

**BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE**

Testimony Of

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**Regarding
Sales and Marketing Practices of Competitive Retail Suppliers**

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**Chairman Godshall, Chairman Caltagirone,
and Members of the House Consumer Affairs Committee**

Thank you for having me here today to speak on the important topic of the sales and marketing practices of competitive retail suppliers. Pennsylvania's retail electric and natural gas markets have been in full scale operation for almost a decade with a large number of competitive suppliers and hundreds of potential offers to residential customers. The Commission has engaged in numerous regulatory initiatives to both enhance the competitive retail markets and to address concerns that have arisen in the competitive markets, including providing regulations and guidance regarding sales and marketing activities of competitive suppliers. The Commission and my Office have also engaged in extensive consumer education about shopping for competitive electric and natural gas supply. My Office also provides monthly electric and natural gas Shopping Guides that compare prices charged by utilities and competitive suppliers on an apples-to-apples basis.¹ Our Shopping Guides can be mailed to consumers or viewed on our website. In calendar year 2017, we mailed approximately 900 Shopping Guides and received over 49,000 hits on these Guides on our website.

Despite our efforts at regulation and education, the electric and natural gas retail markets continue to be affected by incidents of confusing advertising material that often mislead consumers about savings, oral representations during the sales process that are misleading, and high pressure sales tactics that push consumers, often those most vulnerable, into signing up for competitive service out of mistake or misunderstanding, and sometimes out of fear of losing service.

¹ The Office of Consumer Advocate has been compiling its electric Shopping Guide since 1999. In compiling both our electric and natural gas Shopping Guides, the OCA contacts suppliers each month by email and provides an information sheet to fill in with the offer. The OCA has standardized its information sheet so that it receives all pertinent information about the offer and the OCA can ensure an apples-to-apples comparison. The OCA staff then updates the Shopping Guides on a monthly basis. Supplier offers can be updated during the month by contacting the OCA by email with an updated information sheet.

In considering this issue, it is important to recognize the essential nature of electric and natural gas service. Electricity, in particular, is essential to the health, welfare and safety of residential customers and communities. An electric bill has a major impact on most households' finances. Customers go to great lengths to pay their utility bills, and look for ways to reduce their monthly bill. This is particularly the case for senior citizens living on a fixed income and our low income consumers. This desire to control the cost of their utilities makes consumers particularly interested in marketing and advertising that suggests savings from selecting a competitive supplier.²

There are certain marketing avenues that seem to draw the most complaints to our office and may be most susceptible to potential abuse. Door to door marketing and telemarketing, which rely heavily upon oral sales representations, seem to be the two sales channels where the most complaints are found and where enforcing the requirements of the Commission's regulations and other Pennsylvania statutes is most challenging. A recent public input hearing in Erie regarding a proposal by Pennsylvania Electric Company for a "retail market enhancement adder" which would have charged customers extra who chose to remain on utility default service, drew hundreds of customers to oppose the default rate adder and discuss their concerns about retail choice. The ALJ did a remarkable job in summarizing the extensive testimony. Relevant to this discussion, I would like to quote from the ALJ's summary of the concerns she heard about the sales tactics of competitive suppliers:

The overwhelming concern expressed by people who did not want to be forced to switch to an EGS in order to avoid paying the PTC [Price to Compare] adder were the general sales tactics used by many suppliers and unscrupulous sales tactics.

² As we quickly found out during the extraordinary run up in prices during the Polar Vortex of 2014, consumers who were trying to save a few dollars a month by shopping for electricity, instead found themselves overwhelmed by bills that could not have been anticipated and were not as many believed was promised. Customers experienced monthly bills that were more than double what was expected, and in some instances exceeded \$1,000 for one month's usage.

Many individuals complained about telemarketing and door-to-door sales. All felt they were a nuisance. Others complained that the door-to-door salespeople often employed high pressure sales tactics or were not honest about who they were representing.

At least two witnesses told stories of an elderly person in their care who was confused about why their electric bills were suddenly so high. The caretakers discovered that the elderly person had a supplier who was charging an exorbitantly high rate and the person had no recollection of switching. These two and many others expressed concern that the PTC Adder would force the elderly and other vulnerable populations into an EGS marketplace that they were not well-equipped to navigate or protect themselves from unscrupulous entities.

Petition of Pennsylvania Electric Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, Docket No. P-2017-2637857, R.D. at 49 (R.D. issued June 8, 2018) (footnote citations to 24 consumer testimonies omitted).

While this testimony is from the Erie area, these are concerns that my staff hears from across the Commonwealth both through our Call Center and during our outreach events. These are also the concerns that were present in the testimony of hundreds of customers that participated in the complaints that were filed by my Office and the Office of Attorney General against several EGSs following the Polar Vortex in 2014.

From the cases that my Office pursued along with the Office of Attorney General following the Polar Vortex of 2014, and from our continued work with consumers in this area, my Office remains concerned about the sales and marketing practices of many EGSs and NGSs in Pennsylvania. The advertisements and oral statements made during the sales contact often emphasize savings in a manner that leads the consumer to mistakenly believe that their monthly bills will be lower, both immediately and over a period of time. Many times, the advertisements and oral statements suggest an affiliation with the local utility or an endorsement by the local utility that does not exist. While disclaimers are present on many of these written advertisements, the disclaimers are often in very small type and hard to follow.

More problematic are the oral representations that are made during the sales contact in a door-to-door or telemarketing sales approach. These oral communications and representations typically form the basis of the consumer's opinion as to whether to enroll with the competitive supplier. Consumers often view the "formal" enrollment process with its fine print, and lengthy terms and conditions to be outside of the decision making process. This is even more the case where the Disclosure Statement required by the Commission's regulations and the actual Terms and Conditions are provided to the customer after the enrollment as is often the case.

Addressing the potential for oral misrepresentations is a far broader task that implicates many of the operational processes and controls of the sales force of the EGSs and NGSs. Issues that we found when we investigated the cases arising from the Polar Vortex included the inadequacy of training of the sales agents, the structure of the compensation system for the sales agents, the lack of rigorous monitoring and review of the sales contact, the enrollment of customers before they received the disclosure statements or contract terms and conditions, and the potential inadequacy of the third party verification processes of enrollments. Failings in any of these areas contribute to sales and marketing practices that consumers find confusing, misleading and unscrupulous.

I do not wish to paint with too broad a brush as there are many EGSs and NGSs that comply with all Commission regulations, provide full and accurate disclosure, provide good training for the sales force, monitor the performance of sales agents for compliance and provide good customer service. Unfortunately, though, abuses continue, particularly with door-to-door marketing and telemarketing, and these abuses continue to harm both individual customers and the retail choice market as a whole.

This is a challenging area to address as it is difficult to oversee hundreds of suppliers producing hundreds of advertisements, with potentially hundreds of agents spread out across the Commonwealth conducting door-to-door marketing, and with hundreds of telemarketers making phone calls or robocalls throughout the course of the day and night. Enforcement can also be challenging as it often depends upon individual customers to come forward. But there are means to address these issues, some of which are already embedded in the Commission's regulations and Commission actions, and others of which may require additional laws, regulations or authority for the Commission.

As an initial matter, I must urge that we continue to support our strong default service model in the electric industry and our natural gas purchasing practices in the natural gas industry. Pennsylvania's default service and natural gas purchasing models ensure that **all** customers receive the benefit of competition from access to the wholesale markets for electricity and natural gas. As a recent Kleinman Center Report on the retail electricity market found, residential customers on default service in 2016 had the potential to save over \$818 million compared to pre-restructuring inflation adjusted generation and transmission costs. *A Case Study of Electric Competition Results in Pennsylvania*, Christina Simeone and John Hanger, pg. 3 (October 28, 2016). The Study also found that during the full implementation of restructuring from 2011 to 2014, statewide average annual retail electricity rates to residential customers were higher than the residential utility default service rates. Id. Through our default service, customers receive the benefits of the competitively priced generation from the PJM wholesale market and the lower associated bills.

The General Assembly may also wish to ensure that the Commission has clear authority to fully oversee sales and marketing practices of EGSs and NGSs. As I mentioned, the Commission has implemented regulations regarding the marketing and sales practices for the retail residential

market. These regulations provide sound direction for competitive suppliers on many aspects of their sales and marketing practices. The Commission also periodically holds Supplier Workshops to review these regulations with competitive suppliers, as well as to discuss other issues that have arisen in the competitive market. It should be made clear, though, that the Commission has full authority to ensure compliance with these regulations. It may also be time to further review and update these regulations, particularly in light of the lessons learned in the Polar Vortex.

The Commission also has detailed disclosure regulations which it did update following the Polar Vortex. These updates provided better information to consumers, but they were limited to specific areas of disclosure. The Commission is currently in the process of further updating these regulations to address additional problems that have been identified in the retail market. My Office has supported many of the Commission's proposals and provided comments on the proposals and questions posed by the Commission. We look forward to continuing work on the issue of full disclosure in this ever changing market.

In addition to the regulations of the Commission and the improvements already proposed in the Commission rulemaking process, some areas to explore and to ensure that the Commission has full authority to act would include:

- Implementation of standard contract terms and conditions that must be used by all competitive suppliers;
- Implementation of standard language for disclosure statements and a requirement that the disclosure statement be provided to the consumer before enrollment;
- Further specifying the type face and placement of disclaimer language in advertisements and in the oral sales contact;

- Requiring that third party verification scripts confirm the details of the offer and demonstrate the customer's understanding of the necessary disclosure items;
- Providing advanced price notification for all pricing changes, including variable rate price changes;
- Requiring sales monitoring and compliance programs that are rigorous, approved by the Commission, and subject to audit by the Commission;
- Providing clear authority for the Commission to conduct audits of training programs and sales performance for compliance with Commission regulations;
- Providing clear authority, beyond civil penalties, to ban door-to-door marketing and telemarketing by a competitive supplier or an agent of that supplier for violations of the Commission's regulations or other applicable laws;
- Requiring that low income customers in a utility's Customer Assistance Program pay no more to a competitive supplier than they would to the utility, that is, the customer pays a price that is no higher than the utility price to compare

While some of these requirements may already be reflected in Commission regulations or actions, it is not always clear that the Commission has the full authority to act as it may with a regulated public utility. Clarifying the Commission's authority could reduce controversy and litigation when enforcement is necessary.

Consumers need good information, fair marketing and full disclosure to make the right choices about their energy needs. The sales and marketing activities of competitive suppliers may need closer monitoring to meet these standards as well as to ensure compliance with the Commission's regulations and customer expectations. Thank you again for having me here today. I look forward to the continuing discussion on this important topic.