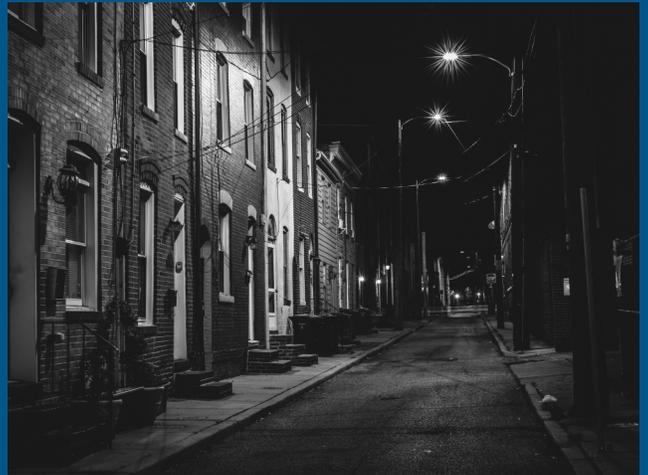

Maryland's Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies

By Laurel Peltier and Arjun Makhijani, Ph.D.

December 2018



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Executive Summary¹

Maryland's Electric Customer Choice and Competition Act of 1999 opened the door to electric retail competition and allowed a variety of third-party supply companies to sell electricity supply and other services to Maryland's consumers. The regulated utilities continue to provide distribution service to all customers, and they supply service to those customers who do not want to purchase it from competitive suppliers. The idea was that a deregulated energy market would provide consumers with choices, spark competition, and "provide economic benefits to all customer classes."² This report examines whether retail competition has benefited residential consumers, especially low-income households. Gas retail competition also is available, subject to the same licensing and consumer protection rules that apply to electric retail competition.

For a variety of reasons, the marketplace for nonregulated suppliers was slow to grow until 2010. The impact, however, during that year was positive: Residential consumers who purchased from non-utility ("third-party") suppliers saved in total about \$20 million, as compared to regulated utility supply prices. Between 2011 and 2013, consumers who switched to third-party suppliers came out about even on the whole.

But from 2014 to 2017, Maryland households have been paying tens of millions of dollars more per year in aggregate to third-party electricity suppliers—about \$255 million more in all than if they had stayed with their utility's supply offer. This adverse outcome for consumers, despite a large number of suppliers, indicates that Maryland's third-party supply residential market has become dysfunctional³; in its current state, it is no longer fulfilling the purpose of the law—to benefit all consumer classes.

¹ References for statements in this summary can be found in the body of the report.

² Maryland Electric Restructuring Act 1999, 20.

³ We use the word "dysfunctional" in the sense that price-based competition, with transparency in the market, should in theory produce lower prices on average, but that is not the case for Maryland's residential customers.

Table ES-1: Maryland residential electricity third-party supply summary 2014-2017

| Year | # On third-party supply | % Supplier rate over SOS | Total overpayment compared to SOS |
|--------------|-------------------------|--------------------------|-----------------------------------|
| 2014 | 477,000 | 15% | \$77 million |
| 2015 | 441,000 | 14% | \$69 million |
| 2016 | 418,000 | 11% | \$50 million |
| 2017 | 400,400 | 16% | \$59 million |
| Total | | | \$225 million |

In this report, we examine the impact of higher rates on low-income households, with a focus on Baltimore City. There are 383,000 low-income households in Maryland that are eligible for government assistance to help reduce energy bills; 20 percent live in Baltimore City alone. Statewide, in 2016, assisted households had an average income of about \$14,700 and average energy bills of about \$2,180—15 percent of income. Many more families live under serious financial stress.

For better insight, we collected data and interviewed clients at a Baltimore City agency that provides a variety of services to low-income Baltimoreans, including energy assistance. Most of the people we interviewed were elderly African-American women. We found the following:

- When compared to Baltimore Gas and Electric Company's (BGE) Standard Offer Service (SOS) rates, the 40 low-income account holders we interviewed paid a 51 percent premium for electricity and a 78 percent premium for natural gas.
- The 40 low-income account holders we interviewed have all applied for, and most have received, financial aid through Maryland's Office of Home Energy Programs (OHEP) to help pay their energy bills. We estimated that over half of the low-income clients who visited the Baltimore City agency for energy assistance in May and June were on third-party supply, more than double the statewide average.
- For a sample of nine energy-assistance clients, we analyzed monthly bill-level data, which revealed that 34 percent of energy-assistance money was negated by higher prices of third-party suppliers.

Since 2009, Public Service Commission (PSC) regulations have allowed regulated utilities to

purchase the suppliers' receivables at a very small discount, effectively shifting the risk of nonpayment of bills to the utilities—and the ratepayers—rather than the companies that charge the high prices. Yet no state agency actually collects and analyzes the impact of third-party supply rates for Maryland consumers, even though federal electricity supplier reporting is available. More remarkably, no government agency assesses the impact of higher rates on energy burdens, though the harms to low-income families caused by unaffordable utility bills are known to be severe.

The outcomes of these policies for low-income consumers are clear:

- Certain consumers face higher utility bills than the regulated utilities' SOS for electricity and gas supply.
- They are at greater risk of nonpayment of utility bills and utility service termination notices.
- There is a decreased effectiveness of limited energy assistance dollars in reducing high energy costs.
- Third-party suppliers are incentivized to charge high rates because they no longer bear the risk of nonpayment—a phenomenon known in economics as "moral hazard."
- The already-severe economic stresses faced by low-income families are intensified by high energy bills, thereby magnifying the damage to low-income families (e.g., ill health, homelessness, loss of productivity). Maryland also incurs substantial costs in the form of added emergency room visits, shelter for the homeless, and other economic and social losses.

The report offers the following recommendations:

1. The PSC should be required to annually collect and report actual bill-level data for consumers by zip code. These data would reveal the scope of overpayments if they continue to exist, or estimate customer savings, if any, and would verify whether they disproportionately affect low-income households as our data and analyses from other states suggest.
2. Residential customers who want third-party supply should only be served by some form of aggregated supply that would ensure lower costs. We are not recommending the end of third-party supply for the residential sector but are advocating for the end of marketing to and contracting with households for third-party supply on an individual basis with a very restricted exception of 100 percent renewable energy procurement. There are tested approaches to such aggregated contracts. For example, Ohio and Delaware have such programs that guarantee savings to low-income households.
3. A comprehensive program that uses the competitive supply market to ensure lower costs for all low-income households getting assistance should be put into place. All other households, including non-low-income households, should be allowed to opt-in to such programs, if they choose.
4. Variable rate contracts should not be permitted for residential customers.
5. Consumers should be allowed to terminate third-party energy supply contracts without early termination fees.
6. For consumers who choose third-party supply, utility bills should prominently display that the customer saved Y dollars or paid X dollars extra for that month by being on third-party supply.
7. Some marketing practices to low-income households in Baltimore appear to be similar to those condemned by the PSC in 2014. We strongly recommend that the PSC initiate a broad and thorough investigation into marketing practices affecting low-income households and also more actively enforce current regulations.

Unlike many issues facing the state, improving consumer outcomes quickly and effectively seems a realistic goal. Maryland has many good models to study and consider, and we offer a list of common-sense reforms to dramatically improve a marketplace that is currently not functioning to the benefit of Maryland households, especially low-income residents.

Introduction

The utility bill is an essential part of everyday life. When these monthly statements arrive, most people look at the amount due and pay it, rarely glancing at the details. All too often, however, low-income households cannot afford all the bills that are due. Those who fall behind on payment of utility bills can build up a large balance due and thus risk termination of electricity or natural gas supply. They may also be unable to pay for other essentials, like food, medicine, and rent. High residential utility costs can cause a large variety of serious harms to people and also damage the state's economy in the form of lower productivity, loss of time at school and work, and higher medical costs.

In this report, we examine the impact that Maryland’s Electric Customer Choice and Competition Act of 1999 (Energy Choice Act) has had on residential electricity and natural gas costs, with a special focus on low-income households. Like other states, Maryland’s legislature assumed that increased energy supply competition would lower costs and benefit the economy and people of the state. To examine the results for Maryland’s households, we begin with a few basics about the electricity deregulation law.

Electric and gas utilities are subject to extensive regulation of their rates and services by federal and state agencies due to their monopolistic nature. Prior to deregulation, the generation, transmission, and distribution of electricity by Maryland utilities were regulated to ensure safety and reliability, and to prevent excessive profits. Deregulation required Maryland utilities to transfer or sell their generating facilities, and allowed many non-utility supply companies, including those that own generating facilities, to use the utilities’ transmission and distribution wires to deliver electricity. The utilities remained under regulation. Electricity supply can be purchased by both competitive suppliers and utilities in the interstate wholesale market administered by a regional transmission operator (RTO) (known as “PJM” in the mid-Atlantic region)⁴ to ensure reliability and a level playing field for all wholesale suppliers.

In Maryland, the Public Service Commission (PSC) is the state agency that regulates all electric and gas utilities; the regulation extends to transmission and distribution services, as well as the provision of electricity or gas supply to customers who do not use energy suppliers. The regulated utilities include the larger investor-owned utilities, as well as electric cooperatives and municipal utilities. The Office of People’s Counsel (OPC) is an independent state agency that represents Maryland’s residential consumers

⁴ PJM initially stood for Pennsylvania, Jersey, and Maryland. The PJM grid now covers parts or all of many eastern states, with the westernmost point being Chicago, Illinois.

in electricity, natural gas, telecommunications, private water, and certain transportation matters before the PSC, federal regulatory agencies, and the courts.⁵

The regulated utilities acquire electricity and natural gas supply under the purview of the PSC to ensure reasonable prices and reliable supply. Electric utility supply is called “Standard Offer Service.” Natural gas utility supply is referred to as “gas commodity service.” But Maryland consumers can also choose a different energy supplier—referred to as “third-party suppliers” in this report. The electricity and gas are still brought to consumers’ homes and businesses via the same distribution wires and pipes owned by the utilities.

In contrast to Standard Offer Service rates, third-party suppliers’ prices are not regulated by the PSC; however, third-party suppliers must be licensed by the PSC before they can sell energy in the state and must agree to comply with extensive consumer protection requirements. It is these unregulated, different prices that can raise or lower consumers’ bills compared to the option of just sticking with the prices overseen by the PSC.

This report focuses on two questions:

1. Have residential consumers, in general, benefited from the opening up of the market to third-party suppliers?
2. Within that assessment, have low-income households, specifically, benefited?

We excluded commercial consumers from this analysis because the available data indicate that competition has, on the whole, benefited this sector in the form of lower prices.⁶

⁵ <http://opc.maryland.gov/>

⁶ We examined commercial third-party electricity supply briefly to determine whether this sector also experienced higher Standard Offer Service rates. The data show that, in the aggregate, commercial customers on third-party supply save money. However, it also appears that small commercial customers pay more, on average. While we have not examined this issue in detail, there may be a need to protect small commercial customers as well as residential customers from higher prices.

Third-Party Supply Data

Three of Maryland's four privately owned distribution utilities are owned by the Exelon Corporation: Baltimore Gas & Electric (BGE), Potomac Electric Power Company (PEPCO), and Delmarva Power & Light. These three utilities serve about 83 percent of the state's electricity customers. Exelon is engaged in power generation and competitive energy sales, in addition to its ownership of utilities in several jurisdictions. A fourth utility, Potomac Edison, is owned by First Energy and serves Western Maryland. A fifth, SMECO, is a customer-owned electric cooperative in Southern Maryland, along the western shore of the Chesapeake Bay. Maryland also has seven other small cooperatives and municipal utilities.

Washington Gas provides natural gas for the territories of PEPCO and SMECO. There are also several other companies, like Columbia Gas, that provide natural gas to Maryland customers.

Both regulated utilities and third-party suppliers acquire electricity and natural gas through interstate wholesale electricity and gas markets. It is the same energy; only the regulatory circumstances are different. About 20 percent of Maryland homes have switched their electricity to one of the 60 or so third-party suppliers that sell to Maryland households (see Table 1).⁷ Similarly, about 20 percent of households with natural gas have switched to a third-party gas supplier.

⁷ OPC list 2018.

Table 1: Electricity third-party supplier participation

| | Number of households on electricity supply by Utility | Percent of households on electricity supply by Utility | Number of households on third-party electricity supply | Percent of households on third-party electricity supply |
|--------------------------|---|--|--|---|
| BGE | 1,163,650 | 52% | 281,697 | 24% |
| PEPCO | 524,495 | 23% | 105,694 | 20% |
| Potomac Edison | 235,169 | 10% | 25,580 | 11% |
| Delmarva | 178,278 | 8% | 24,737 | 14% |
| SMECO | 148,685 | 7% | 4,906 | 3% |
| Total for five utilities | 2,250,277 | 100% | 442,614 | 20% |

Source: May 2018 PSC Monthly Reports.

Note 1: All customers on third-party supply include those who subscribe to suppliers that only sell renewable energy plans. In the rest of this report, we do not include these "green" energy suppliers in estimating higher costs because their customers pay more for the specific type of energy they want.

Table 2: Natural gas third-party supplier participation

| | Number of natural gas households by Utility | Percent of households served by Utility | Number of households on third-party natural gas supply | Percent of Utility's households on third-party supply |
|----------------|---|---|--|---|
| BGE | 630,714 | 58% | 136,021 | 22% |
| Washington Gas | 449,021 | 42% | 90,686 | 20% |
| Total | 1,079,735 | 100% | 226,707 | 21% |

Source: May 2018 PSC Monthly Reports.

Note 1: Data for third-party supply for several smaller natural gas utilities are not available. The total households and percentages here are only for the two utilities shown.

For the 80 percent of households that choose not to buy their home's energy from a third-party supplier, their local utility is automatically assigned as their residence's default electricity and/or gas supplier; this is known as Standard Offer Service.

Electricity usage is measured in units called kilowatt-hours (kWh). Standard Offer Service prices are based on a PSC-approved bid solicitation process that requires the utilities to secure two-year contracts on a staggered basis; each spring and fall, they bid to acquire a portion (25 percent) of their full needs. The bid results are reviewed and approved by the PSC, and are reflected in tariff rates. Natural gas usage is measured in units called therms; natural gas prices change monthly or quarterly, subject to prudence reviews.

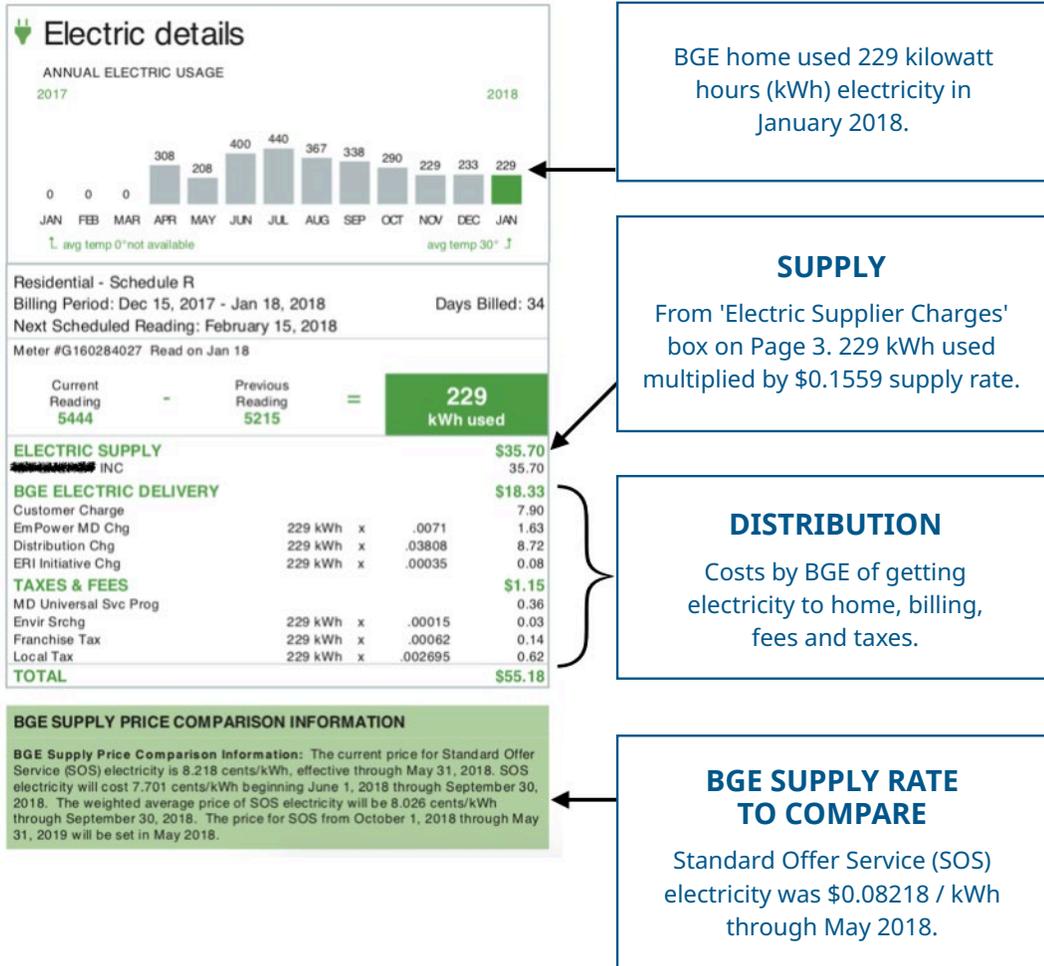
Most Maryland households, including those that have switched from utility Standard Offer Service to third-party energy supply, receive one monthly utility bill. But their electricity (and when applicable, natural gas) supply portion of the bill represents

the charges by the third-party supplier based on that supplier's price rather than the Standard Offer Service rate.

Figure 1 (next page) is an actual bill from a low-income BGE account holder who switched to a third-party supplier. The section labeled "distribution" is common to all BGE bills and represents getting energy to homes (poles, power lines, service, and billing). The "supply" section is the amount owed to the third-party supplier for the amount of electricity the home used during that invoice cycle.

During January 2018, this customer's electricity supply rate of \$0.1559 per kWh was 90 percent more than BGE's Standard Offer Service rate of \$0.08218 per kWh. The higher third-party supply rate added an extra \$16.88 to this customer's bill, even though monthly electricity usage was relatively low—229 kWh compared to an average monthly 800 kWh typical of a BGE residence that heats with natural gas.

Figure 1: Low-income household's BGE invoice for third-party electricity supply



Found on Page 3 of BGE bill is Electric Supplier Charges box. Supplier sends this information to BGE to be printed on customer's bill.

Third-Party Supplier View

The third-party suppliers' association, known as RESA, claims that suppliers offer a variety of benefits to consumers. Based on these benefits outlined below, RESA argues that third-party supply rates are not comparable to Standard Offer Service prices:

- Fixed rates over a year or more can insulate the customer from price changes in the Standard Offer Service, which are adjusted twice a year under PSC supervision.
- Customers may choose a “smart thermostat” as an incentive for signing up, allowing them to conserve energy, reduce usage, and lower bills despite a higher rate.
- Retail suppliers provide other benefits like grocery discounts or cash gift cards.
- Some retail suppliers offer renewable energy as part or all of their supply.⁸

We agree that in the case of renewable energy, the principal product, electricity, has attributes that are different. We have, therefore, excluded renewable energy third-party suppliers from our estimates of excess costs.

However, RESA's remaining arguments are not valid on the whole. For instance, Standard Offer Service rates can go down as well as up; in fact, in recent years, they have been declining. Further, many consumers on third-party supply are on variable—not fixed—rates. And finally, the cost of all incentives, such as thermostats or cash incentives, must be recovered by charges that consumers pay. These generally fall into three categories—the supply charge, a monthly fee (in some cases), and in many cases, a termination

⁸ We note that in most cases, “green energy” options do not involve purchases of renewable energy but electric certificates (RECs) representing that energy; the energy itself is sold to other parties. In some cases, RECs are purchased from renewable energy generators in states like Texas and Iowa, where renewable generation greatly exceeds any mandates. Such RECs are typically very cheap relative to premiums paid for renewable energy. In some cases, suppliers do actually purchase the renewable energy.

fee if the customer wants to exit a contract before its expiry. These can be as high as \$100 or more. This is a stiff deterrent to choosing another supplier or reverting to Standard Offer Service, especially for low-income consumers when they realize they are paying more for third-party supply.

Growth of Maryland's Third-Party Energy Supplier Market

By 2008, eight years after the Electric Choice Act, only 3 percent of Maryland households had waded into the energy choice pool.⁹ That changed in late 2008, however, when the PSC finalized the Purchase of Receivables (POR) rule, which made the market more attractive for third-party suppliers.¹⁰ Before that time, third-party charges were part of utility bills. So if all or part of the bill was unpaid, utilities could transfer past-due amounts back to the supplier, who then bore the cost of collecting the arrears (or not).

Two significant changes came about when POR went into full effect in 2010. Under the rule, Maryland's utilities are allowed to buy the amount owed by customers from the suppliers, unless the utilities want to prorate the revenues received.¹¹ Third-party suppliers are paid whether or not their customers pay their utility bills. For customers who do not pay, Maryland utility ratepayers have to make up for the arrears because regulated utilities are guaranteed a rate of return on investment.

The impact of the regulation can be clearly seen in Figure 2 (next page) with the rise of third-party residential contracts since the POR rule went into effect.

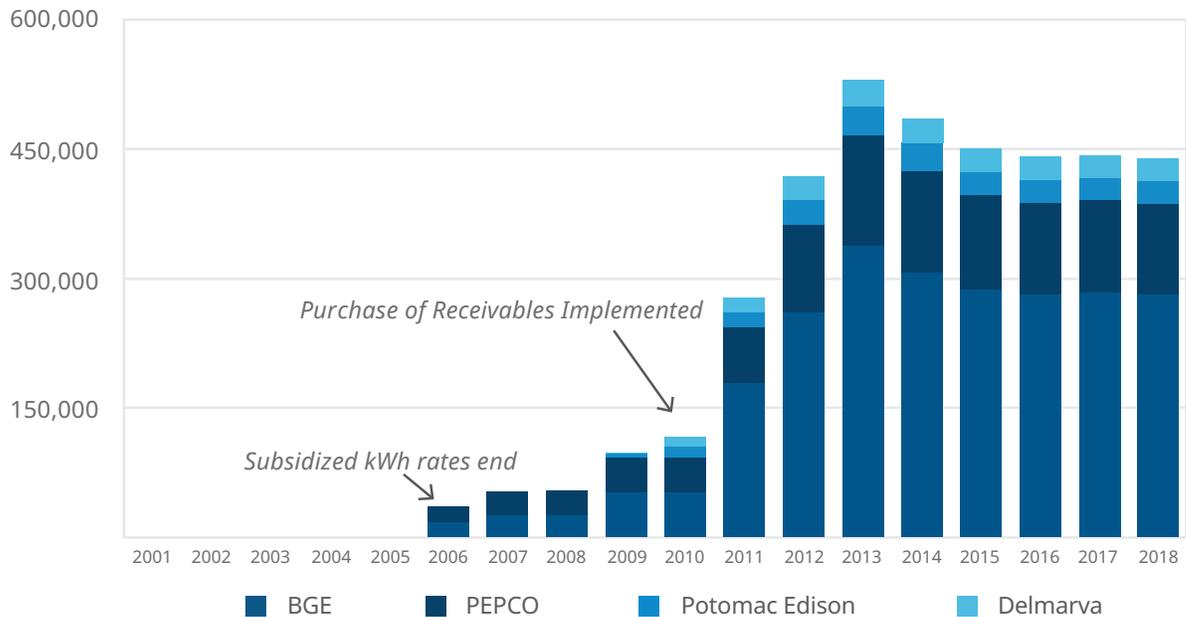
Third-party suppliers are required to pay something for this POR service. Specifically, under the rule, utilities pay a slightly lower

⁹ PSC Monthly Reports. Reports for each year, including 2008, can be found in these monthly reports.

¹⁰ PSC Rule Making # 17. COMAR 20.53.05.06. See COMAR various articles in the reference list.

¹¹ RESA Glossary.

Figure 2: Maryland households on third-party electricity supply



Source: Public Service Commission Electric Choice: Monthly Enrollment Reports

amount (a “discounted” rate) than the amount due because some bills will be uncollectible. But this “discount” does not take into account the higher risk of default when third-party rates are higher, which they are on average for residential customers. This discounting based on Standard Offer Service insulates third-party suppliers from the effects of uncollected bills that are due to higher prices, as they have been since 2014. In other words, third-party suppliers can charge much higher rates and increase the risk of default without any penalty for the risky practice.

The economic term for such a policy is “moral hazard”—a situation in which one party is freed up to take risks, while another party bears the consequences. **Purchase of Receivables freed third-party suppliers to increase prices to levels that created a greater likelihood of nonpayment of a bill, while reaping guaranteed payment of invoices and transferring the risk of nonpayment to ratepayers** (via the regulated utilities). POR also expanded the marketplace because credit

history and inability to pay high bills are no longer relevant risks for third-party suppliers. It is noteworthy that, during the rulemaking process, BGE stressed that the Purchase of Receivables approach would be costly for ratepayers because it would shift cost and risk to them from third-party suppliers.¹²

Maryland’s Electricity Choice Pricing Outcomes

Has third-party supply brought benefits to Maryland’s residential electricity and gas customers?

Until November 2018, there was no official answer to this rather straightforward and important question. In that month, however, a report commissioned by the Office of People’s Counsel concluded that Maryland’s residential electricity customers on third-party supply were losing about \$34.1 million per year on electricity costs and \$20.7 million per year on natural gas costs relative to the costs of Standard Offer Service. To make

¹² BGE 2009

these estimates, the study relied on published and fixed rates, rather than actual prices from state databases, assuming they were constant.¹³ The published prices reflect the initial rate that the consumer would pay at the time of signing up for third-party supply. Yet we know that many third-party suppliers charge variable rates — and that those rates go up after an initial period, such as three months. Fixed rates can be and are adjusted upward after the period of the initial contract expires. Thus, the average actual rate paid over time tends to be higher than published rates.

We found only one reference to Maryland residential results based on actual prices billed. SMECO ran aggregated 2017 billing data and found that its 5,301 electric third-party customers paid \$1.9 million over SMECO's Standard Offer Service prices. This amounted to an extra \$358 per household that chose a third-party supplier for electricity.¹⁴

We estimated overpayments based on data that all electricity providers must report to the federal government. These data allow us to estimate the actual annual average prices that consumers paid for both regulated utility and third-party suppliers.

We found that Maryland homeowners on third-party electricity supply:

- Saved about \$20 million in 2010 as compared to their utility's offer;
- Came out about even in 2011, 2012, and 2013; and
- **Overpaid about \$255 million from 2014 to 2017, ranging from a high of \$77 million in 2014 to a low of \$50 million in 2016. The overpayment amount was about \$59 million in 2017.**¹⁵

¹³ Office of People's Counsel 2018, vi.

¹⁴ SMECO 2018, 1.

¹⁵ These are approximate estimates. We used the Energy Information Administration Form 861's "Sales_Ult_Cust-XXXX" spreadsheet to compute the actual annual average rate for each third-party supplier; XXXX stands for the year for which data are provided. The EIA 861 spreadsheet is segmented by residential, commercial, industrial, and transportation sectors. To calculate the statewide

Table 3 (next page) takes a closer look at how many customers, sorted by average supplier overpayment to Standard Offer Service, paid higher and lower rates than SOS. Only about 3 percent of the 387,000 households, on average, came out ahead in 2017. The other 97 percent of households on third-party supply—17 percent of all Maryland households—paid an average of about \$154 more for third-party supply as compared to their utility's Standard Offer Service rates. In the worst case, a third-party supplier charged about 5,000 households an average rate that was 76 percent more than the Standard Offer Service rate.

Electric choice outcomes for low-income households in Baltimore City

In this section, we focus on the impact of third-party supply on low-income households. We interviewed 40 people and, with their permission, collected current BGE utility bills at a Baltimore City assistance center known as GEDCO CARES,¹⁶ which also serves as a Fuel Fund of Maryland satellite energy assistance center.¹⁷

Standard Offer Service rate and compare the third-party actual rates, we combined data from two publicly available sources. State data for the number of customers on third-party supply by utility are available at PSC Monthly Reports on the Public Service Commission's website. To calculate the statewide weighted average Standard Offer Service rates for each utility, we pulled monthly utility Standard Offer Service rates as reported by the Office of People's Counsel at OPC Price Comparison. Using these data, we were able to derive a weighted average Standard Offer Service rate by month and by utility served. We used a monthly kilowatt-hour usage figure reported by BGE to calculate a yearly weighted average by utility price. We excluded third-party suppliers that sell only 100 percent renewable products (i.e., CleanChoice, Clearview, Inspire, and Green Mountain Energy).

¹⁶ GEDCO CARES provides emergency financial assistance, including energy assistance. It is a program of the parent organization, GEDCO, which provides affordable housing for seniors and formerly homeless men and women. <https://gedco.org/what-we-do/community-services/cares/>. CARES services Baltimore City zip codes: 21210, 21212, 21218, and 21239 from the city line to 33rd Street.

¹⁷ The Fuel Fund provides resources to vulnerable Maryland families for heat and home utility needs. <https://www.fuefund-maryland.org/about>

Table 3: 2017 Residential third-party supply customers sorted by average supplier overpayment premium to SOS

| Rate differences from Standard Offer Service (SOS) (Note 1) | Number of homes on third-party supply (rounded) | Percent of third-party customers in category | Average overpayment or savings per customer |
|---|---|--|---|
| 30%+ to 76% above SOS | 96,000 | 24% | \$365 |
| 20%+ to 30% above SOS | 50,000 | 13% | \$235 |
| 0 to 20% above SOS | 241,000 | 60% | \$53 |
| Total accounts on average above SOS | 387,000 | 97% | \$154 |
| Accounts on average less than SOS | 13,000 | 3% | -\$58 |
| Total on third-party supply | 400,000 | 100% | \$147 |

Note 1: The rate differences are averages, with one percentage representing the average for all customers served by a supplier. Individual customers for each supplier could have rates different than that reflected by the average.

While our CARES interviews do not constitute a statistically random sample, the findings match the negative outcomes reported in other states (notably Massachusetts¹⁸) and mirror the aggregate federal data cited above. All CARES clients have applied to Maryland's Office of Home Energy Program (OHEP) for energy assistance.

Most of the CARES clients we interviewed were elderly, African-American, and very low-income. Very few had access to a computer, email, or the internet. We were able to determine answers to the following key questions:

- What portion of CARES clients appeared to be enrolled with third-party suppliers?
- What were pricing outcomes compared to BGE's Standard Offer Service rates?
- Were any government energy assistance funds going to suppliers as a result of higher third-party supplier prices?

To determine what portion of CARES clients were enrolled with a third-party supplier, we compiled the yearly energy usage for 127 CARES client who visited the energy assistance

¹⁸ Massachusetts Attorney General 2018, pp. 13-18

By the Numbers

Cares clients interviewed: 40

- Average percent electricity rate premium to BGE: 51
- Average percent natural gas rate premium to BGE: 78

May & June clients assisted at CARES: 127

- Estimated percent on third-party electricity: 55
- Percent MD homes on third-party electricity: 20

BGE "deep dive" supplier analyses: 9

- Average overpayment to supplier: \$479
- Average energy assistance payments*: \$1,421
- Percent assistance to third-party overpayment: 34

*MD energy assistance can be: Taxpayer/ratepayer-funded OHEP bill assistance & MEAP arrearages, donor-funded Fuel Fund Payments, and ratepayer BGE/Fuel Fund matching credits

center in May and June 2018. We were able to determine, through BGE data, whether the account was enrolled with a third-party electricity supplier. The majority—55 percent—of these CARES clients were enrolled with third-party suppliers at the time they visited CARES to seek utility bill assistance. Maryland's statewide average is 20 percent.

Aggregating BGE billing data for the 40 low-income clients revealed that these households' rates were on average 51 percent higher for electricity and 78 percent higher for natural gas as compared to BGE's Standard Offer Service rates.¹⁹

¹⁹ These data, including the average overpayment per households in the box below, are only for the months we looked at and are not annual numbers.

To determine what portion of taxpayer and ratepayer-funded energy assistance is captured by third-party suppliers due to higher prices, we were able to take a "deep dive" into nine CARES clients' BGE monthly bills. With their permission, we analyzed their BGE accounts for the duration of their enrollment with a third-party supplier.²⁰ We also collected the actual energy assistance funds received by these clients.

²⁰ Source: bge.com. This website posts account invoice history for a maximum of 24 months. It appears a few CARES clients were enrolled with suppliers longer than 24 months, but we did not have access to those prior invoices. The range of recorded duration of third-party enrollment for the 24-month period for the nine CARES clients was between five and 24 months.

Table 4: "Deep dive" into nine low-income residential accounts on third-party supply

| Client | Months on third-party supply | Supply cost if customer paid SOS | Actual supplier bill | % Supplier Rate Over SOS | Added third-party payment | Total Energy Assistance* | % Energy Assistance paid to Supplier Overpayment |
|--------------------|------------------------------|----------------------------------|----------------------|--------------------------|---------------------------|--------------------------|--|
| 1 | 24 | \$2,603 | \$3,433 | 32% | \$830 | \$2,902 | 29% |
| 2 | 5 | \$295 | \$528 | 79% | \$233 | \$340 | 69% |
| 3 | 24 | \$1,118 | \$1,677 | 50% | \$559 | \$1,126 | 50% |
| 4 | 24 | \$1,959 | \$2,527 | 29% | \$568 | \$1,853 | 31% |
| 5 | 17 | \$1,103 | \$1,445 | 31% | \$342 | \$1,300 | 26% |
| 6 | 10 | \$968 | \$1,597 | 65% | \$629 | \$2,147 | 29% |
| 7 | 8 | \$663 | \$842 | 27% | \$179 | \$659 | 27% |
| 8 | 22 | \$1,877 | \$2,534 | 35% | \$657 | \$1,064 | 62% |
| 9 | 20 | \$1,361 | \$1,674 | 23% | \$313 | \$1,403 | 22% |
| 17 mo. avg. | | \$11,947 | \$16,257 | 36% | \$4,310 | \$12,794 | 34% |
| | | | | | per person > | \$479 | \$1,422 |

*Note: Bill assistance requires annual applications. Assistance for clearing arrearages can be obtained once every seven years, though exceptions can be made. Often families do not apply every year or come in to CARES when they are in arrears and threatened with a cutoff notice. We have calculated the percent of assistance that goes to third-party supply as a fraction of third-party excess payment to assistance. The results in this column are approximate and indicative rather than definitive.

Table 4 (above) illustrates that low-income households in energy crisis can tap into multiple energy assistance sources.²¹

On average, about one-third of the total energy assistance went into the coffers of third-party suppliers, instead of lowering bills. In each case, the account holder had no idea that choosing a third-party supplier had a negative impact on their utility bill. Several had turn-off notices.

The CARES data also show that the third-party natural gas rate was \$0.79 per therm—78 percent above the average BGE gas rate. As a result, the average CARES client that we

interviewed on third-party natural gas supply would pay \$329 more per year due to the higher third-party natural gas price based on average usage of 997 therms.

The average assistance provided by OHEP in FY 2017 to households using electricity heat was \$959; it was \$1,081 for households using natural gas heat.²² Both values are statewide averages; we do not have Baltimore-specific numbers. We note that both OHEP figures are below the average assistance of \$1,178 received by the nine "deep dive" customers from all sources. These indicative data raise the urgent question: **What is the fraction of assistance intended to lower bills of low-income households going to third-party suppliers in the form of higher rates?**

²¹ The assistance sources include the Electric Universal Supply Program, Maryland Energy Assistance Program, the assistance provided by the private non-profits like the Fuel Fund of Maryland, and the matching assistance provided by BGE.

²² OHEP 2018, Table 9.

Information issues

According to OHEP, the average Maryland family that received energy assistance in 2016 earned just \$14,707. Its average utility bill was \$2,178, about 15 percent of income. For Maryland, the average utility bill percent of income is between 3 and 4 percent. With finances tight, low-income families looking to shave their budgets may be vulnerable to sales pitches and incentives that appear attractive in the short term but may turn out to be costly over time. Marketing tactics may explain why low-income households appear to enroll with third-party suppliers at higher rates.

We identified four problem areas:

- i. Lack of accurate information and effective price-comparison tools:** Third-party suppliers do not use mass media advertising as a principal tool for marketing to low-income consumers. No one who we interviewed knew what BGE's energy rates were or where to find them. Every CARES client we interviewed assumed they were saving money by switching to a third-party supplier.
- ii. Lack of internet access:** There is some rate information on official websites (PSC, OPC), but very few of the low-income people we interviewed had access to the internet. This is an example of how the digital divide exacerbates poverty. For consumers with internet access, the PSC's official electricity supplier shopping web site is difficult to read and sometimes lists inaccurate pricing. Published information is also incomplete in that it does not inform the consumer of the maximum possible rate or even of the fact there is no actual upper limit to the rate in case of variable rate contracts.
- iii. Complex utility bills:** On the whole, interviewees had little understanding about how to read their BGE bills. This problem is not confined to low-income households. We have also found cases

where households with relatively high incomes are paying more—sometimes much more—for electricity but are unaware of this fact. Many weren't even sure if they had switched to a third-party supplier and needed to be shown where to find that information on their BGE invoice.²³

- iv. Complex pricing plans:** When consumers enroll with third-party suppliers, they enter into formal business contracts. The pricing plan is a big component of the contract terms and conditions along with early cancellation fees, monthly fees, contract length, and contract renewal terms. Termination fees can be as high as \$150. Our interviews indicate that most CARES clients did not understand their supplier contract. There are variable rate plans, in which rates can increase from month to month after an initial promotional period. In principle, the new rate must be made available 12 days before the change, but this requires the consumer to know how to access the information and to check it each month. Rates can increase up to 30 percent per month without explicit notice to the consumer. There are fixed rate plans that automatically become variable rate after the initial contract term ends, unless the consumer takes action to prevent that.

²³ Southwell et al. 2012. Researchers looked at energy literacy in the United States with participants in all income and educational groups (~10 percent had less than a high school education, and one-third had a bachelor's degree or higher). An online survey was used, so unlike the low-income sample in this report, all participants had internet access. In regard to energy bills, the study found that only 27 percent of respondents could correctly answer all three questions; 19 percent could not answer any question. See Table 4 and pages 8-10.

Unfortunately, even after energy assistance is factored in, energy burdens still remain high for most households. On average, energy burdens were almost 15 percent in FY 2018 before assistance and over 10 percent after assistance provided by the Office of Home Energy Programs.

Direct sales agents in low-income neighborhoods

In Baltimore City, especially in urban neighborhoods with dense housing, third-party suppliers often use door-to-door sales tactics. Direct sales agents canvas neighborhoods repeatedly, and sometimes offer gift cards, rebate checks, bill credits, and other incentives to encourage enrollments. Supplier direct sales agents are usually employed by separate marketing companies, and do not work directly for energy suppliers. Agents are usually paid on a sales-per-head, commission-only basis.

Every CARES client who we interviewed self-reported they had enrolled with a third-party supplier through a direct sales agent at their door or in their neighborhood. A pervasive complaint was that too many aggressive energy direct sales agents knocked on their doors at night.

The majority of clients we interviewed self-reported that the direct sales agent offered a gift card that was promised to come in the mail after enrollment, yet the incentive never came. One CARES client did report receiving rebates in the mail that totaled \$12 for the year.

In Baltimore, third-party suppliers also market in places frequented by low-income citizens accessing government assistance. Direct sales agents sell energy at the steps to Baltimore City's Social Services office on North Avenue, the Housing office on Pratt Street, and the OHEP office on York Road. Suppliers can often be found marketing at the city's larger MTA bus transfer stations and even next to soup kitchens.

For two days in November 2017, a third-party supplier set up shop across the alley from Paul's Place Outreach Center, which offers services and programs to low-income individuals and families in South Baltimore's Washington Village and Pigtown communities.²⁴ Ironically, the supplier was offering significant BGE bill credits the same day that the Fuel Fund was hosting its Watt Watcher energy efficiency classes.²⁵ Offering rebates at locations where there are large numbers of low-income people seeking assistance is problematic because it creates a situation where short-term interests may dominate, even if there are negative long-term consequences. This is precisely the result we observed in the energy data we reviewed. We also received some complaints that, again, the promised incentives never materialized.

²⁴ <https://paulsplaceoutreach.org/about-us/>

²⁵ Laurel Peltier personal communication and email with Paul's Place Day Programs Coordinator in November 2017 and on-site visit.

The Burdens and Harms Due to Unaffordable Utility Bills²⁶

Low-income households in Baltimore live under considerably greater economic stress than the state as a whole. The problem in Baltimore is especially acute because the median income there was just \$42,665 in 2014, which is only 56 percent of the median income of \$76,067 for the state as a whole.²⁷

The term “energy burden” is defined as the fraction of a household’s gross income (i.e., before taxes) that is spent on household energy bills, which include utility electricity and natural gas bills, heating fuel oil, and propane bills. They do not include expenditures on transportation fuels.

Energy burdens in Maryland average between 3 and 4 percent. They are much higher for low-income households and can be 10 to 20 percent of income. For the lowest-income households with incomes at 50 percent or less of the federal poverty level, energy burdens are higher than 30 percent of gross income.²⁸

Maryland, like other states, has an energy assistance program to help low-income households reduce their energy burdens. Households with incomes of up to 175 percent of the federal poverty level are eligible to get government assistance to pay their electricity and heating bills. About 383,000 Maryland households qualify, with about 20 percent living in Baltimore City. In FY 2018, however, only about 27 percent of those who qualified actually received utility bill assistance. The vast majority do not apply, and an increasing number of those who do are being rejected. Further, the number of households assisted has been declining since 2011.²⁹

Unfortunately, even after energy assistance is factored in, energy burdens still remain high for most households. On average, energy

burdens were almost 15 percent in FY 2018 before assistance and over 10 percent after assistance provided by the Office of Home Energy Programs. This provides the context for considering the added harm inflicted when third-party supply results in higher bills than would be the case with Standard Offer Service.

Description of harm

Low-income Maryland households often face impossible choices that go under the rubric of “heat or eat.” The range of intractable problems is much greater than the phrase implies.³⁰

A 2011 national survey of households receiving heating bill assistance at least once in the previous five years found that:

- More than one-third of the households had to forgo medical/dental care and medications because of high energy bills;
- Nearly one in five had someone become ill because their homes were too cold; and
- Six percent were evicted from rental units while another 4 percent faced foreclosure, exacerbating homelessness.

Overall financial stress

Low-income families typically experience economic stresses that can increase quickly due to an unexpected illness or breakdown of a vehicle. “The Report on the Well-Being of U.S. Households in 2017” by the Board of Governors of the Federal Reserve System found that “22 percent of adults expected to forgo payment on some of their bills in the month of the survey,” mainly credit card bills. For one-third of them—about 7 percent of all households—the payment conflicts were explicitly between rent or mortgage payment and utility bills. They expected that these bills would be left at least partially unpaid in the month of the survey.³¹

²⁶ Unless otherwise stated, this section is based on or taken from Makhijani, Mills, and Makhijani 2015.

²⁷ Baltimore Facts 2017 and Maryland Facts 2018.

²⁸ Fisher, Sheehan & Colton 2017.

²⁹ OHEP Budget 2018, Exhibit 1, 6. There was a slight uptick in 2014 relative to 2013. The downward trend resumed the year after.

³⁰ Portions of this chapter are taken from Makhijani, Mills, and Makhijani 2015.

³¹ Federal Reserve Report 2018, 22.

African-American households face such bill payment conflicts at roughly double the average rate for all households.³² From this we may infer that about 14 percent of African-American households—about one in seven households—would have faced rent/mortgage and utility bill conflicts during the month of the survey. The greater financial stresses reported by African-Americans in the Federal Reserve survey were likely due to lower incomes and higher unemployment on average because race and income are closely correlated.

These bill payment conflicts occur even without unexpected expenses. An expected bill of \$400 increases the fraction of households unable to pay all their bills from 22 percent to almost 35 percent.³³ Coincidentally, \$400 is roughly the average overpayment of electricity bills faced by almost 100,000 Maryland households with the most expensive third-party supply contracts in 2017 (see Table 3 on page 11).

For Baltimore, which has a majority African-American population and a high poverty rate, we may infer that on the order of 10 percent of all households—about 24,000—face routine rent/mortgage and utility bill conflicts.³⁴

Most people who lose their homes move in with friends or family. A fraction—roughly one-fourth—become homeless. Besides the costs and trauma experienced by the homeless families themselves, there are also costs to society as a whole.

Costs of shelter for homeless families vary a great deal. Data in a 2010 study by the U.S. Department of Housing and Urban Development indicate costs of housing a

homeless family for one year range from about \$5,000 to well over \$40,000.³⁵

Homelessness also increases other costs as well, notably health care costs. There is clear evidence that such costs are huge. A study of 6,494 patients in the Boston Health Care for the Homeless Program estimated added costs of \$1,468 per month for one person compared to low-income people who live in their homes.³⁶ Combining the costs of providing shelter and added emergency care for a family of two for seven months, a typical period of homelessness, gives an estimate of \$28,000.

There are many other categories of cost once people become homeless. The American Roundtable to Abolish Homelessness estimates that when all costs are taken into account, the range of costs to society of one homeless person is between \$35,000 and \$150,000 per year;³⁷ this gives an estimate of \$40,000 to \$170,000 for total costs per family rendered homeless for a typical period of seven months.

The data we have cited above indicate that a few thousand families in Maryland become homeless each year due to rent/mortgage and utility bill conflicts. This suggests costs on the order of \$100 million to \$200 million per year. A significant fraction of these costs would be in Baltimore City.

In addition, those families who move in with friends or family also cause the latter to bear added costs, the extent of which is unknown. There are two to four times as many families in this category as there are families who become homeless and need public shelter.

Even when families are able to remain stably housed, there are many health problems attributable to high energy burdens. The 2011 survey by the National Energy Assistance Directors' Association (NEADA) found that about one in eight households receiving

³² Federal Reserve Report 2018, Figure 13, 22.

³³ Federal Reserve Report 2018, 22.

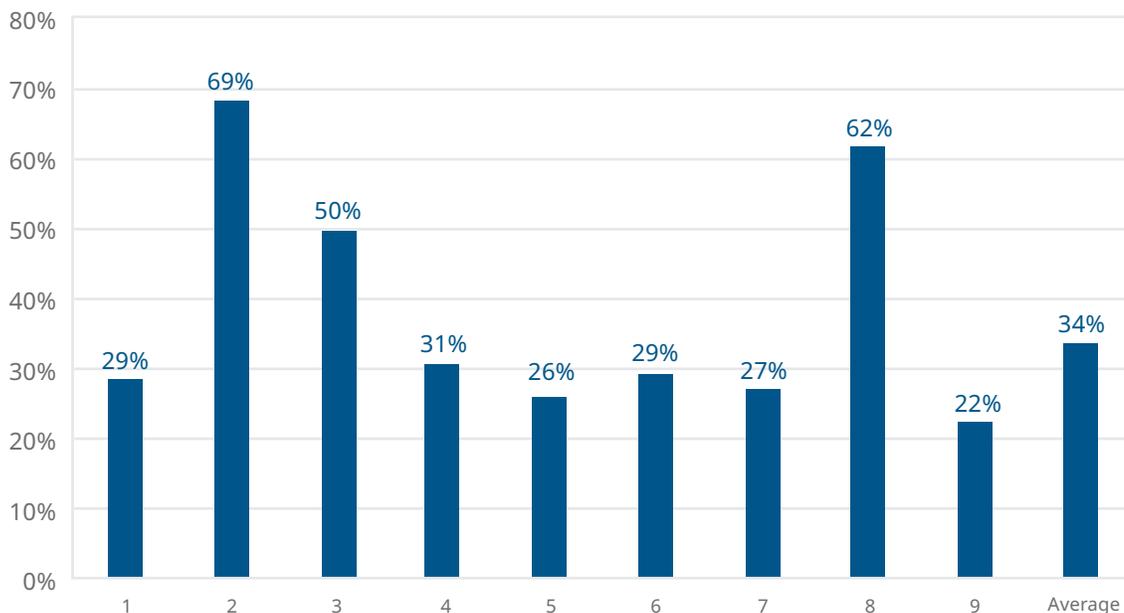
³⁴ 10 percent is between the 7 percent rent/mortgage and utility bill average conflict rate and the 14 percent rate for African-Americans inferred from the Federal Reserve Report 2018, 22. This rate was chosen as an order of magnitude representation of the problem because of Baltimore's demographic and poverty rate characteristics.

³⁵ HUD 2010, Exhibit 1, ES-4.

³⁶ Boston Health Care for the Homeless 2013, S314. 71 percent of the study population were men, S313.

³⁷ Mangano 2013, slide 18.

Figure 3: Percent of assistance to third-party overpayment



Source: BGE.com for account holders' history, OPC Electricity Retail Price Comparison by Service Area charts, and CARES.

federal heating assistance funds were still so cold that a member of the household became ill enough to have to go to the doctor or to the hospital; among households with at least one child under 18, that figure was 19 percent. In addition, 3 percent of the households also had someone who needed a doctor or hospital visit because the house was too hot.³⁸ These data indicate that the magnitude of the health problems associated with high energy burdens is considerably greater than the added health care costs associated with homelessness alone. Given the high percentages that face illness and medical bills, it is clear that the number of households involved number in the tens of thousands each year. Even if the added costs of emergency room visits and other assistance amount to \$1,000 per year for such families, the social costs of economic stresses would run into tens of millions of dollars per year—quite apart from the costs to the families themselves.

³⁸ NEADA 2011, Tables IV-25A and IV-25B, 43-44.

Added economic distress due to higher third-party energy supply rates

The Baltimore data we collected from 40 energy-assistance recipients indicate that low-income households on third-party electricity supply pay 51 percent above the BGE Standard Offer Service rate for the month we checked. Third-party natural gas supply ranged between 8 percent and 210 percent more than the Standard Offer Service rate. The average increase for those on third-party supply was 78 percent more than the Standard Offer Service rate, implying an excess cost of \$200 per year.

The nine cases we examined in detail showed average excess payments of more than \$479 for electricity and gas. This amounts to about 3 percent of the average annual income of \$14,000 of families getting electricity bill assistance in Maryland. We can infer from the Federal Reserve Report data that a significant fraction of low-income families that face such added costs would face conflicts with payment of other bills including rent or mortgage payments.

Another way of looking at the problem is that substantial fractions of energy assistance provided by taxpayers and ratepayers for the purpose of reducing energy burdens is actually captured by third-party suppliers in the form of higher rates for electricity and, in some cases, natural gas supply. Figure 3 (previous page) shows the percentage of assistance used for higher third-party supply costs for each of the nine cases we examined in detail.

Data from Other States

Though publicly available data and media reporting is spotty across the 13 deregulated states for residential third-party results, our review and other data indicate the problem is widespread in deregulated markets. In other words, Maryland's experience of residential-sector third-party overpayments on average is not unique; rather, it appears to be typical. Consumers in several states paid third-party suppliers large sums in excess of the amounts they would have on their utility's electricity offers. The same suppliers use similar sales tactics and sell similar products with similar suboptimal results.

Other deregulated states have taken steps to reform their third-party energy marketplaces. Maine has tightened renewal and disclosure terms.³⁹ Connecticut publishes consumer pricing results and requires suppliers to publish historical variable rates on their websites.⁴⁰ Some deregulated states offer their residents unbiased and official online comparison tools to help households choose the best plan.⁴¹

In the summer of 2018, Illinois tried to reform energy choice, but the proposed law failed by a few votes. As reported, Exelon Corporation's pushback to the reform legislation was cited as a major reason for the bill's failure. Exelon stated that the reform legislation would have "substantially limited customer choice without

enacting additional consumer protection requirements." Similar to Maryland, Exelon also owns the Illinois distribution utility Commonwealth Edison as well as the supplier Constellation Energy Services and Constellation New Energy.⁴² Since that time, Illinois' attorney general has called for an end to third-party residential retail supply.⁴³

In November 2018, the attorney general's office filed a complaint against a supplier in Cook County Circuit Court, alleging fraudulent and deceitful marketing practices that targeted low-income, mainly African-American households.⁴⁴ The lawsuit, one of several complaints filed by the office, was settled on November 19, 2018, with a statement from the attorney general that "alternative retail electric supply industry is rife with fraud and deceit."⁴⁵ The provisions include refunds to customers and a ban on the company from the Illinois retail market for two years.

In March 2018, Massachusetts' attorney general published an extensive analysis of the state's energy choice markets and concluded that low-income customers enrolled with third-party suppliers at twice the rate of non-low-income households. Unfortunately, these low-income accounts paid even higher premiums (\$252 per household) than non-low-income accounts (\$217 per household).

It's also worth noting that only 10 percent of low-income households in Massachusetts were saving money compared to utility offers. Only 12 percent of non-low-income accounts beat their utility Standard Offer Service rates.⁴⁶ The Massachusetts legislature's Joint Committee on Telecommunications, Utilities, and Energy had a hearing on May 8, 2018. No legislation was pending as of October 2018.⁴⁷

³⁹ Fishell 2018.

⁴⁰ Connecticut Consumer Council 2018.

⁴¹ <http://www.papowerswitch.com/>

⁴² Daniels 2018.

⁴³ Daniels 2018a.

⁴⁴ Madigan complaint 2018.

⁴⁵ Illinois attorney general 2018.

⁴⁶ Massachusetts attorney general 2018.

⁴⁷ Jen Bosco, personal email communication 2018.

Those who overpaid in 2017 (97 percent of the total who were on third-party supply) lost an average of about \$154 compared to the Standard Offer Service rate.

Ohio, New York, and Pennsylvania have restricted electric choice for their low-income customers.⁴⁸ Some states have designed programs that are guaranteed to have rates lower than Standard Offer Service. Delaware offers state-sponsored low-income residential accounts to choose from on a pre-approved list of third-party supplier plans that not only guarantee savings but also mandate added consumer protections.⁴⁹ Ohio prohibits households receiving assistance from shopping for electricity individually; the state has designed a program that allows third-party supply by a utility-issued request for proposal if the rate is below the Standard Offer Service price.⁵⁰

Current Status at the Maryland PSC

As previously discussed, those who overpaid in 2017 (97 percent of the total who were on third-party supply) lost an average of about \$154 compared to the Standard Offer Service rate. The PSC does not appear to have tracked overpayments by Maryland consumers to third-party electricity suppliers; however, this information is readily deducible from the Energy Information Administration's Form 861 spreadsheet "Sales to Ultimate Customers."

Adding to the puzzle is a stark 2014 case in which the PSC found a Maryland supplier in significant and multiple violations of state law in its marketing practices:

In this Order, the Maryland Public Service Commission (the "Commission") finds that Starion Energy PA, Inc. ("Starion") engaged in multiple practices that violate State law and Commission regulations. These violations include 122 "slamming" violations against Southern Maryland Electric Cooperative's ("SMECO") customers, thousands of violations of Maryland's Door-to-Door Sales Act, over 200 complaints by customers that Starion employed false and misleading tactics to acquire new accounts, and the failure to obtain a license to market electricity to SMECO customers or Potomac Electric Power Company's ("Pepco") commercial customers.⁵¹

The PSC found these actions to be intolerable and promised to be vigilant on such issues as part of the Order in Case 9324:

To be clear, this Commission cannot and *will not tolerate* misleading or deceptive advertising or sales tactics in the retail marketplaces over which we hold jurisdiction. We have and *will continue to proactively monitor retail sales practices* and act firmly when we find that violations have occurred.⁵²

⁴⁸ Gabel 2017, iii.

⁴⁹ Gabel 2017, 3.

⁵⁰ Gabel 2017, 21-22.

⁵¹ Maryland PSC 2014, 1. The PSC defined "slamming" in this document as "a supplier enrolling a customer without the customer's permission or re-enrolling a customer after a customer has terminated service."

⁵² Maryland PSC 2014, 3 (italics added).

In the course of this work we collected testimonials from customers that included examples of door-to-door marketing in low-income areas of Baltimore and of customers who are not comfortable with the sales approaches. We have been able to do this with modest investment of time. To the extent that we can determine, the PSC does not appear to be exercising the proactive monitoring promised in 2014.

The publication in November 2018 of the Office of People’s Counsel report on third-party supply has partly closed the information gap on costs of third-party supply in the residential sector. The report concluded that third-party supply of electricity and natural gas is resulting in substantial overpayments in the aggregate. The report also noted that data on how much energy bill assistance might be going to third-party suppliers in the form of higher bills is “critically needed.”⁵³

The Commission did consider the issue of whether data on third-party supply costs should be officially compiled at its August 14, 2018 hearing on the FY 2019 budget of the Office of Home Energy Programs (OHEP). As noted in the Office of People’s Counsel report, the PSC “opened the door narrowly to obtaining more information” but did not order its acquisition. It acknowledged that the “topic merits further exploration and discussion.”⁵⁴ The PSC did not say what might be done to stop the overpayments by low-income households while this “exploration and discussion” is going on, nor did it put a time limit on the exploration.

⁵³ OPC 2018, 7.

⁵⁴ PSC 2018, p. 6

Recommendations

In an effort to estimate the approximate overall cost to residential consumers of third-party supply, we found that the true extent of the harm can be easily determined through the billing data held by the electric and gas distribution companies. Further, there are ways to report these data that protect privacy as well as suppliers’ concerns about proprietary data.

Individual contracts in the residential market are often detrimental and have been so in Maryland to the tune of some \$255 million between 2014 and 2017. Our recommendations should be seen in the context of what has become—from the residential consumers’ point of view—a dysfunctional residential market. They should also be seen in the context of widespread evidence that the same problems exist in other states and that low-income households suffer disproportionately adverse results.

The zip code analysis of third-party supplier activity in the Massachusetts attorney general’s report shows that suppliers target low-income communities. Our limited analysis of Baltimore data indicates the same thing. A thorough analysis by zip code in Maryland therefore appears to be warranted.

Third-party supply can be beneficial and, in some circumstances, it is. This is indicated by the commercial customers who use large amounts of electricity and routinely save large amounts of money by using third-party supply. They have the resources to solicit bids, sort through them, and get a good price. It is notable that even in the commercial context, EIA 861 data indicate that small business consumers often wind up paying more.⁵⁵

⁵⁵ We analyzed commercial third-party data in the same manner as residential data. The suppliers whose commercial customers averaged more than 100,000 kilowatt-hours of usage per year had average rates less than Standard Offer Service rates, while those supplying customers with less than 100,000 kilowatt-hours per year had higher rates.

Individual contracts in the residential market are often detrimental and have been so in Maryland to the tune of some \$255 million between 2014 and 2017.

Residential third-party supply reforms

1. Residential customers who want third-party supply should only be served by some form of aggregated supply that would ensure lower costs. We are not recommending the end of third-party supply for the residential sector but are advocating for the end of marketing to and contracting with households for third-party supply on an individual basis (except on a restricted basis for 100 percent renewable plans as described below in no. 5). There are tested approaches to such aggregated contracts. For example, Ohio and Delaware have such programs that guarantee savings to low-income households. A program that uses the competitive supply market to ensure lower costs for all low-income households getting assistance should be put into place, with non-low-income households allowed to opt-in to such programs, if they choose. One approach would be for Maryland's Office of Home Energy Programs to competitively procure the third-party supply for all low-income households getting assistance, except those who opt out. Such a program could also be open to other low-income households, or possibly all other Maryland households, on an opt-in basis.
2. Variable rate contracts should not be permitted for residential customers.
3. Consumers should be allowed to terminate third-party energy supply contracts without early termination fees.
4. Utility bills should prominently and clearly state that the customer saved Y dollars or paid X dollars extra during that month by being on third-party supply, as the case may be. The bills should also have simple instructions on how to switch back to Standard Offer Service.
5. Individual third-party supply contracts would be permitted only if customers are (1) procuring 100 percent renewable supply; (2) the contract price is fixed for the duration of the contract; (3) the contract clearly states the premium above the prevailing SOS, if any, that the consumer would pay in percentage terms and per kilowatt-hour for green energy; (4) the contract clearly states whether the renewable energy procurement consists of only the electronic certificates representing renewable energy or whether both the energy and the certificates have been procured on behalf of the customer; (5) there are no termination fees; and (6) the contract price does not increase at the end of the contract term except if the cost of renewable energy procurement has verifiably increased and the documentation is provided to the customer in writing.

Data collection and publication

1. The Public Service Commission (PSC) should be required to annually collect and report actual bill-level data for consumers by zip code level. These data would reveal the scope of overpayments if they continue to exist—or estimate customer savings, if any—and would verify whether they disproportionately affect low-income households as our data and analyses from other states suggest.
2. It is essential that the PSC require electric and natural gas utilities to provide the Office of Home Energy Programs with data of all residential customers who are on third-party supply and compensate the utilities for the effort that would entail. It is also essential for OHEP to have the resources to analyze that data, including calculating overall savings and costs for each third-party supplier relative to Standard Offer Service rates, and estimate the net total or excess costs (or savings) faced by all consumers.
3. For customers who get government energy assistance, OHEP should be required to estimate the amount of energy assistance captured by third-party suppliers due to higher rates, if any. Of course, OHEP should also publish the estimate of overall net savings, should that be the case. The PSC should be required to collect and report yearly actual bill-level data for consumers by zip code. These data would reveal the scope of the problem of overpayments and confirm whether it disproportionately affects low-income households as our data and analyses from other states suggest.

Public Service Commission action

1. Some marketing practices affecting low-income households in Baltimore appear to be disturbingly similar to those condemned by the PSC in 2014. We strongly recommend that the PSC initiate a broad and thorough investigation into marketing practices affecting low-income households and enforce the regulations currently on the books.

Conclusions

Despite the large number of third-party electricity suppliers, there is scant evidence of competition in the form of lower prices. In 2017, 97 percent of residential customers on third-party supply, about 387,000 households in all, had average rates higher than Standard Offer Service. The average overpayment was about \$154. Only 3 percent—about 13,600 customers—saved money, roughly \$58 per household. Between 2014 and 2017, the overall overpayments, taking into account all those who saved money and those who overpaid, totaled about \$255 million.

Our brief examination of the commercial third-party supply indicates that large consumers, presumably with the ability to sort through bids and examine electricity bills, saved money on average. This indicates that aggregation of residential customers under an umbrella with a capacity to sort through bids and get lower prices could be beneficial.

We focused on low-income households in Baltimore, examining 127 of them in varying degrees of detail. This was not a random sample but rather a way of assessing the situation as it appears in one center set up to assist low-income households.

A large fraction of the assistance that low-income households get to pay their electricity bills simply goes to third-party suppliers in the form of higher prices.

The data indicate that low-income households in Baltimore enroll at much higher rates than the Maryland average, and that they typically overpay by amounts that would adversely impact their financial and housing security. A large fraction of the assistance that low-income households get to pay their electricity bills simply goes to third-party suppliers in the form of higher prices. For the nine cases we reviewed, about 34 percent of assistance from up to four different sources went to third-party suppliers. As a result, the core purpose of ratepayer and taxpayer assistance to reduce the financial stresses of high utility bills on low-income households is partially defeated in such cases.

Despite these poor results, there has been a remarkable lack of vigilance on the part of the PSC, to the point that no official agency so much as estimates the overall impact on consumers. The inaction extends to low-income households, despite clear indications that much of the money intended to help low-income households lower their energy bills goes to third-party suppliers in the form of higher prices.

Given the financial stresses faced by hundreds of thousands of Maryland households, the lack of official action to compile and analyze the data needs to be urgently remedied. Options to save low-income households money by using market mechanisms are available and are in place in some states, like Delaware and Ohio. They are even discussed in a report prepared for Maryland's PSC.⁵⁶ But no action along those lines is pending in the state.

⁵⁶ Gabel 2017

About the Authors

Laurel Peltier is an independent journalist and publishes the environmental Greenlaurel column at Baltimore Fishbowl. Her work has been published in EcoWatch, *The Baltimore Sun* and CBS Baltimore. Her previous career as a consumer brand manager at PepsiCo and MCI were key in researching the consumer energy supplier marketplace for this report. She is a graduate of the University of Los Angeles and the Darden School of Business - University of Virginia.

Arjun Makhijani is president of the Institute for Energy and Environmental Research (IEER) (www.ieer.org). Since 2012 he and his colleagues have been working on renewable energy in Maryland, including a report on energy equity: *Energy Justice in Maryland's Residential and Renewable Energy Sectors* (2015). He earned his Ph.D. in 1972 from the Department of Electrical Engineering and Computer Sciences of the University of California at Berkeley. His work has appeared in scientific journals as well as in the mainstream media.

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- Bill Freeman, Director, Office of Home Energy Programs
- Mel Brennan, Former Executive Director, Fuel Fund of Maryland
- Olivia Wein, Attorney, National Consumer Law Center
- Rachael Neill, GEDCO CARES

We deeply appreciate their insights and comments and have benefited from them. Of course, as authors, we alone are responsible for the contents of this report, including its conclusions and recommendations and any errors or gaps that may remain.

A note about scope: this report is limited to an examination of the third-party supply of the residential market for electricity and natural gas in Maryland, mainly the former. Our recommendations are narrowly targeted to remedying the problems of high cost that have characterized the sector since 2014, especially as it concerns low-income households. Overall issues of energy assistance, affordability, efficiency, renewable energy, and many others are all critical, but are not addressed in this report.

[Laurel Peltier, independent journalist](#)

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Maryland's Dysfunctional Residential Third-Party Energy Supply Market:
An Assessment of Costs and Policies

By Laurel Peltier and Arjun Makhijani, Ph.D.
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The Abell Foundation is dedicated to the enhancement of the quality of life in Maryland, with a particular focus on Baltimore. The Foundation places a strong emphasis on opening the doors of opportunity to the disenfranchised, believing that no community can thrive if those who live on the margins of it are not included.

Inherent in the working philosophy of the Abell Foundation is the strong belief that a community faced with complicated, seemingly intractable challenges is well-served by thought-provoking, research-based information. To that end, the Foundation publishes background studies of selected issues on the public agenda for the benefit of government officials; leaders in business, industry and academia; and the general public.

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