

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Initiatives to Promote and Protect Consumer Interests)	D.P.U. 19-07
In the Retail Supply Market)	
)	

COMMENTS OF MUNICIPAL AGGREGATION COMMUNITIES

I. Introduction

The Town of Bellingham, Town of Chelmsford, City of Greenfield, Town of Lexington, Town of Nantucket, Town of Natick, City of Newton, City of Salem, Town of Watertown, Town of Webster, and City of Worcester (the “Municipal Aggregation Communities” or “Communities”) are pleased to submit these comments in response to the Request for Comments (“Request for Comments”) issued by the Department of Public Utilities (“Department”) on February 5, 2020. The Department seeks comment on several proposals addressing supplier licensing and marketing.

The Department opened this Investigation on January 18, 2019 in order to increase customer awareness and the operational efficiency of the competitive market and to adopt “a more pro-active approach toward . . . oversight of competitive supplier performance rather than reacting to third-party complaints or reports about alleged violations of statute/regulation.” *Request for Comments* at 1.

The need for Department action is great. The residents of our communities are regularly subjected to false and deceptive supplier marketing by mail, by telephone, and even door-to-door.

For example, as the Department is aware, in recent weeks many residents have received multiple calls from a sales agent misrepresenting himself as the customer's utility making an "apology" call because of past overbilling. (*Notice regarding Deceptive Telemarketing Campaign*, attached as Exhibit A.) The caller states that the customer is entitled to a refund and a 30% discount going forward. To receive these benefits, all the customer has to do is provide their utility account number "for verification." Of course, the caller is not the customer's utility at all, but rather a competitive supplier. The caller wants the account number not to process a refund, but to enroll the customer in the supplier's service.

Unfortunately, the thing that distinguishes this recent batch of calls is their volume, not their content. Customers regularly receive calls like this from sales agents misrepresenting themselves as the customer's utility.

Customers have also received letters from a supplier marketing clean energy. In an effort to persuade the customer to enroll with the supplier, the letters state the customers are currently receiving 96% polluting energy. (*Letter from CleanChoice Energy*, attached as Exhibit B.) Ninety-six percent polluting sounds very bad indeed. However, the statement is difficult to reconcile with the electricity actually received by Massachusetts residents. The Renewable Portfolio Standard ("RPS") requires that all customers receive at least 16% Class I renewable energy, and residents in many municipal aggregation communities are receiving electricity that is significantly cleaner than the RPS minimum. There is not a single customer in any of our communities that is receiving 96% polluting electricity.

The current process of relying on customer complaints to identify such conduct is inadequate. Customers who understand the deceptive communications for what they are

simply hang up or toss the letters in the recycling. Only a very, very small fraction even know where to file a complaint, let alone take the time to do so. The customers who fall for the misrepresentations do not file complaints because they do not even know that they have been duped. The Department should not wait for customer complaints. A pro-active approach is needed to root out this misconduct.

II. Comments on Proposed Initiatives

A. License Application Review

In the Request for Comments, Department staff proposes to allow stakeholder comments on new license applications in order to “take advantage of the value that stakeholder input can provide.” *Request for Comments* at 4 – 5. However, the review of license renewal applications would be treated as ministerial, and no stakeholder comments would be permitted. *Id* at 5. While recognizing the value of stakeholder input, the proposal would exclude that input from the place where it would be the most valuable – license renewal applications.

Massachusetts stakeholders may have little to contribute to the review of an application for a *new* license. Because the applicant would not have begun doing business in the state, Massachusetts stakeholders would not have experience with the company.

At the time of *renewal*, however, stakeholders would be able to provide valuable input. By then stakeholders will have had experience with the applicant and would be able to offer that experience to the Department.

For stakeholder input on a renewal application to have value, the Department will need to treat the review of renewal applications as more than just ministerial. The Department will

need to examine the supplier's conduct to determine whether license renewal is warranted. Indeed, license renewal is the perfect time to shine a light on supplier conduct. This is exactly the sort of approach that would move the Department to the "pro-active" oversight of supplier performance that the Department envisioned in launching this proceeding.

B. Notification of Door-to-Door Marketing

The Municipal Aggregation Communities support the Department Staff's proposal to require competitive suppliers to submit a separate door-to-door marketing notification for each day that they expect to market, and that each notification be limited to three municipalities or neighborhoods. *Id* at 7 – 8. As the Request for Comments indicates, these new requirements will greatly increase the usefulness of the notifications in "identifying where a competitive supplier may be door-to-door marketing on a particular day." *Id* at 8.

The Request for Comments provides that the door-to-door marketing notification would be provided at least to the Department and the Attorney General, and asks whether the notification should be provided to other entities as well. The notification should also be provided, on a confidential basis, to a designated municipal contact¹ in the municipalities where the competitive supplier will be marketing. Municipal officials frequently receive questions from residents about supplier door-to-door marketing, but do not have the information needed at the time either to allay the questioner's concerns or, alternatively, to report unauthorized marketing to the Department.

¹ It should be up to the municipality to inform the Department of the designated contact. For municipalities that choose not to designate a contact, the competitive supplier would not be obligated to provide the notification form to the municipality.

Some may suggest that municipal notification is not necessary because door-to-door marketers are typically required to register with the municipal police department. However, the police department registrations typically cover a broad time period and do not provide specificity regarding exactly when the supplier will be marketing in the community. Moreover, the police department registrations are focused on public safety not consumer protection. Those registrations look at whether the salespeople have criminal records, not whether they are misleading the public.

The Request for Comments seeks input regarding the municipalities for which competitive suppliers should be required to identify neighborhoods, and the specific neighborhoods to be identified. A list of municipalities and neighborhoods is attached as Exhibit C.

C. Identification of Third-Party Marketing Vendors

The Department proposes to require competitive suppliers to provide the Department and the Attorney General with lists of their third-party door-to-door and telemarketing vendors, including information regarding background checks and standards of conduct. *Request for Comments* at 9. The Municipal Aggregation Communities support this proposal.

D. Disclosure of Product Information

The Request for Comments proposes requiring suppliers to provide customers with a contract summary form that would, among other things, disclose key product information in plain language. *Id* at 10 – 11 and Attachment 2. The Municipal Aggregation Communities support this approach.

The Renewable Energy section of the contract summary form should be amended to require a description of the sources of the renewable energy. Competitive suppliers should be required to state whether any renewable energy in excess of the state minimum is, or is not, from RPS Class I facilities. As the term “RPS Class I” is not meaningful to most consumers, suppliers should use the term for those resources that is used by the Energy Switch website, currently “new regional resources.”

E. Door-to-Door and Telemarketing Scripts

In the Request for Comments, the Department proposes to require vendors to affirmatively state that they are not affiliated with the customer’s electricity company or any city or town energy program. *Id* at 11. The Municipal Aggregation Communities support this requirement.

In addition, vendors should be prohibited from using false or misleading language, such as, but not limited to, “urgent,” “official,” “important,” “notification,” “notice,” “warning,” “utility account,” “disconnection,” “reminder,” and “your town program is ending.”

F. Recording of Marketing Interactions

As proposed by the Attorney General and other Consumer Advocates, suppliers should be required to document all door-to-door and telemarketing interactions by voice recording. *Id* at 12.

The Department should not be swayed by the Competitive Suppliers’ assertions that recordings, particularly of door-to-door interactions, would be burdensome. Door-to-door interactions offer the greatest opportunities for abuse. At least with telemarketing, callers typically work in call centers where they can be monitored by supervisors. Door-to-door agents

work alone. Even if their employers follow the rules, rogue agents, often working on commission, have both the opportunity and incentive to deceive customers. Recordings offer the only way to monitor this behavior. Suppliers that do not want to bear the burden of recording are free not to engage in door-to-door marketing.

G. Marketing Materials

In the Request for Comments, the Department proposes to require competitive suppliers to submit direct mail materials to the Department for review prior to use. *Id* at 14. The Municipal Aggregation Communities support this requirement.

Consistent with the marketing scripts, all such materials should affirmatively state that the supplier is not affiliated with either the utility or any energy program offered by the customer's city or town. Also, the materials should not use false or misleading language, such as, but not limited to, "urgent," "official," "important," "notification," "notice," "warning," "utility account," "disconnection," "reminder," and "your town program is ending."

H. Energy Switch Website

In the Request for Comments, the Department proposes to add municipal aggregation products to the Energy Switch website; to list the municipal aggregation's default product immediately below Basic Service; and to display the aggregation contract term using start and end dates, as it does for Basic Service. *Id* at 17 – 19. The Municipal Aggregation Communities support this approach.

For municipal aggregators, the Department proposes limiting information about voluntary renewable energy content to resources from RPS Class I facilities. *Id* at 19. This requirement should apply to all products, not just products from municipal aggregators.

Renewable energy resources from RPS Class I facilities are significantly different both in cost and environmental impact from resources from other facilities. Comparing products based on their percentage of RPS Class I content would be meaningful. Comparing an RPS Class I product from a municipal aggregator to non-Class I product from a competitive supplier would be misleading. To enable fair comparisons, the percentages listed for voluntary renewable energy content should be limited to Class I resources.

In addition, aggregators and suppliers should be able to list their voluntary percentage of Class I resources whatever that percentage is. They should not be limited to an arbitrary minimum percentage.

III. Conclusion

The Municipal Aggregation Communities appreciate the opportunity to provide these comments. We urge the Department to amend its proposal as described above.

Respectfully submitted,

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Town of Bellingham

/s/ Paul E. Cohen
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Town Manager
Town of Chelmsford

/s/ Roxann Wedegartner
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Mayor
City of Greenfield

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Town Manager
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Co-Director of Sustainability
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Mayor
City of Salem

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Town Manager
Town of Watertown

/s/ Doug Willardson
Doug Willardson
Town Administrator
Town of Webster

/s/ Edward M. Augustus, Jr.
Edward M. Augustus, Jr.
City Manager
City of Worcester

Date: March 5, 2020

Exhibit A



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

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NOTICE

TO: MASSACHUSETTS COMPETITIVE ELECTRIC SUPPLIERS

RE: DECEPTIVE TELEMARKETING CAMPAIGN

DATE: FEBRUARY 28, 2020

The Department of Public Utilities (“Department”) has been made aware of misleading and deceptive telemarketing calls to residential electricity consumers in the Commonwealth on behalf of licensed competitive suppliers. These calls begin with a pre-recorded message that states that, as a customer of the specified electric distribution company (i.e., Eversource, National Grid, Unitil), the consumer is eligible to receive a 30 percent discount from his/her current monthly electric bill. In some instances, the automated message states that the consumer has been overcharged on previous bills. The pre-recorded message call informs the consumer to “press 1” to find out more about the offer, at which point the consumer is transferred to a live agent. At no point during the message is the name of the competitive supplier identified. The live agent subsequently informs the consumer that, by switching to the unidentified competitive supplier, the consumer can avoid paying charges mandated by statute (e.g., customer, transmission, and renewable energy charges that currently appear on the monthly bill).

These calls are unacceptable. The Department seeks to take all reasonable steps to identify the competitive supplier(s) on whose behalf these calls are being made. We are doing so to avoid having to take other action, which could impact all suppliers. As an initial step in this matter, the Department directs all competitive suppliers that have conducted telemarketing campaigns during 2020 to provide the following information:

FAX: (617) 345-9101
www.mass.gov/dpu

- (1) the name of each third-party vendor that conducted telemarketing on behalf of the competitive supplier during 2020, and for each vendor, all subcontractors that the vendor may have employed for the purpose of such telemarketing; and
- (2) a statement that the competitive supplier has contacted each of the vendors identified in (1), and that the vendor attested to the supplier that neither the vendor nor any subcontractors engaged in the types of telemarketing calls described above.

Competitive suppliers should provide this information via email to Gregory Wade at Greggory.Wade@mass.gov by 5 PM on March 13, 2020. Please note that the Department may request additional information at a later date.

The Department holds competitive suppliers responsible for the actions of their third-party marketing vendors. Any competitive supplier on whose behalf a vendor engaged in misleading and deceptive telemarketing calls may be subject to licensure action pursuant to 220 CMR 11.07 and the procedures established in Investigation by the Department of Public Utilities on its own Motion to Establish Interim Guidelines for Competitive Supply Formal Investigations and Proceedings, D.P.U. 16-156-A, Att. A (2017). Thank you for your attention on this matter.

By the Commission,

/s/
Matthew H. Nelson, Chair

/s/
Robert E. Hayden, Commissioner

/s/
Cecile M. Fraser, Commissioner

Exhibit B



*** MASSACHUSETTS RESIDENT ***
RETURN BY 2/28/20

AUTO



S32851-5001A
P0078L 0000**
+P02867 L
9658 B BT

Default Electricity Source for

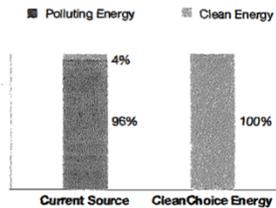


- Dirty mix includes fossil fuels
- Renewable Sources (solar & wind)

Return the form below to choose where Eversource gets your electricity: clean, renewable sources or traditional sources like fossil fuels.

Regardless of your decision, there will be no change to your Eversource reliability or service.

Where do you want your electricity to come from?



NE ISO System Fuel Mix 2017

Dear [Redacted],

As a resident of [Redacted] you have a choice as to where Eversource gets the electricity for your home. You can continue using their dirty mix that contributes to pollution, or you can choose 100% clean, pollution-free wind and solar energy.

Please return the form below by 2/28/20 to indicate your choice.

To choose clean energy, all you have to do is check the "I CHOOSE CLEAN ENERGY" box on the form below. Then every kilowatt of electricity used by the [Redacted] home will be replenished onto the grid by wind and solar farms in your region. You don't need any new equipment, and service will be as reliable as ever. You will simply be instructing Eversource to switch your electric supply to CleanChoice Energy, a licensed supplier of clean energy. Eversource will still be responsible for billing and maintenance. There will be no interruption of service, and you will receive the same service level from Eversource that you always have.

Choosing clean energy means you're doing your part to ensure a better environment for future generations. If you are not satisfied for any reason, you can switch back at any time with no cancellation fee.

Whatever Your Choice, Please Return Your Electricity Selection Form by 2/28/20.

If you do not return your form, the energy for your home will continue to come from its current source.

**To make your selection, return the form below.
Or visit mycleanchoiceenergy.com/sun or call (800) 242-0866.**

▼ DETACH HERE ▼

2020 Electricity Selection Form

Exhibit C

City of Newton

- Auburndale
- Chestnut Hill
- Newton Centre
- Newton Corner
- Newton Highlands
- Newton Lower Falls
- Newton Upper Falls
- Newtonville
- Nonantum
- Oak Hill
- Thompsonville
- Waban
- West Newton

Source: <http://www.newtonma.gov/gov/planning/lrplan/econdev/villages.asp>

City of Worcester

- Neighborhoods to be provided