

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

MEMORANDUM

TO: Distribution List in:
D.P.U. 19-07, Investigation into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market.

FROM: Gregory Wade, Hearing Officer

RE: Request for Comments

DATE: November 19, 2020

CC: Mark D. Marini, Secretary

I. INTRODUCTION

On January 18, 2019, the Department of Public Utilities (“Department”) opened 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). The Department identified initiatives that were intended to: (1) increase customer awareness of the electric competitive supply market and the value these markets can provide, thus allowing customers 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 customers. D.P.U. 19-07, at 4-5, 10.

On May 22, 2020, the Department issued D.P.U. 19-07-A, in which it set forth initiatives related to (1) Department 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 notification and reports,

(9) enrollment reports, and (10) display of municipal aggregation products on the Energy Switch MA website (“Website”). The Department identified issues associated with several of the initiatives set forth in D.P.U. 19-07-A that require further discussion with stakeholders. D.P.U. 19-07, at 97-98.

On August 6, 2020, the Department convened a Zoom meeting to discuss with stakeholders the issues identified in D.P.U. 19-07-A associated with (1) license renewal applications, (2) door-to-door marketing notifications, (3) disclosure of product information (renewable energy and basic service information to be included on contract summary form), (4) recording of telemarketing calls, (5) review of direct mail marketing, and (6) the display of renewable energy information on the Website (August 6, 2020 PowerPoint presentation). In addition, Department staff discussed with stakeholders the definition of a small commercial and industrial (“C&I”) consumers (August 6, 2020 PowerPoint presentation, slide 21). At the request of the Department, Davis, Malm & D'Agostine, P.C (“Davis Malm”) and the Retail Electric Supply Association (“RESA”) presented proposals on issues related to the door-to-door marketing notifications and the definition of small C&I consumers. Staff presented proposals on the remaining issues.

The Department seeks comment on the proposals set forth below related to the issues discussed in the August 6, 2020 Zoom meeting (Sections II through VIII). In addition, the Department seeks comment on staff proposals related to the untimely filing of license renewal applications and customer assignment for gas customers (Section IX). Finally, the Department announces that we will convene a Zoom meeting on Wednesday December 16, 2020 to discuss initiatives that the Department categorizes as Tier Two initiatives (Section XI).

As specified in D.P.U. 19-07-A, the issues addressed in this Hearing Officer Memorandum are associated with initiatives that apply both to licensed electric and gas competitive suppliers, and licensed electricity brokers and gas retail agents,¹ with the exception of the Website-related issue (which applies only to electric competitive suppliers). For the sake of simplicity, this Hearing Officer Memorandum uses the term “Competitive Entities” to refer jointly to both types of licensed entities.

¹ In the July 17, 2020 Hearing Officer Memorandum, at 3, the Department specified the instances in which the initiatives would apply to each type of Competitive Entity.

II. PUBLIC ACCESS TO LICENSE RENEWAL APPLICATIONS

A. Summary of Initiative/Issues for Further Discussion

In D.P.U. 19-07-A at 10-12, the Department set forth the process by which we will make pending new license applications available to stakeholders for comment. In D.P.U. 19-07-A at 12-13, the Department stated that it is not appropriate to subject license renewal applications to a stakeholder comment process because of the administrative nature of the Department's review of such applications (to verify that a licensee seeks to maintain its license for the upcoming year and ensure that the licensee's business information is current). However, the Department stated that we agree with the Consumer Advocates² that general business information about licensed Competitive Entities should be available to the public on the Department's website and that, accordingly, we intend to post licensee's renewal applications on our website. D.P.U. 19-07-A at 13. The Department stated that we intend to work with stakeholders to better understand how we might revise the existing license renewal application to provide information that would be most useful to stakeholders, while ensuring that posting such information on the Department's website would not violate licensees' confidentiality concerns. D.P.U. 19-07-A at 13.

B. Department Staff Proposal

At the August 6, 2020 Zoom meeting, Department staff discussed with stakeholders the information included on the existing renewal license application:³ (1) legal name of applicant; (2) applicant's business address; (3) website URL (optional); (4) contact information for a customer service contact person; (5) contact information for a regulatory contact person; (6) name and address of a resident agent for service of process; (7) a summary of any history of bankruptcy, dissolution, merger, or acquisition of the entity in the last year; and (8) a statement identifying whether there have been any regulatory actions taken against the applicant in any jurisdiction over the last year (August 6, 2020 PowerPoint presentation, slides 4-6).

Based on the discussion during the Zoom meeting, staff proposes to add information related to licensees' corporate structure to the license renewal application. A copy of the proposed license renewal application is included as Attachment 1 to this Hearing Officer

² The Consumer Advocates include the Office of the Attorney General, the National Consumer Law Center, and the Greater Boston Legal Services. D.P.U. 19-07-A at 5.

³ License renewal applications are available at <https://www.mass.gov/how-to/renew-a-competitive-supplier-or-electricity-broker-license> and <https://www.mass.gov/how-to/renew-a-gas-supplier-or-retail-agent-license>, for electric and gas applications, respectively.

Memorandum. Staff requests comment on the proposal, including whether the posting of such information on the Department's website would pose confidentiality concerns. In addition, consistent with the discussion during the Zoom meeting, Staff requests comment on whether (and if so, why) the license renewal application would be more useful to stakeholders if the application indicated whether a licensee is licensed to serve residential customers.⁴

III. DOOR TO DOOR MARKETING NOTIFICATION

A. Summary of Initiative

In D.P.U. 19-07-A at 19-30, the Department set forth an initiative that requires Competitive Entities that are door-to-door marketing to residential consumers to submit daily notifications to the Department, with the notifications provided to the Department and the Attorney General on a confidential basis⁵ two business days in advance of the marketing date. The initiative (1) establishes a limit of five municipalities that Competitive Entities can identify in a notification, and (2) requires that Competitive Entities identify specific neighborhoods in the City of Boston ("Boston") in which they may be engaging in door-to-door marketing. This initiative took effect August 3, 2020.

The Department identified three potential improvements to the initiative related to (1) notifying municipal officials, (2) implementing the municipality limit on a regional or vendor basis, and (3) applying the neighborhood requirement to additional municipalities. Department staff addresses these issues below.

B. Notification of Municipal Officials

1. Issues for Further Discussion

In D.P.U. 19-07-A at 25, the Department stated that it sees merit in the Municipal Aggregation Communities' recommendation that the Department require Competitive Entities

⁴ Department staff notes that this information currently is available on the Department's file room at <https://eeaonline.eea.state.ma.us/DPU/Fileroom/Licenses> and <https://eeaonline.eea.state.ma.us/DPU/Fileroom/Suppliers>, for electric and gas Competitive Entities, respectively.

⁵ Specifically, the Department provided a standing order for protective treatment for the municipality and vendor contact information contained within the notification. D.P.U. 19-07-A at 28-29. The Department stated that notification to the Attorney General is contingent upon the Attorney General and a competitive supplier executing a non-disclosure agreement. D.P.U. 19-07-A at 25-26.

to provide notification, on a confidential basis, to designated officials of the municipalities to which competitive suppliers expect to engage in door-to-door marketing. The Department stated that “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.” The Department concluded that more discussion with stakeholders was required to establish the process by which such a requirement would be implemented, and stated that we will work with stakeholders to gain a better understanding of the information that municipal officials would seek to receive from Competitive Entities, and the confidential treatment that should apply to that information. D.P.U. 19-07-A at 25.

2. Department Staff Proposal

At the August 6, 2020 Zoom meeting, Department staff presented a proposal for the process by which Competitive Entities would notify municipal officials of upcoming door-to-door marketing activities (August 6, 2020 PowerPoint presentation, slides 7-8). Under staff’s proposal, municipalities that seek to be so notified would be required to provide to the Department contact information (*i.e.*, name, email address) for a designated municipal official(s). The Department would make such information readily available on our website. For municipalities that provide contact information for a designated official(s), a Competitive Entity would be required to send an email to the designated official(s) of each municipality that the entity intends to door-to-door market, as indicated in its notification to the Department.⁶ Such email would include (1) contact information for the Competitive Entity and its third-party marketing vendor(s) (*i.e.*, name, position, email address, and phone number), and (2) the date(s) of expected door-to-door marketing in the applicable municipality, as indicated in its notification to the Department. Competitive Entities would be required to notify municipal officials two business days in advance of the door-to-door marketing date, consistent with the notification provided to the Department. The requirement to notify a municipality would be contingent upon the Competitive Entity and municipality arranging for the transfer of confidential information.

Department staff seeks stakeholder comments on the proposal set forth above, including: (1) the contact information that a municipality should be required to provide for its designated official(s); (2) the information that Competitive Entities should be required to include in their notification email to municipalities; and (3) ways in which the Department may (i) best ensure that municipalities are aware of this notification provision, and (ii) facilitate the exchange of confidential information between municipalities and Competitive Entities.

⁶ Competitive suppliers would have no obligation to contact municipalities that did not identify a designated official(s).

C. Five-Municipality Limit

1. Issues for Further Discussion

In D.P.U. 19-07-A at 23, the Department stated that it sees merit in commenters' recommendations that the Department impose the five-municipality limit on a regional or vendor basis,⁷ but concluded that more discussion is required to better understand the pros and cons of these approaches. The Department stated that it would work with stakeholders to gain a better understanding of how the approaches might be incorporated into the door-to-door marketing notification requirements. D.P.U. 19-07-A at 23.

2. Competitive Supplier Proposal

At the August 6, 2020 Zoom meeting, RESA and Davis Malm proposed that the Department impose the five-municipality limit on a distribution company service territory basis, rather than on a statewide basis. Under such an approach, electric Competitive Entities could identify, in each of their door-to-door marketing notifications, five municipalities that are located in each of the service territories of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("National Grid"); Western Massachusetts Electric Company ("Eversource West") and NSTAR Electric Company ("Eversource East"), each d/b/a Eversource Energy ("Eversource"); and four municipalities in the Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil") service territory,⁸ for a total of 19 municipalities statewide. Similarly, gas Competitive Entities could identify up to five municipalities in each of the gas company distribution company service territories in the Commonwealth: The Berkshire Gas Company; Blackstone Gas Company;⁹ Eversource Gas Company of Massachusetts¹⁰ and NSTAR Gas Company, each d/b/a Eversource Energy; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Boston Gas Company and the former Colonial Gas Company, each d/b/a National Grid; and Unitil, for a total of 32 municipalities statewide.¹¹

⁷ These commenters are Davis Malm, RESA, and Vistra.

⁸ The Unitil service territory includes four municipalities in total.

⁹ The Blackstone Gas Company service territory includes two municipalities in total.

¹⁰ On October 7, 2020, the Department approved the acquisition of Bay State Gas Company d/b/a Columbia Gas of Massachusetts by Eversource Energy and Eversource Gas Company of Massachusetts. Bay State Gas Company, D.P.U. 20-59 (2020).

¹¹ Department staff notes that applying the five municipality limit at the service territory, rather than statewide, basis does not affect the obligation of Competitive Entities to

Department staff seeks comments from stakeholders on the proposed approach summarized above. As part of these comments, staff seeks input from stakeholders on whether the Department should defer consideration of such an approach until such time that we gain more information and experience on the application of the five-municipality limit on a statewide basis. Staff also seeks input on whether the Department should condition the five municipality per service territory approach on a Competitive Entity agreeing to use global positioning system/geotracking technology to track the location of its employees and vendor agents that are door-to-door marketing on the Competitive Entity's behalf.¹² Finally, staff seeks input from stakeholders on the appropriateness of applying the five municipality per service territory approach to the gas competitive market, given the larger number of gas service territories in the Commonwealth.

D. Identification of Neighborhoods in Large Municipalities

1. Issues for Further Discussion

In D.P.U. 19-07-A at 24, the Department stated that it sees merit in commenters' recommendations regarding the application of the neighborhood requirement to other large municipalities,¹³ but concluded 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). The Department stated that it 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. D.P.U. 19-07-A at 24.

provide separate notifications for the door-to-door marketing of electric and gas supply products, even if an entity is marketing the two types of products jointly in the specified municipalities.

¹² Such a condition would be a variation on the proposal put forth by Davis Malm that the Department waive the municipality limit for Competitive Entities that agree to use such technology.

¹³ These commenters are the Consumer Advocates, the Electric Distribution Companies, and the Municipal Aggregation Communities.

2. Department Staff Proposal

a. Introduction

At the August 6, 2020 Zoom meeting, Department staff indicated that we intend to defer consideration of applying the neighborhood requirement to other municipalities until a later date, stating that we seek to gain more information on the neighborhood requirement as it relates to Boston before expanding the requirement to other municipalities (August 6, 2020 PowerPoint presentation, slide 9). The door-to-door notifications provided to the Department to date have caused staff to rethink our position on this matter. Below, staff sets forth proposals to apply the neighborhood requirement to the Cities of Springfield and Worcester (“Springfield” and “Worcester,” respectively).¹⁴ Consistent with D.P.U. 19-07-A at 22-24, the neighborhoods established for Worcester and Springfield would count toward the five-municipality limitation.¹⁵

b. Springfield

As shown in Attachment 2, for the period September 14, 2020¹⁶ through October 31, 2020 significantly more Competitive Entities identified Springfield in their daily door-to-door marketing notifications than in any other municipality (or, in the case of Boston, neighborhood) in the Commonwealth.¹⁷ Because of this, and in light of the fact that Springfield is the Commonwealth’s third most populated municipality, behind only Boston

¹⁴ Department staff does not propose to explore the use of zip codes as an alternative to neighborhoods at this time - staff seeks to gain more information on the implementation of the neighborhood requirement before exploring alternative approaches.

¹⁵ Staff notes that, if the Department decides to adopt the five municipality per service territory proposal discussed above, the three municipalities to which the neighborhood requirement will apply will be located in separate service territories - Eversource East (Boston), National Grid (Worcester), and Eversource West (Springfield).

¹⁶ Department staff used September 14, 2020 as the initial date for this analysis because it is the Monday after Labor Day.

¹⁷ Specifically, an average of 2.6 Competitive Entities identified Springfield in their daily door-to-door marketing notifications during this period, as compared to an average of 1.5 for Boston - Dorchester, the next highest municipality that was identified in door-to-door marketing notifications during that same period.

and Worcester,¹⁸ staff considers it reasonable and appropriate to apply the neighborhood requirement to Springfield.

Attachment 3 includes a map of Springfield that identifies 17 well-defined neighborhoods.¹⁹ In translating these neighborhoods into areas that could be for used for the purpose of the door-to-door neighborhood requirement in Springfield, staff seeks to balance four objectives: (1) the area should include neighborhoods that are contiguous; (2) the areas should be relatively equal in terms of size and population; (3) the proportion of number of areas to Springfield's total population should be relatively equal to the proportion established for Boston; and (4) the population within an area should have similar income characteristics. To strike an appropriate balance between these objectives, staff proposes to assign the 17 neighborhoods shown in the map into five door-to-door notification neighborhoods (Attachment 3). As shown in Attachment 3, the areas are relatively equal in size and the neighborhoods within each area are contiguous. In addition, establishing five door-to-door notification neighborhoods is consistent with the neighborhood-to-population proportion established for Boston.²⁰ Finally, the areas are relatively equal in population and have similar demographic characteristics with respect to median family income, as shown in Attachment 4. Staff seeks comment on our proposal - staff requests that stakeholders that propose alternatives to staff's proposed door-to-door notification neighborhoods for Springfield provide documentation in support of their proposals, including, to the extent possible, maps that clearly delineate the proposed neighborhoods.

¹⁸ According to the United States Census Bureau, as of July 1, 2019, the populations of Boston, Worcester, and Springfield were 692,000, 185,428, and 153,606, respectively. <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

¹⁹ Source - [https://www.springfield-ma.gov/planning/fileadmin/ Planning_files/ Springfield and its Neighborhoods 4-8-19.pdf](https://www.springfield-ma.gov/planning/fileadmin/Planning_files/Springfield_and_its_Neighborhoods_4-8-19.pdf). Staff notes that these neighborhoods are consistent with, although not identical to, the neighborhoods identified by the Distribution Companies in their D.P.U. 19-07 March 5, 2020 Comments.

²⁰ In D.P.U. 19-07-A Attachment 1, the Department identified 21 Boston door-to-door notification neighborhoods. Thus, the proportion of Springfield neighborhoods to Boston neighborhoods (five to 21, approximately 24 percent) is consistent with the proportion of the cities' populations (153,606 to 692,000, approximately 22 percent).²¹ These neighborhoods are (1) Tatnuck Area/Airport Hill, (2) Columbus Park, (3) Grafton Hill, (4) Belmont Hill, (5) Burncoat Area, (6) Vernon Hill, (7) Central Business District, (8) Salisbury Heights, and (9) South Worcester. Distribution Companies D.P.U. 19-07 March 5, 2020 Comments, Attachment A.

c. Worcester

As mentioned above, Worcester is the Commonwealth's second most populated municipality. Because of this, and in light of the fact that, in recent weeks, Worcester is among the top municipalities identified by Competitive Entities in their daily door-to-door marketing notifications (Attachment 5), staff considers it reasonable and appropriate to apply the neighborhood requirement to Worcester.

Department staff puts forth two proposals for Worcester door-to-door notification neighborhoods for stakeholder comment. One proposal would establish such neighborhoods using the five City Council districts in Worcester, as shown in Attachment 6. A second proposal would establish such neighborhoods based on the Worcester neighborhoods identified by the Distribution Companies in their D.P.U. 19-07 March 5, 2020 comments.²¹ For this second proposal, staff seeks comments on how these neighborhoods could be combined to establish door-to-door notification neighborhoods that would strike the best balance between the objectives stated above. Staff requests that stakeholders provide that alternatives to staff's proposals provide documentation in support of their proposals, including, to the extent possible, maps that clearly delineate the proposed neighborhoods.

IV. CONTRACT SUMMARY FORM

A. Introduction

In D.P.U. 19-07-A at 39-50, the Department set forth an initiative that requires Competitive Entities to provide consumers, at the point of sale, 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, consumers' right to rescind, and the Website. The Department identified two ways in which the usefulness of the Contract Summary Form could be improved, related to information regarding (1) the competitive supply products' voluntary renewable energy content,²² and (2) the applicable basic or default service price.

²¹ These neighborhoods are (1) Tatnuck Area/Airport Hill, (2) Columbus Park, (3) Grafton Hill, (4) Belmont Hill, (5) Burncoat Area, (6) Vernon Hill, (7) Central Business District, (8) Salisbury Heights, and (9) South Worcester. Distribution Companies D.P.U. 19-07 March 5, 2020 Comments, Attachment A.

²² Voluntary renewable energy content refers to the renewable energy content of a product that exceeds the minimum content required by the Commonwealth.

B. Voluntary Renewable Energy Content

1. Summary of Initiative/Issues for Further Discussion

In D.P.U. 19-07-A at 43-45, the Department specified the language that Competitive Entities must use on their Contract Summary Forms to describe their products' renewable energy content. For products for which the renewable energy content meets the state minimum requirements, the Contract Summary Form must state that:

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.

Similarly, for products for which the renewable energy content exceeds the state minimum requirements ("voluntary renewable energy products"), the Contract Summary Form must state that:²³

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.

In D.P.U. 19-07-A at 44, the Department stated that we see merit in the recommendations of the Consumer Advocates and the Municipal Aggregation Communities 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,²⁴ or resources located outside the New England region. The Department stated that we intend to work with stakeholders to explore ways to optimize the usefulness of the renewable energy information provided to consumers through the Contract Summary Form.

2. Department Staff Proposal

At the August 6, 2020 Zoom meeting, Department staff presented a proposal that would require Competitive Entities to state on their Contract Summary Forms whether a product's voluntary renewable energy resources (1) are located outside or within the New

²³ The Department requires 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.

²⁴ RPS refers to the Commonwealth's Renewable Portfolio Standards. 225 CMR 14.00 and 15.00.

England region, and (2) have been designated by the Commonwealth as RPS Class I resources (August 6, 2020 PowerPoint presentation, slide 11-15).²⁵ Based on the discussion during the meeting, staff proposes specified language for three types of voluntary renewable energy products. Consistent with the Department's approach in D.P.U. 19-07-A, staff's proposed language takes into account only those clean energy resources required under the Clean Energy Standard (inclusive of RPS Class I), the RPS Class II, and the RPS Class II Waste-to-Energy requirement – it does not include either the Alternative Energy Portfolio Standard requirement nor the Clean Peak Energy Portfolio Standards.

1. For voluntary renewable energy products that include renewable resources that are located outside the New England region, the Contract Summary Form would state:

The Commonwealth of Massachusetts requires that all electric supply products include, in [2020], a minimum of [27]% clean energy resources that are located within the New England region, including at least [16]% of which the Commonwealth has designated as “premium” renewable resources. This product includes [100]% renewable energy resources. The resources that exceed the minimum requirement may be located outside of the New England region and have not been designated as “premium” resources by the Commonwealth.

2. For voluntary renewable energy products for which all of the voluntary renewable resources are located within the New England region but are not RPS Class I resources, the Contract Summary Form would state:

The Commonwealth of Massachusetts requires that all electric supply products include, in [2020], a minimum of [27]% clean energy resources that are located within the New England region, including at least [16]% of which the Commonwealth has designated as “premium” renewable resources. This product includes [100]% renewable energy resources and all of the resources that exceed the minimum requirement are located within the New England region, but have not been designated as “premium” resources by the Commonwealth.

²⁵ In order to improve the usefulness of the renewable energy information provided to consumers through the Contract Summary Form, staff proposes that (1) resources located within the New England region refer to those resources that are tracked through the New England Generation Information System, and (2) the term “premium resources” refer to RPS Class I resources.

3. For voluntary renewable energy products for which all of the voluntary renewable resources are located within the New England region and are RPS Class I resources, the Contract Summary Form would state:

The Commonwealth of Massachusetts requires that all electric supply products include, in [2020], a minimum of [27]% clean energy resources that are located within the New England region, including at least [16]% of which the Commonwealth has designated as “premium” renewable resources. This product includes [100]% renewable energy resources, all of which are located within the New England region and have been designated as “premium” resources by the Commonwealth.

For voluntary renewable products that do not fit into one of these definitions, Competitive Entities would need to submit the Contract Summary Form for Department review. Competitive Entities that seek to use alternative language would also need to submit the Contract Summary Form for Department review. The Department seeks comments on this proposal.

C. Basic Service and Gas Supply Information

1. Summary of Initiative/Issues for Further Discussion

In D.P.U. 19-07-A at 47-48, the Department specified the language to be included on Contract Summary Forms regarding the basic service and gas supply products offered by the electric and gas distribution companies, respectively. For electric supply products, the Contract Summary Form must state that:

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 Contract Summary Form must state that:

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>.

The Department did not require that the Contract Summary Forms specify basic service prices or gas supply rates.

In D.P.U. 19-07-A at 48-49, the Department stated that we see merit in the recommendation of the Consumer Advocates that the Contract Summary Form identify basic service prices. The Department stated that the purpose of the Contract Summary Form is not only to provide consumers with information that makes them sufficiently aware of the supply product being offered, but also to act as a vehicle to make consumers aware that alternate supply product options are available to them. The Department stated that identifying basic service prices on the Contract Summary Form would complement the statement from the Department “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.” The Department stated that we intend to work with stakeholders to gain a better understanding of how to best present basic service prices on the Contract Summary Form.

2. Department Staff Proposal

At the August 6, 2020 Zoom meeting, Department staff presented a proposal in which Contract Summary Forms for electric and gas products would: (1) identify the current basic service/gas supply rate, and the month through which the rate will be in effect; (2) identify the upcoming basic service/gas supply rate (if known at time of enrollment), and the effective date and term of the new rate; and (3) if the upcoming basic service/gas supply rate is not known, provide information regarding whether the upcoming rate is expected to increase or decrease (August 6, 2020 PowerPoint presentation, slide 11-15). This information would be provided in the bottom box of the Contract Summary Form, directly preceding the Department’s statement regarding Energy Switch/Gas Division website.

Based on the discussion during the meeting, Department staff concludes that the information on the Contract Summary Form should be limited to the identification of existing and upcoming basic service/gas supply rates, consistent with the presentation of basic service rates on the Website. While staff recognizes the value of providing consumers with information regarding the cyclical nature of basic service/gas supply rates, we conclude that the difficulty of conveying such information on the Contract Summary Form in a concise and useful manner outweighs the benefits that such information would provide to consumers. Staff concludes that consumers are better served by being directed to the Department’s website to better understand this dynamic - the Website for basic service prices²⁶ and the Gas Adjustment Factor webpage for gas supply rates. To clarify to consumers that competitive suppliers are providing this information as a regulatory requirement of the Department, the language would be preceded by “A Message from the Massachusetts Department of Public Utilities.”

²⁶ Staff will work with stakeholders to ensure that the Website provides useful information to consumers regarding the cyclical nature of basic service.

Consistent with the above, staff proposes the following language for Contract Summary Forms for electric supply products:

“A Message from the Massachusetts Department of Public Utilities - Your electric utility offers you a basic service supply product at a price of *[xx]* cents per kWh through *[month/year]*. For the period *[month/year]* through *[month/year]*, the basic service price will be *[xx]* cents per kWh. The Department 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. You can visit the website at <http://energyswitchma.gov>.” OR

“A Message from the Massachusetts Department of Public Utilities - Your electric utility offers you a basic service supply product at a price of *[xx]* cents per kWh through *[month/year]*. A new basic service price will be in effect for the six-month period beginning *[month/year]*. The Department 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. You can visit the website at <http://energyswitchma.gov>.”

For gas supply products, Contract Summary Forms, staff proposes the following language:

“A Message from the Massachusetts Department of Public Utilities - Your gas utility offers you a default gas supply product (the Gas Adjustment Factor or “GAF”) at a price of *[xx]* cents per therm through *[month/year]*. For the period *[month/year]* through *[month/year]*, the default gas supply price will be *[xx]* cents per therm. Your utility may adjust this rate depending on the monthly market price for natural gas. The Department 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>.
OR

“A Message from the Massachusetts Department of Public Utilities - Your gas utility offers you a default gas supply product (the Gas Adjustment Factor or “GAF”) at a price of *[xx]* cents per therm through *[month/year]*. A new default gas supply price will be in effect for the six-month period beginning *[month/year]*. Your utility may adjust these rates based on monthly market price for natural gas. The Department 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>.”

Under the proposal, the Department would provide information on its Website regarding, for each distribution company: (1) the existing basic service/gas supply rates, (2) the date on which Competitive Entities must include upcoming basic service/gas supply rates on their Contract Summary Forms, and the rates to be so included; and (3) when upcoming rates are not known, the month that the upcoming rates will go into effect. Competitive Entities would be responsible for accessing this information and presenting it accurately on their Contract Summary Forms. Staff seeks comments on the proposal.

V. RECORDING OF TELEMARKETING CALLS

A. Summary of Initiative/Issues for Further Discussion

In D.P.U. 19-07-A at 56-57, the Department set forth an initiative that requires Competitive Entities to record outgoing telemarketing calls conducted on their behalf for which the duration exceeds one minute, regardless of whether the call resulted in an enrollment. Entities are required to retain recordings for a minimum of two years.²⁷ This initiative applies to telemarketing calls made on or after August 3, 2020. The Department noted the importance of ensuring that the Department has access to such recordings in a timely manner, and stated that we intend to work with stakeholders to identify the means by which the Department can access the recordings.

B. Department Staff Proposal

At the August 6, 2020 Zoom meeting, Department staff presented a proposal in which Competitive Entities would be required to provide the Department with access to telemarketing (and accompanying TPV) recordings²⁸ ideally on a real-time basis (in order to allow for a proactive review of such recordings), but at a minimum, within 72 hours of a Department request (August 6, 2020 PowerPoint presentation, slide 19). Based on the discussion during the meeting, staff limits the proposal set forth here to the time within which Competitive Entities must provide the Department a recording of a telemarketing/TPV call upon request. Consistent with the proposal presented at the Zoom meeting, staff proposes that Competitive Entities be required to submit recordings to the Department within three business days of the Department's request. Staff seeks comment on this proposal. As a final

²⁷ In a June 17, 2020 Hearing Officer Memorandum, the Department specified that the two-year period starts with the date of the telemarketing call.

²⁸ Staff emphasizes that it is the responsibility of a Competitive Entity to ensure that it can provide the Department with access to the recording regardless of whether the Competitive Entity continues to employ the services of the third-party vendor that conducted the telemarketing call.

matter, staff notes that the Department will address the issue of real-time access to recordings as a Tier Two initiative (Section XI, below).

VI. DIRECT MAIL MARKETING

A. Summary of Initiative/Issues for Further Discussion

In D.P.U. 19-07-A at 60-64, the Department set forth an initiative that requires Competitive Entities to submit their direct mail marketing materials to the Department for review. The Department stated that it sees merit in providing the Attorney General with access to such material and that it will work with stakeholders to develop such a process.

B. Staff Proposal

At the August 6, 2020 Zoom meeting, Department staff proposed that the Department include the Attorney General on the email that it sends to Competitive Entities informing them that they can proceed with using the marketing material attached to the email (August 6, 2020 PowerPoint presentation, slide 20). The Department seeks comment on this proposal.

VII. DISPLAY OF RENEWABLE ENERGY PRODUCTS ON ENERGY SWITCH

A. Summary of Initiative/Issues for Further Discussion

In D.P.U. 19-07-A at 85-91, the Department set forth an initiative that allows municipal aggregators to display their products on the Website. To accommodate the renewable energy products that municipal aggregation programs offer to their participants, the Department revised the manner in which the Website displays information about a product's voluntary renewable content. The Department stated that we will notify stakeholders when the Website revisions will take effect.

Currently, the Website displays information about a product's voluntary renewable content only for those products that are composed of at least 50 percent renewable energy resources (*i.e.*, including the content required by the Commonwealth). Under the initiative set forth in D.P.U. 19-07-A, this requirement will continue to apply to products that include resources that are not designated by the Commonwealth as RPS Class I resources ("Non RPS Class I Products"). However, for products that are composed entirely of RPS Class I resources ("RPS Class I Products"), the Website will display information about the product's voluntary renewable content regardless of the percentage that renewable resources compose the products. D.P.U. 19-07-A at 88-89. The Department stated that we intend to work with stakeholders to improve the manner in which the Website displays information regarding the voluntary renewable energy content of renewable energy products, including the elimination of the minimum content requirement for Non-RPS Class I products. D.P.U. 19-07-A at 89.

B. Department Staff Proposal

At the August 6, 2020 Zoom meeting, Department staff presented a proposal that would eliminate the minimum renewable energy content requirement for Non-RPS Class I products (August 6, 2020 PowerPoint presentation, slide 22). As such, the Website would display information related to the voluntary renewable energy content of all products that exceed the content required by the Commonwealth, irrespective of whether the product is composed entirely of RPS Class I resources. Staff seeks comment on this proposal.

VIII. DEFINITION OF SMALL COMMERCIAL AND INDUSTRIAL CONSUMER

A. Background

In D.P.U. 19-07-A, the Department identified the following initiatives as being applicable to the marketing and provision of competitive supply services to both residential and small C&I consumers: (1) identification of third-party marketing vendors; (2) disclosure of product information; (3) marketing scripts; (4) recording of telemarketing calls; (5) review of direct mail marketing materials; and (6) automatic renewal notification. In the July 17, 2020 Hearing Officer Memorandum, at 2, the Department stated that further discussion with stakeholders regarding the definition of a small C&I consumer is required before these initiatives can be applied to these customers in a useful manner and, thus, excluded small C&I consumers during the initial stage of the initiatives' implementation. Below, Department staff presents its proposal for the definition of both gas and electric small C&I consumers.

B. Department Staff Proposal

Department staff proposes to define a gas small C&I consumer as a non-residential consumer whose annual gas usage does not exceed 7,000 therms, consistent with the definition set forth in 220 CMR 14.00. Department staff proposes to define an electric small C&I consumer as a non-residential consumer whose annual electric usage does not exceed 15,000 kilowatt hours, consistent with the proposal put forth by RESA at the August 6, 2020 Zoom meeting.²⁹

Department staff proposes that, for a gas or electric C&I consumer that has multiple distribution company accounts (e.g., a fast food chain with multiple locations), Competitive Entities may aggregate the usage of each individual account to determine whether the consumer should be treated as a small C&I consumer for the purpose of complying with the

²⁹ RESA notes that this definition is consistent with the definition used in Illinois, Pennsylvania, and Maryland, where many of the suppliers in Massachusetts are also active.

applicable initiatives. Staff seeks comment on our proposal in general, and specifically on the treatment that should be provided to new gas or electric distribution customers, for whom historical annual usage is not available.

IX. OTHER ISSUES

A. Untimely License Renewal Applications

1. Background

In the February 5, 2020 Hearing Officer Memorandum, at 21, Department staff put forth a proposal regarding the untimely filing of license renewal applications by Competitive Entities. Under the proposal, a competitive supplier that fails to submit a license renewal application within thirty days from the renewal due date would be prohibited from enrolling new customers (the competitive supplier would be allowed to serve its existing customers). The competitive supplier would regain the ability to enroll new customers by submitting a license renewal application within 90 days from the renewal due date. Competitive suppliers that fail to submit the renewal application within 90 days could be subject to further licensure action pursuant to the procedures set forth in Order Establishing Final Interim Guidelines for Competitive Supply Investigations and Proceedings, D.P.U. 16-156-A (2017).

An electricity broker or gas retail agent that fails to submit a renewal application within thirty days from the renewal due date would be prohibited from working with competitive suppliers to facilitate the sale of electricity or gas, respectively. The electricity broker or gas retail agent would regain the ability to work with competitive suppliers by submitting a renewal license application within 90 days from the renewal due date. Electricity brokers and gas retail agents that fail to submit the renewal application within 90 days could be subject to further licensure action pursuant to the procedures set forth in D.P.U. 16-156-A.

The Department received comments on staff's proposal from the Attorney General, Davis Malm, National Energy Marketers Association ("NEM"), and RESA. Davis Malm, NEM, and RESA recommended that the Department provide notification to Competitive Entities regarding untimely license renewals prior to taking the actions set forth in the proposal (Davis Malm April 2, 2020 Comments at 8-9, NEM April 2, 2020 Comments at 5, and RESA April 2, 2020 Comments at 8-10).³⁰ The Attorney General recommended that the

³⁰ Davis Malm additionally recommended that the Department consider: (1) changing the periodicity of renewal filings from annual to every two-five years; and (2) strengthening the requirements for initial licensing, such as use of a minimum financial security requirement (Davis Malm April 2, 2020 Comments at 9). Because these issues are outside of the scope of the issues set forth in the February 5, 2020

Department initiate a formal proceeding in all instances in which a Competitive Entity failed to submit its renewal application within the 90-day timeframe (Attorney General April 2, 2020 Comments at 5).

2. Department Staff Proposal

a. Notification

Based on the comments received, Department staff incorporates the following notification provisions into the proposal put forth here: (1) approximately 30 calendar days prior to the license renewal application due date,³¹ the Department would notify Competitive Entities (via an email sent to each Competitive Entity's regulatory contact)³² of the upcoming deadline for submitting their renewal license application to the Department; and (2) within five calendar days from the license renewal application due date, the Department would send a second notice to those Competitive Entities that had yet to submit a license renewal application.

b. Competitive Suppliers

A competitive supplier that fails to submit a renewal license application within fourteen calendar days from the renewal due date³³ would be prohibited from enrolling new customers (the competitive suppliers would be allowed to serve its existing customers). The competitive supplier would regain the ability to enroll new customers by submitting its renewal license application within 60 calendar days from the renewal due date.³⁴ A

Hearing Officer Memorandum proposal, the Department will not address Davis Malm's comments in this Hearing Officer Memorandum.

³¹ In Hearing Officer Memorandums dated August 5, 2020 and September 1, 2020, the Department established a uniform July 1 date for the filing of license renewal applications, as of 2021.

³² It is the responsibility of Competitive Entities to ensure that their regulatory contact information on file with the Department is accurate and up-to-date.

³³ This period of time was 30 days in staff's initial proposal. Staff proposes to shorten the period to 14 days in light of the fact that notifications will be provided to Competitive Entities.

³⁴ This period of time was 90 days in staff's initial proposal. Staff proposes to shorten the period to 60 days in light of the fact that notifications will be provided to Competitive Entities.

competitive supplier that fails to submit a license renewal application within 60 calendar days from the renewal due date would be required to petition the Department to regain the ability to enroll new customers. The Department may take further licensure action against any competitive supplier that fails to submit the renewal application within 60 days of the due date, pursuant to the procedures set forth in D.P.U. 16-156-A.

The Department would enforce the prohibition against enrolling new customers by directing the distribution companies either to: (1) revise the existing electronic data interchange process so that the competitive suppliers' ability to submit business transactions associated with the enrollment of new customers could be disabled, while its business transactions associated with existing customers could continue unimpeded; or (2) inform the Department when an enrollment transaction has been submitted by a specified competitive supplier(s). In the latter instance, a competitive supplier that enrolled new customers despite the prohibition against doing so would be subject to licensure action pursuant to the procedures set forth in D.P.U. 16-156-A.

c. Electricity Brokers/Gas Retail Agents

An electricity broker or gas retail agent that fails to submit a license renewal application within fourteen calendar days of the renewal due date would be prohibited from working with competitive suppliers to facilitate the sale of electricity or gas, respectively. The electricity broker or gas retail agent would regain the ability to work with competitive suppliers to facilitate the sale of electricity/gas by submitting its renewal license application within 60 calendar days from the renewal due date. An electricity broker or gas retail agent that fails to submit a license renewal application within 60 calendar days from the renewal due date would be required to petition the Department to regain the ability to work with competitive suppliers to facilitate the sale of electricity or gas. The Department may take further licensure action against any electricity broker or gas retail agent that fails to submit a renewal application within 60 calendar days of the due date, pursuant to the procedures set forth in D.P.U. 16-156-A.

The Department would enforce this provision by notifying competitive suppliers' regulatory contacts that competitive suppliers are prohibited from working with a specified electricity broker or gas retail agent to facilitate the sale of electricity or gas until the Department notifies them otherwise. Competitive suppliers that do not comply with this directive would be subject to licensure action pursuant to the procedures set forth in D.P.U. 16-156-A.

d. Request for Comments

Department staff seeks comment on the proposal put forth above, specifically (1) the proposed enforcements mechanisms, and (2) the criteria the Department should use in

determining whether to take further licensure action against a Competitive Entity pursuant to the procedures set forth in D.P.U. 16-156-A.

B. Customer Assignment for Gas Customers

In D.P.U. 14-140-D, the Department established rules for the assignment of customers between electric competitive suppliers. Order Establishing Reporting Requirements and Rules for the Assignment of Customers from one Competitive Supplier to another Competitive Supplier, D.P.U. 14-140-D (2016). Department staff proposes to extend the rules established in D.P.U. 14-140-D to gas suppliers. This proposal requires gas suppliers to notify the Department, the distribution companies, and affected customers when customers are assigned to a new competitive supplier, pursuant to the directions specified by the Department. D.P.U. 14-140-D at 23.

X. REQUEST FOR COMMENTS

The Department seeks written comments on the proposals put forth above no later than 5:00 p.m. on Friday December 18, 2020. Reply comments are due no later than 5:00 p.m. on Friday January 15, 2021. When providing comments, please indicate clearly which initiative you are addressing. Comments may be provided on any or all of the initiatives. We encourage interested persons to present consensus positions and submit comments jointly, when possible.

At this time, all filings will be submitted only in electronic format in recognition of the difficulty that parties and the Department may have filing and receiving original copies. On March 10, 2020, Governor Baker issued a state of emergency related to COVID-19 for the entire Commonwealth. Until further notice, parties must retain the original paper version and the Department will later determine when the paper version must be filed with the Department Secretary. Importantly, all large files submitted must be broken down into electronic files that do not exceed 20 MB.

All documents must be submitted to the Department in pdf format by e-mail attachment to mark.marini@mass.gov, peter.ray@mass.gov, and greggory.wade@mass.gov. The text of the e-mail must specify: (1) the docket number of the proceeding (D.P.U. 19-07); (2) the name of the person or company submitting comments; and (3) a brief descriptive title of the document. All documents submitted in electronic format will be posted on the Department's website by looking up the docket by its number in the docket database at: <https://eeasonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber> (enter "19-07").

XI. TIER TWO INITIATIVES

The initiatives set forth in D.P.U. 19-07-A were categorized by the Department as “Tier One” initiatives that the Department determined could be resolved in the timeliest manner. During the D.P.U. 19-07 stakeholder process, the Department identified several “Tier Two” initiatives that require greater information and discussion before the Department we can determine how best to proceed. D.P.U. 19-07-A at 4-5. The Department will convene a Zoom meeting on Wednesday December 16, 2020, from 1:00 to 5:00 pm to discuss Tier Two initiatives with stakeholders. The Department will provide additional information to stakeholders prior to the meeting.

Attachment 1: Proposed License Renewal Application

Applicant license number (starts with CS or EB): _____

Year renewal submitted: _____

1. Legal name of applicant: _____

2. Business address: _____

3. Website URL (optional): _____

4. Name, title, toll-free telephone number, and email address of customer service contact person:

Name Title

Toll-free telephone number (required) Email

5. Name, title, and direct telephone number and direct email address of regulatory contact person:

Name Title

Address

Direct telephone number (required) Email

6. Name and address of resident agent for service of process (must be located in Massachusetts):

Name

Address

- 7. Provide a description of the corporate structure of the applicant (e.g., identification of parent company, affiliates, owners).
- 8. Provide a summary of any history of bankruptcy, dissolution, merger, or acquisition of the entity in the last year.
- 9. Provide a statement identifying whether there have been any regulatory actions taken against the applicant in any jurisdiction in the last year.

DECLARATION

I/We, _____ and, _____
(print name and title) (print name and title)

declare that I/we have personally reviewed the above statements and that they are true and correct and complete in all material respects. I/We further declare that the information contained in this application was prepared and compiled under our supervision and control. I/We further declare that I/we are authorized by the applicant to file this application on its behalf. I/We acknowledge that we have a positive duty to ascertain the accuracy and completeness of this application and that I/we sign this declaration under personal pains and penalties of perjury, including, but not limited to, those provided by G.L. c. 268, § 6. I/We acknowledge that the applicant is liable for the actions of all third-party contractors whose services it may use.

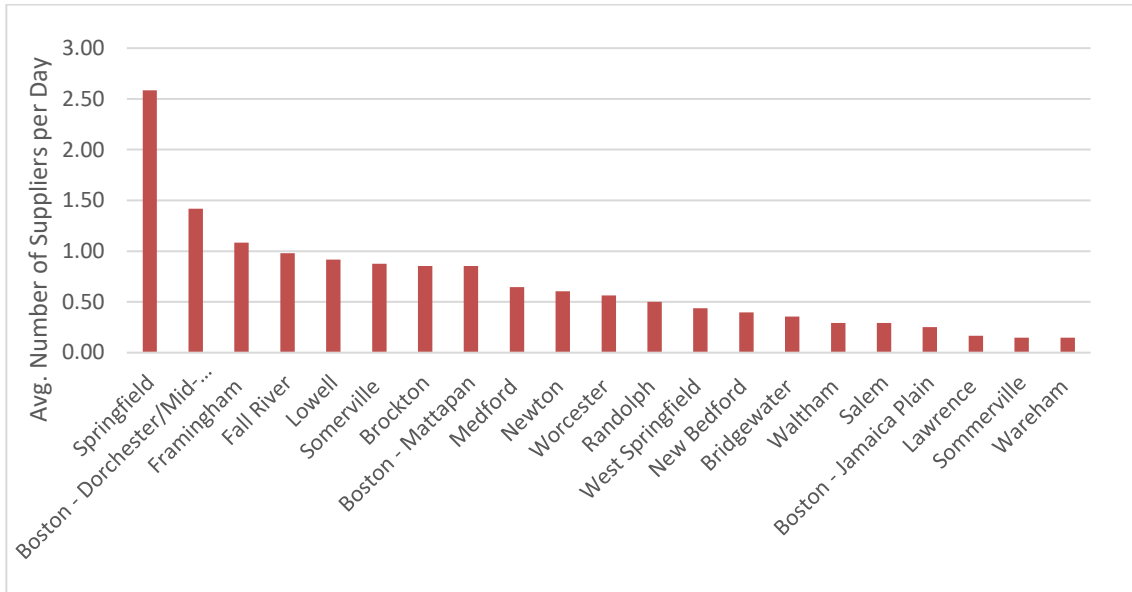
Dated this _____ day of _____ 20____ at _____
(day) (month) (year) (place of execution)

Signature: _____
Title: _____

Signature: _____
Title: _____

NOTARIZATION:
Notarial seal:

Attachment 2: Municipalities that have been Most Identified by Competitive Entities in their Daily Door-to-Door Marketing Notifications, September 14, 2020 through October 31, 2020

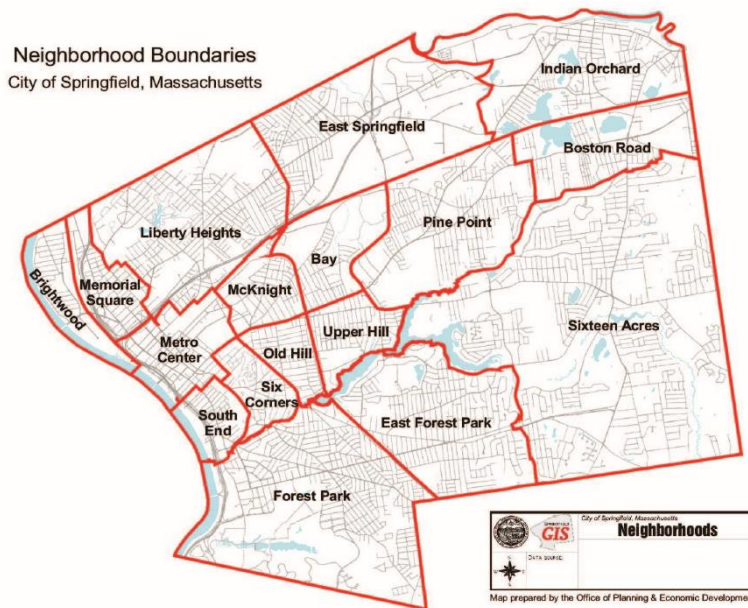


Attachment 3: Proposed Springfield Door-to-Door Notifications Neighborhoods

As discussed in the Hearing Office Memorandum at 8-9, Department staff proposes to assign the 17 Springfield neighborhoods shown in the map below into five door-to-door notification neighborhoods. These neighborhoods are:

1. Bay, Brightwood, McKnight, Memorial Square, Metro Center, Six Corners, South End
2. Boston Road, Indian Orchard, Pine Point
3. East Springfield, Liberty Heights
4. Forest Park, Old Hill, Upper Hill
5. East Forest Park, Sixteen Acres

Source: https://www.springfield-ma.gov/planning/fileadmin/Planning_files/Springfield_Neighborhood_Profiles_PDF.pdf



**Attachment 4: Proposed Springfield Door-to-Door Notifications Neighborhoods -
Population and Median Family Income**

Proposed Neighborhood 1		
	2009 Population	Median family income
Bay	4,506	\$ 27,448
Brightwood	3,912	\$ 19,247
McKnight	5,069	\$ 27,009
Memorial Square	4,134	\$ 17,539
Metro Center	6,752	\$ 20,184
Six Corners	6,767	\$ 17,583
South End	3,016	\$ 13,962
Total	34,156	

Proposed Neighborhood 2		
	2009 Population	Median family income
Boston Road	4,156	\$ 43,152
Indian Orchard	8,669	\$ 43,653
Pine Point	10,318	\$ 50,450
Total	23,143	

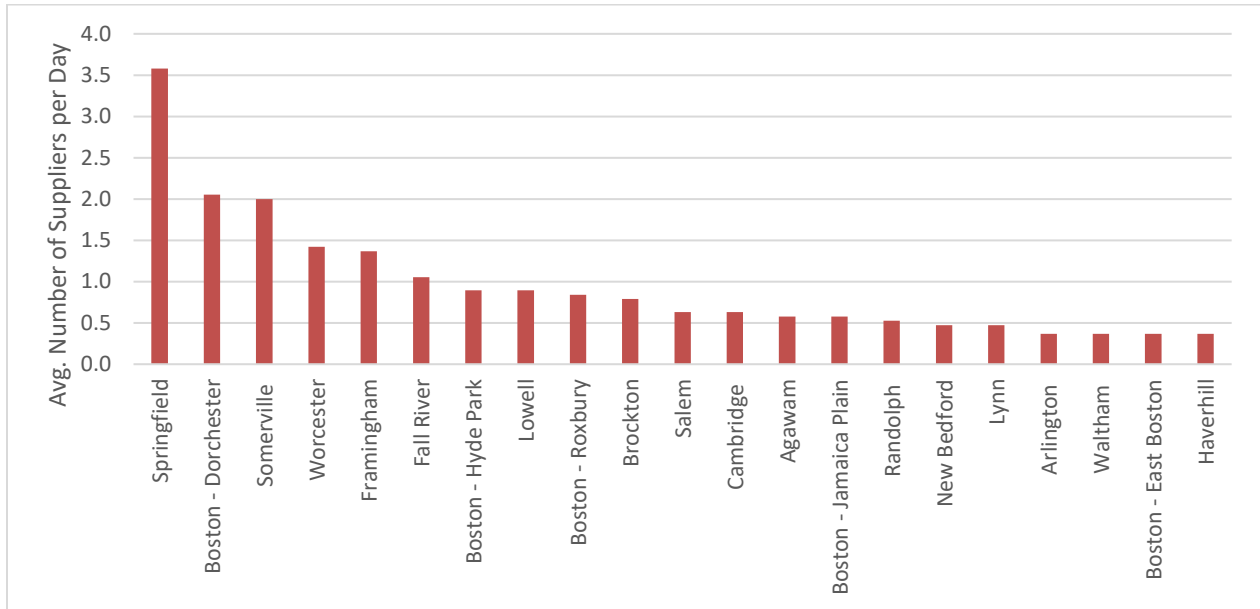
Proposed Neighborhood 3		
	2009 Population	Median family income
East Springfield	6,207	\$ 36,382
Liberty Heights	18,744	\$ 44,408
Total	24,951	

Proposed Neighborhood 4		
	2009 Population	Median family income
Forest Park	23,756	\$ 42,738
Old Hill	4,471	\$ 39,375
Upper Hill	7,999	\$ 35,360
Total	36,226	

Proposed Neighborhood 5		
	2009 Population	Median family income
East Forest Park	10,440	\$ 69,500
Sixteen Acres	24,254	\$ 61,684
Total	34,694	

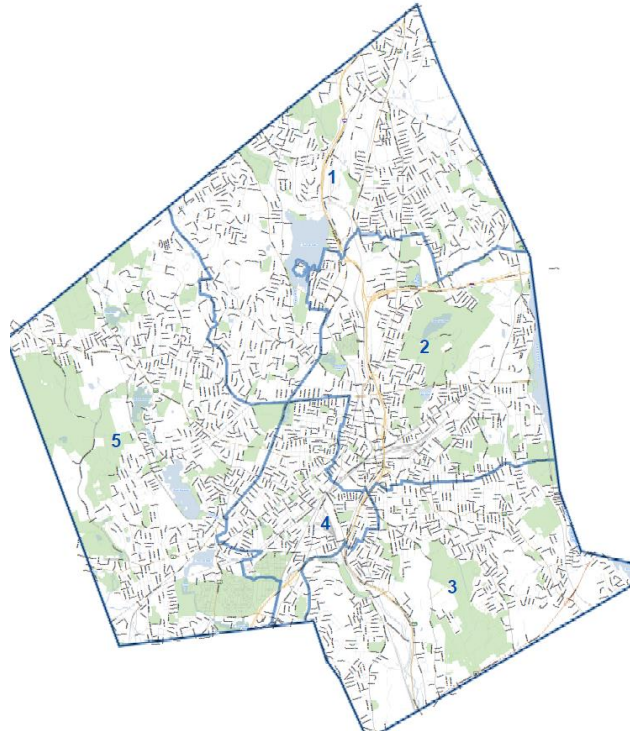
Source: https://www.springfield-ma.gov/planning/fileadmin/Planning_files/Springfield_Neighborhood_Profiles_PDF.pdf. For neighborhoods that have multiple zip codes, Department staff averaged the multiple median family incomes for that given neighborhood to obtain a single median family income for the neighborhood.

Attachment 5: Municipalities that have been Most Identified by Competitive Entities in their Daily Door-to-Door Marketing Notifications, October 13, 2020 through October 31, 2020



Attachment 6: Worcester City Council Districts

The map below shows the five Worcester City Council Districts that would serve as the door-to-door notification neighborhoods for Worcester under one of the two proposals put forth by Department staff (Hearing Office Memorandum at 9).



Source: An interactive map of each of the districts is available at: <http://www.worcesterma.gov/online-maps> under the “District/Ward/Precinct Maps” section of the webpage