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February 4, 2021

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

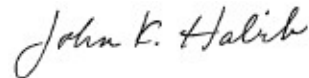
Re: Investigation by the Department of Public Utilities on its own Motion into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market – D.P.U. 19-07

Dear Mr. Marini:

Enclosed on behalf of 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 (together the “Companies”) are the Companies’ joint reply comments in the above-referenced proceeding.

Thank you for your attention to this matter. Please contact me should you have any questions.

Sincerely,



John K. Habib



Brendan P. Vaughan

Enclosures

cc: Gregory Wade, Esq., Hearing Officer
Meabh Purcell, Esq. – National Grid
Carleton B. Simpson, Esq. – Unitil
R.J. Ritchie, Esq. – Liberty
Leonard Rodriguez, Esq. – Berkshire

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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

**JOINT REPLY COMMENTS OF THE DISTRIBUTION COMPANIES ON THE
DEPARTMENT OF PUBLIC UTILITIES’ TIER ONE INITIATIVES**

I. INTRODUCTION

On January 18, 2019, the Department of Public Utilities (the “Department”) issued a Vote and Order Opening Investigation in the above-captioned docket (the “NOI”). The NOI sought input from stakeholders on initiatives to improve the retail electric competitive supply market in the Commonwealth of Massachusetts. See, NOI at 1. The NOI outlined several areas in which the Department sought stakeholder input, including Customer Awareness, Investigation into Competitive Suppliers, and Barriers to Market Efficiency. NOI at 5-12. To assist the Department in its investigation, the NOI also requested comments on twenty-one specific questions. The Department received comments from several stakeholders on these initiatives on February 19, 2019.

On May 22, 2020, the Department issued D.P.U. 19-07-A setting forth several 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 (D.P.U. 19-07-A (May 22, 2020)).

Additionally, the Department identified several issues associated with these initiatives for discussion. On August 6, 2020, the Department held a Zoom meeting for interested stakeholders to discuss the D.P.U. 19-07-A initiatives.

On November 19, 2020, the Department issued a Hearing Officer Memorandum (“November 19 Memorandum”), soliciting comments on the proposals set forth during the August 6, 2020 meeting, and also on Department staff proposals related to the untimely filing of license renewal applications and customer assignment for gas customers (together with D.P.U. 19-07-A, the “Straw Proposal”). On January 11, 2021, pursuant to the November 19 Memorandum, the Department received initial comments from: (1) NSTAR Gas Company, Eversource Gas Company of Massachusetts, and NSTAR Electric Company d/b/a Eversource Energy (“Eversource”), Boston Gas Company, Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid (“National Grid”), Fitchburg Gas & Electric Light Company d/b/a Unitil (“Unitil”), The Berkshire Gas Company (“Berkshire”), and Liberty Utilities (New England Gas Company) d/b/a Liberty (“Liberty”) (together the “Distribution Companies”); (2) Clean Choice Energy (“Clean Choice”); (3) 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, “Consumer Advocates”); (4) Davis, Malm & D’Agostine, P.C. (“Davis Malm”); (5) the Department of Energy Resources (“DOER”); (6) the City of Melrose (“Melrose”); (7) the Retail Energy Supply Association (“RESA”); (8) Vistra Corp. (“Vistra”); and (9) SFE Energy Massachusetts (“SFE”) (collectively, the “Stakeholders”). In response to comments raised by the Stakeholders, and in accordance with the November 19 Memorandum, the Distribution Companies offer the following reply comments.

II. RESPONSE TO INITIAL COMMENTS

A. Public Access to License Renewal Applications

1. Overview of Staff Proposal

In response to the issues raised at the August 6, 2020 Zoom meeting, the Department proposes to add information related to a licensee's corporate structure to the license renewal application (November 19 Memorandum at 3). The Department seeks comment on whether the posting of license renewal applications, including corporate structure, would pose confidentiality concerns (*id.*). Additionally, the Department requests comment on whether it would be useful to include whether the licensee is licensed to service residential customers (*id.* at 4).

2. Stakeholder Initial Comments

Generally, the Distribution Companies note that the Stakeholders supported the Straw Proposal on public access to applications. However, Clean Choice would like to have the option to identify certain information which may be confidential and SFE claims the corporate structure, related financial history and regulatory actions should be considered confidential and not publicly posted (Clean Choice Comments at *3; SFE Comments at 2). SFE claims the other items included in the license renewal application can be made public (SFE Comments at 2). Notably, Davis Malm strongly opposes making license renewal applications public, claiming there is already "significant" amount of information on the Department's website and asserts much of the information should be kept confidential (Davis Malm Comments at 2-8). Moreover, Davis Malm asserts requiring disclosure of any regulatory action should be limited to Massachusetts actions (*id.* at 7). RESA asserts the Department should clarify the meaning of "owners" on the application and clarify it does not intend for suppliers to disclose individual shareholders (RESA Comments at 3-4).

Additionally, DOER noted that the Department's proposed July 1 due date for renewal applications coincides with when competitive suppliers must make their renewable portfolio standards ("RPS") and alternative portfolio standards ("APS") compliance filings with DOER (DOER Comments at 3). As such, DOER raised a concern that competitive suppliers could receive Department approval while technically being non-compliant with DOER regulations (DOER Comments at 3). Therefore, if the July 1 date is not changed, DOER proposes the Department consult with DOER on its list of non-compliant competitive suppliers prior to renewing licenses for the coming year (DOER Comments at 4).

The Consumer Advocates support including the proposed information on the Department website and including whether the competitive supplier serves residential customers. Further, the Consumer Advocates assert this information is generally already public but, including it in one place is beneficial (Consumer Advocates Comments at 2-3).

3. Distribution Companies Response to Stakeholder Comments

The Distribution Companies reiterate their support for making license renewal applications publicly available to protect customers from insolvent or financially unstable suppliers. Consistent with the Straw Proposal, suppliers should be required to provide sufficient details of their financial history to enable the Department to make an informed decision on an application for renewal or a "new" license application submitted by an entity that became insolvent under a prior name. To that end, the Distribution Companies disagree with the competitive suppliers who assert that the Straw Proposal information should be kept confidential, because contrary to David Malm's assertion, the information on prior insolvencies is customer affecting and, therefore, should be disclosed to customers. Clearly, the financial health of a competitive supplier would have a direct impact on its business and on its ability to serve customers. Additionally, as stated by the Consumer

Advocates, much of the information is already public and making it available will result in transparency of operations and ensure an informed consumer base (Consumer Advocates Comments at 3-4).

Further, the Distribution Companies ardently oppose Davis Malm's recommendation to limit regulatory actions to only those actions in Massachusetts. Regulatory action taken against a competitive supplier in any regulated jurisdiction is relevant to the Department's consideration of a license renewal, and certainly is relevant to a potential customer seeking information about the reputation of the entity with which it plans to engage in a business arrangement for the provision of supplier service. Davis Malm's assertion that customers will somehow be confused, because they are "not steeped in" the regulatory requirements in other states (Davis Malm Comments at 7), is paternalistic and relies on consumer confusion as a tool to undermine transparency. Limiting the information to only Massachusetts regulatory actions also undermines the ability of consumers to discern for themselves whether a potential arrangement with a supplier would be in their best interests. The Distribution Companies strenuously reject this limitation. One does not have to be "steeped in" regulatory requirements to understand that a company has been or is being penalized or reprimanded in another state, and that a supplier's business practices that lead to the disciplinary action may be an indicator for the business practices the supplier will employ in Massachusetts. Unseemly business practices in other states may be indicative of a larger, corporate culture issue that customers are entitled to be aware of when deciding whether to contract with a competitive supplier. Moreover, limiting regulatory action disclosure to only Massachusetts fails to serve the purpose sought in the Straw Proposal, because the Department, as the regulator, is already familiar with any previous actions it has taken against the competitive supplier. As such, adoption of changes to the Straw Proposal to endorse Davis Malm's position would undermine the express

purpose of this part of the Straw Proposal to have access to all regulatory actions in the license renewal applications. Competitive suppliers should be required to disclose any regulatory action taken against it in any state in which it currently operates or has operated in the past, so that the Department has a full and complete record of the particular supplier company's business practices for its review and consideration. Nothing precludes the Department from investigating on its own merit any allegations or concerns that arise from the information provided, and it may also ultimately determine that, for whatever reason, the issue in question does not apply for consumers in Massachusetts. As such, the Distribution Companies continue to support the Straw Proposal and urge the Department to require public disclosure of as much information as possible for suppliers seeking license renewal.

B. Door-to-Door Marketing Notification

1. Notification of Municipal Officials

a. Staff Proposal

The Department proposed that Competitive Entities should be required to notify a designated municipal official in advance of door-to-door marketing (November 19 Memorandum at 4-5).¹ The Department proposes that a municipality inform the Department if it would like to be notified of door-to-door marketing and provide contact information for the designated official (*id.*). For municipalities that provide contact information for a designated official, a Competitive Entity would then be required to send an email to the designated official(s) of each municipality that the entity intends to door-to-door market with contact information for the Competitive Entity and its third-party marketing vendor and dates of expected marketing (November 19 Memorandum

¹ The Department clarified "Competitive Entities" is defined as licensed electric and gas competitive suppliers, and licensed electricity brokers and gas retail agents (November 19 Memorandum).

at 5). Similar to the requirement to notify the Department, the municipal official would need to be notified two business days in advance (*id.*). The Department seeks feedback on the nature and scope of the contact information to be provided, and the manner in which the municipalities are notified and the confidential information related to this notification is made available. (November 19 Memorandum at 5).

b. Stakeholder Comments on Notification of Municipal Officials

The Stakeholders generally supported notifying municipal officials. However, Vistra and SFE proposed the Department create a central system where the Department would notify the municipality (Vistra Comments at 4; SFE Comments at 3). Several competitive suppliers also reiterated that the information provided to the municipalities should be maintained confidential and an executed non-disclosure agreement should be executed between the municipality and competitive supplier (RESA Comments at 5).

Davis Malm opposes the notification of municipal officials, claiming it is administratively burdensome and duplicative of its notice to the Department (Davis Malm Comments at 12). Davis Malm also asserts the information is confidential and could not be maintained as such by municipalities (Davis Malm Comments at 12).

The City of Melrose recommends the Department notify all of its municipality contacts that the instant proceeding is ongoing. Melrose recommends once all municipalities are notified, they can comment on whether they want to designate an official for notification (Melrose Comments at 1-2).

c. Distribution Companies' Response

Consistent with the initial comments filed on January 11, 2021, the Distribution Companies continue to support the Department's proposals with respect to notifications of municipal officials

and should not require a municipality to provide more than a name and email address for such notifications (Distribution Companies In. Comments at 5). At a minimum, the notification, which must be provided at least two days in advance of such activities, should provide: (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. This information is vital for municipalities for planning purposes and provides them with advance knowledge of when Competitive Entities will be soliciting in their municipality. Providing this relatively basic information should provide for sufficient notice and allow a municipality to inform residents, should any residents contact them, of the activity.

2. Five-Municipality Limit

a. *Overview of Staff Proposal*

In D.P.U. 19-07-A, the Department proposed a five-municipality limit for door-to-door marketing (D.P.U. 19-07-A at 22). The Department seeks comment on the Competitive Entities proposal to implement the five-municipality limit on a distribution company service territory basis, rather than statewide (November 19 Memorandum at 6). The Competitive Entities propose a five municipality for each electric distribution company, except Unitil,² and five municipalities for each gas distribution company (*id.*).

Further, the Department seeks comments on whether: (1) to defer consideration of the proposal until more experience is gained through the five-municipality limit on a statewide basis; (2) to condition the approach on a competitive entity using global position system (“GPS”) to track

² The Unitil service territory only includes four municipalities in total (November 19 Memorandum at 6).

employees and agents out for door-to-door marketing; or (3) whether five municipalities per gas service territory is appropriate (November 19 Memorandum at 7).

b. Stakeholder Comments

Several Stakeholders voiced support for applying the five-municipality limit to each distribution company's service territory, rather than on a statewide basis (Vistra Comments at 2; SFE Comments at 4; RESA Comments at 6; Davis Malm Comments at 9). Vistra and SFE oppose the requirement of GPS tracking for their door-to-door employees or agents (Vistra at 2; SFE at 4). However, RESA supports the use of GPS tracking (RESA Comments at 6).

The Consumer Advocates oppose the expansion of the five-municipality limit to service territory asserting the statewide limit is already sufficiently flexible (Consumer Advocates Comments at 4-5). The Consumer Advocates assert, in contrast to the arguments raised by suppliers, that increasing the number will allow bad actors to hide the targeting of low-income or other sensitive communities (Consumer Advocates Comments at 5).

c. Distribution Companies Response

The Distribution Companies reiterate their earlier initial comments on this subject and continue to voice its concern over the expansion of the five-municipality limit and dilution of the purpose of imposing a limit in the first place (Distribution Companies In. Comments at 6-7). The expanded approach included by the Competitive Entities and incorporated by the Department for consideration in the Straw Proposal provides no meaningful limits. As previously pointed out by the Distribution Companies and the Consumer Advocates, the Department's Order in D.P.U. 19-07-A rejected a smaller 15 municipality limit (Distribution Companies In. Comments at 6-7; Consumer Advocates Comments at 4-5). See, specifically, D.P.U. 19-07-A at 22. Since that determination, no additional compelling information has been presented to suggest that the

Department should expand the municipality limit even higher than the limit of 15 municipalities that was previously proposed, and rejected, in D.P.U. 19-07-A. However, this is exactly the counter-intuitive affect that adoption of the Competitive Entities would have on the door-to-door marketing requirements under consideration in the Straw Proposal. Therefore, the Distribution Companies urge the Department to reject this even broader, more diluted proposal, to adhere to the Straw Proposal set forth in D.P.U. 19-07-A, and to continue to limit marketing activities to five municipalities statewide.

3. Identification of Neighborhoods in Large Municipalities

a. *Overview of Staff Proposal*

In addition to the five municipality limit for door-to-door purposes, the Department proposes to apply a neighborhood requirement, used currently for the City of Boston (“Boston”), to the cities of Springfield (“Springfield”) and Worcester (“Worcester”) (November 19 Memorandum at 8).³ The Department states in its Straw Proposal that it saw a large number of municipality notifications occur in Springfield and Worcester recently, raising a concern for the Department as to the need to provide greater granularity (*id.*). The Department proposes to divide both Springfield and Worcester into five “door-to-door” neighborhoods (*id.* at 8-9, 10). For Springfield, the Department proposes to establish the neighborhoods based on the following 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 (November 19

³ The Department notes that Springfield and Worcester are the second and third largest cities in the Commonwealth (November 19 Memorandum at 8).

Memorandum at 9). For Worcester, the Department proposes to delineate neighborhoods by either city council districts or based on the neighborhoods identified by the Electric Distribution Companies in their March 5, 2020 comments (*id.*).

b. Stakeholder Comments

Not surprisingly, the competitive supplier commenters of RESA, Vistra, Davis Malm and SFE are opposed to the Department's proposal to apply neighborhood limits to Worcester and Springfield, on grounds that dividing Worcester and Springfield will be overly restrictive (RESA Comments at 8; Vistra Comments at 2-3; Davis Malm at 13-14; SFE Comments at 5). Additionally, RESA claims that the populations of Worcester and Springfield are less dense than Boston and, therefore, should not be held to the same limitations (RESA Comments at 7-9).

By contrast, the Consumer Advocates support applying the neighborhood identification to Worcester and Springfield. Further, the Consumer Advocates recommend the Department consult with local agencies and community organizations to set the neighborhood boundaries for each community (Consumer Advocates Comments at 6).

c. Distribution Companies' Response

Consistent with our initial comments and with the comments presented by the Consumer Advocates, the Distribution Companies continue to support dividing Worcester and Springfield into neighborhoods for the purpose of door-to-door notification. Worcester and Springfield are the second and third most populated cities in the Commonwealth, and while some stakeholders have indicated these cities are not as populated as the Boston, Worcester and Springfield are significantly larger than other towns and cities in the Commonwealth. Moreover, size and population density are not the only considerations, as noted in the Comments of the Consumer Advocates, stating that "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 [citations omitted].” The Companies support the suggestion of the Consumer Advocates to consult directly with the municipal agencies in Springfield and Worcester, and with the many organizations that serve low-income residents, for their input on the division of these cities into separate neighborhoods.

It may also be reasonable to apply the divided neighborhood approach to more cities in the Commonwealth beyond Boston, Springfield, and Worcester, as suggested in the Electric Distribution Companies’ March 5, 2020 Comments at Attachment A (proposing to also divide Cambridge and Newton into neighborhoods for door-to-door marketing purposes), but certainly these three are appropriate for consideration as the Department has suggested. The increased customer protections and transparency provided to the Department, the municipalities, and their residents, outweighs any perceived disadvantages to suppliers by dividing Worcester and Springfield into neighborhoods.

C. Contract Summary Form

1. Voluntary Renewable Energy Products

a. Overview of Staff Proposal

In D.P.U. 19-07-A, the Department proposed an initiative to require a Contract Summary Form at the point of sale with key contract details (November 19 Memorandum at 10). The Department now proposes two methods of improving the Contract Summary Form by requiring the form to identify whether the voluntary renewable energy resource is located outside of the New England region and whether the product is a designated RPS Class I resource (November 19 Memorandum at 11-12). Staff proposed three forms of notifying language based on the classification of the product (*id.* at 12-13). If a voluntary renewable product does not meet one of

the proposed definitions, the competitive supplier would need to submit it for Department review (*id.* at 13).

b. Stakeholder Comments

The Consumer Advocates and DOER generally support the Straw Proposal to include additional information (Consumer Advocates Comments at 7; DOER Comments at 4-5). By contrast, the competitive suppliers do not support the Straw Proposal,⁴ claiming additional information will harm the effectiveness of the Contract Summary Form and assert the use of “premium” will confuse customers (Clean Choice Comments at 6; Vistra Comments at 5-6; RESA Comments at 10-11; Davis Malm Comments at 16-17). The Consumer Advocates share the concern that “premium” is too imprecise of a term and recommends distinguishing between RPS-eligible and non-RPS eligible, and also recommend including whether the generation sources are recently built or older than ten years (*id.* at 9).

c. Distribution Companies’ Response

The Distribution Companies agree with the concerns raised by stakeholders with respect to possible consumer confusion over the term “premium” versus “non premium”, and further maintains that there is no need to specify the class of REC in the Contract Summary Form. Rather than over complicating the issue, the easiest way to elicit the requested information may be to offer a Yes or No question, such as, “Does the additional renewable product contribute to Massachusetts goals under the Global Warming Solutions Act? - Check “Yes” or “No.” This approach would eliminate any ambiguity related to buying renewables from outside the region while still accomplishing the goal of providing transparency about the product to consumers.

⁴ SFE offered no comment on this issue.

2. Basic Service Rate and Gas Supply Rate

a. *Overview of Staff Proposal*

Additionally, Department staff proposes including the current and upcoming Basic Service/gas supply rate on the Contract Summary Form. The Department proposes language notifying the consumer this is a message from the Department on rates and directing the consumer to the website for additional information (November 19 Memorandum at 14-15). 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 suppliers would be directed to provide this information on the Contract Summary Form (November 19 Memorandum at 16).

b. *Stakeholder Comments*

Generally, the competitive suppliers opposed the Straw Proposal to include basic service rate information on the Contract Summary Form (Clean Choice Comments at *7; Vistra Comments at 7-8; SFE Comments at 6; Davis Malm Comments at 18-19).⁵ The competitive suppliers instead assert that inclusion of the basic service information will confuse customers and inappropriately compare two dissimilar products (Clean Choice Comments at *7; Vistra Comments at 7-8; SFE Comments at 6). Further, Vistra claims including basic service rates runs afoul of the AGO's advertising requirements (Vistra Comments at 7-8). Lastly, Davis Malm asserts it will create a

⁵ RESA offered no comment on including basic service on the Contract Summary Form.

lengthy contract summary form that is unlikely to offer further education to consumers regarding the product they are being offered (Davis Malm Comments at 19).

By contrast, the Consumer Advocates and DOER support including basic service and gas supply information on the Contract Summary Form (Consumer Advocates Comments at 10; DOER Comments at 5). Additionally, Consumer Advocates strongly support including a disclosure that consumers should not rely on current basic service rate when making a decision (Consumer Advocates Comments at 10). Further, the Consumer Advocates propose to include language for circumstances when a new rate has been proposed but is not yet approved by the Department (*id.* at 12). The Consumer Advocates recommend the Department investigate the accessibility to Contract Summary Form by (1) ensuring customers have access to information on Contract Summary Form through printouts; (2) improve readability access of the Energy Switch website; and (3) allow for the Energy Switch site to be translated via Google Translate and improve disability access to website (*id.* at 14-15)

c. Distribution Companies' Response

While the Distribution Companies understand the Consumer Advocates' intention in revising the basic service Straw Proposal language, the Distribution Companies do not support the proposed paragraph⁶ for when the basic service rate is not known. The Distribution Companies are concerned the additional language is overly lengthy and potentially confusing to customers. Rather, the Distribution Companies support the second option provided in the Straw Proposal which discloses the basic service rate and when that rate ends. While generally supportive of disclosure and transparency of information, the Distribution Companies maintain that, in this

⁶ The Distribution Companies are referring to the paragraph in the Consumer Advocates Comments at 11.

instance, it would make more sense from a messaging perspective to have each Distribution Company provide the necessary information on its website with a direct link to a list of historic basic service rates by electric distribution company, and to note the existence of that information on the Contract Summary Form rather than to attempt to provide the details themselves on the bill or in a bill message. The Distribution Companies are happy to work with the Department or the Consumer Advocates, as desired, to develop the appropriate bill message and web interface to communicate the desired information.

D. Recording of Telemarketing Calls

1. Overview of Staff Proposal

As set forth in D.P.U. 19-07-A, competitive suppliers are required to record outgoing telemarketing call for all calls over one minute and maintain a copy of the recording for a period of two years. The Department is proposing to require competitive suppliers to provide the Department with a copy of recording within three business days of a Department request (November 19 Memorandum at 16). The Department also notes it will review the possibility of real-time access to recordings as a Tier Two initiative (*id.* at 17).

2. Stakeholder Comments

Stakeholders generally support the Straw Proposal (Clean Choice Comments at *7-8; SFE Comments at 7; Consumer Advocates Comments at 15-16; RESA Comments at 16). However, Clean Choice asserts the Department should have to provide a specific customer or lead with whom a supplier has made contact when requesting recordings (Clean Choice Comments at *7-8). Further, Clean Choice claims the Department should have to provide a reasoning for each request and cannot broadly request recordings (*id.*). Davis Malm recommends extending the timeline for providing recordings from three days to five to ten business days (Davis Malm Comments at 20).

The Consumer Advocates recommend the recordings be accompanied by an affidavit attesting to the completeness and accuracy of the recording (Consumer Advocates Comments at 15-16).

3. Distribution Companies' Response

The Distribution Companies reiterate their support for the Straw Proposal requiring competitive suppliers to maintain recordings of telemarketing calls (Distribution Companies In. Comments at 10). The Distribution Companies defer to the Department's judgment on how long, and what manner, the recordings should be maintained.

E. Definition of Small Commercial and Industrial Consumer

1. Overview of Staff Proposal

The Department proposes to define a small gas commercial and industrial ("C&I") customer as a non-residential customer whose annual gas usage does not exceed 7,000 therms for purposes of the Tier I and Tier II initiatives (November 19 Memorandum at 18). For electric small C&I customers, the threshold would be a non-residential consumer whose annual electric usage does not exceed 15,000 kilowatt hours. When determining whether an electric or gas customer with multiple accounts is a small C&I customer, the Department proposes to allow Competitive Entities to aggregate the usage of each individual account to determine whether small C&I initiatives apply (*id.* at 18-19). Additionally, the Department seeks comments on how to treat new gas or electric customers without historical annual usage (*id.* at 19).

2. Stakeholder Comments

Clean Choice, SFE, and RESA support the Straw Proposal definition for Small C&I customers (Clean Choice Comments at *10; SFE Comments at 8; RESA Comments at 14; Davis Malm Comments at 23). Additionally, for when historical data is unavailable, SFE and RESA recommend the Distribution Companies provide their method for determining historical usage and rate class (SFE Comments at 8; RESA Comments at 14). RESA recommends an additional comment period after the Distribution Companies disclose their method (RESA Comments at 14). Davis Malm recommends the classification be based on “good faith” estimates of the projected annual electric load but, is open to hearing other procedures (Davis Malm Comments at 23-24).

3. Distribution Companies’ Response

As discussed in the Distribution Companies’ initial comments, when placing a customer in a rate class, the Distribution Companies do not examine the customer in terms of “small” or “large” commercial customers (Distribution Companies Initial Comments at 11-15). Rather, the Distribution Companies generally review the size of the load of the customer (*id.*). Once the load is determined, the Distribution Companies place the customer on the appropriate rate (*id.*). However, since rate classes are company specific, and the load of significance in determining those rate classes is similarly company-specific, a small gas C&I customer may not be defined as a non-residential customer whose annual gas usage does not exceed 7,000 therms pursuant to each gas company’s tariffs. In fact, as shown in the tables that accompany the Distribution Companies’ initial comments, each of the six natural gas local distribution companies define a “small C&I” customer on a volumetric basis with significant disparity between each of the companies. As such, instead of establishing a single threshold or small C&I definition for all companies to 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, the Distribution Companies reiterate their previously stated recommendation that the Department should define small C&I by Company, according to each company's individual tariff (*id.* at 12, 15). This approach would achieve the Department's goals of protecting and notifying both residential and small C&I customers while also ensuring that all small C&I customers, as defined by the Distribution Companies, receive the requisite information to make informed decisions regarding their electric and natural gas service.

F. Other Issues

1. Untimely License Renewal Applications

a. Overview of Staff Proposal

The Department proposes to notify Competitive Entities thirty days prior to license renewal and would send an additional notice within five days of license renewal due date (November 19 Memorandum at 20). If a competitive supplier fails to renew within 14 days of the due date, they would be barred from enrolling new customers (*id.* at 20). If the competitive supplier renews within 60 days, it would regain the ability to enroll new customers (*id.*). If the competitive supplier fails to renew within 60 days, it would be required to petition the Department to regain the ability to enroll new customers (*id.* at 21). To enforce this prohibition, the Department proposes that the Distribution Companies revise their electronic data interchange process to disable enrollment or to inform the Department if a particular competitive supplier attempted to enroll a new customer. If the competitive supplier attempts to enroll a new customer, it would be subject to licensure action (*id.*).

The Department proposes that if an electricity broker or gas retail agent fails to submit a license renewal application within 14 days of the renewal date, it would be prohibited from

working with Competitive Entities to facilitate the sale of electricity or gas (November 19 Memorandum at 21). Similarly, if an electricity broker or gas retail agent renew within 60 days, it will regain its ability to work with Competitive Entities. If they do not apply within 60 days, they would be required to petition the Department (*id.*). To enforce this prohibition, the Department would notify Competitive Entities of an electricity broker or gas retail agent that is prohibited. If the competitive supplier does not comply, it would be subject to licensure action (*id.*).

b. Stakeholder Comments

Clean Choice and RESA support the Straw Proposal with respect to license renewal (Clean Choice Comments at *10-11; RESA Comments at 16). However, Clean Choice recommended a “cease and desist” notification be sent for delinquent suppliers informing them they are prohibited from enrolling new customers (Clean Choice Comments at *10-11). Davis Malm generally supports the Straw Proposal but opposes distribution company involvement in the enforcement (Davis Malm Comment at 25). Instead, Davis Malm recommends the Department send a D.P.U. 16-156-A letter to the regulatory contact and warn the delinquent supplier that failure to obey could result in an investigation or other sanction (Davis Malm Comments at 25). SFE opposes the Straw Proposal asserting it is an overly aggressive penalty and, instead, late license renewal applications should be penalized by a fine (SFE Comments at 9).

c. Distribution Companies’ Response

The Distribution Companies continue to oppose the first method of enforcement which requires the distribution company to modify its electronic data interchange (“EDI”) process to disable enrollment by the delinquent competitive supplier. As noted previously, the Distribution Companies oppose this method because it is administratively burdensome, costly, and leaves

potential for human error when switching between enabling to disabling enrollment (Distribution Companies In. Comments at 16). Rather, the Distribution Companies could produce lists of new enrollments for particular suppliers, if requested by the Department.

G. Elimination of Customer Account Number

In the Consumer Advocates' Initial Comments, they reiterated their opposition to the elimination of the customer account number asserting it will increase unauthorized enrollments and will not reduce door-to-door marketing (Consumer Advocates Comments at 19-20).

While the elimination of the customer account number is a Tier II issue,⁷ the Distribution Companies reiterate their opposition to the elimination of the customer account number and concur with the Consumer Advocates that the risks associated with unauthorized enrollments outweigh any perceived benefits. The customer account number is a unique identifier that can be safely transmitted using the EDI process and used easily to validate a competitive supplier enrollment process. As discussed in the Distribution Companies' January 7, 2021 presentation on Tier II initiatives including "enroll with your wallet", transmitting other unique identifiers, including social security numbers, credit card or bank information or other data, is inadvisable from a data security perspective and from a customer safety perspective. As such, the Distribution Companies continue to urge the Department to maintain the customer account number requirement. As this issue is a Tier II topic, the Distribution Companies look forward to continuing this discussion with the Department and stakeholders.

⁷ See Hearing Officer Memorandum at 19-20 (Feb. 5, 2020).

III. CONCLUSION

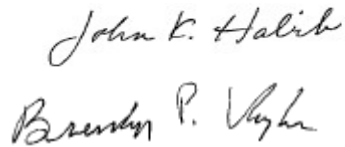
The Distribution Companies appreciate the opportunity to submit these comments on the Department's proposals and Stakeholder comments in this matter and look forward to continued participation in the remaining phases of this investigation.

Respectfully Submitted,

DISTRIBUTION COMPANIES

By their attorneys,

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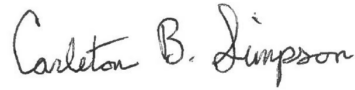
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