COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

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

COMPETITIVE SUPPLIER GROUP'S
TIER TWO INITIATIVES PROPOSALS

Direct Energy Services, LLC, Energy Plus Holdings LLC, Green Mountain Energy Company, Reliant Energy Northeast LLC d/b/a NRG Home, and XOOM Energy Massachusetts, LLC (collectively, "NRG Energy Companies"); CleanChoice Energy, Inc.; Residents Energy, LLC; Town Square Energy, LLC; and the Retail Energy Supply Association ("RESA")[1] (together with the individual suppliers, the "Competitive Supplier Group") hereby submit proposals on Tier Two (also referred to as "Tier 2") initiatives in response to the Hearing Officer's March 17, 2021 Memorandum.[2]

PROPOSALS

The Competitive Supplier Group appreciates the Department of Public Utilities' ("Department") stakeholder process and supports the continued consideration of

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

[2] *See* Hearing Officer Memorandum (Mar. 17, 2021) ("Memorandum").

proposals for initiatives to improve the retail energy competitive supply market. The collaborative and deliberative process that the Department has established to evaluate issues in this proceeding encourages the participation of stakeholders with varied and diverse perspectives. To assist in those efforts, the Competitive Supplier Group, as requested, hereby submits proposals on the following Tier 2 initiatives:

(1) Customer access to future monthly prices;
(2) Development of a wholesale market price index;
(3) Best practices for the terms and conditions of automatic renewal products;
(4) Best practices for the conduct of third party verifications ("TPVs"); and
(5) An "Enroll with Your Wallet" approach.[3]

The Competitive Supplier Group encourages the Department to continue to ensure that all stakeholders have a meaningful opportunity to comment on proposals that could affect suppliers, the competitive market, and consumers.

I. ACCESS TO FUTURE MONTHLY PRICES

Throughout this investigation and in the May 22, 2020 Order adopting various Tier One Initiatives, the Department has explored measures to better inform customers about monthly variable price products.[4] These include the following new requirements: (a) the initial monthly price to be included in contract summary forms for variable products as well as end-of-fixed-term notices for products that would automatically renew to variable products; and (b) the contract summary for variable products to include a means for the customer to access future monthly prices when available, such as a website, customer portal, or customer service phone number. In doing so, the Department balanced the marketplace value of monthly variable priced products to consumers who

[3] Hearing Officer Electronic Mail Memorandum (Apr. 9, 2021).

[4] *See* Order on Tier One Initiatives, D.P.U. 19-07-A (May 22, 2020) ("Tier 1 Order"), at 39-50 (establishing requirements for Contract Summary Forms), 93-94 (requiring submission to Department for review of Contract Summary Form in certain instances, including variable-price products).

are not interested in a longer-term fixed price product against concerns that certain consumers may take a "switch and forget it" approach that could result in a lack of awareness that their price has changed to higher than they would have paid if they had chosen other available marketplace products. Additionally, the Department has demonstrated awareness of a systemic barrier to the ability of customers to benefit from increased awareness of pricing; namely, that longstanding utility monthly billing cycle systems may preclude a switch to a product with better value in pricing or terms from becoming effective for a substantial period – potentially as long as eight weeks.[5]

Accordingly, the Memorandum explained that the Department "seek[s] to explore uniformity among competitive suppliers regarding the manner in which subsequent month's prices [for monthly variable price products] are made available to customers" and requests from the Competitive Supplier Group 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."[6] Separately, but in furtherance of pro-consumer policies, the Department also has committed to exploring accelerated intra-cycle switching options as

[5] *See* Vote and Order Opening Investigation (Jan. 18, 2019), at 13-14 (supporting investigation of intra-cycle switching within two days after submission of completed enrollment); *see* Competitive Supply NOI Technical Session (Jun. 6, 2019), at Slide 4 (classifying enrollment issues associated with timing as Tier 2 issues); *compare* Tier Two Initiatives Presentation (Jan. 7, 2021) ("Tier 2 Presentation") (acknowledging work needed to enroll with your wallet but not yet addressing intra-cycle switching); Memorandum *passim* (not requiring straw proposal for intra-cycle switching); *see also* D.P.U. 16-193, *Petition of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid for approval of proposed revisions to certain tariff language related to competitive suppliers*, Order (May 31, 2017), at 10-13 (denying utility request to extend from two business days to four business days the cut-off date in the Model Terms and Conditions for suppliers to submit customer enrollments for timely processing in the current billing cycle).

[6] *See* Memorandum, at 3; *see also id.* at 7 (summarizing proposal requests).

a Tier 2 issue.[7] Accelerated switching has been implemented in several states, including Pennsylvania (within 3 business days) and Maryland (same).[8]

Relative to the Department's request for a straw proposal on "when the next month's price should be made available to customers (vis-à-vis when the prices take effect)," consistent with guidelines in several states, including Maryland and Delaware,[9] the Competitive Supplier Group proposes a new requirement that suppliers be required to establish the following month's variable price no later than 15 days before the effective date of such price. Such price should be promptly made available within the supplier organization to customer service representatives and on other resources containing prices (such as websites or customer portals). Longer lead times for variable price setting increase uncertainty over market conditions and require larger risk premiums that will result in higher consumer prices especially in more volatile months.

This new 15-day advance requirement for establishing variable prices would be in addition to the following requirements that have already been adopted by the Department: (a) disclosure of initial variable prices in contract summaries for new customers and in autorenewal notices for existing customers transitioning to variable prices; (b) inclusion in contract summaries of information on how the consumer may access future Massachusetts variable prices once available, whether by website, customer portal, or

[7] *See* footnote 5 *supra*.

[8] *See* 52 Pa. Code § 57.174 (time frame requirement for enrollments with suppliers); Code Md. Regs. 20.53.04.02 (time frame requirements for supplier enrollments and drops).

[9] *See* Code Md. Regs. 20.53.07.13(B) (requiring new variable prices for residential customers to be made available at least 12 days prior to close of customer billing period); 26 Del. Admin. Code 3001.7.1.1 (requiring same for residential and small commercial customers).

customer service number; and (c) disclosure of available monthly price information to consumers upon request.[10]

Relative to the Department's request for a straw proposal on "the vehicle(s) through which this price should be made available," consistent with guidelines in several states for conversions from fixed to variable products, including Maryland and Delaware,[11] the Competitive Supplier Group proposes a new requirement that any price increase of thirty percent (30%) or more must be sent to the customer not less than twelve (12) days in advance of the effective date. This proposal would ensure that consumers are provided a separate notice of significant price changes without creating excessive administrative burdens or customer notice fatigue.

In addition, in order to allow consumers to take action in response to these notices as quickly as possible, the Competitive Supplier Group also supports adoption of accelerated switching – currently a Tier 2 issue but not addressed in the Memorandum – as an important customer-friendly consumer protection that should be expedited in this proceeding.[12] In order to maximize competitive benefits, consumers should not have to wait weeks or even a month-plus for the next utility billing cycle in order to change service providers and benefit from more attractive prices and terms. Thus, the Competitive Supplier Group recommends that, as part of Tier 2, the Department require the distribution companies to submit a proposal to implement accelerated switching.

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[10] *See* Tier 1 Order at 50-51, 94 (requiring Department review of contract summaries for variable rate products); *id.* at 66-67 (requiring initial monthly variable price to be included in automatic renewal notices).

[11] *See* Code Md. Regs. 20.53.07.13(C)(1); 26 Del. Admin. Code 3001.8.2.6.

[12] *See* footnote 5 *supra*.

II. WHOLESALE MARKET PRICE INDEX

The Memorandum stated:

> 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 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.[13]

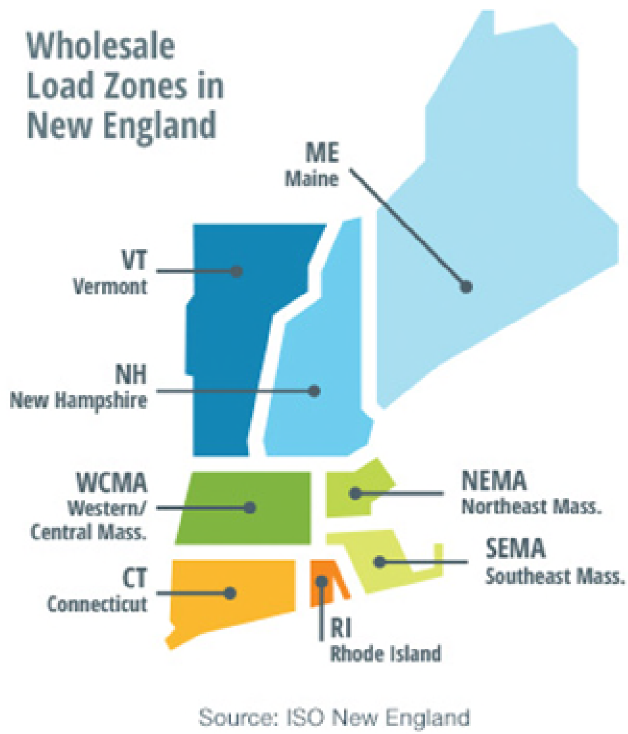
While the establishment of a Wholesale Market Price Index may appear to be straightforward at a high level, it is far more complex and nuanced when intended to be used a benchmark or proxy to compare competitive monthly variable price offerings. For instance, the following costs are billed by ISO New England ("ISO-NE") to electrical load:

- Energy costs, including costs associated with congestion and losses;
- Capacity costs, including costs associated with Installed Capacity ("ICAP") and the Forward Capacity Market ("FCM");
- Costs for ancillary services related to the supply of energy and capacity (e.g., spinning reserves a/k/a operating reserves, Real Time Reserves, etc.);
- Daily Reliability Must Run ("RMR") charges not associated with any agreements (a/k/a RMR uplift);
- Regulation (a/k/a automatic generation control);
- Locational Forward Reserve ("LFR") costs;
- Credits for Financial Transmission Rights ("FTR") auction revenues (a/k/a Auction Revenue Rights);
- ISO Schedule 2 costs;

[13] Memorandum, at 4.

- ISO Schedule 3 costs;
- ISO credit insurance costs;
- ISO participant default costs;
- GIS administration costs; and
- ISO Load Response costs.[14]

In addition, pricing in the wholesale electricity marketplace is calculated at individual generating units, about 1000 load nodes (specific points on the transmission system), eight (8) load zones (aggregations of load nodes), and the Hub (a collection of locations in central New England where little congestion is evident). In Massachusetts, there are three (3) distinct load zones: NEMA (Northeast Mass.); SEMA (Southeast Mass.); and WCMA (Western/Central Mass.). Refer to map below for details.

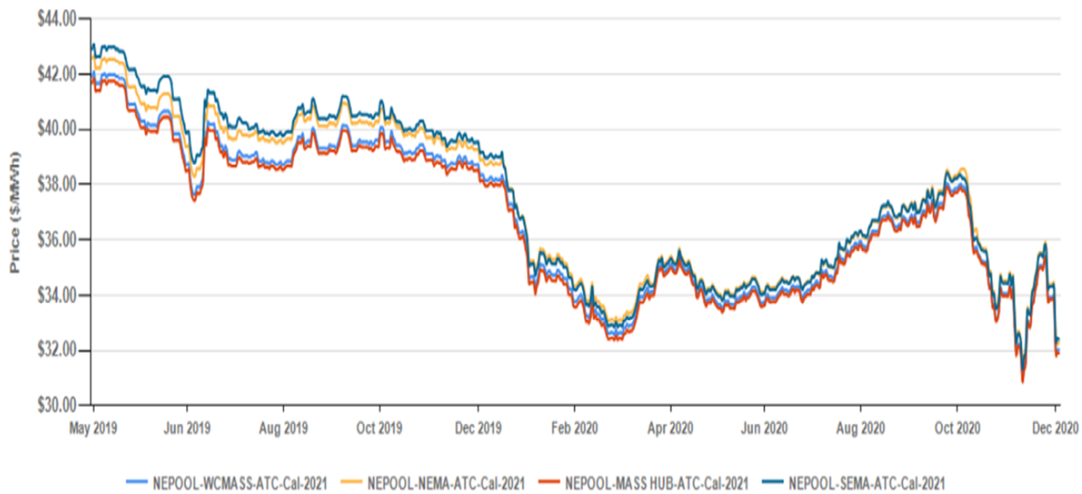


[14] *See* D.P.U. 12-126, *Investigation by the Department of Public Utilities Pursuant to Chapter 209, Section 51 of the Acts of 2012, An Act Relative to Competitively Priced Electricity in the Commonwealth*, Comments of Retail Energy Supply Association (Mar. 25, 2013), at 8-9.

Locational Marginal Price ("LMP")

The LMP is a way for wholesale electric energy prices to reflect the value of electric energy at different locations, accounting for the patterns of load, generation, and the physical limits of the transmission system. In New England, wholesale electricity prices are identified at over 1,000 pricing nodes (i.e., locations) on the bulk power grid that include individual points on the transmission system, load zones (i.e., aggregations of pricing nodes), external nodes where the ISO-NE transmission system interconnects with a neighboring region, and the Mass Hub ("Hub"). The Hub is a collection of locations intended to represent an uncongested price for electric energy, facilitate electric energy trading, and enhance transparency and liquidity in the marketplace. More specifically, the Hub is a specific set of predefined pricing nodes for which locational marginal prices are calculated and which are used to establish reference prices for electric energy purchases, the transfer of day-ahead and real-time adjusted load obligations and the designation of FTRs. Accordingly, the Hub can serve as an effective reference point for wholesale energy prices in New England, specifically in Massachusetts (refer to the red line representing the Hub in the chart below).

How Mass Hub Compares to Other Zones in Massachusetts



Wholesale energy pricing can be impacted by traditional supply-demand conditions, largely attributed to weather related anomalies. For example, higher real-time power prices in calendar years 2013, 2014, and 2018 (so-called Polar Vortex years) were largely due to spikes in natural gas prices during wintertime natural gas delivery constraints. When natural gas is constrained and at a premium, oil generation becomes more economic but may result in higher prices. Competitive markets need to anticipate and account for the potential of prices during the winter period to exhibit volatility reflective of the fuel and weather constraints that limit the ability of power resources to produce electricity during extended cold conditions.

While wholesale energy is a major determinant of overall pricing, it is ***not the only factor*** in the complex constellation that comprises the overall retail price to end-use customers. The cost of capacity, as determined by the competitive Forward Capacity Auction ("FCA") and Renewable Energy costs, among other secondary pricing components, are also part of the mix.

Wholesale Capacity

The capacity market works in tandem with the energy and ancillary service markets to provide revenue that attracts and sustains power resources needed today and into the future. The FCA is an annual auction in the FCM during which capacity resources compete to obtain a commitment to supply capacity in exchange for a market-priced capacity payment. In New England, in the locational capacity market, ISO-NE projects the needs of the power system three (3) years in advance of the operating period and then holds an annual auction to purchase power resources to satisfy the region's future needs.

The aim of the FCM is to send appropriate price signals to attract new investment and maintain existing resources where and when they are needed, including during shortage events; thereby, ensuring the reliability of the New England electricity grid. Moreover, the FCM ensures that the New England power system will have sufficient resources to meet the future demand for electricity. Resources compete in the auctions to obtain a commitment to supply capacity in exchange for a market-priced capacity payment. These payments help support the development of new resources and help retain existing resources. They also serve as a stable revenue stream for resources that are needed to meet peak demand but do not run often the rest of the year.

While the wholesale energy market value varies with fuel prices, the capacity market value varies with changes in the amount of available electricity-producing resources. Strong competition has generally kept capacity market auction prices low for most years. When older generation units or facilities start to retire, however, the capacity market value experiences increased pricing until the market rebalances.

Over the years, the FCM has enabled the entry of nearly 12,000 MW from energy efficiency, demand response, renewable resources and natural gas plants. And it has provided an orderly process for the retirement of almost 7,000 MW from older fossil units and nuclear plants.

New England's annual capacity auction for power system resources provides transparent and known capacity prices to the market that are embedded in retail pricing models by competitive suppliers. For example, the latest ISO-NE FCA (i.e., FCA 15) that recently concluded in February 2021 determined that there are sufficient resources to meet peak electric demand in 2024-2025, with clearing prices ranging from $2.48 per kilowatt-month (kW-month) to $3.98 kW-month across different pricing zones.

Capacity zones are developed to align with power system transmission constraints. They serve a purpose that parallels but significantly differs from the marginal pricing load zones (e.g., NEMA, SEMA, WCMA, Hub) in the ISO-NE energy markets. Instead, capacity zones signal areas of the system with a potential shortfall or surplus of capacity. For the FCA, the region was divided into four zones: (a) Northern New England ("NNE"), made up of Vermont, portions of Maine and New Hampshire; (b) "Nested" Maine, referring to the remainder of Maine; (c) Southeast New England ("SENE"), comprising Northeastern Massachusetts, Greater Boston, Southeastern Massachusetts, and Rhode Island; and (d) Rest of Pool ("ROP"), which includes Connecticut and western and central Massachusetts. These multiple zones help to ensure that capacity is located and priced appropriately. The preliminary clearing prices for the most recent FCA 15 are: (a) $3.98 kW-month in the SENE zone; (b) $2.61 kW-month in the ROP zone; and (c) $2.48 kW-month in the NNE and Nested Maine zones.

Renewable Portfolio/Clean Energy Standards

Renewable Portfolio Standard ("RPS") and Clean Energy Standards ("CES") represent the third major cost factor that may influence competitive retail electricity pricing. In New England, state law and regulation has established regularly increasing annual compliance requirements for load-serving entities ("LSEs"), including competitive suppliers, to meet the future demand for electric energy using new or existing renewable energy resources. Specifically, the LSEs are required to satisfy their RPS and CES obligations by acquiring Renewable Energy Certificates ("RECs") and Clean Energy Certificates ("CECs") from eligible renewable and clean resources qualified by each state.

Within Massachusetts, retail electricity suppliers are currently required to meet the annual compliance obligations for the RPS, Alternative Portfolio Standards, CES and Clean Peak Standards, to name a few. Oftentimes, due to public policy considerations by the Administration and/or Massachusetts General Court, new RPS or clean energy requirements or changes to existing regulation can introduce unanticipated costs that can result in increases prices to end-use customers.[15] The manner and method by which each LSE addresses these changes can vary widely and result in different pricing.

Retail Market Pricing

As noted above, the variability and unpredictability of wholesale energy, wholesale capacity, and renewable energy pricing are driven by an array of factors that include, but are not limited to, weather, market conditions, supply/demand dynamics, and

[15] *See, e.g.*, Department of Energy Resources RPS Class I & II Rulemaking (*available at* https://www.mass.gov/service-details/rps-class-i-ii-rulemaking) (last visited May 17, 2021) (providing notices regarding ongoing rulemaking to amend current regulations).

state public policies. Moreover, to remain financially viable in the highly competitive energy market, retail suppliers need to account for and operate in an environment that demands active and ongoing engagement in wholesale and retail market modeling and analysis; risk mitigation; trading and hedging strategies; weather forecasting; changes to state regulations and related statutory policies (e.g., RPS, CES), to name a few. These critical elements also influence the formulation of the ultimate retail pricing to various customer segments. Specifically, the culmination of these factors contributes to the preparation of the “secret sauce” that represents proprietary and commercially sensitive pricing strategies employed by various market participants.

Finally, it is important for the Department to appreciate and recognize that retail suppliers need to maintain and pay for the “corporate infrastructure” to provide innovative products and quality service to retail end-use customers. This infrastructure includes highly trained sales and marketing personnel, utility operations, customer care and call centers, state of the art IT/digital platforms, legal and regulatory support, accounting, corporate overhead, etc. These costs required to sustain the supplier’s corporate enterprise as an ongoing concern also play a role in pricing strategy and are not addressed through a regulated cost of service pricing model like that employed by the distribution utilities.

The Competitive Supplier Group appreciates the Department’s goal to establish a Wholesale Market Price Index that may allow the Department to better understand the extent to which competitive suppliers’ monthly prices track wholesale market costs. However, as outlined above, significant underlying complexities may limit the Department’s ability to gain full insight into the ultimate prices charged to end-use customers. Given this, instead of developing a Wholesale Market Price Index the Competitive Supplier Group recommends that the Energy Switch Massachusetts website describe, in a consumer-friendly manner, the various elements that comprise the retail price of energy, with the goal to further educate the customer. The Competitive Supplier Group further recommends that the Department establish a working group, chiefly comprised of retail suppliers, to review and develop these descriptions.

If, with the complete understanding that it is not realistic (as detailed above) for a Wholesale Market Price Index to serve as a direct comparison to competitive supplier monthly pricing or as a proxy of such, the Department still wishes to pursue a Wholesale Market Price Index, the Competitive Supplier Group recommends that, at a minimum, the Department include the three principal pricing components of LMP, Wholesale Capacity and RPS/CES as a highly generalized "benchmark." For example, the Department could use the publicly available LMP at ISO-NE's Hub; the Wholesale Capacity prices known and determined by ISO-NE's FCAs; and an assigned, monthly cost factor related to the value of the annual RPS/CES compliance requirements. While this generalized benchmark may serve to assist the Department, because of the numerous other wholesale and retail components that ultimately go into the price charged to consumers, any such generalized benchmark will not and cannot provide a direct comparison to any given supplier's retail price and will provide little (if any) value to consumers and, conversely, will likely only create consumer confusion and frustration.

III. AUTOMATIC RENEWAL PRODUCTS

In the Tier 1 Order, the Department established new requirements to ensure that customers are more aware of the contract renewal provisions in their contracts.[16] First, the Department required that the contract summary form describe the renewal provisions of the contract.[17] Second, the Department required that customers be sent automatic renewal notices containing specific language between thirty and sixty days prior to the expiration of their contracts.[18]

In the Memorandum, the Hearing Officer requested 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 Department staff's presentation at the January 7, 2021 technical session.[19] In the Tier 2 Presentation, Department staff proposed the following limitations on automatic renewal products: (a) the terms and conditions of a new product remain unchanged from the initial product, subject to the customer affirmative authorization of specified terms and conditions; (b) there be no early cancellation fee; and (c) automatic renewal products be subject either to certain pricing limitations or to certain reporting requirements.[20]

Customers contract regularly for products that automatically renew. Fundamentally, automatic renewal provisions generally and in competitive supply contracts specifically, like all other terms in valid contracts, are terms to which both

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[16] *See* Tier 1 Order, at 42-43, 66-68.

[17] *See id.* at 42-43.

[18] *See id.* at 66-68.

[19] *See* Memorandum, at 4-5; *see also* Tier 2 Presentation, at 23-25.

[20] Tier 2 Presentation, at 24-25.

parties—the competitive supplier and the customer—mutually assent.[21] Customers receiving service from a competitive supplier have made an affirmative choice to participate in the competitive retail energy market[22] and likely have contract terms describing how renewals will be handled.[23] Because Department staff's proposals would frustrate customers' ability to benefit from agreements freely entered into following review of their terms, they should not be adopted.

Indeed, Department staff's proposed requirement that the terms and conditions of the automatically renewed contracts remain unchanged from the terms and conditions of the customer's original contract unless the customer has provided affirmative authorization of change to specified terms[24] would infringe significantly on customers' rights to contract freely for energy supply. When a customer agrees contractually that his or her energy supply contract will renew automatically at the end of its term, the customer also agrees to a mechanism for determining how the terms of the renewed contract will be set. The customer and the supplier could agree that all, or some, of the terms of the original contract remain unchanged or could agree on a mechanism for changing all or certain terms upon renewal. Regardless of the mechanism the customer chooses, the customer's choice should be respected. Requiring that the customer provide additional consent to the terms of the automatically renewed contract, or prohibiting pricing terms from being updated in the manner to which the customer agreed, would frustrate the customer's decision to accept how the terms of his or her renewal contract

[21] *See, e.g., I & R Mech., Inc. v. Hazelton Mfg. Co.*, 62 Mass. App. Ct. 452, 454-55 (2004) ("Contract formation requires a bargain in which there is a manifestation of mutual assent to the exchange.").

[22] *See* 220 CMR 11.05(4)(c).

[23] *See* 220 CMR 11.06(3)(b) (requiring supplier terms of service to present the length and kind of contract).

[24] Tier 2 Presentation, at 24.

would be set. It may even prevent the customer from taking advantage of certain changes in contract terms, such as value-added services or potentially reduced prices.

Further, Department staff's proposal to prohibit early cancellation fees in automatically renewed contracts could harm customers. Early cancellation fees are mechanisms designed to recover costs associated with a customer's contract cancellation, such as the costs of procuring power at wholesale to serve the customer. An early cancelation fee allows these costs to be recovered from the cost causer (i.e., the customer cancelling a contract), instead of being built into the prices charged to all customers. If the Department adopts staff's proposal to prohibit early cancellation fees in automatically renewed contracts, suppliers would likely increase the prices of their products to cover the expenses that they could no longer recover through early cancellation fees. This would produce an inequitable result because the customers causing these costs would avoid bearing them, while other customers who did not cause these costs and remain with the supplier ultimately would be responsible for them.

That said, the Competitive Supplier Group regards the renewal notification requirements established by the Department in the Tier 1 Order as meaningful consumer protections that appropriately notify and remind customers of upcoming automatic renewals.[25] At this time, particularly because the requirements have only been in effect since September 2020,[26] the Competitive Supplier Group does not recommend creating any additional automatic renewal product requirements. Instead, the Department, and other stakeholders should study the effects of already established automatic renewal

[25] Tier 1 Order, at 42-43, 66-68.

[26] *See* Tier 1 Order, at 68 ("This requirement applies to customers whose contracts expire on or after September 8, 2020.").

notice requirements and, once sufficient experience with these requirements have been developed, determine whether they should be modified or enhanced in any way. Because many supplier contracts have terms that are twelve months or longer,[27] although some customers have received contract summary forms summarizing renewal terms, many customers may not yet have received automatic renewal notices because their contract terms have not neared expiration since the requirement was implemented. Consequently, before adopting further requirements (especially those that would infringe upon the rights of parties to contract freely), the Department should allow the current requirements to remain in effect without change for a sufficient period of time to allow a meaningful review of their effectiveness.

If, despite the foregoing, the Department wishes to further enhance consumer protections related to automatic renewal products at this time, it should focus its efforts on ensuring that customers have notice and a meaningful opportunity to react to unexpected price changes. To that end, the Department could consider creating a requirement that competitive suppliers provide additional notice to the customer if the price on an automatic renewal product will exceed their current contract price by a certain percentage. Such a requirement exists in Maryland. Under the Maryland Public Service Commission's regulations:

> If a contract with a fixed rate for three or more billing cycles changes to a variable month-to-month price and a change in the contract rate will be equal to or exceed 30 percent of the supplier's current supply rate, the supplier shall provide written notice of the new rate to the customer at least 12 days prior to the close of the customer's billing period.[28]

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[27] *See* Energy Switch Massachusetts, https://www.energyswitchma.gov/#/ (last visited May 17, 2021) (listing supplier products with terms equal to and exceeding twelve months).

[28] Code Md. Regs. 20.53.07.13(C)(1).

Such a requirement enhances customers' awareness of certain upcoming price changes and could similarly benefit customers in Massachusetts by enhancing their awareness of situations in which they might wish to explore other supply options. The Department could further enhance such a requirement by applying it not only when a customer renews a fixed price contract to a variable price, but also whenever a customer's variable price will increase by thirty percent (30%) or more from one month to the next.[29]

In addition, the Department should ensure that customers are able to receive these notices as expeditiously as possible. For instance, as an alternative to U.S. Mail, customers should have the ability to obtain these notices via telephone, electronic mail, text message, and/or an app if their supplier offers these technologies.

Finally, the Department should also ensure that customers can react quickly to such notices. Presently, from the point of a customer's meter read date, it can take one to two billing cycles for a customer to enroll/de-enroll or switch to alternative pricing plans. Customers should be able to act quickly to switch suppliers and choose products that meet their needs. When consumers see prices changing dramatically as can occur during extreme winter weather events or prolonged summer heat waves, they should have the ability to select products that offer better pricing or price protection and to effectuate that change almost immediately. The best way of doing this is to ensure that customers have the ability to switch suppliers in a more accelerated fashion, including within a billing cycle.

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[29] *See* Section I *supra* (proposing this enhancement as part of supplier straw proposal relative to access to monthly prices).

The Pennsylvania Public Utility Commission has regulations that require the distribution companies to reduce the time it takes customers to change suppliers to three (3) business days.[30] Such accelerated intra-cycle switching allows the customer to receive information, make decisions upon it, and have those decisions take effect promptly. This is particularly important when customers wish to take advantage of pricing that best suits their needs so that they can receive the benefit of such pricing promptly. As discussed in Section I *supra*, the Department has identified intra-cycle switching as a Tier Two issue but did not request the suppliers or Department staff to create a straw proposal in the Memorandum. The Competitive Supplier Group requests that the Department prioritize implementation of accelerated intra-cycle as part of Tier 2 and establish a set schedule by which the distribution companies should provide a proposal for implementation.

IV. THIRD PARTY VERIFICATIONS

In the Memorandum, the Hearing Officer requested 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.[31] The Competitive Supplier Group appreciates Department staff's interest in creating uniformity among competitive suppliers regarding the manner in which they conduct TPV calls.[32] However, while customers may be well served by TPV approaches that are generally consistent among competitive suppliers, the Department should not adopt requirements that would frustrate suppliers' ability to distinguish themselves from their competitors. A generic, uniform TPV script in which the exact words and phrases to be used by competitive

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[30] 52 Pa. Code § 57.174. A similar standard applies in Maryland as well. Code Md. Regs. 20.53.04.02 (time frame requirements for electric supplier enrollments and drops).

[31] *See* Memorandum, at 5.

[32] *See id.*

suppliers are prescribed would inhibit reasonable enhancements that suppliers may make to emphasize their own brand identity or otherwise set themselves apart from their competitors. Consequently, the Department should allow suppliers some flexibility in designing TPVs, including TPV scripts.

That said, to ensure that customers have consistent experiences across the Massachusetts competitive supply market, the Competitive Supplier Group proposes that TPVs be required to cover certain minimum elements, without overwhelming the customer with excessive amounts of information. The Maryland Public Service Commission has taken such approach.[33] Consistent with that approach, in addition to covering the customer's affirmative choice to switch suppliers and associated verification data,[34] the Competitive Supplier Group proposes that suppliers be required to include the following elements of the Department's established contract summary form in the TPV:

- price;
- term;
- enrollment fee, early termination fee, and/or other fees;
- automatic renewal;
- renewable energy content and/or incentives;
- the rescission period; and
- competitive supplier contact information.[35]

In addition, the Competitive Supplier Group proposes certain best practices for marketing representatives during TPVs. In particular, the Competitive Supplier Group proposes setting parameters for the presence of the marketing representative during the

[33] Code Md. Regs. 20.53.01.02(B)(16).
[34] *See* 220 CMR 11.05(4)(c)(2).
[35] *See* Tier 1 Order, Attachment E.1.

TPV. For telesales interactions, once the marketing representative has transferred the call to the TPV representative and introduced the customer, the marketing representative should not speak during the TPV. For door-to-door interactions that involve a TPV (instead of or in addition to a letter of authorization),[36] the marketing representative should be required to depart the premises unless the customer expressly consents to allow the marketing representative to remain at the premises.[37] If permitted to stay, the marketing representative should not speak during the TPV.

Finally, the Department should recognize that additional communications technologies can be used to undertake a TPV and not expressly or implicitly limit TPVs to traditional audio telephone calls. While telephone calls, whether with live operators or automated systems, are the traditional forms of TPVs, technology exists for TPVs to be conducted by other systems, such as email, text, and chat systems. These systems may provide added convenience to customers and should also be recognized (and not precluded) as options for conducting TPVs. Thus, the Competitive Supplier Group recommends that the Department explicitly indicate that a TPV can include other forms of verification (text, chat, and email) beyond traditional audio telephone calls.

V. "ENROLL WITH YOUR WALLET"

In the Memorandum, the Hearing Officer also invited the Competitive Supplier Group to propose an "Enroll with Your Wallet" approach taking into account the Tier 2 and distribution companies' presentations.[38] In addition, the proposal should also identify

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[36] *See* 220 CMR 11.05(4)(c).

[37] 52 Pa. Code § 111.7(b)(2) ("When verifying a transaction that resulted from an agent's contact with a customer at the customer's residence, the verification process shall be initiated only after the agent has physically exited the customer's residence, unless the customer agrees that the agent may remain in the vicinity of the customer during the verification process.").

[38] *See* Memorandum at 6-7.

any differences in the manner that such an approach should be implemented for the electric and gas competitive markets.[39]

An "Enroll with Your Wallet" approach would enhance the customer experience significantly. Currently, as the Department is aware, customers are required to have access to their utility account numbers in order to enroll with a supplier. Because account numbers appear on customers' bills, customers typically only have access to this information when they are at home. As a consequence, the marketing channels that are predominate in Massachusetts focus on reaching customers when they are at home (e.g., telemarketing, door-to-door solicitations). If "Enroll with Your Wallet" is adopted, customers would be able to enroll with a supplier based on information that they have more readily available (e.g., last four digits of social security number, driver's license number). This would make it easier for customers to shop for energy supply, including at locations outside their homes, such as shopping mall kiosks. In addition, "Enroll with Your Wallet" would enhance the customer experience and could reduce the number of unplanned solicitations that customers receive at their homes.

The Competitive Supplier Group proposes a system (such as a secure web portal or mobile application maintained by each distribution company) that would allow suppliers to look-up customer account numbers upon inputting unique combinations of identifiers readily known to customers, such as last four digits of social security number, driver's license number, service address, and/or telephone number. Comparable

[39] *See id.* at 7.

approaches have been adopted in both Pennsylvania[40] and Ohio.[41] Under this approach, the supplier would receive customer consent and then, with the information provided by the customer, use the portal to obtain the customer's account number and proceed with the enrollment.[42]

In their presentations, the distribution companies and Department staff raised concerns about potential unauthorized enrollments, data security, and cost.[43] While these are important issues, they are not impediments to creating an "Enroll with Your Wallet" system. Instead, these are issues that should and can be addressed in developing an "Enroll with Your Wallet" program. The Competitive Supplier Group supports robust security features to prevent unauthorized enrollments and to protect sensitive data. Various levels of encryption and other security features, such as two-factor authentication, could be used for these purposes as the distribution utilities and Department staff recognized.[44] Similarly, the Competitive Supplier Group agrees that cost is an important issue in designing an "Enroll with Your Wallet" approach. However, reasonable measures are available to control costs, such as outsourcing the work of developing the "Enroll with Your Wallet" system to a third-party vendor[45] selected through a competitive bidding process.

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[40] *See* Docket No. M-2013-2355751, *EDC Customer Account Number Access Mechanism for EGSs*, Final Order (Pa. Pub. Util. Comm'n Jul. 16, 2013) ("PA EWYW Order").

[41] Case No. 16-1852-EL-SSO *et al.*, *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*, Opinion and Order (Pub. Utils. Comm'n of Ohio Apr. 25, 2018) ("OH EWYW Order"), at 47-48.

[42] *See* PA EWYW Order, at 33.

[43] *See* Tier 2 Presentation, at 31, 37.

[44] *See id.* at 36 (suggesting "[l]everag[ing] two-factor authentication to increase security); "Technical Issues Related to Eliminating the Customer Account Number Requirement in the Competitive Supplier Enrollment Process" Presentation (Jan. 7, 2021), at 8 (same).

[45] *See* Tier 2 Presentation, at 36 ("Potentially outsourced to 3rd party vendor for single interface for Suppliers and Companies").

The distribution companies and Department staff also raised the issue of whether information provided by customers will be sufficient to allow account numbers to be looked up or obtained.[46] This issue was addressed in Pennsylvania and Ohio when "Enroll with Your Wallet" approaches were authorized.[47] Ultimately, selecting the best combination of data items will require detailed consideration; however, the Competitive Supplier Group is confident that such a combination can be selected. Finally, the Competitive Supplier Group does not envision any need for an "Enroll with Your Wallet" approach to vary between electric and gas suppliers.

CONCLUSION

The Competitive Supplier Group appreciates the opportunity to offer these proposals and looks forward to working with the other stakeholders as the Department continues to develop enhancements to the competitive retail energy market that benefit all stakeholders.

[46] *See* Tier 2 Presentation, at 33-35.

[47] *See* PA EWYW Order, at 23 ("[T]he customer's full name, service street address and postal code should be the required data elements."); OH EWYW Order, at 47 (requiring the following information: "(1) the customer's phone number assigned to the account; and (2) either (a) the last four digits of the customer's Social Security Number; or (b) the amount of one of the customer's last three bills, to the extent the Company possesses that information for the affected customer").

Respectfully Submitted,

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