January 25, 2024

Senator Brian Feldman, *Chair*
Senator Cheryl Kagan, *Vice-Chair*
Senate Education, Energy, and the Environment Committee
2 West, Senate Miller Building
Annapolis, Maryland 21401

Re: **Senate Bill 1/ House Bill 267: Electricity and Gas - Retail Supply - Regulation and Consumer Protection – OPPOSED**

Dear Chairman Feldman & Vice-Chairwoman Kagan:

On behalf of its membership, the Retail Energy Supply Association (RESA) offers this written testimony in strong opposition to **Senate Bill 1/ House Bill 267: Electricity and Gas - Retail Supply - Regulation and Consumer Protection** as currently drafted.

Founded in 1990 and headquartered in Harrisburg, Pennsylvania, RESA is a non-profit trade association representing the interests of its members, who are active participants in the retail competitive markets for electricity and natural gas in Maryland. RESA is a broad and diverse group of 16 retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. Several RESA member companies are licensed by the Maryland Public Service Commission (PSC) and serve the state's residential, commercial, and industrial customers.

Retail Energy Supply in Maryland

In the State of Maryland, there are over **588,000** residential and business accounts that have switched to competitive suppliers and taken advantage of offered savings. A staggering **13.4%** of residential customers are served by competitive suppliers statewide. Maryland's competitive energy marketplace has existed since the enactment of the Electric Customer Choice & Competition Act of 1999. The passage of the aforementioned legislation, the Natural Gas Supplier Licensing & Consumer Protection Act of 2000, and the Maryland PSC regulatory policies have been the cornerstones to the successes of the state's market expansion and energy retail growth over the last 25 years.

RESA firmly believes the ability of consumers to choose an energy supplier should be a right that is available to all customers, not just those who reside in restructured states or jurisdictions. Interestingly, this belief is also commonly shared by Maryland residents. In 2020, ACCES surveyed Maryland consumers and found that 87% of retail supplier customers were satisfied with their third-party supplier, with 62% reporting that they planned to renew their current retail supplier contracts. Within the past year, polling research from two distinguishable sources (by *Gonzales Research* and *Normington, Petts & Associates*) showed Maryland consumers overwhelmingly prefer choice and support competition in the energy marketplace over a utility monopoly. In fact, the poll conducted by *Normington, Petts & Associates* indicated that 87% want the freedom to shop for and choose an energy provider.

The existence of a competitive marketplace and allowing customer choice in Maryland has also consistently shown substantial cost savings for consumers. Last month, RESA issued a press release indicating that Maryland residents could have saved over $39 million in October alone by shopping for electricity – that number increased to $59.8 million within two months.

Throughout our advocacy and support in Maryland, RESA has always maintained the position that consumer protection and industry accountability are paramount. Last February, RESA issued a press release supporting the Maryland PSC's strategy to deliver consequences to retail energy suppliers that do not uphold consumer protection rules. The Association officially stated, "*RESA strongly supports Chairman Stanek and the PSC to identify chronic, intentional offenders and revoke their license if necessary*." RESA's principles include a strict compliance policy with federal and state laws and advocates for fair and transparent business practices. The organization encourages all retail suppliers, RESA members, and retail energy suppliers serving Maryland to monitor business and sales activities and proactively report any concerns to the PSC's Consumer Affairs Division (CAD).

RESA's Unwavering Support for Consumer Protection & Supplier Accountability

RESA's efforts to ensure consumer protection have extended well beyond public statements or internal policies. During the 2019 legislative session, the Maryland General Assembly introduced **House Bill 689**, entitled *Public Utilities – Electricity and Natural Gas Suppliers – Information*.

The bill required the PSC to establish residential customer choice shopping websites for electricity and natural gas, each of which must include specified related information and links to other resources. The PSC was also mandated to provide educational information related to electric customer choice on its website.

The following year, the Maryland Legislature introduced **Senate Bill 603/House Bill 928**, entitled *Public Service Commission - Electricity and Gas Suppliers - Training and Educational Program (2020).* According to the Department of Legislative Services' fiscal note:

> "*This bill requires the Public Service Commission (PSC) to develop a training and educational program, in consultation with interested stakeholders, for any entity or individual that is licensed by PSC as an electricity supplier or a gas supplier, subject to specified requirements. The program must require that a designated representative of each licensed electricity supplier or licensed gas supplier demonstrate a thorough understanding of relevant PSC regulations.*
>
> *PSC must conduct an examination at the end of the training and certify that the designated representative has successfully completed the training. PSC may recover the initial costs of the program through its standard assessment and may establish reasonable fees for the program. PSC may also adopt regulations that include appropriate penalties or sanctions for failure to comply with the bill*."

Both bills were enacted and received overwhelming support from RESA. Our involvement and collaboration with state lawmakers on these important pieces of legislation are further testament to

RESA's unwavering commitment to ensuring the protection of Maryland consumers in the Maryland energy marketplace.

Creating a Bill that Reflects its Stated Intention

When considering these facts, **it should give great pause to this committee that RESA, its member companies, and other key stakeholders, universally, oppose Senate Bill 1/ House Bill 267 in its current incarnation**. This legislation was initially described "*<u>as a consumer protection measure first and foremost</u>*." By our account, nothing could be further from the truth.

Veiled as a consumer protection bill, this legislation is a prescriptive means of restricting how energy suppliers may conduct business and provide energy savings to customers while allowing utility companies to market Standard Offer Service (SOS) directly to all customers. Essentially, it is the very thing that the legislation's sponsors expressed the bill was <u>not</u> going to do.

RESA submits this letter in strong opposition to Senate Bill 1/ House Bill 267 and respectfully summarizes the following concerns that require further discussions with the committee leadership and its members.

- Given the definition of an "energy salesperson" and the new regulations that follow thereafter, this bill as written indicates each **<u>person</u>** engaged in energy sales (broadly defined) will have to be separately licensed – whether an employee of a licensed supplier or otherwise. This mandates that even employees of a licensed supplier will have to be separately and individually licensed, which means they must go through the PSC's licensing process, payment of fees, bonding, financial qualifications, insurance etc. It could also entail personal liability as a licensee. An employee of a licensed supplier is covered by the license held by the supplier (and the associated protection) and should not be required to separately and personally be licensed with associated liability and disclosure of personal financial information. This is unnecessary, duplicative and unsustainable.

- The Bill states that utilities can now "market" standard offer/default service to customers in their territory. As a result, captive regulated ratepayer dollars would be used for "marketing," which leads to a very uneven and anticompetitive playing field for suppliers to compete. Under no circumstance should this be included as written and we strongly recommend this be removed.

- The Bill includes several onerous and unnecessary restrictions to retail supply offers which are anti-competitive and run counter to the options and choices that customers want. Many of these provisions will actually hurt customers. For example:

    - Suppliers can only offer a price that does not exceed the trailing 12-month average of the standard service offer. Practically speaking, this could not reasonably be implemented and monitored for all customers. More importantly, it caps 'market-based competitive prices' based on historical information for products and services that are not comparable. For example, one cannot compare historical brown power or brown gas product to a 100% green or carbon neutral product. Moreover, historic prices are not necessarily indicative or determinative of future prices. Lastly, the twelve-month historical average is irrelevant to a fixed-price long-term contract that may insulate a customer from the risk of fluctuations and volatility in market pricing.

- Term cannot exceed 12 months at a time. This is contrary to consumer protection because many customers prefer the option to choose longer-term products and the stability and predictability it offers. It does not help customers to restrict product duration when many homeowners and businesses place significant value on long-term price protection to properly budget their energy expenses.

- Prohibition against auto-renewal. Suppliers invest in Maryland, among other reasons, to help attract and retain business. Requiring a supplier to obtain affirmative consent to keep a customer after the expiration of the term undermines and interferes with the supplier—customer relationship. This provision will simply increase the cost of doing business with no offsetting benefits. Practically, it will result in customers automatically going back to utility default service against their will. Such a requirement undermines customer preferences to continue their relationship with a supplier and erects costly and unnecessary barriers to competition that simply are not present in other similar industries like telecommunications and cable.

- Prohibition against variable rates, other than rates that adjust seasonally no more than twice a year. This provision would undermine customer preferences and impose unreasonable restrictions on supplier products.

- Prohibition against salesperson commission or other incentive-based compensation to any energy salesperson. Removal of incentives for performance is certainly not a consumer protection, is anti-competitive and serves no good purpose.

- On pgs. 29 – 30, this entire section was originally introduced as HB1214/Del. Stein, Session 2023, entitled: "Residential Retail Energy – Green Power – Renewable Energy Credits & Marketing Claims during the 2023 Session.

  - This section will require an electricity supplier to purchase renewable energy credits (RECs) for each year the electricity supplier offers "green power" for sale to residential customers. The electricity supplier would also have been mandated to include a related disclosure about the source of the green power in its marketing materials.

  - "Green Power" means energy sources or RECs that are marketed as green, eco-friendly, environmentally friendly or responsible, carbon-free, renewable, 100% renewable, 100% wind, 100% hydro, 100% solar, 100% emission-free, or similar claims. The required disclosure describes the physical reality of electricity delivery and unbundled RECs as experienced by retail electricity customers in the State's deregulated electricity market.

  - This entire section is another regulatory reach by the legislature that will create unnecessary confusion for consumers by adding a new definition of Green Power and creating a new and complex marketing disclosure. In addition, it would restrict the kinds of renewable energy products available to Maryland consumers and would raise the price of going green for the segment of customers who might be interested but on the fence about voluntary green products.

- This section attempts to "shoehorn" an entirely different piece of legislation that was heavily amended by the House ECM before failing to receive a committee vote in the Senate Education, Energy, and the Environment Committee. Based on its intent, it would serve no consumer protection value and be another draconian restriction on a supplier.

Summary of Report Findings

The PSC currently has well-established authority, jurisdiction, and tools it needs under current law and COMAR to deter and punish suppliers for deceptive practices. It has exercised this authority and broad discretion in the past to address issues with suppliers, assess fines and revoke licenses and there is nothing preventing the PSC from doing the same going forward.

On November 1, 2023, the Maryland Public Service Commission issued a report to the Maryland General Assembly regarding enforcement actions taken against third-party retail energy suppliers from calendar years 2010 – 2022. This report was prepared pursuant to the 2023 Joint Chairmen's Report submitted by the Senate Budget & Taxation Committee and the House Appropriations Committee.

As Contained in the report, the PSC stated, "*that enforcement actions tend to be effective in bringing an errant supplier into compliance, with the goal of deterring repeat violations*." Moreover, last February 2023, the PSC launched the Maximum Enforcement Initiative in response to the influx of complaints against suppliers. As a result, PSC's Consumer Affairs Divisions' supplier complaint intake numbers "*returned to levels at or below its historic average*."

According to the data included in PSC's report, there was a **61% decrease** in complaints against suppliers between Quarter 1 of the 2023 calendar year to Quarter 3. In addition, a reported **82% decrease** in complaints among the three suppliers incurring the most complaints between Quarter 1 and Quarter 3 (2023).

This information substantiates their conclusions that enforcement, non-compliance remediation, and educational outreach are working to reduce customer complaints and, more importantly, maintain accountability on energy retail suppliers in the Maryland marketplace.

Conclusion

If it truly is the will of the Maryland General Assembly to improve consumer protection, the recent data contained in the PSC's report indicates that increased staffing for enforcement, remediation, and educational resources are the best solutions to deter predatory practices by suppliers, while also expanding customer knowledge and interest in energy choice. In addition, the PSC should implement the long-awaited training and education program enacted under Senate Bill 603/House Bill 928 (2020).

RESA affirms its position to continue being a valuable and constructive partner with the state lawmakers to find reasonable and fair solutions to address issues and uphold industry accountability so long as those solutions do not jeopardize absolving competition and consumer choice in Maryland.

We recognize that the competitive energy market is not perfect, just like other markets in consumer goods and services are imperfect. At the same time, we believe strongly that choice and competition are vital to delivering innovation, economic benefits, consumer value, and a clean energy future to the citizens of Maryland.

Sincerely yours,

Tracy McCormick

Tracy McCormick
Executive Director