



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 14-140-G

May 4, 2018

Investigation by the Department of Public Utilities on its own Motion into Initiatives to Improve the Retail Electric Competitive Supply Market.

ORDER ESTABLISHING DOOR-TO-DOOR MARKETING NOTIFICATION
REQUIREMENTS AND STANDARDS OF CONDUCT

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I. INTRODUCTION

On December 11, 2014, the Department of Public Utilities (“Department”) opened its investigation (“Notice of Investigation” or “NOI”) into initiatives to improve the retail electric competitive supply market. Investigation by the Department of Public Utilities on its own Motion into Initiatives to Improve the Retail Electric Competitive Supply Market, D.P.U. 14-140. The Department proposed five initiatives to enhance the value of the retail electric competitive supply market for residential and small commercial and industrial (“C&I”) customers: (1) developing a “shopping for competitive supply” website; (2) revising the existing information disclosure label; (3) eliminating the basic service bill recalculation provision for residential and small C&I customers; (4) establishing reporting requirements for door-to-door marketing; and (5) establishing reporting requirements and rules for the assignment of customers from one competitive supplier to another competitive supplier. D.P.U. 14-140, at 1. The Department stated that these initiatives were intended to: (1) provide customers with information regarding competitive supply products that is accurate, transparent, and understandable; and (2) improve customer protections related to the marketing and delivery of competitive suppliers and electricity brokers’ (“competitive supply companies”) product offerings. D.P.U. 14-140, at 1.

As part of the NOI, the Department proposed specific reporting and notification requirements for competitive supply companies (“NOI Proposal”), and sought comments from stakeholders. D.P.U. 14-140, at 12-13, 17. The Attorney General of the Commonwealth of Massachusetts (“Attorney General”), Constellation Energy Resources,

LLC, Just Energy Massachusetts Corp. (“Just Energy”), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (“National Grid”), NRG Energy, Inc. (“NRG”), NSTAR Electric Company and Western Massachusetts Electric Company, together d/b/a Eversource Energy (“Eversource”), Retail Energy Supply Association (“RESA”), and Starion Energy, Inc. submitted initial comments on August 28, 2015. The Attorney General, Just Energy, National Grid, and Eversource submitted reply comments on September 18, 2015. After consideration of the written comments, the Department issued a revised proposal for door-to-door marketing notification and reporting requirements, and a filing template (“Revised Proposal”). The Attorney General, Just Energy, NRG, and RESA submitted comments on the Revised Proposal on December 8, 2015. The Attorney General and RESA submitted reply comments on the Revised Proposal on December 22, 2015. On March 24, 2016, the Department held a conference call to discuss the Revised Proposal and comments received on the Revised Proposal.

After consideration of the December 8, 2015, and December 22, 2015, written comments, and the discussion at the March 24, 2016 conference call, the Department issued a second revised proposal for door-to-door notification and reporting requirements (“Second Revised Proposal”) and a Notice of Door-to-Door Marketing template (“Notice”). Hearing Officer Memorandum, D.P.U. 14-140 (June 27, 2017). The Second Revised Proposal included standards of conduct (“Standards of Conduct”) for competitive supply companies engaged in door-to-door marketing. Second Revised Proposal at 2-3. Additionally, the Second Revised Proposal eliminated the requirement for a competitive supply company to

maintain a customer complaint database.¹ RESA, Choice Energy, and Town Square Energy (collectively, the “Supplier Group”), the Attorney General, National Grid, and Eversource submitted comments on the Second Revised Proposal on July 18, 2017. In this Order, the Department establishes the final notification requirements, Notice template, and Standards of Conduct for competitive supply companies conducting door-to-door marketing in Massachusetts.

II. SECOND REVISED PROPOSAL

A. Notice of Door-to-Door Marketing

The Second Revised Proposal set forth the notification requirements for competitive supply companies conducting door-to-door marketing in Massachusetts and provided a Notice template to be used by competitive supply companies when complying with the notification requirements. Second Revised Proposal at 2-3, Att. The notification requirements in the Second Revised Proposal were developed to provide the Department with sufficient information to quickly identify the competitive supply company conducting door-to-door marketing if a customer or local authority contacts the Department regarding a complaint or issue. The Department proposed to achieve this goal by obtaining: (1) sufficient notice of

¹ The Department reiterated that competitive supply companies must continue to maintain accurate and up-to-date customer complaint data and immediately notify the Department of any serious complaints. The Department also determined that requiring competitive supply companies to develop a customer complaint database and establish requirements for maintaining and preserving customer complaint data was outside the scope of this proceeding. Hearing Officer Memorandum, D.P.U. 14-140, at 3 (June 27, 2017).

which competitive supply companies are actively conducting door-to-door marketing; (2) up-to-date contact information for the competitive supply company personnel (and third-party door-to-door vendor if applicable) overseeing the door-to-door marketing campaign; and (3) an attestation that any required permits or licenses were obtained, and background checks were conducted on each person who will participate in the company's door-to-door marketing campaign. Second Revised Proposal at 1-2.²

Pursuant to the Second Revised Proposal, competitive supply companies engaged in door-to-door marketing in Massachusetts would be required to file a Notice no later than 5:00 p.m. the day before the start of the door-to-door marketing campaign.³ Second Revised Proposal at 1. The Notice will be valid for 30 days, at which point a competitive supply company must resubmit a Notice if it is continuing its door-to-door marketing campaign. Second Revised Proposal at 2. A competitive supply company also must file a new Notice,

² In the Second Revised Proposal, the Department used “third-party door-to-door agent” to reference an entity with whom the competitive supply company has entered into a contractual agreement to conduct its door-to-door marketing campaign. This term may be confused with the term “marketing agent” that was used to describe individuals in the field conducting marketing campaigns. Thus, the Department now defines “third-party door-to-door vendor” or “vendor” as the entity with whom the competitive supply company has entered into a contractual agreement to conduct its door-to-door marketing campaign. The term “door-to-door marketing agent” or “agent” will refer to an individual conducting or overseeing marketing campaigns in the field. A door-to-door marketing agent may be employed by a competitive supply company or a third-party door-to-door vendor.

³ All Notices are required to be filed by email to the Director of the Department's Consumer Division, or his/her designee, and to epd.filing@state.ma.us.

prior to the expiration of the 30-day period, if any of the information changes. Second Revised Proposal at 2.

According to the Second Revised Proposal, the Notice shall include the following content: (1) the competitive supply company's name and the date of submission; (2) the name, title, email address, and phone number of the person responsible for preparing the Notice;⁴ (3) the name, email address, day telephone number, and evening/weekend telephone number of at least two employees of the competitive supply company responsible for overseeing the door-to-door marketing campaign; (4) the company name, contact name, email address, and phone number of any third-party door-to-door vendor; (5) a statement as to whether the competitive supply company is using its own employees for door-to-door marketing or a third-party door-to-door vendor; (6) a confirmation that the competitive supply company or its third-party door-to-door vendor will obtain all required municipal permits and license, and will comply with all municipal notice requirements;⁵ and (7) a confirmation that the competitive supply company or its third-party door-to-door vendor has

⁴ The Second Revised Proposal stated that competitive supply companies would be required to provide the mailing address of the person responsible for preparing the Notice, but the proposed Notice did not include that requirement. The Department's intent was to exclude that requirement in the Second Revised Proposal.

⁵ The Second Revised Proposal required competitive supply companies to confirm that all municipal permits and licenses were obtained prior to filing the Notice, and thus was inconsistent with the proposed Notice, which required an affirmation that the necessary permits and licenses would be obtained prior to commencing a door-to-door campaign. The Department's intent was to ensure that the necessary permits and licenses would be obtained prior to commencing a door-to-door campaign.

conducted a Massachusetts-specific and nation-wide background check, and sex offender registry search of each person who will participate in the door-to-door marketing campaign. Under the Second Revised Proposal, the Department also proposed that competitive supply companies would have the option to provide the city or town name in which the door-to-door marketing campaign will be taking place, and the start date and end date of the door-to-door marketing campaign. The Department, however, (1) encouraged competitive supply companies to provide this information in their Notices; and (2) stated that we may require a competitive supply company to provide this information if we determine that, due to customer complaints or other issues, more detailed information is necessary. Second Revised Proposal at 2. Upon further consideration, and given the protection afforded this information under the standing order of protective treatment discussed below, the Department will require competitive supply companies to provide the city or town name in which it expects the door-to-door marketing campaign will be taking place, and the expected start date and end date of the door-to-door marketing campaign. See, Attachment 1, Notice of Door-to-Door Marketing – Filing Template.

B. Standards of Conduct

The Second Revised Proposal also included Standards of Conduct that all competitive supply companies and third-party vendors conducting door-to-door marketing in Massachusetts would be required to adopt. Second Revised Proposal at 2. The Standards of Conduct required that all personnel engaging in door-to-door marketing: (1) shall produce and display identification clearly stating the competitive supply company's name and logo,

and the individual's name, photo, and identification number; (2) shall provide a phone number on request that the customer can call to verify the identity of the individual and the competitive supply company that they are representing; (3) shall identify the competitive supply company which he/she represents upon commencement of the sales call; and (4) may not represent, in any way, that he/she is affiliated with the local distribution company serving the customer. Second Revised Proposal at 2.

III. SUMMARY OF COMMENTS

A. Notice of Door-to-Door Marketing

1. Notice Content

The Supplier Group states that it is willing to provide contact information for its third-party door-to-door vendors, but requests that the Department clarify that it will not directly contact the third-party door-to-door vendors unless the Department is unable to reach the competitive supply company's employees responsible for overseeing the door-to-door marketing campaign and that there is an emergency that requires such contact (Supplier Group Comments at 7). The Supplier Group also states that the Department should define the terms used in the Notice to avoid confusion (Supplier Group Comments at 7-8).

The Supplier Group also notes that there is inconsistency regarding whether a competitive supply company or its third-party door-to-door vendor is required to obtain all required permits and licenses at the time the Notice is filed, or attest that all required permits and licenses will be obtained prior to the commencement of the door-to-door marketing campaign (Supplier Group Comments at 8-9). The Supplier Group argues that, due to certain

municipal rules, it would be impossible for the competitive supply company or its third-party door-to-door vendor to obtain all permits prior to filing the Notice (Supplier Group Comments at 8-9). As such, the Supplier Group recommends that the Department amend the Notice and require competitive supply companies to obtain all required municipal permits and licenses prior to commencing a door-to-door marketing campaign (Supplier Group Comments at 8-9). The Supplier Group also recommends removing the mailing address of the person responsible for preparing the Notice and asserts that it is unlikely that the Department will contact the person by mail (Supplier Group Comments at 6-7).

Eversource argues that the Notice should contain an attestation that all personnel engaging in door-to-door marketing have received training regarding electric and gas supply rates and products directly from the competitive supply company (Eversource Comments at 2). Eversource also states that competitive supply company employees and sales representatives should be required to sign a confidentiality agreement to keep personal customer information confidential (Eversource Comments at 2). National Grid states that the Notice should include an additional attestation requiring competitive supply companies to confirm that the company or any third-party door-to-door vendor who conducts a door-to-door marketing campaign has read and will follow the Standards of Conduct (National Grid Comments at 2). National Grid claims that requiring this attestation will better ensure that competitive supply companies and third-party door-to-door vendors abide by the Department's Standards of Conduct (National Grid Comments at 2).

2. Effective Time Period for Notices

The Supplier Group opposes a 30-day limit on the duration of the door-to-door Notice and argues that submitting multiple Notices, even when no information has changed, will impose unnecessary and costly administrative burdens on the competitive supply companies (Supplier Group Comments at 3-4). The Supplier Group argues that the 30-day Notice limitation establishes a new compliance obligation for competitive supply companies in contravention of Executive Order 562, which states that new regulations shall not be implemented unless the benefits exceed the costs and less restrictive or intrusive alternatives have been explored (Supplier Group Comments at 3-4 n. 9). The Supplier Group argues that the Department could achieve the same result with a single Notice and a requirement that competitive supply companies notify the Department of any changes to the information provided (Supplier Group Comments at 3). Alternatively, the Supplier Group suggests that the Notice be effective for a longer period (e.g., six months) (Supplier Group Comments at 4 n.10). Furthermore, the Supplier Group maintains that the Department should include an effective date that is at least 30 days from the issuance of the final door-to-door requirements to allow competitive supply companies time to institute the requirements (Supplier Group Comments at 12-13).

3. Background Checks

The Supplier Group recommends that the Department require a background check on “all personnel engaging in door-to-door marketing” rather than “each person who will participate in the door-to-door marketing campaign” (Supplier Group Comments at 9-10).

The Supplier Group argues that the language in the Second Revised Proposal is confusing and overly broad, and the term “participate” could include personnel who have no in-person contact with customers, for example, top management and legal staff engaged in door-to-door-specific sales (Supplier Group Comments at 9-10). The Supplier Group also argues that the Department should institute background check requirements across all the industries over which it has jurisdiction, including the distribution companies’ employees and contractors that interact with customers at their homes (Supplier Group Comments at 10). In addition, the Supplier Group states that the background check standards in the Second Revised Proposal are overly broad because they require a background check in all fifty states, over an infinite period of time, and do not provide any guidance regarding what type of information would disqualify someone from engaging in door-to-door marketing campaigns (Supplier Group Comments at 11). Thus, the Supplier Group argues that the Department should adopt a more balanced approach, such as the one employed in Pennsylvania (Supplier Group Comments at 11).⁶ The Supplier Group states that it will support a nationwide search

⁶ According to the Supplier Group, Pennsylvania regulations state that a supplier may not permit a person to conduct door-to-door sales and marketing activities until it has obtained and reviewed a criminal history record from the Pennsylvania State Police, including a check of the sex offender registry maintained by the Pennsylvania State Police, and from every other state in which the person resided during the last twelve months (Supplier Group Comments at 11, citing 52 Pa. Code § 111.4). The Pennsylvania requirements also state that a supplier may not hire a person as an employee or an agent for door-to-door marketing or sales who was convicted of a felony or misdemeanor when the conviction reflects adversely on the person’s suitability for this type of employment (Supplier Group Comments at 11, citing 52 Pa. Code § 111.4).

requirement if competitive supply companies can rely on a national database, rather than a separate background check in each and every state (Supplier Group Comments at 11-12).

4. Standing Order for Protective Treatment

The Supplier Group argues that the Department should adopt a standing order for protective treatment of confidential information (Supplier Group Comments at 4-6). The Supplier Group states that filing a motion for protective treatment with each Notice would increase the administrative burden on competitive supply companies and on the Department, which must evaluate and rule on each motion (Supplier Group Comments at 6). The Supplier Group argues that the following information is confidential and should not be made public: (1) confirmation that a competitive supply company has commenced a door-to-door marketing campaign; (2) the specific names of the third-party door-to-door vendors; and (3) contact information for the competitive supply company representatives completing the Notice and overseeing the door-to-door marketing campaign (Supplier Group Comments at 4). The Supplier Group also asserts that information regarding the town or city where the door-to-door marketing campaign will take place and the start and end dates, is commercially sensitive confidential information (Supplier Group Comments at 4-5).

5. Other Issues

Eversource argues that competitive supply companies that telemarket should use valid telephone phone numbers that identify the competitive supply company or third-party door-to-door vendor making the call (Eversource Comments at 3). Eversource argues that customers would be confused if they dial an invalid telephone number and cannot reach a

sales representative (Eversource Comments at 3). National Grid also states that the Department should require all competitive supply companies to include a statement on all marketing materials indicating that the competitive supply company is not affiliated with the distribution company (National Grid Comments at 1).

B. Standards of Conduct

The Attorney General argues that the Department should require competitive supply companies to retain complaint data for a minimum of five years from the date a complaint is filed (Attorney General Comments at 1-2). The Attorney General states that competitive supply companies have an independent duty to preserve complaint data and that the data retention requirement would not create an undue burden (Attorney General Comments at 1-2). The Attorney General maintains that preserving complaint records could be relevant to future Department inquiries, and as such outweighs the negligible burden on competitive supply companies (Attorney General Comments at 1). Alternatively, if more information is necessary, the Attorney General requests that the Department initiate a separate proceeding or working group to examine document retention requirements (Attorney General Comments at 1-2).

The Supplier Group supports the requirement that all personnel engaged in a door-to-door marketing campaign be required to display identification (Supplier Group Comments at 12). The Supplier Group, however, requests that the identification badge only include the agent's first name to protect the safety and privacy of the agent (Supplier Group Comments at 12).

Eversource states that the Standards of Conduct should explicitly prohibit all personnel engaging in a door-to-door marketing campaign from using customer information in a manner that is unfair or deceptive, inconsistent with regulations, or not explicitly authorized by the customer (Eversource Comments at 2-3). Eversource also requests including the requirements that door-to-door marketing agents (1) must leave the premises immediately if asked, and (2) discontinue the sales presentation if a customer has difficulty understanding English and there are no translation services provided (Eversource Comments at 3). Eversource further states that the Standards of Conduct should require door-to-door marketing agents to clearly inform customers of the three-day rescission period (Eversource Comments at 3). In addition, Eversource and National Grid request that the Department prohibit a competitive supply company, a third-party door-to-door vendor, or a door-to-door marketing agent from requesting or otherwise obtaining a customer account number until the customer agrees to enter into a competitive supply agreement (Eversource Comments at 2; National Grid Comments at 2).

IV. ANALYSIS AND FINDINGS

A. Introduction

The Department has reviewed the comments submitted on the Second Revised Proposal. As discussed below, we direct competitive supply companies conducting door-to-door marketing campaigns to residential customers in Massachusetts to use the following final notification requirements. Competitive supply companies will be responsible for complying with the notification requirements even when a third-party door-to-door vendor

is hired to conduct the door-to-door marketing campaign. Further, competitive supply companies must use the Notice of Door-to-Door Marketing template when submitting a Notice to the Department. See, Attachment 1, Notice of Door-to-Door Marketing – Filing Template. Finally, competitive supply companies are directed to adhere to the Standards of Conduct set forth below.

B. Notice of Door-to-Door Marketing

1. Notice Content

As stated above, the Department's Second Revised Proposal required competitive supply companies to file a Notice that includes contact information for the competitive supply company and the personnel overseeing the door-to-door marketing campaign, including contact information for any third-party door-to-door vendor. The Supplier Group requests that the Department clarify whether competitive supply companies submitting a Notice will need to provide a mailing address of the person responsible for preparing the Notice (Supplier Group Comments at 7-8). Because it is unlikely that the Department would contact this person by mail, the Department will not require competitive supply companies to include the mailing address of the person responsible for preparing the Notice.

The Supplier Group also argues that the Department should (1) define in the Notice template who qualifies as a third-party door-to-door vendor, and (2) confirm that the Department will not contact a third-party door-to-door vendor unless the Department cannot reach the competitive supply company in an emergency situation (Supplier Group Comments at 7). As stated in the Second Revised Proposal, the Department considers a third-party

door-to-door vendor to be an entity with whom the competitive supply company has contracted to conduct its door-to-door marketing campaign. Thus, the Notice requires the third-party door-to-door vendor's company name and the contact information of a supervisor or manager, not a list of every person that may be engaged in a door-to-door marketing campaign for the third-party door-to-door vendor. Because the Department defined third-party door-to-door vendor in the Second Revised Proposal, it is unnecessary to reiterate this definition in the Notice. The Department confirms, however, that if an issue arises we will first attempt to contact the competitive supply company before contacting a third-party door-to-door vendor.

The Second Revised Proposal also required competitive supply companies to attest that all municipal permits and notification requirements have been met. The Attachment, however, indicated that a competitive supply company, or its third-party door-to-door vendor, would obtain all required permits and licenses. The Supplier Group argues that the Department should allow the competitive supply company to attest that the competitive supply company or a third-party door-to-door vendor will obtain all required permits and licenses prior to commencing a door-to-door marketing campaign, not that the requirements be met at the time of filing the Notice (Supplier Group Comments at 8-9). The Department agrees with the Supplier Group's comments. It is not important which entity obtains the permits or submits the municipal notification, as long as those requirements are met. In addition, the purpose of the attestation is to ensure that these requirements are met prior to the commencement of the door-to-door marketing campaign, not necessarily before the Notice is

submitted to the Department. Accordingly, the Department confirms that it will allow either the competitive supply company or its third-party door-to-door vendor to obtain the necessary permits and comply with all municipal notification requirements before initiating the door-to-door marketing campaign. This change is reflected in the Notice. See Attachment 1.

2. Effective Time Period for Notices

The Department's Second Revised Proposal stated that Notices will be valid for 30 days, at which point a competitive supply company would need to resubmit a Notice if it is continuing its door-to-door marketing campaign. A competitive supply company would also need to file a new Notice, prior to the expiration of the 30-day period, if any of the information in the Notice changes. The Supplier Group argues that the requirement to send a new Notice every 30 days is unnecessarily burdensome, and the Department should require only one Notice that will remain active unless revoked and only need to be amended or resubmitted if the information changes (Supplier Group Comments at 3). Alternatively, the Supplier Group argues that the Department should adopt a longer effective time period for the Notice (e.g., six months) (Supplier Group Comments at 4 n.10). The Department finds that submitting a new notice every 30 days, via email, is not unduly burdensome. For example, a competitive supply company that continuously engages in door-to-door marketing throughout the year would be required to email a one and a half page Notice twelve times a year. Further, if none of the substantive information in the Notice has changed at the expiration of the 30-day period, the competitive supply company would only be required to change the date and then email the updated Notice to the Department.

In addition, regarding the Supplier Group's argument that the Notice requirements are in contravention to Executive Order 562, the Department notes that Executive Order 562 specifically deals with the review and effectiveness of current or proposed regulations. Executive Order, No. 562 (March 31, 2015). As the Notice requirements approved in this Order are not new regulations, the Department finds that they are not subject to the scrutiny of Executive Order 562. Further, even if the Notice requirements were subject to Executive Order 562, the Department finds that imposing such requirements on competitive supply companies conducting door-to-door marketing are not unduly burdensome, are essential to protect the public health and safety of the citizens of the Commonwealth, and will improve the operations of the Department.

The Supplier Group also argues that a single Notice that remains active until revoked would accomplish the goal of providing the Department with knowledge of which competitive supply companies are actively marketing door-to-door (Supplier Group Comments at 3). The Department disagrees with this point. As stated above, the purpose of the Notice is to identify which competitive supply companies are actively door-to-door marketing and allow the Department to quickly identify a company if an issue arises. If, as the Supplier Group suggests, the Department allows a competitive supply company to submit one Notice that remains active until revoked, a competitive supply company that is door-to-door marketing could file a Notice and then discontinue its door-to-door marketing campaign and the Department would be unaware. Similarly, a competitive supply company that is not currently door-to-door marketing, but may in the future, could file a one-time Notice and the

Department would be unaware of when or if the competitive supply company has begun its door-to-door marketing campaign. In each of these scenarios, if an incident occurs, the Department could waste valuable time by contacting and waiting to hear from competitive supply companies that are not actively engaged in door-to-door marketing.

Based on the above, the Department finds that a 30-day effective time period for the Notices strikes an appropriate balance between providing the Department with accurate and up-to-date information so that it can respond to any issues in a timely manner, while not overly burdening the competitive supply companies. Therefore, the Department declines to extend the effective time period for door-to-door marketing Notices and confirms the requirements set forth in the Second Revised Proposal. See Attachment 1.

3. Background Checks

The Supplier Group requests that the Department clarify the scope of door-to-door marketing personnel subject to background checks (Supplier Group Comments at 10). Thus, the Department determines that the Notice will require an attestation affirming that background checks have been conducted on the following personnel engaging in a door-to-door marketing campaign: (1) any sales agent who participates in a door-to-door marketing campaign and may interact directly with a customer, whether employed directly by the competitive supply company or by a third-party door-to-door vendor; and (2) any other competitive supply company or vendor employees that are in the field and may interact with a customer during a door-to-door marketing campaign, for example, supervisors or quality control employees. See Attachment 1. The Supplier Group also requests that the

Department expand the background check requirements to Massachusetts distribution company employees and contractors that interact with customers at their homes (Supplier Group Comments at 10). The Department notes that the proposed expansion of the proposed background check requirement is not within the scope of this proceeding and, accordingly, will not be addressed at this time.

The Supplier Group also states that the Department should define the time period used for background checks and require the use of a nationwide database, as opposed to a separate search in all 50 states, similar to the protocols instituted in Pennsylvania (Supplier Group Comments at 11-12). The Department finds that adopting parts of the Pennsylvania approach, described above, is appropriate. Thus, the Department will not require a separate background check for all 50 states. The Department will, however, require competitive supply companies to obtain and review: (1) a Massachusetts-specific search of the criminal offender records (“iCORI”) maintained by the Massachusetts Department of Criminal Justice Information Services; (2) a criminal history record from every other state that the applicant or employee has resided within the last 24 months; and (3) a search of the sex-offender registry maintained by the Massachusetts Sex Offender Registry Board.

The Supplier Group further argues that the Department should provide guidance regarding conduct that would disqualify an individual from engaging in a door-to-door marketing campaign (Supplier Group Comments at 11). Without guidance, the Supplier Group states that to avoid a finding of non-compliance, competitive supply companies might presume that anything revealed during a background check would disqualify an individual

from participating in a door-to-door marketing campaign (e.g., “someone who was arrested but not convicted thirty years ago for a jay walking offense”) (Supplier Group Comments at 11). We note that there are likely many categories of information and degrees of infractions that may be revealed from a background check. It is not practicable for the Department to opine on such information in a vacuum and enumerate disqualifying conduct. Accordingly, it is incumbent upon each competitive supply company, exercising good business judgment, to review each background check and determine whether an individual is suitable for employment in a door-to-door marketing campaign. If an issue arises with a particular employee, the Department will determine whether the requisite background checks were conducted and, if so, whether the competitive supply company made a reasonable determination to hire an individual based on the results of the background check.

4. Standing Order for Protective Treatment

a. Introduction

The Supplier Group argues that the Notice for door-to-door marketing should provide for a standing order of protective treatment for confidential information (Supplier Group Comments at 4-6). The Supplier Group asserts that requiring a motion for protective treatment to be filed with each Notice would be administratively burdensome (Supplier Group Comments at 4-6). In addition, the Supplier Group maintains that information regarding when a competitive supply company has begun door-to-door marketing, the specific names of its third-party vendors, individual contact information, and the names of the towns and municipalities where the door-to-door marketing will occur are confidential, competitively

sensitive information, and should be protected from public disclosure (Supplier Group Comments at 4-6). Below, the Department determines whether a standing order of protective treatment for confidential information is appropriate and, if so, what information provided in the Notice will be given protective treatment. We also address confidential information filing requirements.

b. Standard of Review

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

[T]he [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

General Laws c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) (“specifically or by necessary implication exempted from disclosure by statute”). To overcome the presumption that documents in the possession of the Department are public records and to protect confidential information from public disclosure,

the Department requires a party in a Department proceeding to file a written motion for a protective order in accordance with 220 CMR 1.04(5)(e).

General Laws c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, confidential, competitively sensitive or other proprietary information;” second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by “proving” the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D; 220 CMR 1.04(5)(e).

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113, Hearing Officer Ruling at 4 (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party’s Limited Liability Company Agreement, notwithstanding requesting party’s assertion that such terms were competitively sensitive); see also Standard of Review for Electric Contracts, D.P.U. 96-39, Letter Order at 2 (August 30, 1996) (Department will grant exemption for electricity contract prices, but “[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of

the customer”); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

Motions for protection from public disclosure will not be allowed automatically by the Department. A party’s willingness to enter into a non-disclosure agreement with other parties does not resolve the question of whether a document, presumed to be a public record once it is received by the Department, should be protected from public disclosure. What parties may agree to share and the terms of that sharing are not dispositive of the Department’s scope of action under G.L. c. 25, § 5D, or c. 66, § 10. See Boston Edison Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

c. Analysis and Findings

As stated above, the Department will only grant an exemption from the general statutory mandate that all documents received by the Department are public records in certain, narrowly defined circumstances. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. The burden is on the moving party to prove that the information should be protected, and the Department does not automatically grant protective treatment. G.L. c. 25, § 5D. The Notice requirements approved by this Order, however, present a unique scenario in which competitive supply companies are required to file information with the Department every 30 days. In addition, as required by the Notice template, each Notice will contain the

same type of information, and the company-specific information in one Notice will often be the same as the prior months' Notice. Therefore, we find that instituting a standing order of protective treatment for some of the information contained in the Notice is appropriate. As described below, however, not all of the information contained in the Notice will be given protective treatment. If a competitive supply company wishes to protect confidential information, it must comply with the procedural requirements of this Order.

The Supplier Group specifically seeks to protect from public disclosure information when a competitive supply company has begun door-to-door marketing, the names of the third-party vendors, individual contact information, and the names of the towns and municipalities where the door-to-door marketing will occur, to the extent that information is included in the Notice. The Department finds that the names and contact information of the third-party vendors and the names of the cities and towns where the competitive supply company will be marketing constitutes confidential, competitively sensitive, or proprietary information that warrants protective treatment from public disclosure. See, e.g., Verizon New England, Inc., D.T.E. 01-20, Hearing Officer Ruling at 9-10 (December 21, 2001). Competitors could use the vendor name and contact information to undercut vendor contracts and solicit effective marketing partners. In addition, competitors could use the names of the cities and towns to determine a competitive supply company's marketing strategy and use that information to their advantage. Thus, the disclosure of this information could put competitive supply companies at a competitive disadvantage and, as a result, the Department

will permit competitive supply companies to redact this information from the public copy of the Notice.

The Supplier Group also seeks to protect from public disclosure the competitive supply company employee contact information, required in questions one and two of the Notice.⁷ The Department has previously granted protective treatment to employee home addresses, social security numbers, and similar personally identifying information. See, e.g., Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 09-39, Hearing Officer Ruling on Motions for Confidential Treatment at 14 (April 15, 2010); Global NAPs, Inc., D.T.E. 03-29, Hearing Officer Ruling on Motion for Confidential Treatment at 3-4 (May 27, 2003). In this case, however, we find that the information the Supplier Group seeks to protect, with the exception of the “Evening/Weekend Telephone Number,” is not personal contact information but professional contact information that does not warrant the same type of treatment as social security numbers or home addresses. Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 15-129, Hearing Officer Ruling on Motion for Confidential Treatment at 3-4 (June 9, 2016). Accordingly, we will not protect this information from public disclosure.

The Supplier Group further requests protective treatment for the individual contact information for the competitive supply company representative completing the Notice and the two competitive supply company representatives overseeing the campaign, including their

⁷ This information includes names, titles, email addresses, and phone numbers.

evening and weekend telephone numbers (Supplier Group Comments at 4). The Supplier Group, however, only argues that the disclosure of the evening/weekend telephone numbers will result in the disclosure of personal, confidential information, and potentially unlisted phone numbers (Supplier Group Comments at 5). The Supplier Group does not make any argument as to why the name, title, email address, and phone number of the person responsible for preparing the Notice, or the names, email addresses, and day telephone numbers of the employees responsible for overseeing the door-to-door marketing campaign should be protected from the public disclosure. Further, the Department expects that the contact information provided in the Notice will be the employees' professional contact information, which is not the type of personal information intended to be protected by G.L. c. 4, § 7, CL. 26(c). As a result, the Department will protect from public disclosure the evening/weekend telephone numbers required to be filed in the Notice. The additional contact information, however, will not be protected from public disclosure.

Finally, the Supplier Group argues that information regarding when a door-to-door marketing campaign commences should be protected from public disclosure as it could be used by a competitive supply company's competitors to gain a competitive advantage (Supplier Group Comments at 5-6). The Department agrees that, as with the exact locations of a door-to-door marketing campaign, the exact dates and times of active door-to-door marketing should be considered confidential information and protected from public disclosure. The approved Notice, however, does not require the competitive supply companies to include the date or times of the door-to-door marketing campaign. Instead, the

Notice only requires the competitive supply company to provide the filing date, to renew the Notice every 30 days (if the competitive supply company wants to continue door-to-door marketing), and to file the Notice no later than 5:00 p.m. the day before the start of a door-to-door campaign in Massachusetts. Thus, a competitor looking at the Notice would only know that the competitive supply company has notified the Department that it may be door-to-door marketing in the 30-day period following the filing of the Notice, and that it may start its campaign the next day. This information will not inform a competitor of the exact dates and times of the door-to-door marketing campaign. For example, a competitive supply company may file a Notice in anticipation of starting its door-to-door marketing campaign a week later. As a result, the Department declines to include in the standing order of protective treatment the filing date of the Notice or Notice renewals.

d. Filing Requirements

Based on the findings above, a competitive supply company may file a Notice of door-to-door marketing and redact: (1) the specific names of the third-party vendors and their contact information; (2) the weekend or evening telephone numbers of the competitive supply company employees; and (3) the names of the city or town where the door-to-door marketing will occur. All of the other information required in the Notice will remain public. The public copy of the Notice, with redactions, shall be emailed to the Director of the Department's Consumer Division, or his/her designee, and to epd.filing@state.ma.us.

To ensure that the Department has access to the confidential information provided in the Notice and the information remains protected from public disclosure, the competitive

supply company shall mail to the Secretary of the Department an unredacted copy of the Notice in a sealed envelope, clearly marked with the word “CONFIDENTIAL” on the outside of the envelope as well as on each page of the Notice (“Confidential Copy”). The Notice shall be accompanied by a cover letter stating that the enclosed Notice contains confidential information that has been granted protected treatment pursuant to this Order (“D.P.U. 14-140-G”). If the competitive supply company files a subsequent Notice at the expiration of the 30-day effective time period that contains the exact same confidential information, then the competitive supply company need not file an additional Confidential Copy. Instead the competitive supply company shall state in its email with the renewal Notice that the confidential information previously submitted to the Department on the relevant date has not changed.

Finally, if a competitive supply company seeks to protect from public disclosure information not granted protective treatment in this Order, it must file a separate motion for protective treatment. That motion must describe the additional information and argue why, pursuant to the established standard of review, the information should be protected from public disclosure.

With the changes described above, the Department adopts the attached Notice of door-to-door marketing. See Attachment 1 – Notice of Door-to-Door Marketing.

e. Sunset Period

As stated above, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such

protection will be in effect. See G.L. c. 25, § 5D; 220 CMR 1.04(5)(e). The information covered by the standing order of protective treatment detailed above is not the type of information that should be given protective treatment in perpetuity. After a certain period of time, the location of a competitive supply company's door-to-door marketing campaign and the third-party door-to-door vendors being used will no longer be competitively sensitive. As a result, the Department finds that any confidential information submitted under the standing order of protective treatment will remain confidential for a period of five years from the date of filing. If, prior to the expiration of the five-year period, a competitive supply company determines that it wants to extend the period of protective treatment, it may file a new motion for protective treatment with the Department. Otherwise, the information will be made publicly available.

5. Other Issues

Eversource argues that the Notice should contain an attestation that all competitive supply company and third-party door-to-door vendor personnel have received training regarding the competitive supply market and have signed a customer information confidentiality agreement (Eversource Comments at 2). Competitive market training requirements and customer confidentiality agreements are not within the scope of this proceeding. The determination of appropriate training requirements and the scope of customer confidentiality applicable to competitive supply companies would require notice and an investigation with interested stakeholders. Thus, the Department will not include in the Notice an attestation regarding training requirements or customer confidentiality agreements

for competitive supply company and third-party door-to-door vendor personnel, at this time. The Department does, however, encourage competitive supply companies to train their employees and third-party door-to-door agents on the competitive supply market.

Eversource also argues that, consistent with the Attorney General's regulations, the Notice should contain an additional attestation by the competitive supply company that it is not affiliated with the distribution company (Eversource Comments at 1-2). Similarly, National Grid suggests that the Department require competitive supply companies to include on any marketing material provided by a competitive supply company or a third-party vendor that the competitive supply company is not affiliated with the distribution company (National Grid Comments at 1). As described below, the Department is adopting Standards of Conduct that address how personnel engaging in door-to-door marketing may represent the competitive supply company and its products, including prohibitions against representing that the competitive supply company is affiliated with the distribution company. Therefore, the Department will not require an attestation in the Notice to that effect.

National Grid argues that the Notice should contain an attestation that all competitive supply company employees or third-party door-to-door agents who conduct door-to-door marketing will read and abide by the Standards of Conduct (National Grid Comments at 2). Although such a requirement was not fully discussed at a technical session or put forth in a prior proposal, the Department finds that it would be beneficial to require all competitive supply company employees or third-party door-to-door agents who conduct door-to-door marketing to read and agree to the Standards of Conduct. Unlike the training requirements

and customer confidentiality attestations suggested by Eversource, which would require extensive investigation and be difficult to develop, requiring employees and third-party door-to-door agents to read and agree to the Standards of Conduct, is a simple requirement that will ensure all persons conducting door-to-door marketing are aware of the basic marketing standards mandated by the Department. As a result, the Department amends the Notice template and will require competitive supply companies marketing door-to-door to attest that all competitive supply company employees and third party door-to-door marketing agents who are involved in door-to-door marketing campaigns have read and agree to comply with the Standards of Conduct. See Attachment 1.

C. Standards of Conduct

In the Second Revised Proposal, the Department included Standards of Conduct that would apply to all competitive supply companies and third-party door-to-door vendors conducting door-to-door marketing campaigns in Massachusetts. The Attorney General requests that the Department adopt, as part of the Standards of Conduct, a requirement that competitive supply companies maintain customer complaint data for five years or, alternatively, that the Department establish a working group to determine complaint data retention standards (Attorney General Comments at 1-2). The Attorney General's proposal was not specifically within the scope of this proceeding, nor was the proposal developed during this proceeding. Accordingly, the Department does not have sufficient information to impose specific complaint data retention requirements, at this time. Nonetheless, as the Attorney General states, competitive supply companies have an independent duty to maintain

customer complaint data if the competitive supply company knows or reasonably should know the information might be relevant to a possible action (Attorney General Comments at 1-2, citing Scott v. Garfield, 454 Mass. 790, 798 (2009), Kippenhan v. Chaulk Services, Inc., 428 Mass. 124, 128 (1998)). Therefore, the Department expects competitive supply companies to maintain accurate and up-to-date customer complaint data in accordance with the relevant case law, and to make complaint data available to the Department when requested. The Department also expects competitive supply companies to immediately notify the Department of any serious complaints. The Department may investigate specific complaint data retention requirements in a future proceeding.

The Supplier Group asserts that the Standards of Conduct should only require an individual's first name on the identification badge in order to ensure their safety and privacy (Supplier Group Comments at 12). Including the competitive supply company's name and logo, and the first name, photo, and identification number of the employee on the identification badge will provide sufficient information such that a customer can identify the sales agent. Accordingly, the Department finds that it is unnecessary to include a person's full name on the identification badge.

Eversource and National Grid argue that competitive supply companies should be prohibited from requesting a customer's account number until the customer agrees to enter into a contract or sales transaction with the competitive supply company (Eversource Comments at 2; National Grid Comments at 2). Eversource and National Grid's recommendation, however, was not included in the Second Revised Proposal nor was it fully

discussed in this proceeding. In addition, the Department has concerns that door-to-door marketing agents may not be able to correctly identify a customer's rate class (e.g., whether the customer receives a low-income discount) and provide the customer with the correct products if they are unable to obtain the account information until a customer agrees to sign a contract. These issues should be investigated before the Department adopts this requirement and, as a result, the Department declines to adopt this requirement in the Standards of Conduct at this time.

Eversource also suggests adopting requirements in the Standards of Conduct that are mandated by statute or regulations (e.g., door-to-door personnel should be prohibited from using customer information in a deceptive or illegal manner, must inform customers of the three-day rescission period, and must leave the premises if asked or if the customer does not understand the sales agents) (Eversource Comments at 2-3). Because these recommendations are legal requirements with which competitive supply companies must comply, the Department will not require their inclusion in the Standards of Conduct approved by this Order. Eversource further suggests that the Standards of Conduct include provisions that each competitive supply company should establish a telephone number that identifies the sales agent making the call, which should also apply to "robo-marketing" calls (Eversource Comments at 3). The Department and the stakeholders have not had the opportunity to investigate this suggestion and determine its feasibility to be incorporated into the Standards of Conduct. Accordingly, the Department will not adopt these recommendations in the Standards of Conduct at this time.

With the changes described above, the Department adopts the attached door-to-door Standards of Conduct. See Attachment 2 – Standards of Conduct.

V. CONCLUSION

Based on the above, the Department adopts the Notice requirements, filing template, and Standards of Conduct. See Attachments 1 and 2. The provisions of this Order shall take effect 30 days from the issuance of this Order.⁸

VI. ORDER

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

ORDERED: That all competitive supply companies engaged in door-to-door marketing in the Commonwealth of Massachusetts shall provide the Department of Public Utilities with a Notice of Door-to-Door Marketing pursuant to the timing and format requirements contained herein; and it is

FURTHER ORDERED: That all competitive supply companies engaged in door-to-door marketing in the Commonwealth of Massachusetts shall comply with the Standards of Conduct as provided in this Order; and it is

⁸ A competitive supply company's failure to comply with the requirements of this Order, including the Notice filing requirements and the Standards of Conduct may result in licensure action or civil penalties pursuant to 220 CMR 11.07, and Interim Guidelines for Competitive Supply Investigations and Proceedings, D.P.U. 16-156 (2017).

