

DAVID S. LAPP
PEOPLE'S COUNSEL

WILLIAM F. FIELDS
DEPUTY PEOPLE'S COUNSEL

JULIANA BELL
DEPUTY PEOPLE'S COUNSEL

— OPC —
OFFICE OF PEOPLE'S COUNSEL
State of Maryland

6 ST. PAUL STREET, SUITE 2102
BALTIMORE, MARYLAND 21202
WWW.OPC.MARYLAND.GOV

BRANDI NIELAND
DIRECTOR, CONSUMER
ASSISTANCE UNIT

BILL NO.: HB 1214 - Residential Retail Electricity - Green Power -
Renewable Energy Credits and Marketing Claims

COMMITTEE: Education, Energy, and the Environment

HEARING DATE: March 30, 2023

SPONSOR: Delegate Stein

POSITION: Informational

House Bill 1214 as amended by the House, as the Office of People's Counsel understands it, is intended to ensure the integrity of retail electricity suppliers' "green marketing" claims by requiring suppliers who claim their products benefit the environment to: (a) buy renewable energy credits that are both sufficient to match their environmental marketing claims and are in quantities that exceed their existing renewable energy portfolio standard requirements under Maryland law; and (b) provide an explanation to consumers clarifying what RECs are. OPC supports this intent but is concerned that certain provisions of the bill, as currently written, run counter to this intent, and may prove detrimental to consumers.

Since 2004, Maryland's Renewable Energy Portfolio Standard ("RPS") has required electricity suppliers to fill to a minimum of their electricity sales with energy from renewable sources. *See* Public Utilities Article ("PUA") §§ 7-701 et seq. The RPS allows for the sale and transfer of renewable energy credits ("RECs") where individuals and companies interested in installing a qualifying source of energy can sell their RECs to an electricity supplier. If an electricity supplier does not comply with the minimum requirements, it will have to pay a financial penalty, called an Alternative Compliance Payment.

We have two primary concerns with the bill as drafted. *First*, HB 1214 does not contain language stating how many RECs—or the proportion of RECs—that a supplier must buy to call itself or its products "green." The bill states its purpose as "requiring an

electricity supplier that offers green power for sale to residential customers to purchase certain renewable energy credits *in excess of* the renewable energy portfolio standard in a certain year in an amount equal to the amount of electricity sold to residential customers as green power in that year,” but the operative text does not conform with this purpose. Although the bill requires electricity suppliers to submit reports on the amounts and type of generation, the operative text of the bill (§ 7-707(b)) requires only that “an electricity supplier shall purchase [RECs] for each year the electricity supplier offers green power for sale to residential customers.” No language requires an electricity supplier offering “green power” to purchase RECs “in excess of the [RPS]” or “in an amount equal to the amount of electricity sold to residential customers as green power in that year,” as the bill intends.

HB 1214’s failure to state how many RECs—or the proportion of RECs—that a supplier must buy to call itself or its products “green” means that a supplier could call its offer “green” by simply complying with the current RPS law—purchasing only the minimum RECs to meet the RPS, and nothing more. Suppliers should not be allowed to market themselves as “green” for simply meeting the minimum standard that Maryland law requires—an outcome the bill likely does not intend, but on its face would allow. In our view, suppliers should only be able to market their offers as “green” if they exceed, significantly, the requirements of Maryland law.

Second, although we support the bill’s attempts at transparency, the disclaimer language in proposed section 7-707(d) is potentially misleading. The proposed disclaimer suggests that the purchase of RECs cannot have any effect on the resource mix used to generate electricity. However, suppliers’ purchases of RECs in fact can change the mix of generation. RECs provide funding to renewable energy producers. This effect may be small at the individual level but is larger in aggregate.

Given the complexities of this issue, OPC suggests that the General Assembly instead instruct the Public Service Commission to promulgate regulations that fulfill the intent of HB 1214. The Commission could be required to set orders or regulations that (1) require suppliers that want to make “green” marketing claims to buy the desired RECs; (2) define what percentage of RECs above the RPS requirement a supplier must purchase to call itself or its products “green”; and (3) draft an appropriate explanation of how RECs work, as necessary.