

February 13, 2024

Del. C. T. Wilson
Chair, Economic Matters Committee
Del. Brian M. Crosby
Vice Chair, Economic Matters Committee
Room 231
House Office Building
Annapolis, Maryland 21401

**Re: House Bill 267 / Senate Bill 1
Electricity and Gas – Retail Supply – Regulation and Consumer Protection
Comments of Tomorrow Energy Corp**

Position: OPPOSE

To the Honorable Chairpersons:

Tomorrow Energy Corp (“Tomorrow Energy”), a Maryland-licensed electricity supplier and natural gas supplier,¹ respectfully submits the following information in opposition to House Bill 267 and Senate Bill 1 (the “Legislation”). While Tomorrow Energy generally supports Legislative initiatives that protect consumers by directly targeting unlawful behavior, it opposes efforts which would serve to reduce competition by placing unreasonable restraints on the market’s participants.

I. INTRODUCTION

Tomorrow Energy, previously known as Sperian Energy Corp, was established in 2011. In February 2019, the company’s name was changed to reflect the company’s renewed emphasis on helping customers make a positive environmental impact with renewable-backed energy products.

Tomorrow Energy currently serves customers across 2 ISOs – PJM and ERCOT. In addition to providing electric and natural gas services to customers in Maryland, Tomorrow Energy provides electric service to customers in Illinois, New Jersey, Ohio, Pennsylvania, and Texas, and provides natural gas service to customers in Michigan, New Jersey, Ohio, and Pennsylvania.

II. TOMORROW ENERGY’S COMMITMENT TO CONSUMER PROTECTION

Tomorrow Energy would first like to acknowledge the importance of consumer protection initiatives. Tomorrow Energy takes pride in its own end-to-end consumer protection approach,

¹ Throughout these remarks, the term “Supplier” may be used to refer to the supply of either electricity or natural gas, both individually or collectively.

utilizing both technological and process solutions. While Tomorrow Energy participates in neighborhood sales by engaging commission-based sales agents, Tomorrow Energy routinely stresses to those sales agents the importance of sales *quality* over quantity.

To that end, all Tomorrow Energy agents are trained, not only on Tomorrow Energy's systems and processes, but also the "rules of the road" for marketing to consumers for each of the territories in which Tomorrow Energy's services will be offered. In addition, Tomorrow Energy reviews select sales completed through person-to-person marketing channels to confirm that sales scripts have been followed, that the customer is provided all material terms, that the sale is authorized, and that a third-party verification has been completed.

Tomorrow Energy also monitors individual sales agents to ensure compliance with all regulatory requirements. If a sales agent fails to adhere to the requirements, that sales agent will be coached, retrained, or removed from Tomorrow Energy's campaign, as the situation warrants. Finally, Tomorrow Energy makes "welcome calls" to newly-enrolled customers to confirm that the customer understands and agrees to all material terms and that the sales agent was wearing the proper uniform and displaying an identification badge. If, during the welcome call, the customer expresses that they no longer wish to enroll with Tomorrow Energy, the customer's enrollment will be canceled, and any early termination fees waived.

All findings produced through these processes, as well as any complaints received, are reviewed during a weekly compliance meeting which includes members of Tomorrow Energy's compliance, sales, and leadership teams.

III. CURRENT REGULATORY FRAMEWORK

Tomorrow Energy would next respectfully refer the Committee to Maryland's already robust regulatory framework—only a few highlights of which are contained herein—which is designed to protect consumers from predatory practices.² First and foremost, a Supplier is prohibited from marketing or offering to provide services until it has been licensed by the Maryland Public Service Commission ("PSC").³ Furthermore, a Supplier may not engage in misleading or deceptive conduct, or make false or misleading representations, and must provide its customers with accurate, easily-understandable information about the products being offered.

Specific to person-to-person sales, all Suppliers are required to obtain criminal background history records prior to permitting a sales agent to conduct marketing activities. Once a sales agent has passed a criminal background check, the Supplier then must ensure that the agent has been trained on a host of subjects, including the State and Federal laws and regulations that govern marketing, telemarketing, consumer protection, and door-to-door sales, responsible and ethical sales practices, and the customer's right to rescind and cancel contracts.

² COMAR 20.53.01.01, *et seq.* and 20.59.01.01, *et seq.*

³ COMAR 20.51.02.01 and 20.54.02.01.

Once an agent begins person-to-person marketing, the agent must prominently display a photo identification badge with the Supplier's logo and customer-service phone number, identify the Supplier that the agent represents, and state that he or she is not working for—and is independent of—the customer's local distribution company. The agent is further prohibited from making representations or suggesting in any way, including using apparel or equipment, that would suggest a relationship that does not exist with a local distribution company, government agency, or other Supplier. Should the PSC find that a Supplier's agents have been using fraudulent, deceptive, or other unlawful marketing acts, the Supplier will be held responsible.

Suppliers are also required to maintain a process to verify any transaction that has involved a sales agent that is separate and apart from the interaction with the sales agent and initiated only after the sale has been finalized. This process is generally referred to as a "third-party verification" or "TPV." Once the transaction has been finalized and verified, the Supplier must provide the customer with a copy of its disclosure statement containing all terms of the agreement. After receiving the disclosure statement, the customer is provided a 3-business-day right of rescission under which the customer may cancel the enrollment without penalty.

If, at any point during the sales transaction or through the course of the customer-Supplier relationship, the customer is dissatisfied, the customer is encouraged to contact the Supplier to resolve the issue. In the event the Supplier is unable to resolve the customer's complaint, the customer may then file an informal complaint with the PSC to be investigated and a finding determined.

Based on the foregoing, Tomorrow Energy respectfully represents to the Committee that Suppliers and their sales agents are already subject to—and trained on—a robust system of rules and regulations designed to protect consumers from bad actors, and that the Legislation would do little to provide protections to consumers that they do not already enjoy.

IV. OPPOSITION TO LEGISLATION

a. PSC Authority

Because the Maryland Public Service Commission, acting under authority of the Public Utility Article, has already set in place a robust set of regulations aimed at consumer protection, the concerns that this Legislation seeks to address should first be remedied at the regulatory level. The PSC's regulations already protect consumers from misleading and deceptive practices, ensure that consumers are knowledgeable about the energy products they choose, and require adequate notice to energy customers when their contracts are nearing their end. In addition, the PSC recently implemented additional protections for recipients of the Energy Assistance Program to ensure that they do not pay more than the standard offer service price. The PSC is also currently working to identify and implement additional consumer protections and examine the purchase of receivables program. Finally, in 2023, the PSC launched a "maximum enforcement" campaign with the goal of investigating and prosecuting retail Suppliers. These efforts ultimately contributed to a steep decline in consumer complaints between the first and second halves of 2023.

Since the PSC has already proven its ability to manage the retail energy market and appropriately deal with the occasional bad actor which fails to abide by the regulations in place, the General Assembly should allow the PSC to continue its work and carry out its mission. The proposed Legislation would only serve to erect additional hurdles that distract from the important work that the PSC is already doing.

b. Price Limits

One such proposal contained in the Legislation that would make more work for the PSC is the attempt to fix a Supplier's prices at or below the trailing 12-month average of the electric company's standard offer service rate. This proposal would not only place an additional burden on the PSC by forcing it to be the constant watchkeeper of market rates, but it also fails to recognize the volatility of the wholesale energy market. Although wholesale energy markets are forward-looking, resulting in a market-clearing price after taking into account all anticipated supply and demand factors, the proposed retail price limitation mechanism is entirely backward-looking. In the event of a demand or supply shock, such a backward-looking pricing limitation could essentially force all Suppliers to either market energy at a loss or stop marketing altogether.

The Legislation also fails to consider the diverse product types that Suppliers are uniquely positioned to offer and which consumers are routinely eager to purchase at a small premium. For instance, Tomorrow Energy customers enrolled on its 100% renewables-backed products have, for about the price of a cup of coffee per day, enjoyed the benefit of knowing that, by making this one small change in their routine, they are contributing to a significant environmental shift that will positively impact future generations. Other products that are currently available in the retail market include products that cater to owners of electric vehicles, time-of-use products, and products that benefit charitable organizations. Each of these products, and the innovation, environmental, and social benefits derived from them, would be phased out if the price limits proposed by the Legislation were to pass.

c. Incentive-Based Compensation to Energy Salespersons

The Legislation also proposes to limit the methods by which Suppliers can build awareness of their products by prohibiting commission and other incentive-based compensation to salespersons. One of the most effective and efficient ways that Tomorrow Energy has found to spread the word about its products is through the use of neighborhood marketing—particularly by utilizing commission-based neighborhood sales agents. Tomorrow Energy and many other small Suppliers utilize the commission-based compensation model for the reason that it would simply be unreasonable and unduly burdensome to onboard a staff of full-time salespersons paid on an hourly or salary basis. While larger Suppliers may have the resources to bear this added expense, the simple reality is that this legislation would place an unfair burden on the market's smaller Suppliers. Moreover, these proposed limitations would remove a lawful source of income from individuals seeking to market these products to Maryland consumers.

V. CONCLUSION

For the reasons stated herein, Tomorrow Energy supports initiatives that may come before the Committee which would actually serve to enhance the robust protections that are already afforded to Maryland's consumers. However, Tomorrow Energy opposes the proposals in the Legislation which would harm consumers by making Maryland's retail energy market less attractive to Suppliers, thereby reducing competition in the marketplace. Tomorrow Energy appreciates the Committee's time and attention to this matter and looks forward to actively engaging and participating with the Committee as it continues its efforts to address these important concerns.

Respectfully submitted,



H. Emerson Grogro
Chief Legal and Compliance Officer
Tomorrow Energy Corp

cc: Sen. Malcolm Augustine
Prime Sponsor, Senate Bill 1
214 James Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401

Del. Brian M. Crosby
Prime Sponsor, House Bill 267
231 Taylor House Office Building
6 Bladen Street
Annapolis, Maryland 21401