

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF PUBLIC UTILITIES**

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INVESTIGATION BY THE DEPARTMENT OF	:	
PUBLIC UTILITIES ON ITS OWN MOTION	:	D.P.U. 19-07
INTO INITIATIVES TO PROMOTE AND	:	
PROTECT CONSUMER INTERESTS IN THE	:	
RETAIL ELECTRIC COMPETITIVE SUPPLY	:	
MARKET	:	

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**NRG RETAIL’S MOTION FOR CLARIFICATION**

Energy Plus Holdings LLC; Green Mountain Energy Company; Reliant Energy Northeast LLC; and XOOM Energy Massachusetts, LLC (collectively, the “NRG Retail Companies”) hereby request that the Department of Public Utilities (the “Department”) clarify that the in-person enrollment contract summary form obligations set forth in the Department’s May 22, 2020 Order on Tier One Initiatives<sup>1</sup> - which include a component of oral disclosures and close customer contact unworkable during a time of mandatory social distancing – do not apply to enrollments that the NRG Retail Companies initiate in-person within retail stores but are completed wholly online by the customer and fulfilled wholly online by NRG Retail, as described herein.

**I. BACKGROUND**

On May 22, 2020, the Department issued the Order, which set forth rules to implement certain specified tier one consumer protection initiatives in the retail electric and gas competitive

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<sup>1</sup> See D.P.U. 19-07-A, Order on Tier One Initiatives (May 22, 2020) (“Order”), at 39-52.

supply markets (“Tier One Initiatives”).<sup>2</sup> The Hearing Officer subsequently provided additional detail and clarification about those initiatives.<sup>3</sup>

One of the Tier One Initiatives requires competitive suppliers to provide customers with a contract summary form that includes: (i) product information related to price, term, early cancellation fee, automatic renewal, and renewable energy content; and (ii) general information about the competitive supplier, the customer’s distribution company, and consumers’ right to rescind.<sup>4</sup> Further, the Department set parameters for disclosing information on the contract summary forms to customers, with different requirements applying to in person, telephonic and online enrollments.<sup>5</sup> The NRG Retail Companies now hereby request clarification that the online enrollment contract summary form obligations apply to online enrollments that are conducted in person as described herein.

## **II. ENROLLMENT PROCESS**

The NRG Retail Companies market their competitive supply products in various ways, including at stores, shopping malls, farmers’ markets, and other retail venues (collectively, “Retail Venues”). In light of the COVID-19 pandemic, the operation of retail businesses is subject to various mandatory safety standards and recommended best practices.<sup>6</sup> Among other things, retail businesses are to “[i]ninstall physical barriers for checkout stations where possible, otherwise maintain 6 feet distance where not possible” and to “[r]equire face coverings for all workers and customers, except where unsafe due to medical condition or disability.”<sup>7</sup> To address

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<sup>2</sup> *See, generally, id.*

<sup>3</sup> *See* Hearing Officer Memorandum: Tier One Initiatives - Further Direction and Issues for Further Discussion (Jul. 17, 2020).

<sup>4</sup> *See* Order, at 39; Order, at Attachment E.

<sup>5</sup> *See id.* at 51.

<sup>6</sup> *See* Safety Standards and Checklist: Retail Businesses, <https://www.mass.gov/info-details/safety-standards-and-checklist-retail-businesses> (last visited Sep. 16, 2020).

<sup>7</sup> *Id.*

these requirements, and general COVID-19-related health and safety concerns, the NRG Retail Companies developed an approach to ensure that marketing can occur at Retail Venues with the requisite amount of distance between customers and sales representatives and to limit the amount of time that customers and sales representatives spend in each other's presence. Under this approach, the sales agent initiates the enrollment process on a sales tablet, while standing at a distance, and talks the customer through selection of the product. The sales agent then enters the customer and account details for each account being enrolled. At this point, the customer has a choice of methods to receive a link to confirm the enrollment (either via text message or email). The customer will use this link to complete the enrollment from his or her personal device and can do this either at the store or later. After accessing the link, the customer is taken to the enrollment confirmation page where all details of the enrollment are summarized and can be reviewed. The customer also reviews the Contract Summary Form and Terms of Service, consents to authorization language, consents to contact terms and signs the enrollment form – all electronically from his or her personal device. After the enrollment is complete the customer receives an email confirming the enrollment completion. It contains an enrollment confirmation form, notice of cancellation, Contract Summary Form and Terms of Service documents.

This approach has been well received in locations where the NRG Retail Companies have begun using it. The process is simple and convenient. It allows the customer to confirm his/her enrollment information from an appropriate distance, using an electronic device of his/her choosing, and at a time of his/her choosing. In fact, it is effectively a “contactless” method of enrollment because the customer avoids touching devices, writing implements (e.g., the sales representative's tablet and pens) or hard copy documents that might otherwise be used to enroll. Moreover, it also enhances the customer experience. For example, because the enrollment is

accomplished with an online platform, the customer can shorten his/her interaction with the sales representative. This mitigates COVID-19-related risk from extended interactions, and the difficulty of having conversations in a socially distanced setting, when both parties are wearing face-coverings. In fact, because this enrollment approach has been so well received, the NRG Retail Companies envision keeping it as an option even after COVID-19-related restrictions on retail business operations end.

### **III. CLARIFICATION REQUEST**

Fundamentally, the enrollment takes place online via an online portal created specifically for tablets and personal devices. While the customer has a marketing interaction with the sales representative the customer confirms all the enrollment information on his/her personal device. The customer consents to the enrollment through an online process which includes viewing the Contract Summary and Terms of Service. Thus, customers are free to electronically enroll at their convenience<sup>8</sup>. In fact, the customer is under no obligation to remain at the Retail Venue while completing his/her enrollment. Further, like an online enrollment, once the enrollment is completed, the customer will receive an electronic copy of the Terms of Service, including the Contract Summary Form. As a consequence, the enrollment process is more akin to an online enrollment, than an in-person enrollment.

Moreover, given current conditions, providing the contract summary form information orally could prove challenging for a sales representative wearing a face-covering from a distance of at least six feet away, particularly in light of the background noise that is a feature of many Retail Venues. In fact, because of these obstacles, there is an increased risk that customers could mishear or misunderstand contract summary form information delivered orally. In addition,

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<sup>8</sup> The email link containing the enrollment offer is only valid for 160 hours and will expire thereafter. For customers choosing the text option, the customer's 160-hour window begins when the customer texts YES to consent to receiving information via text.

allowing the contract summary form to be provided electronically, rather than in hard copy, reduces the need for contact between sales representatives and consumers. Therefore, the Department should clarify that enrollments using the NRG Retail Companies' approach outlined above constitute online enrollments for which contract summary form information should be provided in accordance with the Order's directives for enrollments that take place online.

### **CONCLUSION**

For the foregoing reasons, the Department should clarify that online enrollments following in-person marketing interactions at Retail Venues as described herein constitute online enrollments for the purposes of distributing contract summary form information pursuant to the requirements of the Order.

Respectfully submitted,  
ENERGY PLUS HOLDINGS LLC,  
GREEN MOUNTAIN ENERGY COMPANY,  
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