



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

MEMORANDUM

TO: Distribution List in:
D.P.U. 19-07, Investigation into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market.

FROM: Gregory Wade, Hearing Officer

RE: Request for Comments

DATE: February 5, 2020

CC: Mark D. Marini, Secretary

I. INTRODUCTION

On January 18, 2019, the Department of Public Utilities (“Department”) opened Investigation by the Department of Public Utilities into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07. The Department identified initiatives that were intended to: (1) increase customer awareness of the electric competitive supply market and the value these markets can provide, thus allowing customers to make well-informed decisions; (2) facilitate the Department’s adoption of a more pro-active approach toward our oversight of competitive supplier performance rather than reacting to third-party complaints or reports about alleged violations of statute/regulation; and (3) improve the operational efficiency of the competitive market to optimize the value that the market can provide to customers. D.P.U. 19-07, at 4-5, 10. The Department received comments from stakeholders on these initiatives on February 19, 2019.

The Department convened a technical session on June 6, 2019, during which Department staff announced that we intended to investigate the initiatives in the proceeding in a tiered manner. Tier One would address those initiatives that can be resolved in the timeliest manner. Tier Two would address those initiatives that require more information

before we can determine how best to proceed. Tier Three would address those initiatives that would require fundamental changes to the way in which the retail competitive markets currently operate, and thus require significantly more discussion (see June 6, 2019 PowerPoint presentation, slides 3-4). Staff also announced that we would engage stakeholders through (1) periodic technical sessions that would attempt to reach consensus among stakeholders on “high-level” principles associated with each initiative being investigated and (2) more regular working group meetings that would attempt to develop implementation details (see June 6, 2019 PowerPoint presentation, slide 5). The technical session focused on the implementation details associated with the Tier One initiatives that would be developed through the working group process. At the conclusion of the technical session, staff announced the formation of a Customer Protection working group and an Energy Switch working group to develop these details (see June 6, 2019 PowerPoint presentation, slide 41).

On June 26, 2019, Department staff convened the initial meeting of the Customer Protection working group. Based on the discussion during that meeting, staff requested that: competitive suppliers (“Competitive Supplier Group”) develop straw proposals on (1) the language and format of automatic renewal notifications; (2) the language and format for the written and oral disclosure of product information; and (3) introductory and closing scripts for door-to-door and telemarketers; and that advocate groups representing customers and the Massachusetts Office of the Attorney General (“Attorney General”) (collectively, “Consumer Advocates”) develop straw proposals on protocols for competitive suppliers oversight of their third-party marketing vendors (see July 2, 2019 Hearing Officer Memorandum).¹ The Competitive Supplier Group and Consumer Advocates submitted their proposals on July 26, 2019 and July 31, 2019, respectively (“Competitive Supplier Group Initial Proposal” and “Consumer Advocate Proposal”).

On August 6, 2019, Department staff convened a second meeting of the Customer Protection working group to discuss the Competitive Supplier Group and Consumer Advocate proposals. At that meeting, staff presented alternatives to the Competitive Supplier Group Initial Proposal. Subsequent to the meeting, staff requested that the Competitive Supplier Group submit revised proposals in response to staff’s alternatives and the discussion during the meeting, and invited the Competitive Supplier Group to submit comments on the Consumer Advocate Proposal (see August 15, 2019 Hearing Officer Memorandum). The Competitive Supplier Group submitted its revised proposals (“Competitive Supplier Group

¹ For the purpose of making this request, Department staff categorized stakeholders as competitive suppliers, consumer advocates, electric and gas distribution companies, and municipal aggregators (see June 24, 2019 Hearing Officer Memorandum). The Consumer Advocates participating in D.P.U. 19-07 include the Attorney General, National Consumer Law Center, and Greater Boston Legal Services.

Revised Proposal”) and comments (“Competitive Supplier Group Comments”) on September 20, 2019. On November 1, 2019, the Department convened a second technical session to discuss both Tier One and Tier Two initiatives (see November 1, 2019 PowerPoint presentation, slides 6-7).

In Section II, below, Department staff puts forth proposals regarding the following Tier One initiatives: (1) the Department license application review process, (2) notification of door-to-door marketing; (3) third-party marketing vendors; (4) disclosure of product information; (5) marketing scripts; (6) marketing materials; (7) automatic renewal notification and reporting; (8) competitive supplier enrollment reports; and (9) the display of municipal aggregation products on the Energy Switch Website (electric only). Staff seeks comments on the proposals. It is staff’s expectation that, upon review of the comments, the Department may issue an order on the Tier One initiatives.

In Section III, below, Department staff addresses and seeks comment on Tier Two initiatives related to third-party verification and the customer enrollment process. The Department will take these comments into consideration as we consider next steps in implementing these initiatives. Staff notes that, while we do not seek comments on the Tier Two initiatives related to product limitations for automatic renewals and low-income customers, we discuss how such limitations may be applied individually to suppliers in Sections III.C.1 and 2, respectively. Finally, in Section IV, staff sets forth a proposal to establish a new process for competitive suppliers, brokers, and retail agents that do not submit a timely license renewal application. All proposals in Sections II through IV apply to both the electric and gas markets, except the Tier One proposal relating to the Energy Switch Website.

II. TIER ONE INITIATIVES

A. License Application Review

1. Consumer Advocate Proposal

The Consumer Advocates propose that the Department publicly docket its review of new and renewal license applications. They argue that docketing a license application allows for other parties to intervene in the licensing proceeding, and creates a public repository of information regarding the competitive supplier and its activity in the Commonwealth and elsewhere. The Consumer Advocates state that any material that the competitive supplier believes to be confidential should be submitted in a redacted form and accompanied by a motion for protective treatment, consistent with Department practice. Additionally, the Consumer Advocates propose that the Attorney General receive an unredacted copy of each document and correspondence submitted by the applicant to the Department (see Consumer Advocates Proposal at 2-3).

2. Competitive Supplier Group Comments

The Competitive Supplier Group opposes the Consumer Advocate Proposal that competitive supplier license applications be docketed as adjudicatory proceedings, arguing that, because such proceedings would require a greater level of Department staff resources, it would be difficult for the Department to rule on pending license application in a timely manner. As an alternative to the Consumer Advocate Proposal, the Competitive Supplier Group states that it would not oppose the Department making the public portion of a competitive supplier's application available online, thus making the competitive supplier licensing process more accessible to the public without fundamentally altering the nature of the licensing process. The Competitive Supplier Group states that it does not object to the Consumer Advocate Proposal that the Attorney General receive an unredacted version of any licensing document submitted to the Department, subject to a motion for protective treatment (see Competitive Supplier Group Comments at 2-7).

3. Department Staff Proposal²

a. New License Applications

Department staff intends to take advantage of the value that stakeholder input can provide to the license application review process, while avoiding the administrative burden associated with adjudicatory proceedings.

Department staff proposes to make available information regarding pending new license applications on the Department's website. Applicants would have the opportunity to submit a redacted version of their applications, consistent with Department policy.³ Under staff's proposal, the Department would not adjudicate new license applications. Instead, stakeholders would have the opportunity to submit comments on an application within 15 business days after an application's posting date. Stakeholders would be responsible for monitoring the Department's website to identify pending license applications.⁴ The

² Staff notes that the proposal set forth here is consistent with that presented by staff at the November 1, 2019 technical session (see November 1, 2019 PowerPoint presentation, slides 9-10).

³ Upon implementation of this initiative, the Department would provide instructions to stakeholders regarding how to access information about pending applications on the website.

⁴ The Department would not post a pending application until staff determines that the application is sufficiently complete for comment.

Department would review comments submitted by stakeholders and may request additional information from an applicant based on those comments.⁵ In such instances, stakeholders would have ten business days after the applicant's response to submit further comment. The Department would inform the applicant of our decision to approve or reject the application within 20 business days of our determination that no further information is required. 220 CMR 11.05(2)(d). The Department would make available all stakeholder comments, Department requests for information, applicant responses, and the Department's letter of approval/rejection on the website.

b. License Renewals

The Department approaches the review of license renewal applications as an administrative process, designed to verify that a licensee seeks to maintain its license for the upcoming year, and to ensure that the licensee's business information (as listed on the Department's website) is current (see November 1, 2019 PowerPoint presentation, slide 10). Thus, Department staff sees no value in making information regarding license renewals available on the Department's website. Staff notes that in Section IV below, we present for comment a proposed approach for the treatment of licensees that do not submit their license renewal applications in a timely manner.

B. Marketing-Related Activities

1. Introduction

In this section of the Hearing Officer Memorandum, Department staff address six initiatives associated with competitive suppliers' marketing activities: (1) notification of door-to-door marketing; (2) identification of third-party marketing vendors; (3) disclosure of product information; (4) door-to-door and telemarketing scripts; (5) marketing recordings; and (6) marketing materials.

2. Notification of Door-to-Door Marketing

a. Background

In Investigation by the Department of Public Utilities on its Own Motion into Initiatives to Improve the Retail Electric Competitive Supply Market, D.P.U.14-140-G (2018), Attachment 1, the Department established door-to-door marketing notification requirements that are intended to provide the Department with sufficient information to quickly identify competitive suppliers that market door-to-door in a specific location if a

⁵ The Department would not respond directly to stakeholders regarding their comments.

customer or local authority contacts the Department with a complaint.⁶ D.P.U. 14-140-G at 3. A competitive supplier must file a door-to-door notification no later than 5:00 p.m. on the day before the start of a marketing campaign that identifies the municipalities in which it “expects it may conduct” such marketing over the upcoming 30-day period and, for each municipality, the dates within the 30-day period that it expects to market. As part of the notification, a competitive supplier must provide contact information for itself and its marketing vendor(s), and attest that, prior to initiating the campaign, it (or its vendors) will obtain all required municipal permitting and licenses and will comply with all municipal notice requirements.

b. Consumer Advocate Proposal

The Consumer Advocates propose several changes to the door-to-door marketing notifications that would improve the transparency and availability of the notifications. The Consumer Advocates propose that the notification: (1) be submitted at least two business days prior to the start of a marketing campaign; (2) identify the zip codes of the areas where the marketing may be conducted; (3) include as attachments copies of the required municipal permit(s); and (4) include an expanded number of contact persons. In addition, the Consumer Advocates propose that the notifications be available on the Department website and/or provided directly to the Attorney General (see Consumer Advocates Proposal at 3).

c. Competitive Supplier Group Comments

The Competitive Supplier Group states that the Department should not modify the current door-to-door notification requirements absent a compelling reason to do so, arguing that many of the Consumer Advocates’ proposed changes would add cost or administrative burden with little to no additional benefit to customers. With respect to the Consumer Advocates’ Proposal, the Competitive Supplier Group opposes the requirement that competitive suppliers attach municipal permits to their door-to-door marketing notifications, stating that municipalities are the appropriate authorities to enforce their own requirements and ordinances, and that many permits can only be obtained on the actual marketing day. The Competitive Supplier Group states that it does not oppose providing zip code level information on a confidential basis if the Department finds such information valuable (notwithstanding the fact that competitive suppliers and/or their vendors typically organize their marketing campaigns by municipality rather than zip code), or providing the door-to-door marketing notifications to the Attorney General on a confidential basis. Finally, the Competitive Supplier Group states that because marketing plans regularly change from the initial plans (e.g., because of results-based adjustments to initial marketing plans, inclement

⁶ D.P.U.14-140-G applied to electric competitive suppliers.

weather), it would be challenging to accurately predict the location of door-to-door marketing activities days in advance (see Competitive Supplier Group Comments at 15-18).

d. Department Staff Proposal⁷

Department staff proposes that competitive suppliers be required to submit a separate door-to-door marketing notification for each day that they expect to conduct such marketing, no later than two business days prior to the applicable marketing day.⁸ The Department would require competitive suppliers to: (1) identify the municipalities where they may be marketing on the applicable day (or, as discussed below, the neighborhoods in which they may be marketing for specified municipalities); and (2) for each municipality, indicate whether (i) the supplier, as of the notification filing date, has obtained and has in its possession the required permits; (ii) the supplier, as of the filing notification date, has not obtained the required permits, but will do so and will have the required permits in its possession as of the marketing date - use of this option should be limited to municipalities that do not issue the required permits until the marketing date; or (iii) no permit is required.⁹ Competitive suppliers would provide the required information to the Department in a working Excel spreadsheet in the format shown in Attachment HO Memo Spreadsheet, Tab “Door-to-Door Marketing Notification.”¹⁰ Staff proposes that competitive suppliers provide this information to the Attorney General on a confidential basis. Staff seeks comment on

⁷ Unless specified otherwise, the proposal set forth here is consistent with that presented by staff at the November 1, 2019 technical session (see November 1, 2019 PowerPoint presentation, slide 16).

⁸ For example, if a competitive supplier seeks to conduct door-to-door marketing on a Friday, it would need to submit its notification to the Department no later than close-of-business (i.e., 5:00 p.m.) the preceding Wednesday. Similarly, if a competitive supplier seeks to conduct door-to-door marketing on a Monday, it would need to submit the notification no later than close-of-business the preceding Thursday.

⁹ This provision of staff’s proposal differs from that presented at the November 1, 2019 technical session, in which we proposed that competitive suppliers be required to attach copies of municipal permit(s) to their door-to-door notifications.

¹⁰ As shown in the attached spreadsheet, the notifications would also provide contact information for competitive suppliers and their vendors, consistent with the current requirement. Staff notes that information related to background checks and standards of conduct that competitive suppliers currently are required to provide in their notifications would be provided by competitive suppliers in the filings in which they identify their third-party marketers, as discussed in Section II.B.3. below.

whether the Department should require competitive suppliers to provide this information to other entities on a confidential basis.

Staff's proposed notification requirement addresses a fundamental deficiency with the Department's existing requirements. Owing to the extended period of time each notification covers, competitive suppliers often identify a large number of municipalities in which they expect to market over the 30-day period, and identify the full 30-day period as the expected dates of marketing for each municipality. This detracts from the notification's purpose of identifying where a competitive supplier may be door-to-door marketing on a particular day (see November 1, 2019 PowerPoint presentation, slide 15). Staff expects that reducing a notification's date range to a single day will improve competitive suppliers' ability to specify the locations of their expected marketing activities.

Staff proposes two other provisions that should further improve the usefulness of the notifications. First, staff proposes to limit competitive suppliers to identifying a maximum of three municipalities in each notification. This provision is intended to strike an appropriate balance between ensuring that the notifications serve their intended purpose of identifying where competitive suppliers will be marketing on a particular day, and providing flexibility for competitive suppliers/vendors to respond to changing conditions.¹¹ Staff seeks comment on the appropriateness and reasonable of such a limitation. Second, for specified large municipalities, staff proposes to require competitive suppliers to identify the neighborhoods within the municipality where they expect to be marketing. Each neighborhood would count toward the three-municipality limitation discussed above.¹² For illustrative purposes, Staff identifies the proposed neighborhoods within Boston that competitive suppliers would be required to identify in Attachment 1, "Door-to-Door Notifications - Boston Neighborhoods". Staff seeks input from stakeholders on other municipalities for which competitive suppliers would be required to identify specific neighborhoods, and the neighborhoods that should be identified within each municipality.¹³

¹¹ Such a limitation was not included in the proposal that staff presented at the November 1, 2019 technical session.

¹² This provision of staff's proposal differs from that presented at the November 1, 2019 technical session, in which we proposed that competitive suppliers identify zip codes.

¹³ Commenters should identify the source for their proposed neighborhoods.

3. Identification of Third-Party Marketing Vendors

a. Consumer Advocate Proposal

The Consumer Advocates propose that applicants for a competitive supplier license include in the application the list of third-party vendors that will be marketing on behalf of the competitive supplier, and that licensed competitive suppliers update this information on an ongoing basis, no later than 30 days following the effective date of a contract with a new marketing vendor. The Consumer Advocates state that this information should be publicly available through the Department's website (See Consumer Advocates Proposal at 2).

b. Competitive Supplier Group Comments

The Competitive Supplier Group states that it would be reasonable for the Department to require competitive supplier license applicants that seek to service residential customers to include in their applications a list of their third-party marketing vendors. The Competitive Supplier Group recommends that competitive suppliers update such lists annually as part of their license renewal applications (Competitive Supplier Group Comments at 9-11).

c. Department Staff Proposal

Consistent with the Consumer Advocate Proposal, Department staff proposes to require competitive suppliers to provide the Department, on an ongoing basis, with updated lists of their third-party door-to-door and telemarketing vendors. Such lists would include information related to background checks and standards of conduct that competitive suppliers currently provide through their door-to-door notifications. Staff proposes that competitive suppliers provide this information to the Attorney General on a confidential basis. Staff seeks comments on whether competitive suppliers should provide this information to other stakeholders on a confidential basis.

As discussed during the November 1, 2019 technical session, staff seeks to work with stakeholders to develop a process by which we could pro-actively identify potentially problematic marketing vendors (see November 1, 2019 Technical Session PowerPoint presentation, slides 11-13). The proposed reporting requirement set forth above is intended to serve as an initial step in this process.

4. Disclosure of Product Information

a. Background

In D.P.U. 14-140-G, Attachment 2, the Department established standards of conduct for electric competitive suppliers conducting door-to-door marketing to ensure that marketers clearly identify themselves and the competitive supplier they represent. In D.P.U. 19-07,

at 10-11, the Department stated that we seek to (1) expand these standards to include requirements related to the disclosure of product information such as contract term, early cancellation fees, and automatic renewal and (2) apply the standards to other marketing activities such as telemarketing and direct mail.

b. Competitive Supplier Group Revised Proposal

The Competitive Supplier Group proposes the format and language competitive suppliers would use to disclose information to customers regarding the following product characteristics: price, term, cancellation/early termination fees (and other applicable fees), automatic renewal terms, renewable energy, incentives and value-added products and services. The proposed contract summary form would also include information about the competitive supplier, the distribution company, and the Energy Switch website. The Competitive Supplier Group proposes that competitive suppliers be provided flexibility to tailor their contract summary forms to accommodate a range of possible products. The Competitive Supplier Group proposes that the revised contract summary form be delivered to all customers at the point of sale, whether the sale is in person, over the telephone, or electronic. Competitive suppliers may opt to communicate the summarized information to customers on the first page of a new contract, alongside the Terms of Service. Competitive suppliers would provide the form in plain English with no less than 10-point font (see Competitive Supplier Group Revised Proposal - Contract Summary Form). Finally, the contract summary form would be provided to the customer in the same language utilized to solicit the customer. If the customer does not have the English language skills to understand or respond to solicitations from a competitive supplier, the competitive supplier would find another representative fluent in the customer's language or terminate contact with the customer (see Competitive Supplier Group Revised Proposal - Language/format for the written and oral disclosure of product information).

c. Department Staff Proposal

Department staff's proposed template and language for the contract summary form is shown in Attachment 2, "Staff Proposed Contract Summary Form".¹⁴ Under the proposal, the Department would require competitive suppliers to use this template and language for all products, with the following exceptions: (1) for products for which the price varies on a monthly basis, competitive suppliers should use language in the price and term sections that describe the applicable price structure and term of the product; (2) for products for which the renewable content exceeds the minimum requirement, competitive suppliers may use language that describes the renewable resources that comprise the "voluntary" component of the

¹⁴ Staff's proposed language and template is consistent with that included in the Competitive Supplier Group Revised proposal, with minor revisions.

product; (3) for products that include fees other than an early cancellation fee or enrollment fee, competitive suppliers should include language that describes such fees; and (4) for products that include additional incentives or “value-added” products and services, competitive suppliers should include language that describes such incentives. In these instances, competitive suppliers would be required to submit their contract summary forms for Department review. The Department would respond to the competitive supplier with revisions within ten business days. If the Department does not respond within ten business days, the competitive supplier would be able to proceed with using the form.¹⁵

Consistent with the Competitive Supplier Group Revised Proposal, Department staff proposes to require competitive suppliers to provide the Staff Proposed Final Contract Summary Form to customers at the point of sale. For those sales that take place in person or online, competitive suppliers would provide a written version of the Staff Proposed Final Contract Summary Form, as the first page of the contract. For sales that take place over the telephone, competitive suppliers would provide the information in the Staff Proposed Final Contract Summary Form orally, followed by a paper version as the first page of the contract sent by direct mail.

5. Door-to-Door and Telemarketing Scripts

a. Competitive Supplier Group Revised Proposal

The Competitive Supplier Group proposes introductory scripts for door-to-door and telemarketing that require vendors to: (1) identify the name of the vendor and the competitive supplier that the vendor represents,¹⁶ and (2) state that the competitive supplier is not affiliated with either the customer’s electric company or any energy program that the customer’s municipality may offer. The Competitive Supplier Group proposes closing scripts that inform the customer of the upcoming verification process in which the customer will be asked to confirm the product information provided during the marketing call/visit (see Competitive Supplier Group Revised Proposal – Introductory/Closing Scripts).

b. Department Staff Proposal

Department staff proposes to adopt the scripts included in the Competitive Supplier Group Revised Proposal, with the caveat that at no time during door-to-door and

¹⁵ Competitive suppliers would submit their contract summary forms via email attachment and the ten-business day period would begin on the business day following the date that the email was submitted.

¹⁶ The Competitive Supplier Group notes that its proposed introductory script complies with the telemarketing requirements set forth in G.L. c. 159C, § 5A.

telemarketing interactions shall the marketing agent identify the name of a customer's distribution company – for telemarketing, this applies equally to both the “live” interactions and the recordings that may precede such interactions. All door-to-door and telemarketing shall be conducted in a language that the customer can understand; otherwise, the marketing vendor would be required to terminate contact with the customer. Uniform marketing scripts, and the disclosure of product information requirements discussed in Section II.B.4, are important customer protection initiatives that help insure that customers are provided useful information regarding both the marketers/competitive suppliers that are offering them products and the products that are being offered. As discussed in Section III.B, below, the Department seeks to develop an enhanced third-party verification process that would further protect customers from purchasing supply products about which they are insufficiently informed.

6. Recording of Marketing Interactions

a. Consumer Advocates Proposal

The Consumer Advocates propose that the Department require competitive suppliers to record all door-to-door and telemarketing interactions. If the customer refuses, the marketer must end the conversation. The Consumer Advocates propose that the Department require competitive suppliers to maintain all recordings for a period of five years, and identify each recording with the date, time, and address (or customer account number). Finally, the Consumer Advocates propose that the Department approve the type of recording equipment or technology identified by a competitive supplier (Consumer Advocates Proposal at 3-4).

b. Competitive Supplier Group Comments

The Competitive Supplier Group states the recording requirements proposed by the Consumer Advocates are: (1) unnecessary and unreasonable; (2) burdensome in terms of costs and time, and (3) duplicative of customer protections already available under federal, state, and municipal law. The Competitive Supplier Group argues that the mandatory recording of sales transactions presents potential privacy concerns, but states that recording and retaining of third-party verification calls is more appropriate (Competitive Supplier Group Comments at 18-22).

c. Department Staff Proposal

Staff proposes that competitive suppliers be required to record telemarketing calls, as they do for their third-party verification calls. Just as the recording of third-party verification calls serves as a tool in ensuring that customers have given their affirmative authorization for the applicable transaction, the recording of the underlying marketing call

would serve as a tool in identifying any misleading or deceptive marketing. Staff sees no reason why the recording of marketing calls would be more unreasonable or more burdensome than the recording of third-party verification calls. In considering the issue of the recording of marketing interactions, Department staff distinguishes between telemarketing and door-to-door marketing interactions.

At this time, staff does not propose to require competitive suppliers to record their door-to-door marketing interactions. While staff recognizes that the recording of these interactions can provide the same value as the recording of telemarketing calls, we are swayed by the comments of the Competitive Supplier Group that such a requirement may place an unreasonable burden on competitive suppliers. Staff notes that the proposed requirements put forth in this Hearing Officer Memorandum related to the disclosure of product information (see Section II.B.4, above) and an enhanced third-party verification process (see Section III.B, below) are intended to ensure that marketing vendors provide customers with accurate and useful information about the supply products being offered. This is particularly true for door-to-door marketing interactions during which vendors would be required to disclose product information in written form. As such, Staff considers it reasonable to defer consideration of mandatory recording of door-to-door marketing interactions until the issues related to these other proposed initiatives are resolved.

7. Marketing Materials

a. Consumer Advocate Proposal

The Consumer Advocates propose that the Department require competitive suppliers to submit: (1) copies of all marketing material (including those of their third-party vendors) as part of its initial and renewal license applications; and (2) updated marketing materials on a rolling basis, but no less than quarterly. The Consumer Advocates specify that these marketing materials should include, but not be limited to, direct mail, online advertisements, telemarketing scripts, door-to-door marketing scripts, any pamphlets or handouts, contract summaries, contract documents, and welcome letters (Consumer Advocate Proposal at 2).

b. Competitive Supplier Group Comments

The Competitive Supplier Group opposes the Consumer Advocates' proposal to require competitive suppliers to file marketing materials on no less than a quarterly basis, stating that such a requirement would be administratively burdensome and require competitive suppliers to submit materials that have not changed. The Competitive Supplier Group states that such materials should be provided annually as part of each competitive supplier's annual license review process, and in the event of any material changes (Competitive Supplier Group Comments at 9-11).

c. Department Staff Proposal¹⁷

Department staff proposes that competitive suppliers be required to submit updated versions of their direct mail marketing materials (including the envelope) for Department review prior to the use of such materials.¹⁸ Consistent with the marketing scripts and disclosure of product information requirements sets forth above, such materials should: (1) display the competitive supplier name and logo at the top of the document (thus clearly identifying the competitive supplier as the sender); (2) clearly state that the competitive supplier is not affiliated with the customer's utility; (3) clearly communicate that the notice is an advertisement for the sale of a product; (4) disclose pertinent information about the product(s) being marketed; and (5) not use false or misleading headers or subject lines, such as "action requested" or "urgent notification about your utility bill/account." The Department would respond to the competitive supplier within ten business days. If the Department does not respond within this period of time, the competitive supplier would be able to proceed with using the mailing.¹⁹

While Department staff sees value in requiring competitive suppliers to provide the Department with all up-to-date marketing material, we recognize that requiring this for all marketing channels on a rolling basis would be unwieldy for both the competitive suppliers and the Department. Staff believes that other marketing guidelines proposed in this memo will improve customer protection in this area.

C. Automatic Renewal

1. Customer Notification

a. Background

In D.P.U. 19-07, at 7-8, the Department stated that customers' lack of awareness of the automatic renewal provisions that may be included in their supply contracts is a significant customer protection issue. To ensure that customers are sufficiently aware of such

¹⁷ The proposal set forth here is consistent with that presented by staff at the November 1, 2019 technical session (see November 1, 2019 PowerPoint presentation, slide 17)

¹⁸ Here, staff refers to direct mail marketing material that is updated from the materials that a competitive supplier provides as part of its initial license application.

¹⁹ Competitive suppliers would submit their materials via email attachment and the ten business day period would begin on the business day following the date that the email was submitted.

provisions, the Department stated that we seek to establish uniform requirements regarding the automatic renewal information that competitive suppliers must provide their customers, including the timing and manner by which they must provide this information.

b. Competitive Supplier Group Revised Proposal

The Competitive Supplier Group proposes that, between 30 and 60 days prior to the expiration of a contract, competitive suppliers be required to provide customers with the following information regarding their contract renewal option: (1) the price that the customer is currently paying, and the date on which the current price will end; (2) the new price, price structure, and term to which the contract will automatically renew if the customer takes no action; and (3) how to contact the competitive supplier for more information or additional options, including the Energy Switch website (see Competitive Suppliers' Revised Proposal, Automatic Renewal Notifications). The Competitive Supplier Group proposes that competitive suppliers be afforded the flexibility to use "branding, language and style that reflects its corporate voice," provided that the notification provides the required information in clear and plain language. The Competitive Supplier Group proposes that if the Department drafts exact language to be included in automatic renewal notifications, such language should be considered a "safe harbor" rather than a requirement (see Competitive Suppliers' Revised Proposal, Automatic Renewal Notifications).

c. Department Staff Proposal

Consistent with the Competitive Supplier Group Revised Proposal, Department staff proposes to require competitive suppliers to provide customers with automatic renewal notifications between 30 and 60 days prior to the expiration of contracts that have such provisions. Department staff's proposed language and format for the notifications is shown in Attachment 3, "Department Staff Proposed Automatic Renewal Notification Template."²⁰ The Department would require all competitive suppliers to use staff's proposed language in the upper portion of their notifications, while being allowed to use the lower portion of the notifications to present competitive supplier-specific branding, language, and style. Staff's proposal is intended to strike an appropriate balance between ensuring that the notifications effectively serve their customer protection function, and providing competitive suppliers with the opportunity to use the notifications to reflect their "corporate voice and vernacular."

²⁰ Staff's proposed language is consistent with that included in the Competitive Supplier Group Revised proposal, with minor revisions.

2. Competitive Supplier Reports

a. Background

At the June 6, 2019 technical session, Department staff proposed that all competitive suppliers be required to report on the number of customers that did and did not opt-out of their contractual automatic renewal provision. Staff stated that such reports would be helpful in evaluating the effectiveness of the automatic renewal notifications (see June 6, 2019 PowerPoint presentation, slide 13). Staff further discussed such a requirement at the November 1, 2019 technical session.

b. Department Staff Proposal

Department staff proposes to require that competitive suppliers report periodically on the number of residential customers they serve through automatic renewal provisions that are included in the customers' contracts. Each competitive supplier would report both on the number of customers that were automatically renewed during the specified period, as well as the total number customers that the competitive supplier was serving through an automatic renewal provision on the last day of the specified period. Competitive suppliers would also report on the method of delivery of the notification during the specified period. Staff's proposed template and information requirements for the automatic renewal reports is included in Attachment HO Memo Spreadsheet, tab "Auto Renewal Report." Staff proposes that competitive suppliers initially report this information on a quarterly basis, with the expectation that we would revisit the frequency of such reporting at a later date.

D. Competitive Supplier Enrollment Reports

1. Background

In D.P.U. 19-07, at 12, the Department stated that having information on competitive suppliers' enrollment activities, specifically the types of customers enrolled through each type of marketing channel, would allow the Department to adopt a more proactive approach to our investigations of competitive suppliers' marketing activities (e.g., look into practices of competitive suppliers that enroll a significant number of low-income customers via door-to-door marketing). Department staff addressed this issue with stakeholders during the June 6, 2019 and November 1, 2019 technical sessions (see June 6, 2019 PowerPoint presentation, slide 29; November 1, 2019 Spreadsheets, tab "Enrollment Report").

2. Department Staff Proposal

Department staff proposes to require competitive suppliers be to report periodically on the total number of residential customers and the number of low-income customers²¹ they enrolled during the specified period through: (1) door-to-door marketing; (2) telemarketing; and (3) other marketing channels. In addition, competitive suppliers would report on the total number of residential and low-income customers they are serving as of the last day of the specified period. Competitive suppliers should provide this information separately for each distribution company service territory in the Commonwealth. Staff's proposed template for the report is included in Attachment HO Memo Spreadsheet, tab "Supplier Enrollment Report." Staff proposes that competitive suppliers initially report this information on a quarterly basis, with the expectation that we would revisit the frequency of such reporting at a later date.

E. Energy Switch Website

1. Background

In October 2016, the Department launched the Energy Switch website ("Website") that allows customers to view the following information about the supply products offered by participating competitive suppliers (as well as basic service offered by the electric distribution companies): (1) the name/logo of the competitive supplier; (2) price; (3) contract term; (4) early cancellation fee; (5) automatic renewal (if applicable); (6) renewable energy content; (7) additional products and services (if applicable); and (8) estimated monthly cost. D.P.U. 14-140-E (2016). In D.P.U. 19-07, at 7, the Department requested comments from stakeholders on initiatives that would increase customer awareness of the competitive supply market through the Website. Commenters identified the Website's potential to display municipal aggregation products as one such initiative (Cape Light Compact March 8, 2019 Comments at 4; National Grid March 8, 2019 Comments at 3). Department staff discussed this issue with stakeholders at the July 31, 2019 Energy Switch Working Group meeting and the November 1, 2019 technical session (see July 31, 2019 PowerPoint presentation; November 1, 2019 PowerPoint presentation, slide 27).

2. Department Staff Proposal

Department staff proposes that, except as indicated below, the Website display information on municipal aggregation products in the same manner that it displays information on other competitive supply products. Therefore, the Department proposes: (1) the listing of municipal aggregation products would be voluntary; (2) the municipality

²¹ Here, the term "low-income customers" refers to customers that receive distribution service under their distribution company's R-2 and R-4 rate.

would input information about its products and would be responsible for ensuring the accuracy of that information;²² (3) the Website would only display municipal aggregation products to those customers for whom the products are available (based on the zip code information provided by Website users and the municipal aggregators); and (4) the Website would display the name and logo of the municipal aggregator. Staff's proposed exceptions to the rules that govern the operations of the Website²³ are related to: (1) the order in which the Website lists municipal aggregation products; (2) contract terms; and (3) renewable energy content.

a. Order of Product Listing

Currently, the Website always lists basic service as the top product, followed by competitive supply products (initially sorted from lowest to highest estimated monthly cost). Staff proposes that the Website always list a municipal aggregation's "default product"²⁴ directly below basic service, both in the initial listing of product and after product sorting/filtering (this exception to the Website rules would not apply to a municipal aggregation's "non-default" products, which would be listed according to the rules that apply to other competitive supply product). Staff's proposed exception is intended to reflect the unique "opt-out" treatment provided by statute to municipal aggregation programs.

b. Contract Term

Currently, the Website displays information related to contract term differently for basic service than for competitive supply products. For basic service, the Website displays contract terms using a specified start and end date (consistent with each distribution company's basic service pricing terms); for competitive supply products, the Website displays contract terms in number of months. Staff proposes that, for municipal aggregation products, the Website display contract terms using start and end dates, similar to the display of basic

²² Department staff would permit municipal aggregators to designate their consultants as Website "administrators," provided that a municipality provides a letter from each granting the consultant such authority.

²³ The Department established the rules that govern the operation of the Website in D.P.U. 14-140-E. The Department issued revised rules in D.P.U. 14-140-F (2017).

²⁴ Staff uses the term "default product" to refer to the product that a municipal aggregator automatically offers to its program participants, unless a participant selects an alternate product option. To implement this provision, a municipal aggregator would be required to specify its default product.

service terms. Staff's proposal is intended to accommodate the method by which municipal aggregators procure supply for their program participants.

c. Renewable Energy Content

Currently, the Website displays information about a product's "voluntary" renewable energy content (*i.e.*, the renewable energy resources that exceed the amount required to meet the Commonwealth's Renewable Portfolio Standards ("RPS")) only for those products that are composed of at least 50 percent renewable energy resources (including the renewable energy resources required to meet the RPS). Staff proposes that, for municipal aggregation products, the Website display information about the products' voluntary renewable energy content if the voluntary renewable energy resources: (1) are composed entirely of RPS Class I resources, and (2) represent at least five percent of the product's total resources. Staff's proposal is intended to accommodate the renewable energy product options that several municipal aggregation programs offer to their participants. Staff seeks comment on whether we should apply this same rule to other competitive supply products.

III. TIER TWO INITIATIVES

A. Third-Party Verifications

In D.P.U. 19-07, at 11-12, the Department stated that we seek to expand the role of the third-party verification ("TPV") process to include confirmation that competitive suppliers have complied with the proposed requirements related to the disclosure of product information (*see* Section II.B.4, above). The Department stated that expanding the TPV process in this manner would protect customers from purchasing supply products about which they were insufficiently informed.

During the November 1, 2019 technical session, Department staff presented a proposal that would require customers, during the TPV process, to affirmatively state the product information included in the contract summary form in order for a competitive supplier to proceed with enrolling the customers.²⁵ In addition, to protect customers that are enrolled through telemarketing against "spoofing," customers would be required to identify the telephone number and name that appears on the customer's telephone. (*see* November 1, 2019 PowerPoint presentation, slide 30). Staff seeks comments from stakeholders on the benefits that such a process would provide to customers (*i.e.*, the extent to which the process would protect customers from purchasing supply products about which they were

²⁵ As discussed in Section II.B.4, the contract summary form will provide customers with product information related to: (1) price; (2) contract term; (3) early termination fees; (4) automatic renewals; and (5) renewable content.

insufficiently informed), and the difficulties that competitive suppliers may have in implementing such a process.

B. Customer Account Number

In D.P.U. 19-07, at 12-14, the Department stated that we seek to address barriers that detract from the value that the competitive retail supply market can provide to customers. The Department identified a potential barrier to be the requirement that competitive suppliers provide a customer's distribution company account number, information that customers may not have readily available, in order to successfully enroll the customer. The Department sought stakeholder input on the reasonableness and appropriateness of approaches that would allow competitive suppliers to enroll customers when they may not have ready access to their account number.

During the November 1, 2019 technical session, the Competitive Supplier Group identified other states in which processes have been developed that enable competitive suppliers to enroll customers with the information typically available from a customer's wallet (see Competitive Supplier Group November 1 PowerPoint presentation).²⁶ These processes allow competitive suppliers to utilize this information to enroll customers either through distribution company portals and/or through customer information lists.

As the next step in examining this issue, Department staff requests that the distribution companies work jointly to develop a process by which an "enroll with your wallet" approach could be most effectively and efficiently implemented in Massachusetts, while considering the distribution companies' existing customer information systems and electronic business transaction infrastructure.

C. Product Limitations

1. Automatic Renewal

During the November 1, 2019 technical session, Department staff presented a proposal for product limitations that would apply statewide to customers whose contracts have been automatically renewed (see November 1, 2019 PowerPoint presentation, slide 32). Staff does not seek comments on its proposal in this Hearing Officer Memorandum. However, it may be appropriate to discuss such limitations individually with competitive suppliers based on the information provided through the automatic renewal reports proposed in section II.C. above.

²⁶ These states are Ohio, Maryland, and Pennsylvania.

2. Low-Income Customers

During the November 1, 2019 technical session, Department staff presented a proposal for product limitations that would apply statewide to low-income customers (see November 1, 2019 PowerPoint presentation, slide 33). Staff does not seek comments on its proposal in this Hearing Officer Memorandum. However, it may be appropriate to discuss such limitations individually with competitive suppliers based on the information provided through the competitive supplier enrollment renewal reports proposed in section II.D. above.

IV. LICENSE RENEWAL PROCESS

Pursuant to the Department's regulations, approved licenses are valid for one year from the date of approval. 220 CMR 11.05(2)(d). To date, the Department has not established a uniform policy to address licensees that fail to submit a license renewal application in a timely manner. Department staff proposes to establish a new process for competitive suppliers, brokers, and retail agents that do not submit a timely license renewal application.

Under this proposal, if an electricity broker or gas retail agent fails to submit a renewal application within thirty days of the renewal due date, the Department would suspend its license, and would notify competitive suppliers that they can no longer do business with that electricity broker or gas agent until we notify them otherwise. If the suspended electricity broker or gas retail agent were to submit the renewal license application within 90 days from the renewal due date, the Department would lift the license suspension, and would so notify competitive suppliers. If the electricity broker or gas retail agent fails to submit the renewal application within 90 days, the Department may take further licensure action, pursuant to the procedures set forth in Order Establishing Final Interim Guidelines for Competitive Supply Investigations and Proceedings, D.P.U. 16-156-A (2017).

If a competitive supplier fails to submit a renewal license application within thirty days of the renewal due date, the Department would suspend its ability to sign up new customers (the competitive suppliers would be allowed to serve its existing customers). If the competitive supplier submits its renewal license application within 90 days from the renewal due date, the Department would lift the aforementioned suspension. If the competitive supplier fails to submit the renewal application within 90 days, the Department may take further licensure action, pursuant to the procedures set forth in D.P.U. 16-156-A.

V. REQUEST FOR COMMENTS

The Department seeks written comments on the Tier One initiatives no later than 5:00 p.m. on Thursday, March 5, 2020. The Department seeks written comments on the Tier Two initiatives and proposed license renewal process no later than 5:00 p.m. on Thursday, March 19, 2020. When providing comments, please indicate clearly which

initiative you are addressing. Comments may be provided on any or all of the initiatives. We encourage interested persons to present consensus positions and submit comments jointly, when possible. One original and two copies of all comments should be filed with Mark D. Marini, Secretary, Department of Public Utilities, One South Station -5th Floor, Boston, Massachusetts 02110.²⁷ After receiving and reviewing the comments, the Department expects to issue an Order on Tier One initiatives.

²⁷ All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dpu.efiling@mass.gov and the hearing officer greggory.wade@mass.gov or (2) on a CD-ROM. The text of the e-mail or CD-ROM label must specify (1) the docket number of the proceeding (D.P.U. 19-07); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. All documents submitted in electronic format will be posted on the Department's website by looking up the docket by its number in the docket database at: <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber> (enter "19-07").

Attachment 1 – Door-to-Door Notifications: Boston Neighborhoods

In Section II.B.2, above, Department staff proposes that, for specified “large” municipalities, competitive suppliers be required to identify in their D2D notifications the neighborhoods within the municipality where they expect to be marketing on the applicable day. Below is the list of neighborhoods that staff proposes for the City of Boston:

- Allston
- Back Bay
- Bay Village
- Beacon Hill
- Brighton
- Charlestown
- Chinatown-Leather District
- Dorchester
- Downtown
- East Boston
- Fenway-Kenmore
- Hyde Park
- Jamaica Plain
- Mattapan
- Mid-Dorchester
- Mission Hill
- North End
- Roslindale
- Roxbury
- South Boston
- South End
- West End
- West Roxbury

Source: <https://www.boston.gov/neighborhoods>

Attachment 2 - Staff Proposed Contract Summary Forms

[Supplier Name] - Electric Supply Contract Summary

[Supplier Logo]

You have purchased an electric supply product from [Supplier Name]. Your electric utility will continue to deliver the electricity you use to your home.

<p>Price <i>(if fixed price)</i></p>	<p>[xx] cents per kWh. This does not include the price that your electric utility will charge you for the delivery component of your electric service. [OR] [\$] per month plus [xx] cents per kWh. This does not include the price that your electric utility will charge you for the delivery component of your electric service.</p>
<p>Term <i>(if fixed price)</i></p>	<p>The above price will remain constant for [xx] months.</p>
<p>Enrollment Fee</p>	<p>The product includes a one-time enrollment fee of [\$].</p>
<p>Early Cancellation Fee</p>	<p>If you cancel your contract prior to the end of its term, you will be charged a fee of [\$]. [OR] [\$] per month remaining on the contract. [OR] No cancellation fee applies.</p>
<p>Other Fees</p>	<p>The product includes a [frequency] [x] fee of [\$].</p>
<p>Automatic Renewal <i>(if applicable)</i></p>	<p>Your contract will automatically renew to a new price at the end of the contract term unless you inform [Supplier Name] otherwise. We will contact you no later than 30 days before that time to discuss your supply options with you.</p>
<p>Renewable Energy</p>	<p>The state of Massachusetts requires that all electric supply products include a minimum of [mandatory minimum RPS compliance %] renewable energy resources. This product meets the minimum requirement. [OR] This product includes [xx]% renewable energy resources, an amount that exceeds the minimum requirement. <i>(Supplier may include resource-specific information).</i></p>
<p>Incentives</p>	<p><i>(Description, in plain language).</i></p>

Competitive Supplier Information	[Supplier Name], DPU License Number: [DPU license number], [telephone number], [website] <i>(Plain language statement that [Supplier Name] is only responsible for generation/supply charges.)</i>
Electric Utility Information	[Name of Electric Distribution Company] will continue to deliver the electricity that you use to your home and is responsible for the delivery charges that appear on your monthly bill. If you have questions about the delivery portion of your bill, contact [Name of Electric Distribution Company] at [telephone number], or by visiting its website at [website].
The Massachusetts Department of Public Utilities recommends that consumers visit the Energy Switch website to view the broad range of available electric supply products. You can visit the website at www.energyswitchma.gov .	

[Supplier Name] – Gas Supply Contract Summary

[Supplier Logo]

You have purchased natural gas supply product from [Supplier Name]. Your natural gas utility will continue to deliver the natural gas you use to your home.

<p>Price <i>(if fixed price)</i></p>	<p>[xx] cents per therm. This does not include the price that your gas utility will charge you for the delivery component of your gas service. [OR] [\$] per month plus [xx] cents per therm. This does not include the price that your gas utility will charge you for the delivery component of your gas service.</p>
<p>Term <i>(if fixed price)</i></p>	<p>The above price will remain constant for [xx] months.</p>
<p>Enrollment Fee</p>	<p>The product includes a one-time enrollment fee of [\$].</p>
<p>Early Cancellation Fee</p>	<p>If you cancel your contract prior to the end of its term, you will be charged a fee of [\$]. [OR] [\$] per month remaining on the contract. [OR] No cancellation fee applies.</p>
<p>Other Fees</p>	<p>The product includes a [frequency] [x] fee of [\$].</p>
<p>Automatic Renewal <i>(if applicable)</i></p>	<p>Your contract will automatically renew to a new price at the end of the contract term unless you inform [Supplier Name] otherwise. We will contact you no later than 30 days before that time to discuss your supply options with you.</p>
<p>Incentives</p>	<p><i>(Description, in plain language).</i></p>
<p>Competitive Supplier Information</p>	<p>[Supplier Name], DPU License Number: [DPU license number], [telephone number], [website] <i>(Plain language statement that [Supplier Name] is only responsible for generation/supply charges.)</i></p>
<p>Natural Gas Utility Information</p>	<p>[Name of Gas Utility] will continue to deliver the gas that you use to your home and is responsible for the delivery charges that appear on your monthly bill. If you have questions about the delivery portion of your bill, contact [Name of Gas Distribution Utility] at [telephone number], or by visiting its website at [website].</p>

The Massachusetts Department of Public Utilities recommends that consumers visit the Gas Division website to view the current natural gas supply rates (“Cost of Gas Adjustment Factor Rate (GAF)”) offered by their natural gas utility. You can visit the website at <https://www.mass.gov/info-details/cost-of-gas-adjustment-factor-rates-and-information>.

Attachment 3 – Department Staff Proposed Automatic Renewal Notification Templates

[Company Letterhead]

Important Information Regarding Your Electric Supply Contract With [Competitive Supplier Name]

As a customer of [Competitive Supplier Name], we purchase and supply electricity on your behalf, while the distribution utility continues to deliver the electricity you use to your home. Your current supply price, [xx] cents per kWh, will end during [month year]. Unless you contact us, your contract will automatically renew to a new price, [xx] cents per kWh, that will remain in effect for [xx] months. **OR** to a new price that will change monthly. Your initial monthly price will be [xx] cents per kWh. Prices for future months will be available through our website, [website address].

Please contact us at [email address] or [telephone #] prior to [month year] if you do not wish to your contract to be automatically renewed, or to find out more about electricity supply products that we offer.

The Massachusetts Department of Public Utilities recommends that consumers visit the Energy Switch website to view the broad range of available electric supply products. You can visit the website at www.energyswitchma.gov.

[Competitive supplier specific language]

[Company Letterhead]

Important Information Regarding Your Natural Gas Supply Contract With [Competitive Supplier Name]

As a customer of [Competitive Supplier Name], we purchase and supply natural gas on your behalf, while the distribution utility continues to deliver the gas you use to your home. Your current supply price, [xx] cents per therm, will end during [month year]. Unless you contact us, your contract will automatically renew to a new price, [xx] cents per therm, that will remain in effect for [xx] months. **OR** to a new price that will change monthly. Your initial monthly price will be [xx] cents per therm. Prices for future months will be available through our website, [website address].

Please contact us at [email address] or [telephone #] prior to [month year] if you do not wish to your contract to be automatically renewed, or to find out more about gas supply products that we offer.

[Competitive supplier specific language]