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Via Electronic Mail¹

February 4, 2021

Mark D. Marini, Secretary
Commonwealth of Massachusetts
Department of Public Utilities
One South Station, 5th Floor
Boston, Massachusetts 02110

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

Dear Mr. Marini:

Vistra Corp.² (“Vistra”) appreciates the opportunity to provide these reply comments on the Tier 1B initiatives described in the Hearing Officer’s November 19, 2020 Memorandum (“November 19 Memorandum”) in the above-referenced proceeding. Specifically, Vistra offers these limited reply comments on the proposal by the electric and gas distribution companies (“Distribution Companies”)³ to use the definition of small commercial and industrial (“C&I”) customer by utility tariff. While Vistra agrees with the concept in the Distribution Companies’ proposal to ensure the right group of customers receives small C&I protections, Vistra urges the Department of Public Utilities (“Department”) to adopt a single statewide definition of small C&I customers instead of a utility service territory specific definition.

The Distribution Companies jointly filed initial comments in this proceeding on January 11, 2021. In those initial comments, the Distribution Companies proposed defining small C&I customers

¹ Pursuant to the Department’s March 12, 2020 notice regarding Temporary Changes to Filing Requirements, and the November 19 Memorandum, at 22, these comments are being provided electronically only.

² Vistra Corp. is the parent company for, and filing on behalf of, Massachusetts licensed suppliers Ambit Northeast, LLC; Dynegy Energy Services (East), LLC; Public Power, LLC; Viridian Energy, LLC; Everyday Energy, LLC d/b/a/ Energy Rewards; and Massachusetts Gas & Electric, Inc.

³ Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company, Nantucket Electric Company, Boston Gas Company and former Colonial Gas Company each d/b/a National Grid, NSTAR Electric Company, NSTAR Gas Company, and Eversource Gas Company of Massachusetts each d/b/a Eversource Energy, The Berkshire Gas Company, and Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty.

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“by Company, according to each company’s individual tariff.”⁴ The Distribution Companies state that this would ensure “that all small C&I customers in Massachusetts receiving service from Competitive Entities are protected by and subject to the Tier I.A and 1.B protections,” and that “a small C&I customer as defined by Eversource or Liberty receives the same notice as a would a Small C&I customer as defined by Unitil.”⁵

Consistent with the theme of Vistra’s initial comments urging clarity in the application of these new requirements,⁶ using a statewide threshold would reduce the administrative burden on suppliers and the Department related to administering required small C&I consumer protections and verifying which group of customers received these protections. The administration would become even more challenging if a utility changed its tariff definition after the Department issues an order on this topic. A statewide definition, on the other hand, decreases the likelihood of a situation where a supplier intends to comply in good faith, but inadvertently applies a definition to the wrong service territory or relies on a prior definition. Utility service territory specific thresholds are even more tedious as the Distribution Companies do not even use the same units of measurement. While many of the gas definitions apply annual therm usage, Boston Gas Company (and the former Essex Gas Company and Colonial Gas Company) have six different definitions which utilize a combination of peak usage as a percentage of annual usage, therms, and/or cubic feet per hour.⁷ For electric, the definitions use monthly demand in kW, sometimes combined with monthly kWh usage.⁸

Several other states apply consumer protections based on a statewide definition of small C&I customers rather than by utility service territory even when those distribution companies have different definitions. In Pennsylvania, a small business customer is defined as a “person, sole proprietorship, partnership, corporation, association or other business that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months.”⁹ This is not the same as the thresholds for small commercial customers in the Pennsylvania utilities’ tariffs. For example, Pennsylvania Electric Company’s Rate GS-Small uses a different quantitative threshold, applying to non-residential customers whose total consumption does not exceed 1,500 kWh per

⁴ Distribution Companies Initial Comments at 12.

⁵ *Id.*

⁶ *See* Initial Comment of Vistra Corp., filed January 11, 2021.

⁷ Distribution Companies Initial Comments at 13-14.

⁸ *Id.* at 12-13.

⁹ 52 Pa. Code § 54.152.

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month for two (2) consecutive months in the most recent twelve-month period.¹⁰ PECO's tariff defines small C&I customers as up to 100 kW.¹¹

Similarly, in Illinois, "Small commercial retail customer" means "those nonresidential retail customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area."¹² Ameren Illinois' Rate DS-2-Small General Delivery Service applies to customers with a maximum monthly demand of 150 kW or less.¹³

Thus, in these states, although the utilities define small C&I differently for purposes of their own tariffs, when it comes to statewide consumer protections, a statewide definition is applied. For ease of implementation, lessening of administration burdens, and benefits to consumers, the same structure should be applied in Massachusetts. For the reasons described above, Vistra urges the Department to adopt a single statewide definition of small C&I customers. To the extent the Department wants to move forward with a utility service territory specific definition, Vistra requests a working group be established first so that some of the implementation details when applying different small C&I definitions can be discussed further.

Please do not hesitate to contact me if you have any questions or require additional information. Thank you.

Sincerely,



Erick M. Sandler¹⁴

¹⁰ Pennsylvania Electric Company, Electric Service Tariff, Rate GS-Small.

¹¹ PECO Energy Company, Electric Service Tariff, Section 22.1(d)(2).

¹² 220 ILCS 5/16-102.

¹³ Ameren Illinois Company, d/b/a Ameren Illinois Electric Service Schedule III. C. C. No. 1, Rate DS-2-Small General Delivery Service.

¹⁴ Admitted in Massachusetts, Connecticut, and New York.