

BEFORE THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

CONSUMER PROTECTION REQUIREMENTS FOR
NONREGULATED POWER PRODUCERS

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PUBLIC UTILITIES COMMISSION

Comments of AARP

June 16, 2014

Pursuant to the Notice of Rulemaking and Public Hearing issued by the Commission on May 16, 2014, AARP submits the following Comments and recommendations for reform to the current regulations applicable to “nonregulated power producers” (NPPs or electric suppliers) in the retail energy market in Rhode Island. This Order stated that comments would be entertained if filed by June 16, 2014.

AARP is a nonpartisan, nonprofit social welfare organization with a membership that helps people 50+ have independence, choice, and control in ways that are beneficial and affordable to them and society as a whole. AARP is an advocate for the rights of people 50 and older. A substantial percentage of AARP’s members live on fixed or limited income. A major priority for AARP is to protect consumers from unaffordable expenses for essential energy services that may endanger their health and financial security.

AARP’s comments have been prepared with the assistance of Barbara R. Alexander, Consumer Affairs Consultant. Ms. Alexander has a long standing experience and expertise with regard to consumer protection policies and programs for retail energy competition. She has testified in over 15 states and Canadian jurisdictions on consumer protection policies, service quality, and low income program design and implementation. Ms. Alexander has recently assisted or participated in rulemakings and proposals for regulatory reform of retail electric markets proceeding in Connecticut, Pennsylvania, New Jersey, Arizona, New York, and Maryland.

I. WHY REFORMS ARE NEEDED

Rhode Island consumers, similar to those in other states, were promised that deregulation or retail competition would provide benefits and result in lower electricity prices compared to traditional cost of service regulation of electric generation. What proponents of deregulation failed to recognize that markets require supervision, consumer protections, and proper enforcement. Consumer complaints include: misrepresentation of prices, the use of variable rates that are not predictable or even plainly stated, teaser rates, the renewal of fixed rate contracts into variable rate contracts without affirmative

customer consent, and a host of telemarketing and door to door activities that confuse customers and take advantage of their lack of education and understanding of the terms being proposed to them in a hard sell marketing technique.

The evidence of the need for reforms has been documented throughout the retail competition states. AARP is active in a number of states who are reviewing their retail market rules in light of the recent price spikes. Problems identified in those states include:

- Consumers are told repeatedly that they will receive “lower bills” or “savings” in marketing materials from alternative suppliers, but while the initial rate may be slightly below the current Standard Offer price, the contract switches to variable prices after the initial term that are significantly higher than the Standard Offer price.
- Variable rates are disclosed as “based on wholesale market conditions” and do not reflect any publicly available index or formula that a consumer can access to determine the degree of variability in the prices based on historical conditions or even predict their next monthly bill. The following typical disclosures were documented in recent proceedings in Connecticut, Maryland, and the District of Columbia.

A typical example is the following disclosure from Blue Pilot Energy:

Price per Kilowatt Hour. You have a variable rate plan with a starting price set at 7.5 cents per kWh. This initial rate will be effective for at least the first ninety (90) days of service. Thereafter, your price may vary on a month-to-month basis. This price includes Generation Charges, but excludes applicable state and local Sales Taxes and the Delivery Charges from your LDU. At any time after ninety (90) days of service, but not more frequently than monthly, Blue Pilot may increase or decrease your rate based on several factors, including changes in wholesale energy market prices in the ISO New England Markets. Your variable rate will be based upon ISO-NE wholesale market conditions. Please log on to www.bluepilotenergy.com or call Customer Service at 877-513-0246 for additional information and updates.

Another typical marketing disclosure was offered by Starion Energy in which customers were told in large and bold print that SAVINGS are promoted, a price is listed slightly below the current Standard offer, but in tiny print at the bottom of the brochure is stated, “Starion Energy’s rate is variable, therefore is subject to change in response to market conditions.”

- Door to door and telemarketing sales agents are typically independent contractors that are paid by the licensed supplier based on a successful sale, a sales arrangement that often results in untrained agents, an incentive for misrepresentation, and even in some rare cases, criminal conduct.
- The Connecticut Office of Consumer Counsel has documented that thousands of Connecticut customers are paying significantly more than the Standard Offer procured by utilities in the wholesale market pursuant to a Department approved

plan. The OCC documented that 10 Connecticut suppliers are charging higher than 17 cents per kWh for some of their customers, a rate that is more than double the standard offer.

- The majority of the 2013 bills incurred by low income customers of PPL Electric (Pennsylvania) who enrolled with an alternative supplier were higher than default service. The study showed that 67% of the bills received by known low income customers receiving ratepayer bill payment assistance and who were receiving service by an EGS were above default service, ranging from 58% in June 2013 to 82% in March 2013.¹
- Recent press reports in Pennsylvania have documented that some residential customers on variable rate plans with alternative suppliers have seen winter electric bills with pricing over 20 cents per kWh.² As documented by testimony filed before the Pennsylvania PUC on behalf of the Office of Consumer Advocate, AARP, and PULP,³ the consumer agencies and organizations have heard from hundreds of consumers in Pennsylvania with shockingly high prices and bills from suppliers who passed through variable prices in the winter of 2014. For example, the OCA heard from a single mother with three children from State College whose electric bill nearly quadrupled from one month to the next. Her bill went from \$370 to \$1,456 with no warning. When she called to speak to the supplier to ask for help, she was told: "We are a variable rate company, so we can do that." She told us that "disaster is inevitable," and she may be right for her family.
- Alternative suppliers typically do not issue their own bills but collect their unregulated charges through the local utility and consumers may assume that a utility bill includes charges that are fair and reasonable. Many consumers do not understand the relationship between the current market price charged by the alternative supplier and the current standard offer price until the bill is shockingly high.
- In some cases when customers discover that they are paying higher prices than initially promised and call their supplier to terminate the contract, they are told they have to pay an early termination fee. Consumers have filed complaints with state regulators alleging they can't get through to a responsible person to resolve their complaint and that it may take 30-60 days to cancel service and return to the Standard Offer Service.

¹ Testimony of Stephen Krone on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania before the Pennsylvania PUC, Docket No. P-2013-2389572. (January 17, 2014).

² See, e.g., <http://blog.pennlive.com/capitol-notebook/2014/01/heres-what-you-need-to-know-ab.html#incart-river>

³ Available from the Pennsylvania PUC website at: <http://www.puc.state.pa.us//pcdocs/1277994.pdf>

II. COMMENTS ON PROPOSED REGULATIONS

AARP endorses the proposed reforms reflected in the Notice of Rulemaking. Current regulations state that NPPs “should” provide price disclosure. AARP endorses the proposal that suppliers who offer a variable rate contract must disclose the “price change formulas” and information as to whether there is a rate cap and the proposed disclosure that the price may be higher than the standard offer rate. A clearer requirement is essential. In general, however, the proposal does not go far enough to address the problems experienced by consumer.

The reforms relating to improved disclosures to customers about how and when to cancel service or return to Standard Offer Service do not reflect the lengthy delays that typically occur when a customer attempts to call the supplier to cancel service, or the length of time needed for the supplier to submit the switch order and for the distribution utility to then implement that switch order for the next meter reading cycle. This may result in a delay of 30-60 days. The Commission should consider reforms that allow the customer to call the distribution utility to cancel service with a supplier and return to Standard Offer Service and require distribution utilities to implement those requests promptly.

With regard to the proposed additional disclosure, AARP recommends that the regulation adopt more detailed disclosures as follows:

1. Variable rate price change methodology and/or formula;
2. The historical prices charged by the supplier pursuant to its variable rate contract for the customer class over at least the last 12 months;
3. Whether there is a rate cap for any month or over the term of the contract and if no rate cap, a disclosure that there is no limit to monthly price increases under the contract;
4. A statement that the monthly change in the variable rates will be provided at least 30 days prior to the issuance of the next monthly bill, posted on the supplier’s website, and provided to customers via email or other agreed upon communication method.

The proposed changes and regulations governing “disputes” between NPPs and their customers is troubling. As proposed, these regulations would allow customers to file complaints about supplier conduct only if there is an allegation of “violations of these regulations.” AARP recommends that the Division and Commission retain jurisdiction over the supplier’s activities pursuant to its license from the Commission and that this jurisdiction include not only the specific regulations, but allegations of unfair and deceptive conduct and practices pursuant to typical consumer protection policies.

III. AARP RECOMMENDED REFORMS

AARP recommends that the Commission undertake more significant reforms and, where necessary, seek statutory authority to expand and conduct more responsible oversight of the retail electric supply market in Rhode Island. The statutory and regulatory reforms that AARP recommends are based upon our evaluation of retail energy markets in New England and Mid-Atlantic states, our knowledge of fair consumer protection policies for other essential consumer products and services, and our knowledge of reforms adopted in other states, such as Pennsylvania and Connecticut.

Standard Offer Service Policy

If the recent spate of complaints and investigations have taught us anything it is that the current statutory policy governing how the Standard Offer Service is procured and provided to customers who choose not to choose or who need a safe haven to return to if they are dissatisfied with their experience with marketers must be retained and supported. AARP recommends that the Commission ensure that default service is procured and offered to ensure least cost and stable prices for customers who choose not to shop for electric supply service or enter into a contract with a NPP. This service should reflect a prudent mix of wholesale market contracts so as to dampen short-term price volatility and significant changes every six months.

Disclosures: Fixed and Variable Rate Contract Terms

- Suppliers should be required to disclose their price in a uniform manner as part of their marketing materials and terms of service documents. This recommendation is not intended to regulate the pricing method that suppliers choose to use or regulate their underlying pricing decisions. Rather, the recommendation would require that a true “apples to apples” comparison of prices be enabled by requiring suppliers to include all fixed and recurring charges, such as minimum monthly charges or other unavoidable fees, in the cents per kWh price that is presented to customers and listed in any regulatory agency-sponsored website.

This proposal is quite similar to the requirement under the Truth in Lending Act that creditors disclose the Annual Percentage Rate (APR) for all credit transactions in a uniform and “regulated” manner to allow customer comparisons of interest rates.

- The disclosures required for variable rate energy contracts are in need for reform and are the cause of most customer confusion and, in many documented cases, result in prices higher than the Standard Offer Service without customer understanding or awareness of how these prices are calculated. The concern is that the customer may be informed that the price will vary, but the disclosures concerning the manner or range within which the price will vary is often obscure or deliberately hidden in fine print. Some of these variable rate disclosures are incomprehensible and allow the supplier to make changes in the customer’s rates without any reference to any methodology (internal or external) that is not in the control of the supplier. As a result, there is no basis for determining how a variable rate price has been calculated.

- Suppliers who offer variable rate contracts should conspicuously disclose an example of how the price of their contract would have changed in the past 12-24 months if the contract had been in place with the methodology included in the supplier's contract. Obviously, there should not be any promise that historical changes in the index or methodology will guarantee future price changes, but at least the customer will understand the nature of the variability to which he or she has agreed and see the range of change in price that has occurred in the recent past. Such a disclosure is required, for example, for variable rate mortgages under the Truth in Lending Act.
- Most importantly, variable rate contracts should be required to identify the specific index, formula, or methodology to govern their terms. It is unreasonable and unfair for residential customers to be exposed to a monthly change in price for essential electricity or natural gas service based on an unidentified or unknown methodology. Whatever the methodology, index, or formula used by the supplier, it should be either publicly available or based on an identified formula or methodology that prevents suppliers from making changes at their total discretion. This reform is particularly important because (unlike the natural gas market) there is no publicly available index available to link retail prices with the electric wholesale market. The term used by suppliers as "response to market conditions" is entirely meaningless and without any means of enforcing contract terms. It is possible to argue that this type of price disclosure is not a disclosure of any "price" at all and borders on an unconscionable contract term that should be per se prohibited. This reform, coupled with the proposed disclosure requirement that the customer be presented with how that index, formula, or methodology has changed the underlying electricity gas price in the past 12-24 months, will allow customers to make a more informed decision about whether a variable rate contract is appropriate for their needs. These disclosures are also crucial for residential customers to understand the nature of variable rate contracts for electricity, a phenomenon that is not typical for these utility services.

Additional Fees and Renewal Clauses

- Early termination fees should be limited to \$50 similar to a reform adopted in Illinois and in Connecticut. Furthermore, there is no reasonable justification for including an early termination fee in month-to-month or variable rate contract.
- Consumers who enter into a fixed term contract are typically given a renewal notice that tells them that they will be put on a variable rate contract if the customer does not initiate contact with the supplier. Suppliers should not be able to interpret a customer's failure to respond to different or "material" contract terms as agreement to renew a contract. The term "material" should be defined at a minimum as a change in the pricing terms. First, it is unreasonable to allow suppliers to change the terms of an existing contract when that term affects the customer's price or fees and charges without affirmative customer consent. Second, when a supplier's contract has reached the end of its stated term, the regulations should require the

supplier to obtain a customer's affirmative consent to a renewal of any contract that also seeks to change the original price or related fees and charges.

- Renewal of an existing contract should be allowed to occur without affirmative customer consent only if the underlying terms and price do not change or if the renewal is limited to a month-to-month contract with the original terms and no termination fee. A supplier should not be able to change a fixed price contract into a variable price contract nor alter the fixed rate without obtaining affirmative customer consent.

Low Income Customer Protections

- Customers enrolled in low income programs need additional protections. Such customers who enroll with retail suppliers under the impression that they will save money on their bills and who in fact end up paying more than the Standard Offer Service threaten not only their own ability to afford essential electric service, but cause additional costs from nonpayment and higher bills to be imposed on all ratepayers.

Regulation of Door to Door and Telemarketing Sales

The PUC website does not contain rules to govern door-to-door marketing by alternative suppliers. Door to door sales are a frequent source of complaints. If door to door sales are allowed, there should be regulations governing such sales, including the need for additional consumer disclosures, obligations by suppliers for training and supervision of their sales agents, the use of an independent and Commission approved third party verification of customer authorization to change suppliers; and a requirement that suppliers develop and implement complaint and disciplinary programs governing their sales agents. Regulations should include:

- Suppliers should be required to develop and implement standards and qualifications for employees and agents engaged to interact with retail customers, and document that it has procedures in place to prevent the hiring or engagement of individuals that do not meet these standards;
- A supplier shall ensure the training of its agents on the following subjects:
 - State and Federal laws and regulations that govern marketing, telemarketing, consumer protection and door-to-door sales, including state-specific consumer protection laws and regulations.
 - Responsible and ethical sales practices as described in these regulations.
 - The supplier's products and services.
 - The supplier's rates, rate structures and payment options.
 - The customer's right to rescind and cancel contracts.

- The applicability of an early termination fee for contract cancellation when the supplier has one.
 - The necessity of adhering to the script and knowledge of the contents of the script if one is used.
 - The proper completion of enrollment and customer authorization documents.
 - The supplier's disclosure statement.
 - Terms and definitions related to energy supply, transmission and distribution service.
 - Information about how customers may contact the supplier to obtain information about billing, disputes and complaints.
 - The confidentiality and protection of customer information as required by state law and regulations.
- Suppliers should be required to document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.
 - Suppliers should be required to make training materials and training records available to the Commission upon request, as well as evidence that the training materials and records have resulted in reasonable management oversight to implement the training requirements.
 - Suppliers should be required to monitor a representative sample of telephonic and door-to-door marketing and sales calls to: (1) Evaluate the supplier's training program; (2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.
 - Suppliers should be required to develop and implement a disciplinary program to ensure compliance with its training programs and these regulations and document that such disciplinary program has been implemented to prevent violations and internal management failures.
 - Suppliers must issue an identification badge to employees or agents that interact with consumers in door to door sales or public events. The badge must:
 - Accurately identify the supplier, its trade name and logo.
 - Display the agent's photograph.
 - Display the agent's full name.
 - Be prominently displayed.
 - Display a customer-service phone number for the supplier.
 - Suppliers should be required to affirmatively identify the name of the Supplier that he represents and affirmatively state that he is not working for and is independent of the customer's local distribution company or other supplier. This requirement

shall be fulfilled by both an oral statement by the agent and by written material provided by the agent.

- When conducting door-to door activities or appearing at a public event, an agent should be prohibited from wearing apparel or accessories or carry equipment that contains branding elements, including a logo, suggests a relationship that does not exist with any distribution utility, government agency or another supplier.
- A supplier should not be able to use the name, bills, marketing materials or consumer education materials of another supplier, distribution utility, or government agency in a way that suggests a relationship that does not exist.
- A supplier or supplier agent may not say or suggest to a customer that utility customers are required to choose a competitive energy supplier.
- Door to door sales should comply with local ordinances regarding door to door marketing and sales activities.
- With regard specifically to door-to-door sales or telemarketing marketing activities, an agent should be required to comply with the following:
 - After greeting the customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.
 - The agent shall offer a business card or other material that lists the agent's name, identification number and title and the supplier's name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.
- When a customer's language skills are insufficient to allow the customer to understand and respond to the information being conveyed by the agent, or when the customer or a third party informs the agent of this circumstance, the agent shall terminate contact with the customer.
- When an agent completes a transaction with a customer, the agent shall:
 - Provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent leaves the customer's residence. If requested by the customer, a copy of the materials used by the agent during the call shall be provided to the customer as soon as practical.
 - Explain the supplier's verification process to the customer

- State that the supplier shall send a copy of the disclosure statement about the service to the customer after the transaction has been verified if the disclosure statement has not been previously provided.
 - State that the customer may rescind the transaction within seven business days after receiving the disclosure statement.
- An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises or if the customer expresses no interest in what the agent is attempting to sell.
- A supplier shall comply with an individual's request to be exempted from door-to-door marketing and telemarketing sales contacts and annotate its existing marketing or sales databases consistent with this request within 2 business days of the individual's request.
- A supplier shall not initiate a telemarketing call to any residential customer to solicit enrollment or authorization more than once per calendar year unless the customer has a business relationship with the supplier.