**NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

**Resolution 2014-1**

**Urging the Adoption of State Laws and Regulations to Provide Better Consumer Protections for Retail Energy Customers Who Are Being Solicited, or Have Entered into Agreements, for Variable Rate Contracts with Competitive Energy Suppliers**

***Whereas,*** the markets for electricity and natural gas have been open to retail competition in numerous states for nearly two decades; and

***Whereas***, public utility commissions do not approve the price or rate offers of retail competitive suppliers; and

***Whereas***, in most retail competition states, competitive energy suppliers are subject to certain marketing, solicitation, disclosure, and contracting rules established by the state public utility commission’s orders and regulations or by state law; and

***Whereas***, while state public utility commissions’ laws and regulations share some similar features, they are not uniform; and

***Whereas*,** in some but not all retail competition states, competitive energy suppliers also are subject to that state’s statutes and policies against unfair and deceptive trade practices; and

***Whereas*,** in response to concerns about certain marketing, disclosure, solicitation and contracting practices of competitive energy suppliers, NASUCA adopted Resolution 2012-4 on June 25, 2012 to urge the adoption of state laws and regulations designed to promote honesty and clarity in marketing practices, and to assist consumers in selecting an appropriate competitive energy supplier, if interested in doing so; and

***Whereas*,** Resolution 2012-4 stated generally that “retail energy providers should be required to disclose the price of energy supply,” and that “regulators should require uniform disclosure of prices and terms by retail energy providers;” and

***Whereas*,** since the adoption **of** Resolution 2012-4, there has been a significant increase in the number of competitive energy suppliers that have implemented market strategies that include, *inter alia*, short-term promotional discounts or fixed prices followed by “variable rate” contracts for residential and other consumers; and

***Whereas***, competitive energy suppliers have described or defined variable rate offers or contract terms in a variety of ways, including statements such as:

 “Rates are subject to change without notice”

“Rates may change due to current and predicted weather patterns, retail competition, fluctuations in energy supply and demand, industry regulations, pricing strategies”

“Rates may change based on an evaluation of a number of factors, including applicable fees, charges, costs and expenses; expected margins; competitive prices and other market and business conditions”

“Rates may reflect the cost of buying your electricity supplies in the regional wholesale electricity markets”

 “Rates may vary according to market conditions”

 “Price may fluctuate and change at the sole discretion of supplier;”

and

***Whereas***, variable rate offers and contract terms frequently do not state any methodology, method of calculation or index that can be used by a consumer to determine how the variable rate is calculated; and

***Whereas***, competitive energy suppliers use variable rate terms in the following ways: (1) beginning with the first month, (2) after the conclusion of the term of an initial or introductory fixed rate term; or (3) upon the automatic renewal of a contract; and

***Whereas***, in most states, there are no provisions for an upper limit or cap, or range of variation, for the variable rate; and

***Whereas***, variable rate contracts can be month-to-month contracts, or fixed term contracts; and

***Whereas***, variable rate contracts frequently require a customer to provide notice of cancellation in a timeframe and form specified in the contract; and

***Whereas*,** customers who attempt to terminate a contract without providing notice in the time frame or form required by the contract may be delayed or prevented from canceling the contract or switching to another supplier or to default service; and

***Whereas***, customers who cancel a contract early may incur a cancellation fee; and

***Whereas***, in most states, switching and billing rules for competitive energy supply result in delays of weeks and sometimes months before a retail customer can be switched from a competitive energy supplier even after valid notice of cancellation; and

***Whereas*,** many competitive suppliers in the PJM and NE ISO areas in recent years have, for significant periods of time, been charging residential consumers variable rates that are substantially above rates available to consumers through default service prices and above market prices, including in the examples below; and

***Whereas*,** in the winter of 2012-2013 at least one competitive energy supplier operating in the PJM area charged variable rate customers in PJM states a rate in the range of 16 to 19 cents per kwh, compared to a default service price less than ten cents, based on the contract term of “change in market conditions” that the supplier admitted occurred in a separate ISO region, ISO NE, and not based on any supply or cost changes within the PJM region or PJM states; and

***Whereas*,** in the winter of 2013-2014, an unknown number of competitive energy suppliers operating in states within the PJM and NE ISO regions charged their variable rate customers without prior notice rates within the 25 to 48 cents per kwh range in the month of January 2014, which constituted increases two to four times the default service or fixed price costs in those states; and

***Whereas***, consumer advocate agencies, public utility commissions and Offices of Attorneys General in those states received record numbers of consumer complaints about these dramatic increases in the supplier rates, particularly since the impact of the high rates was compounded by the increased energy usage in those months; and

***Whereas*,** the current cancellation and switching rules in most states during those months prevented consumers from cancelling these contracts without penalty or switching from suppliers in time to avoid these rates for the next month or two or more; and

***Whereas*,** the existing laws and regulations do not: provide clear and sufficient disclosure requirements that ensure consumers understand variable rate terms; protect retail customers from dramatic fluctuations in these rates; enable these customers to be informed about the actual variable rate in advance of being charged; or allow consumers to cancel contracts easily and quickly;

***Now, therefore, be it resolved***, that state legislatures and state public utility commissions should develop and adopt laws and regulations to address marketing of energy contracts by energy suppliers, especially with respect to variable rates; require clear and conspicuous disclosures regarding variable rates; impose reasonable restrictions or parameters on changes in variable rates; and enable faster and easier switching while respecting verification procedures;

***Be it further resolved***, that in addition to the general consumer protections set forth in Resolution 2012-4, such laws and regulations should incorporate the following specific consumer protections:

1. Limit or cap the percentage monthly and annual rate increases for variable rate contracts, if a limit or cap is not already in place;
2. For variable rate contracts, require the competitive energy suppliers clearly and conspicuously to disclose, in a uniform, brief and easily comprehensible format, in advance of the sale and in writing, so the customer can review and consider the information as part of an informed decision:

a. the methodology or formula used to calculate the new rate so that it is transparent and capable of showing how the current monthly price was calculated;

b. the historical price charged to its customers under this methodology for at least the previous 12 months;

c. the price to be charged in the next billing cycle before that cycle begins;

d. the cap or limit on the monthly and annual rate increases for a variable rate contract; and

e. how a consumer can find out current rate information via a website and toll free number;

3. Limit the early termination fees (ETFs) (also known as cancellation fees) to a reasonable amount, but no more than fifty dollars ($50), for fixed rate contracts, and prohibit ETFs for variable rate contracts;

4. Allow a customer to terminate a contract and return to the utility supply service (sometimes known as Standard Offer Service (SOS) or default service) by contacting the utility directly;

5. Prohibit the automatic renewal of consumer contracts whereby fixed term agreements, upon expiration of their term, are converted to variable rate contracts based on a negative option notification. Instead, require affirmative consent of the customer to such variable rate contracts;

6. Ensure that the public utility commission has sufficient authority to address consumer issues with respect to marketing, disclosure, and contracting activities of competitive energy suppliers, specifically with regard to: establishing notice, disclosure and other such requirements; standards and limits with respect to telemarketing and door-to-door sales; requiring baseline service quality and customer service standards, and providing sufficient enforcement tools, including the ability to issue a temporary halt to marketing and sales activities based on the result of a Show Cause Notice; take other reasonable license actions and order suppliers who violate the regulations and policies to provide consumer restitution (refunds and credits);

7. Establish a reasonable rescission period, of a minimum of 3 business days, for supplier contracts; and

8. Prohibit suppliers from requiring customers, by contract or otherwise, to give advance notice of termination to the supplier of any longer duration than the duration of the advance notice given by the supplier to the customer of a change in the variable rate charged to the customer.

***Be it further resolved***, that NASUCA authorizes its Executive Committee to develop specific guidelines for retail energy marketing to consumers and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action, if possible. In any event, the Executive Committee shall notify the membership of any actions taken pursuant to the resolution.

Submitted by the Consumer Protection Committee

Approved June 3, 2014

Santa Fe, New Mexico