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

Maryland Senate Finance Committee

Hearing on **SB 31 - Electricity and Gas - Energy Suppliers – Supply Offers**

Testimony of Jenifer Bosco, National Consumer Law Center

January 29, 2021

Position -- SUPPORT

To the Members of the Senate Finance Committee:

Thank you for holding this hearing on Senate Bill 31 **- Electricity and Gas - Energy Suppliers – Supply Offers.** My name is Jenifer Bosco, and I am an attorney at the National Consumer Law Center, where I focus on energy and utility matters and debt collection issues that affect low-income 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. 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 been tracking the consumer experience in the competitive supply market in other states and I have written a report[1] and an issue brief[2] which describe abusive sales practices and inflated prices that have

[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.

harmed 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. There are common issues emerging in the states (see, e.g., the attached FTC memorandum from Commissioner Rohit Chopra). Among other problems, we find:

- 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 other non-poor shoppers.
- 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.

States that have examined how their low-income consumers have fared in the competitive supplier marketplace have started to take steps to protect their low-income consumers. One common thread emerging in other states is the concern that inflated electric and gas prices paid by low-income energy assistance customers diminish the resources available through rate payer and taxpayer funded energy assistance programs, thus undermining goal of affordability and imposing an unfair burden on the ratepayers and taxpayers. In response, many states have taken recent action to address this harm to low-income customers, ratepayers and taxpayers.

- **Connecticut:** *Prohibits electric third-party suppliers from serving hardship customers.*
    - The Connecticut Public Utility Regulatory Authority found that 78% of hardship customers who had received service from a third-party supplier paid more than they would have on standard service. The commission also found that 69% of the low-income customers that contracted with a third-party supplier paid more than non-low-income customers that contracted with third-party suppliers.[3] On December 18, 2019, the Connecticut Public Utilities

[3] 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) at p. 17.

Regulatory Authority released a Final Decision which directed the state's distribution utilities to transfer low-income customers from third-party electric suppliers back to distribution utility service.[4]

  - "Hardship customers' overpayments substantially reduced the amount of available energy bill assistance funds to the hardship customers and to the social programs that assist their electricity payments. . . .This Authority finds that returning all hardship customers to standard service offers significant cost savings benefits to Connecticut, it is feasible to accomplish, and the costs to accomplish are not unreasonable when compared with the long-term savings accomplished."[5]

- **Illinois**: *Limits the types of competitive supply contracts to low-income customers to plans that guarantee electric and gas supply less than the amount charged by the electric and gas utility.*
  - As of January 1, 2020, alternative suppliers in Illinois must comply with new rules designed to protect low-income utility consumers and funding for essential energy assistance programs, under the Home Energy Affordability and Transparency (HEAT) Act.[6] Suppliers must comply with new price disclosure and marketing rules and will be restricted in the type of plans that can be offered to low-income consumers who participate in low-income utility assistance programs.
  - Alternative suppliers will not be able to change a low-income customer's supplier unless it is to a government aggregation program for electric or to a Commission-approved savings guarantee plan (electric and gas). Suppliers may apply to the Commission to offer a savings guarantee plan that, at a minimum, shall charge customers for a supply amount that is less than the amount charged by the utility. The Commission is required to initiate a proceeding to consider the application.[7]
- **New York**: *Limits the types of competitive supply contracts to residential customers to plans that guarantee customers would pay no more than what he or she would pay to the utility.*
  - In 2016 the NY PSC issued an order to prohibit energy suppliers from contracting with low-income energy assistance customers. Utility companies were to place a block on assistance customer accounts to prevent enrollment with an energy supply company and ESCOs were required to de-enroll energy assistance customers.[8]

[4] 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).
[5] *Id* at p. 18.
[6] Illinois SB0651, Public Act 101-0590 (Aug. 27, 2019).
[7] Illinois SB0651, Public Act 101-0590 (Aug. 27, 2019) at Sec. 16-115E (alternative retail electric supplier utility assistance recipient) and Sec. 19-116 (alternative gas supplier utility assistance recipient).
[8] 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,

- "Imposing higher prices on consumers who are already challenged to pay their bills coupled with the fact that these prices automatically diminish the value of subsidies paid for by all utility consumers is, without question, a waste of utility ratepayer dollars which the Commission has an obligation to remedy."[9]
    - The Commission, in its December 2016 low-income order, stated that the "Commission's objective is to obtain the lowest bills possible for [low-income energy assistance customers]. Accordingly, the Commission remains open to reconsidering aspects of the prohibition where ESCOs demonstrate the ability and desire to achieve savings for these customers."[10]
    - On December 12, 2019 the NY Commission issued an Order that limits the suppliers serving new residential customers. Competitive supply contracts must guarantee savings over the utility's price, as reconciled on an annual basis. For fixed-rate contracts, the commodity product must not exceed 5% more than the trailing 12-month average utility supply rate. There are additional restrictions on renewably-sourced products and another proceeding for energy-related products.[11]
- **Ohio:** *Low-income Ohioans participating in the percentage of income payment plan program (PIPP) cannot be switched to competitive supply. The low-income PIPP customers are coordinated exclusively by the Ohio development services agency.*[12]
    - Competitive suppliers are prohibited from knowingly enrolling PIPP customers.[13]
    - Utilities are prohibited from switching customers in PIPP and graduated PIPP (the first 12 month transition for those leaving PIPP).[14]
    - Regular customers on competitive supply who become PIPP Customers or are on graduated PIPP are to be switched to the utility's standard office service.[15]
- **Pennsylvania:** *Currently, PPL Energy and First Energy, which serve roughly 70% of Pennsylvania's low-income customers, limit eligible competitive supply plans for*

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).

[9] 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).

[10] 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.24.

[11] N.Y. Pub. Svc. Commission, Case Nos. 15-M-0127, 12-M-0476, 98-M-1343, "Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process" (Dec. 12, 2019) at pp.108-109, available at http://www.dps.ny.gov.

[12] See Ohio Admin. Code 4901:1-21-06(B).

[13] *See* Ohio Admin. Code 4901:1-21-06(B)(1).

[14] *See* Ohio Admin. Code 4901:1-10-29(I).

[15] *Id.*; *see also* Ohio Public Utilities Commission, Percentage of Income Payment Plan Plus (PIPP Plus). Available at https://www.puco.ohio.gov/be-informed/consumer-topics/percentage-of-income-payment-plan-plus-pipp-plus/.

customers on the Customer Assistance Program to plans that are at or below the price to compare and may not contain cancellation or early termination fees.[16]

- PPL Energy restricts low-income Customer Assistance Program (CAP) customers who choose to shop with a supplier, to a CAP-Standard Offer Program (CAP SOP). Suppliers choosing to participate in CAP SOP to agree to serve PPL's CAP customers at a 7% discount off of the price to compare at the time of enrollment, with the price remaining fixed for 12 months, and a prohibition on early termination fees.[17]
- The Commonwealth Court, in upholding the Commission's decision, noted "PUC's approval of PPL's CAP-SOP is designed to alleviate harms to access, affordability, and cost-effectiveness resulting from unrestricted CAP shopping."[18]
- FirstEnergy Companies limit the type of competitive supply available to low-income energy assistance customers to plans with rates at or below the utility's price to compare at all time periods of the contract and prohibit early termination fees or cancellation fees.[19]
- On February 28, 2019, the Pennsylvania Public Utility Commission issued for comment a proposed policy statement on electric customer assistance program shopping. The statement sets out a shopping program design for low-income energy assistance customers that the supplier rates must be at or below the utility's price to beat in effect during the duration of the contract and prohibits early termination and cancellation fees and other fees unrelated to the provision of electric generation service.[20]

NCLC's report on the competitive supply market confirmed research done by the Massachusetts Attorney General. The Attorney General determined that Massachusetts

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[16] *See* PA PUC, Motion of Commissioner David W. Sweet, Electric Distribution Company Default Service Plans – Customer Assistance Program (CAP) Shopping, 3006578-CMR, Public Meeting (Dec. 20, 2018)(Proposing unity in CAP shopping practices and requirements to be included in the distribution companies' next default service plans. *E.g.*, that CAP shopping products must be at or below the price-to-compare and prohibition on early termination or cancellation fees).

[17] *See* Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021, Docket No. P-2016-2526627 (Order Entered October 27, 2016). Affirmed by, *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, No. 230 C.D. 2017 (Pa. Commw. Ct. filed May 2, 2018).

[18] *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, No. 230 C.D. 2017, 25-26 (Pa. Commw. Ct. filed May 2, 2018).

[19] *See* Joint Petition of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively, the Companies) for Approval of their Default Service Programs for the Period Beginning June 1, 2019 through May 31, 2023, Docket Nos. P-2017-2637855, et al, (Order Granting reconsideration of September 4, 2018 Opinion and Order entered November 1, 2018).

[20] *See* Pennsylvania Public Utility Commission, *Proposed Policy Statement Order*, Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, M-2018-3006578 (Feb. 28, 2019).

residential consumers paid **$253 million** more to competitive suppliers than they would have paid to their distribution utilities for electric service from July 2015 through June 2018, and that low-income customers are disproportionately harmed.[21] Low-income Massachusetts residents paid **$40 million** more to suppliers than had they remained on the standard offer and overpaid 25% more than their non-low-income neighbors.[22]

Research by NCLC and the Massachusetts Attorney General conclusively demonstrate that the practices of competitive suppliers increase the financial burden for consumers who already struggle to afford their utility bills.

As we have learned from investigations by the Maryland Office of People's Counsel[23] and by analysts for the Abell Foundation,[24] the problems identified in Massachusetts are nearly identical to the problems experienced by Maryland households. Data from several other states are included in Appendix A, attached.

Senate Bill 31 would substantially mitigate the harms to low-income Maryland consumers, the ratepayers and taxpayers supporting the low-income assistance programs and the charitable assistance programs by preventing low-income customers from paying more than they

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[21] Mass. Office of the Attorney General, Are Residential Consumers Benefiting from Electric Supply Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts (March 2018); Mass. Office of the Attorney General, 2019 Update (Aug. 2019), at https://www.mass.gov/competitive-electric-supply.

[22] Mass. Office of the Attorney General, Are Residential Consumers Benefiting from Electric Supply Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts (March 2018) at p16; Mass. Office of the Attorney General, 2019 Update (Aug. 2019) at p.12, at https://www.mass.gov/competitive-electric-supply.

[23] Maryland Office of People's Counsel; Maryland's Residential Electric and Gas Supply Markets: Where Do We Go from Here? (Nov. 2018), at http://www.opc.state.md.us/Portals/0/Hot%20Topics/Maryland%20Electric%20and%20Gas%20Residential%20Supply%20Report%20November%202018.pdf.

[24] 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.

would have under the utility's standard offer. This would ensure that low-income customers do not overpay for essential electric or gas service and protect the cost-effectiveness of the ratepayer and taxpayer funded programs.

In conclusion, NCLC supports Senate Bill 31, to protect the affordability low-income customers' energy bills. 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

APPENDIX A

Amounts charged by competitive electric supply companies to residential customers for electric supply in excess of utility standard offer rate

STATE	DATES ANALYZED	AMOUNT OF EXCESS PAYMENTS
Connecticut	August 2019-July 2020	$41,023,111
Illinois	June 2019-May 2020	$234,434,643
Maine	2014-2016	$77,670,086
Maryland	2017	$34,138,799
Massachusetts	July 2017- June 2018	$76,208,703
New York	January 2014- December 2016	$1.2 billion

SOURCES:

Conn. Office of Consumer Counsel, *OCC Fact Sheet: Electric Supplier Market, August 2019 Through July 2020* (Oct. 26, 2020), at www.ct.gov/occ

Ill. Commerce Commission, *Office of Retail Market Development 2020 Annual Report* (July 31, 2020)

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

Susan M. Baldwin and Sarah M. Bosley, *On behalf of the Maryland Office of People's Counsel; Maryland's Residential Electric and Gas Supply Markets: Where Do We Go from Here?* (Nov. 2018)

Massachusetts Attorney General's Office (Prepared by Susan M. Baldwin). *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts – August 2019 Update* (Aug. 1, 2019)

State of New York Public Service Commission, 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)