



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

### MEMORANDUM

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

FROM: Gregory Wade, Hearing Officer

RE: Request for Stakeholder Proposals on Tier Two initiatives

DATE: March 17, 2021

CC: Mark D. Marini, Secretary

---

#### I. INTRODUCTION

On January 18, 2019, the Department of Public Utilities (“Department”) initiated Investigation by the Department of Public Utilities into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07 (2019), to investigate initiatives that would: (1) increase customer awareness of the electric competitive supply market and the value the market can provide, thus allowing customers to make well-informed decisions; (2) facilitate the Department’s adoption of a more pro-active approach toward our oversight of competitive supplier performance; and (3) improve the operational efficiency of the electric competitive supply market in order to optimize the value that the market provides to customers. D.P.U. 19-07, at 4-5, 10. During a June 6, 2019, technical session, Department staff announced that we intended to investigate the initiatives in the proceeding in a tiered manner:<sup>1</sup> (1) Tier One would address those initiatives that can be resolved in the timeliest manner; (2) Tier Two would address those initiatives that require

---

<sup>1</sup> At the June 6, 2019 technical session, Department staff also announced that the D.P.U. 19-07 investigation would include the gas competitive supply market.

more information before we can determine how best to proceed; and (3) Tier Three would address those initiatives that would require fundamental changes to the way in which the retail competitive markets currently operate, and thus require significantly more discussion. On May 22, 2020, the Department issued its order on Tier One initiatives, D.P.U. 19-07-A. In the November 19, 2020, Hearing Officer Memorandum, the Department sought comments on ways in which the Tier One initiatives could be improved – stakeholders submitted initial and reply comments on January 11, 2021, and February 4, 2021, respectively.

On January 7, 2021, the Department held a technical session to discuss Tier Two initiatives that would further improve: (1) the information provided to customers; (2) the ability of the Department to proactively oversee the competitive market; and (3) the operational efficiency of the competitive supply market.<sup>2</sup> This Hearing Officer Memorandum sets forth the next step in the investigation of Tier Two initiatives. Unless specified otherwise, the initiatives discussed below apply equally to the electric and gas competitive supply markets.

## II. TIER TWO INITIATIVES

### A. Introduction

In the stakeholder process that preceded the issuance of D.P.U. 19-07-A, Department staff requested that competitive supplier representatives and consumer advocate representatives draft straw proposals for specified Tier One initiatives, while staff drafted proposals for other initiatives. These proposals formed the basis for further discussions among stakeholders that led to the initiatives set forth in D.P.U. 19-07-A. Consistent with this approach, in the sections below, staff specifies the Tier Two initiatives for which we request the competitive supplier representatives (“Competitive Supplier Group”) to draft straw proposals, and the initiatives for which staff will take the lead in drafting straw proposals. Section III, below, addresses the timing and process for drafting straw proposals.

### B. Improved Consumer Information

#### 1. Monthly-Price Products

##### a. Contract Summary Form

In D.P.U. 19-07-A at 39-40, the Department specified the price-related language that competitive suppliers must use on their Contract Summary Forms for fixed-price products.

---

<sup>2</sup> A copy of the PowerPoint presentation that was used to facilitate discussion during the technical session is attached to this Hearing Officer Memorandum (“January 7 Technical Session Presentation”).

Competitive suppliers currently are required to submit price-related language for monthly-price products for the Department's review. D.P.U. 19-07-A at 40. To date, the Department has reviewed monthly-priced product language for multiple suppliers. Department staff would like to explore uniform price-related language for inclusion in Contract Summary Forms for monthly-price products. To facilitate discussion among stakeholders on this issue, staff will draft a straw proposal for such language.

b. Customer Access to Future Monthly Prices

Currently, competitive suppliers that offer products for which the prices are subject to change monthly are required to inform customers only of the initial month's price, either through Contract Summary Forms for monthly-price products or through automatic renewal notifications. D.P.U. 19-07-A at 39-40, 66-67. During the January 7, 2021 technical session, Department staff stated that we seek to explore uniformity among competitive suppliers regarding the manner in which subsequent month's prices are made available to customers (January 7 Technical Session Presentation, slide 18).<sup>3</sup> To facilitate discussion among stakeholders on this issue, staff requests that the Competitive Supplier Group draft a straw proposal for best practices regarding (1) when the next month's price should be made available to customers (vis-à-vis when the prices take effect), and (2) the vehicle(s) through which this price should be made available.

c. Notification of Increase in Monthly Price

During the January 7, 2021 technical session, Department staff stated that we seek to explore creating uniform rules for competitive suppliers to notify customers any time that a price increases from one month to the next (January 7 Technical Session Presentation, slide 18). To facilitate discussion among stakeholders on this issue, Department staff will draft a straw proposal for the timing, format, and language of such notifications.

2. Customer Complaint Scorecard

In D.P.U. 19-07, at 9-10, the Department stated that we see value in exploring making competitive supplier complaint data or a performance rating available to the public online in a transparent and easily understood manner. During a June 6, 2019 technical conference, Department staff presented a proposed framework for such a rating system which may include: (1) residential customer complaints against a competitive supplier would be

---

<sup>3</sup> Through our review of the Contract Summary Forms for such products, the Department has required competitive suppliers to provide information regarding the website address or customer service phone number through which customers can gain access to next month's prices. To date, the manner in which these prices are made available to customers has varied across competitive suppliers.

based on information entered into the Department's Consumer Division database; (2) competitive supplier performance would be calculated as the ratio of number of complaints against a supplier to the number of residential customers served by the supplier over a specified period of time; (3) competitive suppliers must serve a minimum number of residential customers in order to be included in the publicly-available rating system; and/or (4) competitive suppliers' performance ratings will be presented in a "star grading" system. To facilitate discussion among stakeholders on this issue, Department staff will draft a more detailed straw proposal for a "customer complaint scorecard."

C. Improved Department Oversight

1. Monthly Price Products

a. Reporting Requirement

Pursuant to the Department's directives in D.P.U. 19-07-A at 71-74, 77-80, competitive suppliers are required to submit semi-annual reports on their automatic renewals and customer enrollments. During the January 7, 2021 technical session, Department staff stated that we seek to explore a similar reporting requirement for monthly-price products (January 7 Technical Session Presentation, slide 19). To facilitate discussion among stakeholders on this issue, Department staff will draft a straw proposal for the information to be reported and the format in which the information will be reported.

b. Wholesale Market Price Index

Department staff recognizes that competitive suppliers may consider several factors in determining prices for their monthly-price products. One of the primary factors that competitive suppliers take into consideration is the wholesale market costs that they will incur in providing service to their monthly-price customers during a particular month. Developing an index for such costs may allow the Department to better understand the extent to which competitive suppliers' monthly prices track wholesale market costs. To facilitate discussion among stakeholders on this issue, Department staff requests that the Competitive Supplier Group develop a straw proposal for the method by which a monthly wholesale market cost index may be calculated for the electric and gas markets.

2. Automatic Renewal Products

During the January 7, 2021 technical session, Department staff stated that we seek to explore best practices for the terms and conditions of automatic renewal products. To facilitate discussion during the technical session, staff set forth a proposal for the terms and conditions of such products, related to: (1) pricing structure; (2) pricing components; (3) contact term; (4) renewable energy content; and (5) early cancellation fees (January 7 Technical Session Presentation, slide 24). To further facilitate discussion among stakeholders

on this issue, Department staff requests that the Competitive Supplier Group draft a straw proposal for best practices related to the terms and conditions of automatic renewal products, taking into consideration the presentation made by staff during the technical session.

### 3. Products Provided to Low-Income Customers

On June 6, 2020, the Department issued D.P.U. 19-07-B, in order to explore the extent of the impact of the competitive supply markets on: (1) the distribution companies' Arrearage Management Programs' success rates; (2) low-income customers as a whole; and (3) the general subsidy costs for the low-income assistance programs paid for by all ratepayers. During the January 7, 2021 technical session, Department staff summarized the information provided by the electric and gas distribution companies related to the impact of the competitive supply markets on low-income customers (January 7 Technical Session Presentation, slides 14-15). In addition, to facilitate discussion during the technical session, staff presented a proposal on best practices that may apply to products offered to low-income customers (January 7 Technical Session Presentation, slide 16). To further facilitate discussion among stakeholders, staff will take the lead in drafting a straw proposal for the products that competitive suppliers may provide to low-income customers.

### 4. Renewable Energy Products

In Section II.C.1.a, above, Department staff stated that we will draft a straw proposal for the reporting of information related to monthly-price products. Staff seeks to explore a similar reporting requirement for voluntary renewable energy products. To facilitate discussion among stakeholders on this issue, Department staff will draft a straw proposal for the information to be reported, and the format in which the information will be reported.

### 5. Third-Party Verification

In D.P.U. 19-07 A at 57, the Department stated that we intend to investigate the implementation of an enhanced third-party verification ("TPV") process as a Tier Two initiative. During the January 7, 2021 technical session, the Competitive Supplier Group presented an overview of competitive suppliers' current TPV practices, including but not limited to: (1) the use of live versus pre-recorded TPV agents; (2) the participation and role of the telemarketing agent during the TPV call; and (3) the information for which affirmation is required (January 7 Technical Session Presentation, slide 42-43).

In light of the important consumer protection function provided by the TPV process, Department staff seeks to explore creating uniformity among competitive suppliers regarding the manner in which they conduct TPV calls, including the scripts used during those calls. To facilitate discussion among stakeholders, Department staff requests that the Competitive Supplier Group develop a straw proposal for best practices on the conduct of TPV calls and a uniform script that competitive suppliers would use during TPV calls.

#### 6. Telemarketing Notification

In D.P.U. 19-07-A at 19-30, the Department established a door-to-door marketing notification requirement for competitive suppliers. This requirement has provided the Department with useful information regarding door-to-door marketing activities being conducted in the Commonwealth. Department staff seeks to explore a similar notification requirement for telemarketing activities. To facilitate discussion among stakeholders on this issue, Department staff will draft a straw proposal for the frequency and timing of such notifications, and the information to be provided.

#### 7. Department Access to Telemarketing/TPV Recordings

Pursuant to the Department's directives in D.P.U. 19-07-A at 56-57, competitive suppliers are required to record all outgoing telemarketing calls conducted on their behalf, and retain the recordings of those calls for which the duration exceeds one minute for a minimum of two years (regardless of whether the call resulted in a customer enrollment). The Department stated that we will discuss with stakeholders the means by which the Department will access the recordings. D.P.U. 19-07-A at 57. In the November 19, 2020 Hearing Officer Memorandum at 12, staff requested comment on our proposal that competitive suppliers be required to submit recordings to the Department within three business days of a request. The Department will address this issue in a subsequent Order.

During the January 7, 2021 technical session, the Competitive Supplier Group presented an overview of the ways in which suppliers comply with Department's directive in D.P.U. 19-07-A regarding the recording of marketing calls, and the retention of those recordings (January 7 Technical Session Presentation, slides 46-47). To facilitate our oversight of competitive supplier compliance with Department rules, Department staff seeks to explore a process for proactively requesting recordings from suppliers, rather than in reaction to consumer complaints received by the Department's Consumer Division. D.P.U. 19-07-A at 3. To facilitate discussion among stakeholders, Department staff will draft a straw proposal for such a process.

#### D. Improved Market Efficiency

In D.P.U. 19-07, at 12-14, the Department stated that we seek to address barriers that detract from the value that the competitive retail supply market can provide to customers. The Department identified as such a barrier the requirement that competitive suppliers provide a customer's distribution company account number in order to successfully enroll the customer, information that customers may not have readily available. D.P.U. 19-07, at 14.

During the January 7, 2021 technical session, the distribution companies presented information on an "Enroll with Your Wallet" approach (January 7 Technical Session Presentation, slides 30-37). In addition, to facilitate discussion during the technical session,

Department staff set forth proposed guiding principles for such an approach: (1) the customer information to be used for enrollment should be well-known by the customer, but not others; and (2) improvements in market efficiency cannot be achieved at the expense of consumer protections against slamming (January 7 Technical Session Presentation, slide 28). To the extent that the Competitive Supplier Group would like to propose an “Enroll with Your Wallet” approach, the Competitive Supplier Group should draft a straw proposal taking into account the presentations made by the distribution companies and Department staff during the technical session. The Competitive Supplier Group should also identify differences, if any, in the manner in which the straw proposal should be implemented for the electric and gas competitive markets.

### III. NEXT STEPS

In the sections above, Department staff specifies the following Tier Two initiatives for which we request that the Competitive Supplier Group draft straw proposals:

1. customer access to future monthly prices (Section II.B.1.b);
2. wholesale market price index (Section II.C.1.b);
3. best practices for the terms and conditions of automatic renewal products (Section II.C.2);
4. best practices for the conduct of TPV calls, including a uniform TPV script (Section II.C.5); and
5. an “Enroll with Your Wallet” approach (Section II.D).

Similarly, Department staff specified the following Tier Two initiatives for which we would draft straw proposals:

1. uniform Contract Summary Form language for monthly-price products (Section II.B.1.a);
2. notification of increase in monthly price (Section II.B.1.c);
3. customer complaint scorecard (Section II.B.2);
4. reporting requirement for monthly price products (Section II.C.1.a);
5. best practices for products offered to low-income customers (Section II.C.3);
6. reporting requirement for renewable energy products (Section II.C.4);
7. telemarketing notifications (Section II.C.6); and
8. pro-active access to marketing call recordings (Section II.C.7).

The Hearing Officer will schedule a procedural call with the Competitive Supplier Group to discuss the timing of the requests set forth in this Hearing Officer Memorandum. Subsequent to that discussion, the Hearing Officer will issue a procedural memorandum including the schedule by which the Competitive Supplier Group and staff straw proposals will be distributed to stakeholders.