

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department of Public Utilities)	
On its Own Motion into Initiatives to Promote and)	D.P.U. 19-07
Protect Consumer Interests in the Retail Electric)	
Competitive Supply Market)	

COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION
ON TIER TWO INITIATIVES AND
PROPOSED LICENSE RENEWAL PROCESS

Executive Summary:

The National Energy Marketers Association (NEM)¹ hereby submits its comments on the Tier Two initiatives and proposed license renewal process in the Department’s Investigation to consider initiatives aimed at improving residential electric consumer protections regarding competitive supply offerings. These comments are submitted pursuant to the Memorandum and Request for Comments, dated February 5, 2020, as well as the Granted Motion for Extension of Time dated March 17, 2020, in the above-referenced proceeding. The Tier Two initiatives that were proposed for stakeholder consideration pertain to third party verification requirements and addressing the barrier to competition posed by the customer account number requirement for enrollment. Stakeholders were also requested to comment on the establishment of a uniform

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

policy for licensees that fail to timely submit a license renewal application. NEM previously filed comments on the Department's Tier One initiatives.

NEM supports the establishment of meaningful consumer protection and marketing standard requirements and generally supports the Tier Two initiatives and proposed license renewal process subject to the modifications described herein. NEM's comments identify practical constraints associated with the third-party verification proposals as explained in more detail herein. We appreciate the efforts of the Department and Staff to collaboratively engage with the stakeholders to develop a well-balanced, thoughtful approach to enhancing consumer understanding and awareness of the competitive energy marketplace and competitive offerings without imposing unreasonable supplier compliance obligations.

Comments:

NEM's responses to the specific Tier Two initiatives and proposed license renewal process set forth in the Memorandum and Request for Comments are set forth below:

A. Third Party Verification

Staff proposes to 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." (Memorandum at 19). NEM understands that the intent of the Staff proposal is to better ensure consumers understand the nature of the product being purchased by having the customer answer open-ended questions based on the contract summary form, instead of answering only questions that require a yes or no response. From a practical perspective, NEM notes that the customer will only have the contract summary form in-hand

during a door-to-door sale interaction. In the case of telemarketing, the consumer does not yet have the contract summary form and so will not be able to “affirmatively state the product information” included therein. Supplier compliance with this requirement in the telemarketing context will therefore be constrained.

Staff also proposes to require customers to identify the phone number and name that appears on the customer’s phone during telemarketing to protect them against spoofing. (Id.). NEM submits that there are practical limitations to this proposal as well. Fewer and fewer people have landline phones in their homes. As a result, fewer people have and use the caller identification function showing the caller phone number and name. Cell phones only display the phone number of the caller and not the name (unless the caller is already in the cell phone’s address book).² This will limit consumers ability to respond and suppliers’ ability to comply with a proposal that requires identification of the phone number *and* name appearing during the telemarketing call. As an alternative, the Department may wish to consider including a reference in the rules to include supplier and telemarketing agent compliance with the applicable provisions of the federal Truth in Caller ID Act³ and FCC implementing regulations⁴ that prohibit the transmission of inaccurate or misleading caller identification information.

² This proposal also assumes that all cell phone users are adept at using their phones and can easily locate the phone number on the screen once the call commences.

³ See 47 U.S.C. 227(e) which provides that,

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B).

⁴ 47 CFR § 64.1604.

B. Customer Account Number - Enroll With Your Wallet

The Department recognized that the requirement that the customer account number be used to complete an enrollment is a barrier to retail competition. In response, the utilities were requested to jointly develop a process to implement an “enroll with your wallet” (EWYW) approach. (Memorandum at 20). Wallet enrollment allows a customer to enroll with a supplier using information typically found in a wallet and does away with the customer account number requirement. NEM supports the implementation of EWYW.

The customer account number requirement has been a significant barrier to energy choice. The customer account number is not memorable (like a phone number) or easily accessible. Indeed, the bill where the account number is found probably gets thrown in the trash by the consumer once it is paid. An EWYW tool would address this problem. An EWYW tool can be implemented in a manner that ensures consumer protection and privacy and likewise ensures supplier accountability to deter improper conduct.

C. Uniform Policy on Licensee Failure to Submit Renewal Application

Staff proposes to establish a uniform policy applicable in the case that a licensee fails to timely file a license renewal application. Specifically with respect to competitive suppliers, if a competitive supplier fails to submit a renewal application within thirty days of the due date, Staff proposes that the supplier’s ability to enroll new customers would be suspended. (Memorandum at 21). If the renewal application is submitted within ninety days from the renewal due date, the suspension would be lifted. If not, the Department may take further licensure action. (Id.). Under the proposal, the supplier can still service existing customers and contracts during suspension.

NEM recommends that the rules make clear that the supplier will be provided with notice of the suspension and an opportunity to respond. Notice of the suspension should include the reason and effective date and describe the actions that the supplier needs to take to have the suspension lifted. With the clarification suggested, NEM submits that this proposed uniform policy to address the failure to timely file a license renewal application seems reasonable.

Conclusion

NEM appreciates the opportunity to offer its comments on the Tier Two initiatives and proposed license renewal process in the Department's retail market investigation. We look forward to a continued dialogue on these important consumer protection and marketing standard issues.

Respectfully submitted,



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