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BILL NO.:	House Bill 0236 Public Service Commission - Electricity Supply and Consumer Protections - Regulations and Orders
COMMITTEE:	Economic Matters Committee
HEARING DATE:	February 15, 2024
SPONSOR:	Chair Wilson (by request of the Maryland Energy Administration)
POSITION:	Favorable

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The Office of People's Counsel ("OPC") supports House Bill 236 because it will provide urgently needed protections for consumers interacting with the retail energy supply market.

In 1999, the General Assembly passed Maryland's Electric Customer Choice and Competition Act ("the Act").[1] The Act "deregulate[d] the generation, supply and pricing of electricity" by enabling companies other than the State's monopoly utilities to sell electricity directly to retail customers.[2] 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[.]"[3]

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

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[1] 1999 Md. Laws Ch. 3, 4 (S.B. 300/H.B. 703).
[2] Md. Code Ann., Pub. Util. ("PUA") § 7-504(3).
[3] PUA §§ 7-504(2), 7-504(4).

energy suppliers operating in Baltimore Gas and Electric's service territory showing that retail supply customers are not, in fact, paying competitive prices.[4] 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."[5]

At the same time, the harm to customers has been plentiful. Current laws and regulations enable 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 numerous cases before the Public Service Commission ("PSC") 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.[6] 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.[7]

Consumer complaints against retail energy suppliers include 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;[8]
- Deceptively marketing products as "green energy," "renewable energy," and "carbon-free" without defining these terms;

[4] 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.
[5] *Id.* at 43.
[6] *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*.
[7] Case No. 9617, Order No. 89526 (Mar. 6, 2020); Case No. 9613, Order No. 90515 (Feb. 22, 2023).
[8] 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 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).

- Enrolling customers without their consent, making misleading claims about potential savings, and posing as representatives of a customer's utility company;[9]
- 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 thus far have done little to curtail retail supplier misconduct. In fact, the number of consumer complaints filed against retail energy suppliers operating in Maryland is 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.[10] It is likely that the numbers of consumers affected by supplier misconduct are substantially greater than the number of complaints.

Enforcement cases have not effectively deterred bad actors in the retail supply market. In our view, while the PSC has found violations of statutes and regulations, its remedies have been weak, allowing retail suppliers to indefinitely continue to profit from violating the law and otherwise failing to deter future violations. 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.[11] Enforcement cases also often span several years, which means that even if the affected customers are granted relief, that relief is substantially delayed. In one current case on appeal, the supplier continues to serve—and receive revenues from—customers that the PSC found in 2021 it had unlawfully enrolled.[12]

The best way to minimize abuses and ensure that customers benefit from retail choice is to have strong consumer protection laws and regulations that limit the opportunities for violations and deter future non-compliance. HB 236 will enhance customer protections by directing the PSC to adopt regulations or issue orders to:

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[9] *See e.g.,* PSC Case No. 9324; PSC Case No. 9615; PSC Case No. 9647.

[10] Consumer complaint information is publicly available on the PSC's website: https://www.psc.state.md.us/retail-energy-supplier-complaint-reports/.

[11] PSC Case No. 9647, *Notice of Probable Cause Hearing* (Public and Confidential), ML No. 301288 (Feb. 13, 2023).

[12] *Matter of SmartEnergy Holdings, LLC,* 256 Md. App. 20 (2022) (on appeal to the Sup. Ct. of Md.).

- Establish reasonable restrictions on in-person marketing;
- Establish licensing procedures, fees, and reporting requirements for door-to-door marketing by individuals and electricity suppliers;
- Prohibit contract periods of more than one year for variable price contracts;
- Require that residential customers be returned to standard offer service at the expiration of a variable price contract, absent a newly executed contract;
- Require offers and contracts for residential supply to prominently display the current standard offer service price and any other information the PSC considers necessary; and
- Prohibit commission-based compensation for customer choice marketing employees and contractors.

OPC supports the urgent consumer protections in HB 236. Most of these protections are also embodied in HB 267, which contains additional consumer protections that OPC also supports. Although OPC would prefer to see the more extensive protections in HB 267 advanced, OPC also supports a favorable report for HB 236.

Recommendation: OPC requests a favorable Committee report for HB 236.