

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

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

Comments of PowerOptions, Inc.

PowerOptions is a not-for-profit energy purchasing consortium formed in 1996. Its over 400 nonprofit commercial and industrial (“C&I”) members in Massachusetts include hospitals and healthcare systems, colleges and universities, community and human service agencies, K-12 public and private schools, museums, as well as municipalities and housing authorities, with approximately one billion kWh of annual load, 200 MW of peak load, and 11 million dekatherms of annual gas usage. PowerOptions’ electric members represent over 3,200 C&I accounts and over 4,200 residential accounts that are in the name of a commercial customer.¹ As part of its mission, PowerOptions represents its members’ interests in many energy forums, including before the Department in proceedings such as this one.

I. EXECUTIVE SUMMARY

A fair, well-functioning residential retail market is in the best interests of all entities involved in the competitive electricity market. While PowerOptions does not participate in the residential retail market, we agree that certain changes will benefit all customers and increase faith in competitive supply markets, and we believe that similar changes to the small C&I market are necessary as well. First, we advocate for the expansion of the product-related information

¹ For example, housing authorities often have numerous residential electric accounts.

that can be included on electric distribution company bills. We also encourage the Department to revise its regulations to eliminate the predatory practice of oral authorization. PowerOptions submits that the small C&I market is functioning well and providing customer benefits. We do, however, advocate for modifications to the small C&I retail market to drive further efficiencies, with particular emphasis on the elimination of oral authorization for initiation of supply service.

II. **RESPONSE TO QUESTIONS²**

Section II – Customer Awareness

7. How could the presentation of competitive supply information on electric distribution companies' bills be revised to provide competitive supply customers with improved awareness of their competitive supplier and their competitive supply product (e.g., a separate page dedicated to the competitive supply component of customers' electric service, the insertion of competitive supplier logos on the bill)?

PowerOptions recommends the inclusion of a line for pass-throughs to be included on electric distribution company bills for all customers who choose the single bill option, not just residential customers. Pass-throughs are uncommon but, when they do occur, are potentially substantial. Including a line for competitive suppliers to delineate any pass-throughs imposed on customers affords customers the chance to review the charge and ask questions of their supplier. Pass-throughs are not ideal for customers, but are sometimes unavoidable. For instance, with ISO New England's decision to retain the Mystic units for fuel security purposes, there will be significant and difficult to predict costs that will be borne by electricity customers (through their suppliers) in the 2022-2024 timeframe. Many suppliers will be hesitant or unwilling to price this large, unpredictable cost into long-term supply contracts and will seek to pass these costs

² Silence on a question does not indicate support or opposition.

through to customers as they are actually incurred. With the current set-up of single billing, there is no way for a supplier to transparently list these costs on the electric distribution company's bill. PowerOptions recommends that a line on electric distribution company bills be afforded to competitive suppliers for conveying pass-throughs. Having a separate line-item for this (as opposed to the supplier increasing the volumetric charge to recover the cost of the pass-through or the supplier sending a separate bill) allows customers to see the exact amount being collected as a pass-through on the same bill on which they receive their supply charge, which promotes transparency and simplicity for the customer.

Section III – Department Investigation of Competitive Suppliers

13. How else could the Department improve its ability to investigate suppliers' marketing activities?

The Department can improve its ability to investigate suppliers' marketing activities by banning the practice of oral authorization for electricity contracts. This practice is outdated and allows telemarketers to easily take advantage of customers. This would require a revision of 220 C.M.R. §11.05(4)(c). While oral authorization can, in theory, produce efficiencies in signing customers up for desired supply services, in practice it often becomes a predatory marketing practice. Oftentimes the person giving oral authorization is not aware that they are actually agreeing to supply terms without ever signing a contract. Thus, "affirmative choice" should exclude oral authorization and should require written authorization from the customer.

Other Issues

19. Would it be reasonable and appropriate for the Department to require the electric distribution companies to establish a "do not switch" list, which would preclude a

company from switching a customer to a competitive supplier? If no, explain why not.

PowerOptions requests more information on the intent and structure of a “do not switch” list before commenting. In theory, every customer should be, by default, on a “do not switch” list as affirmative authorization from the customer must be provided before the customer is moved to a new supplier.

Application to Small C&I Customers

20. The issues raised in this NOI, and the questions presented above, relate solely to the electric competitive supply market for residential customers (see Section I, above). Would it be reasonable and appropriate for the Department to investigate any (or all) of these issues as they relate to the electric competitive supply market for small C&I customers? If no, explain why not. If yes, identify the issues that the Department should investigate, and for each issue, discuss whether the Department’s resolution of the issue should differ between residential and small C&I customers.

PowerOptions first seeks to clarify the definitional ambiguity around customer types. Residential customers are those served on R-1 through R-4 rate classes. However, PowerOptions is concerned that this definition is not nuanced enough in the context of this proceeding. Specifically, PowerOptions has a number of members, particularly housing authorities and universities, that would be classified as small or even large C&I customers, but who also serve a number of residential accounts (tenants, dorm rooms, etc.). PowerOptions requests clarification from the Department that residential accounts in the name of a commercial entity are not included in any changes made to the residential competitive market in this docket. Further, PowerOptions notes that, because C&I rate classes are not uniform across electric distribution

company territories, small C&I customers cannot be classified as simply as residential customers are. PowerOptions agrees with the Department's definition of small C&I customers as customers whose monthly demand does not exceed 25 kW (D.P.U. 14-140-F, Energy Switch Massachusetts Website Rules).

PowerOptions believes that the small C&I market is functioning effectively and providing value to customers. Small C&I customers benefit from the budgetary certainty provided by long-term supply contracts (as opposed to basic service's fluctuations) and from the myriad of options available to customize supply arrangements (e.g., the ability to purchase additional green power). That said, we do believe some modifications are warranted to further enhance the market.

First, as we explained above with respect to residential customers, competitive suppliers should be able to display and collect pass-through charges on electric distribution company bills if the customer is receiving single bills. This should apply to all customers: residential, small C&I, and large C&I. With regard to C&I customers, we further suggest that extra lines on the electric distribution companies' bills be allocated for supply products that are more advanced than fixed all-in pricing. For instance, some PowerOptions members choose to lock in a portion of their supply and leave the rest of their supply exposed to the market. Currently, this purchasing arrangement is unable to be accommodated on a single bill. Extra lines or more space on the distribution company bill would also accommodate customers who choose a 'capacity pass-through' option, in which capacity costs are not locked in, but the rest of the supply pricing components are. Allowing for additional lines on the electric distribution company bill that are dedicated to the customer's competitive supply price would benefit customers who want to make sophisticated energy purchases.

Second, PowerOptions strongly advocates for revisions to 220 C.M.R. §11.05(4)(c) that would eliminate the predatory practice of oral authorization for supply contracts. Several PowerOptions members have been switched by electricity brokers under this regulation, resulting in thousands of dollars in penalties and increased supply costs for these nonprofits. One PowerOptions member recently sought our assistance after being taken advantage of under this practice. Specifically, a broker had contacted an administrative assistant at the member organization to discuss competitive supply. The administrative assistant verbally agreed, despite not having approval from management. As management was unaware that the organization had been verbally entered into a contract for supply, they renewed their expiring supply arrangement through the PowerOptions program. The member was then served with a \$12,000 early termination bill for prematurely ending the supply arrangement that management did not even know existed, since it was authorized by an employee without the proper authority. Experiences like this are all too common, especially for residential and small C&I customers, and it simply could have been avoided if the broker was required to obtain a signature from an authorized representative of the member organization. There is no reason to still allow oral authorization in a world where e-signatures are just as quick and provide greater consumer protections. Thus, in order to protect customer interests, the Department should revise 220 C.M.R. §11.05(4)(c) to eliminate the practice of oral authorization and require a signature from an authorized representative of the customer before supply service may be initiated.

Lastly, PowerOptions believes that initiating service on an intra-billing cycle basis is an unnecessary change which will provide no benefits for customers. It is well-established in the competitive supply market that service begins on the first meter read date following the effective date of the contract. So, for example, if a contract is to be effective on June 1 but the customer's

meter read date is June 13, the supply under the contract will begin on June 13, not June 1.

Changing to intra-cycle billing will be complex and confusing to both customers and suppliers.

Thus, the logistical concerns around how to bill and account for supply service initiated in the middle of a billing cycle outweigh the potential customer benefits.

III. CONCLUSION

The Department's investigation into initiatives to promote and protect consumer interests in the retail electric competitive supply market represents an opportunity to update regulations to reflect the current conditions of the market. As supply products have become more sophisticated, competitive suppliers should be allocated more than one line on electric distribution company bills. The practice of oral authorization that has been used to prey on residential and small C&I customers should be eliminated. Finally, because of the way that contracts work for small C&I customers, there is no need to allow for intra-billing cycle initiation of supply service.

PowerOptions looks forward to continuing to engage in this process.