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Maryland Senate Finance Committee
Hearing on **SB 681 - Electricity and Gas Suppliers - Consumer Protections**
Testimony of Olivia Wein, National Consumer Law Center
February 25, 2020

Position -- SUPPORT

To the Members of the Senate Finance Committee:

Thank you for conducting this hearing on Senate Bill 681- Electricity and Gas Suppliers – Consumer Protections. My name is Olivia Wein, and I am a longtime resident of Montgomery County and an 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 been tracking the consumer experience in the competitive supply market in other states and have also released a report¹ and an issue brief² 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. Among other problems, analysis from other states finds that:

- Consumers pay more for competitive electric supply than they would have paid for service from their utility companies.
- The very small number of consumers who do manage to save money see only minor savings compared with those consumers who pay higher prices.
- 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 file complaints about high prices for competitive electric supply, involuntary switching or “slamming,” unwanted telemarketing or door-to-door marketing, deceptive sales practices, and more.

NCLC’s reports confirmed research done by the Massachusetts Attorney General. The Attorney General determined that Massachusetts 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.³ 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.⁴

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.

³ 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>.

⁴ 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>.

As we have learned from investigations by the Maryland Office of Public Counsel⁵ and by analysts for the Abell Foundation,⁶ the problems identified in Massachusetts are nearly identical to the problems experienced by Maryland households. Additional state summaries are provided in the attached Appendix.

Senate Bill 681 would mitigate much of the residential consumer harm from the confusing and unfair overpriced energy and electric supply. It will empower consumers by requiring a customer's written consent before a supplier's contract moves from a fixed rate to a variable rate, limit early termination fees that trap consumers into overpriced supply contracts, provides a price comparison of the suppliers rate and the standard offer rate on the bills and lists the price difference between the rates. This will pricing transparency will empower consumers to easily know if they are getting the deal promised by the suppliers' sales agents. SB 681 also requires restitution if the Commission finds just cause and consumer harm and authorizes OPC to conduct investigations of suppliers in certain circumstances.

In conclusion, NCLC supports SB 681, which would help protect Maryland consumers from being tricked into overpaying for essential gas and electric supply. If you have questions regarding this testimony, please contact Olivia Wein, Staff Attorney, National Consumer Law Center, at owein@nclc.org or 202-452-6252, x103.

Sincerely,

Olivia Wein, Staff Attorney
National Consumer Law Center, on behalf of our low-income clients

⁵ 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>.

⁶ 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.

APPENDIX A

Alternative Energy Supply: National Overview

Alternative energy suppliers, also known as competitive energy suppliers or ESCO's, are allowed to sell electricity or natural gas directly to residential customers. About one-third of U.S. states¹ have laws that deregulate parts of the state's utility market. About 16 states have deregulated or partly deregulated electricity markets, and several more have deregulated sales of natural gas. Residential customers may choose to continue to buy their power from the regulated distribution utility company that offers service to the customer's home, or can switch to an alternative energy supply company which is not part of any regulated distribution utility.

Utility deregulation, which opened the door to alternative energy suppliers, was pitched to consumers as a money saving idea that would lower electric and gas rates, increase supplies of renewable energy, and create other free market benefits such as innovative energy products or service. Instead, deregulated states that have analyzed the impacts on consumers have found that alternative suppliers provide the same electricity or gas service but at inflated prices. Overpriced service is marketed to consumers with the use of deceptive sales practices. While distribution utility company prices are set by government authorities, alternative supply companies trap consumers in contracts with clauses that allow prices to increase without notice and with no upper limit.

States that have published analyses of the financial impact of alternative retail suppliers on residential utility customers include Connecticut, Illinois, Maine, Maryland, Massachusetts, New York, Pennsylvania and Rhode Island. In each case, residential consumers were found to pay higher prices for alternative energy supply than they would have paid for the same service from the distribution utility, resulting in hundreds of millions of dollars of aggregate financial harm to consumers.

Connecticut

The Connecticut Office of Consumer Counsel (OCC) has since 2014 compiled a series of fact sheets that compare the prices paid by residential electric customers for "Standard Offer" service from the distribution utility, compared with prices paid to alternative electric suppliers. In its August 2019 analysis,² the OCC found that from July 2018 - June 2019, residential consumers paid alternative electric suppliers \$29,815,548 more in the aggregate than these customers would have paid for Standard Offer service from the distribution utility.

¹ States with deregulated electricity markets include Connecticut, Delaware, Maine, Maryland, Massachusetts, New York, Ohio, Pennsylvania, Rhode Island and Texas as well as the District of Columbia.

² Conn. Office of Consumer Counsel, OCC Fact Sheet: Electric Supplier Market, July 2018 Through June 2019 (August 6, 2019), https://www.ct.gov/occ/lib/occ/fact_sheet_electric_supplier_market_june_2019.docx

Previous analyses by OCC reveal the same pattern. For instance, from October 2017 - September 2018, residential consumers paid \$38,380,874 more to alternative electric suppliers than they would have paid for Standard Offer service.³

On December 18, 2019, the Connecticut Public Utilities Regulatory Authority released a Final Decision which verified these harms and directed the state's distribution utilities to transfer low-income customers from third-party electric suppliers back to distribution utility service.⁴

Illinois

The Illinois Office of Retail Market Development (ORMD) has compiled Annual Reports detailing the higher prices paid by customers with alternative electric suppliers since 2008. In Illinois, these companies are referred to as alternative retail electric suppliers (ARES).

In its 2019 report,⁵ the ORMD determined that residential customers in the service territories that were analyzed paid more in the aggregate than customers who received service from the distribution utility. Residential customers of alternative suppliers in the ComEd territory paid around \$8.13 million more per month during the 2018-2019 year analyzed in the report when compared to the "Price-to-Compare," and \$10.35 million more per month when compared to the ComEd Price-to-Compare which includes the Purchased Electricity Adjustment. In the Ameren Illinois territory, residential customers with alternative suppliers paid around \$9.14 million more per month during the last twelve months when compared to the Ameren Illinois Price-to-Compare and \$10.16 million more per month during the last twelve months when compared to the Ameren Illinois Price-to-Compare including the Purchased Electricity Adjustment.

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

³ Conn. Office of Consumer Counsel, OCC Fact Sheet: Electric Supplier Market, October 2017 Through September 2018 (November 8, 2018), https://www.ct.gov/occ/lib/occ/fact_sheet_electric_supplier_market_september_2018.pdf

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 Illinois Commerce Commission Office of Retail Market Development 2019 Annual Report (June 2019), <https://www.icc.illinois.gov/downloads/public/2019%20ORMD%20Section%2020-110%20Report.pdf>.

⁶ Illinois SB0651, Public Act 101-0590 (Aug. 27, 2019).

charged by the utility. The Commission is required to initiate a proceeding to consider the application.⁷

Maine

A 2018 analysis⁸ by the Maine Public Utilities Commission, using publicly available data from the U.S. Department of Energy's Energy Information Administration, indicated that Maine residential customers who received electricity from an alternative supplier during the three years of 2014-2016 paid approximately \$77.7 million more than what they would have paid for standard offer service through the distribution utility. On average, customers paid approximately 56% more than they would have paid for standard offer service in 2016; 60% more in 2015; and 12% more in 2014.⁹

Maryland

Two recent reports document the price disparities and other consumer problems faced by Maryland consumers who purchase electricity from alternative suppliers.

In a 2018 report commissioned by the Maryland Office of People's Counsel (OPC),¹⁰ the researchers analyzed consumer participation information published by the Maryland Public Service Commission and other limited pricing information to estimate a net annual consumer loss associated with the gas and electric supply markets of \$54.9 million.

Another report issued in the same year by the Abell Foundation¹¹ determined that from 2014 to 2017, Maryland households paid about \$255 million more to alternative electricity suppliers than they would have paid to their distribution utilities for electric service. The Abell Foundation report used different sources of data than those analyzed in the OPC report, relying

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 Maine Public Utilities Commission, Report on Competitive Electricity Provider and Standard Offer Price Comparisons (Feb, 15, 2018), https://digitalmaine.com/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1017&context=puc_docs.

⁹ Maine Public Utilities Commission, Report on Competitive Electricity Provider and Standard Offer Price Comparisons at 3 (Feb, 15, 2018) (describing analysis using data from U.S. EIA Form 861).

¹⁰ 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), <http://www.opc.state.md.us/Portals/0/Hot%20Topics/Maryland%20Electric%20and%20Gas%20Residential%20Supply%20Report%20November%202018.pdf>.

¹¹ Laurel Peltier and Arjun Makhijani, Ph.D, Abell Foundation, Maryland's Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies (Dec. 2018), https://www.abell.org/sites/default/files/files/Third%20Party%20Energy%20Report_final%20for%20web.pdf.

instead on publicly available data from the U.S. Department of Energy’s Energy Information Administration.¹²

Massachusetts

The Massachusetts Office of the Attorney General released a report in March 2018 analyzing price discrepancies between distribution utilities and alternative electric supply companies.¹³ The analysis revealed that Massachusetts residential electric consumers paid \$176.8 million more to alternative electric suppliers than they would have paid if they had received electric supply from their distribution utilities during the two-year period from July 2015 to June 2017. Low-income consumers alone paid alternative electric suppliers a premium of \$23.6 million over the distribution utilities’ prices during the 2016–2017 study period and an additional \$16.4 million from July 2017 through June 2018. An August 2019 update to the report found that customer losses continued into 2017-2018, when customers paid an additional \$76.2 million to alternative suppliers over the rates that they would have paid to their distribution utilities. Overall, 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 2018.¹⁴

A second report by the National Consumer Law Center documented numerous consumer problems with alternative energy supply companies and their use of aggressive and deceptive sales practices. A financial analysis based on limited utility company data indicated that most residential consumers in Eversource’s eastern Massachusetts territory paid alternative electric suppliers more than they would have paid for distribution utility service during 2015-2016.¹⁵

New York

The New York Public Service Commission (PSC) Staff’s analysis of actual bills issued by utilities that include supplier charges concluded that between 2014 and 2016, residential consumers on competitive electric and gas supply paid \$1.2 billion more than they would have

¹² Maryland’s Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies at 10, fn 15 (Dec. 2018) (explaining use of U.S. EIA form 861 as source of publicly available information).

¹³ 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 (March 2018), <https://www.mass.gov/files/documents/2018/03/29/Comp%20Supply%20Report%20Final%20032918.pdf>.

¹⁴ 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), https://www.mass.gov/files/documents/2019/07/31/Massachusetts%202019%20Update_August%202019.pdf.

¹⁵ National Consumer Law Center, Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts (April 2018), <http://www.nclc.org/images/pdf/pr-reports/competitive-energy-supply-report.pdf>.

paid with their default utility service.¹⁶ Within this aggregated amount, low-income consumers who participate in several state assistance programs paid \$96 million more to alternative electric suppliers than they would have paid for distribution utility service.

In light of these findings, and a finding that supply companies failed to show that their services provided any additional service or value compared with electric service from the distribution utilities, the PSC conducted proceedings and issued an order to halt alternative energy supply sales to certain low-income customers.¹⁷ Further, the PSC found that the higher charges were significant enough to drain crucial funds from taxpayer and ratepayer supported programs that were intended to assist low-income customers.

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."¹⁸

Pennsylvania

While Pennsylvania has not published a statewide analysis of price disparities between alternative energy suppliers and the state's distribution utilities, there has been recent analysis of the financial impact on low-income consumers. Data provided to the Pennsylvania Public Utility Commission from PPL Electric Utility Corporation indicates that low-income consumers in that utility's service area paid \$2.7 million more to alternative electric suppliers than they would have paid to PPL Electric for the same service over a one-year period.¹⁹ Billing data from another Pennsylvania utility, FirstEnergy, similarly showed over a 58-month period, that nearly 65% of low income customers in the Customer Assistance Program served by alternative suppliers paid rates above the default service rate, resulting in an aggregate financial impact of \$18.3 million over the 58-month period.²⁰

On October 27, 2016, the Pennsylvania Public Utility Commission approved PPL Electric Utilities Corporations' and other stakeholders' plan to restrict low-income Customer Assistance Program (CAP) customers who choose to shop with a supplier, to a CAP-Standard Offer Program (CAP SOP) which requires suppliers choosing to participate in CAP SOP to agree

¹⁶ 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).

¹⁷ 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), 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).

¹⁸ N.Y. Pub. Svc. Commission 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).

¹⁹ Motion of Commissioner David W. Sweet, Pennsylvania PUC, Electric Distribution Company Default Service Plans—Customer Assistance Program Shopping, Public Meeting (December 20, 2018), <http://www.puc.state.pa.us/pcdocs/1599226.pdf>.

²⁰ Motion of Commissioner David W. Sweet, Pennsylvania PUC, Electric Distribution Company Default Service Plans—Customer Assistance Program Shopping, Public Meeting (December 20, 2018), <http://www.puc.state.pa.us/pcdocs/1599226.pdf>

to serve 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.²¹

Rhode Island

Based on supplier pricing data reported by Rhode Island electric utilities, the Division of Public Utilities and Carriers reported in May 2018 that during the previous five year period, consumers served by alternative suppliers paid \$55 million more than they would have paid if they had been on default service.²²

All states that have examined the financial impact of alternative energy suppliers on residential consumers have reached similar findings – alternative energy suppliers charge customers more for utility service that is essentially identical to distribution utility service. In the aggregate, consumers pay hundreds of millions of dollars over the price of distribution utility service.

²¹ 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).

²² State of Rhode Island, Division of Public Utilities & Carriers (“DPUC”), Press Release: DPUC Enacts New Rules for Competitive Electricity Suppliers, Initiates Review of Competitive Supply Marketplace (May 8, 2018).