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April 19, 2018

By Electronic Filing and Federal Express

Mr. David J. Collins
Maryland Public Service Commission
6 Saint Paul Street, 16th Floor
Baltimore, MD 21202-6806

Re: Rulemaking 62

Dear Mr. Collins:

Enclosed for filing in the referenced matter please find the Comments of the Retail Energy Supply Association. An original and 17 copies will be sent via Federal Express to the Commission.

Sincerely,

A handwritten signature in blue ink that reads 'Brian R. Greene'.

Brian R. Greene

Enclosure

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

Revisions to COMAR 20.32, 20.50, 20.53,	*	
20.55, and 20.59 – Competitive Markets and	*	Administrative Docket
Retail Gas and Electric Customer Choice	*	RM62
	* * * * *	

**COMMENTS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”),¹ by counsel, submits these comments pursuant to the Maryland Public Service Commission’s (“Commission”) Notice Initiating Rule Making and Notice of Rule Making Session issued on March 8, 2018 (the “Notice”). In the Notice, the Commission called for comments on the Petition to Initiate a Rule Making Associated with Public Conference 44 (“PC44”) and Enhancements to the Competitive Markets and Customer Choice Regulations (“Petition”) filed by the leader of the Commission’s PC44 Phase II Competitive Markets and Customer Choice (“CMCC”) Work Group on January 31, 2018.

RESA actively participated in each of the CMCC work group meetings in both the first and second phases of the work group. In the first phase, the CMCC work group was tasked with “developing a statewide standard data sharing format for implementation by utilities that have

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

deployed AMI.”² The second phase was for “considering changes to retail choice that will create a more competitive, transparent and customer-friendly market in Maryland.”³ The product of the CMCC work group was draft regulations, Attachment 4 to the Petition, which address several different areas. RESA supports adoption of the proposed rules on: (1) Instant Connects and Seamless Moves; (2) an alternative option for door-to-door agent background checks; and (3) notice of and modifications to the rules regarding supplier offers posted to the Commission’s website. RESA recommends limited, but important, modifications to the proposed rules regarding interval meter data access and budget billing.

While RESA appreciates the efforts of work group participants, RESA believes that a key retail market shortcoming is not adequately explored or addressed in the Petition. Perhaps the most significant opportunity to advance the Commission’s stated goal of creating a “more competitive, transparent and customer-friendly market in Maryland” is enabling customers to shop with the information contained in their wallet, sometimes called “enroll with your wallet.” Currently, customers are required to provide their supplier with their utility-designated identification number – a 22-digit number for the PHI utilities and a 14-digit number for BGE – before their supplier can submit an enrollment transaction to the utility for that customer. As discussed below, reliance on these lengthy identification codes stands as a major barrier that frustrates customers trying to enroll with their chosen supplier, denying or delaying some customers the opportunity to exercise their right to shop and choose their retail energy supplier.

² PC44, Dkt. No. 64, Notice at 10 (Jan. 31, 2017) (the “PC44 Notice”).

³ *Id.*

Finally, the Petition references the suggestion of some working group stakeholders that suppliers should send additional notices regarding variable rate changes. Importantly, the Petition also discusses the existing variable rate change notice requirements implemented in RM54. As discussed below, the disclosures regarding variable pricing were litigated in the RM54 proceeding and the Commission's regulations promulgated in RM54 already address variable rates. Therefore, the Commission should not revisit variable pricing disclosures at this time.

As discussed below, RESA supports the enhancements called for in the Petition, but believes that the Commission should take the additional step towards more robust, properly functioning retail energy markets in Maryland by enabling customers to shop for energy using the information they carry with them in their wallets.

II. COMMENTS

A. RESA recommends that the Commission approve the proposed rules implementing Seamless Moves, Instant Connects, alternative background check procedures, and requirements for suppliers posting offers to the Commission's website.

i. Seamless Moves and Instant Connects

Seamless Moves and Instant Connects are essential features to achieve a well-functioning competitive retail energy market. In a fully-functional competitive market, customers must be able to exercise choice immediately from their initial day of service (instant connects) and, if they have chosen to shop, keep their contract with their supplier if they move residences within a service territory (seamless moves). However, that is not the way it works in Maryland.

In Maryland's current markets, customers are not able to directly sign up with a competitive supplier on their first day of service. Instead, they must enroll with utility's SOS or sales service and then, in a second step, switch to a competitive supplier. Likewise, when a

customer moves within a utility service territory, they must cancel their contract with their chosen energy supplier, establish a new account with their utility at the location they are moving to, and then re-enroll with their supplier.

The lack of Seamless Moves and Instant Connects triggers antiquated thinking, confuses customers, and leads to negative shopping experiences. Mandating that a customer take SOS or sales service at the onset of service, and that a shopping customer revert to SOS or sales service and cancel their supplier contract if they move residences, is the antithesis of “choice” and encourages the old-school thinking that the utility is the provider of first resort as opposed to the supplier of last resort. In fact, Seamless Moves and Instant Connects are basic fundamentals of a competitive market that Maryland, for whatever reason, did not recognize when it implemented retail choice. As RESA has pointed out in prior proceedings, customers’ expectations have evolved over time, and we now live in “Amazon time.” Customers think of energy purchases in the same way they think of their cell phones, cable or fiber optic service, online streaming services, banking apps with online payment capability, stock trading apps, and virtually every product – they value simplicity, they want what they want, and they want it at the moment they make their shopping decision.

A market without Seamless Moves and Instant Connects is inconsistent with a competitive market and customers’ expectations. First, it is very frustrating for a customer to move residences and have to go through the time and effort to re-enroll in a contract with a supplier that is cancelled simply because of the utility’s outdated internal systems. Yet, many times, customers view the supplier as the faulty party, creating a negative shopping experience that can easily be avoided with updated utility processes. And there are other implications as well. For example, in a market where many customers choose the price certainty of long-term,

fixed price products, Maryland’s regulatory structure requires the customer to cancel their contract and then re-enroll after they move. Because energy markets fluctuate over time, if a customer is in the middle of their contract, he or she may face the unfortunate situation of a higher price in the market when they move than they would have paid if able to continue their contract through the move. As another example, a customer may move, have their contract cancelled, and the supplier may no longer offer the same product or service. That could include the same contract duration, or a renewable percentage, or a specific value-added service. Implementing Seamless Moves and Instant Connects as proposed is critical to fixing these flaws in Maryland’s competitive retail energy markets, for the benefit of Maryland energy consumers.

In the Notice initiating the PC44 working group processes, the Commission directed the CMCC work group to address Seamless Moves and Instant Connects.⁴ In the Notice, the Commission cited Seamless Moves and Instant Connects as examples of solutions to “administrative or process burdens (not related to consumer protection) that discourage customers from selecting a retail supplier.”⁵ Seamless Moves and Instant Connects were also recommended in the report prepared by Gabel Associates, Inc., regarding the advisability of establishing an opt-in electric affordability program in Maryland.⁶ The Gabel Report explained that the Pennsylvania Public Utility Commission directed the Pennsylvania distribution utilities to implement Seamless Moves and Instant Connects back in 2013.⁷ In its Final Order on Duquesne Light Company’s Plan for Seamless Moves and Instant Connects, the Pennsylvania

⁴ PC44 Notice at 10.

⁵ *Id.* (citing Comments from IGS Energy and Just Energy, PC44 Dkt. No. 36).

⁶ *A Report Evaluating the Advisability of Establishing an Opt-in Electric Affordability Program*, Gabel Associates, Inc., Public Conference 47 (Jan. 5, 2017) (the “Gabel Report”).

⁷ Gabel Report at 28. Implementation in Pennsylvania was delayed until July 2016 while the distribution utilities focused on implementing 3-business day switching, which is already in place in Maryland. *Id.*

Public Utility Commission noted, “we remain convinced that seamless moves and instant connects are important enhancements to the competitive electric market landscape. These two items are, from a customer’s perspective, ordinary and expected capabilities that have been hindered by current EDC account handling processes and information systems.”⁸ The Commission went on to say, “[t]he current system inappropriately elevates default service to a favored, primary service role.”⁹ Notably, proposals to implement Seamless Moves and Instant Connects are also pending in Delaware, and Delmarva Power has agreed that if Maryland implements those programs, then Delmarva Power will not contest them in Delaware.¹⁰ RESA recommends that the Commission proceed with Seamless Moves and Instant Connects as proposed in the Petition.

ii. Alternative background check procedures

RESA recommends that the Commission approve the proposed regulations addressing alternative background check procedures for door-to-door agents. The Commission approved virtually the same language on a temporary basis through market-wide waivers, and the proposed regulation would make the waiver language permanent.

In RM54, the Commission promulgated regulations requiring criminal background checks for door-to-door sales agents.¹¹ On April 18, 2016, the Office of External Relations (“OER”) filed proposed alternative background check procedures, requesting that the

⁸ Pa. Pub. Util. Comm’n, *Duquesne Light Company Plan for Seamless Moves and Instant Connects*, Docket No. M-2014-2401127, Final Order at 10 (Sept. 3, 2015).

⁹ *Id.*

¹⁰ Delaware Docket No. 15-1693, In a Stipulated Order entered April 19, 2018, (¶ 6), Delmarva Power agreed not to contest Seamless Moves, Instant Connects, and EWYW in Delaware if Maryland approved them. Implementation of these programs across the PHI footprint at the same time will drive down implementation costs for each PHI utility service territory.

¹¹ Petition at 9.

Commission (1) establish a rulemaking to consider amending the RM54 background check procedures and (2) grant a market-wide waiver allowing suppliers to use the alternative background check procedure proposed in OER’s filing.¹² The Commission granted the waiver, which lasted until March 31, 2017 or when the Commission adopted final regulations addressing criminal background checks.¹³ The Commission re-approved the alternative background check language on January 24, 2018, until July 1, 2019, “or until the Commission adopts final regulations regarding whether and how COMAR 20.53.08.02B and C and 20.59.08.02B and C should be amended, whichever comes first.”¹⁴ RESA’s understanding is that the alternative background check method that has been in place for almost two years is working well. RESA is not aware of any issues or concerns regarding the alternative background check procedure. Therefore, RESA recommends that the Commission promulgate the proposed revisions to COMAR 20.53.08.03 and COMAR 20.59.08.03.¹⁵

iii. Posting offers to the Commission website

RESA supports the proposed new regulations in COMAR 20.53.07.07(C)(2)(b) and COMAR 20.59.07.07(C)(2)(b) regarding supplier offers posted on the Commission’s website. The existing regulations require suppliers to submit open offers to the Commission’s website “according to instructions provided by the Commission.”¹⁶ The proposed new provision would require suppliers to honor the terms of an open offer on the Commission’s website to the extent

¹² Petition at 7 n.9.

¹³ *Id.* (citing Letter Order, dated April 27, 2016).

¹⁴ Letter Order, ML# 217539 (Jan. 24, 2018).

¹⁵ Petition at Attachment 4, pp. 28, 55. The cited regulations reflect the new numbering in Attachment A to the Petition. The background check regulations are found in the Agent Qualifications and Standards Section, COMAR 20.53.08.02 and COMAR 20.59.08.02 of the current regulations.

¹⁶ COMAR 20.53.07.07(C)(2) and COMAR 20.59.07.07(C)(2).

that the terms are more favorable to a customer than the corresponding offer on the supplier's website. If a supplier posts an offer on the Commission's website, then it should honor the terms of that offer when a customer requests to enroll in that offering.

Some stakeholders raised a concern that certain offers listed on the Commission's website may be out-of-date. To address the concern, RESA proposed a notice from the Commission to licensed suppliers reminding them of their obligation to post offers on the Commission website.¹⁷ RESA recommends that the Commission send the proposed notice to licensed retail suppliers to help facilitate compliance with the existing requirements, while working to improve the Commission's shopping website as discussed in the Petition.¹⁸

B. RESA recommends that the Commission modify the proposed budget billing and interval meter data access rules.

i. Interval meter data access

In the first phase of the PC44 CMCC working group, RESA participated in the group's meetings and offered written comments as the group developed proposed regulations for interval meter data access. RESA supports the goal of maximizing the return on Maryland ratepayers' investment in AMI infrastructure. That goal is best achieved if the proposed data access regulations do not interfere with the current methods by which authorized retail suppliers securely access their customers' smart meter data.

RESA believes that adequate consumer protections must accompany opportunities for unlicensed third parties to access customer data. During the working group process, RESA proposed a bonding requirement for third-party "Energy Consultants" registering to access

¹⁷ Petition at Attachment 3.

¹⁸ Petition at 9.

customer interval meter data with their customers' consent. The bonding proposal was not included in the proposed data access regulations attached to the Petition.¹⁹ Retail energy suppliers are required to satisfy the Commission's financial integrity requirements and post a \$250,000 bond with the Commission as part of the licensing process.²⁰ RESA recommends that the Commission consider modifying proposed COMAR 20.50.13.06 (electricity) and COMAR 20.55.10.06 (natural gas) to include a bonding requirement of at least \$10,000 along with the other Energy Consultant registration requirements.

Additionally, RESA recommends that the Commission clarify that any registered "Energy Consultant" under the new data access rules must comply with the Commission's broker licensing requirements if they will be acting as an agent or intermediary in the sale and purchase of electricity. The proposed "Energy Consultant" definition in COMAR 20.50.01.02(B)(24) would allow registered Energy Consultants access to customer data to provide "energy information services or energy management services" to distribution utility customers. The terms "energy information services" and "energy management services" are not defined. To avoid a scenario where a registered Energy Consultant misinterprets the authority to provide "energy management services" as an exemption from the Commission's broker licensing requirements, RESA recommends adding the following language to the "Energy Consultant" definition:

¹⁹ Petition at Attachment 4, pp. 9-14, 38-42.

²⁰ If a supplier meets certain financial integrity requirements, they may qualify for exemption from the bonding requirement. *See* COMAR 20.51.02.08. Brokers and Aggregators are required to post a \$10,000 bond. COMAR 20.51.03.02(C).

An Energy Consultant may not act as an agent or intermediary in the sale and purchase of electricity without first obtaining a license from the Commission.²¹

Importantly, RESA believes that customers – not utilities, suppliers, or others – own their data and should be able to securely share their own data as they choose. However, RESA recommends that the Commission take steps to ensure that new data access regulations do not interfere with retail suppliers’ ability to access their customers’ historical and current meter data using existing processes. Retail suppliers are already working with their customers to: (1) educate them about their energy usage; (2) provide opportunities for customers to better manage their usage’ and (3) develop new energy products and services that leverage customer data to enable customers to more efficiently manage their usage to reduce their overall energy costs. Only with continued and uninterrupted access to customer meter data will suppliers will be able to compete and innovate to better serve Maryland customers as the market works to achieve the General Assembly’s goals for competition embodied in the Electric Customer Choice and Competition Act of 1999 (“Choice Act”).²²

- ii. The proposed budget billing regulations must be modified to accurately address the roles of the utility and the supplier in budget billing for supplier charges.

In the Petition, the CMCC Work Group Leader proposed new regulations addressing budget billing for supplier charges. The Petition’s proposed budget billing language includes requirements to: (1) base the budget billed amounts on the customer’s previous twelve months of usage; (2) include certain information on the customer’s bill; and (3) recalculate the estimated

²¹ The corresponding section for natural gas is COMAR 20.55.01.04(B)(12). Petition at Attachment A, p. 35.

²² PUA § 7-501 *et seq.*

annual obligation at least once each year to reflect the customer’s actual energy consumption.²³ As explained the Petition, this budget billing language is intended to require retail suppliers offering budget billing options to comply with the “comparable provisions for budget billing as already required of the electric and gas companies.”²⁴ The proposed language would be “applicable to suppliers who voluntarily elect to offer a budget billing option to their customers.”²⁵ Thus, the proposed regulations would apply to supplier-administered budget billing for supplier charges.

If the Commission is inclined to adopt budget billing regulations for supplier charges, RESA recommends that the regulations be modified to address the fundamental disconnect between the current budget billing regulations for supplier charges and actual utility practice. COMAR 20.53.05.04(C) and COMAR 20.59.05.04(C) require utilities to “make budget billing available for supplier charges.” However, utilities are not administering budget billing for supplier charges. Instead, utilities enable suppliers to put their charges on the utility consolidated bill (“UCB”). Today, if a supplier wants to offer budget billing, the supplier can do so and submit the budgeted amounts to be billed by the utility on the UCB. Going forward, either the utilities should be directed to comply with the requirement to administer budget billing for supplier charges along with the utility’s distribution charges (in which case the proposed budget billing regulations should be removed), or the regulations should be revised to match real-world practice. To do the latter, COMAR 20.53.05.04(C) and COMAR 20.59.05.04(C) would need to

²³ Petition at Attachment 4, pp. 18 and 46.

²⁴ Petition at 8.

²⁵ *Id.*

be changed to instead say that suppliers may offer budget billing for supplier charges on the UCB:

COMAR 20.53.05.04(C): “For those customers who otherwise have a budget billing option, **a supplier may make budget billing available for supplier charges.**”²⁶

RESA does not oppose the monthly payment structure required in COMAR 20.53.05.04(D)(1) and COMAR 20.59.05.04(D)(1) or the estimated annual obligation recalculation and amortization requirements in COMAR 20.53.05.04(D)(3) and COMAR 20.59.05.04(D)(3). However, RESA is concerned that the utilities’ systems may not be able to accommodate the additional bill content requirements for both distribution charges and supply charges.²⁷ Because the utility controls the content and format of the utility consolidated bill, suppliers can provide information to the utility regarding the budget billed charges, but the utility ultimately controls how that information is presented on the bill.

As proposed, the budget billing language is not consistent with utility practice regarding budget billing and conflicts with the current regulations in COMAR 20.53.05.04(C) and COMAR 20.59.05.04(C), which require the utility to offer budget billing for supplier charges. Absent revision, the proposed language would be confusing to suppliers, who do not control the UCB, which would lead to customer confusion regarding budget billing options, the exact opposite of the stated intent of the proposed budget billing language.

²⁶ The corresponding section of the natural gas regulations is COMAR 20.59.05.04(C).

²⁷ The bill content requirements are in COMAR 20.53.05.04(D)(2) and COMAR 20.59.05.04(D)(2). Petition at Attachment 4, pp. 18, 46.

C. The Commission should promulgate rules to enable customers to shop with the information contained in their wallets.

Customers should be able to enroll with the retail energy supplier of their choice using the information they carry in their wallets. Today, customers are not able to enroll with their chosen supplier unless they can provide the utility-designated identification number, separate from their utility account number, to their supplier. More specifically, Marylanders who want to enter into an electricity contract with a supplier must have their 14-digit (for BGE) or a 22-digit service number (for Pepco and Delmarva Power) or an account number, none of which anyone has memorized or carries with them. This administrative process burden stands as a barrier making it unnecessarily difficult for customers to enroll with their supplier or, in many cases, preventing customers from enrolling. Enabling customers to “enroll with your wallet” (“EWYW”) is essential to well-functioning competitive retail energy supply markets in Maryland.

As explained above, we live in a world where consumers can, in seconds, transfer money and pay bills on their banking apps, call for a car service, book a flight, stream movies or other shows, order food, and so many other things. But for some reason, Maryland (and many other states) are still wedded to antiquated account numbers, Choice ID numbers, and 22-digit service numbers to process retail electricity and natural gas enrollments. There is no reasonable argument to continue the current system when, as explained above, customers’ expectations regarding energy service have evolved, and the technology exists to implement EWYW in a manner that will be both effective and will not sacrifice existing consumer protections.

To facilitate greater customer access to the competitive market, RESA proposes EWYW functionality as a fix to the existing enrollment barriers. The 814 EDI transaction, which is used

to communicate switch requests to the utility, would be modified to allow suppliers to submit an enrollment using other data points to match with the customer's account, such as the customer's phone number, the last four digits of an account-holder's social security number, or a service address. Suppliers would no longer need to submit a Choice ID number, a 22-digit service number, or an account number to effectuate a switch, although they could if they had that information. Currently, the 814 transaction is programmed to send "reject codes," which would be modified for EWYW to include reject codes if the information submitted by the supplier (e.g., the phone number) did not match the utility's records.

To clarify, enabling customers to enroll using the information in their wallets would not "eliminate" Choice ID or service numbers.²⁸ Rather, EWYW as proposed by RESA would simply require utilities to match a supplier-submitted enrollment request (an EDI transaction for electricity enrollments or an XML transaction for natural gas enrollments) using data points other than the utility-specified shopping or Choice ID number. Those utility-designated numbers would remain in the utility systems as unique identifiers for each account, but the utility would match an enrollment to a customer's account using a combination of other data points such as the service address and telephone number associated with the account.

RESA's proposal is in line with the utilities' new IVR systems that enable customers to obtain their account information necessary for enrollment by calling the utility's automated telephone line. Customers enter their (a) account number, (b) phone number associated with their account, (c) social security number, or (d) tax identification number and (in some instances) the last four digits of their SSN to access their account information. The IVR system can match a

²⁸ Petition at 11.

customer to their account using any one of these four data points. RESA's proposal would build upon the IVR functionality and allow a customer to enroll with a supplier using the same information they use to authenticate their accounts in a phone call with their utility.

RESA anticipates that certain stakeholders will argue that the IVR functionality is sufficient and that EWYW is not needed or too dangerous. They are wrong. EWYW eliminates the hassle for customers to either find their bill (and their Choice IDs or 22-digit service numbers) or call their utility. From a practical perspective, calling the utility to obtain the Choice ID or 22-digit service number either through IVR or by speaking with an agent takes approximately 3-5 minutes and can be very difficult in a public setting such as a mall or grocery store. With EWYW, customers can provide the same information – their phone number, last four digits of their SSN, etc. – to the supplier, agree to the contract in accordance with existing rules and regulations, and the supplier enrolls the customer using that information. EWYW makes it easier for customers to get what they want when they want it, consistent with customers' evolving expectations as explained above in these Comments.

The Commission can direct utilities to implement EWYW functionality under existing regulations and tariffs. COMAR 20.53.04.02(A) provides that "a supplier may enroll or drop a customer by sending the appropriate electronic enrollment or drop transaction to the utility." Working within that existing regulatory requirement, the utility should be required to accept EDI/XML enrollment transactions that do not include a Choice/shopping ID number if there are other data points that the utility can use to match the enrollment request to a customer account. Likewise, using BGE as an example, BGE's supplier coordination tariff provides that the utility

and suppliers shall use Commission-established EDI standards for communications and data exchange, or mutually agreeable standards.²⁹ BGE’s tariff further provides that BGE will process enrollments upon receipt of “an electronic file...containing information in accordance with this Tariff or the procedures established by the Commission.”³⁰ RESA recommends that the Commission establish a different, more consumer-friendly enrollment procedure by directing the utilities to implement EWYW.

RESA members report that Choice/shopping ID number requirements are the biggest barrier to successfully enrolling a customer that has entered into an energy supply agreement with their chosen supplier. Enrollment transactions will be rejected by the utility if there is a single character off when submitting, in PHI’s case, the 22-digit service number.

Importantly, there is a comparable EWYW proposal pending before the Delaware Public Service Commission.³¹ In the Delaware proceeding where EWYW is under consideration, aggregated information received from certain RESA members in November 2017 showed that approximately 14.8% of Delaware residential enrollments for 2017 year-to-date failed because the supplier either was unable to capture the customer’s account or service number to submit the sale to the utility for enrollment, or because the submission was rejected by the utility for an invalid account/service number. There is no reason to think that the percentage in Maryland is any less than that in Delaware. Indeed, the Gabel Report discussed EWYW in Maryland, describing it as:

²⁹ BGE Supplier Coordination Tariff § 2.9.1.

³⁰ BGE Tariff § 7.2.2.

³¹ See Delaware Public Service Commission, *In the Matter of the Review of Customer Choice in the State of Delaware* (Filed December 23, 2015), PSC Docket No. 15-1693, Public Notice of Evidentiary Hearing (Apr. 3, 2018) (providing notice of an evidentiary hearing on April 19, 2018).

a customer's ability to enroll with a choice supplier, while away from the home, using information a consumer carries in their wallet, such as their name, address, phone number, driver license number, or the last four digits of their social security number. Currently, customers can only be enrolled if the supplier is provided the customer's unique choice number assigned by the EDC, which customers seldom have at their fingertips or committed to memory.³²

It is unacceptable that almost 15% of customers who desired to enroll with a supplier during 2017 could not secure the product of their choosing, or experienced inconvenience doing so, simply because the utility requires a 22-digit service number to switch to a supplier service. This percentage does not capture the additional customers who were interested in enrolling with a supplier but did not complete the enrollment because it was too difficult to find their account number. Moreover, Delmarva has agreed not to oppose implementation of EWYW in Delaware if this Commission moves forward with EWYW for the benefit of Maryland customers.³³

RESA believes that the existing enrollment procedures requiring customers to use lengthy utility-designated identifying numbers to enroll with their chosen supplier are anticompetitive, harmful to Maryland's competitive retail energy markets, and inconsistent with customers' expectations when participating in the market. In addition, it discourages the use of public venues to enroll customers and instead requires suppliers to rely on methods like telemarketing or door-to-door sales, reaching customers while they are at home and have access to their account numbers. Moreover, the use of these lengthy numbers drives up suppliers' transaction costs, making it more difficult for customers to shop, unnecessarily increasing prices

³² Gabel Report at 28.

³³ Delaware Docket No. 15-1693, Stipulated Order entered April 19, 2018, (¶ 6).

because, unlike utilities, a supplier does not have captive customers and guaranteed cost recovery; rather, a supplier's only way to recover its costs is to include them in the prices charged to customers. At the end of the day, the current system imposes costs on suppliers while delaying and even preventing some customers' enrollments with their supplier of choice. RESA recommends that the Commission direct the utilities to implement EWYW within six months after the Commission's Order, and task a stakeholder working group with developing implementation plans for EWYW.

D. RESA recommends that the Commission confirm that variable price notifications were fully litigated and decided in the recent RM54 proceeding, and that no revisions to COMARs 20.53.07.13 and 20.59.07.13 (Access to Change in Rate) are warranted.

The CMCC Work Group Leader requested guidance from the Commission on whether retail suppliers should be required to provide "electronic advance notice, before any change in rate, to any customer who provides an email address to the supplier."³⁴ Some members of the CMCC Work Group proposed this additional notice requirement in PC44, failing to understand or appreciate that this proposal has recently been litigated and considered by the Commission.

In RM54, the Commission considered options for variable pricing disclosures and notifications, promulgating regulations to ensure adequate consumer protections regarding variable price energy products. Indeed, variable price disclosures were the central focus of RM54. The revised regulations included numerous new disclosure requirements for suppliers to ensure that customers understand the product they are signing up for, including variable rate contracts. The Commission's regulations comprehensively address variable prices, requiring:

³⁴ Petition at 10.

- Specific up-front disclosures regarding the risks of variable prices in both the contracts and the new contract summary form;³⁵
- Ongoing access to upcoming variable prices at least 12 days before they go into effect;³⁶
- The ability to avoid an upcoming variable price by terminating a contract without advance notice and switching to another energy supply product within three business days;³⁷
- Specific disclosures in the notices provided to customers when a contract renews to a variable price.³⁸

RM54 stakeholders litigated variable rate disclosures and notices and the Commission considered additional monthly notice requirements. In RM54, OPC argued for “automatic renewal and notice of rate change” notices, arguing that suppliers should be required to send a notice to their customers any time a variable rate was about to change.³⁹ However, the RM54 working group leader (and ultimately the Commission) did not agree with OPC’s proposal.⁴⁰ The working group leader explained in recommendations to the Commission regarding the “Notice of Change in Rate” regulations in COMAR 20.53.07.13 and COMAR 20.59.07.13:

The [variable price] information will be accessible through means defined by the supplier, provided to the consumer in advance and the right to access the information cannot be waived. This change mirrors the principle easily found throughout COMAR and utility

³⁵ COMAR 20.53.07.08(A)(2)(d) and COMAR 20.59.07.08(A)(2)(d) require residential contracts to include explanations regarding any conditions of variability, including any limits on variability or a conspicuous disclosure if there are no limits on variability. COMAR 20.53.07.08(B) and COMAR 20.59.07.08(B) require suppliers to provide customers with the contract summary at the time of enrollment.

³⁶ COMAR 20.53.07.13 and COMAR 20.59.07.13.

³⁷ COMAR 20.53.04.02(B)&(E) and COMAR 20.59.04.02(B)&(E).

³⁸ COMAR 20.53.07.08(D) and COMAR 20.59.07.08(D) address variable price disclosures in contract renewal notices.

³⁹ RM54, OPC Comments at 2 (Sept. 1, 2015).

⁴⁰ RM54, Dkt. No. 23, *Recommendations of the Maryland PSC Leader, Version 2, Rule Making 54* (July 24, 2015).

tariff that establishes management responsibility for the consumer account on both customer and utility. Here, that concept is extended to the supplier-customer contractual relationship by requiring the supplier to provide the information in a timely and useful manner, and for the customer, who may access the information if desired.⁴¹

In other words, the Commission in RM54 rejected the exact same proposal that is identified in the Petition: to require suppliers to send variable rate information to their customers before the rate changes. In RM54, the Commission adopted COMAR 20.53.07.13 and 20.59.07.13, mandating that how the customer accesses the rate must be in writing (such as in the contract), but providing that the way the supplier would enable the customer access to the variable rate was a negotiated item best left for the competitive market. Thus, suppliers are not required to affirmatively send a notice by letter, email, text, etc., and can instead allow their customers to call an 800 number or go to a website to access the next month's variable rate. No stakeholder presented any change in circumstances since the Commission's decision in RM54 that would warrant a new requirement for suppliers to send a notice to their customers as opposed to enabling the customer to take the initiative to access the rate.

Customers receive many notices from their supplier and their utility throughout the year. Adding in new monthly email notices for customers is not necessary or appropriate and may even disadvantage customers who prefer other means for accessing rate information - some customers do not regularly access email. Customers that prefer an email notice each month (or at whatever frequency they desire) can incorporate that preference into their shopping decision. Customer communications, smart phone applications with account and price information,

⁴¹ *Id.* at 1-2.

supplier websites, and customer service more generally are competitive functions. Any customer that is not satisfied with their current supplier regarding price or any other component of their relationship with their supplier should be encouraged to engage with their supplier to resolve the issue or switch to a different supplier whose offerings satisfy the customer's preferences. If there are suppliers in the market whose customers are not satisfied with the service they are receiving, then those customers should exercise their choice to switch to a new supplier.

Competition thrives when customers engage with their suppliers and vote with their dollars. The Commission's regulations comprehensively and effectively address variable pricing disclosures. If there are suppliers in the market that are not complying with the regulations, then action should be taken to enforce the rules. Likewise, if a customer is not satisfied with their supplier, they should switch to a new supplier. Additional variable pricing regulations are not necessary and stakeholder resources should not be devoted to revisiting and relitigating variable pricing regulations at this time.

E. The costs to implement market-wide fixes benefit all customers and should be recovered from all customers.

The market-wide fixes proposed in the Petition are one-time costs that should be recovered from all ratepayers because all ratepayers benefit from the choices available through well-functioning competitive markets. In enacting the Choice Act, the General Assembly directed the Commission, "in assessing and approving each electric company's restructuring plan, and overseeing the transition process and *regulation of the restructured industry*," to:

provide that the transition to a competitive electricity supply and electricity supply services market shall be orderly, maintain electric system reliability, and ensure compliance with federal and State environmental regulations, be fair to customers, electric company investors, customers of municipal electric utilities,

electric companies, and electricity suppliers, and provide economic benefits to all customer classes.⁴²

To that end, the Commission was tasked with issuing orders and adopting regulations to establish competitive retail electricity markets.⁴³ The Choice Act authorized each utility to recover “all of its prudently incurred and verifiable net transition costs...”⁴⁴ Moreover, the Choice Act directed the Commission to determine transition costs to be recovered by utilities through a competitive transition charge or other appropriate mechanism.⁴⁵ Thus, recognizing that the utilities would incur significant costs to transition to fully functioning competitive retail markets, the General Assembly authorized utilities to recover their costs and directed the Commission to determine the appropriate costs to be recovered by the utilities. In addition, the General Assembly recognized that the Commission would need to “monitor the retail electricity supply and electricity supply services markets to ensure the markets are not being adversely affected by market power or any other anticompetitive conduct.”⁴⁶

If the Commission determines that there is an issue “preventing the electric customers in the State from obtaining the benefits of properly functioning retail electricity supply and electricity supply service markets, the Commission may take remedial actions within its authority to address the impact of market power or any other anticompetitive conduct activities.” RESA is not suggesting that any of Maryland’s utilities intentionally acted anticompetitively. Rather, there are anticompetitive effects from antiquated utility policies and procedures that can

⁴² PUA § 7-505(a)(1)(emphasis added).

⁴³ PUA § 7-505(B)(10)(i).

⁴⁴ PUA § 7-513(a)(1).

⁴⁵ PUA § 7-513(b).

⁴⁶ PUA § 7-514(A)(2).

and should be remedied as discussed herein to create more fully functional competitive retail energy markets.

The costs per customer for Seamless Moves and Instant Connects are minimal, particularly when considered relative to other proposals pending before the Commission. As shown on Table 1, below, the one-time costs to permanently implement Seamless Moves and Instant Connects are a small fraction of the costs for other programs under consideration.

TABLE 1 IMPLEMENTATION AND PER-CUSTOMER COSTS				
	BGE	PHI	PE	SMECO
Seamless Moves	\$1.4 million - \$2 million	\$836,000 - \$1.3 million	\$519,000	\$700,000 - \$1.1 million
Instant Connects	\$350,000 - \$500,000	\$264,000 - \$420,000		\$320,000 - \$480,000
Combined Cost Per Customer	\$0.89 - \$1.27 ⁴⁷	\$1.40 - \$2.19 ⁴⁸	\$1.92 ⁴⁹	\$7.34 - \$9.66 ⁵⁰
Rate Design Pilot Programs				
• Base IT Costs	\$700,000-\$900,000	\$500,000	N/A	N/A
• Marketing, Research, and Customer Education Costs	\$900,000 - \$1.1 million	\$2.3 million - \$2.9 million	N/A	N/A
Combined Cost Per Electric Distribution Customer	\$1.23 - \$1.55	\$2.93 - \$3.69	N/A	N/A
Statewide EV Portfolio “Education and Outreach” Costs Only ⁵¹	\$2,406,501	\$2,103,293	\$615,000	N/A

⁴⁷ February 2018 Electric Choice Enrollment Report: 1,293,961 BGE distribution service accounts (electric); September 2017 Gas Choice Enrollment Report: 670,074 BGE distribution service accounts (natural gas).

⁴⁸ February 2018 Electric Choice Enrollment Report: 785,090 PHI distribution service accounts.

⁴⁹ February 2018 Electric Choice Enrollment Report: 270,824 PE distribution service accounts.

⁵⁰ February 2018 Electric Choice Enrollment Report: 163,544 SMECO distribution service accounts.

⁵¹ PC44, *Petition for Implementation of a Statewide Electric Vehicle Portfolio* at 57-60 (Jan. 19, 2018).

Cost Per Electric Distribution Customer	\$1.86	\$2.68		
Offshore Wind ⁵²	\$1.40 per customer per month (levelized cost in 2012\$) for 20 years			

As shown on Table 1, a BGE customer would pay between 89 cents and \$1.27 for Seamless Moves and Instant Connects. While the implementation costs for Pepco and Delmarva Power are slightly higher than BGE’s costs, it is conceivable that if Delaware also implements Seamless Moves and Instant Connects, the overall cost for each PHI utility would decrease as costs are spread out through the PHI footprint. Even without Delaware’s involvement, these one-time costs are not substantial and should not prevent the Commission from moving forward with these worthwhile programs as RESA has proposed.

BGE’s residential customer price to compare for June 1, 2018, through September 30, 2018, is 7.677 cents per kWh.⁵³ As of April 16, 2018, there were over twenty offers posted on the Commission’s shopping website with electricity prices lower than the BGE price to compare, including fixed price offerings for up to 36 months.⁵⁴ In a single month, a customer using 1,000 kWh per month that switches to a supplier at 7.4 cents per kWh would save \$2.77. There are fixed price offers available below 7 cents per kWh, saving residential customers in BGE’s service territory nearly \$7 per month or more.⁵⁵ Yet, as of February 28, 2018, less than 25% of

⁵² According to the Commission’s most recent available Electric Choice Enrollment Report (February 2018) there are a total of 2,513,419 electric distribution utility service accounts.

⁵³ BGE, *Electric Price Comparison*, <https://www.bge.com/MyAccount/MyService/Pages/ElectricPriceComparison.aspx>.

⁵⁴ Electric Choice: Shop and Compare (last visited Apr. 16, 2018), <http://www.psc.state.md.us/electricchoice/shop-and-compare/>.

⁵⁵ Assuming 1,000 kWh monthly usage.

residential customers in the BGE service territory were enrolled with a competitive supplier.⁵⁶ Simply by enrolling with a competitive supplier, customers can save money every month. The fact that 75% of BGE's residential customers are overpaying each month while they remain on SOS demonstrates that more needs to be done to enhance competition and facilitate customer shopping in Maryland. Looking at the BGE example above, the savings available in one month by shopping for competitive retail energy supply would more than pay for the permanent market fixes discussed herein.

III. CONCLUSION

RESA appreciates the opportunity to comment on the Petition and respectfully requests that the Commission adopt the proposed regulations included in the Petition, with modifications to the budget billing and data access provisions as discussed above. Moreover, RESA recommends that the Commission direct utilities and stakeholders to develop implementation plans for EWYW functionality to enable more customers to more easily access the benefits of Maryland's competitive retail energy markets.

⁵⁶ Electric Choice: Monthly Enrollment Reports (Feb. 2018), <http://www.psc.state.md.us/electricity/electric-choice-monthly-enrollment-reports/>.

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Dated: April 19, 2018