PUBLIC SERVICE COMMISSION OF MARYLAND

Residential Retail Energy Offerings for Electric and/or Natural Gas Service and Consumer Protections

Response to 2021 Joint Chairmen's Report
on the Fiscal 2022 State Operating Budget (HB 588)
and the State Capital Budget (HB 590)
and Related Recommendations

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In response to the Joint Chairman's Report – April 2021, the Commission conducted a 50-state survey of existing energy deregulation policies and associated consumer protections. This report will outline which states currently offer residential[1] retail energy offerings for electric and/or natural gas service. Next, it will provide a series of observations about existing consumer protections. Finally, it will provide a brief overview of developing issues in retail energy and consumer protection in other States.

Background

When customers purchase electric or natural gas service in their home or business they are in fact procuring two separate services—the commodity (generation of electricity or gas) and the delivery service (distribution). Historically, a vertically integrated utility would provide both the commodity (through its own generation stations or purchasing agreements) and the delivery of energy (through its own infrastructure such as wires and poles). Because utility service is a natural geographic monopoly, a state utility regulatory body (in Maryland and other states, called a public service commission or PSC; in some states this may also be known as a public utility commission or PUC) sets the rates for the utility as a substitute for competition and those rates include generation, transmission, and distribution.

In the last few decades, energy deregulation sought to remove the commodity portion of energy services from the regulated utility space in order to allow competition, rather than regulation, to set rates. Energy deregulation, retail supply, restructuring, and consumer choice are all terms for a paradigm which allows energy customers to separately procure these two items—the commodity from a retail supplier and the delivery service from their local utility. On a typical deregulated electric or gas bill, these items are billed separately as kWh or therms, and then as delivery fees in a combination of fixed customer charges and volumetric delivery charges. In a deregulated or "restructured" regulatory environment, such as in Maryland, the utility regulator sets prices for the delivery portion of the bill and, where permitted, provides limited oversight of the marketing practices of the retail suppliers who can supply the commodity to the customer.

Regulatory Paradigm	**Commodity supplied by:**	**Delivery – (regulated by PSC)**
Regulated or Vertically Integrated	Local Distribution Utility	Local Distribution Utility
Deregulated or Restructured	Local Distribution Utility or **Retail Supplier (unregulated)**	Local Distribution Utility

Analysis

Maryland allows licensed retail suppliers to offer residential electricity and gas choice in the majority of its utility service territories. Ten other states also offer residential retail choice for both gas and electric supply. All of these states, like Maryland, require licensing with the applicable state utility regulatory commission. An additional five states offer residential electric choice but allow gas choice

[1] As explained below, this report will focus on residential supply and consumer protections.

only for commercial and industrial (C&I) customers and require a license from the state utility regulator. Finally, 14 states offer residential natural gas choice, but this is largely limited in scope and these states do not allow residential electric choice; and only two of these states require a PSC/PUC license. The remainder of this report will focus on the 16 states that offer electric choice or electric and gas choice, but will not consider states that only offer gas choice.

Residential consumer protections for retail energy supply offers begin with PSC/PUC licensing processes which generally consider the financial and managerial abilities of the supplier. All of the states which allow retail choice require some form of licensing, registration, or certification with the applicable state utility commission. In addition, all of the states include a series of regulations that require some combination of marketing disclosures, renewal notices, and minimum contract requirements. In addition, some states have existing consumer protections laws such as Maryland's Telephone Solicitations Act and Door to Door Sales Act. The majority of state consumer protection laws are modeled on the federal consumer protections statutes which form a federal "floor" of minimum protections.

Early Termination Fee

Focusing specifically on limitations for cancellation or early termination fees (ETFs), Maryland is in line with the majority of states that have no limitations on these fees. It should be noted that the majority of variable-rate plans offered in Maryland do not have any early termination fees, while early termination fees are commonly in contracts for fixed-rate plans for a fixed term (*e.g.*, 12 or 24 mos.)[2]

Policies by State

-	Prohibited	Illinois
-	Prohibited for variable-rate plans	Delaware
-	Limited in amount	Connecticut
-	Prohibited for customer who is moving	Texas, Ohio
-	Allowed without limitation	Maine, New Hampshire, DC, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia

Door-to-Door Sales

Focusing specifically on limitations on door-to-door sales,[3] Maryland is one of two states that require retail energy suppliers to report where they plan to engage in door-to-door solicitation

[2] In Maryland, retail energy suppliers are required to disclose whether an early termination fee applies to a particular offer. The Maryland PSC's official retail choice website (www.MDEnergyChoice.com) allows visitors to filter offerings to specifically exclude plans that include early termination fees.
[3] As an initial note, many states banned door-to-door marketing during the COVID-19 pandemic; however, those temporary bans are not considered in this report.

(reported by zip code). Massachusetts has a similar reporting regimen, but it is more robust than Maryland's. In addition to reporting of the geographic location (*i.e.*, municipalities or neighborhoods rather than zip code) of the scheduled solicitations, Massachusetts requires contact information for company employees, identification of the vendor, contact information for the vendor's supervisor, and compliance with local permitting requirements. In response to the COVID-19 pandemic, the Ohio regulator issued an order requiring retail suppliers to report the times, dates, duration, and location of door-to-door solicitations at least 48 hours prior to their commencement.

Policies by State

- Requires reporting on sales activities	Massachusetts, Maryland, Ohio
- Allowed without limitation	Connecticut, Delaware, Maine, New Hampshire, Texas, DC, Illinois, New Jersey, New York, Pennsylvania, Rhode Island, Virginia

Emerging Issues

In addition to the specific areas discussed above, our research included several states that have recent or on-going proceedings related to supplier market reforms. As outlined below, these reforms have focused on increased transparency, low income issues, and customer remedies. The Maryland PSC continues to monitor regulatory activities involving retail energy suppliers in other states and will make recommendations to the legislature, as necessary.

Connecticut Public Utilities Regulatory Authority	- Adopted new marketing standards and sales practices in 2020 to ensure access to accurate information - Established a disclosure statement in all promotional materials which provides the highest and lowest rate charged in variable offers in the prior 12 months - Legislature passed a law in 2020 authorizing restitution to customers
Massachusetts Department of Public Utilities	- Exploring enhanced protections such as license renewals, door-to-door marketing notifications, product information disclosures, and display of renewable energy information on the MA choice website
New York State Public Service Commission	- Adopted reforms in 2019 that would enhance price and operational transparency as well as limitations on types and prices of products

Public Utilities Commission of Ohio	- Denied proposal to require supplier 'shadow billing' showing what customers would have paid on default service - Denied a request to give customers the ability to register to block their accounts from being switched to retail supply
Pennsylvania Public Utility Commission	- Adopted new disclosure rules in 2020 to provide more transparency around variable rate, flat monthly, and time-of-use offerings
Public Utility Commission of Texas	- Regulator approved a process to provide a monthly list to suppliers to help identify low income customers