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S.2150/H.3352 – TUE Committee -- SUPPORT

192nd General Court of the Commonwealth of Massachusetts

Testimony of Jenifer Bosco
National Consumer Law Center
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Dear Chair Barrett, Chair Roy, Vice Chair Pacheco, Vice Chair Mark, and Members of the Joint Committee on Telecommunications, Utilities and Energy:

Thank you for conducting this hearing on S. 2150 and H. 3352, An Act Relative to Electric Ratepayer Protections. 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 describe 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 \$425.7 million more to alternative suppliers than they would have paid to their distribution utilities for electric service from July 2015 through June 2020. Research done by NCLC and the Office of the Attorney General, as well as complaints to the Department of Public Utilities conclusively demonstrate that the practices of competitive suppliers increase the financial burden for

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>.

consumers who already struggle with energy insecurity. Compounding the harm, the inflated prices put additional stress on all ratepayers who fund the low-income utility affordability programs as well as the general taxpayers who fund programs such as the Low Income Home Energy Assistance Program (LIHEAP).

Consumers have reported many problems in this market, including:

- Most consumers pay more for competitive supply than they would have paid for service from their utility companies, and some pay much more
- The very small number of consumers who do manage to save money see only minor savings
- Signs of targeting the poor: A higher percentage of low-income households were signed up to buy competitive supply and the rates were often higher than customers who had higher incomes
- Consumers' complaints in other states highlight problems with high prices, involuntary switching or "slamming," unwanted telemarketing or door-to-door marketing, deceptive sales practices, and more

At NCLC, we frequently hear from advocates for low-income utility customers who are struggling to pay their electric bills and face disconnection. When we are able to review utility bills for these customers, we often find that the low-income client is paying an unnecessarily high rate for electricity, which only worsens their energy affordability problems. During the COVID-19 pandemic, we clearly saw that affordable and reliable electric service is a public health and safety concern that impacts not just the struggling household but the entire community. While Massachusetts protected utility customers from disconnection during the COVID-19 state of emergency, those temporary protections ended this summer and disconnections have resumed. The inflated rates charged to most customers who sign up with competitive energy supply companies undermine the Commonwealth's efforts to help families maintain vital electric service.

NCLC agrees with the analysis by the Office of the Attorney General – the competitive energy supply market cannot be adequately reformed and the General Court should pass S.2150 and H.3352.

As described above, financial harm, deceptive marketing, and abusive practices in Massachusetts and in other states with competitive supply markets has been documented in numerous reports.³

³ Office of Massachusetts Attorney General Maura Healey, *Are Consumers Benefiting from Competition? 2021 Update*, <https://www.mass.gov/doc/2021-competitive-electric-supply-report/download>; National Consumer Law Center, *Competing To Overcharge Consumers: The Competitive Electric Supplier Market In Massachusetts*, (Apr. 2018), <https://www.nclc.org/images/pdf/prreports/competitive-energy-supply-report.pdf>; 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>; Susan M. Baldwin & Sarah M. Bosley, *Maryland's Residential Electric and Gas Supply Markets: Where Do We Go from Here?*, Maryland Office of the People's Counsel (Nov. 2018), <http://www.opc.maryland.gov/Portals/0/Publications/reports/APPRISE%20Where%20do%20we%20go%20from%20Here.pdf?ver=2019-09-11-075024-040>; Abell Foundation, *Maryland's Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies* (Dec. 2018), at https://www.abell.org/sites/default/files/files/Third%20Party%20Energy%20Report_final%20for%20web.pdf;

The same competitive supply 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. The Federal Trade Commission has taken note of the widespread consumer problems in this market.⁴

Ending individual residential sales of competitive supply is the best and most effective solution for Massachusetts consumers. We do not need further data -- there is already ample information to show that consumers are being harmed. Energy marketers appear to target low-income consumers, older adults, and consumers with limited English proficiency. The most vulnerable households in Massachusetts are suffering disproportionate harm.

Massachusetts would not be alone in taking a strong approach by ending individual residential sales. Oregon's electric system restructuring law allows for sales of competitive electric supply only to commercial and industrial customers, not to residential customers.⁵ In recent years, legislation similar to S.2150/H.3352 has been proposed or introduced in both Connecticut and New York.⁶ As an initial step, other states have recently enacted partial protections for residential utility consumers, although advocates involved in those efforts generally recognize that ending all marketing and sales to individual residential customers is the preferred approach to protect consumers.⁷

In conclusion, NCLC strongly supports S.2150/H.3352. 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, 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

Maine Public Utilities Commission, *Report on Competitive Electricity Provider and Standard Offer Price Comparisons* (Feb. 15, 2018).

⁴ U.S. Federal Trade Commission, Statement of Commissioner Rohit Chopra, *Regarding the FTC EnergyGuide Rule* at 3 (Dec. 22, 2020), available at https://www.ftc.gov/system/files/documents/public_statements/1585238/20201222_final_chopra_statement_on_energyguide_rule.pdf.

⁵ Or. Rev. Stat. Ann. § 757.601.

⁶ A similar bill is currently before the New York Senate and Assembly, A01382/S03032 (2021-2022 Legislative Session). During 2019, Connecticut's Consumer Counsel proposed similar legislation, see Consumer Counsel Elin Swanson Katz, State of Connecticut, *Time to End the Third-Party Residential Electric Supply Market* (Feb. 4, 2019).

⁷ E.g., See Connecticut House Bill (HB) 6526 – An Act Concerning Energy Suppliers; Conn. Public Utilities Regulatory Authority, Decision, Review of Feasibility, Costs and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. State. § 16-245O(M), Docket No. 18-06-02 (Dec. 18, 2019); Illinois SB0651, Public Act 101-0590 (Aug. 27, 2019); Maryland HB 397 (2021), Electricity and Gas - Energy Suppliers - Supply Offers, Enacted under Article II, Section 17(c) of the Maryland Constitution - Chapter 636; N.Y. Pub. Svc. Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M0667, “Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016) at p.10, available at <http://www.dps.ny.gov>, upheld by Nat. Energy Marketers Assn. v. N.Y. State Pub. Svc. Commn., 2017 NY Slip Op 27223, Supreme Court of N.Y., Albany County (June 30, 2017).