SIERRA CLUB
MONTGOMERY COUNTY, MD

May 19, 2023

Andrew S. Johnston
Executive Secretary
Maryland Public Service Commission
William D. Schaefer Tower
6 St. Paul Street
16th Floor
Baltimore, Maryland 21202

RE: Administrative Docket RM80 - Montgomery County Community Choice Aggregation Pilot Program Rulemaking

Dear Mr. Johnston,

Pursuant to the Public Service Commission's April 27, 2023 Notice of Further Rulemaking (RM80), please accept the attached comments of the Montgomery County Group of the Maryland Chapter of the Sierra Club on the revised, proposed regulations for the Montgomery County Community Choice Aggregation Pilot Program.

The Montgomery County Sierra Club has approximately 2,200 members and approximately 8,400 additional supporters in the County. The Sierra Club, through its Montgomery County Group and the Maryland Chapter, is a strong supporter of the Community Choice Aggregation Pilot Program in Montgomery County, having submitted detailed written testimony on the state legislation that enacted the program in 2021 (HB768). That testimony explained that community choice aggregation will provide multiple benefits to Montgomery County residents and ratepayers, including creating a powerful tool for the county to meet the substantial clean energy requirement of its ambitious greenhouse gas reduction goals in a cost-effective manner.

We have reviewed the revised, proposed regulations, including the comments submitted through tracked changes and in comment bubbles. We respectfully submit the attached comments below.

Sincerely,

Darian Unger
Chair, Montgomery County Sierra Club
DWUnger@Howard.edu

cc: Montgomery County Executive Marc Elrich
Montgomery County Council President Evan Glass

Attachment

Advertising and Promotion of CCA Basic Service

The Montgomery County Sierra Club disagrees with the proposed regulations regarding informational and promotional communications by the Community Choice Aggregator ("CCA") set forth in subpart 07 ("Customer Protection"), section .07 ("Advertising and Solicitations"). Most fundamentally, the proposed regulations are inconsistent with the governing statute. In addition, the proposal does not comport with the guidelines on this issue provided by the Commission in its March 15, 2023 Order 90545.

The proposed regulations would impose a blanket prohibition on the CCA "conduct[ing] promotional advertising for CCA Basic Service," .07(A), while allowing the CCA to "conduct informational advertising for CCA Basic Service, subject to Commission approval." .07(B). The proposed definitions, set forth in 20.XX.01.02(B), define "Promotional Advertisement" to include information "directed toward selling services or promoting the addition of new customers or seeking the use of CCA service." They define "Informational Advertisement" to include information "directed toward informing customers about the CCA service options, conditions of service, energy efficiency and conservation, temporary or emergency conditions, changes in rates for service and changes in service options."

Section 7-510.3(J) of the Public Utilities Article explicitly allows the CCA to "promot[e] the use of renewable energy" and "promot[e] energy efficiency programs" by assessing a charge on its customers for the cost of the promotional activities. The proposed regulations repeat this authorization in subpart 14 ("CCA Non-Commodity Fees and Charges Tariff Structure"), section .02. Accordingly, the Commission is precluded from adopting a blanket prohibition on CCA promotional advertising.[1]

While the statutory authorization by itself necessitates a rejection of the proposed prohibition, the error is further underscored by how the prohibition departs from guidelines on this issue provided by the Commission in its March 15, 2023 Order 90545.

In the Order (par. 30), the Commission advised that "[t]he proposed regulations should permit educational and informational communications with ratepayers but not permit unrestricted commercial or promotional advertising," and must "ensure[] the necessary regulatory clarity."

Thus, the Commission limited its concern to promotional advertising that is not accompanied by appropriate restrictions. The Commission did not endorse a blanket prohibition on promotional advertising.

Further, the attempt in the proposed regulations to distinguish between permissible informational advertising and prohibited promotional advertising falls far short of ensuring regulatory clarity; instead, the distinction is unclear and untenable. It is natural and to be expected that informational advertising by the CCA would indicate that CCA Basic Service is beneficial (e.g.,

[1] We also note that the proposed definition of informational advertising mistakenly does not include information regarding the use of renewable energy.

with regard to the provision of renewable energy). Yet, using positive language to describe the CCA could be construed to be a promotion since doing that would or could encourage electricity users to join the CCA. In short, it would be extremely challenging for the CCA to discern how to navigate between what is permissible language and what is impermissible.

We believe that the restrictions proposed by Montgomery County will fully protect consumers, i.e., that CCA advertising must not be unfair, false, misleading, or deceptive.

Lastly, we do not agree with the requirement in the proposed regulations that promotional advertising be subject to Commission approval. The statute does not require this, and we do not see a basis for such a requirement.

Information Included in the CCA Opt-Out Notice

In subpart 04 ("Transfers of Service"), section .01(B)(10), there is a disagreement as to what information the opt-out notice should include on the subject of what a CCA customer may do if the customer believes they were incorrectly enrolled in CCA service.

The Montgomery County Sierra Club agrees with Montgomery County that it is fully sufficient for the opt-out notice to include information on the dispute resolution process. We do not think it is necessary or helpful to further require, as set forth in the proposed regulations, that the individual receiving the notice be informed about potential compensation for enrollment errors.

At this very early point in the enrollment process, the individual in question is a potential customer – not yet a CCA customer. It is therefore premature, hypothetical, and overly complex to require that the individual be provided a detailed explanation of what might occur *if* the individual is enrolled in the CCA, *if* it later is determined through the dispute resolution process that the enrollment was incorrect, *if* it is determined that compensation should be provided and, if compensation is ordered, *what* "compensation" might be provided and would not be provided. In this regard, it is noteworthy that, pursuant to subpart 07 "Customer Protection"), section .05(E), an unauthorized enrollment "may" result in compensation, not that compensation always will be ordered.

Notification of Termination by the CCA of an Optional Service

In the forthcoming implementation of community choice aggregation, the CCA will offer a Basic Service plan and, in addition, may offer one or more variations on that plan as optional services. A question presented for the regulations is, if the CCA should decide to terminate an optional service, in what circumstances should the CCA be required to mitigate potential risks to SOS due to some number of CCA customers possibly migrating to SOS.

The Montgomery County Sierra Club believes that this is best addressed by including the termination of an optional service as a matter that would trigger the provisions of subpart 19 ("SOS Risk Mitigation and Pilot Annual Reporting"), section .03, dealing with "Event Monitoring." Thus, the CCA would be required to provide notice (in the manner prescribed by that section) if the termination "is likely to cause a material migration of customers from CCA service to SOS."

Alternatively, the proposed regulations might be read as treating the termination of an optional service as an event of similar magnitude to a planned termination of the entire CCA program, and thus subject to the same notice requirements. These notice requirements are set forth in subpart 12 ("CCA Program Termination"), section .03. They provide that the CCA must annually file with the Commission a termination plan that includes "[t[he planned termination date, or range of dates, for each electric supply offering," section .03(A)(1)(a); and must "notify, no less than 16 months prior to the planned termination date of the pilot, the Commission, and all electric companies with CCA customers in the county, of any planned termination of CCA electric supply service that could result in CCA customers switching to SOS supply." Section .03(B).

We believe that the "Event Monitoring" provisions are the appropriate vehicle for handling this matter since the termination of an optional service is a far less significant occurrence than the termination of the entire program (or a partial termination that concerns a specific electric company service territory). Those CCA customers who subscribed to the terminated optional service would be able to switch to CCA Basic Service or to another optional service (if other optional services exist), and it is speculative as to whether any such customers, let alone a material number, would migrate to SOS.

This approach will allow the CCA to have the flexibility to modify or terminate optional service offerings as market conditions or supply conditions change while, at the same time, ensuring the requisite risk mitigation protection for SOS.