

**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 TWO 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 Two 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.

In comments filed on March 5, 2020 in this docket, Direct Energy acknowledged and generally supported the Department for developing a comprehensive set of Tier

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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.

One initiatives “that will improve market transparency, enhance consumer protection and allow competitive suppliers to offer real value to residential customers” (Direct Energy, March 5, 2020 Comments at 15). Moreover, Direct Energy recognized that these Tier One initiatives resulted from a constructive collaborative process instituted, organized and facilitated by the Department which successfully forged a consensus of disparate stakeholder interests (Id.).

As is the case with the Department’s Tier One proposals, the Tier Two initiatives outlined by the Department in the February 5 Memo are designed to (1) increase customer awareness of the competitive supply market and the value these 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. *See Vote and Order Opening Investigation*, D.P.U. 19-07, at 4-5. Like the Tier One proposals, the Tier Two initiatives clearly would benefit from the kind of collaborative process that shaped and improved the range of consumer protection proposals presented during the Tier One phase of the proceeding. As set forth in the sections that follow, the Tier Two initiatives largely presented in the Department’s February 5 memo – the customer’s role in third-party verification; “*Enroll With Your Wallet*” approaches; and possible product limitations for automatic renewal and low-income customers – are in a relatively early stage of development and would benefit

significantly from the information sharing and vetting of stakeholder straw proposals that were the hallmark of the Department's collaborative process in this docket. Indeed, the customer protection and market enhancements associated with the Department's Tier Two initiatives could be significantly delayed if these proposals are not further developed through an actively managed, Department-facilitated collaborative process that has proven to be both valuable and effective during the Tier One phase.

For these reasons, Direct Energy respectfully requests that the Department consider the comments and suggestions provided by stakeholders relative to these Tier Two initiatives and proceed to establish a series of collaborative sessions designed to inform and improve these important proposals, as well as to help advance these proposals in a timely manner.

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

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

### **A. Third-Party Verifications**

The Department has stated that it seeks to expand the role of the third-party verification ("TPV") process to include confirmation that competitive suppliers have complied with the new product disclosure measures, *i.e.*, contract summary forms.

February 5 Memo at 19, *citing* D.P.U. 19-07, at 11-12. Specifically, the DPU is proposing

to require, as part of the TPV process, that “customers affirmatively state the product information set forth in the contract summary form”, in order to complete a sale.

Moreover, in order to prevent spoofing, customers would be required to identify the caller’s telephone number and name as it appears on a customer’s phone. Id.

Given the significant additional protections required by the Department’s Tier One initiatives for telemarketing sales, Direct Energy believes it is premature to implement substantial changes to the current TPV process. With the adoption of Tier One initiatives for telemarketing sales requiring suppliers to (1) use specific scripts; (2) provide the customer with the information in the contract summary form over the phone; and (3) follow-up by mailing the customer a copy of the contract summary form as the first page of the contract, the Department has taken a number of critical and significant steps to protect customers from purchasing products about which they have been insufficiently informed. Moreover, the customer continues to have the right to rescind the contract within three (3) days. 220 CMR 11.05(4)(d), 220 CMR 14.04(4)(d)

The Department’s proposal to require customers at the TPV stage to affirmatively state all of the key information in the contract summary form – price, contract term, early termination fees, automatic renewals, and renewable content – at best would be administratively cumbersome, and, at worst, would establish a challenging condition for suppliers to complete a telemarketing sale, fully comply with the customer protection rules and ensure that their customers fully understand the product(s) being purchased.

Here, it is important for the Department and stakeholders to step back and consider the appropriate role of TPV in a market where the DPU has taken important and meaningful steps through its Tier One initiatives to significantly improve transparency and ensure that suppliers provide accurate information to customers about products. In this regard, it is not at all clear that requiring customers to restate key elements of the contract summary form in a follow-up TPV call would do anything other than make it dramatically more difficult for buyers to buy and sellers to sell.<sup>2</sup>

Given the foregoing, at a minimum, Direct Energy thinks it is reasonable for the Department to gather data over the first six months or year after adoption of the Tier One initiatives to determine whether the problem with customers signing up for products about which they have not been sufficiently informed is indeed a relevant concern.

Moreover, there may be alternatives to the Department's proposal regarding TPV. Instead of requiring customers to affirmatively restate all product information reflected in the contract summary form in a TPV call, it may be more beneficial from a

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<sup>2</sup> Assuming TPV systems can even be adapted to accommodate the kind of interactive conversation that would enable customers "to affirmatively state the product information included in the contract summary form in order for a competitive supplier to proceed with enrolling" customers, the practical implications of evaluating those conversations to determine whether enrollment can proceed would be staggering. If a customer has purchased a product at 10.25 cents, but rounds up that price to 10.3 cents on the TPV call, is that sale valid? What if a customer seeks clarification on the TPV call as to the meaning of "term"? These practical details are significant and input from competitive suppliers and other stakeholders must be fully considered before any changes to the TPV process can be made.

consumer perspective to develop uniform or standardized TPV scripts (or standardized introductions for all TPV calls) which focus on the product information that the customer has received in the telemarketing call, but stop short of a lengthy recitation and/or confirmation of all elements of the contract summary form. The standardized TPV script would be approved by the Department and would be required to be utilized by all licensed suppliers and their vendors.

Indeed, it is the case that any Department proposal to improve the TPV process to ensure that customers fully understand products they have purchased would benefit immeasurably from further development as part of the collaborative process. The collaborative process will allow the Department and stakeholders to step back and focus on the appropriate role of TPV in a market where customers will now have complete information about the competitive products they are purchasing because of the Department's Tier One initiatives. Moreover, to the extent that the TPV process can offer opportunities to improve customers' understanding of product offerings, the Department should first work with suppliers (and other stakeholders) to fully understand the difficulties suppliers will experience with different approaches to changing the TPV process. By employing the collaborative process, the Department can develop policies that actually improve the TPV process to the benefit of both customers and market participants, and not simply make changes that will make it only more difficult for buyers to shop and sellers to sell.

## **B. Customer Account Number**

As part of its development of Tier One initiatives in this docket, the Department sought input from stakeholders regarding “the reasonableness and appropriateness of approaches that would allow competitive suppliers to enroll customers when they may not have ready access to their account number.” February 5 Memo at 20. Among other things, the Department noted that the Competitive Supplier Group had identified three other states – Ohio, Maryland and Pennsylvania – where so-called *Enroll with Your Wallet* (EWYW) programs have been implemented or were being considered. *Id.* These EWYW processes allow competitive suppliers to enroll new customers with information from a customer’s wallet whether through distribution company portals and/or through customer information lists. *Id.*

As a next step in developing an EWYW program, the Department has asked the distribution companies to jointly develop an EWYW approach which could be implemented in Massachusetts. *Id.*

Direct Energy applauds the Department for recognizing the significant consumer benefit value that EWYW programs will deliver to the Massachusetts retail market. EWYW programs allow residential customers to enroll with a competitive supplier using information typically available in the customer’s wallet -- such as home address, date of birth, phone number or the last four digits of a Social Security number – rather than a lengthy and inaccessible customer account number.

Importantly, adoption of EWW in Massachusetts would come with all the customer rights and protections currently in place through the Department's and the Attorney General's regulations, as well as the significant consumer protection measures adopted by the Department as part of its Tier One initiatives. Here, it is notable that EWW is a customer-driven, non-intrusive process, where customers on their own volition can learn more about an array of competitive energy products by visiting a retail supplier kiosk in a traditional retail setting or other public settings. Indeed, the ability to complete direct or face-to-face sales in various public venues through EWW programs would contribute to the reduced use of door-to-door sales channels, which have historically been the source of residential customer complaints.

Other jurisdictions have recognized the clear benefits of an EWW program that does not require customers to know their account number in order to complete a transaction. The Pennsylvania Public Utility Commission noted the clear benefits of these types of programs:

"The Commission agrees that the inability to obtain customer account numbers in the context of selling at public venues is a serious impediment to customer shopping. We want customers to have the opportunity to shop and enroll with a competitive supplier at public locations like shopping malls, just as they can with wireless phone and other services and believe this sales venue offers several advantages over other sales channels like door-to-door or telemarketing. In a public venue it is usually the customer initiating the sales contact at a time and place of the customer's choosing. The ability to talk face-to-face with a sales agent may promote a customer's understanding of shopping for electricity, and doing so in a public location may be less intrusive than a transaction in a customer's residence. Public venues also offer opportunities for suppliers

to focus on specific customer groups with products and services in which the group may be interested. For example, a conference of trade associations representing renewable power producers may be of interest to a supplier selling renewable generation. Marketing in public locations also enhances the visibility of suppliers and helps them build their brand experience significant “failure rates” when attempting to obtain the account number by an ECL query.

Completing the electronic data exchange (EDI) transaction necessary to enroll and switch the customer’s generation service requires the customer’s account number. As such, these customers and EGSs without account numbers are unable to complete the application process at the point of sale. To complete the enrollment, the customer and EGS must take one of several extra possible steps, including having the customer retrieve a utility bill and then contacting the EGS to provide it, or by the customer calling the EDC’s call center and then informing the EGS. EGSs believe that the need to complete these extra steps create a barrier to efficient customer enrollment by EGSs, which decreases participation and increases costs. The delay may also result in a lost savings opportunity for customers that sometimes results in customer frustration and disappointment and a less-than-favorable opinion of the competitive retail market.”

*EDC Customer Account Number Access Mechanism for EGSs*, Docket M-2013-2355751 (2013), at 2-3.

While Direct Energy appreciates that the Department recognizes the significant benefits of an EWYW approach that does not require a customer to know or obtain a customer account number in order to purchase retail products, all stakeholders also understand that the success of an EWYW program depends on the specifics and costs of the program. Here, Direct Energy urges the Department to first bring all parties together in a collaborative process to discuss and vet the programmatic details that are necessary to effectively launch effective and viable EWYW programs in Massachusetts.

Again, Direct Energy believes the collaborative process is well suited for this type of program and policy development with competitive suppliers offering information on the processes adopted in other states and suppliers' experience completing sales through these processes; with distribution companies offering information on, among other things, their EDI systems, costs, and customer account security; and consumer advocates presenting proposals on how to ensure customers are appropriately informed and fully protected in purchasing products through EWYW programs. While Direct Energy fully understands that final and detailed EWYW programs will be implemented by the distribution companies, the most beneficial and effective EWYW program is the one that results from the vetting of stakeholder straw proposals, the exchange of information and data, and ultimately a well-developed Department proposal.

### **C. Product Limitations**

#### ***1. Automatic Renewal***

At the November 1, 2019 technical session, the Department presented a proposal for product limitations in those cases where customers' contracts had been renewed. Specifically, the Department proposed the following when fixed-price contracts were renewed either to fixed- or monthly-priced 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)

Importantly, Staff suggested 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. D.P.U. 19-07, November 1, 2019 PowerPoint Presentation, Slide 32.

The Department now has indicated that “it may be appropriate to discuss such limitations individually with competitive suppliers based on the information provided through the automatic renewal reports” which have been addressed as part of the Tier One initiatives. February 5 Memo at 20.

Although the Department is not seeking comments at this time regarding possible imposition of product limitations in cases of automatic renewal, Direct Energy respectfully suggests that discussions surrounding this issue should continue as part of the collaborative process.

As an initial matter, Direct Energy believes that there is currently not enough information available to impose these product limitations at this time. The new notification requirements that suppliers must provide customers with automatic renewal provisions in their contracts, *i.e.*, requiring standardized notices to customers with automatic renewal contracts 30 to 60 days before expiration of contracts, will go a long way toward ensuring that customers are aware of automatic renewal provisions and are protected.

Second, it is not at all clear that the Department has the statutory authority to cap the price that a competitive supplier can charge a customer at the utility Basic Service rate or otherwise tie a competitive supplier's filing requirements to a willingness to cap rates.

Rather than focusing on product limitations, which essentially amount to price caps, the Department and stakeholders should invest their energies in developing measures that will enable all customers, including customers with contracts with automatic renewal provisions, to fully understand the broad array of products that are available to them.

For example, the Department could increase customer awareness of automatic renewal provisions and their implications through its highly functional and well-designed and Energy Switch website. Among other measures, the Department could post announcements on the Energy Switch website reminding customers to consult their Contract Summary Forms; to check on renewal provisions clearly set out in those forms; as well as informing consumers of changes and updates to utility Basic Service rates. Moreover, competitive suppliers and other stakeholders may be able to agree on increased disclosure of pricing to customers that automatically renew, thereby further increasing market transparency and ensuring that customers understand the value of the products they are purchasing. In Direct Energy's view, a competitive market works most efficiently when customers understand their contracts and their options.

Direct Energy is prepared to provide required notifications and take other steps as necessary to ensure that customers with automatic renewal contracts fully understand their options. While acknowledging its own obligations to provide complete and timely information to automatic renewal customers, Direct Energy also believes that customers bear some degree of responsibility to open mail and/or answer calls from suppliers who are providing them with the information to make an informed choice. Working with consumer advocates, suppliers and distribution companies, the Department will be able to develop policies and initiatives that will both protect automatic renewal customers and provide these customers with clear information regarding their options, without taking the unnecessary (and likely unauthorized) step of imposing product limitations.

## *2. Low-Income Customers*

At the November 1, 2019 technical session, the Department also presented a proposal for product limitations relative to low-income customers. Specifically, the Department proposed the price that competitive suppliers charge low-income not exceed the applicable basic service price. Department Staff further proposed that these limitations 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. D.P.U. 19-07, November 1, 2019 PowerPoint Presentation, Slide 33.

While the Department is not seeking comments on this particular proposal at this time, Direct Energy strongly believes that the role of low-income customers in the retail market should be fully understood and discussed as part of the Department's collaborative process before any regulatory action is taken. Accordingly, the Department should convene a series of technical or informational meetings to discuss the current state of play for low-income consumers and explore potential product alternatives.

First, as noted in Section II.C.1., above, it is not at all clear that the Department has the statutory authority to cap the price that a competitive supplier can charge a low-income customer or otherwise tie a supplier's obligations to a willingness to cap rates.

Second, the Department should not head down the road of imposing price caps or proposing other solutions to problems surrounding the experience of low-income customers in the competitive electricity and gas markets until the Department and stakeholders have an understanding of what has taken place to date in the low-income market.

Here, Direct Energy shares the Department's view, as well as the view of other stakeholders, that low-income customers must be fully protected with respect to all interactions in the competitive market. At the same time, however, it is not necessarily the case that the Department's primary objective here should be to minimize the

number of low-income customers that purchase products in the retail market. Low-income customers should have full access to the same range of choices as all residential customers, but such access must be made available with appropriate guardrails in place to protect the unique interests and vulnerabilities of these customers.

However, even a discussion of “guardrails” for low-income customers is premature unless and until the Department has taken necessary steps to fully explore and understand what is happening in the low-income sector. In this regard, Direct Energy acknowledges that two reports issued by Susan M. Baldwin on behalf of the Attorney General’s Office -- “Are Consumers Benefiting from Competition?” (March 2018) and “Are Consumers Benefiting from Competition? – August 2019 Update” – raise serious issues regarding how low-income customers have fared and are faring in competitive markets in Massachusetts. As a next step, the Department should expand its collaborative process to fully explore what is going on in the low-income market, starting with a discussion of Ms. Baldwin’s methodologies and findings, and continuing with a full exploration of information and data specific to low-income customers, including information and data on pricing, sales channels, sales practices, price trends and products. In the end, gathering these key data through the collaborative process or some other investigation should not be difficult and would offer the Department a long-overdue window into what is going on in low-income markets. More importantly, once the Department has a full understanding of how the low-income market is working, it

can move forward and fully develop a comprehensive set of “guardrails” which protect low-income customers without depriving these customers of the opportunity to access the benefits of competitive markets.

### **III. CONCLUSION**

The Department successfully facilitated a highly constructive collaborative process to forge consensus among disparate stakeholder interests and develop a set of comprehensive Tier One initiatives that will improve market transparency, enhance consumer protection and allow competitive suppliers to offer real value to residential customers. Direct Energy encourages the Department to adopt a similar collaborative process to fully develop, vet and implement the Department’s proposed Tier Two initiatives. As was the case with the Tier One initiatives, by allowing stakeholders to share information and vet straw proposals, the Department can further develop its Tier Two initiatives, *i.e.*, improvement in third-party verification, “Enroll With Your Wallet” approaches, in a manner that fully protects customers while ensuring further development of a robust market offering customer value.

Respectfully submitted,

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