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April 2, 2020

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Re: 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

Dear Secretary Marini:

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 the above-referenced proceeding. The Attorney General’s Office (“AGO”) hereby submits its comments on the Tier Two proposals.

A. Third-Party Verification Calls

The Department staff proposes to expand the role of Third-Party Verification (“TPV”) calls to (1) require customers to affirmatively state the product information contained in the contract summary form; and, (2) for telemarketing enrollments, to require customers to affirmatively state the telephone number and name that appears on the customer’s caller ID. Memorandum, at 19–20. The Department staff believes these requirements will help (1) ensure the customer is sufficiently informed prior to enrollment and (2) prevent “spoofing.” *Id.*

The Department’s proposal could provide meaningful safeguards for customers and the AGO supports it. However, the AGO cautions the Department against relying heavily on TPV call recordings to investigate complaints against a supplier. As stated in the AGO’s comments from March 8, 2019: in the AGO’s experience, TPV calls are prone to manipulation by suppliers and/or agents of the supplier—especially when the customer is an individual who has difficulty understanding the substance of the transaction due to advanced age or a language barrier. Agents

can stop and re-start TPV call recordings to ensure the customer provides a “clean” TPV call. Additionally, parts of TPV calls can be erased if they reveal misleading or deceptive behavior on behalf of sales agents. The AGO strongly believes that the effectiveness of TPV calls can be easily undermined, and, as a result, the Department should not solely rely upon TPV call recordings to determine whether a supplier is in compliance with applicable laws and regulations.

B. Customer Account Number

In connection with this specific proposal, the AGO has filed joint comments with the Consumer Advocates and the Electric Distribution Companies.

C. Product Limitations

1. Automatic Renewals

Department staff propose not to move forward at this time with the voluntary product limitations related to automatic renewals originally proposed by Department staff during technical sessions in June and November 2019. Memorandum, at 20. Department staff envisioned limitations to include (1) renewal prices to be capped at the applicable monthly basic service price, or other specified market price and (2) a limited renewal period. *Id.* However, rather than move forward on these proposals, Department staff may “discuss such limitations individually with competitive suppliers based on the information provided through the automatic renewal reports.” *Id.* Unfortunately, the Department’s revised position on automatic renewals fails to provide effective consumer protections for the hundreds of thousands of ratepayers who participate in the individual residential electric supply market.

First, the new proposal is incredibly vague, which itself creates a number of problems. It is unclear, for example, whether the “individual” discussions will be held in the context of a formal or informal investigation. Equally unclear is what will trigger an “individual” discussion, whether the Department will consider high rates to automatically renewed customers, numbers of low-income customers who are automatically renewed, or even what particular conduct by suppliers the Department seeks to prevent.¹ Accordingly, because the Department’s proposal does not include any guidance about what would trigger individual discussions, what those discussions would entail, or even what consequences, if any, would flow from those discussions, the proposal is not likely to be an effective consumer protection measure. The proposal does not provide suppliers any guidance on how to act and is unenforceable because there are no rules to enforce. Moreover, the proposal also could lead to a lack of uniformity in rules concerning automatic renewal because the process is conducted in an entirely piecemeal fashion.

¹ The Department staff indicates it will use information from the automatic renewal reports to determine whether an individual discussion is necessary. The Department should include in this docket the information that it collects through the automatic renewal reports so that other stakeholders in this proceeding will have access to the full record that the Department relies upon to make a decision regarding the most effective consumer protections related to automatic renewals.

Second, the proposal appears to lack any transparency, which will itself hinder, rather than help, the Department's efforts. As presented, it appears that only the Department and the individual supplier in question will be involved in the contemplated "discussions," effectively freezing out the public and other stakeholders, including consumer advocates and other suppliers. This process is especially concerning because it denies the Department input of others who could contradict the one-sided account of the supplier in question. If conducted through a transparent process, then consumer advocates, members of the public, and others would be able to come forward with information that might assist the Department or contradict self-serving representations of the supplier involved. As currently designed, the Department's proposal would create an incentive for the supplier to lie or misrepresent the truth because no one who could contradict the supplier would have a role in the process.

Instead of moving ahead with staff's revised position, the Department should strongly consider adopting staff's original proposal from the June and November 2019 technical sessions as a required product limitation. Department staff's original proposal provides clear rules that could be enforced.

Additional clear and enforceable rules regarding automatic renewals are sorely needed. First, as discussed during the technical sessions convened in this docket, most stakeholders outside of the Competitive Supplier Group have experienced interactions with consumers who, for a long period of time, had no idea they were enrolled with a competitive supplier. Automatic renewal allows suppliers to continue to charge these consumers without establishing a customer relationship of any kind. Second, suppliers continue to charge exorbitant rates to consumers in Massachusetts—rates that are much higher than the offers displayed on the Energy Switch website.² The disparity between the rates and the offerings on the Energy Switch website strongly suggests that suppliers consistently auto-renew their customers onto higher rates.³ Accordingly, the evidence currently available to the Department shows that there is an urgent need for exactly the type of consumer protection measures originally proposed by Department staff regarding automatic renewals. The AGO urges the Department to revisit its staff's original

² Massachusetts Attorney General's Office, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, prepared by Susan M. Baldwin, at Table 2.1 (March 2018) (the "*Massachusetts 2018 Report*"), available at <https://www.mass.gov/doc/comp-supply-report-final/download>, and *Massachusetts 2019 Update*, at Table 2.1, available at <https://www.mass.gov/doc/2019-ago-competitive-electric-supply-report/download>; National Consumer Law Center, *Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts*, at 14-17 (Apr. 2018) ("*Competing to Overcharge Consumers*"), available at <https://www.nclc.org/images/pdf/pr-reports/competitive-energy-supply-report.pdf>.

³ See, e.g., *Massachusetts 2018 Report*, at Table 2.3 and *Massachusetts 2019 Update*, at Table 2.3 (showing Supplier 37, with one of the largest residential customer bases in the state, continuing to bill its customers rates, on average, between \$0.0391 and \$0.0546 higher than the applicable basic service rates).

proposal.

2. Low-Income Customers

Department staff propose to not move forward at this time with the voluntary product limitation related to low-income customers that it proposed during technical sessions in June and November 2019. Memorandum, at 21. Department staff originally proposed that the rates charged to low-income customers not exceed the applicable basic service rate. *Id.* However, rather than move forward on this proposal, Department staff may “discuss such limitations individually with competitive suppliers based on the information provided through the competitive supply enrollment renewal reports.” *Id.*

Unfortunately, Department staff’s revised position on low-income raises the same enforceability and transparency issues as Department staff’s revised position on automatic renewal. *See* discussion, § C.1 *supra*. It is not clear what issues would trigger a “discussion,” what the substance of any such discussion would be, or what particular conduct that the Department seeks to prevent. As with Department staff’s revised position on automatic renewal, Department staff’s revised position on low-income would likely not provide significant protection to consumers because it is unenforceable and does not provide any guidance to suppliers regarding how to act. Similarly, the process created by the revised position on low-income lacks transparency and will thus deprive the Department of potentially valuable input from consumer advocates, the public, and other stakeholders.⁴

The low-income issue is critically important and urgent—low-income residents are those who can least afford to pay an extra \$12 or more per month for their electricity. Yet, data consistently show that electric suppliers disproportionately enroll low-income customers.⁵ Moreover, the AGO’s reports in 2018 and 2019 show that suppliers consistently charge low-income customers higher rates than other residential customers—not simply a subset of suppliers but a *majority* of suppliers who serve low-income customers.⁶ Thus, it is necessary to address the low-income issue in a uniform and comprehensive manner rather than on a piecemeal basis,

⁴ The Department staff indicates it will use information from the competitive supplier enrollment reports to determine whether an individual discussion is necessary. The Department should include in this docket the information that it collects through the competitive supplier enrollment reports, as well as any low-income customer information provided to the Department by the electric distribution companies, to allow other stakeholders in this proceeding access to the full record that the Department relies upon to make a decision regarding the most effective consumer protections related to low-income customers.

⁵ *See* Department Staff, November 1, 2019 PowerPoint Presentation, slide 24; *Massachusetts 2018 Report*, at 4-5; *Massachusetts 2019 Update*, at 4; *Competing to Overcharge Consumers*, at 8-9.

⁶ *Compare Massachusetts 2019 Update*, Appendix 2D (Supplier-Specific Information – All Households) with *Massachusetts 2019 Update*, Appendix 3A (Supplier-Specific Information – Low-Income Households) (showing that 32 of the 56 suppliers with low-income customers charge higher rates, on average, to their low-income customers).

as proposed by Department staff in the Memorandum. The AGO strongly urges the Department to open a separate investigation into the issues surrounding the competitive supply market and low-income customers, as requested by the AGO in its letter to the Department on December 17, 2019. A separate investigation will allow the Department to develop a robust record that will, amongst other benefits, serve to support low-income product limitations such as those originally proposed by Department staff.

D. License Renewal Process

Department staff proposes to create new processes concerning competitive suppliers, brokers, and retail agents that do not submit a timely license renewal application. Memorandum, at 21. For competitive suppliers that fail to submit a renewal license application within 30 days of the renewal due date, Department staff proposes to suspend the supplier's ability to sign-up new customers, while allowing the supplier to continue to serve its existing customers. *Id.* For competitive suppliers who fail to submit a renewal application with 90 days of the renewal due date, the Department may take further licensure action pursuant to D.P.U. 16-156-A. *Id.*

The AGO supports the Department staff's proposal to establish a license renewal process. The AGO recommends one modification: the Department's process should include a requirement that a formal proceeding under D.P.U. 16-156-A will be automatically initiated if a supplier fails to submit a renewal application within 90 days of the renewal due date. A supplier that is not in compliance with the simple filing requirement for license renewal is unlikely to be in compliance with the Commonwealth's Renewable Portfolio Standard ("RPS") and Clean Peak Standard ("CPS") requirements. The longer the delinquent supplier continues to serve customers, the deeper the potential RPS/CPS debt to the Commonwealth. In order to mitigate the potential harm to the Commonwealth, the Department should ensure that a formal proceeding to revoke a delinquent supplier's license is commenced immediately upon the expiration of the 90-day grace period.

Sincerely,

/s/ Elizabeth A. Anderson

Elizabeth A. Anderson
Assistant Attorney General

cc: Gregory Wade, Hearing Officer

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

**Investigation into Initiatives to Promote
and Protect Consumer Interests in the
Retail Electric Competitive Supply Market**

D.P.U. 19-07

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.

/s/ Elizabeth A. Anderson
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