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BILL NO.:	House Bill 0267 Electricity and Gas - Retail Supply Regulation and Consumer Protection
COMMITTEE:	Economic Matters Committee
HEARING DATE:	February 15, 2024
SPONSOR:	Vice Chair Crosby
POSITION:	Favorable

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The Office of People's Counsel ("OPC") supports House Bill 267 because it will provide urgently needed protections for consumers interacting with the retail energy supply market.

In 1999, the General Assembly passed Maryland's Electric Customer Choice and Competition Act ("the Act").[1] The Act "deregulate[d] the generation, supply and pricing of electricity" by enabling companies other than the State's monopoly utilities to sell electricity directly to retail customers.[2] The intent of the Act was to "create competitive retail electricity supply and electricity supply services markets . . . [and] provide economic benefits for all customer classes[.]"[3]

Since 1999, however, the benefits for residential customers from retail choice have been sparse. OPC's experience in this regard was confirmed by a recent study of retail energy suppliers operating in Baltimore Gas and Electric's service territory showing that

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[1] 1999 Md. Laws Ch. 3, 4 (S.B. 300/H.B. 703).
[2] Md. Code Ann., Pub. Util. ("PUA") § 7-504(3).
[3] PUA §§ 7-504(2), 7-504(4).

retail supply customers are not, in fact, paying competitive prices.[4] Compounding this problem, the study also found that "households who live in low-income areas pay higher [electricity] prices, on average, than households in high-income areas."[5]

At the same time, the harm to customers has been plentiful. Current laws and regulations enable retail energy suppliers to engage in deceptive and unfair marketing practices that are hard to uncover and even harder to adequately remedy. OPC has litigated numerous cases before the Public Service Commission ("PSC") successfully alleging that retail energy suppliers have violated Maryland law and regulation by engaging in unfair and deceptive practices that resulted in harm to customers.[6] In just two of those cases, Maryland customers were overcharged by over $14 million and $6 million dollars, respectively, and individual customers were overcharged by thousands of dollars.[7]

Consumer complaints against retail energy suppliers include unfair and deceptive marketing and solicitation practices such as:

- Telemarketing based on incomplete or deceptive advertising material that results in a binding supply contract just based on a telephone call;[8]
- Deceptively marketing products as "green energy," "renewable energy," and "carbon-free" without defining these terms;
- Enrolling customers without their consent, making misleading claims about potential savings, and posing as representatives of a customer's utility company;[9]

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[4] Kahn-Lang, Jenya, *Competing for (In)attention: Price Discrimination in Residential Electricity Markets*, pg. 1, (Mar. 7, 2023), https://drive.google.com/file/d/1IClpnaf3gVy3X94YWhLtSSTMWKTzi16K/view.
[5] *Id.* at 43.
[6] *See e.g.,* PSC Case No. 9324, *In the Matter of the Investigation into the Marketing Practices of Starion Energy PA, Inc.*; PSC Case No. 9613, *In the Matter of the Complaint of the Staff of the Public Service Commission against SmartEnergy Holdings d/b/a SmartEnergy*; PSC Case No. 9615, *In the Matter of the Complaint of the Staff of the Public Service Commission v. U.S. Gas & Electric and Energy Services Providers, Inc., D/B/A Maryland Gas & Electric*; PSC Case No. 9617, *In the Matter of the Complaint of the Staff of the Public Service Commission Against Smart One Energy, LLC*; PSC Case No. 9647, *Complaint of the Md. Office of People's Counsel Against SunSea Energy, LLC*.
[7] Case No. 9617, Order No. 89526 (Mar. 6, 2020); Case No. 9613, Order No. 90515 (Feb. 22, 2023).
[8] The most egregious example of this type of supplier behavior is Smart One Energy. Through telephone marketing, the company was able to learn the account number or customer ID for the customer and enroll the customer without their consent. The company had no other interaction with the customer other than to put excessive charges—usually about twice the utility's rate—on the customer's bill. This practice went on for years before being detected. The company enrolled over 17,000 Maryland customers. Many customers had no idea that they were being served by a supplier, had no knowledge of Smart One Energy, and endured overcharges for years. *See* PSC Case No. 9617, Order No. 89219 (August 2, 2019).
[9] *See e.g.,* PSC Case No. 9324; PSC Case No. 9615; PSC Case No. 9647.

- Deploying third-party sales agents who are unlicensed and unregistered, making it difficult to prevent agents who violate Maryland regulations from continuing to operate in Maryland; and
- Locking customers into variable rate contracts that significantly increase in price and charge excessive early terminations fees.

Although the PSC has a customer complaint process, PSC enforcement actions thus far have done little to curtail retail supplier misconduct. In fact, the number of consumer complaints filed against retail energy suppliers operating in Maryland is growing. In fiscal year 2021, consumers filed 157 complaints with the PSC's Consumer Affairs Division; in 2022, consumers filed 86 complaints; and in 2023, consumers filed 641 complaints.[10] It is likely that the numbers of consumers affected by supplier misconduct are substantially greater than the number of complaints.

Enforcement cases have not effectively deterred bad actors in the retail supply market. In our view, while the PSC has found violations of statutes and regulations, its remedies have been weak, allowing retail suppliers to indefinitely continue to profit from violating the law and otherwise failing to deter future violations. For example, one retail supplier racked up 41 new consumer complaints just months after restarting marketing and solicitation activities following an enforcement action before the PSC.[11] Enforcement cases also often span several years, which means that even if the affected customers are granted relief, that relief is substantially delayed. In one current case on appeal, the supplier continues to serve—and receive revenues from—customers that the PSC in 2021 found the supplier had unlawfully enrolled.[12]

The best way to minimize abuses and ensure that customers benefit from retail choice is to have strong consumer protection laws and regulations that limit the opportunities for violations and deter future non-compliance. HB 267 will enhance customer protections by:

- Enhancing licensing requirements, for example, by requiring retail energy suppliers to reapply for a license every three years, providing additional opportunities for the PSC to review suppliers' conduct and to deny problematic suppliers from selling in the state;

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[10] Consumer complaint information is publicly available on the PSC's website: https://www.psc.state.md.us/retail-energy-supplier-complaint-reports/.
[11] PSC Case No. 9647, *Notice of Probable Cause Hearing* (Public and Confidential), ML No. 301288 (Feb. 13, 2023).
[12] *Matter of SmartEnergy Holdings, LLC,* 256 Md. App. 20 (2022) (on appeal to the Sup. Ct. of Md.).

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- Increasing the penalty amount from $10,000 to $25,000 and providing that each customer who is affected by a retail supplier's misconduct is a separate violation;
- Eliminating variable rate contracts;
- Prohibiting commission-based compensation for energy salespersons, which will remove the incentivize for deceptive marketing and solicitation practices;
- Prohibiting the sale and purchase of accounts receivable; and
- Eliminating early termination fees; and many other protections.

To further advance the goals of the bill, OPC is working with the sponsors to amend the bill in several important ways, including among others:

- Exempting municipal utilities serving customers solely in their distribution territories and community choice aggregators;
- Providing that if an individual person is employed by or under contract with an entity licensed as an "energy salesperson," that individual is not also subject to the requirements of an "energy salesperson";
- Extending the same limitations on contracts for electric supply to contracts for natural gas supply;
- Providing a more workable comparison to standard offer service prices;
- Removing the restriction on fixed-rate contracts exceeding 12 months;
- Removing the authority for investor-owned utilities to market standard offer service;
- Requiring a supplier that offers "green power" to purchase and retire renewable energy credits *in excess* of the amount already required by Maryland's Renewable Portfolio Standard and delegating to the PSC the authority to determine the appropriate threshold for protecting consumers from being misled and promoting the State's renewable energy goals;
- Directing the PSC to adopt disclosure requirements and language regarding green power offers.

OPC supports the urgent consumer protections in HB 267 and appreciates the opportunity to work with the sponsors to ensure residential customers are protected.

Recommendation: OPC requests a favorable Committee report for HB 267.