

**STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL**

Paula M. Carmody, People's Counsel

6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
410-767-8150; 800-207-4055
www.opc.maryland.gov

BILL NO.: Senate Bill 315
Electric Industry – Community Choice Energy

COMMITTEE: Finance

HEARING DATE: February 25, 2020

SPONSORS: Senators Beidle, et al.

POSITION: Informational

Senate Bill 315 would allow a county or municipal corporation, individually or as a group, to create a community choice aggregation program that would procure electricity for residential and certain commercial customers within the county or municipality except those served by an energy supplier or those who affirmatively opt out of the group. The governing body of the county or municipality is required to give 60 days notice to customers of the plan to aggregate. If a customer does not opt out of the aggregation, the customer is deemed to have given permission to the county or municipal corporation to act on the customer's behalf for electricity supply. A county or municipal corporation that becomes an aggregator is not an electricity supplier under PUA §7-507A. (Page 12, §7-510.3(J)). The bill would also give the county or municipal corporation the ability to access data on the usage of all customers in the county or municipal corporation once it decides to become a community choice aggregator. (Page 13, §7-510.3(L)).

Some retail competition states have community choice aggregation programs, including California, Illinois, Ohio, Massachusetts, New Jersey, New York, and Rhode Island. Maryland does not have such a program. Instead, Maryland has a strong utility-provided Standard Offer Service (SOS) program that serves about 80% of residential customers and the majority of small business customers. In effect, SOS acts as a large aggregation pool for the small customers in a service territory. From a price perspective, the Office of People's Counsel (OPC) is not persuaded that community choice aggregation, which will likely aggregate fewer customers than SOS, will consistently produce lower price electricity supply than SOS. However, as in other states, a Maryland county or municipality may have other reasons for an aggregation program, particularly a local governmental in support of renewable energy.

Today, electricity customers buy electricity supply either from their local electric utility, a service that is called standard offer service (SOS), or from an electricity supplier. For SOS customers, the electric utilities conduct a bid solicitation process twice a year to buy electricity supply. During each process, the utility buys about 25% of the power needed by these customers. The Commission oversees each solicitation process, and bids are obtained from multiple suppliers. The least cost supply is selected in the process. These procurements result in a laddered portfolio of supply contracts, so that at any one time, the price for SOS is a blend of the price for power procured in four bid solicitations over two years. The Commission approved this system to achieve electricity supply at least cost, while protecting customers from excessive price volatility, as required by PUA §7-510((c)(4)(ii). Currently, approximately 80% of residential customers of the electric utilities are on SOS. The other 20% have entered into

contracts with retail energy suppliers. Customers have experienced declining SOS prices over the past several years, as prices have declined in the wholesale electricity markets.

OPC filed informational comments on a similar bill during the 2019 General Assembly session that raised a number of concerns. Senate Bill 315 addresses the concerns raised by OPC regarding several of the definitions in the bill as well as the lack of clarity over whether a customer would be able to return to SOS or switch to a retail supplier during the aggregation.

OPC also raised concerns over the types of notice and customer understanding of the nature of these programs. Almost 20 years after deregulation, we know that many residential customers do not fully understand retail competition, and there is an abundance of confusion in the marketplace. The introduction of an aggregation program can increase the confusion unless the notices are clear, easy to understand, and available through a variety of avenues. This is especially critical because the bill proposes an opt-out program. OPC has generally not supported opt-out programs because customers may be switched to a new supplier, perhaps at a higher price, with no actual knowledge of the switch occurring, and without giving affirmative consent. If the opt-out model is adopted, it is critical that the advance notice and information be provided to local residents in a fully transparent and understandable manner, and that they have multiple ways to opt-out, if they choose to do so.

OPC also raised questions about the impact of the program on SOS prices, given that a community choice aggregation could be a sizeable portion of a utility's load. The potential for a significant change in the number of customers in SOS, whether it is a potential increase or a potential decrease, can raise the supply costs for customers remaining on the local utility's SOS. Senate Bill 315 has provisions designed to mitigate these risks by directing the Commission to

adopt regulations to address these concerns. (Pages 14 and 15, §7-510.3(R)(4) and (8)).

Because the State has not authorized municipal aggregation to date,¹ the Commission has not had to address the issue of how to mitigate the costs of large changes in the number of customers on SOS and the effectiveness of mitigation measures.

Senate Bill 315 also has a provision that allows the Community Choice Aggregator to include in rates a fee associated with “PROMOTING THE USE OF RENEWABLE ENERGY” or “PROVIDING AND PROMOTING ENERGY EFFICIENCY MEASURES THAT ARE COMPLEMENTARY TO THOSE OFFERED IN ACCORDANCE WITH §7-211 OF THIS TITLE.” (Page 11, §7-510.3(I)). These charges would be in addition to the charges for electricity supply costs. OPC is concerned that this provision would allow fees to be charged as part of the aggregation rates for promotional programs or energy efficiency programs that have not been vetted before the Public Service Commission to review the cost-effectiveness of the programs. Given the opt-out nature of the bill's aggregation program, this concern is heightened since these fees could affect the cost of the aggregation program.

¹ Maryland's retail competition law does permit municipal aggregation, with the approval of the Commission, if there is insufficient retail competition. Public Utilities Article §7-510(f).