

A CONSUMER PROTECTION AGENDA FOR THE IMPLEMENTATION OF  
NATURAL GAS COMPETITION FOR RESIDENTIAL AND  
SMALL COMMERCIAL CUSTOMERS:

A PRESENTATION TO THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ON BEHALF OF THE COLORADO OFFICE OF CONSUMER COUNSEL

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Colorado has adopted Gas Unbundling Legislation (SB99-153) that allows natural gas utilities to file plans with the Colorado PUC to provide all consumers, including residential and small commercial customers, with the opportunity to choose a natural gas supplier. The purpose of this presentation is to identify the regulatory agenda that should be implemented prior to the implementation of any large scale customer choice program. This agenda is based on the legislative requirement that any utility unbundling proposal must address at least the following programs and policies:

- Service integrity and reliability;
- Fall-back or default supply for those not offered supply services, refused services, or for those who do not make a choice in the competitive market;
- Utility affiliate participation requirements to insure a level playing field;
- Market barriers, such as access to upstream pipeline capacity;
- Market power safeguards;
- Consumer education;
- Standards of conduct to address slamming, credit, collection, service disconnection, consumer privacy, unfair or deceptive marketing practices;
- Certification requirements for suppliers;
- Other rules or plan modification as the Commission deems necessary.

The Commission is specifically authorized at its sole discretion to adopt all necessary rules in furtherance of this section, including, but not limited to, standards of conduct, unfair and deceptive marketing practices, and consumer protections.

The agenda that is described below is based on the implementation of natural gas

competition in other states that have adopted comprehensive gas unbundling legislation and is informed as well by the experience to date in the implementation of retail electric restructuring in over 20 states. One of the key decisions that should be made promptly by the Colorado PUC is what substantive issues that should be addressed in generic rules or policies and which should be litigated in the individual restructuring filings by the natural gas utilities prior to the implementation of natural gas choice. The issues relating to Supplier Licensing, Customer Information and Disclosure, Consumer Protection rules applicable to suppliers, the minimum contents of a consumer education program, and the implementation of the funding mechanism for the low-income or universal service programs will be very difficult to address solely in the context of an individual LDC filing. First, suppliers should not have to negotiate these issues more than once. They will want to operate seamlessly in any LDC service territory that opens itself to competition with the same license and under the same disclosure and consumer protection regulations. Such an approach will reduce their operational costs and increase the likelihood of multiple suppliers entering the Colorado market. Second, it is vital that the Commission itself supervise suppliers and establish and enforce licensing and consumer protection rules. The Commission should not rely on the LDC to supervise, license or regulate suppliers via its tariff provisions. The LDC does not have the enforcement tools or the interest/will to pursue issues that are a matter of contract between individual customers and suppliers. In addition, it is difficult for the LDC to interact with and enforce consumer protection or disclosure requirements without being subject to criticism due to the LDC's relationship with its retail sales affiliate.

- I. **Consumer Education Program** In order to participate in a competitive market for natural gas supply service, customers will need to understand that they have a choice of natural gas suppliers, how to make that choice and select a supplier, and how to shop for natural gas supply. While this education program can be viewed as primarily an awareness campaign [perhaps similar to the introduction of new area codes which has been the subject of significant outreach and education in Colorado], the program should contain additional messages. For example, consumers will need to be reassured concerning the continuing regulation of the reliability side of the business and the Commission's role with respect to consumer protection and licensing of natural gas suppliers. It will be crucial to tie the consumer education program to the design and presentation of unbundled charges on the customer's LDC bill with the prices quoted by suppliers so that customers can compare gas supply offers among competitive suppliers and between suppliers and the gas supply rate that appears on their unbundled utility bill.

The consumer education plan should address the need for both a statewide (or region-wide) and a local (LDC-specific) education plan. The statewide plan and activities should focus on the need to enhance customer awareness and develop the shopping skills of residential and small commercial natural gas customers. Once the Commission has established its policies with respect to the statewide education program, gas utilities will need to submit their local programs for review and approval. Local programs should be developed and implemented to complement and coordinate with the statewide program in terms of content and timing. In particular, the local education

program should emphasize a targeted effort to reach low income, elderly and other hard to reach customers through the use of local community-based organizations. Such customers are more likely to respond to personalized outreach and educational efforts from local organizations that they already know and trust. These vehicles will also be more likely to transmit the consumer protection messages that will be very important to present as part of the educational campaign. This is because of the already-documented history of complaints and abuses associated with door-to-door marketing by some natural gas suppliers in some customer choice programs.

A. Program Administration:

1. Structure of Commission review and approval of statewide and local education plans;
2. Form of stakeholder input for design and implementation of statewide program (Advisory Committee?; separate organization?);
3. Budget and length of statewide program; methodology of determination of LDC funding share (e.g., sales, revenues). The funding for this statewide program should come from the LDC education funding mandated by the Act, Sec. 40-2-122(c)(VI).
4. Evaluation: pre and post-campaign evaluation of customer understanding, awareness, and identification of barriers to competition.
5. Timing of design and implementation of consumer education program: sufficient lead time prior to implementation of customer choice.

B. Program Goals:

1. Raise knowledge, awareness and understanding;
2. Provide information on how gas competition may affect consumers;
3. Provide consumers with clear, accurate, comparable information to assist them in making sound decisions about their gas service, including an understanding of customer choice and how to exercise their choice
4. Provide information on customer rights and protections;
5. Emphasize the importance of cultural, ethnic and other differences in design of statewide and local programs
6. Emphasize that safety and reliability of the gas system will be maintained

C. Program Objectives: The use of a state-wide or system-wide education campaign requires that common terminology is used to educate customers about these changes. These terms should be linked to the bill disclosures and customer information disclosures imposed on both utilities and suppliers. The purpose of the education campaign should be to raise awareness by customers of the customer choice program, educate customers on how to obtain more detailed information (1-800 number, web sites, etc.), and inform customers how to shop for natural gas (compare prices based on uniform price disclosure requirements,

see below).

1. Common terminology;
2. Comparable information for consumers to make informed decisions (relate to uniform price disclosure requirements);
3. Provide for consistent messages across the state and messages that support the local plans and programs;
4. Coordinate between state and local plans.

D. Program Components:

1. Research: initial baseline level of knowledge; ongoing tracking of effectiveness of education program; surveys and focus groups
2. Direct consumer communications: educational brochures and bill inserts; toll free call center; web site;
3. Grassroots communication: targeted to hard-to-reach consumers; include community outreach; audience specific materials; evaluation of effectiveness; use of local community based organizations. The use of community-based organizations to participate in the development of local education plans, as well as their role in the implementation of local education plans will prove to be particularly valuable in reaching vulnerable populations, such as low-income customers, non-English speaking, disabled, and elderly customers. Such customers often respond more readily to messages and information that are provided in local communities, by leaders they already know and trust, and in a language and with cultural attributes that are readily accessible. Most larger states that have implemented electric competition have set aside a specific budget for outreach and education by local CBOs.
4. Media: press releases; public service announcements; radio and TV advertisements

E. Preliminary Program Content

1. Consumer education materials targeted to residential and small commercial customers: clear, plain language, non-biased information; consistent terms and terminology
2. Topics for consumer education materials: unbundled bill components; gas supply price and Price to Compare; natural gas supplier contracts and disclosures; how to change suppliers; billing options; gas safety and reliability issues; sample questions to ask gas suppliers.
3. Consumer information Internet website and toll-free telephone Hotline; provide standardized information; identify low income and payment troubled customers for more targeted educational materials and existence of universal service programs.

4. Local educational programs must inform customers (twice per year?) in bill inserts about how to shop and how to compare supplier prices with default gas supply service (Price to Compare).
- F. Cost Recovery procedures for LDCs (track incremental costs or consider in next base rate case).

**Implementation:** Commission Order stating its views re consumer education and setting forth goals and objectives of the LDC-funded education program, statewide versus local spending ratios and requiring each LDC to identify its proposed plan and funding level in a restructuring filing. Commission should appoint an advisory committee to assist in development of statewide plan and to review and approve local education plans [alternatively, consider local plans in the context of restructuring proceeding].

II. **Customer Information and Disclosures** An efficient market requires informed participants, both buyers and sellers. Because most consumers will not be used to shopping for utility services, it will be important for the Commission to stimulate customer understanding of how to shop and compare prices. The lack of uniform disclosures and price comparison rules will also make it more likely that residential customers in particular will either be confused (and decline to participate in the competitive market) or subject to misleading “pitches” which may result in higher prices instead of savings.

- A. LDC duties when communicating with customers re choice. This issue is linked to the need to assure that LDCs provide neutral information about customer choice, education existing and new customers about opportunity to choose; provide a list of all licensed suppliers, and do not favor in any way or provide access to the LDC marketing affiliate.

**Implementation:** Reviewed as part of LDC restructuring filing; tariff changes; standards and duties reflected in Code of Conduct applied to LDC re affiliate transactions.

- B. LDC Bills (format; terminology; minimum contents)

1. Bills must reflect unbundled rates with common terms and definitions.
  - a. Distribution or Transportation Charges: itemized and defined.
  - b. Gas Supply Charges (when providing fall-back or default service): separately itemized and stated in a standard format (cents per therm or dollars per CCF);
  - c. Supplier Charges (when LDC is billing for supplier): graphically

separated; itemization and prices of all services (uniform price format, same as LDC)<sup>1</sup> and fees; provide Supplier name, address and toll free contact number.

2. Separate subtotals for regulated Distribution charges and Supplier Charges (when billing for supplier): separate tracking of customer payments, credits and amount owed to supplier.
3. Obligation to continue budget billing for the regulated portion of the bill and support budget billing for supplier portion of the bill.
4. Historical (12-month) usage chart or bar graph

**Implementation:** While the LDC billing options and disclosures can be reviewed in an LDC restructuring filing, the necessity for a statewide approach in minimum bill format and disclosures which are applicable to both LDCs and suppliers can only occur by means of a generic Customer Information and Disclosure Rule.

C. Supplier Bills (if billing separately)

1. Contact information;
2. Itemized charges; uniform terminology re key terms;
3. Charges for gas supply charges, expressed in either a cents per therm or \$ per MCF or CCF format;
4. Referral to dispute procedure and Commission toll free number.
5. Usage; meter information on which bill is based
6. Due date; late fees (if in contract)

**Implementation:** Generic Customer Information and Disclosure Rule.

D. Supplier Marketing rules

1. Claims and substantiation: suppliers must be able to substantiate their claims and document any savings promised to customers.
2. Price disclosure in marketing materials and terms of service documents. While supplier prices should not be regulated, suppliers should be required to translate their offers into a uniform price disclosure methodology. This

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<sup>1</sup> The requirement that suppliers state their prices on customer bills in a uniform format does not mean that the Commission is regulating the price or rate design offered by the supplier, rather that the supplier price is disclosed in a uniform format on bills and in marketing materials to enable the customer to compare and shop on an “apples to apples” basis.

should be either cents per therm or \$ per ccf , whatever is more commonly used in Colorado on existing LDC bills. If a supplier's price is set with reference to a variable rate, the estimated supplier bill should be given based on the prior season or the current rate in effect. This price disclosure initiative will be even more important for gas restructuring than for electric competition because the gas supply of a customer's bill is a far greater percent of the total bill than generation is for an electric customer. Secondly, experience in other state customer choice pilot programs has demonstrated that if this type of uniform price disclosure is not required, gas suppliers will adopt their price in ways that customers cannot understand or compare with the current LDC gas supply charges. Suppliers often reference a customer's existing LDC rate ("guaranteed 10% savings) without any real disclosure of the actual price of the gas supply so that a customer is unable to rationally compare and shop among suppliers. The potential for customer confusion and abuse if there are no uniform disclosure requirements is significant, which in turn will depress the customer interest in entering the competitive market.

**Implementation:** Customer Information and Disclosure Rule.

E. Supplier Contract disclosure rules

1. Terms of Service document must to given or mailed to new customers with 3-day right of rescission. This document will contain all the material terms of the agreement and will reflect the minimum consumer protection requirements mandated by the Commission. This document will also contain the supplier's services and prices.

**Implementation:** Customer Information and Disclosure Rule.

III. **Customer Selection of Supplier**

- A. Process and flow of information: Electronic Data Interchange transfer system between suppliers and LDCs. It will be important for both suppliers and utilities to devise an electronic method of exchanging data for enrollment and ongoing billing systems. The most efficient method should be designed by a statewide task force so that suppliers are not required to invest in alternative methods in each LDC service territory. This will also keep implementation costs lower and assure a more competitive market.
- B. Methods of customer authorization of selection and change of supplier. Only a handful of states (New Jersey and Montana) have required energy suppliers to obtain a customer's "wet signature" on the contract document itself as a condition for leaving the public utility and entering into the competitive electric or natural

gas market. While such an approach is often justified to prevent slamming, there is no evidence that written signatures will prevent slamming because some of the more egregious slamming cases have involved the forgery of a customer's signature or obtaining the customer's signature on a form that is not recognized by the customer as a document that will change the customer's energy or telephone supplier. In fact, the highest number of customer complaints in several states that allege slamming involve the use of door-to-door marketing in which customer signatures are allegedly obtained. Furthermore, some suppliers have obtained signatures by those without the authority to bind the customer's account, such as minors, unrelated adults or guests. The continued insistence on the wet signature requirement is likely to have an adverse impact on the development of Colorado's retail energy markets because suppliers incur additional costs to obtain wet signatures and lose potential customers. [Several suppliers have announced they will not participate in New Jersey's market, for example]. Of course, the requirement for a wet signature also prohibits the use of Internet enrollment, one of the fastest growing niche markets for energy competition. Finally, there is ample evidence from other states that reputable suppliers can obtain customer authorization in a number of alternative ways that are acceptable to customers and that conform to strong consumer protection policies. California, Pennsylvania, Massachusetts, Ohio, Maine, Connecticut, Maryland, and Ohio either have relied upon or are planning to rely on the use of telephonic and Internet enrollment methods with proper consumer protection safeguards. Ohio has recently recorded its 500,000 customer to switch in its natural gas competition programs in which its marketers may use telephonic and Internet enrollment options. Pennsylvania has seen the growth and development of a significant retail electric market aimed at residential customers using written, telephonic and Internet enrollment procedures. While a few allegations of slamming have occurred, they are dealt with severely and the most significant case has involved door-to-door marketing in which the issue is not so much slamming as deceptive marketing practices, discussed in more detail below. Those suppliers who cannot or do not comply with these alternative methods of obtaining customer authorization should be the focus of significant regulatory enforcement action, including license suspended or revoked. Furthermore, customers who have been slammed should (as in Colorado anti-slamming rules for telecommunications) not owe any charges to the slamming entity. Colorado should not tolerate slamming and this can be achieved with specific rules that set forth the manner in which customers can provide authorization to select or switch natural gas suppliers.

1. Internet Enrollment: There is no reason why residential customers should not be able to purchase electricity and natural gas services using this new medium. The final rule should use the same type of documentation and evidentiary requirements for electronic agreements that are widely in use for other types of e-commerce. One issue that does arise with allowing



marketers to rely exclusively on the use of Internet transactions and this has an adverse effect on the ability of those with household computers and Internet access to obtain competitive electricity and natural gas shopping opportunities. Such marketers should be required to make reasonable accommodations for such households in their marketing plans. Electricity consumers in Pennsylvania, California and Massachusetts can shop over the Internet. In Pennsylvania, more than 4,000 consumers who registered with ElectricityChoice.com's buying pool are being given the opportunity to save between 15 and 25% (annual) savings on generation. Also, OnlineChoice.com is developing a network of independent Internet guides that offer consumers the information they need to make choices about a wide range of consumer services. These opportunities will be enhanced by the ability of a consumer to choose a licensed supplier online. Of course, not all consumers have access to the Internet and the lower penetration ratio of both computers and Internet use among low income and minorities should result in alternative enrollment methods that are widely available.

2. Telephone enrollment: mandatory oral disclosures; use of independent third party verification; recording of verification.
  3. Written enrollment: minimum disclosures; prohibit the use of checks, prize or raffle forms; link to suppliers obligation to provide written Terms of Service.
  4. Slamming Complaint Procedure. The commission's rule should contain an explicit and straightforward process to resolve customer complaints that allege slamming, modeled on similar regulations in effect in Colorado already for telecommunications competition. With respect to those states that have adopted electric restructuring, the rules adopted in Massachusetts, Maine and Pennsylvania are useful models as well. Of paramount importance is that the timetable for complaint resolution will provide a prompt response to customers and the commission will be able to assure customer restitution where appropriate. Furthermore, the proposed rule should include a method of automatic customer restitution and minimum regulatory sanctions which will make clear that Colorado will not tolerate slamming.
- C. Role of LDC re communication with customers about change of supplier: notification letter to customer; LDC role in investigation of allegations of slamming; complaint investigation and enforcement by PUC.

**Implementation:** Generic rule so that suppliers can operate throughout the state with same customer authorization and communication process

with LDCs.

#### IV. LDC Tariffs

- A. Application for service: clarify obligation of LDC re nondiscriminatory access to distribution system; neutral information to new customers re customer choice and licensed suppliers.
- B. Deposits: distinguish basis for deposit amount; not based on gas supply portion of the bill unless customer selects fall-back or default service
- C. Collections by LDC: Sec. 40-2-122(c)(IX)
  - 1. Multiple balance billing for regulated and unregulated charges.
  - 2. Prohibition of disconnection by LDC or supplier for nonpayment of unregulated charges (exception for fall-back or default Service) and clarify that this policy will prevail even if the LDC purchases the supplier's receivables.
  - 3. Partial payment rule: allocation of customer payment first to regulated charges (including any stranded cost charges) and then to any unregulated supplier charges appearing on customer's LDC bill.
  - 4. LDC communications with customer re amount due, payment arrangements must reflect distinction between regulated and unregulated charges when the LDC is billing for the supplier.
- D. LDC fees. The LDC should be prohibited from charging customers (or suppliers) a fee to select or switch suppliers. The costs incurred to implement customer choice should be borne by all customers and reflected in the regulated transportation rates charged to all customers.
- E. Fall-back or Default Service. The Colorado Act requires the LDC to provide a "fallback retail natural gas supply service, on a firm basis with adequate backup....under reasonable terms and conditions." Sec. 40-2-122(c)(V). Subsection (XII) further requires LDCs to offer gas supply service unless at least 33 1/3% of customers are served by competitive providers and at least five competitive suppliers (not including the LDC's affiliate) are providing services, at which time the fall back service takes over from the LDC.
  - 1. Definition: customer eligibility; when provided. This service should be available to any customer who chooses not to choose or who is refused service by a supplier. It is an automatic service
  - 2. Method of acquisition: The Act authorizes the Commission to require the

LDC to obtain the gas supply for this service by means of a competitive bid. Since it is unlikely that a significant market will develop for low use residential customers in the near future, the Commission should explore the option of requiring the LDC to obtain gas supply for these customers by means of a competitive bid open to licensed suppliers. In a particularly large service territory (such as PSCo) the Commission may also want to consider the selection of more than one supplier for this service. Suppliers are likely to bid to obtain this service because they will avoid the expensive marketing and administrative costs associated with obtaining customers individually. In fact, the Commission may want to consider requiring suppliers to pay a premium over the wholesale rate (current unbundled gas supply rate charged by LDC) to obtain these customers.

3. Method of establishing rates/prices in relationship to current rates.
  4. Fees; contract terms (no switch fees; no minimum service period)
  5. Billing and collection: continue to be regulated by Commission pursuant to existing rules applicable to utilities.
  6. Appearance on the customer bill: see Customer Information and Disclosure rules
- F. Supplier Access Tariff. Suppliers should be able to gain access to the LDC's customers by executing a standard agreement that has been approved by the Commission and included in the LDC's tariffs. This agreement or Supplier Tariff will contain the creditworthiness provisions, billing options, fees, communication protocols, method of gaining access to customer-specific data, and dispute resolution procedures, as well as many technical and operational issues relating to pipeline safety, balancing, etc.
1. Supplier Administrative and Billing Fees. These fees should be strictly regulated by the Commission and kept to a minimum.
  2. Communication Protocols: electronic process; reduce manual processing of enrollment, switching, customer drops, to a minimum.
  3. Enrollment Process: reflects the Commission's customer authorization rules, role of the LDC re notification to customers, performance standards for LDC and supplier performance.
  4. Access to Customer specific account and usage information: conditions under which suppliers can obtain such information; implementation of Commission's privacy rules.
- G. Code of Conduct for LDC and gas supply affiliates

1. Structural separation
2. Physical separation of facilities; no shared employees; no shared offices; no access by affiliate to distribution records and reports
3. Separate books and records
4. Price of Administrative and General support services
5. Use of common names and logos (Georgia PSC has prohibited; CA, PA, NJ, ME, OH require certain disclosures if affiliate uses similar name or logo)
6. Dispute and enforcement mechanisms.

**Implementation:** LDC Restructuring Filing or Generic Rule.

V. **Privacy of customer-specific information:**

- A. Pre-enrollment access to customer information. Most states have prohibited the release of customer specific information to suppliers in the form of a mass list. However, the Pennsylvania PUC has required both electric and gas utilities to release a mass customer list with name, address, account number, usage history, and rate class unless the customer calls or writes the LDC to prevent release of such information. All customers were notified by separate mailing with a prepaid postcard to return to utility or could call the utility to prevent the release of this information. The release of a customer's telephone number was specifically prohibited, as well as the release of any credit and payment history. Other states have required customers to affirmatively approve of the release of customer specific information, including usage history, using any of the allowable methods for selection of a supplier.
- B. Post-enrollment: After a customer enrolls with a supplier, the supplier should have access to certain specific information: address, existence of current payment arrangement, particularly budget billing, usage history, meter information.
- C. Information that should not be distributed to suppliers by LDCs: customer-specific payment and billing history. The LDC should not operate as a credit reporting agency for suppliers.
- D. The current Colorado PUC Rule 7 requires written authorization for release of customer specific information, but this would require a supplier to obtain a customer's written signature even though the customer selected the supplier with a phone call or Internet sign-up (with third party verification). The Commission may want to consider changing this rule with the onset of retail competition.

**Implementation:** LDC Restructuring Filing or Generic Rule

VI. **Service Quality.** Sec. 40-2-122(c)(IV) requires the Commission to impose consumer

protections to assure “reliable natural gas supply service, taking into consideration the needs of consumers.” This provision should be interpreted to include service quality considerations as well as reliability of service.<sup>2</sup> This is most directly accomplished by establishing baseline performance standards based on the LDC’s historical performance and then assessing pre-established “penalties” on the LDC revenue requirement for failure to perform at a reasonable historical level. The following types of performance areas should be addressed:

1. Outages: restoration and repair
2. Installation and Repair Appointments Kept
3. Complaint ratios
4. Speed of response to customer safety calls.
5. Customer Service: ASA at phone centers (or percent of calls answered within 30 seconds); percent busy signal.
6. OSHA workplace safety statistics

**Implementation:** Generic rule and individual LDC proceedings

- VII. **Licensing of suppliers by PUC.** The LDC should not be the barrier to entry for new suppliers. Rather the PUC should be responsible for assuring that suppliers are financially qualified and technically fit to conduct business at the retail level. Sec. 40-2-122(6) allows the Commission to set certification requirements, terms and conditions for competitive suppliers by means of a rule or by the LDC filing.
- A. Relationship of current LDC “certification” or creditworthiness; what to do with those current approved under LDC tariffs for pilot programs.
  - B. Financial qualification: minimum security bond payable to the Commission for the purpose of assuring compliance with all financial, reliability and consumer protection rules applicable to the supplier. This is a separate security interest from that required by the LDC, who is understandably only interested in covering for any losses in may incur in providing gas to fallback customers if the supplier falls to deliver as promised. The Commission’s interest should be to protect consumers in their dealings with suppliers while the LDC interest is to protect the financial impact on the LDC should the supplier fail to deliver.
  - C. Technical qualifications: safety, reliability of supply, quality of service, compliance with customer protections

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<sup>2</sup> Of course, the Commission has an ongoing obligation to assure adequate service quality and reliability whether or not unbundling and gas competition is implemented. This discussion is equally applicable to rate base or performance based regulation of gas utilities.

- D. Complaint and enforcement record in other states
- E. Background of owners/operators
- F. Complaint number and contact person.
- G. Procedures for issuance of license, public review and protest (minimal, but should include copy of application to OCC), and suspension/revocation procedures.

**Implementation:** Generic Licensing Rule

**VIII. Additional Consumer Protection Rules: Suppliers**

- A. To what extent should existing or comparable consumer protection rules that have governed utility-customer relationships for many years also be made applicable to suppliers, particularly with respect to deposits, disputes, billing rights? The recently enacted Pennsylvania natural gas restructuring legislation imposes the existing utility billing, credit and collection rules on competitive suppliers. If the existing rules are not applied to suppliers, the Commission's regulations should establish the criteria for residential deposits, the maximum deposit amount, require suppliers to give applicants a written notice of denial in response to an application for service, right to protest bills, dispute procedures, and state unequivocally that a supplier cannot require a customer to waive any consumer protection as a condition of granting service.
- B. Nondiscrimination: no redlining based on race, religion, source of income, location of household, sex, age, and other prohibited criteria reflected in the Equal Credit Opportunity Act.
- C. Regulation of telemarketing practices: Reflect the minimum FTC regulations in rules to allow for enforcement by the PUC via the licensing authority.
- D. Do-Not-Call List. The PUC should create a "Do-Not-Call" list for those customers who do not want to receive telemarketing calls from energy suppliers, modeled on the policy recently adopted in Maine, California, Ohio, and other states. The recently enacted Texas electric restructuring legislation also requires the PUC to implement a Do-Not-Call list. Customers in surveys throughout the country have indicated that they want to avoid telemarketing calls from suppliers with the onset of retail energy competition. Many customers are so adamant about their ability to control these intrusive telephone calls into their homes that they react negatively to the idea of electric competition merely because of the possibility of more telemarketing calls. This proposal will allow customers to get on a list and require licensed suppliers to comply with the prohibition on telemarketing to those customers on the list.

- E. Unfair trade practices: prohibit unfair and deceptive trade practices; coordinate enforcement with A.G., but allow PUC to investigate and suspend/revoke licenses for violation of existing federal and Colorado consumer protection laws.
- F. Length of contract:
  - 1. Multi-year contracts with negative option renewal features are common in the sale of natural gas supply. Suppliers should not be allowed to obtain automatic renewals with changed terms and conditions or price increases. Rather, suppliers should be required to give the customer sufficient notice of renewal terms and obtain specific customer authorization for renewal on terms that are different from the original contract.
  - 2. Many suppliers have contracts which require a minimum 12-month contract term with significant early termination penalties. In addition to the disclosure of any early termination penalties in the Terms of Service document, the Commission should emphasize this feature in consumer education program materials that educate customers on what to look for before selecting a supplier. At a minimum, the Commission should prohibit any early termination penalty when a customer moves.
- G. Change of contract terms or assignment of contract by supplier: mandatory 60-90 day notice to customer and opportunity to exit new terms./new supplier without penalty.
- H. Collection remedies, including the minimum contents of a Cancellation Notice, prohibition on the use of a prepayment meter as a collection device, prohibition on threatening disconnection of service, prohibition on excessive collection costs.
- I. Late fees; early termination penalties; collection costs. The Commission's regulations should establish a minimum due date for monthly bill payments and suppliers should not be able to impose late fees that exceed those charged by utilities for residential customers and utilities should charge late fees to customers when the utility is billing on behalf of the supplier only when the supplier has contracted for the right to impose a late fee.
- J. Dispute Procedures: Suppliers should be required to investigate and respond promptly to customer complaints. A customer who is not satisfied with the supplier's response should be informed of the right to file a dispute/complaint with the Colorado PUC and given the PUC's toll free number and address. The PUC should clearly state its jurisdiction over customer complaints from suppliers, track these complaints and monitor compliance with the Commission's regulations through this process.

- K. Door to door sales are rapidly assuming the first place in customer complaints associated with the move to electric and natural gas competition. In the past year, state regulators have reported the following tidal wave of complaints concerning door-to-door sales by energy suppliers:
- \$ The Georgia Public Service Commission has documented over 150 cases of deceptive and misleading practices by a competitive supplier (United Gas Management) who relies heavily on door-to-door sales for natural gas supply in the Atlantic Gas Light customer choice program.<sup>3</sup>
- \$ The Michigan Public Service Commission reported that Michigan Consolidated Gas Co. documented 2,000 complaints with either the company or the PSC staff regarding various aspects of the solicitation and enrollment process in the first year of the customer choice program, many of which were associated with door-to-door marketers whose name and uniform led customers to believe were representatives of the utility company. As a result, a number of consumer protections were ordered to be followed by suppliers in the next program year, including uniform requirements and a 30-day cancellation period for new enrollments.<sup>4</sup>
- \$ Energy America LLC is under scrutiny in five states for allegedly using deceptive selling practices to sign up new natural gas and electricity customers (Michigan, Maryland, Georgia, Ohio and New Jersey).<sup>5</sup>
- \$ The New Jersey Board of Public Utilities accepted a consent agreement with Energy America as result of its customer complaints and investigations that results in a revamped training and marketing materials by the company, the payment of \$280,000 to the State, and the institution of third-party verification of

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<sup>3</sup> Georgia PSC, In Re: Rule Nisi Directing United Gas Management of Georgia, Inc. to Show Cause Why the Commission Should Not modify, Impose Conditions Upon, Or Revoke its Certificate of Authority Based on Unauthorized Changing of Consumers' Preferred Natural Gas Provider and Misleading and Deceptive Practices as Means to Enlist Consumers: GPSC Docket No 11114-U; CUCD File No. 99147, August 3, 1999.

<sup>4</sup> Michigan PSC, In the Matter of Application of Michigan Consolidated Gas Co. For Authority to Modify its Experimental Gas Customer Choice Program, Case No. U-12050, August 17, 1999.

<sup>5</sup> Wall Street Journal Interactive Edition, "Energy America's Marketing Under Scrutiny in 5 States," December 13, 1999, <http://interactive.wsj.com/archive/retrieve.cgi?id=DI-CO-19991213-005520.djml>.



every sale made at the consumer 's residence.

\$ On January 28, 2000, the Pennsylvania PUC announced two settlements with energy suppliers—Horizon Energy Co. d/b/a Exelon Energy and United Gas Management. The allegations against Exelon involved telemarketing and were settled with a more formal third party verification procedure and the payment of \$4,000. The allegations against United Gas Management involved door-to-door marketing with several documented forged enrollment forms and misrepresentation as to the identity of the marketer. This case was settled with the Commission by a payment of \$59,000, but the Pennsylvania Attorney General announced a settlement on February 4 in which United Gas Management agreed to pay \$250,000 to settle complaints relating to door-to-door sales in which customers alleged that the forms they were signing made them believe that the gas company was providing a discount on their existing gas service.<sup>6</sup>

In addition to the requirements that may be imposed on a retail energy supplier as a result of customer authorization or anti-slamming rules, a supplier that engages in door-to-door marketing at the consumer's residence or personal solicitation at a public location (such as malls, fairs, places of retail commercial activity) should be subject to the following:

1. The supplier must provide the disclosures and right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. §429).
2. The supplier must provide the customer at the time of the sale with a copy of the contract and terms of service disclosures required by [other applicable consumer protection requirements for all energy suppliers]. This document must be labeled in 14 point type with the following statement: **THE PURPOSE OF THIS DOCUMENT IS TO CHANGE YOUR ENERGY SUPPLIER TO \_\_\_\_\_**  
\_\_\_\_\_.
3. The supplier must affirmatively inquire as to the identity of the individual with the authority to change the customer's energy supplier and explain that only that individual can agree to change the customer's energy supplier.

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<sup>6</sup> Pennsylvania PUC, Pennsylvania PUC v. United Gas Management, Docket No. M-00001332, Tentative Order, January 28, 2000; Pennsylvania PUC v. Horizon Energy Co d/b/a Exelon Energy, Docket No. M-00001331, Tentative Order, January 28, 2000; News Release, Pennsylvania Attorney General, February 4, 2000.

4. The individual who represents the supplier must wear clothing or other form of identification which appears on the front of their outer clothing which prominently displays the name of the supplier, which name must conform to the identity of the supplier on its license obtained from the [state licensing authority for suppliers] and which appears on all the supplier's contract and terms of service documents. The uniform or other clothing worn by the individual representing the supplier must be designed to avoid the impression of a reasonable consumer that the individual represents or is related in any way to the customer's local distribution company.
5. The supplier must affirmatively explain that the supplier is not a representative of the customer's local distribution company.
6. The supplier must submit a copy of its proposed sales script, its contract, terms of service disclosures and any other materials presented to the customer to the [state licensing authority] and the [ratepayer or public advocate] at least 10 business days prior to using the material.
7. A supplier shall not submit the change in the customer's supplier to the local distribution company until the rescission period has expired and the customer's authorization has been verified by an independent third party in the same manner as provided in [applicable customer authorization rule for telemarketing solicitations].

**Implementation:** Generic Consumer Protection Rule applicable to suppliers [could be included with Licensing Rule]. Note that Sec. 40-2-122(3)(c)(IX) allows the "Commission" to set the terms and conditions to protect the public interest and Subsection 9 requires the Commission to report on whether "it will" initiate a rulemaking proceeding to provide for consistent consumer protection provisions applicable to all suppliers.

- IX. Universal Service programs and policies: Sec. 40-2-122(c)(VIII). Most states have adopted or expanded universal service and low-income assistance programs as a condition of the move to retail competition for both electricity and natural gas. Both Legislatures and regulators have reasoned that the public benefits associated with the move to competition are unlikely to have a uniform impact on all customers. Low-income customers in particular are unlikely to see the impacts of deregulation because most competitive commodity markets do not deliver significant benefits to low use customers, especially those who may be viewed as a higher credit risk. In addition to the response to the development of a competitive market and its uncertain impact on low-

income customers, Commissions have increasingly identified more cost-effective means of serving low-income customers. Since utilities devote ratepayer funds to collection activities, the redirection of those funds to the provision of specific benefits that result in more affordable bills and more frequent bill payments are likely to have benefits to all ratepayers as well as low-income customers. These ratepayer benefits are more likely to accompany bill payment assistance and energy conservation programs that target assistance based on an analysis of energy burden (relate the customer's energy payment obligation to the household income).

- A. Separately identified charge [“public benefits charge”]
- B. Administered by the Colorado Energy Assistance Foundation;
  - 1. Low-income Energy Assistance payments and programs
  - 2. Low-income weatherization assistance and programs;
  - 3. Low-income energy education; and
  - 4. Energy conservation.
- C. Annual report by CEAF to Commission re expenditures.