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D.T.E. 01-54-A

Investigation by the Department of Telecommunications and Energy on its own Motion into
Competitive Market Initiatives.

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I. INTRODUCTION

On June 29, 2001, the Department of Telecommunications and Energy (“Department”) issued Competitive Market Initiatives, D.T.E. 01-54, which opened a “formal investigation into competitive market initiatives with the intent to minimize or eliminate any barriers to competitive choice.” D.T.E. 01-54, at 1-2 (2001). The primary objective of the investigation is to identify and implement initiatives that would expand the range of competitive options available to consumers. Id. at 1. The Department stated that the initial phase of the investigation would focus on establishing a “comprehensive set of initiatives that will ensure that competitive suppliers¹ have appropriate access to information” regarding each distribution company’s customers. Id. at 7.

As part of its investigation, the Department specifically directed each distribution company to take certain steps immediately, in order to “expand the competitive options available to default service customers during the summer months.” Id. at 5-7. The Department directed distribution companies to provide the names, addresses, and rate classification of its default service customers to licensed competitive suppliers and electricity brokers, upon request (“Customer Information Lists” or “Lists”). In order to receive this information, the supplier is required to agree that the information will be used only for the marketing of electricity-related services. In addition, the Department directed each distribution company to compile a list of

¹ In D.T.E. 01-54, and in this Order, the Department uses the terms “competitive supplier” and “supplier” to refer to both licensed competitive suppliers and electricity brokers.

“active” suppliers that are ready to provide competitive generation offers to customers in its service territory. Id.

The Department held a technical session on July 24, 2001, to discuss issues associated with supplier access to customer information. Subsequent to the technical session, written comments were submitted by Alternative Power Source, Inc. (“APS”); the Attorney General of the Commonwealth of Massachusetts (“Attorney General”); Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric (“NSTAR”); ChooseEnergy, Inc. (“ChooseEnergy”); AES New Energy, Inc., ChooseEnergy, Enron Energy Services, Exelon Energy Company, Green Mountain Energy Company, the National Energy Marketers Association, and the NewPower Company, (jointly, “the Competitive Suppliers”); Dominion Retail, Inc. (“Dominion”); the Division of Energy Resources (“DOER”); Massachusetts Union of Public Housing Tenants and the National Consumer Law Center (jointly, “NCLC”); Massachusetts Electric Company and Nantucket Electric Company (together, “MECo”); Mirant New England, Inc., (“Mirant”); Select Energy, Inc. (“Select”); Strategic Energy, LLC (“Strategic”); and Western Massachusetts Electric Company (“WMECo”). In addition to addressing issues related to supplier access to customer information, comments addressed issues involving Internet-based customer authorizations or "electronic signatures."

II. CUSTOMER INFORMATION LISTS

A. Introduction

Pursuant to the Department's directives in D.T.E. 01-54, each distribution company currently provides suppliers access to a Customer Information List, which includes the name, address, and rate classification of each default service customer in its service territory. In this section of the Order, the Department addresses (1) what additional information should be included on the Customer Information Lists, (2) the manner in which the information should be formatted, updated, and provided to suppliers, (3) the purposes for which suppliers can use the information, (4) whether distribution companies may charge fees for access to the Customer Information Lists, and (5) the manner by which customers may have their information included in, or removed from, the Lists.

B. Historic Usage and Payment History Information

1. Introduction

In Competitive Market Initiatives, the Department proposed that distribution companies be required, upon request of a competitive supplier, to provide historic load information and credit information for those default service customer that have affirmatively authorized the distribution company to do so. D.T.E. 01-54, at 8. Currently, in order to gain access to a customer's historic usage data, a supplier must obtain authorization from the customer pursuant to 220 C.M.R. § 11.05(4)(a), and then request release of the data from the distribution company pursuant to 220 C.M.R. § 11.04(12)(2).² A customer must provide separate

² The Department's Regulations at 220 C.M.R. §§ 11.04(12) provide:

(continued...)

authorization to each supplier that seeks access to the customer's usage data.³ There is no corresponding process allowing suppliers to request information regarding customer credit information or payment histories from distribution companies. Under the "opt-in" proposal outlined in D.T.E. 01-54, customers would provide a single, affirmative authorization directly to their distribution companies, which would, in turn, make historic usage and credit information available to suppliers upon request. D.T.E. 01-54, at 8.

2. Summary of Comments

a. Customer Historic Usage Information

Most commenters differentiate between historic billing usage data and metered interval data with respect to including such information on the Customer Information Lists.⁴ For historic billing usage data, DOER and a broad range of suppliers recommend implementation of

²(...continued)

Each Distribution Company shall be required to provide a Customer's historic usage information to Competitive Suppliers and Electricity Brokers that have received the required Customer authorization as established by 220 C.M.R. § 11.05(4)(a).

The Department's Regulations at 220 C.M.R. § 11.05(4)(a) provide:

Each Competitive Supplier or electricity Broker must obtain verification that a customer has affirmatively chosen to allow the release of the Customer's historic usage information to the Competitive Supplier of Electricity Broker, in accordance with 220 C.M.R. § 11.05(4)(c).

³ For billing usage data, this information is requested by and provided to suppliers via Department-approved electronic business transactions ("EBTs") developed by the EBT Working Group. For interval usage data, the information is provided via email or through an Internet account, pursuant to Department-approved tariffs.

⁴ Billing usage data is the monthly energy consumption and demand information from which customers' bills are calculated. Interval usage data, when available, provides information regarding customers' hourly energy consumption and demand.

an “opt-out” process in which customers who do not want their historic usage information made available are given the opportunity to have this information removed from the Customer Information Lists by the distribution company. For all customers who do not opt-out, the most recent twelve-months of billing usage data would be made available to suppliers via the Customer Information Lists (Competitive Suppliers Comments at 7-9; DOER Comments at 4-5; Dominion Comments at 3-4; Strategic Comments at 3).

These commenters argue that an opt-out process strikes a reasonable balance between respecting customers’ privacy interests and providing suppliers with access to necessary customer information (DOER Comments at 10-11; Dominion Comments at 2-3; Strategic Comments at 3). Dominion and Strategic argue that the Department’s proposed opt-in approach will have limited success because many customers will not be sufficiently motivated to respond affirmatively (Dominion Comments at 3-4; Strategic Comments at 3). The Competitive Suppliers assert that, for most customers, historic usage data is not competitively sensitive, noting that historic usage information is provided to suppliers in Ohio through an opt-out process with no indication of customer concern or displeasure (Competitive Suppliers Comments at 8-9). DOER asserts that making historic usage information available through an opt-out approach will be particularly helpful to those suppliers that seek to market their products to residential and small commercial consumers (DOER Reply Comments at 1-2).

For its opt-out proposal, DOER recommends that the Department establish an initial period during which distribution companies would use bill inserts to inform and educate their customers about the benefits of the release of historic usage information as well as the opportunity to opt-out of the release of such information. Customers who did not opt-out

during this initial period would have an opportunity to do so on an ongoing basis (DOER Comments at 4-7). In order to implement an opt-out process, DOER notes that the Department may need to amend its regulations regarding the release of historic usage information (DOER Comments at 5-7, citing 220 C.M.R. § 11.05(4)).

With respect to metered interval data, the Competitive Suppliers and DOER recommend that, in light of the potentially sensitive nature of such data, an opt-in approach be implemented in which customers who wish to have this data included on the Customer Information Lists affirmatively authorize the distribution companies to do so. For customers who do not opt-in, the existing practice of requiring an individual customer authorization would continue (Competitive Suppliers Comments at 9-11; DOER Comments at 10-11). The Competitive Suppliers argue that, for metered interval data, an opt-in procedure provides an appropriate balance between protecting the information a customer may consider proprietary and the benefits of making this information readily available to marketers (Competitive Suppliers Comments at 9-10). The Competitive Suppliers assert that an opt-in approach authorizing the release of interval usage data would greatly minimize the delays experienced by suppliers in obtaining this data from individual customers' distribution companies (id.).

The distribution companies object to any change in the way that customers' historic usage data, both billing and interval usage data, currently is released to suppliers, citing the confidential and proprietary nature of this information (MECo Comments at 3; NSTAR Comments at 5-7; WMECo Comments at 8). NSTAR asserts that commercial or industrial customers' historic usage information may be competitively sensitive because such information can reveal information about customers' business practices (NSTAR Comments at 6-7).

NSTAR and WMECo argue that releasing historic usage information through an opt-out approach would invite customer dissatisfaction, particularly because many customers will not read the bill inserts informing them of their ability to opt-out (NSTAR Comments at 9-10; WMECo Comments at 10-11).

The distribution companies argue that releasing historic usage information without explicit customer authorization is inconsistent with the Electric Industry Restructuring Act (“Restructuring Act” or “Act”), citing G.L. 164, § 1C(v) (providing that a distribution company cannot share proprietary customer information with its affiliates without customer authorization), and G.L. c. 164, § 1F(7) (directing the Department to establish rules and regulation governing, amongst other things, the confidentiality of customer records) (MECo Comments at 3; NSTAR Comments at 5-7; WMECo Comments at 7-11). WMECo further argues that an opt-out approach for the release of historic usage data would be inconsistent with the Department’s regulations requiring suppliers to obtain affirmative customer authorization for the release of historic usage data (WMECo Comments at 11, citing 220 C.M.R. § 11.05(4)). In addition, citing to the experience of its affiliate Connecticut Light and Power, WMECo asserts that implementing an opt-out process is costly, both in terms of educating customers of their opt-out rights and in developing an internal tracking system (WMECo Comments at 12-13). Recognizing that the existing system of customer authorization may be enhanced, NSTAR recommends that the Department convene a working group to develop an opt-in proposal that would both protect consumers’ rights and facilitate the sharing of customer information with suppliers (NSTAR Comments at 10-11).

Finally, the Attorney General and NCLC oppose the inclusion of a customer's historic usage data on the Customer Information Lists without written authorization from the customer, arguing that it harms customers who consider this information to be private (Attorney General Comments at 3; NCLC Comments at 13-17). The Attorney General asserts that the unauthorized release of such information would be an "unfair and deceptive trade practice that may be actionable under G.L. c. 93A" (Attorney General Comments at 3). NCLC asserts that such an approach may be in violation of G.L. c. 214, § 1B, which states that "a person shall have a right against unreasonable, substantial or serious interference with his privacy." NCLC Comments at 15.

b. Customer Payment History Information

Commenters were generally opposed to the inclusion of customer payment information on the Customer Information Lists, due to the sensitive and private nature of this information (Attorney General Comments at 3; Competitive Suppliers Comments at 13; DOER Comments at 11; MECo Reply Comments at 5; NSTAR Comments at 7; WMECo Comments at 8-9). The Attorney General argues that, similar to historic usage information, unauthorized release of a customer's credit history is an unfair and deceptive trade practice that may be actionable under G.L. c. 93A (Attorney General Comments at 3). NSTAR and WMECo assert that general credit information is available from credit-reporting agencies, thus obviating the need for distribution companies to share this information with competitive suppliers (NSTAR Comments at 7; WMECo Comments at 8-9).

The Competitive Suppliers state the exclusion of payment information from the Customer Information Lists should not be a barrier to the development of the competitive

market. However, the Competitive Suppliers recommend that, for residential default service customers, Customer Information Lists be screened to include only customers that are not more than 30 days in arrears. The Competitive Suppliers argue that such screening would make the Lists more useful to suppliers without implicating privacy concerns (Competitive Suppliers Comments at 13). In contrast, DOER, MECo, and Mirant oppose filtering the Customer Information Lists to exclude customers with histories of non-payment, arguing that filtering is counter-productive to the goal of stimulating the competitive market and moving consumers from default service to competitive supply (DOER Comments at 11; MECo Reply Comments at 5; Mirant Comments at 2). Finally, on a related matter, the Attorney General and NCLC argue that the Department should prohibit the release of rate class information that would identify customers that take service under distribution companies' low-income rates, stating that such identification would lead to economic "redlining" (Attorney General Comments at 2, n.2; NCLC Comments at 17-19).

3. Analysis and Findings

a. Customer Historic Usage Information

The Department's goal is to expand the range of competitive options that are available to consumers. Our challenge is to strike an appropriate balance between providing suppliers efficient access to information that would expand consumers' options, and respecting consumers' privacy concerns. Historically, distribution companies have not released customers' historic usage information to third parties, as the companies considered the information to be either private or proprietary. No compelling need could be shown requiring the release of such information. With the advent of the restructuring of the electric industry and the introduction of

competitive retail supply, the importance of this information has increased significantly. The value of information regarding a customer's historic usage lies in how it provides competitive suppliers with a reasonable estimate of what the customer's usage will be over the upcoming time period.⁵ Access to a customer's historic usage is critical for suppliers to project what their wholesale costs would be as that customer's retail supplier.

Under the current system, a supplier must obtain authorization from a customer to gain access to that customer's historic billing usage data and then request release of the data from the customer's distribution company. The supplier must contact the customer again if it seeks to make a competitive supply offer. If the offer is accepted, the competitive supplier must obtain the customer's authorization for enrollment.

The current system is cumbersome and inefficient. This process could be made more efficient and, therefore, less costly if suppliers were provided general access to customers' historic usage data without having to obtain an individual authorization from each customer. General access to usage data would be particularly beneficial for consumers with low usage levels, e.g., residential and small commercial customers, because suppliers seeking to provide services to low-usage customers typically employ a mass-marketing strategy in an attempt to enroll large numbers of customers. Requiring suppliers to individually contact potential customers twice, once for authorization to obtain historic usage information and a second time

⁵ Distribution companies report the aggregate hourly usage of each suppliers' customers to the Independent System Operator - New England, which uses this information to calculate the wholesale financial obligation of each supplier on an hourly basis. For customers whose usage data is metered on a monthly basis, distribution companies derive and report hourly usage based on customer-class specific load profiles. For customers whose usage data is metered hourly, the metered data is reported.

for authorization to enroll, is incompatible with a mass-marketing strategy. A viable range of competitive options for residential and small commercial customers will develop more efficiently by making historic usage information more readily available to suppliers. Failure to account for the practicalities of mass-marketing, while at the same time ensuring consumer safeguards are in place, would have the ultimate effect of subverting the central purpose of the Restructuring Act: namely, to extend the efficiencies and probable cost-saving benefits of competition to consumers. Exalting one value over another does not serve this end. Making historic usage information more readily available to suppliers also would increase the competitive options for consumers with larger usage levels, e.g., medium and large commercial and industrial customers. For these reasons, we conclude that it is both necessary and appropriate to include customers' historic usage information on the Customer Information Lists.

As an important tool for expanding their competitive options, we are convinced that, with proper education efforts, the vast majority of customers will appreciate the value of having their historic usage information included on the Customer Information Lists. This is particularly true because, pursuant to the Department's directives in D.T.E. 01-54, any information included in the Customer Information Lists is available to a limited number of qualified entities (i.e., competitive suppliers and electricity brokers licensed by the Department) and for a limited purpose (i.e., the marketing of electricity-related services).⁶ D.T.E. 01-54, at 6.

⁶ See Section II.C, below, for a discussion of the activities that are considered electricity-related services.

Despite the benefits that may be realized, we recognize that certain customers may, for whatever their individual reasons, not want to have their historic usage data made available to suppliers, even though the information may only infrequently be sensitive. For a small number of commercial and industrial customers, information regarding their electricity usage may reveal information about the customers' business practices and operations that they consider proprietary. Other customers may consider the information to be private. In D.T.E. 01-54, we addressed these concerns by proposing to release historic usage information for customers "that have affirmatively authorized the distribution company to do so." D.T.E. 01-54, at 8. Our proposal contemplated an "opt-in" system. However, after consideration of the comments received on this issue, the Department finds that an "opt-out" system better meets the legislative purpose of providing suppliers efficient access to information that would expand consumers' competitive options. The affirmative action required of consumers in an opt-in program may limit the benefits of the Customer Information Lists because many customers may not be sufficiently motivated to respond to their distribution companies before an opt-in deadline. An opt-out program will minimize the affirmative actions a customer must take, thereby increasing the likelihood these customers will be able to benefit from an active competitive market. The more information available, the quicker that market will develop. At the same time, a well-designed opt-out program will appropriately recognize consumer's privacy concerns by ensuring that they are provided with a reasonable opportunity to keep their usage information private. The process by which customers will be able to opt-out is discussed in Section II.E, below.

The release of customer information by a distribution company to a competitive supplier is not prohibited by the Restructuring Act. Section 1(k) of the Act counsels that reductions in the price of electricity for consumers “can be achieved most effectively by increasing competition and enabling broad consumer choice” Using an opt-out process as a means to further consumer choice is consistent with the mandates of the Act.

In addition, the Department’s regulations do not prohibit our use of an opt-out process. Our regulations at 220 C.M.R. §§ 11.00(12)(a) and 11.05(4)(a) require a competitive supplier to obtain affirmative customer authorization to release historic usage information before the distribution company can release such information. DOER argues that the Department must amend these regulations to permit an opt-in procedure. However, 220 C.M.R. § 11.08 provides that the Department may grant an exception to any provision of 220 C.M.R. § 11.00. For the purposes of the Customer Information Lists, we find that good cause exists to grant an exception to the affirmative customer authorization requirements contained in 220 C.M.R. §§ 11.00(12)(a) and 11.05(4)(a).⁷ Therefore, each distribution company shall include historic usage data for its customers on the Customer Information Lists to be made available to licensed suppliers,⁸ consistent with the opt-out process described in Section II.C, below.⁹

⁷ This exception applies only to the general release of historic billing data for the Customer Information Lists. In the event that a supplier wishes to receive historic usage data from an individual customer outside of the information provided on Lists, the affirmative customer authorization requirements of 220 C.M.R. §§ 11.00(12)(a) and 11.05(4)(a) still apply.

⁸ It is worth emphasizing that abusive or transgressive conduct by a licensed supplier opens that supplier to licensure action by the Department. 220 C.M.R. § 11.07

⁹ Issues associated with the availability of metered interval data will be addressed in

b. Customer Payment History Information

There was broad consensus among commenters that distribution companies should not provide suppliers information regarding a customer's credit or payment history, citing the sensitive character of this information. Unlike historic usage information, customers' credit and payment histories are not essential to suppliers' marketing and product design activities. This is true, in part, because, unlike historic usage data, credit-related information is available to suppliers via other means. In light of the potentially sensitive and non-essential nature of this information, we conclude that the Customer Information Lists should not include information regarding customers' payment or credit histories. Customers can, in any event, voluntarily agree to release such information, if they so wish.

We also conclude that the Customer Information Lists should not be "filtered" to remove customers with late payment histories. Such filtering would not promote the development of competitive options for these customers and may result in them remaining long-term on default service. This result would be counter-productive to the goals of this investigation. Finally, we conclude that customer income level is not germane to suppliers' marketing and product design activities. Therefore, in preparing the Customer Information Lists, distribution companies shall categorize the rate classifications of their residential

⁹(...continued)

Metering and Billing Services, D.T.E. 01-28. As part of that proceeding, the Department recently approved distribution company tariffs governing, among other things, the manner in which customer's metered interval data is made available to customers and suppliers. D.T.E. 01-28 is the appropriate forum to ensure that interval usage data is made available to suppliers in an appropriate and efficient manner.

customers in a manner that does not differentiate between low-income customers and other customers receiving the same service.

C. Non-Usage Information

1. Introduction

In D.T.E. 01-54, the Department directed the distribution companies to include the names, addresses, and rate classification of their default service customers on Customer Information Lists that are available to licensed suppliers/brokers, upon request. D.T.E. 01-54, at 6. Commenters suggested a variety of additional information to include with the Customer Information Lists.

2. Summary of Comments

The Competitive Suppliers and DOER recommend that, in addition, to names, addresses (both service and mailing), and rate classifications, the following information be made available to suppliers: load profile category, meter type, interval meter indicator, rider, budget bill indicator, and meter read cycle (Competitive Suppliers Comments at 7-9; DOER Comments at 10-11). The Competitive Suppliers note that the above-listed information is made available to suppliers in Ohio (Competitive Suppliers Comments at 7-9). DOER suggests that two additional items be made available: a service delivery point indicator and a sales tax exemption indicator, stating that providing suppliers with access to the maximum amount of customer information will enhance their ability to market their products to consumers (DOER Comments at 10-11).

The Competitive Suppliers, Dominion, and Select argue that commercial accounts should include a contact name, where possible, in order to enable suppliers to have more

effective communications with customers (Competitive Suppliers Comments at 6; Dominion Comments at 2; Select Comments at 1). The Competitive Suppliers and DOER support the inclusion of a identifying number for each customer in order to enable suppliers to track changes in customer information in successive generations of the Customer Information Lists (Competitive Suppliers Comments at 5-6; DOER Comments at 10-11). Finally, Dominion recommends that customers' account numbers be included on the Customer Information Lists, arguing that this would greatly minimize enrollment mistakes. Dominion asserts that the benefits of proving customer account numbers far outweigh any disadvantages associated with the potential for customer slamming (Dominion Comments at 2-3).

DOER and a broad range of suppliers support an opt-out provision for customers who do not want to have this non-usage information provided to suppliers (Competitive Suppliers Comments at 6; DOER Comments at 4; Dominion Comments at 3-4; Strategic Comments at 3). DOER recommends that the Department establish an initial opt-out period and then subsequent, periodic, opt-out opportunities (DOER Comments at 4-5). Commenters argue that an opt-out process reasonably balances the privacy interests of the customer with the needs of the supplier to have useful access to necessary information (Competitive Suppliers Comments at 7-9; DOER Comments at 4; Dominion Comments at 2-3; Strategic Comments at 3).

MECo and WMECo object to making any additional information available to suppliers, except that MECo does not object to providing information regarding customers' meter read cycles (MECo Comments at 2-3; WMECo Comments at 15). MECo argues that information regarding load profiles, meter type, and service delivery point are associated with a customer's rate classification and are readily available to suppliers through other means (MECo Reply

Comments at 4). MECo further asserts that information regarding whether a customer is on a budget bill plan or qualifies for a sales tax exemption is proprietary and should not be released without the customer's affirmative consent (MECo Reply Comments at 4-5). NSTAR also opposes release of budget bill information, stating that this information is particularly sensitive because it relates to a customer's income level (NSTAR Comments at 7). MECo and WMECo recommend the occasional use of periodic bill inserts or messages to inform customers of their rights to have their names removed from the Lists (MECo Comments at 2; WMECo Comments at 4). Finally, the Attorney General and NCLC note their continued opposition to the release of any customer information without the affirmative assent of the customer (Attorney General Comments at 3; NCLC Comments at 13-17).

3. Analysis and Findings

As we have stated, the primary objective of making Customer Information Lists available to suppliers and brokers is to expand the competitive options available to consumers by allowing suppliers to market their services in a more efficient manner. Consistent with this objective, it is essential that suppliers are able to effectively communicate with the persons responsible for making energy-related decisions. A vibrant market is intended by the Restructuring Act as a benefit to consumers. Therefore, we conclude that customers' service and mailing addresses, as well as customer contact persons, where this information is available, should be included on the Customer Information Lists.

Customer switches, or enrollments, occur on their meter read dates. Information regarding customers' meter read cycles is useful because it informs suppliers of the date on which their wholesale obligation for that customer would begin, thus allowing the supplier to

manage its wholesale supply portfolio more efficiently.¹⁰ For these reasons we conclude that customer meter read cycle also should be included on the Customer Information Lists.

Information associated with a customer's name, address, rate classification, billing cycle, and historic usage is specific to each customer and is not available to suppliers except through Customer Information Lists. In contrast, information associated with a customer's load profile category, meter type, and service delivery point is not specific to the customer, but, instead is related to the customer's rate classification. This rate class information is generally available to suppliers via the distribution company websites.¹¹ We recognize that this information has certain value to suppliers in projecting their wholesale costs. However, in order to maintain the utility of the Customer Information Lists as well as to minimize the costs incurred by distribution companies in compiling and maintaining these Lists, it is appropriate to limit the information included on the Customer Information Lists to information that is not readily available to suppliers by other means. For these reasons, we find that load profile category, meter type, and service delivery point should not be included on the Customer Information Lists. The Department intends to review the manner in which this information is made available to suppliers (see Customer Information Working Group, Section II.F, below). If rate class information is not readily available to suppliers, we may revisit this issue.

We are not convinced that information as to whether a customer is on a budget billing plan or receives a sales tax exemption is necessary to market services to consumers.

¹⁰ Currently, meter read information for a particular customer is provided to the supplier only after the customer is switched to the supplier.

¹¹ MECo Reply Comments at 4.

Therefore, the Department concludes that this information need not be included on the Customer Information Lists. The inclusion of distribution company account numbers on Customer Information Lists may be useful to minimize mistakes made during the customer enrollment process.¹² A customer's account number is one of two pieces of information that must be known by a supplier to successfully enroll a customer.¹³ Pursuant to the current Department-approved enrollment procedure, distribution companies process a customer enrollment transaction submitted by a supplier if the transaction includes the customer's correct account number and account name. The distribution company does not independently verify that the supplier has obtained the customer's required authorization.¹⁴ Instead, the fact that a supplier knows a customer's account number and account name is considered sufficient proof by the distribution company of the customer's authorization for the switch. Therefore, including account numbers on the Customer Information List raises legitimate concerns with respect to unauthorized enrollments or "slamming."¹⁵ Although they have potential utility to

¹² Commenters also argue that customer account numbers, (or individual tracking numbers), would allow suppliers to better track customers. We address this issue in Section II.D, below.

¹³ The second piece of information is the first four characters of the name on the customer's account.

¹⁴ Other states, (e.g., New York), require distribution companies to send mailings to customers to verify that they have given their authorization for a supplier switch.

¹⁵ Current protections against slamming are established by statute and our regulations. These penalties include refunds by a supplier to affected customers as well as fines of up to \$3000 per offense. In addition, the Department may take licensure action against suppliers that engage in "egregious" or a pattern of misconduct. G.L. c. 164, § 1F(8); 220 C.M.R. § 11.07.

suppliers and customers in streamlining the enrollment process, we will not require inclusion of customer account numbers on Customer Information Lists at this time. Instead, in the next phase of this proceeding, the Department will consider the broader issue of whether the current information requirements for customer enrollments serve as barriers to competitive choice.

Any revisions to the current enrollment requirements must ensure that appropriate protections against consumer slamming are maintained.

D. Other Issues

1. Introduction

In addition to issues related to the appropriate information to include on the Customer Information Lists, commenters addressed the following List-related issues: (1) whether Customer Information Lists should be made available for standard offer service customers, (2) the format of the Lists, (3) for what purposes the Lists may be used by suppliers, and (4) whether distribution companies should be allowed to charge fees for maintaining and providing the Lists.

2. Summary of Comments

There was broad agreement among commenters that the Customer Information Lists should include information both for standard offer and default service customers in order to expand the competitive options for all consumers (Competitive Suppliers Comments at 6-7; DOER Comments at 11-13; Dominion Comments at 2; NSTAR Comments at 11-12; Select

Comments at 1; Strategic Comments at 2). MECo, NSTAR, and WMECo do not oppose the broadening of the Lists to include standard offer customers (MECo Comments at 4; NSTAR Comments at 12; WMECo Comments at 5-6).

There also was widespread agreement among commenters on issues associated with the formatting and updating of the Lists, and the means by which distribution companies should make the Lists available to suppliers. First, most commenters agree that Customer Information Lists should be updated on a regular, *e.g.*, quarterly, basis (Competitive Suppliers Comments at 5; DOER Comments at 13; Dominion Comments at 3; NSTAR Comments at 12; Select Comments at 1). Second, most commenters agree that the Lists should be provided using a uniform format for all distribution companies, in order to increase the efficiency with which suppliers use the information (Competitive Suppliers Comments at 5; Mirant Comments at 3; NSTAR Comments at 12; Select Comments at 1; WMECo Comments at 3-4). Third, most commenters agree that the Lists should be made available via the Internet or other electronic means, with appropriate protections to prevent unauthorized access (Competitive Suppliers Comments at 5; DOER Comments at 13; Dominion Comments at 3; Mirant Comments at 3; Strategic Comments at 2). Mirant argues that, whatever method is used, the Department should require distribution companies to provide the Customer Information Lists to suppliers within two business days of receiving a request (Mirant Comments at 2).

With respect to the current requirement that suppliers may use the information obtained from the Customer Information Lists only to market electricity-related services, the Competitive Suppliers, DOER, MECo, and WMECo recommend that the Department define or establish a

list of uses that are permissible “electricity-related services” (Competitive Suppliers Comments at 13-14; DOER Comments at 14-15; MECo Comments at 5; WMECo Comments at 6-7). The Competitive Suppliers recommend that this term be defined as broadly as possible so as not to limit the ability of suppliers to design new offerings or develop new bundles of products and services (Competitive Suppliers Comments at 13-14). MECo recommends that demand-side management services be included as “electricity-related” (MECo Comments at 5). Once a definition has been established, DOER recommends that the Department amend its regulations to include specific restrictions on the use of the Customer Information Lists. DOER states that, once amended, the regulations would permit the Department to levy penalties against suppliers for misuse of List information (DOER Comments at 14-15, citing 220 C.M.R. § 11.07(4)(c)). MECo and NSTAR argue that the Department has statutory authority pursuant to G.L. c. 164, § 1F(7) to penalize suppliers for misuse of information obtained from the Customer Information Lists (MECo Comments at 3-4; NSTAR Comments at 13).

Finally, the distribution companies argue that they should be allowed to recover the costs of providing suppliers with Customer Information Lists (MECo Comments at 5; NSTAR Comments at 13). Dominion states that costs assessed to suppliers should be reasonable and tied directly to the utilities’ direct costs (Dominion Comments at 3). Mirant argues that the Department should prohibit distribution companies from charging fees for making this information available to suppliers (Mirant Comments at 3).

3. Analysis and Findings

Standard offer service customers have the same opportunity to choose an alternative electricity supplier as default service customers. Therefore, we conclude that it is appropriate that information regarding standard offer customers, as well as default service customers, should be included on the Customer Information Lists.

The availability of Customer Information Lists is intended to increase the competitive options available to customers by allowing suppliers to market their services to customers in a more efficient manner. In order to maximize the usefulness of the Lists for this purpose, the Lists should be formatted consistently among distribution companies. In addition, the Lists must be readily available to suppliers in electronic form. Finally, to ensure that the information included on the List is up-to-date, the Lists must be updated on a quarterly basis. Suppliers should use the most current version of the List to ensure that customers' opt-out elections are honored. To the extent possible, customer identification numbers should also be used to assist suppliers in tracking customers as the Customer Information Lists get updated. Recognizing that the need exists to develop a detailed implementation plan for these issues, the Department will convene a customer information working group ("Working Group"). The responsibilities of the Working Group are discussed in Section II.F, below.

In order to receive copies of the Customer Information Lists, suppliers are required to agree that the information will be only used for the marketing of electricity-related services. With respect to commenters requests to define the term "electricity-related services," we agree that it would be useful to provide more broad guidance regarding the types of services for which suppliers may use the information on the Customer Information Lists. For the purposes

of this proceeding, the Department will use the following definition: “Electricity-Related Services are any activities associated with a customer’s electricity consumption. The activity may be either supply- or demand-related. Supply-related activities are actions taken in an attempt to become a customer’s competitive supplier or electricity broker. Demand-related activities are actions taken in an attempt to provide energy efficiency or load response services to a customer.” Each distribution company shall modify any Customer Information List agreements signed by suppliers from the date of this Order to incorporate the above definition of electricity-related services.

Finally, we address the recovery of costs associated with compiling the Lists and making them available to suppliers. Although we recognize that distribution companies incur certain costs associated with compiling, maintaining, and distributing these Lists, the distribution company is the custodian of the customer’s data. As such, the dissemination of Customer Information Lists is a service that can only be provided by the distribution companies. Making the Customer Information Lists available is a service that provides benefits to all of the distribution companies’ customers.¹⁶ Therefore, the Department directs the distribution companies to make the Customer Information Lists available at no cost to suppliers.

E. Opt-Out Process

We directed the distribution companies to implement an opt-out process to provides customers with the opportunity to remove information from the Customer Information Lists.

¹⁶ A base rate case proceeding pursuant to G.L. c. 164, § 94, would be a more appropriate venue to investigate the recovery of these costs.

An effective opt-out process must inform and educate consumers regarding (1) the information that will be included on the Lists, (2) the reason why this information is being provided to suppliers, (3) the benefits that should accrue to customers whose information is included on the Lists, and (4) the opportunity to remove their information from the Customer Information Lists. In addition, an effective opt-out process must provide customers with a reasonable method by which they can exercise an opt-out election.

We conclude that the most appropriate manner to inform and educate customers regarding the opt-out process is through the use of bill inserts and messages. The bill insert will contain the customer education component as well as the details of the opt-out process. Certain commenters argued that customers are unlikely to read bill inserts. To address this concern, the bill messages will alert customers that the insert in the current month's bill includes important information regarding a newly-established customer information policy. In order to increase the likelihood that the information is read by the maximum number of customers, it is necessary that the bill insert and message be included in customers' bills for two consecutive months. The first bill message and inserts shall be included in customers' December 2001 bills. The second bill message and insert shall be included in customers' January 2002 bills. After the January 2002 billing cycle, customers will have approximately one month to opt-out before the Customer Information Lists established pursuant to the directives in this Order are made available to suppliers.¹⁷ Customers will have the continuing option to opt-out of the release of this information as subsequent updates of the Customer Information Lists are made.

¹⁷ In the interim, the distribution companies shall continue to provide supplier access to the Customer Information Lists established pursuant to D.T.E. 01-54.

In order to implement the mechanics of this opt-out process, the Department directs each distribution company to compile a Customer Information List of those customers that have not opted-out as of January 31, 2002, and to make that List available to suppliers as of February 7, 2002. In addition to the bill inserts, each distribution company shall make the details of the opt-out process, including the consumer education component, available on its website. As necessary, each distribution company should also modify its privacy policy incorporate the disclosure of information contained in the Customer Information Lists and the availability of the opt-out election. The Working Group, as discussed below, will develop the appropriate language of the bill messages and inserts.

After the initial opt-out period described above, it is appropriate for distribution companies to use periodic bill inserts and messages to remind customers of their ability to opt-out. As Customer Information Lists will be updated periodically, customers who opt-out after the initial opt-out period will have their information removed from the Lists as of the date of the next update. In order to ensure that customers' opt-out elections are honored, suppliers will be required to use only the most recently-updated version of the Lists in their electricity-related marketing activities.

With regard to the appropriate method to exercise an opt-out election, telephone calls or letters are the traditional means of customer communication with their distribution companies. Therefore, the Department considers it appropriate for customers to exercise their opt-out election either by telephone phone call or letter.

F. Customer Information Working Group

As discussed in Sections II.C, D, and E, above, the Department will convene a Working Group to develop the details associated with the implementation of certain of the directives contained in this Order. The Working Group, with the guidance of Department Staff, is charged with the following:

- S Developing the language of the bill messages and bill inserts regarding the Customer Information Lists and the opt-out process;
- S Developing a regular schedule for updates to the Customer Information Lists;
- S Developing a consistent format for the Customer Information Lists to be used by each distribution company. If feasible, the Lists should include a customer identifier to allow supplier to easily track customers as the Lists are updated;
- S Developing the electronic means by which the Customer Information Lists will be made available to suppliers;
- S Reviewing the means by which each distribution company makes information regarding load profile categories, meter type, and service delivery point available to suppliers and, if necessary, recommend methods to ensure that this information is readily available through each company's website.
- S Reviewing the manner in which the distribution companies use their active supplier lists as established in D.T.E. 01-54, and, if necessary, recommends ways in which the active supplier list could be used more efficiently.¹⁸

The first meeting of the Working Group will be held at 10:00 a.m. at the Department's offices, on October 24, 2001. All persons who wish to participate in the Working Group must notify the Department in writing by the close of business (5:00 p.m.) on October 22, 2001. In order to ensure that sufficient time is available to have inserts and messages placed in bills issued during December, 2001, the Working Group must submit its recommendations regarding

¹⁸ DOER and Dominion recommend certain improvements to the active supplier lists (DOER Comments at 8-9; Dominion Comments at 5).

the language of the bill message and insert no later than November 7, 2001. Recommendations regarding all other issues must be submitted to the Department no later than January 15, 2002.

III. INTERNET-BASED CUSTOMER AUTHORIZATIONS

A. Introduction

In D.T.E. 01-54, the Department stated our intent to investigate issues involving Internet-based customer authorizations or “electronic signatures.” Specifically, we stated: “General Laws c. 164, § 1F requires customer authorization for switching must be in written form or via telephone with a third-party verification. This requirement, established as a consumer protection against ‘slamming’ may be a barrier to the growing number of competitive suppliers that seek to do business through the Internet.” D.T.E. 01-54, at 10.

Commenters were asked to discuss whether the use of electronic signatures is valid in Massachusetts. In particular, the Department sought comment on whether there is any legal impediment to the use of electronic signatures in transactions related to contemplated competitive market initiatives such, as the authorization for switching a consumer to a competitive supplier or the authorization to release customer usage information.

B. Summary of Comments

Commenters argue that current procedures employed in enrolling customers are cumbersome, costly to administer, and may be a deterrent to competition (APS Comments at 1; Dominion Comments at 4; Select Comments at 2). As a policy matter, commenters generally support and encourage the use of electronic signatures as a means to promote the efficient transfer of customer information to suppliers and lower transaction costs if sufficient consumer

protections are in place to prevent unauthorized release of customer information or slamming (ChooseEnergy Comments at 10, DOER Comments at Att. A; Dominion Comments at 4; Mirant Comments at 3; Select Comments at 2). The commenters are split, however, as to whether electronic signatures are currently permitted in Massachusetts under state and federal law.

In June of 2000, Congress passed the E-Sign Act¹⁹ providing that an electronic signature on a contract between two willing parties may not be considered invalid merely because it is an electronic signature. DOER argues that the E-Sign Act does not apply to the retail sale of electricity in Massachusetts because the statute is limited to “any transaction in or affecting interstate or foreign commerce” (DOER Comments at Att. A). Still, other commenters, such as the Competitive Suppliers and NCLC, argue that the E-Sign Act is applicable and that electronic signatures cannot be denied legal effect as a matter of law (Competitive Supplier Comments at 20; NCLC Comments at 6). As such, NCLC argues that the Department should conduct further proceedings to develop the rules necessary to implement the complex requirements of the E-Sign Act, including maintaining the disclosure and verification requirements of the Restructuring Act (NCLC Comments at 6, 13). A third group of commenters, including MECo, NSTAR and WMECo, recognize the passage of the E-Sign Act, but take no position on whether or not it preempts state law (MECo Comments at 6; NSTAR Comments at 15, n.11; WMECo Comments at 17).

¹⁹ Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq.

With respect to state law, DOER argues that there is no general prohibition in Massachusetts law against the use of electronic signatures (DOER Comments at Att. A). While G.L. c. 164, § 1F(8) does define “affirmative choice” as the “signing of a letter of authorization,” DOER notes that the definition is broad because such choice may be made through the use of third party verification or the completion of a toll-free call made by the customer to an independent third party (id.). DOER urges the Department to interpret the phrase “letter of authorization” more broadly to include an Internet signature (id.). Still other commenters, such as ChooseEnergy, citing to the same statutory language in G.L. c. 164, § 1F(8), argue that electronic signatures are not valid in Massachusetts (ChooseEnergy Comments at 9). NSTAR states that G.L. c. 164, §1F(8) is ambiguous as to whether it encompasses electronic signatures (NSTAR Comments at 15, n.11).

Because it is not addressed in the Restructuring Act, NSTAR asserts that there is no statutory impediment for the Department to permit electronic signatures for the authorization for the release of customer information and suggests that the Department amend 220 C.M.R. § 11.05(4)(a) to permit the use of electronic signatures in this context only (NSTAR Comments at 14-15). However, with respect to initiating service from a competitive supplier, NSTAR maintains that the Restructuring Act does not permit electronic signatures (id. at 15).

WMECo asserts that current Massachusetts law and Department regulations do not allow for electronic signatures (WMECo Comments at 16). Noting that G.L. c. 164, § 1C(v) prohibits distribution companies from sharing any proprietary information with their affiliates without written authorization of the customer, WMECo argues that while the Department may

institute a rulemaking to allow Internet authorizations for the release of information from customers, it cannot alter the statutory provision with respect to distribution companies (id.).

The Attorney General's comments focus on consumer protection issues, recommending that the Department require either written or third-party verification for electronic signatures similar to the requirements for switching suppliers (Attorney General Comments at 6). The Attorney General argues that, while the Restructuring Act is silent on the use of electronic signatures, the Legislature expressed a clear intent to require verification as a means to prevent the unauthorized switching of electric service (id. at 5-6). DOER's support of the electronic signatures is also contingent upon the Department adopting sufficient slamming protections (DOER Comments at Att. A).

Mirant encourages the Department to implement harsh penalties for suppliers caught slamming, arguing that suspending or withdrawing competitive supplier license would prevent the abuse of electronic signatures (Mirant Comments at 3). NCLC is concerned that electronic documents pose greater risks to consumers who are not sophisticated computer users and, therefore, also urges the use of strong consumer protections (NCLC Comments at 10-13).

Rather than adopt the non-technology based protections encouraged by the Attorney General, ChooseEnergy submits that technology-based solutions exist, giving electronic signatures the same or better protection than traditional signatures or third party verification (ChooseEnergy Reply Comments at 3-4). These protections include log-in and password protection, e-mail address, time and date stamped log files, and account number validation protocols (id. at 4).

Several commenters, including MECo, NCLC and WMECo, suggest that the Department could initiate a rulemaking proceeding to investigate new processes for switching a consumer to a competitive supplier and releasing customer information, which would include the use of electronic signatures. As part of this recommended rulemaking, several commenters urge the Department to adopt regulations that closely regulate supplier practices to prohibit slamming (MECo Comments at 4-6; NCLC Comments at 13; WMECo Comments at 16).

C. Analysis and Findings

In determining what law governs the definition of “signature,” the question is presented whether the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq. preempts the provisions of G.L. c. 164, § 1F(8). General Laws c. 164, § 1F(8) requires a customer’s expression of “affirmative choice” of a competitive supplier by that customer’s “signing a letter of authorization” to switch his service to that supplier. The question presented is whether the Federal statute renders the Massachusetts statute unconstitutional because of irreconcilable inconsistency between the enactments. In answering this question, the Department assumes, *arguendo*, that a sale of a electricity by a competitive supplier may come under the E-Sign law because of the interstate nature of power pool generation and sales.

The subsidiary question then arises whether an administrative agency, itself the creature of state statute, may find an act of the General Court to be unconstitutional and, hence, invalid. Spence v. Boston Edison Company, 390 Mass. 604, 610 (1983), holds, however, that “[a]gencies, which are creations of the State, may not challenge the constitutionality of State

statutes.” The challenge, then, is to reconcile the claimed or suggested contradiction between Federal and state law and to construe both enactments harmoniously. There is, we believe, a way to read the two statutes together and thereby to avoid a conflict between their respective signature provisions.

We must determine what the act of “signing” means in this context. First, we look to other sections of Chapter 164 to discover whether that chapter imposes other signature requirements that may help us understand the disputed meaning of G.L. c. 164, § 1F(8). Statutes in *pari materia* are a recognized source for determining the meaning of statutory terms whose intent is not immediately obvious. Sutherland, Statutory Construction, 6th ed. (2001). There are several sections of the chapter that deal with signature, G.L. c. 164, §§ 17, 83, and 84A; but none of these, though *pari materia*, sheds any useful light on the meaning of § 1F(8). So, we look elsewhere for assistance, viz., to Chapter 106, the Uniform Commercial Code (“UCC”).

Electric rates have, of course, long been heavily regulated. The Court has accordingly ruled that, “*in some respects*,” electric rates thus lie outside the realm of ordinary contracts. Boston Edison Company v. City of Boston, 390 Mass. 772, 777 (1984) (“Boston Edison”) (emphasis added). The evident implication of this 1984 case is that, in some circumstances, UCC contract law, at least as an analogue, may be a useful legal-analytic tool. We note that the holding in Boston Edison concerning the relationship between tariffs and contract law remains the law of the Commonwealth, FMR Corporation v. Boston Edison Company, 415 Mass. 393, 396 (1993) (“FMR”) (“Furthermore, it must be understood that the extensive

legislative regulation of Edison's rates and practices takes the furnishing of electricity out of the realm of contract law"), citing Boston Edison, at 777. Our concern with contract law here relates only to the much narrower question of giving meaning to the term "signing" in G.L. c. 164, § 1F(8)(a)(ii) and nothing more.

With the passage of the 1997 Electric Restructuring Act, the relationships between customers and their competitive suppliers, while subject to licensure regulation, are fully market-based, not tariff-based, relationships. In this sense, the relationships are somewhat different from that before the Court when it ruled in 1984 and again in 1993; and it is different from the relationship customers have with their electric company when they pay regulated distribution rates. The customer buys a market-based commodity, i.e., electricity, from a competitive supplier, while that same customer takes and pays for rate-regulated, electric distribution from his electric company. In this sense, the commodity purchase is more akin to a contract relationship than was the case in 1984 or 1993, while the electric distribution remains squarely the kind of heavily regulated relationship, outside ordinary contract, that was before the Court in Boston Edison at 772, and in FMR at 393.

There is another sense in which UCC contract law is analogous. It has long been established that electricity "can be the subject of sale" and partakes of "something corresponding to delivery in the sale of a tangible chattel." Electricity has even been likened to "a commodity subject to sale and delivery rather than a service furnished by the generating company." G.E. Lothrop Theatres Company v. Edison Electric Illuminating Company, 290 Mass. 189, 193 (1935). "In some respects," then, electricity, especially competitively supplied

electricity, is sufficiently akin to an ordinary contract sale to warrant looking to the UCC model for assistance in understanding the signature requirement of § 1F(8) and to making that requirement work for customers both as a consumer protection and as a flexible means to securing the 1997 Electric Restructuring Act's competitive benefits in an age of electronic transactions. See Boston Edison, 777.

General Laws. c. 106, § 1-201(39) provides a definition governing sales under UCC Article 2 (G.L. c. 106, § 2-102) that proves instructive as a statute in pari materia. General Laws c. 164, § 1F(8)(a)(ii) uses the term "signing," while G.L. c. 106, § 1-201(39) uses the term "signed." The latter term, "signed," is defined in a way that allows us to construe both Federal and state statute in a way that avoids conflict, while still giving full meaning to the intent and underlying purposes of both laws. Under Massachusetts law, "'Signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing." G.L. c. 106, § 1-201(39). Whether a party to a competitive supply agreement chooses to bind himself by electronic or by handwritten signature appears to be left to him by G.L. c. 106, § 1-201(39) and by G.L. c. 164, § 1F(8)(a)(ii). There is no express requirement in either state statute that traditional pen and paper be used. (Moreover, the term "signing" as appearing in G.L. c. 164, § 1F(8)(a)(ii) is unmodified by either "written" or "in writing" and thus does not implicate G.L. c. 4, § 7, cl. Thirty-eighth.) This breadth in what may constitute a "writing" encompasses electronic recording and, thus, is consistent with other sources of law. Cf., Fed. R. Evid. 1001(1); Proposed Mass. R. Evid. 1001(1) and Advisory Committee's Note (1).

Allowing for an electronic signature merely recognizes the facts of 21st Century marketing, *provided*, of course, that at the time and point of signature of an agreement with a competitive supplier, a consumer is made aware with sufficient force and clarity and without ambiguity that his electronic signature will be taken as a matter of law as an expression of his then-present intent to bind himself to the terms of a contract for the competitive supply of electricity. Electronic signature, properly safeguarded, is consistent with both purposes expressed by the General Court in the 1997 Act: consumer protection from “slamming” and ready consumer access to the benefits of a competitive electric market. As there is no necessary conflict between Federal and state law, we avoid the questions of preemption and alleged unconstitutionality. Therefore, we will investigate the development of the technical processes and consumer protections necessary to implement the use of electronic signatures consistent with the requirements of the Restructuring Act in Phase II of this proceeding.

IV. SECOND PHASE OF INVESTIGATION

In D.T.E. 01-54, the Department stated our intent to investigate several issues in subsequent phases of this proceeding.²⁰ D.T.E. 01-54, at 8-11 (2001). First, we identified two potential ways in which distribution companies could perform the role of electricity brokers for their default service customers: (1) the companies could participate in an Internet-based auction processes to assist the movement of default service customers to suppliers; and (2) the companies could obtain authorization directly from default service customers, *e.g.*, via

²⁰ The Department stated that we would consider changing the scope of this investigation as further issues develop. D.T.E. 01-54, at 8-9. In addition, the Department stated that we intend to investigate the rules for interconnection standards and back-up distribution rates for the installation of distributed generation in a separate proceeding. *Id.* at 11

telephone call or post card, to switch their customers to competitive suppliers. The appropriate role of the distribution company as an electricity broker will be addressed in Phase II of this proceeding.

A second issue we identified in D.T.E. 01-54 involves the manner in which municipal aggregators, as defined in G.L. c. 164, § 134, may aggregate default service customers within their municipal boundaries. We are currently investigating a Default Service Pilot Project submitted by the Cape Light Compact (“Compact”), in which the Compact proposes to provide municipal aggregation service to default service customers within its municipal boundaries.²¹ Cape Light Compact Default Service Pilot Project, D.T.E. 01-63. The Department’s Final Order in D.T.E. 01-63 will address the manner in which municipal aggregators may aggregate default service customers within their municipal boundaries.

As we discussed in Section IV, above, we began our investigation of Internet-based authorizations in this phase of the proceeding. We will continue our investigation during Phase II, with an emphasis on the specific applications of electronic signatures and the technology necessary to implement them. In addition, we will consider appropriate consumer protections to prevent the misuse of electronic signatures. Finally, as discussed in Section II.C, above, we will consider the customer information required for suppliers to successfully enroll customers in Phase II of this proceeding.

²¹ The Compact is an intergovernmental organization consisting of 21 towns and two counties located on Cape Cod, whose purpose is to represent consumer interest in the emerging competitive market for electricity. The Department approved the Compact’s municipal aggregation plan on August 10, 2000, pursuant to G.L. c. 164, § 134. Cape Light Compact, D.T.E. 00-47 (2000).

Interested parties will have an opportunity to discuss Phase II issues at a technical session to be held at the Department's offices at 10:00 a.m. on November 14, 2001. Any party wishing to participate in this technical session must notify the Department in writing of its intent to participate no later than the close of business on November 12, 2001.

V. ORDER

Accordingly, it is hereby

ORDERED: That all electric distribution companies and licensed competitive suppliers and electricity brokers comply with the directives regarding access to customer information contained herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr. Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).