civil penalty and a revocation of SunSea's license (emphasis added).**

David Lapp, for OPC, stated this case is similar to other cases of unlawful practices. Pleas for mercy from SunSea that it was ignorant of the law are no excuse. Retail suppliers need to know the law and be held accountable. No leeway should be given.

Mr. Lapp further stated SunSea offers a "rogue vendor" defense, which is not acceptable as "rogue vendor" arguments enable infinite regulatory whack-a-mole. Strong deterrence is needed to discourage anti-consumer behavior.

Patrick O'Laughlin, on behalf of the OPC, stated that SunSea refunded 1,200 customers. 334 of those refund checks have been cashed. The total refund constituted roughly $66,000. OPC was not able to cross check each refund, but a review showed a possible short-change of customers in refunds and some discrepancies. An outside audit should be conducted as a precedent that these matters are taken seriously and the Commission expects strict compliance. A $2.5 million penalty is recommended.

Kevin Mosier, witness for OPC, was sworn in.

James McGee, representing SunSea LLC, summarized that SunSea has complied with Commission orders and that no further penalty is required. SunSea voluntarily ceased enrolling new customers in May. SunSea will not enroll any new telephone customers, which directly addresses the previous violations, and guards against "whack-a-mole" concerns stated by OPC. Refund checks and accounting of refunds were submitted to the Commission. SunSea is willing to file quarterly reports with the Commission with updates about cashed refund checks.

Jacob Adigwe, SunSea President, was sworn in.

Kevin Mosier, witness for OPC, summarized allegations that SunSea rates were not competitive and that advertised rates were deceptive.

Chairman Stanek addressed Jacob Adigwe, Sunset President, and inquired about remaining SunSea Maryland customers, personnel changes at SunSea following the complaint, changes of company address, OPC's concerns related to customer refund amounts, and SunSea marketing practices, rewards programs, and energy products.

Mr. Adigwe, SunSea President, stated no new Maryland customers have been enrolled since May, 2020, that 1,000 customers enrolled via telephone are no longer SunSea customers, and that SunSea has no remaining Maryland customers. Mr. Adigwe noted SunSea employee responsibility for compliance failures and stated several were let go as a result. Mr. Adigwe described the manual rerate recalculation that resulted in 1,200 customer refund checks and customer notices, described the multiple forms of evidence of customer refunds submitted to the Commission, detailed specific personnel involved in these processes, addressed marketing and rewards questions, and described SunSea's desire to continue operating in Maryland with a clean slate and in full compliance with state rules and regulations.

Commissioner O'Donnell inquired about SunSea's business model and marketing material moving forward, SunSea's first Maryland customers, refund rates to customers, thoughts on an independent audit, and why 300 SunSea customers were returned to SOS.

Mr. Adigwe stated future marketing is still under development and would be submitted to the Commission. Mr. Adigwe stated SunSea Maryland customers date back to September 2019, he would have no problem with an independent audit, and that returning customers to SOS was an internal decision out of a desire to start over in Maryland with a clean slate.

Commissioner Herman inquired about SunSea customers returned to SOS.

Mr. Adigwe replied that reverting customers to SOS was conducted in November 2020, that customers were notified of the change via phone, and that some could not be reached.

Commissioner Richard inquired about staff's allegations of deceptive rates and whether SunSea believes it was being competitive with other suppliers.

Mr. Adigwe replied that he does not track competitors' rates.

Commissioner Linton inquired with OPC about the differences in recommended civil penalties.

Kevin Mosier, witness for OPC, stated that the civil penalty number was based on the number and severity of the violations and attempt to follow Commission precedent, and that he would not object to a higher penalty amount.

Patrick O'Laughlin, on behalf of the OPC, stated that staff recommendation is too low. Based on violation calculations, there were some 1,400 different violation days, another 1,000 violations for telephonically solicited customers, and failure to provide contract summaries following enrollment. $1,000 per violation was justifiable, totalling over $2 million.

Chairman Stanek summarized concerns about accuracy of customer refunds, that a correct total refund amount would be closer to $300,000. He was pleased that SunSea would not object to an independent audit. Because it's unclear whether SunSea has complied with all directives, Chairman Stanek moved that an independent audit be conducted.

Patrick O'Laughlin, on behalf of the OPC, requested the audit include all solicitation contracts going back to the beginning of SunSea's operations in Maryland.

Chairman Stanek agreed and stated the independent audit be conducted by a Maryland based firm identified by February 16 and that the audit report be filed by April 1, 2021 barring an extension request by the parties. During that time, SunSea would continue to be barred from soliciting or marketing Maryland customers.

Chairman Stanek formally moved that the Commission order SunSea LLC at its own expense work with OPC and Commission staff counsel to identify a Maryland based independent auditor to conduct a full report on SunSea's compliance with the refund directive ordered by the Commission on October 7, 2020, to determine the accuracy of the refunds directed to customers by the Commission; additionally, the scope of the audit will include the review of all contracts executed by SunSea customers in the State of Maryland since SunSea Energy LLC was licensed to do business supplying electric and natural gas services to ensure full compliance with state law and regulations.

The motion was approved unanimously.

James McGee, representing SunSea LLC, inquired about the two components of the motion and whether this may require two separate firms with different specialities.

Chairman Stanek replied two firms could be hired if needed, but that a single firm would likely be able to do both. Chairman Stanek then stated he did not believe a decision regarding penalties should not be made until the audit was concluded.
The meeting was adjourned.

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 31 (Senator Washington)
Finance

Electricity and Gas – Energy Suppliers – Supply Offers

This bill generally prohibits, beginning July 1, 2022, a third-party retail supplier from offering to provide or continuing to provide electricity or gas to households in the State that have received energy assistance from the Office Of Home Energy Programs (OHEP) within the past fiscal year. However, the Public Service Commission (PSC) must, by January 1, 2022, establish an administrative process to approve such supply offers, subject to specified conditions – namely, an approved supply offer must include a commitment to charging at or below the standard offer service (SOS) rate or gas commodity rate for customers receiving energy assistance. Each year, PSC must create test cases for new enrollments that must be run through each utility's billing and enrollment system quarterly to verify that suppliers on the approved list are correctly charging households that receive energy assistance. The bill contains a related annual reporting requirement for PSC. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: Special fund expenditures increase by $178,100 in FY 2022. Future year expenditures reflect ongoing costs. Special fund revenues increase correspondingly from assessments imposed on public service companies.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	$178,100	$160,500	$165,100	$170,900	$176,800
SF Expenditure	$178,100	$160,500	$165,100	$170,900	$176,800
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

Current Law: 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.

Energy Assistance

OHEP within the Department of Human Services (DHS) administers a variety of energy assistance programs and services for residential customers using local administering agencies, including local departments of social services, in each county and Baltimore City. These programs include the Electric Universal Service Program bill payment assistance, Maryland Energy Assistance Program bill payment assistance (heating source), and gas and electric arrearage assistance programs. The income eligibility for each of these programs is 175% of the federal poverty level.

State Fiscal Effect: The bill creates new and ongoing responsibilities for PSC that cannot be absorbed with existing resources. Therefore, special fund expenditures for PSC increase by $178,083 in fiscal 2022, which accounts for the bill's July 1, 2021 effective date. This estimate reflects the cost of hiring one regulatory economist and one staff attorney to monitor supplier offers and engage in ongoing enforcement efforts. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	$161,593
Other Operating Expenses	16,490
Total FY 2022 PSC Expenditures	**$178,083**

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies.

The extent to which special/federal fund expenditures from OHEP energy assistance programs may be reallocated across customers due to the bill is unknown; overall expenditures are not affected. DHS did not indicate the need for any additional resources as a result of the bill.

Small Business Effect: Electricity and gas suppliers are generally prohibited from enrolling and serving customers who have received financial assistance from OHEP in the previous fiscal year, beginning July 1, 2022. As such, the bill (1) precludes small suppliers from serving a portion of their potential market unless they can at least compete with SOS prices and (2) requires additional verification procedures at the time of contract enrollment and renewal.

Additional Information

Prior Introductions: SB 685 of 2020, a similar bill, passed the Senate with amendments and was referred to the House Economic Matters Committee; no further action was taken. Its cross file, HB 1224, received a hearing from the House Economic Matters Committee, but no further action was taken.

Designated Cross File: HB 397 (Delegate Lierman) - Economic Matters.

Information Source(s): Public Service Commission; Department of Human Services; Department of Legislative Services

Fiscal Note History: First Reader - January 28, 2021
rh/lgc

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

TXU EnergyAid-infographic flyer_PRINT (1).PDF

Uploaded by: Nash, Katie

Position: UNF

Texans who need a hand with their electricity bills can lean on TXU Energy Aid^{SM}.
We've provided bill payment assistance to our customers for over 35 years.

HOW WE'VE HELPED

35+ YEARS

Supporting our neighbors in need for over 35 years.

Taking care of Texans through one of the largest electricity assistance programs in the country.

$4 MILLION

Giving back an additional $4 million per year through TXU Energy.

$110+ MILLION

Providing over $110 million in bill-payment assistance for nearly 560,000 Texans.

20,000 CUSTOMERS

Helping 20,000 families a year keep their homes powered and safe each year.

80 AGENCIES

Working with 80 social service agencies across Texas.

100%

Ensuring 100% of funds go to our customers in need.

TXU energy

TXU Energy Aid

Texans who need a hand with their electricity bills can lean on TXU Energy Aid℠. We've provided bill payment assistance to our customers for over 35 years.

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Ensuring 100% of funds go to our customers in need.

2021 Testimony SB31 Electricity and Gas - Energy S

Uploaded by: OBrien, Rhea

Position: UNF

pepco®
An Exelon Company

delmarva power®
An Exelon Company

February 2, 2021

112 West Street
Annapolis, MD 21401
410-269-7115

OPPOSE - Senate Bill 31
SB31 - Electricity and Gas – Energy Suppliers – Supply Offers

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva Power) oppose unless amended **Senate Bill 31 Electricity and Gas – Energy Suppliers – Supply Offers**. Senate Bill 31 requires the Public Service Commission (Commission) to establish an administrative process to approve supply offers for electricity or gas for households in the State that receive energy assistance through the Office of Home Energy Programs and places additional requirements around third party offers to households who receive energy assistance. The bill also requires that the Commission create test cases for new enrollments that shall be run through utilities billing and enrollment system on a quarterly basis to verify that suppliers on the approved list are correctly charging households that receive energy assistance.

Pepco and Delmarva Power support transparency in pricing and contract terms and note that COMAR includes provisions dedicated to consumer protection. Senate Bill 31 is seeking information regarding rates charged by third-party suppliers. Senate Bill 31 would require a quarterly report for test cases for new enrollments that includes information on what the Standard Offer of Service price is and verifying whether a third-party supplier is charging a price that is equal or below what the SOS price is. All of the information required by Senate Bill 31 for test cases for new enrollments can and should be obtained from the third-party supplier offering the rate.

Pepco and Delmarva Power are unable to comply with the last requirement of the bill—that is to verify that third party suppliers are meeting the requirements of the bill based upon how they are charging customers. Third-party suppliers serving in the Pepco and Delmarva Power service territory provide us with what we term “bill ready” information. “Bill-ready” information does not provide the underlying rates that comprise the amount on the bill—and instead only provides the total bill amount. We are unable to comply with section (E) of the bill because third party residential suppliers provide the utilities with “rate-ready” data information. Changes to the billing system for Pepco and Delmarva Power are required to implement “rate-ready” billing.

For the above reasons, Pepco and Delmarva Power oppose Senate Bill 31 unless Subsection (E) requiring utilities to verify information for test cases identified by the Commission for new enrollments is stricken from the bill.

Contact:

Katie Lanzarotto
Senior Legislative Specialist
202-428-1309
Kathryn.lanzarotto@exeloncorp.com

Ivan K. Lanier
State Affairs Manager
202-428-1288
Ivan.Lanier@pepco.com

SB0031_Unfavorable_Stanek.pdf

Uploaded by: Stanek, Jason

Position: UNF

STATE OF MARYLAND

JASON M. STANEK
CHAIRMAN

PUBLIC SERVICE COMMISSION

February 2, 2021

Chair Delores G. Kelley
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 31 – UNFAVORABLE - Electricity and Gas – Energy Suppliers – Supply Offers

The Maryland Public Service Commission has reviewed Senate Bill 31, which intends to prevent individuals who receive ratepayer-funded and other forms of energy assistance from paying a gas or electric supply rate that is higher than default utility rates. Despite well-meaning intentions, I cannot support the bill in its current form due to concerns regarding implementation.

SB 31 requires the Commission to issue an Order or promulgate regulations before January 1, 2022, and to approve gas and electric supply offers for individuals who receive energy assistance through the Maryland Department of Human Services, Office of Home Energy Programs. Suppliers would be prohibited from soliciting individuals receiving OHEP benefits with unapproved offers. Furthermore, section B(1)(i) specifies that an approved supply offer may not be offered to customers who received energy assistance during the previous fiscal year. SB 31 would therefore limit approved retail supply offers to customers who are receiving their first year of benefits. Implementation would require the Commission to design and implement an ongoing process for identifying customers who are approved by OHEP and solicited by suppliers.

The Commission would likely need to establish procedures via regulation to satisfy the legislation's requirements. In light of the complex and technical nature of the Commission's regulations, it is usually most effective to use a stakeholder working group to allow various constituencies to work towards a complete set of regulations for Commission consideration. While effective, this collaborative process can take several months or longer. Once draft regulations are presented to the Commission, the notice and comment period required under Maryland law takes several additional months. Accordingly, I recommend amending the proposed legislation to extend the date for promulgating regulations to July 1, 2022. Similarly, the effective date for supplier compliance should be moved to January 1, 2023, at the earliest.

In addition, SOS electricity rates change at least twice a year, and gas rates change on a monthly basis. Each time the utility rates change, the Commission would need to review approved offers to determine if they remain at or below the new SOS rate. This could be a very large undertaking depending on the number of suppliers that elect to participate. Any violations will result in an evidentiary proceeding, which are time consuming and resource laden. For these reasons, the Commission will require additional staff resources with expertise in economic analysis and legal prosecution to accomplish the bill's requirements.

Further, SB 31 requires the Commission to file an annual report; sections D and E require information that the Commission does not currently possess. The Commission does not have access to energy assistance data cross referenced with supplier enrollment data required under (D(1)(iv)-(v), and it is unclear whether the Commission has legal authority to require OHEP and retail supply companies to disclose the data necessary to comply. Therefore, the bill may require amendments to clarify that the relevant entities must provide necessary data to the PSC. In addition, D(1)(vi) requires the Commission to report "the total number of energy assistance households that filed complaints about their third party supplier." While the Commission handles and tracks complaints against suppliers and regulated companies, it does not require customers to report their income or OHEP qualification status during the complaint process. While adding this requirement is possible, it may have a chilling effect on customers' willingness to file complaints. Finally, section (E) requires the Commission to create "test cases" for each utility to verify supplier compliance with this law. The Commission does not have test accounts with any Maryland utility and does not know how or if this requirement can be satisfied. I recommend clarifying the meaning of "test cases" or removing (E).

I urge an unfavorable vote on SB 31 as currently drafted. The PSC is available to participate in any discussions or efforts with the Office of People's Counsel, utilities, retail suppliers, and OHEP to improve the language and address the issues I have highlighted above.

Sincerely,

Jason M. Stanek, Chairman

SB0031 (HB0379) - LOI.pdf

Uploaded by: Fahrig, Landon

Position: INFO

Maryland Energy Administration

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Mary Beth Tung, Director

TO: Members, Senate Finance Committee
FROM: Mary Beth Tung – Director, MEA
SUBJECT: SB0031 (HB0379) – Electricity and Gas - Energy Suppliers - Supply Offers
DATE: February 2, 2021

MEA POSITION: Letter of Information

MEA has been supportive of the Commission's efforts to develop a competitive energy market in Maryland, a process which began when the General Assembly passed the Electric Customer Choice and Competition Act of 1999. This is because retail rates in states with wholesale electric competition (like Maryland) have increased less than in states without restructured markets; creating "significant value for customers in Maryland."[1] From 1990 to 2014, a review of percentage changes in weighted average prices, in both nominal and real terms, shows that retail choice states had the best price outcomes for residential, commercial, and industrial customers.[2]

Retail choice has also been a boon for "green sales." "Green pricing programs offer customers the option of buying power from environmentally friendly generation resources…"[3] Growth in retail choice states resulted in approximately double the volume of "green sales" by 2013 as compared to traditional states.[4]

Senate Bill 31 restricts the ability of Maryland ratepayers who receive assistance from the Office of Home Energy Programs within the Department of Human Services to select a competitive energy supplier for their electric or gas service, removing an individual ratepayer's ability to select an energy supply offer that they believe provides the greatest benefit.

MEA recognizes the importance of protecting Maryland's most vulnerable ratepayers. However, constraining the competitive energy marketplace may limit overall benefits to all Marylanders. MEA urges the committee to consider this information when it reports on Senate Bill 31.

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[1] *A Common Sense Guide to Wholesale Electric Markets*, Bates White, 2007, at 37.
Retail Rate Comparisons and the Electric Restructuring Debate, Bates White, 2008, at 2.

[2] *Retail Choice in Electricity: What Have We Learned in 20 Years?*, Electric Markets Research Foundation, 2016 at 43, *Citing* U.S. Energy Information Administration [Form 861, Green_Pricing2010.xls, Green_Pricing2011.xls, and Green_Pricing2012.xls]

[3] *Id* at 39.

[4] *Id*.