

**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)	

JOINT COMMENTS OF 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 ON THE DEPARTMENT OF PUBLIC UTILITIES’ TIER TWO INITIATIVES

I. INTRODUCTION

On January 18, 2019, the Department of Public Utilities (the “Department”) issued a Vote and Order Opening Investigation in the above-captioned docket (the “NOI”). The NOI sought input from stakeholders on initiatives to improve the retail electric competitive supply market in the Commonwealth of Massachusetts. See, NOI at 1. The NOI outlined several areas in which the Department sought stakeholder input, including Customer Awareness, Investigation into Competitive Suppliers, and Barriers to Market Efficiency. NOI at 5-12. To assist the Department in its investigation, the NOI also requested comments on twenty-one specific questions. The Department received comments from several stakeholders on these initiatives on February 19, 2019, including NSTAR Electric Company d/b/a Eversource Energy (“Eversource”), Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid (“National Grid”) and Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) (together the “EDCs” or the “Companies”).

The Department convened a technical session on June 6, 2019, during which Department staff announced that it intended to investigate the initiatives in the proceeding in a tiered manner,

with Tier One addressing initiatives that can be resolved in the timeliest manner; Tier Two addressing initiatives that require more information before the Department can determine how best to proceed; and Tier Three initiatives requiring fundamental changes to the way in which the retail competitive markets currently operate, and thus requiring significantly more discussion (see June 6, 2019 PowerPoint presentation, slides 3-4). Following several working group meetings with certain stakeholders, on February 5, 2020, the Hearing Officer issued a Memorandum (the Feb. 5 Memorandum) requesting comments on certain Tier Two initiatives by Thursday March 19, 2020. As outlined below, the EDCs appreciate the Department's efforts in developing the Tier Two initiatives and responding to feedback provided throughout its investigation into these matters. The EDCs, joint comments on Tier Two Initiatives are provided below.¹

II. RESPONSES TO SPECIFIC TIER TWO INITIATIVES

1. Third-Party Verifications

The Department seeks comment on its November 1, 2019 proposal to expand the role of the Third-Party Verification ("TPV") process to include confirmation that competitive suppliers have complied with its proposed requirements related to the disclosure of product information.

The Department's November 1, 2019 proposal calls for:

- All (outgoing) telemarketing calls and door-to-door marketing interactions that result in a sale would be confirmed by a TPV call
- For an enrollment to be considered successful, a customer would be required to affirmatively identify the name of the supplier, as well as the following product information
 - Price
 - Contract term

¹ As noted below, the EDCs along with the Office of the Attorney General ("AGO") and National Consumer Law Center ("NCLC") submitted joint comments on the Department's proposal considering the elimination of the Customer Account Number requirement.

- Early termination fee (if applicable)
 - Automatic renewal provision (if applicable)
 - Renewable content (if applicable)
 - Spoofing protections
- Establishing a system that provides the Department with ready access to TPV calls.

While the EDCs support the Department's efforts to enhance and strengthen the TPV process, the Companies respectfully state that the Department does not go far enough to effectively achieve this goal. As outlined in their comments submitted throughout this proceeding, the Department should establish uniform language that TPV service providers would be required to use to confirm that suppliers have complied with the marketing standards of conduct. The TPV call should not be spoofed or hidden, and should clearly and concisely explain that the Competitive Supplier does not represent the utility. Deviations from these TPV requirements, when brought to the Department's attention, should be investigated and, if the investigation determines that regulations were violated, the Department should take appropriate action, including using its regulatory authority to issue fines against suppliers, or loss of licensure in egregious cases.

The TPV process should be strengthened so that it provides an actual check on whether the customer has knowingly entered into an agreement with the supplier. The Department should require that the competitive supplier, or its marketing agent, not be present when the TPV call occurs, and that the customer affirmatively state that the agent or marketer is neither present nor otherwise participating on the TPV call. This will provide much needed independence and help ensure that customers are not being coached by the supplier through the TPV process.

TPV calls should take place in native language. As discussed in NCLC's February 19, 2019 initial comments, consumers regularly complain that the TPV process is confusing. Consumers have reported being coached to answer the TPV questions correctly, whether they

understand or not. Consumers with limited English proficiency report TPV calls that are conducted in English, defeating the entire purpose of the TPV process.

While the Department's proposal represents a first step towards improving and strengthening the TPV process in Massachusetts, significant work remains to be done in order to protect Massachusetts customers and ensure that TPV is not just lip service but can be relied upon as a check and verification to the enrollment process. The EDCs recommend that the Department consider the above comments, and continue to receive input from stakeholders in the form of technical sessions and working group meetings in order to fully understand the issues associated with TPV and how it can best be used to verify enrollments with competitive suppliers.

2. Eliminating the Customer Account Number Verification Requirement is Not Advisable and Will Not Result in Benefits to Customers.

The EDCs are opposed to the elimination of the Customer Account Number requirement to verify enrollment with a competitive supplier. The EDCs have joined with the AGO and NCLC to submit joint comments on that subject contemporaneously to the Department. The EDCs and incorporate those comments by reference here.

3. Product Limitations

The Feb. 5 Memorandum refers to the Department's presentation on product limitations that would apply statewide to customers whose contracts have been automatically renewed:

- Staff proposes that the following product limitations for (fixed-price) contracts that automatically renew (either to fixed-and monthly-price products):
 - Renewal prices would not exceed the applicable monthly basic service price (or another specified market price)
 - The term of the renewal would be limited to three billing months (or another specified period of time)

- Staff proposes that these proposals be implemented in a voluntary manner, with the expectation that suppliers that do not agree to abide by these limitations would be subject to enhanced reporting requirements

For Low-Income Customers:

- Staff proposes that the price that competitive suppliers charge these customers not exceed the applicable basic service price
- Staff proposes that these proposals be implemented in a voluntary manner, with the expectation that suppliers that do not agree to abide by these limitations would be subject to enhanced reporting requirements
 - In addition, staff seeks to examine the reasonableness and appropriateness of utilizing other entities (e.g., distribution companies, the AG, consumer advocates) of providing additional protections to low-income customers

While the Feb. 5 Memorandum states that the Department does not specifically request comment on this issue, the EDCs wish to provide the Department with information that can help inform its decision or future action. The Department's proposal is based on data provided to it by competitive suppliers throughout the course of this proceeding, which, according to the Department, "raises significant concern regarding the high percentage of such customers on competitive supply." While the Feb. 5 Memorandum does not solicit stakeholder feedback on this proposal at this juncture, in its initial comments, Eversource noted that both the Attorney General and the National Consumer Law Center have investigated the competitive electric supplier market in Massachusetts, and have found that (1) residential competitive supply customers have paid \$176.8 million dollars more than they would have paid had they been on the basic service rate;⁵ and (2) that abusive sales practices harm low income customers in Massachusetts disproportionately, as 2017 data indicates that about half of Massachusetts' low-income electric customers received service through Competitive Suppliers, as opposed to other residential customers, where the rate of competitive supply adoption hovered near 37% - 42%.⁶ These are very real and tangible issues which should be investigated by the Department and

should be resolved through enactment or enforcement of strong regulations to protect consumers from unfair marketing attempts.

The Department should examine the NCLC Report from April 2018, and consider changes to the way that low-income customers receive competitive supply, either by preventing Competitive Suppliers from enrolling low-income customers, or requiring Competitive Suppliers to never charge low-income customers a rate greater than basic service.

Additionally, on December 17, 2019, the AGO submitted a request to the Department to open an investigation into the impacts of competitive supply on low income customers, including potentially barring competitive suppliers from enrolling low-income customers. In December 2019, to protect Low Income customers, the Connecticut Public Utilities Regulatory Authority (“PURA”) took the steps of ordering electric utilities in Connecticut to return all “hardship customers” (Connecticut’s terminology for low income customers) to default service (Connecticut’s terminology for Basic Service). It found:

The Authority finds that hardship customers could have realized significant savings during the time period studied in this docket had they received electric supply through standard service rather than from an electric supplier. Hardship customers’ overpayments substantially reduced the amount of available energy bill assistance funds to the hardship customers and to the social programs that assist their electricity payments. The EDCs offered evidence that for a one-time cost of less than \$520,000, they can program their computer systems to return existing hardship customers to standard service and prevent hardship customers from receiving supply from third-party suppliers in the future. The Authority finds that returning all hardship customers to standard service offers significant costs savings benefits to Connecticut, it is feasible to accomplish, and the costs to accomplish are not unreasonable when compared with the long-term savings accomplished. As a result, the Authority orders all hardship customers returned to standard service and orders the EDCs to implement system programming to prevent hardship customers from enrolling with an electric supplier.’

PURA Docket No. 18-06-02, at 18 (December 18, 2019) (emphasis added).

The EDCs request further stakeholder process and investigation on this proposal and alternative proposals, including the AG's request for a docketed investigation focusing specifically on these issues, in an effort to alleviate the detrimental impact that competitive supply appears to have on low income customers throughout the state.

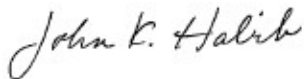
III. CONCLUSION

The EDCs appreciate the opportunity to submit these comments, and their joint comments with the AGO and NCLC on the Customer Account Number Requirement, on the Department's proposed Tier Two Initiatives in this matter and looks forward to reviewing the comments of other interested stakeholders and continued participation in the remaining phases of this investigation.

Respectfully submitted by,

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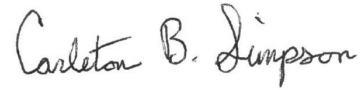
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