BEFORE
THE FEDERAL TRADE COMMISSION

Green Guides Review

(16 CFR Part 260)

(Matter No. P952501)

FTC Case No. 2022-007

RIN3084-AB15

COMMENTS TO PROTECT CONSUMERS WITH MORE STRINGENT RULES FOR THE OFFERING OF CLAIMED GREEN ENERGY BY UTILITIES AND ENERGY MARKETERS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

Bruce Weston
Ohio Consumers' Counsel

Keith Layton (0071496)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Layton]: (614) 466-9571
keith.layton@occ.ohio.gov

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I. INTRODUCTION AND BACKGROUND

On December 20, 2022, the Federal Trade Commission ("FTC") issued a request for public comment on its Guides for the Use of Environmental Marketing Claims ("Green Guides").[1] In its request for public comment, the FTC is soliciting comments on the efficacy, costs, benefits, and regulatory impact of the Green Guides to determine whether to retain, modify, or rescind them.[2] The Office of the Ohio Consumers' Counsel ("OCC") urges the FTC to not only retain its Green Guides but to improve its Green Guides for the protection of consumers.

Specifically, the FTC invited comments on its Carbon Offset rules.[3] The FTC also invites comments on whether it should consider a rulemaking to establish independently enforceable

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[1] 87 Fed. Reg. 77,766 (Dec. 20, 2022).

[2] FTC-2022-007, Matter No. P952501, Dec. 20, 2022, Section II.

[3] *Id*. at Section III, B (1).

requirements related to unfair and deceptive environmental claims.[4] OCC answers with an emphatic "yes." The FTC should open a rulemaking for public protection.

Consumers should be protected from greenwashing, which is the conveying of a false impression or misleading information about how a company's products are claimed to be environmentally sound. Consequently, OCC recommends that the FTC act to further protect consumers from deceptive green energy sales practices. In this regard, the FTC's Carbon Offset rules (16 CFR 260.5) should be amended to expressly include utilities and energy marketers.

The FTC should also open a formal rulemaking to invite comments on how amended rules would apply to utilities and energy marketers. More specificity is needed to define improper utility and energy marketer sales practices. And reporting rules are needed for utilities and energy marketers regarding their selling of green generation and renewable energy credits ("RECs"). These new rules are needed to ensure that consumers are getting what they pay for. The Green Guides should also be updated to prevent natural gas power plant owners from portraying their services as green and environmentally friendly.

The Green Guides were first issued by the FTC in 1992.[5] They were most recently revised in 2012.[6]

OCC is the state representative of millions of Ohio residential utility consumers, per Ohio Revised Code Chapter 4911. OCC actively participates in numerous state and federal regulatory proceedings. OCC represents the Ohio residential utility consumers impacted by the FTC's decisions in this proceeding. OCC provides its recommendations to the FTC as follows.

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[4] *Id*. at Section III, A (19).

[5] 57 Fed. Reg. 36,363 (Aug. 13, 1992).

[6] 77 Fed. Reg. 62,122 (Oct. 11, 2012).

II. RECOMMENDATIONS TO PROTECT CONSUMERS

A. To protect public utility consumers, the FTC should specifically subject utilities and energy marketers to its Carbon Offset rules.

The FTC's 16 C.F.R. § 260.5 Carbon Offset rules read as follows:

> (a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.
>
> (b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.
>
> (c) It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.

These current requirements should be updated. The updates should make certain that public utilities and energy marketers are subject to the FTC's Carbon Offset rules. And, as discussed later, the FTC should adopt more specific reporting requirements for the provision of utilities' and energy marketers' green energy sales in states with electric competition.

On March 8, 2021, The Wall Street Journal reported that "U.S. consumers who signed up with retail energy companies that emerged from deregulation paid $19.2 billion more than they would have if they stuck with incumbent utilities from 2010 through 2019" (Attachment 1). These results were based on a Wall Street Journal analysis of available data from the U.S. Energy Information Administration. Moreover, recent shadow-billing data from Columbia Gas of Ohio reflects that consumers would have saved over $2.15 billion from April 1997 through March 2023 had they chosen Columbia's standard offer as opposed to receiving service from a marketer.

Additionally, there have been number of investigations in Ohio regarding deceptive energy marketing.[7]

Consumers need more information. And consumers need information that is truthful and readily available when choosing alternative energy suppliers in states with competition. The absence of sufficient and accurate information from alternative suppliers reduces the consumer benefits intended by the introduction of market competition. The FTC should make certain that its green energy Carbon Offset rules include utilities and energy marketers offering such green energy services in competitive markets.

On February 21, 2023, the Joint Consumer Groups[8] (NCLC among others) filed comments in this proceeding. In addition to OCC's recommendations, the FTC should adopt NCLC's recommendation to limit utilities' marketing of RECs to consumers. Among other things, NCLC states that:

> Deceptive claims associated with energy supply contracts, renewable energy certificates, gas and alternative gas utility services, and other products lead customers to purchase energy products that they do not need or overpay for home energy. Misleading environmental claims can also create suspicion and mistrust when consumers learn of the falsehoods, which

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[7] *See In the Matter of the Investigation of RPA Energy, Inc. d/b/a Green Choice Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 22-441-GE-COI; *In the Matter of the Commission's Investigation of XOOM Energy Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 22-267-GE-COI; *In the Matter of the Commission's Investigation Into SFE Energy Ohio, Inc. and Statewise Energy Ohio, LLC's Compliance with the Ohio Revised Code and Ohio Administrative Code and Potential Remedial Action*, Case No. 20-1216-GE-COI; *In the Matter of Commission's Investigation Into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI; *In the Matter of Commission's Investigation Into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-958-GE-COI; and *In the Matter of Commission's Investigation Into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI.

[8] FTC Matter No. P954501 - The National Consumer Law Center ("NCLC"), Public Citizen, the Maryland Energy Advocates Coalition, and the Pennsylvania Utility Law Project ("Joint Consumer Groups Comments").

> undermines support for effective measures to fight climate change.[9]

This concern by NCLC et al. should be heeded by the FTC. Again, the FTC should subject utilities and energy marketers to its Carbon Offset marketing requirements. As stated, the Green Guides and Carbon Offset rules should also be updated to prevent gas power plant owners and their agents from portraying their services as green and environmentally friendly. Generation products that have a carbon element should be expressly prohibited from being marketed as green energy resources to consumers.

NCLC's recommendations to the FTC included for the FTC to expand its considerations of how environmental marketing claims are interpreted to cover all reasonable interpretations of energy marketers' green energy claims. Reasonable consumer interpretations should include the individual circumstances of consumers whose ability to read or interpret green energy claims are affected by disabilities, limited English speaking proficiency, and low-income status (among others).

NCLC recommended that:

> Pursuant to 16 C.F.R. § 260.2, the marketers of products have the responsibility to determine that any reasonable interpretation of environmental marketing claims is truthful:
>
> > 'To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims.' 16 C.F.R. § 260.2.
>
> When evaluating 'all reasonable interpretations of their claims,' we urge the FTC to consider the wide variations in educational background, expertise in energy or environmental matters, the

[9] Joint Consumer Groups Comments, P.1.

needs of consumers with limited English proficiency, and the needs of consumers with disabilities that affect their ability to read or interpret environmental marketing claims. Where marketers engage in deceptive practices, exploiting the environmental concerns of low-income consumers and others, the FTC should exercise its enforcement authority against these bad actors.[10]

B. To protect utility consumers, the FTC should adopt green energy Carbon Offset reporting requirements to prohibit greenwashing.

The State of Ohio has promulgated several laws to protect utility consumers from deceptive sales practices, and the Public Utilities Commission of Ohio ("PUCO") has adopted rules related to those laws. Two of the rules adopted by the PUCO are as follows:

1) O.A.C. 4901:1-21-05[11] requires that:

> no [competitive retail electric service] CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES;[12] and

2) O.A.C. 4901:1-29-05(D)[13] provides that:

> no retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service.[14]

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[10] *Id.*

[11] Online: https://codes.ohio.gov/ohio-administrative-code/rule-4901:1-21-05.

[12] O.A.C. 4901:1-21-05(C) includes eleven identified "unfair, misleading, deceptive, or unconscionable acts or practices" that are prohibited, but the enumerated examples are not an exhaustive list. *See also* R.C. 4928.10 ("Rules adopted under this section shall include a prohibition against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of such a competitive retail electric service and in the administration of any contract for service, and also shall include additional consumer protections concerning all of the following…[enumerated list omitted]...").

[13] Online: https://codes.ohio.gov/ohio-administrative-code/rule-4901:1-29-05.

[14] O.A.C. 4901:1-29-05(D) includes eight identified "unfair, misleading, deceptive, or unconscionable acts or practices" that are prohibited, but the enumerated examples are not an exhaustive list. *See also* R.C. 4929.22 ("Rules adopted under this section shall include additional consumer protections concerning all of the following …[enumerated list omitted]...").

These Ohio rules assist in protecting consumers. But more is needed at the federal level by the FTC to protect consumers from unfair and unconscionable green energy sales tactics. Consequently, in response to its inquiry about whether to open a rulemaking, the FTC should initiate a rulemaking proceeding. The FTC should develop rules to protect consumers from greenwashing tactics by utilities and energy marketers.

Specifically, an FTC rulemaking should invite public comment on FTC-mandated annual utility reporting for green energy purchases and sales to consumers. At a minimum, the FTC should require utilities and energy marketers to report on the:

1) Annual megawatts of green energy purchases for each utility and energy marketer selling green energy service to consumers;
2) From whom the green energy was purchased;
3) The type of green energy purchased, *e.g*., solar, wind, hydro, etc.;
4) The level of electric storge purchased and a demonstration that the storage was not produced from carbon-related generation;
5) When the green generation megawatts were produced, when the green generation was purchased, and when that green energy was sold to consumers;
6) Total sales of green energy to consumers during each annual period and whether there was a green energy production shortfall; and
7) If there was a green energy production shortfall compared to total sales, how consumer rate refunds were effectuated to reflect the lower price of non-green energy.

Regarding RECs, NCLC et al. commented to the FTC that marketing terms should be prohibited if they are misleading because the REC is combined with a carbon generation product.

OCC agrees. The FTC should prohibit marketing that leads a consumer to believe they are buying renewable energy, if consumers in reality are buying electricity from their local utility grid plus a REC. As NCLC et al. states:

> Competitive energy supply companies and their agents should not be allowed to claim or imply that the regular energy from the electric grid (which is mostly generated with fossil fuels) PLUS a REC somehow equals "green power" or 100% renewable energy. The REC might do little or nothing to balance out the use of non-renewable electricity, and the customer is likely to be paying more attention to the way that they believe the electricity itself is generated. When the thing that is being sold is the electricity itself, it is deceptive to imply that this electricity has somehow transformed into renewable energy through the addition of the REC.[15]

To protect consumers, NCLC recommended that the following rule be adopted concerning utility and energy marketers' provision of RECs:

Section 260.xx, Non-Utility Energy Supply Renewable Energy Claims

- a) It is deceptive for a non-utility energy supply company (also known as competitive energy supply company or alternative retail energy supply company) or its agent to misrepresent, directly or by implication, that:
  - i) The company will directly supply energy generated with renewable resources to the customer's location, or
  - ii) There will be any change to the amount of renewable energy that will be supplied directly to the customer or used by the customer, or
  - iii) Purchasing the company's energy supply or service will cause a reduction in carbon emissions, greenhouse gas emissions, or the emission of other pollutants.
- b) It is a deceptive practice for a non-utility energy supply company to use climate-friendly terms such as "green power," "Clean Energy," "Carbon Free" or "Pollution Free" to describe electricity or electrical service, when the electricity itself is the product being marketed and sold to the customer.
- c) Any claim of environmental benefit that is based on the purchase of renewable energy certificates (RECs) must clearly state that:
  - i) The electricity in the customer's home or business will not change, and

[15] Joint Consumer Groups, P. 3.

ii) The contract for electric supply includes the purchase of RECs, which each represent a unit of renewable energy generated anywhere in the United States.

d) It is deceptive for a non-utility energy supply company to misrepresent, directly or by implication, that the renewable energy represented by the RECs is created with a particular type of renewable resource, such as solar or wind, if the REC in fact originated from another type or types of renewable energy resource.[16]

Again, OCC supports the recommendation.

In addition to these laudable requirements proposed by NCLC, the FTC should adopt utility and energy marketer annual reporting requirements for RECs. At a minimum, these reporting requirements should include:

1) Annual number of RECs purchased;

2) From whom the REC was purchased;

3) The type of green energy purchased associated with the REC, *e.g.*, solar, wind, hydro, etc.; and

4) When the REC green generation was produced, when the RECs were purchased by consumers, and the average amount of time between the utility or energy marketer purchase of the RECs and delivery to consumers.

For the timing of the RECs purchased, the FTC should require that the RECs purchased by a utility or energy marketer be delivered to consumers at a time near its purchase. It makes little sense to sell RECs to consumers, under the guise of promoting clean energy, where the RECs were produced a year or even several years ago.

Finally, the FTC's rulemaking should invite public comment on proposed monetary penalties for those providers who deceive the public on these issues. These penalties should be

[16] Joint Consumer Groups Comments P. 5.

set at a level significant enough to dissuade utilities and energy marketers from viewing penalties as merely a cost of doing business.

III. CONCLUSION

OCC appreciates the FTC for this opportunity for stakeholders to comment on these important consumer matters. To further protect consumers, the FTC should specifically include the marketing of green energy products by utilities and energy marketers in its Carbon Offset rules. The FTC, through a rulemaking process, should adopt utility and energy marketer green energy reporting requirements. The FTC should adopt NCLC's proposed rules on how RECs are provided to consumers. Finally, the FTC should adopt monetary penalties for any utilities and energy marketers that use deceptive greenwashing tactics against consumers.

Respectfully submitted,

Bruce Weston
Ohio Consumers' Counsel

/s/ Keith Layton
Keith Layton (0071496)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Layton]: (614) 466-9571
keith.layton@occ.ohio.gov

Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn't – Wall Street Journal
March 8, 2021

Scott Patterson & Tom McGinty

Twenty years ago, a new breed of energy companies promised consumers that deregulation of the electricity industry would cut their power bills.

The opposite happened.

U.S. consumers who signed up with retail energy companies that emerged from deregulation paid $19.2 billion more than they would have if they'd stuck with incumbent utilities from 2010 through 2019, a Wall Street Journal analysis of U.S. Energy Information Administration data found.

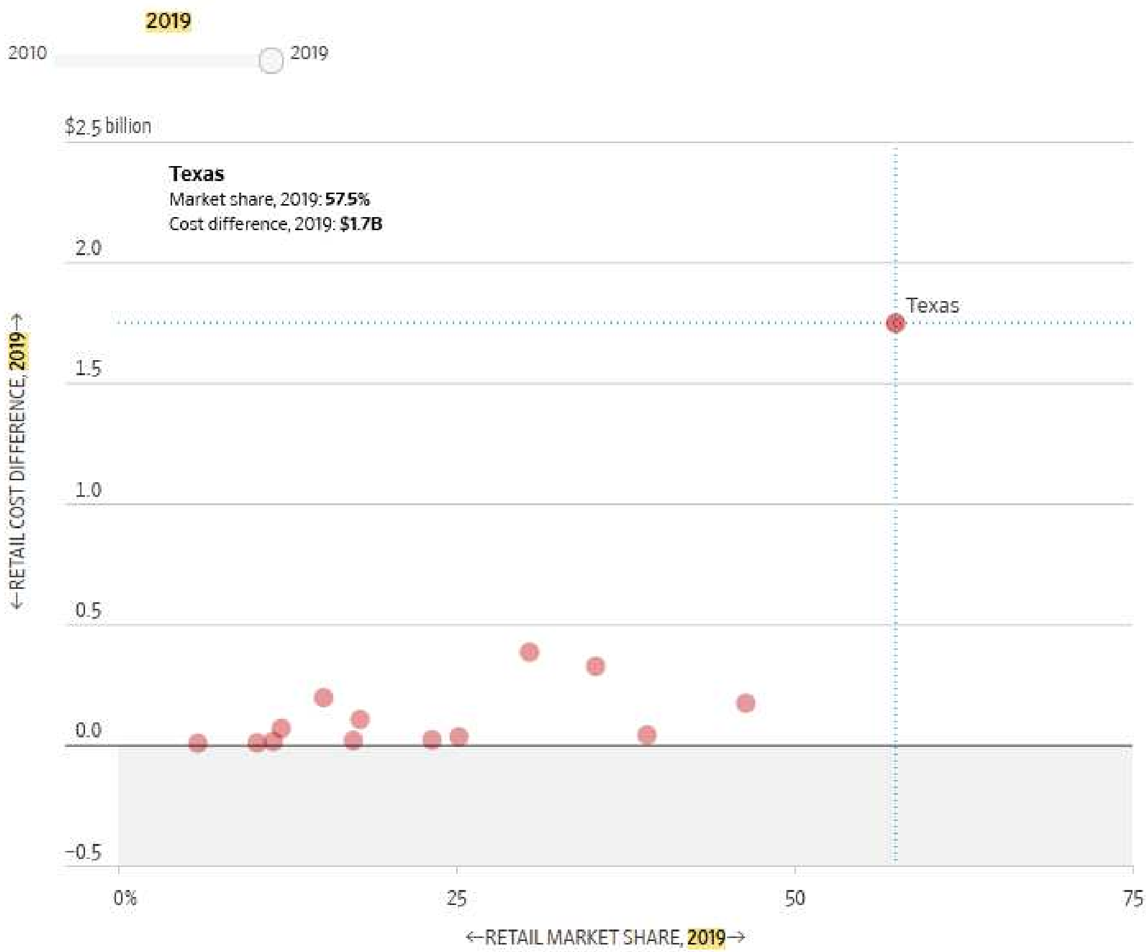
Retail energy companies buy electricity from generators—power-plant operators, wind farms, solar-power firms—and sell it to consumers, usually over the local utilities' wires. Giving consumers a choice between their old utilities and new rivals, the argument for deregulation went, would create competitive pricing.

But in nearly every state, they have charged more than their incumbent utilities in each of the five years from 2015 through 2019, the Journal analysis found. The Journal's analysis of power prices in 13 states and the District of Columbia excluded other states where retail companies supplied less than 1% of residential electricity in 2019.

Consumers on retail plans paid $1.9 billion extra in Pennsylvania and $1.7 billion in New York during the 10-year period examined by the Journal. In 2019, consumers paid $3.1 billion more in D.C. and the 13 states together, the biggest single-year difference ever over what they would have paid their utilities. On average across D.C. and the states, retail electricity cost 14% more than utility power in 2019, an all-time high.

Overcharged

From 2010 to 2019, **retail electricity providers in 13 states and the District of Columbia** charged $19.2 billion more than what regulated utilities would have. Retail providers in Texas have held nearly 60% of the state's electricity market and charged the most in markups over their regulated competitors.



Source: WSJ analysis of U.S. Energy Information Administration data

In Texas, where retail-electricity deregulation has gone furthest, residential consumers who signed up with retailers paid $12.6 billion more in the 10 years through 2019 than if they had paid utilities' rates, according to the Journal's analysis.

Texas also deregulated electricity generation—the production of electricity by power plants—and allows the wholesale-market price that power plants charge to go as high as $9,000 a megawatt-hour in times of scarcity, more than 400 times the 2020 average price of $21.18. Prices hit that cap on five days during the February deep freeze, and some retail customers who had opted for variable-rate plans were immediately hit with thousands of dollars of charges.

Retail power providers say their ability to buy and sell power at the best prices allows them to get cheaper energy and curbs the utilities' monopoly power. They also say competitive markets

for electricity can spark innovation in the power packages they provide, including the option to purchase plans that include clean-energy supply, giving consumers more choices.
Electricity deregulation worked for business. Federal data show it led to substantial savings for commercial and industrial power customers, whose large-scale electricity use gives them the incentive to shop around and seek expert guidance.

Regulated utilities, while cheaper for consumers, have struggled in many states with issues around reliability and maintenance. Consumers who are paying more for power through retail electricity suppliers still rely on the same power grid and usually the same power plants that customers of the regulated utility use.

Consumers can benefit from the deregulated marketplace by strategically shifting to suppliers with the lowest prices. “People who are effective at shopping are going to get the best price,” said Daniel Allegretti, a consultant for the Retail Energy Supply Association, an industry trade group, and a former employee of Enron Corp., which helped spawn the retail energy industry in the 1990s.

Many customers aren’t experts at reading the fine print in contracts that let retailers raise rates in ways they don’t expect, consumer advocates say. In most deregulated states, retailers’ customers get their power bills from the incumbent utility, rather than directly from the retail provider, leaving the perception for some consumers that the regulated provider is still overseeing the contract.

Mr. Allegretti said many retail firms would prefer to send the bills themselves, which he said would help develop their brands with consumers.

Watchdog groups, state attorneys general offices and state consumer advocates have complained about the retail power industry’s sales practices for years, saying some use low teaser rates to attract consumers who don't understand that rates could go up eventually or illegally switch people to their service without consent. Big retail companies such as NRG Energy Inc. concede there has been bad behavior by some competitors and say they are working to improve the industry’s reputation, such as efforts to make customer bills more transparent.

“After 20 years, I think you’d want to know, has this worked out for residential customers?” said Paula Carmody, who served for 14 years until this January as head of Maryland’s Office of People’s Counsel, an independent state agency that represents residential utility consumers. “From the information we have, it’s not working.”

Some retailers have targeted the elderly as well as poor and often heavily minority neighborhoods where electricity bills account for larger shares of income. “Low-income customers are much more receptive to the message, ‘Hey you can save some money here,’ ” said Mr. Allegretti. Rules that encourage retail firms’ ability to market their services to low-income communities give customers in those neighborhoods the ability to take advantage of the cost savings they promise, he said.

Mr. Medley's switch

Laurel Peltier, an environmental writer in Baltimore, was helping a local church's parishioners with financial issues in 2016 when she saw some had skyrocketing electricity bills. "I'm looking at these bills, and I'm confused," she said. She realized many—often minorities or cash-strapped elderly consumers—had signed up with retailers and were paying much more than if they had signed up with Baltimore Gas & Electric Co., the incumbent utility for the city of Baltimore.

One she helped recently was retiree Jessie Medley, 76. Ms. Peltier determined that over three years, Mr. Medley had paid retail energy supplier IDT Energy Inc. more than $2,000 in excess of what he would have paid the utility. He said he didn't realize he had been switched to IDT because his bills still said BGE, which was handling collection for the retail energy company. Mr. Medley, who is on Social Security and frequently gets meals from a local food pantry, said an IDT sales representative told him he would save money if he switched plans. He said he didn't agree to change plans and didn't sign any forms, but he was switched anyway. After a Maryland Public Service Commission investigation determined IDT couldn't verify certain information about Mr. Medley's decision to sign up for their service, the company agreed to repay Mr. Medley $2,635.10.

An IDT spokesman said that the company considered Mr. Medley's enrollment valid and that his monthly bills identified IDT. Mr. Medley's bills, which the Journal reviewed, were delivered by BGE and prominently displayed the name of the utility as well as IDT.

The spokesman said a Maryland Public Service Commission rejection of an enrollment "doesn't necessarily mean fraud was involved" and that the commission rejects enrollments for a variety of reasons, such as incorrect formatting of paperwork.

The retail power industry now ranges from relatively small players like Genie Energy Ltd. , which owns IDT and is publicly traded with a stock-market value of about $200 million, to the nation's biggest players in the electricity industry, such as NRG Energy and Exelon Corp. NRG provides power to some six million customers in the U.S. and Canada and has grown sharply in recent years with acquisitions of rival suppliers such as Xoom Energy and Direct Energy Services LLC. Exelon, with a market capitalization of about $40 billion, became a major player in the retail business with its $8 billion purchase of Constellation Energy Group in 2012. More than 230 retail providers reported selling residential electricity in 2019, with the biggest 20 accounting for 75% of retail sales. Consolidation in the industry means many companies in the market are owned by the same parent. In Texas, marketers owned by NRG and Vistra Corp. accounted for three-quarters of the retail electricity sold in the state in 2019.

Deregulation of retail electricity went further in Texas than any other state. Nearly 60% of residents are required to shop for their electricity on the retail market, with no option of remaining with a traditional utility. Because retailers don't sell in the areas that are served by utilities in Texas, it isn't possible to make direct rate comparisons; the Journal analysis compared Texas' statewide average cost of power sold in the deregulated areas with the statewide average cost of full-service utilities.

In D.C. and the other 12 deregulated states in the Journal's analysis, residents could still opt to stay with their incumbent utilities. In 2010, retailers in D.C. and those states supplied 32 million megawatt-hours of residential power, or about 10% of the total. In 2019, they sold 86 million megawatt-hours, 28% of all residential electricity.

Deregulation wave

Before deregulation, a consumer usually had one option for electricity: Buy from the regulated-monopoly utility. Government officials let the utilities charge enough to cover costs and make a modest profit.

The retail energy industry began in the 1990s following a wave of deregulation of businesses ranging from railroads to telecommunications to natural gas. Eventually, at least 18 states deregulated retail residential electricity to varying degrees.

The retail power industry largely languished until about a decade ago, when many of those states adopted a regulation called "purchase of receivables," or POR. Under the rule, which regulators implemented as a way to encourage retailers to sell their service to more consumers, utilities became responsible for collecting unpaid residential customer bills. The retail power companies pay a small fee for the service.

Because they were no longer responsible for unpaid bills, retail power companies didn't have to worry about the risks of signing up residential consumers, said Mr. Allegretti, the industry consultant. The POR rule, he said, "makes the retail supplier completely indifferent as to the credit risk of certain customers, and that includes low-income neighborhoods."

James Bride, president of Energy Tariff Experts, an energy-industry consultant, said: "Some of the POR programs were designed without anticipating that some bad actors would charge really high rates."

Many retail energy companies use teaser rates to persuade households to switch to their services. Variable rates often kick in several months after service begins and can change month to month.

They sometimes use deceptive marketing practices—such as promising to deliver long-term cheap power—then raise rates after a few months, according to regulators, customer complaints and multiple lawsuits against some companies in the industry. In online descriptions of their power plans, the companies typically disclose they have the right to raise prices, but the details are often vague and buried in the fine print.

Mr. Allegretti and other industry backers say residential customers need better education from the industry and regulators about how the retail-electricity market works and how it can benefit them. “The more educated the customers are, the better they do,” he said.

Some consumers the Journal interviewed said they weren’t actively monitoring their month-to-month charges and didn’t realize their rates were creeping up.

In Massachusetts, the state attorney general’s office in 2019 said residents in the past four years had filed more than 1,000 complaints about retail energy suppliers engaging in “aggressive and deceptive tactics.” Retail provider Starion Energy Inc., in response to a complaint by the Massachusetts attorney general’s office, agreed in August 2020 to pay up to $10 million for promising big savings while instead raising prices through variable-rate contracts.

According to a script used by telemarketers to sell Starion’s services, potential customers were told “starting next month you’re able to receive a rate reduction” on an electric bill, according to the complaint. The script didn’t disclose that the rate reduction would expire after one or two months, after which charges could more than double.

A Starion representative said it honored its settlement agreement and is focused on serving its current customers with new products.

The Public Utilities Commission of Ohio is investigating whether retail energy providers PALMco Energy and Verde Energy USA, a Spark Energy Inc. affiliate, provided misleading information about variable rates, among other possible violations. The two providers were “very misleading about the nature of the price and the variable nature of it,” said Matt Schilling, public-affairs director with the agency, who said the rate they eventually charged was as much as four times the standard utility charge.

PALMco, which has left the Ohio market, declined to comment on any litigation pending before the Ohio commission or on settlement discussions and said it has refunded consumers in the state hundreds of thousands of dollars. Verde didn’t respond to requests for comment. Verde didn’t dispute the violations detailed in a staff report on its investigation, according to the commission’s order on the case.

NRG’s Xoom Energy LLC is a defendant in a New York class-action lawsuit over claims it overcharged customers for gas and electricity.

Connecticut’s utility regulatory authority in 2019 fined Direct Energy $1.5 million for engaging in unfair and deceptive marketing practices, among other things.

Agents for Direct Energy, also owned by NRG, told consumers that the rate a local utility charged was variable, when it actually was a fixed rate, according to the Connecticut agency's investigation. "Now, if you haven't chosen a supplier, sir, then your rate right now is a variable rate on your bill. It changes month to month," a Direct Energy agent told a consumer, referring to a competing utility company, according to the investigation.

Direct Energy agents would at times describe themselves as "an energy adviser...working with your electric company," rather than saying they worked for a competitor, according to the investigation. The agents would also suggest that the customer isn't switching to a different service provider. In response to a customer stating that "I'm not interested in changing," an agent said: "Well, no, you don't change anything. Everything stays the same."

An NRG spokeswoman said: "We are a fierce advocate for consumer protection, and we support action that holds suppliers accountable. The alleged violations pertaining to Xoom Energy and Direct Energy occurred prior to their acquisition by NRG."

NRG CEO Mauricio Gutierrez said in a written statement to the Journal that while there are some "non-reputable actors" in the retail energy industry, the solution "is not to deprive customers of choices but instead taking meaningful steps to empower and inform customers of their rights and options."

Minority impact

Minorities often represent a disproportionate share of retail energy consumers. About 12% of New York City's households are in ZIP Codes where Black and Hispanic people make up more than half of the population, but those ZIP Codes accounted for 47% of the retail suppliers' electricity customers, according to the Journal's analysis of data from the U.S. Census Bureau and research done in 2016 by the Public Utility Law Project, a consumer advocacy organization. Those customers paid $63 million more for their electricity that year than they would have if they had chosen to be served by the regional utility, Consolidated Edison Inc., the analysis shows.

Illinois in a 2018 lawsuit said IDT carried out a "particularly egregious marketing scheme that disproportionately impacted African-American consumers on the South and West sides of Chicago." IDT "bombarded customers with false claims of lower electricity rates and savings," mainly through telephone calls and door-to-door sales, the Illinois attorney general's office said in a news release.

The state's investigation found that nine of 10 ZIP Codes with the highest IDT enrollments were in neighborhoods where the population was more than 90% Black. In a settlement, IDT, which didn't admit wrongdoing, agreed to refund $3 million to more than 176,000 customers.
A 2019 analysis commissioned by the Connecticut Office of Consumer Counsel looked at one month of retail supplier bills in select communities in which people of color made up more than half the population. In those communities, the poorest households—families that got

assistance from the state for their electric bills known as “hardship customers”—paid premiums on their bills that were on average nearly 50% higher than other customers for retail providers. In these communities, 45% of the hardship families got their power from retail energy companies. Statewide, 35% of hardship households got their electricity from these companies, compared with 27% of non-hardship customers that did, the analysis found. None of the communities surveyed saw the poorest families get lower rates than other customers.

Susan Baldwin, an independent consultant and expert in U.S. energy policy who has frequently testified in state regulatory proceedings on behalf of consumer advocates, did the analysis and has done studies of retail energy company practices in several other states. She said billing data shows that people of color tend to use retail energy companies and pay more for their power. “The most vulnerable consumers are harmed the most,” she said.

‘Sick of it’

Some states, such as New York, Illinois and Ohio, have adopted policies that restrict the ability of retail energy suppliers to sell to consumers who get state aid for their utility bills. Maryland has considered enacting a similar policy. From 2015 through 2019, residential retail electricity consumers in Maryland paid $399 million more than they would have paid their utility company, according to the Journal’s analysis.

Betty Burrows, a 72-year-old retiree in Baltimore, started getting electricity from IDT in January 2020—without her consent, she said. She asked the company to cancel the contract in February. IDT complied, and she went back to getting power from her incumbent utility, Baltimore Gas & Electric.

In August, her account illegally switched back to IDT, again without her consent, according to the Maryland Public Service Commission, which investigated the matter. IDT said she had enrolled in August online, but the email address and phone number used for the enrollment weren’t hers, according to the commission’s investigation. Ms. Burrows said she doesn’t own a computer.

Over the course of the year, Ms. Burrows paid $267 more for electricity and natural gas than she would have paid her incumbent utility, the commission found. IDT refunded that amount after the commission’s investigation. An IDT spokesman said the retailer terminated the agent who it said had fraudulently signed her up in August.

“It’s just hard on some people,” Ms. Burrows said, adding that she is concerned she might get switched again. “I’m sick of it.”