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Joint Committee on Telecommunications, Utilities and Energy
191st General Court of the Commonwealth of Massachusetts
Public Hearing on Carbon Price, Competitive Supply, and Consumer Protection Legislation
Testimony of Jenifer Bosco
National Consumer Law Center
January 14, 2020

Dear Members of the Joint Committee on Telecommunications, Utilities and Energy:

Thank you for conducting this hearing on legislation regarding the competitive energy supply industry and other important matters. 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 or 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 the AG, as well as complaints to the Department of Public Utilities conclusively demonstrate that the practices of competitive suppliers increase the financial burden for consumers who already struggle with energy insecurity.

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>.

Other states, most notably our neighboring states of New York and Connecticut, have taken strong steps to protect low-income customers, in particular, from the deceptive and predatory practices in which competitive suppliers all too frequently engage.³ Yet here in Massachusetts, we are lagging behind. 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,⁴ the Department has not taken any public enforcement actions against suppliers such as licensure actions, civil fines, or other penalties.

In light of the lack of meaningful action by the Department to protect consumers, the Attorney General recently requested that the Department 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 submitted a letter to the Department last week urging the Department 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.

With that background, I offer these comments on H. 2823, which would make significant consumer protection improvements in Massachusetts. I also offer comments on H. 2818, S. 1978 and S. 1979, which would most likely have the opposite effect, weakening consumer protections and compounding financial harm to consumers.

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 transparency and accountability for all. H. 2823, introduced by Representative Chan, contains several proposals to increase transparency and would require clear disclosures to consumers, in their own languages. Today, many consumers sign contracts for competitive electric supply that automatically renew indefinitely, with a variable price that can keep rising without any advance notice to the customer. The consumer's electric bill would list only the supplier's price but not the lower price that the consumer's next door neighbors pay to Eversource or National Grid for the same electricity. H. 2823 would provide consumers with all of this important price information on an ongoing basis, and would further improve consumer protections by requiring notice before a change in terms, prohibiting automatic renewal of a contract if rates will increase, and capping cancellation fees at a reasonable amount.

³ 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).

⁴ 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.

Further, the bill contains important public reporting improvements. Public disclosures of complaints, and quarterly reports of actual prices paid, would add needed transparency and accountability in this market.

Most importantly, low-income consumers who purchase competitive electric supply could not be charged more than the utility basic service rate. Similar price protections for eligible low-income customers have been adopted in New York, Connecticut, Pennsylvania, Ohio and Illinois. Without such protections, the current harm to Massachusetts low-income consumers is two-fold. First, low-income consumers who are financially eligible for a discounted utility rate might be charged much higher prices for competitive supply than they would have paid in discounted rates to their utility company, adding to the household's financial struggles. Second, the valuable programs that assist these vulnerable households especially the Low-Income Home Energy Assistance Program (LIHEAP or fuel assistance), are adversely impacted as funds are essentially diverted away from the people they were intended to help in order to pay inflated competitive supply prices. A strong and enforceable price protection for low-income consumers would protect families and households that are the most vulnerable.

In contrast, *H. 2818, S. 1978 and S. 1979* all would likely deprive consumers of crucial protections and result in more financial harm.

Although pitched by the industry as enhancing customer choice, all three bills would actually erode customer choice by confusing consumers about the role of their utility company and forcing utility companies to promote competitive supply companies to their customers.

H. 2818 purports to address customer choice for low-income customers, but would instead single out these consumers to be removed from utility service and involuntarily switched into an aggregation program operated by competitive supply companies for low-income consumers only. No state does this, and there is no indication that there would be any benefit for low-income customers. The legislation itself does not address the inflated prices that low-income customers currently pay to competitive supply companies, or the prospect that the proposed change could harm these consumers further.

Other highly problematic sections of *H. 2818* would eliminate utility-provided basic service as a default option for consumers, and would remove the consumer protection that requires competitive supply companies to request and obtain a utility account number from a consumer before switching that consumer to competitive supply. These proposals would almost certainly lead to even greater rates of involuntary switching and financial harm to consumers.

S. 1978 and S. 1979 also propose strip away existing consumer protections. Both bills would force utility companies to essentially promote competitive supply service to customers. The competitive supply market *already* causes rampant confusion even among savvy consumers. These legislative proposals would magnify that confusion and turn even simple consumer interactions, such as a routine call to the utility's customer service line, into an unwanted sales pitch. For instance, if a low-income consumer called the utility customer service department to ask about qualifying for the discount rate, they might be treated as "making an inquiry regarding

their rates.” Instead of having their request for help handled promptly, directly, and with compassion, the consumer would likely have to sit through a canned sales pitch for competitive energy supply.

This involuntary marketing requirement would apply even if a customer contacts a utility company to ask about available energy efficiency programs. Adding this marketing requirement could drive away customers who are seeking information about energy efficiency improvements but do not want to hear a sales pitch for products they did not ask about. Adding barriers to energy efficiency would appear to run counter to Massachusetts’ climate goals and policies.

Among their many problematic proposals, S. 1978 and S. 1979 would change the way that utility customers are billed, and could cause some consumers to lose consumer protections that are provided by Massachusetts law. Currently, National Grid, Eversource, and the other utilities bill their customers for both the distribution services provided by the utility, and the electric supply services which may be provided by the utility or by the competitive supplier. As part of its responsibilities, the utility company also administers consumer protections that are required by Massachusetts law. These consumer protections include discount utility rates, arrearage management programs, termination protections for people with serious illnesses, termination protections for older adults, and other protections. These are somewhat complicated and must be administered correctly. If these billing and administration responsibilities were suddenly shifted to dozens of competitive electric supply companies, it is difficult to see how this arrangement could avoid harming low-income consumers. Competitive supply companies tend to operate in multiple states. If as proposed suppliers were to bill Massachusetts consumers directly, it is not clear whether or how these companies would correctly apply these Massachusetts bill payment programs and consumer protections, or whether the companies would be responsive to intervention by the Department of Public Utilities when problems arise.

In conclusion, NCLC supports H. 2823, which would strengthen Massachusetts consumer protections. We strongly oppose H. 2818, S. 1978 and S. 1979, since these proposals would be likely to worsen financial harm to Massachusetts consumers and erode existing consumer protections. 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