

Congress of the United States

Washington, DC 20515

December 11, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

Deregulation of the residential electric supply market promised to bring consumers in Massachusetts and other states a choice of electricity supply providers and lower bills. Instead, consumers — disproportionately in low-income communities and communities of color — have endured unfair and deceptive marketing and sales tactics by competitive electric suppliers, saddling those consumers with higher electric bills and costing them hundreds of millions of dollars in net losses, with knock-on effects that delay climate action. The Federal Trade Commission (FTC) needs to intervene, investigate, and rigorously enforce consumer protection laws against an industry that too often preys on, misleads, and overcharges vulnerable consumers for a basic and essential service.

In the late 1990s, Massachusetts and other states enacted legislation allowing residents to buy electricity from a supplier other than their default utility.¹ Underlying this deregulatory effort was the assumption that competition in the market for residential electricity would bring lower power prices for customers. But the *Wall Street Journal*, for example, found that “in nearly every state where they operate, retailers have charged more than regulated incumbents.”² Specifically, data from Massachusetts, Connecticut, Illinois, Maine, Maryland, New York and Pennsylvania “confirm that families pay far too much when they sign up for alternative electric supply instead of sticking with their utility companies.”³

Competitive electric suppliers, such as Liberty Power and Starion Energy, have fleeced Massachusetts consumers. As Massachusetts Attorney General Andrea Joy Campbell recently explained in testimony before the state legislature: “From Boston to Lawrence to Lynn — and beyond — we have seen again and again Massachusetts residents being targeted by competitive electric suppliers. And these suppliers use deceptive marketing tactics that hide the fact that their products do not provide consumers with meaningful savings and in fact, can result in higher utility bills.”⁴ Indeed, Attorney General Campbell’s office has found that, in the last seven years,

¹ Mass. Gen. Laws ch. 164, § 1 (1997).

² Scott Patterson & Tom McGinty, *Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn’t*, Wall St. J. (Mar. 8, 2021) (emphasis added), <https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623?page=16>.

³ Jenifer Bosco, *Retail ‘choice’: A bad deal for consumers and the planet*, Utility Dive (Sept. 22, 2023), <https://www.utilitydive.com/news/retail-choice-bad-deal-consumers-arrearages-renewable-energy-community-choice/694355/>.

individual residential customers who received their electric supply from competitive suppliers paid \$607 million more on their electric bills than they would have paid to their default utility.⁵

Especially troublesome, the Attorney General’s Office found that competitive electric suppliers have targeted vulnerable populations:

- low-income customers in Massachusetts are nearly twice as likely to sign up with individual competitive electric suppliers and are charged higher rates than non-low-income customers;
- assuming 600-kilowatt hour per month usage, typical for a Massachusetts household, an average non-low-income customer who signed up with a competitive supplier lost \$222 per year while the average low-income customer lost \$254 per year;
- low-income customers collectively experienced an annual net loss of more than \$20 million due to higher rates and additional monthly fees;
- communities of color, communities with low median incomes, and communities with high percentages of residents lacking English proficiency correlate with higher rates of participation in the individual residential market for electric supply;⁶ and
- customers of advanced age who cannot understand the transaction or are particularly vulnerable are targeted and subjected to aggressive sales tactics.⁷

The competitive electric suppliers and their marketing agents have engaged in myriad unfair and deceptive acts and practices to lure consumers into oppressive retail electricity contracts, including:

- selling unnecessary “price protection” or “rate increase” protection products by convincing customers that electricity prices would otherwise soar without the protections;
- misleading customers about the actual difference in price between the competitive plan and basic utility service;

⁴ Remarks of Attorney General Andrea Joy Campbell before the Joint Committee on Telecommunications, Utilities and Energy, Massachusetts House of Representatives (Sept. 21, 2023); see Miriam Wasser, *Why a plan to drive down electric prices in Mass. Led to higher bills*, NPR (May 8, 2023), <https://www.wbur.org/news/2023/05/08/massachusetts-eversource-national-grid-third-party-competitive-electricity>.

⁵ Remarks of Attorney General Andrea Joy Campbell before the Joint Committee on Telecommunications, Utilities and Energy, Massachusetts House of Representatives (Sept. 21, 2023).

⁶ *Id.*; Susan M. Baldwin & Timothy E. Howington, *Consumers Continue to Lose Big: the 2023 Update to An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, Massachusetts Attorney General’s Office (May 2023), <https://www.mass.gov/doc/consumers-continue-to-lose-big-the-2023-update-to-an-analysis-of-the-individual-residential-electric-supply-market-in-massachusetts/download>.

⁷ *In re Liberty Power Holdings LLC*, Addendum to Proof of Claim Filed by the Commonwealth of Massachusetts, Case No. 21-13797-SMG (Bankr. S.D. Fla.).

- failing to disclose industry consensus about price drops and that, if basic service prices decreased, consumers would pay higher prices under the competitive plan;
- failing to disclose that the customer’s introductory rate would automatically renew to a higher variable rate;
- falsely stating the rates that customers currently paid for basic service in order to trick them into signing up for contracts that charged an even higher rate than those the customers were currently paying; and
- switching customers from their utility to competitive services without authorization, a practice known as “slamming.”

Competitive electric supplier scams come with another high cost — climate change. Massachusetts and other states are working hard to transition from dirty fossil fuels to a clean energy future. But when consumers see high electric bills due to inflated prices charged by non-utility energy supply companies, they “may be understandably hesitant to switch their home heating and appliances from gas-powered to electric.”⁸ One way to help keep the cost of electricity low is to stop competitive electric suppliers from conning consumers out of hundreds of million dollars for the same electricity they would have received if they had just stayed with their local utility.

The Massachusetts Attorney General’s Office, like other states’ consumer protection watchdogs, has taken enforcement action against competitive electric suppliers who engage in wrongful marketing and sales practices. But many of these bad-actor competitive electric suppliers operate across state lines, which makes enforcement actions time-consuming and difficult for state officials, thereby warranting federal intervention. Indeed, after ten years pursuing competitive electric suppliers, the Massachusetts Attorney General’s office has recovered only \$19 million — a small fraction of the more than \$600 million lost.⁹

Under the FTC Act, the Commission is charged with protecting consumers from “unfair or deceptive acts or practices.”¹⁰ In 2020, then-FTC Commissioner Rohit Chopra said that the agency had a key opportunity to “reduce residential consumers’ burdensome energy costs” by taking action against “unscrupulous energy suppliers that employ deceptive marketing practices to entice consumers to switch from their local distribution company’s services.”¹¹ As these

⁸ Jenifer Bosco, *Retail ‘choice’: A bad deal for consumers and the planet*, Utility Dive (Sept. 22, 2023), <https://www.utilitydive.com/news/retail-choice-bad-deal-consumers-arrearrages-renewable-energy-community-choice/694355/>.

⁹ Chris Lisinski, State House News Service, *Mass. leaders eye changes to ‘predatory’ electric sales tactics*, WBUR (June 6, 2023), <https://www.wbur.org/news/2023/06/06/mass-leaders-eye-changes-to-predatory-electric-sales-tactics>.

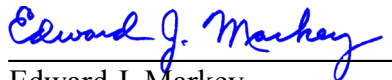
¹⁰ 15 U.S.C. § 45.


¹¹ Rohit Chopra, *Statement: Regarding the FTC EnergyGuide rule*, U.S. Federal Trade Commission (Dec. 22, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585238/20201222_final_chopra_statement_on_energysguide_rule.pdf.


practices have continued in the intervening years, the FTC still has both the opportunity and the responsibility to protect consumers.

As colder weather approaches and competitive electric suppliers across the nation continue to prey on fears of high electricity bills, the FTC must signal it will not tolerate business as usual by competitive electric suppliers. These suppliers continue to target vulnerable populations, engage in unlawful tactics, and dramatically overcharge consumers — precisely the types of wrongdoing against which the FTC is empowered to act to protect consumers. We urge the FTC to immediately open an investigation into the unfair and deceptive marketing acts and practices of competitive electric suppliers.

Sincerely,


Edward J. Markey
United States Senator


Elizabeth Warren
United States Senator


Ayanna Pressley
Member of Congress