



THE COMMONWEALTH OF MASSACHUSETTS
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July 19, 2019

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

Re: Investigation by the Department of Public Utilities into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07

Dear Secretary Marini:

On January 18, 2019, the Department of Public Utilities (the “Department”) issued an order opening an investigation into initiatives to promote and protect consumer interests in the retail electric competitive supply market (the “Order”). The Department conducted a technical session on June 6, 2019 and convened the first stakeholder working group meeting on June 26, 2019. One facet of the working group meeting was a discussion of supplier reporting tables. On July 2, 2019, the Hearing Officer issued a memorandum requesting suggested edits and comments on the following proposed supplier reporting tables:

- (1) Automatic Renewal Report Table;
- (2) Enrollment Report Table; and
- (3) Contract Pricing Report Table.

The Department requested stakeholder input by July 19, 2019, and the Office of the Attorney General (the “AGO”) hereby submits this correspondence as its suggested edits and comments.¹

As an initial matter, the AGO fully supports the Department’s efforts to require detailed reporting, on a range of issues, from the suppliers operating in Massachusetts. The more data and information the Department and other stakeholders have, the better we will understand this market and how best to tailor the most effective consumer protections.

¹ Discussion by the AGO of any business practice by competitive suppliers in the context of the Department’s investigation, or the silence of the AGO as to any such practice, should not be interpreted as an admission that such practice complies with G.L. c. 93A or the regulations promulgated thereunder.

Automatic Renewal Report Table

The AGO suggests that the Department add “or a new variable rate contract” after “fixed-price contract” in Note (8) to the table to account for the possibility that the customer affirmatively entered into a new variable rate contract.

In D.P.U. 14-140, the Department established rules for the Energy Switch Website. As part of those rules, the Department described “fixed-price” as products with contract terms of three months or greater. *See Revised Website Rules*, D.P.U. 14-140-F (Oct. 17, 2017), at III.C. The Department should confirm that this definition of a “fixed-price” contract applies to the discussion of “fixed-price” contracts in this proceeding as well. Ultimately, the Department should promulgate regulations that define “fixed-price.”

Additionally, the Department should expand this table to include a row for “Low-Income” customers, as a subset of the overall numbers. This row would allow the Department and others to evaluate whether certain customer behavior (*e.g.*, affirmatively entering into a new contract) differs between low-income and non-low-income groups.

Finally, the Department should also include a column titled “Rate Change” after “Auto Renew (7).” In the “Rate Change” column, the supplier can indicate whether the rate charged as part of the automatic renewal resulted in either (a) a higher rate than the original contract, by stating “Up;” (b) a lower rate than the original contract, by stating “Down;” or (3) no change to the original contract rate, by stating “None.” This information will help determine whether the anecdotal evidence that the Department, the AGO, and others have observed—that automatic renewals result in higher rates to customers—is, indeed, true. The Department’s ability to cite to specific data showing customers, overall, do not benefit from the automatic renewal “status quo” will be both important and useful as the Department looks to formulate rules and regulations to apply to automatic renewal practices by suppliers.

Enrollment Report Table

The AGO recommends the Department require two additional levels of data in this table: (1) the reporting of the zip code for each customer enrolled in each service territory and (2) the rate charged upon enrollment to each customer enrolled in each service territory, by zip code. The reporting of the rates charged will allow the Department to evaluate whether suppliers charge higher rates upon enrollment to customers in certain communities, such as low-income or majority minority communities. Further, as stated in the AGO’s Initial Comments (March 8, 2019), this type of data (when aggregated) will help the Department, the AGO, and other stakeholders identify where to target consumer education efforts. For example, if the data shows that a significant number of customers in certain neighborhoods of Worcester enroll with suppliers via door-to-door sales, stakeholders can develop community outreach programs specifically for the neighborhoods affected (*e.g.*, communities with a large immigrant population or limited English-speaking population). The data will also allow the Department and others to more easily identify problematic areas of the market and provide focused oversight accordingly (*e.g.*, developing regulations to require suppliers marketing in these neighborhoods to use agents that can speak to

these prospective customers in their native language). To accomplish the task of including this additional data, the AGO suggests splitting up the enrollment report table so that each service territory has its own sheet.

Contract Pricing Report Table

The information in this table is a good first step towards learning more about the nature of the rates charged to each sub-category of customers. However, how many customers receive fixed or monthly price contracts is not sufficient, on its own, to inform the Department in its pursuit of the best reforms necessary to address consumer protection issues in this market. In order to be a truly effective tool used for evaluation, the table should include the actual rates charged for each of the sub-categories, which can be added via rows to the left. As a hypothetical example, a supplier could provide information that shows 20 customers who fall into the category of “Low-Income Customers on a Monthly Price under Automatic Renewal” were charged a rate of .1099, while only 5 customers who fall into the category of “All Customers on a Monthly Price under Total Customers” were charged the same .1099 rate. By including the actual rates, the Department and others can evaluate whether the suppliers are charging higher rates to low-income customers; whether the rates are higher under automatic renewal as opposed to an affirmative contract signed by the customer; whether fixed price contracts are more or less costly than monthly price contracts; and whether the analysis differs based on the customer’s rate class. Ideally, suppliers should provide the detailed rate information on a zip-code level basis to allow the Department and stakeholders to evaluate whether certain communities are charged higher rates than others.

The AGO suggests the Department require additional information throughout its three tables—specifically, actual rates charged and zip-code level data—because the AGO believes this is the information that will be necessary to formulate, and support the implementation of, the rules and regulations that can most effectively address the shortcomings of the individual residential supply market.

Respectfully submitted,

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department of Public
Utilities Regarding the Retail Electric
Competitive Supply Market

D.P.U. 19-07

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1)

(Department's Rules of Practice and Procedure). Dated at Boston this 19th day of July, 2019.

/s/ Elizabeth A. Anderson
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