**NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

**Resolution 2014-2**

**Urging the Adoption of State Laws and Regulations to Reform Licensing and Consumer Protection Requirements and to Increase State Oversight and Enforcement Resources over Competitive Energy Suppliers**

**Whereas**, electric and natural gas services continue to be essential to the health, safety and daily life of residential consumers, the loss of such service has detrimental impacts on the young and elderly, as well as those with medical vulnerabilities and disabilities; and

**Whereas,** on six occasions between 1997 and 2014, NASUCA has adopted resolutions urging the development and enforcement of consumer protection, disclosure, education, and licensing requirements to govern the activities of retail electric and natural gas suppliers for States that have implemented retail energy markets;[[1]](#endnote-1) and

**Whereas,** these Resolutions have repeatedly called for prohibition of unfair and deceptive marketing practices and contract terms, reasonable licensing and security requirements, reasonable disclosures about the material terms of service prior to enrollment, safeguards to prevent slamming and cramming, specific reforms to govern contracts with variable rates, and penalty provisions designed to deter conduct that violates state laws or regulations; and

**Whereas,** there is growing evidence that on average customers are paying more for competitive energy supply compared to the otherwise applicable default service[[2]](#endnote-2) rates, thus eliminating the potential for customers to save on their electric and natural gas bills; and

**Whereas,** in most restructured statesconsumer complaints about supplier marketing practices, the fine print terms of their contracts, volatile prices, high termination fees, and the customer’s inability to pay for essential electric and natural gas service as a result of higher supplier charges that appear on their local utility bill have dramatically increased; and

**Whereas,** competitive markets in which the seller has an unfair advantage over the buyer due to disparity in knowledge and experience, as well as unfair and deceptive marketing practices, create the potential for abuse and unaffordable bills for these essential services; and

**Whereas**, consumer confidence and ability to participate without fear or suspicion is crucial to the success of retail energy markets; and

**Whereas,** members of NASUCA have gained extensive experience since the introduction of retail competition with the practical problems of consumers in responding to the marketing efforts of competitive energy suppliers;

**Whereas**, public utility commissions in states with retail energy markets may lack sufficient authority and often lack sufficient resources and expertise to design and enforce consumer protection policies and regulations for competitive markets;

**Now, therefore, be it resolved,** that state legislatures and state public utility commissions should develop and adopt the following reforms and initiatives to eliminate unfair and deceptive practices, adopt and enforce effective licensing and consumer protection requirements, conduct more frequent enforcement proceedings, and implement a stronger oversight and enforcement program with sufficient authority and resources to ensure consumer protection and fair competition:[[3]](#endnote-3)

1. The criteria for licensure should require electric and natural gas suppliers to submit a bond or security interest payable to the public utility commission in sufficient amount to cover the potential need for customer restitution in the event of a finding of misleading and deceptive advertising, failure to comply with contractual terms, or other violation;

2. The public utility commission should, where necessary, seek additional resources and expertise to design and enforce effective consumer protection policies and regulations for competitive markets, and then use those resources to investigate customer complaints that show potential violations or unfair conduct and pursue enforcement action when appropriate. At a minimum, the state utility commission should have and exercise its authority to:

* License or register independent representatives, including multi-level marketers, of the suppliers;
* Assess licensing fees on suppliers that reflect the heightened level of supervision, education, and enforcement that is needed in the implementation of retail energy competition;
* Reject, suspend, and revoke a license for violation of the consumer protection regulations and licensing conditions;
* Hold competitive energy suppliers liable for the fraudulent, deceptive or other unlawful marketing acts of their authorized sales agents, including door to door sales and telemarketing contractors and independent representatives, authorized to represent the supplier’s products and services to customers no matter how the agent or individual is compensated.
* Require adherence to marketing and disclosure standards as a condition of eligibility to market electricity or gas to retail consumers;
* Order suppliers to provide restitution to customers where deceptive or otherwise unlawful behavior has occurred;
* Order a supplier to halt the use of a particular marketing channel or practice when preliminary evidence suggests that such a suspension is warranted while a more formal commission investigation is completed;
* Assess civil penalties for violation of orders or regulations; and
* Upon a finding that a licensee has violated a statute or regulation regarding the provision of service to residential or small non-residential customers, direct that amounts from the financial security be distributed for refunds of security deposits or refunds, restitution to consumers, or payment of administrative of penalties or other sanctions.

3. Suppliers should be required to clearly and conspicuously disclose the price and other material terms of their offer in an approved uniform template or label as part of their marketing materials, oral statements and contract document prior to a customer’s enrollment and receipt of the formal terms of service documents;[[4]](#endnote-4)

4. Suppliers should be required to provide to customers a true “apples to apples” comparison of prices by disclosing the supply rate and all fixed and recurring charges, such as minimum monthly charges or other fees, as well as a total cents per kWh price inclusive of the supply rate and add-on charges;

5. Suppliers should be required to maintain a website and post all material terms and conditions of its offers in the same approved uniform format adopted for disclosure of suppliers’ terms of service and contract materials;

6. Electric and Natural Gas Utilities should be required to conspicuously state their “default” or “standard” service price on every customer’s bill in a manner that includes all applicable charges (as reflected in state specific policies) in a uniform cents per kWh format and inform their consumers of the schedule when this price will change;

7. Commissions should require electric and natural gas utilities to modify their billing systems in such a way as to accommodate customers wishing to return to default service as soon as is technically feasible;

8. Suppliers should be prohibited from imposing an early termination fee in excess of $50 for residential customer contracts with a fixed price;

9. Automatic or “negative option” renewal of an existing contract should be allowed 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;

10. Customers enrolled in low income programs should be provided appropriate protections so that the customers do not incur unnecessarily higher supplier rates and energy assistance providers do not have to contribute more funds than necessary towards customer bills;

11. Door to door sales and telephone solicitation (telemarketing) by competitive energy suppliers should be subject to additional supervision and consumer protection laws or regulations. At a minimum, these additional requirements should include the following:

* Identification of the person making the solicitation and the supplier;
* For door to door sales activities:
* The issuance of an identification badge to be visibly worn by door to door sales agents;
* The issuance of a business card or other written material with the agent’s identifying information, to be provided to the customer at the time of solicitation;
* Prohibition on the wearing of apparel or accessories or use of materials that contain branding elements, including colors and logos, that suggest a relationship that does not exist with a distribution utility, government agency or other supplier;
* Prohibitions on certain statements designed to mislead the customer about the voluntary nature of the choice of supplier, the role of default service and the supplier’s relation to the regulated utility prohibitions on deceptive marketing statements about savings or lower rates in comparison to utility default service rates; and
* Requirements for greater oversight and control of marketing representatives, including third-party sales agents, contractors and multi-level marketers, such as those adopted by the Pennsylvania Public Utility Commission in 52 Pa. Code, Ch. 111 (eff. June 2013).

12. Suppliers that offer promotional rates, prizes, or other benefits for enrollment should be required to track and report the actual results of these promotional offers in terms of customers who qualify and receive these benefits to the state utility commission as part of their licensing renewal or annual reporting process;

13. State regulators should terminate referral programs or other “retail market enhancements” that require the utility to explain or market retail energy provider services to customers who call the utility to initiate or discuss their utility service;

14. In States where utilities are required or allowed to purchase the receivables of competitive energy suppliers, utilities should be prohibited from:

* purchasing receivables in excess of the default service rate; and
* disconnecting service for any amount that exceeds what the customer would have paid pursuant to default service rates;

15. Suppliers should be required to document the training of their third party marketing and sales agents and maintain a record of the training materials, schedules and agent participation for 3 years from the date the training was complete;

16. 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, including compliance audits and disciplinary programs;

17. 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;

18. When a supplier or 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. A copy of the materials used by the supplier or agent during a telemarketing call shall be provided to the customer promptly; and

19. 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.

20. **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 action taken pursuant to the resolution.

Submitted by Consumer Protection Committee

Approved November 18, 2014

San Francisco, California

1. These prior resolutions were as follows:

Resolution Urging the Adoption of Standards to Protect Consumer as Part of any Electric Restructuring Legislation or Regulations (June 1997)

Resolution in Support of Minimum Disclosure Requirements Where the Retail Marketing of Electricity is Adopted (November 1997)

Resolution Urging Federal and State Policymakers to Protect the Interests of Consumers in Setting Policies to Create the Market Structure for Competitive Utility Service (November 1998)

Resolution Urging Jurisdictions Introducing the Competition Provision of Electricity or Natural Gas Service to Assure the Continued Availability of Reliable Service to Customers from a Default Service Provider at Just and Reasonable Rates (June 2002)

Resolution Urging the Adoption of State Laws and Regulations Regulating Competitive Energy Supply Markets, Including Measures Designed to Promote Honesty and Clarity in Marketing and to Give Consumers a Reasonable Ability to Select a Competitive Provider (June 2012)

Resolution 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 (June 2014) [↑](#endnote-ref-1)
2. Default service refers to the supply service provided by the local electric utility, and is sometimes referred to as “standard offer service (SOS).” [↑](#endnote-ref-2)
3. These reforms and practices should be adopted to complement and supplement the proposed reforms adopted in NASUCA’s 2014 Resolution on Variable Rate Contracts. [↑](#endnote-ref-3)
4. This recommendation is not intended to regulate the pricing method that suppliers choose to use or regulate their underlying pricing decisions. [↑](#endnote-ref-4)