



NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

Joint Committee on Consumer Protection and Professional Licensure
191st General Court of the Commonwealth of Massachusetts
Hearing on Competitive Electric Supply, Over Quota Alcohol, Misc. Legislation
Testimony of Jenifer Bosco
National Consumer Law Center
January 27, 2020

Dear Chair Feeney, Chair Chan, and Members of the Joint Committee on Consumer Protection and Professional Licensure:

Thank you for conducting this hearing on S. 195 and H. 331, An Act Relative to Protecting Residential Electric Customers. My name is Jenifer Bosco, and I am a staff attorney at the National Consumer Law Center, where I focus on energy and utility matters that affect consumers. The National Consumer Law Center (NCLC) is a nonprofit organization that, since 1969, has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, and we submit this testimony on behalf of our low-income clients.

NCLC has been actively involved in advocacy for consumers who have been financially harmed by alternative (or competitive) energy supply companies. We have released a report¹ and an issue brief² which both described the common abusive sales practices and inflated prices which have harmed so many Massachusetts consumers, with a particular emphasis on the unfair and deceptive marketing that has targeted low-income consumers, older adults, and those with limited English language proficiency.

Harmful financial impacts have been documented in Massachusetts and elsewhere. The Attorney General has determined that 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. Research done by NCLC and by the Office of the Attorney General, as well as complaints to the Department of Public Utilities, conclusively

¹ National Consumer Law Center, *Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts* (April 2018), at <http://bit.ly/2H3ORJJ>.

² National Consumer Law Center, *Still No Relief for Massachusetts Consumers Tricked by Competitive Electric Supply Companies* (Oct. 2018), at <https://www.nclc.org/issues/consumers-tricked-by-competitive-electric-supply-companies.html>.

demonstrate that the practices of competitive suppliers increase the financial burden for consumers who already struggle with energy insecurity.

While the Department of Public Utilities (DPU) receives a steady volume of consumer complaints and has an open docket where it is considering some additional steps to protect consumers in the competitive supply market,³ the DPU has not taken any public enforcement actions against suppliers such as licensure actions, civil fines, or other penalties.⁴ Of note, the current DPU docket is somewhat limited in scope. Activity in this docket, DPU 19-07, is mainly focused on issues such as marketing standards and what information should be provided to consumers about competitive electric supply. While any improvements in this market would be welcomed, the docket is too narrow in scope to address the fundamental problems in the market.

In light of the lack of meaningful action by the DPU to protect consumers, the Attorney General recently requested that the DPU open an investigation into the harm caused to low-income consumers and the detrimental impact on vital assistance programs that protect low-income energy consumers. NCLC and 29 other state and local organizations, along with many individuals, submitted a letter to the DPU earlier this month urging the DPU to conduct this investigation and halt the enrollment of individual low-income consumers while the investigation proceeds. The level of interest generated by this somewhat obscure regulatory proceeding illustrates the high level of concern within social service organizations, legal aid, and other organizations that serve low-income and moderate-income consumers throughout the state. As of this writing, DPU has not publicly responded to the Attorney General's request or the letter from NCLC and our fellow advocacy and non-profit organizations.

With that background, I offer these comments in support of S. 195 and H. 331.

NCLC agrees with the Office of the Attorney General – the competitive energy supply market should be ended in Massachusetts.

As described above, financial harm in Massachusetts and in other states with competitive supply markets has been documented in numerous reports.⁵ The deceptive and abusive marketing practices in this industry have also been widely documented.⁶ The same competitive supply

³ DPU 19-07, Investigation by the Department of Public Utilities on its own Motion into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market. This docket was opened a full year ago, but has not yet resulted in any concrete actions to help consumers.

⁴ DPU has stated that it has undertaken some compliance actions with competitive suppliers, but DPU has not made these actions public.

⁵ See, e.g., *Conn. Office of Consumer Counsel, OCC Fact Sheet: Electric Supplier Market, November 2018 Through October 2019* (January 16, 2020), at <https://portal.ct.gov/OCC>; *Ill. Commerce Comm. Office of Retail Market Development 2019 Annual Report* (June 2019), <https://www.icc.illinois.gov/downloads/public/2019%20ORMD%20Section%2020-110%20Report.pdf>; Maine Pub. Utilities Comm., Report on Competitive Electricity Provider and Standard Offer Price Comparisons (Feb, 15, 2018), https://digitalmaine.com/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1017&context=puc_docs; New York Pub. Service Comm., In the Matter of Eligibility Criteria for Energy Service Companies, Case 15-M-0127, et al., Initial Brief of the New York Department of Public Service Staff, at 2 (March 30, 2018).

⁶ See, e.g., Abell Foundation, *Maryland's Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies* (Dec. 2018),

companies that operate in Massachusetts also operate in multiple deregulated states, and the same types of consumer problems have emerged in each state that has studied the problem.

Other states, most notably our neighboring states of New York and Connecticut, have taken strong steps to protect residential consumers, and low-income customers in particular, from the deceptive and predatory practices in which competitive suppliers all too frequently engage.⁷ Connecticut has adopted what are likely the most stringent consumer protections and transparency requirements. Yet even after these strong protections were implemented, the Connecticut utility consumer advocate determined that reform could not successfully protect consumers, and therefore called for the end of residential sales of competitive electric supply in that state.⁸

Ending individual residential sales of competitive supply is similarly the best and most effective solution⁹ for Massachusetts consumers.

There is ample information to show that consumers are being harmed. Low-income consumers, older adults, and consumers with limited English proficiency have been saddled with unaffordable bills due to competitive suppliers targeting their communities with deceptive sales practices and higher prices than they charge other residential customers, as the Attorney General has documented. The most vulnerable households in Massachusetts are suffering disproportionate harm.

In conclusion, NCLC strongly supports S. 195/H. 331, *An Act Relative to Protecting Residential Electric Customers*. Households in Massachusetts have suffered harm in this market for too long, and reforms will not adequately protect individual residential consumers. If you have questions regarding this testimony, please contact Jenifer Bosco, Staff Attorney, National Consumer Law Center, at jbosco@nclc.org or 617-542-8010.

Sincerely,

Jenifer Bosco, Staff Attorney
National Consumer Law Center, on behalf of our low-income clients

https://www.abell.org/sites/default/files/files/Third%20Party%20Energy%20Report_final%20for%20web.pdf; Texas Coalition for Affordable Power, *PUC Complaint Data: A Snapshot Report*, 2019 Edition, at <https://tcaptx.com/reports/snapshot-report-2019-puc-complaint-data>.

⁷ On December 12, 2019, the New York Public Service Commission 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." NYPSC 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).

⁸ State of Conn., Office of Consumer Counsel, "Time to End the Third-Party Residential Electric Supply Market" (Feb. 4, 2019), <https://portal.ct.gov/-/media/OCC/2419Pressreleasepdf.pdf?la=en>.

⁹ Chair Tackey Chan has introduced a different bill that, if residential sales were not ended at this time, could provide the next best improvement for consumers. Chair Chan's bill, H. 2823, *An Act to protect consumers from predatory electric supplier practices*, could help consumers by protecting low-income consumers from unaffordable price increases while improving overall transparency and accountability.