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H. 4144, An Act relative to energy affordability, independence and innovation

Joint Committee on Telecommunications, Utilities and Energy
194th General Court of the Commonwealth of Massachusetts

Testimony of Jenifer Bosco, Managing Director of Energy Advocacy
National Consumer Law Center

July 2, 2025

Dear Senate Chair Barrett, House Chair Cusack, and Members of the Joint Committee on Telecommunications, Utilities and Energy:

Thank you for the opportunity to provide written testimony regarding **H. 4144, An Act relative to energy affordability, independence and innovation.** My name is Jenifer Bosco, and I am the Managing Director for Energy Advocacy at the National Consumer Law Center, where I lead NCLC's work on energy and utility matters. 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.

Energy affordability has long been a concern in Massachusetts and across the country. The Residential Energy Consumption Survey (RECS) by the U.S. Energy Information Administration found that in 2020, about 27% of households nationally reported challenges paying for home energy.[1] Here in Massachusetts, as of September 2024, residential gas and electric customers owed more than $832 million in past due bills – an average of $997 per household (when including all residential households), with a much higher average of $1,471 among low-income households.[2]

We appreciate Governor Healey's comprehensive approach to improving energy and utility affordability for all Massachusetts residents. We are writing in support of Sections 21, 31 and 41

[1] U.S. Energy Information Administration, Residential Energy Consumption Survey (RECS), *In 2020, 27% of U.S. households had difficulty meeting their energy needs* (April 11, 2022), available at https://www.eia.gov/todayinenergy/detail.php?id=51979.
[2] NCLC, *Massachusetts Discount Rate Customers Falling Farther Behind on Utility Bills* (March 2025), available at https://www.nclc.org/resources/massachusetts-discount-rate-customers-falling-farther-behind-on-utility-bills/

(at lines 1777-1830). We also have concerns about Sections 43 and 52, and request that these sections be removed from the legislation at this time.

Section 21, Competitive Supply - Support

High prices and deceptive sales practices have plagued the competitive supply market in Massachusetts and other deregulated states for decades.[3] The Attorney General has determined that Massachusetts residential consumers paid $651.3 million more to non-utility alternative supply companies than they would have paid to their distribution utilities for electric service over the years analyzed by the office.[4] The inflated rates charged to many or most customers who sign up with competitive energy supply companies worsen our energy affordability problems[5] and undermine the Commonwealth's efforts to help families maintain vital electric service. Compounding the harm, the inflated prices put additional stress on all ratepayers who fund the low-income utility affordability programs as well as taxpayers who fund programs such as the Low Income Home Energy Assistance Program (HEAP). Consumers need solutions now.

NCLC supports the aspects of Section 21 which would provide increased consumer protections for utility customers who consider purchasing competitive electric supply. The bill in sections 12, 15, 16, 18, 19 and 21 has a number of protections, and some stand out as potentially helpful to ratepayers. Under these protections, consumers would be shielded from variable rates which currently have no upper limit, and from cancellation fees. These price protections are a step forward to help consumers keep their electricity bills affordable. Additionally, the proposed restrictions on automatic renewals of contracts could be beneficial, and may help to reduce the number of customers who report being trapped in overpriced auto-renewing contracts without their affirmative consent. We recommend that any written consent to automatic renewal should physically be in writing on paper and not via electronic signatures or check boxes.

There is an area where the General Court could move further to protect low-income consumers, based on a recommendation made recently by the representatives of competitive supply companies. In H.4144, Section 21 would cap prices that could assist low-income customers, so that suppliers could not charge these low-income customers more than the utility company's average basic service price. We note that implementation of these protections in other deregulated states (New York and Illinois in particular) has required a significant investment of time by those states' utility commissions. We would instead urge the General Court to adopt a

[3] See, e.g., Jenifer Bosco, Utility Dive, *Retail 'choice': A bad deal for consumers and the planet* (Sept. 22, 2023), available at https://www.utilitydive.com/news/retail-choice-bad-deal-consumers-arrearages-renewable-energy-community-choice/694355/; National Consumer Law Center, *Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts* (April 2018), at http://bit.ly/2H3ORJJ; NCLC, *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.

[4] Office of the Massachusetts Attorney General, *A Predatory and Broken Market: the January 2025 Update, Analysis of the Individual Residential Electric Supply Market in Massachusetts* (Jan. 2025), https://www.mass.gov/competitive-electric-supply.

[5] *See, e.g.*, NCLC, *Massachusetts Discount Rate Customers Falling Farther Behind on Utility Bills* (March 2025), available at https://www.nclc.org/as-winter-shutoff-protections-expire-more-bay-staters-are-falling-behind-on-energy-bills/

recommendation made voluntarily by the competitive supply company representatives during stakeholder sessions in D.P.U. 19-07. There, RESA and REAL proposed to "Prohibit enrollment of low-income customers".[6] At the June 25 hearing before this Joint Committee, John Holtz from NRG Energy Services reiterated that RESA and REAL voluntarily offered to stop enrolling low-income customers during the April stakeholder working group in D.P.U. 19-07.[7] Halting enrollments of low-income customers would be a strong protection for those who are currently harmed the most in this market.

While we still believe that only a ban on residential sales will fully protect consumers, we support the price protections, restrictions on automatic contract renewals and other protections in H. 4144 as an important starting point.

Section 31, Extreme Heat - Support

We are also supportive of the extreme heat protections in Section 31, which would prevent involuntary electricity disconnections during extreme heat events.

For many years, NCLC has been actively involved in advocacy for low-income Massachusetts utility consumers. We have represented low-income consumers and helped to implement utility protections in Massachusetts including discount utility rates, winter disconnection protections, serious illness protections, and others. As summers become warmer and extreme heat events become more common, we have recognized that Massachusetts lacks a summer or extreme heat protection, and this disconnection protection has become necessary to protect health and safety.

In recent years, Americans have suffered through more frequent and dangerous heat waves across the country, which can lead to life-threatening harm to health and safety. Low-income households are more at risk for the harmful consequences of climate-related extreme heat. Last year NCLC issued an extreme heat report which details the problem and the need for extreme heat protections, with more information about the impacts of extreme heat and utility affordability on low-income consumers.[8]

Section 31 of H. 4144 would create a disconnection protection during periods when the temperature will exceed 85 degrees for three or more days. Although details would need to be worked out in the regulatory process, this protection could save lives. To do so, there should be clear authority that the protection applies if temperatures are **predicted** to meet or exceed the unhealthy heat threshold. Otherwise, this language could be open to misinterpretation.

We also request that you consider adding a provision allowing customers who were involuntarily disconnected before the heatwave to be temporarily reconnected upon request.

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[6] Department of Public Utilities, D.P.U. 19-07, " DPU 19-07 Working Sub-Group Meeting, Mechanics of Energy Switch Enrollments," Slide at page 25 (attached to this testimony as "Attachment 1")(May 1, 2025).
[7] Recording of public hearing on H.4144, June 25, 2025, at approximately 3:59, available at https://malegislature.gov/Events/Hearings/Detail/5241.
[8] National Consumer Law Center and the Center for Energy Poverty and Climate, *Protecting Access to Essential Utility Service During Extreme Heat and Climate Change* (July 2024), available at https://www.nclc.org/resources/protecting-access-to-essential-utility-service/

We note that another bill was introduced earlier in this session which also addresses extreme heat protections and is very comprehensive. H.3792/S.D.2785 would also apply to water and would provide even more comprehensive public health safety protections than the measure in H.4144. We urge the Joint Committee to consider incorporating some of the provisions from H.3792 into the current bill, such as the provision that allows for temporary reconnection during an extreme heat event even if the household had been disconnected previously due to nonpayment. Either way, these protections are urgently needed in Massachusetts.

Section 41 at lines 1777-1830 (creating a new G.L. c. 164, section 153) (LI Discount Rate statewide charge) - Support

We are supportive of this provision creating statewide cost recovery of the low-income discount rate, with the hopes that this change would benefit low-income ratepayers across the state by providing a steady and predictable source of funding for the low-income discount rate. Since the fixed monthly charge would be determined for each rate class, the charge for low-income ratepayers should be zero or as close to zero as possible. This would avoid raising the bills of low-income households, which currently use less household energy on average than their more affluent neighbors.

Section 43, Submetering - Oppose

We would also like to raise some concerns with certain provisions in the bill. Section 43, which would allow for residential submetering of certain electricity costs, could have unintended consequences that would exacerbate the affordable housing challenges that we face. We recommend that this section be removed from the bill.

Section 43 of H. 4144 would add a new Section 22A to Chapter 186 of the General Laws, allowing for landlords to install energy monitoring systems and charge tenants for utility usage, based on that system. Without strong protections for tenants, this section could increase housing costs by adding more utility expenses to the tenant's responsibilities without a corresponding rent decrease. In other words, tenants for whom heat is now included in rent could be made responsible for paying for heat through a submetered electric bill from the landlord. Before tenants are faced with the potential for this significant cost shift, additional protections need to be clarified.

Additionally, low-income tenants who are customers of investor owned utilities are usually eligible for the low-income discount on their electric bill. This discount can be significant, and is an important tool for keeping energy burdens affordable. If these low-income tenants paid their landlords for the electricity needed to operate the building's heat pump or water heater, it is not clear how the discount rate could be applied to these bills. Similarly, it is not clear how new heat pump electric rates could be applied to these submetered bills.

Additional protections are needed to avoid increasing the housing and energy burdens on families and to communicate adequate understanding of any changes related to responsibility for utilities. Housing law compliance, and the need for new lease agreements, may be implicated. We urge the Joint Committee to remove Section 43 from the bill, to allow time to address these questions.

Section 52, On-bill Financing - Oppose

Section 52 would create an energy financing program where loans for heat pumps, energy efficiency improvements or other energy measures would be paid back on a customer's electric bill. These programs, while well-intentioned, could be financially harmful to families who already face financial challenges or are burdened by debt. As described below, evidence elsewhere indicates that about half of families who finance these improvements through such a program do not save the projected funds needed to cover the costs, despite the structure of the program relying on such savings. There are also several unresolved legal and regulatory issues regarding these financial instruments. NCLC therefore requests that you remove section 52 from the legislation.

While on-bill financing may be appropriate in regions of the country where there are very limited or no low-income energy efficiency and electrification programs, Massachusetts does not need the potential risks of on-bill financing since we already have low-income programs that are among the best in the country. Low-income customers should continue to be directed to the successful no-cost programs provided by LEAN and MassSave. But even low-income protections such as restricting financing products to non-low-income households may not be adequate. Not all low-income customers are identified or even know that they are eligible for low-income assistance programs. These customers could still sign up for financing which could become unaffordable and threaten their housing stability, as well as contributing to utility uncollectibles that would ultimately be passed along to other ratepayers. Additionally, a low-income customer could be required to take on the financing agreed to by a previous tenant, since these lending products travel with the meter. Protections for these sets of low-income customers would be needed to prevent financial harm.

Although on-bill financing products have been promoted as a "scalable" solution to building decarbonization, uptake of these products tends to be limited. In fact, the study of the Ipswich program which was cited in the June 25 hearing involved six homes, and of those only three homes had upgrades installed.[9]

Further, in programs already in operation, significant numbers of households do not realize savings. While higher utility expenses may be an acceptable choice for higher-income homeowners, a failure to realize promised savings could harm low-income families and could lead to utility disconnection or eviction. Costs and savings are difficult to predict and savings may not always materialize. For instance, last year's study by LBNL found that only half of participating Midwest Energy households generated enough savings to cover the cost of the

[9] Lilly Hoch & Ashley Muspratt, CET, *Unlocking Residential Electrification with Inclusive Utility Investments: Resource Ipswich* Final Report (March 2024), available at https://www.cetonline.org/resource-ipswich-final-report/

on-bill financing charges associated with a Pay As You Save program.[10] The Ipswich study of three homes based its conclusions on *estimated* savings, not actual savings realized by families using the new equipment.[11]

We also note that these products appear to be loans or credit products, and therefore should be subject to all state and federal laws that apply to loans such as the federal Truth in Lending Act (TILA).[12] While on-bill financing is sometimes described as being something other than a loan, regulators have not determined that to be so. For instance, the California Department of Financial Protection and Innovation determined that these financing products fall under their purview, have referred to commercial on-bill financing programs as loans, and are continuing to review these products. While under on-bill financing programs the debt is tied to the utility meter and is marketed as a utility expense rather than a loan, it operates similarly to other non-recourse loans that defer payment to future installments. Standard credit disclosures and remedies are not provided because the on-bill financing programs declare that these products are not loans.[13] These legal issues need to be resolved before on-bill financing programs are contemplated.

Other options, such as revisions to the popular HEAT loan program, might be a more protective and affordable route to create additional options for moderate-income or higher-income customers who are interested in affordable financing.

We strongly recommend removing Section 52 from H. 4144 in its entirety. If Section 52 were to remain in the affordability legislation, then we urge you to remove the mandatory language at line 2408 of the legislation, changing "shall" to "may".

Thank you for considering this testimony. We appreciate the Healey Administration's work to increase energy affordability and protect low-income customers, and we offer these comments in the spirit of refining the affordability proposals to work for low-income consumers. We would be glad to provide further information and to consult on any redrafting. If you have questions regarding this testimony, please contact Jenifer Bosco, National Consumer Law Center, at jbosco@nclc.org or 617-542-8010.

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[10] Jeff Deason, Sean Murphy, and Greg Leventis, Lawrence Berkeley National Laboratories, Participant outcomes in residential Pay As You Save® programs (March 2024), available at https://emp.lbl.gov/publications/participant-outcomes-residential-pay

[11] Lilly Hoch & Ashley Muspratt, CET, *Unlocking Residential Electrification with Inclusive Utility Investments: Resource Ipswich* Final Report (March 2024), available at https://www.cetonline.org/resource-ipswich-final-report/

[12] See, e.g., Coalition Letter to CFPB and FTC Regarding Tariffed On-Bill Financing (TOB) (Sept. 9, 2024), available at https://www.nclc.org/resources/coalition-letter-to-cfpb-and-ftc-regarding-tariffed-on-bill-financing-tob/.

[13] See, e.g., Holmes Hummel and Harlan Lachman, "What is inclusive financing for energy efficiency, and why are some of the largest states in the country calling for it now?," ACEEE Summer Study on Energy Efficiency in Buildings 13-3 (2018) ("A PAYS program participant does not take on a new debt obligation and, therefore, does not face the liability or the risk of disqualification due to underwriting criteria required in the banking sector. Like a loan, PAYS allows for payment over time, but unlike a loan, the PAYS obligation ends with the customer's occupancy, at which point cost recovery continues with a successor customer.").

Sincerely,

Jenifer Bosco, Managing Director of Energy Advocacy
National Consumer Law Center

Attachment 1

DPU 19-07 Working Sub-Group Meeting

Mechanics of Energy Switch Enrollments

May 1, 2025

Interim Steps (cont).

Staff Proposal (cont.)

- R-2 Customers
  - Prohibit new customer enrollments
  - For customers on competitive supply through automatic renewal, price cannot exceed basic service price
    - This requirement would become effective on the customer's next billing cycle
    - Suppliers have option to continue to serve customers or return them to basic service