



# The Commonwealth of Massachusetts

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## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 14-140-D

September 16, 2016

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

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ORDER ESTABLISHING REPORTING REQUIREMENTS AND RULES FOR THE  
ASSIGNMENT OF CUSTOMERS FROM ONE COMPETITIVE SUPPLIER TO ANOTHER  
COMPETITIVE SUPPLIER

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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 (2014). The Department proposed the following 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. These initiatives are 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’ product offerings. D.P.U. 14-140, at 1.

This Order addresses the reporting requirements and rules for the assignment of customers from one competitive supplier to another competitive supplier (“customer assignment reporting requirements”) that were proposed in the NOI (“NOI Proposal”).

D.P.U. 14-140, at 14-16. Pursuant to the Department’s request, initial comments on the NOI

Proposal (“NOI Comments”) were submitted on January 28, 2015, by Just Energy;<sup>1</sup> Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (“National Grid”); Mint Energy (“Mint”);<sup>2</sup> National Energy Marketers Association (“NEM”);<sup>3</sup> NSTAR Electric Company and Western Massachusetts Electric Company, each d/b/a Eversource Energy (“Eversource”);<sup>4</sup> Patriot Energy Group (“Patriot Energy”);<sup>5</sup> and Retail Energy Supply Association (“RESA”).<sup>6</sup> D.P.U. 14-140, at 14-16. The Department also discussed the customer assignment reporting requirements at a May 27, 2015 technical session. Based on the NOI Comments and the May 27, 2015 technical session discussion, the Department issued its revised customer assignment proposal (“Revised Proposal”) and requested comments on the Revised Proposal (“Comments”) to be filed by August 19, 2015.

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<sup>1</sup> Just Energy is a licensed competitive supplier in Massachusetts.

<sup>2</sup> Mint Energy is a licensed competitive supplier in Massachusetts.

<sup>3</sup> NEM is a non-profit trade association representing suppliers and consumers of natural gas, electricity, and energy-related products in the United States, Canada, and the European Union.

<sup>4</sup> At the time the NOI Comments were filed, Eversource was operating as Northeast Utilities.

<sup>5</sup> Patriot Energy Group is a licensed electricity broker in Massachusetts.

<sup>6</sup> RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. d/b/a IGS Energy; Just Energy; Liberty Power; MC Squared Energy Serves, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.

See D.P.U. 14-140, Hearing Officer Memorandum, attachment (August 5, 2015). Comments were filed by Choice Energy & Town Square Energy (“Choice-Town”);<sup>7</sup> Eversource; Mint; National Grid; NRG Energy, Inc. (“NRG”); and RESA. The Department requested reply comments on the Revised Proposal (“Reply Comments”) to be filed by September 10, 2015.

D.P.U. 14-140, Hearing Officer Memorandum (August 26, 2015). Reply Comments were filed by Choice-Town; Eversource; National Grid; and RESA. In this Order, the Department establishes final customer assignment reporting requirements.

## II. CUSTOMER ASSIGNMENT REPORTING REQUIREMENTS

### A. Revised Proposal<sup>8</sup>

The Department’s Revised Proposal required an Assigning Supplier to provide the Department with two notifications: (1) a Preliminary Notice of Assignment, to be filed with the Department no later than 24 hours after the Assigning Supplier and Acquiring Supplier sign an initial agreement (“Term Sheet”); and (2) a Final Notice of Assignment, to be filed with the Department no later than 24 hours after the Assigning Supplier and Acquiring Supplier execute a final agreement or contract (“Final Contract”), regarding the price and terms of the customer acquisition. Revised Proposal at 1. The content requirements for these two notices are as follows:

1. Documentation that its customer contracts allow for customer assignment;

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<sup>7</sup> Choice Energy & Town Square Energy are licensed competitive suppliers in the Massachusetts.

<sup>8</sup> For the purposes of this Order, any capitalized terms used in this section, other than those already memorialized in this Order, are reflective of those used in the Revised Proposal.

2. The number of customers that the competitive supplier seeks to assignment, by customer type (e.g., residential or commercial and industrial), and by distribution company service territory;
3. The date(s) of the intended assignment;
4. The name and Massachusetts license number of the Acquiring Supplier to which the contracts will be assigned;
5. A statement that the assignment will maintain all contractual terms and conditions, including pricing, through the term of the contract;
6. The number of customers that have contracts that contain either an early termination fee provision or an automatic renewal provision; and
7. The reason for the assignment, and whether (and, if so, when) the Assigning Supplier intends to withdraw its license with the Department.

Revised Proposal at 1.

The Department's Revised Proposal also required the Assigning Supplier to provide each distribution company affected by the customer assignment (i.e., distribution companies with service territories covering customers to be assigned) with the same notifications provided to the Department.<sup>9</sup> Revised Proposal at 2. The Revised Proposal also required the Preliminary Notice of Assignment and Final Notice of Assignment to be filed with the Department in a specific format.

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<sup>9</sup> The NOI Proposal did not require an Assigning Supplier to notify the distribution companies or affected electricity brokers of an impending customer assignment. The Department received NOI Comments stating that both the distribution companies and electricity brokers should receive notification (Eversource NOI Comments at 2; Patriot Energy NOI Comments at 1-2). The Revised Proposal provided that the distribution companies should receive the same notice provided to the Department. Revised Proposal at 2. The Revised Proposal did not, however, provide that electricity brokers should be required to receive notification. There were no arguments in comments that elaborated on whether the electricity brokers affected by an assignment should receive notice. Therefore, the Department will not require electricity brokers to be notified of customer assignments.

The Revised Proposal also required the Assigning Supplier to provide a Notice of Assignment letter to customers with the following information:

1. Name of Assigning Supplier;
2. Name of Acquiring Supplier;
3. Date of customer assignment;
4. Statement that the assignment will not interrupt the customer's electricity service;
5. Statement that the assignment is allowed, per the terms and conditions of the customer's contract;
6. Statement that there will be no changes in the terms and conditions as set forth in the customer's contract;
6. Statement that no action is required from the customer for the assignment to occur;
7. Date that customer inquiries should be made to the Acquiring Supplier;
8. Statement that a customer may decline to be assigned to the Acquiring Supplier;<sup>10</sup>
9. Amount of early termination fee, if applicable;
10. Statement that if a customer declines to be assigned, the customer will go back to basic service with their local distribution company; and
11. Contact information for Acquiring Supplier in case the customer has any questions about the assignment.

Revised Proposal at 2.

The Revised Proposal also required the Assigning Supplier to provide the Notice of Assignment letter via the agreed upon means of communication between the competitive supplier and customer (U.S. Mail or email). Revised Proposal at 3. If there is no agreement as to the customer's preferred means of communication, then the Assigning Supplier would be required to send the letter via U.S. Mail.<sup>11</sup> Revised Proposal at 3. In addition, the Revised

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<sup>10</sup> The Notice of Assignment letter must include a phone number for customers to call if customers want to decline the assignment.

<sup>11</sup> The Revised Proposal also requires that the envelope state the following: "Open Immediately - Important Information About Your Electric Account."

Proposal required that the Assigning Supplier include an information disclosure label with the Notice of Assignment letter. Revised Proposal at 3.

The Revised Proposal required Acquiring Suppliers to enroll customers in conformance with the rules governing Electronic Business Transactions (“EBT”),<sup>12</sup> except where there is insufficient time to enroll customers using the EBT process, then the Acquiring Supplier may work with the distribution companies to enroll customers manually. Revised Proposal at 3. Finally, the Department’s Revised Proposal required that the Acquiring Supplier notify customers of an upcoming automatic contract renewal no later than 30 days prior to the date of the contract renewal. Revised Proposal at 3. Notification of the contract renewal would also be provided using the information disclosure label, rather than an Automatic Renewal Notification letter. Revised Proposal at 3.

B. Summary of Comments

1. Department Notification

Choice-Town and RESA state that the Preliminary Notice of Assignment requirement, based on information contained in the Term Sheet, should be eliminated (Choice-Town Comments at 3; Choice-Town Reply Comments at 1-2; RESA Comments at 4-5).

Choice-Town and RESA note that the information in the Term Sheet may change as the Assigning and Acquiring Suppliers finalize the assignment transaction, thus rendering the

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<sup>12</sup> The EBT rules calls for enrollments to take effect on customers’ meter read dates. The EBT rules are incorporated in the distribution companies’ approved Terms and Conditions for Competitive Suppliers (see e.g., M.D.P.U. No. 1201, § 5; M.D.P.U. 1202).



information provided in the Preliminary Notice of Assignment incorrect (Choice-Town Comments at 3; Choice-Town Reply Comments at 1-2; RESA Comments at 4-5).

Choice-Town and RESA also state that the Preliminary Notice of Assignment might contain competitively sensitive information that could negatively affect present and future business transactions (Choice-Town Energy Comments at 3; Choice-Town Energy Reply Comments at 1, 2; RESA Comments at 4-5). Thus, RESA requests that the Department require only one Notice of Assignment, which would occur after the Final Contract has been executed (RESA Comments at 3). RESA proposes that the Notice of Assignment to the Department occur within five business days of Final Contract execution where the assignment will not occur for at least 30 days, and within one business day of the Final Contract's execution where the assignment will occur in less than 30 days (e.g., an emergency assignment during a distressed sale) (RESA Comments at 3-4). Choice-Town and RESA further state that competitive suppliers should not be required to send Notice of Assignments on non-business days, and that the one-day Notice of Assignment should not include weekends and holidays (Choice-Town Comments at 4; RESA Comments at 10). Thus, Choice-Town suggests that Notice of Assignment should be required within 48 hours, or two business days, whichever is longer, after the event that triggers the disclosure obligation (Choice-Town Comments at 4; Choice-Town Reply Comments at 2).

NRG also urges the Department to eliminate the Revised Proposal's Preliminary Notice of Assignment requirement for the following reasons: (1) the number of customers, date of assignment, and the number of contracts with early termination fees and automatic renewal

provisions will not be fully known at the time a Term Sheet is agreed to by the Assigning Supplier and Acquiring Supplier; (2) the negotiating positions of the Assigning Supplier and Acquiring Supplier could be compromised by disclosure of an incomplete deal; and (3) if the Assigning Supplier or Acquiring Supplier are publicly traded companies, premature disclosure of the transaction could trigger additional disclosure obligations under federal and state securities laws (NRG Comments at 1). In addition, NRG contends that limiting or managing disclosure obligations by having the Department and distribution companies sign nondisclosure agreements would be cumbersome, time-consuming, and expensive (NRG Comments at 1).

NRG further states that signing a final agreement and actually closing a deal are not simultaneous and conditions may have to be met before closing occurs (NRG Comments at 2). Thus, NRG recommends that Final Notice of Assignment be sent to the Department no later than five business days before Notice of Assignment letters are sent to customers in accordance with the Revised Proposal (NRG Comments at 2-3). NRG also recommends that the Department protect from public disclosure the Final Notice of Assignment submitted to the Department because public disclosure of the impending assignment, before customers receive their Notice of Assignment letters and options, may cause confusion and result in numerous calls by customers to the Department and the distribution companies (NRG Comments at 2).

RESA and Choice-Town also state that (1) customer assignment dates do not necessarily occur at the same time, and (2) the number of customers with early termination fees or automatic renewal provisions can change between the time a competitive supplier files its Preliminary Notice of Assignment and Final Notice of Assignment with the Department and

when the final assignment actually occurs (RESA Comments at 7-8; Choice-Town Reply Comments at 3). Thus, RESA and Choice-Town request that the Department's final assignment requirements acknowledge that this may occur and clarify that a competitive supplier is not required to supplement or update its Notice (RESA Comments at 7-8; Choice-Town Reply Comments at 3).

Choice-Town, Mint, and RESA argue that filing all assigned contracts with the Department would be costly and burdensome (Mint Comments at 2; RESA Comments at 6-7; Choice-Town Reply Comments at 3). Thus, Choice-Town, Mint, and RESA state that competitive suppliers should only be required to file sample contracts of the assigned customers, by customer class, with the Department, and that the requirement to file the assigned contracts with the distribution companies should be eliminated (Mint Comments at 2; RESA Comments at 6-7; Choice-Town Reply Comments at 3). Further, if competitive suppliers are required to file contracts to be assigned with their Preliminary Notice of Assignment or Final Notice of Assignment, Choice-Town, Mint, and RESA state that the Department should grant motions for protective treatment of confidential information (Mint Comments at 2; RESA Comments at 6-7; Choice-Town Reply Comments at 3).

RESA also states that the Revised Proposal requirement to maintain all contract terms and conditions, including pricing, through the term of the contract should be changed to require that only "material" contract terms and conditions, including pricing, need to be maintained following assignment (RESA Comments at 8). Similarly, Choice-Town asserts that the terms and conditions of the assigned contract should be "materially the same, or better"

than the terms and conditions of the original contract (Choice-Town Comments at 4-5). Choice-Town states that competitive suppliers might want the opportunity to provide customers with more favorable contract terms to discourage customers from returning to basic service or choosing other competitive supplier options (Choice-Town Comments at 4-5; Choice-Town Reply Comments at 2). Choice-Town further states that a competitive supplier's decision to waive early termination fees, although beneficial to customers, would violate the Revised Proposal's requirement to maintain all contract terms and conditions (Choice-Town Comments at 4-5; Choice-Town Reply Comments at 2).

Finally, Choice-Town, Mint, and RESA state that there are issues regarding the accuracy and effectiveness of using the current information disclosure labels to inform assigned customers of an automatic renewal following an assignment (Choice-Town Comments at 3; Mint Comments at 1-2; RESA Comments at 12-13). Thus, Choice-Town, Mint, and RESA state that the Department should clarify whether the information disclosure label or a contract summary form should be used to inform customers of the automatic renewal process (Choice-Town Comments at 3; Mint Comments at 1-2; RESA Comments at 12-13).

## 2. Customer Notification

RESA argues that the Department should eliminate from the Notice of Assignment letter to customers the required statement that customers can decline the assignment and return to basic service, because it could create customer confusion and additional complaints, and hide the possibility of an early termination fee (RESA Comments at 11). NRG and Choice-Town also state that the Revised Proposal should be amended to clarify that customers

may decline an assignment in accordance with the cancellation provision of their contract (NRG Comments at 3; Choice-Town Reply Comments at 3).

In addition, Choice-Town and NRG argue that the Department should amend the Revised Proposal to clarify that returning to basic service is not the only option for customers declining to be assigned (NRG Comments at 3; Choice-Town Reply Comments at 3). NRG argues that the Notice of Assignment letter to customers should state that if a customer declines to be assigned, the customer may contact the Acquiring Supplier for other offers, select an alternative competitive supplier before the assignment date, or return to basic service with his or her distribution company (NRG Comments at 3).

### 3. Distribution Company Notification

Eversource supports the Department's NOI Proposal, which requires Assigning Suppliers to provide each distribution company affected by a customer assignment with the same notifications provided to the Department (Eversource NOI Comments at 2). Eversource states that notification to the distribution companies will ensure that they can better serve their customers by providing sufficient time for their customer service representatives to prepare for potential customer questions (Eversource NOI Comments at 2).

RESA states that a formal notice requirement to distribution companies is unnecessary because it is in the best interest of the Assigning and Acquiring Suppliers to proactively communicate and cooperate with the distribution companies (RESA Comments at 9). RESA also states that the distribution companies should not be given all of the information given to the Department (e.g., competitively sensitive information and customer contracts) (RESA

Comments at 9). If the Department requires notice to the distribution companies, RESA and NRG state that the notice should only contain: (1) the number of customers to be assigned, by service classification and distribution company service territory; (2) the names and license number of the Assigning and Acquiring Suppliers; and (3) the expected dates of the assignments (NRG Comments at 2; RESA Comments at 9). RESA maintains that its proposed notification will provide the distribution companies with the information they need to perform their limited role, while ensuring that competitively sensitive information is not provided to parties who do not require it, and who could have affiliates that are direct competitors of competitive suppliers (RESA Comments at 10).

NRG argues that the Department should eliminate the requirement for a Final Notice of Assignment to be provided to the distribution companies at the same time as the Final Notice of Assignment is provided to the Department (NRG Comments at 2). Alternatively, NRG states that providing a Final Notice of Assignment to the distribution companies concurrent with the Notice of Assignment letter to customers will provide sufficient time for the distribution companies to prepare for the assignment of customers (NRG Comments at 2).

#### 4. Automatic Renewal Provision

Choice-Town argues that because the information disclosure label is currently being updated, it would be unwise and premature to mandate that the information disclosure labels be the exclusive and required means for notifying customers about their impending automatic renewal. Instead, Choice-Town argues that the Department should afford competitive

suppliers flexibility on the most effective means of communicating this information to their customers (Choice-Town Comments at 5-6).

5. Enrollment Method for Assigned Customers

Eversource and National Grid argue that the Department should require competitive suppliers to use the EBT process for enrolling customers that have been assigned, which requires enrollments to take effect on customers' meter read dates (Eversource Comments at 2; National Grid Comments at 1; Eversource Reply Comments at 1; National Grid Reply Comments at 1). Eversource states that it does not have the protocols or resources to support a manual approach for enrolling customers outside the automated EBT process ("off-cycle batch enrollments" or "batch enrollments") and that requiring it to do so would create significant administrative burdens for the distribution companies (Eversource Comments at 2; Eversource Reply Comments at 1-2). National Grid argues that the EBT process is a consensus product of both competitive suppliers and distribution companies in Massachusetts, and if the competitive supplier does not have sufficient time to enroll customers using the EBT process, then it is not reasonable nor realistic to expect distribution companies to process customer assignments manually (National Grid Comments at 1, 2). As such, Eversource and National Grid request that the Department eliminate the off-cycle batch enrollment portion of its Revised Proposal (Eversource Comments at 2; National Grid Comments at 1; Eversource Reply Comments at 2; National Grid Reply Comments at 1).

RESA states that maintaining the Revised Proposal's off-cycle batch enrollment option could protect customer interests by allowing for smoother and more efficient customer

assignments (RESA Reply Comments at 5). RESA states that if a competitive supplier is in imminent danger of losing its ability to serve customers, it may need to act quickly to assign these customers to another competitive supplier and, absent a process that allows for batch enrollments, the customers may, by default, be returned to basic service and possibly at a higher rate (RESA Reply Comments at 5-6). Rather than not allowing batch enrollments, RESA requests that the Department provide flexibility in its final customer assignment rules, and allow the use of batch enrollments by agreement with the distribution companies and when circumstances warrant (RESA Reply Comments at 6). RESA also states that the Department should modify the Preliminary Notice of Assignment and Final Notice of Assignment requirements to the Department and distribution companies by directing competitive suppliers to provide a statement indicating whether they are requesting a batch enrollment and, if so, the reasons for the request (RESA Reply Comments at 5-6). Choice-Town and RESA further state that the distribution companies and competitive suppliers involved can subsequently notify the Department if they reach an agreement to use a batch enrollment process (Choice-Town Reply Comments at 4; RESA Reply Comments at 6).

C. Analysis and Findings

1. Introduction

The Department has reviewed the comments submitted on the Revised Proposal and the NOI Proposal. Below are the final notification and reporting requirements for assignment of customers from one competitive supplier to another competitive supplier.



## 2. Department Notification

As stated above, the Department's Revised Proposal required a Preliminary Notice of Assignment and a Final Notice of Assignment to be filed with the Department prior to an assignment of customers from one competitive supplier to another. Based on the comments, the Department is eliminating the Preliminary Notice of Assignment requirement and will require the Assigning Supplier to file only one notification with the Department ("Department Notification of Assignment"). The Department Notification of Assignment must be filed no later than five business days after the Final Contract between the Assigning and Acquiring Suppliers has been executed, but not less than five business days prior to Notice of Assignment letters to customers being sent. These timing requirements provide the Department with timely information once the Final Contract has been executed, and allows the Assigning and Acquiring Suppliers to negotiate and finalize the terms of the acquisition prior to notifying the Department. The timing requirements also provide the Department with sufficient time to prepare for any calls, complaints, or questions from customers who will be assigned to a new competitive supplier.

In emergency circumstances where the Assigning and Acquiring Suppliers need to expeditiously complete customer assignments and cannot provide the Department Notification of Assignment five days prior to the Notice of Assignment letters to customers being sent ("distressed sale"),<sup>13</sup> the Department Notification of Assignment must be filed no later than

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<sup>13</sup> For purposes of this Order, a distressed sale occurs when the Assigning and Acquiring Suppliers must complete the assignment of customers in an expedited time frame and

one business day after the Final Contract has been signed.<sup>14</sup> If an Assigning Supplier files the Department Notification of Assignment in accordance with the one day distressed sale requirement, it must include a cover letter providing details regarding: (1) the nature of the distressed sale; (2) why the five-day notification requirements could not be met; and (3) when customers affected by the assignment will be notified.

The required content for the Department Notification of Assignment is the same for all assignments -- those in the normal course of business and those resulting from distressed sales. Therefore, regardless of the type of transaction, the Assigning Supplier must provide the following information:

1. The names and Massachusetts license numbers of the Assigning and Acquiring Suppliers;
2. A brief summary or description of the assignment;
3. A statement as to whether the Assigning Supplier intends to withdraw its license with the Department, and if so, when the withdrawal will be filed;
4. An attestation that all customer contracts, subject to the assignment, allow for customer assignment;
5. A statement that the assigned contracts will maintain the material contractual terms and conditions, including pricing, through the term of the assigned contracts;
6. The expected date(s) of the assignments;
7. The number of customers that the Assigning Supplier seeks to assign, by customer type (i.e., residential or commercial and industrial), and by distribution company service territory;

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will not be able to provide customers with notification of the assignment 30 days prior to the assignment taking place, as required in Section II.C.3, below.

<sup>14</sup> A business day is a day the Department is open, and does not include Saturdays, Sundays, or legal holidays. See, 20 C.M.R. §1.02(4).

8. The number of customers with contracts that contain either an early termination fee and/or an automatic renewal provision;<sup>15</sup> and
9. A statement that the Notice of Assignment letter to customers meets the requirements outlined in Section III.C.3, below.

The Department Notification of Assignment must be filed using the template attached to this Order. See, Attachment 1, Department Notification of Assignment - Filing Template.

The Revised Proposal required competitive suppliers to provide the Department with copies of customer contracts, and the customer Notice of Assignment letter and envelope. The Department received comments stating that this requirement was burdensome and unclear as to whether competitive suppliers needed to provide all customer contracts or only sample contracts. As a result, the Department finds that it is unnecessary for the competitive suppliers to provide a copy of all contracts and all notices sent to customers, and that the intended results (i.e., receiving assurances that the customer assignments are contractually permissible, and that customer notifications are proper) may be achieved with competitive supplier attestations. Accordingly, the Department Notification of Assignment requires the Assigning Supplier to provide attestations that the customer contracts allow for customer assignment and that the Assigning Supplier has complied with the requirements of the Notice of Assignment letter to customers, outlined in Section III.C.3, below. The Department, however, may request specific customer contracts and/or copies of notices from the Acquiring Supplier. Therefore,

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<sup>15</sup> The Department recognizes that the number of customers being assigned, the effective dates of the assignments, and the number of customers with early termination fees or automatic renewal provisions can change between the time when an Assigning Supplier files the Department Notification of Assignment and when the assignment occurs. The Department does not require an update or supplemental notification filing if these customer counts change.

the Acquiring Supplier must maintain copies of customer contracts and of notices sent to the customer for one year after the expiration or cancellation of the customer's contract, and make the copies available to the Department upon request. See, e.g., 220 C.M.R. 75.05(45) (preservation of records of electric, gas, and water utilities).

Finally, the Department cannot prospectively protect from public disclosure information that will be provided in the Department Notification of Assignment, which competitive suppliers may deem to be confidential, as requested. If a Department Notification of Assignment filing contains information that a competitive supplier deems to be confidential, then the competitive supplier must file a Motion for Protective Treatment and provide the Department with both public and confidential copies of the Department Notification of Assignment.<sup>16</sup> See 220 C.M.R. 1.04(5) and G.L. c. 25, § 5D. The Department will then determine whether the information warrants protection from public disclosure on a case-by-case basis.

### 3. Customer Notification

In requiring the Assigning Supplier to provide Notice of Assignment letter to customers, the Department aims to balance the business needs of the competitive suppliers with the needs of customers to receive prompt and accurate information. An Acquiring Supplier and an Assigning Supplier negotiating the purchase and sale of customer contracts require flexibility to negotiate and execute their Final Contract before informing customers of the

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<sup>16</sup> In accordance with Department practice, the public copy of the Department Notification of Assignment may contain redactions, but only to the extent that is necessary to protect the competitively sensitive information.

impending assignments. Conversely, customers must be given sufficient notice of the impending assignment so they may make informed decision on whether to cancel their contract, remain with the Acquiring Supplier, go back to basic service, or shop for a different competitive supplier. As a result, and based on the comments received, the Assigning Supplier must provide a Notice of Assignment letter to customers at least 30 days prior to the effective date of the assignment.

If customers are being assigned from one competitive supplier to another during a distressed sale that allows less than 30 days to notify the customer (e.g., emergency assignment), then Notice of Assignment letter to customers must be sent within one business day following the execution of the Final Contract.

The Notice of Assignment letter to customers must include the following information:

1. Name of Assigning Supplier;
2. Name of Acquiring Supplier;
3. Expected date of customer assignment;
4. Statement that the assignment will not interrupt the customer's electricity service;
5. Statement that the assignment is allowed per the terms and conditions of the customer's contract;
6. Statement that there will be no changes in the material terms and conditions, including price and duration, as set forth in the customer's contract;
7. Statement that no action is required from the customer for the assignment to occur;
8. Date by which customer inquiries should be made to the Acquiring Supplier;
9. Contact information for the Acquiring Supplier if the customer has any questions about the assignment;
10. Statement that a customer may decline to be assigned to the Acquiring Supplier in accordance with the cancellation provision of his or her contract;<sup>17</sup>
11. Amount of early termination fee, if applicable; and

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<sup>17</sup> The Notice of Assignment letter to customers must include a phone number for customers to call if they want to decline the assignment.

12. A statement that if a customer declines to have his or her contract assigned, the customer will be returned to basic service with his or her distribution company unless he or she chooses to sign a new contract with the Acquiring Supplier or move to another competitive supplier.

As noted above, one of the Department's initiatives in D.P.U. 14-140 is to revise the existing information disclosure label that competitive suppliers provide to their customers. As part of that initiative, the Department is developing an information disclosure label that competitive suppliers will provide to customers whose contracts have been assigned (see D.P.U. 14-140, Hearing Officer Memorandum at 2-3 (March 11, 2016)). The Department, however, has not finalized the format and requirements of the new information disclosure label. As a result, competitive suppliers will not be required to include an information disclosure label with the Notice of Assignment letter to customers, at this time.

Finally, the Notification of Assignment letter to customers must be delivered to the customer by the agreed upon method of communication between the customer and the competitive supplier (U.S. Mail or email). If there is no agreement as to the customer's preferred means of communication, then the Assigning Supplier must send the letter via U.S. Mail.

4. Distribution Company Notice

The Department's Revised Proposal required the Assigning Supplier to provide each distribution company affected by the customer assignment with the same notifications provided to the Department. Revised Proposal at 2. The distribution companies support the Revised Proposal (Eversource Comments at 1; National Grid Comments at 1). RESA, however, states

that the Department should not mandate formal notice requirements to the distribution companies (RESA Comments at 9-10).

Based on the comments received, the Department finds that providing notice to the distribution companies will benefit customers by providing the distribution companies with sufficient time to prepare for and respond to customer questions. As noted by RESA, the distribution companies, however, do not need all of the information provided in the Department Notification of Assignment in order to perform their limited role of preparing customer service staff to respond to customer inquiries. Therefore, the Assigning Supplier must submit a notice of assignment to each distribution company (“Distribution Company Notification of Assignment”) identifying customers in the distribution company’s service territory affected by the assignment. The Distribution Company Notification of Assignment must contain the following information:

1. The names and Massachusetts license numbers of the Assigning and Acquiring Suppliers;
2. The number of customers that the Assigning Supplier seeks to assign in the distribution company’s service territory, by customer type (i.e., residential or commercial and industrial); and
3. The expected dates of the assignments.

The Distribution Company Notification of Assignment must be submitted to the distribution companies in accordance with the Department Notification of Assignment timing requirements, and in a format consistent with Attachment 1, the Department Notification of Assignment - Filing Template.

5. Automatic Renewal Provision

The Revised Proposal required Acquiring Suppliers to notify customers of an upcoming automatic contract renewal, no later than 30 days prior to the date of the contract renewal, using an information disclosure label. Revised Proposal at 3. As noted above, one of the Department's initiatives in D.P.U. 14-140 is to revise the existing information disclosure label that competitive suppliers provide to their customers. As part of that initiative, the Department is developing an information disclosure label that competitive suppliers would provide to their customers at the end of a contract term (see D.P.U 14-140, Hearing Officer Memorandum at 2 (March 11, 2016)). The Department, however, has not finalized the format and requirements of the new information disclosure label. As a result, competitive suppliers will not be required to use an information disclosure label for notifying customers of an impending renewal, at this time. The Department, however, will work with Acquiring Suppliers on a case-by-case basis to ensure that all assigned customers are adequately informed of automatic contract renewals.

6. Enrollment Method for Assigned Customers

As in the Revised Proposal, the Department will require Acquiring Suppliers to enroll customers in conformance with the rules governing EBT, which call for the enrollment of customers to take effect on customers' meter read dates. Revised Proposal at 3. This process, however, does not accommodate assignments that take place during a distressed sale, which may require enrollments to be finalized prior to an assigned customer's next meter read date.

At the December 2, 2015 technical session, the Department discussed how the distribution companies may accommodate customer assignments and enrollment during a



distressed sale. The distribution companies stated that they can only enroll customers on their specific meter read dates and are currently unable to accommodate the type of off-cycle batch enrollment described in the Revised Proposal. Based on these comments, the Department will not require competitive suppliers and distribution companies to utilize manual batch and “off-cycle” customer enrollments (i.e., enrollments on dates other than the customer’s meter read date) at this time.

The Department, however, seeks to avoid situations in which customers that would otherwise be assigned to a new competitive supplier are returned to basic service because the distribution companies cannot accommodate off-cycle enrollments. As such, the Department urges the Acquiring Supplier and the applicable distribution companies to work together to avoid this outcome.

### III. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That all electric competitive suppliers shall provide notification to the Department, all affected customers, and the distribution companies when customers are being assigned from one competitive supplier to another, pursuant to the timing and format requirements contained herein; and it is

