Competitive Energy Supply
A Legacy of Deception, Fraud And Consumer Rip-Offs

National Consumer Law Center

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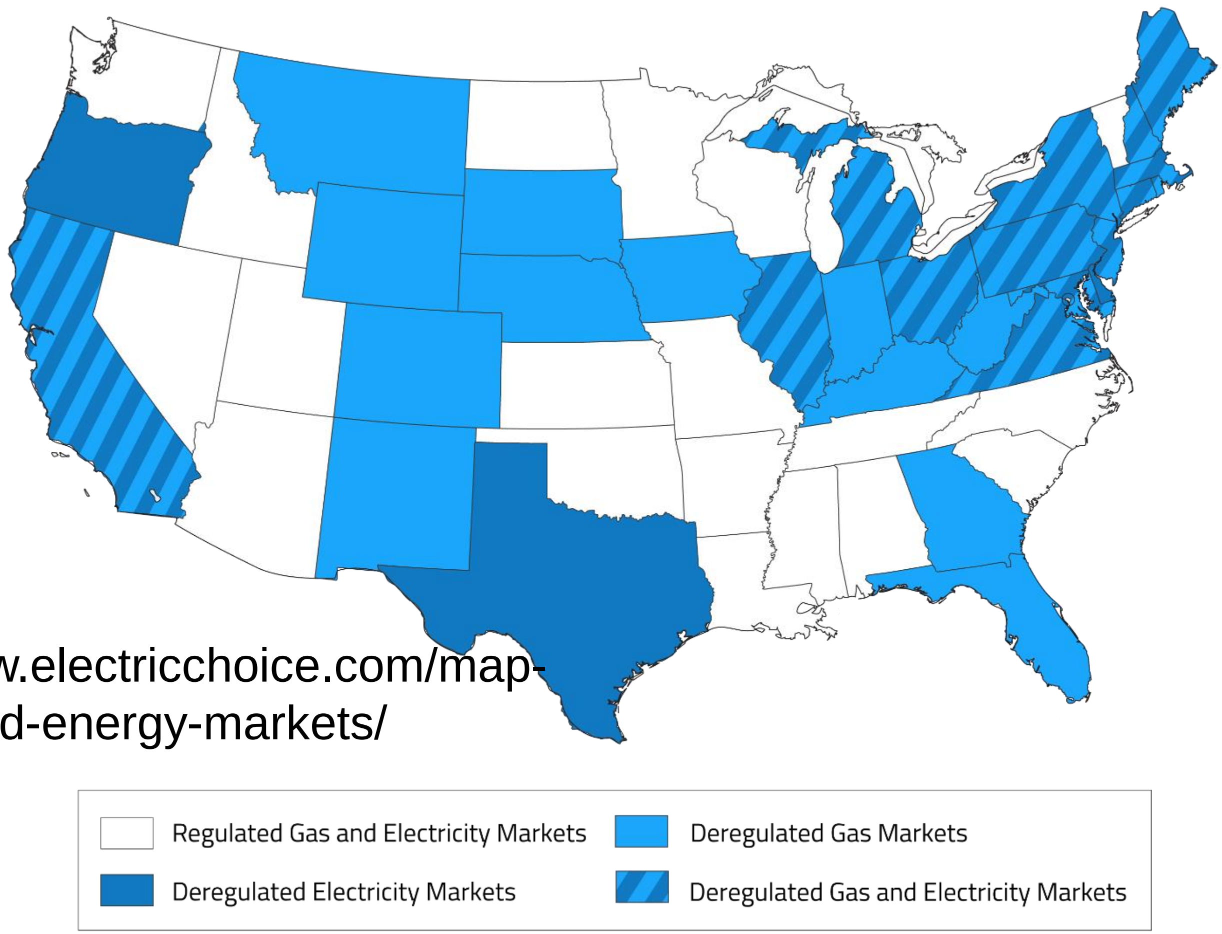
Roadmap

- State of Restructuring
- Troubled legacy of residential competition
  - Supplier prices typically exceed the price of default utility energy price
  - Low-income, communities of color and elders particularly targeted
  - Billions of consumer dollars lost
  - Hundreds of millions of federal LIHEAP assistance dollars spent
  - Fraud and deception in energy supply marketing
- NCLC position: end (or don't initiate) individual competitive energy market for residential customers

State of Restructuring*



https://www.electricchoice.com/map-deregulated-energy-markets/

Supplier Prices Typically Exceed Default Utility Supply Price

- Connecticut, Illinois, Maine, Maryland, Massachusetts, New York, Pennsylvania and Rhode Island have published analyses of the financial impact of alternative retail suppliers on residential utility customers.

- In each case, residential consumers were found to pay **higher prices for alternative energy supply** than they would have paid for the same service from the distribution utility, **resulting in hundreds of millions of dollars of aggregate financial harm to consumers.**

Supplier Prices Typically Exceed Default Utility Supply Price

Connecticut:

- In the month of October 2019, **eight out of ten** residential supplier customers paid more than the Standard Offer in Eversource territory, and over **eight out of ten** residential supplier customers paid more than the Standard Offer in United Illuminating territory.

- For the rolling year of November 2018 through October 2019, residential consumers who chose a retail supplier paid, in aggregate, $37,019,249 more than the Standard Offer.

Supplier Prices Typically Exceed Default Utility Supply Price

Connecticut:

- In 2014, state officials said PURA received more than 1,300 complaints from consumers accusing electric suppliers and other companies of aggressive door-to-door sales pitches, violations of state and federal "Do Not Call" lists and misleading advertisements.

- On December 18, 2019, the Connecticut Public Utilities Regulatory Authority released a Final Decision which verified these harms and directed the state's distribution utilities to transfer low-income customers from third-party electric suppliers back to distribution utility service.

Supplier Prices Typically Exceed Default Utility Supply Price

- Former CT Consumer Counsel Elin Swanson Katz and others urged passage of legislation that would forbid electric suppliers from executing new residential contracts after Oct. 1, 2019.
- PUC actions/legislative fixes not enough: Legislation in 2014 that set rules for the so-called third-party electricity suppliers accused of rapidly raising prices and improper practices “didn’t fix the problem,” Katz said.
- Katz: “I believe the problem is unfixable.”

Supplier Prices Typically Exceed Default Utility Supply Price

Illinois:

- Over the last five years, residential and small commercial customers enrolled with ARES have **paid more than $870 million** more for their electricity than if they stayed with their regulated public utility.

- IL AG and City of Chicago investigations showed low-income/ communities of color specifically targeted.

- Chicago Housing Authority took the unusual step in March of 2017 of banning alternative supply marketing in CHA properties.

Supplier Prices Typically Exceed Default Utility Supply Price

- In response, IL G.A. unanimously passed the HEAT Act
  - Prohibits switching of consumers enrolled in LIHEAP (Low Income Home Energy Assistance Program) and PIPP (Percentage of Income Payment Plan) unless supplier appears before ICC to prove its rate is lower than default utility supply price for length of contract.
  - Requires the utility's comparison price to be included on all supplier marketing materials, during telephone or door-to-door solicitations, and on every consumer's utility bill so consumers can make informed price comparisons.
  - Requires suppliers to obtain consumers' express consent before the contract is switched from a fixed rate to a variable rate contract.
  - Preventing suppliers from charging consumers termination fees or penalties.
  - Note the Illinois AG, who proposed the bill, recommended ending sales to individual residential market. (HEAT Act was a compromise bill.)

Supplier Prices Typically Exceed Default Utility Supply Price

Maine:

- A 2018 analysis by the Maine Public Utilities Commission, indicated that **Maine residential alternative supplier customers paid approximately $77.7 million more during 2014-2016 than what they would have paid for standard offer service** through the distribution utility.

- On average, customers paid approximately 56% more than they would have paid for standard offer service in 2016; 60% more in 2015; and 12% more in 2014.

Supplier Prices Typically Exceed Default Utility Supply Price

Maryland:

- A 2018 Office of Public Counsel report tabulated a **net annual consumer loss associated with the gas and electric supply markets of $54.9 million.**

- A 2018 Abell Foundation report determined Maryland **households paid about $255 million more to alternative electricity suppliers than they would have paid to their distribution utilities** for electric service from 2014 to 2017.

Supplier Prices Typically Exceed Default Utility Supply Price

Massachusetts:

- 2018 Massachusetts Attorney General report: **Residential electric consumers paid $176.8 million more to alternative electric suppliers than they would have paid to the default utility during July 2015 to June 2017.**

- **Low-income consumers alone paid $23.6 million above the distribution utilities' prices during the 2016–2017 study period.**

- August 2019 MA AG update report: **customer losses continued into 2017-2018, with ARES customers paying an additional $76.2 million over the default utility supply rates.**

- ***Overall, Massachusetts residential consumers paid $253 million more to alternative suppliers than they would have paid to their distribution utilities for electric service from July 2015 through June 2018.***

- Two reports by the National Consumer Law Center documented numerous consumer problems with alternative energy supply companies and their use of aggressive and deceptive sales practices. *See* http://www.nclc.org/images/pdf/pr-reports/competitive-energy-supply-report.pdf.

  https://www.nclc.org/images/pdf/energy_utility_telecom/electric_and_gas/ib-ma-consumers-tricked-competitive-electric-supply-oct2018.pdf

Low-Income and Communities of Color Specifically Targeted

Chart 1
Percentages of Massachusetts Low-Income Customers and Other Residential Customers Receiving Electric Service from Utility Companies and from Competitive Electric Supply Companies (including municipal aggregation customers)
January 2017 and September 2017

Source: Mass. Dept. of Energy Resources

Low-Income and Communities of Color Specifically Targeted

Massachusetts:

- 2019 MA AG Update Report: Low-income households make up 20 percent of the individual residential electric supply market yet make up only 12 percent of the market for all electric consumers.

- Over one-third (35 percent) of all low-income consumers take service from a competitive electric supplier.

- MA Attorney General is advocating to end individual residential competitive supplier sales in MA.

Other Observations…

MA AG August 2019 Update Report (Susan Baldwin):

- Residential consumers still do not benefit from direct participation in the electric supply market.
- The consumer losses during the three study periods are net of the relatively small gains that a minority of consumers experienced.
- Unlikely that these consumers' overpayment is a fair exchange for some additional benefit, such as the "green power" marketed by suppliers, because as recently as April 29, 2019, **only 37 percent (21 out of 57) of the product offerings included renewable energy content above the amount required under law.**

Supplier Prices Typically Exceed Default Utility Supply Price

New York:

- NY Public Service Commission (PSC) analysis: Between 2014 and 2016, **residential alternative gas and electric supplier consumers paid $1.2 billion more than they would have paid with their default utility service.**

- Within this aggregated amount, **low-income consumers enrolled in state assistance programs paid $96 million more to alternative electric suppliers than they would have paid for distribution utility service.**

Supplier Prices Typically Exceed Default Utility Supply Price

New York:

- **NY PSC conducted proceedings and issued an order to halt alternative energy supply sales to certain low-income customers.**

- **NY PSC: higher charges were significant enough to drain crucial funds from taxpayer and ratepayer supported programs that were intended to assist low-income customers.**

- On December 12, 2019, the New York PSC took additional steps to protect that state's consumers by prohibiting competitive supply sales to residential customers unless, *inter alia*, the offer "includes a guaranteed savings over the utility price."

Supplier Prices Typically Exceed Default Utility Supply Price

Pennsylvania:

► Pennsylvania PUC: data from PPL Electric Utility Corporation indicated that **low-income consumers in that utility's service area paid $2.7 million more** to alternative electric suppliers than they would have paid to PPL Electric over the same one-year period.

► Billing data from another Pennsylvania utility, FirstEnergy, similarly showed over a 58-month period, that **nearly 65% of low income customers in the Customer Assistance Program served by alternative suppliers paid rates above the default service rate**

► **Aggregate financial impact for *only these service territories* = $18.3 million over the 58-month period.**

Supplier Prices Typically Exceed Default Utility Supply Price

Rhode Island:

- Division of Public Utilities and Carriers May 2018 report: During previous five year period, **consumers served by alternative suppliers paid $55 million more** than default service customers

- Based on supplier pricing data reported by Rhode Island electric utilities.

Fraud and deception in energy supply marketing

- Door-to-door marketers claiming to be from a utility with offers of “discounts”
- Slamming (customers signed up without authorization)
- Green-washing (assertions that a customer’s supply will now be sourced from renewables)
- Failure to disclose length and terms of contract
- Introductory teaser rates give way to expensive variable rates
- Auto-renewal provisions

How do ARES market their product?

- Door-to-door solicitations
- In-person solicitations at retail establishments (e.g., shopping mall kiosks), where customers are offered gift cards to sign up
- Telephone solicitations ("telemarketing")
- Website/digital marketing.

Fraud and Deception in Utility Marketing

Other state action examples include:

- Delaware Public Advocate: No proof that competitive electric supply has saved money for consumers in Delaware or elsewhere.
- Pennsylvania PUC: found multiple violations of state law and ordered alternative supplier Blue Pilot to refund $2.4 million in overcharges to customers.
- New Jersey Attorney General: $5.28M settlement with Palmco Power for alleged deceptive and abusive marketing practices; similar lawsuit filed against Palmco by IL Attorney General for alleged violations of the state law prohibiting unfair and deceptive trade practices.
- Liberty Power, Starion Energy, Palmco Power and Direct Energy operate in Massachusetts and also sell electricity to residential customers in other states including Connecticut, Illinois and New York. Massachusetts customers filed hundreds of complaints about these four companies from 2015 through 2017.
- MA AG Settlements:
  - Just Energy agreed to pay $3.8 million to Massachusetts customers in restitution and $200,000 in civil penalties, settling allegations of deceptive sales marketing practices and customer overcharges.
  - Spark Energy agreed to cease certain deceptive marketing practices such as misrepresenting Spark's relationship with the LDC or misrepresenting customer contract terms and pricing, and agreed to refund certain charges to Massachusetts customers and to pay $55,000 into a consumer aid fund instead of paying of a civil penalty.

See NCLC Issue Brief: *Still No Relief for Massachusetts Consumers Tricked by Competitive Electric Supply Companies*, J. Bosco, October 2018, p. 13.

Fraud and Deception in Supplier Marketing

<u>Illinois</u> – "Greenwashing" example

In the matter of: THE INVESTIGATION BY THE ATTORNEY GENERAL Of ***ETHICAL ELECTRIC, INC****. Assurance of Voluntary Compliance (AVC) pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/6.1, August 8, 2016.*

- Illinois AG investigation detailing Ethical direct mail solicitations that failed to disclose that the company purchases renewable energy certificates (RECs) – not actual renewable supply.
- Solicitations implied customers' homes would be directly powered by electricity generated from renewable energy sources rather than renewable energy in the form of null power matched with a renewable energy certificate.
- **AVC: Ethical agreed to change its name, revise marketing materials and provided $191,673 in restitution.**

Fraud and Deception in Utility Marketing

PEOPLE OF THE STATE OF ILLINOIS, ex rel. KWAME RAOUL, Attorney General of the State of Illinois v. IDT ENERGY, INC., No. 2018 CH 14380*,* Final Judgment and Consent Decree, June 18, 2019 -- AG alleged that **IDT**:

- *engaged in a pattern of unfair and deceptive in-person and telemarketing solicitation through slamming*
- *misrepresented that customers would save money with IDT and failed to disclose to them the price, length of contract, the terms and conditions of IDT's rebate and rewards programs, or the identity of the company from whom the deceived consumer would be purchasing their electricity.*
- *enrolled customers after being given the false impression that they were signing up for free or discounted electricity from their public utility or that they were going to save money through a government-sanctioned "energy choice program."*
- *routinely charged higher prices than default utility supply rates*
- *disproportionately targeted African American and low-income communities, with these communities bearing a disproportionate share of the harm.*
- ***Restitution payment of $3 million to current and former customers, plus $50,000 payment to the State, ceased marketing for 2 years***

Fraud and Deception in Utility Marketing

Whack-a-Mole litigation continues…

- *PEOPLE OF THE STATE OF ILLINOIS v. LIBERTY POWER HOLDINGS LLC* -- Illinois AG's latest lawsuit against Liberty Power, February 19, 2020

- Press release: "The Attorney General's office is pursuing investigations into other ARES."

Fraud and Deception in Utility Marketing

Liberty lawsuit allegations:

- Offered “price protection” that in fact locks in a rate increase. Liberty’s customers pay a fixed rate, typically for one or two years, and typically between 9 and 12 cents per kilowatt hour.
- Default utility price: historically paid a variable rate between 2.7 and 6.6 cents per kilowatt hour in Ameren territory and between 5.0 and 8.8 cents per kilowatt hour in ComEd territory.
- Liberty’s sales representatives misrepresent an association with ComEd or Ameren, the utility companies.

NCLC Position

- Energy/utility service is an essential service that shouldn’t be subject to a buyer beware mentality.
- Competitive energy supply market is confusing and not transparent under the best of circumstances.
- Troubled legacy of electric supply competition includes widespread fraud, deception and lawsuits.
- Overwhelming evidence: alternative electric supply typically priced significantly higher than default utility supply.

- **End individual competitive energy market for residential customers.**

Message to states contemplating restructuring?

- JUST SAY

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. **www.nclc.org**

Appendix

Fraud and Deception in Utility Marketing

PEOPLE OF THE STATE OF ILLINOIS, ex rel. KWAME RAOUL, Attorney General of the State of Illinois v. MAJOR ENERGY ELECTRIC SERVICES LLC, No. 2018 CH 4549, Final Judgment and Consent Decree, June 18, 2019 -- AG alleged that **Major**:

- engaged in a pattern of unfair and deceptive in-person and telemarketing solicitation through slamming
- misrepresented to consumers that they would save money with Major.
- failed to disclose the price, length of contract, a monthly service fee charged to the consumer, or the identity of the company from whom the allegedly deceived consumer would be purchasing their electricity.
- enrolled customers after being given the false impression that they were signing up for a discount on electricity from their public utility or that they were going to save money through a government-sanctioned "energy choice program."
- nearly always charged higher prices for Major's electricity supply than they would have paid if they had remained a customer of their public utility for electricity supply service.
- omitted key disclosures during its telephone solicitations, including obtaining consumers' consent to the solicitation at the beginning of the call, in violation of Section 15 of the Telephone Solicitations Act;
- failed to clearly and conspicuously disclose in its written contracts the automatic renewal clause, including the cancellation procedure, in violation of Section 10 of the Automatic Contract Renewal Act;
- failed to include certain sweepstakes disclosures, in violation of the Prizes and Gifts Act.
- **Settlement: Restitution of $1,950,000 to current and former Major customers, plus $50,000 payment to State**

Fraud and Deception in Utility Marketing

PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, v. SPERIAN ENERGY CORP., a Nevada corporation, No. 2017 L 8604, Final Judgment and Consent Decree, October 16, 2018

AG alleged that from April, 2012 through August, 2015, Sperian engaged in unfair and deceptive acts or practices in the course of trade and commerce, in violation of the Illinois Consumer Fraud Act, and the Telephone Solicitations Act, including:

- engaged in slamming
- misrepresented to Illinois consumers that they would save money with Sperian and failed to disclose to them the price, length of contract, a monthly "Energy Service Fee" charged to the consumer, or the identity of the company from whom the deceived consumer would be purchasing their electricity.
- enrolled customers after being given the false impression that they were signing up for a discount on electricity from their public utility or that they were going to save money through a government-sanctioned "energy choice program."
- Sperian customers routinely paid higher prices from Sperian's electricity supply than they would have paid if they had remained a customer of their public utility for electricity supply service.

- **Settlement: Restitution of $2.65 million, plus $25,000 to the State, ceased marketing activities in the State over a 5-year period.**

Fraud and Deception in Utility Marketing

In the matter of: THE INVESTIGATION BY THE ATTORNEY GENERAL of SMARTENERGY HOLDINGS, LLC

- AG alleged SmartEnergy routinely misrepresented to Illinois consumers that

  (a) consumers would save money on their energy bills by switching to SmartEnergy,

  (b) SmartEnergy's rates are always or usually lower than the consumer's utility rate,

  (c) the consumer's utility rate is not competitive,

  (d) SmartEnergy would lock in consumers' current electric supply rate for six months,

  (e) SmartEnergy's offer was a reward for the consumer's status with the public utility,

  (f) SmartEnergy was enrolling consumers in a "program" offered by their utility or "applying benefits" to their utility accounts,

  (g) consumers' electric supply could not be switched from their utility, and (h) consumers were merely being asked to complete "pre-enrollment" that would not result in actually switching electric supply providers.

- routinely omitted or obscured default utility's current rate for electric supply during its interactions with consumers.
- violated Section 2P of the Consumer Fraud Act by promoting its electric supply service by means of offering free prizes, gifts, or gratuities to Illinois consumers without clearly and conspicuously disclosing all material terms and conditions at the outset of the offer.
- **AVC Settlement: Restitution of $200,000 plus $50,000 to the State, revision of marketing practices**

Fraud and Deception in Utility Marketing

Liberty lawsuit (*PEOPLE OF THE STATE OF ILLINOIS v. LIBERTY POWER HOLDINGS LLC* -- Illinois AG's latest lawsuit against Liberty Power, February 19, 2020):

- Sales reps claimed the consumer is eligible for savings on their electricity bills through a program sanctioned by the State of Illinois that Liberty oversees. (There is no such program.)
- Liberty slamming strategies:
  - Tells consumers it is contacting them to update the utility's system, update the consumer's billing information, check on their utility bill
  - Inform them that the electric supplier in their area is "switching,"
  - Threaten that their "power bill may be illegal" and the consumer "could be in legal trouble" -- all to obtain a customer's account number.

Fraud and Deception in Utility Marketing

Liberty lawsuit:

- “The fraud is intentional. The explosive audio recordings alone reveal, among other reprehensible business practices, that Liberty targets the elderly and people with disabilities. According to Liberty’s own words, its over-priced products are ‘specifically designed for people on a fixed income,’ such as ‘people with disabilities’ and those on ‘disability income.’

- “Liberty’s fraudulent scheme also includes outright theft. Its agents steal consumers’ personal information, forge their signatures, and switch their service without their consent, a reviled practice known in the industry as ‘slamming.’”

- “The size of the fraud is even more staggering than the methods are despicable. Liberty has scammed tens of thousands of Illinois consumers out of over $77 million. Since 2016, Liberty has overcharged Illinois consumers by an average of over $1 million per month. During that same period, Liberty’s rates—rates that Liberty promises are ‘low,’ will provide ‘price protection,’ and will result in ‘savings’—have been higher than the comparable utility’s rate over 99% of the time. The fraud is ongoing.”

Endnotes

- **Connecticut**

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Conn. Public Utilities Regulatory Authority, Decision, *Review of Feasibility, Costs and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. Stat. § 16-245O(M),* Docket No. 18-06-02 (Dec. 18, 2019).

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- **Illinois**

Illinois Commerce Commission, Office of Retail Market Development 2019 Annual Report, June 2019 https://www.icc.illinois.gov/icc-reports/report/AnnualReportOfficeOfRetailMarketDevelopment,

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- **Illinois**

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- **Maine**

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- **Maryland**

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- **Massachusetts**

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New York

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N.Y. Pub. Svc. Commission dockets 98-M-1343, 12-M-0476, 15-M-0127, *Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process*, at 108. (Dec. 12, 2019).

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