

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-07-A

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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.

ORDER ON TIER ONE INITIATIVES

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I. INTRODUCTION

In 1997, the Commonwealth enacted legislation that restructured the provision of electric service to retail consumers in Massachusetts. An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein, St. 1997, c. 164, § 37 (“Electric Restructuring Act”). Before electric restructuring, consumers had to purchase all components of their retail electric service – the supply component (i.e., the electricity), the delivery component (i.e., the transportation of electricity over transmission and distribution facilities), and a customer service component (i.e., metering and billing) – from their service territory’s electric company. The Electric Restructuring Act introduced competition into the supply component of retail electric service by allowing consumers to purchase electric supply from third-party competitive suppliers or to continue purchasing electric supply from their electric company. In 2000, the Department approved natural gas unbundling regulations allowing consumers to choose their own gas supplier. Rulemaking to Establish Rules Governing the Unbundling of Services Related to the Provision of Natural Gas, D.T.E. 98-32-E (2000).

In enacting the Electric Restructuring Act, the Legislature charged the Department of Public Utilities (“Department”) with the dual responsibilities of (1) fostering a robust competitive supply market and (2) implementing safeguards to protect retail consumers. Specifically, G.L. c. 164, § 1F states that “The [D]epartment shall promulgate rules and regulations to provide retail consumers with the utmost consumer protections contained in

law,” which include, but are not limited to, nine listed provisions. These provisions anticipate a (1) competitive marketplace with competent qualified suppliers, (2) well-informed consumers, and (3) processes that address unacceptable marketing practices and prevent such practices from continuing. See G.L. c. 164, §§ 1F(1), (2), (3), (5), (6), (7) (Department shall license suppliers and marketers; notice of terms of agreement; establish rules to promote effective competition; investigate disputes and institute complaint resolution mechanism; require customer information disclosure; establish labelling regulations; establish code of conduct applicable to the retail sale of electricity to consumers).

In the two plus decades following the Electric Restructuring Act, the Department has promulgated regulations (220 CMR 11.00) and issued Orders to implement its statutory mandate (Competitive Market Initiatives, D.T.E. 01-54-A (2001); D.T.E. 01-54-B (2002) (minimize barriers to competitive choice and implement initiatives to expand competitive options to consumers); Purchase of Receivables, D.P.U. 10-53-B/C/D/E (2014); Initiatives to Improve the Retail Electric Competitive Supply Market, D.P.U. 14-140-A (2015) (eliminated basic service bill recalculation provision); D.P.U. 14-140-D (2016) (established reporting requirements for the assignment of customers from one competitive supplier to another competitive supplier); D.P.U. 14-140-E (2016) (developed Energy Switch website (“Website”) that allows electricity consumers to compare different electric supply product offerings and purchase such products from competitive suppliers that participate in the Website); D.P.U. 14-140-F (2017); D.P.U. 14-140-G (2018) (established notification requirements and standards of conduct for door-to-door marketing campaigns in

Massachusetts); Interim Guidelines for Competitive Supply Investigations and Proceedings, D.P.U. 16-156-A (2017) (established procedure to investigate competitive supplier consumer protection violations)).

On January 18, 2019, the Department opened this 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 (2019). With this investigation, the Department identified initiatives that were intended to: (1) increase consumer awareness of the electric competitive supply market and the value these markets can provide, thus allowing consumers to make well-informed decisions; (2) facilitate the Department's adoption of a more pro-active approach toward our oversight of competitive supplier performance rather than reacting to third-party complaints or reports about alleged violations of statute/regulation; and (3) improve the operational efficiency of the competitive market to optimize the value that the market can provide to consumers. D.P.U. 19-07, at 4-5, 10. With these initiatives, and guided by our core statutory principles, the Department establishes additional rules to further protect retail residential consumers from abuses in the competitive supply market, while continuing to foster conditions for a vibrant competitive market.

II. PROCEDURAL HISTORY

On January 23, 2019, the Department issued its Notice of Investigation and Request for Comments in this proceeding. The distribution list for this proceeding includes approximately 300 stakeholders, representing competitive suppliers, distribution companies, consumer advocates, and municipal aggregation cities and towns. Between February 15,

2019 and March 8, 2019, the Department received comments from the following stakeholders: Arcadia Power Inc. (“Arcadia Power”), Astral Energy, the Cape Light Compact JPE (“Compact”), City of Melrose, Davis, Malm & D’Agostine, P.C. (“Davis Malm”), the Commonwealth of Massachusetts Office of the Attorney General (“Attorney General”), Direct Energy Services, LLC (“Direct Energy”), Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (“National Grid”), Fitchburg Gas and Electric Light Company d/b/a Unitil, and NSTAR Electric Company d/b/a Eversource Energy (collectively, “Electric Distribution Companies”), Massachusetts Department of Energy Resources (“DOER”), Mr. Werne Lohe, National Consumer Law Center (“NCLC”), the Municipal Aggregation Communities, National Energy Marketers Association (“NEM”), Patriot Energy Group, PowerOptions, Inc., Retail Energy Supply Association (“RESA”), and SourceOne, Inc.

The Department convened a technical session¹ on June 6, 2019, during which the Department announced that we intended to investigate the initiatives in the proceeding in a tiered manner.² Tier One would address those initiatives that can be resolved in the timeliest

¹ The Department convened technical sessions that were open to all stakeholders and were a forum to broadly discuss the initiatives proposed in this NOI. The Department also convened working groups to address the proposed initiatives in greater detail and develop implementation plans. Stakeholders determined in which, if any, working group they chose to participate.

² At the June 6, 2019 technical session, the Department also announced that the investigation would include the gas competitive market and that it would strive to establish rules that apply equally to both markets.

manner. Tier Two would address those initiatives that require more information before we can determine how best to proceed. Tier Three would address those initiatives that would require fundamental changes to the way in which the retail competitive markets currently operate, and thus require significantly more discussion. The June 6, 2019 technical session focused on the implementation details associated with the Tier One initiatives that would be developed through two working groups: a Customer Protection working group and an Energy Switch working group.

On June 26, 2019, the Department convened the initial meeting of the Customer Protection working group. Based on the discussion during that meeting, Department staff requested that competitive suppliers (“Competitive Supplier Group”) develop straw proposals on: (1) the language and format of automatic renewal notifications; (2) the language and format for the written and oral disclosure of product information; and (3) introductory and closing scripts for door-to-door and telemarketers. Further, Department staff requested that the Attorney General, National Consumer Law Center (“NCLC”), and Greater Boston Legal Services (collectively, “Consumer Advocates”) develop straw proposals on protocols for competitive suppliers’ oversight of their third-party marketing vendors (July 2, 2019 Hearing Officer Memorandum). The Competitive Supplier Group and Consumer Advocates submitted their proposals on July 26, 2019 and July 31, 2019, respectively (“Competitive Supplier Group Initial Proposal” and “Consumer Advocate Proposal”). On August 6, 2019, Department staff convened a second meeting of the Customer Protection working group to discuss the Competitive Supplier Group and Consumer Advocate proposals. At that meeting,

staff presented alternatives to the Competitive Supplier Group Initial Proposal. Subsequent to the meeting, staff requested that the Competitive Supplier Group submit revised proposals in response to staff's alternatives and the discussion during the meeting, and invited the Competitive Supplier Group to submit comments on the Consumer Advocate Proposal (August 15, 2019 Hearing Officer Memorandum). The Competitive Supplier Group submitted its revised proposals and comments on September 20, 2019.

On July 31, 2019, the Department convened the initial meeting of the Energy Switch working group. The meeting focused on municipal aggregation products and the mechanics associated with providing product information that could be displayed on the Website and the manner in which the Website could display municipal aggregation products.

On November 1, 2019, the Department convened a technical session to discuss both Tier One and Tier Two initiatives. After consideration of the material discussed at the November 1, 2019 technical session, the Department, on February 5, 2020, issued a Hearing Officer memorandum ("February 5, 2020 Hearing Officer Memorandum") that set forth and sought comments on Department staff's proposals regarding Tier One initiatives and Tier Two initiatives related to third-party verification and the customer enrollment process. On March 5, 2020, the Department received initial comments from Arcadia Power, the Consumer Advocates, Compact, CleanChoice Energy, Inc. ("CleanChoice"), Davis Malm, Direct Energy, DOER, Electric Distribution Companies, the Municipal Aggregation Communities, NEM, NRG Energy, Inc. ("NRG"), RESA, Starion Energy, Inc. ("Starion"), and Vistra Energy Corp. ("Vistra").

In this Order, the Department addresses stakeholder comments on Tier One initiatives and adopts rules to implement the Tier One initiatives. The rules adopted in this Order apply to electric and gas competitive suppliers, electricity brokers, and gas retail agents, and to residential and small commercial and industrial (“C&I”) consumers, unless otherwise noted.

Below, the Department sets forth the rules that will apply to: (1) the Department’s review of license applications; (2) door-to-door marketing notification; (3) identification of third-party marketing vendors; (4) disclosure of product information; (5) marketing scripts; (6) recording of marketing interactions; (7) review of marketing materials; (8) automatic renewal notifications and reports; (9) enrollment reports; and (10) the display of municipal aggregation products on the Website. As stated above, the rules for these initiatives were developed through a stakeholder process that provided stakeholders with the opportunity to provide input and feedback. The Department will continue to engage with stakeholders in such a process to ensure the effective, efficient, and timely implementation of the initiatives.

III. LICENSE APPLICATION REVIEW

A. Introduction

The Department did not identify an initiative related to the review of competitive supplier and electricity broker/gas retail agent license applications in D.P.U. 19-07. The issue was first addressed by the Consumer Advocates in their July 31, 2019 Proposal. Department staff discussed this issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 3-5, Department staff proposed a process by which the Department would make information regarding pending new license applications available on the Department's website³ and interested stakeholders would have the opportunity to provide comments on these applications. Department staff stated that its proposal was intended to take advantage of the value that stakeholder input can provide to the license application review process, while avoiding the administrative burden associated with adjudicatory proceedings.⁴ Department staff did not, however, propose to post and take comment on license renewal applications. Department staff stated that the Department approaches license renewal reviews as an administrative process, which is designed to verify that a licensee seeks to maintain its license for the upcoming year and ensure that the licensee's business information is current. Accordingly, Department staff saw no value in making information regarding license renewals available on the Department's website for stakeholder comment.

C. Summary of Comments

1. New License Applications

CleanChoice, Direct Energy, and RESA support Department staff's proposal regarding stakeholder participation in the review of new license applications (CleanChoice

³ This reference is to the Department's general website and not to the Energy Switch Website.

⁴ The Consumer Advocates requested that license applications be docketed for review in an adjudicatory proceeding (Consumer Advocates March 8, 2019 Comments at 3, 12).

Comments at 2; Direct Energy Comments at 5; RESA Comments at 4). No stakeholder opposed Department staff's proposal. DOER and the Electric Distribution Companies recommend that the Department notify interested stakeholders when the Department has posted a new license application for comment, stating that providing such notification will improve stakeholders ability to review and provide comment in a timely manner (DOER Comments at 2-3; Electric Distribution Companies Comments at 3). NEM recommends that the Department (1) provide license applicants the opportunity to respond to comments submitted by stakeholders and (2) limit comments to those stakeholders that have a legitimate interest in commenting on the license application (NEM Comments at 2-3).

2. License Renewal Applications

Arcadia Power, CleanChoice, Direct Energy, and RESA support Department staff's proposal regarding the review of license renewal applications (Arcadia Power Comments at 2; CleanChoice Comments at 2; Direct Energy Comments at 5;⁵ RESA Comments at 4). In contrast, the Consumer Advocates, the Electric Distribution Companies, and the Municipal Aggregation Communities oppose Department staff's proposal and recommend that the Department post license renewal applications for comment on the Department's website (Consumer Advocates Comments at 2; Electric Distribution Companies Comments at 4;

⁵ Direct Energy recommends that the Department consider requiring competitive suppliers to submit renewal applications every two years instead of on an annual basis (Direct Energy Comments at 5). Because this issue is outside the scope of the issues set forth in the February 5, 2020 Hearing Officer Memorandum proposal, the Department will not address Direct Energy's comment in this Order.

Municipal Aggregation Communities Comments at 3-4). The Electric Distribution Companies and the Municipal Aggregation Communities state that stakeholder comment on renewal applications could affect the Department's decision on whether to approve or deny a license renewal (Distribution Companies Comments at 4; Municipal Aggregation Communities Comments at 3-4). The Consumer Advocates state that providing information such as competitive suppliers' corporate structures and regulatory contacts on the Department's website would create administrative efficiencies for stakeholders by, for example, eliminating the need to submit public records requests, or visiting other state utility commission websites, to obtain this information (Consumer Advocates Comments at 2).⁶

D. Analysis and Findings

1. New License Applications

In the February 5, 2020 Hearing Officer Memorandum at 4-5, Department staff proposed a process by which pending new license applications would be made available to the public for comment on the Department's website. Based on the comments received, the Department sets forth the final process for this initiative.

⁶ The Consumer Advocates additionally recommend that the Department post information on its website related to informal remedial plans between the Department and a competitive supplier (Consumer Advocates Comments at 2, citing D.P.U. 16-156-A, Interim Guidelines). Because this issue is outside the scope of the issues set forth in the February 5, 2020 Hearing Officer Memorandum proposal, the Department will not address the Consumer Advocate's comment in this Order.

The Department will post pending new license applications on our website.⁷ License applicants will have the opportunity to request confidential treatment of portions of their application, consistent with Department precedent on this issue and G.L. c. 25, § 5D (Consumer Advocates Comments at 3). To ensure that stakeholders have ample time to review materials and submit comments, the Department will develop a distribution list by which we will notify interested stakeholders when a license application has been posted to the Department's website and is available for comment (DOER Comments at 2-3; Electric Distribution Companies Comments at 3). Stakeholders will have the opportunity to submit comments on an application within 15 business days after the application's posting date. The Department will review comments submitted by stakeholders and may request additional information from an applicant based on those comments. In such instances, stakeholders will have ten business days after the applicant's response to submit further comment. License applicants will have the opportunity to respond to all comments submitted by stakeholders. The Department will inform the applicant of our decision to approve or reject the application within 20 business days of our determination that no further information is required. 220 CMR 11.05(2)(d). The Department will make available all stakeholder comments, Department requests for information, applicant responses, and the Department's letter of approval/rejection on the website.

⁷ The Department will not post a pending application until Department staff determines that the application is sufficiently complete for comment.

NEM asserts that a license applicant's due process rights would be implicated if the Department does not allow the applicant to respond to stakeholder comments (NEM Comments at 2-3). As noted above, the Department will determine which stakeholder comments merit additional information from the license applicant and, in such instances, will provide the license applicant with the opportunity to respond to stakeholder comments. The Department concludes that the process set forth above allows the Department to take advantage of the value that stakeholder input can provide to ensure we license competent qualified competitive suppliers, while avoiding the administrative burden associated with adjudicatory proceedings.

The Department will post new complete license applications filed on or after July 1, 2020 on our website for stakeholder comment. Prior to that date, the Hearing Officer assigned to this proceeding will provide direction to stakeholders on how to locate license applications on the Department's website, and how to be included on the Department's notification distribution service list.

2. License Renewal Applications

The Department approaches the review of license renewal applications as an administrative process that is designed to verify that a licensee seeks to maintain its license for the upcoming year and ensure that the licensee's business information is current (February 5, 2020 Hearing Officer Memorandum at 4-5). The Department disagrees with those commenters that state the review of license renewals is an appropriate time to review competitive supplier performance and that the applications should be made available for

comment on the Department's website, similar to the process for new license applications (Consumer Advocates Comments at 2; Electric Distribution Companies Comments at 4; Municipal Aggregation Communities Comments at 3-4). In D.P.U. 16-156-A, the Department established the procedures by which the Department will review and investigate competitive suppliers' performance. Interested stakeholders may request that the Department initiate either an informal review or a formal investigation into a competitive supplier's performance as part of those procedures. Interim Guidelines, Sections 3(1), 4(1). As such, the Department will not subject license renewal applications to a stakeholder comment process.

The Department, however, agrees with the Consumer Advocates that general business information about licensed entities should be available to the public on the Department's website (Consumer Advocates Comments at 2). Accordingly, the Department intends to post licensees' renewal applications on our website. Before doing so, the Department seeks to work with stakeholders through the D.P.U. 19-07 stakeholder process to identify the information that would be most useful to stakeholders, and ensure that the Department can post such information without violating licensees' confidentiality concerns.

IV. DOOR-TO-DOOR MARKETING NOTIFICATION

A. Introduction

In D.P.U. 14-140-G, Attachment 1 (2018), the Department established door-to-door marketing notification requirements that were intended to provide the Department with sufficient information to quickly identify those electric competitive suppliers conducting

door-to-door marketing activities in a specific location if the Department were to receive a complaint.⁸ D.P.U. 14-140-G at 3. Under these requirements, electric competitive suppliers must file a door-to-door notification no later than 5:00 p.m. on the day before the start of a marketing campaign that identifies the municipalities in which it “expects it may conduct” such marketing over the upcoming 30-day period and, for each municipality, the dates within the 30-day period that it expects to market (14-140-G, Attachment 1). The Consumer Advocates proposed revisions to the notification requirements in their July 31, 2019 Proposal. Department staff addressed this issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 7-8, Department staff proposed that electric and gas competitive suppliers⁹ be required to submit a separate door-to-door marketing notification for each day that they expect to conduct such marketing, no later than two business days prior to the applicable marketing day. Department staff proposed requiring competitive suppliers to identify the municipalities where they may be marketing on the applicable day and limiting competitive suppliers to identifying a maximum of three municipalities in each notification. In addition, Department staff proposed that, for

⁸ D.P.U. 14-140-G applied only to electric competitive suppliers.

⁹ Department staff clarified that the door-to-door marketing notification proposal would apply to both electric and gas markets (February 5, 2020 Hearing Officer Memorandum at 3).

large municipalities, competitive suppliers would be required to identify the neighborhoods within the municipality where they expect to be marketing, with each neighborhood counting toward the three-municipality limitation. Department staff identified Boston as a municipality for which competitive suppliers would be required to identify specific neighborhoods.

Department staff sought comment on other municipalities for which competitive suppliers would be required to identify specific neighborhoods. Finally, Department staff proposed that competitive suppliers provide this information to the Attorney General on a confidential basis. Department staff sought comment on whether other entities should receive this information on a confidential basis. Department staff stated that its proposal was intended to address fundamental deficiencies with the existing notification requirements.

C. Summary of Comments

1. Introduction

Stakeholders submitted comments related to the following issues with Department staff's proposal: (1) the daily notification requirement; (2) the three-municipality limit; (3) the identification of neighborhoods for specified large municipalities; and (4) the entities to which competitive suppliers should provide the notifications.

2. Daily Notification Requirement

The Consumer Advocates, Direct Energy, the Electric Distribution Companies, and the Municipal Aggregation Communities support the daily notification requirements proposed by Department staff (Consumer Advocates Comments at 3; Direct Energy Comments at 6; Electric Distribution Companies Comments at 5; Municipal Aggregation Communities

Comments at 4). Direct Energy states that more frequent door-to-door marketing notifications are a reasonable means of increasing transparency and accountability in the door-to-door sales channel. Direct Energy requests that the Department provide competitive suppliers with a minimum of 60 days to comply with the enhanced door-to-door marketing notifications (Direct Energy Comments at 6).

In contrast, Davis Malm, NEM, RESA, and Vistra oppose Department staff's proposed daily notification requirements, asserting that the proposed requirements are too restrictive and prohibit flexibility (Davis Malm Comments at 4; NEM Comments at 4; RESA Comments at 5; Vistra Comments at 4-5). Davis Malm argues that requiring separate notifications for each day threatens the overall viability of the door-to-door sales channel, asserting that the proposal focuses solely on the benefits of the daily notification requirements without considering the added burdens and costs on competitive suppliers (Davis Malm Comments at 4). As an alternative, Davis Malm recommends that the Department adopt a bi-monthly notification requirement (Davis Malm Comments at 4-5). NEM recommends that the Department adopt an approach in which notifications would identify the start and end dates for marketing in a particular area, with such notice lasting a week (NEM Comments at 4). Vistra recommends that the Department adopt either a day-of marketing or day-after marketing notification requirement, in which a competitive supplier would be required to provide notification to the Department by 12:00 p.m. of the applicable day (Vistra Comments at 4-5).

3. Number of Municipalities

The Consumer Advocates and Municipal Aggregation Communities support Department staff's proposed three-municipality limitation (Consumer Advocates Comments at 4; Municipal Aggregation Communities Comments at 4).

In contrast, Davis Malm, NEM, RESA, and Vistra oppose the three-municipality limit; they argue that the limitation is arbitrary and impractical, and denies competitive suppliers the flexibility required to adapt to changing conditions in the field, such as inclement weather, traffic, staffing issues, and the presence of other competitors (Davis Malm Comments at 6; NEM Comments at 4; RESA Comments at 5; Vistra Comments at 3-4). Davis Malm questions the Department's authority to impose such limitations (Davis Malm Comments at 6). If the Department adopts municipality limitations, Davis Malm recommends that the Department apply the limit on a per-vendor basis, rather than on a per-supplier basis (Davis Malm Comments at 7). RESA recommends that the Department increase the number of municipalities to fifteen (RESA Comments at 5). RESA further recommends that the Department consider a regional approach to implementing municipality limits, given that some competitive suppliers or their door-to-door vendors have multiple offices across the Commonwealth and may be able to market in multiple regions at the same time (RESA Comments at 5).

4. Large Municipalities/Neighborhoods

Davis Malm, the Electric Distribution Companies, and RESA support Department staff's proposal regarding identifying neighborhoods for Boston. Davis Malm and RESA

recommend that the Department limit the neighborhood-level requirement to Boston, stating that (1) Boston has a uniquely high population and (2) other cities lack well-established and defined neighborhoods and for which boundaries may be set through custom rather than law (Davis Malm Comments at 8; RESA Comments at 6-7). RESA argues that if neighborhoods count toward the municipality limit, the limit should be increased (RESA Comments at 6).

The Consumer Advocates, the Electric Distribution Companies, and the Municipal Aggregation Communities identify other municipalities for which the Department should require competitive suppliers to identify neighborhoods (Consumer Advocates Comments at 4; Electric Distribution Companies Comments at 5; Municipal Aggregation Communities Comments at 13).¹⁰ The Electric Distribution Companies further recommend that the door-to-door notifications include zip code information, which would support the Department's goal of geographical specificity (Electric Distribution Companies Comments at 6).

5. Entities to Receive Notification

The Electric Distribution Companies recommend that the Department require competitive suppliers to provide their door-to-door notifications to the Electric Distribution Companies on a confidential basis, stating that receiving the notifications will aid the distribution companies in their response to customer complaints (Electric Distribution

¹⁰ These municipalities are Brockton, Cambridge, Fall River, Haverhill, Lawrence, Lowell, Lynn, New Bedford, Newton, Quincy, Springfield, Weymouth, and Worcester.

Companies Comments at 5). The Municipal Aggregation Communities recommend that the Department require competitive suppliers to provide their door-to-door notifications on a confidential basis to a contact person designated by each municipality, asserting that existing solicitation requirements for competitive suppliers to register with local police departments are broad and targeted at public safety rather than consumer protection (Municipal Aggregation Communities Comments at 4-5).

Direct Energy recommends that the Department not require competitive suppliers to provide advanced door-to-door notifications to entities other than the Attorney General, stating that only the Attorney General has independent authority relative to the door-to-door sales channel (Direct Energy Comments at 4-7). Davis Malm states that it would be willing to provide the Attorney General and Electric Distribution Companies, on a confidential basis, with notifications for requested dates or municipalities (Davis Malm Comments at 7).

D. Analysis and Findings¹¹

1. Introduction

Below, the Department addresses the following issues associated with Department staff's proposal regarding door-to-door marketing notifications: (1) frequency of the notifications; (2) limit on the number of municipalities that competitive suppliers can identify in each notification; (3) identification of neighborhoods for large municipalities; (4) entities to which competitive suppliers must provide their notifications; (5) municipal permit

¹¹ The requirements set forth in this section apply only to door-to-door marketing to residential consumers.

requirements; (6) information requirements and format of the notifications; and (7) protective treatment for the notifications (February 5, 2020 Hearing Officer Memorandum at 7-8).

2. Frequency of Notifications

Department staff's proposal required competitive suppliers to provide separate door-to-door marketing notifications for each marketing day, with two business days advance notice.¹² Department staff stated that the proposal was intended to address a fundamental deficiency with the existing requirements -- given the 30-day period that each notification covers, competitive suppliers often identify a large number of municipalities in which they expect to market over the period covered by the notification, and identify the full 30-day period as the expected dates of marketing for each municipality. This deficiency significantly compromises the usefulness of the notifications in identifying where a competitive supplier may be door-to-door marketing on a particular day (February 5, 2020 Hearing Officer Memorandum at 7-8).

The Department disagrees with those commenters that assert that the proposed notification requirement would impose a costly burden on competitive suppliers (Davis Malm Comments at 4; Vistra Comments at 3; RESA Comments at 5). The Department must strike the appropriate balance between costs to competitive suppliers and our obligation to protect

¹² For example, if a competitive supplier seeks to conduct door-to-door marketing on a Friday, it would be required to submit its notification to the Department no later than close-of-business (i.e., 5:00 p.m.) the preceding Wednesday. Similarly, if a competitive supplier seeks to conduct door-to-door marketing on a Monday, it must submit the notification no later than close-of-business the preceding Thursday.

consumers. To minimize the financial burden on competitive suppliers, the Department streamlines the daily notification process by specifying an easy-to-use format by which competitive suppliers will submit their notifications to the Department (Section 7, below), and providing a standing order to protect confidential information from public disclosure (Section 8, below). The Department concludes that the benefits that the daily notifications will provide, in terms of increased transparency and accountability regarding suppliers' door-to-door activities (Direct Energy Comments at 6), are an important consumer protection tool and outweigh the costs that competitive suppliers will incur in complying with the requirement. The Department further concludes that the commenters' proposed alternatives, ranging from weekly or bi-monthly notifications to day-of or day-after notifications, would provide neither sufficient certainty nor adequate notice regarding where a competitive supplier will be door-to-door marketing on a particular day. The Department concludes that a daily notification requirement, with two business days advanced notice, will provide the Department with an appropriate level of transparency regarding competitive suppliers' door-to-door sales activities, and will allow the Department to respond to complaints in a timely manner.

3. Limit on Municipalities

Department staff's proposal limited competitive suppliers to identifying a maximum of three municipalities in each door-to-door marketing notification. Department staff stated that the proposal was intended to strike an appropriate balance between ensuring that the notifications serve their intended purpose of identifying where competitive suppliers will be

door-to-door marketing on a particular day, and providing flexibility for competitive suppliers and their third-party vendors to respond to changing conditions (February 5, 2020 Hearing Officer Memorandum at 8).

The Department agrees with those commenters that the proposed three-municipality limit does not provide sufficient flexibility for competitive suppliers to respond to changing conditions such as inclement weather, traffic, staffing issues, and potential presence of competitors (Davis Malm Comments at 6; RESA Comments at 5; Vistra Comments at 4). The Department disagrees, however, with RESA regarding the appropriateness of a fifteen-municipality limit (RESA Comments at 5); such a limit would not provide sufficient certainty regarding where a competitive supplier will be door-to-door marketing on a particular day. The Department concludes that establishing a five-municipality limit strikes an appropriate balance between providing the Department with certainty regarding where a competitive supplier will be door-to-door marketing on a particular day and providing competitive suppliers with flexibility to respond changing conditions. Davis Malm expressed its concern as to whether the Department may restrict the number of municipalities in which a competitive supplier may conduct door-to-door marketing on a particular day (Davis Malm Comments at 6). After due consideration of all comments received, we implement our initiative pursuant to our obligation, under G.L. c. 164, § 1F, to provide the utmost consumer protections by enhancing our oversight in response to observed door-to-door marketing abuses.

While the Department sees merit in commenters' recommendations that the Department impose the municipality limit on a regional or vendor basis (Davis Malm Comments at 7; RESA Comments at 5; Vistra Comments at 4), we conclude that more discussion is required to better understand the pros and cons of these approaches. Through the D.P.U. 19-07 stakeholder process, the Department will work with stakeholders to gain a better understanding of how the approaches may be incorporated into the door-to-door marketing notification requirements.

4. Identification of Neighborhoods in Large Municipalities

Department staff's proposal required that competitive suppliers identify the neighborhoods within Boston that they may be door-to-door marketing on the applicable marketing day. Department staff sought comments on other municipalities for which this requirement should apply (February 5, 2020 Hearing Officer Memorandum at 8). Commenters supported Department staff's proposal on this matter, citing Boston's large population and well-defined neighborhoods vis-a-vis other municipalities (Davis Malm Comments at 8; Electric Distribution Companies Comments at 5; RESA Comments at 6). Accordingly, the Department will require competitive suppliers to identify the specific Boston neighborhoods in which they expect to engage in door-to-door marketing on the applicable marketing day. The specific neighborhoods in Boston are identified in Attachment B. Individual Boston neighborhoods will count toward the five-municipality limit described above.

The Department agrees with those commenters that recommend that the Department not apply the neighborhood requirement to other municipalities (Davis Malm Comments at 8; RESA Comments at 6-7). While the Department sees merit in the recommendations made by commenters regarding other municipalities to which neighborhood requirements should apply (Consumer Advocates Comments at 4; Electric Distribution Companies Comments at 5; Municipal Aggregation Communities Comments at 13), we conclude that more discussion is required to establish the criteria by which a neighborhood requirement would be implemented (e.g., size of population, existence of well-defined neighborhoods). Through the D.P.U. 19-07 stakeholder process, the Department will work with stakeholders to determine whether and how to adopt neighborhood requirements for other municipalities. As part of this discussion, the Department will explore how zip codes, rather than neighborhoods, could be used to provide greater geographic specificity for these municipalities (Electric Distribution Companies Comments at 6).

5. Entities to be Notified

Department staff's proposal required competitive suppliers to provide the Attorney General the door-to-door marketing notifications on a confidential basis. Department staff requested comment on whether competitive suppliers should be required to provide the notifications to other entities (February 5, 2020 Hearing Officer Memorandum at 7).

The Department disagrees with the Electric Distribution Companies' recommendation that the Department require competitive suppliers to provide the notifications to the distribution companies (Electric Distribution Companies Comments at 5). While the

Department appreciates the interest of the distribution companies in providing assistance to their customers in response to customer complaints, the most useful step the distribution companies can take to assist their customers in such instances is to provide direction on how customers can file a complaint with the Department's Consumer Division. Therefore, the Department will not require competitive suppliers to provide their door-to-door marketing notifications to the distribution companies.

The Department sees merit in the Municipal Aggregation Communities' recommendation that the Department require competitive suppliers to provide notification, on a confidential basis, to designated officials of the municipalities in which competitive suppliers expect to engage in door-to-door marketing - such notification would allow municipalities to provide enhanced consumer awareness and protection to their residents in ways that supplement the public safety protection provided by municipal permits for door-to-door marketing (Municipal Aggregation Communities Comments at 5). However, the Department concludes that more discussion is required to establish the process by which such a requirement would be implemented. Through the D.P.U. 19-07 stakeholder process, the Department will work with stakeholders to gain a better understanding of the information that municipal officials would seek to receive from competitive suppliers, and the confidential treatment that should apply to that information.

Finally, the Department disagrees with Davis Malm's recommendation that the Department require competitive suppliers to provide the notifications to the Attorney General only upon request (Davis Malm Comments at 7). If the Attorney General and a competitive

supplier execute a non-disclosure agreement, the Department will require competitive suppliers to provide their door-to-door marketing notifications to the Attorney General when it is provided to the Department.

6. Municipal Permits

Department staff's proposal required that competitive suppliers indicate in their notifications the status of their efforts to obtain the permits required for door-to-door marketing activities within their municipal boundaries (i.e., required permits obtained, required permits not yet obtained, or permits not required) (February 5, 2020 Hearing Officer Memorandum at 7).

The Department disagrees with the Consumer Advocates' recommendation that the Department require competitive suppliers to submit an attestation, signed by an individual employee with management responsibilities, that verifies compliance with municipal permitting requirements (Consumer Advocates Comments at 5). The Department seeks to streamline the daily notification requirements, to the extent reasonable, in order to minimize the burden placed on competitive suppliers. The Department concludes that the benefits that would be gained from requiring a written attestation, as recommended by the Consumer Advocates, are outweighed by the additional burden such a requirement would place on competitive suppliers.

Accordingly, consistent with Department staff's proposal, the Department will require competitive suppliers to indicate for each identified municipality whether: (1) as of the notification filing date, the competitive supplier has obtained and has in its possession the

required municipal permits; (2) as of the filing notification date, the competitive supplier has not obtained the required municipal permits, but will do so and will have the required permits in its possession as of the marketing date (competitive suppliers should limit the use of this option to identified municipalities that do not issue the required permits until the marketing date); or (3) no permit is required by the municipality. The Department will require competitive suppliers to produce municipal permits to the Department upon request (Consumer Advocates Comments at 5).

7. Information Requirements/Format of Notification

Consistent with the proposal set forth by Department staff in the February 5, 2020 Hearing Officer Memorandum at 7-8, the Department will require competitive suppliers to provide the following information in each door-to-door marketing notification: (1) the filing date of the notification; (2) the marketing date to which the notification applies; (3) the municipalities and/or neighborhoods in which the competitive supplier expects to engage in door-to-door marketing; (4) the status of the competitive supplier's efforts to obtain the required municipal permits; and (5) supervisor contact information for both the competitive supplier and its third-party marketing vendor(s). The Department provides the format that competitive suppliers must use for the notifications in Attachment C ("Door-to-Door Marketing Notification Template") to this Order.¹³

¹³ Attachments C.1, C.2, and C.3 include the formats for municipality information, marketing vendor contact information, and competitive supplier contact information, respectively.

8. Standing Order for Protective Treatment

In D.P.U. 14-140-G at 23-27, the Department found that the following information required to be included in the 30-day door-to-door marketing notifications warranted protective treatment: (1) the names of the third-party vendors and their contact information; (2) the weekend or evening telephone numbers of the competitive suppliers' employees; and (3) the names of the city or town where the door-to-door marketing may occur. Pursuant to G.L. c. 25, § 5D, the Department instituted a standing order of protective treatment for such information.¹⁴ The Department found that the other required information, including the notification filing date, should not be protected from public disclosure. The Department required competitive suppliers to submit both confidential and redacted public copies of their notifications.

Above, the Department establishes a daily door-to-door marketing notification requirement. The shift from a 30-day to a daily notification requirement requires the Department to re-assess its position on protective treatment as it relates to the filing date. Under the existing process, the notification filing date did not disclose information on the specific days within the 30-day period in which a competitive supplier would be door-to-door marketing – as such, the Department did not provide protective treatment for the notification filing date. In contrast, under the daily notification requirement established in this Order, the notification filing date will clearly identify the day in which a competitive supplier would be

¹⁴ Under G.L. c. 25, § 5D, the Department may protect information that constitutes “trade secrets, confidential, competitively sensitive or other proprietary information.”

door-to-door marketing, which is competitively sensitive. As such, the Department will protect from public disclosure the notification filing date. Therefore, the Department will include in its standing order for protective treatment all information included in the daily notifications other than competitive supplier contact information¹⁵ -- to streamline the daily notification requirement, competitive suppliers shall report this competitive supplier contact information in a table separate from the information to be provided protective treatment.¹⁶

9. Summary

Based on the above, the Department will require competitive suppliers to submit to the Department and the Attorney General daily notifications of their door-to-door marketing activities, with two business days advanced notice (Section 2).¹⁷ For each notification, competitive suppliers must (1) adhere to a limit of five municipalities (Section 3), (2) identify the specific neighborhoods of Boston (each of which counts towards the limit of five municipalities) that they expect to engage in door-to-door marketing on the applicable

¹⁵ For the competitive suppliers primary and secondary contacts, suppliers must provide a primary and a backup phone number so that the Department can reach the supplier during the work day, evenings, weekends, and holidays.

¹⁶ Specifically, the Department will institute a standing order of protective treatment for all information included in Attachments C.1 and C.2 (municipality information and marketing vendor contact information, respectively). The Department will not provide protective treatment to the information included in Attachment C.3, competitive supplier contact information.

¹⁷ The requirement to submit the daily notifications to the Attorney General is contingent upon the Attorney General executing a non-disclosure agreement with competitive suppliers (Section 5, above).

marketing day (Section 4), and (3) indicate the status of their efforts to obtain required municipal permits (Section 6) The Department sets forth the required format in Attachment C (“Door-to-Door Notification Template”) to this Order. The Department will provide protective treatment to all information included in each notification other than competitive supplier contact information (Section 8).

10. Implementation Date

The Department recognizes the importance of providing competitive suppliers with sufficient time to comply with these new door-to-door notifications requirements (Direct Energy Comments at 6). As such, the Department will defer the implementation of the door-to-door notification requirements set forth herein until August 3, 2020.¹⁸ Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

¹⁸ On March 10, 2020, Governor Baker issued a state of emergency related to COVID-19 for the entire Commonwealth. On March 23, 2020, the Governor issued a further order to minimize all unnecessary activities outside of the home during the state of emergency. Following this order, on March 24, 2020, the Department requested that all Competitive Suppliers and Licensed Competitive Supply Brokers cease door-to-door marketing activities until the Department rescinds the request or the state of emergency in the Commonwealth is lifted, whichever comes first. The August 3, 2020 date for the implementation of the above door-to-door notification requirements does not override the request to cease door-to-door marketing.

V. IDENTIFICATION OF THIRD-PARTY MARKETING VENDORS

A. Introduction

The Department did not identify an initiative related to the identification of competitive suppliers' third-party marketing vendors in D.P.U. 19-07. The issue was first addressed by the Consumer Advocates in their July 31, 2019 Proposal. Department staff discussed the issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 9, Department staff proposed that competitive suppliers be required to provide the Department, on an ongoing basis, with updated lists of their third-party door-to-door and telemarketing vendors. Department staff proposed that competitive suppliers be required to provide this information to the Attorney General on a confidential basis. Department staff requested comments on whether competitive supplier should be required to provide the information to other stakeholders on a confidential basis. Department staff stated that the proposal was intended to serve as an initial step in working with stakeholders to develop a process by which the Department can pro-actively identify potentially problematic third-party marketing vendors.

C. Summary of Comments

No stakeholder opposed Department staff's proposal. As discussed below, stakeholders commented on: (1) the frequency with which the Department should direct competitive suppliers to submit their updated lists of third-party vendors; (2) whether the Department should provide confidential treatment to the lists; and (3) whether the Department

should direct competitive suppliers to provide the lists to stakeholders other than the Attorney General.

The Consumer Advocates recommend that the Department require competitive supplier license applicants to provide a list of their third-party marketing vendors with their new applications, and competitive suppliers to update their lists within 30 days of adding or removing a vendor (Consumer Advocates Comments at 5). The Consumer Advocates state that this will allow the Department and the Attorney General to identify problematic vendors in a timely manner (Consumer Advocates Comments at 5). The Consumer Advocates and the Electric Distribution Companies recommend that the Department require competitive suppliers to include updated lists of their third-party marketing vendors with their license renewal application, thus allowing stakeholders the opportunity to comment on specific vendors as part of the renewal process (Consumer Advocates Comments at 5; Electric Distribution Companies Comments at 6-7). Davis Malm states that when a competitive supplier is (1) adding a new vendor, it would be reasonable for the Department to require the supplier to submit an updated list in advance or promptly after the fact and (2) dropping a vendor, it would be reasonable for the Department to require the supplier to submit an updated list within ten days to a month of the drop (Davis Malm Comments at 8-9). NEM recommends that competitive suppliers submit updated lists of third-party marketing vendors annually (NEM Comments at 4).

The Consumer Advocates state that the Department should not provide confidential treatment for competitive suppliers' third-party marketing vendor lists (Consumer Advocates

Comments at 5). The Consumer Advocates state that third-party vendor information should be easily accessible to the public (Consumer Advocates Comments at 5). In contrast, CleanChoice, Davis Malm, and Direct Energy state that there is no basis for providing this information to entities other than the Attorney General (CleanChoice Comments at 3-5; Davis Malm at 8-9; Direct Energy Comments at 9). Davis Malm, Direct Energy, and Vistra request the Department to clarify that it will provide confidential treatment to a competitive supplier's list of third-party marketing vendors, similar to the treatment that the Department provides to the door-to-door notifications pursuant to D.P.U. 14-140-G (Davis Malm Comments at 8-9; Direct Energy Comments at 7; Vistra Comments at 12-13). The Electric Distribution Companies recommend that the Department require competitive suppliers to provide the third-party marketing vendor lists to the distribution companies on a confidential basis, stating that such information will allow the companies to better identify the third-party marketing vendors that are the subject of consumer complaints (Electric Distribution Company Comments at 6-7).

D. Analysis and Findings

The Department seeks to take a more proactive approach to our oversight of competitive suppliers. D.P.U. 19-07, at 10. Department staff's proposal regarding the identification of competitive suppliers' third-party marketing vendors, as set forth by in the February 5, 2020 Hearing Officer Memorandum at 9, was intended to allow the Department to pro-actively identify potentially problematic vendors that market on behalf of competitive suppliers. The importance of implementing such an initiative is demonstrated by the

Department's February 28, 2020 letter to electric competitive suppliers regarding deceptive telemarketing practices, in which the Department directed competitive suppliers to identify their third-party telemarketing vendors.¹⁹ If the Department had access to information regarding the vendors used by each competitive supplier, the Department could have responded to these marketing practices in a more timely manner.

To assist the Department in identifying potentially problematic vendors, the Department requires competitive suppliers to provide the following information for each of its vendors: (1) legal name of vendor and the name(s) under which the vendor does business; (2) business address; (3) name of vendor owner; (4) state in which the vendor is incorporated; (5) vendor's federal tax identification number; (6) location of vendor's office in Massachusetts; (7) dates on which vendor began and ended marketing for competitive supplier in Massachusetts; and (8) confirmation that the competitive supplier (or the vendor) has followed the background check and standards of conduct requirements set forth in D.P.U. 14-140-G, Attachment 1, Items 6 and 7. The Department considers all of the required information to be information that competitive suppliers should know (and, more importantly, should want to know) about the entities that market to consumers on their behalf. The Department provides the format that competitive suppliers must use for their vendor lists in Attachment D ("List of Third-Party Marketing Vendors Template") to this Order.

¹⁹ In the February 28, 2020 letter, the Department observed that competitive suppliers are responsible for the actions of their third-party marketing vendors.

To serve its intended purpose most effectively, competitive suppliers must provide updated lists of their third-party marketing vendors in a timely manner. As such, the Department directs competitive suppliers to submit an updated list of their third-party marketing vendors within ten business days of the addition or removal of a third-party vendor. License applicants should provide the required information for their third-party marketing vendors as part of their license application, if such information is known at that time. Once licensed, the competitive suppliers will be subject to the same requirements described herein. The Department disagrees with the Consumer Advocates' and the Electric Distribution Companies' recommendation that the Department require competitive suppliers to include an updated list of vendors in their renewal applications (Consumer Advocates Comments at 5; Electric Distribution Companies Comments at 6-7). Such information would not be part of the Department's "administrative" review of renewal applications (Section III.D.2, above), and would simply repeat the information provided by a competitive supplier in its most recently updated list of vendors.

In D.P.U. 14-140-G at 24-25, the Department included the identity of a competitive supplier's third-party marketing vendors as confidential material subject to protection in the Department's standing order for protective treatment. The Department will continue to protect such material from public disclosure pursuant to the process established in D.P.U. 14-140-G at 27-29. The Department will aggregate the information provided by each competitive supplier and post a statewide list of third-party marketing vendors on the Department's website.

Finally, the Department disagrees with the Electric Distribution Companies' recommendation that the Department require competitive suppliers to submit their updated lists of vendors to distribution companies on a confidential basis (Electric Distribution Company Comments at 6-7). As stated in Section IV.D.5, above, while the Department appreciates the interest of the distribution companies in providing assistance to their customers in response to customer complaints, the most useful step the distribution companies can take to assist their customers in such instances is to provide them with direction on how they can file a complaint with the Department's Consumer Division. The Department will not require competitive suppliers to provide their updated vendor lists to entities other than the Attorney General.

The Department directs competitive suppliers to submit their vendor lists no later than August 3, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

VI. DISCLOSURE OF PRODUCT INFORMATION

A. Introduction

In D.P.U. 14-140-G, Attachment 2, the Department established standards of conduct for electric competitive suppliers conducting door-to-door marketing to ensure that marketers clearly identify themselves and the competitive suppliers they represent. In D.P.U. 19-07, at 10-11, the Department stated that we seek to expand these standards to include requirements related to the disclosure of product information (such as early cancellation fees and automatic renewals) and to apply the standards to other marketing activities such as

telemarketing and direct mail. The Department also seeks to expand the standards of conduct to gas competitive suppliers. The Competitive Supplier Group proposed the format and language that competitive suppliers would use on these “Contract Summary Forms” in their September 20, 2019 Revised Proposal. Department staff discussed this issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 9-11, Department staff proposed that competitive suppliers be required to provide a Contract Summary Form to all consumers at the point of sale. The Contract Summary Form would be provided in writing for in-person and online sales, and orally for phone sales, followed by a mailed written version. Department staff prepared a revised Contract Summary Form for both electric and gas suppliers, and specified that competitive suppliers would be required to include information in their Contract Summary Form related to the price, term, early cancellation fee, automatic renewal (if applicable), renewable energy content, information related to the competitive supplier, the consumer’s distribution company, and the Website. Department staff proposed that competitive suppliers submit to the Department for review any Contract Summary Form for a product with: (1) a variable (monthly) price; (2) renewable energy content that exceeds the minimum requirements; (3) additional fees in addition to early cancellation or enrollment fees; and/or (4) additional incentives or “value-added” products and services.

C. Summary of Comments

No stakeholder opposed Department staff's proposal. CleanChoice requests that the Department not require competitive suppliers to submit the Contract Summary Form in direct mail solicitations, as this might lead consumers to believe they have been enrolled in a contract when they have not (CleanChoice Comments at 6). Direct Energy requests that the Department provide competitive suppliers with a minimum of 60 days to comply with these new requirements (Direct Energy Comments at 9).

The Consumer Advocates recommend that the Department revise the Contract Summary Form to provide additional information related to automatic renewals, the three-day rescission period, renewable energy content, basic service prices, and the Website (Consumer Advocates Comments at 6-7). The Consumer Advocates recommend that the Department consult with the Massachusetts Office on Disability to increase the font size used in the form from 10-point to a larger minimum size (Consumer Advocates Comments at 6). The Municipal Aggregation Communities request that competitive suppliers be required to submit a description of the source of its "voluntary" renewable energy content, i.e., whether it is from Renewable Portfolio Standard ("RPS") Class I facilities (Municipal Aggregation Communities Comments at 6). CleanChoice requests that the Department clarify whether competitive suppliers are permitted to print additional content on the reverse of the Contract Summary Form (CleanChoice Comments at 6).

The Electric Distribution Companies recommend that the Department require that competitive suppliers provide the Contract Summary Form as both a hard copy and electronic

copy to new customers to ensure the form is accessible and to safeguard against the document being lost or misplaced (Electric Distribution Companies Comments at 8). In contrast, CleanChoice states that competitive suppliers should be allowed to submit the form through either direct mail or email for those sales that take place over the phone or online (CleanChoice Comments at 5).

D. Analysis and Findings

1. Introduction

Department staff's proposal required competitive suppliers to provide consumers with a Contract Summary Form that includes: (1) product information related to price, term, early cancellation fee, automatic renewal, and renewable energy content and (2) general information about the competitive supplier, the customer's distribution company, and products listed on the Website (February 5 Hearing Officer Memorandum, at 9-11). Below, the Department specifies the language and format that competitive suppliers will be required to use in their Contract Summary Form and specifies the instances in which competitive suppliers must submit their Contract Forms for Department review.

2. Product Information

a. Price

No stakeholder opposed Department staff's proposed price-related language for fixed-price products (i.e., products for which the price remains constant over the contract term). As such, the Department directs competitive suppliers to use the following language for fixed-price products that include only a volumetric charge:

[xx] cents per [kWh/therm]. This does not include the price that your [electric/gas] utility will charge you for the delivery component of your [electric/gas] service.

For fixed-price products that include both a monthly and a volumetric charge, the Department directs competitive suppliers to use the following language:

[\$xx] per month plus [xx] cents per [kWh/therm]. This does not include the price that your [electric/gas] utility will charge you for the delivery component of your [electric/gas] service.

For products that include prices that change over the contract term (e.g., products that include prices that change monthly, or fixed-price products with introductory offers), the Department directs competitive suppliers to submit the Contract Summary Form for Department review.

b. Term

No stakeholder opposed Department staff's proposed term-related language. As such, for fixed-price products, the Department directs competitive suppliers to use the following language:

The above price will remain constant for *[xx]* months.

The Department does not specify term-related language for products for which the price changes over the contract term. As discussed above, the Department requires competitive suppliers to submit the Contract Summary Form for these products for Department review. The Department will review the term-related language for these products as part of our review of the price-related language.

c. Enrollment Fee

No stakeholder opposed Department staff's proposed language related to enrollment fees. As such, for products that include an enrollment fee, the Department directs competitive suppliers to use the following language:

The product includes a one-time enrollment fee of $[/xx]$.

For products that do not include an enrollment fee, the Department directs competitive suppliers to remove this category from the Contract Summary Form.

d. Early Cancellation Fee

No stakeholder opposed Department staff's proposed language related to early cancellation fees. As such, for products that include a "fixed" early cancellation fee, the Department directs competitive suppliers to use the following language:

If you cancel your contract prior to the end of its term, you will be charged a fee of $[/xx]$.

For products that include a "variable" early cancellation fee, the Department directs competitive suppliers to use the following language:

If you cancel your contract prior to the end of its term, you will be charged a fee of $[/xx]$ per month remaining on the contract.

Finally, for products with no cancellation fee, the Department directs competitive suppliers to use the following language:

There is no cancellation fee if you cancel your contract prior to the end of its term.

For products with early cancellation fees structures other than those specified above, the Department directs competitive suppliers to submit the Contract Summary Form for Department review.

e. Other Fees

No stakeholder opposed Department staff's proposal related to other fees. As such, for products that include fees other than enrollment or early cancellation fees, the Department directs competitive suppliers to submit the Contract Summary Form for Department review. For products that do not include other fees, the Department directs competitive suppliers to remove this category from the Contract Summary Form.

f. Automatic Renewal

Department staff's proposed language related to automatic renewals stated that "Your contract will automatically renew to a new price at the end of the contract term" (February 5, 2020 Hearing Officer Memorandum, Attachment 2). The Consumer Advocates recommend that the Contract Summary Form state that the new price might be higher than the existing price. In response to this recommendation, the Department includes language in the Contract Summary Form that states the new price may be higher or lower than the existing price. The Department agrees with the Consumer Advocates' recommendation that the Contract Summary Form indicate that a contract could automatically renew on an ongoing basis (Consumer Advocates Comments at 6). As such, the Department includes language in the Contract Summary Form that states that the supplier will notify the consumer before *each* automatic renewal.

Consistent with the above, for products that include an automatic renewal provision, the Department directs suppliers to use the following language:

Your contract will automatically renew to a new price at the end of the contract term unless you inform *[Supplier Name]* otherwise. The new price may be higher or lower than the existing price. *[Supplier Name]* will contact you no later than 30 days before each automatic renewal to notify you of your supply options.

For electric products that do not include an automatic renewal provision, the Department directs suppliers to title the category End of Contract Term and use the following language:

[Supplier Name] will place you on your electric utility's basic service at the end of the contract term unless you choose an alternate supply option.

For gas products that do not include an automatic renewal provision, the Department directs suppliers to title the category End of Contract Term and use the following language:

[Supplier Name] will place you on your gas utility's supply service at the end of the contract term unless you choose an alternate supply option.

Finally, the Department disagrees with the Consumer Advocates recommendation that information about automatic renewals be placed directly below the price information (Consumer Advocates Comments at 6). The Department concludes that Department staff's proposed ordering of the Contract Summary Form, which provides consumers with intra-term information prior to providing end-of-term information, is reasonable and appropriate. The Department addresses the format of the Contract Summary Form in Section 4, below.

g. Renewable Energy Content

Department staff's proposed language related to a product's renewable energy content stated that the product either meets or exceeds the minimum renewal energy content required by law (February 5, 2020 Hearing Officer Memorandum, Attachment 2). Department staff

proposed that competitive suppliers that seek to use additional language to describe a product's voluntary renewable energy content would be required to submit such language for Department review. The Department sees merit in the Consumer Advocates' and the Municipal Aggregation Communities' recommendation that the Department require competitive suppliers to identify whether a product's voluntary renewable energy content is composed of RPS Class I or Class II resources, or from resources located outside the New England region (Consumer Advocates Comments at 6-7; Municipal Aggregation Communities Comments at 6). Through the D.P.U. 19-07 stakeholder process, the Department will work with stakeholders to explore ways to optimize the usefulness and consistency of the information provided to consumers regarding renewable energy content, both through the Contract Summary Form and the Website (Section XII, below) (RESA Comments at 8). For the present time, the Department will adopt the language proposed by Department staff. For supply products for which the renewable energy content meets the state minimum requirements, the Department directs competitive suppliers to use the following language:

The Commonwealth of Massachusetts requires that all electric supply products include a minimum of *[mandatory minimum RPS compliance percentage]*% renewable energy resources. This product meets the minimum requirement.

For electric supply products that include renewable energy content beyond the state minimum requirements, the Department directs competitive suppliers to use the following language:

The Commonwealth of Massachusetts requires that all electric supply products include a minimum of *[mandatory minimum RPS compliance percentage]*% renewable energy resources. This product includes *[xx]*% renewable energy resources, an amount that exceeds the minimum requirement.

Consistent with the Website's display of information regarding products' renewable energy content, Contract Summary Forms should identify the mandatory minimum renewable energy content using the following components of the Commonwealth's renewable portfolio standard requirements: (1) Clean Energy Standard (including RPS Class I); (2) RPS Class II Renewable Energy; and (3) RPS Class II Waste-to-Energy.²⁰ The Department may modify the portfolio standard components to be included in the minimum renewable energy content in the future. Consistent with Department staff's proposal, the Department directs competitive suppliers that seek to include additional language regarding a product's voluntary renewable energy content to submit the Contract Summary Form to the Department for review.

h. Incentives/Other Products and Services

Department staff's proposal required competitive suppliers to submit the Contract Summary Form for Department review for supply products that include additional products or services (February 5 Hearing Officer Memorandum, at 10-11). No stakeholder opposed Department staff's proposal. As such, for products that include any additional incentives,

²⁰ In 2020, the mandatory minimum renewable energy content is equal to 26.7 percent, composed of (1) 20 percent for the Clean Energy Standard (inclusive of RPS Class I) requirement, (2) approximately 3.2 percent for the RPS Class II Renewable Energy requirement, and (3) 3.5 percent for the RPS Class II Waste-to-Energy requirement. 225 CMR 14.07, 225 CMR 15.07, and 310 CMR 7.75(4). As with the Website, competitive suppliers should round this percentage to the nearest round number (i.e., 27 percent). This percentage includes neither the Alternative Energy Portfolio Standard requirement nor the Clean Peak Energy Portfolio Standard requirement.

such as promotional products or carbon offsets, the Department directs competitive suppliers to submit to the Department for review a description, in plain language, of those incentives. For products that do not include additional incentives, the Department directs competitive supplier to remove this category from the Contract Summary Form.

3. General Information

a. Introductory Language

No stakeholder opposed Department staff's proposed introductory language. As such, the Department directs competitive suppliers to display the following statement clearly at the top of the document:

[Supplier Name] – [Electric/Gas] Supply Contract Summary

You have purchased an *[electric/gas]* supply product from *[Supplier Name]*. Your *[electric/gas]* utility will continue to deliver the *[electricity/gas]* you use to your home.

b. Rescission Period

Department staff's proposal did not include language related to consumers' right to cancel their contract within three days without a fee. The Department agrees with the Consumer Advocates that this is important consumer protection information that should be provided to consumers through the Contract Summary Form (Consumer Advocates Comments at 6). As such, the Department directs competitive suppliers to include a category on the Contract Summary Form titled Rescission Period and use the following language:

You have 3 days to cancel this contract free of charge from the time you receive your contract and terms and conditions.

c. Competitive Supplier and Distribution Company Information

No stakeholder opposed Department staff's proposed language about the competitive supplier and the consumer's distribution company. As such, under the category Competitive Supplier Information, the Department directs competitive suppliers to use the following language:

[Supplier Name], DPU license number: [DPU license number], [telephone number], [website]. [Supplier Name] is only responsible for the [electric generation/gas supply] portion of your bill.

Under the category Electric/Gas Utility Information, the Department directs competitive suppliers to use the following language:

[Name of Electric/Gas Distribution Company] will continue to deliver the [electricity/gas] that you use in your home and is responsible for the delivery charges that appear on your monthly bill. If you have questions about the delivery portion of your bill, contact [Name of Electric/Gas Distribution Company] at [telephone number], or by visiting its website at [website].

d. Statement by the Department

Department staff's proposed Contract Summary Form stated that the Department "recommends that consumers visit the Energy Switch website to view the broad range of available electric supply products" (February 5, 2020 Hearing Officer Memorandum, Attachment 2). In response to the Consumer Advocates' comments, the Department includes language in the electric Contract Summary Form that states that consumers can view their electric distribution company's basic service prices on the Website (Consumer Advocates

Comments at 7).²¹ The Department disagrees with the Consumer Advocates' recommendation that the Contract Summary Form refer to supply products listed on the Website as "introductory offers." The Website clearly displays whether a product includes an introductory price offer, and for such products, identifies the number of months the introductory price will be in effect, and the price that will be in effect for the remainder of the contact term.

Consistent with the above, the Department directs electric competitive suppliers to include the following language on their Contract Summary Forms regarding the Website:

The Massachusetts Department of Public Utilities recommends that consumers visit the Energy Switch website to view the broad range of available electric supply products, including your electric utility's basic service price. You can visit the website at <http://energyswitchma.gov>.

For gas supply products, the Department directs gas competitive suppliers to provide the following language:

The Massachusetts Department of Public Utilities recommends that consumers visit the Gas Division website to view the current gas supply rates offered by their gas utility. You can visit the website at <https://www.mass.gov/info-details/cost-of-gas-adjustment-factor-rates-and-information>.

e. Basic Service

The Department sees merit in the Consumer Advocates' recommendation that the Contract Summary Form include information related to basic service prices (Consumer

²¹ The Website displays the basic service prices currently in effect, and future basic service prices, to the extent that the future prices are known.

Advocates Comments at 6, footnote 7).²² The purpose of the Contract Summary Form is to provide consumers with information that makes them sufficiently aware of the supply product being offered. D.P.U. 19-07, at 10-11. The Department also considers the Contract Summary Form to be a vehicle to make consumers aware that alternate supply product options are available to them. As such, the Contract Summary Form includes a statement from the Department recommending that consumers visit the Website to view the broad range of available supply products, including basic service (Section VI.D.3.d., above). Including basic service price information on the Contract Summary Form would complement this statement by providing consumers with a reference price against which they can evaluate the supply price being offered, thus potentially providing consumers with additional motivation to “consult the information available on the Website prior to purchasing a supply product.” D.P.U. 19-07, at 7. However, the Department concludes that more discussion is required regarding how the inclusion of basic service prices on the Contract Summary Form should be implemented, particularly with respect to the manner and form in which it will be presented to consumers. Through the D.P.U. 19-07 stakeholder process, the Department will work with stakeholders to gain a better understanding of how to best present basic service prices on the Contract Summary Form.

²² Department staff did not propose, in the February 5, 2020 Hearing Officer Memorandum, the inclusion of basic service price information on the Contract Summary Form.

4. Format

The Department provides the format that competitive suppliers must use for their Contract Summary Forms in Attachment E (“Electric/Gas Supplier Contract Summary Form Template”) to this Order.²³ The Department agrees with the Consumer Advocates’ recommendation that the Department require competitive suppliers to use a minimum of 14-point font size (Consumer Advocates at 7).²⁴

5. Department Review

As discussed above, the Department requires competitive suppliers to submit the Contract Summary Form for Department review for products that include (1) price changes over the contract term, (2) voluntary renewable content for which a competitive supplier seeks to include additional descriptive language, (3) fees other than early cancellation or enrollment fees, and/or (4) additional incentives or “value-added” products and services. The Department’s review will focus on the qualitative information included in the Contract Summary Forms, rather than the quantitative, product-related information that may be included. If the Department does not respond within ten business days of receiving a

²³ As shown in Attachment E, competitive suppliers are required to place their company name and logo at the top of form. The Department notes that if a competitive supplier’s logo clearly identifies the company’s name, the logo will suffice (CleanChoice Comment at 8).

²⁴ The 14-point font is derived from an informal consultation with the Massachusetts Office on Disability.

competitive supplier's Contract Summary Form, the competitive supplier is permitted to use the form as submitted.

6. Distribution of Contract Summary Form

Consistent with the proposal set forth by Department staff in the February 5, 2020 Hearing Officer Memorandum at 10-11, the Department requires competitive suppliers to communicate the information included in the Contract Summary Form to consumers during the enrollment process. For enrollments that take place in person, competitive suppliers shall provide the information orally, and then provide consumers with a hard copy of the Contract Summary Form that is included as the first page of the contract/terms of service that are provided to consumers during in-person enrollments. For enrollments that take place by telephone, competitive suppliers shall provide the information orally, followed by a copy of the Contract Summary Form that is included as the first page of the contract/terms of service that are mailed (or emailed) to consumers. Finally, for enrollments that take place on-line, competitive suppliers shall include the Contract Summary Form as the first page of the contract/terms of service that are provided to these consumers.

The Department disagrees with the Electric Distribution Companies' recommendation that the Department require suppliers to provide the Contract Summary Form as both a hard copy and electronic copy to new customers. As discussed, above, competitive suppliers shall provide consumers with a copy of the Contract Summary Form using the delivery method(s) used to provide consumers with their contract/terms of service.

7. Implementation Date

The Department recognizes the importance of providing competitive suppliers with sufficient time to comply with these new Contract Summary Form requirements (Direct Energy Comments at 6). As such, the Department will defer the implementation of the Contract Summary Form requirements set forth herein until September 8, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide instructions to competitive suppliers regarding filing requirements.

VII. MARKETING SCRIPTS

A. Introduction

The Department did not identify an initiative related to door-to-door and telemarketing scripts in D.P.U. 19-07. The Competitive Supplier Group proposed both introductory and closing scripts in their September 20, 2019 Proposal. Department staff discussed the issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 11-12, Department staff proposed the introductory and closing scripts that competitive suppliers' third-party door-to-door and telemarketing vendors would be required to use. Department staff stated that at no time during door-to-door and telemarketing interactions should a marketing vendor identify the name of a consumer's distribution company.

C. Summary of Comments

No stakeholder opposed Department staff's proposed marketing scripts. CleanChoice, Direct Energy, NEM, and Vistra, however, oppose Department staff's proposed prohibition

against marketing agents identifying the name of a consumer's distribution company during door-to-door and telemarketing interactions (CleanChoice Comments at 6-7; Direct Energy Comments at 9-11; NEM Comments at 5-6; Vistra Comments at 5-7). These commenters state there may be legitimate reasons for a competitive supplier to identify a consumer's distribution company, for example, to respond to a consumer's request for this information, to ensure the competitive supplier is quoting the correct price, or to assist a consumer in locating the account number on the distribution company bill (CleanChoice Comments at 6-7; Direct Energy Comments at 9-11; NEM Comments at 5-6; Vistra Comments at 5-7). Direct Energy requests that the Department provide competitive suppliers with a minimum of 60 days to adopt the required scripts (Direct Energy Comments at 10).

D. Analysis and Findings

No stakeholder opposed Department staff's proposed introductory marketing scripts. As such, the Department directs competitive suppliers (and third-party vendors that market on their behalf) to use the following language at the beginning of all telemarketing calls, regardless of whether the call is initiated by a live marketing agent or a pre-recorded message:²⁵

My name is [first name of telemarketing agent] and I work for [name of telemarketing vendor company]. I am calling on behalf of [name of competitive supplier], a licensed [electric/gas] supplier. [Name of competitive suppliers] is not affiliated with the local [electric/gas] utility or any city or town energy program.

²⁵ The Department notes the questionable legality of using a pre-recorded message to open a telemarketing call. G.L. c. 159C, § 3.

Similarly, the Department directs competitive suppliers (and third-party vendors that market on their behalf) to use the following language at the beginning of all door-to-door marketing interactions:

My name is [first name of door-to-door marketing agent] and I work for [name of door-to-door marketing vendor company]. I am speaking with you on behalf of [name of competitive supplier], a licensed [electric/gas] supplier. [Name of competitive suppliers] is not affiliated with the local [electric/gas] utility or any city or town energy program.

The Department recognizes that there may be legitimate reasons for a competitive supplier to identify a customer's distribution company during telemarketing calls and door-to-door marketing visits -- for example, in response to a customer's request for this information, to ensure the competitive supplier is quoting the correct price, or to assist a customer in locating the account number on the distribution company bill (CleanChoice Comments at 6-7; Direct Energy Comments at 9-11; NEM Comments at 5-6; Vistra Comments at 5-7). As such, while the Department will not prohibit a marketing vendor from identifying the name of a consumer's distribution company, the Department emphasizes that such identification must be done in the spirit of providing consumers with useful and accurate information and not to suggest or imply that the marketing vendor or competitive supply company is or has a connection to the distribution company.

Finally, at the end of telemarketing calls and door-to-door marketing interactions during which a consumer has agreed to purchase a supply product, competitive suppliers (and third-party vendors that market on their behalf) shall state that the consumer will momentarily

be transferred or placed on a call to a third-party verification provider who will ask the consumer to confirm the product information that has been discussed.

VIII. RECORDING OF MARKETING INTERACTIONS

A. Introduction

The Department did not identify an initiative related to the recording of marketing interactions in D.P.U. 19-07. The issue was first addressed by the Consumer Advocates in their July 31, 2019 Proposal. Department staff discussed the issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 12-13, Department staff proposed that competitive suppliers be required to record telemarketing calls, as they do their third-party verification calls. Department staff stated that recording telemarketing calls should not be more burdensome than recording third-party verification calls. In contrast, Department staff did not propose that competitive suppliers be required to record their door-to-door marketing interactions, stating that such a requirement may place an undue burden on competitive suppliers. Department staff proposed to defer consideration of mandatory recording of door-to-door marketing interactions until issues raised with an enhanced third-party verification process are resolved.

C. Summary of Comments

Davis Malm questions the necessity of Department staff's proposal regarding the mandatory recording of telemarketing calls given existing consumer protection laws (Davis

Malm Comments at 10). CleanChoice, the Electric Distribution Companies, and NEM recommend that the Department establish retention guidelines for such recordings and whether the requirements will apply to telemarketing calls that do not result in an enrollment (Clean Choice Comments at 6-7; Electric Distribution Companies Comments at 9-10; NEM Comments at 6). The Consumer Advocates recommend that the Department require competitive suppliers to provide recordings to the Department, the Attorney General, and to consumers promptly, without a fee, and to maintain recordings for a period of five years (Consumer Advocates Comments at 7-8).

Davis Malm and Direct Energy support Department staff's position that recording door-to-door interactions would be an excessively problematic and costly requirement, and duplicate existing consumer protection laws (Davis Malm Comments at 9-10; Direct Energy Comments at 10-11). In contrast, the Consumer Advocates and the Municipal Aggregation Communities oppose Department staff's position, stating that without door-to-door marketing recordings the Department's ability to enforce its marketing script requirements will be impeded (Consumer Advocates Comments at 7-8; Municipal Aggregation Communities at 6-7).

D. Analysis and Findings

Department staff's proposal regarding the mandatory recording of telemarketing calls was intended to improve the Department's ability to identify misleading and deceptive marketing practices (February 5, 2020 Hearing Officer Memorandum, at 12-13). The proposal was prompted based on the numerous complaints received by the Department's

Consumer Division regarding competitive supplier telemarketing calls and third-party verification calls and the Department's experiences reviewing of these complaints.

Consistent with the above, the Department directs competitive suppliers, as of August 3, 2020, to record all outgoing telemarketing calls conducted on their behalf (i.e., calls not initiated by a consumer) and retain all calls for which the duration exceeds one minute.²⁶ This requirement applies equally to telemarketing calls that do and do not result in a customer enrollment. The Department directs competitive suppliers to retain their recordings for a minimum of two years. It is important that the Department has access to such recordings in a timely manner (Consumer Advocates Comments at 7-8). Through the D.P.U. 19 07 stakeholder process, the Department will discuss with stakeholders the means by which the Department will access the recordings.

The Department will not require competitive suppliers to record their door-to-door marketing interactions at this time. The Department intends to investigate the implementation of an enhanced third-party verification process as a Tier Two initiative in this proceeding February 5, 2020 Hearing Officer Memorandum, at 19-20. As part of that investigation, the Department intends to explore the reasonableness of linking the mandatory recording of a competitive supplier's door-to-door marketing interactions with the competitive supplier's willingness to implement an enhanced third-party verification process.

²⁶ As required by Massachusetts law, a competitive supplier must notify people when their call is being recorded.

IX. REVIEW OF MARKETING MATERIALS

A. Introduction

The Department did not identify an initiative related to the submittal and review of competitive supplier marketing material in D.P.U. 19-07. The issue was first addressed by the Consumer Advocates in their July 31, 2019 Proposal. Department staff discussed this issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 13-15, Department staff proposed that competitive suppliers be required to submit direct mail marketing material to the Department for review. Department staff provided guidance on the content that such material should include (e.g., a clear statement that the competitive supplier is not affiliated with the consumer's distribution company) and should not include (e.g., misleading headers such as "action requested" or "urgent notification about your utility bill/account"). Department staff's proposal did not require competitive suppliers to submit other marketing materials for Department review.

C. Summary of Comments

The Consumer Advocates, CleanChoice, Direct Energy, DOER, the Electric Distribution Companies, the Municipal Aggregation Communities, RESA, NEM, and Vistra support Department staff's proposal regarding the review of direct mail marketing material (Consumer Advocates Comments at 8; CleanChoice Comments at 7; Direct Energy Comments at 11-12; DOER Comments at 2; Electric Distribution Companies Comments

at 10; Municipal Aggregation Communities Comments at 7; RESA Comments at 10; NEM Comments at 7; Vistra Comments at 9). In contrast, Arcadia Power opposes Department staff's proposal and argues that direct mail marketing is a passive form of marketing that does not pressure consumers to enroll and, instead, allows consumers time to research and make decisions on their competitive supply options (Arcadia Power Comments at 3).

CleanChoice recommends that, for the purpose of implementing this initiative, the Department define "direct mail marketing material" as material that is sent to prospective new customers and includes a letter of authorization that allows the consumer to enroll without further interaction with the competitive supplier (i.e., the requirement should not apply to mailings that simply prompt consumer to visit the website or to call the supplier's customer service number) (CleanChoice Comments at 7-8). CleanChoice recommends that the Department apply the direct mail marketing review requirement equally to brokers and municipal aggregators (CleanChoice Comments at 7-8). Vistra Energy requests that the Department clarify that it will review the template of marketing materials, rather than product-specific information such as pricing (Vistra Comments at 9).

CleanChoice, the Electric Distribution Companies, the Municipal Aggregation Communities, and RESA recommend that the Department provide competitive suppliers with additional guidance and clarification with regards to the content the Department would consider either acceptable or prohibited in its review of direct mail marketing materials (CleanChoice Comments at 8; Electric Distribution Companies Comments at 10; Municipal Aggregation Communities Comments at 7; RESA Comments at 10). CleanChoice

recommends that the Department publish a marketing guidance report prior to its review of direct mail marketing and that this report be updated no less than every six months (CleanChoice Comments at 9).

Finally, the Consumer Advocates oppose Department staff's proposal to limit the filing of marketing material to direct mailings, stating that, to achieve transparency and accountability, the Department should (1) require competitive suppliers to submit all consumer-facing marketing materials, not just direct mail content, and (2) post all marketing material publicly on the Department's website (Consumer Advocates Comments at 8).

D. Analysis and Findings

1. Introduction

Department staff's proposal required competitive suppliers to submit direct mail marketing material to the Department for review. Department staff's proposal did not require competitive suppliers to submit other marketing materials for Department review (February 5, 2020 Hearing Officer Memorandum, at 13-15).

2. Direct Marketing Materials

The Department seeks to improve its ability to oversee and investigate competitive suppliers' marketing practices, in part by adopting a more pro-active approach to such oversight. D.P.U. 19-07, at 5, 10. Department staff's proposal to require competitive suppliers to submit direct mail marketing materials for Department review is consistent with such an approach (February 5, 2020 Hearing Officer Memorandum at 13-14). The Department disagrees with (1) Arcadia Power's assertion that direct mail marketing is a

passive form of marketing that does not warrant Department review (Arcadia Power Comments at 3) and (2) CleanChoice's recommendation that the Department limit its review to direct mail marketing that includes a letter of authorization, through which consumers can enroll without further interaction with the competitive supplier (CleanChoice Comments at 7-8). The Department seeks to ensure that all direct mail marketing material that is designed to attract new customers contains information that is accurate and useful. Finally, the Department disagrees with NEM's recommendation that the Department limit its review of competitive suppliers' direct mail marketing material to an annual review that take place as part of the license renewal process (NEM Comments at 7). The Department seeks to review such material prior to its use, which requires that competitive suppliers submit marketing material for our review in a timely manner when material changes have been made.

Department staff provided guidance on the content that such material should and should not include (February 5, 2020 Hearing Officer Memorandum at 13-14). Several commenters requested the Department to provide additional clarity and certainty regarding Department staff's proposed guidance (CleanChoice Comments at 8; Electric Distribution Companies Comments at 10; Municipal Aggregation Communities Comments at 7; RESA Comments at 10). In response to these requests, the Department clarifies that it will not approve direct mail marketing that contains language that could lead consumers to believe that (1) they are receiving an official communication from the state, their distribution company, or their municipality; (2) unless they take quick action, their electric or gas service

might be interrupted;²⁷ or (3) the competitive supplier is working in conjunction with a municipal aggregation program.²⁸ In addition, the Department will not approve material that does not clearly (1) identify the name of competitive supplier and (2) disclose that the material is an advertisement for the sale of a product. With respect to renewable energy products, the Department will not approve direct mail marketing material that inaccurately describes the renewable energy content of the competitive supply product or of alternate supply products such as basic service. As discussed in Section VI.D.2.g, above, and Section XII.D, below, the Department seeks to work with stakeholders through the D.P.U. 19-07 stakeholder process to improve the manner in which information about supply products' voluntary renewable energy content is presented to consumers through Contract Summary Forms and the Website. The Department will explore with stakeholders how such improvements should be incorporated into competitive suppliers' direct mail marketing materials.

The Department disagrees with the Consumer Advocates' recommendation that the Department post competitive suppliers' direct mail marketing material on our website (Consumer Advocates Comments at 8). The Department concludes that the value that would

²⁷ The Department does not specify the language that may imply that such action is required. Instead, the Department informs competitive suppliers that we will not approve material that creates a false sense of urgency or importance regarding the consumer's existing or future electric or gas service.

²⁸ This applies equally to the envelope in which direct marketing material may be enclosed.

be provided by posting such material would be outweighed by the administrative burden that such posting would impose on the Department and competitive suppliers.²⁹ The Department, however, sees merit in providing the Attorney General with access to competitive suppliers' direct mail marketing material. Through the D.P.U. 19-07 stakeholders process, the Department will work with stakeholders to develop such a process.

The Department will review direct mail marketing on a case by case basis, using the above criteria as a guideline. The Department's review will focus on the qualitative information included in such material, rather than the quantitative, product-related information that may be included (e.g., price, contract term). As such, the Department does not require competitive suppliers to submit direct mail marketing material for our review in instances where the only change to material previous approved by the Department relates to quantitative product information (Vistra Comments at 9). If the Department does not respond within ten business days of receiving a competitive supplier's direct mail marketing material, the competitive supplier is permitted to use the material as submitted. The requirements set forth in this section apply to direct mail marketing material that competitive suppliers will send to consumers on or after September 8, 2020. The Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

²⁹ The Department notes that marketing material for new license applicants will be available to the public pursuant to the Department license application review process discussed in Section III, above.

3. Other Marketing Materials

The Department disagrees with the Consumer Advocates' recommendation that the Department require competitive suppliers to submit all marketing materials for Department review (Consumer Advocates Comments at 8). As stated by Department staff, while there could be value in the Department reviewing materials for all marketing channels, requiring competitive suppliers to provide the Department with all up-to-date marketing material and reviewing materials for all marketing channels on a rolling basis would be unduly burdensome for both the Department and competitive suppliers (Hearing Officer Memorandum at 13-14). Based on our experience in reviewing direct mail marketing materials, the Department will consider extending our review to the other forms of marketing.

X. AUTOMATIC RENEWAL NOTIFICATIONS AND REPORTS

A. Introduction

In D.P.U. 19-07, at 7-8, the Department stated that consumers' lack of awareness of the automatic renewal provisions that may be included in their supply contracts is a significant consumer protection issue. To ensure that consumers are sufficiently aware of such provisions, the Department stated that we seek to establish uniform requirements regarding the automatic renewal information that competitive suppliers must provide their customers, including the timing and manner by which they must provide this information. D.P.U. 19-07, at 8. At the June 6, 2019 and November 1, 2019 technical sessions, Department staff proposed that competitive suppliers periodically report information on their

residential customers having automatic renewal provisions in their contracts. Department staff stated that such reports would be helpful in evaluating the effectiveness of the automatic renewal notifications. At the June 6, 2019 and November 1, 2019 technical sessions, Department staff also presented a proposal for product limitations that would apply to customers whose contracts have been automatically renewed. Department staff did not seek comment on this issue (February 5, 2020 Hearing Officer Memorandum at 16).

Below, the Department sets forth initiatives associated with the automatic renewal notifications and reports. The Department will address the issue of automatic renewal product limitations as a Tier Two initiative in this proceeding.

B. Automatic Renewal Notifications

1. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 14-15, Department staff proposed that competitive suppliers be required to provide customers with automatic renewal notifications between 30 and 60 days prior to the expiration of contracts that have such provisions. Department staff proposed the language that all competitive suppliers would be required to use in the upper portion of their notifications; competitive suppliers, however, would be allowed to use the lower portion of the notifications to present competitive supplier-specific language. Department staff's proposal was intended to ensure that the automatic renewal notifications effectively serve their important consumer protection function, while allowing suppliers to use the notifications to reflect their corporate branding and style.

2. Summary of Comments

No stakeholder opposed Department staff's proposal. Direct Energy requests that the Department provide competitive suppliers with a minimum of 60 days to comply with the notification requirements (Direct Energy Comments at 13). The Electric Distribution Companies recommend that the Department require competitive suppliers to send the notifications both by U.S. mail and email, stating that such a requirement will best ensure that customers receive and review the notifications (Electric Distribution Companies Comments at 11).

3. Analysis and Findings

In the absence of comments opposing the automatic renewal notification proposal set forth by Department staff in the February 5, 2020 Hearing Officer Memorandum, the Department adopts the proposal in full. For contracts that automatically renew to a fixed-price product, the Department directs competitive suppliers to use the following language in their automatic renewal notifications:

As a customer of *[Competitive Supplier Name]*, we purchase and supply *[electricity/gas]* on your behalf, while your *[electric/gas]* utility continues to deliver the *[electricity/gas]* to your home. Your current supply price, *[xx]* cents per *[kWh/therm]*, will end during *[month, year]*. Unless you contact us, your contract will automatically renew to a new price, *[xx]* cents per *[kWh/therm]*, which will remain in effect for *[xx]* months.

Please contact us at *[email address]* or *[telephone #]* prior to *[month, year]* if you do not wish your contract to be automatically renewed, or to find out more about *[electricity/gas]* supply products that we offer.

For contracts that automatically renew to a variable-price product, the Department directs competitive suppliers to use the following language:

As a customer of *[Competitive Supplier Name]*, we purchase and supply *[electricity/gas]* on your behalf, while your *[electric/gas]* utility continues to deliver the *[electricity/gas]* to your home. Your current supply price, *[xx]* cents per *[kWh/therm]*, will end during *[month, year]*. Unless you contact us, your contract will automatically renew to a new price that will change monthly. Your initial monthly price will be *[xx]* cents per *[kWh/therm]*. Prices for future months will be available through our website, *[website address]*.

Please contact us at *[email address]* or *[telephone #]* prior to *[month, year]* if you do not wish to your contract to be automatically renewed, or to find out more about *[electricity/gas]* supply products that we offer.

For electricity consumers, the notification shall include the following statement from the

Department:

The Massachusetts Department of Public Utilities recommends that consumers visit the Energy Switch website to view the broad range of available electric supply products, including basic service offered by your electric utility. You can visit the website at <http://energyswitchma.gov>.

For gas consumers, the notification shall include the following statement from the

Department:

The Massachusetts Department of Public Utilities recommends that consumers visit the Gas Division website to view the current gas supply rates offered by your gas utility. You can visit the website at <https://www.mass.gov/info-details/cost-of-gas-adjustment-factor-rates-and-information>.

The Department directs competitive suppliers to use the applicable language specified above in the upper portion of their automatic renewal notifications. Competitive suppliers may use the lower portion of their automatic renewal notifications to present language that reflects their corporate branding and style. The Department provides the format that competitive suppliers must use for their automatic renewal notifications in Attachment F (“Electric/Gas Supplier Automatic Renewal Notification Template”) to this Order. As with

the Contract Summary Forms discussed in Section IV.D.4, above, the Department requires competitive suppliers to use a minimum of 14-point font size for their automatic renewal notifications.

The Department directs competitive suppliers to send automatic renewal notifications to applicable customers between 30 and 60 days prior to the expiration of their contracts. This requirement applies to customers whose contracts expire on or after September 8, 2020. Competitive suppliers shall send their notifications using the method(s) used to communicate other information to the customer. As discussed below, the Department will require competitive suppliers to report periodically on, among other things, the method used to send automatic renewal notifications. The Department will review this information to determine whether a link can be established between the method(s) of communication and the customers' responses to the communications (Electric Distribution Companies Comments at 11).

C. Automatic Renewal Reports

1. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 16, Department staff proposed that each competitive supplier be required to report information periodically on the residential customers it serves through automatic renewal provisions in customers' contracts. Department staff proposed that competitive suppliers initially report this information quarterly, with the expectation that the Department would revisit the frequency of such reporting at a later date.

2. Summary of Comments

The Electric Distribution Companies support Department staff's proposal (Electric Distribution Companies Comments at 12). The Consumer Advocates state that the Department should provide the reported information in an aggregated form to other stakeholders as part of a broader effort to develop policies related to automatic renewals (Consumer Advocates Comments at 9).

Davis Malm, RESA, and Starion oppose Department staff's proposal (Davis Malm Comments at 11; RESA Comments at 11-12; Starion Comments at 1-2). Davis Malm asserts that the costs that competitive suppliers will incur in reporting this information will outweigh the benefits to be gained from such reporting (Davis Malm Comments at 11). RESA asserts that, because competitive suppliers' existing systems were not designed to track this information, the proposed reporting requirement could require a significant amount of competitive supplier time and resources, thus imposing undue burdens on competitive suppliers (RESA Comments at 11-12). Starion recommends that the Department work with competitive suppliers to explore ways to better achieve the Department's desired reporting goals (Starion Comments at 1-2). Davis Malm and RESA state that, if the Department imposes the proposed reporting requirement, the Department should (1) provide competitive suppliers with sufficient time to develop the systems required to produce the reports, which would allow suppliers to avoid the cost and time associated with manually producing the

reports³⁰ and (2) require semi-annual or annual (rather than quarterly) reporting, to reduce the administrative burden of preparing the reports while ensuring that the Department receives the requested information (Davis Malm Comments at 11; RESA Comments at 11-12). Direct Energy states that, while the reporting requirement will increase competitive suppliers' regulatory compliance costs, it recognizes that such increased costs may be necessary to achieve consumer protection objectives (Direct Energy Comments at 13-14). Direct Energy requests that the Department provide competitive suppliers with a minimum of 60 days to submit their initial automatic renewal reports and establish predictable filing dates for the reports (Direct Energy Comments at 13-14). Vistra states that the Department should issue a standing order that such reports would be provided confidential treatment, stating that the reports will include commercially valuable, proprietary, and market-sensitive information (Vistra Comments at 10-11). CleanChoice recommends that, prior to imposing the reporting requirement, the Department work further with stakeholders to clarify the information to be reported to ensure that the information can be reported accurately and consistently (CleanChoice Comments at 10). To reduce administrative burden, CleanChoice recommends a semi-annual or annual (rather than quarterly) reporting requirement (CleanChoice Comments at 10). Finally, NEM states that the Department should not interpret the number of customers that a competitive supplier

³⁰³⁰ Davis Malm recommends that the Department require competitive suppliers to submit their initial reports in early 2021, providing information for the 2020 calendar year (Davis Malm Comments at 11).

serves under automatic renewal provisions as an indication of the effectiveness of the supplier's notification or its regulatory compliance efforts (NEM Comments at 8).

3. Analysis and Findings

The Department seeks to develop a strategy that best ensures that customers are sufficiently aware of the automatic renewal provisions that may be included in their contracts. D.P.U. 19-07, at 7-8. The automatic renewal notification initiative set forth above is a necessary, but not sufficient, component of such a strategy. The notification requirement must be supplemented by a reporting requirement that assists the Department in evaluating the effectiveness of the notifications. Department staff's proposal regarding the periodic reporting by competitive suppliers of information regarding the number of their customers whose contracts have been automatically renewed, as set forth in the February 5, 2020 Hearing Officer Memorandum, at 16, was intended to serve that purpose.

The reports proposed by Department staff will serve two purposes. First, aggregating the information provided through competitive suppliers' individual reports will provide information on the number of customers statewide whose contracts have been automatically renewed. The Department intends to make such aggregated information publicly available (Consumer Advocates Comments at 9). Second, the reports will assist the Department in identifying competitive suppliers that are "outliers" when compared to the statewide data and thus may warrant further review. While such information is not dispositive that such competitive suppliers are under-performing with respect to their notification efforts (NEM Comments at 8), it will allow the Department to focus our efforts in this regard.

The Department disagrees with those commenters that assert that Department staff's proposed reporting requirement is unnecessarily burdensome (Davis Malm Comments at 11; RESA Comments at 11-12; Starion Comments at 1-2). The reports will include information that competitive suppliers should know, and should want to know, about automatic renewals and the effectiveness of their notifications. The Department considers it reasonable and appropriate to require competitive suppliers to track and report such information.

Notwithstanding the importance of the information to be reported, the Department recognizes the reasonableness of providing competitive suppliers with sufficient time to submit their initial automatic renewal report (Davis Malm Comments at 11; Direct Energy Comments at 13-14; RESA Comments at 11-12). As such, competitive suppliers will be required to submit their initial reports on August 3, 2020. This information to be reported will be limited to (1) the total number of customers that a competitive supplier is serving as of June 30, 2020, and (2) the number of customers that a competitive supplier is serving on June 30, 2020, through the automatic renewal provisions included in the customers' contracts.³¹

The Department is persuaded by comments that recommend a less frequent reporting requirements (CleanChoice Comments at 10; Davis Malm Comments at 11; RESA Comments at 11-12). As such, the Department will adopt a semi-annual reporting requirement for subsequent automatic renewal reports. The Department concludes that this strikes an

³¹ The reports shall distinguish between contracts that automatically renewed to fixed-price and monthly-price products.

appropriate balance between providing the requested information and reducing the administrative burden placed on competitive suppliers in complying with the reporting requirement. The Department will require competitive suppliers to submit their next automatic renewal reports on February 1, 2021. The information to be reported will have three components. First, competitive suppliers will report on (1) the total number of customers that a competitive supplier is serving as of December 30, 2020, and (2) the number of customers that a competitive supplier is serving on December 30, 2020, through the automatic renewal provisions included in the customers' contracts. Second, competitive suppliers will report on the following information for the period July 1, 2020 through December 30, 2020: (1) the number of residential contracts that expired during that period; (2) the number of such contracts that included an automatic renewal provision to either a fixed-price or monthly-price product; and (3) the number of contracts for which the automatic provision took effect. Third, competitive suppliers will report on the method used to deliver the automatic renewal notification to their customers during the specified period.

The Department provides the format that competitive suppliers must use for their automatic renewal notifications in Attachment G ("Automatic Renewal Report Template") to this Order. In D.P.U. 14-140-G at 24-25, the Department determined categories of information to be confidential and, therefore, appropriately subject to protection in the Department's standing order for protective treatment. The Department determines that the three components of information required to be included in the automatic renewal notifications are competitively sensitive and are appropriately protected from public

disclosure.³² Accordingly, the Department will protect such material from public disclosure pursuant to the process established in D.P.U. 14-140-G at 27-29. The Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements. To ensure that competitive suppliers report information using common definitions of what constitutes an automatic renewal, the Department will convene a conference call with stakeholders prior to the initial filing date (CleanChoice Comments at 10).

As a final matter, the Department intends to investigate automatic renewal product limitations as a Tier Two initiative in this proceeding. As part of that investigation, the Department expects to explore the reasonableness of linking the frequency of a competitive supplier's automatic renewal reporting requirement to its willingness to adopt voluntary product limitations for automatically renewed customers.

XI. ENROLLMENT REPORTS

A. Introduction

In D.P.U. 19-07, at 12, the Department stated that requiring competitive suppliers to report information on the types of customers they enroll through their different marketing channels would allow the Department to adopt a more pro-active approach into our investigations of competitive supplier marketing activities. Department staff addressed the content of such reports at the June 6, 2019 and November 1, 2019 technical sessions. At the

³² The information constitutes “trade secrets, confidential, competitively sensitive or other proprietary information.” G.L. c. 25, § 5D.

June 6, 2019 and November 1, 2019 technical sessions, Department staff also presented a proposal for product limitations that would apply to low-income customers. Department staff did not seek comments on Department staff's proposal on this issue (February 5, 2020 Hearing Officer Memorandum at 16). Below, the Department sets forth an initiative associated with the customer enrollment reports. The Department will address low-income product limitations as a Tier Two initiative in this proceeding.

B. Hearing Officer Memorandum Proposal

Department staff's proposal required competitive suppliers to report periodically on the number of residential customers (both non-low-income and low-income customers) that the competitive supplier enrolled during a specified period. Department staff proposed that competitive suppliers initially report this information quarterly, with the expectation that the Department would revisit the frequency of such reporting at a later date (February 5, 2020 Hearing Officer Memorandum at 16).

C. Summary of Comments

Direct Energy and the Electric Distribution Companies support Department staff's proposal (Direct Energy Comments at 14; Electric Distribution Companies Comments at 12-13). The Electric Distribution Companies state that reporting this information will provide the Department with insight into competitive suppliers' marketing activities that the Department currently does not possess (Electric Distribution Companies Comments at 12-13). Direct Energy requests that the Department provide competitive suppliers with a minimum of 60 days to submit their initial automatic renewal reports and establish predictable filing dates

for the reports (Direct Energy Comments at 14). The Consumer Advocates recommend that the Department require competitive suppliers to report on enrollments by vendor and by zip code to allow the Department to monitor whether a competitive supplier or its vendors target particular zip codes (Consumer Advocates Comments at 9). The Consumer Advocates state that the Department should provide the reported information in an aggregated form to other stakeholders in order to inform future policy discussions (Consumer Advocates Comments at 9).

In contrast, Davis Malm and RESA oppose Department staff's proposal (Davis Malm Comments at 11-12; RESA Comments at 11-12). Davis Malm asserts that the costs that competitive suppliers will incur in reporting this information will outweigh the benefits to be gained for such reporting (Davis Malm Comments at 11-12). RESA asserts that, because competitive suppliers' existing systems were not designed to track this information, the proposed reporting requirement could require a significant amount of competitive supplier time and resources, thus imposing undue burdens on competitive suppliers (RESA Comments at 11-12). Davis Malm and RESA state that if the Department imposes the proposed reporting requirement, then the Department should (1) provide competitive suppliers with sufficient time to develop the systems required to produce the reports in order to allow suppliers to avoid the cost and time associated with manually producing the reports³³ and

³³ Davis Malm recommends that the Department require competitive suppliers to submit their initial reports in early 2021, providing information for the 2020 calendar year (Davis Malm Comments at 11)

(2) require semi-annual or annual (rather than quarterly) reporting to reduce the administrative burden of preparing the reports while ensuring that the Department receives the requested information (Davis Malm Comments at 11-12, RESA Comments at 12-13).

NEM expresses the concern that Department staff's proposed reporting requirement for this information from all suppliers is to address the misconduct of a few (NEM Comments at 9). NEM recommends that the Department consider a less frequent reporting requirement, with the understanding that the Department could subject competitive suppliers that have been the subject of Department oversight and enforcement activities to more frequent reporting (NEM Comments at 9). Vistra states that the Department should issue a standing order that the customer enrollment reports would be provided confidential treatment, stating that the reports will include commercially valuable, proprietary, and market-sensitive information (Vistra Comments at 10-11). CleanChoice recommends that, prior to imposing the reporting requirement, the Department work further with stakeholders to clarify some of the information to be reported, to ensure that the information can be reported accurately and consistently (CleanChoice Comments at 11-12). To reduce administrative burden, CleanChoice recommends a semi-annual or annual (rather than quarterly) reporting requirement (CleanChoice Comments at 11-12).

D. Analysis and Findings

The Department seeks to adopt a pro-active approach to our investigation of competitive supplier market activities. D.P.U. 19-07, at 12. Department staff's proposal regarding the periodic reporting by competitive suppliers on the marketing channels through

which they enroll customers and the types of customers enrolled through each channel was intended to serve that purpose (February 5, 2020 Hearing Officer Memorandum, at 16-17). The reports proposed by Department staff will serve two purposes. First, aggregating the information provided through competitive suppliers' individual reports will provide statewide information on the number of residential and residential low-income customers enrolled through each type of marketing channel. The Department intends to make such aggregated information publicly available. Second, the reports will assist the Department in identifying competitive suppliers that are "outliers" when compared to the statewide data, and thus may warrant further review.³⁴

The Department disagrees with those commenters that assert that Department staff's proposed reporting requirement is unnecessarily burdensome (Davis Malm Comments at 11; RESA Comments at 11-12; Starion Comments at 1-2). As with the automatic renewal reports discussed in Section X.C.3, above, the enrollment reports will include information that competitive suppliers should know, and should want to know, about their customer enrollments. The Department considers it reasonable and appropriate to require competitive suppliers to track such information.

Notwithstanding the importance of the information to be reported, the Department recognizes the reasonableness of providing competitive suppliers with sufficient time to

³⁴ For example, the Department may seek to examine the practices of competitive suppliers that enroll a significant number of residential low-income customers through door-to-door marketing. D.P.U. 19-07, at 12.

submit their initial enrollment report (Davis Malm Comments at 11-12; Direct Energy Comments at 14; RESA Comments at 12-13). As such, competitive suppliers will be required to submit their initial reports by August 3, 2020. This information to be reported will be limited to the total number of residential and residential low-income customers that a competitive supplier is serving in each electric and gas distribution company service territory (as applicable) as of June 30, 2020.

The Department is persuaded by comments that recommend less frequent reporting (CleanChoice Comments at 11-12; Davis Malm Comments at 11-12; RESA Comments at 12-13). As such, the Department will adopt a semi-annual reporting requirement for subsequent enrollment reports. The Department concludes that this strikes an appropriate balance between providing the requested information and reducing the administrative burden placed on competitive suppliers in complying with the reporting requirement. The Department will require competitive suppliers to submit their next enrollment report on February 1, 2021. The information to be reported will have two components. First, competitive suppliers will report on the number of residential and residential low-income customers that they are serving in each electric and gas distribution company service territory (as applicable) as of December 30, 2020. Second, competitive suppliers will report on the number of residential and residential low-income customers that they enrolled in each electric and gas distribution company service territory (as applicable) during the period July 1, 2020 through December 30, 2020, and the marketing channels through which the customers were enrolled.

The Department provides the format that competitive suppliers must use for their customer enrollment reports in Attachment H (“Supplier Enrollment Report Template”) to this Order. In D.P.U. 14-140-G at 24-25, the Department determined categories of information to be confidential and, therefore, appropriately subject to protection in the Department’s standing order for protective treatment. The Department determines that the two components of information required to be included in the customer enrollment reports are competitively sensitive and are appropriately protected from public disclosure.³⁵ Accordingly, the Department will protect such material from public disclosure pursuant to the process established in D.P.U. 14-140-G at 27-29. The Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

As a final matter, the Department intends to investigate product limitations for residential low-income customers as a Tier Two initiative in this proceeding. As part of that investigation, the Department expects to explore the reasonableness of linking the frequency of a competitive supplier’s enrollment reporting requirement to its willingness to adopt voluntary product limitations for residential low-income customers.

³⁵ The information constitutes “trade secrets, confidential, competitively sensitive or other proprietary information.” G.L. c. 25, § 5D.

XII. DISPLAY OF MUNICIPAL AGGREGATION PRODUCTS ON THE ENERGY SWITCH WEBSITE³⁶

A. Introduction

In October 2016, the Department launched the Website that allows consumers to view information about the supply products offered by participating competitive suppliers, as well as basic service offered by the electric distribution companies. D.P.U. 14-140-E (2016). In D.P.U. 19-07, at 7, the Department requested comments from stakeholders on initiatives that would increase consumer awareness of the competitive supply market through the Website. Commenters identified the Website display of municipal aggregation products as one such initiative (Compact March 8, 2019 Comments at 4; National Grid March 8, 2019 Comments at 3). Department staff discussed this issue with stakeholders at the November 1, 2019 technical session.

B. Hearing Officer Memorandum Proposal

In the February 5, 2020 Hearing Officer Memorandum at 17-19, Department staff proposed that the Website display information on municipal aggregation products in the same manner that it displays information on other competitive supply products, as set forth in the Website Rules,³⁷ with the following three exceptions. First, Department staff proposed that

³⁶ The Website displays only electric supply products.

³⁷ The Department established the rules that govern the operation of the Website in D.P.U. 14-140-E. The Department issued revised rules in D.P.U. 14-140-F (2017) (“Website Rules”).

the Website always list a municipal aggregation's "default product"³⁸ as the second product, after basic service, regardless of a product sorting/filtering options selected by a Website user. Department staff stated that its proposal was intended to reflect the unique "opt-out" treatment provided by statute to municipal aggregation programs. Second, Department staff proposed that the Website display information related to a municipal aggregation product's contract term in the same manner as the Website displays the basic service contract term, i.e., using a specified start and end month, rather than number of months displayed for competitive supply products. Department staff stated that its proposal was intended to accommodate the method by which municipal aggregators procure supply for their program participants. Third, Department staff proposed that municipal aggregation products not be required to meet the 50 percent renewable energy content threshold that applies to competitive supply products in order for the Website to display information about the products' "voluntary" renewable energy content, i.e., the renewable energy content that exceeds the content required by the Commonwealth's RPS. Department staff proposed that the Website display information about a municipal aggregation product's voluntary renewable energy content for products for which the voluntary content is composed entirely of RPS Class I resources and represents at least five percent of the product's total resources. Department staff's proposal was intended to accommodate the renewable energy product

³⁸ Department staff used the term "default product" to refer to the product that a municipal aggregator automatically offers to its program participants, unless a participant selects an alternate product option.

options that several municipal aggregation programs offer to their participants. Department staff sought comment on whether this rule should apply equally to other competitive supply products.

C. Summary of Comments

1. Overview

The Compact, Consumer Advocates, DOER, Electric Distribution Companies, and Direct Energy support Department staff's proposal to display municipal aggregation products on the Website (Compact Comments at 2; Consumer Advocates Comments at 9; DOER Comments at 3-4; Electric Distribution Companies Comments at 13-14; Direct Energy Comments at 14). No stakeholder opposed Department staff's proposal or the contract term proposal in the February 5, 2020 Hearing Officer Memorandum. Stakeholders commented on two issues associated with the proposal (1) the order of listing of municipal aggregation products and (2) the display of information regarding products' renewable energy content.³⁹

2. Order of Product Listing

The Compact, Consumer Advocates, DOER, and Municipal Aggregation Communities support Department staff's proposal that the Website always list default municipal aggregation products directly below basic service (Consumer Advocates Comments

³⁹ The Consumer Advocate comments include proposed revisions to the Website that are outside of the scope of the proposal set forth in the Hearing Office Memorandum, related to (1) the mandatory listing of competitive supply products and (2) the calculation of estimated monthly costs (Consumer Advocates Comments at 9-10). As such, the Department does not address those comments in this Order.

at 9; Compact Comments at 3; DOER Comments at 3; Municipal Aggregation Communities Comments at 7). In contrast, NEM opposes Department staff's proposal, asserting that displaying the municipal aggregation default product beneath basic service inappropriately gives the product an elevated status, thus unfairly affecting the suppliers' ability to attract consumers (NEM Comments at 9).

3. Display of Renewable Energy Content

Direct Energy, DOER and the Municipal Aggregation Communities support Department staff's proposal regarding the Website display of municipal aggregation renewable energy products that are composed solely of RPS Class I products (Direct Energy Comments at 14; DOER Comments at 3-4; Municipal Aggregation Communities at 7-8). The Municipal Aggregation Communities recommend that the Department not establish a minimum percentage of RPS Class I resources that must comprise a product's renewable energy content product for the Website to display information about the product's content (Municipal Aggregation Communities at 8). Direct Energy and DOER state that the new rule should apply equally to both municipal aggregation and competitive supply products (Direct Energy Comments at 14; DOER Comments at 3-4).

CleanChoice and the Compact oppose Department staff's proposal, arguing that the Website should display information about the voluntary renewable content of municipal aggregation products in the same manner as the Website currently displays such content for competitive supply products (CleanChoice Comments at 12; Compact Comments at 3-4). The Compact states that, if the Department implements the proposed rule, it should clarify

that, for municipal aggregation products for which the voluntary renewable energy content is not composed solely of RPS Class I resources, the Website will display information about the products renewable energy content pursuant to the Website's current rules (Compact Comments at 3-4).

D. Analysis and Findings

1. Introduction

In the February 5, 2020 Hearing Officer Memorandum at 17-19, Department staff proposed that, with limited exception, the Website Rules that apply to competitive suppliers and competitive supply products would apply equally to municipal aggregators and municipal aggregation products. The Website Rules include the following sections: (1) general; (2) supplier information; (3) supply product information; (4) display of renewable energy content information; (5) display of basic service information; (6) user preference options; and (7) uploading product information. Below, the Department sets forth the revisions to the Website Rules that the Department deems necessary to accommodate the Website display of municipal aggregation products.⁴⁰

2. General

a. Product Availability

Competitive suppliers are required to offer their residential and small C&I products to all residential and small C&I consumers, respectively, within the specified electric

⁴⁰ For the purpose of this section, the Department uses the terms competitive supplier and competitive supply products to refer to entities that offer products outside of municipal aggregation programs, and the products that they offer.

distribution company service territory.⁴¹ Website Rules, Section I.D. The Department specifies that a municipal aggregator will be required to offer its products to all consumers within its municipality.

b. Product Uniqueness

Competitive suppliers can list a maximum of eight unique products on the Website. Website Rules, Section I.F. One criterion for product uniqueness is that the voluntary renewable energy content differs by a minimum of 25 percent. Website Rules, Section I.F.2. As discussed below, the Website will differentiate between voluntary renewable energy products (both municipal aggregation and competitive supply) that are composed entirely of RPS Class I resources and those that are not. For voluntary renewable energy products that are not composed entirely of RPS Class I resources, the existing rule regarding product uniqueness will continue to apply. However, for voluntary renewable energy products that are composed entirely of RPS Class I resources, products will be considered unique if their voluntary renewable energy content differs by a minimum of one percent.

3. Supply Product Information

a. Introduction

Section III of the Website Rules, “Supply Product Information,” sets forth the rules that apply to supply products’ (1) availability, (2) price, (3) contract term, (4) early

⁴¹ More specifically, competitive suppliers are required to offer their product to consumers within the specified ISO-New England load zone or the electric distribution company service territory. Website Rules, Section I.D.

termination fee, (5) automatic renewal, (6) renewable energy content, (7) additional products and services, (8) hyperlinks and telephone numbers (optional), (9) start and end date, and (10) estimated monthly cost. The Department revises the rules related to contract term and renewable energy content to accommodate the display of municipal aggregation products.

b. Contract Term

The Website displays the contract term for basic service as the six-month period during which the basic service prices will be in effect.⁴² Website Rules Section V.B. The Website displays the contract term for competitive supply products as the number of months for which the products will be available. Website Rules Section III.C. Department staff proposed that the Website display the contract term for municipal aggregation products as the period of time in which the products will be available, similar to the manner in which the Website displays contract terms for basic service. Department staff stated that the proposal is intended to accommodate the method by which municipal aggregators procure supply for their program participants (February 5, 2020 Hearing Officer Memorandum, at 18-19). In the absence of comments opposing Department staff's proposal, the Department adopts that proposal -- the Website will display the contract term of municipal aggregation products as the start and end dates of the period of time in which the products will be available.⁴³

⁴² For example, for Eversource East, the Website currently displays the basic service contract term as January 2020 through June 2020.

⁴³ The Website will continue to display the contract terms of competitive supply products in number of months.

Through the D.P.U. 19-07 working group process, the Department will work with stakeholders to explore ways in which the Website can inform consumers that supply product contract terms are linked to consumers' meter read dates (Compact Comments at 3).

c. Voluntary Renewable Energy

Currently, the Website displays information about a product's voluntary renewable content (i.e., the renewable energy content that exceeds the content required by the Commonwealth's Clean and Renewable Portfolio Standard Programs) only for those products that are composed of at least 50 percent renewable energy resources (i.e., including the content required by the Commonwealth). Website Rules Section III.H. Department staff proposed that for municipal aggregation products, the Website display information about a product's voluntary renewable energy content for those products for which the voluntary content is composed entirely of Massachusetts RPS Class I resources and represents at least five percent of the product's total resources. Department staff stated that its proposal was intended to accommodate the renewable energy product options that several municipal aggregation programs offer to their participants. Department staff sought comment on whether this rule should apply equally to other competitive supply products (February 5, 2020 Hearing Officer Memorandum, at 19).

The Department seeks to ensure that the Website display the full range of renewable energy products offered by municipal aggregators (Compact Comments at 4-5; Municipal Aggregation Communities Comments at 8). The Department also seeks to ensure that the Website displays renewable energy products offered by municipal aggregators and

competitive suppliers in a consistent manner, thus allowing users to make an “apples to apples” comparison between products (CleanChoice Comments at 12; Compact Comments at 3-4; Direct Energy Comments at 14; DOER Comments at 3-4). As such, regarding the display of information about a product’s voluntary renewable content, the Website will differentiate between products that are composed entirely of Massachusetts RPS Class I resources and those that are not. For municipal aggregation and competitive supply products that are not composed entirely of RPS Class I resources, the existing rule will continue to apply. However, for municipal aggregation and competitive supply products that are composed entirely of RPS Class I resources, the Website will display information about the product’s voluntary renewable content provided that the voluntary resources comprise a minimum of one percent of the product’s total resources.

Through the D.P.U. 19-07 working group process, the Department will work with stakeholders to improve the manner in which the Website displays information about supply products’ voluntary renewable energy content. Consistent with comments received in this proceeding, the Department will explore, among other things (1) the display of information regarding the voluntary renewable energy content of renewable energy products and (2) the elimination of a minimum content in order for the Website to display such information (Consumer Advocates Comments at 9-10; Compact Comments at 5; RESA Comments at 14-15; Starion Comments at 2-3).

4. Listing of Municipal Aggregation Products

The Website lists basic service as the top supply product regardless of a user's product sorting preferences.⁴⁴ Website Rules Section V.C. The Website lists competitive supply products initially by average monthly costs, from low to high, and then according to users' product sorting preferences. Website Rules Section VI.B. Department staff proposed that the Website always list a municipal aggregation's designated default product directly beneath basic service, regardless of a user's product sorting preferences; other municipal aggregation products would be listed according to the rules that apply to competitive supply product (February 5, 2020 Hearing Officer Memorandum, at 18).

The Department disagrees with NEM that the display of default municipal aggregation products will inappropriately elevate the status of the municipal aggregation default product, making the Website less effective and useable (NEM Comments at 9). As stated by Department staff, the unique opt-out treatment provided by statute to municipal aggregation programs warrants a special treatment regarding the manner in which the Website lists municipal aggregation products (February 5, 2020 Hearing Officer Memorandum). As such, consistent with Department staff's proposal, the Website will list a municipal aggregation's "default product" directly below basic service, both in the initial listing of product and after product sorting and filtering. All other municipal aggregation products will be listed in the same manner as competitive supply products.

⁴⁴ Website users' sorting preferences are set forth in Section VI.B of the Website Rules.

5. Uploading Product Information

Competitive suppliers have three options to upload information about their supply products onto the Website -- through the supplier portal of the Website, through a spreadsheet that is imported into the supplier portal, or using an application program interface. Website Rules Section VII.B. The Department notes that the spreadsheet would require significant revisions to accommodate municipal aggregation products. Because of this, and because competitive suppliers have seldomly used the spreadsheet upload option, the Department limits municipal aggregators' upload options to the supplier portal and the application program interface. Consistent with Department staff's proposal, municipal aggregators can designate entities such as their aggregation consultants or suppliers to serve as their Website "administrators," provided that the municipality submits a letter to the Department granting these entities such authority (February 5, 2020 Hearing Officer Memorandum, at 17-18).

6. Implementation Date

The Department currently is working with our Website vendor to implement the changes required to implement the rule revisions discussed above. The Hearing Officer assigned to this proceeding will notify stakeholders when the Website revisions set forth in this section will take effect, and will issue Revised Website Rules at that time. Prior to that date, the Hearing Officer will provide directions to municipal aggregators regarding the steps they need to take to display their products on the Website.

XIII. SUMMARY

Below, the Department summarizes the initiatives set forth above.

License Application Review – In Section III, above, the Department sets forth the process by which we will make pending new license applications available to the stakeholders for comment. The process will apply to new complete license applications filed on or after July 1, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide direction to stakeholders on how (1) to gain access to new license applications and (2) to be included on the distribution service list by which the Department will notify stakeholders of new license applications.

The Department will not apply the new process to license renewal applications. The Department, however, will work with stakeholders, through the D.P.U. 19-07 stakeholder process, to identify information about licensed entities that should be made readily available to the public (without violating licensees' confidentiality concerns).

Door-To-Door Marketing Notification - In Section IV, above, the Department sets forth an initiative that requires competitive suppliers to submit door-to-door marketing notifications to the Department on a daily basis. The initiative limits competitive suppliers to identifying five municipalities in each notification and requires competitive suppliers to specify the neighborhoods within Boston where they expect to market -- each neighborhood will count toward the five-municipality limit. Competitive suppliers shall submit the notifications in the format shown in Attachment C. The Department will provide protective treatment to the notifications as set forth above. These requirements will apply to door-to-

door marketing that takes place on or after August 3, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements. The Department will work with stakeholders, through the D.P.U. 19-07 stakeholder process, to explore the reasonableness and appropriateness of (1) applying the municipality limit on a regional or vendor basis, (2) applying the neighborhood requirements to other municipalities, and (3) requiring competitive suppliers to provide notification to officials of the municipalities in which they expect to door-to-door market.

Identification of Third-Party Marketing Vendors - In Section V, above, the Department sets forth an initiative that requires competitive suppliers to submit updated list of their third-party marketing vendors within ten business days of the addition or removal of a vendor. Competitive suppliers shall submit the lists in the format shown Attachment D. The Department will provide protective treatment to the lists. The Department will make the list of vendors available to the public. Competitive suppliers shall submit their initial list vendors on August 3, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

Disclosure of Product Information - In Section VI, above, the Department sets forth an initiative that requires competitive suppliers to provide consumers with a Contract Summary Form that includes (1) product information related to price, term, early cancellation fee, automatic renewal, and renewable energy content; and (2) general information about the competitive supplier, the customer's distribution company, and consumers' right to rescind.

Competitive suppliers will be required to submit a Contract Summary Form to the Department for review in certain instances (e.g., variable-price products, voluntary renewable energy products for which a competitive supplier seeks to provide additional language regarding the product's voluntary content). If the Department does not respond within ten business days, the competitive supplier may use the Contract Summary Form as submitted. Competitive suppliers shall submit the notifications in the format shown in Attachment E. These requirements will apply to marketing that takes place on or after August 3, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements. The Department will work with stakeholders, through the D.P.U. 19-07 stakeholder process, to improve the usefulness of the information that consumers are presented regarding products' renewable energy content, both in the Contract Summary Form and the Website.

Marketing Scripts - In Section VII, above, the Department sets forth an initiative that requires competitive suppliers (and third-party vendors that market on their behalf) to use scripts at the beginning of telemarketing calls and door-to-door interactions that (1) identify the name of the vendor and supplier and (2) state that the supplier is not affiliated with the local utility or a municipal energy program. Competitive suppliers are permitted to identify the name of consumer's distribution company only in limited circumstances. These requirements will take effect on August 3, 2020.

Recording of Marketing Interactions - In Section VIII, above, the Department sets forth an initiative that requires competitive suppliers to record (outgoing) telemarketing calls

conducted on their behalf for which the duration exceeds one minute, regardless of whether the call did or did not result in a customer enrollment. Competitive suppliers are required to retain their recordings for a minimum of two years. These requirements will take effect on August 3, 2020. The Department will work with stakeholders, through the D.P.U. 19-07 stakeholder process, to ensure that the Department will have ready access to the recordings. The Department will not require competitive suppliers to record their door-to-door marketing interactions at this time.

Review of Marketing Materials - In Section IX, above, the Department sets forth an initiative that requires competitive suppliers to submit their direct mail marketing materials to the Department for review. Such material must clearly identify the name of the competitive supplier and must disclose that the material is an advertisement for the sale of a product. The Department will not approve direct mail marketing that contains language that could mislead consumers to believe that: (1) they are receiving an official communication from the state, their distribution company, or their municipality; (2) unless they take quick action, their electric or gas service might be interrupted; or (3) the competitive supplier is working in conjunction with a municipal aggregation program. For renewable energy products, the Department will not approve marketing material that misrepresents the renewable energy content of the competitive supply product or of alternate supply products such as basic service. If the Department does not respond within ten business days, the competitive supplier may use the direct mail marketing material as submitted. These requirements will apply to direct mail marketing material that competitive suppliers send to consumers on or

after August 3, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

Automatic Renewal Notifications - In Section X.B, above, the Department sets forth an initiative that requires competitive suppliers to send an automatic renewal notification to customers (as applicable) between 30 and 60 days prior to the expiration of their contracts. The format for the notifications is shown in Attachment F. These requirements will apply to customers whose contracts expire on or after September 8, 2020.

Automatic Renewal Reports - In Section X.C, above, the Department sets forth an initiative that requires competitive suppliers to submit semi-annual reports on the number of their customers whose contracts have been automatically renewed. Competitive suppliers shall submit their reports in the format shown in Attachment G. The Department will provide protective treatment to the reports as set forth above -- the Department will make aggregated information regarding automatically renewed customers available to the public. Competitive suppliers shall submit their initial automatic renewal reports on August 3, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

Enrollment Reports - In Section XI, above, the Department sets forth an initiative that requires competitive suppliers to submit semi-annual reports on their customer enrollments. Competitive suppliers shall submit their reports in the format shown in Attachment H. The Department will provide protective treatment to the reports as set forth above -- the Department will make aggregated information regarding customer enrollments available to the

public. Competitive suppliers shall submit their initial enrollment reports on August 3, 2020. Prior to that date, the Hearing Officer assigned to this proceeding will provide further direction to competitive suppliers regarding filing requirements.

Energy Switch Website - In Section XII, above, the Department sets forth the rules that will govern the Website's display of municipal aggregation products. The Hearing Officer in this proceeding will inform stakeholders when the rules will take effect, and will provide direction to municipal aggregators regarding the steps they will need to take to display their products on the Website.

XIV. NEXT STEPS

A. Implementation Dates

<u>Initiative</u>	<u>Implementation Date</u>
License Application Review	July 1, 2020
Door-to-Door Marketing Notifications	August 3, 2020
List of Marketing Vendors	August 3, 2020
Contract Summary Form	September 8, 2020
Marketing Scripts	August 3, 2020
Recording of Telemarketing Calls	August 3, 2020
Review of Direct Mail Marketing	September 8, 2020
Automatic Renewal Notifications	September 8, 2020
Automatic Renewal Reports	August 3, 2020
Enrollment Reports	August 3, 2020
Energy Switch Website	To be determined

B. Stakeholder Process

As stated in the sections above, the Department will work with stakeholders, through the D.P.U. 19-07 stakeholder process, to identify ways in which we can improve the Tier One initiatives set forth in the Order. In addition, the Department will continue to investigate

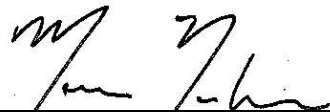
the Tier Two initiatives associated with (1) an enhanced third-party verification process, (2) an “enroll with your wallet” process, and (3) product limitations related to automatic renewal and low-income customers. The Department may investigate other issues as appropriate. The Hearing Officer assigned to this proceeding will inform stakeholders on the manner in which the Department will proceed on these issues.

XV. ORDER

Accordingly, after due notice, opportunity for comment, and consideration, it is

ORDERED: That all competitive suppliers shall comply with the directives set forth herein.


By Order of the Department,



Matthew H. Nelson, Chair



Robert E. Hayden, Commissioner



Cecile M. Fraser, Commissioner