



Bill No: House Bill 267 — Electricity and Gas – Retail Supply – Regulation and Protection

Committee: Economic Matters

Date: February 15, 2024

Position: Oppose

The Apartment and Office Building Association of Metropolitan Washington (“AOBA”) submits this testimony in opposition to HB 267. AOBA’s members own or manage approximately 20.5 million square feet of commercial office space and over 215,650 apartment units in the State of Maryland. Our members are served on a mixture of utility distribution non-residential rate schedules. Specifically, AOBA members receive service from the Potomac Electric Power Company (“Pepco”) under its Small Commercial Rate Schedules (Type I), as well as Pepco’s Medium and Large Commercial Rate Schedules (Type II), including master-metered apartments. AOBA members also receive service from the Washington Gas Light Company (“WGL” and “Washington Gas”) under its Group Metered Apartment, Commercial and Industrial and Interruptible rate schedules. Additionally, AOBA members receive service from Baltimore Gas and Electric Company (“BGE”) and Potomac Edison (“PE”) under their non-residential rate tariffs.

Many AOBA members in Maryland purchase their electric and natural gas supply through retail competitive supply contracts. Others receive electric supply service from utility Standard Offer Service (“SOS”), and natural gas utilizing Washington Gas’ Purchased Gas Charge (“PGC”).

Considering the types of energy supply service (i.e., SOS or competitive supply) that our members choose, as well as the varying terms of service, (i.e., length of supply contract, fixed price contract, pass-through charges, percentage of renewable energy purchased, etc.), and our members’ strong desire to continue to have the flexibility in choosing the various options that are currently available in the market and that meet their company’s needs, AOBA files this testimony in **Opposition to HB 267**.

AOBA submits that after more than 20 years since the deregulation of energy supply in Maryland, the retail competitive market is functioning well for our members and the practices adopted by the Maryland Public Service Commission regarding utility provided Standard Offer Service (“SOS”) have also served AOBA members well. Therefore, **AOBA is in opposition to HB 267 since this legislation will essentially end retail competition in the State.**

AOBA opposes HB 267 for the following reasons:

1) HB 267 would require that a supply contract not exceed 12 months at a time and restricts the determination of the price.

HB 267 would amend the current law and would mandate that:

(D) An electricity supplier: (I) May offer electricity only at a price that does not exceed the trailing 12-month average of the electric company’s Standard Offer Service (“SOS”) rate in the electric company’s service territory as of the date of the agreement with the customer; and

(II) May offer electricity supply only: for a term not to exceed 12 months at a time.

These new restrictions on the manner in which AOBA members purchase energy supply completely change the way our members do business. The majority of our membership purchases their energy supply (both electricity and natural gas) for longer terms than one year, (i.e., between two-to-five-year contracts, and even longer, up to ten-year purchase agreements). Options currently available to our members also include the ability to purchase a portion of their energy supply over a period of years, thus hedging their price risk through a layered purchasing strategy. Price stability is an essential consideration for our members. Commercial purchasers, both small and large, of commodity supply manage their price risk using a more complex approach than purchasing one year at a time to hedge against future uncertainty.

It is important for AOBA members to continue to have the ability to choose the length of their contracts and the timing of their supply purchases since this is the way most commercial properties, both office buildings and multi-family, prepare their operating budgets. Since energy costs are a significant portion of a building’s costs of operations (i.e. approximately 18%), it is critical for our members to be able to plan for such expenses and budget appropriately, as well as to determine rents for their commercial tenants and their multi-family residents. While our members are constantly striving to lower their costs of operations, it is also necessary for our members to know what their costs will be over time. Our members utilize commodity purchase supply agreements to manage these costs and hedge their risk.

Additionally, requiring that any offer of a supply contract cannot exceed the electric company's SOS price may limit when a supplier offers competitive supply rates. For example, currently, in Pepco's service area residential and small commercial customer rates are procured by purchasing 25% of the SOS load for each of two seasons (Summer and Non-summer) for delivery over a two-year period. The summer season is June 1 to September 30 and non-summer is October 1 to May 31. This means that no more than 25% of any single season is procured during an auction. It takes four auctions to completely procure residential and small commercial SOS supplies for a SOS supply period (June-September or October- May).

SOS bids are solicited separately for medium and large non-residential customers (Type II). Type II SOS charges are established for three-month periods:

June 1- August 31;
September 1 – November 30;
December 1 – February 28; and
March 1 – May 31.

For large commercial users (over 600 kW of PJM Peak Load) Hourly Priced generation service or HPS is offered. While some customers at times have chosen to use HPS, at a time of rising energy prices, HPS can expose the customer to greater price increases.

The manner in which SOS supply is purchased on the wholesale market makes it very difficult, if not an impossibility, for a supplier to be able to make offers to customers at a time when the offer may not exceed the SOS price. SOS prices for an upcoming period may only be known 30 days before the SOS rates go into effect. (COMAR 20.52.05.01, Public Notice of Price).

2) HB 267 would prohibit an electricity supplier “from imposing a fee on customers for cancellation or early termination of an electricity supply agreement.” If there is no penalty or cancellation fee for a contract, then there is no contract. Why would a retail supplier agree to furnish electric or gas supply to any customer, if that customer could at any time cancel the agreement? Suppliers contract for their supply to customers utilizing contracts with wholesale suppliers which are binding and do not allow for early termination by the purchaser without recourse. No electric or gas supplier would want to do business in the Maryland market if retail customers could cancel their contracts indiscriminately without being able to recoup their incurred costs.

3) HB 267 would require that the term of a license be limited to three years, and must then be renewed. Md. Code, Pub. Util. §7-507(b)(1)(2)). AOBA submits that this is an unnecessary change to the Public Service Commission current regulations for licensing and bonding requirements and is unnecessarily burdensome. Further, this new requirement will increase costs to suppliers which will get passed onto customers. This new licensing requirement will also cause increases in resources for

the Public Service Commission. The Public Service Commission already has robust consumer protection regulations and licensing requirements including annual updates to licenses that have been effective in protecting customers' interests.

4) HB 267 would allow Maryland utilities to market SOS rates to consumers in its service territory. AOBA submits that this new provision, which essentially allows the utility to market its SOS in competition with retail suppliers, will serve to limit the number of suppliers in Maryland and further destroy the retail market. It is an unfair advantage to allow the utility to market its SOS when its costs of marketing are paid for by ratepayers. This is an unfair disadvantage to competitive suppliers since they will now be essentially now competing with a ratepayer subsidized service.

Conclusion

AOBA submits that while the intent of HB 267 may be the protection of consumers, the unintended consequence of this legislation caused by the combination of the several new requirements discussed in this testimony, will be the end of retail competition in Maryland.

The effect of HB 267 is to eviscerate the previously established retail market in the State for all natural gas and energy users, as well as all classes of customers, and eliminate the ability for ratepayers to choose the manner in which they purchase their energy supply.

For these reasons, **AOBA respectfully opposes the adoption of HB 267 and requests an unfavorable report.**

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