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Via Electronic Filing¹

April 2, 2020

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

Re: D.P.U. 19-07 – Investigation by the Department of Public Utilities on its Own Motion into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market

Dear Mr. Marini:

Vistra Energy Corp. (“Vistra”)² appreciates the opportunity to provide these comments to the Tier Two initiatives described in the Hearing Officer’s February 5, 2020 Memorandum (“February 5 Memorandum”).

In its February 5 Memorandum, the Department proposes that competitive suppliers affirmatively state the product information included in the contract summary form during the mandatory third-party verification (“TPV”) call to “protect customers from purchasing supply products about which they were insufficiently informed”.³ While Vistra understands and shares the Department’s customer-protection purpose, Vistra believes a better way to ensure that customers are properly informed of the nature of the plan a customer agrees to purchase can be achieved through implementation of some other methods, already proposed by the Department, during the sales call. The TPV should provide the clearest, most straightforward method for the customer to verify what was discussed during that sales call.

¹ Pursuant to the Department’s March 12, 2020 notice regarding Temporary Changes to Filing Requirements, these comments are being provided electronically only.

² Vistra Energy Corp. is the parent company for, and filing on behalf of, Massachusetts licensed suppliers Ambit Northeast, LLC; Dynegy Energy Services (East), LLC; Public Power, LLC; Viridian Energy, LLC; Everyday Energy, LLC d/b/a/ Energy Rewards; and Massachusetts Gas & Electric, Inc.

³ February 5 Memorandum, at 19-20.

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Vistra believes the greatest benefit to the customer is to educate them on their selected plan and help them make an informed decision during the sales call itself. The Department's Tier One initiatives already enhance the information a customer would receive during the sales call. For instance, the Department has proposed to require competitive suppliers to provide the contract summary form information to customers at the point of sale.⁴ For those sales that take place over the telephone, that contract summary information would be provided orally.⁵ Better educated customers will make more informed decisions on whether the price and terms they are being offered by the agent provide a better offer for them. It is this back-and-forth exchange between the sales agent and the customer that is most beneficial during the sales call itself, so that a free-flowing exchange can take place between the parties.

The TPV is reserved for verification purposes only. This is, in part, why regulations require the TPV to be an "independent third party operating in a location physically separate from the telemarketing representative who obtained the Customer's oral authorization...."⁶ Further, the TPV agent should not be put in a position where (s)he needs to make judgement decisions on whether to continue the TPV. For instance, what if the price is provided to the TPV agent by the competitive supplier in cents per kWh (as provided on the contract summary form), but when asked, the customer provides that price to the TPV agent in dollars per kWh? Would the TPV fail because the customer does not provide the information in the exact format? If the TPV agent needs to ask for customer clarification, there could be customer confusion, or that TPV could unnecessarily fail and frustrate the customer's intent.

As a typical matter, at the conclusion of the sales call, a sales agent enters the product information and then this information is read back to the customer for verification during the TPV. Given the amount of numerical information related to a customer's product selection, having this information collected during the solicitation and then repeated back to the customer during the TPV for the customer to verify creates two checkpoints to collect the right information. This reduces the amount of enrollment rejections where the supplier needs to go back to the customer. The Department's proposal contemplates only one instance of having this information provided during the TPV, and that instance would be the customer reading it to the TPV agent. The result could be that inaccurate information is inadvertently included in the TPV that increases customer frustration when the competitive supplier performs outreach to correct this information.

Vistra believes the customer will be more engaged if they can listen to their selected product information twice (once during sales call and again during the TPV) rather than being administered a memory test in the TPV with multiple points of failure when so much of the information involves numerical values (e.g., the percentage of renewable content, contract term, price, early cancellation fee, etc.). Vistra believes there should be two instances where this product information is read to the customer to better inform customers and increase successful enrollments – once during the sales call and once during the TPV where the customer also affirms the information.

⁴ February 5 Memorandum, at 11.

⁵ *Id.*

⁶ 220 CMR 11.05(4)(c).

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As an alternative to the Department's proposal, Vistra supports requiring a customer to respond to TPV questions relating to product information, including price, contract term, early termination fees (if applicable), automatic renewals (if applicable), and renewable content.⁷ The key distinction between the Department's proposal and Vistra's alternative suggestion is that the TPV questions should require the customer's affirmative *response* rather than affirmative *statement*. Vistra believes such a solution would alleviate many of the concerns raised above while accomplishing the Department's overall goal to "include confirmation that competitive suppliers have complied with the proposed requirements related to the disclosure of product information."⁸

In addition, the February 5 Memorandum would require the customer to identify during the TPV the telephone number and name that appears on the customer's telephone to "protect customers that are enrolled through telemarketing against 'spoofing'..."⁹ Vistra supports the goal behind the Department's proposal, but cautions against the customer confusion this anti-spoofing measure may inadvertently create. Competitive suppliers are not always able to control the telephone number or name that appears on the customer's telephone. That information is, ultimately, controlled by the local telephone company. Despite a competitive supplier's best efforts, it is possible that the local telephone company displays incorrect or inaccurate information. Rather than hold competitive suppliers responsible for the actions of another company which they do not control, Vistra respectfully suggests that the Department should simply require that the competitive supplier transmits the accurate information and not require any affirmative statement regarding the telephone number or name during the TPV.

Vistra notes that TPVs are also conducted for inbound telephonic sales where the customer contacts the supplier directly to enroll or switch to another product. In these instances of customer-initiated calls, there would be no concern of "spoofing." Thus, requiring that the customer identify the telephone number and name that appears on the customer's telephone would undoubtedly lead to consumer confusion, or instances where the TPV could unnecessarily fail and frustrate the customer's intent.

Please do not hesitate to contact me if you have any questions or require additional information.
Thank you.

Sincerely,

/s/ Eric K. Runge

Eric K. Runge

⁷ February 5 Memorandum, at footnote 25.

⁸ *Id.* at 19.

⁹ *Id.* at 19.