

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

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

**ADDITIONAL COMMENTS OF THE NATIONAL CONSUMER LAW CENTER ON
THE DEPARTMENT’S TIER TWO INITIATIVES**

INTRODUCTION

On February 5, 2020, the Department of Public Utilities (“the Department”) issued a Memorandum (“H.O. Memorandum”) in Docket No. 19-07, seeking comments on two sets of Initiatives proposed by the Department. On March 5, 2020, the National Consumer Law Center (“NCLC”) and the Office of the Attorney General (“AGO”) submitted comments on the Department’s proposed Tier One initiatives in this docket. Comments on the Tier Two initiatives were originally due on March 19, 2020, but NCLC filed a Motion for an Extension of Time on March 16, 2020, which the Department granted on March 17, 2020, extending the deadline for comments to April 2, 2020.

The Department seeks comments on its proposals regarding Third-Party Verifications, Customer Account Number requirements, and License Renewal Requirements. The Department also made note of proposals regarding Product Limitations including Automatic Renewal and Low-Income Consumers.

NCLC is submitting comments addressing Customer Account Number requirements separately, in a joint filing with the AGO and utility companies. These additional comments will therefore not address the Customer Account Number requirements, but will address the Department’s Tier Two initiatives on Third-Party Verifications and Product Limitations.

I. THIRD-PARTY VERIFICATIONS

The Department seeks comment on its proposal to require that third-party verification (TPV) phone calls include confirmation that suppliers have provided the correct contract information to customers who are about to enroll. Under the proposal, customers would affirmatively state or repeat the product information included in the supplier’s contract, and would also identify the name and phone number of the supplier that appears on the customer’s telephone.

While the Department’s proposals may provide some additional protection to consumers, we remain concerned that reported abuses of the TPV process would continue even with these more comprehensive requirements. As noted in NCLC’s February 19, 2019 comments in this

docket, consumers frequently report that the TPV process is confusing and may be abused. Consumers have reported being coached to answer the TPV questions correctly, whether they understand or not.¹ Consumers with limited English proficiency report TPV calls that are conducted in English.

If customers are already coached by suppliers or their agents to answer TPV questions correctly, even if they speak a language other than English, and if consumers could still be coached to answer the additional questions proposed by the Department, it is difficult to see how additional TPV questions would significantly protect customers.

In addition to the broad problem of coaching, there may be some consumers who lack the caller ID function needed to implement the Department's proposal. The proposal anticipates that TPV calls would be made to the phone number of each new customer, and the customer would recite information and also provide the company name and phone number of the caller that had appeared on the customer's phone. However, some customers, particularly elders, may use older land-line telephones that do not include a caller ID function. Since older adults appear to be disproportionately targeted with aggressive or deceptive marketing,² this proposal is likely inadequate to protect this vulnerable population.

NCLC appreciates the Department's efforts to strengthen consumer protections and agrees that the TPV calls are a needed consumer protection. Yet we remain concerned that TPV calls, even with additional requirements, are not an adequate measure to protect consumers in the absence of a broad set of strong protections including those discussed in the following section on Product Limitations.

II. PRODUCT LIMITATIONS

Although the Department did not seek comments on Product Limitations, NCLC includes the following discussion of important consumer protections that have been discussed in this docket and were included in the Department's H.O. Memorandum.

A. Automatic Renewal

In its presentation at the November 1, 2019 technical session,³ the Department offered these voluntary guidelines regarding automatic renewals:

¹ See DPU Complaint Data 2017-2018, including, for example, the following complaint from Nov. 28, 2017: "COR's daughter called. Said mother has elec in her name, they live together. Mother is home during day, gets visited by solicitors for suppliers often. A Rep from DIRECT Energy came by, told her of coming rate increases, offered to protect against them by signing up. She signed up, had a TPV recorded. Daughter said that mother later maintained she was being coached by the rep through the TPV call, and was confused about the process. Daughter noticed mother was paying higher bills, but then saw a mailing from Direct and then went over the bills herself. She saw Direct on the bill and called them. After speaking to a rep, she realized rate was .1229, higher than the Natl Grid rate at the time. She thinks that there is no way her mother would sign up for a higher rate and must have been manipulated."

² See, e.g., National Consumer Law Center, *Issue Brief: Still No Relief for Massachusetts Consumers Tricked by Competitive Electric Supply Companies* (Oct. 2018), at <http://bit.ly/2H3ORJJ> (with examples of slamming of older consumers, from Department Complaint Data).

³ D.P.U. 19-07 Competitive Supply NOI Technical Session, PowerPoint presentation by Department (Nov. 1, 2019).

Product Limitations

- In the June 6, 2019 technical session, Department staff identified three types of automatic renewal initiatives necessary to provide customers with reasonable and appropriate protection: (i) notification, (ii) supplier reporting, and (iii) product limitations
 - o Staff stated that we would address product limitations as a Tier Two initiative (see June 24, 2019 HO Memo)

- Staff proposes that the following product limitations for (fixed-price) contracts that automatically renew (either to fixed- and monthly-price products):
 - o Renewal prices would not exceed the applicable monthly basic service price (or another specified market price)
 - o 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

NCLC agrees that automatic renewals to higher-priced electric service is a fundamental problem for consumers, and therefore supports the Department's proposed consumer protections. However, to our knowledge suppliers have not taken steps to adopt these voluntary measures, and the status of this proposal is unclear. We urge the Department to implement these proposals as mandatory rules for all Massachusetts suppliers, with penalties for noncompliance.

B. Low-Income Consumers

NCLC urges the Department to prioritize protections for low-income consumers. These vulnerable households have suffered disproportionate financial harm in the competitive supply market, and the high prices charged to these consumers drain the resources of the assistance programs that have been created to help these customers remain connected to essential utility services.⁴

Illinois, New York and Pennsylvania have already recognized this need and implemented strong protections to ensure that low-income consumers pay no more than the basic service price for electricity.⁵ Connecticut is returning low-income consumers to basic service.⁶ Ohio exempts

⁴ See, e.g., National Consumer Law Center, *Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts* (April 2018), at <http://bit.ly/2H3ORJJ>; Massachusetts Attorney General's Office (Prepared by Susan M. Baldwin). *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts* (March 2018), <https://www.mass.gov/files/documents/2018/03/29/Comp%20Supply%20Report%20Final%20032918.pdf>.

⁵ Illinois: Illinois SB0651, Public Act 101-0590 (Aug. 27, 2019).
New York: N.Y. Pub. Svc. Commission, Case Nos. 12-M-0476, 98-M-1343, 06-M-0647, and 98-M0667, "Order Adopting a Prohibition of Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016), available at <http://www.dps.ny.gov>, upheld by *Nat. Energy Marketers Assn. v. N.Y. State Pub. Svc. Commn.*, 2017

its low-income assistance customers from the competitive supply market and prohibits suppliers from enrolling these customers.⁷

Although not directly part of this docket, consumer advocates have sought Department involvement to provide needed protections for low-income consumers. 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 (Request of the Office of the Attorney General, Office of Ratepayer Advocacy for Investigation into the Effect of the Individual Residential Supply Market on Low Income Ratepayer Assistance Programs, Pursuant to G.L. c. 164, §§ 1F, 76C, 124A, 124E, 124F, 124H; and St. 2005, c. 140, § 17). On January 10, 2020, NCLC along with 29 organizations and over a dozen individuals, filed a letter in support of the AGO's request for an Investigation. As described in the January 10 letter, the organizations and individuals who signed on to the letter strongly support measures to combat the financial harm caused to low-income ratepayers and the programs that support them.

CONCLUSION

Thank you for the opportunity to submit these comments. NCLC appreciates the Department's ongoing work to protect Massachusetts consumers. While we continue to urge an end to sales in the individual residential competitive supply market, NCLC supports stronger consumer protection measures in the interim.

Respectfully submitted,

National Consumer Law Center, on behalf of our low-income clients
By:



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NY Slip Op 27223, Supreme Court of N.Y., Albany County (June 30, 2017). On December 12, 2019, the New York Public Service Commission took additional steps to protect that state's consumers by prohibiting competitive supply sales to residential customers unless, *inter alia*, the offer "includes a guaranteed savings over the utility price." NYPSC dockets 98-M-1343, 12-M-0476, 15-M-0127, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process, at 108. (Dec. 12, 2019).

Pennsylvania: Motion of Commissioner David W. Sweet, Pennsylvania PUC, Electric Distribution Company Default Service Plans—Customer Assistance Program Shopping, Public Meeting (December 20, 2018), <http://www.puc.state.pa.us/pcdocs/1599226.pdf>; Motion of Commissioner David W. Sweet, Pennsylvania PUC, Electric Distribution Company Default Service Plans—Customer Assistance Program Shopping, Public Meeting (December 20, 2018), <http://www.puc.state.pa.us/pcdocs/1599226.pdf>.

⁶ Conn. Public Utilities Regulatory Authority, Decision, Review of Feasibility, Costs and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. Stat. § 16-245O(M), Docket No. 18-06-02 (Dec. 18, 2019).

⁷ Ohio Revised Code 4928.54.

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