

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 781 (Delegate Carr, *et al.*)
Economic Matters

**Electricity and Gas Suppliers - Residential Electricity Supply Contracts -
Information and Customer Relations**

This bill alters the definitions of “electricity supplier,” “gas supplier,” and “broker.” The Public Service Commission (PSC) must include on its staff an electricity and gas supplier relations position. The bill also includes specified terms and conditions for a “residential supply contract” for electricity. The bill applies prospectively and, therefore, does not affect existing residential supply contracts.

Fiscal Summary

State Effect: PSC can implement the bill with existing budgeted resources. The application of existing penalty provisions to the bill is not anticipated to significantly affect State finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Residential supply contract” means an agreement between an electricity supplier and a residential customer to provide electricity or electricity supply services.

A “broker” includes an entity or individual that has the ability to directly enroll customers in a residential supply contract with an electricity or gas supplier and is not an employee of the electricity or gas supplier.

An “electricity supplier” does *not* include a person who promotes an electricity supplier or who refers customers to an electricity supplier, if the person (1) cannot directly enroll customers in a contract for electricity or electricity supply services; and (2) does not receive compensation for the promotion of the electricity supplier or a referral.

A “gas supplier” does *not* include a person who promotes a gas supplier or who refers customers to a gas supplier, if the person (1) cannot directly enroll customers in a contract for gas or gas supply services; and (2) does not receive compensation for the promotion of the gas supplier or a referral.

Electricity Suppliers – Residential Supply Contracts

If an electricity supplier makes specified claims that a residential supply contract may or will result in savings based on historical data, the electricity supplier must include a disclaimer on its marketing materials and its website that historical savings do not guarantee future savings.

If the residential supply contract has a rate that is subject to change or otherwise variable, the electricity supplier must notify the customer in writing or electronically at least 30 days before a new rate can take effect. The electricity supplier must provide an email address that the customer may use to initiate requests, including canceling or refusing renewal of the residential supply contract.

A residential supply contract cannot contain provisions for automatic renewal, an early termination fee, or a cancellation penalty, unless the customer is given clear notice of the terms, and an opportunity to accept or reject the provision, either on the contract or electronically. A customer may refuse to renew a residential supply contract at any time up to 30 days before an automatic renewal takes effect. An early termination fee or cancellation penalty must decline monthly, so that the customer owes no early termination fee or penalty at the end of the contract.

Public Service Commission

To assist with compliance relating to the regulation of electricity supply services as well as gas and gas supply services, the bill requires PSC to include in its staff an electricity and gas supplier relations position.

Current Law:

Definitions

“Broker” means an entity or individual that acts as an agent or intermediary in the sale and purchase of electricity or gas but does not take title to electricity or gas. An “electricity supplier” means a person who sells electricity, electricity supply, billing, or metering services, or who purchases, brokers, arranges, or markets electricity supply services for sale to a retail electric customer. It also includes electric companies, which physically transmit or distribute electricity in the State.

Electricity Suppliers — Residential Supply Contracts

The Electric Customer Choice and Competition Act of 1999 (Chapters 3 and 4) facilitated the restructuring of the electric utility industry in Maryland. The Act required electric companies to divest themselves of generating facilities or to create a structural separation between the unregulated generation of electricity and the regulated distribution and transmission of electricity. The resulting system of customer choice allows the customer to purchase electricity from a competitive supplier or continue receiving electricity under standard offer service (SOS). Default SOS electric service is provided by a customer’s *electric company*. Competitive electric supply is provided by competitive *electricity suppliers*.

In Case Number 9245, PSC initiated a proceeding to consider whether persons selling electricity or gas on behalf of electricity brokers or suppliers licensed in Maryland, but not directly employed by licensed brokers or suppliers, should be regarded as brokers themselves and be required to obtain an electricity or gas supplier license. As of November 2010, 23 electricity suppliers had entered into over 300 contractual relationships with counterparties who range from traditional brokers, to door-to-door sales and telemarketers, to nonprofits engaged in fundraising. Further, 202 distinct marketing counterparties had signed contracts with electricity suppliers for various services, including brokering and acting as sales representatives. The case will determine if some or all of the nonbroker counterparties will be required to obtain a license to operate as electricity or gas brokers. The case is pending as of February 2012.

PSC may adopt regulations that prescribe standards to protect consumers, electric companies, and electricity suppliers from anticompetitive and abusive practices. Electricity suppliers must provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of any electricity services offered by the electricity supplier.

The Code of Maryland Regulations (COMAR 20.53.07) establishes consumer protections for customers that choose a competitive electricity supplier and define minimum contract requirements. Residential supply contracts must include a statement of the duration of the contract, including the initial time period, and any automatic renewal clause. Suppliers must provide notice to the customer at least 45 days before the automatic renewal is scheduled to occur. Electricity suppliers may charge a reasonable early termination fee, which must be disclosed in the contract.

An electricity supplier who violates specified provisions of current law is subject to a civil penalty of up to \$10,000 per violation. Each day is a separate violation. PSC may also revoke or suspend the license of an electricity supplier and take other specified actions in response to violations.

In addition to any other penalty authorized, PSC may impose a civil penalty not exceeding \$25,000 against a person who violates specified provisions of law or a PSC ruling, order, rule or regulation. Each day or part of a day the violation continues is a separate offense, and civil penalties are paid into the general fund.

Background: Most alternative plans to SOS require a fixed-length contract of at least 12 months and have cancellation fees that range between \$150 and \$200; however, some suppliers are now offering month-to-month supply options. The majority of these alternative plans also include a portion of renewable energy, which may add additional cost. **Exhibit 1** illustrates the number of residential customers that are currently served by competitive electricity suppliers in selected service territories.

Exhibit 1
Residential Customers Served by Competitive Electricity Suppliers
December 2011

<u>Distribution Utility</u>	<u>Customers Served by Competitive Suppliers</u>	<u>Total Accounts</u>	<u>Percent of Total</u>
Allegheny Power	16,200	221,288	7.3%
BGE	260,911	1,116,401	23.4%
Delmarva	17,459	173,650	10.1%
PEPCO	100,798	487,642	20.7%
Total	395,368	1,998,981	19.8%

Source: Public Service Commission

Small Business Effect: Small businesses excluded from the definition of “electricity supplier” benefit from reduced costs associated with any future regulation by PSC. Further, requiring the early termination fee to gradually be reduced throughout the life of the contract is likely to affect electricity suppliers. The bill impacts small businesses to the extent any electricity suppliers are considered small businesses.

Additional Comments: PSC advises that it has specific individuals on staff designated to address supplier inquiries. In addition, PSC’s website allows a person to (1) obtain a list of licensed electricity suppliers; (2) verify an electricity supplier; and (3) view current electricity offers from electricity suppliers who are using the supplier secure portal.

Additional Information

Prior Introductions: HB 1080 of 2011, a similar bill, was withdrawn after receiving a hearing in the House Economic Matters Committee.

Cross File: Although SB 780 (Senator Pugh – Finance) is designated as a cross file, it is different.

Information Source(s): Public Service Commission, Office of People’s Council, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2012
ncs/lgc

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