

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Initiatives to Promote and Protect Consumer Interests)
In the Retail Supply Market)

D.P.U. 19-07

COMMENTS OF MUNICIPAL AGGREGATION COMMUNITIES

I. Introduction

The Cities of Cambridge, Greenfield, Medford, Melrose, Newton, and Salem, and the Towns of Acton, Arlington, Bellingham, Chelmsford, Foxborough, Grafton, Nantucket, Natick, Stoneham, Sutton, Westborough, and Winchester (the “Municipal Aggregation Communities” or “Communities”) are pleased to submit these comments regarding the retail electric competitive supply market in response to the Notice of Investigation issued by the Department of Public Utilities (“Department”) on January 18, 2019.

Competitive suppliers regularly target our communities with misleading and deceptive marketing. We urge the Department to use this proceeding to restrict this conduct.

II. Our Residents’ Experience with Retail Supplier Marketing

Supplier Mailings

As the Department knows, prior to launch municipal aggregators send notification letters to all eligible customers informing customers about the program, its price and term, and customers’ ability to, and mechanisms for, opting out. The language of the letter is approved by the Department and the letter is presented as an official town communication.

As soon as these notification letters arrive in customers' mail boxes, customers receive a barrage of marketing letters from competitive retail suppliers. These marketing letters are often designed to resemble a government communication, tricking customers into thinking that they need to respond to the supplier's letter in order to join the municipal program. We have heard from many customers who were confused about which letter described the municipal program, and from many who signed up with the competitive supplier thinking they were joining the municipal program. We hear most often from elderly residents, who are particularly vulnerable to deceptive marketing. However, the deceptive marketing is effective throughout our communities, including among our most informed residents. In one community, a member of the board of the selectmen who had been briefed on and voted for the aggregation program, enrolled with a competitive supplier thinking that he was joining the aggregation. Sadly, the deceptive marketing is very effective.

Of course, competitive suppliers' letters are not reviewed by the Department and contain none of the consumer protections that the Department requires in municipal aggregators' letters. Suppliers' letters often fail to clearly and prominently display the price, contract term, other charges, and the basis for any environmental claims.

The volume of supplier mailings is particularly high during the aggregation opt-out period, but the letters continue after the program launch. These deceptive supplier mailings are an ongoing problem in our communities.

Supplier Door-to-Door Marketing

During the program opt out period and after, customers in aggregation communities are subjected to high-pressure and deceptive door-to-door marketing by suppliers. The most

flagrant abuses include door-to-door marketers who affirmatively state that they represent the municipality or the local utility. In some cases, these marketers ask to see, and even photograph, the customers' electric bill, claiming that this is necessary in order for them to quote a price.

We have had reports of particularly high door-to-door marketing activity in lower income neighborhoods. This may help to explain the Attorney General's finding that lower income customers are twice as likely to be on competitive supply as non-low income customers and pay 17% more for electricity on average. Office of the Attorney General, *Are Consumers Benefitting from Competition*, (2018), at 17 -18.

As with the mailings described above, the offers presented door-to-door are often misleading, failing to provide clarity about the price, contract term, other charges, and the basis for any environmental claims.

Supplier Telemarketing

Customers in aggregation communities are also subject to repetitive and deceptive telemarketing. As with door-to-door marketing, the abuses include explicit statements by the telemarketer that they represent the municipality or the utility. In some cases, the name of the utility is the caller ID that appears on the customer's phone when the telemarketer calls.

Many residents, particularly elderly residents, have reported receiving call after call after call. Frequently, the resident says "no" to the offer the first several times, but ultimately surrenders and says "yes."

Recently, telemarketers have been targeting aggregation customers around the time of a change in the aggregation supply contract. We have had reports that these marketers have

misrepresented to customers that the aggregation program is ending and that they must choose a new supplier in order to maintain electric service.

As with the mailings and door-to-door offers described above, the offers presented by phone are often misleading, failing to provide clarity about the price, contract term, other charges, and the basis for any environmental claims.

III. Responses to the Department's Questions

The Municipal Aggregation Communities offer responses to several of the Department's specific questions below.

- 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?**

Yes, it would 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. Based on the calls that we receive from our residents, we believe that many door-to-door marketers are not providing complete and accurate information. A Department requirement that marketers disclose key product information would help to ensure that customers are able to make informed decisions.

The product information that suppliers should be required to disclose includes price (including kWh charges and any other charges), contract term, cancellation fees, automatic

renewal, and how the supplier's product compares to Basic Service on all of those elements. Suppliers should not, for example, be able to compare a low kWh price to a higher Basic Service kWh price without also disclosing that their product includes a fixed monthly fee while Basic Service does not. If the supplier makes an environmental claim, the supplier should identify the sources and location of the generation that is the basis for the claim.

The Department should establish a uniform format for the disclosure of information, and should require that the marketer obtain the customer's signature on a copy of the disclosure sheet. Without a uniform disclosure format, there is no doubt that at least some door-to-door marketers will not present all of the information clearly, and without a customer signature requirement at least some door-to-door marketers will not present the information at all. In addition, the supplier should be required to leave a copy of the disclosure sheet with the customer.

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?

The Department should require that the marketer wear clothing displaying the name and logo of the company and make a prominent, affirmative statement that they represent a private company and that they are not affiliated with the local distribution company, the municipality, or the municipality's community choice aggregation program. The marketer should be required to obtain the customer's signature on a document confirming that the marketer has made this disclosure. While a signature requirement may seem onerous, we note that the existing standards of conduct prohibit door-to-door marketers from representing that they are affiliated with the local distribution company, D.P.U. 14-140-G, Attachment 2, and this

requirement is regularly flouted. Without a customer signature requirement, the Department would have little reason to believe that its standards of conduct would be followed by many marketers.

In addition, suppliers should be required to provide the full contract terms and conditions before the customer signs any contract. It is not sufficient to provide the terms and conditions after the fact. Finally, suppliers should be required to disclose that the customer has a 3-day cancellation period and to provide a phone number to call to cancel.

- 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.**

The Department should establish similar standards of conduct for telemarketing and direct mail. The types of information to be disclosed should be the same, including all elements of the price, documentation of any environmental claims, and an affirmative statement that the marketer represents a private company and is not affiliated with either the local distribution company or the municipality or the municipality's community choice aggregation program. Suppliers should be required to provide the full terms and conditions before the customer signs the contract and to disclose the three-day cancellation period. As with door-to-door marketing, the marketer should be required to obtain verification that it provided the required disclosures to customers.

- 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?

Yes, the Department should expand the role of third-party verification (“TPV”) to include confirmation that a competitive supplier has complied with the marketing standards of conduct. As noted above, some marketers regularly flout those standards of conduct now. TPV will help to ensure compliance with the Departments rules. The Department should establish uniform language for the TPV services providers to use.

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?

Competitive suppliers should be required to provide the Department with detailed data regarding the marketing channels through which they have signed up customers and should be required to document that they have complied with the Department’s standards of conduct. The documentation should include lists of the specific accounts signed up through each channel and include the location of each account, the date it was signed up, and documentation that the standards of conduct were followed. Only with this information will the Department be able to document supplier misconduct and be able to help customers by ordering offending suppliers to reverse enrollments that came about through misconduct. The information will

also help the Department to track supplier marketing activity and determine whether suppliers are targeting low-income customers and other vulnerable populations.

- 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).**

It would be reasonable and appropriate for the Department to make competitive supplier complaint and/or performance information available to customers and other stakeholders. The Municipal Aggregation Communities do not have specific suggestions at this time for how best to make that information available. We look forward to reviewing the suggestions that may be offered by other commenters.

- 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.**

The Department should not eliminate the requirement that suppliers obtain the customer account number in order to enroll a customer. The account number requirement is one thing that is preventing what would otherwise be more widespread abuse. The requirement should be maintained.

IV. Conclusion

The Municipal Aggregation Communities appreciate the opportunity to provide these initial comments. We look forward to participating further in this proceeding as it moves forward.

Respectfully submitted,

/s/ Louis A. DePasquale

Louis A. DePasquale
City Manager
City of Cambridge

/s/ William Martin

William Martin
Mayor
City of Greenfield

/s/ Alicia Hunt

Alicia Hunt
Director of Energy & Environment
City of Medford

/s/ Martha Grover

Martha Grover
Office of Planning and Community Dev.
City of Melrose

/s/ Ann G. Berwick

Ann G. Berwick
Co-Director of Sustainability
City of Newton

/s/ Kimberley Driscoll

Kimberley Driscoll
Mayor
City of Salem

/s/ John S. Mangiaratti

John S. Mangiaratti
Town Manager
Town of Acton

/s/ Ken Pruitt

Ken Pruitt
Energy Manager
Town of Arlington

/s/ Denis C. Fraine

Denis C. Fraine
Town Administrator
Town of Bellingham

/s/ Paul E. Cohen

Paul E. Cohen
Town Manager
Town of Chelmsford

/s/ William G Keegan, Jr.
William G Keegan, Jr.
Town Manager
Town of Foxborough

/s/ Timothy P. McInerney
Timothy P. McInerney
Town Administrator
Town of Grafton

/s/ Lauren Sinatra
Lauren Sinatra
Energy Coordinator
Town of Nantucket

/s/ Jillian Wilson Martin
Jillian Wilson Martin
Sustainability Coordinator
Town of Natick

/s/ Erin Wortman
Erin Wortman
Director of Planning & Community Dev.
Town of Stoneham

/s/ James A Smith
James A Smith
Town Manager
Town of Sutton

/s/ Kristi Williams
Kristi Williams
Interim Town Manager
Town of Westborough

/s/ Susan McPhee
Susan McPhee
Energy Conservation Coordinator
Town of Winchester

Date: March 8, 2019