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 AND RESPONSES OF DIRECT ENERGY TO THE DEPARTMENT'S QUESTIONS RE: CONSUMER INTERESTS IN THE RETAIL ELECTRIC MARKET

Direct Energy hereby submits its comments in response to the Department of Public Utilities' ("Department") Vote and Order Opening Investigation[1] in the above-captioned proceeding regarding the Department's inquiry seeking input from stakeholders on initiatives to further improve the retail electric competitive supply market in the Commonwealth of Massachusetts.

BACKGROUND

In 1997, the Commonwealth enacted legislation to restructure the provision of electric service in Massachusetts. An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein, St. 1997, c. 164, § 37 ("Restructuring Act"). The Restructuring Act introduced competition into the generation (electrons) portion of retail electric service. Specifically, it allows customers to purchase electric supply from competitive suppliers

[1] Vote and Order Opening Investigation (Jan 19, 2019) ("Comment Request").

or from their local utility.

In December 2014, the Department opened its investigation into initiatives to improve the retail electric competitive supply market, particularly for residential and small commercial and industrial ("C&I") customers[2]. In that proceeding, the Department: (1) eliminated the bill recalculation provision, which allowed the utilities to retroactively calculate monthly costs on a customer who left default service during the six-month default service pricing cycle (D.P.U. 14-140-A (2015)); (2) established reporting requirements for the assignment of customers from one competitive supplier to another (D.P.U. 14-140-D (2016)); (3) developed a website for electricity consumers to compare different electricity product offerings and purchase electricity products from competitive suppliers that participate in the website ("Competitive Supply Website" or "Website") (D.P.U. 14-140-E (2016)); and (4) established notification requirements and standards of conduct for door-to-door marketing initiatives (D.P.U. 14-140-G (2018)).

In March 2018, the Attorney General of the Commonwealth of Massachusetts ("Attorney General") issued a report regarding the electric supply market in Massachusetts.[3] The Attorney General report recommended to the state legislators that if they allow the market to continue, they should take action to ensure (1) the level of transparency and informed decision-making that is required for a well-functioning market and (2) adequate oversight and enforcement over competitive supplier actions (Attorney General Report at 40-46).

The Department now seeks to build on its prior initiatives and further modify the protections provided to residential customers related to the marketing and delivery of competitive retail electricity product offerings. The inquiry encompasses many issues and is aimed at investigating

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2 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 (2014).

3 Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts, available at: https://www.mass.gov/doc/comp-supply-report-final.

solutions that are within the Department's statutory authority. The Department has also suggested that it is willing to consider initiatives that are outside of its existing statutory or regulatory authority and that might "require a legislative or regulatory change".

The Department has asked a series of questions targeted at three primary topical areas: (1) Consumer awareness of the Competitive supply market and the value the market can bring to consumers; (2) the Department's oversight and authority over competitive suppliers' marketing practices; and (3) the operational efficiency of the electric competitive supply. Direct Energy provides its answers to the Department's specific questions below and offers additional discussion and comments where warranted.

Executive Summary

Direct Energy is pleased that the Department is seeking comments to assist their efforts to improve the retail electric competitive supply market in the Commonwealth. The Department has presented many valid observations, questions, ideas and suggestions in its Comment Request. However, at this time, more research or collaboration is needed before the Department will have the "right" answers to many of its questions.

Direct Energy is fully supportive of the Departments efforts to enhance its oversight and enforcement capabilities. However, Direct Energy does not support implementing rules for the sake of implementing rules. With this in mind, Direct Energy provides some very definitive "Yes" answers to the Department's questions. It also provides some very definitive "No" answers to the Department's questions. In addition, in contrast to offering unsupported recommendations to some of the questions, Direct Energy suggests that the Department create on ongoing stakeholder collaborative that can provide the Department with input from all stakeholders, current data collection, analysis, and comprehensive market recommendations. This collaborative can be utilized

to continually improve many aspects of the market like the Competitive Supply Website, call scripts, complaint data and others. For example, it would be entirely inappropriate for the Department to mandate website design or language, call script language or complaint definitions without some ability to change those findings as the market evolves outside of a change to regulations. The collaborative process can be utilized long-term in conjunction with the Department and Staff to continually improve consumers' awareness of and experiences with the retail electricity market.

In response to the Department's questions regarding the revision of utility billing for suppliers' services, Direct Energy recommends that a separate task force be convened to specifically address the changes that are needed to the current billing paradigm. For a variety of reasons, the current system is not working, and many creative options are available that would enable a robust, customer-focused, and educational electricity invoice. Such a consumer invoice would enable many more advanced retail products and services, but unfortunately, is not practically available for residential consumers today.

Direct Energy appreciates the Department's initiative and looks forward to working with the Department, Staff and other stakeholders to continually improve the electricity markets so that consumers will see continued and improved benefits of electricity competition.

Introduction

Direct Energy appreciates the Department's initiative and efforts to improve the competitive retail electric supply market. It is without question that opening the electricity markets to competitive forces has been a net positive to consumers, saving consumers in restructured states billions of dollars annually when compared to what they would have paid under the vertically integrated utility models[4]. While it is impossible to do an exact comparison, a recent study by former

[4] See: Cicala, Steve, Imperfect Markets versus Imperfect Regulation in U.S. Electricity Generation,

Illinois Commissioner Phillip O'Connor and Muhammad Asad Khan showed that over the past 10 years, consumers in vertically integrated utility markets have paid over $300 billion more than they would have paid if their energy costs rose at same rate as the rates rose in restructured states. It is in this context of extreme consumer value that has been created that the Department should consider the discussion presented below.

While all of this consumer value has been created from competitive forces, some of the state-specific retail models have not evolved as was envisioned when the competitive market models were adopted. Clearly, there is room for improvement in the Massachusetts retail electricity market. The Department has appropriately identified several of the constraints present in the market and has also identified some areas of low-cost and "no regrets" improvements to the market. Direct Energy commends the Department for opening the discussion on these issues.

Direct Energy is supportive of several of the ideas that the Department has presented in its Comment Request. However, there also is a general tenor running through several of the questions that more oversight and regulation will improve the market. While Direct Energy is not opposing Department oversight, several of the questions inquire about specific solutions where there is simply not enough data or evidence to show that the solutions suggested will generate any benefit to the market, to the customers, to the suppliers, to the utilities or to the Department and on their face, would appear to increase costs for consumers and make a retail energy transaction more difficult for consumers and suppliers. In many instances, the Department has not even identified a problem that it is looking to address through its proposal. Noted playwright and short-story author Anton Chekhov famously wrote about story writing "If in the first act you have hung a pistol on the wall, then in the

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University of Chicago, January 22, 2017; ISO NE, 20 Years, 2017 Regional Electricity Outlook; PJM, The Value of Markets, found at: https://pjm.com/-/media/about-pjm/newsroom/fact-sheets/the-value-of-pjm-markets.ashx?la=en.

following one, it should be fired. Otherwise don't put it there." In other words, everything that is introduced in a story needs to have a function. Direct Energy will explain more fully below but urges caution when jumping to the conclusion that more oversight will help. It is also concerned that many seemingly harmless mechanisms inquired about by the Department will be "fired off" in a later chapter just because they are there. That is not an efficient manner or methodology of market oversight.

Direct Energy's responses to the questions below will generally fall into one of two categories. The first will be a definitive "Yes, let's move forward with this" or a "No, this will be very detrimental" type of response. The other category of response that will be provided in the answers to many of the questions posed by the Department will be Direct Energy recommending that it may be more appropriate to move the issue to a working group or groups, and have the working groups generate productive solutions that will address known or proven market shortcomings. As such, Direct Energy respectfully requests that the Department convene a standing collaborative working group that will be capable of addressing some of the more challenging questions presented below. For ease of communicating this concept in this document, the group will be referred to at the Massachusetts Electricity Market Improvement Team or "MEMIT". The MEMIT should be empowered to address and advise the Department of some of the more technical implications associated with the concepts presented in the Department's Comment Request and that are certain to arise moving forward even as some of the tools envisioned in these questions are implemented. Additionally, for one particular issue, changes to the billing paradigm, Direct will recommend the development of a separate task force dedicated to addressing of the billing issues raised in the Comment Request. The need for the stakeholder groups will become more transparent further in this response.

Implementing the MEMIT is not intended to delay implementation of any tools that might be

needed for the Department to oversee the retail electricity market. Rather, it is intended to ensure that the Department is collecting the right data, looking at the right information, analyzing it in an appropriate context, developing more informed decisions and implementing more effective tools over time.

The approach presented in the Comment Request, where several stakeholders file their ideas, no real discussion occurs, and the Department selects one or more of the ideas, is likely to lead to a sub-optimal outcome. Imposing further regulations on the market, without any evidence that a problem exists, where desired outcomes are not defined or without any showing that the regulations will lead to desired outcomes, will only increase the cost of conducting business in the Commonwealth and will not resolve any of the problems (if they exist). Direct Energy encourages the Department to take an evidence-based approach to further regulation. As part of that approach, the Department should clearly define and articulate its objectives for the market. "Transparency", "efficiency" and "low-cost" are great concepts, but one person's interpretation of any of those words may be drastically different from another's.

After the Department has had a chance to review the stakeholder input received in the responses to its inquiry, it should move to open the MEMIT process where its desired market outcomes and goals are clearly defined. If the Department's desired outcomes and goals are not yet defined, the MEMIT process could provide input into the development of the Departments goals.

Responses to the Department's Questions

Question from Section II - Customer Awareness

1. **What types of general education activities would be most effective to increase customer awareness of the value that the Competitive Supply Website can provide (see Section II.B)? For each type of activity, identity the appropriate role of the Department, the distribution companies, the competitive suppliers, and other stakeholders.**

A. Well-designed shopping websites for any product or service, whether it's electricity products, cars or kitchen appliances, can provide consumers with tremendous value. First and foremost, they allow for a quick comparison of the high-level attributes of competing products, including price. Consumers can choose the product that best fits their values or needs. And they usually provide a quick and efficient avenue to purchase the desired product. The question proposed by the Department suggests that consumers aren't aware of the "value of the Competitive Supply Website." It is more likely that customers aren't aware of the existence of the Competitive Supply Website and of their options associated with competitive choice of electric generation suppliers.

There are several approaches to raise consumer awareness of the Competitive Supply Website. These include consumer education efforts, public service announcements, earned media, paid advertising, social media initiatives and others. The Department should consider all of these but before implementing any, engage individuals who are well versed in the field of digital commerce. This is an area where stakeholders to this proceeding will offer many ideas for consumer awareness, but it is not likely that any have significant experience in developing and promoting a comparative shopping website. For example, Direct Energy employs individuals who are focused on promoting its own website, www.directenergy.com, but they are not expert at promoting comparative shopping sites.

One approach that the Department could explore would be to outsource the Competitive Supply Website. The Department could solicit competitive bids for private enterprises to own and/or operate and develop the website. Instead of burdening taxpayers with the development and management costs of this website, the owners of the website could be compensated by the market for each consummated transaction. For example, the owners of the website might be allowed to charge each of the retail suppliers an annual fee for being listed and promoted on the site and then further compensated by the suppliers for each competitive contract that is entered into by a consumer. While this might run contrary to the conventional thinking of the regulators who have implemented state-run shopping websites, it will likely create the incentives for the owners of the website to educate mass market consumers about the existence of and value of the Competitive Supply Website. Of course, the Department could maintain its oversight and ownership of the materials posted on the website.

Private comparative shopping websites have arisen in other areas of the country. For example, in Texas, several private websites have evolved. www.choosetexaspower.org and www.texaselectricrates.com are both privately-funded websites that offer comparative shopping tools to customers in that market. www.powertochoose.org is the original, state-funded website, and provides access to all suppliers. The Department could, in theory, provide a website that is the best of both worlds. It could mandate certain terms and conditions in its oversight of the website but could also allow the developers latitude to be compensated in part based on the success of the site.

2. **Would it be reasonable and appropriate for the Department to require competitive suppliers to provide customers with information regarding the Competitive Supply Website through their marketing materials/scripts (see Section II.B)? If no, explain why**

not. If yes, identify the information (e.g., Website URL, number of participating suppliers, number of products listed) that would be most effective to increase customer awareness of the value that the Competitive Supply Website can provide.

A. It is in every supplier's interest to have the Competitive Supply Website be as robust as possible to enhance the customer experience. Direct Energy supports the Departments efforts to improve the awareness of and effectiveness of the Competitive Supply Website. From a supplier's perspective, the perfect outcome of this endeavor would have the website URL be as familiar to consumers as Amazon.com. It is possible that a private operator of this website (as described in the prior answer) could achieve that level of familiarity with the right incentives. It is less likely that a Department-managed website will achieve the same levels of success.

It should be noted, however, that the issue of consumer awareness is not nearly as relevant to the consumers that suppliers are talking to as it is to consumers who are not being engaged by suppliers. Consumers who are engaged with suppliers are already being educated. The consumers looking at a supplier's website, or on the phone with a supplier, or reading a letter from a supplier are not likely the consumers that need to be informed about the Competitive Supply Website. It is the other consumers who are not engaged in the market that should be the focus of this effort. It is not clear that any requirement on supplier marketing materials will solve that problem.

The requirement, as presented by the Department in this question, raises many legal and market issues. At the most basic level, this question is asking whether it is appropriate for the Department to require a competitive company who is investing in a marketing campaign to spend a portion of that investment advising its targeted customers to investigate what their competitors are offering as well. There is no evidence that a requirement like this would add any value to the market. In fact, it might very well confuse customers as this consumer education model does not exist in any other market that Direct Energy is aware of. For example, Macy's does not suggest you go to Shoes.com in its advertising for its shoes[5].

Further, this question does not define what comprises "marketing materials/scripts". Where would the line be drawn. Is a renewal notice a "marketing material"? What about direct mail advertisement? Or a website banner ad that runs across multiple states on Google.com? With respect to "scripts", the same questions are applicable. Would a renewal script be required to mention the website? What level of communication would be required in an oral conversation? Would the supplier representative just say, "you could also visit www.energyswitchma.gov". Or would there have to be a more forceful "we have to inform you that there are competitive offers

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[5] It is possible that one or more suppliers could challenge such a requirement on the grounds that it is compelled speech that is forbidden by the First Amendment. See, e.g., *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), While a proposed regulation requiring suppliers to provide, in essence, free marketing to their competitors would be compelled commercial speech, which would receive different scrutiny from non-commercial speech (see, e.g., *Zauderer v. Office of Disciplinary Counsel,* 471 U.S. 626 (1985)), a lawsuit challenging such a regulation could take many years to resolve, dampening the measure's effectiveness. Less intrusive measures should be explored first.

available at...". Or would there need to be full descriptions of what is available on the website with the company representative required to spell out the website, letter by letter.

Many other potential approaches to reach the consumers that are not engaged in the market are feasible. Direct Energy is not in the position to offer the solution to best educate all consumers. Moreover, it is important to note that the residential consumer is not a homogenous group but rather a group comprised of many different individuals with different values and needs. Different companies market to different segments of the market and have products tailored to meet the needs of those different segments. It is not likely that any one company markets effectively to all market segments.

For all of the reasons elaborated in this response, Direct Energy urges the Department to move this issue of whether suppliers should be required to promote the Competitive Supply Website to the MEMIT collaborative process described above. That group could better understand the Department's goals, brainstorm much more effective ways to achieve those goals, educating consumers about the Competitive Supply Website and other attributes of the competitive supply market. It is with collective thought, brainstorming and conversation that the appropriate solutions will emerge.

3. **Would it be reasonable and appropriate for the Department to require the electric distribution companies to put information regarding the Competitive Supply Website on their bills (see Section II.B)? If no, explain why not. If yes, identify the information (e.g., Website URL, number of participating suppliers, number of products listed) that would be most effective in increasing customer awareness of the value that the Competitive Supply Website can provide.**

A. Yes. At a minimum, the distribution utilities should include the URL for the Competitive Supply Website on its bills. It should also include links to the Competitive Supply Website on its own website, including in the billing portal section of its website. However, before jumping to conclusions about what other information to include, it would be best for the distribution utilities to perform some short-term market testing before committing to the long-term messaging approach about the website. For example, the Department suggests three potential data points that might be appropriate to drive consumers to the website. Before deciding in a regulatory proceeding which point, or points, are most effective, the distribution utilities could perform a simple test to see which messages drive consumers to the website. Is it a savings message? Alternative product message? Number of offers message? We don't know, but it would not take long for the utilities to do the market research to see which messages are most effective.

The issue of distribution company education efforts about the Competitive Supply Website should be included in the discussion topics for the MEMIT to address. While it might add a month or two to the process, an evidence-based consumer education message will yield better results than simply requiring a distribution company to put a message on a bill.

4. **What other steps could the Department take to increase customer awareness of the value that the Competitive Supply Website can provide?**

A. Direct Energy re-asserts its beliefs stated above that consumers understand the value of a comparative shopping website. The challenge for this stakeholder group is to raise awareness of the Competitive Supply Website. As discussed above, Direct Energy believes that the Commission should consider outsourcing the Competitive Supply Website. The market has shown quite convincingly that it can create sustainable comparative shopping websites. Amazon, Travelocity, and Hotels.com are a few of the better-known comparative websites.

Direct Energy is not making a formal recommendation to the Department to outsource the Website, although believes the option should be considered in the process of improving the market. Consistent with the general theme of these comments, Direct Energy believes that solutions that are based in positive experiential evidence will give rise to the best outcomes in the Commonwealth.

The general "customer awareness of the website" issue should be moved to the MEMIT process. Customer engagement tools will evolve over time and what might be best technology and information today might be outdated in a year. Education tools and trends will change and the information presented to customers should evolve as well. This is certainly not an area where a static solution presented at a point in time makes sense.

5. **Would it be reasonable and appropriate for the Department to establish uniform requirements by which competitive suppliers would notify customers of the automatic renewal provision in their supply contracts (see Section II.C, above)? If no, explain why not. If yes,**

   a. **What information should competitive suppliers be required to provide to customers (e.g., the date on which the automatic renewal will take effect, the price and pricing structure to which the contract will automatically renew)?**

   b. **How long before the automatic renewal takes effect should competitive suppliers be required to provide such notification to customers?**

   c. **What method(s) should competitive suppliers be allowed to use to provide the notification (e.g., direct mail, e-mail)?**

   d. **If the contract would renew to a monthly-priced product, should competitive suppliers be required to notify customers on an ongoing basis regarding the price that will be in effect during the upcoming month? If no, explain why not.**

   e. **What state(s) have established automatic renewal notification requirements? For each state, discuss the manner in which the state implements such a requirement.**

A. Yes. Direct Energy supports a uniform notification requirement for renewal contracts. However, Direct Energy urges the Department, that if it adopts renewal communications requirements, that it model their requirements after another state's requirements. Two of the Commonwealth's neighboring jurisdictions -- Connecticut and Rhode Island – have both implemented renewal notification requirements. The Department should evaluate which of those jurisdiction's requirements most align with its own goals and adopt those standards exactly. While this type of requirement will increase costs in the market, mirroring another state's requirements will minimize the cost increases.

6. **Would it be reasonable and appropriate for the Department to require the electric distribution companies use their monthly bills to provide information to competitive supply customers about the automatic renewal provision in their supply contracts (see Section II.C, above)? If no, explain why not. If yes,**

   a. **What information should be provided through the bills (e.g., the date on which the automatic renewal will take effect, the price and pricing structure to which the contract will automatically renew)?**

   b. **How often should the electric distribution companies be required to provide this information (e.g., on all bills to competitive supply customers for whom the supply contract includes an automatic renewal provision, only on the bill preceding the month in which the renewal takes effect)?**

   c. **What other supply product-related information should the electric distribution companies be required to provide to competitive supply customers through the bills (e.g., early termination fees)?**

A. No. While it might sound tempting, even for some suppliers, to put the onus of a renewal notice on the utility, Direct Energy believes that this would be a disastrous situation leading to unprecedented levels of customer confusion, especially if implemented in conjunction with the type of requirements envisioned in Question Number 5. However, even without the mandates envisioned in Question Number 5, it would still lead to negative consumer experiences and bad outcomes.

Suppliers are constantly engaged in consumer outreach and engagement efforts, including renewal efforts. And these efforts don't happen in monthly intervals like a utility bill. They happen continually. With a renewal notice mandate placed on the utilities, it is easy to envision a scenario where a customer enters into a renewal agreement then receives a bill a week later that indicates that its contract is about to expire and it should shop around. That could lead to duplicate contracts, early termination fees, unhappy customers and unnecessary customer confusion.

Additionally, this type of requirement would put the utility in a position where it would first have to track the duration of each individual consumer contract. At some point prior to the renewal date, the utility would be required to tell the customer "you should go back and renew with Supplier X" or "you should consider all of your options as you have a renewal opportunity". The contract tracking and both renewal statements are troubling coming from the host utility.

The utilities should be completely unbiased in its consumer education and communications efforts. The utilities should not engage in any communication with consumers about specific contractual issues with their suppliers.

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)?

A. The best billing outcome for improving customer awareness of competitive suppliers and competitive supply options would be the implementation of Supplier Consolidated Billing ("SCB"). SCB offers many consumer benefits and is more consistent with how a productive combination of product suppliers and transportation suppliers co-exist. UPS, for example, won't send you a bill from a department store, but it makes infinite sense for the department store to charge you for transportation and shipping. Direct Energy fully understands that a move to SCB would require a legislative change and is outside the scope of this docket. However, SCB is the optimum end-state for the most effective and efficient electricity market where suppliers can develop, sell and appropriately invoice customers for, and educate customers about, advanced energy products.

Moving forward, the Department should consider billing from the customer's perspective as an engaged energy consumer and not from the perspective of a "ratepayer" or of the utility. The bill should emphasize what is important to the customers. It should focus on product attributes, energy efficiency attributes, renewable attributes, budget attributes, frequent flyer miles or whatever other concerns the customer has. Items like regulated distribution rates and riders that go out to the fifth decimal place and are not manageable, arcane industry jargon and other items historically placed on electricity bills are not of great interest to the customer. The consumer needs and wants to be made aware of things that can be impacted. Like an invoice from Amazon.com, the detail is in the products and product attributes. The transportation/shipping charge is a line item.

The type of billing arrangement discussed in this question warrants further and comprehensive stakeholder discussion. In a perfect non-SCB world, the billing host would present all of the suppliers' products on the bill in the exact format that the supplier would put them on their own hypothetical SCB bill. That would require the utility to be able to invoice for multiple products from multiple suppliers in a manner that wouldn't further confuse the consumers.

The billing host could be the incumbent utility. Alternatively, similar to the website concept discussed above, the billing function could be outsourced. There is no fundamental reason why the utility is in the billing service business. Billing services are not in any way a monopoly function. Outsourced utility billing could still fall under the purview of the Department and the Department could regulate the distribution bill format, the bits of information from the distribution company that are required on the bill, and other bill aspects. The independent billing entity could also be required to submit supplier bills in the same envelope and the Department could mandate that certain bits of

information be included on those invoices. Beyond that, however, the suppliers could coordinate with the billing host to design and deliver an invoice that would mirror exactly what the suppliers hypothetical SCB would look like. The billing host could be a for-profit entity and would be paid independently by the utilities and by the suppliers. If the billing host was the utility, it should be required to offer billing flexibility, within the bounds of what is technically feasible, not within the bounds of what its current billing system can offer.

Obviously, there are many other issues that would need to be discussed and resolved before the Department can issue meaningful requirements for comprehensive billing. Direct Energy urges the Department to convene a task force that is specifically challenged with addressing the myriad of billing issues associated with this question. This task force should be commissioned with defined mandates and deadlines that are solely focused on alternative billing solutions. This task force, which should be separate and distinct from the MEMIT collaborative, should be required to report back to the Department with its findings and recommendations not longer than one year after it is convened.

Questions from Section III - Department Investigation of Competitive Suppliers

8. Would it be reasonable and appropriate for the Department to establish door-to-door marketing standards of conduct for competitive suppliers related to the disclosure of supply product information (see Section III.B, above)? If no, explain why not. If yes,

a. What supply product information should door-to-door marketers be required to disclose to customers?

b. Should the Department establish uniform language (and a uniform format) that suppliers would be required to use to disclose this information?

A. Yes. The Department should come up with a uniform format and list of disclosures that suppliers would be required to present to customers if they are engaged in door-to-door marketing efforts. At a minimum, the disclosure should identify the verifiable trade name of the supplier that will be the counter-party to the customer's contract. It should also disclose in simple English, the price per kWh, the duration of the price, the duration of the contract and any renewal terms.

9. What other standards of conduct should the Department add to the door-to-door marketing standards of conduct established in D.P.U. 14-140-G?

A. Direct Energy is fully supportive of a robust program of oversight over door-to-door marketing programs. However, it is possible that adding more requirements to the standards of conduct will only add costs to the selling process or confuse customers. Please also see the comments in response to Question Number 8, above.

However, because Direct Energy firmly believes that the market participants should be acting in an ethical manner, it is supportive of imposing an increased financial assurance requirement on companies engaged in door-to-door marketing. But before imposing the requirement, the Department should move this issue to the MEMIT collaborative to discuss important areas such as the appropriate level of assurance and the violations that would lead to forfeiture of the assurance and the burden of proof that a violation occurred.

Additionally, Direct Energy supports the notion of enhanced penalties for violations of Department rules when those violations are committed against customers identified as low-income customers, if supported by the available evidence.

10. Would it be reasonable and appropriate for the Department to establish standards of conduct for marketing channels such as telemarketing and direct mail (see Section III.B, above)? If no, explain why not. If yes, identify the marketing channels for which the Department should establish standards of conduct and, for each marketing channel, discuss how the standards of conduct should differ from the standards of conduct for door-to-door marketing.

A. Based on the discussion in the Department's Comment Request, it appears that the Department is inquiring about the appropriateness of requiring an identification of the supplier, and certain terms of any product offer (term, termination fees, renewal obligations) in a supplier's direct mail and telemarketing efforts. The Department has not shown nor is it even alleging that any problems exist stemming from these channels. In Question Number 14 (addressed below), the Department seeks input on complaint data and publishing complaint data. The Department should link requirements under this Question to the review of complaint data. Direct Energy recommends that the Department deploy an effort to collect and quantify complaint data (subject to the discussion presented in response to Question Number 14). If (and only if) that data reveals some type of troubling trend to the Department with respect to direct mail or telemarketing initiatives, should the Department seek to impose regulatory requirements on those channels.

Direct Energy supports incremental evidence-based requirements and standards of conduct on telemarketing and direct mail if a problem can be shown to exist with respect to these marketing channels. It does not support a rule for the sake of writing a rule. Telemarketing is already regulated at the federal and the state levels. Most notably, the Federal Trade Commission's national Do Not Call registry and the Massachusetts Office of Consumer Affairs and Business Regulation's Do Not Call list provide adequate safeguards to protect consumers from unwanted telemarketing efforts. Fraudulent or deceptive direct mail is also regulated at the federal level. In addition to identifying a problem in the market, before the Department implements further restrictions on these marketing channels, it should first understand the requirements in the existing governing regulations, then identify any gaps that might exist, then proceed with further governance. In the absence of these two preliminary steps, the Department's efforts might be duplicative and add nothing further to any type of consumer protection. But worse, without preliminary investigation, the Department might

implement rules that would be in conflict with those of the FCC, FTC, US Postal Service and state agencies.

11. Would it be reasonable and appropriate for the Department to expand the role of TPV to include confirmation that a competitive supplier has complied with the marketing standards of conduct (see Section III.C, above). If no, explain why not. If yes, should the Department establish uniform language that TPV service providers would be required to use to confirm that suppliers have complied with the marketing standards of conduct?

A. No. Expanding the TPV requirements, especially in the absence of any compelling need, is detrimental to customers, suppliers and the market in general.

In its Comment Request, the Department states that it "expects that expanding the TPV in this way would (1) protect customers from purchasing supply products about which they were insufficiently informed and (2) facilitate the Department's ability to identify competitive suppliers that should be reviewed or investigated for non-compliance with the marketing standards of conduct." This suggestion by the Department is troubling on many fronts. First, including TPV requirements as described is essentially asking a customer to verify that the supplier has complied with the letter of the law. Customers are unlikely to be informed about what the standards of conduct are and even if explained, might not understand all of the terminology used in this verification. Second, the Department has not shown how a TPV requirement will lead to the Department getting information to "identify competitive suppliers that should be reviewed or investigated". Finally, the Department is literally "hanging the gun" for the sole purpose of using it later. Rather than establishing regulatory requirements that will lead to no market improvements, the Department should instead, be looking to identify shortcomings in the market and addressing those. Direct Energy would support an additional requirement if a set of data (complaint data perhaps) identified a problem that could be rectified with an additional requirement.

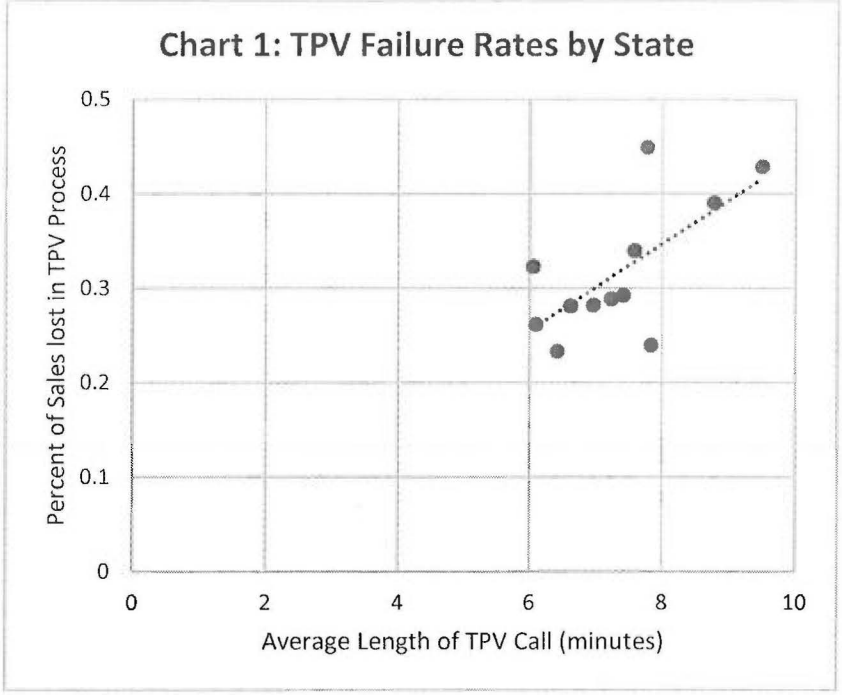
The suggestion proposed by this question misapprehends the essential function of TPV and the limits to which that function can be extended. TPV is intended to allow a supplier to comply with G.L. c. 164 sec. 1F(8), which requires affirmative consent from the customer to switch the customer from one supplier to another. Ideally, the customer's expression of consent would be contained in the fewest statements needed to ensure that the consent was genuine (that is, not coerced in any way) and informed. Beyond that point, additional TPV questions simply increase the chances that the customer will say something that requires the TPV agent to abandon the call, nullifying the sale and, where the customer otherwise fully intended to switch suppliers and fully understood the product she was buying, frustrating the customer's intent and causing the supplier to incur an unproductive cost.

Over the years and across the restructured states, TPV has become a means by which the customer is asked to make ever more subtle evaluations of the sales experience, the purposes of which might be clear to someone in the industry but which are surely opaque to the average customer. Excessive TPV questions also make the sales process annoying to customers for no good reason. There is no

equivalent of this requirement for other consumer products and services, some of which result in far greater financial exposure. For example, a customer with good credit can spend tens of thousands of dollars on a car without being asked to answer a series of questions probing his or her understanding of the car-buying decision. Such a requirement would run the risk of plunging the automobile industry into a deep recession. Yet we make electricity buyers jump through an ever-lengthening series of hoops after having already heard a sales pitch that itself is subject to increasing regulation.

The suggestion that buyers be asked whether the prospective supplier has complied with all marketing standards is a bridge too far on this journey. It has nothing to do with the essential question of whether the customer does, in fact, wish to buy the product offered by the seller. It would be likely to result in a very high percentage of sales being invalidated at the TPV stage, since TPV agents are not allowed to answer substantive questions posed by the customer, and the proposed question is uniquely designed to engender a series of questions by a discerning customer. (An irony of this and other TPV questions is that the customers most likely to pass through this hoop successfully are those who may not be paying close attention but who understand that the fastest way to get off this unexpected extra phone call is to just say yes to everything as quickly as possible.)

Direct Energy's experience with TPV requirements bears this concern out. The more complex the TPV requirements, the more likely the sale is to be cancelled. In fact, there is a strong correlation between the length of a TPV call and the failed sales rate. It is not clear exactly why that correlation exists, but common sense would lead to the conclusion that the more questions that are asked of a customer, the more likely it is that a customer will: 1) get tired of the questions and hang up, 2) be bothered by repeating the same information that has likely been stated earlier, 3) be worried about repeating information to an "independent" company that is not the company they are conducting business with, or 4) not understand a question or a term fully and ask questions back that might force the cancellation of the sale.



In this chart, each dot represents a state where Direct Energy conducts retail sales subject to TPV requirements. As is plainly evident, as the TPV portion of the sales call endures, the likelihood that the sale will be rejected increases significantly. As calls approach or surpass the 8-minute mark, nearly half of all sales fail.

This is one more area where the Department is considering implementing rules without any evidence to support the need for the rule or without showing how the rule might protect consumers. There is no evidence in any market that Direct Energy is aware of that shows that TPV leads to higher levels of engagement, knowledge, transparency or customer satisfaction. In fact, it is possible that TPV leads to customer confusion and dissatisfaction because it prolongs the sales interaction, and in many cases, if the customer has any questions after the fact, the transaction is nullified.

12. Would it be reasonable and appropriate for the Department to require competitive suppliers to periodically provide the Department with data on the types of marketing channels through which they have signed up customers (see Section III.D, above)? If no, explain why not. If yes,

a. What data should competitive suppliers be required to provide the Department?

b. How often should competitive suppliers be required to provide this data to the Department?

A. No. In its Comment Request, the Department stated, "Having information on suppliers' marketing activities, including the types of customers enrolled through each type of activity, would allow the Department to prioritize our review of TPVs and adopt a more proactive approach to our review and investigation of competitive suppliers' marketing activities." It is not clear how reporting sales data by marketing channel will lead to either of these outcomes. Additionally, this statement appears to show that the Department is at least contemplating an initiative to review some (and perhaps all) TPV calls. It is not clear what if any, value that will provide to the Department, the market, the customers or to suppliers. The Department states that this will allow it to "ensure

competitive suppliers that 1) enroll customers primarily through door-to-door marketing or (2) enroll a significant number of low-income customers comply with our marketing standards of conduct." The Department would seemingly have the authority to review TPV scripts without imposing additional reporting requirements on suppliers.

This is another powerful example of Chekhov's "hanging the gun on the wall" lesson. Reporting this type of data could not possibly lead to any positive outcome for consumers, suppliers or the market, nor any actionable data to the Department. Yet, it would provide a data set that someone may feel compelled to respond to just because the data was being collected and showed some type of trend, even if the trend was meaningless and harmless. For example, a supplier might report for two successive years that 90% of its sales were from door-to-door initiatives. The only conclusion that can be drawn from that is that most of the company's sales are from door-to-door initiatives. That should not give rise to an investigation of the supplier or of its marketing practices. Conversely, if that same supplier has high complaint rates and they are all related to door-to-door sales, then perhaps the Department should take action against that supplier. Complaint data can reveal patterns and behaviors that are worth further investigation. Sales data by marketing channel will not.

Direct Energy is not fundamentally opposed to data collection efforts, but it would first need to understand what the Department's ultimate goals are with respect to understanding the sales data, why the data is being collected and what the potential regulatory use of the data might be. Using the MEMIT process described above to discuss these issues is more likely to produce valuable data sets than a paper process where the Department will be forced to pick a few data elements to have reported.

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

A. This is the most challenging question posed by the Department as it is subject to at least two interpretations, each of which might lead one in a different direction. By "investigate suppliers' marketing activities" the question could mean the investigation of a particular supplier where that supplier has given the Department reason to believe it is breaking the rules. In this case, the question becomes one of enforcement. The Department has plenary authority over electric suppliers, including over the licensing of suppliers, and that authority can be brought to bear effectively where, for example, a supplier is the subject of an extraordinary number of complaints within a certain time or of complaints the nature of which raise extraordinary concerns. In this context, in Direct Energy's view the need for improvement is in making more effective and efficient use of the Department's scarce enforcement resources. While this would be an excellent subject for the MEMIT, Direct Energy does have some immediate suggestions. These include:

- More clearly established consequences for specific behaviors
- Non-discretionary, escalating penalties for multiple violations of the same regulation or statute

- Coordination with the Massachusetts Attorney General on a single set of marketing regulations, violations of which would carry the penalties available in G.L. c. 93A.

The other interpretation of this question is that it is intended to address the Department's ongoing monitoring of the competitive industry as a whole. This leads one back to Question 12 regarding the possible collection of sales data by marketing channel. As noted in our response to that question, it is not clear exactly what use would be made of such data. However, it is likely that there are categories of data and performance parameters that would be useful to the Department in its overall enforcement efforts. For example, the Attorney General's report from last March raised serious questions about possible disparities in the treatment of low-income customers, both in pricing and in sales and marketing activities. More information is needed to understand what may be going on with low-income customers, but Direct Energy believes that instituting monitoring of the market in some form in order to ensure that low-income customers are not treated unfairly should be one of the first priorities of a newly-established MEMIT.

14. Would it be reasonable and appropriate for the Department to make competitive supplier complaint and/or performance information available to customers and other stakeholders? If no, explain why not. If yes,

a) Identify other state(s) that make this information publicly available; and for each state, discuss the usefulness of (1) the information that is provided and (2) the manner in which that information is presented.

b) Based on your response to (a), identify best practices for (1) determining which competitive supplier complaint and/or performance information should be made publicly available, and (2) presenting that information (stakeholders are welcome to provide a visual representation of such best practices).

A. Direct Energy is fully supportive of having the Department maintain a very accurate and thorough data set related to complaints. Information to inform the consumers is very important to developing a competitive market. Earlier discussion in these comments addressed comparative shopping websites. One of the features that gives those websites additional credibility is the preponderance of customer reviews and ratings of both the product and the vendor. The Department should make complaint data public. However, before doing so, the Department must fully define what comprises a complaint. For example, a call to the Commission to complain about a high bill might not be a "complaint". That customer might be on a very competitively priced product (or even on standard offer service) but has used the air conditioner extensively over the prior month, or might have faulty electric equipment on premises that is consuming an inordinate amount of electricity. This sentiment of overspending should not be reported to the market as a complaint.

Direct Energy proposes the following as guidance to the Department as to how to define a complaint: A complaint is registered against a utility or a supplier when a consumer submits to the Department a call, email, letter or other communication outlining a behavior or result that is not consistent with

normal business practices. Some examples of what should and should not be considered complaints are presented in the chart below:

Chart 2: Examples of how Reported Behaviors might be Classified		
Topic	**Not a Complaint**	**Valid Complaint**
Marketing	Telemarketing Call	Telemarketing call where agent is rude and aggressive
Customer Service	Slow Response	Not responding to calls and/or emails
Pricing	High bill due to usage	High bill due to unreasonable unit pricing
Unit Pricing	High cost but coupled with additional products and/or services	Out of market unit pricing without added products and/or services
Service interruptions	If tied to a major weather event	If persistent short outages seemingly caused by faulty distribution network equipment.

Utility complaint data should also be shared in the same context as supplier complaint data. Consumers need to understand that if they remain on basic service, consumer satisfaction issues might also arise and that they have the right to make a complaint against the utility.

When complaint data is presented, it should be in terms that are equivalent among all companies. A percentage of customers complaining, a number of complaints per 10,000 customers or something similar would allow consumers to evaluate the companies' effectiveness and levels of customer satisfaction. An adjustment for companies with fewer than a certain number of customers should also be incorporated into the data set. For example, companies with under 1,000 customers might simply have an asterisk that shows that they are too small to add to the data. This exemption should be made because with small numbers, a glitch either way is not likely to be representative of a longer-term reality. A new supplier with 500 customers might have zero complaints because it had only been in the market for two months. On the other hand, the company's first bills might have glitched, giving rise to 100 complaints. Neither outcome is likely reflective of that company's long-term reality.

Direct Energy is not prepared to offer any state as a model at this point. The primary reason is that none of the reporting websites define what comprises a complaint and they are all lumped into one or more very broad categories. Additionally, some of the states that do report complaint data report different types of complaints for the utilities. Complaints should be broken down into specific categories, to the extent possible. The categories would include (but should not be limited to) marketing practices, pricing issues, service issues, billing issues, and perhaps others. This type of

breakdown would allow a customer to know that company A might register a lot of marketing complaints but have low prices. Company B might generate pricing complaints. The host utility might generate a significant amount of billing and/or service complaints. A customer must be able to compare all information on an apples-to-apples basis including information about the host utility. The identification of complaint categories and other aspects of complaints and complaint reporting should be assigned to the MEMIT for quick turnaround.

Questions from Section IV - Barriers to Market Efficiency

15. Would it be reasonable and appropriate for the Department to direct the electric distribution companies to initiate competitive supply service during a customer's meter read cycle (see Section IV, above)? If no, explain why not. If yes,

a) Discuss how this would improve the value that the market can provide customers.

b) Identify other states that allow the initiation of supply service during a customer's meter read cycle. For each state, describe the manner in which the state implements such an approach.

A. Yes. The Commission should adopt a timely customer switching model – not one that is dependent on the meter read date. Under this proposed framework, a customer who perceives themselves to be in an unfavorable supplier or standard offer service arrangement can get new service in just a few days. Under the current model, if a customer finds itself in an unfavorable contract, the customer could be stuck in that arrangement for another month or longer. If an unhappy customer decided to get out of its contract today, it is likely that the customer would not see the first bill from its new supplier for at least 40 days. If the switch request happens to fall inside the current enrollment window, that customer may not see its first invoice from the new supplier for approximately 70 days. An accelerated switching framework gives rise to much greater customer satisfaction as the customer can take control and see results of his or her decision much sooner than under the current framework

16. Would it be reasonable and appropriate for the Department to eliminate the customer account numbers as required information on an enrollment transaction (see Section IV, above)? If no, explain why not. If yes:

a) Discuss how this would improve the value that the market can provide to customers.

b) Identify alternate piece(s) of information that could be required on enrollment transactions in order to provide the same level of customer protection that a customer's account number provides.

A. Suppliers generally refer to a customer's ability to enroll without having his/her account number available as "Enroll with your wallet". Of course, being able to purchase an item without an account number is the norm in every marketplace in the country. It is possible today to walk into most stores

without even your credit card from the store and still purchase something on credit from that store. As long as you have an identification that shows that you are the account holder, you can make the purchase. The Department should follow that economic norm and direct stakeholders to develop a platform that will allow a customer to enroll with a supplier using simple customer identifying information such as name, service address and a photographic identification card like a passport or driver's license. Today, the rules require customers to know their account number to switch to a new supplier.

The utility account number is completely unrelated to anything personal about the customer and should not be required. Immediate access to the customer's historic usage information should also be made available at no cost in this scenario so that the suppliers could tailor a product based on the customers' needs as shown with the historic usage data. For example, the data might indicate that an efficiency product could be of high value to a particular customer. While all legal forms of marketing should continue to be allowed, including door-to-door and telephone-based sales, enroll with your wallet will allow the industry to rely less on "in-home" customer interactions (where the customer may be able to access its utility account number) and move to more traditional types of retail customer engagements such as retail stores and kiosks. This model works very well in the cellular industry and is beginning to be deployed in the electric and gas industry in more evolved markets.[6]

17. What other rules may act as barriers to a more efficient competitive market? For each answer, propose ways to mitigate those barriers.

A. Suppliers are working with Regulatory Commissions around the country to develop a suite of market improvements that have proven to be successful in enabling and empowering consumers to get into shopping relationships that they desire and out of relationships that might not be working as well as intended.

1) **Seamless Moves and Instant Connects**: This initiative allows customers to transfer their supplier service to another service address if they move within the same utility territory and to establish competitive supply service at utility turn-on instead of first going on default service for a month. Customers who have previously contracted with a supplier, did so with some intent. If they request to move their contract to their new residence, the utility should heed that request. The summer months which see moving activity, coincide with what are among the highest priced and most volatile market months for electricity. If a customer has protected itself with a supplier contract, the customer should be able to keep that protection, even when the residence changes. Instant connect/seamless move will allow customers to keep the benefits and protections of supplier products for which they have already contracted. This is the norm now in the cable and telecommunications industries, where a customer can now take a land-line phone number to a new address. There is simply no reason energy service should not be portable like cable, internet or telecom services.

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6 http://www.energychoicematters.com/stories/20170214a.html

2) **Affirmative Choice on Enrollment**: when a customer enrolls for distribution service with a Massachusetts utility, the customer should be required to make an affirmative choice of supplier, even if their choice is utility standard offer service. The utility should be required to offer information about different offers from different suppliers and, if providing information about standard offer service, the representative should be required to inform enrolling customers that the standard offer rate is an option but is priced based on energy markets conditions and that the standard offer rate it is not guaranteed and that the price changes. This change would also enable alternative marketing approaches as suppliers would be able to focus marketing activities on move-in related activity. For example, in other markets, it is common for suppliers to market through various referral channels with partnerships with real estate agents, moving companies, and other home service providers.

3) **A Better Shopping Website**: The Massachusetts Competitive Shopping Website is one of the better Commission-run shopping websites implemented to date. However, as the Department noted in its Comment Request, consumer knowledge about the website and the benefits of the website are not as high as they could or should be. The Department should consider the outsourced website model that was presented in responses to the Department's Question Numbers 1 and 2 above.

4) **Smart meter functionality**: Direct Energy understands that the Department recently issued an order generally rejecting smart metering initiatives. The Department should engage a follow-on stakeholder process and/or formal proceeding to better understand technological developments and evolving uses of smart-metering technologies and the types of products and services that could be enabled through a full deployment of smart meters and advanced grid functionality. Advanced retail products such as time of use rates, home energy management devices and others have proven to provide consumer and grid-wide benefits such as load management and peak load reductions resulting in higher utilization factors and decreased infrastructure benefits. Of course, all electricity consumers benefit from the comprehensive improvements from these products and the engaged consumer benefits further from decreased usage and peak load management at the residence.

   Companies now exist that will manage residential load based on real-time market pricing and real time consumption. Griddy (www.griddy.com) has launched what is effectively a wholesale procurement product and coupled that with the delivery of pricing information to the customer so that customers can see in real time when the grid is constrained (or constraining) and take actions to curtail load. The service is paid for with a flat monthly fees and customer satisfaction appears to be very high. The benefits, as described above, accrue to both the customer and to all customers as the load curtailments hold prices in check for everyone. These types of products are only available with smart meter functionality.

5) **Allocation of utility indirect costs to standard offer service**: In March 2003, the Department noted that "[d]efault service may serve as a barrier to competition as long as

competitive suppliers must recover all of their costs through the prices they charge customers, while distribution companies are able to recover some of their default service-related costs through their distribution base rates."[7] In that order, the Department determined that all wholesale costs and "direct" retail costs such as uncollectibles would be incorporated into the standard offer service (then called "default" service) price. However, the Department incorrectly determined that indirect retail costs should not be allocated to default service. They reasoned that a "distribution company would continue to provide these services, and incur these costs [for billing and customer service] if it no longer had the obligation to provide default service to its customers."[8] The position that if costs aren't avoidable then they shouldn't be allocated is fundamentally flawed and is contrary to NARUC cost allocation principles[9]. This issue is of paramount importance today as certain stakeholders are holding out a subsidized standard offer service prices as a benchmark and a theoretic price cap where if a supplier exceeds that price, it is somehow overcharging customers.

The NARUC Cost Allocation Manual states: "While opinions vary on the appropriate methodologies to be used to perform cost studies, few analysts seriously question the standard that service should be provided at cost. Non-cost concepts and principles often modify the cost of service standard, but it remains the primary criterion for the reasonableness of rates. The cost principle applies not only to the overall level of rates, but to the rates set for individual services, classes of customers, and segments of the utility's business"[10] (emphasis added). NARUC doesn't mention the issue of "avoidability" of costs as a threshold for allocation. In fact, it is because costs are not avoidable that they need to be allocated.

Additionally, in an allocation principles document, NARUC further states that the costs allocated to competitive services should be at the higher of cost or market value.[11] So even if the resources used to provide default service were fully depreciated, a market proxy would be required under NARUC guidance.

6) **Low Income aggregation**: The Department and the Attorney General have expressed concern that low-income customers are perhaps being charged rates that are higher than the rates charged to other customers. One possible solution to this issue is for the Department to sanction and oversee an aggregation for low-income customers. The aggregation would be similar to the municipal aggregations that have been executed in the Commonwealth, but the defining characteristic of this aggregation would be the low-income designation rather than a political or geographic boundary. The Department would have many options at its disposal to execute the aggregation, but one would be almost like a call option. The Department could work with a supplier or suppliers to

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7 Massachusetts Department of Telecommunications and Energy, Order D.T.E. 02-40-B, Investigation by the Department of Telecommunications and Energy on its own Motion into the Provision of Default Service, p. 15 (2003).

8 Id, p. 17.

9 See Lacey, Frank, Default Service Pricing – the Flaw and the Fix, The Electricity Journal, Vol 32 (2019).

10 NARUC, Electric Utility Cost Accounting Manual, January 1992, found at *http://pubs.naruc.org/pub/53A3986F-2354-D714-51BD-23412BCFEDFD*

11 NARUC, http://pubs.naruc.org/pub/539BF2CD-2354-D714-51C4-0D70A5A95C65

prepare the aggregation of customers to be switched to a retail supplier. The retail supplier would not execute the switch transactions until it could guarantee that it would match or beat the utility's standard offer rate. The aggregations could be a series of short-term contracts with the customers, or if the Department chose, it could be a longer-term, fixed price that might vary from the standard offer rate over time. The renewal process could also be overseen by the Department, ensuring protections for the low-income group.

7) **Alternative default service provider**: Under the MA Restructuring Act, standard offer service could be offered by an entity other than the incumbent utility. The Restructuring Act states that the "[D]epartment may authorize an alternate generation company or supplier to provide default service, as described herein, if such alternate service is in the public interest. In implementing the provisions of this section, the department shall ensure universal service for all ratepayers and sufficient funding to meet the need therefor." G.L. c. 164 sec. 1B(d) (emphasis added).

   The implementation of a non-utility default service provider will likely resolve many of the market issues that are present today. At a minimum, it would eliminate the cross-subsidization issue addressed in sub-section 5 of this answer. By definition, if a non-utility company was the standard offer service provider, it would not have the resources of the distribution business to subsidize it so it would be competitively priced. A non-utility standard offer service provider could also become the common billing entity for electric supply and delivery, further allowing the utilities to focus on their core operations of transmission and distribution. The Department should consider moving toward that model and perhaps open a new docket that would formally investigate the potential consumer benefits and alternative business models associated with moving that service away from the utility. A thorough review of this alternative would allow the Department to fairly evaluate and consider which entity would be better equipped to offer a more competitively-priced service – a fully allocated utility or an alternative non-utility provider. Many studies performed over the years have shown that competitive entities are able to provide services more efficiently than regulated utilities.

Questions from Section E. Other Issues

18. In what ways could the electric distribution companies better inform customers of their ability to prevent distribution companies from providing their account information to competitive suppliers and electricity brokers?

A. It would be wholly inappropriate for the distribution companies to proactively communicate to customers about their ability to essentially "opt out" of the market. Moreover, there is an inherent conflict of interest in that message that could be improperly conveyed to and/or misunderstood by customers. Under the current standard offer service design, customers have the inherent ability to opt out of the market by simply doing nothing and remaining on standard offer service.

19. **Would it 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. If yes,**

    a) **Discuss the manner in which the "do not switch" list should be implemented.**

    b) **Identify other states that have established such a list, and, for each state, describe the manner in which the state has implemented the list.**

A. No. It is unreasonable and inappropriate for the utilities to establish a "do not switch" list. First, as stated above, consumers have the ultimate ability to not switch. By doing nothing, a customer can not be switched to a competitive supplier. That is the default state of the market. Additionally, the utility is a competitor in the market. Allowing one competitor to manage customer flow into and out of the market is at best, anti-competitive and at worst, in violation of one or more competitive markets laws and regulations. It would be hard for the Department to police utility behavior. For example, nothing would prevent a utility from recommending the do not switch list to every customer who calls with a complaint of any kind about a retailer, or putting "do not switch list" reminders on the bill every month, subliminally sending a message that the utility is your safe harbor – when in reality, standard offer service is not the best protection for all customers. Finally, if a supplier switched a customer to its service without consent, the supplier would be in violation of state and federal anti-slamming rules. Stated another way, "Do not switch" is already the law of the land unless the account-holder expressly authorizes another option.

The remedy of taking yourself completely out of the market doesn't exist elsewhere. A consumer can decide not to shop at a particular store if they had a bad experience there, but there is not a "do not shop list" that a competitor holds that would prevent the customer from shopping there until it formally requested that it be allowed to shop there. Of course, customers would presumably be allowed to change their mind to remove themselves from the "do not switch" list, but no doubt, would have to jump through hoops to accomplish that objective, potentially adding one more hurdle to the shopping experience. A consumer's bias toward the status quo will tend make the do not call switch a place where people go but do not leave, even if their circumstances have changed.

This idea is another example of an additional barrier to deliver to customers competitive energy-related products and services. As stated above, the Department should be looking to break down the utility-related obstacles and be pushing for the ability of consumers to be empowered to purchase goods and services that will allow them to optimize their energy consumption.

Questions from Section F. 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.

No. Several reasons suggest that it is not practical or necessary and it will certainly be harmful to the markets that are already functioning well. One only has to look at the example of a Starbucks (or any of dozens of other small stores that are part of larger chains). It is highly likely that every Starbucks (or similar) store, if on its own meter, is on a small commercial meter. However, Starbucks (and others similarly situated) doesn't purchase electricity at the store level. These contracts are negotiated at the regional or corporate level and often times include goods and services in addition to the commodity. Interfering with that type of relationship is going to materially interfere with the market. These companies are in fiercely competitive markets for the goods and services that they sell and they do not need layers of so-called "protections" from the utility or the Department that will only increase their costs for energy.

The typical response to the Starbucks example is to ask about the small independent deli or similar business. As a society, we expect people who go into business to manage their affairs as they best see fit. The deli owner buys meats, cheeses and other supplies that are likely significantly more expensive than electricity. The Department should be wary of interfering in a business person's ability to manage those affairs, whether it is with respect to electricity, rent, or the purchase of other inputs for the products or services a business sells.

Applying any or all of the above-mentioned "protections" would also greatly increase the regulatory burden on the utilities and the Department and for no apparent reason. The Attorney General has recently opined that the residential market is beyond its ability to regulate (an opinion Direct Energy does not share). The Department, as it has historically with respect to both energy and telecommunications, should focus its efforts where they are most needed and most effective, namely the residential market.

Questions from Section G. Application to the Gas Competitive Market

21. 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 competitive gas market for residential 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 the electric and gas markets, and why.

A. To date, no party has raised any issues with the gas market that would give rise to the level of scrutiny and oversight that is envisioned with these questions. The Department should leave that market alone for now and if solutions emerge from this proceeding that drive success into the electricity market, then the Department should consider implementing them on the gas market. But

until that time where a problem is identified or an improvement is proven to work, the Department should let the gas market function as is.

Conclusion

Direct Energy appreciates the Department's efforts in reviewing alternatives that are designed to improve the consumers' experiences with the retail electricity markets and looks forward to working with the Department, Staff and other stakeholders to ensure that the Massachusetts electricity market will benefit all consumers. We respectfully urge the Department to move forward with thoughtfulness – implementing some of the "no-regrets" changes to the market in short order, understanding and articulating long-term goals for the market and developing policies that can be dynamic in nature to achieve those long-term goals.

Respectfully submitted,

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