BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

In the Matter of Maryland Energy Advocates Coalition's Petition for Rulemaking and Request for a Rulemaking Session	* * * *

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Introduction

In 1999, the General Assembly created retail choice for customers with the goal of "provid[ing] economic benefits for all customer classes."[1] Twenty-four years later, the results demonstrate few if any benefits for residential customers. Rather, customer complaints against suppliers are growing, the numbers of customers being served by suppliers is low, and few customers stay with competitive suppliers for more than a short period. While limited information is available on the prices charged by suppliers, that limited information indicates that customers choosing retail suppliers are not paying competitive prices—a primary goal of restructuring.[2]

An efficient market for retail electric and natural gas supply relies on buyers having good information to make rational choices about their purchases. Consumers cannot make rational choices about retail energy supply when suppliers fail to disclose material information necessary to understand their products. Retail suppliers currently can take advantage of buyers by exploiting inherent information asymmetries, particularly in the context of door-to-door and telemarketing sales. The Commission can change its retail choice regulations to increase transparency for customers and create a market environment that better enables customers to make rational choices. Customers will benefit from an enhanced capacity to identify competitive retail choice options and from avoiding overpriced and high-risk offers. The retail supply market will also benefit

[1] Md. Code Ann., Pub. Utils. ("PUA") § 7-504.
[2] Maryland Energy Advocates Coalition ("MEAC"), Petition for Rulemaking and Request for a Rulemaking Session ("MEAC Petition"), at 15 (June 2, 2023). MEAC cites U.S. Department of Energy, Energy Information Administration information regarding the rates Maryland retail suppliers charged in 2021.

from a more level playing field for suppliers who follow the Commission's regulations, make accurate and complete sales pitches, and provide offers that benefit customers.

The experience with retail choice shows that most customers are unfamiliar with the complexity of the retail energy markets that enable retail suppliers to sell electricity and gas at prices significantly higher than the utility price. The current regulations have few restrictions or limitations on the marketing practices, allowing retail suppliers to pursue business practices that result in customers being enrolled in harmful supply arrangements. That harm occurs both because of the opaqueness of the product and deceptive or misleading marketing that is hard to prove and even harder to discover. These business practices include:

- Telemarketing based on incomplete or deceptive advertising material that results in a binding supply contract just based on the telephone call;
- Door-to-door sales that result in a digitally-signed contract on the spot;
- Deploying marketers who are unlicensed and not registered or known to the Commission, making it impossible to prevent marketers who violate the regulations from continuing to operate in Maryland;
- Marketing products as "green energy," "renewable energy," and "carbon-free" without defining these terms;[3]

[3] For example, one company advertises a "renewable energy plan" as the "SimpleClean" plan that "uses up to 50% renewable sources" without providing information about what energy source the RECs come from (https://xoomenergy.com/en/residential/maryland/electricity/bge-electric?dez=21202); another company markets a plan as "100% clean energy" without providing the plan's definition of "clean energy" until you provide your personal information (https://www.eligoenergy.com/rates/21201?c=electric); another advertises "Pollution Free ™" and "100% wind energy" without providing a clear explanation of why 100% wind power RECs are "pollution free" (https://www.greenmountainenergy.com/home-energy-solutions/ne-products?providerUrlSlug=bge&gasProvider=bgg&elecUnit=kwh&gasUnit=thm); and a company that advertises a plan of "carbon-free power" that "matches you electricity with emission-free certifications & is generated 100% by nuclear, wind, solar or hydroelectric"; however, the description of the "carbon-free" plan information differs from information on the company's website that states, "Our 100% carbon-free electricity plans are sourced from our *nuclear* generation units located across Ohio and Pennsylvania.

- Owning and operating multiple retail supply companies under multiple licenses, which creates loopholes through which suppliers can reduce their risk of regulatory violations;

- Making no public disclosure of the prices charged to customers; and

- Locking customers into unfavorable contracts with excessive early terminations fees.

Allowing these business practices has resulted in the Commission receiving a high number of complaints. The Consumer Affairs Division's ("CAD") Q323 report, which tracks consumer complaints filed against retail suppliers, shows that 234 complaints were filed with CAD against 16 retail suppliers during January 1, 2023 – March 31, 2023.[4] Of these 234 complaints, 133 "cited a primary issue of slamming or misrepresentation,"[5] which are serious consumer protection allegations. One retail supplier sustained 39 complaints in three months, and another had 23 complaints.[6] The number of complaints almost doubled second quarter of fiscal year 2023 to the third quarter, increasing from 128 to 234, which could evidence a further increasing upward trend of consumer protection violations.[7] These troubling figures illustrate the number of bad actors in Maryland's retail supply market, for which residential ratepayers are paying the price.

If you'd prefer a *green* plan, we also provide 100% green electricity plans, which offset your electricity consumption through Renewable Energy Certificates (RECs) purchased from wind generators across the country" (emphasis added) (https://energyharbor.com/en/offers?zip=21201&edc=BGE&edcGas=BGE).

[4] State of Maryland Public Service Commission, Consumer Affairs Division, 3Q23 Report, at 3, located at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.psc.state.md.us/wp-content/uploads/PSC-CAD-Quarterly-Report-3Q23-suppliers.pdf.

[5] *Id*.

[6] *Id*.

[7] *Id*.

The permissiveness of the regulations exacerbates the information gaps that preclude the Commission from effectively monitoring the market. Neither the Commission nor the public has information on what retail suppliers charge customers. The Commission does not have a process for periodically reviewing the performance and qualifications of a supplier to determine if the supplier should continue to serve customers in Maryland. The only information available to the Commission comes from CAD, but that information is limited. Many customers who have bad retail shopping experiences do not go through the trouble of learning that they can file a CAD complaint and follow through with the complaint process. Additionally, few customers are legal or energy experts, and they are unaware of violations of law or regulations when they interact with a supplier.

Enforcement is certainly important, and the Commission should explore mechanisms to improve detection and enforcement of violations.[8] But the best way to minimize abuses is to have regulations that limit the opportunities for violations to occur in the first place. The current regulations have proven to be ineffective in prophylactically preventing unfair business practices, including deceptive and misleading marketing. The failure to proactively prevent unfair practices means customers end up in harmful high-priced retail supply contracts, a result clearly contrary to the public interest. Litigating

[8] The Commission put out a report and announced "maximum enforcement," but the results have been sporadic, at best. *See* State of Maryland Public Service Commission, Consumer Affairs Division, 3Q23 Report, at 3, located at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.psc.state.md.us/wp-content/uploads/PSC-CAD-Quarterly-Report-3Q23-suppliers.pdf (describing "maximum enforcement"). A few enforcement cases are unlikely to significantly affect supplier behavior generally.

enforcement actions takes a long time to resolve and consumes significant resources of the Commission, its Staff, and OPC. Indeed, the complaint data casts doubt on the deterrent effect of Commission enforcement actions thus far.

OPC agrees with MEAC that the purchase of receivables option for utility-consolidated billing utilities should be eliminated.[9] OPC has identified other areas of the current regulations that should be modified. In the sections below, we provide additional recommendations and a procedural path for moving forward expeditiously. We address the following points:

- The notice provisions for price changes under variable rate contracts need to be strengthened to effectively inform customers of the rate they are paying.[10]

- Enrollments based solely on a telephone call run afoul of basic consumer protection tenets.[11] The Commission should adopt regulations that require a signed contract, either via wet ink or an e-signature, before the supplier submits an enrollment from a telephone solicitation.

- On-the-spot enrollment contracts that result from door-to-door marketing do not give customers enough time to carefully consider the complicated aspects of a retail energy contract.[12]

- Marketing that includes "green," "renewable," "clean," "environmentally friendly," and "carbon free" energy.[13]

- The Commission should reform the rules governing supplier-agent relations, including requiring suppliers to register their sales agents or

[9] *See* Code of Maryland Regulations 20.53.05.06. These comments refer to the Commission's regulations in 20.53 on competitive electric supply but not to the corresponding regulations in 20.59 on competitive gas supply. The recommendations in these comments on amendments to the regulations in 20.53 would also apply to the corresponding regulations in 20.59.
[10] *See* COMAR 20.53.07.13, 20.53.07.13C.
[11] *See* COMAR 20.53.07.08; *see also* Md. Code Ann., Comm. L. ("Comm. L.") § 14-2203.
[12] *See* COMAR 20.53.10.06; *see also* Com. L. §§ 14-301 – 14-306.
[13] *See* COMAR 20.53.07.07A(2).

prohibiting the use of third-party agents to make sales to customers.

- Retail suppliers should be required to disclose historical price data. The Commission should adopt regulations that require suppliers to report the annual average prices charged to customers.

- Retail suppliers' contact information should appear on all communication concerning the customer's bill—mail, email, and text—not just on the monthly bill.

- The retail supplier application process[14] should be modified to (1) require all affiliated suppliers to operate under one shared license held by the parent company and (2) require suppliers that merge or acquire another supplier operating in Maryland to reapply for a license.

- Once a retail energy supplier license is issued, the company is not required to renew the license,[15] which deprives the Commission an opportunity to review whether the supplier remains qualified to serve customers in Maryland and whether it is promoting the goals of retail choice. The Commission should adopt regulations that require suppliers to reapply for a retail energy supplier license every three years.

- The bond required under COMAR 20.51.02.08 should be increased from $250,000 to at least $500,000 because the current bond amount is not in-line with recent orders directing retail suppliers to pay penalties and refunds. Further, the required bond language[16] should be modified to provide that bond proceeds can be used to pay customer refunds.

- The Commission should reform the CAD complaint system and resolution process and create a CAD enforcement division.[17]

- The Commission should reform its monitoring and enforcement policies to adequately safeguard a competitive market for retail supply by adopting (1) a presumption that customer refunds will be issued for consumer protection law violations and (2) a penalty schedule to assist parties in making sanction recommendations.

[14] *See* COMAR 20.51.02.02, 20.51.02.09.
[15] *See* COMAR 20.51.03.01.
[16] *See* COMAR 20.51.02.08H(5).
[17] *See* COMAR 20.32.01.02, 20.32.01.03, 20.32.01.04.

- The Commission should define what is considered a "reasonable" cancellation fee.

Along with ending purchase of receivables, these recommendations, discussed in the fourteen sections below, can be adopted without a prolonged process. The Commission should provide parties with an opportunity to file comments in reply to the comments filed on November 6, 2023. After receiving reply comments, the Commission could hold a legislative-style hearing to receive more information. We recommend that the Commission provide specific guidance on the changes in regulations it wishes to consider in a subsequent rulemaking. The Commission could direct that a work group draft regulatory language to implement the Commission's guidance, followed by a rulemaking to adopt them. Sending the issues to a workgroup without Commission guidance would be time-consuming and unproductive. In sum, the Commission should set a legislative-style hearing, issue an order that provides specific guidance to the parties, set an accelerated workgroup process to draft regulatory language based on that guidance, and then issue proposed regulations. These procedures would give stakeholders ample opportunity to comment and allow the voluminous number of issues to be disposed of in an efficient and effective manner.

Comments

I. Purchase of receivables for utility-consolidated billing and supplier-consolidated billing should be eliminated; alternatively, UCB and SCB procedures should be symmetric.

OPC agrees with MEAC's recommendation that the POR option be eliminated for residential customer classes and that utilities providing UCB should be required to prorate customer payments between the utility and the retail supplier.

The Commission's regulations for purchase of receivables, established almost 15 years ago in 2009,[18] give utilities options to: (1) purchase retail suppliers' receivables; or (2) "prorate customer payments between the utility and a supplier."[19] All utilities use the first option of POR[20] under which utilities purchase retail supplier receivables at a rate that is discounted from the rate the retail suppliers charge their customers.[21] Upon purchase of the receivables, the utility takes on responsibility for billing and debt collecting regardless of whether the retail supplier's rate is significantly higher than standard offer service or the utility's gas commodity rate. Further, "the purchased supplier receivables become utility charges for the purpose of termination of service."[22]

[18] *See* RM17, *Nonresidential Consumer Protection, COMAR 20.59 Competitive Gas Supply, COMAR 20.53 Competitive Electric Supply* (filed June 21, 2005).
[19] COMAR 20.53.05.06(A).
[20] *See* Case No. 9461, Order No. 89116, at 2, fn 3, ML #: 225157 (May 7, 2019).
[21] BGE's discount is 0%. *Petition for Rulemaking and Request for a Rulemaking Session*, Page 4, filed by the Maryland Energy Advocates Coalition.
[22] COMAR 20.53.07.06(B).

Utilities purchase receivables within five days of the retail supplier incurring customer costs.[23] As a result, the retail suppliers feel no impact from slow or erratic customer payments; instead, they enjoy consistent payments from a reliable vendor supported by ratepayers. As a result, retail suppliers currently incur no billing or collections costs, and they can neglect any consideration of their potential customers' creditworthiness. Finally, once the retail supplier sells or assigns the receivables to the utility, the collection responsibility transfers to the utility and the retail suppliers never incur the wrath of customers unhappy with collections actions or service terminations.

The POR option eliminates normal business risks that would otherwise impact retail suppliers. That reduction in risk has resulted in a retail supply market that encourages suppliers to enroll as many customers as possible, as quickly as possible, with little concern for customer retention. The supplier receives automatic payment at its rates for the limited months the customer stays with the supplier. The supplier may also receive an early termination fee from customers who terminate their contract before it expires. This business model based on churn—enrolling as many customers as possible without an incentive to retain the customers long-term—is not delivering the economic benefits the General Assembly had hoped retail choice would achieve.

MEAC's petition to eliminate the POR option appropriately takes on the problems created by POR. MEAC correctly argues that widespread adoption of the POR option has

[23] Supplement 502 to P.S.C. Md. E-6, Supplement 372 to P.S.C. Md. G-6, *Compliance Filing for Annual Re-calculation of Discount Rate for Baltimore Gas and Electric Company's Purchase of Receivables Programs*, at 4 (March 30, 2012).

resulted in several negative consequences, including deceptive sales and marketing practices and higher rates, which were not taken into account during Rulemaking Docket No. 17 (RM17).[24] OPC's experience confirms MEAC's point that POR has affected retail suppliers' customer base and rate structures with customers entering into retail supply contracts that they cannot afford—promoted by suppliers because the supplier is unconcerned about debt collection. Additionally, POR "may also be the reason most suppliers charge their customers variable rates[.]"[25] Further, we agree with MEAC that the impetus behind the POR option—to level the playing field between retail suppliers and utilities—is no longer needed. The retail supplier market has markedly grown since the adoption of POR and many of the retail suppliers now benefit from relatively deep coffers, as many are owned by Fortune 500 companies.

The Commission should thus end POR and adopt the pro rata apportionment of customer payments. Under a pro rata system, "a [customer] payment shall be allocated between the utility, supplier, and any other party in proportion to the percentage of the combined charges on the customer's total bill under terms and conditions approved by the Commission."[26] Further, "the utility shall bill for supplier charges and arrearages for a minimum of 90 days from the date a supplier receives final usage data from the utility."[27] If a "utility cancels a supplier's charges, the utility shall rebill the canceled supplier

[24] RM17 was established to adopt as regulations the licensing and consumer protection orders from Case No. 8738.
[25] MEAC Petition, at 9.
[26] COMAR 20.53.05.06D; *see also* 20.59.05.03D.
[27] COMAR 20.53.05.06E; *see also* 20.59.05.03E.

charges to the customer for at least 90 days after the bill adjustment."[28] The retail supplier will continue to pay a fee to the utility for the supplier use of UCB.[29]

The proration option offers a clear-cut solution to the problems created by POR—a system that is not promoting economic benefits for the consumer and that is no longer necessary. Requiring UCB utilities to prorate payments to retail suppliers would reincorporate some of the business risks eliminated by POR. Retail suppliers would have to add debt collection operations, which would disincentive enrolling customers who cannot afford the supplier's rates.

If it decides not to end POR, the Commission should modify POR to create symmetry between SCB and UCB so that POR works in the same manner as the newly adopted SCB rules in Case No. 9641/RM70. Under SCB, suppliers purchase the regulated receivables of a customer's utility[30] and render customers a bill that includes those charges, as well as the supplier's charges. In the event a customer served by an SCB supplier fails to pay a supplier-consolidated bill, the supplier is obligated to conduct "reasonable collection efforts" before dropping the customer back to the utility.[31] When that occurs, the utility is required to repurchase the outstanding "arrearages attributable to the utility;"[32] which the utility can then seek to collect from the customer directly before terminating service. Under SCB, therefore, the supplier is obligated to seek repayment of

[28] COMAR 20.53.05.06F; *see also* 20.59.05.03F.
[29] COMAR 20.53.05.03D.
[30] COMAR 20.53.05.11.
[31] COMAR 20.53.05.12A(1).
[32] COMAR 20.53.05.12D(1). This regulation caps the arrearages that a utility will repurchase to those invoiced within the past 110 days. COMAR 20.53.05.12D(2)(a).

its remaining charges directly from the customer—without the ability to terminate service for nonpayment of supplier charges.

POR under UCB should be reformed to adopt a similar mechanism for the receivables utilities purchase from suppliers. That is, utilities should only be required to conduct "reasonable collection efforts" before suppliers are required to repurchase the "arrearages attributable" to the supplier. The utility would then only utilize its right to terminate service if a customer ultimately fails to pay the regulated receivables owed to the utility.

Adopting this symmetry between POR for UCB and SCB has the further advantage of encouraging SCB, which is promoted as a means of helping retail suppliers build relationships with customers. Symmetry promotes SCB by removing the disincentive for leaving UCB that POR provides retail suppliers. Removing the POR disincentive for SCB is important because of the Commission's recent ruling that the SCB implementation costs will be collected from all ratepayers upfront, with only the possibility that those costs would be reimbursed over time from fees assessed to suppliers.[33] There is "no guarantee of full supplier repayment" and repayment will only occur "[i]f the [SCB] market matures sufficiently over time."[34] Based on the estimates presented during Case No. 9461, utilities estimate that it will cost at least $32.3 million to

[33] Case No. 9461, *Order on Cost Recovery Methodology of Supplier Consolidated Billing*, Order No. 90696, at 21, ML# 303740 (June 27, 2023) (noting that the adopted cost recovery mechanism "presents only a pathway to full recovery [for ratepayers], and the timing of repayment may raise some intergenerational concerns.").
[34] *Id*. at 6.

implement SCB.[35] In order to avoid ratepayers paying these high costs for a billing option that is never utilized at the level needed to repay ratepayers, the Commission should ensure that its POR rules do not perversely incentivize suppliers to continue UCB despite the new SCB option.

II. The regulations governing variable rate contracts should be strengthened to ensure customers receive effective notice of price changes and an economic benefit.

Many retail supply contracts start with a fixed price for a prearranged term and then convert to a variable price arrangement where the supplier can charge a new, higher price—usually described with vague language about market conditions. The customer only sees the price charge after the price increase, when they receive a bill from their utility. OPC's experience is also that residential customers on retail supply receive more monthly charges from variable prices than they do from fixed prices. Variable rate contracts expose customers to high electricity and gas prices with little or no notice of the changing monthly price. Customer response to price is a critical part of any market. If retail suppliers were required to provide effective advance notice of the price they charge for electricity or gas, customers could avoid paying unreasonably high prices either by making a change to their supply arrangement or making a change to their consumption.

The current regulations have an ineffective provision governing notice of rate changes. Under COMAR 20.53.07.13, suppliers are supposed to make information on

[35] *See* Case No. 9461, Office of People/s Counsel, *Comments Regarding the Supplier Consolidated Billing Work Group's Request*, at 5, ML #: 302267 (Apr. 5, 2023).

rate changes available at least 12 days in advance of the new rate being effective.[36] There are no requirements for how the notice is provided to customers. Instead, the format of the notice is "prescribed by the supplier."[37] OPC's experience is that the suppliers who assert compliance with this provision say that the information is available somewhere on the supplier's website or it is available if the customer calls the supplier and asks for the information. In practice, very few residential customers have any notice of what they are going to be charged under a variable rate contract until they get the bill from the utility.

The regulations have an additional requirement for written notice of changes in price under COMAR 20.53.07.13C, which applies if the customer is being switched from a fixed rate to a variable rate and the change in rate will be equal to or exceed 30 percent of the fixed rate.[38] Even this requirement is limited, however, because it only applies to the first month that the rate goes from a fixed price to a variable price. If the supplier raises the rate 25 percent in the first month, it can then raise the price an unlimited amount in any subsequent month with no obligation to inform the customer.

The Commission should adopt regulations that strengthen the notice provisions for changes in rates for residential customers. Customers should be informed in writing every time their rate changes. The customer should agree to the method that the supplier will use to send the notice. The time period of 12 days in the current regulations is sufficient notice of a rate change for most retail supply products. For a product where the

[36] COMAR 20.53.07.13A(1).
[37] COMAR 20.53.07.13A(2).
[38] COMAR 20.53.07.13C.

rate changes within a month, the notice could be less than 12 days, provided there is clear disclosure of that at the time of contracting. The regulations already allow notice by email or text message provided that is disclosed to the customer.[39] This type of notice should be permitted under the new requirement to disclose all rate changes. Electronic notice can be automated and very low cost for suppliers and would provide the information customers need to take action to adjust their consumption or to investigate another supply offer.

OPC further recommends that the Commission require that variable rate products guarantee customer savings on an annual basis relative to the utility commodity price, as the New York Public Service Commission has required.[40] As required in New York, the Commission should require the supplier to reconcile its rates against the applicable utility rates at least annually, and if the amounts charged to the customer is higher than what the customer would have been charged by their utility, the supplier should be required to issue a refund.[41]

III. The Commission should modify the regulations governing telephone enrollments to require retail suppliers to obtain a signed contract prior to enrollment.

The Commission's regulations allow suppliers to enroll customers when the only interaction between the customer and the supplier has been a telephone call. The premise

[39] COMAR 20.53.07.13C(2). This provision also allows notice by automated phone message.
[40] Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*; CASE 12-M-0476, *Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State*; Case 98-M-1343, *In the Matter of Retail Access Business Rules, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process*, at 39 (December 12, 2019).
[41] Case 98-M-1343, *In the Matter of Retail Access Business Rules, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process*, at 41 (December 12, 2019).

for allowing this practice is that the customer and the supplier come to an agreement during the telephone call, creating a contract. With this type of enrollment practice, the supplier has no customer-signed document containing all the terms of service to which the customer allegedly agreed. Yet, as long as the supplier obtains the customer's account number or ID number, the supplier can enroll the customer in its service through the utility's automated enrollment process. Allowing this contracting and enrolling method has proven to put customers at a significant disadvantage and resulted in numerous enforcement actions.[42] In these cases, customers did not understand the nature of the telephone call with the supplier, never intended to enter into a contract, and ended up in a supply arrangement that was neither what they wanted nor beneficial to them.

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 after the telephone call.[43] 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

[42] *See* Case No. 9617, *In the Matter of the Complaint of the Staff of the Pub. Serv. Comm'n against Smart One Energy, LLC*, Order No. 89219 (Aug. 2, 2019); Case No. 9647, *Complaint of the Md. Off. Of People's Couns. Against SunSea Energy, LLC*, Order No. 89914 (Aug. 18, 2021); Case No. 9614, *In the Matter of the Complaint of the Staff of the Pub. Serv. Comm'n against Direct Energy Servs., LLC*, , Order No. 90208 (May 4, 2022); Case No. 9615, *In the Matter of the Complaint of the Staff of the Pub. Serv. Comm'n of Md. v. U.S. Gas & Electric, Inc. and Energy Serv. Providers, Inc., d/b/a/ Md. Gas & Electric*, Order No. 90311 (Aug. 16, 2022); Case No. 9325, *In the Matter of the Investigation into the Marketing Practices of Starion Energy PA, Inc.*, Order No. 86211, March 7, 2014; Case No. 9346, *In the Matter of the Investigation into the Marketing, Advertising and Trade Practices of American Power Partners, LLC; Blue Pilot Energy, LLC; Major Energy Electric Services, LLC and Major Energy Services, LLC; and Xoom Energy Maryland, LLC*, Order No. 87418 (February 26, 2016), ML# 176598 (October 23, 2015), ML# 228008 (December 30, 2019).

[43] Case No. 9617, *In the Matter of the Complaint of the Staff of the Public Service Commission Against Smart One Energy, LLC*, Order No. 89219, at 4 (August 2, 2019).

on for years before being detected. The company enrolled over 17,000 Maryland customers.[44] 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. In the *Smart One* enforcement case,[45] the Commission ordered the company to issue a refund to all of its customers in the amount of the difference between the rate it charges customers and the rate the customer would have been charged by the utility.[46] These refunds would have totaled over $14 million if they had been paid.[47] Unfortunately, the company stopped responding to the Commission's orders after the Commission cancelled the company's supplier license.[48] The Commission ordered the company's bond of $250,000 to be paid to the Commission.[49] None of those funds were used for refunds to customers.

Enrollments based on telephone calls are counter to one of the basic tenets of consumer protection that runs through the Commission's regulations: full disclosure to the customer. The Commission has adopted a requirement that customers receive—prior to entering into a contract—a summary of the contract, in a form prescribed by the Commission, that must be physically handed to the customer during an in-person solicitation.[50] The regulations list 21 "Minimum Contract Requirements" that must be

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[44] *Id. at 9.*
[45] Case No. 9617, *In the Matter of Complaint of the Staff of Public Service Commission against Smart One Energy, LLC*, Order Suspending Retail Supplier License, Imposing Civil Penalty, and Directing the Transfer of Service, ML #226324 (August 2, 2019).
[46] Case No. 9617, *In the Matter of the Complaint of the Staff of the Public Service Commission against Smart One Energy, LLC*, Order No. 89526, at 4-5 (March 6, 2020).
[47] *Id*. at 3.
[48] Case No. 9617, *In the Matter of the Complaint of the Staff of the Public Service Commission against Smart One Energy, LLC*, Notice of Default, ML #226324 (August 14, 2019).
[49] *Id*.
[50] COMAR 20.53.07.08B.

included on all retail supply contracts.[51] These are just the minimum requirements. Suppliers can have other terms in their contracts, and they usually have at least a page of small-print terms and conditions.

When a retail supply transaction is conducted exclusively over the telephone, however, consumers do not benefit from these protections. The customer does not see the contract summary or the terms and conditions of the contract during the telephone call or before enrollment occurs. There is even an exception to the contract summary requirement for enrollments based on telephone calls.[52] Although the regulations require that the company "[d]isclose all material contract terms and conditions to the customer over the telephone,"[53] it is just not practical or constructive for a supplier sales representative to read a long list of terms and conditions to a customer during a telephone solicitation, and the records in the enforcement proceedings have borne that impracticality out. The regulations require that the supplier mail the contract summary and a copy of all the terms and conditions that the supplier intends to impose on the customer within three days of the telephone call, but by that time the supplier could already have sent the enrollment to the utility.

A retail supply arrangement is a complicated arrangement that usually has no end date and may start with a fixed price but turn into a variable contract, with little notice as described above. Customers, therefore, should be fully informed of those terms before the

[51] COMAR 20.53.07.08A(2).
[52] COMAR 20.53.0708B(3).
[53] COMAR 20.53.07.08C(4)(b)(v).

customer is bound to them. But the current regulations do not require that the customer have that information before a purported agreement is reached.

The Commission has determined that the Maryland Telephone Solicitation Act[54] requires that written, signed contracts are required for at least some enrollments based on telephone calls.[55] But legal issues remain that leave the door open to many of the abuses seen in enforcement cases. In the absence of better regulations, more time-consuming and resource-demanding litigation will be required to resolve exactly when a written, signed contract is required, and when it is not. The Commission is currently defending two orders where the issues include 1) whether the advertising used by the supplier satisfies the exemptions under the MTSA in CL §§ 14 2202(a)(2)(ii) and 14-2202(a)(5) for transactions involving a "preexisting business relationship" and for transactions in which the advertising material initiating the consumer call includes a "description of the goods or services" and "[a]ny limitations or restrictions that apply" and 2) whether the supplier provided material terms to the customer prior to a telephone enrollment.[56]

The Commission should thus create a simple rule that will be easy for suppliers to understand and follow: require a signed retail supply contract—either as a wet ink signature on a written document or electronically signed—before the supplier submits an enrollment. The regulations should also require that the contract summary be provided to

[54] Comm. L. § 14-2203(b).
[55] Case No. 9613, *In the Matter of the Complaint of the Staff of the Public Service Commission of Maryland v. Smart Energy Holdings, LLC d/b/a SmartEnergy*, Order No. 89795, ¶ 88.
[56] Petition of U.S. Gas & Elec., Inc., and Energy Service Provides, Inc. for Judicial Review of the Decision of the Maryland Public Service Commission, In the Circuit Court for Anne Arundel County, Co. C-02-CV-22-001400; and In the Matter of Direct Energy Services, LLC, In the Circuit Court for Anne Arundel County, Case No. C-02-CV-22-000856.

all customers prior to entering into an agreement. These requirements would inform customers of all the terms and conditions before agreeing to a retail supply arrangement. It would also minimize disputes over whether a supplier has a valid contract with a customer it is charging or whether the customer was enrolled without their consent. The requirement for a signed contract would also obviate the need to litigate what information needs to be in advertising materials to qualify for an exemption in the MTSA[57] or what terms are "material terms" that must be disclosed during a telephone call to meet the requirement for telephonic enrollments under the current regulation.[58] Even if litigation were to clarify what "material terms" must be disclosed prior to a telephone enrollment, the current approach sets up a factual dispute over whether those terms were actually disclosed during the telephone solicitation. Unless the telephone solicitation is recorded, it is difficult for the Commission to enforce a rule where the validity of an enrollment turns on what was said during a telephone conversation. Requiring a signed contract prior to enrollments would provide the transparency that the regulations were intended to provide and reduce the number of disputes that the Commission will need to resolve.

IV. The Commission should prohibit signed enrollment contracts during the door-to-door sale and require customers to submit the signed contract to the retail supplier *after* the agent leaves the customer's premises.

Rash decisions can be costly to electricity customers. Currently nothing in the Commission's regulations stops retail supplier agents from fully executing customer contracts after a few minutes of conversation, all while standing at the customer's door.

[57] Comm. L. §§ 14 2202(a)(2)(ii), 14-2202(a)(5).
[58] COMAR 20.53.07.08C(4)(b)(v).

The Commission should enact new regulations that slow down the process by which agents execute customer contracts during door-to-door sales.

The Commission currently regulates door-to-door electricity sales under COMAR 20.53.10.06. A supplier agent may appear at a customer's door fully equipped to change the resident's electricity supplier within minutes. After a brief introduction, the agent can use a handheld tablet to open a new customer contract, make various customer-specific selections in the contract, and have the customer execute the contract. All of this can take place without the customer having a single document in their control to read and consider. The agent is only required to provide copies of the contract documents to the customer *after* the contract has been executed.[59] After receiving those copies, the customer has three days to rescind the contract.[60]

This quick process is a problem. Understanding electricity rates is complicated, and a true analysis of all relevant factors that a customer should consider before switching electricity suppliers requires using math that cannot be performed under time constraints while standing at a door. The problems are not resolved by the optional use of third-party verification (TPV)[61] procedures. TPV generally requires "yes" or "no" answers to simple questions about whether certain information and contract terms were or were not provided. It is not an effective tool for assessing a customer's understanding of the math and the contract terms.

[59] COMAR 20.53.10.06.
[60] Comm. L. § 14-301.1(3)(iii).
[61] *See* COMAR 20.59.01.02(B)(25).

The Commission can protect customers from the pitfalls of these doorway contracts by enacting regulations that restrict the way supplier agents execute contracts. The Commission should promulgate regulations that require the agents to provide customers with a copy of the contract—whether in physical or electronic form—after which customers complete and execute those contracts through their own independent action, while the contract is in the exclusive control of the customer and after the agent has left the customer's residence. Then, once the customer has completed and executed the contract, the customer may mail or email the contract to the retail supplier. This process will allow customers time to properly consider whether they would benefit by switching electricity suppliers.[62]

[62] This recommendation would be especially effective in conjunction with the recommended mandatory average price disclosures. *See* discussion *infra*, Section VI.

V. The Commission should promulgate regulations limiting the use of green marketing.

OPC is concerned that consumers are being harmed by deceptive and misleading environmental marketing. In response to consumer preferences to reduce reliance on fossil fuels in favor of more sustainable, renewable sources of energy, retail suppliers are marketing their products as "green" or otherwise environmentally beneficial, using the procurement of renewable energy credits ("RECs").[63] The quality of the RECs that support these claims varies widely, and energy suppliers sometimes entice customers with claims of "green" power without explaining what that means or even whether the offers do anything more than comply with existing law.

Since 2004, Maryland's Renewable Energy Portfolio Standard ("RPS") has required electricity suppliers to fill a minimum of their electricity sales with energy from renewable sources.[64] Regulated entities comply with the RPS by procuring RECs, either by generating the renewable energy (and associated certificate) themselves or by procuring the REC in a marketplace. Such RECs must come from a source within or

[63] *See e.g.,* CleanChoice Energy, https://cleanchoiceenergy.com/ (last accessed Oct. 24, 2023) ("A cleaner future starts with you. Together, we can create a brighter future for all by choosing easy, impactful renewable energy solutions."); SmartEnergy, https://smartenergy.com/why-smart/about-us/ (last accessed Oct. 24, 2023) ("SmartEnergy is proud to offer 100% green energy, and it's our mission to prove that helping the environment doesn't have to come at the expense of your wallet."); Energy Harbor, https://energyharbor.com/en/for-home/green-energy (last accessed Oct. 24, 2023) ("Energy Harbor offers a wide selection of affordable, 100% clean energy plans that can shrink your home's carbon footprint and help protect the environment.").

[64] *See* PUA §§ 7-701 et seq.

adjacent to PJM.[65] RECs are divided into Tier 1 and Tier 2 based on the energy source that produced the REC.[66]

The only Commission regulations currently governing marketing by retail energy suppliers are found in COMAR 20.53.07.07A(2), which states that "a supplier may not engage in marketing or trade practice that is unfair, false, misleading, or deceptive."[67] The Commission has no further guidance, rules, or regulations in place regarding supplier marketing.

The lack of specific guidance, rules, or regulations on retail suppliers' environmental marketing leaves significant gray areas that retail suppliers can (and we believe do) exploit to the detriment of customers. These gray areas create problems both for consumers looking to buy green energy and for retail suppliers looking to provide green energy using honest sales pitches. To address some of the most glaring issues with "green" marketing by retail suppliers, the Commission should require that a retail supplier marketing "green" or "renewable" energy (1) use RECs that meet the definition

[65] PUA § 7-701(m).
[66] PUA § 7-701(s) and (t). Tier 1 sources include (1) solar energy, including energy from photovoltaic technologies and solar water heating systems; (2) wind; (3) qualifying biomass; (4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant; (5) geothermal, including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source; (6) ocean, including energy from waves, tides, currents, and thermal differences; (7) a fuel cell that produces electricity from a Tier 1 renewable source under item (3) or (4) of this subsection; (8) a small hydroelectric power plant of less than 30 megawatts in capacity that is licensed or exempt from licensing by the Federal Energy Regulatory Commission; (9) poultry litter-to-energy; (10) waste-to-energy; (11) refuse-derived fuel; (12) thermal energy from a thermal biomass system; and (13) raw or treated wastewater used as a heat source or sink for a heating or cooling system. Tier 2 sources only include hydroelectric power.
[67] COMAR 20.53.07.07A(2). PUA § 7-505(b)(7) also contains near-identical language.

for a Tier 1 REC in PUA § 7-701(m) and (s), and (2) purchase RECs to match at least 75 percent of their electricity sales.

Customers should be able to assume that their purchase of renewable or "green" energy supply supports renewable energy producers in Maryland or supports Maryland's greenhouse gas emissions reduction goals. Requiring suppliers marketing green energy to use RECs that meet the definition of a Tier 1 REC in in PUA § 7-701(m) and (s) means that those RECs must come from sources within or adjacent to PJM. Requiring suppliers to match at least 75 percent of their green energy sales with RECs ensures customers are getting some additional benefit beyond what the RPS already requires.

Finally, the rules should define "green marketing" to include the array of marketing practices that include the terms "green," "clean," "renewable" and other like terms and phrases that creative marketers deploy to entire customers that want to advance environmental goals.

VI. Retail suppliers should be required to annually disclose the average rates charged to residential customers.

Insufficient information is available for either Maryland energy customers or the Commission to accurately evaluate how the retail supply market is working for customers. The Commission needs good information on the actual prices of electricity being charged by retail suppliers in order to judge whether the retail supply market provides the "economic benefits for all customer classes" that the General Assembly anticipated in 1999.[68] Because the Commission does not require retail electricity

[68] PUA § 7-504.

suppliers to report average customer prices, neither the Commission nor customers have the price information needed to determine that the restructured electric supply market provides economic benefits to customers. The Commission should fix this informational deficiency by promulgating regulations that mandate both the collection and dissemination of the average prices that retail supply customers pay for electricity.

Maryland law requires that a residential electricity supplier must "maintain at least one open offer to supply electricity to residential customers."[69] The electricity supplier must submit a monthly report to the Commission that includes, "to the extent practicable," the "cost of electricity per kilowatt-hour" of any "*open offers*."[70] This information is also used to populate the Commission's customer choice electricity shopping website.[71] The price that a customer pays for electricity, however, often changes after the customer accepts the open introductory offer. By limiting the price reporting to those open introductory offers only, customers cannot appreciate the full impact that switching electricity suppliers may have on their utility bill.

New regulations could remedy this information imbalance. A retail supplier's historic pricing data would be useful to customers when determining whether to enter into a contract with a retail supplier for future service. The Commission should adopt regulations that require either retail suppliers or utilities to provide periodic reports of the actual prices residential customers are charged.[72] For suppliers using UCB, the utilities

[69] PUA § 7-510.1(c)(2).
[70] PUA § 7-510.1(b)(3) (emphasis added).
[71] PUA § 7-510.2(c).
[72] Both Connecticut and Pennsylvania require retail suppliers to make historic variable pricing data available to customers. In Connecticut, as a licensing condition, retail suppliers "shall make available to

already have the information required to determine the average rate customers were charged by each retail supplier. Under UCB, both the utility and the retail supplier must "transmit consumption, billing, and related data to each other using electronic transactions."[73] Because utilities have both the billing and consumption data for retail supply customers in their service area, they can calculate the average price customers of a supplier were charged every month. The Commission should enact regulations that require the utilities providing UCBs to annually provide the average customer prices to the Commission. If a supplier elects to do separate billing or to do SCB, the regulations should require the supplier to report the average price it charged customers. This process would give the Commission a truer picture of the actual economic benefits that the restructured electricity supply market provides to Maryland customers.

Relatedly, to inform the public, the Commission's regulations should require that the annual average customer prices for the most recent calendar year[74] appear on all marketing material, contract documents, and contract summaries. The regulations should enable a supplier that offers green products to provide separate average price calculations for customers on a green service and customers not on a green service. The supplier data could also be distinguished on the marketing and contract material.

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the authority for posting on the authority's Internet web site and shall list on the licensee's own Internet web site, on a monthly basis, the highest and lowest electric generation service rate charged by the licensee as part of a variable rate offer in each of the preceding twelve months to any customer with a peak demand of less than fifty kilowatts, cumulated of all such customer's meters, during a twelve-month period." Conn. Gen. Stat. Ann. § 16-245(g)(12). In Pennsylvania, the retail supplier must provide "a telephone number and Internet address at which a customer may obtain the previous 24 months' average monthly billed prices for that customer's rate class and…service territory." Pa. Code § 54.5(c)(13).

[73] COMAR 20.53.05.03.

[74] January 1 to December 31.

VII. Retail supplier contact information should be prominently displayed in all customer correspondence, including email, text, and mail.

The Commission's consumer protection disclosure regulation is out of step with common consumer payment practices. For many customers, an email takes the place of a formal bill. These customers receive monthly emails that may include both a balance owed and a link to an online payment portal, with no bill attached to the email.[75] When a customer clicks on the link provided in the email, the customer is taken directly to the payment portal. Once inside, the customer sees the owed balance and payment information. If the customer wants to view the relevant monthly utility bill, the customer must take additional steps and move beyond the payment portal. In this scenario, many customers never view their bill at all, and therefore do not benefit from the consumer protection disclosure that appears on the bill.

The Commission should update the consumer protection disclosure regulation to match current trends. When a customer is served by a supplier, the suppliers' name, website address, and license number should be displayed at all stages of the billing process, not just on the bill itself. This important information both informs the customer that they use a retail supplier and gives the customer easy access to their retail supplier's contact information. Many customers prefer online payment, however, and may never see their utility bill. The Commission thus should update the consumer protection disclosure

[75] *See, e.g., eBill Frequently Asked Questions*, FirstEnergy (Oct. 31, 2023, 3:05 PM), https://www.firstenergycorp.com/help/billingpayments/ebill_electronicbilling/frequently-asked-questions.html#. FirstEnergy's website explains its electronic billing notifications as follows, "each month, you will receive an email from ElectronicOnline@FirstEnergyCorp.com letting you know that your statement is available for review and payment online."

regulation to require the retail supplier information in all monthly emails, text messages, and mail that inform customers of their owed balance. This regulation update would make the consumer protection disclosure available where customers are more likely to view it and fill the gap left by the current regulation.

VIII. The Commission should update its licensing regulation to require (i) retail suppliers to reapply when corporate ownership changes and (ii) a parent company to hold one license for all affiliated retail suppliers.

To obtain a license to operate as a retail energy supplier in Maryland, an entity files an application using a form provided by the Commission.[76] The application requires information supporting the technical and managerial competency of the applicant; a description of the applicant's ownership structure and identification of any affiliates; a list of other states where the applicant is licensed; statements that the applicant is in compliance with certain state and federal laws;[77] reporting of any enforcement actions taken against the applicant and its affiliates; and information regarding the entity's financial integrity.[78] As discussed further below, the applicant's financial integrity can be partially established through the posting of a bond, [79] and the applicant must provide balance sheets and income statements.[80] The application is taken up at an administrative

[76] COMAR 20.51.02.02A.
[77] The entity must submit a statement confirming compliance with Federal Energy Regulatory Commission requirements; any independent system operator, regional transmission operator, or system transmission operator used by the entity; any application federal and state consumer protection laws; any environmental laws and regulations relating to the generation of electricity; proof from the state where the entity was formed that it is in good standing; proof from the Maryland State Department of Assessments and Taxation that the entity is in good standing; and an affidavit of tax compliance. COMAR 20.51.02.02B.
[78] COMAR 20.51.02.02B.
[79] COMAR 20.51.02.08E, H.
[80] COMAR 20.51.02.02B(4).

meeting, at which Staff, OPC, and other stakeholders present comments, and the applicant is available for questions. "After review, the Commission may grant a license on finding that the issuance will promote a competitive retail electricity supply and electricity supply services market."[81]

1. *Retail supply companies that merge or acquire another retail supplier should be required to obtain a new license.* Retail suppliers that merge or acquire other Maryland suppliers do not necessarily promote a competitive energy supply services market.[82] By authorizing retail choice to allow ratepayers to choose an energy supplier other than their regulated utility, the legislature intended to encourage competition in the energy market and drive down prices for ratepayers.[83]

In several respects, however, the current retail energy market neither promotes competition nor lowers prices. An important reason is that many retail suppliers are related entities. For example, NRG Energy, Inc. owns Direct Energy, Discount Power, XOOM Energy, Reliant, and Green Mountain Energy, all of which currently operate in the BGE service territory.[84] Competition is not promoted when the market is concentrated, with one company owning multiple affiliates that operate in the same service territory. Further, when multiple retail suppliers are affiliated, one affiliate can

[81] COMAR 20.51.02.09.
[82] *See* COMAR 20.51.02.09.
[83] PUA § 7-504.
[84] This conclusion is drawn from comparing NGR's "family of brands" (https://www.nrg.com/about/our-story.html) with the retail suppliers posted on MD Electric Choice's "current supply service" for BGE (https://www.mdelectricchoice.com/shop/?kwh=&utility=292). Using the same method, Vistra operates both MDG&E (a subsidiary of USG&E) and Ambit Energy in the BGE service territory (https://vistracorp.com/retail/#:~:text=Through%20our%20family%20of%20retail,%2C%20and%20US%20Gas%20%26%20Electric%E2%80%A6).

transfer customer contracts to another through a notice of assignment without customers' consent. [85] The involuntary transfer of customers from the retail supplier that they chose to an affiliate undermines the premise of retail customer choice.

To achieve the objectives of retail choice, retail suppliers that merge or acquire other suppliers that operate in Maryland should be subject to the full license application process. The requirement for a new license will allow the Commission to review the company's new corporate structure, managerial and technical capacity, financial integrity, complaint and enforcement history, and other important factors before a customer's supplier changes. In addition to the application requirements, the Commission will be able to consider the public interest and consider the impact of the transaction on the competitiveness of the retail supply market in Maryland. To ensure that the public interest is served, the Commission can order license modifications—such as a different bond amount or enhanced complaint reporting procedures—or deny the license.[86]

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[85] *See* U.S. Gas & Electric, LLC d/b/a Maryland Gas & Electric and Viridian Energy PA, LLC, Joint Notice of Contract Assignment pursuant to COMAR 20.53.07.12. within the Washington Gas Service Territory, ML #: 303626 (June 20, 2023); Constellation Home Products and Services, LLC and Constellation NewEnergy - Gas Division, LLC, Notice of Assignment of Natural Gas Customer Contracts from Constellation Home Products & Services, LLC to Constellation NewEnergy– Gas Division, LLC. Effective: September 1, 2023, ML #: 304023 (July 12, 2023).

[86] The Commission has the authority to deny a license to a supplier that merges with or acquires another Maryland supplier if it does not serve retail energy competition. First, in reviewing a retail electricity supply license application, the Commission must find "that the issuance will promote a competitive retail electricity supply and electricity supply services market." COMAR 20.51.02.09. Further, "[t]he Commission shall monitor [and investigate] the retail electricity supply and electricity supply services markets to ensure that the markets are not being adversely affected by market power or any other anticompetitive conduct." PUA § 7-514(a)(1)–(2). If such an investigation "determines that market power or any other anticompetitive conduct in the relevant market under the Commission's jurisdiction is preventing the electric customers in the State from obtaining the benefits of properly functioning retail electricity supply and electricity supply services markets, the Commission may take remedial actions within its authority to address the impact of the market power or any other anticompetitive conduct activities." PUA § 7-514(b). Finally, "[t]he Commission shall adopt regulations or issue orders to: (1)

2. *Affiliated retail energy suppliers should operate under the same license held by the parent company.* As noted above, many Maryland retail suppliers are affiliated with other suppliers, sometimes in the same service territory. But even though the affiliated suppliers are owned by the same company, each affiliate operates under its own retail supplier license. The allowance for separate licenses creates a false separation of the affiliate retail suppliers that limits the parent company's incentive to encourage best business practices from all of its affiliates—if one gets in trouble, the parent company can fall back on its affiliate suppliers.

The use of multiple licenses for related suppliers has sowed confusion in enforcement actions. For example, in Case No. 9690, Complaint for Show Cause Against SFE Energy Maryland Inc. ("SFE"), it was unclear whether requirements imposed on one retail supplier equally applied to its affiliate supplier.[87] Case No. 9690 was brought against retail supplier SFE for several alleged consumer protection violations. During the course of the case, OPC argued that provisions of a settlement agreement from a consumer protection case against a different retail supplier—Statewise—also applied to SFE, because the two suppliers were related entities—a position opposed by SFE.[88] Due to this open question, the public utility law judge presiding over Case No. 9690 ordered

protect consumers, electric companies, and electricity suppliers from anticompetitive and abusive practices[.]" PUA § 7-507(e)(1).

[87] Case No. 9690, *Complaint for Show Cause Against SFE Energy Maryland Inc. d/b/a SFE or SFE Energy*, Public Utility Law Judge Division - Ruling on Issues Identified at Pre-Hearing Conference, ML #: 302978 (May 16, 2023).

[88] *See* Case No. 9661, *Complaint for Show Cause against Statewise Energy Maryland, LLC* (March 17, 2021).

the parties to submit briefs addressing the effect of the Statewise Settlement.[89] The PULJ subsequently issued an order finding that "the provisions in the Statewise Settlement dealing with contracting practices, enrollment authorization, and required notices became binding on SFE as of January 11, 2022, the date the proposed order in Case No. 9661 became a Final Order of the Commission[,]" prompting SFE to file a motion for reconsideration.[90] Consequently, significant resources were expended in Case No. 9690 on the question of whether terms from Statewise's settlement agreement applied to its affiliate, SFE.

Aside from resource inefficiencies, the lack of a single license requirement creates a regulatory loophole that allows companies to move operations, products, and even customers,[91] from one affiliated supplier to another. If problems arise for one affiliate supplier, the parent company can shift resources to a related supplier, obfuscating transparency and accountability.

Amending the application process to require affiliate retail suppliers to operate under the same license closes this loophole. It would incentivize the parent company to closely monitor the business practices of each affiliate, and, in turn, it would encourage better compliance from affiliated retail suppliers, because they would rely on each other to retain a license for the entire operation to continue doing business in Maryland.

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[89] Case No. 9690, *Complaint for Show Cause Against SFE Energy Maryland Inc. d/b/a SFE or SFE Energy*, Public Utility Law Judge Division - Notice of Procedural Schedule, ML#: 302223 (04/03/2023).
[90] Case No. 9690, *Complaint for Show Cause Against SFE Energy Maryland Inc. d/b/a SFE or SFE Energy*, *SFE Energy Maryland, Inc. d/b/a SFE or SFE Energy*, Ruling on Issues Identified at Pre-Hearing Conference, ML #: 302978 (May 16, 2023); Request for Reconsideration, ML#: 303047 (May 19, 2023).
[91] COMAR 20.53.07.12.

IX. The Commission should require retail supply companies to renew their licenses every three years.

Currently, retail supplier licenses are perpetual. Under COMAR 20.51.03.01, a retail supplier must notify the Commission within ten days of a material change and must file "annual updates of the information required in the application under COMAR 20.51.02."[92] But the regulation does not require approval of the change or give the Commission an opportunity to reevaluate the supplier's status as a licensee in the absence of other regulatory violations. The Commission's only opportunity to review and act on the performance of a retail supply company is through an enforcement action—which generally only occurs after Maryland customers have been harmed.

To remedy this regulatory gap, the Commission should adopt regulations that require retail supply companies to apply for a license renewal every three years.[93] The application renewal process would allow the Commission to review the requirements set forth in COMAR 20.51.02, as well as additional factors that impact the public interest. To determine whether a license renewal is in the public interest, the Commission should examine the supplier's complaint history and the average rate it charged its residential

[92] COMAR 20.51.03.01C. If a retail supplier "fails to provide the updated information required under COMAR 20.51.03.01" a penalty can be imposed, which can include: (1) Denial of an electricity supplier license; (2) Revocation or suspension of a license issued under Regulation .09 of this chapter; (3) Imposition of a civil penalty of up to $10,000 per violation; (4) Imposition of a moratorium on adding or soliciting additional customers." COMAR 20.51.02.06.

[93] Ohio requires retail energy suppliers to reapply for certification every two years. *See* Rule 4901:1-24-09 ("(A) No less than thirty and no more than sixty calendar days prior to the expiration date indicated on the competitive retail electric service provider's certificate, the provider shall file an application with the commission for certification renewal on forms supplied by the commission." Oregon requires energy suppliers to reapply annually. Oregon Administrative Rule 860-038-0400(13)(A) ("An [electricity service supplier] (ESS) must file its application for renewal 30 days prior to the expiration date of its current certificate.").

customers. Reviewing this information every three years will catch consumer protection violations earlier, ensure that the company continues to operate in the public interest, and promote competition.

X. The Commission should increase the bond amount and modify the required bond language.

Modifications to the bond regulations are critical to protecting residential customers from bad actors in the retail supply market. *First*, the bond amount for electric and gas retail suppliers should be increased to $500,000 for each license and to $750,000 for suppliers that elect supplier consolidated billing (SCB). While the application process provides retail supplier applicants options for proving financial integrity, most applicants elect to post the $250,000 bond.[94] Pursuant to COMAR 20.51.02.08, the bond must:

- "Identify the Maryland Public Service Commission as the sole beneficiary";
- Be payable up to the full amount of the bond;
- "Be continuous and subject to cancellation on 60 days notice to the Commission";
- State that "[p]ayment under this bond shall be due if: (a) The Commission determines that (electricity supplier name) is financially insolvent or unable to meet its obligations as a licensed electricity supplier in Maryland; or (b) Ordered by a Maryland court after a person who has obtained a judgment against a licensed supplier has previously attempted to collect the judgment through all other means available to the court";
- "Permit the Commission to direct that the proceeds of the bond be paid or disbursed to satisfy the electricity supplier's financial

[94] COMAR 20.51.02.08. For example, the applicant can show that it has an unsecured credit allowance greater than $2,000,000 from PJM Interconnection, LLC; provide documentation showing positive working capital, positive stockholder equity or positive net income; or post a bond of $250,000.

> obligations to the Commission or other Maryland governmental entity."[95]

Recent cases have shown that the bond amount of $250,000 is insufficient to cover civil monetary penalties and refunds often ordered in consumer protection cases. In these cases, OPC regularly advocates for customer refunds to make the impacted customers whole, which is often more than the current bond amount. For example, in Case No. 9690, the penalty and refunds are likely to total $550,000;[96] in Case No. 9647, the intermediate penalty was $400,000;[97] in Case No. 9613, the refund amount was at least $6,000,000;[98] and in Case No. 9617, the penalty issued was $561,000.00 and refunds to the affected customers were calculated to be over $14,000,000.[99] In Case No. 9647, the Commission also ordered the retail supplier to increase its bond to $1 million.[100] These examples show that the current bond amount does not align with recent Commission-ordered penalties and refunds. It is critical that the bond amount be increased to align with the Commission's orders since retail suppliers generally cannot be relied upon to satisfy the imposed penalty and refunds, as demonstrated by SmartOne Energy's departure from Maryland before paying the $561,000.00 penalty and customer refunds.

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[95] COMAR 20.51.02.08.
[96] Case No. 9690, *Complaint for Show Cause against SFE Energy Maryland Inc. d/b/a SFE or SFE Energy*, Joint Petition for Approval and Adoption of Settlement Agreement, ML #: 305460 (October 6, 2023).
[97] Case No. 9647*, Complaint of the Maryland Office of People's Counsel against SunSea Energy, LLC*, Order No. 90614 on Findings & Motion for Clarification, ML #: 30278 (May 4, 2023).
[98] Case No. 9613, *In the Matter of the Complaint of the Staff of the Public Service Commission of Maryland v. Smart Energy Holdings, LLC d/b/a SmartEnergy*, SmartEnergy Holdings, Inc. Motion for Stay, Attachment 2, ML #: 234681 (April 8, 2021).
[99] Case No. 9617, *In the Matter of Complaint of the Staff of the Public Service Commission against Smart Energy One, LLC*, Order 89526, ML #: 228964 (March 6, 2020).
[100] Case No. 9647*, Complaint of the Maryland Office of People's Counsel against SunSea Energy, LLC*, Order No. 90581 on Delegation to PULJ, ML #: 302347 (April 11, 2023).

An increased bond amount could create a barrier to market entry for smaller suppliers. To accommodate this concern, the Commission could tailor the increased bond amount to the retail suppliers' number of customers. The Commission could require companies that serve a larger number of customers to post a higher bond than smaller, more niche companies.[101]

Second, the bond language required under COMAR 20.51.02.08 should be updated to allow bond proceeds to be distributed to customers upon a Commission finding of consumer protection violations. COMAR 20.51.02.08H(5) currently states that the bond shall:

> Permit the Commission to direct that the proceeds of the bond be paid or disbursed to satisfy the electricity supplier's financial obligations to the Commission or other Maryland governmental entity[.]"[102]

This regulation should be amended to include language authorizing the Commission to direct that bond proceeds be paid or disbursed to satisfy financial obligations to rerate and refund customers in cases where the Commission finds that customers have been harmed by violations of state law or Commission regulations.

[101] For example, retail electricity suppliers that serve 0 – 5,000 customers would be required to post a bond of $250,000; suppliers that serve 5,001 – 10,000 would be required to post a bond of $500,000; and suppliers that serve 10,001 or more customers would be required to post a bond of $1,000,000. The bond amount would also apply for a retail gas supplier license.
[102] COMAR 20.51.02.08H(5).

XI. The Commission should reform CAD's complaint submission and resolution process and create a CAD enforcement division.

Customers who have been harmed by retail suppliers that violate State consumer protection laws and Commission regulations governing contracting, door-to-door sales, and telephone solicitations face an enormous information deficit. That deficit means most customers are unlikely to be compensated for their financial losses. To successfully file a CAD complaint, customers first must learn of CAD's little-publicized complaint process, find the online link, ensure they have already sought to resolve their complaint with their retail supplier, and attempt to identify—and support with sufficient documentation—the wrongs perpetrated against them in legally sufficient detail to support a finding under unfamiliar COMAR regulations.[103] To improve this process, the Commission should reform the complaint submission and resolution process and establish an enforcement division within CAD that can prosecute violations of the State's retail supplier laws.

Retail supply customers who have a dispute regarding a supplier's bill—including, among others, a math error, a bill's failure to reflect a payment or credit, or a charge for a service for which the customer alleges the customer is not responsible[104]—must first submit their dispute to the supplier for resolution.[105] The supplier must investigate the dispute and propose a resolution or report its findings to the customer.[106] Maryland

[103] Commission regulations governing competitive suppliers of electricity and gas are found, respectively, in COMAR 20.53 and 20.59, though numerous other laws and regulations also apply to them.
[104] *See* COMAR 20.32.01.02B(5) (defining "dispute"), (6) (defining "disputed bill"), and (7) (defining "inquiry" to mean "the written or oral communication used by a customer to request review of a dispute"); COMAR 20.32.01.03A (requiring a customer to first submit any inquiry or dispute directly to the supplier for resolution).
[105] COMAR 20.32.01.03A.
[106] COMAR 20.32.01.03B.

regulations do not mandate a timeframe for the supplier's response. However, a customer has seven days from the date the customer receives a supplier's determination to submit an inquiry to the Commission.[107] CAD then reviews and investigates inquiries that are submitted by customers or referred to it by the Commission or staff.[108] CAD can require customers to submit written inquiries to expedite investigations,[109] utilize a fillable online form to walk customers through submission,[110] and allow customers to submit their complaint via fax or mail if they do not wish to correspond entirely via email.[111] CAD can close its investigation "for any reason that requires closure"[112] or submit its findings to the Commission if no resolution is reached—in which case its summary of written findings and conclusions shall be treated as an appeal under the statute and regulations governing complaints before the Commission.[113]

CAD's fillable online complaint form presents challenges for customers. The form is not viewable in its entirety before a customer begins the process and provides no guidance, including on its "Dispute Explanation" page, for what kinds of details CAD requires to evaluate various kinds of complaints, asking only the amount in dispute, "What is the problem you are experiencing?", "What resolution are you seeking?" and

[107] COMAR 20.32.01.04A.
[108] COMAR 20.32.01.04C(1).
[109] COMAR 20.32.01.04D.
[110] *See* Online Complaint Instructions, Maryland Public Service Commission, at https://mdpsc.my.site.com/complaints/s/?language=en_US.
[111] *Id.* at 3 ("My Information").
[112] COMAR 20.32.01.04C(3)(d).
[113] COMAR 20.32.01.04C(5), referencing COMAR 20.32[01.04]M and PUA § 3-102 and COMAR 20.70.03.

allowing for "additional information."[114] While the "Commission's Dispute Process and Your Rights" web page provides limited additional information (including what categories of disputes CAD can investigate),[115] such questions make it difficult for all but the most legally sophisticated customers to identify the facts necessary to support a finding in their favor. The Commission's regulations do not require suppliers and CAD to communicate with customers in plain language, nor does any statutory or regulatory requirement require equal access to the complaint process for those without access to computers or for whom English is a second language. Such requirements are absent, despite that (i) nearly 38 percent of the 974,011 foreign-born Maryland residents in 2021 had limited English proficiency[116] and (ii) some Maryland households are less likely than others to have a computer.[117]

The Commission should reform the CAD complaint and evaluation process by requiring CAD, among other things, to provide educational materials in plain language describing how to file a complaint; publicize the complaint process and ensure it is offered accessibly online, on paper, and over the phone; provide step-by-step prompts to

[114] Online Complaint Instructions, https://mdpsc.my.site.com/complaints/s/?language=en_US at 4 ("Dispute Explanation").
[115] *See* Maryland Public Service Commission, Frequently Asked Questions, Commission's Dispute Process and Your Rights, *avail. at* https://www.psc.state.md.us/frequently-asked-questions/commissions-dispute-process-and-your-rights-4/ (last visited Oct. 21, 2023).
[116] *See* State Immigration Data Profile for Maryland, Migration Policy Institute, *avail. at* https://www.migrationpolicy.org/data/state-profiles/state/language/MD (last visited Oct. 31, 2023). Data comprises Migration Policy Institute tabulations of the U.S. Census Bureau's American Community Survey (ACS) and Decennial Census. Unless stated otherwise, 2021 data are from the one-year ACS file.
[117] *See, e.g.*, United States Census Bureau, QuickFacts; Maryland, United States, Households with a computer, percent, 2017-2021, *avail. at* https://www.census.gov/quickfacts/fact/table/MD,US/COM100221 (showing 94.6% of Maryland households overall had a computer but that just 31.7% of African-American-only households in Maryland did).

customers filling out the complaint form that identify in plain language what information would be helpful to CAD's evaluation and what documents customers should consider attaching in support; and provide telephonic translation services in the more than two dozen languages—including but not limited to Spanish—available through the statewide language interpretation services contract[118] to assist customers for whom English is not a first language.

Further, to provide for increased customer participation, the time limit to file a CAD complaint after a supplier renders a determination on the customer's complaint should be increased from seven days.[119] Customers should be given at least ten days—the same amount of time customers are given to appeal CAD decisions—to file their initial CAD complaint.[120]

Finally, the Commission should establish an enforcement division within CAD that can prosecute violations of the State's retail supplier laws and regulations using complaint documents as evidence and CAD dispute resolution personnel as witnesses. Such a division would ensure better coordination between CAD and the supplier complaint process. For example, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement has the authority to investigate and prosecute customer

[118] *See* Department of Budget and Management, Contract Information, Statewide Language Interpretation Services 2019-2024, description *avail. at* https://dbm.maryland.gov/contracts/Pages/contract-library/Services/Language2019.aspx (last visited Oct. 31, 2023).
[119] COMAR 20.32.01.04A.
[120] COMAR 20.32.01.04L.

complaints. The Commission should request additional positions to support the new division.

XII. The Commission should reform the rules governing supplier-agent relations.

Retail suppliers frequently hire companies or individuals not directly employed by the supplier to market electricity or gas on their behalf—typically through door-to-door or telemarketing sales channels. These sales agents do not supply a product and are not responsible for delivery of the product or collection of payments from the customer. The individual is also not an employee of the licensee and is not provided salary or benefits (medical, overtime, vehicles, office supplies, retirement, etc.). Instead, these individuals usually obtain financial compensation based on the number of consumer contracts signed and/or a percentage of electric consumption by the customers.

While these marketing approaches have been used for years for sale of non-regulated, non-essential products (such as household cleaners and cosmetics), a heightened level of scrutiny and protection should exist when the sale involves a commodity necessary for health and safety like electricity or gas.

Several previous enforcement actions against suppliers have involved violations during sales transactions committed by third-party sales agents.[121] These violations have included unauthorized enrollments (i.e., "slamming") and deceptive or misleading claims about potential savings, price, service, terms and conditions. The agents in these cases

[121] *See, e.g.,* 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*; Case No. 9647, *Complaint of the Md. Office of People's Counsel Against SunSea Energy, LLC*; Case No. 9324, *In the Matter of the Investigation into the Marketing Practices of Starion Energy PA, Inc*.

often misrepresented material facts to Maryland consumers in order to secure enrollments, including: (i) stating that the sales agent was affiliated with State or local government or a customer's electric or natural gas utility; (ii) promising savings that never materialized and that had no basis in the historical prices actually charged; and (iii) enrolling customers without permission by fraud or by obtaining the signature of an individual other than the actual utility account holder. In these cases, suppliers have attempted to deflect blame by asserting that these activities were isolated incidents or the actions of "rogue agents."

The regulations governing supplier-agent relations state that suppliers are responsible for the acts of their agents.[122] In addition to setting detailed hiring and training requirements, suppliers "may not permit its agent[s] to conduct door-to-door activities unless . . . [t]he supplier has ensured that the agent meets any local licensing, registration, or permitting requirements of the jurisdiction where the agent will be conducting door-to-door activities."[123] Importantly, the regulations also state that a "supplier shall monitor telephonic and door-to-door marketing and sales calls to:

- Evaluate the supplier's training program; and
- Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations, and providing courteous service to customers.[124]

[122] COMAR 20.53.08.03B ("A supplier is responsible for any fraudulent, deceptive, or other unlawful marketing acts performed by its agent in the conduct of marketing or sales activities on behalf of a supplier.").
[123] COMAR 20.53.08.03B(2), 20.59.08.03B(2). Similarly, COMAR 20.53.08.06A and 20.59.08.06A states that "A supplier and its agents shall comply with state and local government ordinances regarding door-to-door marketing and sales activities."
[124] COMAR 20.53.08.04E, 20.59.08.04E.

These regulations also provide that door-to-door sales agents may not wear apparel or accessories suggesting "a relationship that does not exist with a utility, government agency, or another supplier,"[125] and cannot "use the name, bills, marketing materials, or consumer education materials of another supplier, regulated utility, or government agency in a way that suggests a relationship that does not exist."[126]

Nevertheless, OPC has observed that these regulations have not translated into effective oversight of third-party sales agents. On the contrary, suppliers have been unable to demonstrate effective monitoring or documentation that sales agents are complying with the requirements of COMAR 20.53.08. For example, suppliers have been unable to provide documentation that the sales agents marketing on their behalf have the peddler's licenses mandated by local licensing laws, and they cannot provide information as to whether the individual sales agents have committed violations working for other suppliers. Moreover, suppliers cannot reliably produce the sales agents involved in these transactions for cross-examination during enforcement hearings.

To address these existing gaps in current regulations, the Commission should impose additional provisions to the supplier-agent relations regulations. The Commission should prohibit suppliers from using third-party sales agents to make sales to consumers. A prohibition on using third-party sales agents would make it more straightforward for suppliers to demonstrate compliance with the applicable licensing requirements and provide suppliers with a heightened ability to adequately train its sales personnel about

[125] COMAR 20.53.08.05C, 20.59.08.05C.
[126] COMAR 20.53.08.05D, 20.59.08.05D.

the supplier's offerings. Furthermore, suppliers will be in a better position to make sales agents available for cross-examination during enforcement hearings.

Alternatively, the Commission could require suppliers to register their sales agents to identify and track agents that repeatedly violate consumer protection laws. Sales representatives who are operating under a contract to perform marketing services for a supplier, either by telephone or door-to-door, should be required to register with the Commission. The Commission could then identify sales agents that are violating the applicable consumer protection laws, and the Commission and stakeholders will be able to ensure that the sales agents are licensed to engage in the commercial activity suppliers have hired them to perform. The additional information will also permit the tracking of individual sales agents that have committed violations while working for different suppliers.

XIII. The Commission should reform its enforcement policies to protect customers while supporting a retail supply competitive market.

To protect customers and make the retail energy supply market fair for suppliers that comply with the law, the Commission should engage in robust enforcement. More robust enforcement will give consumers confidence that they will not be victimized by deceptive practices in connection with the purchase of retail energy supply. To make enforcement more effective, the Commission should establish a presumption that refunds will be issued to consumers harmed by a supplier's violation of consumer protection laws and develop a civil penalty schedule sufficient to deter future violations.

1. *The Commission should impose a presumption that refunds will be issued to all customers affected by a supplier's violation of consumer protection laws and regulations.* In most previous enforcement actions, the Commission has not ordered refunds to customers harmed by a supplier's violation of consumer protection laws.[127] But refunds are essential to give consumers confidence that any harms they suffer from deceptive practices will be remedied. This principle is embraced in the General Assembly's adoption of the Maryland Consumer Protection Act: "The General Assembly is concerned that public confidence in merchants offering goods, services, realty, and credit is being undermined … [t]he General Assembly concludes therefore, that it should take strong protective and preventive steps to investigate unlawful consumer practices, to assist the public in obtaining relief from these practices, and to prevent these practices from occurring in Maryland."[128]

Ordering restitution ensures "public confidence" in the market for consumer goods and services. For example, when a determination of a violation of consumer protection laws has occurred, the Maryland Consumer Protection Division is required "to take affirmative action, including the restitution of money or property" to consumers harmed

[127] *See, e.g.,* Case No. 9346(b), *In the Matter of the Investigation into the Marketing, Advertising and Trade Practices of Major Energy Electric Services, LLC*.
[128] Comm. L. § 13-102(b)(1)-(2). *See also Legg v. Castruccio,* 100 Md. App. 748, 756 (1994) ("The Legislature's goal in enacting the CPA was to provide protection against unfair or deceptive practices in consumer transactions by "implement[ing] strong protective and preventative measures to assist the public in obtaining relief from unlawful consumer practices and to maintain the health and welfare of the citizens of the State.") (citation omitted); *Klein v. State*, 52 Md. App. 640 (1983) ("[T]he purpose of the Consumer Protection Act is to protect the consumer, § 13–102(b)(1), by setting minimum standards, § 13–103(a), and to restore an "undermined" public confidence in merchants.") (citation omitted).

by the violations.[129] The purpose of restitution in these cases is not primarily punitive, but it is instead animated by the principle that violators of consumer protection laws should not be able to retain a consumer's money or property to avoid unjust enrichment.[130] With this principle in mind, the Commission should establish, by regulation, a presumption that refunds will be issued to consumers when a determination has been made that a supplier has violated a consumer protection law.

2. *To deter supplier misconduct, the Commission should create a penalty schedule to assist parties in making sanction recommendations*. Higher penalties than the Commission has historically imposed are necessary for deterrence. When violators reap financial gains even if the violations are caught, suppliers will continue violating the law. Retail suppliers make informed business decisions when developing their marketing strategies for their Maryland operations. Unless this decision-making process is constrained by the prospect of significant penalties for consumer protection violations, it will continue to make sense for suppliers to engage in the kinds of deceptive practices that Maryland has experienced in its restructured energy market.

[129] Comm. L. § 13-403(b)(1).
[130] *See Matter of Cash-N-Go, Inc.*, 256 Md. App. 182, 221–22, 286 A.3d 53, 77 (2022), *cert. denied sub nom. Cash-N-Go, Inc. v. Consumer Prot. Div.,* 483 Md. 275, 291 A.3d 782 (2023) ("The purpose of restitution in the CPA context is to 'disgorge benefits it would be unjust for [the violator] to keep.'") (citations omitted).

To date, the Commission has failed to consider a supplier's revenues or profit margins when making penalty determinations. That failure has led to a history of civil penalties being imposed at levels much lower than in other jurisdictions.[131]

The penalties that the Commission has historically imposed in these cases establishes the backdrop against which penalty determinations are recommended and made in supplier enforcement actions. For sanctions in future cases to be set at the level needed to deter future violations, the Commission should create a penalty schedule that stakeholders can use when developing penalty recommendations for consideration by the Commission. This schedule should be accompanied by a policy that requires consideration of a supplier's revenues, profit margins, and customer counts to ensure the penalty is set a high enough level to deter the supplier from violating the law in the future. While the Commission should maintain its discretion to depart from any penalties included in such a schedule, the existence of the schedule itself has deterrence value, signaling to the retail supply market to meaningfully reform their business practices.

XIV. The Commission should clearly define what is considered a "reasonable" cancellation fee.

COMAR 20.53.07.10C(2) currently allows suppliers to assess "reasonable" cancellations fees on customers who terminate fixed term supply contracts before the end of their effective date. Suppliers typically characterize these "early termination fees"

[131] *See, e.g.* Pa. Pub. Utility Commission, *Comm. of Pennsylvania v. Blue Pilot Energy, LLC*, (Dkt. No. C-2014-2427655) (July 7, 2016) (assessing $2.5 million in penalties and awarding $2.4 million in customer refunds against supplier that failed to provide accurate pricing information or comply with applicable telemarketing requirements).

("ETFs") as valid liquidated damages needed to protect the supplier from the economic harm they claim will be suffered when a customer cancels a supply contract prior to the contract's effective termination date.

While liquidated damage provisions are valid under Maryland law,[132] retail suppliers frequently use ETFs as hammers to influence customers to remain on high-priced retail supply contracts or as bargaining chips to be used in disputes with customers rather than to provide reasonable "compensation for the damages anticipated by the breach."[133] The Commission should direct any work group assembled to implement supplier reforms to examine whether the cancellations fees utilized in the retail supply market are legitimate liquidated damages rather than unlawful penalties prohibited under Maryland contract law. The Commission should use the examination to establish parameters around what "reasonable" cancellation fees are in the context of retail supply competition.

Conclusion

The MEAC petition and the Commission's notice recognize that the residential customers' experience with retail energy choice has not been positive. OPC agrees with MEAC that POR should be eliminated or, in the alternative, reformed as suggested above. In these comments, OPC has identified 13 additional improvements in the

[132] *See Bd. Of Educ. Of Talbot Cnty. V. Heister*, 392 Md. 140, 156 ("There are three essential elements of a valid and enforceable liquidated damages clause. 'First, such a clause must provide 'in clear and unambiguous terms' for 'a certain sum'[.]'; 'Secondly, the liquidated damages must reasonably be compensation for the damages anticipated by the breach[.]'; 'Thirdly, liquidated damage clauses are by their nature mandatory binding agreements before the fact which may not be altered to correspond to actual damages determined after the fact[.]'") (citations omitted).
[133] *Id*.

regulations that could be made without a prolonger process while still receiving input from all affected stakeholders. These recommendations would improve the transparency of the market, which would improve customers' ability to avoid retail supply options that are not beneficial to them, improve the ability of suppliers who follow the regulations and offer energy products that are beneficial to customers to successfully market their products, and increase the Commission's ability to monitor the market for unfair business practices and determine if there are other measures that could improve the retail energy market in Maryland.

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