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BILL NO.: Senate Bill 0749 – Residential Retail Customer and Retail  
Electricity Suppliers - Definition and Alterations

COMMITTEE: Education, Energy, and the Environment

HEARING DATE: February 26, 2026 (EEE)

SPONSOR: Senators Gile, Beidle, Hettleman, and Watson

POSITION: Informational

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The Office of People’s Counsel (OPC) respectfully offers the following informational comments on Senate Bill 0749, Residential Retail Customer and Retail Electricity Suppliers - Definition and Alterations. SB 0749 proposes several changes to provisions of the Public Utilities Article enacted as part of Senate Bill 0001 in 2024. That legislation placed new operational requirements and restrictions on retail energy suppliers to protect customers against predatory practices. Notably, SB 0001 did not require third party suppliers to exit the market, but the new protections may have caused suppliers to choose to exit the market. In particular, certain provisions may have restricted the operation of reputable third-party retail suppliers in Maryland. SB 0749 seeks to make limited adjustments to these potentially problematic provisions while preserving essential protections for customers.

**Benefits of SB 0001, 2024**

In 1999, the General Assembly passed Maryland’s Electric Customer Choice and Competition Act (“the Act”).<sup>1</sup> The Act “deregulate[d] the generation, supply and pricing

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<sup>1</sup> 1999 Md. Laws Ch. 3, 4 (S.B. 300/H.B. 703).

of electricity” by enabling companies other than the State’s monopoly utilities to sell electricity directly to retail customers.<sup>2</sup> The intent of the Act was to “create competitive retail electricity supply and electricity supply services markets . . . [and] provide economic benefits for all customer classes[.]”<sup>3</sup>

Since 1999, however, the benefits for residential customers from retail choice have been sparse. OPC’s experience in this regard was confirmed by a recent study of retail energy suppliers operating in Baltimore Gas and Electric’s service territory showing that retail supply customers are not, in fact, paying competitive prices.<sup>4</sup> Compounding this problem, the study also found that “households who live in low-income areas pay higher [electricity] prices, on average, than households in high-income areas.”<sup>5</sup>

At the same time, the harm to customers was plentiful. Existing laws and regulations enabled retail energy suppliers to engage in deceptive and unfair marketing practices that are hard to uncover and even harder to adequately remedy. OPC has litigated before the Public Service Commission (PSC) numerous cases successfully alleging that retail energy suppliers have violated Maryland law and regulation by engaging in unfair and deceptive practices that resulted in harm to customers.<sup>6</sup> In just two of those cases, Maryland customers were overcharged by over \$14 million and \$6 million dollars, respectively, and individual customers were overcharged by thousands of dollars.<sup>7</sup>

Consumer complaints against retail energy suppliers included unfair and deceptive marketing and solicitation practices such as:

- Telemarketing based on incomplete or deceptive advertising material that results in a binding supply contract just based on a telephone call;<sup>8</sup>

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<sup>2</sup> Md. Code Ann., Pub. Util. (PUA) § 7-504(3).

<sup>3</sup> PUA §§ 7-504(2), 7-504(4).

<sup>4</sup> Kahn-Lang, Jenya, Competing for (In)attention: Price Discrimination in Residential Electricity Markets, pg. 1, (Mar. 7, 2023), <https://drive.google.com/file/d/1IClpnaf3gVy3X94YWhLtSSTMWKTzi16K/view>.

<sup>5</sup> *Id.* at 43.

<sup>6</sup> See e.g., PSC Case No. 9324, *In the Matter of the Investigation into the Marketing Practices of Starion Energy PA, Inc.*; PSC Case No. 9613, *In the Matter of the Complaint of the Staff of the Public Service Commission against SmartEnergy Holdings d/b/a SmartEnergy*; PSC Case No. 9615, *In the Matter of the Complaint of the Staff of the Public Service Commission v. U.S. Gas & Electric and Energy Services Providers, Inc., D/B/A Maryland Gas & Electric*; PSC Case No. 9617, *In the Matter of the Complaint of the Staff of the Public Service Commission Against Smart One Energy, LLC*; PSC Case No. 9647, *Complaint of the Md. Office of People’s Counsel Against SunSea Energy, LLC*.

<sup>7</sup> Case No. 9617, Order No. 89526 (Mar. 6, 2020); Case No. 9613, Order No. 90515 (Feb. 22, 2023).

<sup>8</sup> The most egregious example of this type of supplier behavior is Smart One Energy. Through telephone marketing, the company was able to learn the account number or customer ID for the customer and enroll the customer without their consent. The company had no other interaction with the customer other than to put excessive charges—usually about twice the utility’s rate—on the customer’s bill. This practice went on for years before being detected. The company enrolled over 17,000 Maryland customers. Many

- Deceptively marketing products as “green energy,” “renewable energy,” and “carbon-free” without defining these terms;
- Enrolling customers without their consent, making misleading claims about potential savings, and posing as representatives of a customer’s utility company;<sup>9</sup>
- Deploying third-party sales agents who are unlicensed and unregistered, making it difficult to prevent agents who violate Maryland regulations from continuing to operate in Maryland; and
- Locking customers into variable rate contracts that significantly increase in price and charge excessive early terminations fees.

Although the PSC has a customer complaint process, PSC enforcement actions had done little to curtail retail supplier misconduct. In fact, the number of consumer complaints filed against retail energy suppliers operating in Maryland was growing. In fiscal year 2021, consumers filed 157 complaints with the PSC’s Consumer Affairs Division; in 2022, consumers filed 86 complaints; and in 2023, consumers filed 641 complaints.<sup>10</sup> For example, one retail supplier racked up 41 new consumer complaints just months after restarting marketing and solicitation activities following an enforcement action before the PSC.<sup>11</sup> Finally, enforcement cases often span several years, which means that even if the affected customers are granted relief, that relief is substantially delayed. In one case, the supplier continued to serve—and receive revenues from—customers for years after the PSC found it had unlawfully enrolled customers.<sup>12</sup>

OPC supported the passage of SB 0001 in 2024 because it imposed strong consumer protection laws and regulations to minimize abuses and ensure that customers benefit from retail choice, including by:

- Enhancing licensing requirements, for example, by requiring retail energy suppliers to reapply for a license every three years, providing additional opportunities for the PSC to review suppliers’ conduct and to deny problematic suppliers from selling in the state;
- Increasing the penalty amount from \$10,000 to \$25,000 and providing that each customer who is affected by a retail supplier’s misconduct is a separate violation;
- Eliminating most variable rate contracts;

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customers had no idea that they were being served by a supplier, had no knowledge of Smart One Energy, and endured overcharges for years. *See* PSC Case No. 9617, Order No. 89219 (August 2, 2019).

<sup>9</sup> *See e.g.*, PSC Case No. 9324; PSC Case No. 9615; PSC Case No. 9647.

<sup>10</sup> Consumer complaint information is publicly available on the PSC’s website:

<https://www.psc.state.md.us/retail-energy-supplier-complaint-reports/>.

<sup>11</sup> PSC Case No. 9647, *Notice of Probable Cause Hearing* (Public and Confidential), ML No. 301288 (Feb. 13, 2023).

<sup>12</sup> *In re Smart Energy Holdings, LLC*, 486 Md. 502 (2024).

- Prohibiting commission-based compensation for energy salespersons, which removed the incentive for deceptive marketing and solicitation practices;
- Prohibiting the sale and purchase of accounts receivable; and
- Eliminating early termination fees; and many other protections.

Notably, SB 0001 did not require third party suppliers to exit the market, but the new protections may have caused suppliers to choose to exit the market.

## **Comments**

SB 0749 seeks to make limited adjustments to particular provisions that may have restricted the operation of reputable third-party retail suppliers in Maryland while preserving the essential customer protections established by SB 0001. OPC offers the following comments on the targeted revisions proposed in SB 0749:

### **I. Removing the reference to the “trailing 12-month average”**

Under current law, a residential electricity supplier may not offer electricity, other than green power, at a price that exceeds “*the trailing 12-month average* of the electric company’s standard offer service rate in the electric company’s service territory as of the date of agreement with the customer.”<sup>13</sup> While there is tremendous value in having a price cap, setting that cap based on a historical average—the 12-month trailing average—creates a market where even well-intentioned retail suppliers are challenged to compete with the utilities’ default standard offer service (SOS) at least part of the time. This is because utilities procure SOS through forward looking procurements—four procurements over two years of 25 percent of projected energy on a rolling basis. When future prices are going up, like they have been, retail suppliers may not be able to compete if their offers are capped at the 12-month historical price. In the same way, setting a cap based on historical averages also provides limited protection for customers if future prices are going down because the cap will be too high. SB 0749 proposes to address this issue by removing the specific reference to “the trailing 12-month average” while preserving the restriction that the offer price may not exceed the relevant electric company’s SOS rate as of the date of the agreement with the customer.

### **II. Clarifying that a residential electricity supplier “may use consolidated billing”**

Senate Bill 0001 prohibited a billing practice known as the purchase of receivables, whereby utilities would purchase retail suppliers’ accounts receivable and

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<sup>13</sup> PUA § 7 510(d)(2).

include those charges on customers' utility bills. The purchase of receivables (POR) meant that debt for retail suppliers' charges was passed on to utilities, such that (1) a retail supplier bore no liability and was perversely incentivized to enroll customers, regardless of their ability to pay the prices charged; and (2) nonpayment of a retail supplier's charges could become grounds for termination of utility service. Rogue suppliers took advantage of POR to overcharge customers. With the prohibition against the practice of POR, the PSC—through a Commission-directed work group—explored various billing alternative arrangements, including non-POR utility-consolidated billing, supplier consolidated billing, and dual billing. In Order No. 91463, the PSC found that while non-POR utility-consolidated billing is legally permissible, utilities were not required to offer any form of utility-consolidated billing after January 1, 2026 and any interim use must be negotiated with suppliers under a payment-posting framework.<sup>14</sup> The PSC found that supplier consolidated billing also remains fully authorized and strongly encouraged, but supplier participation remains voluntary. Given the timeline for transitioning to utility consolidated billing without purchase of receivables, combined with limited supplier participation in finalizing the details of the supplier consolidated billing, the PSC found that dual billing was the only feasible interim solution.<sup>15</sup>

SB 0749 appears to intend to address the current standstill by expressly providing that an electricity supplier “may use consolidated billing,” but the added language simply restates the status quo: that dual billing is not the only potential solution to the termination of POR—whether through non-POR utility-consolidated billing or supplier consolidated billing, a residential electricity supplier may use consolidated billing.

### **III. Removing the requirement that the PSC consider “the state in which the electricity was generated”**

SB 0001 also included a number of provisions specifically governing offers for “green power,” as that term is specifically defined in the statute.<sup>16</sup> Under that law, green power offers are not subject to the same price cap as other residential offers. Instead, SB 0001 directed the PSC to hold an annual proceeding to set a maximum price per megawatt-hour for electricity marketed as “green power,” and allowed an electricity supplier to request that the Commission hold a proceeding to set a different price for electricity marketed as green power by that particular supplier.<sup>17</sup> As part of both proceedings, SB 0001 required the PSC to consider certain enumerated factors, including

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<sup>14</sup> Md. Pub. Serv. Comm'n, Order No. 91463, Order on Purchase of Receivables Pursuant to Senate Bill 1 (SB 1) (PC 65, Dec. 30, 2024) at 24.

<sup>15</sup> Order 91463 at 1, 20-21.

<sup>16</sup> PUA § 7-707(a).

<sup>17</sup> PUA § 7-707(d)(2).

“the state in which the electricity was generated.”<sup>18</sup> SB 0749 proposes to remove this factor from the list of required considerations. Notably, however, SB 0749 does not change the requirement that residential electricity suppliers “purchase renewable energy credits for each year the electricity supplier offers green power” wherein “renewable energy credit” (REC) is defined as located: (1) in the PJM region; (2) outside of PJM “but in a control area that is adjacent to the PJM region, if the electricity is delivered into the PJM region;” or (3) on the outer continental shelf off the coast of the State and designated for leasing.”<sup>19</sup> As a result, any REC used to comply with Maryland’s renewable portfolio standard or used in a “green power” product must have been generated by a generator located in or adjacent to the PJM region.<sup>20</sup> Nor does SB 0749 change the requirement that a residential electricity supplier include a disclosure in its marketing materials about “the state in which the electricity was generated.”<sup>21</sup> So while the PSC is no longer directed to consider this factor when setting the per MWh price cap for a green power product or considering a request to go above the cap, suppliers are still required to purchase at least a portion of their RECs from sources in or adjacent to PJM and to disclose the state in which the credit was generated.

OPC appreciates the opportunity to provide these informational comments on SB 0749.

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<sup>18</sup> PUA § 7-707(d)(3)(iii).

<sup>19</sup> PUA §§ 7-707(e) and 7-701(m).

<sup>20</sup> PUA §§ 7-703(d), 7-701(m), and 7-707(e)(1).

<sup>21</sup> PUA § 7-7(g)(5).