



Maryland House Economic Matters Committee
HB267 – Electricity and Gas – Retail Supply – Regulation and Consumer Protection -
OPPOSE

SFE Energy Maryland, Inc. and StateWise Energy Maryland LLC [hereinafter “SFE Energy”]¹ appreciate the opportunity to offer written testimony on HB267. SFE Energy strongly supports the availability of competitive retail electric and natural gas product options for all customer classes. HB267 would unjustifiably and unreasonably restrict the ability of retail electric suppliers to make competitive offerings available in the retail marketplace. The Maryland Public Service Commission (MDPSC) already has the authority to modify consumer protection regulations and implement supplier training programs to address the perceived problems this legislation was intended to address. The MDPSC also initiated a Market Reform inquiry in the fall of 2023, which is targeted at retail energy competition issues.² The MDPSC should be relied upon to complete that inquiry and direct appropriate changes to the regulations without imposing additional, unwarranted legislative mandates on the industry. *SFE Energy is opposed to HB267 and requests an unfavorable vote by the Committee.*

Requiring the Maryland Public Service Commission to Establish Licensing Procedures for Energy Salespersons Would Be Duplicative of Existing Requirements and Processes

HB267 would require the MDPSC to establish licensing procedures, fees, bonding requirements and reporting requirements for “energy salespersons,” which is defined to include an individual selling on retail supplier’s behalf that is employed by that retail supplier or is an independent contractor sales agent. This provision would be duplicative of existing requirements and processes:

- Retail gas and electric supplier entities that are licensed by the MDPSC are already subject to the MDPSC’s consumer protection regulations, and a retail supplier is responsible for the actions of its agents, including its employees engaged in sales activities as well as individual independent contractors engaged in sales on the supplier’s behalf.
- Potentially thousands of individuals could come within the rubric of the licensing requirement, which would require significant MDPSC resources to implement and maintain. Requiring individual sales agents to become licensed; pay fees; demonstrate financial integrity, for example by posting a bond; and report would also be burdensome (and particularly depending on the amount of the licensing fee and bonding requirement, impossible) for these individual sales agents to comply with.
- The bill does not specify if the licensing requirement would apply only to sales agents engaged in sales to residential customers. It bears noting here that the brokers that engage in direct sales to commercial customers are already licensed by the MDPSC. Moreover, Maryland state and local laws already require peddlers licenses for foot peddlers.
- The MDPSC already has authority to revise its consumer protection regulations for retail energy suppliers with respect to sales practices. The MDPSC was also recently granted authority by the

¹ SFE Energy Maryland, Inc. and StateWise Energy Maryland LLC are licensed electric and natural gas suppliers in Maryland.

² See, e.g., Comments of SFE Energy Maryland, Inc. and StateWise Energy Maryland LLC to the Maryland Public Service Commission, Maillog 306006.

legislature to adopt and administer a supplier training program. Such program, when implemented, would directly address the perceived issue with sales practices.

Utilities Should Be Prohibited from Marketing Standard Offer Service

Utility standard offer service (SOS) is a customer's default commodity supply option. Utility SOS, by design, is basic, "plain vanilla" commodity service. If a customer chooses not to shop in the retail energy marketplace, the customer will be served under the utility default commodity supply option. As such, there is absolutely no reason for the utilities to market SOS service to customers. Nor should utilities be permitted to market other value-added competitive energy products, such as renewable offerings. The competitive marketplace should be relied upon to deliver value-added products such as renewable offerings.

The Proposed Competitive Product and Pricing Restrictions Will Not Benefit Consumers

The bill would lock competitive suppliers into only offering consumers products that are at or below the trailing 12-month average utility rate; would limit contract terms to one year; would prohibit automatic renewal; limit variable rate changes to twice per year; and prohibit early termination fees. The proposed product and pricing restrictions are purportedly to ensure that customers that shop realize savings. However, the restrictions are so extreme that it would make supplier compliance impossible, effectively ending *all* consumer choice opportunities. For example, products generally priced at a premium to the utility rate, that reflect a supplier's increased costs and risks of offering such products, including long-term fixed rate products, renewable products, and commodity products bundled with other valued-added offerings (such as home warranty products), would be eradicated from the marketplace.

There is a fundamental pricing mismatch in the proposal to peg competitive supplier offerings to the trailing 12-month average utility rate. The trailing 12-month average utility rate would be a historical backward-looking rate. It is not indicative of the current price the customer is paying, nor what the customer will be paying next month or next year. Competitive suppliers, on the other hand, price their product offerings based on forward and futures markets. The incongruence will make it difficult for competitive suppliers to offer compliant products. In addition, the utility commodity rate benchmark is not an apples-to-apples comparison with supplier rates because additional commodity-related costs remain bundled in utility delivery service rates (in other words, some of the utility costs of providing default commodity service are not included in the utility "price to compare"). The SOS rate can be subject to retroactive or future price adjustments that are not evident to consumers.

HB267 does not distinguish which customer classes would be subject to the product and pricing restrictions. Sophisticated commercial customers are accustomed to shopping for more complex electric and natural gas products that are suited to the individual needs of the customer business. Imposing a one-size-fits-all approach on commercial customers would be particularly inappropriate.

It is standard industry practice for variable rate supply contracts to have month-to-month terms. The variable rate contract continues each month until the customer decides to cancel, and when the contract is cancelled, it is also standard industry practice that there would be no applicable termination fee. That being the case, the proposal to limit such variable price residential electric supply contracts to a one-year term is unnecessary as the customer has the ability to cancel the contract at any time without penalty. With respect to fixed rate products, the contract duration can last for months or years (the contract term is disclosed to the customer up front). A fixed rate product benefits the consumer

by offering a known rate for budgeting purposes. If the supplier includes an early termination fee with a fixed rate product, it is assessed if the customer chooses to end the contract prematurely, in order to offset the commodity the supplier bought to service that customer. Renewable product offerings are also offered at varying contract durations. Some supplier contracts include an automatic renewal feature. This feature allows the supplier to better manage its customer acquisition costs, resulting in lower customer prices. All of this is to illustrate that consumers are better served by having an array of competitive product and pricing options available to them.

Restrictions on Supplier Compensation Methods Should Not Be Imposed

Prohibiting commission-based or other incentive-based compensation to energy salespersons for enrolling customers would be an unwarranted interference in supplier compensation models. Commission-based and other incentive-based compensation is an important means of motivating sales agent performance. It is a common form of compensation for people acting in sales roles across industries as it rewards employees as a direct measure of their work efforts, as compared with hourly wages or a fixed salary approach. If the underlying perceived issue to be solved is with sales agent sales practices, then this should be addressed, with respect to suppliers, in the form of a training program (which the MDPSC has the authority to adopt), and with respect to customers, in the form of more robust consumer education.

The bill language does not address whether the compensation restriction would be limited to residential sales or also apply to commercial customer sales. SFE Energy does not believe a prohibition on commission-based or other incentive-based compensation is warranted for either class of customer.

The Proposed Prohibition on Purchase of Receivables Should Not Be Adopted

One of the primary issues that the MDPSC is examining in its open inquiry into Market Reforms is utility purchase of receivables (POR) and whether modifications may be warranted. POR was adopted in the MDPSC regulations because it was viewed as offering a more equitable and stable treatment of partial customer payments than the payment hierarchy then in effect. Under the prior payment hierarchy, a competitive supply customer could potentially pay just enough of the bill so as to cover its utility charges without any payment or very little payment of supplier charges, and the customer would avoid termination.

The threat of termination for nonpayment is a significant tool for managing customer bad debt, but unlike the utilities, suppliers did not then and do not now have the ability to terminate a customer for nonpayment. Supplier remedies for addressing nonpaying customers were limited to dropping the customer to utility default service and utilizing collection processes to attempt to collect customer payments owed. Collection activities are time-consuming and expensive to undertake, and this would be in addition to the costs the supplier incurred to acquire the customer and then procure energy commodity to serve that customer. Under POR, this issue is ameliorated because supplier charges are rolled into the utility charges for utility collection and termination purposes.

All told, the MDPSC decision to move to a system in which supplier charges are treated more equitably was correct when adopted and remains sound today. Indeed, so long as the utility is the sole entity able to terminate for customer nonpayment, POR remains an appropriate market construct. Given the significant history behind the implementation of POR by the Maryland utilities, the MDPSC is best situated to evaluate the program and whether any changes may be needed. A legislative prohibition on POR is not warranted.

The Proposed Utility Monthly Reporting Would Not Accurately Capture the Value of Competitive Products

HB267 would require monthly reporting by the utilities regarding competitive supplier rates and utility SOS rates. Reporting of this nature would only serve to promote the simplistic and erroneous view that the only value to be derived from the market is savings. It would undervalue products that often carry a price premium, such as long-term fixed rate products, renewable offerings (supported by renewable energy credits for electricity or carbon offsets for gas), or competitive offers that bundle a product with commodity, such as a home warranty product. Such a misconception should not be promoted to consumers.

The Proposed Renewable Product Restrictions Would Drive Up Consumer Prices

The bill would set locational generation or delivery requirements on renewable energy credits (RECs) used to support green power offerings. Locational generation or delivery requirements can create shortages in the availability of RECs, thereby driving up supplier costs, and in turn, increasing customer pricing for REC-backed products. Suppliers should have more flexibility in the manner in which they construct products to meet consumers green energy goals, and nationally sourced RECs can be a more cost-effective way to do so.

Conclusion

SFE Energy appreciates this opportunity to offer its perspective on HB267. For the reasons set forth herein, SFE Energy opposes the bill and respectfully requests an unfavorable report by the Committee.

Stacey Rantala
Associate Director, Government & Regulatory Affairs
SFE Energy
PH: 646-720-1038
P.O. Box 967, Buffalo, NY 14240-0967
srantala@sfeenergy.com

Dated: February 13, 2024.