

CASE NOS. SC19-328; SC19-479 (CONSOLIDATED)

IN THE SUPREME COURT OF FLORIDA

**ADVISORY OPINION TO THE ATTORNEY GENERAL RE: RIGHT TO
COMPETITIVE ENERGY MARKET FOR CUSTOMERS OF INVESTOR
OWNED UTILITIES; ALLOWING ENERGY CHOICE**

**APPENDIX TO
AMENDED INITIAL BRIEF OF FLORIDIANS FOR
AFFORDABLE RELIABLE ENERGY (FARE),
URBAN LEAGUE OF PALM BEACH COUNTY,
JACKSONVILLE URBAN LEAGUE, AND THE
CENTRAL FLORIDA URBAN LEAGUE**

IN OPPOSITION TO THE INITIATIVE

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CONSTITUTIONAL AMENDMENT PETITION FORM

Note:

- All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.
- Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]
- If all requested information on this form is not completed, the form will not be valid.

Your name: _____
Please Print Name as it appears on your Voter Information Card

Your address: _____

City _____ Zip _____ County _____

Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable).

Voter Registration Number _____ or Date of Birth _____

I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election:

BALLOT TITLE: Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice.

BALLOT SUMMARY: Grants customers of investor-owned utilities the right to choose their electricity provider and to generate and sell electricity. Requires the Legislature to adopt laws providing for competitive wholesale and retail markets for electricity generation and supply, and consumer protections, by June 1, 2025, and repeals inconsistent statutes, regulations, and orders. Limits investor-owned utilities to construction, operation, and repair of electrical transmission and distribution systems. Municipal and cooperative utilities may opt into competitive markets.

ARTICLE AND SECTION BEING CREATED OR AMENDED: Article X, new section

FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:

(a) POLICY DECLARATION. It is the policy of the State of Florida that its wholesale and retail electricity markets be fully competitive so that electricity customers are afforded meaningful choices among a wide variety of competing electricity providers.

(b) RIGHTS OF ELECTRICITY CUSTOMERS. Effective upon the dates and subject to the conditions and exceptions set forth in subsections (c), (d), and (e), every person or entity that receives electricity service from an investor-owned electric utility (referred to in this section as "electricity customers") has the right to choose their electricity provider, including, but not limited to, selecting from multiple providers in competitive wholesale and retail electricity markets, or by producing electricity themselves or in association with others, and shall not be forced to purchase electricity from one provider. Except as specifically provided for below, nothing in this section shall be construed to limit the right of electricity customers to buy, sell, trade, or dispose of electricity.

| TEXT CONTINUES ON OTHER SIDE |

[TEXT BEGINS ON OTHER SIDE]

(c) IMPLEMENTATION. By June 1, 2023, the Legislature shall adopt complete and comprehensive legislation to implement this section in a manner fully consistent with its broad purposes and stated terms, which shall take effect no later than June 1, 2025, and which shall:

(1) implement language that entitles electricity customers to purchase competitively priced electricity, including but not limited to provisions that are designed to (i) limit the activity of investor-owned electric utilities to the construction, operation, and repair of electrical transmission and distribution systems, (ii) promote competition in the generation and retail sale of electricity through various means, including the limitation of market power, (iii) protect against unwarranted service disconnections, unauthorized changes in electric service, and deceptive or unfair practices, (iv) prohibit any granting of either monopolies or exclusive franchises for the generation and sale of electricity, and (v) establish an independent market monitor to ensure the competitiveness of the wholesale and retail electric markets.

(2) Upon enactment of any law by the Legislature pursuant to this section, all statutes, regulations, or orders which conflict with this section shall be void.

(d) EXCEPTIONS. Nothing in this section shall be construed to affect the existing rights or duties of electric cooperatives, municipally-owned electric utilities, or their customers and owners in any way, except that electric cooperatives and municipally-owned electric utilities may freely participate in the competitive wholesale electricity market and may choose, at their discretion, to participate in the competitive retail electricity market. Nothing in this section shall be construed to invalidate this State's public policies on renewable energy, energy efficiency, and environmental protection, or to limit the Legislature's ability to impose such policies on participants in competitive electricity markets. Nothing in this section shall be construed to limit or expand the existing authority of this State or any of its political subdivisions to levy and collect taxes, assessments, charges, or fees related to electricity service.

(e) EXECUTION. If the Legislature does not adopt complete and comprehensive legislation to implement this section in a manner fully consistent with its broad purposes and stated terms by June 1, 2023, then any Florida citizen shall have standing to seek judicial relief to compel the Legislature to comply with its constitutional duty to enact such legislation under this section.

DATE OF SIGNATURE

SIGNATURE OF REGISTERED VOTER

Initiative petition sponsored by Citizens for Energy Choices, PO Box 1101, Alachua, FL 32616

If paid petition circulator is used:

Circulator's name _____

Circulator's address _____

For Official Use Only:

Serial Number: 18-10 _____

Date Approved: 10/5/2018 _____

**Energy Information Administration's
Comparative Average Per Kilowatt-hour
Revenue Tables for Deregulated
and Regulated States**

**Table 1. Average Revenue per Kilowatt-hour:
Deregulated vs. Regulated States**

	Deregulated States	Regulated States (in cents per kilowatt-hour)	National
1997	8.1	5.8	6.8
1998	7.8	5.8	6.7
1999	7.7	5.8	6.6
2000	8.0	5.9	6.8
2001	8.6	6.2	7.3
2002	8.5	6.2	7.2
2003	8.8	6.4	7.4
2004	8.9	6.6	7.6
2005	9.6	7.0	8.1
2006	10.7	7.5	8.9
2007	11.0	7.7	9.1
2008	11.7	8.3	9.7
2009	11.5	8.5	9.8
2010	11.5	8.6	9.8
2011	11.3	8.8	9.9
2012	11.0	8.9	9.8
2013	11.3	9.1	10.1
2014	11.8	9.4	10.4
2015	11.8	9.4	10.4
2016	11.5	9.3	10.3
2017	11.8	9.6	10.5

Difference, in cents per kilowatt-hour

1997-2017	3.7	3.8	3.7
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Source: Energy Information Administration, Forms EIA-861 and EIA-826.

**Table 2. Residential Revenue per Kilowatt-hour:
Deregulated vs. Regulated States**

	Deregulated States	Regulated States (in cents per kilowatt-hour)	All States Combined
1997	10.1	7.2	8.4
1998	9.7	7.2	8.3
1999	9.5	7.2	8.2
2000	9.6	7.3	8.2
2001	10.0	7.5	8.6
2002	9.8	7.5	8.4
2003	10.1	7.7	8.7
2004	10.3	8.0	8.9
2005	11.0	8.3	9.4
2006	12.4	9.0	10.4
2007	12.8	9.2	10.7
2008	13.4	9.8	11.3
2009	13.6	10.1	11.5
2010	13.6	10.1	11.5
2011	13.4	10.5	11.7
2012	13.4	10.8	11.9
2013	13.8	10.9	12.1
2014	14.3	11.3	12.5
2015	14.5	11.3	12.7
2016	14.3	11.3	12.5
2017	14.6	11.7	12.9
Difference, in cents per kilowatt-hour			
1997-2017	4.5	4.5	4.5

Source: Energy Information Administration, Forms EIA-861 and EIA-826.

SUPPORTING SOURCED FACTS

- Individual residential electricity supply customers in Massachusetts who switched power companies paid \$176.8 million more than they would have paid if they had received their electricity from their original power provider over a two-year period spanning from July 2015 to June 2017.

See "Are Consumers Benefiting from Competition," *MA Attorney General's Office*, March 2018.

- In Massachusetts, customer losses are getting worse and not better. An average household paid \$134 more during the 2015-2016 study period than they would have without deregulation, and paid \$226 more during the 2016-2017 study period.

See "Are Consumers Benefiting from Competition" *Massachusetts Attorney General's Office Commonwealth of Massachusetts*, March 2018.

- In Massachusetts, residents in communities with the following demographics paid higher rates to competitive suppliers: Communities with low median incomes; communities with high percentages of households receiving subsidized low-income rates; communities with high percentages of minority households; and communities with high percentages of households with limited English proficiency.

Low-income customers pay especially high prices in the competitive supply market. Assuming an average monthly usage of 600 kWh across both income groups, the annual consumer loss for low-income participants in Massachusetts is \$252, which is 17 percent higher than the annual consumer loss of \$216 for non-low-income participants.

See "Are Consumers Benefiting from Competition," *MA Attorney General's Office*, March 2018.

- In the last three years, the Massachusetts Attorney General's Office has received more than 700 complaints about competitive suppliers engaging in aggressive and deceptive tactics. Complaints include suppliers pretending to be a utility company to induce customers to turn over sensitive information; suppliers harassing customers with repeated calls or home visits; and door-to-door salespeople forcing their way into elderly customers' homes and refusing to leave without a signed contract.

See "AG Healey Calls for Shut Down of Individual Residential Competitive Supply Industry to Protect Electric Customers," press release from the *Office of Attorney General Maura Healey*, March 2018.

- In New York, residential and some small commercial customers overpaid by \$817 million between January 2014 and June 2016, and low-income customers overpaid by almost \$96,000,000 during the same period, compared to the prices charged by regulated public utility companies.

See "Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts" *National Consumer Law Center*, April 2018.

- From June 2016 to May 2017, residential customers in Illinois who purchased electricity from competitive electricity suppliers spent an additional \$152,108,081 over the rates that regulated utility providers charged.

In New York, between January 2014 and June 2016 residential and some small commercial customers paid \$817 million more than they otherwise would have, had they received electricity from a regulated utility.

See "Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts," by Jenifer Bosco, *National Consumer Law Center*, 2018.

- More than 1.8 million residential customers in Illinois have switched to an alternative electricity supplier. In the past three years, that switch has cost Illinois residential and small commercial customers \$400 million more in electricity costs than their electrical utility company would have charged."

See "Lisa Madigan sues to shed light on alternative electricity supplier 'fraud'," *Chicago Sun Times*, April 2018.

- After deregulation in Illinois allowed rate caps to expire, residential electricity rates skyrocketed. A period of uncertainty ensued as the attorney general began investigating wholesale suppliers for market manipulation and excessive power prices, the state legislature was forced to step in and mandate \$1 billion dollars in rate relief for customers, and a new government entity was established to procure power.

See "Electric Industry Deregulation: A Look at the Experiences of Three States," a review of states experiences with deregulation produced by *Public Sector Consultants Inc.*, October 2013.

- In Maryland, from 2014 to 2017 residential consumers paid \$255 million more in electric bills than they would have if they had continued to receive electricity supply from a regulated utility.

By 2017 in Maryland, 97 percent of residential customers using third-party electricity suppliers, totaling about 387,000 households, paid an average of \$154 more than they would have under standard service rates.

See "Maryland's Dysfunctional Residential Third-Party Energy Supply Market," prepared by *The Abell Foundation*, December 2018.

- In Texas, rates in deregulated areas have been between 9.2% (2002) and 46.5% (2014) higher than regulated areas. This means that residents living in energy deregulated areas might have lowered their energy bills by a total of \$25 billion dollars if they had the same averages prices as residents living in regulated areas

In 2014 in Texas, residents in deregulated areas would have saved a combined total of \$1.4 billion dollars had they paid the same average price as residents living in regulated areas.

See "Electricity Prices in Texas I Snapshot Report" from the *Texas Coalition for Affordable Power* from June 2016.

- When blackouts or brownouts occur in a deregulated environment, a vacuum may emerge as electricity suppliers are caught flat-footed. First responders may bear the immediate brunt of the disorder that deregulation can bring. In Texas, as ERCOT floundered in its response, police officers were sent scrambling to direct cars after traffic signals unexpectedly stopped working.

See "The History of Electric Deregulation in Texas," report by the *Cities Aggregation Power Project, Inc.*

- Electricity prices in the effectively deregulated states increase over four times faster, after deregulation, relative to U.S. electricity prices than before deregulation. Eight states have either extremely or very statistically significant increases in relative electricity prices and are extremely or very less efficient, after deregulation.

See "U.S. Electrical System Reliability: Deregulated Retail Choice States' Evidence and Market Modeling," *International Journal of Energy Economics and Policy*, 2014.

- While the deregulation era began with great hope that regulatory innovations, and the incentives provided by competition, would dramatically improve efficiency and greatly lower consumer costs, that hope was largely illusory. Though rates rose in both regulated and deregulated states, they rose more rapidly in the deregulated states as deregulation fever swept the country.

See "THE U.S. ELECTRICITY INDUSTRY AFTER 20 YEARS OF RESTRUCTURING," by Severin Borenstein & James Bushnell, NATIONAL BUREAU OF ECONOMIC RESEARCH, April 2015c.



PRESS RELEASE

AG Healey Calls for Shut Down of Individual Residential Competitive Supply Industry to Protect Electric Customers

Two-Year Study by AG's Office Shows Competitive Supply Customers Paid \$176.8 Million More; Companies Appear to Have Targeted Low-Income, Minority Neighborhoods in Gateway Cities

FOR IMMEDIATE RELEASE:

3/29/2018

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BOSTON — Citing aggressive sales tactics, false promises of cheaper electric bills and the targeting of low-income, elderly, and minority residents, Attorney General Maura

Healey today issued a [report \(/doc/comp-supply-report-final\)](#) calling for an end to the [competitive electricity supply market \(/competitive-electric-supply\)](#) for individual residential customers in Massachusetts.

AG Healey made the announcement today standing with Quincy Mayor Thomas Koch, along with consumer and civil rights advocates. The report found that Massachusetts electric customers who switched to a competitive electric supplier paid \$176.8 million more than if they had stayed with their utility company during the two-year period from July 2015 to June 2017.

“Competitive electric suppliers promise big energy savings but are actually burdening customers with hundreds of dollars in extra costs,” said AG Healey. “In two years, Massachusetts residents lost over \$176 million to these predatory companies. I’m calling for an end to this industry because that’s the best way to protect our seniors, low-income residents, and minority communities from these persistent scams.”

According to the AG’s report, nearly 500,000 residents in the state receive their electricity from a competitive supplier, but certain communities are particularly hard hit. The report found that 36 percent of low-income households received their electricity from a competitive supplier, double the rate among other customers. The study found that competitive suppliers appear to have targeted low-income and minority residents in many of the state’s gateway cities including Worcester, Springfield, Brockton, Lynn, Lowell, Lawrence, Fall River, Quincy and New Bedford. Participation was greatest in zip codes with the highest percentage of low-income and minority populations.

“Door-to-door competitive electric suppliers have been such a problem in our city that the Quincy Police Department has issued warnings to the public,” said Quincy Mayor Thomas Koch. “For too long, these companies have sold Quincy residents, particularly seniors, a bill of goods. I am proud to join with Attorney General in an effort to stop these scammers.”

“The competitive market for electricity was supposed to lower prices for households in Massachusetts, but for years it has done the opposite,” said Jenifer Bosco, staff attorney at the National Consumer Law Center in Boston. “As the Massachusetts Attorney General has documented in this report, millions of dollars in overcharges have been picked from the pockets of Massachusetts families, especially low-income families, as the result of this failed deregulatory experiment. The Massachusetts Department of Public Utilities and our Legislature should act now to protect Massachusetts families from further financial harm.”

“For far too long, these energy companies have been preying on the city’s vulnerable residents. They send door-to-door salespeople that take advantage of our elderly and non-English speaking residents and sign them up for costly contracts that rob them of hundreds of dollars,” said Marci Pina-Christian, Executive Director of the Human Relations Commission & Human Services Coordinator for City of New Bedford’s Department of Community Services and Executive Board Member of the New Bedford NAACP. “We stand with the Attorney General in her efforts to stop this scam practice.”

In Massachusetts, residential customers, like commercial and industrial customers, can “shop around” for electricity rates. Customers can choose to get their electric supply from their utility – National Grid or Unitil or Eversource – or from a “competitive supplier.” When customers do not choose a supplier, they receive “basic service” electricity from their utility. The utilities buy basic service electricity in bulk through a competitive bidding process. Utilities pass the wholesale cost of basic service to customers and are not allowed to earn any profit from basic service rates. Under state law, the Department of Public Utilities reviews utilities’ basic service rates but does not review the rates charged to residential customers by competitive suppliers.

The AG’s report found that the average low-income customer enrolled with a competitive supplier paid \$231 more than if the customer was receiving their electricity from their utility company. The report found some low-income households lost more than \$541 by switching to a competitive supplier.

In the last three years, the AG's Office has received more than 700 complaints about competitive suppliers engaging in aggressive and deceptive tactics. Complaints include suppliers pretending to be a utility company to induce customers to turn over sensitive information; suppliers harassing customers with repeated calls or home visits; and door-to-door salespeople forcing their way into elderly customers' homes and refusing to leave without a signed contract.

As a follow on to the study, the AG's Office will work with the Legislature, the Department of Public Utilities, the energy industry and civil rights and consumer advocates to close down the market for individual residential competitive electric supply in Massachusetts. The AG's Office does not propose any changes to Massachusetts cities' and towns' municipal aggregation programs or the markets for commercial and industrial competitive supply.

Today's announcement is part of the AG's ongoing efforts to address unfair and deceptive practices in the competitive electricity supply market, including ongoing investigations into third-party suppliers who violate the state's consumer protection laws.

* * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed through the Florida Courts E-Filing Portal to all parties listed below and others listed on the e-file portal this 22nd day of April, 2019.

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