

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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

**JOINT CONSUMER ADVOCATES’ COMMENTS REGARDING THE  
DEPARTMENT’S D.P.U. 19-07-A PROPOSALS**

**I. INTRODUCTION**

On November 19, 2020, the Department of Public Utilities (“the Department”) issued a Hearing Officer Memorandum (the “November 19 Memo”) in Docket No. 19-07 (the “Docket”), setting forth staff proposals related in the Docket and requesting comments relating to such proposals. On November 25, 2020, Hearing Officer Gregory Wade followed up the memorandum with an email (the “November 25 Email”), in which he indicated that the Department was considering replacing the customer account information currently required for customer enrollments with an “enroll your wallet approach.” The Office of the Attorney General (“AGO”), Alternatives for Community and Environment (“ACE”), the National Consumer Law Center (“NCLC”), Greater Boston Legal Services (“GBLS”), and Lawyers for Civil Rights (“LCR”) (collectively, the “Consumer Advocates”) jointly submit the following comments in response to the November 19 Memorandum and the November 25 Email.<sup>1</sup> We respond to the Department Staff’s proposals in the sections below.

At the outset, the undersigned organizations commend the Department for swiftly responding to community concerns and requesting, on November 27, 2020, that all competitive

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<sup>1</sup> The AGO, NCLC, and GBLS have previously submitted comments related to the Docket.

energy suppliers cease door-to-door marketing activity in the Commonwealth, following requests from ACE, LCR, GBLS, NCLC and the AGO. In particular, the undersigned organizations were concerned about the resurgence of predatory, door-to-door campaigns in cities like Chelsea, a majority-minority immigrant community that has been historically targeted by predatory energy suppliers and is presently experiencing some of the highest rates of COVID-19 infection and hospitalization in the Commonwealth.

We recommend that the Department make consumers aware of its request by, at minimum, posting the request on its web page concerning the impacts of COVID-19 at <https://www.mass.gov/info-details/information-for-massachusetts-utility-ratepayers-impacted-by-covid-19>. We also recommend that the Department publish, in a multi-lingual and mobile-friendly format, any complaints regarding competitive supplier door-to-door marketing from consumers on its website so that consumers, municipal officials, and state agencies can be made aware if any competitive supplier marketers are creating public health risks or taking advantage of vulnerable populations at a time of economic distress.

Finally, we urge the Department to work in partnership with municipalities, the AGO, and community-based organizations on both monitoring for marketing activity in the Commonwealth and engaging in comprehensive, multi-lingual education campaigns to inform residents about their rights when interacting with competitive energy suppliers.

## **II. PUBLIC ACCESS TO LICENSE RENEWAL APPLICATIONS**

The Consumer Advocates strongly support Department Staff's proposal to place the information included in Attachment 1 on its website for all electric suppliers licensed to do business in Massachusetts. We also believe that the license renewal application would be more useful to stakeholders if it indicated whether a licensee is licensed to serve residential customers.

An entity's corporate structure and whether they are licensed to serve residential customers are both basic information that should be easily attainable for consumer advocates and consumers who interact with the dozens of suppliers who are already licensed to do business in the Commonwealth. The current lack of publicly available information about specific suppliers means that consumers and consumer advocates must go to the website of another state's PUC to find such key information about a supplier such as their corporate structure. Moreover, information about whether a supplier is licensed to serve residential customers in Massachusetts would not be available in any public place, as it would be state-specific. The Consumer Advocates and municipalities should not have to resort to public records requests to get this basic information.

The Department's Staff's proposed requirement that each licensed supplier provide a regulatory contact person is also important. State and municipal officials should have a simple and straightforward way to communicate concerns with a company other than simply calling a generalized customer service number. Similarly, requiring the suppliers to report regulatory actions will assist stakeholders in identifying problematic supplier conduct in other states, which alerts those stakeholders that similar conduct may also be occurring in the Commonwealth.

The Department should reject any argument from suppliers that the information that the Department proposes to make available to the public is confidential. Almost all suppliers operate in other jurisdictions where this information is contained in the license application and is posted onto a publicly available website.<sup>2</sup> Moreover, information provided to the Department is

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<sup>2</sup> See, e.g., Residential Suppliers, New Hampshire Public Utilities Commission, <https://www.puc.nh.gov/Consumer/Residential%20Suppliers.html>. This web page contains the name of each supplier licensed to serve residential customers.

presumptively public information.<sup>3</sup> Indeed, information such as the names of certain contact persons, and the URL of the supplier’s website would not provide any competitive advantage if disclosed. Similarly, a supplier’s business address, recent bankruptcies, and the name of the Company’s service agent is already a matter of public record. In addition, suppliers that are publicly traded must disclose material regulatory actions and “the organization, financial structure, and nature of the business,” as part of their public filings with the United States Securities and Exchange Commission.<sup>4</sup> Accordingly, in this regard, privately-held suppliers currently enjoy an unfair advantage over their publicly-traded competitors, and the Department’s proposal would create a more level playing field. The Consumer Advocates therefore recommend that the Department adopt the public access to supplier information proposal in the November 19 Memo.

### **III. DOOR TO DOOR MARKETING NOTIFICATION**

#### *A. The Five-Municipality Limit*

The Consumer Advocates recommend that the Department apply its five-municipality limit on a statewide, rather than service territory-specific basis. The Department should reject the Retail Electricity Supply Association and Davis Malm’s proposal to impose the five-municipality limit on a service territory-specific basis.

As the November 19 Memo notes, the Retail Electric Supply Association (“RESA”) and Davis Malm’s proposal would result in each supplier identifying as many as 19 municipalities statewide. RESA and Davis Malm’s proposal is more aggressive than the 15-municipality statewide limit that the Department already rejected in D.P.U. 19-07-A. As the Department

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<sup>3</sup> *NSTAR Electric Company and Western Massachusetts Electric Company, each d/b/a Eversource Energy*, D.P.U. 17-05, Hearing Officer Ruling, at 6 (May 23, 2017).

<sup>4</sup> See 15 U.S.C.A. § 781; 17 C.F.R. § 229.103(a).

noted in D.P.U. 19-07-A, “such a limit would not provide sufficient certainty regarding where a competitive supplier will be door-to-door marketing on a particular day.”<sup>5</sup> The Department recognized that a five-municipality limit is consistent with its “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.”<sup>6</sup> The Department should therefore reject RESA’s and Davis Malm’s proposal to impose the five-municipality limit by utility service territory.

Although the Consumer Advocates recognize and appreciate the Department’s initial openness to discussing a regional versus a statewide limit, the ensuing discussion has demonstrated that a five-municipality limit statewide is necessary and appropriate. Even a straightforward Eastern-Western Massachusetts division would effectively result in a ten-municipality limit, which is far too many municipalities for the Department to “provide sufficient certainty regarding where a competitive supplier will be door-to-door marketing on a particular day.”<sup>7</sup> The five-municipality limit already accounts for the need to “provide sufficient flexibility for competitive suppliers to respond to changing conditions such as inclement weather, traffic, staffing issues, and potential presence of competitors.”<sup>8</sup>

Moreover, a high municipality limit would allow bad acting suppliers and third-party marketers to disguise their targeting of low-income communities. The AGO’s reports on the competitive market found that “communities with majority-minority populations and with low median incomes correlate with higher rates of participation in the individual residential market for competitive electric supply.”<sup>9</sup> Similarly, supplier self-reporting in response to the

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<sup>5</sup> D.P.U. 19-07-A, at 22.

<sup>6</sup> *Id.*

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

<sup>8</sup> *Id.*

<sup>9</sup> Office of Attorney General Maura Healey, *Are Residential Consumers Benefiting from Electric Supply Competition? 2019 Update*, at 15 (Aug. 2019), at <https://www.mass.gov/doc/2019-ago-competitive-electric-supply-report>.

Department's low-income customer enrollment reporting requirement has also shown that low-income customers are nearly twice as likely to receive competitive supply as non-low-income customers.<sup>10</sup> In light of these significant concerns about targeting, it is all the more vital that the Department have precise information concerning the cities and towns where competitive suppliers are marketing door-to-door. A 19- or even a 10-municipality limit would allow a bad-acting supplier or third-party marketer to hide their targeting of low-income communities by including more economically advantaged communities in their notifications, even where it has no intention of ever marketing in earnest in those communities.

Accordingly, the Department should adopt the five-municipality limit on a statewide basis.

*B. Identification of Neighborhoods in Large Municipalities*

Regarding the identification neighborhoods in Springfield and Worcester, we encourage reporting that will identify neighborhoods that have been excessively targeted by marketers of competitive energy supply. As the AGO and NCLC noted in previous comments, the AGO's research has shown that customers in Springfield and Worcester are among those who have suffered the greatest financial impacts by paying higher prices to competitive suppliers.<sup>11</sup> We suggest that the Department consult directly with those cities, and organizations that serve low-income residents of those communities such as legal services programs and community action agencies, to determine which neighborhoods within their cities should be included in reporting.

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<sup>10</sup> See PowerPoint Presentation, D.P.U. 19-07 Tier Two Initiatives, at 10–12, circulated by Hearing Officer Gregory Wade to the D.P.U. 19-07 Service List on December 14, 2020.

<sup>11</sup> Massachusetts Attorney General's Office (Prepared by Susan M. Baldwin), *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts* (August 2019 Update), Table 3.2 (Aug. 2019), at <https://www.mass.gov/doc/2019-ago-competitive-electric-supply-report>.

#### **IV. CONTRACT SUMMARY FORM**

##### *A. Voluntary Renewable Energy Content*

##### *i. The Department Should Include Detailed Information Concerning Consumers' Voluntary Renewable Content.*

The Department Staff's proposal to include more detailed information about the renewable content of electricity offered by competitive suppliers, and the characteristics of "green" products, would add important transparency for consumers. However, the proposed language that would identify "premium" renewable products is likely not adequate for the average consumer to gain an understanding of the product that they are purchasing. The proposed "premium" label would not help the consumer to make an informed purchase.

Ultimately, consumers who seek to purchase a greater mix of renewable energy would be best served if suppliers provided estimates of the percentage of generation represented by the different types of renewable resources. The following list is a suggestion for labeling that would provide transparency for consumers:

Solar power located in New England

Wind power located in New England

Small hydropower located in New England

Geothermal energy located in New England

Solar power located outside of New England

Wind power located outside of New England

Small hydropower located outside of New England

Geothermal energy located outside of New England

Biomass fuel located in New England

Waste energy located in New England

Other [provide explanation] located in New England

Biomass fuel located outside of New England

Waste energy located outside of New England

Other [provide explanation] located outside of New England

Full and accurate disclosures of renewable content is particularly important because deceptive marketing of “green” products has been an ongoing problem area. The AGO has found that it is “[u]nlikely that these consumers’ overpayment is a fair exchange for some additional benefit, such as the ‘green power’ marketed by suppliers.”<sup>12</sup> Elsewhere, deceptive marketing of renewable energy products, or “greenwashing,” was the basis of an Illinois enforcement action in 2016 against a company whose solicitations implied that customers’ homes would be directly powered by electricity generated from renewable energy sources.<sup>13</sup> Therefore, we urge the Department to carefully consider the effect of the contract information on prospective customers.

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<sup>12</sup> Massachusetts Attorney General’s Office (Prepared by Susan M. Baldwin), *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts* (August 2019 Update), available at [https://www.mass.gov/files/documents/2019/07/31/Massachusetts%202019%20Update\\_August%202019.pdf](https://www.mass.gov/files/documents/2019/07/31/Massachusetts%202019%20Update_August%202019.pdf)

<sup>13</sup> *In the matter of: The Investigation by the Attorney General of Ethical Electric, Inc.*, Assurance of Voluntary Compliance (AVC) pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/6.1, August 8, 2016. The Illinois Office of the Attorney General investigated the company Ethical Electric, Inc., and determined that the company’s direct mail solicitations failed to disclose that the company purchases renewable energy certificates (RECs) – not actual renewable supply. However, the company’s solicitations implied that customers’ homes would be directly powered by electricity generated from renewable energy sources. As a result of the investigation, Ethical Electric agreed to change its name, revise marketing materials and provided \$191,673 in restitution.



In addition, consumers should receive information about whether these generation sources are recently built or are greater than ten years old. In order to assist consumers, the Department should create labeling such as that described above, rather than relying on descriptions that are not as clear for consumers.

*ii. In the Alternative, the Department Should Revise Its Disclosures Concerning Voluntary Renewable Content.*

In the alternative, if the Department does not require that suppliers provide specificity as to the fuel types and origins of the renewable content, it should at minimum revise its proposed disclosures to more accurately distinguish between RPS-eligible and non-RPS-eligible voluntary demand.

We recognize the Department Staff's proposed disclosures are an attempt at the inherently difficult balance between providing easy-to-understand information about the RPS that is also accurate. We, however, believe that the use of the word "premium" to describe RPS-eligible RECs does not convey useful information to the consumer and could be misleading. Specifically, we are concerned that the word "premium" unintentionally suggests that RPS-eligible RECs are a luxury product and inappropriately normalizes non-RPS-eligible RECs as "normal" or "budget" options for renewable content. This unintentional suggestion would be contrary to the Commonwealth of Massachusetts' state policy, which recognizes RPS-eligible RECs as achieving the Commonwealth's energy and climate goals and does not count non-RPS-eligible RECs at all towards those goals.

Accordingly, as an alternative for the more precise disclosures that we recommended *supra*, we recommend that the Department replace the phrase "have not been designated as 'premium' resources by the Commonwealth" with "have not been designated by the Commonwealth as resources that will encourage additional renewable investment in New

England and these resources may or may not encourage renewal development or displace the use of fossil fuels elsewhere.” This framing is easy to understand and an accurate description of the difference between RPS-eligible and non-RPS-eligible content.

*B. Basic Service and Gas Supply Information*

As expressed in our previous comments, we strongly support Staff’s proposal to include information concerning basic service rates to the contract summary form, as inclusion of such information about basic service/gas rates is a vital consumer protection measure.<sup>14</sup> We recognize the Department’s interest in carefully balancing the interest in providing the customer as much relevant information in an easy-to-digest manner. However, we strongly recommend that the Department revise its disclosure to include language that makes clear that consumers should *not* rely solely on the current basic service rate when making decisions regarding their electricity supply. Specifically, when neither the approved or proposed upcoming basic service is not known, the Department should require suppliers to include the basic service rate along with a short disclaimer regarding the cyclical and seasonal nature of basic service increases and decreases. Indeed, the November 19 Memo notes that “staff recognizes the value of providing consumer with information regarding the cyclical nature of basic service/gas supply rates . . . .”<sup>15</sup>

Accordingly, we propose to replace the phrase regarding the six-month time period of basic service in the Department Staff’s proposed disclosure that would apply when the current basic service rate is not known. In particular, the disclosure would be amended to read as follows, in relevant part:

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<sup>14</sup> Based on our experiences working with consumers in Massachusetts, those individuals who knowingly switch to a competitive supplier overwhelming do so because they believe that they will save money by doing so. However, few, if any, consumers know their current electricity or gas rates. Unless the Department requires that basic services rates be disclosed, consumers are easy prey for the unfair and deceptive marketing tactics which are well-documented in this industry.

<sup>15</sup> November 19 Memo, at 14.

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]. Basic service prices have gone both up and down significantly in the past based on the season, so the current basic service rate may be much higher or lower than basic service rates that you are likely to pay in the future.

As reflected in the above recommended disclosure, we strongly recommend replacing the disclosure regarding the fact that basic service prices remain fixed for six months with a short, clear explanation that a basic service rate has changed significantly depending on the time of year and thus the current basic service rate is *not* necessarily representative of prices in the future.

As described in greater length in the AGO’s most recent update to its report on the competitive supply market, consumers in Massachusetts paid \$253 million more receiving individual competitive supply than they would have paid if they had received basic service over the three-year period from July 2015 to June 2018.<sup>16</sup> As we are all aware, basic service/gas rates vary based on the season and, for example, gas rates are substantially higher in the winter.<sup>17</sup> A significant portion of consumers’ losses appear to be attributed to suppliers who sign customers up to long-term, fixed rate contracts that are offered at a price somewhat below winter basic service rates to attract customers, but are much higher than expected summer rates. Put simply, the cyclical, seasonal nature of basic service is the singular most important aspect that the

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<sup>16</sup> Office of Attorney General Maura Healey, *Are Residential Consumers Benefiting from Electric Supply Competition? 2019 Update*, Table 3.2 (Aug. 2019), at <https://www.mass.gov/doc/2019-ago-competitive-electric-supply-report>.

<sup>17</sup> *See, e.g.*, Eversource Winter Cost of Gas Adjustment Factor, *available at* <https://www.eversource.com/content/ema-c/residential/my-account/billing-payments/about-your-bill/rates-tariffs/eversource-winter-cost-of-gas-adjustment>

Each year, there is likely a seasonal increase in natural gas supply prices during the winter months. As a result, starting November 1, 2020, there will be a winter cost of gas increase. This is due to heightened natural gas demand during colder weather.”)

consumer should understand before entering into a contract for competitive electric supply. Although it would certainly be good for customers to understand that basic service is fixed for six-months, that knowledge would not help customers avoid the most common pitfall for customers in the electric supply market. Indeed, a Department-endorsed statement that includes only the current basic service rate could mislead the customer into believing that the current basic service rate is a good benchmark to evaluate a long-term competitive electric supply contract—which is not true. Accordingly, to best balance the Department’s interest in providing the most important information in a short, easily-understandable disclosure, we recommend that the Department adopt our requested disclosure and require competitive suppliers to include it in their Contract Summary Forms.

In addition, we further recommend that the Department also develop a disclosure for the time period where the upcoming basic service rate has been filed by the applicable distribution company, but the Department has not yet approved that rate. Specifically, we recommend amending relevant portion of the disclosure as follows:

*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 of [month/year] through [month/year], your utility has proposed a rate of [xx] cents per kWh, but that rate is still subject to approval by the Department.*

The above disclaimer provides useful information to the consumer. The Department consistently adopts the basic service rates proposed by the distribution companies without modification. Thus, information about proposed basic service rates are useful to customers, because the proposed basic service rate is almost certainly the basic service rate that the customers will ultimately pay. Nor is the disclosure misleading, as it clearly states that the proposed rate is “still subject to approval by the Department.” It is far better to convey this information with the

appropriate caveat than to simply leave consumers in the dark about the rate that they are almost certain to pay if they remain on basic service. Accordingly, we recommend that the contract summary form also include information about proposed basic service rates when appropriate.

### *C. Contract Summary Form Access*

We also recommend that the Department's investigation include measures to ensure that the disclosures that it includes in its Contract Summary Form are accessible to all customers through general readability and in particular, customers who do not have access to the internet and customers who do not speak English as a first language.

First, the competitive supply market is disproportionately made up of low-income consumers,<sup>18</sup> many of whom may not have ready access to the internet. According to estimates from recent census data, over 500,000 Massachusetts residents either do not have a computer or, while having a computer, do not have access to the internet.<sup>19</sup> Much of the information provided in the Contract Summary Form is provided through links in disclosures. We would recommend that the Department work with the Consumer Advocates, the suppliers, and other stakeholders to investigate measures that would ensure that these customers have adequate access to the information included in the Contract Summary Form. Measures could include, but not necessarily be limited to, providing printouts of the relevant information in the internet links with the Contract Summary Form.

Second, neither the Energy Switch website nor the GAF website currently provides pricing information in plain language. The average American has a readability level equivalent

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<sup>18</sup> Massachusetts Attorney General's Office, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, prepared by Susan M. Baldwin, at Table 2.1 (March 2018) (the "Massachusetts 2018 Report"), available at <https://www.mass.gov/doc/comp-supply-report-final/download>, and Massachusetts 2019 Update, at 4-5, available at <https://www.mass.gov/doc/2019-ago-competitive-electric-supplyreport/download>

<sup>19</sup> <https://data.aclum.org/2020/05/13/internet-deserts-prevent-remote-learning-during-covid-19/>

to a 7th/8th grader (12 to 14 years old)<sup>20</sup> and thus target grade levels for consumers should be at this level. However, if you input the introduction at the top of the Energy Switch comparison page into a readability tool,<sup>21</sup> it indicates it has an average reading level of grade of 9.5. The explanation for basic service on the comparison page has a whopping grade level of 20. The GAF website has similar issues: If you input the language on it into the same tool, it indicates that it has a reading level of grade 13. Accordingly, the Energy Switch website requires significant readability access improvements before a significant portion of the customers who currently participate in the competitive supply market effectively use it.

In addition to these readability concerns, the Energy Switch site is not accessible to the over half a million adult residents of the Commonwealth who report that they speak English less than “very well.”<sup>22</sup> That equates to almost 150,000 households, or 5.6 percent of the total households in the Commonwealth.<sup>23</sup> Unsurprisingly, there is a high concentration of Limited English Proficient (“LEP”) individuals in some of the Commonwealth’s lowest-income urban centers, with 33 percent of all adults in Chelsea, 31 percent of all adults in Lawrence, and 16 percent of all adults in Lynn identifying as LEP.<sup>24</sup> As research from the AGO and NCLC has demonstrated, it is precisely these low-income urban centers that are targeted by competitive energy suppliers for account slamming and switching.

For these reasons, it is absolutely critical that the Department ensure that information on the Energy Switch website is equally available to all LEP residents. Although many divisions of state government use a “mass.gov” domain, which provides an option for Google translation of

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<sup>20</sup> <https://centerforplainlanguage.org/what-is-readability/>

<sup>21</sup> <https://storytoolz.com/readability>

<sup>22</sup> See U.S. Census Bureau, 2012-2016 American Community Survey.

<sup>23</sup> *Id.*

<sup>24</sup> RESEARCH DIVISION, BOSTON REDEVELOPMENT AUTHORITY, DEMOGRAPHIC PROFILE OF ADULT LIMITED ENGLISH SPEAKERS IN MASSACHUSETTS 3 (2019), available at <http://www.bostonplans.org/getattachment/df1117a-af16-4257-b0f5-1d95dbd575fe>.

webpages into multiple languages, the Energy Switch website has no such option. Although we recognize Google Translate is imperfect, it is an easy and essential first step to providing language access—especially during a global pandemic. Indeed, Google announced that its decision to reopen access to the Google Translate Website Translator was propelled by the global pandemic and the fact that untranslated websites can “prevent valuable information from reaching a diverse set of readers.”<sup>25</sup>

Furthermore, the website also needs improvement from a disability access standpoint, with an accessibility check for compatibility with screen readers yields poor results.<sup>26</sup> These shortcomings mean that the Energy Switch website is not currently a very useful tool for price comparison for a large segment of consumers and we also therefore have serious concerns about any attempt to convey information regarding the cyclical nature of prices via the website in its current form.

## **V. RECORDING OF TELEMARKETING CALLS**

The Department has proposed that competitive supply companies would be required to submit recordings of telemarketing and third-party verification (TPV) phone calls to the Department in either real time or within three business days of the Department’s request. Real time reporting, or reporting windows that are as short as possible, may help to prevent the type of tampering that was discussed in dockets D.P.U. 20-47 and D.P.U. 20-48.<sup>27</sup> Further, the unaltered recordings may assist the Department in future efforts to ensure that such calls are conducted in the language spoken by the customer, in addition to investigations of complaints. We encourage

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<sup>25</sup> Xinxing Gu & Michal Lahav, *Google translate’s website translator—available for non-commercial use*, Google Webmaster Central Blog (May 19, 2020), available at: <https://webmasters.googleblog.com/2020/05/google-translates-website-translator.html>.

<sup>26</sup> We used <https://www.webaccessibility.com/>, a free accessibility tool to test the site.

<sup>27</sup> See D.P.U. 20-47, Notice of Probable Violation, at 10–13; D.P.U. 20-48, Notice of Probable Violation, at 4–9.

the Department to consider a small additional requirement. Telemarketing and TPV call recordings should be accompanied by a signed affidavit attesting to the accuracy and completeness of the recording.

## **VI. DIRECT MAIL MARKETING**

We support the proposal to share proposed direct mail solicitation materials with the AGO, but note that the receipt or review of these materials should not be construed as an endorsement or approval of the materials. Specifically, the AGO<sup>28</sup> requests that, if the Department adopts staff's proposal, the Department also makes clear that the provision of this material to the AGO does not suggest that the AGO "approves" it, either tacitly or otherwise. The Consumer Advocates further recommend that the Department similarly make clear that any decision to allow a competitive supplier or other entity to use a piece of direct mail marketing material does not immunize the material from action if the material ultimately proves to be misleading, deceptive, or otherwise contrary to law.

The AGO is charged with enforcing the Consumer Protection Act, codified at G.L. c. 93A. In that role, the AGO does not and cannot "pre-clear" marketing material for businesses operating in the Commonwealth. In fact, any "pre-clearance" would be impossible because it is often not clear whether a given direct mail piece is unfair or deceptive until consumers are actually harmed by the deceptive conduct. For example, a direct mail piece that promises a consumer savings on their electricity bills is not necessarily deceptive—it will be deceptive only if consumers do not actually save money on their electricity bills. It is each competitive

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<sup>28</sup> On this point, the AGO writes separately for the sole reason that, among the Consumer Advocates, only the AGO can speak on its own authority.



supplier's responsibility, and not the AGO or the Department's, to ensure that its direct marketing materials comply with the law and are not deceptive.

The Consumer Advocates also recommend that the Department similarly make clear that its "approval" of a given piece of direct marketing does not immunize the supplier for future Department action based on that piece of direct mail marketing. The Department's decision to review direct mail is a good initiative that will likely prevent many misleading direct mail communications. As the Department noted in its Order, the Department will not allow direct mail marketing that

. . . contains language that could lead consumers would lead customers 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. 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.

D.P.U. 19-07-A, at 61–62. A direct mail piece, for example, that contains language that could lead consumer to believe that they are receiving an official communication from a state agency is obviously deceptive and that deception can be detected on the face of the document. A direct mail piece, however, that contains misleading statements concerning the supplier's pricing or other material terms of the contract may not be deceptive on its face because the Department may not be aware of how the customer will be priced or all of the terms of the supplier's consumer contract. Accordingly, we support the Department's initiative to review direct mail marketing material, but also respectfully requests that the Department make the limitations of its review clear in its order.

## **VII. DISPLAY OF RENEWABLE ENERGY PRODUCTS ON THE ENERGY SWITCH WEBSITE**

While we do not have specific comments on the Department's proposal for displaying information about renewable content on the Energy Switch website, please see the above section of our comments addressing Voluntary Renewable Energy Content for a description of our concerns.

## **VIII. ENROLLMENT WITHOUT A CUSTOMER ACCOUNT NUMBER**

The Consumer Advocates oppose the elimination of the customer account number requirement. At the Department's January 7, 2021 Zoom meeting, the distribution companies' presentation made clear that the Department cannot eliminate the account number requirement without imposing additional costs on ratepayers and creating significant customer privacy and cybersecurity issues that would be difficult and costly to address. Moreover, the AGO and the NCLC previously submitted joint comments (Joint Comments on Tier 2 Proposal to Eliminate The Customer Account Number Requirement, hereinafter the "April 2 Joint Comments") concerning the enroll your wallet proposal with Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Until.<sup>29</sup> We refer the Department to those comments, which contain our grave concerns about this proposal and also reiterate them briefly here:

The elimination of the customer account number requirement will almost certainly result in increased unauthorized enrollments. Involuntary enrollment, or "slamming," is already a significant consumer problem in the Commonwealth, even under the current rules that require a

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<sup>29</sup> D.P.U. 19-07, Joint Comments on Tier 2 Proposal to Eliminate the Customer Account Number Requirements (Apr. 2, 2020).

customer's account number for enrollment. In fact, we have worked with costumers—very often individuals who have low English proficiency or are elders—who did not realize they had a competitive supplier until a case worker, relative, or attorney looked closely at their bill.<sup>30</sup>

Currently, the customer account number requirement is the only significant obstacle preventing unscrupulous marketers or suppliers from easily switching Massachusetts electricity or gas customers without their authorization. Other than the account number, a supplier needs only the customer's name and address to process a switch, and it would require minimal effort for a supplier or its marketers to collect hundreds to thousands of potential customer names to “slam” by searching the phone book, the Internet, or the registry of deeds for basic information about each customer.

In addition to hearing frequent complaints about slamming, all of our organizations are also inundated with complaints regarding aggressive and misleading marketing tactics. Even during the pandemic, Massachusetts residents have been solicited by marketers at their doorsteps and on their phones.<sup>31</sup> Facilitating the suppliers' ability to sell to customers in public venues will only exacerbate this problem. Sales presentations at public venues are just as likely to be misleading and aggressive because (a) the information imbalance between the supplier's agent and the customer still exists; and (b) sales agents will be under pressure to enroll customers as quickly and efficiently as possible. Moreover, consumer advocates in Ohio and Pennsylvania—the only two sates with such a system—advise that “Enroll with your wallet” has not had a significant impact in reducing door-to-door and telemarketing enrollments in that state and the

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<sup>30</sup> For example, GBLS represented a woman in Melrose who when paying her octogenarian mother's bills discovered a supplier had enrolled the elder, despite her obvious signs of dementia.

<sup>31</sup> For example, LCR has received complaints about supplier representatives going door to door in Chelsea, a low-income, majority-minority community that has struggled with high COVID-19 rates and economic dislocation.

main marketing channels remain door-to-door and telemarketing. Thus, instead of reducing aggressive and misleading marketing tactics, allowing suppliers to enroll customers without the customer account number will most likely lead to yet another venue for such unlawful tactics.

Moreover, as discussed *supra*, data consistently show that electric suppliers disproportionately enroll low-income customers,<sup>32</sup> and that suppliers consistently charge low-income customers higher rates than other residential customers.<sup>33</sup> If “Enroll with your Wallet” is implemented in Massachusetts, it would be the only state to operate such a program without additional, critical consumer protections for low-income customers. In Pennsylvania, customers in the First Energy and PPL Electric service territories who are enrolled in low-income bill payment assistance programs may only sign up with competitive supply companies through a dedicated portal in which supplier prices cannot exceed basic service prices.<sup>34</sup> In Ohio, suppliers *cannot* enroll low-income customers who participate in the state’s Percentage of Income Payment Program.<sup>35</sup>

In addition, as described in the April 2 Joint Comments and the distribution companies’ presentation, the proposal would likely result in significant additional costs to ratepayers. For the reasons listed above, we strongly urge the Department to drop from consideration eliminating

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<sup>32</sup> Massachusetts Attorney General’s Office (Prepared by Susan M. Baldwin), *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, at 4-5 (2018).

<sup>33</sup> *Compare* Massachusetts Attorney General’s Office, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, prepared by Susan M. Baldwin, Massachusetts 2019 Update (“2019 Update”), Appendix 2D (Supplier-Specific Information – All Households), *available at* <https://www.mass.gov/doc/2019-ago-competitive-electric-supply-report>, with Massachusetts 2019 Update, Appendix 3A (Supplier-Specific Information – Low-Income Households) (showing that 32 of the 56 suppliers with low-income customers charge higher rates, on average, to their low-income customers).

<sup>34</sup> *EDC Customer Account Number Access Mechanism for EGSs*, Final Order, Pennsylvania PUC, Docket No. 2013-M-2355751 (July 17, 2013).

<sup>35</sup> Ohio Revised Code 4928.54; *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, In the Form of an Electric Security Plan*, Final Order, Public Utilities Commission of Ohio, Case No. 16-1852-EL-SSO (Apr. 25, 2018).

the customer account number requirement because such a system would be extremely detrimental to consumers in Massachusetts and particularly low-income consumers.

## IX. CONCLUSION

Thank you for the opportunity to comment in this docket. We respectfully request that the Department exercise its authority to implement “. . . rules and regulations to provide retail customers with the utmost consumer protections contained in law,” including but not limited to licensing, regulation, and other powers enumerated at G.L. c. 164, §1F.

Respectfully submitted,

ATTORNEY GENERAL  
MAURA HEALEY

NATIONAL CONSUMER LAW  
CENTER, On behalf of its low-income  
Clients,

By: /s/Nathan C. Forster  
Nathan C. Forster  
Assistant Attorney General  
Office of the Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200  
Nathan.forster@mass.gov

By: /s/Jenifer Bosco  
Jenifer Bosco  
Staff Attorney  
National Consumer Law Center  
7 Winthrop Sq., 4<sup>th</sup> Floor  
Boston, MA 02110  
(617) 542-8010  
[Jbosco@nclc.org](mailto:Jbosco@nclc.org)

GREATER BOSTON LEGAL  
SERVICES, On behalf of its low-income  
Clients,

LAWYERS FOR CIVIL RIGHTS

By: /s/Alexa Rosenbloom  
Alexa Rosenbloom  
Senior Attorney  
Greater Boston Legal Services  
197 Friend St.  
Boston, MA 02114  
(617) 603-1542  
ARosenbloom@gbls.org

By: /s/Lauren Sampson  
Staff Attorney  
Lawyers for Civil Rights  
61 Batterymarch Street, Fifth Floor  
Boston, MA 02110  
(617) 988-0609  
lsampson@lawyersforcivilrights.org

ALTERNATIVES FOR COMMUNITY &  
ENVIRONMENT,

By: /s/Sofia E. Owen

Sofia E. Owen

Staff Attorney

Alternatives for Community &  
Environment

2201 Washington St., Ste. 302

Boston, MA 02119

(617) 442-3343

sofia@ace-ej.org

Dated: January 11, 2021

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the service list in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department’s Rules of Practice and Procedure). Dated at Boston this 11th day of January, 2021.

*/s/ Nathan C. Forster*  
Nathan C. Forster  
Assistant Attorney General  
Office of the Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200