COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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

JOINT COMMENTS ON TIER 2 PROPOSAL TO ELIMINATE THE CUSTOMER ACCOUNT NUMBER REQUIREMENT

On February 5, 2020, the Department of Public Utilities (the "Department") issued a Hearing Officer Memorandum ("Memorandum"), requesting comments on a series of Tier One and Tier Two proposals that are part of the Department's ongoing investigation into initiatives to promote and protect consumer interests in the retail electric competitive supply market. In its Memorandum, the Department staff notes that it sought stakeholder input on the reasonableness and appropriateness of changes to existing consumer protections that would allow competitive suppliers to enroll customers in contracts without the customer account number. In connection with the Department's request, the Competitive Supplier Group offered a presentation during the November 1, 2019 technical session regarding a proposed "Enroll with your Wallet" process that allows suppliers to enroll customers using information readily available on a customer's person, from the customer's wallet.

In response to the November 1, 2019 presentation by the Competitive Supplier Group, the Attorney General's Office ("AGO") and National Consumer Law Center ("NCLC") (collectively, the "Consumer Advocates") and NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil (together the "Electric Distribution Companies" or "EDCs") offer the following joint comments.[1]

The Consumer Advocates and the Electric Distribution Companies write together to strongly oppose elimination of the customer account number requirement. As described at greater length below, removal of this requirement (1) will almost certainly result in increased unauthorized enrollments; (2) would require costly utility billing system upgrades and additional administrative and overhead costs; and (3) will have absolutely none of the beneficial effects that the suppliers claim, based on experiences in other states.

[1] The parties have provided separate comments on the remaining Tier 2 issues, including the Department's proposal on Third Party Verification and Product Limitations.

A. Use of the Customer Account Number in The Competitive Supply Enrollment Process.

At a high level, it is important to acknowledge that under the current process to enroll a customer with a competitive supplier, the customer account number is a vital identifying marker used by the Electric Distribution Companies to personally identify a specific customer. Under the current process, which was developed by the Electronic Business Transaction ("EBT") Working Group, a working group consisting of the Competitive Suppliers, Electronic Data Interchange ("EDI") providers working with the Competitive Suppliers, and representatives of the EDCs, all competitive supplier enrollments, drops, and changes using the EDI process hinge on the use of the Customer's Account Number, Name Key and other information on the requested action (enrollment, drop, or change). The Account Number is *the* crucial data input as it is unique to each customer and acts as both a check in the IT system and an indicator that the customer at issue is, at least at first glance, making the affirmative choice to enroll with a competitive supplier, and every EDI transaction must have the account number. The Customer Account number is a unique identifier that can be safely transmitted using the EDI process and used easily to validate a competitive supplier enrollment process. Transmitting other unique identifiers, including social security numbers, credit card or bank information or other data, come with concerns about customer privacy and presents opportunities for bad actors to target the EDCs customers.

The competitive suppliers want to eliminate the customer account number requirement to make it easier to enroll customers on the spot, after the conclusion of the supplier's sales pitch, at a shopping mall, on the doorstep or during a telemarketing call. As customers typically do not commit their utility account numbers to memory, the requirement to locate and provide a unique account number provides an invaluable period of reflection, however brief, before a customer makes an affirmative commitment to switch to competitive supply. Eliminating the account requirement, therefore, eliminates a customer's opportunity to reflect during the course of what is too often a high-pressure sales solicitation. This is a significant reason why the EDCs and Consumer Advocates urge the Department to decline to eliminate the account number requirement.

Moreover, any changes to this process, including those required to eliminate the customer account number verification requirement, will be costly, and may come with unforeseen issues and challenges once implemented that could ripple through related competitive supply IT support. Further, such changes would likely eliminate the same degree of certainty that the actual customer has elected to enroll with a supplier.

Essentially, the current enrollment process leans heavily on the unique identifier provided in the Customer Account Number as a safe and reliable verification method that can be transmitted electronically without disclosing more sensitive customer information. Eliminating the customer account number verification requirement for enrollments throws open the door to erroneous enrollments, as well as increased 'slamming', the term used for a Competitive Supplier or its agent submitting a request to provide service to a customer without that customer's consent. By utilizing the account number along with the customer's name key, the Company can ensure that the customer has made an affirmative decision to enroll with a supplier. As outlined below, the Department should not require any changes to the current enrollment process.

B. The Removal of the Customer Account Number Requirement Will Result in Increased Unauthorized Enrollments.

First, the elimination of the customer account number requirement will almost certainly result in increased unauthorized enrollments, and the Competitive Suppliers' November 1, 2019 presentation on the subject did not explain or provide any evidence to the contrary. Involuntary enrollment, or "slamming," is already a significant consumer problem in the Commonwealth, even under the current rules that require a customer's account number for enrollment.[2] Indeed, a review of complaint data compiled by the Department from 2015 through 2018 shows that complaints about slamming are one of the most frequent types of complaint, and have been filed against nearly all suppliers that do business in Massachusetts.[3]

Moreover, these complaints likely significantly understate the actual amount of "slamming" that occurs. As the Department is aware, customers who receive competitive supply continue to be billed through their local distribution company, so those who have been slammed are unlikely to know that they have been switched unless they scrutinize—and have sufficient background on the competitive supply industry to understand—the supply charges on their electric bills. As a result, many customers who were switched without their authorization likely remain unaware of this fact for the narrow thirty-day window to file a complaint under the statute. G.L. c. 164, § 1F(8)(b). Thus, an unknown but likely large number of Massachusetts customers are currently taking service from competitive suppliers (and paying much more for their electricity service) without ever providing authorization for the switch.

Notably, the customer account number is the only significant obstacle preventing unscrupulous marketers or suppliers from easily switching Massachusetts electricity customers without their authorization. Other than the account number, a supplier needs only the customer's name and address to process a switch. Customer names and addresses are often publicly

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[2] *See, e.g.,, Still No Relief for Massachusetts Consumers Tricked by Competitive Electric Supply Companies* (Oct. 2018), available at https://www.nclc.org/issues/consumers-tricked-by-competitive-electric-supply-companies.html; *Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts*, at 10 (Apr. 2018), available at https://www.nclc.org/images/pdf/pr-reports/competitive-energy-supply-report.pdf.

[3] *See*, Mass. Dept. of Public Utilities, Letter to NCLC and Data Summary attachment (Oct. 13, 2017); Mass. Dept. of Public Utilities, Complaint Data 2017-2018. *See also, Still No Relief for Massachusetts Consumers Tricked by Competitive Electric Supply Companies* (Oct. 2018), available at https://www.nclc.org/issues/consumers-tricked-by-competitive-electric-supply-companies.html; *Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts*, at 10 (Apr. 2018), available at https://www.nclc.org/images/pdf/pr-reports/competitive-energy-supply-report.pdf.

available, and it would require minimal effort for a supplier or its marketers to collect hundreds to thousands of potential customer names to "slam" by searching the phone book, the Internet, or the registry of deeds for basic information about each customer.[4] Accordingly, the Department's proposed change is likely to exacerbate what is already an extremely serious consumer protection problem in Massachusetts.

C. The Removal of the Customer Account Number Requirement Will Likely Result in Significant Additional Costs to Ratepayers.

In addition, the "Enroll with your Wallet" proposal, if implemented, would require the investment of substantial resources from the EDCs, in the form of additional administrative and information technology/billing system costs, and the Department staff, in the form of additional oversight and compliance.

While it is difficult to develop a working level estimate of the costs to implement changes to the Customer Account Number Requirement without a more concrete proposal as to what data would be used, any changes to this process would result in costly IT changes that would ultimately be borne by the EDCs Customers. In order to develop changes to the current process, the EDCs would have to add to their back-end IT systems, Customer Information Systems and implement EDI process, working with the EBT working group etc. Each of these changes would be costly, take time and would redirect resources from other necessary and important IT projects. Additionally, as noted above, depending on the type of identification information that could be selected to take the place of the Customer Account Number, there would be increased Information System security and compliance costs in order to protect sensitive information such as a customer's social security number, credit card information, or bank account information. Although the suppliers intimated that in other states there has been a fee assessed to access these alternative identification databases, it is not clear that such a fee would be assessed here or that the costs for the Competitive Suppliers' requested changes would be borne entirely by the Competitive Suppliers.

Moreover, because the type of customer information required under the "Enroll with your Wallet" proposal is generally available, a robust verification process will need to be administered by either the EDCs or the Department to confirm: (1) the customer's identifying information (*e.g.* state-issued driver's license) is valid; and (2) the supplier has appropriate records to show the customer provided actual authorization for the switch.

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[4] It is important to note that during the pendency of this case, the Department has issued two notices to competitive suppliers regarding deceptive telemarketing phone calls being placed to consumers that clearly attempted to confuse customers into enrolling with an unknown competitive supplier. See March 24, 2020 Letter to Competitive Suppliers on COVID-19 Precautions and Door-to-Door Marketing, at 1-2; February 28, 2020 Notice to Competitive Electric Suppliers re: Deceptive Telemarketing Campaign, at 1-2. While these unwanted calls may or may not have involved slamming, these sort of deceptive marketing activities reinforce the Consumer Advocates' and EDCs' reluctance to eliminate necessary checks on the enrollment process, including the Customer Account Number Requirement.

Accordingly, costs would increase for all ratepayers in order to implement this proposal—*i.e.*, Massachusetts ratepayers would provide a subsidy to the competitive supply industry. Asking the ratepayers to further subsidize this industry is inappropriate given known interactions with individual residential consumers in our state who have already paid suppliers at least $340 million more than what they otherwise would have paid for electric supply since July 2015.

D. The Removal of the Customer Account Number Will Not Have Any Beneficial Effects for Customers.

The AGO, the Department, the EDCs, NCLC, Greater Boston Legal Services, and others are inundated with complaints regarding aggressive and misleading marketing tactics. Massachusetts residents are solicited very often by marketers at their doorsteps and on their phones. Facilitating the suppliers' ability to sell to customers in public venues will exacerbate this problem. First, sales presentations at public venues are just as likely to be misleading and aggressive because (a) the information imbalance between the supplier's agent and the customer still exists; and (b) sales agents will be under pressure to enroll customers as quickly and efficiently as possible. Second, the suppliers have not submitted any evidence to support the theory that suppliers will abandon, or otherwise reduce the use of, their lucrative door-to-door and telemarketing campaigns as a result of sales in public venues.

Indeed, the experiences of the two states that have adopted some variation of the "Enroll with your Wallet" proposal show that they provide little to no benefits to customers.[5] In Ohio, a recent settlement by AEP Ohio, and approved by the commission, allows for "Enroll with your wallet" in AEP Ohio's service territory only. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, In the Form of an Electric Security Plan,* Final Order, Public Utilities Commission of Ohio, Case No. 16-1852-EL-SSO (Apr. 25, 2018). Consumer advocates in Ohio advise that, based on experience from recent compliance cases, "Enroll with your wallet" has not had much of an impact in reducing door-to-door and telemarketing enrollments in that state.

In Pennsylvania, the suppliers have access to an online information portal, which was set-up and maintained by the utilities, following an order issued by the Pennsylvania Public Utilities Commission in 2013. *EDC Customer Account Number Access Mechanism for EGSs,* Final Order, Pennsylvania PUC, Docket No. 2013-M-2355751 (July 17, 2013). The online portal is used to obtain customer account numbers for sales transactions that occur in public venues.

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[5] As part of its presentation to the Department, the Competitive Supplier Group offered Ohio, Pennsylvania, and Maryland as examples of other states that have developed processes to allow suppliers to enroll customers without requiring a customer account number. However, no variation of "Enroll with your Wallet" exists in Maryland. Legislation was introduced in Maryland to allow for an "Enroll with your Wallet" process that eliminated the requirement for a customer account number but was withdrawn. Meanwhile, at the Maryland Public Service Commission ("PSC"), a form of the "Enroll with your Wallet" process was discussed in a working group that is part of a larger grid modernization docket (Docket No. PC44 – "Transforming Maryland's Electric Grid") but was not approved.

Based on discussions the AGO and NCLC have had with consumer advocates in Pennsylvania, the account number look-up mechanism was costly for the utilities to set-up and is rarely used. Further, the consumer advocates in Pennsylvania advise that the main marketing channels remain door-to-door and telemarketing.

Significantly, if "Enroll with your Wallet" is implemented in Massachusetts, it would be the only state to operate such a program without additional, critical consumer protections. For example, both Pennsylvania and Ohio have protections in place for low-income utility customers.[6] In Pennsylvania, low-income customers in the First Energy and PPL Electric service territories may only sign up with competitive supply companies through a dedicated portal in which supplier prices cannot exceed basic service prices.[7] In Ohio, low-income customers who participate in the state's Percentage of Income Payment Program cannot be enrolled in competitive supply contracts.[8]

"Enroll with your Wallet"-type proposals have been adopted in only two states, and neither effort has resulted in any significant consumer benefits in those states. Moreover, both states have additional consumer protection rules that do not exist in Massachusetts. Given the high financial and consumer protection costs of the program, the Department should not adopt the "Enroll with your Wallet" proposal.

E. Conclusion

As described above, the "Enroll with your Wallet" proposal comes with a high cost to ratepayers, from both a consumer protection and financial standpoint. The "Enroll with your Wallet" proposal would lead to increased consumer "slamming," which is already a serious problem in Massachusetts. The "Enroll with your Wallet" proposal would also lead to increased financial costs to all ratepayers because implementing it would require costs upgrades to the EDCs' billing systems as well as additional costs to implement the program. Moreover, there is no evidence that the "Enroll with your Wallet" proposal would benefit anyone other than suppliers—the experiences of Ohio and Pennsylvania suggest that similar proposals have not provided any meaningful benefits to those states' consumers. Ratepayers should not be asked to endure additional "slamming" and invest *even more* money into the electric competitive supply industry. The Department should not adopt an "Enroll with your Wallet" proposal.

[6] On December 17, 2019, the AGO submitted to the Department a request for investigation into the effect of the individual residential supply market on low-income assistance programs.

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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 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 2nd day of April, 2020.

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