



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB 267: Electricity and Gas – Retail Supply – Regulation and Consumer Protection

Position: FAVORABLE

Good afternoon Mr. Chair and distinguished members of the Economic Matters Committee. I am Vice Chair Crosby, and it is my honor to present HB 267, entitled Electricity and Gas – Retail Supply – Regulation and Consumer Protection.

My office has worked very closely with the Senate Sponsor's office, President Pro Tem Malcolm Augustine, as well as the PSC and the OPC. We and other stakeholders are continuing to shape amendments together.

This is fundamentally a consumer protection bill.

There are two different issues at play here, both of which relate back to consumer protection. One: Many third party retail energy suppliers engage in unscrupulous business practices that harm residential customers. Two: There is a need for truth in advertising about the clean, renewable energy claims that many suppliers make. Consumers who are willing to spend more money to support the development of clean, renewable energy sources deserve clarity about exactly where their money is going, and what kind of impact their money is really having.

But first, some background, for people who are unfamiliar with what “third party retail energy supplier” even means:

The Public Service Commission (PSC) first deregulated natural gas in 1996. In 1999, the General Assembly decided to allow ratepayers to choose to purchase their electricity from a third party retail energy supplier instead of the public utility. This change became effective in 2003. Electricity and gas would still be delivered by the public utility. At the time, it was believed that introducing competition to the energy supply market would lower prices for customers. Instead, the data has borne out that on average, residential retail supply customers are paying higher prices than customers who have remained with their incumbent utility – and data has illustrated that many retail energy suppliers engage in sales practices that target low-income neighborhoods. The lower a neighborhood's income, the more the residents pay for energy, on average.

Today, you will hear from several customers who have been utility-slammed, or who were otherwise taken advantage of by unscrupulous companies with deceptive business practices.

Companies have engaged in utility-slamming, in which a customer's supplier is changed through deception without their knowledge or consent. Companies have also hooked customers with a low introductory offer and sometimes an incentive such as frequent flier miles or a gift card, and then surprised their customers with a variable rate that drives their energy bill sky-high.

It has been estimated that since 2014, Maryland customers with third party retail energy suppliers have collectively paid approximately \$1 billion more for their electricity and gas than they would have paid if their incumbent utility had been their supplier instead. It's not hard to understand why, when you look at the price per kilowatt-hour.

Some fast facts for you:

1. Of the 59 suppliers we've looked at, Vistra had 4 subsidiaries operating in Maryland in 2022. Of them, only one averaged below SOS.
2. NRG had 6 subsidiaries operating in Maryland in 2022. None of them averaged below SOS.
3. Of the 59 suppliers we've looked at, the amount of retailers with average rates below SOS has decreased from 11 in 2012, to 7 in 2022.
4. In 2022, the weighted average SOS for the state was 8.07 cents/kWh. In 2022, here are the average kWh rates for some of those 59 suppliers we looked at:
 - a. Sunsea Energy: 24.84 cents/kWh
 - b. Palmco Power MD: 23.89 cents/kWh
 - c. ENGIE Power & Gas: 19.92 cents/kWh
 - d. Energywell: 19.26 cents/kWh
 - e. CleanChoice: 18.93 cents/kWh
 - f. Green Mountain (NRG): 15.49 cents/kWh
 - g. Viridian (Vistra): 15.51 cents/kWh
 - h. IGS: 13.19 cents/kWh

You will hear third party retail suppliers argue that they need to charge customers more for clean, renewable electricity, which they call a “premium product.”

Something these third party retail energy suppliers count on is that their customers do not know that the electricity and gas that are actually delivered to their homes are always generated in the same places, by the same means of generation, regardless of whether the customer purchases their energy from a third party retail supplier, or from their incumbent utility.

That holds true, even when a third party retail energy supplier makes the claim they are selling clean, renewable energy. Every single building in the state of Maryland that is hooked up to the grid is on the same grid, the PJM. The percent of renewable energy that is on the PJM grid generally hovers between six and seven percent. That means that even if a customer is paying a third party retail energy supplier for 100% clean, renewable energy, they are still generally only receiving between six and seven percent renewable energy at their home.

So how do third party retail energy suppliers get away with making these claims? They purchase Renewable Energy Certificates, also known as RECs, and they “bundle” them with the actual electricity that they purchase.

A little more history: When the electricity market was first deregulated in Maryland, the legislature only required that suppliers disclose fuel sources. RECs did not become part of this industry until the Renewable Portfolio Standard (RPS) was adopted in 2004.

One REC is automatically created for every megawatt-hour of electricity that is generated from renewable energy technology. RECs represent the social good that accompanies the generation of

that renewable energy. However, RECs can be bought and sold separately from Power Purchase Agreements, which is how energy is actually sold. RECs can even be resold and bought secondhand. Legally, whoever owns the REC has the right to claim that they own the renewable energy associated with it – even if the actual electricity was sold to a different entity. If renewable energy is generated and sold as part of a Power Purchase Agreement, but the associated REC is sold to a different entity, whoever bought the electricity itself cannot legally claim that they have purchased renewable energy.

RECs were invented to spur investment in burgeoning clean energy generation technology. At the time that RECs became a market-based instrument, the idea was that purchasing RECs would create “additionality,” meaning their sales would generate enough revenue for companies that generate clean, renewable energy, that those companies would be able to build out even more – more solar panels, more wind turbines, etc. However, not all RECs are created equal. Not all REC sales create additionality. The way our RPS was designed in Maryland, was done to drive demand that would create additionality. The way that we do this in Maryland is by requiring RECs to come from energy sources that are either inside the PJM, or adjacent to the PJM and delivered into the PJM. That would include regions like New York and the Midwest – not states like Texas.

Restricting green power marketing offers to RECs that qualify for the Maryland RPS, as this bill will do, will create more demand for building out that energy here at home, rather than sending our ratepayers’ hard-earned dollars to states like Texas, that have had robust renewable energy generation for decades.

A customer in Maryland can sign up with a third party retailer and think they are buying clean, renewable energy. What they probably don’t know is that in most cases, their money is going towards buying RECs from places like a wind farm in Texas, for example, and that the electricity from that wind farm won’t be delivered to the PJM grid, or going to their home. Furthermore, the customer probably also doesn’t know that the RECs the third party retailer bought from that wind farm were so cheap, that that money isn’t being used to build out additional wind infrastructure – that revenue from REC sales is just a drop in the bucket that pads the wind farm’s profits without incentivizing more renewable energy production.

This is a big bill. It has several components, and we will be adding several amendments.

But first, here’s what the bill will NOT do:

One, this bill will NOT affect commercial customers. This bill will be amended to that effect. The Senate sponsor and I are in discussion about exactly what that language will look like.

Two, this bill will NOT end the third party retail energy supply industry in Maryland. Customers will still be able to choose their own energy supplier, if they do not want to stick with their incumbent utility.

Three, this bill NOT redo the RPS system in any way, nor will it reregulate the State.

So here’s what this bill, once it is amended, WILL do:

1. We will define an energy salesperson.
2. We will require electricity supplier licenses to expire every three years, and require that they pay an annual renewal fee.
3. We will allow complaints against energy suppliers and individual salespeople to be brought by the Office of People's Counsel, the Attorney General, and any affected party.
4. We will allow the Public Service Commission to deny, revoke, suspend, or refuse to renew the licenses of suppliers and individual salespeople.
5. We will increase the maximum civil penalties against suppliers for each of the violations from \$10,000 to \$25,000. We will amend out the fines for individual salespeople.
6. We will specify that each customer affected is a violation. It will no longer be one violation to harm 5,000 customers in the same way. Instead, that would be considered 5,000 violations.
7. We will prevent companies from essentially disbanding and reforming under a different name, in order to get around actions against their license.
8. We will require that certain restrictions and penalties for electric suppliers also apply to gas suppliers.
9. We will allow investor-owned utilities to market SOS and their other energy offers to customers. We will add an amendment that will expand that provision to include all utilities regulated by the PSC, and to prohibit them from recouping marketing costs from ratepayers.
10. Third-party retail electricity suppliers may not exceed the trailing 12 month average for SOS in the same service territory.
11. We will not allow for variable rates.
12. We will not allow contracts to last longer than for 12 months, and we will not allow them to auto-renew.
13. Suppliers will not be able to pay their salespeople a commission or other financial incentive based on the number of customers they sign up.
14. Suppliers may not impose a cancellation or early termination fee.
15. Suppliers may not supply electricity to a customer on energy assistance.
16. Suppliers may not sell accounts receivable to a utility. Right now, the utilities are on the hook for the receivables of the third party retail energy suppliers. It's a great deal for the suppliers, but it creates an incentive to market to low-income customers, because the utilities are on the hook for any debt that needs to be collected from accounts that go into arrears.
17. A customer whose account number has been compromised must be able to receive a new one. This is a critical protection for people who have been, or are at risk of being, utility-slammed.
18. We will allow customers to put themselves on a do-not-transfer list, to indicate they do not want to switch from their incumbent utility to a third party retail energy supplier. This is another critical protection for people who have been utility-slammed, or who are at risk of it.
19. We will require the utilities to submit monthly reports to the PSC about third party retail energy suppliers working in their service territory.
20. We will require truth in advertising about green power claims. We will amend the bill to require that if a product is marketed as green, the majority of the energy will be matched with RECs that actually come from inside the PJM, or that generate electricity which is

delivered into the PJM. That will create demand to drive up renewable energy production in our region, which will actually put more renewable energy on our grid. We will also amend the bill to give the PSC wide latitude in regulating the specific language that may be used in green power marketing claims.

21. We will also amend the bill to require that third party retail electricity suppliers report to the PSC details of any RECs they purchase that are outside the PJM, or that are associated with energy that will not be delivered into the PJM. This will create more clarity about where Marylanders' money is really going.

Again, this bill will not eliminate energy choice for customers. These reforms are being introduced in order to give energy deregulation in Maryland, which began in the 1990s, the opportunity to work for the people in the way it was intended. We have been living this experiment for decades, and we know some changes need to be made.

Thank you for your consideration of this legislation.