



Maryland House Committee on Economic Matters
Vistra Submitted Testimony in Opposition to HB 267
February 15, 2024

Chairman Wilson, Vice Chair Crosby and members of the Economic Matters Committee, Vistra appreciates the opportunity to submit these written comments in **opposition** to **HB 267 (Crosby)**, which is being heard in your committee Thursday, February 15, 2024.

Vistra¹ is a leading Fortune 500 integrated retail electricity and power generation company providing essential resources for customers, commerce, and communities. Vistra combines an innovative, customer-centric approach to retail with safe, reliable, diverse, and efficient power generation. The company brings its products and services to market in Maryland – via our Maryland Gas & Electric, Public Power and Ambit brands – as well as 19 other states and the District of Columbia, including all major competitive wholesale power markets in the U.S. Vistra retail brands serve approximately 4 million residential, commercial, and industrial retail customers with electricity and natural gas. Vistra is one of the largest competitive electricity providers in the country and offers over 50 renewable energy plans across the markets we serve. While Vistra does not own electric generation in Maryland, the company is also the largest competitive power generator in the U.S. with a capacity of approximately 37,000 megawatts powered by a diverse portfolio, including natural gas, nuclear, solar, and battery energy storage facilities. Over 7,500 MW of that generation serves the PJM region, of which Maryland is a part. The company also owns and operates the 750-MW/3,000-MWh battery energy storage system in Moss Landing, California, one of the largest of its kind in the world.

Vistra is guided by four core principles: we do business the right way, we work as a team, we compete to win, and we care about our stakeholders, including our customers, our communities where we work and live, our employees, and our investors.

First and foremost, Vistra believes that competitive retail markets deliver the best outcomes for all consumers. Maryland wisely chose to restructure its market 25 years ago which has unlocked substantial value for all Marylanders. Today, more than 5.8 million² customers have chosen a retail supply offer since the market opened to retail competition. Vistra strongly believes in retail choice because it places control in the hands of the consumer. Retail choice treats each consumer as an individual and gives them access to a market where they can pick the best product and service to suit their needs. Competition trusts consumers to know what they want and to seek out those plans and services that provide them with the best overall value, not just price. Markets with true choice treat each consumer as an individual, allowing them to pick the electric service that best fits their unique needs — whether that's finding the least frills, lowest-price plan; a plan that lets them set a monthly budget and easily track usage; or a plan that provides access to renewable energy.

¹ Learn more about our environmental, social, and governance efforts and read the company's sustainability report at <https://www.vistracorp.com/sustainability/>.

² Based on annual EIA data 2000-2022 (latest available) for retail supplier customer counts.

Well-functioning competitive markets, where customers are the focus and can choose or leave a provider at any time, naturally ensure that competitors focus on providing a positive customer experience. Companies who are unable to provide value to their customers, treat their customers like commodities instead of people, or disregard the rules of doing business are appropriately forced out of the market. Vistra believes that customers should be protected against bad actors and that companies should be honest and transparent in their offerings. As such, Vistra believes that Maryland should balance any new consumer protections against viable business practices that are provided in good faith to ensure that all Marylanders continue to have access to products that provide value and innovation.

In line with our core principles, Vistra applauds Vice-Chair Crosby and the committee for the desire to ensure that Maryland electric customers are protected, that those protections are enforced, and that those conducting business in Maryland do business “the right way”. While Vistra commits to a continued dialogue on the details, we have concerns that, as drafted, the language is overly broad and would result in unintended restrictions and consequences in the market. For example, language that would impose more requirements on salespeople could negatively impact the sales process for astute and sophisticated consumers in the market, such as large industrial customers, and could also capture customer service representatives whose primary task is not sales but rather assisting customers with their questions and needs. We believe we are conceptually aligned with the reasons behind licensing energy salespeople, but we also believe that the language could be fine-tuned to uphold the same intent while reducing administrative burdens for regulators and market participants. We look forward to working with the author and committee to refine and improve the language in this and other sections.

There are, however, several sections of the legislation that are being termed as “customer protections” but in reality are measures that would remove choice and significantly hobble the competitive market in Maryland, to the point that if HB 267 were passed in its current form Vistra would be required to seriously evaluate whether the company should continue to operate in the state. While we reiterate our desire and commitment to work with stakeholders, we have identified items of serious concern including multiple provisions updating the Public Utilities Article 7-510 (pgs 12-20), including:

1. Creating a price regulation on competitive electric offers to be no greater than the average trailing 12-months of the Standard Offer Service in the territory;
2. Limiting the term of competitive electric offers to 12-months or less;
3. Prohibiting automatic renewals for competitive electric offers;
4. Prohibition on charging a cancellation or early termination fee;
5. Prohibition on purchase of receivables; and
6. Ability of investor-owned electric companies to market their Standard Offer Service in their territory.

Price Regulation

In the electric industry, as with any business, a company that provides electric service has costs that must be covered (employee wages, administrative expenses, office space, advertising, and so forth) in addition to their commodity cost so that they can do business. These expenses are taken out of revenues generated by the business in the sale of its services or products to consumers. Once the expenses are paid for from the revenues, whatever remains is profit. This

is true for an investor-owned utility (IOU) as much as it is for a competitive electric supply provider.

This is why the provision prohibiting competitive electric suppliers from pricing their products above the average 12-month price of the Standard Offer Service (SOS) in the territory is so egregious. Standard Offer Service is a very specific product, with a certain structure, procurement requirements, and level of customer support. To compare it as equivalent to all the other products offered in the market so that it can be used as a price baseline is fallacious.

Standard Offer Service is more properly characterized as a plain vanilla, commodity-only product which is only one of a myriad of products offered in the “competitive” market, albeit by an incumbent utility with an already captive customer base and guaranteed rate of profit. Standard Offer Service is procured from competitive suppliers in bulk up to two years before it is needed and provides only electrons. Thus, to use the SOS trailing 12-month price average as a market price cap on competitive offers, which provide price certainty, renewable energy, and customer service, among other benefits, is arbitrary and disconnected from the actual expenses incurred by competitive electric suppliers to provide their products. To take this one step further, it is unreasonable to expect any company to be able to provide a fundamentally different product at a price that happened in the prior 12-months.

It is this price regulation, which disconnects the price paid by the customer from actual costs incurred by the supplier to provide the product, that would require Vistra to strongly re-evaluate our ability to offer products and services into the market. If Vistra is unable to price our offers in the market to cover costs and ultimately run a sustainable business due to an arbitrary price cap, then the company has a fiduciary duty to determine alternatives, up to and including leaving the market. This doesn't only impact Vistra's business; it would significantly reduce offers available in the marketplace, harming consumers who are looking for choice and certainty.

Furthermore, it has been said that an electron is an electron and that consumers deserve the lowest possible price for the commodity. While this may be true on a quantum level, it is not true on a policy level. Maryland, along with many others, has statutorily expressed a preference for electrons generated from non-emitting sources of energy, as preferable to other sources. Though the electrons themselves may ultimately be indistinguishable, the costs to generate an electron via solar, wind, biomass, natural gas, or nuclear all have different capital costs which ultimately translate into the price of electricity.

Additionally, the cost of supporting such services are different. A provider who offers white glove 24-7-365 service, will have a different cost structure than a supplier who provides only email support. The costs of their products will reflect these differences, but an arbitrary price cap based on SOS will require foregoing these now unrecoverable costs, ultimately forcing the market to a universal lower level of service.

If this language remains as is, Maryland will be saying that a 100% locally sourced green product should cost the same as a 36.2% renewable product that meets the minimum RPS. Taking this one step further, price regulating the retail market could result a de-evolution of the market as competitive suppliers find themselves challenged to offer anything other than a SOS-type product and the myriad of choices available to Maryland consumers today becomes more of a small limited number of clone offerings virtually indistinguishable from one another.

Consumer Education

If the desire is to ensure customers can find lower prices in the market, the focus should be on two things: access to information on available products and consumer education, not price regulation. For customers who are choosing based on price, there are consistently offers available in the market that are at or below the SOS price-to-compare. An important source of information is the Maryland Electric and Gas Choice website, managed by the Public Service Commission

In a pull from the MD Electric Choice website on Thursday, February 1, 2024, there were the following available offers:

Utility Service Territory	Total Offers*	# Offers below SOS	# below SOS offers that are 50+% renewable
Potomac Edison	60	25 (42% of all offers)	4
PEPCO	75	52 (69% of all offers)	14
BGE	90	52 (58% of all offers)	12
Delmarva	69	46 (67% of all offers)	9
SMECO	14	0	0

* Count includes SOS.

Analysis by the Retail Energy Supply Association (RESA) found that Maryland’s electric choice website is greatly underused compared to similar websites in other states. From October to December 2023 – one quarter of the year – RESA’s analysis found that the MD Electric Choice website had just over 14,300 visitors and the Gas Choice website had less than 5,000. Compare this with other states’ electric and gas choice website traffic for the same time period:

State Website	Traffic Oct-Dec ‘23 ³
MD Electric Choice	14,351
Plug In IL	54,096
Energy Switch MA	74,978
Energize CT	276,699
PA Power Switch	332,733
OH Energy Choice	515,611
MD Gas Choice	< 5,000
PA Gas Switch	70,509

If the concern is truly one that an electron is an electron and that Maryland consumers should receive the absolute lowest possible price for the electric commodity, then consumers should be directed to visit the website to find available offers that are lower than the IOU’s SOS rate. Competitive markets with the most robust participation engage in ongoing consumer education campaigns so customers know how to shop, find offers, and determine which offers best suits

³ Data collected via <https://www.similarweb.com/>

their needs. Consumer education cannot be a one and done; it is an ongoing effort to make new customers aware of their options. It also needs to be a partnership from all market participants including the suppliers, the regulator, and the utilities. Well-informed consumers make the best choices which is why Vistra supports continued efforts to make access to shopping information easier for customers.

Term-Length Regulation

Similar to attempting to limit the price of competitive offers, limiting the term of competitive electric offers to 12-months or less also seems to be arbitrary and not in the public interest. Many consumers find value in being able to lock in a price for long periods of time so they are not subject to wild changes in electricity prices. Limiting their terms to 12-months would unduly limit their ability to choose what is best for them.

Electricity prices, like other commodity prices, can vary wildly from one day to the next based on market conditions and world events. Some consumers prefer the certainty of not being subject to those swings, even it means paying a slightly higher price today. This acts as a sort of insurance for customers who do not want to worry about their electric bill. This insurance would have come in handy for Marylanders who were facing double digit percentage increases in their SOS supply rates over the past six-months. A customer who locked in a 9 cent/kWh rates last year may have been paying more than the price-to-compare in the BGE service territory; however, the BGE SOS rate increased 18.7% on October 1, 2023. That customer is now a savvy shopper, not subject to the dramatic increase. If the customer's term was arbitrarily limited to 12-months, the customers would be forced to come off a product providing them a significant savings and taking either the higher SOS rate or whatever is available in the market at the time. Currently in the market there are plans that are as short as month-to-month, for those who do not want or need a set contracted rate or who are in the process of moving, to fixed rate plans that provide price surety for three or more years. In competitive markets, we have consistently had customers who have benefited from these plans, avoiding market run ups due to increasing fuel prices and other price impacts.

Prohibition on Automatic Renewals

Another provision that concerns Vistra is the prohibition on automatic renewals for electric supply contracts. Vistra believes that automatic renewals, appropriately done with proper customer notification ahead of the renewal, is a benefit to consumers who have already made a choice to move from SOS to a competitive plan. Automatic renewals are not unique to the electric supply industry, many other products and services are automatically renewed on a monthly or annual basis including streaming services, food delivery services, and magazine subscriptions to name a few. The most important consumer protection for an automatic renewal is to require the supplier to send a notice ahead of the renewal informing the customer of his/her options.

Here is a real-world example of how a ban on automatic renewals can negatively impact customers. Take a customer who is on an electric vehicle time-of-use charging product for a 24-month term. Before that term expires, the supplier would reach out to the customer about

options upon expiration. If that term expires under this provision and the customer does not respond, the customer would need to be returned to the SOS rate. This could result in a higher electric bill because the customer no longer benefits from free or reduced vehicle charging overnight.

Prohibition on early cancellation / early termination fees

For customers on longer term plans, competitive electric suppliers often hedge against price risk. They do this by pre-purchasing the estimated electric needs for the customer on the wholesale market for the life of the contract, be that 3-months or 3-years. This can be a significant outlay of funds that is recovered over the full life of the contract term. Early cancellation / termination fees are a way for the competitive electric supplier to mitigate some of the risk of these outlays. Suppliers may also include other products and/or services as part of the supply offer, for example, a smart thermostat. If a customer enrolled onto a supply product and received a smart thermostat then immediately cancelled the contract, the supplier would have no means to recover the product or the cost.

Any cancellation or termination fees are clearly explained to the customer at the time of contracting. These fees can be found in both the terms and conditions document, the one-page contract summary provided to residential customers and are also called out specifically in the high-level information provided for competitive offers on the Maryland Electric Choice website. Customers are fully aware of any potential fees before they enter into the agreement. It should also be noted that the consumer is entering such a contract of their own free will and should be held responsible for honoring their portion of the agreement, just as they would be for any other contract that includes a term component, just as the competitive electric supplier is expected to honor the terms and pricing of the agreement. However, while the consumer has the ability to lodge a complaint with the PSC if the competitive electric supplier fails to honor their agreement, the supplier has no such recourse against a consumer who fails to honor the terms of their agreement. Early cancellation / termination fees are a reasonable, easy means for suppliers to be compensated for the breaking of a contract, without having to resort to more expensive and time-consuming court related remedies. Finally, customers should be encouraged to contact their supplier if they have questions or concerns about a fee. Suppliers are often willing to move customers to a new product without penalty if the current product no longer suits the customer.

Prohibition on Purchase of Receivables

Vistra is unaware of any particular issues concerning the purchase of receivables (POR) in the market today. As such, it is not entirely clear what issue this provision is trying to resolve.

As the market was originally structured, competitive electric suppliers had little to no recourse against customers who fail or refuse to pay for the services rendered to them. This means supplier could be purchasing and providing electricity to their customers without receiving any payment for those goods or services. Without recourse, all suppliers can do is ask the customer to pay, but they do not have any tools to incent the customer to pay the bill. On the other hand, IOUs can disconnect customers for non-payment, which is an important tool. In addition, the IOUs can write off any bad debt and recover it from other ratepayers, ensuring that they remain

nearly whole. However, those options are not available to retail suppliers whether they use their own billing process or the utility's consolidated billing service. This lack of recourse has discouraged suppliers from entering the market, because they were taking on significant risk without tools to manage that risk.

The purchase of receivables program provides a reasonable way for these competitive electric suppliers to cover this risk by sharing it with a company with more recourses for ultimate collection, much as other companies would sell accounts receivable to credit collection agencies in other industries. Under the POR program, suppliers submit their charges to the utility which attempts to collect them from customers. Any charges that are not collected due to customer non-payment are handled by the utility through its usual business processes. In turn for this tool, suppliers pay a discount rate on their charges to cover any uncollectible expense.

Eliminating the POR program would take the market back to a place where there are very few suppliers in the market due to an inability to manage risk. This also creates a situation where a customer could sign up with a supplier, receive electricity, never pay for the electricity, and then switch to a different supplier allowing the customer to game the system and receive free electricity. The POR program is a necessary market feature so suppliers have tools to manage customer non-payment.

Marketing of Standard Offer Service

One of the more questionable provisions in the bill which does nothing to increase consumer protection is a provision allowing the IOUs to market their default, or standard offer, service (SOS). It is unclear why IOUs would need to market SOS when customers are automatically placed on the service absent another affirmative choice and incur those advertising costs to ultimately be charged to captive ratepayers.

Furthermore, the already extremely entrenched and cost-benefited position that IOUs already have in the market in the offering of SOS, would further undermine the "competition" aspect of Maryland's already uneven competitive market. Additionally, IOUs in Maryland earn a profit on their provision of SOS. Allowing them to market a service they directly profit from creates an incentive for the IOUs to spend vast amounts of money on advertising which comes at no cost to them because they will recover all of those costs from ratepayers.

If IOUs would like to be able to market SOS like other competitive offers, then we respectfully recommend that the retail arm of the IOU be treated like a competitive entity, requiring full separation from their parent company and no ability to have guaranteed rate-recovery for any portion of their service or costs, just as other competitive suppliers. In addition, IOUs should be required to follow the same marketing and enrollment practices as retail suppliers since they would be effectively marketing a "choice" to the customer.

Product Transparency

The bill as originally drafted includes a new reporting requirement that would require each Electric Company to submit a report to the commission on customer choice in its service

territory. The report would require, among other things, for the Electric Company to calculate the “cost” to customers for being on a third-party rate instead of the Electric Company’s SOS rate. Despite the fact that this is an arbitrary comparison that does not take into account differences in product structure, customer service or other factors, it also makes an assumption that commission and consumers need additional information and transparency into electric supplier rates and not into Electric Company practices. However, the commission and customers already have a lot of information regarding third party rates in the market via MD Electric Choice, what they don’t have is a lot of transparency into Electric Company rates and practices.

It is useful to note that on the MD Electric Choice website, it is easier to find information on the competitive offers than it is for the Standard Offer Service. For example, while the Standard Offer Service listing only provides the estimated price per kilowatt hour and monthly bill amount (based on the consumer supplied kWh usage), it does not provide information on how often the price can change (the competitive offers do), how much renewable content is included (competitive offers do), and if there are any other monthly fees (competitive offers do). Even on the linked IOU websites, the information on how much renewable content is included in the SOS rate is exceedingly difficult to find, as is other information on the difference between the SOS rate and their residential TOU rate for some utilities. If the IOU’s SOS offer was treated like a competitive offer, it would require the product to become more transparent to customers, which would ultimately benefit consumers. Likewise, any reporting implemented by legislation for the purposes of customer protection and transparency would be significantly lacking in effectiveness without the inclusion of Electric Company information beyond just rates so that consumers can make a truly informed choice between SOS and competitive offers.

Conclusion

Ultimately, the provision of electric service in a competitive market is not about price but about choice, trusting the consumer to know what works best for them and their situation. Competition trusts the consumer to know what they want and to seek out those plans and services that provide them with the best overall value, not just price. It treats each consumer as an individual, allowing them to pick the electric service that best fits their unique need – whether that’s finding the least frills, lowest-price plan; a plan that lets them set a budget and easily track their usage; a plan that provides time-of-use rates to better manage the charging of their electric vehicle; or a plan that provides 100% renewable energy.

Vistra supports robust and enforceable consumer protections in the competitive market, indeed we believe they are one of the key cornerstones to any functional competitive market. Unfortunately, in HB 267, while there are some provisions that are workable towards that goal, there are also severely uncompetitive provisions that do little to protect customers and much more to take away choice from consumers. Our desire is that we are able to work with the author and the committee to resolve these concerns and have a bill that truly reflects strong and enforceable protections for Maryland consumers, your constituents, while also strongly protecting their right to choose. However, until that point is reached, Vistra must advocate in opposition to HB 267, which would irreparably harm Maryland’s competitive electric market, and encourage the committee to vote no on the legislation.

Submitted Respectfully,



Kristina Montgomery
Director of Regulatory Policy, Vistra Corp.

Eric A. Padilla
Director Public Policy, Vistra Corp.