

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department of Public Utilities)	
On its Own Motion into Initiatives to Promote and)	D.P.U. 19-07
Protect Consumer Interests in the Retail Electric)	
Competitive Supply Market)	

COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION
ON TIER ONE INITIATIVES

Executive Summary:

The National Energy Marketers Association (NEM)¹ hereby submits its comments on the Tier One initiatives in Department’s Investigation to consider initiatives aimed at improving residential consumer protections regarding competitive supply offerings. These comments are submitted pursuant to the Memorandum and Request for Comments, dated February 5, 2020, in the above-referenced proceeding. The Tier One initiatives that were proposed for stakeholder consideration pertain to competitive supplier license application review, marketing-related activities, automatic renewal, competitive supplier enrollment reports and the Energy Switch website. NEM supports the establishment of meaningful consumer protection and marketing standard requirements and supports the majority of the Tier One initiatives subject to certain requested clarifications and modifications as explained herein. We appreciate the efforts of the

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

Department and Staff to explore with the industry a well-balanced approach to enhancing consumer understanding and awareness of the competitive energy marketplace and competitive offerings without imposing unreasonable supplier compliance obligations.

Comments:

NEM's responses to the specific Tier One initiatives set forth in the Memorandum and Request for Comments are set forth below:

A. License Application Review

1. New License Application

Staff proposes that redacted versions of pending new competitive supplier license applications would be posted on the Department website and would be subject to a fifteen business day comment period. (Memorandum at 4-5). Under the proposal, supplier applications would not be reviewed under a Department adjudication process. However, it is proposed that the Department may request further comments on an application, depending on the original responses received. The Department would inform an applicant within twenty days of a determination that no further information is required whether the application has been approved or denied.

NEM appreciates that this proposal attempts to balance the interests of providing stakeholder notification of competitive supplier applications while not creating an unduly burdensome, time-consuming process. NEM is, however, concerned that the process as described may be tantamount to an adjudication but without providing the necessary corresponding due process protections to competitive suppliers. This is because the proposed process allows for the receipt

of comments about a supplier application but does not explicitly provide a mechanism for a supplier to directly respond to those comments.

Relatedly, NEM submits that clarification should be made that commenters should be restricted to those with a legitimate interest in commenting on a supplier license application. In addition, it should be clarified that the grounds upon which comments can be made are restricted to the technical, managerial, or financial fitness of an applicant to provide service.

B. Marketing-Related Activities

1. Notification of Door-to-Door Marketing

The Department rules currently require competitive suppliers to file a notification of door-to-door marketing no later than 5PM on the day before the start of marketing campaign over an upcoming thirty day period, including an identification of municipalities in which such marketing activities are expected to occur. Staff proposes to change this notification process such that suppliers would be required to submit a separate door-to-door marketing notification for each day that they expect to conduct such marketing, to be provided no later than two business days prior to the applicable marketing day, and including an identification of the municipalities where the marketing activities may occur up to a maximum of three municipalities per notification. (Memorandum at 7-8). A supplier would also be required to indicate whether the supplier has obtained, is working on obtaining or whether no permit is required.

Staff's proposal is intended to address the problem that the thirty-day notice, potentially spanning activity in many municipalities, makes it difficult to predict exactly where a door-to-door marketing campaign will be on a particular day. In the interest of ensuring that the

notification requirement is workable for suppliers and successful in addressing the perceived problem, NEM respectfully requests that the Department consider a middle ground. For example, a reasonable alternative would be the provision of two days advance notice that identifies a start and end date for marketing in a particular area, with such notice spanning a week duration. This would also eliminate the need for arbitrary limits on the number of marketing locations. By comparison, switching to a daily notice and limiting the location range of marketing activity seems unnecessarily burdensome and overly restrictive.

2. Identification of Third-Party Marketing Vendors

Staff proposes to require competitive suppliers to provide the Department, on an ongoing basis, with updated lists of third-party door-to-door and telemarketing vendors, to include information on background checks and standards of conduct that competitive suppliers currently provide through their door-to-door notifications. (Memorandum at 9). This reporting is intended as an initial step in developing a process to identify problematic marketing vendors. NEM suggests that the annual supplier submission of a list of third-party marketing vendors should be sufficient. Once the reporting requirement has been in place and after experience has been gained with judging its effectiveness in advancing its desired purpose, the Department may then wish to evaluate whether reporting should be required on other than an annual basis.

3. Disclosure of Product Information

Staff proposes to require competitive suppliers to use a template “Staff Proposed Contract Summary Form” for all products, except: a) products for which the price varies on a monthly basis; b) products for which the renewable content exceeds the minimum requirement; c) products that include fees other than an early cancellation fee or enrollment fee; and d) products

that include additional incentives or “value-added” products and services. (Memorandum at 10-11). Suppliers would be required to submit contract summary forms for prior Department review in the four listed instances. The contract summary form would be provided to customers at the point of sale.

NEM supports the adoption of a Contract Summary Form as a means to enhance consumer understanding of retail energy products and to improve the quality and clarity of supplier disclosures that are being made to consumers. A number of other retail choice jurisdictions have adopted this requirement for these reasons.² NEM’s support is premised on the construction of the contract summary form as a one-page document at the beginning of the customer’s agreement that utilizes a standard disclosure format for material terms of service that highlight the important relevant terms to the consumer. When the supplier contract summary is framed in this manner it is easy for the consumer to see and understand the product offering, but the unique competitive elements of supplier pricing and terms of service are not standardized or restricted.

4. Door-to-Door and Telemarketing Scripts

Staff proposes that competitive suppliers be required to use uniform marketing scripts for door-to-door and telemarketing that require identification of the name of the vendor and supplier that the vendor represents as well as that the supplier is not affiliated with the utility or a municipality energy program. (Memorandum at 11-12). However, Staff proposes that “[a]t no time during the door-to-door and telemarketing interactions shall the marketing agent identify the name of customer distribution company.” (Id. at 12). NEM requests clarification of this proposed

² See, e.g., NYPSC Case 98-M-1343, Uniform Business Practices, Section 5, Attachment 4; Pennsylvania PUC Docket L-2014-2409385, Final Omitted Rulemaking Order, adopted April 3, 2014 pages 25-27 and Attachment A; NJBPU Docket No. EX14060579, Order, dated September 30, 2014.

prohibition. It is clear that the overall intent of the proposal is to avoid misrepresentation. Indeed, the prohibition on the use of the utility name during the opening and closing scripts has value in preventing consumer confusion about any relationship between the supplier and a named utility. However, the proposal could be read in a more expansive manner to prohibit the competitive supplier from identifying the utility name at any point. Applying a prohibition in this fashion, while well-intentioned, could lead to inadvertent supplier compliance problems. For instance, if the agent needs to request the consumer to provide its utility bill to verify information. It would be reasonable under those conditions for the agent to use the utility's specific name and/or to respond to a consumer that may reference the utility's specific name.

5. Recording of Marketing Interactions

Staff proposes to require competitive suppliers to record telemarketing calls, in addition to third party verification calls. (Memorandum at 12-13). NEM requests clarification of this proposal with respect to the telemarketing call record retention policy, particularly regarding how long the records would need to be retained and distinguishing between telemarketing calls that result in an enrollment and those calls that do not.³ NEM submits that a prolonged record retention requirement should not be adopted.

³ For example, Illinois Administrative Code Title 83, Section 412.130(d) provides that,

Any telemarketing solicitations that lead to a telephone enrollment must be recorded and retained for a minimum of two years. All telemarketing calls that do not lead to a telephone enrollment, but last at least two minutes, shall be recorded and retained for a minimum of six months. The recordings shall be provided upon request to Commission Staff or a customer who has completed a telephone enrollment.

6. Marketing Materials

Staff proposes that competitive suppliers be required to submit updated versions (from those materials submitted as part of the initial license application) of direct mail marketing materials, including the envelope, for Department review prior to the use of such materials. (Memorandum at 14). It is proposed that direct mail marketing materials should: "1) display the competitive supplier name and logo at the top of the document (thus clearly identifying the competitive supplier as the sender); 2) clearly state that the competitive supplier is not affiliated with the customer's utility; 3) clearly communicate that the notice is an advertisement for the sale of a product; 4) disclose pertinent information about the product(s) being marketed; and 5) not use false or misleading headers or subject lines, such as 'action requested' or 'urgent notification about your utility bill/account.'" (Id.).

NEM submits that direct mail marketing materials should be provided annually as part of the supplier's license review process or when material changes have been made to the direct mail marketing materials. These are reasonable standards for supplier compliance purposes. In addition, with respect to the fifth delineated direct mail disclosure component of the proposal pertaining to headers and subject lines, suppliers should be able to communicate the time-sensitive nature of an offer without it being deemed false or misleading.

C. Automatic Renewal

1. Customer Notification

The Department identified consumers' lack of awareness of automatic renewal provisions in competitive supply contracts as a source of significant concern. In response, Staff proposes that competitive suppliers be required to provide customers with automatic renewal notifications

between thirty and sixty days prior to the expiration of contracts that have such provisions using a proposed automatic renewal notification template. (Memorandum at 15). NEM supports the proposal as a reasonable means of addressing the Department's concern. The proposal is similar to the approach taken in other retail choice jurisdictions.⁴

2. Competitive Supplier Reports

In order to assess the effectiveness of the proposed automatic renewal notifications, Staff proposes to require competitive suppliers to report on a quarterly basis the number of residential customers they serve through automatic renewal provisions included in customer contracts. (Memorandum at 16). NEM appreciates the Department and Staff's willingness to engage the industry in developing appropriate consumer protection requirements regarding automatic renewal provisions and notifications. In this regard, NEM would suggest that value of the automatic renewal reporting results be viewed in the appropriate light. A consumer's decision whether or not to act on the notification will be informed by the renewal price, other competitive offers available under then current market conditions, and the like. As such, it is possible that the number of customers served under automatic renewal provisions may not materially change after the automatic renewal notifications are used and this shouldn't be used to impugn the value or effectiveness of the notices or suppliers good faith compliance efforts.

⁴ See NYPSC Case 98-M-1343, Uniform Business Practices Section 5.B.5.d. which provides that, "This shall not restrict an ESCO from renewing a contract by clearly informing the customer in writing, not less than thirty days nor more than sixty days prior to the renewal date, of the renewal terms and the customer's option to reject the renewal terms."

D. Competitive Supplier Enrollment Reports

The Department is seeking to enhance oversight of supplier marketing activities, in particular marketing targeted at vulnerable consumers and the marketing channels utilized to do so. In response, Staff proposes that competitive suppliers be required to report on a quarterly basis the total number of residential customers and the number of low-income customers enrolled during the quarter through door-to-door marketing, telemarketing and other marketing channels. (Memorandum at 17). NEM is concerned that the proposal is painting an entire industry with a broad brush in requiring this reporting of all suppliers, when it is aimed at the misconduct of a few. To this end, NEM requests that consideration be given to requiring this reporting on a less frequent basis, for instance annually, to reduce the compliance burden. Suppliers that have been subject to Department oversight and enforcement activities could be asked to report on a more frequent basis.

E. Energy Switch Website

Staff proposes that municipal aggregation products would be listed on a voluntary basis by the municipality on the Energy Switch Website. (Memorandum at 17). The Website order of product listing is proposed as follows: basic service product, municipal aggregation default product, and then competitive supply products (including municipal aggregation non-default products). (Id. at 18). NEM submits that listing the municipal aggregation default product second beneath the basic service product gives it an official, elevated status that seems inappropriate. Moreover, it creates a second artificial benchmark that will unfairly affect competitive suppliers' ability to attract customers. As a result, listing the municipal aggregation default product second will make the Website less effective and useable.

Conclusion

NEM appreciates the opportunity to offer its comments on the Tier One initiatives in the Department's retail market investigation. We look forward to a continued dialogue on these important consumer protection and marketing standard issues.

Respectfully submitted,



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Dated: March 4, 2020.