

**In the Matter of Third Party Suppliers-N.J.A.C. 14:4-7 –The Board’s
Review of Consumer Protection Provisions of its Rules Concerning
Third Party Suppliers**

Docket No. EX14060579

And

**In the Matter of the Implementation of the Special Rule Adoption in
Compliance with L 2013, c. 263
Docket No. EX14060610**

Comments of AARP

July 31, 2014

On June 24, 2014 the Board of Public Utilities (BPU) issued a Notice of Stakeholder Meeting and Opportunity to Comment on existing rules applicable to Third Party electric and gas suppliers and the mandate of L.2013, c. 263 that requires the Board to adopt “interim advertising and marketing standards for electric power suppliers, gas supplier, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers applicable to potential residential customers.” The Notice identified a number of topics on which comments were sought and a date of August 1, 2014 established to submit such comments.

AARP welcomes the opportunity to provide comments on these topics. AARP is a nonpartisan, nonprofit social welfare organization with a membership that helps people 50+ have independence, choice, and control in ways that are beneficial and affordable to them and society as a whole. AARP is an advocate for the rights of people 50 and older. A substantial percentage of AARP’s members live on fixed or limited income. A major priority for AARP is to protect consumers from unaffordable expenses for essential energy services that may endanger their health and financial security.

AARP’s comments have been prepared with the assistance of Barbara R. Alexander, Consumer Affairs Consultant. Ms. Alexander has a long-standing experience and expertise with regard to consumer protection policies and programs for retail energy competition. She has testified in over 15 states and Canadian jurisdictions on consumer protection policies, service quality, and low-income program design and implementation. Ms. Alexander has recently assisted or participated in rulemakings and proposals for regulatory reform of retail electric markets proceeding in Connecticut, Pennsylvania, Arizona, New York, and Maryland.

I. WHY REFORMS ARE NEEDED

New Jersey consumers, similar to those in other states, were promised that deregulation or retail competition would provide benefits and result in lower electricity prices compared to traditional cost of service regulation of electric generation. What proponents of deregulation failed to recognize is that markets require supervision, consumer protections, and proper enforcement.

Approximately 500,000 of the New Jersey’s 3.9 million electricity and gas users buy from third-party suppliers, with the biggest growth coming in the past five years. The oversight and proper regulation of this market requires additional resources and enforcement tools compared to the regulation of traditional monopoly utilities. The spike in recent consumer complaints that has occurred in New Jersey and other retail energy markets include: misrepresentation of prices, the use of variable rates that are not predictable or even plainly stated, teaser rates, the renewal of fixed rate contracts into variable rate contracts without affirmative customer consent, and a host of telemarketing and door to door activities that

confuse customers and take advantage of their lack of education and understanding of the terms being proposed to them in a hard sell marketing technique.

The evidence of the need for reforms has been documented throughout the retail competition states and New Jersey is no exception.

In New Jersey the problem is particularly acute as evidenced by the New Jersey Division of Consumer Affairs, and the New Jersey Board of Public Utilities recently announced lawsuit against three third-party energy suppliers – Palmco Power, HIKO Energy, Systrum Energy for allegedly defrauding hundreds of consumers through misrepresentations of monthly bill reductions. The Complaints allege violations of the Electric Discount and Energy Competition Act, the Consumer Fraud Act, multiple regulations concerning energy licensing and registration, retail choice consumer protection, anti-slamming requirements, and advertising by energy suppliers, and/or the Plain Language Act.¹ The New Jersey Division of Consumer Affairs and the BPU allege that Palmco and HIKO engaged in “slamming” by switching customer gas and/or electric accounts without the consumers’ knowledge and consent; as well as other unconscionable commercial practices.

The NJ Division of Consumer Affairs, the BPU, and the Better Business Bureau received more than 2,000 customer complaints this winter, a ten –fold increase over previous periods. Press reports reveal that some NJ customers promised price reductions of between 5-15% actually saw their bills spike by 34% this past winter.²

AARP is active in a number of states that are reviewing their retail market rules in light of the recent price spikes and concerns relative to fraudulent and misleading sales practices. Problems identified in these other states are similar to those that have occurred in New Jersey and include:

- Consumers are told repeatedly that they will receive “lower bills” or “savings” in marketing materials from alternative suppliers, but while the initial rate may be below the current Basic Service price, the contract switches to variable prices after the initial term that are significantly higher than the Basic Service price.
- Variable rates are disclosed as “based on wholesale market conditions” and do not reflect any publicly available index or formula that a consumer can access to determine the degree of variability in the prices based on historical conditions or even predict their next monthly bill. The following typical disclosures were documented in recent proceedings in Connecticut, Maryland, and the District of Columbia.

¹ See <http://philadelphia.cbslocal.com/2014/06/04/nj-sues-third-party-energy-suppliers-for-defrauding-customers/>

² See <http://www.njspotlight.com/stories/14/02/18/as-temperatures-drop-energy-prices-climb-for-third-party-suppliers/>

A typical example is the following disclosure from Blue Pilot Energy:

Price per Kilowatt Hour. You have a variable rate plan with a starting price set at 7.5 cents per kWh. This initial rate will be effective for at least the first ninety (90) days of service. Thereafter, your price may vary on a month-to-month basis. This price includes Generation Charges, but excludes applicable state and local Sales Taxes and the Delivery Charges from your LDU. At any time after ninety (90) days of service, but not more frequently than monthly, Blue Pilot may increase or decrease your rate based on several factors, including changes in wholesale energy market prices in the ISO New England Markets. Your variable rate will be based upon ISO-NE wholesale market conditions. Please log on to www.bluepilotenergy.com or call Customer Service at 877-513-0246 for additional information and updates.

Another typical marketing disclosure was offered by Starion Energy in which customers were told in large and bold print that SAVINGS are promoted, a price is listed slightly below the current Standard offer, but in tiny print at the bottom of the brochure is stated, "Starion Energy's rate is variable, therefore is subject to change in response to market conditions."

- Door to door and telemarketing sales agents are typically independent contractors that are paid by the licensed supplier based on a successful sale, a sales arrangement that often results in untrained agents, an incentive for misrepresentation, and even in some rare cases, criminal conduct.
- The Connecticut Office of Consumer Counsel has documented that thousands of Connecticut customers are paying significantly more than the Standard Offer procured by utilities in the wholesale market pursuant to a Department approved plan. The OCC documented that 10 Connecticut suppliers are charging higher than 17 cents per kWh for some of their customers, a rate that is more than double the Standard Offer.³
- The majority of the 2013 bills incurred by low income customers of PPL Electric (Pennsylvania) who enrolled with an alternative supplier were higher than default service. The study showed that 67% of the bills received by known low income customers receiving ratepayer bill payment assistance and who were receiving service by an EGS were above default service, ranging from 58% in June 2013 to 82% in March 2013.⁴
- Recent press reports in Pennsylvania have documented that some residential customers on variable rate plans with alternative suppliers have seen winter electric bills with pricing over 20 cents per kWh.⁵ As documented by

³ http://www.ct.gov/occ/lib/occ/1-16-14_oag_occ_electricsuppliers.pdf

⁴ Testimony of Stephen Krone on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania before the Pennsylvania PUC, Docket No. P-2013-2389572. (January 17, 2014).

⁵ See, e.g., <http://blog.pennlive.com/capitol->

testimony filed before the Pennsylvania PUC on behalf of the Office of Consumer Advocate, AARP, and PULP, ⁶ the consumer agencies and organizations have heard from hundreds of consumers in Pennsylvania with shockingly high prices and bills from suppliers who passed through variable prices in the winter of 2014. For example, the OCA heard from a single mother with three children from State College whose electric bill nearly quadrupled from one month to the next. Her bill went from \$370 to \$1,456 with no warning. When she called to speak to the supplier to ask for help, she was told: “We are a variable rate company, so we can do that.” She told us that “disaster is inevitable,” and she may be right for her family.

- Alternative suppliers typically do not issue their own bills but collect their unregulated charges through the local utility and consumers may assume that a utility bill includes charges that are fair and reasonable. Many consumers do not understand the relationship between the current market price charged by the alternative supplier and the current default service price until the bill is shockingly high.
- In some cases when customers discover that they are paying higher prices than initially promised and call their supplier to terminate the contract, they are told they have to pay an early termination fee. Consumers have filed complaints with state regulators alleging they can’t get through to a responsible person to resolve their complaint and that it can take 30-60 days to cancel service and return to Basic Service.

Along with the specific recommendations below, and in response to the concerns identified above, AARP recommends the Board require third party energy suppliers make public and file with the BPU historic pricing information on a 12 month basis. It is important for all consumers to understand the price performance of these suppliers relative to Basic Service. AARP further recommends the Board analyze and publicly report on this data, on an annual basis, so that the public and policy makers can evaluate this aspect of energy deregulation.

II. RESPONSE TO THE ISSUES IDENTIFIED IN THE JUNE 24th NOTICE

Adequacy of current regulations and enforcement authority of executive agencies:

AARP’s comments document that the current regulations are not adequate and in need of substantial reforms. With regard to enforcement authority, AARP

[notebook/2014/01/heres_what_you_need_to_know_ab.html#incart_river](http://www.puc.state.pa.us/pdocs/1277994.pdf)

⁶ Available from the Pennsylvania PUC website at:
<http://www.puc.state.pa.us/pdocs/1277994.pdf>

recommends a number of changes and we urge the Board to ensure that it has the necessary resources and enforcement tools to respond to this growing market and potential for abuse.

The criteria for a license should be strengthened to require third party suppliers to submit a bond or security interest payable to the Board to cover the potential for customer restitution in the event of a finding of violation, misleading and deceptive advertising, and failure to comply with contractual terms. The current Board regulation requires a surety bond in the amount of \$250,000, but then allows the Board to lessen or modify this amount. [N.J.A.C. 14:4-5.4 (h)] This bond or security interest should not be lessened and should require that the amount of the bond be linked to its volume of sales in New Jersey, equal to at least 10% of its most recent annual revenues and updated annually.

The Board should expand its staffing and resources to supervise the retail energy market and enforce its consumer protection and licensing requirements. If the Board does not have sufficient resources or enforcement tools and authority, it should petition the Legislature to provide sufficient financial resources and enforcement tools necessary for proper supervision of a retail energy market. AARP recommends the following BPU enforcement remedies include:

1. The authority to adopt orders requiring adherence to marketing standards as a condition of eligibility to market electricity and gas;
2. The authority to reject, suspend, and rescind a license for violation of the regulations and licensing conditions;
3. The authority to order suppliers to provide restitution to customers where misleading and unlawful behavior has occurred;
4. The authority to order a TPS to halt the use of a particular marketing channel or activity when preliminary evidence suggests that such a suspension is warranted pending a more formal investigation, similar to a cease and desist order and/or civil injunction to halt unlawful activity pending resolution of a formal complaint;
5. The authority to assess civil penalties for violation of orders or regulation through an expedited administrative process;
6. The authority to assess licensing fees on TPSs that reflect the heightened level of supervision, education, and enforcement that has arisen in the implementation of retail energy competition;
7. The required security amount will change each year and shall equal 10 percent of the licensee's annual revenues from sales of generation services to residential and small non-residential customers in New Jersey over the prior calendar year; and
8. Upon a finding that a licensee has violated a statute or regulation regarding the provision of service to residential or small non-residential customers, the Board may direct that amounts from the financial security be distributed as follows:

- (i) to customers for a refund of security deposits or advanced payments paid to the TPS;
- (ii) to customers for restitution of amounts paid in error or unlawfully obtained; or
- (iii) to the Board for payment of administrative penalties or any other sanction ordered by the Board pursuant to other statutes or rules applicable to third party suppliers.

Limitations on content of advertising and marketing materials: telephonic or online signups/switching; recordkeeping requirements; notice to customers of change orders:

The primary concern with regard to advertising and marketing materials and the use of telephonic, door to door, and online solicitations and signups is the potential that the oral representations and statements used to “hook” the customer into agreeing to the contract are often contradicted by the written and fine print terms of the actual contract and terms of service. Sales that rely on oral representations, such as door to door sales and telemarketing sales, do not rely on written marketing materials for the most part. As a result, the reasonable marketing standards reflected in N.J.A.C. 14:4-7.4 and that are applicable to written statements do not cure this concern. The risk that this occurs is heightened by the compensation mechanism typically used by TPSs in which their sales agents are compensated based on a successful sale and customer enrollment, thus creating a monetary incentive to record a sale without regard to the compliance with the written terms of the agreement or that attempts to present a benefit to the agreement that is not actually promised in writing.

It is typical for residential and small commercial customers to rely on these oral representations and assume that the contractual terms comply with those representations. Therefore, the Board should carefully consider trends and evidence reflected in customer complaints and institute formal investigations to review sales calls scripts and actual sales call recordings to determine if customers have been misled or the TPS has not revealed the material terms of the contract in such representations. The use of a standardized series of “yes” or “no” questions to trigger the customer’s authorization is an insufficient means to assure that customers have been properly and accurately informed of the contract details and pricing terms, particularly when promotional or “teaser” rates are emphasized, variable rate terms are not properly disclosed, or if the incentives that are promised (a rebate check or free airline miles) is used to avoid presenting the actual pricing terms of the gas or electric contract.

With regard to “notice to customers of change orders,” AARP supports the existing regulation that requires the local distribution company to issue a written notice to the customer of the submission of a change order submitted by a TPS.

With regard to recordkeeping, the current regulation [N.J.A.C. 14:4-2.5] only requires that the “marketing portion” or change order verification calls can be disposed of six months after the call was recorded, but that the portion of the call which reflects the customer’s acceptance of service must be retained for three years. AARP objects to eliminating the “marketing portion” of any verification call and requests that the Board require the entire call and associated customer acceptance of service be retained for three years. Furthermore, the sentence in subsection (ix) under 14:4-2.3(c)(2) that allows a customer to agree not to include the entire sales call in the recording should be eliminated.

Methods of consumer education:

It is only recently that significant growth in the retail energy market for residential consumers has occurred in New Jersey. AARP recommends that the Board adopt an active role in educating customers about how to shop and compare prices and other contract terms in the retail energy market, similar to that undertaken when NJ’s retail energy markets were first deregulated over ten years ago.

A2132 was signed into law on January 13, 2014. This law permits the Board to

promulgate regulations to require each electric public utility, electric power supplier, marketer, government aggregator, and broker engaged in the provision of electricity to end use customers to provide the board with adequate and accurate price comparison information that will enable customers to make informed choices regarding the purchase of electric energy offered by that provider to customers. The board may compile that information into a single, understandable database and post the database on its Internet website in a manner that enables customers to compare prices and services on a uniform basis. The board may contract with a public or private entity for the purpose of developing, administering, and maintaining the database. The contract shall specify the duties and responsibilities of the entity with respect to the development, administration, and maintenance of the database. The board shall monitor the work of the entity to ensure that the database is developed, administered, and maintained pursuant to the requirements of this section.⁷

At this time and unlike other states, New Jersey does not have a central and state sponsored website where customers can see real time TPS prices and contract terms and compare those prices and terms to Basic Service prices and terms. In light of the rash of consumer complaints and lawsuits, and order to provide for objective and clear consumer information about these third party suppliers, and consistent with A2132, AARP urges the Board to establish a state sponsored and operated website immediately.

⁷ See <http://www.njleg.state.nj.us/2012/Bills/PL13/184 .PDF>

In addition, the Board should require all TPSs to make their prices and terms of service available on its own website without requiring customers to initiate a change or switch order to see these prices and contractual details. A licensed TPS should make available its contracts and terms of service to any member of the public on its website and upon request.

Specific issues related to third party supplier contracts:

a. The material terms of gas and electric supply contracts

The TPS should provide ALL its contractual terms and conditions to its new customers in writing or, where consent has been given, electronically. The TPS should not be allowed to require the customer to access another website to obtain these documents. It is also appropriate to require suppliers to prepare a single page summary of material contractual terms and AARP would support the development of a uniform document by the Board in this regard.

b. The end date for any fixed rate pricing if pricing changes from fixed to variable

To the extent that the TPS is offering a fixed price for a term or as a “promotional” price that is in effect for a short time, the customer must be informed of the length of time that the fixed price is in effect. The Board should adopt a minimum period during which a promotional price is in effect. We recommend a period no less than three months.

AARP recommends the Board prohibit the practice of placing customers on variable rate plans when their fixed rate plan expires. If a consumer has not affirmatively chosen a new plan at expiration, they should be continued at the same or lower fixed rate or placed on Basic Service service.

c. The definition of a variable rate and how it may impact a customer’s bill

The Board’s current regulations on disclosures of TPS prices and particularly variable rate prices [N.J.A.C. 14:4-7.4 (b)] are a good first effort. In particular, AARP supports the requirement that the TPS identify “the mechanism or formula by which the price is determined,” and the requirement of a bill comparison between the TPS prices and Basic Service price. AARP assumes as well that the Board has enforced these marketing and disclosure standards since it is our experience in other jurisdictions that these disclosures and standards are NOT being complied with elsewhere.

In order to help clarify the intent of the existing regulations AARP recommends that the regulation adopt more detailed disclosures of variable rate

pricing terms. The term “variable” means that the contract price will change from month to month according to some external index or internal TPS methodology. The Board should also adopt a cap on the amount that rates could increase in a month under a variable rate contract. These contracts should be required to state the following material information:

1. Variable rate price change methodology and/or formula in sufficient detail to allow the customer to understand the basis for any forthcoming variable price;
2. The historical prices charged by the supplier pursuant to its variable rate contract for the customer class over at least the last 12 months;
3. The amount of the rate cap for any month or over the term of the contract if required by regulation. If there is no cap on rate increases adopted by regulation, the TPS should disclose whether they have included a rate cap in their terms of service for any month or over the term of the contract and, if no rate cap, a prominent disclosure that there is no limit to monthly price increases under the contract;
4. A statement that the monthly change in the variable rates will be provided at least 30 days prior to the issuance of the next monthly bill, posted on the supplier’s website, and provided to customers via email or other agreed upon communication method.

d. How the price for gas or electricity is determined

Disclosures: Fixed and Variable Rate Contract Terms

Suppliers should be required to disclose their price in a uniform manner as part of their marketing materials and terms of service documents. This recommendation would not regulate the pricing method that suppliers choose to use or regulate their underlying pricing decisions. Rather, the recommendation would require that a true “apples to apples” comparison of prices be enabled by requiring suppliers to include all fixed and recurring charges, such as minimum monthly charges or other unavoidable fees, in the cents per kWh price that is presented to customers and listed in any regulatory agency-sponsored website.

This proposal is similar to the requirement under the Truth in Lending Act that creditors disclose the Annual Percentage Rate (APR) for all credit transactions in a uniform and “regulated” manner to allow customer comparisons of interest rates.

The disclosures for variable rate energy contracts are the cause of most customer confusion and, in many documented cases, result in prices higher than the Basic Service without customer understanding or awareness of how these prices are calculated. The concern is that while the customer may be informed that the price will vary, the disclosures concerning the manner or range within which the price will vary is often obscure or deliberately hidden in fine print. Some of these variable rate disclosures are incomprehensible and allow the supplier to make changes in

the customer's rates without any reference to any methodology (internal or external) that is not in the control of the supplier. As a result, there is no basis for determining how a variable rate price has been calculated.

AARP recommends that suppliers who offer variable rate contracts be required to conspicuously disclose an example of how the price of their contract would have changed in the past 12-24 months if the contract had been in place with the methodology included in the supplier's contract. While there should not be any promise that historical changes in the index or methodology will guarantee future price changes, this requirement would at least allow a customer to understand the nature of the variability to which he or she has agreed and see the range of change in price that has occurred in the recent past. Such a disclosure is required, for example, for variable rate mortgages under the Truth in Lending Act.

Variable rate contracts should be required to identify the specific index, formula, or methodology to govern their terms. It is unreasonable and unfair for residential customers to be exposed to a monthly change in price for essential electricity or natural gas service based on an unidentified or unknown methodology. Whatever the methodology, index, or formula used by the supplier, it should be either publicly available or based on an identified formula or methodology that prevents suppliers from making changes at their total discretion. This reform is particularly important because (unlike the natural gas market) there is no publicly available index available to link retail prices with the electric wholesale market. The term used by suppliers as "response to market conditions" is entirely meaningless and without any means of enforcing contract terms. This type of price disclosure is not a disclosure of any "price" and borders on an unconscionable contract term that should be per se prohibited. This reform, coupled with the proposed disclosure requirement that the customer be presented with how that index, formula, or methodology has changed the underlying electricity gas price in the past 12-24 months, will allow customers to make a more informed decision about whether a variable rate contract is appropriate for their needs. These disclosures are also crucial for residential customers to understand the nature of variable rate contracts for electricity, a phenomenon that is not typical for these utility services.

TPS should be required to disclose the rate changed in the next billing cycle for variable rate plans before the cycle begins. Consumers should be required to receive 30 days notice of all other price increases and TPS should be required to obtain affirmative written consent from the consumer.

e. Length of time to switch provider

AARP endorses reforms that would allow the customer to directly call the distribution utility and drop a supplier and return to Basic Service, as well as changes in the length of time to process such switch requests. The Pennsylvania Commission has recently adopted interim regulations that require a customer's

switch request to be processed within three business days.⁸ However, the Board should carefully consider the costs that may be incurred to make these and similar changes and ensure that any costs are reasonable prior to allowing recovery of costs to implement a shorter switch period from ratepayers.

f. Requirement to send written terms of contract to customer

Once a TPS has received the customer's affirmative authorization to accept service from the TPS, the TPS should send the customer the written terms of service that include the right of cancellation, a summary of the material contract terms, and all relevant contractual documents.

g. Summary of material terms of contract

AARP supports the development of a uniform presentation of the material terms of the TPS contract. This presentation of the price should include the fixed price (if applicable) in a cents per kWh format that includes all required or recurring fees and charges, the length of time the price is applicable, any early termination or cancellation fee, the right of cancellation and the contact information for the TPS. If the price is variable, the disclosures identified above should be included in this summary. Any "teaser" or "promotional" rate must conspicuously state that number of months that this rate is in effect and the pricing disclosures associated with how the price will be determined after that period, whether fixed or variable.

h. A customer's right to terminate a contract within 7 days of signing

AARP supports the current 7-day cancellation period at a minimum. This requirement, however, should not be applicable when a customer seeks to return to or select Basic Service.

i. The meaning of "guaranteed savings": is it a percentage off the local distribution company price? Free service; cash back; any other offer which constitutes guaranteed savings.

AARP recommends that the Board enforce the contract terms and marketing promises made by the TPS based on the plain language meaning of these terms. If savings are "guaranteed," that is clearly intended to suggest that the customer will save compared to the Basic Service price for the length of the contract and should be enforced as such. Any offer of services or incentives to enter into the contract should not be allowed to contradict the plain meaning of this marketing term. The

⁸ Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards For Changing a Customer's Electricity Generation Supplier, Docket No. L-2014-2409383, Final-Omitted Rulemaking Order, April 3, 2014, available at: <http://www.puc.state.pa.us/pcdocs/1277770.docx>

level of savings that is guaranteed is a reflection of the pricing decisions of the TPS. The level of “guaranteed savings” must be stated and adhered to for the length of time that promise is made.

Additional Reforms that the Board Should Adopt And/or Retain:

Additional Fees

Early termination fees should be limited to a maximum of \$50 for fixed price contracts for a certain term, similar to a reform adopted in Illinois and Connecticut. AARP recommends that early termination fees be prohibited for month-to-month or variable rate contracts.

Renewal Clauses

AARP endorses the current New Jersey regulations that requires suppliers to obtain affirmative customer consent using approved verification methods to make a “material change” in terms and that limits the supplier’s ability to continue such contracts without such affirmative consent to a month to month continuation of the current contractual terms. [N.J.A.C. 14:4-7.6(j) and (l)] These regulations reflect the best practices that AARP has recommended elsewhere and urges the Board to retain and enforce these provisions. Suppliers should not be able to interpret a customer’s failure to respond to different or “material” contract terms as agreement to renew a contract. AARP also endorses the reforms to improve the notices and information provided to customers in their Petition for Rulemaking issued in May 2014.

Low Income Customer Protections

Customers enrolled in low income programs such as LHEAP and the Universal Service Fund need additional protections. Such customers who enroll with retail suppliers under the impression that they will save money on their bills and who in fact end up paying more than Basic Service threaten not only their own ability to afford essential electric service, but cause additional costs from nonpayment and higher bills to be imposed on all ratepayers. AARP recommends the TPS only be permitted to enroll customers who participate in low-income assistance program in TPS services that guarantee savings over what the customer would have been charged by their basic generation service utility provider.

Stricter Regulation of Door to Door and Telemarketing Sales

Many customer complaints about misrepresentation of TPS contract terms and promised savings, as well as allegations that the TPS failed to properly inform customers about the variable rate price implications of their contracts have occurred with door-to-door marketing and telemarketing by TPSs and their sales agents. The current New Jersey regulations do not reflect many of the consumer protections that

are necessary to address the use of these marketing channels. While the reforms recently enacted under A3422 in New Jersey are commendable, they do not reflect the scope and scale of the reforms adopted by the Pennsylvania PUC.⁹ Appendix A reflects AARP's recommendations to address the need for additional consumer disclosures, obligations by suppliers for training and supervision of their sales agents, the use of an independent and BPU-approved third party verification of customer authorization to change suppliers; and supplier complaint and disciplinary programs governing their sales agents.

⁹ 52 Pa. Code, chapter 111, Marketing and Sales Practices for Retail Energy Market, available at: <http://www.pacode.com/secure/data/052/chapter111/chap111toc.html>

APPENDIX A: AARP RECOMMENDATIONS FOR CONSUMERS PROTECTIONS FOR SALES OF ELECTRICITY BY DOOR TO DOOR AND TELEMARKETING

Suppliers should be required to develop and implement standards and qualifications for employees and agents engaged to interact with retail customers, and document that it has procedures in place to prevent the hiring or engagement of individuals that do not meet these standards;

A supplier shall ensure the training of its agents on the following subjects:

1. State and Federal laws and regulations that govern marketing, telemarketing, consumer protection and door-to-door sales, including state-specific consumer protection laws and regulations.
2. Responsible and ethical sales practices as described in these regulations.
3. The supplier's products and services.
4. The supplier's rates, rate structures and payment options.
5. The customer's right to rescind and cancel contracts.
6. The applicability of an early termination fee for contract cancellation when the supplier has one.
7. The necessity of adhering to the script and knowledge of the contents of the script if one is used.
8. The proper completion of enrollment and customer authorization documents.
9. The supplier's disclosure statement.
10. Terms and definitions related to energy supply, transmission and distribution service.
11. Information about how customers may contact the supplier to obtain information about billing, disputes and complaints.
12. The confidentiality and protection of customer information as required by state law and regulations.

Suppliers should be required to document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.

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.

Suppliers should be required to monitor a representative sample of telephonic and door-to-door marketing and sales calls to: (1) Evaluate the supplier's training program; (2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.

Suppliers should be required to develop and implement a disciplinary program to ensure compliance with its training programs and these regulations and document

that such disciplinary program has been implemented to prevent violations and internal management failures.

Suppliers must issue an identification badge to employees or agents that interact with consumers in door to door sales or public events. The badge must:

1. Accurately identify the supplier, its trade name and logo.
2. Display the agent's photograph.
3. Display the agent's full name.
4. Be prominently displayed.
5. Display a customer-service phone number for the supplier.

Suppliers should be required to affirmatively identify the name of the Supplier that he represents and affirmatively state that he is not working for and is independent of the customer's local distribution company or other supplier. This requirement shall be fulfilled by both an oral statement by the agent and by written material provided by the agent.

When conducting door-to door activities or appearing at a public event, an agent should be prohibited from wearing apparel or accessories or carry equipment that contains branding elements, including a logo, suggests a relationship that does not exist with any distribution utility, government agency or another supplier.

A supplier should not be able to use the name, bills, marketing materials or consumer education materials of another supplier, distribution utility, or government agency in a way that suggests a relationship that does not exist.

A supplier or supplier agent may not say or suggest to a customer that utility customers are required to choose a competitive energy supplier.

Door to door sales should comply with local ordinances regarding door to door marketing and sales activities.

With regard specifically to door-to-door sales or telemarketing marketing activities, an agent should be required to comply with the following:

- After greeting the customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.
- The agent shall offer a business card or other material that lists the agent's name, identification number and title and the supplier's name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.
- 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.

When an agent completes a transaction with a customer, the agent shall:

1. 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. If requested by the customer, a copy of the materials used by the agent during the call shall be provided to the customer as soon as practical.
2. Explain the supplier's verification process to the customer
3. State that the supplier shall send a copy of the disclosure statement about the service to the customer after the transaction has been verified if the disclosure statement has not been previously provided.
4. State that the customer may rescind the transaction within seven business days after receiving the disclosure statement.

An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises or if the customer expresses no interest in what the agent is attempting to sell.

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.

A supplier shall not initiate a telemarketing call to any residential customer to solicit enrollment or authorization more than once per calendar year unless the customer has a business relationship with the supplier.