



D.P.U. 19-07
COMPETITIVE SUPPLY NOI
TECHNICAL SESSION
NOVEMBER 1, 2019



AGENDA

1. Introduction
2. Background
3. Purpose of Technical Session
4. Discussion - Tier One Initiatives
5. Discussion - Tier Two Initiatives
6. Next Steps



BACKGROUND

D.P.U. 19-07

- Department issued Notice of Investigation on January 18, 2019
- The NOI identified initiatives that were intended to:
 1. Increase customer awareness of the competitive supply market
 - “Transparency and informed decision-making” are the “fundamental building blocks of a well-functioning ... market”
 2. Facilitate the Department’s adoption of a more pro-active approach toward our oversight of supplier performance
 - Rather than reacting to third-party complaints or reports about alleged violations of statute/regulation
- Stakeholders filed comments on February 19, 2019



BACKGROUND PROCESS

- Based on the comments received, Department staff adopted a tiered approach into investigating initiatives in this proceeding:
 1. Tier One - Initiatives that can be resolved in the timeliest manner
 2. Tier Two - Initiatives that require more information before we can determine how best to proceed
 3. Tier Three - Initiatives that would require fundamental changes to the way in which the retail competitive markets currently operate, and thus require significant more discussion
- Stakeholder participation was divided into:
 - Periodic technical sessions to develop/reach consensus on “high-level” principles associated with each initiative being investigated
 - More regular working group meetings to develop implementation details
- Staff presented Tier One initiatives at initial technical session (June 6)



BACKGROUND

PROCESS (CONT.)

- Subsequent to technical session, staff formed two working groups
 - Customer Protection (meetings held on June 26 and August 6)
 - Energy Switch (meeting held on July 31)
- At request of staff, Supplier Group and Consumer Advocate Group developed proposals (for the consideration of the Customer Protection working group)
 - Supplier Group – marketing scripts, disclosure of production information, automatic renewal notifications
 - Consumer Advocates - supplier oversight of third-party marketing vendors
- During August 6 working group meeting, staff presented its alternative to the Supplier Group proposals
- At request of staff, Supplier Group submitted revised proposals (Sept. 20)



PURPOSE OF TECHNICAL SESSION

- The purpose of today's technical session is two-fold:
 1. Determine Tier One initiatives that are "ripe" for written stakeholder comment
 - Upon review of comments, the Department expects to issue an Order on these initiatives
 2. Prioritize order in which we will address remaining Tier One and Tier Two initiatives
- Department staff will present proposals on the following Tier One initiatives
 - License Application Review
 - Third-Party Marketing Vendors
 - Notice of Door-to-Door Marketing
 - Marketing Materials
 - Marketing Scripts
 - Product Information/Contract Summary Form
 - Automatic Renewal Notification/Reports
 - Supplier Enrollment Reports
 - Energy Switch Website – Display of Municipal Aggregation Products (electric only)



PURPOSE OF TECHNICAL SESSION

(CONT.)

- Department staff will present proposals on the following Tier Two initiatives
 - Third-Party Verification
 - Automatic Renewal - Product Limitations
 - Low-Income Customers - Product Limitations
- In addition, Supplier Group will make presentation on required customer enrollment information
- The discussion during this technical session will focus on initiatives that can facilitate the Department's adoption of a more pro-active approach to our supplier oversight efforts
 - Such initiatives can be implemented, and thus can provide consumer benefits, in a timely manner
 - In contrast, initiatives aimed at increased customer awareness, though key to providing consumer protection, will require a long-term effort



TIER ONE INITIATIVES

LICENSE APPLICATION REVIEW

Background

- Currently, information regarding pending new license applications and license renewal applications is not readily available to the public

Consumer Advocate Proposal

- Department should publicly docket its review of new and renewal license applications
 - Provide opportunity for other parties to intervene in licensing proceedings
 - Allow for a public repository of license application information
- AG should be provided unredacted copy of application



TIER ONE INITIATIVES

LICENSE APPLICATION REVIEW (CONT.)

Staff Proposal – **New** License Applications

- The Department would:
 - make information regarding pending new license applications readily available on our website
 - Identification of applicants
 - Link to applications (redacted as necessary)
 - provide interested persons the opportunity to submit comments, and identify information that the Department should request of the applicant
- The Department would not adjudicate license applications



TIER ONE INITIATIVES

LICENSE APPLICATION REVIEW (CONT.)

Staff Response - License **Renewal** Applications

- Approved license applications will be valid for one year following the date of approval (220 CMR 11.05(2)(d))
- The license renewal process is administrative in nature:
 - Verify that licensed suppliers seek to maintain their license for upcoming year
 - Ensure that business/contact information is up to date
- The Department does not use the renewal process to investigate performance and determine whether licensure action is warranted
 - Such investigation occurs through procedures set forth in D.P.U. 16-156-A (regardless of a supplier's renewal status)
- As such, staff does not propose making information regarding license renewals available through the Department's website



TIER ONE INITIATIVES

THIRD-PARTY VENDORS

Background

- The current License Application requires suppliers that intend to market to residential customers to (i) identify the marketing method(s) they intend to use, and (ii) state whether the marketing will be performed by in-house employees or third-party vendors (Item 22)
 - Electric suppliers must identify their door-to-door (“d2d”) marketing vendors as part of the d2d notice requirements (D.P.U. 14-140-G, Att. 1)
 - No such notice requirement for telemarketing

Consumer Advocate Proposal

- Suppliers should (i) identify their third-party marketing vendors in their license application, and (ii) update this information on an ongoing basis



TIER ONE INITIATIVES

THIRD-PARTY VENDORS (CONT.)

Staff Response

- Staff sees value in requiring suppliers to provide the Department with up-to-date lists of their marketing vendors (both d2d and telemarketing)
- For example, the Department periodically receives complaints from police departments regarding the conduct of marketing vendors
 - While suppliers would likely terminate their relationship with such a vendor, there is concern that the vendor would simply “move on” to other suppliers
- Staff seeks to establish a process that accommodates the “sharing” of information among suppliers about potentially problematic vendors, before the vendor begins marketing on another supplier’s behalf
 - Supplier can then exercise its due diligence on the vendor’s past performance before the vendor can “hit the streets”



TIER ONE INITIATIVES

THIRD-PARTY VENDORS (CONT.)

Staff Proposal

- Suppliers would provide the Department with an up-to-date list of their d2d and telemarketing vendors (one-time filing)
- On an ongoing basis, suppliers would provide the Department with advance notice of new third-party marketing vendors
 - e.g., two-weeks' notice before the vendor can begin marketing for the supplier
- Staff seeks to work with stakeholders to better understand the appropriate role of the Department, if any, in facilitating the sharing of information among suppliers regarding potentially problematic marketing vendors



TIER ONE INITIATIVES

NOTICE OF D2D MARKETING

Background

- The current d2d notification requirements (applicable to electric only) are intended to provide the Department "with sufficient information to quickly identify the supplier conducting d2d marketing if a customer or local authority contacts the Department regarding a complaint" (DPU 14-140-G at 3)
- Suppliers must identify each city and town in which it (or its 3rd-party vendor) may conduct d2d marketing, and the expected dates it will conduct such marketing (DPU 14-140-G, Attachment 1)
 - The notice must be filed no later than 5:00 pm the day before the start of a marketing campaign, and is valid for 30 days from the date of filing
 - Among other things, the notice must include (i) contact information for suppliers and vendors, and (ii) attestation regarding compliance with municipal permit/license and notice requirements



TIER ONE INITIATIVES

NOTICE OF D2D MARKETING (CONT.)

Consumer Advocate Proposal

- The Department should revise the notification requirements so that the notice
 - is provided at least 2 days prior to start of campaign
 - includes zip code information
 - includes copy of municipal permit
 - is available on website/provided directly to AG

Staff Response

- Experience to date shows that the current notification requirements are not serving their intended purpose
 - Most suppliers identify a large number of municipalities where they expect to market over the 30-day period, and provide expected dates that often span the full period
- Revisions are required to improve the usefulness of the notifications



TIER ONE INITIATIVES

NOTICE OF D2D MARKETING (CONT.)

Staff Proposal

- Suppliers (electric and gas) would submit notices (on an ongoing basis) that identify the municipalities in which they will be conducting d2d marketing two business days hence
 - for larger municipalities, suppliers would identify the zip codes within the municipality where they will be marketing
- Suppliers would include municipal permits with the notices
 - For municipalities that do not issue such permits until the actual day of marketing, suppliers would submit the permits on that day
- Suppliers would provide notices directly to the AG



TIER ONE INITIATIVES MARKETING MATERIALS

Background

- Currently, the Department requires supplier license applicants that intend to market to residential customers to include marketing materials in their License Application (Item 22). Suppliers are not required to update this information

Consumer Advocate Proposal - Suppliers should update their marketing material on an ongoing basis

Staff Response - While staff sees value in requiring suppliers to provide the Department with up-to-date marketing materials, we recognize that applying this requirement to all marketing channels would be unwieldy

Staff Proposal

- Suppliers would submit to the Department all **direct mail** marketing materials prior to the materials being used
- Such materials would incorporate the marketing scripts/contract summary requirements discussed below



TIER ONE INITIATIVES

MARKETING SCRIPTS

Background

- In June 6, 2019 technical session, Department staff proposed that uniform "introduction" and "closing" scripts should be developed for use by marketing agents

Supplier Group Revised Proposal

- Introductory scripts need to provide information to consumers without overburdening calls or artificially constraining the conversation, citing G.L. c. 159C, § 5A telemarketing requirements
- Suppliers propose scripts that incorporate G.L. c. 159C, § 5A telemarketing requirements (*See attached spreadsheet, tab "Marketing Scripts"*)

Staff Response

- In general, Staff is concerned about the dearth of information included in the Suppliers' proposed scripts
- We propose to defer consideration of more "informative" scripts until such time that we have addressed issues associated with an enhanced TPV process



TIER ONE INITIATIVES CONTRACT SUMMARY FORM

Background

- In DPU 19-07, the Department stated that we seek to expand the d2d standards of conduct to include requirements related to the disclosure of product information such as contract term, early cancellation fees, and automatic renewal (at 11, Q 8)

Supplier Group Revised Proposal

- Suppliers should be required to provide a Contract Summary to all customer at the point of enrollment
 - In-person (appearing as first page of contract (*Terms of Service?*))
 - Telephone
 - Electronically
- While format/structure should be consistent among suppliers, some flexibility required to accommodate various types of pricing structures - fixed, variable, index



TIER ONE INITIATIVES

CONTRACT SUMMARY FORM (CONT.)

Staff Response/Proposal

- With minor revisions (as indicated), the Suppliers' proposal would serve as the template for the Contract Summary Form
 - *See attached spreadsheet, tab "Contract Summary Form"*
- Suppliers that seek to deviate from template would submit form to Department for approval
- Staff notes that we present, as a Tier Two initiative, our proposal to revise the TPV process to ensure that consumers demonstrate an understanding of the product information included in the contract summary form



TIER ONE INITIATIVES

MARKETING RECORDINGS

Consumer Advocate Proposal

- Mandatory Recording of d2d and Telemarketing Interactions
 - if customer refuses, salesperson ends conversation
 - recordings identified by date/time/customer identifier, maintained for 5 years

Supplier Group Comments

- Proposed requirements are unnecessary and unreasonable, and burdensome in terms of costs and time - required recording and retaining of TPV calls is more appropriate

Staff Response

- The recording of marketing calls/visits can play a key role in ensuring that vendors are not engaged in misleading/deceptive marketing practices
- Notwithstanding its important consumer protection role, staff proposes to defer consideration of this issue until we have addressed enhancements to the TPV process



TIER ONE INITIATIVES

AUTOMATIC RENEWAL NOTIFICATION

Background

- In DPU 19-07, the Department stated that we seek to establish uniform requirements regarding the automatic renewal notifications that competitive suppliers must provide their customers (at 7-8)

Supplier Group Revised Proposal

- Suppliers should provide customers with certain minimum information, in clear and plain language, regarding their contract renewal options, 30 - 60 days prior to the contract's expiration date
 - *See attached spreadsheet, tab "Automatic Renewal Notification"*
- Provide flexibility that strikes balance between (i) consumer protection and (ii) supplier "branding"

Staff Response/Proposal

- Suppliers would include the information shown identified in the suppliers' proposal
- Suppliers would submit notifications to the Department for review



TIER ONE INITIATIVES

AUTOMATIC RENEWAL REPORTS

Discussion

- Absent reporting on automatically renewed customers, the Department has no way of in evaluating the effectiveness of suppliers' notification activities

Staff Proposal

- Suppliers would report information on their automatic renewal customers on a regular basis
 - See attached spreadsheet, tab "Automatic Renewal Report"



TIER ONE INITIATIVES ENROLLMENT REPORTING

Background

- In DPU 19-07, the Department stated that having information on supplier enrollments by marketing channel would allow us to adopt a more pro-active supplier oversight approach (at 12)
- Enrollment information provided to the Department by the electric distribution companies raises concern regarding such enrollments
- Ratio of low-income/total residential customers:
 - All distribution customers (electric) = 11% (gas)=11%
 - Competitive supply customers (electric) = 19% (gas)=21%
- This high percentage of competitive supply L-I customers is driven in large part by a (relatively small) number of suppliers whose enrollment of L-I customers exceeds 25%



TIER ONE INITIATIVES

ENROLLMENT REPORTING (CONT.)

Staff Proposal

- Suppliers would submit information on their customer enrollments (by marketing channel) on a regular basis
 - See attached spreadsheet, tab "Enrollment Report"



TIER ONE INITIATIVES

ENERGY SWITCH

Background

- On July 31, the Department convened a meeting of the Energy Switch working group to discuss the display of municipal aggregation products on the Energy Switch website
- Based on information provide by the municipal aggregation “consultants,” staff expects that the large majority (if not all) of municipal aggregators will display their products on the website



TIER ONE INITIATIVES

ENERGY SWITCH (CONT.)

Staff Proposal

- As with other competitive supply products, (1) the display of municipal aggregation products would be voluntary, and (2) municipal aggregators would be responsible for ensuring accuracy of product information
- Municipal aggregators would identify the zip code(s) in which their products are available to ensure that website will only display municipal aggregation products to applicable customers
- The manner in which the website displays municipal aggregation products would be akin to how it displays other competitive supply products except that on the initial "Start Shopping" page, municipal aggregation product(s) would be displayed directly below basic service
- Website rules associated with renewable energy content and contract term would be revised to better accommodate municipal aggregation products



TIER ONE INITIATIVES DISCUSSION



TIER TWO INITIATIVES

CUSTOMER ACCOUNT NUMBER

Background

- Currently, suppliers must include a customer's distribution company account number to successfully enroll a customer
- In DPU 19-07 (at 14), the Department identified this requirement as a potential barrier, and stated that we seek stakeholder input on the reasonable and appropriateness of replacing the account number with alternate information
 - thus allowing suppliers to enroll customers in locations where customers may not have ready access to their account number
- During the August 6, 2019 stakeholder working group meeting, staff stated that supplier may make a presentation on this issue at the next technical session

Supplier Group Presentation



TIER TWO INITIATIVES

THIRD-PARTY VERIFICATION

Background

- In DPU 19-07, the Department stated that we seek “to expand the role of third-party verification” in ways that would protect customers from purchasing supply products about which they are insufficiently informed (at 11-12)
 - require customers to accurately state information included on Contract Summary Form (during TPV call) as condition for successful enrollment

Discussion

- The TPV process is the most effective and efficient way for suppliers and the Department to affirm that customers understand the terms of the transaction to which they have agreed
- Considering its importance, staff considers the current TPV practice (in which customers simply need to respond “yes” to a series of questions to confirm an enrollment) to be insufficient



TIER TWO INITIATIVES

THIRD-PARTY VERIFICATION (CONT.)

Staff Proposal

- All (outgoing) telemarketing calls and door-to-door marketing interactions that result in a sale would be confirmed by a TPV call
- For an enrollment to be considered successful, a customer would be required to affirmatively identify the name of the supplier, as well as the following product information
 - Price
 - Contract term
 - Early termination fee (if applicable)
 - Automatic renewal provision (if applicable)
 - Renewable content (if applicable)
 - Spoofing protections
- Staff seeks to establish a system that provides the Department with ready access to TPV calls



TIER TWO INITIATIVES

AUTOMATIC RENEWALS

Product Limitations

- In the June 6, 2019 technical session, Department staff identified three types of automatic renewal initiatives necessary to provide customers with reasonable and appropriate protection: (i) notification, (ii) supplier reporting, and (iii) product limitations
 - Staff stated that we would address product limitations as a Tier Two initiative (see June 24, 2019 HO Memo)
- Staff proposes that the following product limitations for (fixed-price) contracts that automatically renew (either to fixed- and monthly-price products):
 - Renewal prices would not exceed the applicable monthly basic service price (or another specified market price)
 - The term of the renewal would be limited to three billing months (or another specified period of time)
- Staff proposes that these proposals be implemented in a voluntary manner, with the expectation that suppliers that do not agree to abide by these limitations would be subject to enhanced reporting requirements



TIER TWO INITIATIVES

LOW-INCOME CUSTOMERS

Product Limitations

- The data compiled by the Department regarding the enrollment of low-income customers raises significant concern regarding the high percentage of such customers on competitive supply
- Staff proposes that the price that competitive suppliers charge these customers not exceed the applicable basic service price
- Staff proposes that these proposals be implemented in a voluntary manner, with the expectation that suppliers that do not agree to abide by these limitations would be subject to enhanced reporting requirements
 - In addition, staff seeks to examine the reasonableness and appropriateness of utilizing other entities (e.g., distribution companies, the AG, consumer advocates) of providing additional protections to low-income customers



NEXT STEPS