

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

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

COMMENTS OF CLEANCHOICE ENERGY

TIER ONE INITIATIVES

I. INTRODUCTION

On January 18, 2019, the Department of Public Utilities (the “Department”) opened this proceeding and proposed the following initiatives to “further improve the protections provided to residential customers related to the marketing and delivery of competitive suppliers’ product offerings” in the retail electric competitive supply market: (1) increase customer awareness of the electric competitive supply market and the value these markets can provide, thus allowing customers to make well-informed decisions; (2) improve the Department’s ability to oversee and investigate competitive suppliers’ marketing practices; and (3) investigate initiatives that would improve the operational efficiency of the electric competitive supply market to optimize the value that the market provides to customers.

On February 5, 2020, the Department Staff put forth proposals regarding the following Tier One Initiatives: (1) the Department license application review process; (2) notification of door-to-door marketing; (3) third-party marketing vendors; (4) disclosure of product information; (5) marketing scripts; (6) marketing materials; (7) automatic renewal notification and reporting; (8) competitive supplier enrollment reports; and (9) the display of municipal aggregation products on the Energy Switch Website. Staff issued a Request for Comments on these proposals.

CleanChoice Energy, Inc. (“CleanChoice”) is a licensed competitive electric supplier that has been serving Massachusetts customers since 2016. CleanChoice Energy empowers people and businesses to cut emissions, support renewable energy, and live cleaner lives. To that end, we offer exclusively 100% renewable energy supply products in restructured energy markets and we are also actively offering Massachusetts customers the opportunity to support the development of solar in the Commonwealth through community solar. Since our founding in 2013, CleanChoice customers have collectively avoided more than 4 billion pounds of carbon dioxide emissions – the equivalent of not burning more than 2 billion pounds of coal. CleanChoice submits the following comments in response to the Department’s Notice of Investigation and Request for Comments in the above-captioned proceeding.

II. EXECUTIVE SUMMARY

CleanChoice appreciates the Department’s invitation to provide stakeholder input in this proceeding and its initiatives to promote a more competitive marketplace that includes appropriate consumer protections. CleanChoice supports most of Staff’s proposals and provides comments seeking clarification and additional detail on some issues, including a request to reconvene the working group, to ensure a shared understanding of how such proposals will be implemented.

III. COMMENTS

A. New License Applications and License Renewals.

CleanChoice supports Staff’s proposal to (1) make available information and permit stakeholders’ comments regarding pending new license applications on the Department’s website and (2) Staff’s proposal to decline to make license renewal applications available on the Department’s website. CleanChoice believes this proposal strikes the appropriate balance

between access to information regarding new applicants and avoiding significant administrative burden for retailers who meet renewal requirements on a timely basis.

B. Marketing-Related Activities

1. Notification of Door-to-Door Marketing

Department Staff proposes that competitive suppliers be required to submit a separate door-to-door marketing notification for each day that they expect to conduct such marketing, no later than two business days prior to the applicable marketing day. The Department would require competitive suppliers to: (1) identify the municipalities where they may be marketing on the applicable day (or, as discussed below, the neighborhoods in which they may be marketing for specified municipalities); and (2) for each municipality, indicate whether (i) the supplier, as of the notification filing date, has obtained and has in its possession the required permits; (ii) the supplier, as of the filing notification date, has not obtained the required permits, but will do so and will have the required permits in its possession as of the marketing date - use of this option should be limited to municipalities that do not issue the required permits until the marketing date; or (iii) no permit is required (at 8-10). Staff proposes that competitive suppliers provide this information to the Attorney General on a confidential basis and seeks comment on whether the Department should require competitive suppliers to provide this information to other entities on a confidential basis (at 11).

CleanChoice does not conduct door-to-door marketing for retail customers and therefore takes no position on Staff's proposal.

2. Identification of Third-Party Marketing Vendors

Consistent with the Consumer Advocate Proposal, Department Staff proposes to require competitive suppliers to provide the Department, on an ongoing basis (no later than 30 days following the effective date of a contract with a new vendor), updated lists of their third-party

door-to-door and telemarketing vendors. Such lists would include information related to required background checks and standards of conduct that competitive suppliers currently provide through their door-to-door notifications. Staff proposes that competitive suppliers provide this information to the Attorney General on a confidential basis. Staff seeks comments on whether competitive suppliers should provide this information to other stakeholders on a confidential basis.

CleanChoice is supportive of Staff's proposal that competitive suppliers provide the Department and the Attorney General with vendor lists on a confidential basis. CleanChoice would like clarification on the definition of "telemarketing vendor." CleanChoice proposes that "telemarketing vendor" is defined as third-party vendors that are used for outbound/unsolicited telesales campaigns, and such definition does not include vendors that may be engaged to provide customer care services, answer inbound calls that are made by customers, or respond to customer requests to be contacted. Further, CleanChoice requests clarification on what is meant by "information related to background checks and standards of conduct." CleanChoice's understanding of a "list" of vendors is a simple roster that identifies the vendor by the legal entity or assumed name (if applicable) but does not include other information about the vendor. CleanChoice finds such a roster to be appropriate. The current door-to-door notice includes significantly more information, including contact information, representations about permits and licensing, background checks, and standards of conduct. While CleanChoice is supportive of providing a simple roster, if Staff anticipates that competitive suppliers would be required to submit materials that are similar to the door-to-door notices regarding each telemarketing vendor, that should be clarified and a sample report should be created by Staff. CleanChoice

believes that disclosure of this competitively sensitive information should be made only to Staff and the Attorney General.

3. Disclosure of Product Information

Staff suggests that the Department require competitive suppliers to use the “Staff Proposed Contract Summary Form” template and language for all products, with the following exceptions: (1) for products for which the price varies on a monthly basis, competitive suppliers should use language in the price and term sections that describe the applicable price structure and term of the product; (2) for products for which the renewable content exceeds the minimum requirement, competitive suppliers may use language that describes the renewable resources that comprise the “voluntary” component of the product; (3) for products that include fees other than an early cancellation fee or enrollment fee, competitive suppliers should include language that describes such fees; and (4) for products that include additional incentives or “value-added” products and services, competitive suppliers should include language that describes such incentives. In these instances, competitive suppliers would be required to submit their contract summary forms for Department review.

Consistent with the Competitive Supplier Group Revised Proposal, Staff proposes that the Contract Summary Form be provided to customers at the point of sale. Staff clarifies that for sales that take place in person or online, the Contract Summary Form would be provided as the first page of the contract. For sales that take place over the telephone, competitive suppliers would provide the information orally, “followed by a paper version as the first page of the contract sent by direct mail.” CleanChoice requests several clarifications. First, for telesales, sales that take place in person, and sales that take place online, CleanChoice suggests that the customer may be provided a copy of the contract either in paper via direct mail or by email. Second, for direct mail, suppliers currently are required to include a copy of the Contract

Summary Form when the customer is sent a complete copy of their terms and conditions but are not required to include a Contract Summary Form in the direct mail solicitation. CleanChoice is concerned that a requirement to include the Contract Summary Form in all solicitations will lead customers to mistakenly believing that they have already been enrolled in the contract. This would cause significant customer confusion and frustration, and therefore CleanChoice does not support this change. CleanChoice would also like affirmative clarification that it is permissible to print additional content on the reverse side of the Contract Summary Form.

4. Door-to-Door and Telemarketing Scripts and Recordings

Department Staff proposes to adopt the scripts included in the Competitive Supplier Group Revised Proposal, with the caveat that at no time during door-to-door and telemarketing interactions shall the marketing agent identify the name of a customer's distribution company – for telemarketing, this applies equally to both the “live” interactions and the recordings that may precede such interactions. CleanChoice supports Staff's adoption of the introductory and closing scripts, including a statement by the agent that he or she is not affiliated with the utility. Further, CleanChoice understands and agrees that an agent should never make a misrepresentation about the supplier's relationship with the utility. However, CleanChoice does not agree with Staff's proposal that an agent may never mention the name of a customer's distribution company during a marketing interaction. CleanChoice believes that this proposal is too extreme and may hinder the ability to assist a customer. An agent may need to verify the customer's utility to ensure they are offering the accurate price or to help the customer locate their account number on their bill. Additionally, customers may ask about the supplier's relationship to the utility, or the supplier may need to explain how bills will look to the customer. CleanChoice does not believe it makes sense to prohibit any statement of the utility's name so long as such the agent's statement is truthful and not misleading (e.g., “You can find your Eversource account number in this section

of your bill”; “National Grid will still send you your bill”; “You still contact Eversource in the event of an emergency or outage”; “Since you are a National Grid customer the supply price that I can offer you is X”). CleanChoice recommends that the Department adopt the proposed opening and closing script and permit statement of the utility’s name so long as such statements are truthful and not misleading.

Staff proposes that competitive suppliers be required to record telemarketing calls, as they do for their third-party verification calls. CleanChoice supports Staff’s proposal with a request for clarification regarding how long such recordings should be retained. CleanChoice suggests that calls not resulting in a sale or enrollment should be required to be retained for no longer than 6 months and that calls resulting in a sale or enrollment should be required to be retained for no longer than one year after the customer discontinues service.

5. Direct Mail Marketing Materials

Department Staff proposes that competitive suppliers be required to submit updated versions of their direct mail marketing materials (including the envelope) for Department review prior to the use of such materials (at 18). CleanChoice is supportive of Staff’s proposal to review direct mail marketing materials. CleanChoice would like additional clarification on the definition of “direct mail marketing materials” to better understand what is required to be submitted for review. CleanChoice understands this proposal to include direct mail sent to prospective new customers that includes a letter of authorization and allows the customer to enroll without further interaction with the company. It is unclear whether Staff intends that direct mail that does not include a letter of authorization but prompts the customer to visit the company website or call a customer service number to enroll would also be subject to review.

Additionally, it is unclear whether “direct mail marketing materials” includes any marketing content that would be mailed to a customer, such as a postcard or enclosure in a “shared mail”

packet (e.g., direct mail packet typically sent by a vendor that includes multiple offers or coupons from different businesses), or non-acquisition content such as customer newsletters, promotional offers with partners, or other information related to servicing a customer's existing account (such as requesting that the customer provides an email address or other contact information). CleanChoice suggests that the Department adopt Staff's proposal but clarify that the requirement is limited to direct mail marketing that is sent to prospective new customers and includes a letter of authorization. Further, CleanChoice suggests that any requirements to provide materials for review should apply to brokers and municipal aggregations and any other entities engaged in direct mail marketing for retail supply services.

Further, CleanChoice requests additional details from Staff on what information is required or prohibited in direct mail. Staff's proposal includes some detail, but it's unclear whether the list is intended to be exhaustive and how Staff will determine whether the content is compliant. For example, Staff suggests that direct mail materials "should" "display the competitive supplier name and logo at the top of the document (thus clearly identifying the competitive supplier as the sender)" (at 19). However, CleanChoice's logo includes our company name, so it is not clear whether a logo only would be compliant. For another example, while CleanChoice does not always include our logo at the top of a direct mail letter, we often include our company name, logo, and/or address on the outer envelope of our mail packages. Additionally, nearly all CleanChoice direct mail includes a Frequently Asked Questions page that includes the Question: Who is CleanChoice Energy and Answer: CleanChoice Energy is an energy supplier licensed by the state of Massachusetts offering only 100% renewable energy. All CleanChoice direct mail also includes the following statement, "This is not a letter from [Utility]."

Similarly, it's unclear why Staff believes that the header or subject line "action requested" is false or misleading. Customers are not required to switch suppliers, but it is important for mail solicitations to clearly convey what action(s) is/are required if the customer wants to switch. All marketing content includes various "calls to action" – this is what informs the customer that a response is needed to accept the offer and additional information on when and how to respond to the marketing offer.

To facilitate shared understanding of the standards that Staff intends to apply when reviewing direct mail marketing materials, CleanChoice suggests that Staff publish and update a Marketing Guidance Report prior to requiring competitive suppliers to submit marketing for review and that such report be updated no less than every six months. CleanChoice suggests that the Marketing Guidance Report clearly identify information that direct mail should include without stipulating exactly how the supplier must comply. For example, CleanChoice would recommend a requirement that all direct mail marketing materials must clearly identify the competitive supplier as the sender, without requiring exactly where such information be included. The Marketing Guidance Report should also include any prohibited statements. Publication of a Marketing Guidance Report that is routinely updated would ensure that all suppliers have a shared understanding of Staff's expectations and that such expectations are applied consistently so that all market participants are being held to the same standards. CleanChoice recommends that the Department approve Staff's proposal to require a review of direct mail marketing materials and require publication of a Marketing Guidance Report that is updated no less than every six months, along with details of the process for review of direct mail marketing materials by the Department.

C. Other Issues

1. Auto-Renewal Notification and Reporting

Consistent with the Competitive Supplier Group Revised Proposal, Department Staff proposes to require competitive suppliers to provide customers with automatic renewal notifications between 30 and 60 days prior to the expiration of contracts that have such provisions. Department Staff's proposed language and format for the notifications is shown in Attachment 3, "Department Staff Proposed Automatic Renewal Notification Template" (at 20). CleanChoice supports Staff's proposal for an automatic renewal notification and template.

Staff also proposes to require that competitive suppliers report periodically on the number of residential customers that were automatically renewed during a specified period, the total number of customers that the competitive supplier is serving through an automatic renewal provision on the last day of a specified period, and the method of delivery of the auto-renewal notification. Staff suggests that such reporting be done on a quarterly basis (at 21).

CleanChoice appreciates that Staff accepted comments on the original reporting documents that were shared with the Working Group. However, CleanChoice believes it is important to clarify some of the information requests to streamline this reporting and ensure that reports can be created and submitted accurately and consistently. The initial reports that CleanChoice created required extensive manual (i.e., non-automated) data collection and analysis. Additionally, determining whether certain customer accounts should be reported in one way or another was sometimes unclear or subject to interpretation. CleanChoice strongly recommends that Staff reconvene the Working Group to discuss potential revisions to the report and the creation of more detailed instructions for retailers prior to imposing additional reporting obligations. Further, CleanChoice prefers that these reports be filed on an annual or bi-annual basis, rather than quarterly, to reduce administrative burden.

2. Enrollment Reporting

Department Staff proposes to require competitive suppliers to report periodically on the total number of residential customers and the number of low-income customers they enrolled during the specified period through: (1) door-to-door marketing; (2) telemarketing; and (3) other marketing channels. In addition, competitive suppliers would report on the total number of residential and low-income customers they are serving as of the last day of the specified period. Competitive suppliers would be required to provide this information separately for each distribution company service territory in the Commonwealth. Staff suggests that this report be filed on a quarterly basis. Although less burdensome than the auto-renewal reporting proposal, CleanChoice does still have some concerns with Staff's "enrollment report" proposal. Specifically, an inquiry regarding how many customers were "enrolled" in a particular period is distinct from how many customers are being "served" on a particular day. CleanChoice reiterates its previous recommendation that Staff provide a clear definition for "enrolled" so that it is clear whether Staff is seeking information about customers who attempted to enroll (i.e., signed up for service) or whether "enrolled" means that the customer both signed up and has begun service with the competitive retailer within the specified period.

Because it can take one to two billing cycles for a customer to go from sign-up to "enrolled" (i.e., "on flow" or formally on the service of the supplier) reporting enrollment information on a quarterly basis could be inconsistent without a clearer direction. For example, if the reporting period is January through March 2020, a customer who signs up in February may not go on the supplier's service until March or April. CleanChoice strongly recommends that Staff reconvene the Working Group to discuss potential revisions to the report and the creation of more detailed instructions for retailers prior to imposing additional reporting obligations. Further, CleanChoice prefers that these reports be filed on an annual or bi-annual basis, rather

than quarterly, to reduce administrative burden and improve the accuracy and understandability of reporting.

3. Energy Switch Website

Staff proposes updates to the Energy Switch Website to include the display of municipal aggregation products, potentially including both “default” and (if applicable) municipal aggregation voluntary renewable products. CleanChoice takes no position on the issue of whether the Department should approve the inclusion of municipal aggregation default products on the Energy Switch website. However, if municipal aggregation voluntary renewable products are included on Energy Switch, such products should be required to meet the same standards in place today regarding voluntary renewable content as other competitive supply products (i.e., only municipal aggregation renewable products that are at least 50% renewable should be listed).

4. License Renewal Process

Staff proposes that if a competitive supplier fails to submit a renewal license application within thirty days of the renewal due date, the Department would suspend its ability to sign up new customers (the competitive suppliers would be allowed to serve its existing customers). If the competitive supplier submits its renewal license application within 90 days from the renewal due date, the Department would lift the aforementioned suspension. If the competitive supplier fails to submit the renewal application within 90 days, the Department may take further licensure action, pursuant to the procedures set forth in D.P.U. 16-156-A. CleanChoice supports Staff’s proposal regarding the license renewal process.

CONCLUSION

CleanChoice appreciates the Department’s invitation to provide stakeholder input in this proceeding. A well-functioning competitive retail energy market enables Massachusetts customers to easily access renewable energy and advance the Commonwealth’s goals to advance a clean energy economy.

Respectfully submitted,

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By its attorneys,

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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 CMR 1.05 (Department's Rules of Practice and Procedure).

Respectfully submitted,



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Dated: March 5, 2020