



Real Possibilities

Testimony of AARP CT
Senate Bill Number 2: AAC Electric Customer Consumer Protection
Energy & Technology Committee
February 20, 2014

AARP CT thanks Senator Williams and Senator Looney for submitting Senate Bill Number 2. We would also like to thank the Energy and Technology Committee for hearing it today. Senate Bill Number 2 is a good first step towards protecting consumers from the pitfalls and abuses in the third party electric supply market, however, AARP believes a more holistic approach to fixing the market is truly. Several recommendations to enhance consumer protections are outlined below.

I. WHY REFORMS ARE NEEDED

Connecticut consumers, similar to those in other states, were promised that deregulation or retail competition would provide benefits and result in lower electricity prices compared to traditional cost of service regulation of electric generation. What proponents of deregulation failed to recognize that markets require supervision, consumer protections, and proper enforcement. Some marketers have turned to means to capture customer interest and agreement that have resulted in complaints, misrepresentation of prices, the use of variable rates that are not predictable or even plainly stated, teaser rates, the renewal of fixed rate contracts into variable rate contracts without affirmative customer consent, and a host of telemarketing and door to door activities that confuse customers and take advantage of their lack of education and understanding of the terms being proposed to them in a hard sell marketing technique.

The evidence of the need for reforms is well known to many of you because you have heard the complaints from your constituents. You will hear actual stories of consumer experience in the current retail electric market from several witnesses

from AARP and others in these hearings. Let me summarize the events and trends that need your serious attention to develop appropriate reforms:

- Consumers are told repeatedly that they will receive “lower bills” or “savings” in marketing materials from alternative suppliers, but while the initial rate may be slightly below the current Standard Offer price, the contract typically relies on variable prices after the initial term that are significantly higher than the Standard Offer price.
- Variable rates are disclosed as “based on wholesale market conditions” and do not reflect any publicly available index or formula that a consumer can access to determine the degree of variability in the prices based on historical conditions or even predict their next monthly bill. A typical example is the following disclosure from Blue Pilot Energy:

Price per Kilowatt Hour. You have a variable rate plan with a starting price set at 7.5 cents per kWh. This initial rate will be effective for at least the first ninety (90) days of service. Thereafter, your price may vary on a month-to-month basis. This price includes Generation Charges, but excludes applicable state and local Sales Taxes and the Delivery Charges from your LDU. At any time after ninety (90) days of service, but not more frequently than monthly, Blue Pilot may increase or decrease your rate based on several factors, including changes in wholesale energy market prices in the ISO New England Markets. Your variable rate will be based upon ISO-NE wholesale market conditions. Please log on to www.bluepilotenergy.com or call Customer Service at 877-513-0246 for additional information and updates.¹

Another typical marketing disclosure is that offered by Starion Energy in which customers are told in large and bold print that SAVINGS are promoted, a price is listed slightly below the current Standard offer, but in tiny print at the bottom of the brochure is stated, “Starion Energy’s rate is variable, therefore is subject to change in response to market conditions.”²

- Door to door and telemarketing sales agents are typically independent contractors that are paid by the licensed supplier based on a successful sale, a sales arrangement that often results in untrained agents, an incentive for misrepresentation, and even in some rare cases, criminal conduct.
- The Office of Consumer Counsel has documented that thousands of Connecticut customers are paying significantly more than the Standard Offer procured by utilities in the wholesale market pursuant to a Department approved plan. In a press release last month the OCC documented that 10 Connecticut suppliers are charging higher than 17 cents per kWh for some of their customers, a rate that is more than double the standard offer. This evidence is sadly typical of evidence from other states:

¹ Provided in response to OCC Interrogatory #37, PURA Docket No. 13-07-18.

² Provided in response to OCC Interrogatory #__, PURA Docket No. 13-07-18.

- The majority of the 2013 bills incurred by low income customers of PPL Electric (Pennsylvania) who enrolled with an alternative supplier were higher than default service. The study showed that 67% of the bills received by known low income customers receiving ratepayer bill payment assistance and who were receiving service by an EGS were above default service, ranging from 58% in June 2013 to 82% in March 2013.³
- An analysis of 24 months of bills for residential customers of Niagara Mohawk (National Grid) in upstate New York documented that between August 2010 and July 2012, 84 % of the residential electric bills and 92 % of the residential gas bills of those who switched to alternative suppliers were higher than the bills of those who decided to keep getting their supply from National Grid. And those statistics translated into huge disparities in consumer bills. For instance, the data showed that over that 24-month period, those with higher bills paid nearly \$500 more for electricity and \$260 for natural gas. In total, residential customers served by alternative suppliers paid approximately \$130 million more for 24 months of service than they would have paid had they not switched to alternative supplier service and instead received full service from the traditional utility for both electricity and natural gas. This study also specifically reported data for the low income customers served by Niagara Mohawk that were identified due to their receipt of LIHEAP and/or participation in the utility discount program, estimated as 33,015 electricity and 20,840 gas customers. Low income customers who selected an alternative supplier paid a net additional cost of \$13.3 million during this study period compared to default electricity rates and \$5.8 million during this same period for gas service compared to default natural gas rates.⁴
- The **Canadian** experience appears to reflect these evaluations in the U.S. In a 2011 Report by the Office of the Auditor General of Ontario (Canada) the Auditor evaluated the performance of the Ontario Energy Board, the key regulator for natural gas and electricity sectors. As part of this evaluation, the Auditor evaluated the Ontario Energy's Board complaint handling and enforcement activities for licensed electricity suppliers. In Ontario consumers can purchase electricity from the utility at a default service price (called the Regulated Price Plan) set by the Board or purchase from a licensed supplier. Approximately 15% of residential customers had selected an alternative supplier, primarily based on the marketing theme of "price

³ Testimony of Stephen Krone on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania before the Pennsylvania PUC, Docket No. P-2013-2389572. (January 17, 2014).

⁴ Direct Testimony of William D. Yates, C.P.A., on behalf of the Public Utility Law Project of New York, Inc., before the New York Public Service Commission, Proceeding for Niagara Mohawk Power Co. for Natural Gas and Electric Rates, Case No. 12-G-0202 and Case No. 12-E-0201 (August 31, 2012).

protection and stability.” Most of these supplier plans are fixed price for a 4-5 year period. The Auditor documented that the Board’s customer complaints had significantly increased in recent years from 1,400 in 2006 to 4,300 in 2010 and totaled 17,000 over five years. In addition, the Auditor sampled customer bills from 2006 to 2009 from various suppliers and found that the supplier fixed price ranged from 8.49 cents per kWh to 10.53 cents per kWh but that during this same period the regulated default service price was 5.4 cents per kWh to 6.3 cents per kWh. The same retail customers paid from 35% to 65% more for their electricity compared to the highest default service rate over the term of their contract. Over the term of a five-year contract (which was typical of the contracts entered into by residential customers) a customer using 1,000 kWh per month would pay about \$2,000 more for electricity than under the regulated default service plan. This Report also noted that the suppliers avoided the normal commercial business risk of collections due to the utility’s purchase of the supplier’s receivables and assuming responsibility for collecting the entire bill.⁵

- Recent press reports in Pennsylvania have documented that some residential customers on variable rate plans with alternative suppliers have seen winter electric bills with pricing over 20 cents per kWh.⁶
- Alternative suppliers typically do not issue their own bills but collect their unregulated charges through the local utility and consumers may assume that a utility bill includes charges that are fair and reasonable. Furthermore, under Purchase of Receivables programs, the local utility buys the supplier’s receivables and can threaten and disconnect service for nonpayment of these unregulated supplier charges. This practice must be halted. Utilities should not be able to disconnect service for charges that would exceed what the customer would have paid under the Standard Plan. Many consumers do not understand the relationship between the current market price charged by the alternative supplier and the current standard offer price until the bill is shockingly high.
- In some cases when customers discover that they are paying higher prices than initially promised and call their supplier to terminate the contract, they are told they have to pay an early termination fee. Some tell us they can’t get through to a responsible person to resolve their complaint.

II. AARP RECOMMENDED REFORMS

⁵ This Report is available from the Auditor General of Ontario at http://www.auditor.on.ca/en/reports_en/en11/302en11.pdf

⁶ See, e.g., http://blog.pennlive.com/capitol-notebook/2014/01/heres_what_you_need_to_know_ab.html#incart_river

The statutory and regulatory reforms that AARP recommends are based upon our evaluation of Connecticut retail market activities, our knowledge of fair consumer protection policies for other essential consumer products and services, and our knowledge of regulations and policies adopted in other states.

Standard Plan Policy

If the recent spate of complaints and investigations have taught us anything it is that the current statutory policy governing how the Standard Plan is procured and provided to customers who choose not to choose or who need a safe haven to return to if they are dissatisfied with their experience with marketers must be retained and supported. The proposals to auction off residential customers to alternative suppliers for a fee are hopefully dead and not going to be revised.

Licensing and Enforcement

- The criteria for a license should be stiffened to require electric suppliers to submit a bond or security interest payable to the Commission to cover the potential for customer restitution in the event of a finding of violation, misleading and deceptive advertising, and failure to comply with contractual terms. The current PURA regulation requires \$250,000 or 5% of revenues with the \$250,000 operating as a cap. This bond or security interest should not be limited by the cap, but rather remain tied to the actual sales activity in Connecticut.
- PURA should be required to propose and adopt regulations to conform to all the statutory requirements for consumer protection policies governing the retail energy markets within 90 days of enactment. It should be noted that PURA has yet to adopt regulations to adopt previous statutory reforms.
- The Legislature should give PURA sufficient financial resources and enforcement tools necessary for proper supervision of a retail energy market. Among the enforcement remedies that PURA should have include:
 - The authority to adopt orders requiring adherence to marketing standards as a condition of eligibility to market electricity and gas;
 - The authority to reject, suspend, and rescind a license for violation of the regulations and licensing conditions;
 - The authority to order suppliers to provide restitution to customers where misleading and unlawful behavior has occurred;
 - The authority to order a supplier to halt the use of a particular marketing channel or activity when preliminary evidence suggests that such a suspension is warranted while a more formal investigation is completed, similar to a civil injunction to halt unlawful activity pending resolution of

- a formal complaint;
- The authority to assess civil penalties for violation of orders or regulation through an expedited administrative process; and
- The authority to assess licensing fees on suppliers that reflect the heightened level of supervision, education, and enforcement that has arisen in the implementation of retail energy competition.
- The required security amount will change each year and shall equal 10 percent of the licensee’s annual revenues from sales of generation services to residential and small non-residential customers in Connecticut over the prior calendar year.
- Upon a finding that a licensee has violated a statute or regulation regarding the provision of service to residential or small non-residential customers, the PURA may direct that amounts from the financial security be distributed as follows:
 - (i) to customers for a refund of security deposits or advanced payments paid to the competitive electricity provider;
 - (ii) to customers for restitution of amounts paid in error or unlawfully obtained; or
 - (iii) to the PURA for payment of administrative penalties or any other sanction ordered by the PURA pursuant to other statutes or rules applicable to competitive electricity providers.

Disclosures: Fixed and Variable Rate Contract Terms

- Suppliers should be required to disclose their price in a uniform manner as part of their marketing materials and terms of service documents. This recommendation is not intended to regulate the pricing method that suppliers choose to use or regulate their underlying pricing decisions. Rather, the recommendation would require that a true “apples to apples” comparison of prices be enabled by requiring suppliers to include all fixed and recurring charges, such as minimum monthly charges or other unavoidable fees, in the cents per kWh price that is presented to customers and listed in any regulatory agency-sponsored website.

This proposal is quite similar to the requirement under the Truth in Lending Act that creditors disclose the Annual Percentage Rate (APR) for all credit transactions in a uniform and “regulated” manner to allow customer comparisons of interest rates.

- The disclosures required for variable rate energy contracts are in need for reform and are the cause of most customer confusion and, in many documented

cases, result in prices higher than the Standard Plan without customer understanding or awareness of how these prices are calculated. The concern is that the customer may be informed that the price will vary, but the disclosures concerning the manner or range within which the price will vary is often obscure or deliberately hidden in fine print. Some of these variable rate disclosures are incomprehensible and allow the supplier to make changes in the customer's rates without any reference to a published or external index that is not in the control of the supplier.

- Suppliers who offer variable rate contracts should conspicuously disclose an example of how the price of their contract would have changed in the past 12-24 months if the contract had been in place with the methodology included in the supplier's contract. Obviously, there should not be any promise that historical changes in the index or methodology will guarantee future price changes, but at least the customer will understand the nature of the variability to which he or she has agreed and see the range of change in price that has occurred in the recent past. Such a disclosure is required, for example, for variable rate mortgages under the Truth in Lending Act.
- Most importantly, variable rate contracts should be required to identify the specific index, formula, or methodology that is external to the supplier's own manipulation or discretion to govern their terms. It is unreasonable and unfair for residential customers to be exposed to a monthly change in price for essential electricity or natural gas service based on an unidentified or unknown methodology. Whatever the methodology, index, or formula used by the supplier, it should be either publicly available or based on an identified formula or methodology that prevents suppliers from making changes at their total discretion. This reform is particularly important because (unlike the natural gas market) there is no publicly available index available to link retail prices with the wholesale market. The term used by suppliers as "response to market conditions" is entirely meaningless and without any means of enforcing contract terms. It is possible to argue that this type of price disclosure is not a disclosure of any "price" at all and borders on an unconscionable contract term that should be per se prohibited. This reform, coupled with the proposed disclosure requirement that the customer be presented with how that index, formula, or methodology has changed the underlying electricity gas price in the past 12-24 months, will allow customers to make a more informed decision about whether a variable rate contract is appropriate for their needs. These disclosures are also crucial for residential customers to understand the nature of variable rate contracts for electricity, a phenomenon that is not typical for these utility services. A publicly available index would also allow PURA to review whether consumers were being charged properly under terms of the agreement.

Additional Fees and Renewal Clauses

Early termination fees should be limited to \$50 similar to a reform adopted in Illinois. Furthermore, there is no reasonable justification for including an early termination fee in month-to-month or variable rate contract.

- Consumers who enter into a fixed term contract are typically given a renewal notice that tells them that they will be put on a variable rate contract if the customer does not initiate contact with the supplier. Suppliers should not be able to interpret a customer's failure to respond to different or "material" contract terms as agreement to renew a contract. The term "material" should be defined at a minimum as a change in the pricing terms. First, it is unreasonable to allow suppliers to change the terms of an existing contract when that term affects the customer's price or fees and charges without affirmative customer consent. Second, when a supplier's contract has reached the end of its stated term, the regulations should require the supplier to obtain a customer's affirmative consent to a renewal of any contract that also seeks to change the original price or related fees and charges.
- Renewal of an existing contract should be allowed to occur without affirmative customer consent only if the underlying terms and price do not change or if the renewal is limited to a month-to-month contract with the original terms and no termination fee. A supplier should not be able to change a fixed price contract into a variable price contract nor alter the fixed rate without obtaining affirmative customer consent.

Low Income Customer Protections

- Customers enrolled in low income programs need additional protections. Such customers who enroll with retail suppliers under the impression that they will save money on their bills and who in fact end up paying more than the Standard Plan threaten not only their own ability to afford essential electric service, but cause additional costs from nonpayment and higher bills to be imposed on all ratepayers.

Stricter Regulation of Door to Door and Telemarketing Sales

While the Connecticut legislature has previously adopted some useful reforms to govern door-to-door marketing by alternative suppliers, additional reforms are required. Our proposals, set forth in greater detail in Appendix A to this testimony, reflect policies recently adopted by the Pennsylvania PUC. AARP's recommendations address the need for additional consumer disclosures, obligations by suppliers for training and supervision of their sales agents, the use of an independent and PURA approved third party verification of customer authorization to change suppliers; and supplier complaint and disciplinary programs governing

their sales agents.

APPENDIX A: AARP RECOMMENDATIONS FOR CONSUMERS PROTECTIONS FOR SALES OF ELECTRICITY BY DOOR TO DOOR AND TELEMARKETING

- Suppliers should be required to develop and implement standards and qualifications for employees and agents engaged to interact with retail customers, and document that it has procedures in place to prevent the hiring or engagement of individuals that do not meet these standards;

- A supplier shall ensure the training of its agents on the following subjects:
 - State and Federal laws and regulations that govern marketing, telemarketing, consumer protection and door-to-door sales, including state-specific consumer protection laws and regulations.
 - Responsible and ethical sales practices as described in these regulations.
 - The supplier's products and services.
 - The supplier's rates, rate structures and payment options.
 - The customer's right to rescind and cancel contracts.
 - The applicability of an early termination fee for contract cancellation when the supplier has one.
 - The necessity of adhering to the script and knowledge of the contents of the script if one is used.
 - The proper completion of enrollment and customer authorization documents.
 - The supplier's disclosure statement.
 - Terms and definitions related to energy supply, transmission and distribution service.
 - Information about how customers may contact the supplier to obtain information about billing, disputes and complaints.
 - The confidentiality and protection of customer information as required by state law and regulations.

- Suppliers should be required to document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.

- Suppliers should be required to make training materials and training records available to the Commission upon request, as well as evidence that the training materials and records have resulted in reasonable management oversight to implement the training requirements.

- Suppliers should be required to monitor a representative sample of telephonic and door-to-door marketing and sales calls to: (1) Evaluate the supplier's training program; (2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.
- Suppliers should be required to develop and implement a disciplinary program to ensure compliance with its training programs and these regulations and document that such disciplinary program has been implemented to prevent violations and internal management failures.
- Suppliers must issue an identification badge to employees or agents that interact with consumers in door to door sales or public events. The badge must:
 - Accurately identify the supplier, its trade name and logo.
 - Display the agent's photograph.
 - Display the agent's full name.
 - Be prominently displayed.
 - Display a customer-service phone number for the supplier.
- Suppliers should be required to affirmatively identify the name of the Supplier that he represents and affirmatively state that he is not working for and is independent of the customer's local distribution company or other supplier. This requirement shall be fulfilled by both an oral statement by the agent and by written material provided by the agent.
- When conducting door-to door activities or appearing at a public event, an agent should be prohibited from wearing apparel or accessories or carry equipment that contains branding elements, including a logo, suggests a relationship that does not exist with any distribution utility, government agency or another supplier.
- A supplier should not be able to use the name, bills, marketing materials or consumer education materials of another supplier, distribution utility, or government agency in a way that suggests a relationship that does not exist.
- A supplier or supplier agent may not say or suggest to a customer that utility customers are required to choose a competitive energy supplier.
- Door to door sales should comply with local ordinances regarding door to door marketing and sales activities.
- With regard specifically to door-to-door sales or telemarketing marketing activities, an agent should be required to comply with the following:

- After greeting the customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.
- The agent shall offer a business card or other material that lists the agent's name, identification number and title and the supplier's name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.
- When a customer's language skills are insufficient to allow the customer to understand and respond to the information being conveyed by the agent, or when the customer or a third party informs the agent of this circumstance, the agent shall terminate contact with the customer.
- When an agent completes a transaction with a customer, the agent shall:
 - Provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent leaves the customer's residence. If requested by the customer, a copy of the materials used by the agent during the call shall be provided to the customer as soon as practical.
 - Explain the supplier's verification process to the customer
 - State that the supplier shall send a copy of the disclosure statement about the service to the customer after the transaction has been verified if the disclosure statement has not been previously provided.
 - State that the customer may rescind the transaction within seven business days after receiving the disclosure statement.
- An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises or if the customer expresses no interest in what the agent is attempting to sell.
- A supplier shall comply with an individual's request to be exempted from door-to-door marketing and telemarketing sales contacts and annotate its existing marketing or sales databases consistent with this request within 2 business days of the individual's request.
- A supplier shall not initiate a telemarketing call to any residential customer to solicit enrollment or authorization more than once per calendar year unless the customer has a business relationship with the supplier.