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STATE OF MARYLAND



PUBLIC SERVICE COMMISSION

December 30, 2014

Senator Thomas V. Mike Miller, Jr.
President, Senate
State House, H-107
100 State Circle
Annapolis, MD 21401

Delegate Michael E. Busch
Speaker of the House
State House, H-101
100 State Circle
Annapolis, MD 21401

Re: ***Final Report and Recommendations of the PSC Leader in Maryland Public Service Commission Public Conference 35 to Review the Current Status of Protections for Consumers in Connection with Competitive Retail Gas and Electric Supply, and to Solicit Recommendations on Ratepayer Protections***

Dear President Miller and Speaker Busch:

In accordance with § 2-1246 of the State Government Article, *Annotated Code of Maryland*, enclosed is the Final Report and Recommendations of the PSC Leader ("Report") in Maryland Public Service Commission ("Commission") Public Conference 35.¹

On May 5, 2014, the Commission initiated Administrative Docket – Public Conference 35 (PC35) to review the current status of protections for consumers in connection with competitive retail gas and electric supply, and to solicit recommendations on ratepayer protections, as required under Chapters 77 and 78 of 2014. As part of Public Conference 35, and also as required by Chapters 77 and 78, the Commission convened the Retail Energy Supplier Consumer Protection Work Group, which consisted of interested persons, including electric suppliers, to advise the Commission on the information and recommendations that should be included in the report.²

After several meetings, exchanges, and comments over the summer and fall, the Work

¹ The enclosed Report substitutes a revised Appendix A for the original Appendix A. The revised Appendix A clarifies the proposed regulations and complies with the *Style Manual for Maryland Regulations*. The overall intent of the proposed regulatory changes remains the same.

² On July 25, 2014, the Commission also closed Case No. 9340 and directed the "important issues surrounding timely customer switching and utility-designed budget billing programs" to be addressed in the context of PC 35.

Group's Leader submitted a non-consensus Report of findings and recommendations to the Commission on November 13, 2014. The Report encouraged and recommended that the Commission:

1. Commence proceedings to adopt the proposed regulations in an expedited manner;
2. Create a separate division within the Commission responsible for coordinating and managing supplier relations, engaging with local government and state agency stakeholders, and empowered with the authority to investigate and where appropriate initiate enforcement proceedings; and
3. Establish a permanent advisory group to develop, manage, and implement Competitive Choice consumer education efforts.

On December 5, 2014, the Commission initiated Administrative Docket – RM54 to consider the regulatory changes proposed by the Leader in PC 35. Comments on the proposed regulations are due on January 23, 2015, and a rulemaking session has been scheduled for February 26 and 27, 2015. Beyond the initiation of the rulemaking, however, the Commission has not evaluated, resolved or decided any of the disputed issues. Although neither the Leader of PC 35 nor the Commission recommends legislation at this time, the Commission looks forward to continuing to work with the General Assembly on these issues.

Please feel free to contact the Commission with any questions or if the Commission may be of further assistance.

By Direction of the Commission,



David Collins
Executive Secretary

Enclosure

cc: Senator Thomas M. Middleton
Delegate David Rudolph
Tamela D. Burt
Robert K. Smith
Obi Linton

W. KEVIN HUGHES
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ODOGWU OBI LINTON
DIRECTOR

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PUBLIC SERVICE COMMISSION

November 13, 2014

David Collins, Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul St., 16th Floor
Baltimore, MD 21202

FILED

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PUBLIC SERVICE COMM
OF MARYLAND

RE: PC35 Final Report, Draft Regulations and Recommendation for Rulemaking

Dear Mr. Collins:

Enclosed for filing, please find a copy of the Final Report and Recommendations of the PSC Leader in Maryland Public Service Commission Public Conference 35. This Report recommends initiation of an emergency rulemaking proceeding to implement these solutions. This is not a consensus report.

Sincerely,

A handwritten signature in black ink, appearing to be "O. Linton", written over a large, stylized "X" mark.

Odogwu Obi Linton, Esq., Director
Office of External Relations
Maryland Public Service Commission

Public Conference 35
Leader

CC: PC 35 Email List

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FINAL REPORT AND RECOMMENDATION

OF THE

MARYLAND PUBLIC SERVICE COMMISSION (“PSC”) LEADER

PUBLIC CONFERENCE 35

November 6, 2014

**Odogwu Obi Linton, Esq., Director
Maryland Public Service Commission
Office of External Relations**

I. INTRODUCTION

After several months of research, working group meetings with multiple stakeholders and review of data, this filing represents the observations and final recommendations of the PSC Leader for Public Conference 35 ("PC35").¹ Below, this Report encourages and recommends that the Maryland Public Service Commission ("Commission"):

- Commence proceedings to adopt the proposed regulations below in an expedited manner;
- Create a separate division within the Commission responsible for coordinating and managing supplier relations, engaging with local government and state agency stakeholders, and empowered with the authority to investigate and where appropriate initiate enforcement proceedings; and
- Establish a permanent advisory group to develop, manage and implement Competitive Choice consumer education efforts.

II. PROCEDURAL BACKGROUND

In response to increasing concerns regarding higher than normal energy usage during an unusually cold period, on February 11, 2014, the Maryland Public Service Commission ("Commission") docketed Case 9340

"to review the extent of the current and projected arrearages owed to Maryland's electric, gas and gas and electric utilities (individually, "Utility," and collectively, "Utilities"), and the Utilities' policies and procedures regarding: (1) assistance to customers who have arrearages, (2) collections and (3) termination of service."

¹ While there are several areas in which other parties will express agreement with these recommendations, this is not a consensus document.

During the course of Case 9340, the Commission was made aware of increased high bill complaints from customers with variable rate electric choice contracts. The Commission directed the Supplier Coordination Working Group (“SCWG”) to review and file recommendations on the long term implementation of off cycle switching and review and propose suggestions on how to implement budget billing that would encompass supplier programs. The SCWG’s Report was due on August 28th, 2014.² On July 25th, 2014, after receipt of a Progress Report filed by the Commission Staff along with comments filed by the workgroup members, the Commission issued Order 86492, closing Case 9340 and assigning all issues for consideration in Case 9340 to be considered in the PC35 docket.³

Concurrently, and also in response to unusually high consumer complaints, the Maryland General Assembly passed Senate Bill 1044/ House Bill 928 (SB1044) during the 2014 Maryland Legislative Session⁴ and in response, on May 5th, 2014 the Commission established PC35 to “review the current status of protections for customers in connection with competitive retail gas and electricity supply, and to solicit recommendations on ratepayer protections.”⁵

Once the additional matters from Case 9340 were added to PC35 for further discussions, the parties expressed interest in filing additional comments in response to the comments filed in response to the June 30, 2014 Staff Progress Report. On September 24th, 2014 the PC35 Leader filed

² Order No. 86293 (April 11, 2014) at 12-13.

³ See Order 86492.

⁴ PC35 was established in response to Senate Bill 1044/ House Bill 928 “Public Service Commission – Competitive Retail Electricity and Gas Supply – Consumer Protection – Report.” On April 8, 2014, the Governor signed this legislation into law, codified as Chapters 77 and 78 of the 2014 Laws of Maryland.

⁵ In The Matter Of The Current Status Of Protections For Customers In Connection With Competitive Retail Gas Supply And Competitive Retail Electricity Supply, May 15, 2014.

comments establishing October 3rd as the date for any final comments to be filed in PC35. This comment opportunity would allow all parties to address any outstanding issues.

III. MARYLAND BACKGROUND DISCUSSION

Beginning in January 2013, the Commission's Office of External Relations ("OER")⁶ of the PSC began receiving a large number of complaints and inquiries from residential customers regarding Starion Energy PA, Inc. ("Starion"). For example, during the month of April 2013, OER received 51 complaints and 78 customer calls referencing Starion.⁷ The Commission's investigation into the multiple complaints about increased rates under variable rate contracts resulted in testimony filed about Starion's experiences in the Independent System Operator - New England ("ISO New England") region. On behalf of Starion, Mr. Steven M. Malkiewicz⁸ testified:

"Counter to historical trends and expectations for moderating prices, the price of hedging continued to climb, and Starion's unhedged supply costs increased dramatically. Purchased power costs of \$200 per MWh were common, with pricing approaching \$500 per MWh in some cases. These price spikes were the result of protracted severe cold weather experienced in the Northeast and New England regions of the US. This weather pattern caused persistently high day-ahead and real time electricity prices in all ISO New England zones, and also affected the broader region in New York City and Long Island, where real time power prices for certain intervals peaked above \$1,000 per megawatt hour. Even spot prices in the PJM Interconnection RTO were affected, with some real time prices exceeding \$300 per megawatt hour. Overall, Starion's average wholesale cost per megawatt hour was almost triple the prices of a few months earlier. Starion passed these cost

⁶ OER is the Commission's Consumer Dispute and Investigation Division, created under the Code of Maryland Regulations 20.32 et. seq.

⁷ *Office of Staff Counsel - Petition for the Issuance of a Show Cause Order and Draft Show Cause Order - Starion Energy PA, Inc.* Case No. 9324 (ML 149783).

⁸ Managing Director of Supply and Risk Services for PML Energy Holdings, LLC, dba ESCO Advisors ("ESCO Advisors").

increases through to its variable rate retail customers.⁹

Customers received no notice that they would be responsible for these costs and had no real mechanism to anticipate or prepare for rates that were between \$0.16-18 per kWh, more than double the available regulated utility default service rates at the time.¹⁰ When completed, the Commission's investigation resulted in significant fines and ongoing monitoring of Starion's customer base.

While the Starion investigation was ongoing, Case 9340 was docketed. The Commission wanted to review and coordinate the response to anticipated "bill shock" from higher than normal usage during the 2013-2014 winter months. Unlike the 2012-2013 winter, this time the persistent cold weather contributed to increased electric winter peak demands across the Pennsylvania-Jersey-Maryland ("PJM") RTO and other RTO's across the east coast.¹¹ In Maryland, the average temperature at Baltimore-Washington International Airport in January 2014 was 27 degrees – compared to 35 in January 2013. In Hagerstown Maryland, the difference was even more dramatic, with an average temperature of 25 degrees in January 2014 versus 34 in January 2013.¹² Taking a cue from lessons learned in case 9175¹³, utilities, suppliers, advocacy organizations and state government initiated efforts to respond to the lasting

⁹ Testimony of Steven M. Malkiewicz on Behalf of Starion Energy PA, Inc., MD PSC Case 9324, IN THE MATTER OF THE INVESTIGATION INTO THE MARKETING PRACTICES OF STARION ENERGY PA, INC. September 24, 2013 at pg. 6.

¹⁰ Customers were also unable to switch from Starion's service due to cumbersome contract cancellation rules.

¹¹ Winter 2013-2014 Operations and Market Performance in RTOs and ISOs – AD14-8-000, April 1, 2014, Department of Energy Report. ISO New England and New York also experienced problems.

¹² See Governor Martin O'Malley Announces \$20 Million in Cold Weather Energy Assistance, February 24, 2014.

¹³ The Commission docketed Case 9175 on January 30, 2009, in response to and in anticipation of multiple complaints caused by colder weather and higher than normal energy usage.

cold.¹⁴ Primary among them was the announcement of an additional \$20 million to help lower-income Marylanders pay high utility bills resulting from recent extreme winter weather and a range of voluntary regulated utility programs that were designed to help customers manage their usage during the winter period.¹⁵ The rate increases also impacted low income customers hard, especially those who rely on annual energy assistance grants from the Department of Human Resources Office of Home Energy Programs (“OHEP”). The average annual grant consisting of Federal Low Income Heating and Energy Assistance Program and Electric Universal Service Program state funds for low income customers was \$868.¹⁶ For many low income customers on variable rate contracts, their monthly bill during the winter when usage was high exceeded their entire annual grant. This is especially concerning since many low income customers had an arrearage when applying for assistance, thereby creating a scenario where the low income customer would leave the OHEP offices with a grant and still remain in need of more assistance to retain or regain electric service.¹⁷

Some Competitive Suppliers offered relief during what we now refer to as the “Polar Vortex”¹⁸ period in the form of rerates and offers to switch to fixed rate prices before the

¹⁴ For example, the Maryland Energy Administration built a webpage with additional information for consumers: <http://energy.maryland.gov/Residential/assistance/EmergencyColdWeatherEnergyAssistance.htm>. The Office of People’s Counsel also issued a Consumer Alert: High Winter Bills on February 21, 2014.

¹⁵ See Example “BGE Offers New Budget Billing Plan Options to Help Customers with High Bills in Response to Significant Increases in Energy Usage Resulting from Consecutive Weeks of Extremely Cold Temperatures”, January 14, 2014.

¹⁶ See Maryland Department of Human Resources/, Family Investment Administration and Office of Home Energy Program - FY 2014 Electric Universal Service Program Annual Report. Case No. 8903

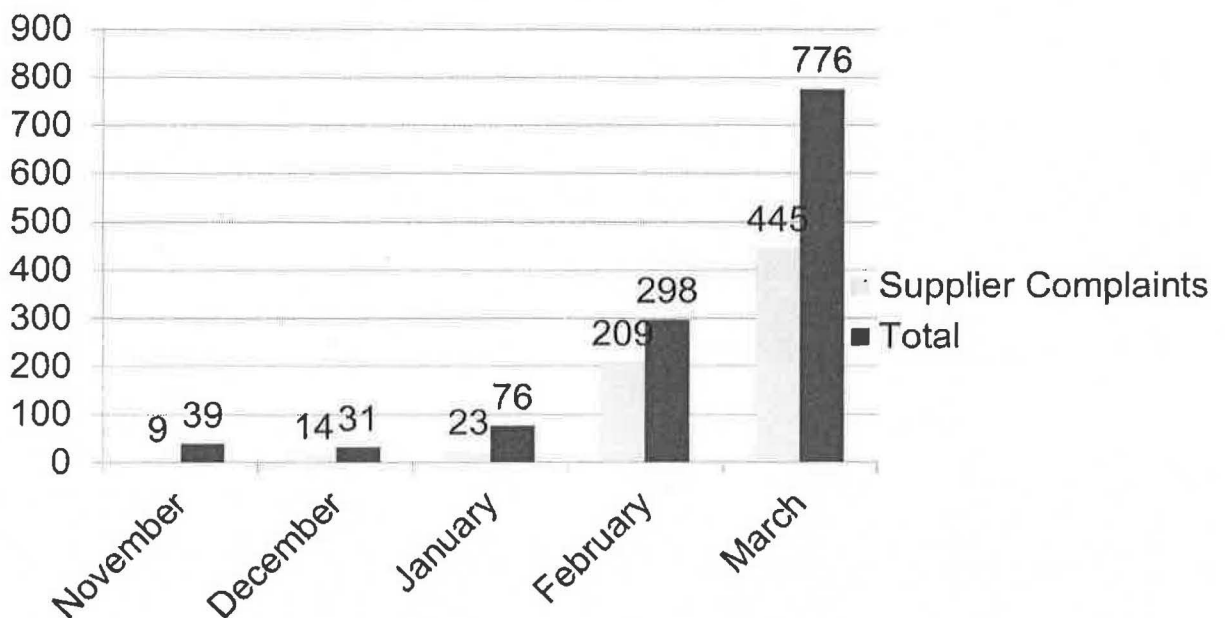
¹⁷ The Electric Universal Service Program has an arrearage component, but customers are eligible for funds from the program once every seven years.

¹⁸ According to AccuWeather.com, a polar vortex is “a swirling mass of air, that is around all the time but usually found around the poles. Recently (2014), different trends in our typical weather pattern have forced it to come down into territories that don’t usually see this cold of temperatures”. <http://www.accuweather.com/en/weather->

variable rate price was billed. At the same time, others offered educational information to explain the reasons for price increases and, suggestions on how to avoid them in the future.¹⁹

Customer complaints also accompanied the cold weather. However, what was unexpected was the source of the complaint volume. The Polar Vortex created an unanticipated demand for generation when supply was constricted at the wholesale market level. This directly impacted suppliers that offered variable rate products procured from day ahead or real time energy markets. Some suppliers passed the higher than normal costs onto mass market customers with variable rate products.

During the Polar Vortex period, the OER noticed a shocking increase in complaints related to competitive suppliers.



[news/how-cold-is-cold-what-does-pol/22453019](https://www.baltimorepostandopinion.com/news/how-cold-is-cold-what-does-pol/22453019). The increased demand for gas powered generation during the cold weather exposed certain wholesale market flaws that are being addressed by PJM.

¹⁹ See example *Why Have Our Energy Bills Increased – Explaining Price Volatility*, ACCES (American Coalition of Competitive Energy Suppliers); March 4, 2014.

During the month of March, 445 of the total of 776 complaints received by OER were from customers with variable rate bills. In March 2014, the OER averaged 35-40 new complains a day, with the majority of them from customers with variable rate supplier products. One of the more egregious complaints is illustrated in the customer study below.

Customer Smith's experience²⁰:

BILLING PERIOD	KWH USAGE	SUPPLIER PRICE	AMOUNT BILLED FOR COMMODITY	BGE SOS THROUGH 5/31/14 \$0.09623/kWh	BILLING IMPACT FOR CUSTOMER
10/17-11/15/13	1042	\$0.079	\$ 82.32	\$ 100.27	\$ 17.95
11/15-12/16/13	1831	\$0.079	\$ 144.65	\$ 176.20	\$ 31.55
12/16/13-1/16/14	2097	\$0.079	\$ 165.66	\$ 201.80	\$ 36.14
1/16-2/14/14	2365	\$0.469	\$1109.19	\$ 227.58	-\$ 881.61
2/14-3/14/14	2011	\$0.469	\$ 943.16	\$ 193.52	-\$ 749.64
3/14-4/15/14	1546	\$0.269	\$ 415.87	\$ 148.77	-\$ 267.10
TOTAL			\$2860.85	\$1048.14	-\$1812.71

As anticipated, the customer's usage increased during the January – March 2014 Polar Vortex period. While the increase in usage would have resulted in a higher bill if the rates remained stable, the greater source of the bill increase is clearly attributable to the higher variable rates. That usage was higher at the same time only compounded the “bill shock”²¹. As can be seen in the description above, the resulting impact to the customer was a difference of over \$1,800, all attributable to the higher rate accumulated during the Polar Vortex period.

²⁰ “Smith” is not the customer's real name.

What the above experience does not show is that Mr. Smith was aware of his increasing bill. An experienced real estate agent, Mr. Smith actively communicated with different suppliers and, while knowledgeable about the risks of variable rate contracts, decided to pursue one anyway because of promises that the variable rate would never go beyond regulated utility default service levels. Once he saw the rates he was charged, he filed his complaint because in his words, he believed he was “gouged”.

Unlike many less knowledgeable or engaged customers, Mr. Smith was able to communicate with his supplier. During the Polar Vortex period, others were not as successful and turned to the Commission and the regulated utilities to complain. The OER received 251 complaints against competitive suppliers from January 1, 2014 to June 1, 2014 that were due to customers expressing an inability to contact their supplier. Of those complaints, 125 were filed between March 1 and April 1, 2014, which is the first billing period after the first Polar Vortex bills would have appeared in customer homes.

Today we know the source of the increase in rates was partly due to poorly hedged firms and certain flaws in wholesale market design.²² Improvements are being designed at the wholesale level, but that in and of itself will not be enough to protect Maryland mass market customers from unexpected increases in energy rates.²³ Variable rate contracts are, by design, structured to allow a supplier to add any rates, fees or charges onto a customer’s bill. The

²¹ A phrase generally used to describe a situation where a customer enrolls with a supplier at a certain rate, only to attempt to cancel the contract prior to its term running to take advantage of a better offer from another supplier.

²² While this report will not go into those issues in depth, PJM has already taken steps to analyze and recommend additional steps to address the market issues. *See eg. Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events*, May 8, 2014, PJM Interconnection.

Commission's current regulations provide multiple protections and notices for fixed rate contracts, but the current regulations never envisioned an industry created variable rate residential product.²⁴ Accordingly, and after observation, discussion with all members of the PC 35 workgroup, review of regulations adopted by other states, multiple multi-party workgroup meetings, review of consumer complaints for the past two years and review of existing Maryland law, this Report concludes that Maryland's current consumer protections are inadequate and must be updated to keep pace with the rapidly changing product offerings in the competitive retail market.

Maryland now joins several states along the American East Coast in its efforts to review and improve the electric and gas competitive market.²⁵ All have made efforts to provide changes that would enhance their markets, without constricting the ability to create new and innovative products and marketing practices. Maryland's changes should be similar. Currently, Maryland has over 300 licensed suppliers, with over 30 to 50 actively participating in the residential mass market. Additionally, as of July 2014, 25% of Maryland's market has selected a competitive

²³ PJM's market enhancements may take several years to implement and even when complete, they would not address potential "transfer" of risk associated with poorly hedged firms from other jurisdictions like in Maryland's experience with Starion.

²⁴ New offers are exhibiting a complex mix of fixed and variable rate contracts over a certain term. This is in response to changes in regulations in other states such as Connecticut and Pennsylvania.

²⁵ See Example DC NOPR Formal Case 712 *In the Matter of the Investigation of the PSC's Rules of Practice and Procedure - Rules clarify various requirements for Energy Suppliers*, October 14, 2014; *In the Matter of the Third Party Suppliers N.J.A.C. 14:4 Et. Seq., the Board's Review of Consumer Protection Provisions Of Its Rules Concerning Third Party Suppliers*, NJ Board of Public Utilities Docket No. Ex14060579, October 10, 2014; *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 12-M-0476, October 17, 2014; and Docket No. 13-07-18 *PURA Establishment of Rules for Electric Suppliers and EDCS Concerning Operations and Marketing in the Electric Retail Market*, State of Connecticut Public Utilities Regulatory Authority, Nov. 5, 2014.

supplier.²⁶ As noted earlier, many suppliers regularly engage Maryland's Commission Staff and are responsive to consumer complaints and concerns. Suppliers that are members of the Retail Energy Supply Association²⁷ and the National Energy Marketers Association²⁸ have adopted "Principles" and "Standards of Conduct", respectively, which emphasize good customer relations and positive customer experiences that work in tandem with a vibrant, competitive market.

While many of those suppliers, and others, chose to not pass through costs and fees from the 2013 -2014 Polar Vortex, (in most cases a significant financial sacrifice), others saw fit to pass historic price increases onto customers, causing concern over the validity of the charges and spurring additional Commission action.²⁹ In Case 9346, the Commission noted that 949 complaints were filed with the Commission's OER between January 1, 2014 and March 31, 2014 compared to 379 complaints filed during the same time period in 2013. This represented a 150% increase in complaints. Of significant concern to the Commission is that over 41% of the complaints filed as of April 1, 2014 are attributable to only five competitive retail suppliers, and over 77% of the complaints filed against these five competitive retail suppliers relate to customer allegations of supplier misrepresentations resulting in unexpected and drastic increases of customers' electricity and natural gas prices.³⁰ This case remains under investigation but does suggest that depending on the financial circumstances for a particular supplier, despite the best

²⁶ Electric Choice Enrollment Monthly Report, July 2014.

http://webapp.psc.state.md.us/Intranet/CaseNum/submit_new.cfm?DirPath=\\Coldfusion\Electric%20Choice%20Reports\\2014%20Electric%20Choice%20Enrollment%20Reports&CaseN=Electric%20Choice%20Enrollment%20Monthly%20Reports

²⁷ <http://www.resausa.org/about-us/resa-principles>.

²⁸ https://www.energymarketers.com/documents/NEM_natl_mktg_stds_release.pdf.

²⁹ See ex. 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., Case 9346.

intentions, a company simply may not be able to avoid passing through unanticipated prices costs in formats which are not conceivable or recognizable by even more advanced and experienced customers.³¹

Accordingly, despite the valiant efforts of some within the industry, it is clear that Maryland must update and adopt customer protection regulations for the Maryland electric and gas residential competitive supplier market. This effort should:

- Embrace an effort to provide more coordinated educational materials to the residential and small commercial markets;
- Establish a more robust engagement with the supplier industry from licensing and dispute resolution to, when necessary, more rigorous enforcement of existing state protections;
- Allow for revisions that can be implemented quickly, to protect against predicted colder than normal weather for the upcoming winter;
- Enhance dispute resolution provisions.

IV. GENERAL RECOMMENDATIONS

A. Embrace an effort to provide more coordinated educational materials to the residential market

When the Electric Choice and Competition Act was adopted in 1999, the Commission stated its goal: It is our goal that Maryland consumers receive all necessary information to permit them to participate effectively in and benefit from the competitive electric supply market.³² There, the Commission established certain principles regarding the importance of an educated

³⁰ *Id.* at 1.

³¹ For example, some suppliers have begun assessing unexplained fees and assessments on variable rate contracts.

consumer marketplace, including the primary principles that any consumer education effort “inform, not sell” customers on Competitive Choice and that all parties have an important role. Although the Consumer Education and Advisory Board (“CEAB”) was created over 15 years ago, it had no operating budget at the time. Three years later however, the CEAB was allocated \$3 million to implement an education plan that would go forward in conjunction with the phased opening of competitive choice across Maryland, which also occurred from 2001 to 2004.

The CEAB met multiple times during that period, and produced a range of educational materials, some of which can still be found throughout the Maryland Public Service Commission’s offices today. Unfortunately the CEAB ran out of operating money in 2003 and today, is inactive.

Since 2003, the competitive choice market in Maryland is largely unrecognizable. Multiple regulations and changes have occurred since then, including the adoption of Purchase of Receivables, the adoption of several new customer protections and the introduction and active participation of literally hundreds of new competitive suppliers.

In recognition of the need for continued educational efforts, in 2011, the General Assembly adopted Chapter 203, 2001 Laws of Maryland (“Act”), entitled “Public Service Commission Education on Customer Choice”. The Act directed the Commission to convene “a workgroup of interested parties to advise it on improvements to the Commission's website information and presentation concerning customer choice as required by this Act, and on additional information and methods of consumer education that can be effectively supplement

³² Case 8738, Order No. 73834 at 136.

the requirements of this Act.”³³ The Commission’s Public Conference 25 (PC25) empanelled a workgroup to complete the report filed on December 29, 2011, which recommended a range of website and other solutions. The Commission has worked diligently on the website enhancements and, is poised to launch this important resource pillar for the residential market in the very near future.

In furtherance and in encouragement of already established efforts, one of the recommendations from the PC25 report was for the Commission to empanel an “implementation” Work Group. This group would function similarly to the CEAB from 2001-2003. Responsible for proposing and coordinating the competitive education effort across Maryland, this group would have the ability to monitor and assist in the development of a comprehensive strategy to provide educational materials for Maryland consumers. Similarly to the CEAB, the initial effort would be simply to do what it can with the budget it has, which at its inception would be nothing. As the plans are implemented, and the need assessed and confirmed, the Commission can then consider pursuing additional financial resources.

This effort would help provide more information and guidance for Maryland’s residential and small commercial customer base. It could encompass both gas and electric choice, and could incorporate and learn from existing educational efforts in EmPOWER Maryland and the Advanced Metering Infrastructure Initiative, for example.

B. Establish a more robust engagement with the supplier industry which would include, when necessary, more rigorous enforcement of existing state protections

³³ In the Matter of the Customer Education On Customer Choice Act, Public Conference 25.

The PC 35 discussions consisted of multiple issues and a variety of unaligned and competitive parties.³⁴ Yet on the matter of the need for more robust engagement with the supplier industry and more rigorous enforcement of existing state protections, there was uniform agreement.³⁵ The Commission has engaged in several complaint proceedings against competitive licensed suppliers, issuing fines and follow up corrective measures and, after several proceedings license suspension in one case.³⁶ All parties recommended that the Commission establish a formal division that would be responsible primarily for monitoring of the competitive market and enforcement of the Commission's regulations. This would include making certain that required licensing updates are filed in a timely manner and that lines of communication remain open with suppliers; this Report concurs with these recommendation and specifically recommends that the Commission direct additional review as appropriate to consolidate and clarify the competitive choice market liaison and enforcement responsibilities.

The Workgroup did not develop specific recommendations or standards; however the Commission could review the responsibilities of similar divisions in other states to obtain some lessons learned. For example, both Pennsylvania and the District of Columbia have established specific positions with this responsibility.³⁷

³⁴ The email mailing list consisted of over 190 representatives of regulated utilities, licensed suppliers, advocacy organizations, representatives of various corporations and state and local agencies.

³⁵ See ex. *Retail Energy Supply Association – Comments PC35*, October 3, 2014, at 2; *Office of People's Counsel - Comments PC35*, October 3, 2014 at 4 (supporting line filed by the *Office of Attorney General, Consumer Protection Division*);

³⁶ See ex. In The Matter of the Commission's Investigation Into Ohms Energy Company, LLC's License to Supply Electricity or Electric Generation Services in Maryland, Case 9118; In The Matter of the Complaint of The Staff of the Public Service Commission Against Viridian Energy PA, LLC, Case 9255; In the Matter of the Complaint of the Staff of the Public Service Commission Against North American Power and Gas, LLC, Case 9253.

³⁷ For example, the District of Columbia recently appointed a Retail Choice Market Specialist within the Office of Consumer Services -http://www.dcpsc.org/hottopics/MauriceSmith_RetailChoiceMarketSpecialist.shtm;

In the interim, the Commission should adopt the regulations proposed below to clarify that the Commission's existing Office of External Relations has the authority to investigate and resolve individual consumer/supplier disputes and, where appropriate, formally recommend additional action.³⁸

C. Adopt COMAR revisions in an expedited manner

As discussed above, forecasts for the upcoming winter suggest similar weather patterns as the prior two years.³⁹ While a long term forecast can change, sometimes substantially, what is not in doubt is that the Maryland retail market's exposure to the *possibility* of increased bills due to harsh weather conditions for the 2014-2015 winter remains a reality. It is also clear that Maryland customers are at risk for higher than normal energy bills due to competitive supplier exposure to the wholesale market in PJM and to the extent they are active, unanticipated costs from other RTO's too.⁴⁰ The market corrections being pursued currently in PJM and other RTO's will not be adopted before the onset of this winter, the 2015 summer, or next year's winter. Accordingly, this Report recommends that the Commission adopt the proposed

Pennsylvania's Office of Competitive Oversight has existed since 2009 -

http://www.puc.state.pa.us/utility_industry/electricity/electric_competitive_market_oversight.aspx.

³⁸ The Commission may also want to review the Memorandum of Understanding between New Jersey's Board of Public Utilities and that state's Office of Attorney General Division of Consumer Affairs to better facilitate data and information transfer so that both agencies can better investigate matters where both may share jurisdiction. During Workgroup discussions, all interested parties appeared willing to pursue additional discussions. See http://articles.philly.com/2014-05-23/business/50033013_1_suppliers-bpu-consumer-complaints.

³⁹ See ex. [US Winter Forecast: Cold, Snow to Seize Northeast; Wintry Blasts to Slick South](http://www.accuweather.com/en/weather-news/us-2014-2015-winter-forecast/35422753); October 24th, 2014; <http://www.accuweather.com/en/weather-news/us-2014-2015-winter-forecast/35422753>.

⁴⁰ During the winter of 2012-2013, Maryland's temperatures were mostly mild with virtually no precipitation (snow, ice, etc.). Storms bypassed Maryland and PJM and, instead struck the New England area, impacting their wholesale market.

regulations below in an expedited manner to provide much needed customer protections before the onset of inclement weather.⁴¹

V. COMAR RECOMMENDATIONS

Attachment A consists of all COMAR amendments proposed in this Report. Below, the Report discusses specific sections of the recommendations.

a) Adoption of a Maryland Choice Disclosure Sheet ("CDS")

Over the last 12 - 24 months, multiple jurisdictions have adopted a variation of a "Schumer Box"⁴² template for competitive choice disclosures of contract terms and conditions.⁴³ Including information about the terms and conditions of a supplier contract in an easy to read format, the CDS would be a visible, easy to maintain and retain document that provides pertinent information about the customer's new Choice contract. While all parties to the PC 35 workgroup process supported the creation of the CDS, the workgroup had differing opinions over the details. Indeed, nearby jurisdictions have also adopted different information required to be on the form. There are differences in display as well. In Pennsylvania, competitive suppliers are allowed to incorporate the template into other marketing and advertising information. On the other hand, in New Jersey, the template must be a separate 8.5x11 piece of paper.⁴⁴

⁴¹ The Commission can adopt emergency regulations under Md. State Government Code Ann. § 10-111(b). Several other states in PJM and elsewhere across the east coast have already adopted regulations similar to those proposed herein.

⁴² The Schumer Box is named after Charles Schumer, the New York congressman (now United States senator) that sponsored legislation requiring clearly outlined credit cards terms. While the Schumer Box is the inspiration for the Competitive Choice templates, Schumer Box refers specifically to credit card terms. To avoid any confusion, and with all due respect to Senator Schumer, this Report recommends adoption of a different name. Other states have taken a similar approach.

⁴³ Pennsylvania, New Jersey, New York are among the jurisdictions that have adopted disclosure templates.

⁴⁴ See 52 Pa. Code § 54.5 *Disclosure statement for residential and small business customers*; and Docket No. Ex14060579 *In the Matter of the Third Party Suppliers-N.J.A.C. 14:4 Et. Seq. The Board's Review of Consumer Protection Provisions of its rules concerning third party Suppliers* 10/10/14.

After reviewing samples of templates in use currently in Pennsylvania and after discussions with other parties regarding use of the forms, this Report recommends a format similar to that adopted recently in New Jersey. Upon adoption of the recommendations in this Report, customers will be provided the information on the CDS at the time of enrollment during door to door enrollments, and on a Telephone Verification (“TPV”) for telephone contracts.⁴⁵ In all instances, the CDS shall be included in the supplier welcome materials sent to the customer by the supplier. Regulations to that end are incorporated into the proposed regulations below.

A sample Choice Disclosure Sheet is included with this Report in Appendix B.

b) Notice of Rate Change and Imposition of new fees, if any; Elimination of Evergreen Renewal if material contract terms change;

As a fairly new industry developed product for the retail mass market customer, Maryland’s current COMAR has no provisions for variable rate contracts. In the absence of customer protections covering this product, suppliers have implemented various contract terms. These terms have varied significantly from supplier to supplier. For example, some suppliers advertise variable rate agreements that are advertised as needing no contract.⁴⁶ Other suppliers offer thirty day contracts that take advantage of Maryland’s allowance of evergreen, or automatically renewing contracts. Some suppliers offer contracts that are both variable and fixed over a set period from a few months to a year or more. Responses to the Commission’s data

⁴⁵ Md. COMMERCIAL LAW Code Ann. §§14-2201—14-2205.

⁴⁶ Examples of this marketing language can be found easily on the Commission’s new website. The language is submitted by suppliers and is not monitored or edited by the Commission or any other party.

requests in PC35 suggest that some suppliers seek prior notice of thirty to forty five days notice prior to contract cancellation.⁴⁷

The differences in material terms and conditions can be confusing for some customers. This Report already recommends the establishment of disclosures at the time of contracting that would provide clear, easy to read information for customers. While the disclosures are necessary during the time of initial enrollment, there is no additional notice in subsequent months when the rate changes.

For fixed rate contracts, Maryland has customer protections to afford customers with notice in advance of the evergreen renewal.⁴⁸ If the customer no longer wants to maintain the contract, the notice affords the customer an opportunity to cancel the contract and return to regulated utility standard offer service or select another supplier. The Notice is sent to the customer 45 days in advance of contract renewal, which is enough time for the customer to switch without being billed under the new contract rates. A creation of the competitive market, no current suppliers offer a variable rate product that affords customers with an option to receive notice of their rate for the current month *before* it is billed. For all variable rate customers, like Mr. Smith above, the first time the customer knows what they have been billed for the prior month's usage is after the switching period has passed,⁴⁹ the supplier has established the rate and submitted the debt to the utility for purchase through the company's purchase of receivable program and the bill has been generated, mailed and received by the customer. The experience of opening this unexpected higher than normal bill is the basis for the term "bill shock".

⁴⁷ In case 9324, Starion's Terms and Conditions required 30 days written advance notice.

⁴⁸ COMAR 20.53.07.08(C)(1).

For residential customers, there are no comparable products or services that provide the price for the product after it is consumed, without notice or option beyond refusing the product outright prior to consumption. Customers certainly can choose to NOT select a variable rate product; however some customers have found themselves on variable rate contracts upon expiration of a fixed rate contract.⁵⁰ Others have selected variable rate products in reliance on marketing materials that promise low rates and cancellation flexibility.

This Report therefore recommends that the Commission expeditiously adopt the regulations below that would provide for a notice of change in rate *prior* to the rate being billed to customers and, a “soft verification” that demonstrates the customer’s willingness to maintain the revised agreement with new rates and or fees. Some suppliers may find this to be a challenging concept since it contradicts the real time or even day ahead purchase of energy on the whole sale market.⁵¹ During workgroup discussions, some parties expressed concerns that customers would be “bothered” at repeated requests to confirm that a contract should continue under new rates. However, in reviewing hundreds of consumer complaints and after speaking with representatives of the OER and in comparable offices in other states, the primary complaint customers have raised is the failure or lack of notice of the impending larger than normal bill,

⁴⁹ COMAR 20.53.04.01-04.

⁵⁰ In Pennsylvania, if a customer fails to respond to a renewal notice, 52 Pa. Code § 54.10(3) grants customers the option to cancel an evergreen renewed contract without cancellation fee. Pennsylvania recently adopted a 30 day notice of a change in rates and terms requirement on variable rate evergreen renewed contracts. This has resulted in suppliers offering variable rate contracts at the conclusion of the fixed term contract. While Maryland did not adopt regulations with this requirement, suppliers here have adopted the practice of evergreen renewing fixed contracts with variable rate terms.

⁵¹ This argument was raised in comments filed by the National Energy Marketers Association in response to the Commission Technical Staff’s Reply comments. *See* October 3, 2014 National Energy Marketers Association-Comments PC35 at 7, *but See Basic Service Rates for Customers* at https://www.nationalgridus.com/masselectric/non_html/MA_Residential_Table.pdf, where National Grid in

with many concluding that choice is untrustworthy and decidedly swearing off the market in its entirety.

Notice in advance of an increase in rates may cause some challenges for suppliers, however no other solution truly provides the protection the Commission is statutorily tasked with providing customers.⁵² Upfront disclosures are helpful; government managed educational campaigns will eventually guide customers as well. The Commission is not empowered with the authority to regulate supplier rates; there is no real benefit in tying notice disclosures to capped rates, be they percentage of the whole or other marker, since the capped rate would become the floor for the next month's rate.⁵³ The only way to make certain customers area aware of a change in an agreed upon price is if they are notified in advance before being billed and, have the option of changing the product choice or the supplier.

Off Cycle Switching

While discussed within the Technical Staff lead Supplier Coordinating Working Group for some time, the current genesis of this recommendation began during Case 9340. There, the PC 35 Workgroup leader recommended a temporary waiver of Maryland's switching regulations to allow customers to contact regulated utilities and switch from their competitive supplier.⁵⁴ The concern at that time was that customers were hostage to competitive supplier variable rate contracts that renewed every month. OER received numerous complaints from customers of

Massachusetts are being encouraged to select a supplier to insulate them from regulated utility variable rates as high as \$0.22 per kWh. In those instances, the rate is known and published for each month, in advance.

⁵² See Md. PUBLIC UTILITIES Code Ann. § 7-604 (2014) (Gas Choice) and Md. PUBLIC UTILITIES Code Ann. § 7-507 (2014) (Electric Choice)

⁵³ Capped rates tied to disclosure requirements would simply invite increases just below the cap ceiling, thereby increasing rates and not invoking the notice requirement.

competitive suppliers delivering supply to the retail mass market through real time or day ahead purchase in an wholesale market. Despite hours, and in some cases days or weeks of effort, customers could not contact suppliers to ask questions about the rate or exercise their options to cancel their variable rate contract. In turn, the suppliers were unprepared for the wave of customer questions and concerns about the higher than normal prices in their variable rate bill and, were unable to answer calls. Additionally, suppliers alerted the Commission that additional higher than normal rates for customers would be billed in upcoming months.⁵⁵ Finally, as noted by the Commission in case 9340, the Commission's regulations did indeed contribute to this situation.⁵⁶ Faster switches were a solution when customers had already experienced bill shock, had received a bill and wished to cancel their contract before another bill accrues; faster switches do not contribute to the prevention of bill shock or, a higher billed rate in the first place. The proposed regulations herein endeavor to empower customers with information prior to the receipt of an unexpectedly large bill and when our utilities are ready to implement the solution, would allow a customer to switch from the unfavorable rate in an expedited manner.

The delay is appropriate in this instance, since the off-cycle switching requires regulated utility billing system changes that have to be implemented and tested before launch. Several states, in response to the Polar Vortex, incorporated off cycle or more rapid switching into their package of regulatory solutions.⁵⁷ However, New York's Technical Staff, initially supportive of off cycle

⁵⁴ See *Office of External Relations - Comments on Complaint Winter High Bill Status*. Case No. 9340 (ML 153185), March 11, 2014.

⁵⁵ Mr. Smith's experience, noted above, demonstrates this fact.

⁵⁶ Order No. 86293, April 11, 2014, at 6.

⁵⁷ See *ex. Public Act No. 14-75*, signed into law by Connecticut Governor Dannel P. Malloy, adopting a customer "Bill of Rights" in Connecticut, one of which is "quick switching, to prevent customers from being stuck for multiple billing periods with a competitive supplier charging excessive rates".

switching, abandoned the idea after the state's utilities explained that "off-cycle switching cannot be accomplished in a timely and cost-effective manner at this time".⁵⁸ During the PC35 workgroup meetings and in filed comments, Maryland's utilities raised similar concerns regarding more rapid implementation of off-cycle switching.⁵⁹ Off cycle switching gives customers more time to switch during the billing cycle, before they receive a new bill with higher than expected rates. It's useful however, *only* if the customer receives notice *in advance* of receiving the impending higher bill.

In addition, several parties expressed interest in other technical enhancements to Maryland's competitive market, including supplier coordinated billing and remote bill look up, both of which may require changes to utility billing systems. It would therefore make sense for the Commission to direct additional discussions by another work group and, incorporate discussions about this and other solutions into discussions about off cycle switching. This group's goal would be to implement the next phase of supplier choice in Maryland in a coordinated manner, instead of adopting one solution and then going back to adopt other changes at a later date.

c) Empower OER to direct suppliers to refund all money paid to supplier under POR when COMAR violation has occurred and refer disputes to Commission for further investigation;

In instances where OER determines that a supplier enrollment was unauthorized, COMAR currently allows the OER to direct the supplier to refund any overcharge and / or fees

⁵⁸ See *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 12-M-0476, October 17, 2014.

or penalties paid by the customer.⁶⁰ This modification recommends a revision to this provision that directs the Supplier to refund ALL funds paid for that customer through purchase of receivables. The customer will then be rebilled by the regulated utility at the default service rate. This revision is intended to eliminate any opportunity for suppliers to have financial gain through unauthorized enrollments by providing a refund that brings the customer's bill to the same rate as that that would have been paid by the customer had the account been serviced by default service.

d) Offers made to Maryland mass market customers shall be submitted and posted on Commission website (high and low price offered to customers for the month)

Maryland law requires that all suppliers post their offers online at the Commission's website.⁶¹ This update incorporates this requirement into COMAR.

e) Clarify that only customer of record can enroll account with supplier

Maryland law empowers the customer of record with authority to make changes to or decisions about the account.⁶² This includes filing disputes, forwarding billing information to third parties and authorizing distribution of account information to third parties. These proposed regulations clarify that only the customer of record may enter into a contract for competitive supply (not a person who claims to have authority to make changes to the account).

f) Customers may contact the regulated utility to cancel service if the supplier is unavailable or unresponsive.

This section adopts regulations to allow a customer to contact the regulated utility and switch to standard offer service only after attempting to contact the competitive supplier.

⁵⁹ For example, Pepco noted that they were launching a new billing computer system called Solution One. Pepco raised concerns that changes to this system could not be initiated until the new system was up and running. BGE filed comments requesting at least a year before system billing changes could be completed.

⁶⁰ COMAR 20.53.07.05(D)(2).

Allowing the utility to submit the drop on the customer's behalf offers an extra layer of protection to residential customers – a protection that is afforded nonresidential customers under COMAR today.⁶³ The Report notes that customer initiated switches through the regulated utility does expose the utility to customer anger in the event a drop actually results in higher rates or fees and, does open the door for drops due to “buyer remorse”. However, in written comments all Maryland utilities and advocates expressed support for this revision.

Competitive suppliers wanted to retain the ability to “win back” the customer by counter offering the expressed desire to cancel a contract. This rationale was used during the development of the original consumer protection regulations, which proposed and required that a consumer contact the supplier to effect a cancellation of the contract, not the utility. In recognition of this, this Report recommends the Commission task the newly created CEAB with the authority to revise the utility cancellation letters to incorporate information about the Commission's website so that the customer has the option to select another supplier if desired. The CEAB could also develop best practices that would allow the utility to inform the customer about the option to select another supplier to effect a cancellation.

(g) No early termination fees purchased through purchase of receivables

The Commission has long determined that suppliers may not “pass through” early termination fees for payment under a utility's purchase of receivable program. This regulation reinforces this understanding.

(h) Update to definitions

⁶¹ Md. PUBLIC UTILITIES Code Ann. § 7-510.1 (2014).

⁶² See *ex* the definition of “Customer” in COMAR 20.32.01.02(B)(2); 20.31.01.02 (B)(2).

While self explanatory, it should be noted that the Report also introduces a definition for the phrase “Third Party Verification” to confirm that the “verifier” is not doubling as the sales representative for the competitive supplier. This definition update cannot supersede the Door to Door Sales Act⁶⁴ or the Maryland Telephone Solicitations Act⁶⁵ requirements for a signed contract after a marketing effort at the door of the customer or through a telemarketing cold call.

(i) Budget Billing

During case 9340, the PSC PC 35 Leader also recommended that the Commission query the utilities to make certain competitive supplier arrearages were included in budget billing solutions. The concern arose out of utility inspired solutions to anticipated high usage complaints. Specifically, several utilities invited customers to contact the company and if necessary enroll in budget billing and, roll in a certain amount of arrears that accrued during the Polar Vortex period. Since the overwhelming majority of customer complaints were the result of variable rate contracts from competitive suppliers, it was important to make sure that the budget billing offers incorporated purchased supplier receivables.

Additionally, the Governor’s Office offered \$20 million of assistance for low income customers. Low income customers receive their benefits by payment through the Office of Home Energy Programs. To apply those funds evenly for twelve months, the utilities apply the grant money through the utility budget billing programs. OHEP applied a onetime grant to the accounts of those customers who had already received grant assistance, leaving some funds for customers who had yet to apply.

⁶³ COMAR 20.53.06.06(D) - Customer Cancellation.

⁶⁴ MD Code Annotated Comm. Law §14-301 *et. seq.*

All participants of the PC35 workgroup agreed that budget billing for supplier charges should not be offered through the utility budget billing programs. Suppliers believed this to be a competitive offer, one that would help differentiate one supplier's offers from another. Utilities did not want to explore the complex billing system changes that would require, among other things, that they would need to purchase estimated supplier receivables without prior knowledge of the rate a supplier may charge, carry those costs and then true up the debt as time passes. Advocates expressed concerns that the budget billing would hide higher than normal rates from customers, thereby masking billing signals that would encourage a customer to find another competitive supplier or return to regulated default service.

This Report agrees with the parties in the group and recommends that to the extent suppliers want to offer budget billing options, it should remain a competitive offer.

(j) Image and appearance of entities representing suppliers

OER has received complaints from customers who were upset over a marketing experience with a supplier but, when calling to complain the customer is unable to recall any details about the sales representative. Some companies use independent third party companies to manage their door to door solicitations, while other companies employ a "warm marketing" or friends and family approach.⁶⁶ Currently, COMAR does not require licensing of third party

⁶⁵ MD Code Annotated Comm. Law § 14-2201 *et. seq.*

⁶⁶ See *ex. In The Matter of the Complaint of The Staff of the Public Service Commission Against Viridian Energy PA, LLC*, Case 9255. Viridian used a "friends and family" model, which encourages Viridian representatives to invite their friends and family members to enter into a contract for Viridian supply. Warm marketing solutions typically do not include door to door marketing.

marketing entities which could include any person or corporation, but county, municipal and incorporated towns in Maryland have various door to door registration requirements.⁶⁷

Most suppliers that use licensed brokers to market their own products or, that employ their own door to door sales representatives, have voluntarily adopted dress codes and other uniquely identifiable clothing and attire so that customers will know that the representative is not from the regulated utility. These suppliers also provide training materials and other direction to the unlicensed representatives, so that they are familiar with the product or service being marketed. Suppliers furthermore have been very clear that they are completely responsible for the marketing practices of their unlicensed representatives.

This Report recommends further exploration of ways to ensure that customers are able to know who is at their door when someone knocks. In the interim, the regulations below recommend adoption of a filing requirement for all suppliers. It includes a requirement directing licensed suppliers to adopt and incorporate guidelines into their training materials for unlicensed representatives. The guidelines will require that unlicensed representatives wear clothing or other identifiable items that makes clear to the customer that the representative represents a competitive supplier. The regulations below also require that licensed suppliers file and maintain current information with the Commission regarding their marketing representative's appearance when marketing on behalf of their company. Finally, the regulations below recommend that all suppliers active in door to door marketing through third party representatives state affirmatively

⁶⁷ For example, Howard County requires all door to door sales representatives to register with the Howard County Office of Consumer Affairs where they will be assigned a card that must be shown to the homeowner upon request.

that the representatives are in compliance with all local door to door, peddler or solicitation requirements.

VI. CONCLUSION

As PSC Leader, I am pleased to have worked on this important project. I thank the Commission for the opportunity and the parties for their courtesy and professional participation.

APPENDIX A
DRAFT REGULATIONS

Title 20

PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY
Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes to revise Regulations .02 under COMAR 20.53.01

.02 Definitions.

A. – (2) – Text Unchanged

(3) "Consumer" or "Customer" [has the meaning stated in Public Utilities Article, §7-501, Annotated Code of Maryland] means the regulated utility retail electric customer account holder.

(4) "Choice Disclosure Sheet" means a summary of the material terms and conditions of a competitive choice contract, on a form provided by the Commission.

~~(4)~~ (5) – (10) – Text Unchanged

~~[(10)~~ (11) "Evergreen contract" means an existing contract that automatically renews without any action by the customer].

~~(11)~~ (12) - ~~(13)~~ (14) - Text Unchanged

~~(14)~~ (15) "Third Party Verification or TPV" means a recorded audio or video statement that includes all material terms and is recorded by an independent person or company that is not party to the agreement.

~~(15)~~ (16) - ~~(16)~~ (17) - Text Unchanged

Title 20
PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY
Chapter 04 Transfers of Service
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action
The Public Service Commission proposes new Regulations .05 under COMAR 20.53.04

.05 Customer Initiated Drops

A. Customer Cancellation.

(1) After the third utility business day following a customer request for a supplier to cancel supply service, the customer may contact the utility to verify that the cancellation request submitted by the supplier has been processed by the utility.

(2) If a customer's cancellation request has not been processed by the customer's supplier, and the customer requests cancellation of supplier service, the utility shall process a cancellation.

B. A supplier may not include cancellation provisions in its contract for service that would limit or waive this provision.

Title 20
PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY
Chapter 07 Residential Customer Protection
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes to revise Regulations .05 under COMAR 20.53.07

.05 Unauthorized Enrollment or Service.

A. A supplier may not enroll a customer without the customer's affirmative consent.

B. The customer's choice of electricity supplier is the electricity supplier with the last enrollment of the customer received by the utility 12 days before the customer's next meter reading or end of the current bill cycle. [date].

C – D(1) – Text Unchanged

(2) Upon proof of the allegations, the customer's remedy through the Commission's Office of External Relations may direct a refund of all charges [overcharge] and any fees or penalties paid by the customer or purchased by the utility as a result of the unauthorized enrollment

(i) If the charges have not been paid by the customer, and the receivable has been purchased by the regulated utility, the refund shall be remitted to the utility.

(ii) If the charges have been paid by the customer, the refund shall be credited to the customers' account or returned to the customer.

E. – Text Unchanged

Title 20
PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY
Chapter 07 Residential Customer Protection
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes to revise Regulations .07 under COMAR 20.53.07

.07 (A)(1) - .07(A)(2) – Text Unchanged

B. Disclosures

(1) All supplier[s] marketing or solicitation information shall include the supplier's Maryland license number in a clear and conspicuous manner.

.07(B)(2) - .07(B)(2)(c) – Text Unchanged

C. Internet Advertising. A supplier shall post on the Internet and the Commission's website current and readily understandable information about its services, prices, and emissions disclosures according to instructions provided by the Commission.

.07(D)(1) - .08(A)(2)(c) – Text Unchanged

(d) A price description of each service, including all [fixed and variable] costs;

.08(A)(2)(e) - .08(A)(2)(k)(ii) – Text Unchanged

(iii) Duration of the notice period before early supplier cancellation; and

.08(A)(2)(k)(iv) - .08(A)(2)(l)(ii) – Text Unchanged

(iii) [Duration of the notice period before early cancellation];

.08(A)(2)(l)(~~iv~~) (iii) - .08(A)(2)(o) – Text Unchanged

B. Choice Disclosure Sheet or CDS

A. At the time of enrollment, a supplier shall provide a copy of a completed Choice Disclosure Sheet template provided by the Commission.

1. If enrollment is completed through telephone solicitation, the Supplier shall include the Choice Disclosure Sheet with the contracting documents as required by the Maryland Telephone Solicitation Act.

2. If enrollment is exempt from the Maryland Telephone Solicitation Act, the terms of the Choice Disclosure Sheet shall be incorporated into the TPV and shall be included in any terms and conditions or welcome packet mailed by the supplier to the customer.

3. If enrollment is completed through the Internet, the Choice Disclosure Sheet shall be:

a. Available online and made available for download by the customer at the time of enrollment;
or

b. Shall be emailed to the customer by the supplier if the customer consents to receipt of email disclosures.

4. If the enrollment is completed in person, the Choice Disclosure Sheet shall be given to the customer by the supplier at the time of contracting.

.08(C) Methods of Contracting - .08(C)(4)(c) – Text Unchanged

C. [Evergreen Contracts] Customer Approval Required for Change in Rate

[(1) A supplier shall provide a customer with notice of the pending renewal of an evergreen contract 45 days before the automatic renewal is scheduled to occur.]

(1) A Supplier shall provide a customer 30 days notice in advance of a proposed rate change on an existing contract.

.08(C)(2) - Text Unchanged

(a) Provide a clearly stated and highlighted notice to a customer of [any] all changes in the material terms and conditions [of the agreement];

(b) Inform the customer how to terminate the contract without penalty; [and]

(c) Inform the customer that terminating the [evergreen] contract without selecting another supplier will return the customer to utility commodity service; and

(D) Obtain approval from the customer to maintain the contract under the new rate, terms and conditions.

(1) Notice and approval can be obtained in writing, via electronic means or through telephone verification.

(2) Approval is not a new enrollment that must be submitted to the utility under COMAR 20.53.04.02.

(3) If approval is not obtained by the Supplier within 15 days of the customer's meter reading or billing date, the supplier shall

(a) Return the customer to Standard Offer Service; or

(b) Continue to bill at the prior agreed upon rate.

(E) The Supplier shall retain proof of the approval for a period of 3 years and provide it to the Commission upon request.

Title 20
PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY
Chapter 07 Residential Customer Protection
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action
The Public Service Commission proposes to revise Regulations .09 under COMAR 20.53.07

.09 Customer Disclosure.

A. Price Information.

(1) The supplier's price for service shall include all [fixed and variable] components.

.09(A)(2) - Text Unchanged

B. Notice of Enrollment.

(1) Except when a contract is assigned or transferred to a new Supplier, an electricity supplier shall provide notice of enrollment of a customer to a utility in a format consistent with the Commission-accepted electric utility supplier coordination agreement.

.09(B)(2) - .09(B)(3)(j) - Text Unchanged

Title 20
PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY
Chapter 07 Residential Customer Protection
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action
The Public Service Commission proposes to revise Regulations .10 under COMAR 20.53.07

.10(A) - .10(C)(2)(b) - Text Unchanged

(3) Except as provided in COMAR 20.53.04.05, a tariff regarding supplier default, a utility may remove a customer from supplier services only if directed by a supplier, subject to applicable bankruptcy law.

Title 20
PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY
Chapter 07 Residential Customer Protection
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes to revise Regulations .11 under COMAR 20.53.07

.11 Rescission Period.

A supplier is not required to offer a contract rescission period except where required by law.

PUBLIC SERVICE COMMISSION
Subtitle 53 COMPETITIVE ELECTRICITY SUPPLY

Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes NEW Regulations .12 under COMAR 20.53.07

.12 Assignment of Contract

(A) Upon assignment or transfer of a Supplier contract from one Supplier to Another, the Suppliers shall jointly:

(1) Send a letter to the Customer informing them of the assignment or transfer. The letter shall include:

(a) A description of the transaction in straightforward language;

(b) A copy of the Customer Disclosure Statement with the current terms and conditions; and

(c) A means for the Customer to contact the Assignee for additional information.

(2) The terms and conditions of the customer's contract at the time of assignment shall remain the same for at least one billing cycle after the customer receives the customer disclosure statement; and

(3) File Notice with the Commission of the Assignment or Transfer of the Customer Contracts and include a copy of the letter sent to customers.

(B) An Assignment or Transfer of a Supplier Contract from one Supplier to another is not an enrollment under COMAR 20.53.04.

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .02 under COMAR 20.59.01

.02 Definitions.

.02(A) – .02(B)(3) – Text Unchanged

(4) "Consumer" or "Customer" [has the meaning stated in Public Utilities Article, §7-501, Annotated Code of Maryland] means the regulated utility retail electric customer account holder.

(5) "Choice Disclosure Sheet" means a summary of the material terms and conditions of a competitive choice contract, on a form provided by the Commission.

~~(5)~~ (6) – (10) – Text Unchanged

~~{(10)}~~ (11) "Evergreen contract" means an existing contract that automatically renews at the same or different terms, conditions or rates without any action by the customer].

~~(11)~~ (12) - ~~(13)~~ (15) - Text Unchanged

~~(14)~~ (16) "Third Party Verification or TPV" means a recorded audio or video statement that includes all material terms and is recorded by an independent person or company that is not party to the agreement.

.02(B)(16) - .02(B)(17) - Text Unchanged.

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 07 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .05 under COMAR 20.59.07

.05(A) - .05(D)(1) – Text Unchanged.

(2) Upon proof of the allegations, the customer's remedy through the Commission's Office of External Relations is limited to a refund of all charges [overcharge] and any fees or penalties paid by the customer or purchased by the utility as a result of the unauthorized enrollment

(i) If the charges have not been paid by the customer, and the receivable has been purchased by the regulated utility, the Supplier shall remit the refund to the utility.

(ii) If the charges have been paid by the customer, the refund shall be credited to the customer's account or returned to the customer.

.05(E) – Text Unchanged

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 07 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .05 under COMAR 20.59.07

.07(A) – Text Unchanged.

B. Disclosures.

(1) All supplier[s] marketing or solicitation information shall include the supplier's Maryland license number in a clear and conspicuous manner.

.07(B)(2) - .07(D)(2) – Text Unchanged

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 07 General
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .08 under COMAR 20.59.01

.08(A) - .08(A)(2)(c) – Text Unchanged.

(d) A price description of each service, [including all fixed and variable costs]

.08(A)(2)(e) – .08(A)(2)(k)(i) Text Unchanged

(ii) Manner in which the supplier shall notify the customer of the early cancellation of the contract; and

[(iii) Duration of the notice period before early cancellation; and]

.08(A)(2)(l) - .08(A)(2)(o) Text Unchanged

B. Choice Disclosure Sheet or CDS

A. A. At the time of enrollment, a supplier shall provide a copy of a completed Choice Disclosure Sheet template provided by the Commission.

1. If enrollment is completed through a telephone solicitation, the Supplier shall include the Choice Disclosure Sheet with the contracting documents required by the Maryland Telephone Solicitation Act.

2. If enrollment is exempt from the Maryland Telephone Solicitation Act, the terms of the Choice Disclosure Sheet shall be incorporated into the TPV and shall be included in any terms and conditions or welcome packet mailed by the supplier to the customer.

3. If enrollment is completed through the Internet, the Choice Disclosure Sheet shall be

a. Available online and made available for download by the customer at the time of enrollment;
or

b. Shall be emailed to the customer by the supplier if the customer consents to receipt of email disclosures.

4. If the enrollment is completed in person, the Choice Disclosure Sheet shall be given to the customer by the supplier at the time of contracting.

.08[(B))(C) - .08(C) Text Unchanged

C. [Evergreen Contracts] Customer Approval Required for Change in Rate

[(1) A supplier shall provide a customer with a notice of the pending renewal of an evergreen contract 45 days before the automatic renewal is scheduled to occur.]

(1) A Supplier shall provide a customer 30 days notice in advance of a proposed rate change on an existing contract.

.08(C)(2) - Text Unchanged

(a) Provide a clearly stated and highlighted notice to a customer of [any] all changes in the material terms and conditions [of the agreement];

(b) Inform the customer how to terminate the contract without penalty; [and]

(c) Inform the customer that terminating the [evergreen] contract without selecting another supplier will return the customer to utility commodity service; and

(D) Obtain approval from the customer to maintain the contract under the new rate, terms and conditions.

(1) Notice and approval can be obtained in writing, via electronic means or through telephone verification.

(2) Approval is not a new enrollment that must be submitted to the utility under COMAR 20.53.04.02.

(3) If approval is not obtained by the Supplier within 15 days of the customer's billing date, the supplier shall

(a) Return the customer to Standard Offer Service; or

(b) Continue to bill at the prior agreed upon rate.

(E) The Supplier shall retain proof of the approval for a period of 3 years and provide it to the Commission upon request.

**PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 07 General**

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .09 under COMAR 20.59.01

A. Price Information.

(1) A supplier's price for service shall include all [fixed and variable] components.

.09(A)(2) - Text Unchanged

B. Notice of Enrollment.

(1) Except when a contract is assigned or transferred to a new Supplier, A gas supplier shall provide notice of enrollment of a customer to a utility in a format consistent with the Commission-accepted gas utility supplier coordination agreement or tariff, as applicable.

.09(B)(2) - .09(B)(3)(j) - Text Unchanged

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 07 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .10 under COMAR 20.59.01

.10 Notice of Contract Expiration or Cancellation.

A. Notice. A supplier shall provide the customer with notice [45] 30 days before expiration or cancellation of a supply contract.

.10(B) - .10(C)(2)(b) - Text Unchanged

(3) Except as provided in COMAR 20.59.04.04, OR a tariff providing for a supplier default, a utility may remove a customer from supplier services only if directed by a supplier, subject to applicable bankruptcy law.

.10(C)(4) - .10(C)(5) Text Unchanged

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 07 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .11 under COMAR 20.59.01

.11 Rescission Period.

A Supplier is not required to offer a contract recession period except where required by law.

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 07 General
Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .12 under COMAR 20.59.01

.12 Assignment of Contract

(A) Upon assignment or transfer of a Supplier contract from one Supplier to Another, the Suppliers shall jointly:

(1) Send a letter to the Customer informing them of the assignment or transfer. The letter shall include;

(a) A description of the transaction in straightforward language;

(b) A copy of the Customer Disclosure Statement with the current terms and conditions; and

(c) A means for the Customer to contact the Assignee for additional information.

(2) The terms and conditions of the customer's contract at the time of assignment shall remain the same for at least one billing cycle after the customer receives the customer disclosure statement; and

(3) File Notice with the Commission of the Assignment or Transfer of the Customer Contracts and include a copy of the letter sent to customers.

(B) An Assignment or Transfer of a Supplier Contract from one Supplier to another is not an enrollment under COMAR 20.53.04.

PUBLIC SERVICE COMMISSION
Subtitle 59 COMPETITIVE GAS SUPPLY
Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-604 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes new Regulations .12 under COMAR 20.59.04.04

.13 Customer Initiated Drops

A. Customer Cancellation.

(1) After the third utility business day following a customer request for a supplier to cancel supply service, the customer may contact the utility to verify that the cancellation request submitted by the supplier has been processed by the utility.

(2) If a customer's cancellation request has not been processed by the customer's utility, and the customer requests cancellation of supplier service, the utility shall process a cancellation.

B. A supplier shall not include cancellation provisions in its contract for service that would limit or waive this provision.

C. A Supplier may not charge an early cancellation fee for a customer request to cancel supply service.

PUBLIC SERVICE COMMISSION
Subtitle 32 DISPUTE RESOLUTION
Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .01 under COMAR 20.32.01

.01 Applicability.

A. This subtitle applies to all electric companies, gas companies, combination gas and electric companies, telephone companies, licensed suppliers, licensed brokers as applicable, and water companies under the jurisdiction of the Public Service Commission.

01B. – Text Unchanged

PUBLIC SERVICE COMMISSION
Subtitle 32 DISPUTE RESOLUTION
Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .02 under COMAR 20.32.02

.02(A) - .02(B)(8) – Text Unchanged

(9) "Utility" means an electric company, gas company, combination gas and electric company, telephone company, licensed supplier, licensed broker or water company as defined by Public Utilities Article, §1-101, Annotated Code of Maryland.

PUBLIC SERVICE COMMISSION
Subtitle 32 DISPUTE RESOLUTION
Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .03 under COMAR 20.32.03

.03 Inquiry to Utility.

A. A customer shall initially submit any inquiry or dispute directly to utility, licensed suppliers or licensed brokers as applicable, for resolution.

B. A utility shall investigate a customer dispute or inquiry, and propose a resolution of the dispute to the customer or report its findings to the customer.

.03(C) - .03(G) – Text Unchanged

PUBLIC SERVICE COMMISSION
Subtitle 32 DISPUTE RESOLUTION
Chapter 01 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of
Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .04 under COMAR 20.32.04

.04(A) - .04(N)(1) – Text Unchanged

(2) May not terminate a customer's service or pursue recovery through third party collection efforts of any fees charged to the customer but not purchased by the utility, except for reasons permissible under COMAR 20.31.02.03.

PUBLIC SERVICE COMMISSION
Subtitle 51 ELECTRICITY SUPPLIERS
Chapter 03 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .01 under COMAR 20.51.03

.01(A) - .01(A)(6) – Text Unchanged

(7) The Licensee purchases electric generation from a generating source operating in an Independent System Operator, Regional Transmission Operator, or System Transmission Operator other than in PJM.

(8) A regulatory body, local or county government has initiated a formal investigation in which the licensee, its parent company, affiliate companies or any of its officers is alleged to have violated local, county or state law or regulation;

(9) Persons whose technical and managerial competency upon which the licensee relied upon to obtain the license have either left or have changed responsibility within the company; and

(10) Any change in company unlicensed representative dress code, color scheme, logos or other physically identifiable or wearable materials.

.01(B) - .01(D) – Text Unchanged

PUBLIC SERVICE COMMISSION
Subtitle 51 ELECTRICITY SUPPLIERS
Chapter 02 General

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-507 Annotated Code of Maryland

Notice of Proposed Action

The Public Service Commission proposes revised Regulations .02 under COMAR 20.51.02

.01(A) - .02(D) – Text Unchanged

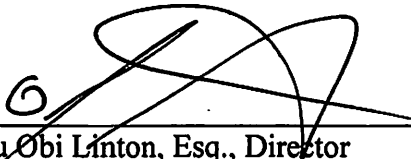
E. The Applicant must provide copies of the training materials offered to the Applicant's unlicensed sales personnel or representatives; as well as the marketing materials that the Applicant will use to advertise to Maryland customers. If training material or marketing material is not available at the time of application, the applicant shall provide such material before commencing business in the state.

F. If the Supplier has adopted a dress code, color scheme, logos or other physically identifiable and wearable materials for use by licensed or unlicensed representatives, the supplier shall file information regarding that code with its application, or at the time of adoption, with the Commission.

G. If engaged in door to door marketing, a statement that the supplier is in compliance with all local, county and State solicitor and peddler registration requirements.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December 2014, a copy of the foregoing "*Revised Appendix A - PC35 Report*" was served by email to the parties that participated in the PC 35 Workgroup.

A handwritten signature in black ink, appearing to read 'Odogwu Obi Linton', is written over a horizontal line.

Odogwu Obi Linton, Esq., Director
Office of External Relations
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APPENDIX B

Draft Choice Disclosure Sheet

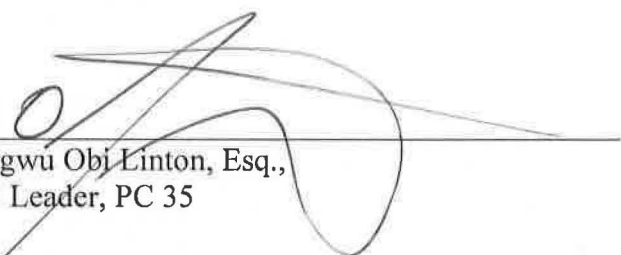
Maryland Choice Disclosure Sheet

Electric Generation Supplier Information	Company name, License Number, Contact Information (email, website AND customer service telephone number for cancellations, questions, renewals, etc). Company logo, slogan or other marketing can appear here too.
Price Structure	Fixed or Variable, Gas
Supply Price	«Rate» «Name» Plus «Monthly Fee» per month
Statement Regarding Savings	The supply price may not always provide a savings.
Incentives	«Marketing Messages» Such as budget billing, renewable energy characteristics, etc. If renewable energy is claimed, specify the renewable energy percentage.
Contract Start Date	Describe when the term of the contract will begin (e.g. next applicable utility meter read date).
Contract Term/Length	Describe the term of the contract (e.g., XX months or XX billing cycles following the Contract Start Date).
Cancellation/Early Termination Fees	Yes, «ETF». Explain when due and how much,
Rescission	Describe any applicable rescission period (e.g. no penalty or fees for termination within X business days of enrollment).
Renewal Terms	Provide a description of renewal terms.

For additional information, please refer to your Terms and Conditions. Please retain this document for your records. If you have any questions regarding this agreement, contact your competitive supplier using the information above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October, 2014, a copy of the foregoing "*Final Report and Recommendation of the Maryland Public Service Commission ("PSC") Leader Public Conference 35*" was served by email to the PC 35 Service list and to parties that have requested it.



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