

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Competitive Market Initiatives) D.T.E. 01-54 (Phase II)
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INITIAL COMMENTS OF COMPETITIVE SUPPLIERS REGARDING
PHASE II ISSUES AND INTERNET-BASED CUSTOMER AUTHORIZATIONS

INTRODUCTION

AES New Energy, Inc., Green Mountain Energy Company, National Energy Marketers Association, The NewPower Company, SmartEnergy, Inc., and Strategic Energy Ltd., (together the “Competitive Suppliers”) commend the Department of Telecommunications and Energy (“Department” or “DTE”) for initiating this proceeding and for the steps it has taken to date to foster the development of the competitive market. As requested in the hearing officer’s memo of December 11, 2001, we have set forth below our initial comments regarding the Phase II Issues and comments regarding internet-based customer authorization.

I. PHASE II ISSUES

A. Electric Distribution Companies as Electricity Brokers

1. Internet-Based Auctions

Distribution companies should not participate in Internet-based auction processes as a means of trying to move default service customers to competitive suppliers. Such proactive marketing would be inappropriate for distribution companies in the restructured marketplace, where licensed suppliers and brokers perform the marketing function.

Endorsing one specific marketing technology over others would also be arbitrary. Sharing customer data with suppliers and helping to educate consumers about the marketplace are appropriate roles for distribution companies; leveraging utility brands and customer service relationships to market on behalf of suppliers through web-based auctions is not.

The Competitive Suppliers applaud the Department and the distribution companies for taking steps to provide customer data to suppliers and brokers. Making customer information available to suppliers is consistent with the Restructuring Act, and by taking actions such as providing Customer Information Lists, inserting educational materials in bills, holding seminars where customers can meet suppliers, and similar measures, the distribution companies will increase market opportunities for electricity consumers. Some distribution companies, in particular, have done commendable work in this regard.

Providing information and helping to educate consumers are appropriate activities for distribution companies, marketing on behalf of suppliers is not. Under the Restructuring Act, the Department licenses suppliers and brokers whose role is to market retail electricity services to consumers. Under the Act, distribution companies no longer compete to provide retail supply to customers. A proposal to place the distribution companies back into the pre-Act role of marketing retail services for any entity is therefore misguided, regardless of whether the technology used is a web-enabled brokerage platform.

The Competitive Suppliers caution the Department not to endorse one specific marketing technology over others. The Competitive Suppliers recognize the potential

benefits and costs of Internet-based auctions. The Competitive Suppliers also recognize the potential usefulness of other marketing vehicles, such as direct mail and telemarketing. Certain companies are already offering electric supply through Internet-based auctions that match consumers with suppliers. The marketplace, free of a Departmental mandate and distribution company endorsements, should determine whether this web-based marketing technology adds value for consumers and suppliers.

2. Direct Authorization to Switch Customers

It can be appropriate for distribution companies to obtain direct authorization to switch customers to competitive suppliers, but only under limited circumstances, as the ConEd program is described below. First, distribution companies should perform this function only for residential customers. Second, the distribution company role should be passive, limited to informing the customer of a choice and implementing the customer's decision to switch. The distribution companies should not engage in active marketing of supplier offerings. Finally, it is important to note that this approach may help to move a limited number of customers into the competitive market, but is not a substitute for the more substantial efforts to stimulate the market that are described elsewhere in these comments.

Consolidate Edison ("ConEd") offers a program like this in New York. ConEd's program, known as the "Ease of Enrollment Program," works as follows: when any ConEd bundled service customer (one who is not on competitive supply) calls the ConEd customer service center with a high bill complaint, or if a customer calls to start service with ConEd (e.g., if the customer has just moved into the ConEd territory), the customer

is immediately made aware of the existence of competitive suppliers. If the customer authorizes a switch, he is switched to a competitive supplier in the same phone call.

The ConEd call center staff describes just one supplier offering to each customer. The supplier offerings are described on a rotating basis.

All residential suppliers in the ConEd territory were given the opportunity to participate in the program. Five of the nine suppliers that are offering service to residential customers agreed to participate.

The program is analogous to the way that new telephone customers choose a long distance carrier in Massachusetts today. Rather than being assigned to a “default” long distance carrier, customers are informed of competitive options and asked to pick one.

The ConEd Ease of Enrollment Program has had some, but modest, success in moving customers into the competitive market. It is worth exploring, but is not a substitute for other approaches to moving the market suggested below.

3. Assignment of Default Service Customers to Competitive Suppliers

In a fully competitive market, the commenting parties envision virtually all customers being provided with energy and the full range of generation-related services by competitive suppliers. In this type of environment, distribution companies will no longer have an obligation to serve, but rather an obligation to deliver, customers’ energy requirements. As such, distribution companies will no longer provide generation service, and those wanting to compete in the retail energy market will do so through a competitive affiliate.

Customer assignment is the most effective mechanism to ensure that residential customers classes complete the transition to a fully competitive market. While such

intervention is not appropriate for the commercial and industrial market because that market has matured more quickly in Massachusetts, assignment is imperative as a means to draw both residential consumers and residential suppliers into the market. Therefore, residential customer assignment should be implemented for Default Service customers in the near-term, with a reasonable transition period, and for Standard Offer Service customers beginning March 1, 2005. The Competitive Suppliers do not recommend commercial and industrial assignment.

The assignment model has been proven successful in Georgia. In order to ensure a complete and successful transition to the competitive market, Georgia regulators agreed that the best public policy was to assign all customers who had not proactively chosen a new supplier by a “date certain”. Implementation of this policy was successful for several reasons. First, customers were effectively assigned and served by multiple competitive suppliers. Second, competitive suppliers educated consumers through massive marketing campaigns designed to encourage switching in advance of the “date certain assignment” (because assignment was based on market share). In excess of 80% of customers had proactively chosen a new competitive supplier before the assignment occurred. Massachusetts is well positioned to pilot this proven model with Default Service customers.

During the transition to a competitive marketplace, legislators, regulators and consumer advocates have been understandably concerned about ensuring customers continued generation service at a reasonable price, and giving them time to adjust to the notion and the logistics of a competitive environment – including assignment. The Competitive Suppliers recognize the fact that the competitive retail market has been

particularly slow to develop for certain market sectors in Massachusetts, and offer the Pennsylvania experience as another effective means of proactively moving toward a sustainable competitive market.

Specifically, Green Mountain Energy Company and The New Power Company are serving thousands of residential customers under a Commission-sponsored program in PECO's service territory. Under this program, PECO issued an RFP and conducted negotiations with several suppliers. The Commission reviewed and approved the RFP, participated in the negotiations, and ultimately, entered an Order approving the winning bids. This program makes a measurable step toward a fully competitive market because customers are served at retail (not wholesale) by winning bidders, because supplier selection occurred through an open RFP process, and because multiple suppliers were selected to serve large groups of customers.

The New Power Company and Green Mountain have invested considerable time and money in explaining both the supplier and consumer selection process to their new customers, most of whom welcome the opportunity to take generation service from a new company. To the extent that a customer does not wish to obtain the benefits of such a program, Pennsylvania regulations permit the customer to select another provider at any time – further supporting the fact that this is a low-risk option for consumers to experience the competitive market. The residential competitive suppliers that are participating in the PECO program would be interested in providing a presentation, detailing their experience, to the Department at its convenience.

B. Customer Enrollment

1. Account Numbers on Customer Information Lists

In order to ensure an effective opt-out process, each customer record on the Customer Information List must be associated with a unique identifier. The opt-out process adopted by the Department enables customers to opt-out of the Customer Information Lists at any time. Competitive Market Initiatives, D.T.E. 01-54-A, pp. 26 – 27 (October 15, 2001). There will be customers who are included on the initial version of the list who opt to be excluded from subsequent versions. Suppliers must be able to identify those customers in order to remove them from their marketing databases, and thus honor the customers' choice to opt-out. Unless there is a unique identifier associated with each customer record, it will be virtually impossible to ensure that every customer's opt-out choice is honored.

From the suppliers' perspective, there is no reason that the identifier on the Customer Lists must be the customer account number. In fact, by restricting access to account numbers, and requiring those numbers for customer enrollment, the Department has protected customers against unauthorized switches. These protections should continue. The identifier should be a separate, unique number in a suitable electronic format for suppliers to scrub their existing lists.

In the Customer Information List Working Group, two utilities have indicated their willingness to include unique customer identifiers in the Customer Information Lists. Two other utilities have indicated a reluctance to include unique customer identifiers because of the cost of doing so given their information systems.

It is necessary to include unique customer identifiers in the Customer Information Lists in order to implement the Department's opt-out process. Therefore, the utilities should be directed to include such identifiers in the Lists. Uniformity across utilities is key. Utilities that are unable to create an identifier other than the account number could be allowed to use the account numbers for this purpose, although this is a less desirable solution.

There are two related issues that warrant further discussion here. First, when the utilities generate subsequent versions of the Customer Information Lists, they should provide suppliers with two lists: 1) a complete new list of all customers that have not chosen to opt-out; and 2) a "scrub" list of customers that were included in the previous version of the list, but have since chosen to opt-out. It is this scrub list, plus the customer identifier, that will enable suppliers to ensure that customer opt-out requests are honored.

Second, while the Competitive Suppliers support the use of the customer account numbers as a slamming protection for standard enrollments, there are two special categories of customer enrollment that require a different treatment of customer account numbers. The first case is municipal aggregation. There, as other states such as Ohio have found, it is not practical to require the supplier serving the aggregation to individually obtain the account number from each customer. Instead, the numbers for only those customers who are not with a competitive supplier are provided en masse to the opt out aggregator. In the case of municipal aggregation, the municipality's decision to aggregate, coupled with an individual customer's choice not to opt-out of that aggregation, or not to have already chosen a competitive supplier constitutes customer

authorization to release the account number. Another special case that would require similar treatment of account numbers is customer assignment, which is discussed above.

2. Customer Account Name

The requirement that the first four-characters of a customer's account name be provided for enrollment should immediately be discarded for all commercial and industrial accounts. For residential customers the DTE should convene a technical session to address possible alternatives to the four-character code. The four-character code was not required in the Restructuring Act or in the Rules Governing the Restructuring of the Electric Industry (220 CMR 11:00), but in the Electronic Data Interchange (EDI) standards approved by the DTE. Unintentionally, the four-character code has become a hindrance to retail access for customers with multiple accounts.

The Competitive Suppliers understand that the intent of the four-character code requirement was to minimize the possibility of accidental switching that could occur by inaccurate data entry. By requiring the four-character code, an incorrectly entered account number belonging to a valid account would not be switched because the four-character name would, most likely, not match. While simple in concept, the requirement is too often problematic, especially for commercial and industrial accounts.

Businesses often have multiple accounts, which they track by account number, as the Distribution Companies require only the account number when bills are paid. When switching to a Competitive Supplier these businesses generally do not know what four-character code matches each account, or even where to find the four-character codes. Some businesses have scores of accounts, and the need to find all the four-character codes has led to many switching delays. These delays harm the consumers who must

wait to receive the lower rates they were expecting during the next billing cycle, and harm the retail supplier who are left holding power contracts without the concomitant demand.

Sufficient consumer protections against unauthorized switching exist in the current regulations. 220 CMR 11:00, section 11:07 (3)(b) specifies refunds to consumers and distribution companies to be paid by a Competitive Supplier in the event a customer is switched without authorization. Section 11:07 (3)(c) specifies civil penalties against Competitive Suppliers who repeatedly switch customers without the proper authorization.

As the financial risk of accidental switching is borne by the Competitive Suppliers, the management of this risk should also be borne by the Competitive Suppliers, and not by the Distribution Companies. There are simple data-entry verification techniques, familiar to anyone who has ever created a password on their computer, which can be used by Competitive Suppliers to minimize accidental switching. Any Competitive Supplier that wants to avoid the cost of accidental switching should employ these techniques. Distribution Companies and the DTE should ensure that the existing rules against unauthorized switching in 220 CMR 11:00 are enforced to protect consumers against the intentional switching of consumers without authorization.

C. Customer Information List Issues

1. Customer Service Delivery Points

The DTE should require that Customer Information Lists include the delivery Zone for every customer and the delivery Node for Commercial and Industrial customers. In addition, the Lists should indicate whether customers have primary or secondary voltage.

The ISO New England has committed to a new wholesale market structure, the Standard Market Design (SMD), which will introduce Locational Marginal Pricing (LMP) to the New England Power Pool. With LMP, the cost of serving retail customers across the state will vary by Node¹ and by Zone². Massachusetts will be divided into three zones, and the Zones do not conform to Distribution Company territories³. For a Competitive Supplier, required in the future to purchase wholesale electricity at a Zonal price, it will be just as important to know in what Zone each prospective customer is located as it is to know which Distribution Company serves that customer. Because it will be possible to purchase through the ISO at the Nodal price it will be important to know from what Node a customer is drawing electricity. This is especially true for customers that can qualify for load response programs because they can sell back to the pool at the Nodal price by shedding load. To improve the development of retail access and load response the DTE should require that Customer Information Lists indicate Zone for all customers and Node for Commercial and Industrial customers.

The Department, along with distribution companies and suppliers, has considered the value of including customers' voltage information on the Customer Information Lists. The Suppliers wish to restate the importance of including information that indicates whether or not customers on the Lists have primary or secondary voltage. Without such voltage data, competitive suppliers cannot accurately determine the cost of providing electricity to customers.

¹ There will be 421 Nodes (each a defined electrical bus) in New England.

² There will be eight Zones in New England. Zonal prices will equal the weighted average of all the nodal prices inside that zone.

³ (1)Western and Central Mass; (2) Northeast Mass. & Boston; (3) Southeast Mass.

2. Competitive Supply Customers

The Customer Information Lists should be expanded to include information about customers who receive generation service from competitive suppliers. All customers should be included in the lists unless they have chosen to opt-out. The lists should indicate whether each customer is receiving Standard Offer Service, Default Service, or competitive supply.

D. Other Issues

1. Use of the Internet for Data Transfer

Distribution companies should use the Internet for the transmission of customer data between the companies and competitive suppliers.

Generally speaking, before the existence of the World Wide Web, a value-added network (VAN) was (is) provided by a private network provider that suppliers and utilities would contract with to facilitate the electronic data interchange between the utility and the competitive supplier. With that said, since the development of the Internet many companies including the interstate gas pipelines, marketers and other energy companies have found it more cost efficient to move their data over the Internet instead of paying minimum monthly fees and per-character charges found in typical VAN contracts.

With the new technologies that have been developed for the Internet such as XML⁴ and Java⁵ the internet can provide all of the functions needed for energy types of transactions, that are offered by the older more traditional EDI and be more economical

⁴ XML is a universal format for structured documents and data on the World Wide Web.

⁵ Java is a platform-independent programming language with built-in security and network communications capabilities

for marketers, especially those providing retail residential service, or contemplating providing retail residential products and services to the marketplace.

Finally, from practical experience, another issue has arisen for companies that have used third parties for communication to utilities. Competitive suppliers have had to manage the quality control of the third party vendor in what is sent to the utility and vice versa. The supplier has to depend on the third party vendor not only to send the information correctly but also to make corrections and provide a timely response to the utility. The same can be said for the utility as they are using the same type (and sometimes the same) vendor⁶.

Today, in the gas industry the Internet is used for a whole host of transactions between the Interstate Pipelines and the competitive marketplace. This data is protected with encryption and has been recognized by regulators as being an acceptable way to communicate. Therefore, we strongly urge the Department (DTE) to make a policy that the Internet be used for the transmission of data between the utilities and the competitive suppliers.

II. INTERNET-BASED CUSTOMER AUTHORIZATIONS

A primary goal of restructured electricity markets is to enable consumers to make educated decisions that reflect their personal preferences. It follows that the competitive marketplace should enable consumers to effectuate their decisions through mechanisms that likewise suit their personal preferences. For an increasing number of consumers, the Internet provides a safe, reliable, and convenient mechanism. The Competitive Suppliers seek to offer flexible switching options without compromising consumer protection or convenience. The Competitive Suppliers appreciate the opportunity to offer the

following specific suggestions to implement a safe, reliable, and convenient electronic enrollment process.

Doing business via the Internet is commonplace in today's market. The volume of consumer Internet-based transactions such as purchasing new cars, filing federal income tax returns, paying bills, and securing loans demonstrates the endorsement of Internet commerce by consumers, business and government. At last count, forty-four (44) states recognize some form of "electronic signature" in government, business, and consumer transactions via computer. The Internet enrollment option is simple, secure and verifiable, provides greater convenience to consumers, and reduces the cost to suppliers of acquiring customers. Over time, this reduction in cost may help keep electric rates lower for all consumers.

At present, consumers in several states are enrolling with electricity suppliers via the Internet. Most notably, New Jersey implemented an Internet enrollment program after several months of deliberation. In the end, all parties agreed that a few relatively simple guidelines were sufficient to ensure consumer protection, and that the potential gains clearly outweighed the perceived risks. Based on experience in New Jersey, Ohio and other markets, the Competitive Suppliers offer the following specific guidelines

(adopted in New Jersey) for an Internet enrollment program:

- 1) All electronic enrollment information transfer between the customer and Supplier must be by an encrypted transaction to ensure privacy and security of customer information.
- 2) The supplier's Internet site, at which the enrollment takes place, must contain the full terms and conditions of the contract. During the Internet enrollment process, the customer shall be required to pass through a screen that contains the terms and conditions. The customer shall be directed to read the terms and conditions.

⁶ For proprietary reasons the names of vendors and specific utilities are not disclosed.

- 3) The Internet enrollment procedure shall prompt the customer to print or save the terms and conditions to which the customer assents.
- 4) The Internet enrollment procedure shall require the customer to include, at a minimum, his/her name, address, utility account number, e-mail address, In addition, the Internet enrollment procedure shall require the customer to indicate that he/she has the authority to change electric suppliers for the account listed, and that he/she has read, understands and agrees to the terms and conditions of the contract. Such acceptance will be retained in a retrievable format.
- 5) After the customer consents the customer shall be directed to read and respond to an explicit statement that the customer is voluntarily authorizing a switch in suppliers, and be provided an option to complete or terminate the transaction.
- 6) The customer must receive a separate electronic message from the supplier acknowledging receipt of the enrollment.
- 7) The customer must be provided the opportunity to request a copy of the full contract terms and conditions, via mail or e-mail.
- 8) The Supplier must provide a toll-free telephone number, Internet address, or an electronic mail address for the customer to contact the Supplier throughout the duration of the agreement.

The bottom line for Massachusetts consumers will be a secure, reliable, and convenient way participate in the competitive electricity market. The Competitive Suppliers look forward to the opportunity to develop an implementation protocol for Internet enrollments. Clearly, experience in New Jersey, Ohio and across the country indicates that consumer protection issues can be addressed simply and effectively.

CONCLUSION

The Competitive Suppliers respectfully request that the Department adopt the recommendations set forth above.

Respectfully submitted,

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