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VIA EXPRESS MAIL AND ELECTRONIC MAIL (dpu.efiling@mass.gov)

March 8, 2019

Massachusetts Department of Public Utilities
Mark D. Marini, Secretary
One South Station, 5th Floor
Boston, MA 02110

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

Dear Secretary Marini:

Please find enclosed an original and two copies of Patriot Energy Group, Inc.'s ("Patriot") comments in the above-captioned docket.

If there are any questions regarding this filing—please do not hesitate to contact me at (781) 404-5928 or by email at mkinney@patriotenergygroup.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matthew T. Kinney', is written over a faint, larger version of the signature.

Matthew T. Kinney
Sr. Counsel

Enclosures

Cc: Gregory Wade, Hearing Officer (via electronic mail)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

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

COMMENTS OF PATRIOT ENERGY GROUP, INC.

In response to the Notice of Investigation (“NOI”) ordered by the Massachusetts Department of Public Utilities (the “Department”) on January 18, 2019 in the above-captioned proceeding, Patriot Energy Group, Inc. (“Patriot”) hereby respectfully submits the following comments on the questions raised in the NOI and/or associated issues.

I. INTRODUCTION & SUMMARY

Patriot, headquartered in Burlington, Mass., is an aggregator/broker/consultant (“ABC”)¹ operating in Massachusetts and nearly all other restructured/retail choice markets in North America offering a variety of services, including competitive electricity and natural gas supply procurement, solar generation, energy efficiency, energy management, bill auditing, and other energy-related services to its thousands of commercial, industrial, governmental, and non-profit organization clients. Patriot operates as a “client-side” ABC, that does not represent competitive suppliers as a sales agent, but rather representing its clients as a “buyer’s broker” and assisting them to make intelligent decisions regarding their energy spending according to their needs and risk profiles. Founded in 2002, Patriot is a leader in the ABC industry segment, and is a proud

¹ In these comments, the acronym “ABC” is used to refer to both types of retail electricity and natural gas sales intermediaries, Electricity Brokers and natural gas Retail Agents, each depending on the context. Patriot is registered as both an Electricity Broker and Retail Agent.

member of The Energy Professionals Association (“TEPA”), an organization dedicated to promoting best practices in the ABC segment of the competitive energy industry.²

Patriot generally agrees with the Department’s goals in this proceeding, namely that (1) competitive electricity and natural gas markets can provide value, especially to commercial and industrial customers; (2) customers should have the tools to make meaningful decisions about their energy needs; and (3) competitive markets should be efficient in operation.

Patriot believes that the Department should also consider the following guiding principles in evaluation of any proposed regulations emanating from this proceeding.³

First, Patriot believes that competitive suppliers of natural gas and electricity should not be limited in the offerings that they may make, especially to commercial and industrial customers of all sizes, but that suppliers should be transparent about the terms and conditions of their offerings. Suppliers should be able to offer “fixed,” index-based, and hybrid products to all commercial and industrial customers, as each customer maintains a different risk profile and tolerance.

A corollary to this principle is that the more detailed information available to customers about the offerings, especially in a marketplace where there is a robust segment with ABCs with the expertise to advise customers about their options, is desirable and will encourage efficient commercial and industrial competition. In fact, supplier contracts should be transparent and specific regarding pass-throughs, changes-in-law clauses (including associated rate increases) and material adverse change clauses. While not all changes in circumstances are foreseeable at the time of contracting, the mechanisms for addressing such changes should be easy to understand and predictable for customers.

² For avoidance of doubt, these comments represent only the position of Patriot, and not necessarily that of TEPA.

³ These items are likely responsive to Item #17 of the NOI.

Third, the Department should limit application of these regulations to residential customers and not take this opportunity to further restrict the development of competitive markets for small (or other) commercial customers.⁴ Although it can be argued that the competitive market, as currently structured, may not be appropriate for residential customers, there is no evidence of market failure for small commercial customers. Commercial entities—no matter how small—are well-versed in using written contracts for various types of services. Electricity supply is no different. This is especially the case given the presence of expert advisors and consultants such as ABCs that can assist and educate small commercial customers.

Finally, to the extent that the NOI refers specifically to competitive suppliers, the Department should not apply any regulations adopted in this proceeding to licensed Electricity Brokers. Generally speaking, licensed Electricity Brokers, such as Patriot represent their clients—in Patriot’s case, commercial, industrial, governmental, and not-for-profit entities—and do not represent suppliers. This role should be viewed as distinct from the role of third-party marketers who clearly act as sales agents or telemarketers for suppliers. In those cases, those entities should be treated by the Department and any adopted regulations as extensions of the suppliers that they represent. If the Department decides, after further notice and comment, to apply new regulations to Electricity Brokers, such regulations should be tailored to the unique role that ABCs play, that of agent and consultant to their clients. should take note of the unique role that ABCs play in the market and tailor any requirements that it might elect to apply to all

⁴ To the extent that Patriot advocates here that any regulations not apply to small commercial customers, in these comments, Patriot will assume for the sake of argument that the Department would seek to implement some proposals for new or changed regulations with respect to small (or large) commercial customers.

“retail sellers of electricity”⁵ and tailor those requirements it chooses to apply to ABCs accordingly.⁶

II. SPECIFIC ISSUES RAISED BY THE DEPARTMENT

A. Item #6 – Automatic Renewals

The Department requests comment on whether the distribution companies should be required to present automatic renewal information regarding supply contracts on the customer’s utility bill. Patriot is not certain this is feasible given the electronic data transfer protocols currently in effect. In addition, different suppliers structure their commercial supply contracts differently. Some provide for automatic renewals for a definite term; others have a “holdover” period in which fixed-rate contracts default to a month-to-month index-based variable rate; still others have a “hard stop” at which time the customer is dropped back to Basic Service, unless the customer has signed a contract to enroll with a competitive supplier for a subsequent term. Because of these differences, and the apparent lack of infrastructure to communicate the varied ways in which contracts terminate, Patriot believes that a requirement to communicate and place automatic renewal information on the utility bill is unrealistic and not workable at the present time.

B. Item #8 – Door-to-Door Marketing

In D.P.U. 14-140, the Department adopted standards for door-to-door marketing for competitive suppliers. Most notably, however, the Department did not actually define what behaviors make up “door-to-door” marketing. If the Department chooses to extend the

⁵ 940 C.M.R. 19.03. The Attorney General’s regulations do not distinguish between competitive suppliers and ABCs, despite the differences in their business practices and roles in the marketplace.

⁶ See Maine Public Utilities Commission, Order Adopting Rule and Amendment, Docket No. 2018-00056 (September 13, 2018) at p.5

application of its door-to-door marketing regulations to Electricity Brokers, it should clarify that unlike solicitation of residential customers, which is accomplished by visits to customers primarily during evening hours or on weekends and are unsolicited by the residents, ABCs often, in their role as consultants, first contact the owners or managers of their small commercial clients and prospective clients and decide to meet, face-to-face at their place of business. This setting is not only comfortable for such clients, but also where small commercial clients are likely to keep their records. As contrasted with unsolicited home visits, commercial meetings are usually scheduled in advance and are not intrusive on those small businesses. Moreover, many of these meetings do not necessarily result in signed contracts with the ABC or suppliers. Often, it is later, either via email or fax, that small business owners are provided with written contracts that they can review and ask questions if necessary. Therefore, Patriot believes that the Department that such meetings by Electricity Brokers are not within the definition of “door-to-door” marketing, for the purposes of the Department’s regulations.

C. Item #15 – Mid-Cycle Enrollments

The Department also requested comment on whether it should adopt mid-cycle enrollments (and drops) to or from competitive suppliers. Patriot believes that mid-cycle enrollments promote competition and may act to reduce confusion among prospective supply customers. Many commercial customers have multiple distribution company accounts, each with a different meter reading cycle. At present, since an enrollment transaction can only be processed on an account on the meter reading date for that account, often commercial customers are confused with having multiple enrollment dates for their competitive supply service, even though they are enrolled via a single supplier contract for the same rate or rate structure. Allowing for mid-cycle enrollments as a rule, as opposed to the exception as is the case today,

will allow customers to reap the benefits of their chosen supply plan on a date certain, and will reduce confusion when reconciling bills with contracted pricing.

D. Item #21 – Applicability to Natural Gas

Moreover, specifically in response to Question 21 of the NOI, t Patriot submits that in general, to the extent applicable, the Department’s regulation should be consistent across commodity lines—regulations for electricity and natural gas competition should parallel each other so that customers can more easily understand the “rules of the road.”

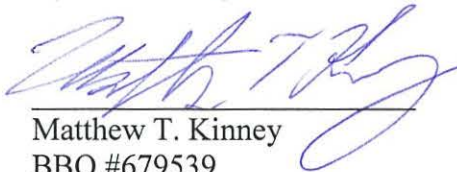
III. CONCLUSION

In conclusion, the Department should be lauded for its efforts to ensure that retail electricity choice is as transparent and fair as possible. However, such a goal needs to be balanced with the reality of business-to-business transactions and the very real distinction between ABCs and competitive suppliers. To the extent that the Department adopts regulations on the matters raised in the NOI, they should be adopted with the above tenets in mind.

Respectfully Submitted,

PATRIOT ENERGY GROUP, INC.

By the undersigned,



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