



Eric J. Wallace  
GreeneHurlocker, PLC  
1807 Libbie Avenue, Suite 102  
Richmond, Virginia 23226  
(804) 672-4544 (Direct)  
[EWallace@GreeneHurlocker.com](mailto:EWallace@GreeneHurlocker.com)

April 9, 2019

**By Electronic Filing and Federal Express**

ML#224671

Ms. Terry J. Romine  
Executive Secretary  
Maryland Public Service Commission  
6 Saint Paul Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202-6806

**Re: PC44**

Dear Ms. Romine:

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.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'EJ Wallace', written over a light blue horizontal line.

Eric J. Wallace

Enclosure

**BEFORE THE  
MARYLAND PUBLIC SERVICE COMMISSION**

In the Matter of Transforming Maryland’s       \*  
Electric Distribution Systems to Ensure that       \*  
Electric Service is Customer-Centered,           \*           PC44  
Affordable, Reliable and Environmentally       \*  
Sustainable in Maryland                           \*  
   \* \* \* \* \*

**COMMENTS OF THE  
RETAIL ENERGY SUPPLY ASSOCIATION**

**I. Introduction**

The Retail Energy Supply Association (“RESA”),<sup>1</sup> by counsel, submits these comments pursuant to the Maryland Public Service Commission’s (“Commission”) Notice of Opportunity to Comment issued in this proceeding on March 19, 2019 (the “Notice”). In the Notice, the Commission requested comments on the draft Public Conference 44 (“PC44”) Retail Supplier Load Shaping Pilot Request for Proposal (“RFP”) Statement of Work (“Statement of Work”).

**II. Comments**

RESA appreciates the Commission’s continued efforts to develop a workable retail supplier time-of-use pilot program to gather information regarding the benefits retail competition can provide to Maryland ratepayers. The competitive market plays a key role in providing innovative rates to consumers and should be an integral part of any rate design pilot program initiative.

---

<sup>1</sup> 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 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](http://www.resausa.org).

### **a. Improvements to the RFP Parameters**

In response to the previous iteration of the retail supplier rate design pilot program, RESA submitted comments identifying several proposed RFP requirements that were unnecessary or conflicted with the Commission’s regulations in COMAR 20.53, and would increase costs for suppliers to participate in the pilot. In the new RFP Statement of Work, the Commission addressed some of the concerns RESA raised:

- **Security Deposit:** The security deposit requirement and penalty provisions for failure to meet a minimum level of customer participation have been removed.
- **Renewal Restriction:** The affirmative consent and re-enrollment requirement at the conclusion of the pilot, which ran counter to the Commission’s contract renewal regulations in COMAR 20.53.07.08(D) has been removed.

Regarding contract renewal, the RFP Statement of Work states that a bidder must “identify what rate offering (although not necessarily the precise pricing) a participant will be offered at the end of the pilot.”<sup>2</sup> RESA recommends the Commission confirm that, with proper notice under COMAR 20.53.07.08(D), customers participating in the supplier pilot may renew to any legal product structure (e.g. fixed, variable, etc.).

### **b. Continuing Concerns Regarding Program Structure**

RESA appreciates the changes to the RFP addressing RESA’s concerns. However, some of the issues RESA identified in the prior RFP remain in this RFP Statement of Work. To address these issues, and better enable suppliers develop a load shaping pilot offering, RESA recommends the following:

- **Flexible Supplier Billing Options**

RESA recommends that the Commission allow suppliers to incorporate flexible billing options into their pilot program proposals, including supplier consolidated billing and on-bill

---

<sup>2</sup> RFP Statement of Work at 5.

financing. Allowing suppliers to manage the consolidated bill for pilot program participants is critical for complex energy supply offerings. Through a supplier consolidated bill, a supplier can provide pilot program customers detailed information regarding their supply costs at various times, helping customers better understand their usage and associated bill impact. Supplier consolidated billing will also allow suppliers to bill for non-commodity products, such as enabling technology (e.g. smart thermostats) or energy efficiency measures. Implementation of supplier consolidated billing is currently under consideration in Case No. 9461.

Absent the ability to offer a Supplier Consolidated Bill, suppliers, at a minimum, should be permitted to include non-commodity enabling technology and energy efficiency measures on the utility consolidated bill. Allowing suppliers to leverage the UCB for customer energy commodity usage and for other products and services will enable suppliers to develop more innovative pilot offerings. Absent the ability to bill for smart thermostats or energy efficiency measures on the utility consolidated bill (or through supplier consolidated billing as discussed above), bundled supplier offerings under the pilot program may be limited by billing constraints. RESA recommends that the Commission update the RFP Statement of Work to provide flexible billing options for retail suppliers.

- **Enrollment Process**

The RFP Statement of Work states that “a signature on the supply contract document” is required for all enrollments.<sup>3</sup> Requiring signatures for all enrollments, including enrollments that would otherwise satisfy the Commission’s contracting requirements in COMAR 20.53.07.08(C), is inconsistent with COMAR and Maryland law, and may discourage participation. RESA interprets the signature requirement to prohibit telephone enrollments that would otherwise

---

<sup>3</sup> RFP Statement of Work at 4.

satisfy COMAR 20.53.07.08(C)(4). It is also unclear whether electronic enrollments (internet contracts) under COMAR 20.53.07.08(C)(3) would be allowed. RESA recommends that the Commission modify the RFP Statement of Work to allow supplier to enroll customers in accordance with applicable law, namely COMAR 20.53.07.08(C).

- **Marketing Support for Supplier Program**

RESA continues to recommend that the Commission provide for utility marketing support or supplier/utility joint marketing for the retail supplier pilot. Based on RESA's experience with the PECO Energy Company time-of-use pilot program a few years ago, utility marketing support and/or joint marketing plays a key role in a successful supplier rate design pilot program.<sup>4</sup> This marketing support could take the form of bill inserts, direct mailings, emails, and links to the supplier pilot program on utility websites. RESA recommends that the Commission modify the RFP Statement of Work to allow suppliers to propose joint supplier/utility marketing plans and/or cost recovery for a portion of the supplier pilot marketing costs (in addition to survey incentives).

- **Review of Supplier Marketing and Contract Materials**

Due to timelines involved in the pilot, submitting marketing materials and contracting documents to the workgroup for review in advance may be challenging. RESA previously proposed submitting all materials for inclusion in the final pilot report. If the Commission is inclined to retain a review period prior to supplier use of marketing and contracting materials, then RESA recommends additional parameters for the review period. For example, if Staff and OPC intend to provide feedback to the supplier materials during the 45-day review window, the

---

<sup>4</sup> See PA PUC, Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement, Docket No. P-2012-2297304, Final Report (Apr. 28, 2015) (the "PECO STP Final Report"); see also PC44, Comments of the Retail Energy Supply Association (Sept. 14, 2017).

feedback should be due within a specific period (e.g. seven business days) after receipt of the draft materials. The supplier will need to finalize and print marketing and contract materials prior to offering them to the public. If Staff or OPC has feedback on the materials but that feedback is not communicated to the supplier until the 44<sup>th</sup> day, it would almost certainly be too late for the supplier to make any revisions to the materials. Therefore, RESA recommends that the Commission require Staff and/or OPC feedback to be provided within a specific, limited period after receipt of the supplier's materials.

- **Retail Supplier Load Shaping Pilot Competition with SOS Pilot Programs**

RESA remains concerned that the retail supplier load shaping pilot program will compete against the utility SOS pilot programs on an un-level playing field. While RESA is a staunch advocate for fair and even retail competition, the presence of competing utility time-of-use pilot programs may discourage retail suppliers from investing the significant resources required to:

1. prepare a response to the retail supplier RFP; develop internal processes to implement the load-shaping offering(s);
2. consult with the utility's EM&V contractor to deliver a comprehensive EM&V plan;
3. timely develop marketing and contract materials for review by Staff and OPC;
4. market the program and enroll 1,000 to 5,000 customers;
5. serve and support participating customers during the pilot period; and
6. support the utility EM&V and reporting processes for the pilot.

All costs associated with participation in the pilot must be factored into the participating suppliers' risk premiums, increasing prices as compared to the SOS pilot, for which the utilities will surely seek full cost recovery for all costs incurred. Suppliers receive no guaranteed cost recovery and face substantial costs and risks to participate, including those listed above. By contrast, the utility programs allocate no risk to the utilities' shareholders and provide full cost recovery, rather than recovering the costs through the SOS TOU rates.

The utility budgets for the 2-year utility SOS pilot programs are significant. For example, BGE’s approximate \$1.4 million SOS TOU pilot program budget included \$82,270 in direct mailing costs, \$180,000 in customer education costs, and \$192,500 in survey incentives, plus another \$112,600-\$122,600 to develop and send customer energy use profiles and TOU rate comparisons to prospective pilot participants.<sup>5</sup> On the other hand, suppliers (not ratepayers) would be responsible for their market research, marketing and enrollment material development, customer recruitment and enrollment, and data tracking costs.<sup>6</sup> Indeed, the “second-highest weighted criteria” for the proposed supplier pilot program “will be the expected costs of the bid to non-participating ratepayers, such as Utility’s estimated EM&V contractor costs, bidder’s requested EM&V support costs, costs to existing efficiency and demand response programs, and the Utility’s administrative costs.”<sup>7</sup>

If a supplier budgeted \$1.4 million for pilot program costs and enrolled 1,000-5,000 customers, the supplier would have to recover \$280 - \$1,400 per customer in addition to the actual commodity costs just to break even. The availability of ratepayer cost recovery outside of the SOS TOU rates for the utility pilot favors the utility SOS pilot program over the supplier programs. This disparity reinforces the need for sufficient incentives, including marketing support, for suppliers to invest in the retail supplier pilot program. RESA also recommends that the Commission waive the 5,000-customer cap to enable suppliers to enroll a sufficient number of customers to support the supplier’s program participation costs.

---

<sup>5</sup> See Joint Utilities, *PC44 TOU Pilot – Revised Implementation and Marketing and Outreach Plans* (Nov. 21, 2018).

<sup>6</sup> RFP Statement of Work at 3.

<sup>7</sup> *Id.* at 4.

### III. Conclusion

RESA fully supports a retail supply pilot and has committed extensive resources to participate in the PC44 rate design workgroup process over the last couple of years. RESA's recommendations above address issues that, if addressed, will provide the greatest opportunity for robust and competitive supplier participation in the retail supplier load shaping pilot program.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel



---

Brian R. Greene  
Eric J. Wallace  
GREENEHURLOCKER, PLC  
1807 Libbie Avenue, Suite 102  
Richmond, VA 23226  
(804) 672-4542  
[bgreene@greenehurlocker.com](mailto:bgreene@greenehurlocker.com)  
[ewallace@greenehurlocker.com](mailto:ewallace@greenehurlocker.com)  
Counsel for RESA

Dated: April 9, 2019