

Robert J. Munnely, Jr.

March 8, 2019

BY HAND AND E-FILING

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

Re: Docket No. 19-07 - Investigation by the Department on its own Motion into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market
Initial Comments of Davis, Malm & D'Agostine, P.C.

Dear Mr. Marini:

On behalf of Davis, Malm & D'Agostine, P.C. ("Davis Malm"), please find enclosed for filing an original and two (2) copies of Davis Malm's Initial Comments in the above-captioned docket.

Please contact the undersigned if you have any questions.

Sincerely,



Robert J. Munnely, Jr.

RJM/jmc
Enclosure

cc: Gregory Wade, DPU Legal Division (by hand and email)

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)
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Docket No. 19-07

INITIAL COMMENTS OF DAVIS, MALM & D’AGOSTINE, P.C. ON INITIATIVES TO PROMOTE AND PROTECT CONSUMER INTERESTS IN THE MASSACHUSETTS RETAIL ELECTRIC COMPETITIVE SUPPLY MARKET.

Executive Summary

Davis, Malm & D’Agostine, P.C. (“Davis Malm”) respectfully provides initial comments on behalf of several of its retail supplier clients. Davis Malm generally supports the decision of the Department of Public Utilities (“Department” or “DPU”) in the January 18, 2019 Vote and Order Opening Investigation (“Order”) to consider additional initiatives to further improve the Massachusetts retail supply market. Davis Malm supports several of the initiatives identified in the Order but has significant concerns with many other of the ideas for which the Order has solicited stakeholder input. The following Comments and Question-by-Question Responses sections include the following Davis Malm recommendations:

- developing strategies for competitively neutral dissemination of information about the Department’s excellent supplier website;
- establishing reasonable uniform requirements for disclosing automatic renewal provisions via a single notice 30-to-60 days in advance of the end of contract term;
- not publicizing unverified supplier complaint data or, alternatively, doing so only in a targeted, reasonable and competitively neutral manner;

- extending existing standards of conduct for door-to-door sales or other sales channels only in a reasonable manner that is administrable by suppliers and not confusing to customers;
- not extending the use of TPVs beyond their core authorization purposes to confirm existing or new conduct standards or, alternatively, to limit those TPV expansions to targeted, objective and unambiguous supplier actions;
- not requiring additional reporting of supplier business activities beyond extensive existing disclosure measures without strong justification;
- initiating efforts to develop reasonable processes for intra-cycle enrollments and “enroll with your wallet” measures that do not require use of the utility account numbers; and
- not extending the provisions discussed in this docket to different settings of small commercial customers segments or natural gas supply.

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Introduction and Summary of Comments

In response to the January 18, 2019 Vote and Order Opening Investigation (“Order”) issued by the Department of Public Utilities (“Department” or “DPU”), Davis, Malm & D’Agostine, P.C. (“Davis Malm”) hereby provides informal stakeholder comments in response to issues raised in the Order. These comments are filed on behalf of several Davis Malm retail electric supplier clients that focus on residential customers.

Davis Malm supports the Department’s decision to consider additional initiatives to “further improve the retail electric supply market in the Commonwealth of Massachusetts.” Order, p. 1. The Department enacted its 220 CMR 11.05 et al. retail supply regulations prior to the start of active competition in the Commonwealth. Davis Malm’s retail supply clients supported many of the targeted additional changes enacted by the Department in the recently concluded Docket DPU 14-140 investigation. See Order, pp. 1-3 (summarizing changes to regulatory provisions); see also Docket 14-140 Hearing Officer Memorandum (October 29, 2018). Davis Malm appreciates the thoughtful manner in which the Department has sought to balance new consumer protection measures against the need to avoid the creation of barriers that would discourage competitive entry or otherwise impede the continued development of a vibrant

competitive retail market that offers choice and innovative competitive offerings to Massachusetts consumers. Davis Malm looks forward to continued thoughtful consideration of proposals in the instant investigation.

Following general discussion of possible changes in the areas of Consumer Awareness (Order, pp. 5-10), Department Investigation of Competitive Suppliers (id., pp. 10-12), and Barriers to Market Efficiency (id., pp. 12-14), the Order requests specific comments in response to 21 questions that address the three above areas plus additional questions about application of potential provisions to the small commercial customer segment and to natural gas markets. Id., pp. 11-22. For the reasons discussed in greater detail below, Davis Malm supports several of the competitive market changes proposed in the Competitive Supply Order. Nevertheless, Davis Malm urges the Department not to implement proposals that would unduly burden suppliers and impede the competitive market. Davis Malm also does not support applying electric provisions developed for residential customers to the small commercial segment or natural gas markets.

Comments

I. CONSUMER AWARENESS

A. General Comments

Davis Malm supports the Department's overall goal of increasing "customer awareness of the electric competitive supply market and the value these markets can provide, thus allowing customers to make well-informed decisions." Order, pp. 4-5. Nevertheless, Davis Malm supports only some of the Order's potential approaches for improving customer awareness. See Order, pp. 5-10.

B. Supplier Website

Davis Malm agrees that the Department has worked hard to develop a strong, best in case, competitive supply website for the benefit of Massachusetts consumers -

energyswitchma.gov. Order, pp. 5-7. Davis Malm supports voluntary industry initiatives to improve customer knowledge and understanding of the website. Id. Such voluntary efforts could include a general educational campaign led by the Department as lead regulatory agency for the electricity industry (Order, p. 7) and, potentially, additional or improved linking to the website on the Department's homepage or other state agency homepages. Companies with active offers on the Massachusetts website may well be undertaking or considering marketing efforts to encourage use of the Massachusetts website.

Nevertheless, insofar as participation in the Massachusetts website has been, and remains, voluntary, Davis Malm stakeholders believe that is not reasonable or appropriate to require suppliers to disseminate marketing information concerning the Massachusetts supplier website on their own proprietary websites or in their scripts or marketing materials; the same concerns are present with respect to requiring electric distribution companies to include website information on bills sent to all customers. Compare Order, pp. 5-7, 8-9 (Sections II. A, B, D). Davis Malm stakeholders similarly oppose any cost pass throughs or assessments applicable to suppliers – including those that have chosen not to participate – of any costs incurred marketing the Massachusetts supplier website. See id.

C. Automatic Renewal

Davis Malm supports reasonable uniform provisions governing how information on automatic renewal provisions are disseminated to Massachusetts customers. Order, pp. 7-8. Specifically, Davis Malm agrees in concept with the Order's recommendation that the Department "establish uniform requirements regarding the automatic renewal information competitive suppliers must provide their customers, including the timing and manner in which they must provide this information." Order, p. 8. Other restructured New England states require suppliers to provide notices prior to the end of a fixed price term (typically between 30 and 60

days prior to term end) advising customers of available options for contract renewal, including, where applicable, the ability and scope of automatic renewal provisions. These notices are widely used and accepted in the supplier industry. Consequently, Davis Malm would support implementation of a reasonable uniform renewal disclosure requirement in the Commonwealth that would involve a single notice to consumers required to be provided 30-60 days prior to the end of a customer's contract term.

Davis Malm opposes using distribution company bills to disseminate information on automatic renewal of contracts between a supplier and a customer. Order, p. 8. As holders of distribution monopoly rights relative to all Massachusetts and as providers of basic service to all customers not electing competitive supply, electric distribution companies are, at minimum, indirect competitors of suppliers for the business of Massachusetts generation customers. As such, Davis Malm opposes giving distribution companies any role in providing information on the monopoly joint bill to customers of competitive suppliers about automatic renewal provisions in supplier contracts or any advantages or disadvantages thereof. Suppliers should have the exclusive ability to provide information to their own generation customers regarding automatic renewal contracts, subject to Department requirements. To the extent that the Department plans to communicate any supply-related information using distribution company bills, the Department should ensure that the information is competitively neutral and approved by the Department in advance.

D. Complaint Data

The Order states that customers are permitted to file complaints with the Department's Consumer Division against distribution companies and competitive suppliers and that such information on complaints filed is not readily available on the Department's website. Order, p. 9. The Order also states that it "sees value" in publicizing "complaint data or a transparent

type of competitive supplier performance rating” if the information “can be presented in a manner that is easily understood.” Order, pp. 9-10. Davis Malm stakeholders remain concerned about any form of public posting of complaint data.

Complaint reporting is unavailable in most states because it poses significant operational and fairness issues, including but not limited to the fact that many complaints are confirmably inaccurate (such as that they allege facts contrary to written records or verification call records) or are more accurately described as requests for information about newly-launched products or services rather than actual complaints. They also typically raise issues with “apples-to-apples” comparisons, insofar as the size of the supplier’s customer base for a particular marketing channel should play a critical role in evaluating the supplier’s overall performance (i.e., a supplier with three times the gross number of complaints of a fellow supplier but actually has ten times the customer base likely should be viewed as performing better than the other supplier). Complaint reporting may also reflect less favorably on suppliers with active marketing campaigns simply because an active supplier is more likely to generate customer inquiries than a supplier engaging in little or no marketing activity. The unintended consequence may be to punish suppliers that are actively contributing to the growth of the competitive market. Additionally, when complaint data is available, it typically singles out competitive suppliers without providing comparative data of distribution utilities even though such utilities may be the subject of higher complaint levels compared to suppliers. Absent a solution that addresses all of these concerns, Davis Malm respectfully requests that Massachusetts complaint data not be publicly reported – and, if it is reported, that distribution company data be required to be disclosed publicly as well.

II. DEPARTMENT INVESTIGATION OF COMPETITIVE SUPPLIERS

A. General Comments

The Order, at pp. 10-12, states that the Department is interested in taking “a more proactive approach” to overseeing competitive suppliers and solicits discussion of four possible steps in support of such more proactive approach. Order, p. 10 (Introduction). Some possible steps appear to be appropriate, assuming they are implemented in a reasonable fashion, but others raise serious concerns and should be rejected.

B. Standards of Conduct

The Order (at pp. 10-11) states that the Department has established standards of conduct in the Order in Docket 14-140-G (2018) for conducting door-to-door marketing campaigns in Massachusetts that focus on “ensuring that entities conducting door-to-door marketing clearly identify themselves and the competitive supplier that they represent.” *Id.* It proposes to (1) expand the door-to-door standards to mandate specific disclosure of product-related information, and (2) develop and apply similar conduct standards to other forms of marketing such as telemarketing or direct mail. *Id.* Davis Malm does not necessarily oppose these new or expanded requirements, provided that they are reasonable, targeted and easy for suppliers to administer, but questions their necessity in light of detailed disclosures and avoidance of unfair and deceptive practices required for all supplier marketing efforts under the Attorney General’s longstanding electric marketing rules at 940 CMR 19.00.

C. Third-Party Verification

The Order acknowledges the current use of third-party verification (“TPV”) calls to confirm that competitive suppliers have obtained appropriate authorizations to provide supply service. Order, p. 11. The Order states that the Department “seeks to expand the role of TPV to include” additional matters, including “confirmation that competitive suppliers have complied

with the marketing standards of conduct discussed” earlier in the Order. *Id.* The goals of this effort would be to “(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.” *Id.*, pp. 11-12.

Davis Malm is skeptical of, and opposes, use of the TPV process other than to confirm that the generation service ordered is properly authorized. Since the dawn of competition, TPVs have served the important purposes of (1) ensuring that customers understand and attest to the objectively measurable elements of their authorization to enter into a supply contract, and (2) providing proof of supplier compliance with authorization requirements. Any expansion of obligations beyond the core authorization principles is potentially problematic and should be avoided. Use of judgment-based questions to determine compliance, such as whether the sales agent properly introduced himself or herself at the start of a sales call (even when an agent properly did so immediately after a greeting) or wore a properly-branded uniform (even when use of a shirt and hat alone are acceptable on hot weather days) will lead to confusion and failures of otherwise valid sales. Customers, suppliers and sales agents will all be unhappy if TPV requirements are expanded without sufficient thought and precision. Davis Malm suggests that the Department focus on possible changes to standards of conduct and then let the suppliers work to capture the necessary additional information on TPV scripts without Department intervention.

Alternatively, to the extent that the Department intends to move forward with expanding the use of TPVs, any such expansions should be limited and carefully crafted in order to avoid even the possibility of ambiguity that will confuse customers and lead to failures of otherwise

mutually-beneficial sales. Expanding TPVs beyond their intended purpose – verification of customer authorization to switch – runs the real risk of creating a negative customer experience and damaging customer perceptions of the competitive market.

D. Competitive Supplier Reporting

The Order states that the Department “does not require competitive suppliers to provide information on the types of marketing activities they use to enroll residential customers.” Order, p. 12. It then proposes to “establish such a requirement.” Id. Respectfully, the Department is already doing this and does not need to impose additional obligations on suppliers.

Specifically, at the initial licensing stage, the Department’s initial application includes detailed requests for applicants to disclose all forms of marketing in which they plan to participate and, for each, requests voluminous supporting materials, including TPV scripts, training materials and complaint records in other states. See Department Competitive Electric Supplier Initial Application at Section V (questions 21-29). Even with respect to renewal applicants, the Department asks the renewal licensees to disclose annually the states in which the supplier is operating (Renewal Application (Question 10) and the types of marketing channels employed by the supplier in Massachusetts (id., Question 11). Additionally, renewal applicants proposing to expand existing licensed commercial and industrial services to include residential customers applications must provide to the Department all of the detailed marketing information that is requested in the initial applicants serving residential customers (id., Questions 12-19). Suppliers in the renewal application also have to annually notify the Department of all regulatory proceedings in other States (id., Question 25). The Department also retains authority to secure additional information from suppliers on an informal or formal basis through Docket No. 16-156 investigations.

Accordingly, the Department's existing practices already require significant detail that can allow the Department to proactively identify and follow up on potentially problematic suppliers. The Department should hesitate before making these already burdensome initial and annual renewal application processes more burdensome than they already are, or establishing substantial new information production requirements.

III. BARRIERS TO MARKET EFFICIENCY

The Davis Malm stakeholders commend the Department for looking beyond potential additional protections for Massachusetts consumer to also consider and address “barriers that detract from the value that the market could provide residential customers.” Order, pp. 12-14. Davis Malm supports investigation and action on both of the barriers specifically identified in the Order, namely, (1) enabling enrollment of new competitive supply customers “on an intra-cycle basis (e.g., two days after submittal of a complete and accurate enrollment confirmation), thus allowing the initiation of service with a competitive supplier to occur in a more timely manner” rather than waiting for the date of the customer's next meter read (Order, pp. 13-14); and (2) enabling enrollment of new competitive supply customers using information that does not necessarily include the customer's account number – “information that a customer may not have readily available.” Order, p. 14.

Customers in 2019 have been living with broadband for more than 20 years, and are used to near-instant consummation of transactions, even substantial ones such as approvals of mortgage, automobile and in-store furniture purchase loans. As a result, customers invariably express surprise, disappointment and even anger that their electricity generation purchases, especially at times of particularly high priced product, are precluded from being consummated for a month or more until the next monthly meter read, due to outdated pre-restructuring billing platforms. The same is true for consumers who receive and are prepared to enroll on the spot

with an electricity supply offer made available outside the home, only to be told that the sale cannot be consummated until after they go home and find their utility account number located in the fine print of their electricity bills. Davis Malm and its clients are prepared to participate in proceedings required to establish processes for expedited intra-cycle enrollments and “enroll with your wallet” options that would not require a utility account number to effectuate enrollment.

Davis Malm Question-by-Question Responses

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, identify the appropriate role of the Department, the distribution companies, the competitive suppliers, and other stakeholders.*

See Davis Malm comments above at pp. 3-4. Davis Malm supports Department dissemination initiatives and voluntary efforts on the part of competitive suppliers and other stakeholders. Davis Malm opposes mandatory efforts to compel suppliers to disseminate information concerning the supplier website, given the website’s voluntary participation nature, and also opposes use of distribution company joint bills for that purpose. To the extent information will be included on distribution company bills, such information should be competitively neutral and approved in advance by the Department.

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.*

See Davis Malm comments above at p. 3 and the response to Question 1 above.

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.*

See Davis Malm comments above at p. 3 and the response to Question 1 above.

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

See Davis Malm comments above at p. 3 and the response to Question 1 above.

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.

See Davis Malm comments above at pp. 3-4. Davis Malm supports reasonable provisions governing uniform notice of automatic renewal provisions, as presently exist as requirements in many states and as a good business practice supported by many suppliers even where not required. Davis Malm supports a notice requirement sent 30-to-60 days prior to contract term end; with the notice sent by a method offered by the supplier and chosen by the customer or by mail if no choice is offered or made; and with respect to a rollover to variable prices, Davis Malm supports including a link to a website or a phone number that can be referred to in order to receive the latest available pricing information.

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)?

See Davis Malm comments above at p. 4. Davis Malm opposes use of electric distribution company monthly bills to provide information to customers about automatic renewal provisions. Suppliers should have the exclusive ability to provide information to their own

generation customers regarding automatic renewal contracts, subject to Department requirements. To the extent information will be included on distribution company bills, such information should be competitively neutral and approved in advance by the Department.

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)?*

Davis Malm has no specific suggestions at this time but reserves rights to comment on suggestions offered by other parties.

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?*

See Davis Malm comments above at p. 6. Davis Malm does not oppose refinements to existing door-to-door standards of conduct to address pricing issues, provided that they are reasonable, targeted and easy for suppliers to administer. Davis Malm has no specific suggestions at this time but reserves rights to comment on suggestions offered by other parties.

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?*

See Davis Malm comments above at p. 6. Davis Malm has no specific suggestions at this time but reserves rights to comment on suggestions offered by other parties.

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.*

See Davis Malm comments above at p. 6. Davis Malm has no specific suggestions at this time but reserves rights to comment on suggestions offered by other parties.

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?

See Davis Malm comments above at pp. 7-8. Davis Malm opposes efforts to expand the role of TPVs to address conduct marketing standards. If the Department changes standards in a way that requires a record of customer acknowledgement, suppliers will work to adjust to TPV scripts to address such new requirements without the necessity of new TPV-specific requirements.

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?

See Davis Malm comments above at pp. 8-9. The Department already requires extensive information on competitive supplier marketing channels through the initial and renewal licensing processes. It is not clear that more is required. If additional information is to be required, it should not be unduly burdensome and it should be subject to a standing protective order without the necessity of motion.

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

Davis Malm has no specific suggestions at this time but reserves rights to comment on suggestions offered by other parties.

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).

See Davis Malm comments above at pp. 5-6. Davis Malm has significant accuracy and fairness concerns with public reporting of unverified complaint data and generally opposes it. Davis Malm has no specific suggestions at this time on specifics of a reporting scheme. Should the Department elect to move forward and implement one notwithstanding Davis

Malm's concerns, Davis Malm reserves rights to comment on suggestions offered by other parties. Any public reporting of competitive supplier complaint data should be accompanied by similar data on complaints experienced by electric distribution companies and take into account numbers of customers served as well as enrollment activity over specified time periods.

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.*

See Davis Malm comments above at pp. 9-10. Customers expect enrollments to become effective on a reasonably prompt basis, and often express disappointment and anger when forced to wait up to a month or more for the next meter read, especially when seeking to change from a higher priced to a lower priced generation product. Davis Malm supports efforts to develop a workable process to accomplish such customer-friendly intra-cycle enrollments.

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.*

See Davis Malm comments above at pp. 9-10. Davis Malm supports efforts to develop a workable process to be able to enroll a customer without the necessity of a utility account number, thereby enhancing the development of new marketing opportunities not fully dependent to contacting customers at home using telephone or door-to-door sales. Such "enroll with your wallet" options hold the promise of positive win/win opportunities for Massachusetts consumers and electric suppliers.

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

Davis Malm has no specific suggestions at this time but reserves rights to comment on suggestions offered by other parties.

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?*

As holders of distribution monopoly rights relative to all Massachusetts and as providers of basic service to all customers not electing competitive supply, electric distribution

companies are, at minimum, indirect competitors of suppliers for the business of Massachusetts generation customers. As such, Davis Malm opposes any proposal that would afford discretion to distribution companies to “market” to customers the ability to preclude access to the competitive market.

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.*

In commenting on the reasonableness and appropriateness of the initiatives identified in this NOI, stakeholders should provide comment on whether the initiative is within the Department’s existing statutory or regulatory authority to implement or whether the initiative would require a legislative or regulatory change.

See Davis Malm’s response to Question 18 above. Davis Malm has substantial concerns with any distribution company discretion in establishing or publicizing a “do not switch” list that would operate to preclude a consumer’s access to the competitive market. Davis Malm does not see a need for such list at this time. Davis Malm has no specific suggestions above how the Department should implement or administer a “do not switch” list but reserves rights to comment on suggestions offered by other parties.

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.*

Davis Malm urges caution in applying any of the potential provisions discussed in the order to the market for small commercial and industrial customers. Davis Malm has no suggestions regarding specific issues as applied to small commercial and industrial customers at this time, but reserves rights to comment on suggestions offered by other parties.

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.*

Davis Malm urges caution in applying any of the potential provisions discussed in the order to the competitive natural gas market, in particular since this docket did not identify natural gas companies as potential targets of this investigation. See Order, p. 1, identifying scope as addressing potential measures within the “Retail Electric Competitive Supply Market” (emphasis added).

Conclusion

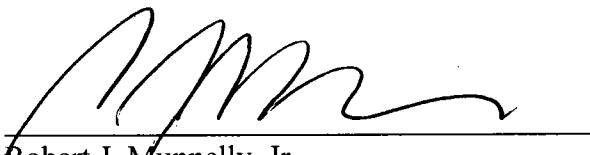
Davis Malm appreciates the Department’s efforts to investigate potential changes that would improve the vibrancy of the Massachusetts retail supply market. Davis Malm urges the Department to consider targeted thoughtful improvements that will benefit consumers without excessively burdening suppliers and consumers. As outlined in the Comments and Question-by-Question Responses above, Davis Malm requests that these improvements include the following:

- developing strategies for competitively neutral dissemination of information about the Department’s excellent supplier website;
- establishing reasonable uniform requirements for disclosing automatic renewal provisions via a single notice 30-to-60 days in advance of the end of contract term;
- not publicizing unverified supplier complaint data or, alternatively, doing so only in a targeted, reasonable and competitively neutral manner;
- extending existing standards of conduct for door-to-door sales or other sales channels only in a reasonable manner that is administrable by suppliers and not confusing to customers;
- not extending the use of TPVs beyond their core authorization purposes to confirm existing or new conduct standards or, alternatively, to limit those TPV expansions to targeted, objective and unambiguous supplier actions;

- not requiring additional reporting of supplier business activities beyond extensive existing disclosure measures without strong justification;
- initiating efforts to develop reasonable processes for intra-cycle enrollments and “enroll with your wallet” measures that do not require use of the utility account numbers; and
- not extending the provisions discussed in this docket to different settings of small commercial customers segments or natural gas supply.

DAVIS MALM STAKEHOLDERS

By their attorney,



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