

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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

COMMENTS OF
SFE ENERGY MASSACHUSETTS, INC.

SFE Energy Massachusetts, Inc.¹ [hereinafter “SFE Energy”] hereby submits comments on the proposals related to the Department’s retail market investigation as set forth in the Memorandum dated November 19, 2020, in the above-referenced proceeding. The proposals for comment pertain to: public access to license renewal applications; door-to-door marketing notification; the contract summary form; recording of telemarketing calls; direct mail marketing; display of renewable energy products on Energy Switch; the definition of small commercial and industrial customer; untimely license renewal application; and customer assignment for gas customers. SFE Energy supports the Department’s efforts to improve the functioning of the competitive retail market for consumers and competitive entities. These comments are offered to suggest modifications to certain proposals in the interest of promoting an informed consumer shopping experience, facilitating supplier compliance, ensuring adequate protection of confidential information, and appropriately scaling regulatory requirements to the nature of the perceived problem.

¹ SFE Energy Massachusetts, Inc. is a licensed electric and natural gas supplier in the Commonwealth of Massachusetts.

These comments address the proposals in the order set forth in the Memorandum.

I. Public Access to License Renewal Applications

The existing license renewal application includes the following information: legal name of applicant; applicant's business address; website URL (optional); contact information for a customer service contact person; contact information for a regulatory contact person; name and address of a resident agent for service of process; summary of any history of bankruptcy, dissolution, merger or acquisition of the entity in the last year; and a statement identifying whether there have been any regulatory actions taken against the applicant in any jurisdiction in the last year. It is proposed that the license renewal application be revised to include information about a licensee's corporate structure, such as the identification of parent company, affiliates, and owners. It is also proposed that the license renewal application information be posted on the Department's website.

SFE Energy notes that it is common practice that the corporate structure information, history of bankruptcy, dissolution, merger or acquisition, and the statement of regulatory actions would be marked as confidential when filed by the supplier and should be treated as such for Department web posting purposes. In other words, this information should not be publicly shared. Subject to those exceptions, the sharing of the other information collected in the license renewal application does not raise confidentiality concerns and can be made publicly available on the Department website.

II. Door to Door Marketing Notification

Three modifications are proposed to the recent requirement adopted in D.P.U. 19-07-A that entities engaged in residential door-to-door marketing provide daily notice to the Department, two days in advance of the marketing date, limited to five municipalities per notice and identifying specific Boston neighborhoods. The proposed modifications pertain to notification of municipal officials of door-to-door activities; application of the five municipality limit; and identification of neighborhoods in large municipalities.

A. Notification to Municipal Officials of Door-to-Door Marketing Activities – It is proposed that requesting municipal officials be provided with notification of competitive supplier door-to-door marketing activities. SFE Energy is not aware of any other Commission that requires this disclosure to municipalities. SFE Energy submits that the municipality notification requirement raises a number of implementation problems and confidentiality concerns. For instance, it is unclear if FOIA requests apply to information provided to the municipality. It is also unclear what processes the municipalities will utilize to ensure the confidentiality of supplier information is maintained. In the absence of these controls, it implicates a heretofore unknown realm of disclosure to competitors. SFE Energy is also concerned that if the contact information for the municipality is not consistently updated, it could lead to inadvertent supplier reporting errors.

A preferable alternative to supplier notification to the municipalities of door-to-door marketing activities would be the creation of a centralized process at the Department through which a municipality could reach out with inquiries regarding suppliers that are

presently marketing in its area. This would ensure that the confidentiality protections afforded to the information at the Department would be maintained.

B. Modification of Five Municipality Limit – It is proposed that the five municipality limit of the door-to-door notification be expanded from a statewide basis to utility service territory basis. SFE Energy supports this proposal as it continues to accomplish the goal of providing the Department with robust information about the location of supplier marketing efforts while also allowing suppliers to reasonably expand the reach of their marketing activities as market conditions and business indicia would support.

There is no reason to defer the expansion of the notification from a statewide basis to a utility service territory basis. Delay will not enhance the quality of the data reported or the Department's ability to review it. Delaying implementation will, however, negatively impact suppliers' ability to conduct door-to-door marketing when it is cost-effective to expand beyond an arbitrary construct of five municipalities statewide.

The use of the service territory approach should not be premised on the supplier agreeing to use global positioning system/geotracking technology to track the location of employees and vendor agents engaged in door-to-door marketing. A requirement to use GPS tracking technology is overly burdensome and costly to implement and assumes that every agent will be outfitted with GPS. In practice, when using GPS tracking to block a sales territory, if a sale takes place in a blocked area, a third party verification call will not be permitted to be completed, and the enrollment will not be processed. The vendor will be instructed to remove the agent that enrolled the customer in the blocked area. The same results and

goals can be easily achieved without GPS tracking technology if the supplier is maintaining proper controls over the vendor.

The service territory approach to the notifications for the gas market is appropriate notwithstanding the large number of gas service territories in the Commonwealth. In practice, there should be only minimal occasions of overlap of door-to-door marketing activities by more than one entity.

C. Identification of Neighborhoods in Large Municipalities – Based on door-to-door marketing notifications received by the Department thus far, Springfield and Worcester have been identified and proposed for application of the neighborhood reporting requirement. For ease of administration and to reflect practical constraints, it is recommended that the door-to-door marketing notification should continue to be limited to the municipality level. The municipality issues the door-to-door marketing permits, not the neighborhoods, and the permits are not issued at a neighborhood-level of granularity as would be necessary to effectuate this proposal. Moreover, a supplier can review real-time sales submissions for a particular day related to complaints that are emanating from an area within a municipality and then take action as appropriate.

III. Contract Summary Form

Two revisions to the recently adopted Contract Summary Form are proposed related to voluntary renewable energy content information and the inclusion of the utility basic service/default price.

A. Voluntary Renewable Energy Content – It is proposed that the Contract Summary Form language on voluntary renewable energy content be revised to distinguish if the resources

are located within (resources tracked through the New England Generation Information System) or outside the New England region and if it includes RPS Class I Resources. Three proposed variations of language were included in the Memorandum to reflect these categories. SFE Energy offers no comment on the proposed change.

B. Basic Service and Gas Supply Information - The Contract Summary Form currently must include a reference to the Department website for energyswitchma.gov or gas cost adjustment factors, as applicable, but does not include the specific basic service price or gas supply rate. It is proposed that the Form be revised to include identification of existing and upcoming basic service/gas supply rates, framed as a “Message from the Department.” Proposed language for the message was included in the Memorandum.

The approach currently used in the Contract Summary Form is reasonable and should be retained without adopting the proposed modification. The current approach appropriately highlights the Department website as a resource for the consumer to evaluate comparative pricing. The inclusion of the basic service/gas supply rates in the Contract Summary Form have the potential to misinform or mislead the consumer because the utility price is not forward looking. The utility commodity price proposed to be featured on the Form is in effect for a six-month period. By featuring this price, it would falsely imply that the supplier product that is being offered is comparable in term, variability and product features when the supplier product may in fact be a variable rate or a long-term fixed rate or a premium renewable product, and may include other products and services. Instituting this false comparison on the Contract Summary Form will unfairly undermine the value of competitive product offerings and should not be adopted.

IV. Recording of Telemarketing Calls

D.P.U. 19-07-A required Competitive Entities to record outgoing telemarketing calls with a duration exceeding one minute, regardless of whether an enrollment results. It is now proposed that this requirement be supplemented with a requirement that Competitive Entities be required to submit recordings to the Department within three business days of Department request. SFE Energy submits that this is a reasonable and workable approach.

V. Direct Mail Marketing

Competitive Entities must submit direct mail marketing materials to the Department for review as per D.P.U. 19-07-A. It is proposed that this requirement be expanded so that when the Department sends an email to the Competitive Entity informing it that it can proceed with using the material (as an attachment), that the Attorney General be copied on the email. SFE Energy submits that this proposed process injects a significant degree of uncertainty into the process. In other words, if the Department determines the marketing material is compliant, ideally that should be the end of the inquiry. However, if the Attorney General is copied after the Department has made its evaluation, it is possible that the Attorney General may reach a different conclusion. The proposal does not contemplate or explain what the supplier should do in the case of contradictory results. If sharing the direct mail marketing is to be allowed (which we are not recommending), it should be subject to a simultaneous review and approval process by both entities.

VI. Display of Renewable Energy Products on Energy Switch

It is proposed that the minimum renewable energy content requirement for non-RPS Class I products be eliminated. Accordingly, the website would display information related to the voluntary renewable energy content of all products that exceed the content required by the

Commonwealth, regardless of whether the product is composed entirely of RPS Class I resources. SFE Energy offers no comment on the proposed change.

VII. Definition of Small Commercial and Industrial Customer

The Department delayed application of the D.P.U. 19-07-A measures to small commercial and industrial customers, pending stakeholder consideration of an appropriate way to define these customers. The following definitions were proposed for comment:

- Gas small C&I customer – 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.
- Electric small C&I customer – a non-residential consumer whose annual electric usage does not exceed 15,000 kilowatt hours.

The proposed definitions are reasonable. It is noted that the proposed gas small C&I customer definition contains the phrasing “does not exceed 7,000 therms,” while the definition set forth in 220 CMR 14.00 uses the phrasing “less than or equal to 7,000 therms of gas.” It is suggested that consistent phrasing should be used for the sake of clarity. SFE Energy also supports the proposal that usage be allowed to be aggregated for a consumer with multiple utility accounts for these definitional purposes.

With respect to the treatment of new customers for whom historical annual usage is not available, this requires a mechanism to verify customer historical usage without having to submit an enrollment in order to ensure compliance. Under current practice, the electric and gas utilities provide historical usage prior to enrolling a customer. In the alternative, the customer’s estimated annual usage as represented to the broker will have to be determinative for supplier compliance

purposes, and suppliers should be entitled to rely on the representations of licensed brokers regarding customer estimated annual usage.

VIII. Untimely License Renewal Application

The Memorandum proposes to include a provision for the Department to provide advance notification to suppliers of a pending license renewal application deadline and to change the proposed timeline applicable to suppliers to cure the failure to timely file a renewal application. Broker and agent license renewal applications would be subject to the same timeline.

It is proposed that a competitive supplier that fails to submit a renewal license application within fourteen calendar days (changed from the prior proposal of thirty days) from the renewal due date would be prohibited from enrolling new customers, while continuing to be allowed to serve existing customers. Rather than the significant and onerous restriction on a supplier's ability to do business for an application filed only fourteen calendar days late, it is suggested that an administrative penalty be utilized, such as a fine. A fine will have the desired deterrent effect. A fine is also in line with the scope of the problem, whereas a restriction on new enrollments is not. Indeed, the supplier's late filing may be caused by technology, or events beyond the supplier's control or other excusable reasons, or constitute a de minimis departure from the filing deadline. Restricting new enrollments under those circumstances is not justified. Moreover, the process as proposed does not appear to afford the supplier adequate due process against the prohibition on new enrollments in response to a filing that is fourteen days late. The supplier should have the opportunity to explain and address the late filing before such a significant and onerous consequence is imposed.

The prohibition against new enrollments is proposed to be enforced by having the utilities disable EDI enrollment transactions or having utilities notify the Department of the submission of enrollments by the subject supplier. If a supplier sought to enroll a new customer when prohibited from doing so, it would cause the supplier to be subject to licensure action. From a policy perspective, it is inappropriate to put the utility monopoly in an oversight position with respect to its competitors, and this proposal should be rejected on that basis. From a practical perspective, the logistics of the proposal would be problematic. For example, the utility will not know, on the basis of the EDI enrollment transaction, whether the transaction is for a new customer or a re-enrollment of an existing customer. In addition, a supplier may hold an enrollment for legitimate business reasons such as quality review or other purposes for an enrollment that took place prior to the prohibition and this is not communicated on the EDI enrollment transaction either.

Under the proposal, broker and agent license renewal applications would be subject to the same timeline, and the Department would notify competitive suppliers' regulatory contacts of a prohibition to work with a broker or agent until further notice. Competitive suppliers that do not comply would be subject to licensure action. In this regard, it is recommended that the notification process that the Pennsylvania Public Utility Commission (PAPUC) utilizes works well. The PAPUC will send a blanket email to all competitive licensees when a broker or supplier fails to submit a required notification. The PAPUC provides the non-compliant entity with thirty days to cure the problem.

IX. Customer Assignment for Gas Customers

The rules that apply to supplier assignment of electric customers are proposed to be made applicable to supplier assignment of gas customers. D.P.U. 14-140-D established rules for the

notification of the assignment to the Department, affected customers and the utilities. SFE Energy agrees that it is reasonable to establish a standardized, uniform approach to the assignment of gas and electric customers.

Conclusion

SFE Energy appreciates the opportunity to comment on the proposals set forth in the November 19, 2020, Memorandum and looks forward to future opportunities to participate in the Department's review of retail energy markets.

Respectfully submitted,

s/Stacey Rantala

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