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Ms. Terri Lemoine Bordelon *Via FedEx*

Louisiana Public Service Commission

Records Section

Galvez Building, 12th Floor

602 North Fifth Street

Baton Rouge, LA 70802

RE: LPSC Docket No. **R-35462** -- In Re: Deregulation Reply Comments

Dear Ms. Bordelon:

Please find an original and three copies of Deregulation Reply comments behalf of AARP Louisiana in the above-referenced matter, along with a certificate of service.

Sincerely,

Denise Bottcher

Real Possibilities

REPLY COMMENTS OF AARP

PSC Docket R-35462

November 9, 2022

AARP, on behalf of its 430,000 members in Louisiana, hereby requests late filed reply comments be accepted in this docket. AARP learned about this proceeding only recently and recently late filed to intervene. Accordingly, these comments are late filed.

AARP opposes deregulation of the power industry nationwide, including in Louisiana. Our backgrounder (see below) outlines our position in detail.

Not only have the promised benefits of lower electricity rates and better service not materialized in states that have deregulated but, importantly, reliability of the grid has been put at risk.

Neighboring Texas still has not figured out how to implement "market reforms" to its deregulated electricity sector after the February 2021 Winter Storm Uri incident. The failings of the electrical grid resulted in a number of deaths a four-day power blackout. Even this past summer, grid operator ERCOT struggled to keep the lights on with frequent emergency alerts due to a lack of power. In addition, customers saw their electricity rates spike.

Louisiana need not go down this path. While the local utility may not be popular and increasing electricity rates a problem, there is no need to take such a risky step as deregulation. Rates increase as a result of the quadrupling of natural gas commodity costs. Deregulation will not solve this problem – a problem that plagues the entire nation.

Further, there is no link between promotion of renewables and deregulation. The two topics are unrelated. States like Minnesota are embracing 100% clean energy without going to a deregulated utility model.

AARP also opposes partial deregulation where some customers could pick an alternative supplier because the remaining customers would be stuck paying the fixed costs of the grid.

Our specific replies to the comments of other parties are as follows:

1. Residential customers across the nation have not seen savings under retail choice. A Massachusetts Attorney General study found that customers would have been better off on the utility default rate. A similar finding was issued in a report by the Illinois Commerce Commission. Based on those findings, AARP disagrees with the comments and recommendations of the alternative energy suppliers seeking to do business in the state (Retail Energy Supply Association, Constellation NewEnergy Inc., Calpine Corporation, Vistra Corporation, NRG Energy Inc.).
2. Partial deregulation is worse than full deregulation. Partial deregulation (allowing Walmart or the refineries to shop but not residential customers) is problematical as remaining customers would be stuck paying more of the fixed costs of operating the grid. Accordingly, AARP disagrees with the recommendations of Walmart supporting partial deregulation.
3. Predatory pricing practices of alternative energy suppliers have plagued deregulated states. AARP state offices in CT, MA, NY, NJ, IL, PA and other states have spent countless hours trying to reform predatory, misleading and deceptive practices of some power marketers. The lack of adequate protections has been problematical. New York's PSC banned marketers from offering non-energy-related incentives and insisted that the price offered must be lower than the utility default rate. Louisiana has avoided this drama.
4. Low-income rates, renewable portfolio requirements and community solar programs can all be instituted without retail open access. AARP therefore disagrees with the Alliance for Affordable Energy because there is no link between deregulation and institution of these policy reforms.

5. Utility divestiture of generation to unregulated suppliers creates stranded costs and provides no consumer benefits. Most states that have deregulated have required utilities sell off their generation, potentially requiring stranded cost payments to utilities. Payments to deregulated power plants have been insufficient to keep the plants open requiring subsidies to nuclear plant operators by state ratepayers in IL, NY, CT, NJ, and other states. Rate based generation continues to be the preferable model that ensures enough and affordable utility service.

In summary, the debate over deregulation has raged for more than 30 years with no clear conclusion. However, recent reliability issues in states like Texas (which is deregulated) have demonstrated that the model is still a work in progress, at best. AARP urges the PSC to reject this proposal in its entirety. We urge the PSC to set this matter for formal hearings and open a new docket clearly focused on this issue.

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AARP Opposes Deregulation

Issue Overview and Background

The issue of deregulation has evolved over the years, from a response to monopoly control by local utilities to a desire to spur competition to lower rates, ultimately landing in the current state where 14 states are "deregulated" [1], allowing consumers to pick their energy supplier.

Deregulated markets allow "retail choice" which allow consumers to pick their electric supplier, or continue to take service under a utility default or standard service rate.[2] [This applies only to the energy portion of their bill, as the transmission and distribution functions continue to be provided by the local utility.]

Proponents of deregulation argue that competition can lead to lower electric utility rates. As such, states with high electricity costs were among those most likely to pursue the idea.

Opponents of deregulation respond with evidence that deregulation has rarely led to lower rates, whether customers elect an "alternative supplier" in lieu of their default provider.3

Deregulation often leads to consumers paying higher prices for electricity sold by third-party suppliers as a result of predatory and fraudulent marketing, a lack of transparency, and a lack of adequate supply – all related to a bifurcated marketplace and inadequate regulation and oversight.

Opponents also note that customers in regulated markets generally already have the option to choose to select more renewable energy sources from their utility, and that incentive schemes (such as temporary price locks and bundled services) promised by suppliers in deregulated markets make it difficult for consumers to easily comparison shop across utilities.

High prices arising from "retail choice" are in part due to the economics of deregulated markets, in which alternative retail energy suppliers are unable to achieve economies of scale in marketing to small usage residential customers. As a result, some states allow entire communities to pick their supplier, which

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[1] The 14 states are: TX, CT, MA, ME, RI, NH, NY, NJ, IL, DE, MD, MI, OH, PA, and DC. (Deregulation was repealed in MT and CA.)

[2] There are inconsistent practices in deregulated markets in ensuring a default rate. Among the states that are deregulated, only Texas does not allow a "standard offer" service (aka a default rate). In all other deregulated states, the incumbent utility offers a default or standard offer service rate for customers that do not want to pick an alternative supplier. Unlike the alternative supplier's rate, the incumbent utility's rate is subject to regulatory oversight.

[3] "A Mixed Record For Energy Deregulation," Ike Brannon, *Forbes*, February 29, 2020. A Mixed Record For Energy Deregulation (forbes.com)

contributes to larger economies of scale for alternative retail energy suppliers but preserves choice. This is known as "community choice aggregation".

Evidence of Overpayment in Deregulated Markets

Whether customers could or have benefitted in the states that allow deregulation has been debated since 1993. Some studies show clear savings, while others show a slower increase in rates – or find that customers are overpaying by not choosing the utility default rate.

This all suggests that "retail choice" practices are not without risk, including the potential for providers to mislead customers with promises of teaser rates, or other incentives that over time result in higher prices than the utility default rate would have delivered. Often customers are not aware they would save more by staying on the utility default rate. Some states -- Connecticut, Maryland and Illinois, for example -- require that the default rate is printed on the bill so customers can see if they are overpaying. AARP Connecticut advocated in 2014 for this consumer protection measure and was the first state to require notification on consumers' bills of savings or overpayment with a third-party electric supplier in comparison with standard service. Elsewhere, state offices in New Jersey, Illinois, Maryland and New York have fought the misleading sales practices of retail suppliers – which continue despite the adoption of consumer protection measures.4

Several examples exist of evidence of overpayment by customers in deregulated markets:

- In Illinois, a study found that residential customers who switched suppliers between June 2014 and May 2019 overpaid alternative electricity suppliers by over $870 million compared with the utility default rate.[5]
- Since March 2018, the Massachusetts Attorney General's Office has released three detailed reports based on comprehensive analyses of the bills that customers pay for third-party suppliers' energy. Massachusetts consumers in the individual residential electric supply market paid $426 million more than they would have paid if they had received electric supply from their electric company during the five-year period from July 2015 to June 2020. The study also shows that low-income households experienced even greater harm than non-low-income households, as did communities of color. [6] (See https://www.mass.gov/doc/2021-competitive-electric-supply-report/download.)
- The Connecticut Office of Consumer Counsel periodically issues fact sheets that analyze the impact of the third-party market on consumers. In a recent fact sheet, the OCC concluded that: "For the rolling year of August 2020 through July 2021, residential consumers who chose a retail supplier paid, in aggregate, $36,818,163 more than the Standard Offer." https://portal.ct.gov/-/media/OCC/Fact-sheet-electric-supplier-market-July-2021.pdf

- On December 18, 2019, the Connecticut Public Utilities Regulatory Authority issued a decision in Docket No. 18-06-02, finding that hardship (primarily low-income) customers:

  > receiving electric supply from third-party suppliers have paid more for electric service than they would have receiving standard service supply from the electric

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[4] Within the last two years, the Maryland Public Service Commission, responding to consumer complaints, conducted separate investigations of four different suppliers' sales and marketing practices. Maryland PSC Case Nos. 9613, 9614, 9615 and 9624. Many other states have also investigated suppliers' fraudulent sales and marketing practices.

[5] See Alternative Energy Suppliers: Higher Prices With Questionable Benefits by the Illinois Attorney General at https://illinoisattorneygeneral.gov/consumers/brochures/Alternative%20Energy%20Suppliers_brochure%201018.pdf

[6] In Massachusetts, there is bipartisan support for legislation (S 2150/H 3352) that would ban competitive electric suppliers from signing up new individual residential customers in Massachusetts. See "Healey, Baker Say It's Time To Stop Harm To Electric Consumers," WBUR, Colin A. Young, July 28, 2021. https://www.wbur.org/news/2021/07/28/energy-overseers-harm-electric-consumers

distribution companies and they have not received commensurate value for this overpayment. This overpayment affects not only the hardship customers, but also all Connecticut ratepayers contributing to the hardship payments. As a result, all hardship customers shall be transferred to standard service immediately upon the electric distribution companies' completion of system programming necessary to prevent hardship customers from contracting with third-party electric suppliers.

- In New York, the Department of Public Services Staff found New York customers of alternative suppliers paid in the aggregate $1.3 billion more than they would have if they remained energy supply customers of their own utility during the 36-month period.[7]
- The State of New Jersey investigated the sales and marketing practices of third-party energy supplier IDT Energy, Inc., during the winter of 2014, which the State alleged included unfair and deceptive sales practices, burdening customers with high energy bills. As a result of the settlement, between the State and IDT, the supplier agreed to pay $1.36 million, including $1.2 million in restitution to consumers and agreed to significantly revise its business practices [8]
- Studies in other states have also confirmed consumers have overpaid by hundreds of millions of dollars by not staying with the local utility default rate. (See Wall Street Journal Story, https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623).

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[7] Press Release, "AARP and PULP Call for Consumer Protections and Oversight for Troubled Energy Market as PSC Considers Expansion to Long Island," November 23, 2021. See also https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=49821&MNO=15-02754 for AARP/PULP's joint comments in the New York proceeding.

[8] "Third-Party Energy Supplier IDT Energy Inc. Enters into $1.36 Million Settlement with the State to Resolve Allegations It Preyed on Consumers During the Harsh Winter of 2014," New Jersey Division of Consumer Affairs Press Release, June 6, 2018. New Jersey Division of Consumer Affairs Press Release (njconsumeraffairs.gov)

Deregulation and RTOs

Another consequence of deregulation is that, in deregulated markets, utilities spin off their regulated generation and participate in a regional transmission organization (RTO) which will operate a wholesale electricity market over a large multi-state region.

There is evidence that the deregulated model with RTOs has difficulty ensuring resource adequacy. Recent power blackouts (such as those in Texas in February 2021 and again in July 2022) were in part perhaps exacerbated by the restructured model, in which there was insufficient power available.

As the Commission is aware, MISO has also warned of rolling blackouts forcing Louisiana to share in the shortage of generation in downstate Illinois.

Finally, California (which allows for communities to shop for alternative suppliers) faced looming blackouts over Labor Day due to a power shortage. No one is clearly in charge of resource adequacy whose responsibility is now spread over the CPUC, CAL ISO and the CEC. This forced the Governor to urge consumers to reduce usage over Labor Day weekend or face rolling blackouts. Louisiana need not emulate this model either (partial deregulation with community choice aggregation).

Deregulation has meant that no single entity is fundamentally responsible for ensuring adequate supply under a decentralized model.

This is because the utilities no longer own (much less plan for new) generation. Indeed, because customers can switch suppliers and because new generation power plants are very expensive, payments to unregulated generators or high spot power price signals may not be enough incentive to ensure a region has enough generation ready to serve load.9 Worse, some generators have received state ratepayer subsidies be paid to them to keep their plants open since the RTO payments are (according to them) insufficient.

<u>AARP State offices in deregulated states have done the following:</u>

- Supporting price transparency for consumers and consumer protection measures.
    - AARP Connecticut backed HB 6526 which bars variable rates, early termination fees, and more and requires training of alternative suppliers. The state office has even pushed to roll back deregulation.
    - AARP Maryland has also been a leader on this issue, conducting a robust member-facing campaign so consumers can see if they are overpaying for utilities by not having stayed with the utility default supplier (whose rate is often lower).
    - AARP Illinois supported reforms to combat fraudulent marketing and promote transparency, which included disclosure of whether rates are variable or fixed and required advance notice to any rate changes. It also required criminal background checks on door to door agents.
    - AARP New York has been a champion in in pushing through reforms that also promote transparency resulting in a requirement that energy service companies must now offer a rate no higher than the utility default rate. To achieve this outcome, the state office promoted the findings of a report issued by the PSC that found customers were overpaying by signing up with ESCOs and would have been better off on the utility default rate. In addition, incentives (such as airline miles) to encourage enrollment are now prohibited.
    - AARP New Jersey was one of the first AARP state offices to call for third party marketer standards in order to curb abuses. In 2014, AARP pushed through a new law to prohibit

[9] By contrast, under the traditional vertically integrated utility model, state regulators order the utility to have an adequate power supply, and cost recovery is allowed in base rates over a 20-year period or longer.

electric power suppliers from making false and misleading claims to potential customers and limited suppliers' phone calls to residential customers to once a year.

- Supporting reform of aggressive marketing practices, including banning unauthorized switching, banning bait and switch teaser offers, and requiring disclosure of the utility default rate to make price comparison easier.
  - In 2021, AARP Maryland fought to support the Energy Supply Reform Bill Maryland (SB31/HB397), which was enacted and goes into effect on January 1, 2023. It will protect low-income consumers from paying more to third-party suppliers than the utility company rate for electricity and natural gas. AARP Maryland was among those supporting the bill, noting in an op-ed that these third-party companies were "ripping off low-income and elderly customers on limited incomes."
- Supporting legislation to limit door-to-door marketing of retail energy.
  - AARP Maine supported legislation to ban door to door marketing by competitive electric providers. Advocating to ensure that there are adequate power supplies.
- Supporting reforms to ensure adequate resources in deregulated states.
  - After Winter Storm Uri and the 4 day blackout during the cold spell in February 2021, AARP Texas has been a leader in advocating for reforms to make sure the grid is reliable and has enough power supplies (and that customers are not exposed to wholesale spot market prices).
- Improving communication and coordination about pending blackouts among utilities, RTOs, customers and others.
- Supporting efforts to roll back deregulation -- or avoid deregulation in the first place.
  - AARP Connecticut advocated for such legislation, asking for an end to residential deregulation. In a joint press conference in 2019 with the consumer counselor and US Senator Richard Blumenthal (D-CT), AARP Connecticut called for the end of the practice, arguing that it that economically harms consumers.
- Supporting rules to strengthen consumer protections and regulation of power marketers.
  - Example: AARP's New Jersey Office has been actively engaged with consumer protection issues relating to the retail electric market since 2012, and has contributed to the "Energy Competition Standards" issued by the New Jersey Board of Public Utilities as well as the Board's adoption of advertising and marketing standards pursuant to the requirements in L.2013, c. 263.

Key Concerns of AARP

- So-called "retail choice" generally has often harmed residential customers financially in states that allow it. It has also sometimes contributed to degradation in service reliability.
- Studies in Connecticut, Illinois, Massachusetts, Maryland and New York have shown that customers in such deregulated states would be better off on the utility default rate.
- Texas cannot afford a repeat of the Texas blackout like that experiences in February 2021, and deregulation hinders the ability of a utility to ensure reliable sources of energy.
- A reliable power supply at affordable rates is needed. Older adults, including those living with special medical needs, cannot afford to be without power for extended periods.
- Often, the market for renewable product can be met by buying "renewable energy certificates" without using local renewable generation. "Retail choice" is not an effective way to provide renewable energy options to consumers.
- Older adults are harmed financially when alternative suppliers engage in deceptive and misleading sales and marketing practices.
- Companies' claims about potential savings are speculative; detailed analyses of bills paid by residential customers often show substantial financial harm to consumers.
- Potential savings are meaningless considering the reality of actual overpayments (often substantial) by residential customers for an essential service.
- Studies (e.g., in Connecticut and in Massachusetts) show that low-income customers are disproportionately harmed by deregulation, paying higher rates than others and participating more frequently than others in the third-party market.

Additional background

AARP New York Press Release: "AARP and PULP Call for Consumer Protections and Oversight for Troubled Energy Market as PSC Considers Expansion to Long Island," November 23, 2021. See also https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=49821&MNO=15-02754 for AARP/PULP's joint comments in the New York proceeding.

AARP AZ Press Release on deregulation:
https://states.aarp.org/arizona/aarp-questions-proposal-to-radically-restructure-electric-industry

NARUC Mid-Atlantic Regional Meeting (MACRUC) - AARP Presentation on RTOs: "All That Glitters is not gold": http://macruc.org/wp-content/uploads/sites/3/2018/06/RTOs-20-years-later.pdf

AARP NV Presentation on Retail Choice:
https://energy.nv.gov/uploadedFiles/energynvgov/content/Programs/TaskForces/2017/Retail%20Choice%20and%20Residential%20Customers%20-%20AARP%20Feb%208%202018%20Final.pdf

Legislation in Illinois sets forth detailed requirements regarding the practices of and disclosures about the offerings of alternative retail electric suppliers.
https://ilga.gov/legislation/ilcs/documents/081505050K2EE.htm

AARP MD Advocacy Resources:
Opinion: Annapolis Showdown on Utility Rip-Offs - Maryland Matters. See also,
https://www.nclc.org/media-center/new-maryland-law-will-protect-low-income-families-from-overpriced-electricity-and-gas.html

Analyses by State Agencies

Connecticut Office of Consumer Counsel Fact Sheet: Electric Supplier Market: https://portal.ct.gov/-/media/OCC/Fact-sheet-electric-supplier-market-July-2021.pdf

Illinois Commerce Commission retail market report (found customers were over-paying by taking service from an alternative electric retail supplier)
https://www.ilga.gov/reports/ReportsSubmitted/2860RSGAEmail5392RSGAAttach2021%20ORMD%20Section%2020-110%20Report.pdf

"Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts: 2021 Update," A Report by the Massachusetts Attorney General's Office, March 2021. https://www.mass.gov/doc/2021-competitive-electric-supply-report/download

Overviews and Analyses of the Retail Market

Deregulation failed to lower homeowner power bills (Wall Street Journal Story):

https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623

Other Studies and Analyses

"Residential energy supply market: Unmet promises and needed reforms," Susan M. Baldwin and Frank Fielder, *The Electricity Journal*, Volume 32, Issue 3, April 2019, Pages 31-38.
https://www.sciencedirect.com/science/article/abs/pii/S104061901930017X