



Energy Choice and Low-Income Households: Consumer Groups and Industry Debate Merits

During the 1990s, numerous states went through deregulation and restructuring initiatives when it came to energy providers. The Energy Policy Act of 1992 (102nd Congress H.R.776.ENR) provided the impetus for this move towards deregulation. The act eliminated restrictions on wholesale electricity pricing by independent power producers. In many cases, utilities that chose deregulation were required to separate their distribution or delivery service from their generation service. This resulted in energy markets in which multiple entities try to sell power directly to customers.

According to the [American Coalition of Competitive Energy Suppliers \(ACCES\)](#), more than half of the states in the country offer some form of retail electric or natural gas providers, which is often called energy choice. Energy choice is based on the theory that promoting competition lowers energy costs as a result of allowing consumers the opportunity to choose the most appropriate energy supplier for their needs.

Consumer groups and regulatory agencies around the country have started to voice concerns over some of the recruitment practices by certain energy choice providers that are directed towards low-income households. It is important to note that the overall energy choice industry condemns these tactics as well. The purpose of this issue brief is to discuss questionable tactics of which those working with low-income households should be aware.

IMPACT ON LOW-INCOME HOUSEHOLDS

Consumer groups have warned that certain energy choice providers engage in marketing practices that can confuse households with low-income or elderly members. In a 2013 [report](#), consumer spokesperson, Barbara Alexander, stated that customers in numerous states have signed up for energy choice expecting to save money only to find out they had been duped by a “teaser” – a low introductory rate that is followed by a variable rate price that ends up being higher than promised at the time of sale. Alexander also noted that, once a household signs up for such a program, there are generally expensive termination fees to get out of the plan.

In a description that could sum up the complaints raised in the multiple states she surveyed, Alexander stated:

“...this door to door marketing company that sells electricity and natural gas supply service has been accused repeatedly of misleading customers about [how] their products will save customers money compared to the utility service, misrepresenting the nature of the utility’s default service, misrepresenting the identity of the sales agent, and generally using high pressure sales tactics with low income, elderly, and non-English speaking customers.”

The energy choice industry, through entities like ACCES and the [Retail Energy Supply Association \(RESA\)](#), de-

nounce these types of tactics. RESA's [Consumer Education Guide](#) provides instructions on how people should interact with energy choice sales agents and encourages people to report questionable practices to their state's public utility commission. The guide provides consumers with a number of questions they can and should ask the energy choice sales agents as well as provides potential warning signs to keep in mind before signing a contract, such as:

- ◆ What part of my service will change?
- ◆ Is the price inclusive of all charges, or will there be other items listed on my bill?
- ◆ Will my price change after a certain period of time? Or will it stay the same?
- ◆ How long is the agreement and price valid for?

The issue of whether or not energy choice as a whole saves low-income households money is a common point of contention with consumer groups. Consumer groups frequently say the claims of cost savings are false and point to examples that include the following:

- In March 2017, the Illinois Attorney General filed a lawsuit against an energy choice provider for claiming customers' energy rates could be lower than those offered by other companies, only to charge "astronomically higher" rates once a customer signed up.
- The Connecticut Consumer Counsel found consumers who used energy choice providers in 2015 to allegedly save money paid about \$58 million more than they would have if they had kept their standard service. The Counsel found that the increased price may have been due to the frequent use of automatically-renewed contracts that kicked in as soon as the original, lower-price contract expired. Those renewal contracts often had prices higher than the "attractive pricing" used to attract new customers.

- In New York between August 2010 and July 2012, 84 percent of the residential electric bills and 92 percent of the residential gas bills of those who switched to energy choice providers were higher than the bills of those who decided to keep getting their supply from the regional investor-owned utility. In total, residential customers served by energy choice providers paid approximately \$130 million more for 24 months of service than they would have paid had they not switched.

Industry associations commonly talk about how the price fluctuation of plans is related to volatility in the energy market. In the "[Myth vs. Fact](#)" section of its website, ACCES states:

"FACT: Energy is a commodity – the price can change daily, even hourly, based on many different factors. This is true whether your supply comes from a competitive firm or a utility. The price that the utility or suppliers pass on to you, however, is more stable, and typically changes on a monthly basis. This means the price can go DOWN as well as up! If you would prefer more certainty, many suppliers offer partially or fully fixed price plans, in which your price is guaranteed. This is just another option available to consumers in an open market."

ACCES also encourages potential customers to "make sure you understand the specific terms and conditions under which you will save money" when deciding to sign a contract with an energy choice provider.

Perhaps the most recent and in-depth look at energy choice, especially in regards to low-income households, comes from New York where the state's Public Service Commission continues to investigate the industry.

[New York Public Service Commission: Addressing Suspicious Energy Choice Providers](#)

For years, organizations like AARP and the Public Utility Law Project of New York have claimed certain energy choice providers used questionable practices to target elderly customers and those with lower incomes. These groups have warned of a recruitment tactic called “slamming,” whereby energy choice representatives obtain personal information for utility customers and sign them up for energy choice without the customer’s knowledge. According to media report, more than 5,000 customers filed complaints with the New York Public Service Commission (PSC) about such practices in 2015.

In February 2016, the PSC adopted new rules to restrict energy choice. Those rules stated that providers had to guarantee savings to customers or offer them plans that include at least 30 percent of the energy from renewable sources. If energy choice providers couldn’t follow these rules, they had to notify customers that they were being returned to their utility for energy supply. RESA, concerned that all energy choice providers were being restricted because of the shady practices of a few, said the PSC’s actions were “akin to shutting down the highway in order to stop a few drivers from speeding.” The energy choice industry filed a lawsuit and won a restraining order that halted the implementation of the new rules.

In late July 2016, a New York Supreme Court judge struck down the rules imposed by the PSC in February, calling them “irrational, arbitrary and capricious.” The judge found that the PSC had failed to give the energy choice industry a meaningful opportunity to be heard on the issues or participate in the process. The judge ordered the PSC to issue a new batch of rules and confirmed that the PSC had jurisdiction over the rates charged by energy choice providers.

As the PSC continued looking at regulating energy choice providers, several companies raised complaints that they would not be able to provide the guaranteed savings to low-income customers because of their higher operating costs. Additionally, some companies

argued that it was unfair of the PSC to deny low-income customers the ability to choose their energy supplier. Energy choice providers claimed that charging a fixed rate, instead of basing rates on the month-to-month fluctuations of the utility energy market, was more beneficial to low- or fixed-income households. RESA warned that it was dangerous to take this option “just before the potentially volatile winter months” when utility default rates can “fluctuate wildly” due to extreme weather.

Ultimately, the inability of energy choice companies to address higher rates for customers led to the PSC’s decision to issue a moratorium in mid-July 2016 on enrollments and renewals of low-income households. The PSC [ordered](#) energy choice providers to stop signing up low-income customers and to return those that had signed up to their original utility. The order said that, as long as a customer participated in a utility low-income program, that utility would provide their gas and electric service. The order was to take effect as of September 2016 and was estimated to impact about 400,000 low-income households. The PSC order stated, “The higher prices charged by energy services companies often exceed the amount of assistance provided to [low-income customers] and thus the goal of reducing that customer’s bill is undermined.” The industry successfully sued to block the moratorium on procedural grounds.

In early December 2016, the PSC announced it was opening an official review of energy choice providers. The PSC’s proposed investigation will give interested parties the opportunity to submit evidence and testimony regarding energy choice providers. To ensure customers receive valuable services and pay a just and reasonable rate, the PSC is considering whether energy choice providers should be completely prohibited from selling their current products to the mass market or whether they should be required to offer value-added energy efficiency and energy management services as a condition to offering commodity services.

The deadline for pre-filed testimony and exhibits was in April 2017.

While still in court over its moratorium issued in July 2016, the PSC announced in mid-December that it would prohibit energy choice providers from selling to low-income customers. It cited data compiled by its staff that low-income households that joined energy choice providers paid almost \$96 million more than their peers that stayed with traditional utilities. The PSC determined that prohibiting energy choice providers from selling to low-income customers was necessary to protect taxpayers, ratepayers, and customers. The PSC said its formal investigation of energy choice programs would continue and determine if the entities needed to be reformed beyond the low-income sector. The docket for the investigation can be followed on the [PSC website](#) under Case Number 15-M-0127.

ENERGY CHOICE AND LIHEAP

An issue underlying much of the controversy in New York, Illinois, Ohio, Connecticut, and Pennsylvania, according to consumer spokespeople like Barbara Alexander and Roger Colton, is that customers actually end up paying more for energy than they would have with their original, regulated, utility. As a result, LIHEAP offices have seen an increase of low-income households applying for LIHEAP assistance in order to pay their increased utility rates.

As an example, Barbara Alexander found LIHEAP customers selecting an energy choice provider in New York paid an additional \$13.3 million for electricity and \$5.8 million for natural gas during a 24-month period. In Pennsylvania Roger Colton, looking at information gathered from January 2012 to October 2015, found that customers selecting an energy choice provider paid an additional \$7.2 million for electricity over customers who stayed with their original, regulated, provider.

Alexander interviewed two or three individuals in each of four states that were involved in the delivery of LI-

HEAP and/or WAP to gather anecdotal experiences or describe training that is done, or not done, with their clients relating to energy choice. Among Alexander's findings were:

- ◆ Local agencies have received complaints about certain marketing tactics and questions about the veracity of some energy choice offers.
- ◆ Many local agencies are frustrated with their lack of knowledge and training when it comes to energy choice.
- ◆ Many local LIHEAP agencies would like to engage in outreach and education with their clients if they had the resources and training to do so.

Alexander suggests training local agencies that work directly with low-income households would allow them to provide more education and information to consumers aiding low-income households in making informed decisions.

In a January 2016 [webinar](#), the [Citizens Utility Board of Illinois](#) (CUB) also warned that energy choice providers were starting to target LIHEAP applicants and the local agencies administering the program. It said that LIHEAP applicants are coming across energy choice providers in the context of already being energy insecure, which makes them vulnerable to pitches about discounted rates.

CUB said it has seen sellers for energy choice “skulking” around local LIHEAP offices and tabling at energy fairs. CUB has even received reports of energy choice representatives setting up shop and tabling inside local LIHEAP agencies, and some of the providers do direct marketing to these local agencies. A common complaint CUB hears from intake workers is that they are “frustrated and confused” by the “funny bills” some LIHEAP applicants bring in from energy choice providers.

To illustrate its concerns, CUB talked about one energy

choice provider that was selling at a LIHEAP energy fair and had set up inside one of the local agencies administering LIHEAP. The company representatives were taking down information about the people who were coming to apply for LIHEAP and encouraging them to attend an upcoming meeting. The provider's material claimed folks could get free energy by selling its products. At the time, the rate the energy choice provider was offering was higher than that of the local utility company.

CUB also discussed the impact that energy choice providers have on LIHEAP programs. It said, once a client signs up and gets through a low-rate introductory period, the rates generally go up. The low-income client is unable to keep up payments at a higher rate. That leads to the client having to come in and apply for LIHEAP multiple times in order to try to keep the power on at home.

SUMMARY

The tactics used by some energy choice providers has drawn the attention of consumer groups, and regulatory agencies around the country appear to also be taking notice. It is important to remember that these questionable recruitment tactics are not endorsed by the industry as a whole. In its *Consumer Education Guide*, RESA says its members:

“...recognize the critical role that substantive, practical, fair and workable consumer protection and marketing practices play in promoting a robust and sustainable competitive retail market that provides value-added products and services to customers. RESA member companies are committed to meeting and promoting a set of guiding principles addressing consumer protection and marketing practices.”

As the events in New York illustrate, the struggle between the industry and consumer groups is likely to continue, as various agencies in states with energy choice seek to balance competition with customer needs.

RESOURCES

Consumer Perspectives

- Barbara Alexander, [An Analysis of Retail and Electric and Natural Gas Competition: Recent Developments and Policy Implications for Low Income Customers](#), June 2013
- Colton, Roger D., Gendusa-English, Aimee, *How Gas & Electric Deregulation is Impacting Low Income Households*, June 2017, NEUAC Presentation [[PowerPoint Slides](#)]
- Texas Ratepayers' Organization to Save Energy, [Texas Electricity Consumers, Beware of REP Fees](#), Aug. 12, 2013
- LIFE Webinar Series, Impact of Supplier Choice Programs on LIHEAP Clients and LIHEAP Agencies, Jan. 26, 2016 [[Webinar](#)] [[PowerPoint Slides](#)]
- LIFE Webinar Series, Update on ESCOs, Sept. 28, 2016 [[PowerPoint Slides](#)]
- LIHEAP Clearinghouse, [Bibliography on Restructuring](#)
- New York Public Service Commission
- [Order](#) banning enrollment of low-income households, July 14, 2016
- [Opening investigation](#) into energy choice, Dec. 2, 2016

Energy Choice

- American Coalition of Competitive Energy Suppliers
- American Coalition of Competitive Energy Suppliers, [Frequently-Asked Questions](#)

- American Coalition of Competitive Energy Suppliers, [Myth vs. Fact](#)
 - American Coalition of Competitive Energy Suppliers, [Consumer Tools](#)
 - [Retail Energy Supply Association](#)
- [Retail Energy Supply Association, Consumer Education Guide](#)
 - New York State Supreme Court, County of Albany, [Preliminary Injunction](#) Against Public Service Commission, July 22, 2016

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