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Filed electronically and Fedexed to the Maryland PSC on January 19, 2017

# Comments of the Institute for Energy and Environmental Research on PC47 – a study on the advisability of establishing an opt-in electric affordability program

## Submitted to the Maryland Public Service Commission regarding Public Conference 47

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January 19, 2017

In 2016, the Maryland Public Service Commission commissioned a study regarding "the advisability of establishing an opt-in electric affordability program for residential and small business customers."[1] Such a study was envisioned in HB 927 and an identical Senate Bill, SB 1075 introduced in 2016. The study was done by Gabel Associates, a New Jersey-based company.[2] A special focus of the Study was to examine approaches that could improve affordability for low-income households through fixed-price contracts for electricity in place of Standard Offer Service (SOS).

The Study did not recommend a statewide opt-in program for all residential and small business customers, such as the one that began to be implemented in Delaware in 2016. Rather, one of its principal recommendations was that the PSC consider and address "affordability initiatives for low-income customers."[3] This recommendation is crucial in light of the widespread recognition that existing heating and electricity bill payment assistance programs "are not a long-term affordability solution" even though they provide considerable relief by lowering energy burdens.[4]

Fixed-price, long-term contracts (24-month contracts are discussed in the Gabel study) are evidently desirable; indeed, such an option would appear to be essential for the low-income households in view of the poor experience that some have had with variable price retail electricity contracts. Rising prices, particularly in times of severe weather, such as the 2014-

[1] Maryland PSC Opt-In 2017
[2] Gabel 2017; hereafter called the Study
[3] Gabel 2017, pp. 40-41
[4] Gabel 2017, p. 19

2015 polar vortex winter, pose difficult problems. While the study does not mention evictions, it is well-known that conflicts between rent/mortgage payments and energy bill payments are a cause of evictions and foreclosures. In turn, evictions and foreclosures not only inflict terrible distress on the evicted families, but also impose considerable costs on society in the form of costs of shelter and increased emergency medical care, among other things.[5] We therefore support an urgent exploration of fixed-price contracts that offer prices significantly lower than Standard Offer Service for low-income households, including, possibly, contracts longer than 24 months (see below). We also support provision for 'seamless moves' that allow continuity in the retail supply contract if a customer moves within the contract period, so long as it is in the territory of the same distribution utility. Such a provision is more important for low-income households because of the greater frequency of moves in that segment of the population.[6]

The fixed-price, 24-month contract being offered by the Delaware Electric Affordability Program provides an initial positive indication of savings. The main contract price is 17 percent below the Standard Offer Service price; there is as yet no meaningful data on whether low-income households are signing up and benefiting in significant numbers.[7]

One of the most important observations about the Delaware opt-in program, so far the only one comparable to the one Gabel was asked to analyze for Maryland, is how the Delaware PSC managed the process of securing the retail electricity supplier:[8]

> This initiative [taken pursuant to Delaware Senate Bill 160] culminated in the issuance of a competitive Request for Proposals (RFP) in December 2015 by the Delaware Public Service Commission (DE PSC) and, based upon the evaluation of proposals from six different suppliers, the award of a contract in April 2016 to a single supplier as the sole sourced electric supplier to contract with the state of Delaware. The selected supplier effectively became the state-endorsed retail supplier.

While the Study was mainly focused on opt-in approaches to retail electricity supply, it does provide some observations about opt-out approaches as well, such as those characteristic of community choice aggregation (CCA) programs. In typical opt-out programs, no action is needed on the part of the customer to participate. That reduces costs compared to opt-in programs, which require considerable investment in customer acquisition. In CCA programs, governments typically acquire electricity in bulk for a defined group of customers in a particular geographic area, unless customers opt out of the aggregated electricity purchase on their behalf. The programs are similar to the Delaware program in that governments select the supplier(s) who are therefore state vetted and endorsed.

[5] Makhijani, Mills, and Makhijani 2015, pp. 87-91
[6] Gabel 2017, p. 28 and p. 37
[7] Gabel 2017, pp. i-ii
[8] Gabel 2017, p. i

The Study notes the following advantages of opt-out approaches:[9]

> The primary benefits associated with the 'opt-out' model for procuring electricity supply for an aggregated group of residential customers, based upon discussions with several active suppliers that market in various states, and also based upon firm experience, are: 1) substantially lower per-customer acquisition costs for an 'opt-out' aggregation as compared to the direct-marketing approach for acquisition of customers (generally less marketing costs, and a much higher 'success rate'); and 2) the ability to lock-in load and hedge energy costs on a specific day, rather than having to hold a 'direct-marketing' offer open for weeks or months (thereby reducing market risk inherent in the offered fixed price). These factors both contribute to the ability of suppliers active in the 'opt-out' aggregation space to offer better pricing for retail supply under an 'opt-out' model as compared to prices being offered for 'direct-marketing' products.

These benefits would be even more important for low-income households. First, signing up low-income households for an opt-in program would likely entail higher costs than average for a variety of reasons. A critical problem is that some low-income households have had poor experiences of rate increases and unaffordable prices when they opted for retail electricity supply. As the Study notes, the problem has led some states to ban retail electricity supply offerings to low-income households altogether.[10] However, this reduces choice and, in the Maryland context, potentially the opportunity to save money.

The opt-out approach is sometimes considered as reducing customer choice, as noted in the Study:[11]

> The primary objection to the use of an 'opt-out' model for supply procurement for an aggregated group of customers, which has led to some local and state governing bodies to reject its implementation, is that it removes 'choice' from the consumer, and that government should not be making energy choices for consumers.

We do not find this objection to be persuasive. Standard Offer Service is also, in its essence, an opt-out program: the PSC makes the decisions about the parameters of acquisition of electricity supply by Electric Distribution Companies (EDCs). EDCs must also, directly or indirectly, deal with market and reliability rules set by Regional Transmission Operators (RTOs) when they make contracts to acquire electricity. Customers are automatically signed up for Standard Offer Service unless they opt out of Standard Offer Service and choose a retail supplier. Thus,

[9] Gabel 2017, p. 24

[10] Gabel 2017, fn 26 on p. 36; see also the example of Ohio on pp. 21-22 in the context of a state that limits energy bills of low-income households to a certain percentage of their income.

[11] Gabel 2017, p. 24

Community Choice Aggregation programs are, in effect, not essentially different than the requirement that Standard Offer Service be the default supply unless a customer opts out.

This is not a criticism of Standard Offer Service as the default option. It is a reasonable approach under the present circumstances in deregulated states like Maryland. Rather we are simply pointing out that acquisition of supply under Community Choice Aggregation is, in principle, the same from a customer point of view. Government agencies play a key role in both cases. In each instance private parties normally supply the electricity under procurement rules set by a governmental body.[12] An opt-out option exists in both cases. The main difference is that in CCAs, a government agency would normally write the request for proposal and select the supplier(s). However, so long as CCA programs acquire electricity in a transparent and accountable manner and the choice to opt out of CCA is available, they are, philosophically, no different than Standard Offer Service in which electricity is acquired under rules set by PSCs and further constrained by RTOs.

Our main recommendation based on reviewing the Study is that the PSC should focus on opt-out approaches to acquiring electricity at fixed prices for low-income households who are eligible under Maryland rules to receive energy bill assistance. Only about one-third of eligible Maryland households actually receive assistance.[13] For many households, energy burdens remain high even after assistance. National data indicate that evictions or foreclosures occur with some regularity even among households receiving assistance.

The benefits of an opt-out program for low-income households would be greater than an opt-in program, especially in the form of lower cost electricity. The limited funds available for energy bill assistance could therefore be used to assist more households.

While the proposed legislation that was the rationale for the PSC commissioning the study was oriented to an opt-in approach, the study itself is clear that an opt-out approach would be more advantageous for affordability; it also appears to have the support of electricity suppliers:[14]

> …based upon experience and based upon input from several suppliers, an opt-out type of model does appear to offer the potential for greater savings to consumers than may exist in the 'direct-access' retail market. Moreover, an 'opt-out'-based electric supply contract that results in long-term savings for participating customers and includes all necessary consumer protections as established by the procuring agency, if one can be obtained, should be

[12] This discussion applies to investor-owned Electric Distribution Companies acquiring electricity under contract from private parties who participate in regional electricity supply markets under the purview of RTOs.
[13] Makhijani, Mills, and Makhijani 2015, Figure II-2, p. 32. Additional five percent or so get assistance to clear arrearages in bill payments; normally this type of assistance can be accessed only once every seven years.
[14] Gabel 2017, fn 26 on p. 36

juxtaposed against other alternatives, particularly as it pertains to low-income customers, such as the status quo of low income customers shopping on their own in the direct access market, or actions taken in some states on the other end of the spectrum prohibiting customers on assistance programs from participating in the retail choice market altogether, and/or being pooled into a low income customer-specific contract from which there is no ability to opt-out.

Though legislation may be required to implement an opt-out program, nothing prevents the PSC from evaluating and quantifying to the extent possible with available data the affordability benefits that would accompany an opt-out program focused on low-income households. Such an evaluation could initially be focused on the low-income households who apply for assistance. This has several advantages:

- The assistance application is a readily available means for aggregation;
- It would require minimal change to the application to include an opt-out provision – in fact it would be similar to the already existing opt-out provision for the EmPOWER efficiency program.[15]
- It would provide suppliers with a stable market that could gradually expand over time.
- The number of customers would is small enough relative to the Maryland total that it would avoid "the potential market disruption associated with a more broad-based, mass-marketed program."[16]

An opt-out approach for acquiring fixed-price electricity at lower cost than Standard Offer Service would also be an excellent complement to the important systematic solution to the affordability problem: a percentage of income payment program (PIPP). Under such a program, evaluated in 2012 by the Staff of the PSC, energy bills of low-income households would be limited to six percent of gross income.[17] The rest would be covered by public funds. Evidently, any approach that structurally lowered electricity bills would automatically lower the amount of assistance needed. Essentially all the benefits of lower electricity cost would accrue to ratepayers and/or taxpayers in the form of lower costs of energy assistance.

[15] The EmPOWER program for low-income households has faced practical difficulties in implementation such as access to rental properties, structures needing remediation far beyond energy-related weatherization improvements, etc. These obstacles do not apply to acquisition of electricity from suppliers under PSC supervision.
[16] Gabel 2017, p. 41
[17] Maryland AEP 2012

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