

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF PUBLIC UTILITIES**

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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 DIRECT ENERGY**  
**REGARDING THE DEPARTMENT OF PUBLIC UTILITIES’ TIER ONE INITIATIVES**

**I. INTRODUCTION**

Direct Energy Services, LLC<sup>1</sup> (“Direct Energy”), a licensed competitive electricity and natural gas supplier in Massachusetts, is pleased to provide its comments regarding the Tier One initiatives presented by the Department of Public Utilities (“Department” or “DPU”) in Hearing Officer Gregory Wade’s February 5, 2020 memorandum (“February 5 Memo”) in the above-captioned docket.

As background, the Department opened this investigation on January 18, 2019 to (1) increase customer awareness of the competitive supply market and the value these

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<sup>1</sup> Direct Energy is one of North America’s largest retail providers of electricity, natural gas and energy-related services to over three million homes and business. It is part of Centrica plc (LSE: CNA), a leading international energy services and solutions provider that is founded on a 200-year heritage of serving people. Direct Energy, its subsidiaries and/or affiliates, operate in 50 U.S. states plus the District of Columbia and 8 provinces in Canada. Direct Energy is focused on satisfying the changing needs of our customers, enabling them to transition to a lower carbon future.

markets can provide; (2) facilitate the Department's adoption of a more pro-active approach toward oversight of competitive market performance; and (3) improve the operational efficiency of the competitive market to optimize value the market can provide to customers. *Vote and Order Opening Investigation*, D.P.U. 19-07, at 4-5.

Direct Energy has been an active participant in this investigation, submitting comprehensive written comments on March 8, 2019; attending the June 6, 2019 and November 1, 2019 technical sessions held by the Department; and helping the stakeholders reach consensus on key issues, both as an individual participant and as part of the Competitive Supplier Working Group.

Indeed, from its vantage point as an active participant in all aspects of this proceeding, Direct Energy can affirmatively state that the Tier One initiatives presented by the Department represent a significant and meaningful set of policies and market rules that achieve the three main objectives of this investigation. More specifically, the well-managed collaborative process facilitated by the DPU has enabled the stakeholders in this proceeding to generally forge a consensus that will allow for enhanced consumer protection, a dramatically more transparent retail market, and improved efficiencies which will optimize the value that the retail electricity and gas markets can provide to Massachusetts residential customers, especially low-income or related vulnerable populations.

Moreover, in reviewing the Department's Tier One initiatives, it is clear that no single stakeholder interest achieved every outcome it sought in this process. Rather, the initiatives result from a significant "give and take" among and between stakeholder groups. Certainly, the Tier One initiatives presented by the Department will require Direct Energy and other competitive suppliers to submit many of their processes and materials to greater regulatory scrutiny and to significantly modify their operational practices, procedures and systems. Moreover, the Tier One initiatives will increase competitive suppliers' administrative burden and corresponding business costs in the Commonwealth. However, the hallmark of a successful collaborative process is one where every stakeholder gives up something in exchange for a better path forward where all market participants can operate with greater confidence and transparency.

At the same time, however, it is Direct Energy's view that the Department and stakeholders have now reached the point where initiatives must be implemented as actual market policies. Almost a full year has passed since Direct Energy and other stakeholders submitted initial comments in response to questions posed by the Department at the beginning of this investigation. And, while Direct Energy fully appreciates and understands that reaching consensus among multiple disparate stakeholders on market issues is never easy and often time consuming, there is a real value and imperative to finalizing these important consumer protection policies and allowing market participants to begin operating under these new rules.

Indeed, as set forth in the February 5 Memo, many of the Tier One initiatives are consistent with, if not identical to, proposals set forth by the Department staff at the November 1, 2019 technical session. Given the time allocated and extensive collaborative work process that already has gone into achieving consensus on many issues, Direct Energy sees little value in the deferral of a Department directive or order pertaining to the Tier One initiatives. “Perfect” can too easily become the “enemy of the good”, and in this instance, there is real risk in delaying changes to the marketplace that will allow for increased customer awareness, greater oversight of market performance, and enhanced market efficiency.

Consistent with these principles, Direct Energy respectfully urges the Department to issue a final order on Tier One initiatives within the next 45 days. As set forth in its comments below, competitive retail suppliers will need to modify processes, practices, systems and materials in order to comply with the policies and market rules coming out of the Tier One initiatives,<sup>2</sup> so the sooner the Department can issue its final order, the sooner competitive suppliers can start the work necessary to achieve the goals of the Department’s initiatives and Massachusetts consumers can begin to enjoy the benefits of a more transparent, robust and efficient competitive market. Moreover, by rolling out its Tier One initiatives in the near term, after allowing for appropriate transition

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<sup>2</sup> In its comments that follow relative to the specific Tier One initiatives, Direct Energy indicates whether a transition period for compliance would be required, and, if so, how long a period would be optimal.

periods to implement those initiatives, the Department and stakeholders will be able to evaluate the efficacy of the initiatives, and modify them, if necessary or warranted. Therefore, as an alternative to potentially spending months further refining the Tier One initiatives in this docket, Direct Energy thinks it would be far more productive for the Department to issue an order that implements the Tier One initiatives and provides immediate consumer benefits to residential electricity consumers.

## **II. COMMENTS ON TIER ONE INITIATIVES**

In the sections that follow, Direct Energy provides brief comments on a number of the Tier One initiatives set forth in the February 5 Memo.

### **A. License Application Review**

Direct Energy supports the Department's Tier One initiatives relative to both applications for new licenses and license renewals (February 5 Memo at 3-5). With respect to license renewals, Direct Energy respectfully requests that the Department consider requiring competitive suppliers to submit renewal applications every two (2) years instead of on an annual basis to provide greater efficiency. However, as currently required, if there is material change to the supplier application, these changes will need to be reported to the Department within thirty days.

Moreover, as required by the Tier One initiatives, competitive suppliers will be submitting both automatic renewal reports and enrollment reports on a quarterly basis (see Section II.H. and II.I., below), providing updated lists of third-party door-to-door

and telemarketing vendors (see Section II.C., below), and providing updated direct mail marketing materials for review (see Section II.G., below). Given this increased level of enhanced supplier reporting and Department review and oversight, there would appear to be little need for costly annual renewal filings. Moreover, with the rollout of the Tier One initiatives, the Department will have an increased ability to identify consumer protection and other market issues in real time and intervene accordingly. Therefore, for the reasons described above, Direct Energy encourages the Department to consider transitioning to a biennial licensure application renewal process.

**B. Notification of Door-to-Door Marketing**

Direct Energy appreciates that the door-to-door sales channel has generated a considerable number of complaints by residential customers and believes that more frequent door-to-door notification requirements (February 5 Memo at 7-8) are a reasonable means, in part, of increasing transparency and accountability. As with other Tier One initiatives, Direct Energy respectfully requests that the Department allow adequate time for competitive suppliers to comply with new requirements on door-to-door marketing notification. Direct Energy thinks at least 60 days would be a reasonable time period.

The Department also has asked commenters to address whether competitive suppliers should be required to provide daily notifications to entities other than the Attorney General on a confidential basis. In Direct Energy's view, there is no basis to

provide such competitively sensitive material to entities other than the Attorney General. No other entity has independent authority relative to such sales and allowing other entities access to these materials – even on a confidential basis – would be wholly inappropriate.<sup>3</sup>

**C. Identification of Third Party Market Vendors**

Department Staff proposes that competitive suppliers be required to provide updated lists of third-party door-to-door and telemarketing vendors on an ongoing basis, and that such lists include information related to background checks and standards of conduct (February 5 Memo at 9). While Direct Energy supports this initiative, it would be helpful if the Department could provide clarification in two areas.

First, the Department should define “on an ongoing basis” so competitive suppliers will know when such updates are due and can plan accordingly.

Second, Direct Energy requests that the Department provide guidance and clarify that this information will continue to be covered by the Department’s standing order for protective treatment adopted in D.P.U. 14-140-G (2018) at 23-27.

Finally, as is the case with notifications of door-to-door marketing, in Direct Energy’s view, there is no basis for providing updated lists of third-party door-to-door and telemarketing vendors to entities other than the Attorney General.

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<sup>3</sup> Moreover, it is not clear that the Department has the authority to allow access to competitively sensitive materials outside of a Department adjudicatory proceeding.

#### **D. Disclosure of Product Information**

Direct Energy strongly supports the Department's proposal to require competitive suppliers to use Contract Summary Forms with standard template and language in sales for most products<sup>4</sup> – whether sold door-to-door, via telemarketing or by direct mail (February 5 Memo at 10-11). In requiring competitive suppliers to provide the Staff Proposed Contract Summary Forms (February 5 Memo, Attachment 2) to customers in retail electricity and gas sales, Direct Energy believes the Department will significantly enhance market transparency and achieve important consumer protection goals.

Direct Energy notes that compliance with this particular initiative will increase business costs and require extensive changes in marketing plans. Nonetheless, as noted in Section I, all stakeholders were required to “give” something in this process in order to reach consensus, and here, Direct Energy will face increased costs and operate under greater regulatory oversight in order to achieve important consumer protection objectives.

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<sup>4</sup> For four types of products -- products for which price varies monthly; products for which the renewable content exceeds the minimum requirement; products that include fees other than early cancellation or enrollment fees; and products that include additional incentives or “value added” products and services) – the competitive supplier will be required to propose substitute text describing the product for the Contract Summary Form -- text which must be approved by the Department.



As with other Tier One initiatives, Direct Energy respectfully requests that the Department allow competitive suppliers at least 60 days to comply with the implementation of the new requirements for providing Contract Summary Forms.

**E. Door-to-Door and Telemarketing Scripts**

Direct Energy also strongly supports the Department's Tier One initiative requiring competitive suppliers to use introductory and closing scripts for door-to-door and telemarketing sales (February 5 Memo at 11-12) and agrees with the Department that use of these scripts, along with other Tier One initiatives, will substantially increase consumer protection and further enhance communications with residential consumers. Moreover, Direct Energy wholly supports the requirement that vendors terminate contact with a customer immediately in those instances where the vendor is not conversant in the language spoken by a customer. If the supplier or the supplier's vendor is presenting to a non-English speaker and is not prepared or able to present its sales offer in a language the prospective customer can understand, the sales process should be terminated.

In presenting this initiative, the Department also lays out one specific 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..."* While Direct Energy agrees that the supplier (or the supplier's vendor) must make it clear to a customer that the competitive supplier is not affiliated with the customer's distribution company,

there will be instances when a customer will ask the supplier to identify or clarify the name of the customer's distribution company. Indeed, where the opening script requires the supplier or its vendor to state that "[Supplier name] is not affiliated with your supplier or any city or town energy program",<sup>5</sup> it would not be at all surprising during the course of the sales process that a customer may seek clarification regarding the identity of its electric distribution company. In such instances in order to maintain credibility with the customer, suppliers and suppliers' vendors must be able to exercise common sense and be able to truthfully answer a customer's question. A rule requiring a supplier or vendor to not answer or otherwise avoid such a practical question would undercut the Department's goal of ensuring that customers receive accurate information. Accordingly, Direct Energy respectfully requests that the Department clarify that the prohibition on identifying a customer's distribution company as part of the introductory or closing scripts for door-to-door and telemarketing sales does not preclude a supplier from accurately identifying a customer's distribution company should a customer directly ask for or seek confirmation regarding the name of the customer's distribution company.

Finally, as with other Tier One initiatives, Direct Energy respectfully requests that the Department allow competitive suppliers at least 60 days to comply with new requirements for introductory and closing scripts.

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<sup>5</sup> See Competitive Supplier Group Revised Proposal – Door-to-Door and Telemarketing Opening Scripts

## **F. Recording of Marketing Interactions**

Direct Energy supports the Department's requirement that competitive suppliers record telemarketing calls (in addition to third-party verification calls) and commends the Department for not extending its recording requirement to door-to-door interactions (February 5 Memo at 12-13) as such a requirement would be considered excessive and would impede the sales experience. Given that other Tier One initiatives in this docket relative to door-to-door marketing will surely operate to enhance consumer protection and improve transparency, requiring the recording of door-to-door interactions would unnecessarily intrude on customers and increase supplier costs.

Unlike distribution companies, competitive suppliers cannot take advantage of any regulatory cost recovery mechanism, and, as such, the costs of equipment necessary to record door-to-door interactions would be absorbed through increased customer pricing.

## **G. Marketing Materials**

Direct Energy also supports the Department's requirement that competitive suppliers submit updated versions of their direct mail marketing materials (including envelopes) for Department review prior to use of such materials. The Department proposes to review direct mail marketing materials that are updated from materials provided in a competitive supplier's license application. The Department has specified the required elements of these marketing materials and has indicated that it will review

proposed updated information within 10 business days; if the Department does not respond by the end of that period, the competitive supplier could proceed with its revised marketing materials (February 5 Memo at 14).

As a competitive supplier's direct mail campaign is generally administered within highly prescribed timetables, Direct Energy believes it is essential that the Department adhere to its 10-business day turnaround plan for reviewing modified marketing materials, even in those cases where the Department asks questions about the proposed materials within the 10 business day period. Assuming a competitive supplier provides the Department with a complete and reviewable version of its proposed direct mail marketing materials, there does not appear to be any reason why the Department should not be able to address and resolve any questions in that 10 business day period so that the competitive supplier can proceed with its direct mail campaign in a systematic and predictable manner.

Finally, if the Department expects that this particular Tier One initiative will lead to submissions by a number of competitive suppliers at the same time, the Department should consider establishing a staggered schedule for the submission of such filings in order to avoid a "bottleneck" situation where it would be difficult for the Department to review proposed modifications from multiple suppliers within the same 10 business day period, especially during "peak" periods when utility basic service rates are scheduled to be updated.

## **H. Automatic Renewal**

Direct Energy strongly supports the Department's requirement that competitive suppliers provide customers with automatic renewal provisions in their contracts with notice of such renewal 30 to 60 days prior to expiration of their contracts. Suppliers would be required to use the renewal notice template provided by the Department for said notices (February 5 Memo at 15-16)

In addition, competitive suppliers will be required to submit automatic renewal reports in a format established by the Department. These automatic renewal reports initially will be filed on a quarterly basis by suppliers, with the expectation that the Department will revisit this reporting schedule at a later date (February 5 Memo at 16).

The new notice and quarterly filing requirements will increase suppliers' regulatory costs, but here again, Direct Energy fully realizes that it will face increased costs and operate under greater regulatory oversight in order to achieve important consumer protection objectives.

With respect to automatic renewal notifications, Direct Energy respectfully requests that the Department allow competitive suppliers at least 60 days to comply with these new requirements. With respect to the quarterly automatic renewal reports, Direct Energy suggests that the Department establish predictable quarterly filing dates – January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and September 1<sup>st</sup> – and that the first quarterly filing be due

no sooner than 60 days from issuance of the Department's final order regarding Tier One initiatives.

**I. Competitive Supplier Enrollment Reports**

Competitive suppliers would be required to report periodically on the number of residential customers and low-income customers served during a specified period through (1) door-to-door marketing, (2) telemarketing; and (3) other marketing channels. Enrollment information would need to be provided separately for each distribution company service territory in the state. These supplier enrollment reports initially will be filed on a quarterly basis by suppliers, with the expectation that the Department will revisit this reporting schedule at a later date (February 5 Memo at 17).

Direct Energy supports this initiative, but respectfully suggests that the Department establish predictable quarterly filing dates – January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and September 1<sup>st</sup> – and that the first quarterly filing be due no sooner than 60 days from issuance of the Department's final order regarding Tier One initiatives.

**J. Energy Switch Website**

Direct Energy supports the Department's initiative regarding changes to the Energy Switch Website for electricity customers. See February 5 Memo at 17-19. Direct Energy is also comfortable applying the Department's proposed new rule relative to voluntary renewable energy content to product options offered by both competitive suppliers and municipal aggregators.

### **III. CONCLUSION**

The collaborative process instituted, organized and facilitated by the Department in this proceeding has resulted in the development of a comprehensive suite of Tier One initiatives that will improve market transparency, enhance consumer protection and allow competitive suppliers to offer real value to residential customers. Indeed, the Department has done an exemplary job of forging a consensus among disparate stakeholder interests. Moreover, Direct Energy supports the Department's Tier One initiatives and, in these comments, has offered a number of modest suggestions designed to clarify the initiatives and allow the Department's new requirements to be rolled out with minimum disruption to markets.

As set forth in its introductory comments, Direct Energy believes that it is now time to leave the proposal phase and proceed to implement the new consumer protection measures. Accordingly, Direct Energy has requested that the Department issue its final order on Tier One initiatives within the next 45 days. In practice, the Department and D.P.U. 19-07 stakeholders may discover that a few of these initiatives may need to be further modified in order to achieve their stated market goals – but, at this point, making such changes based on actual market experience would be preferable to further delaying the implementation of the Department's Tier One initiatives.

Respectfully submitted,

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