

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

**RETAIL GAS AND ELECTRIC
SUPPLY OFFERS TO LOW INCOME
CUSTOMERS**

COMAR 20.51, 20.53, 20.54, and 20.59

**Administrative Docket
PC55**

RM 78

**COMMENTS OF THE NATIONAL CONSUMER LAW CENTER,
ON BEHALF OF OUR LOW-INCOME CLIENTS**

The National Consumer Law Center (“NCLC”) files these comments on behalf of our low-income clients. NCLC is a non-profit law and policy advocacy organization using expertise in consumer law and energy policy to advance consumer justice, racial justice, and economic security for low-income families and individuals. NCLC appreciates the opportunity to comment on these important proposed rules and thanks the Commission for prioritizing the implementation of this legislation.

INTRODUCTION

In 2021, the Maryland General Assembly enacted Chapter 637 of the Laws of Maryland (2021), amending Public Utilities Article, *Annotated Code of Maryland*, § 4-308 (“4-308”). This important consumer protection statute is intended to protect customers with limited incomes from paying more for their essential energy service than had the customers remained on the utilities’ default service, thus extending the reach of limited energy assistance funds administered

by the Office of Home Energy Programs (“OHEP”). Paying more for energy has been a recurring problem in the competitive energy supply market.¹

Overall, the proposed rules go far in implementing Chapter 637, but additional clarifications and process for the transition are needed. Detailed strong regulations are necessary to protect residential customers with limited incomes from overpaying for essential electric and natural gas service. The majority of residential consumers who have contracted with retail suppliers often pay more than they would have for standard offer service.² In particular, low-income retail supply customers have made frequent complaints against their suppliers for unfair practices such as exorbitant energy rates, deceptive marketing practices, involuntary renewal or service changes, and unsolicited visits or phone calls. Low-income consumers are often targeted by more expensive retail supply offers, to the detriment of both individual households with limited funds for basic necessities and OHEP’s energy assistance program.

The Commission is charged with creating an administrative process for approving supplier offers for energy assistance customers by January 1, 2023. As of July 1, 2023, only

¹ As described below, higher overall prices for competitive energy supply have been reported and analyzed in Maryland and other deregulated states over the past decade, see, e.g., Abell Foundation, *Maryland’s Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies* (Dec. 2018); Susan M. Baldwin & Sarah M. Bosley, *Maryland’s Residential Electric and Gas Supply Markets: Where Do We Go from Here?*, Maryland Office of the People’s Counsel (Nov. 2018); Wall Street Journal, *Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn’t*, March 8, 2021 (finding Maryland families paid an extra \$399 Million for alternative or competitive energy supply, and the most vulnerable customers experience the most harm).

² See, e.g., Abell Foundation, *Maryland’s Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies* (Dec. 2018); Susan M. Baldwin & Sarah M. Bosley, *Maryland’s Residential Electric and Gas Supply Markets: Where Do We Go from Here?*, Maryland Office of the People’s Counsel (Nov. 2018); Wall Street Journal, *Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn’t*, March 8, 2021 (finding Maryland families paid an extra \$399 Million for alternative or competitive energy supply, and the most vulnerable customers experience the most harm); Maryland Matters, *Opinion: Annapolis Showdown on Utility Rip-Offs*, February 23, 2021, available at <https://www.marylandmatters.org/2021/02/23/opinion-annapolis-showdown-on-utility-rip-offs/>; Inside Climate News, *Why the Poor in Baltimore Fact Such Crushing “Energy Burdens,”* February 12, 2021, available at <https://insideclimatenews.org/news/12022021/energy-burdens-low-income-baltimore/>; National Consumer Law Center, *Testimony before the Maryland Senate Finance Committee Hearing on SB 31 - Electricity and Gas - Energy Suppliers – Supply Offers*, Testimony of Jenifer Bosco, January 29, 2021 (with chart of excess charges in Maryland and other deregulated states) available at <https://www.nclc.org/resources/testimony-of-jen-bosco-hearing-on-senate-bill-31-electricity-and-gas-energy-suppliers-supply-offers/>.

suppliers that comply with the statute may enroll energy assistance customers. The Commission has initiated this rulemaking to implement the statutory objectives of the statute. Due to the well documented abusive unfair and deceptive practices in the competitive supply market, the rules to implement the statute need to be as protective as possible to prevent harms to low-income consumers. In its September 2, 2022 Order, *Notice Initiating Rulemaking and Directing Implementation Measures for New Low Income Gas and Electric Residential Supply Protections*, the Commission invited participants to offer comments on draft regulations. The National Consumer Law Center respectfully urges the Commission to approve the proposed regulations with the following clarifications and modifications.

REQUIREMENTS OF SECTION 4-308

Beginning July 1, 2023, Chapter 637 states that, without approval from the Commission, third-party retail suppliers are strictly limited in their ability to contract with low-income households who have received energy assistance. Retail suppliers lacking a Commission approved supply offer for energy assistance households shall not:

- Provide electricity or gas to households that have received energy assistance during the current or previous fiscal year;
- Renew contracts with households enrolled in energy assistance programs; or
- Charge termination fees to energy assistance households.

If a retail supplier does have an approved offer, it must commit to charging customers receiving energy assistance no more than the standard offer service rate or gas commodity rate for the entirety of the term of the supply contract. If a retail supplier does not have an approved offer, it may not receive funds from an energy program administered by OHEP or charge a customer receiving such assistance through OHEP.

In order to facilitate the implementation of the amended Section 4-308, the Commission must publish annually, before September 1, a report that includes the following information:

- The names and total number of retail suppliers that applied for approval to sell to energy assistance households;
- The names and total number of retail suppliers that were subsequently approved or rejected by the Commission;
- As reported by retail suppliers, the number of energy assistance households signed up with by the retail supplier;
- As reported by utility companies, the number of energy assistance households that were denied enrollment with unapproved retail suppliers; and
- The total number of self-identified energy assistance households that filed complaints against retail suppliers.

This report must be made publicly available on the Commission’s website, as well as submitted, to the Office of People’s Counsel, OHEP, the Senate Finance Committee, and the House Economic Matters Committee.

RECOMMENDATIONS FOR THE PROPOSED REGULATIONS

1. The definition of “Energy Assistance Household” should be modified to fully meet the intent of the General Assembly and protect low-income consumers.

As the Maryland Office of People’s Counsel (“OPC”) explained in its May 13, 2022 Petition for Rulemaking,³ the Commission must exercise its power to promulgate administrative procedures in support of the law. Financial protection of low-income utility consumers is within the public interest.⁴

As noted by the OPC, “[t]he past 20 years of retail choice include many examples of supplier noncompliance with State consumer protection laws and Commission regulations; highlighting the need for the Commission to proactively issue guidance for how retail suppliers

³ Maryland OPC, *Petition for Rulemaking* (“Revisions to COMAR to implement changes required under Section 4-308 of the Public Utilities Article”), May 13, 2022 (hereinafter, “OPC Petition”).

⁴ See, e.g., Md. Code Ann., Pub. Util. § 4-309 (“The General Assembly finds and declares that the societal benefits of a well-constructed limited-income mechanism to benefit Maryland's eligible limited-income customers are in the public interest.”).

and utilities should comply with PUA § 4-308.”⁵ Clear regulatory guidance from the start can help ensure that all parties will follow the ground rules established by the statute.

The proposed definitions of “Energy Assistance Household” used throughout the proposed amended 4-308 are too narrowly limited to households with a *service address* associated with the utility account qualified for energy assistance.”⁶ Because low-income families may move, the definition should be modified to ensure that the protection envisioned by the statute flows to the low-income families who qualified for the energy assistance regardless of whether the family has moved to a different service address. We propose the following clarification:

“Energy Assistance Household” means that the Office of Home Energy Programs found the household or service address associated with the utility account qualified for an energy assistance program during the current or previous fiscal year.”

2. The Commission should clarify or provide guidance about “reasonable efforts” with regards to Retail Supplier Advertising and Solicitations.

The proposed regulations, 20.53.07.07(A)(3)(a) and 20.59.07.07(A)(3)(a), require that a supplier make reasonable efforts to determine whether a consumer lives in an energy assistance household during solicitations. This could be determined by asking the consumer if their household is currently receiving energy assistance or has received energy assistance in the previous year, or through analyzing census or OHEP data in advance.

Census data can be used to show areas with high levels of energy assistance eligible, limited income populations. Similarly, information from OHEP regarding the concentration of energy assistance customers within certain zip codes should indicate areas where there is a strong

⁵ OPC Petition at 10.

⁶ See, Proposed COMAR 20.51.01.02(14); Proposed COMAR 20.53.01.02(14); Proposed COMAR 20.54.01.02(11), and Proposed COMAR 20.59.01.02(13).

likelihood that the households are within the pool of consumers that Chapter 637 intends to protect.

If suppliers ask consumers directly about whether their household is receiving or has received energy assistance, the Commission should ensure that consumers are not led to believe that they must sign a contract with a supplier in order to continue receiving energy assistance. Given the likelihood that low-income households, particularly those who are struggling to pay their current bills, may apply for energy assistance, suppliers marketing door-to-door in these areas should be required to notify consumers of the following:

1. Under a new law, Chapter 637, retail suppliers may only market PSC-approved supplier offers to energy assistance households;
2. These PSC-approved offers for energy assistance customers must be priced at or below the regular utility default rates;
3. The consumer does not have to provide any information to the supplier, or sign up for any energy contracts; and
4. Refusing to switch to a competitive supplier will not affect the household's OHEP energy assistance eligibility in any way.

To minimize confusion regarding implementation, the Commission should provide examples of "reasonable efforts" such as either researching ahead of time whether it is likely the household is an energy assistance household due to income demographics or by obtaining consumer consent for determining energy assistance status. We urge the Commission to protect consumer privacy and limit the release of household energy assistance status to situations where consumers have provided express written consent for the release of this information.

3. The Utilities and OHEP Must Coordinate to Ensure that Utilities Have Up-to-Date Information on Energy Assistance Households

Proposed regulations regarding the utility duty to reject enrollment with a supplier if the customer is an energy assistance household and the supplier does not have a Commission approved contract (proposed COMAR 20.53.04.02(H) and 20.59.04.02(G)) will require utilities to have up-to-date information on energy assistance households. We urge the Commission to facilitate coordination between utilities and OHEP for the regular (e.g., monthly) updating of households on energy assistance. This is critical to ensure that as many households on limited incomes are protected by Chapter 637. Consumers who have had their energy supplier contract rejected due to the protections of Chapter 637 should be notified of the reason for the rejection. The Commission should provide sample language (e.g., “A new law, Chapter 637, ensures that energy assistance households will not pay more for electric or gas service than the rate the utility company would normally charge (the utility default rate). The supplier contract at issue did not meet this standard.”).

4. Include energy assistance consumer outreach and education about Chapter 637.

All residential energy assistance households should receive a notice from their utility about the new law. This is particularly important for energy assistance households who are currently in a retail supplier contract. The notice should include a summary of the law, what to do if the household wants to return to standard utility service, information on who to call for more information and the process for making consumer complaints.

CONCLUSION

We commend the Commission on its work to implement Chapter 637 to protect Maryland utility consumers.⁷ We respectfully request that the Commission adopt the proposed regulations with the above proposed clarifications and modifications. We appreciate this opportunity to submit comments on the implementation of Chapter 637, and the actions that this Commission is taking by opening this Rulemaking.

Respectfully submitted,

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⁷ As Chapter 637 is implemented, we urge the Commission to regularly review the effectiveness of these protections. If further protections are needed, we urge the Commission to consider supporting more comprehensive requirements, such as the recent Connecticut ruling which prohibited suppliers from enrolling any low-income customers, and required suppliers to return any existing low-income customers to their utilities' standard offer service. Conn. Public Utilities Regulatory Authority, Decision, Review of Feasibility, Costs and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. Stat. § 16-245O(M), Docket No. 18-06-02 (Dec. 18, 2019).