

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-07-C

July 6, 2022

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.

ORDER ON LICENSE RENEWAL APPLICATIONS

I. INTRODUCTION

On January 18, 2019, the Department of Public Utilities (“Department”) opened 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).

The Department identified initiatives that were intended to: (1) increase consumer awareness about the competitive supply market, thus allowing consumers to make well-informed decisions; (2) facilitate the Department’s adoption of a more proactive approach toward our oversight of competitive supplier performance rather than reacting to third-party complaints or reports about alleged violations of statute or regulation; and (3) improve the operational efficiency of the competitive market. D.P.U. 19-07, at 4-5, 10. On May 22, 2020, the Department issued Order on Tier One Initiatives, D.P.U. 19-07-A (2020), which set forth 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 (“Energy Switch Website”).¹ The Department identified issues associated with several of the initiatives set forth in D.P.U. 19-07-A that require further

¹ Available at www.energyswitchma.gov. For a description of the Energy Switch Website, see generally, Order Establishing Rules For The Shopping For Competitive Supply Website, D.P.U. 14-140-E (2016).

discussion with stakeholders. D.P.U. 19-07-A at 97-98. On August 6, 2020, the Department convened a virtual technical session to discuss these and other issues with stakeholders.

On November 19, 2020, the Department issued a Hearing Officer Memorandum that set forth Department staff proposals on issues associated with: (1) disclosure of product information; (2) door-to-door marketing notifications; (3) access to telemarketing call recordings; (4) direct mail marketing; (5) the display of renewable energy information on the Energy Switch Website; (6) definition of small commercial and industrial (“C&I”) customers; (7) license renewal applications; and (8) customer assignment for gas customers.

D.P.U. 19-07, Hearing Officer Memoranda (November 19, 2020) (“November 19 Hearing Officer Memorandum”). The following entities and individuals filed initial comments on these proposals: (1) the Commonwealth of Massachusetts Office of the Attorney General; Alternatives for Community and Environment; the National Consumer Law Center; Greater Boston Legal Services; and Lawyers for Civil Rights (collectively, “Consumer Advocates”); (2) CleanChoice Energy, Inc. (“CleanChoice”); (3) Davis Malm; (4) Fitchburg Gas and Electric Light Company d/b/a Until; 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 (collectively, “Distribution Companies”); (5) Massachusetts Department of Energy Resources (“DOER”);

(6) Retail Energy Supply Association (“RESA”); and (7) SFE Energy Massachusetts, Inc. (“SFE Energy”). The following entities filed reply comments on these proposals: (1) the Consumer Advocates and (2) Distribution Companies. In this Order, the Department addresses posting license renewal applications on the Department’s website and the process for late-filed license renewal applications.^{2,3}

The requirements established in this Order apply to the license renewal applications submitted by (1) competitive suppliers (“Competitive Suppliers”), (2) electricity brokers (“Electricity Brokers”), and (3) gas retail agents (“Gas Retail Agents”) (collectively, “Licensed Entities”). The Department further notes that the Department established a uniform July 1 date for the annual submittal of license renewal applications (“Filing Date”).

D.P.U. 19-07, Hearing Officer Memoranda (August 5, 2020 and September 1, 2020). The

² The Department will address the remaining issues in a subsequent Order.

³ Municipal aggregations are exempt from two requirements included in the Department’s regulations concerning competitive supply. City of Lowell, D.P.U. 12-124, at 31 (2013); City of Marlborough, D.T.E. 06-102, at 16 (2007). First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under the provisions of 220 CMR 11.05(2) in order to proceed with an aggregation plan. D.P.U. 12-124, at 31; D.T.E. 06-102, at 16. Second, a municipal aggregator is not required to obtain customer authorization to switch a customer to the municipal aggregation consistent with the notification and opt-out requirements of G.L. c. 164, § 134(a). G.L. c. 164, § 1F(8)(a); 220 CMR 11.05(4). Accordingly, the municipality (or municipalities) is exempt from the requirements set forth in this Order. However, the competitive suppliers that serve the municipal aggregation are not exempt from any of these requirements. The municipal aggregator is not exempt from other requirements or rules of competitive supply and must operate its plan consistent with provisions in the Department’s regulations at 220 CMR 11.01 et seq. that apply to competitive suppliers and electricity brokers. D.P.U. 12-124, at 31.

requirements set forth below apply to renewal applications due July 1, 2022, and annually thereafter.

II. POSTING LICENSE RENEWAL APPLICATIONS ON THE DEPARTMENT'S WEBSITE

A. Introduction

In D.P.U. 19-07-A at 10-12, the Department set forth the process by which we will make pending new license applications available to stakeholders for comment. The Department stated that due to the administrative nature of the Department's review of a license renewal applications it is not appropriate to subject the application to a stakeholder comment process. Nevertheless, the Department finds merit in making general business information about Licensed Entities available to the public on the Department's website and that, accordingly, we intend to post licensee's renewal applications to our website.

D.P.U. 19-07-A at 13. The Department stated that we intend to work with stakeholders to better understand how we might revise the existing license renewal application to provide information that would be most useful to stakeholders, while ensuring that posting such information to the Department's website would not violate licensees' confidentiality concerns.

D.P.U. 19-07-A at 13.

The existing license renewal application includes the following information: (1) legal name of applicant; (2) applicant's business address; (3) website URL (optional); (4) contact information for a customer service contact person; (5) contact information for a regulatory contact person; (6) name and address of a resident agent for service of process; (7) summary of any history of bankruptcy, dissolution, merger, or acquisition of the entity in the last year;

and (8) statement identifying whether there have been any regulatory actions taken against the applicant in any jurisdiction over the last year. In the November 19 Hearing Officer Memorandum at 3-4, Department staff proposed to add information related to a Licensed Entity's corporate structure to the license renewal application. See, e.g., 220 CMR 11.05(2)(b)3. Department staff requested comment on the proposal, including whether the posting of such information on the Department's website would pose confidentiality concerns. In addition, Department staff requested comment on whether (and if so, why) the license renewal application would be more useful to stakeholders if the application indicated whether a licensee is licensed to serve residential customers.

B. Summary of Comments

The Consumer Advocates and the Distribution Companies support the posting of license renewal applications on the Department's website, including information on corporate structure, as proposed by Department staff in the November 19 Hearing Officer Memorandum (Consumer Advocates Comments at 2-4; Distribution Companies Comments at 3).⁴ These commenters oppose providing confidential treatment to any of the information included in the renewal application, stating that similar information is publicly available in

⁴ DOER states that it appreciates the Department's efforts to provide transparency into the license renewal process (DOER Comments at 3-4). DOER recommends that, prior to granting license renewals, the Department consult with DOER to identify licensees that are not in compliance with the renewable portfolio standards/alternative portfolio standard (DOER Comments at 3-4). Because these issues are outside the scope of the issues set forth in the November 19 Hearing Officer Memorandum proposal, the Department will not address this issue in this Order.

other jurisdictions (Consumer Advocates Comments at 2-4; Distribution Companies Reply Comments at 4-5).⁵ The Consumer Advocates support the inclusion of information regarding the customer classes that a Competitive Supplier is licensed to serve in Massachusetts, stating that, otherwise, they would have to resort to public records requests to obtain this basic information (Consumer Advocates Comments at 3). The Distribution Companies recommend expanding the reporting of any history of bankruptcy, dissolution, merger, acquisition, or regulatory actions from one year to five years (Distribution Companies Comments at 3).

Davis Malm opposes the posting of license renewal applications on the Department's website, stating that most of the information included on license renewal applications is already available on the Department's website (Davis Malm Comments at 23). Further, Davis Malm argues that posting the proposed additional information would provide little value and that managing the nonpublic responses included with license renewal filings would create unnecessary burdens for Licensed Entities and the Department (Davis Malm Comments at 23). With respect to the posting of information related to corporate structure, CleanChoice, Davis Malm, and SFE Energy recommend that a Licensed Entity be able to file a request for confidential treatment of any such information that the Licensed Entity considers to be proprietary (CleanChoice Comments at 4; Davis Malm Comments at 4, 78; SFE Energy Comments at 2). With respect to increasing the reporting of bankruptcy, dissolution,

⁵ The Consumer Advocates note that Competitive Suppliers that are publicly traded must disclose regulatory actions and organization and financial structure information as part of their filings with the U.S. Securities and Exchange Commission (Consumer Advocates Comments at 4).

and regulatory actions from one year to five years, Davis Malm argues that one year is sufficient because past defaults are poor predictors of future problems since troubled suppliers will typically either go out of business or be acquired by substantially more creditworthy entities (Davis Malm Reply Comments at 21).

C. Analysis and Findings

As stated in D.P.U. 19-07-A at 13, the Department finds merit in making general business information about Licensed Entities available to the public through the posting of their renewal applications on the Department's website. Just as the posting of new license applications allows the Department to take advantage of the value that stakeholder input can provide to the Department's review of license applications, the posting of license renewal applications will likewise allow stakeholders to assist the Department in its ongoing review of the performance of Licensed Entities. The Department notes that managing non-public information is a routine matter that requires an entity to file a motion for protective treatment pursuant to G.L. c. 25, § 5D and the Department to rule on that motion, thereby protecting trade secrets, confidential, competitively sensitive, or other proprietary information from public disclosure. Accordingly, we conclude that any burden associated with managing non-public information (by either the Licensed Entity or Department staff) is outweighed by the benefits associated with making this general category of information available to the public.

The Department's website's listing of Licensed Entities identifies the customer classes that each entity is licensed to serve.⁶ Because this information is readily available on the website, the Department declines to require this information in the license renewal applications.⁷

The Department's initial application requires an applicant to provide a summary of any history of bankruptcy, dissolution, merger, or acquisition of the entity in the last five years (Application ¶ 34). A five-year history is appropriate for reviewing an entity's license application in the first instance. In each annual renewal application, the Department and the public is apprised of any new such occurrences. The Department finds that requiring a five-year history in a license renewal application would be redundant of the information already provided to the Department and available to the public. Accordingly, the Department declines to revise the license renewal applications to increase the number of years for which information on the history of bankruptcy, dissolution, merger, or acquisition of the entity must be provided from one year to five years (Distribution Companies Comments at 3-4). A Licensed Entity shall disclose any bankruptcy, dissolution, merger, or acquisition of the entity since its prior application in the subsequent license renewal application.

⁶ The list of Licensed Entities is available at <http://eeaonline.eea.state.ma.us/DPU/Fileroom/Licenses> and <http://eeaonline.eea.state.ma.us/DPU/Fileroom/Suppliers>, for electric and gas licensees, respectively.

⁷ Licensed Entities may not seek to serve additional customer classes at the time of submitting a renewal application. If a Licensed Entity wants to serve additional customer classes, the Licensed Entity must submit a license expansion application.

Consistent with our regulations and to assist with our oversight, the Department finds merit in requiring a license renewal application to identify regulatory actions taken in other jurisdictions. See 220 CMR 11.05(2)(b)17. The Department finds that the information provided through the existing license renewal applications is reasonable and appropriate for the purpose of making general business information about Licensed Entities available to the public. Accordingly, the Department declines to limit the identification of regulatory actions to those actions taken in Massachusetts (Davis Malm Comments at 7).

With respect to including information on corporate structure on the license renewal application, the Department seeks to determine the name of the applicant's parent or affiliate company or companies, and whether the ownership or affiliation is partial or whole; applicants do not need to provide information about their owners beyond the identification of their parent companies (see RESA Comments at 3). By this requirement, the Department only seeks information on corporate structure that would otherwise be publicly available under G.L. c. 156D, § 16.22 (Massachusetts Business Corporations Act), 950 CMR 113.57, or filed with the U.S. Securities and Exchange Commission in Form 10-K at Part IV, Item 15. Accordingly, the Department concludes that basic information on corporate structure should be available to the public and, thus, should be included in the license renewal applications.

Updated versions of the electric and gas license renewal applications are available on the Department's website.⁸ Licensed Entities that have already submitted their 2022 license renewal application as of the issuance of the Order do not need to resubmit a renewal application. Further, Licensed Entities that submit their license renewal application prior to August 1, 2022, need not comply with the new requirements contained herein, but rather may submit an application compliant with the previous guidance. Licensed Entities that have not submitted a 2022 license renewal application as of August 1, 2022 must use the latest versions of these documents posted on our website, which include corporate structure and new filing requirements outlined in this Order.

III. LATE-FILED LICENSE RENEWAL APPLICATIONS

A. Introduction

In the November 19 Hearing Officer Memorandum at 19, Department staff proposed that the Department take the following actions against Licensed Entities that fail to submit their license renewal applications in a timely manner:⁹ (1) prohibit Competitive Suppliers

⁸ License renewal applications are available at <https://www.mass.gov/how-to/renew-a-competitive-supplier-or-electricity-broker-license> and <https://www.mass.gov/how-to/renew-a-gas-supplier-or-retail-agent-license>, for electric and gas applications, respectively.

⁹ The Department proposed a 14-calendar day grace period following the renewal due date before the Department would take action. Before taking action, the Department would notify Licensed Entities of the upcoming due date: (1) approximately 30 calendar days prior to the license renewal application due date via an email sent to each Licensed Entity's regulatory contact on file with the Department of the upcoming deadline for submitting their renewal license application to the Department; and (2) approximately five-calendar days prior to the license renewal application due date,

from enrolling new customers (the Competitive Suppliers would be allowed to serve their existing customers); and (2) prohibit Electricity Brokers and Gas Retail Agents from working with Competitive Suppliers to facilitate the sale of electricity or gas, respectively. These prohibitions would be removed if the Licensed Entity submits its complete license renewal application within 60 calendar days from the Filing Date. Department Staff proposed that Licensed Entities that fail to submit a complete license renewal application within 60 calendar days from the Filing Date would be required to file a license renewal application and petition the Department to lift the prohibitions. November 19 Hearing Officer Memorandum at 20.

Department staff proposed two methods by which the Department would preclude Licensed Entities from conducting business with new customers for failing to timely file license renewal applications and, thereby, ensure timely compliance: (1) revising the existing electronic business transaction (“EBT”) process so that the Competitive Suppliers’ ability to submit business transactions associated with the enrollment of new customers could be disabled, while its business transactions associated with existing customers could continue unimpeded; or (2) having the Distribution Companies inform the Department when an enrollment transaction has been submitted by a specified Competitive Supplier.

B. Summary of Comments

The Consumer Advocates, the Distribution Companies, and RESA support the actions proposed by Department staff in the November 19 Hearing Officer Memorandum to ensure

the Department would send a second notice to those Licensed Entities that had yet to submit a license renewal application.

the timely filing of license renewal applications (Consumer Advocates Reply Comments at 5; Distribution Companies Comments at 15-16; RESA Comments at 16). The Distribution Companies recommend that the Department implement the second proposed approach that requires the Distribution Companies to inform the Department when an enrollment transaction has been submitted by a specified Competitive Supplier (Distribution Companies Comments at 16). The Distribution Companies state that it would require substantial time and financial investment to revise their current EBT process (Distribution Companies Comments at 16).

CleanChoice, Davis Malm, and SFE Energy oppose the actions proposed by Department staff and recommend alternate actions the Department could take (CleanChoice Comments at 10-11; Davis Malm Comments at 24-25; SFE Energy Comments at 9-10). CleanChoice and Davis Malm recommend that the Department send a “cease-and-desist” letter to Competitive Suppliers that fail to submit their license renewal applications in a timely manner, which directs them to cease enrollments until they submit such an application and warns them that failure to respect the stay could result in a formal proceeding pursuant to D.P.U. 16-156-A (CleanChoice Comments at 10-11; Davis Malm Comments at 24-25). SFE Energy recommends that the Department levy a fine against Competitive Suppliers that fail to submit their license renewal applications in a timely manner, stating that the proposed process does not appear to afford Competitive Suppliers adequate due process against the prohibition on new enrollments (SFE Energy Comments at 9). Davis Malm and SFE Energy state that distribution companies should not be involved in enforcing the new enrollment

limitations, stating it is inappropriate to place the distribution companies in an oversight position with respect to Competitive Suppliers (Davis Malm Comments at 25; SFE Energy Comments at 9-10).

C. Analysis and Findings

At issue here is the action(s) that the Department should take when Licensed Entities fail to submit their annual license renewal applications in a timely manner. Based on the comments, the Department is presented with three options on this matter: (1) taking actions that would restrict the services that the Licensed Entities can provide; (2) levying civil penalties against such entities; and (3) sending a “cease and desist” notice to such entities.

The Department concludes that restricting a Licensed Entities’ ability to serve new customers is the most appropriate action to take to address late-filed license renewal applications. As noted above, license renewal is an administrative task that notifies the Department that the Licensed Entity desires to continue its ability to serve customers in Massachusetts and provides the Department with a Licensed Entities updated contact and other basic business information. To accomplish these goals, the Department finds that the immediate impact of limiting Licensed Entities’ ability to serve new customers will provide the greatest incentive for such entities to submit their license renewal applications within the specified period and, accordingly, is administratively efficient. In addition, with this process the Department does not limit a Licensed Entity’s ability to serve its existing customers that were acquired while its license was in compliance with the Department’s regulations at 220 CMR 11.05(2) (i.e., approved license and annual renewals filed with the Department).

This process only limits the ability of a Licensed Entity to acquire new customers while it is out of compliance with our regulations and provides an appropriate incentive for Licensed Entities to comply with Department regulations. As such, the Department sets forth the following process related to late-filed license renewal applications.

On an annual basis, the Department will provide Licensed Entities with two courtesy notifications regarding the upcoming deadline for submitting their license renewal applications, once approximately 30 calendar days prior to the Filing Date (i.e., on or around June 1), and again approximately five calendar days prior to the Filing Date (i.e., on or around June 25). Licensed Entities that do not submit a license renewal application within fourteen calendar days of the Filing Date (i.e., on or before July 15) will be subject to the actions described below.¹⁰

Competitive Suppliers that do not submit a license renewal application within fourteen calendar days of the Filing Date (i.e., on or before July 15) will be prohibited from displaying products on the Energy Switch Website and from enrolling new customers until they submit such application, subject to the provisions discussed below. The Department will enforce the prohibition against enrolling new customers by (1) notifying the Competitive Supplier of its failure to timely file its license renewal application, and (2) informing the

¹⁰ The license renewal application shall be deemed to have been received on the date the electronic copy is received by the Department during business hours.
220 CMR 1.02(2)(b).

distribution companies of those Competitive Suppliers to which the prohibition applies,¹¹ and directing the distribution companies to notify the Department if they receive an enrollment transaction from a Competitive Supplier so identified.¹² A Competitive Supplier that submits an enrollment transaction prior to submitting its license renewal application may be subject to an informal review or formal proceeding under D.P.U. 16-156-A. The Department notes that engaging the distribution companies in an information exchange capacity does not constitute an oversight role for the distribution companies with respect to Competitive Suppliers (Davis Malm Comments at 25; SFE Energy Comments at 9-10). Competitive Suppliers that submit a complete license renewal application between fifteen and 60 calendar days from the Filing Date (i.e., between July 16 and September 1) will regain the ability to (1) submit enrollment requests for new customers and (2) display products on the Energy Switch Website starting September 2. This restriction will assist the Department and the Distribution Companies in efficiently administering these rules because (1) there will be only one list of Licensed Entities to monitor, and (2) there will be less frequent updates to the Department's website and email communications to Licensed Entities since the Licensed Entities' statuses will be changed on a single day. This restriction will also provide

¹¹ The Department will make this same information available to the public on our website.

¹² The Department will continue to work with the Distribution Companies to better understand the necessary steps to revise the existing EBT process so that the Competitive Suppliers' ability to submit business transactions associated with the enrollment of new customers could be disabled, while its business transactions associated with existing customers could continue unimpeded.

Competitive Suppliers with further incentive to submit their license renewal applications in a timely manner. The Department will inform the Distribution Companies and Competitive Suppliers in writing when the prohibition against a Competitive Supplier no longer applies and remove this information from the Department's website. Competitive Suppliers that fail to submit a license renewal application within 60 calendar days following the Filing Date (i.e., on or before September 1) must file a license renewal application and an explanatory statement regarding the failure to timely file the license renewal application before the Department will remove the prohibitions on marketing to new customers.¹³

Electricity Brokers and Gas Retail Agents that do not submit a license renewal application within fourteen calendar days following the Filing Date (i.e., on or before July 15) will be prohibited from working with Competitive Suppliers to facilitate the sale of electricity or gas until such time that they submit such application, subject to the rules discussed below. The Department will enforce this prohibition by informing all Competitive Suppliers of those Electricity Brokers and Gas Retail Agents to which the prohibition applies, and directing the Competitive Suppliers to cease working with the identified entities to facilitate the sale of electricity or gas.¹⁴ Electricity Brokers and Gas Retail Agents that submit a complete license renewal application between fifteen and 60 calendar days from the Filing Date (i.e., between July 16th and September 1st) will regain the ability to submit

¹³ A copy of the explanatory statement is attached hereto as Attachment A.

¹⁴ As with Competitive Suppliers, the Department will make this same information available to the public on our website.

enrollment requests for new customers starting September 2nd. The Department will inform Licensed Entities in writing when the prohibition against an Electricity Broker or Gas Retail Agent no longer applies and will remove the information regarding the prohibition from the Department's website. Electricity Brokers and Gas Retail Agents that fail to submit a complete license renewal application within 60 calendar days following the Filing Date (i.e., on or before September 1) will be required to file a license renewal application and an explanatory statement regarding the failure to timely file the license renewal application before the Department will remove the prohibitions on marketing to new customers.^{15,16}

¹⁵ A copy of the explanatory statement is attached hereto as Attachment A.

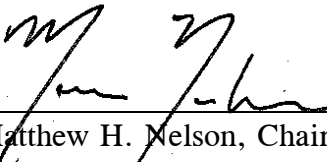
¹⁶ Due to the timing of this Order, and to allow the Department and the distribution companies sufficient time to implement the policies herein, for the year 2022, the Department extends the deadlines to submit license renewal applications. For 2022 only, the deadline to file a license renewal application will be August 1, 2022 and, the 14-calendar day grace period will end on August 15, 2022. Licensed Entities that fail to submit a license renewal application by August 16, 2022 will be prohibited from facilitating the sale of electricity. Licensed Entities that submit a complete license renewal application between August 16, 2022 and October 1, 2022 will regain the ability to submit enrollment requests for new customers starting October 2, 2022. Licensed Entities that fail to submit a complete license renewal application on or before October 1, 2022 will be required to file a license renewal application and an explanatory statement regarding the failure to timely file the license renewal application before the Department will remove the prohibitions on marketing to new customers.

IV. ORDER


Accordingly, after due notice, opportunity for comment, and consideration, it is

ORDERED: That all Competitive Suppliers, Electricity Brokers, and Gas Retail Agents shall comply with the directives set forth herein.

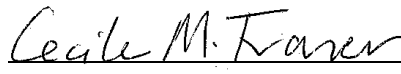
By Order of the Department,



Matthew H. Nelson, Chair



Robert E. Hayden, Commissioner



Cecile M. Fraser, Commissioner