

MARYLAND REGISTER

Proposed Action on Regulations

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22-365-P

Date of Publication in MD Register

1. Desired date of publication in Maryland Register: March 24, 2023

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
20	59	01	02
20	59	03	02
20	59	04	02
20	59	07	02
20	59	07	05
20	59	07	07
20	59	07	08
20	59	07	10
20	59	07	12
20	59	07	13
20	59	07	14

3. Promulgating Authority

Public Service Commission

4. Name of Regulations Coordinator

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6. Check applicable items:

<input checked="" type="checkbox"/>	New Regulations
<input checked="" type="checkbox"/>	Amendments to Existing Regulations
<input type="checkbox"/>	Repeal of Existing Regulations
<input type="checkbox"/>	Recodification
<input type="checkbox"/>	Incorporation by Reference of Documents Requiring DSD Approval

7. Is there Emergency text that is identical to this Proposal:

___ Yes X No

8. Incorporation by Reference

<input type="checkbox"/>	Incorporation by Reference (IBR) approval form(s) attached and 16 copies of documents proposed for incorporation submitted to DSD. (Submit 16 paper copies of IBR document to DSD and one copy to AELR.)
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9. Public Body - Open Meeting

- ☐ OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland
- ☐ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting

10. Children's Environmental Health and Protection

- ☐ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by H. Robert Erwin, General Counsel, telephone #410-767-8039, on February 14, 2023. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Andrew S. Johnston

Title

Executive Secretary

Telephone No.

410-767-8067

Date

February 14, 2023

Title 20

PUBLIC SERVICE COMMISSION

Subtitle 59 COMPETITIVE GAS SUPPLY

20.59.01 General

20.59.03 Pre-Enrollment Information

20.59.04 Transfers of Service

20.59.07 Residential Customer Protection

Authority: Public Utilities Article, §§2-113, 2-121, 4-308, 5-101, 7-507, 7-511, 7-601-7-607, Annotated Code of Maryland

Notice of Proposed Action

[22-365-P]

The Public Service Commission proposes to:

amend Regulation .02 under COMAR 20.59.01 General, amend Regulation .02 under COMAR 20.59.03 Pre-Enrollment Information, amend Regulation .02 under COMAR 20.59.04 Transfers of Service, amend Regulations .02, .05, .07, .08, .10, and .12-.13 and adopt new Regulation .14 under COMAR 20.59.07 Residential Customer Protection. This action was considered by the Maryland Public Service Commission at a scheduled rule-making (RM 78) meeting held on November 9, 2022, notice of which was given under General Provisions Article, §3-302, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to effectuate consumer protections necessary to satisfy the statutory mandates of Public Utilities Article §4-308 and to define new statutory terms within regulations.

Estimate of Economic Impact

I. Summary of Economic Impact. Implementation of these regulations will provide economic benefit to customers receiving energy assistance through the Office of Home Energy Programs.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On Issuing agency:	NONE	
B. On other state agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) Utility Companies and Retail Suppliers	(-)	Unknown
E. On other industries or trade groups:		
(1) Utility Companies and Retail Suppliers	(-)	Unknown
F. Direct and indirect effects on public:		
(1) Customers	(+)	Unknown

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D(1). Implementation of these regulations will require system changes and updates from both regulated utilities and retail suppliers. The magnitude of these costs is unknown until these companies have completed the programming and testing to execute the requirements.

E(1). Implementation of these regulations will require system changes and updates from both regulated utilities and retail suppliers. The magnitude of these costs is unknown until these companies have completed the programming and testing to execute the requirements.

F(1). Implementation of these regulations will provide economic benefit to customers receiving energy assistance through the Office of Home Energy Programs. The law and regulations will prevent energy assistance recipients from paying more than the applicable utility default rate for their gas supply thereby reducing bills, arrearages and utility disconnections. This will also increase the effectiveness of energy assistance payments at relieving energy burdens on the target population.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Andrew S. Johnston, Executive Secretary, Maryland Public Service Commission, 6 St. Paul Street, 16th Floor, Baltimore, MD 21202, or call 410-767-8067, or email to andrew.johnston@maryland.gov. Comments will be accepted through April 24, 2023. A public hearing has not been scheduled.

ANDREW S. JOHNSTON
Executive Secretary

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: **FY 2024**

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

undefined

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No State funds necessary.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Implementation of these regulations will not impact small businesses.

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The intended beneficiaries are low-income households participating in retail energy choice.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted? These regulations are expected to increase low-income household purchasing power by providing a price ceiling on energy supply contracts.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

Businesses are not the intended beneficiaries.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

These regulations will affect public energy distribution utilities and retail energy supply businesses in Maryland by creating additional consumer protections which will require additional procedures. The implementation of those procedures will not be cost-free, however the amount of costs cannot be estimated at this time. The exact number of small businesses that might be affected is not known but is likely to be fewer than 200.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

Affected businesses will benefit from increased consumer trust and confidence. These benefits will accrue primarily to retail energy suppliers, a group that includes a mixture of large and small businesses. The exact number of small businesses that might be affected is not known but is likely to be fewer than 200.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described

above?

These regulations are expected to improve the health of the retail energy supply market over the long term by improving public confidence and trust, to the benefit of companies and customers.

4. **Estimates of Economic Impact.** State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There will be anticipated effects on the cost of providing residential retail energy supply offers because market participants will need to comply with the new requirements of PUA 4-308. The regulations are designed to give market participants regulatory certainty and guidance on how to comply with the requirements of the statute; (2) There is no anticipated effect on the workforce; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is an anticipated effect on consumer choice in the residential retail energy supply market. The requirements of PUA 4-308 will prevent energy assistance recipients from fully participating in the retail supply market: These regulations effectuate that requirement.

Title 20 PUBLIC SERVICE COMMISSION

Subtitle 59 COMPETITIVE GAS SUPPLY

Chapter 01 General

Authority: Public Utilities Article, §§2-113, 2-121, 4-308, 5-101, 7-507, 7-511, 7-603, 7-604(b), and 7-606, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(6) (text unchanged)

(7) *“Contract for Energy Assistance Households” means a residential retail energy supply contract that meets the legal requirements of Public Utilities Article, §4-308, and any other applicable requirements in the Public Utility Article, in connection with a supplier’s supply service for customers who are part of an energy assistance household.*

[(7)](8)— [(10)](11) (text unchanged)

(12) *“Energy Assistance Household” means that the Office of Home Energy Programs found that the service address or household associated with the utility account qualified for a gas assistance program during the current or previous fiscal year. For a utility that provides both gas and electric service, an energy assistance household means that the Office of Home Energy Programs found that the service address or household associated with the utility account qualified for an electric or gas assistance program during the current or previous fiscal year.*

(13) *“Energy Assistance Program” means the following programs administered by the Maryland Office of Home Energy Programs by which a customer receives financial assistance paying their gas utility bills, which includes but is not necessarily limited to:*

(a) *The Maryland Energy Assistance Program;*

(b) *The Utility Service Protection Program; and*

(c) *The Arrearage Retirement Assistance Program.*

[(11)](14)— [(12)](15) (text unchanged)

(16) *“Fiscal Year” means the 12 month period that begins on July 1 of a calendar year and ends June 30 of the next calendar year.*

(17) *“Gas commodity price or net purchased gas charge” is the utility rate for a given period as approved in the utility’s applicable sales service tariff, that would be charged to a utility gas commodity customer, excluding any charges, adjustments, riders, or taxes related to distribution rates. The utility shall post and maintain this rate in an easily accessible location on its website.*

[(13)](18)—[(19)](24) (text unchanged)

[(20)](25) Third party verification (TPV) means consent from the customer agreeing to each of the below-listed material contract terms that is recorded by an independent person not party to the agreement or may be performed by an automated, computerized system. To be valid, the TPV must occur without the presence of the sales agent, and at the outset must describe how the customer can cancel the TPV at any time prior to completion. The consent from the customer must include an acknowledgement:

(a)—(f) (text unchanged)

(g) That the customer may access future pricing information; [and]

(h) That the customer has received the supplier's customer support contact information[.] ; *and*

[(g) That the customer may access future pricing information;]

[(h) That the customer has received the supplier's customer support contact information; and]

(i) (text unchanged)

(i)—(ii) (text unchanged)

[(21)](26)—[(23)](28) (text unchanged)

Chapter 03 Pre-Enrollment Information

Authority: Public Utilities Article, §§2-113, 2-121, 4-308, 5-101, 7-507, 7-511, 7-603, 7-604(b), 7-606, and 7-607, Annotated Code of Maryland

.02 Pre-Enrollment Information.

A. On request of a supplier, a utility shall provide the following applicable customer information:

(1)—(2) (text unchanged)

(3) *Energy assistance household status;*

[(3)](4)—[(7)](8) (text unchanged)

B. (text unchanged)

Chapter 04 Transfers of Service

Authority: Public Utilities Article, §§2-113, 2-121, 4-308, 5-101, 7-507, 7-511, 7-603, 7-604(b), and 7-606, Annotated Code of Maryland

.02 Enrollment.

A.—F. (text unchanged)

G. *Beginning July 1, 2023, a utility shall reject a customer's enrollment with a supplier if, at the time of the enrollment:*

(1) *The customer is an energy assistance household; and*

(2) *The supplier does not have a Commission approved contract for energy assistance households.*

[G.]H. The supplier shall inform the customer if a customer's enrollment is rejected for the reasons specified in §F or §G of this regulation.

[H.]I. (text unchanged)

J. *For Contracts Signed on or After July 1, 2023 with a Customer Who Starts to Receive Energy Assistance While Receiving Service from a Gas Supplier.*

(1) *When a utility determines that a supplier's existing customer is newly identified as an energy assistance household, the utility shall within 3 business days provide the supplier notice of that determination.*

(2) *Upon receipt of the notice required under COMAR 20.59.04.02K(1) the retail supplier shall, within 5 business days:*

(a) *Terminate the contract and return the customer to sales service;*

(b) *If provided for under the existing contract, begin providing service under a Commission-approved contract for low income customers; or*

(c) *obtain the customer's consent to receive service under a Commission approved contract for low income customers.*

(3) *The supplier shall charge the customer the supplier's current contract rate or the utility gas commodity price or net purchased gas rate, whichever is lower, for the time between the supplier's receipt of the notice in COMAR 20.59.04.02K(1) and the date the customer either is dropped to sales service or begins receiving service under a contract for energy assistance households.*

Chapter 07 Residential Customer Protection

Authority: Public Utilities Article, §§2-113, 2-121, 4-308, 5-101, 7-507, 7-511, and 7-601—7-606, Annotated Code of Maryland

.02 Disclosure of Customer Information.

A. Except as provided in §B of this regulation, a supplier may not disclose a customer's billing, payment, *energy assistance household status*, or credit information without the customer's consent.

B.—C. (text unchanged)

.05 Unauthorized Enrollment or Service.

A.—B. (text unchanged)

C. *Prohibition on Serving Energy Assistance Households on Unapproved Contracts*

(1) *For contracts signed on or after July 1, 2023, a supplier may not charge an energy assistance household for supply services unless those charges are for a Commission approved contract for energy assistance households as set forth in COMAR 20.54.04.02K.*

(2) *Prior to submitting an enrollment, a supplier shall make reasonable efforts to ensure that energy assistance households are only enrolled on approved contracts, including, but not limited to:*

- (a) Customer inquiry;
- (b) Disclosing to the customer that an unapproved offer is not available to energy assistance households;
- (c) Checking the My OHEP Status Portal; or
- (d) Acquiring pre-enrollment information as provided in COMAR 20.53.03.02A(8).

[C.]D.—[D.]E. (text unchanged)

.07 Advertising and Solicitations.

A. Advertising Permitted.

(1)—(2) text unchanged

(3) *A supplier may not make an offer to an energy assistance household unless the offer is for a Commission approved contract for energy assistance households.*

B. Disclosures.

(1) (text unchanged)

(2) (text unchanged)

(a)—(c) (text unchanged)

(3) *All supplier marketing or solicitation information must include either:*

(a) If a supplier is marketing a Commission approved contract for energy assistance households, a statement that customers enrolled in an energy assistance program cannot be charged more than the utility's gas commodity price or net purchased gas charge; or

(b) If a supplier is marketing a product that is not approved for energy assistance households, a statement that a customer enrolled with an energy assistance program cannot enroll in this product.

C. Internet.

(1) (text unchanged)

(a)—(b) (text unchanged)

(2) Commission Website.

(a) Suppliers shall submit open offers to the Commission's website according to instructions provided by the Commission[.] ; *and*

(b) (text unchanged)

D. (text unchanged)

(1)—(2) (text unchanged)

.08 Supplier Contracts.

A. Minimum Contract Requirements.

(1) (text unchanged)

(2) A supplier contract shall contain all material terms and conditions, including:

(a)—(l) (text unchanged)

(m) A statement that the supplier may terminate the contract early, including the:

(i)—(iii) (text unchanged)

(iv) Remedies available to the customer if early cancellation occurs[.];

(n) A statement that the customer may terminate the contract early, including the:

(i)—(iii) (text unchanged)

(iv) Remedies available to the supplier if early cancellation occurs; [and]

(v) Amount of any early cancellation fee; *and*

(vi) *A statement that the supplier cannot charge a termination fee to energy assistance households.*

(o)—(q) (text unchanged)

(r) *Identification if the contract is for an energy assistance household;*

(s) A statement that a contract may be cancelled early if a supplier can no longer serve the customer under the existing contract between the supplier and the customer as required by PUA §4-308;

(t) A statement, in a prominent manner with specific written confirmation, regarding whether the customer is receiving, or received during the previous fiscal year, energy assistance from an energy assistance program; and

[(r)] (u) (text unchanged)

(3) *Beginning July 1, 2023, if a supplier's offer is a Commission approved offer for energy assistance households, the supplier contract must contain a statement that energy assistance households cannot be charged more than the utility's gas commodity or net purchased gas charge.*

B.—C. (text unchanged)

D. Evergreen Contracts.

(1)—(5) text unchanged

(6) *Beginning July 1, 2023, a supplier may not renew an evergreen contract for an energy assistance household unless the renewal is onto a Commission approved contract for energy assistance households.*

.10 Notice of Contract Expiration or Cancellation.

A. Notice. Except as permitted in §D and §G of this regulation, a supplier shall provide the customer with notice at least 30 days before expiration or cancellation of a supply contract.

B. text unchanged

(1)—(3) text unchanged

C. Early Cancellation.

(1)—(2)

(a)—(b) text unchanged

(c) *Beginning July 1, 2023, a supplier may not impose a cancellation fee on an energy assistance household.*

(3) Except as provided in [COMAR 20.59.04.04 and .05,] *COMAR 20.59.04.02 and .04* and or in a tariff providing for a supplier default, a utility may remove a customer from supplier services only if directed by a supplier, subject to applicable bankruptcy law.

(4)—(5) text unchanged

D.—F. text unchanged

G. *Cancellation of Contract for Customers Who Start Receiving Energy Assistance*

(1) *A supplier which receives notice from the Utility that a customer is newly identified as an energy assistance household shall provide notice to the customer within 3 business days.*

(2) *The Notice shall inform the customer that:*

(a) *The supplier can no longer serve the customer under their existing contract under Public Utilities Article, §4-308;*

(b) *Unless the customer selects a new service provider with a Commission approved contract for energy assistance households, cancellation of the contract shall return the customer to the utility's standard offer service;*

(c) *The supplier cannot charge a termination or early cancellation fee; and*

(d) *The toll-free telephone number and the web site address of the Commission.*

(3) *In addition to the notice required in section (2), if the supplier chooses to offer the customer a Commission approved contract for energy assistance households, then the supplier shall include all the information necessary to enroll the customer, including:*

(a) *The commission approved contract for energy assistance households, and the contract summary; and*

(b) *Instructions for the customer to provide consent to receive service under the Commission approved contract for energy assistance household.*

(4) *If the existing contract allows the supplier to provide service under a Commission approved contract for energy assistance without additional customer consent, the supplier shall include in the notice: the Commission approved contract for energy assistance households, and the contract summary.*

.12 Assignment of Contract.

A.—E. text unchanged

F. *The suppliers shall not transfer a customer with a contract for energy assistance households unless the receiving supplier has a Commission approved contract for energy assistance households.*

.13 Notice of Change in Rate.

A.—D. text unchanged

E. *A supplier may charge a rate lower than its stated rate in a contract for energy assistance households to comply with Public Utilities Article §4-308 without providing notice.*

.14 Energy Assistance Households

A. *Beginning on July 1, 2023, an energy assistance household may only be enrolled by a supplier onto a Commission approved contract for energy assistance households.*

(1) *Beginning on July 1, 2023, when a utility receives a supplier enrollment the utility shall determine the customer's energy assistance household status and reject the enrollment if the supplier does not have a Commission approved contract for energy assistance households. When rejecting an enrollment, the utility shall identify the reason for rejecting the enrollment as the customer's energy assistance household status.*

(2) *The utility shall record the number of rejected enrollments and provide annual reporting to the Commission.*

B. *Contracts for Energy Assistance Households*

(1) *A contract for energy assistance households must guarantee service at rates at or below the utility's gas commodity price or net purchased gas charge for the term of the contract.*

(2) *The retail supplier's rate for comparison will include all commodity charges, including fixed charges divided by the therms consumed.*

(3) *The retail supplier's rate cannot include a downward adjustment to reflect non-energy products or services that the supplier provides or offers to customers, including, but not limited to, gift cards, free or discounted warranties, and discounts for non-energy products.*

(4) *For billing periods which extend over more than one utility gas commodity price or net purchased gas charge, the rate for comparison will be:*

(a) *If the customer does not have an AMI meter, the weighted average of the number of days on each gas commodity price or net purchased gas charge; or*

(b) *If the customer does have an AMI meter, gas commodity price or net purchased gas charge applied to the usage on each rate.*

C. *For contracts signed or renewed on or after July 1, 2023, if a supplier charges a customer in an energy assistance household pursuant to a contract that is not a Commission approved contract for energy assistance households the customer is entitled to remedies as defined in §D.*

D. *Customer Remedies*

(1) Customer Remedies for a violation of §B and §C of this regulation shall be a refund for each billing period where the supplier charged more than the utility gas commodity price or net purchased gas charge.

(a) The refund shall be calculated as the difference between the monies paid during the billing period and the utility gas commodity price or net purchased gas charge.

(b) The refund shall include interest based on the interest rate that is applied to a utility's refund of customer deposits under COMAR 30.01.05.

(2) The refund shall be remitted as follows:

(a) If the charges have been billed by and the receivable purchased by the utility, the refund shall be remitted to the utility by the supplier. The refund shall be applied to the customer's utility account current balance and the excess returned to the customer upon request. If the customer is no longer served by the utility, then the refund shall be returned to the customer.

(b) Upon purchase of any receivable under this section, the utility shall be entitled to collect from the customer, and the customer shall be responsible to pay the utility the total amount billed less any refund.

(3) A supplier will have a grace period of 10 business days to update their systems to bill a lower new gas commodity price or net purchased gas charge for Contracts for Energy Assistance Households after a utility posts a new gas commodity price or net purchased gas charge.