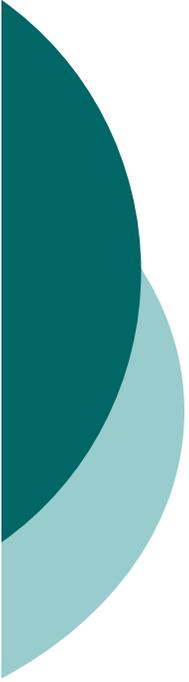




REGULATING RETAIL ENERGY SUPPLIERS: THIS IS NOT “DEREGULATION”

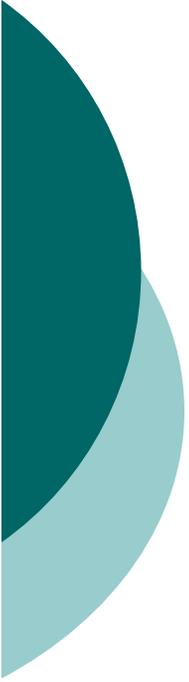


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IN EARLY 2014 MASSIVE VOLUME OF CUSTOMER COMPLAINTS: REGULATORY AND LEGISLATIVE REACTION

- Suppliers with variable rate contracts sent significant price increases to their customers in response to high wholesale market prices in the winter of 2013-2014
- The result: double and triple the total bill amount for residential customers



WHAT HAPPENED THIS WINTER COULD HAVE BEEN PREVENTED BY STATE COMMISSIONS

- Suppliers were allowed to issue variable rate contracts with no pricing methodology
- Suppliers are continuing to mislead and deceive customers about the nature of their contracts at point of sale
- Renewals from fixed to variable rate contracts are allowed without affirmative customer consent
- Commissions are not enforcing current rules and regulations



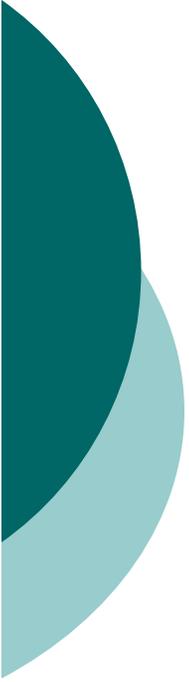
WHAT HAPPENED AND WHY?

- Polar Vortex: Suppliers did not hedge their supply contracts; had to react to short term or spot market prices; UNLIKE DEFAULT SERVICE ACQUIRED WITH PORTFOLIO MIX OF WHOLESALE MARKET CONTRACTS FOR 2-3 YEAR PLAN
- Customers did not know or understand risks with variable rates and no pricing methodology was disclosed; alleged misrepresentation at time of sale or slamming
- Customers had no advance notice of new price until bill arrives
- Many contracts had fixed price “teaser rates” for 60-90 days that were emphasized at point of sale
- Many customer were enrolled in variable rate contracts after failing to respond to renewal notices on fixed price contracts
- Utilities had purchased supplier receivables and allowed to collect with threat of termination



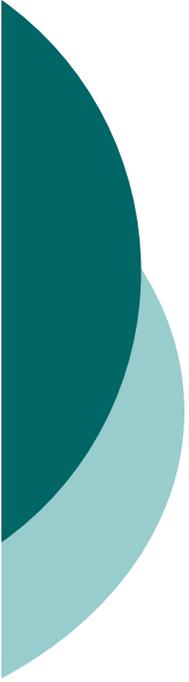
**THE DIRTY LITTLE SECRET: CUSTOMERS GENERALLY
PAY MORE FOR SUPPLIER CONTRACTS COMPARED TO
DEFAULT SERVICE AND LOW INCOME ARE
PARTICULARLY HARD HIT**

- PULP NY ANALYSIS: NIAGARA
MOHAWK
- PULP PA ANALYSIS: PPL ELECTRIC
- CONNECTICUT OCC ANALYSIS
- CUB IN ILLINOIS FOR NATURAL
GAS AND ELECTRIC
- OHIO NATURAL GAS



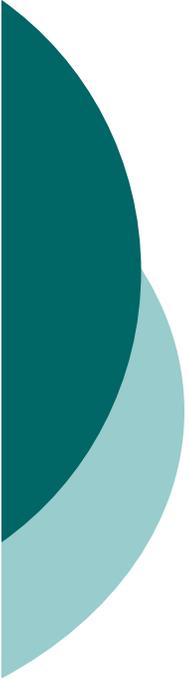
WHAT DID ANALYSIS OF COMPLAINTS REVEAL?

- Supplier fine print terms allowed prices to change based on unstated methodology; general reference to “wholesale market”; no basis to calculate bill
- Customers had no advance warning until bill arrived
- Customers were misled or promised lower prices, savings, prices same or better than default service at point of sale
- Prices had wide range even in same area: \$.19 to \$.40 cents per kWh (and even higher in some cases) compared to \$.08 or \$.09 for default service
- Customers often could not reach supplier to complain or cancel service and return to default service
- Return to default service takes 30-60 days
- Customers could not afford to pay these bills; utilities threatened disconnection for nonpayment (payment plans, late fees)



WHAT HAS BEEN REACTION?

- Formal investigations and Show Cause Proceedings in Maryland; legislative mandate for reforms
- Legislation enacted in CT: Senate Bill 2
- Regulatory reforms in PA and pending legislative reform
- New York Reform Order (but then issued “stay” on key reforms)



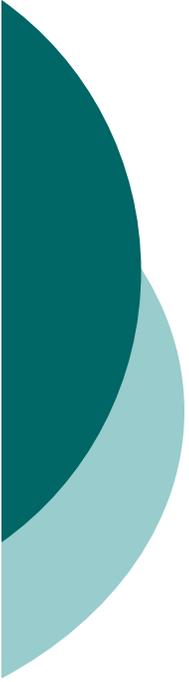
REFORMS ADOPTED TO DATE

- PA (regulations): faster switching rules; additional disclosures; some constraint on renewals to variable rates. **BUT NO INVESTIGATIONS**
- CT(legislation): By 2015, customers must see price at least 30 days in advance and allow return to default prior to that new price; bills must show default service price even with supplier charges; back to default service within 72 hours; early cancellation fees limited to \$50; public posting of historical variable rate prices on PURA website; proceeding to consider whether “hardship” customers should remain on default service
- CT Investigations: PURA has several open investigations of supplier conduct
- **KEY RESULT: END OF CALL FOR ELIMINATION OF DEFAULT SERVICE AND PROPOSALS TO AUCTION CUSTOMERS OFF TO RETAIL SUPPLIERS IN CT AND PA**



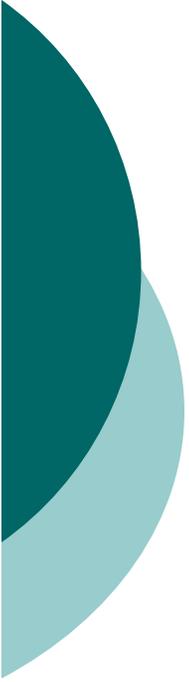
REFORMS ADOPTED TO DATE (CON'T)

- New York: Market Reform Order adopted in February 2014 with several “best practice” reforms but several of the key reforms were later “stayed” and are now up for grabs, including:
 - Suppliers must not charge low income customers enrolled in programs more than default service;
 - Utilities cannot issue termination notices to customers for amount in excess of default service (sending excess charges back to suppliers)
 - End the “referral programs”



CONSUMER PROTECTION IN COMPETITIVE MARKETS

- THIS IS NOT “DEREGULATION”! THERE ARE MANY PRECEDENTS FOR REGULATION OF COMPETITIVE MARKETS:
 - Truth in Lending Act: consumer credit
 - Used Car Sales and Lemon Laws
 - Unfair Trade Practice Acts
 - Credit Reporting
 - Debt Collection
 - Door to Door Sales: FTC Cooling Off Rule
 - Insurance
 - Health Care; Nursing Homes



KEY ISSUES FOR REFORM AND ENFORCEMENT

- MANDATORY DISCLOSURES: TERMS OF SERVICE; PRICE; BILLS
- CONTRACT TERMS RE VARIABLE RATES; NOTICES; RENEWAL POLICIES
- ANTI-SLAMMING AND ANTI-CRAMMING RULES
- UNFAIR TRADE PRACTICES: MARKETING
- LICENSING OF SUPPLIERS
- MARKET POWER AND REMEDIATION
- UNIVERSAL SERVICE AND OTHER PUBLIC BENEFIT PROGRAMS



BARB'S BEST PRACTICE REFORMS

- Protect low income and the ratepayer and federal subsidies to make energy affordable; either prohibit choice for these customers (Ohio) or require suppliers to serve at price that does not exceed default service
- Variable rates: require disclosure of cap on prices or state that there is no cap on prices; disclose the actual methodology or formula to govern prices; give proper notice prior to new price; disclose historical prices at point of sale
- Stricter regulations and ENFORCEMENT of door to door and telemarketing sales activities
- Restrict early cancellation fees: none for variable rate contracts and \$50 for fixed price contracts
- Require suppliers to post prices and terms of service on their own websites (not typical)
- Reform disclosure of “promotional” or “teaser” rate contracts to emphasize the variable rate feature after promotional period
- Prohibit renewal of contract with “material” change of terms (from fixed to variable; change in variable price methodology) without affirmative customer consent; end the negative option notices allowed in all states
- Consider concept of “unconscionable” contract terms when variable rate prices are not defined so as not to state a “price” at all: is there a valid “bargain” here?
- Investigate and review recorded sales calls and telemarketing and door to door marketing scripts. Many are deceptive and misleading on their face!

ENFORCEMENT: BEST PRACTICES

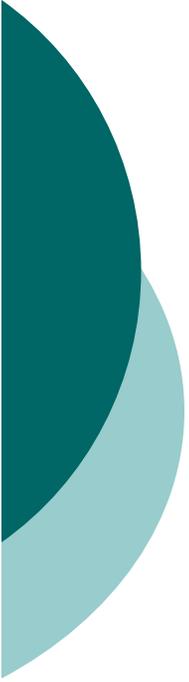
COMMISSIONS MUST HAVE SUFFICIENT RESOURCES AND TRAINED STAFF TO ENFORCE CONSUMER PROTECTION REGULATIONS FOR A COMPETITIVE RETAIL MARKET AND HAVE THE POLITICAL WILL AND COMMITMENT TO ENFORCE THE RULES:

- Access to books and records
- Statutory authority for administrative fines
- License revocation and suspension; Show Cause and injunction
- Customer restitution
- Substantial increase in penalties, up to \$10,000 per day per violation
- Staffing implications for Commission investigators
- Attorneys with skills in consumer protection law



IMPORTANCE OF DEFAULT SERVICE

- These developments enhance the need for a stable and fixed price default service that is acquired with mix of wholesale market contracts and designed to avoid volatile and short-term wholesale market prices
- New York is one of the few states without affirmative stable and least cost mandate for default service



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- PA adopted rules on disclosures and renewal notices, available at: <http://www.puc.state.pa.us/pcdocs/1277768.docx>
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