

JOEY LEE MIRANDA

280 Trumbull Street
Hartford, CT 06103-3597
Main (860) 275-8200
Fax (860) 275-8299
jmiranda@rc.com
Direct (860) 275-8227

Also admitted in District of Columbia and
Massachusetts

Via Electronic Mail and Hand Delivery

March 8, 2019

Mark D. Marini, Secretary
Department of Public Utilities
1 South Station, 5th Floor
Boston, MA 02110

Re: **D.P.U. 19-07 – Investigation by the Department of Public Utilities on its Own
Motion into Initiatives to Promote and Protect Consumer Interests in the Retail
Electric Competitive Supply Market**

Dear Mr. Marini:

Enclosed please find an original and two copies of the Initial Comments of the Retail Energy Supply Association in connection with the above-referenced proceeding.

Please do not hesitate to contact me if you have any questions or require additional information.
Thank you.

Sincerely,



Joey Lee Miranda

Enclosure

Copy to: Gregory Wade, Hearing Officer (*via electronic mail only*)

D.P.U. 19-07

**INVESTIGATION BY THE DEPARTMENT OF PUBLIC UTILITIES ON ITS OWN
MOTION INTO INITIATIVES TO PROMOTE AND PROTECT CONSUMER
INTERESTS IN THE RETAIL ELECTRIC COMPETITIVE SUPPLY MARKET**

**INITIAL COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

MARCH 8, 2019

TABLE OF CONTENTS

	Page
Executive Summary	1
Background	2
Comments	3
Question No. 1	3
Question No. 2	6
Question No. 3	7
Question No. 4	7
Question No. 5	10
Question No. 6	13
Question No. 7	15
Question No. 8	16
Question No. 9	17
Question No. 10	18
Question No. 11	20
Question No. 12	21
Question No. 13	23
Question No. 14	23
Question No. 15	29
Question No. 16	30
Question No. 17	33
Question No. 18	37
Question No. 19	38
Question No. 20	40
Question No. 21	43
Conclusion	43

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

INVESTIGATION BY THE DEPARTMENT OF	:	
PUBLIC UTILITIES ON ITS OWN MOTION INTO	:	
INITIATIVES TO PROMOTE AND PROTECT	:	D.P.U. 19-07
CONSUMER INTERESTS IN THE RETAIL	:	
ELECTRIC COMPETITIVE SUPPLY MARKET	:	

INITIAL COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association (“RESA”)¹ hereby submits its initial comments in response to the request for comments in the January 18, 2019 Vote and Order Opening Investigation issued by the Department of Public Utilities (“Department”) in the above-captioned docket (“Order”).

EXECUTIVE SUMMARY

RESA appreciates the opportunity to comment in this important proceeding. RESA intends these comments to contribute to a robust discussion about ways to promote and to protect consumer interests in the retail electric competitive supply market and to further enhance that market for the benefit of all stakeholders.

The Department has developed an effective and well-designed Competitive Supply Website.² This website can serve as a valuable tool to enhance the competitive supply market and consumer interests through additional customer education activity and ongoing

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

² The term “Competitive Supply Website” has the meaning set forth in the Order. *See* Order, at 2. It may be found at: <http://www.energyswitchma.gov>.

enhancements to its functionality. In addition, reasonable and appropriate updates to the renewal process for customer competitive supply contracts will promote customer satisfaction.

Use of the Department's plenary authority over the marketplace to establish and enforce further marketing standards for door-to-door marketing and for different marketing channels, such as telemarketing, direct mail marketing, and internet marketing, will improve the experiences of consumers when evaluating competitive supply options and making decisions about enrolling in competitive supply products. In addition, reasonably designed product descriptions and third-party verifications will enhance customers' shopping and enrollment experiences. The Department's publication of appropriate complaint data will also allow customers to compare competitive suppliers based on certain performance criteria and make more informed enrollment decisions.

Lastly, removing barriers to market efficiency and adding further enhancements to the market, such as accelerated switching, enrollment with alternatives to electric distribution company ("EDC") account numbers, and supplier consolidated billing, will benefit stakeholders and produce greater customer satisfaction.

BACKGROUND

By the Order, the Department opened an investigation "to seek input from stakeholders on initiatives to further improve the retail electric competitive supply market in the Commonwealth of Massachusetts."³ The Department invited all interested persons to participate in its investigation and sought written comments on twenty-one specific questions (some containing multiple subparts).⁴ The Department further indicated that it would determine the

³ Order, at 1.

⁴ *Id.* at 14.

appropriate next steps after reviewing the initial comments.⁵ RESA hereby submits its initial comments in response to the Order.

COMMENTS

RESA appreciates the opportunity to comment on the Department’s questions and presents its responses to those questions below. Massachusetts law provides the Department with broad authority to adopt “rules and regulations to provide retail customers with the *utmost* consumer protections contained in law”⁶ Through the exercise of that authority, RESA expects that the Department, through the investigation, will adopt enhancements to the retail electric competitive supply market for the benefit of all stakeholders.

The comments presented here are an initial step in what RESA hopes will be a broad discussion of the retail competitive electric supply market. Once the Department has reviewed all of the initial comments that it receives, it should promote a robust discussion of the issues raised by scheduling a technical conference or series of conferences as it deems necessary to allow for a full exploration of the issues raised, and then permitting stakeholders to submit reply comments to more fully develop the record for the Department’s consideration and deliberation as it undertakes this significant and important effort.

Question No. 1: What types of general education activities would be most effective to increase customer awareness of the value that the Competitive Supply Website can provide? For each type of activity, identity the appropriate role of the Department, the distribution companies, the competitive suppliers, and other stakeholders.

The Competitive Supply Website, as implemented by the Department in 2016, offers an excellent competitive supply shopping tool for interested retail supply consumers. It provides existing and prospective customers with valuable general information, such as an overview of

⁵ Order, at 15.

⁶ M.G.L. c. 164, § 1F (emphasis added).

competitive supply, assistance on understanding their bills, and information about renewable energy products. It offers a clear and intuitive way of comparing competitive supply products, and enables customers to make informed decisions about their energy supply. The Department's efforts have made the Competitive Supply Website an effective energy supply shopping tool.

All stakeholders can play a role in promoting the Competitive Supply Website. Several specific actions would be particularly effective at increasing customer awareness of the value that the Competitive Supply Website can provide, including holding educational events, promoting the Competitive Supply Website, and referencing the Competitive Supply Website on bill inserts and messages.

Educational Events

One way the Department could enhance the public educational offerings in the competitive energy marketplace and, in particular, on the Competitive Supply Website would be to hold periodic listening and learning roadshow-type events at locations throughout the Commonwealth. In such a venue, representatives of the Department, along with representatives of the EDCs, competitive suppliers, and other stakeholders could participate. Even if certain customers are not able to attend a particular educational event, efforts to enhance customer awareness of such educational events could have the additional effect of increasing customer awareness of the Competitive Supply Website.

The Pennsylvania Public Utility Commission holds similar consumer education events.⁷ Pennsylvania has an outreach and education team that partners with a variety of stakeholders to help educate and share many useful tools, resources, and programs to help consumers make

⁷ *Consumer Education Events*, Pennsylvania Public Utility Commission (available at: http://www.puc.state.pa.us/consumer_info/electricity/consumer_education_events.aspx) (last visited Mar. 5, 2019).

informed choices.⁸ This team holds educational programs and other events tailored to reach applicable audiences on topics such as the competitive electricity and gas markets.⁹ In the experience of RESA members, such events have been successful at educating the public about the competitive electricity market. Holding comparable events in Massachusetts would also benefit consumers in the Commonwealth.

Bill Messages

To the extent that there is space available on EDC bills, the Department could require that brief messages be included that reference the Competitive Supply Website and provide information about how to access it.¹⁰ As an alternative, the Department could require that such bill messages be combined with bill inserts to enhance the effectiveness of the messages.¹¹

Bill Inserts

The Department could also require that information about the Competitive Supply Website be presented on inserts included at a periodic basis in EDC bills. This would allow a reasonably detailed amount of information about the Competitive Supply Website to be provided to customers. In addition to the Competitive Supply Website URL, a bill insert could include more detailed information about the value of the Competitive Supply Website and screenshots showing its significant features. To ensure that these bill inserts convey information that is useful to consumers, the content should be developed collaboratively by the Department, the EDCs, competitive suppliers, and other interested stakeholders.

⁸ *Id.*

⁹ *Id.*

¹⁰ Maine has a comparable requirement. *See* 65-407-305 Me. Code R. § 4(b)(2) (“The supply bill for a customer that elects to receive generation service from a competitive electricity provider must contain the following . . . [t]he website address and telephone number of the Office of the Public Advocate where customers can access information that provides independent information that allows customers to compare terms, conditions, and rates of electricity supply.”).

¹¹ *Cf.* D.T.E. 01-54-A (Oct. 15, 2001), at 25 (requiring messages be printed on customer bills to alert customers to inserts included with the same customer bills).

Other Promotional Activity

The Department and other stakeholders could also promote the Competitive Supply Website through commonly used methods, such as press releases and advertising through online media. In fact, RESA periodically promotes the value of the Competitive Supply Website through its press releases.¹²

Question No. 2: Would it be reasonable and appropriate for the Department to require competitive suppliers to provide customers with information regarding the Competitive Supply Website through their marketing materials/scripts? If no, explain why not. If yes, identify the information (e.g., Website URL, number of participating suppliers, number of products listed) that would be most effective to increase customer awareness of the value that the Competitive Supply Website can provide.

Requiring competitive suppliers to provide information regarding the Competitive Supply Website through their marketing materials or marketing scripts would effectively require competitive suppliers to promote all offers listed on the Competitive Supply Website, including offers made by their competitors.¹³ It is contrary to a competitive market dynamic to require that suppliers advise customers of ways to learn about their competitors' products and services.

Further, referring customers to the Competitive Supply Website after discussing a product offering in a solicitation could lead to customer confusion. While the Competitive Supply Website is an important resource for consumers exploring the competitive supply market, it may not identify all of the supply offerings available to the customer.¹⁴ If a competitive supplier discusses an offering not listed on the Competitive Supply Website, such as a variable-price supply product, with the customer and then is required to refer the customer to the

¹² See, e.g., Study: Competitive Electric Suppliers Could Have Saved Massachusetts Consumers Nearly \$93 Million in First Four Months of 2018 (available at: <https://www.resausa.org/sites/default/files/RESA-MA-PR-5-8-2018.pdf>).

¹³ See Competitive Supply Website (available at: <http://www.energyswitchma.gov/#/>) (last visited Mar. 5, 2019) (presenting offers from multiple competitive suppliers).

¹⁴ D.P.U. 14-140-F, Energy Switch Massachusetts Website Rules (Oct. 17, 2017), at 1 (indicating that the Competitive Supply Website will list only fixed-price supply products and limiting the number of offers that a competitive supplier can list on the Competitive Supply Website).

Competitive Supply Website, the customer could be confused when (s)he cannot locate the offering on the Competitive Supply Website.

However, requiring the EDCs to provide customers with information regarding the Competitive Supply Website would be an effective way to increase customer awareness of the site and the value it can provide. Thus, RESA urges the Department to require the EDCs to provide customers with the Competitive Supply Website URL at suitable times (such as during conversations about initiating service or transferring service to a new service address) and to provide a link to the Competitive Supply Website on their own websites and, as discussed below,¹⁵ on bills.

Question No. 3: Would it be reasonable and appropriate for the Department to require the electric distribution companies to put information regarding the Competitive Supply Website on their bills? If no, explain why not. If yes, identify the information (e.g., Website URL, number of participating suppliers, number of products listed) that would be most effective in increasing customer awareness of the value that the Competitive Supply Website can provide.

The Department should require the EDCs to put information regarding the Competitive Supply Website on their bills. Printing the Competitive Supply Website URL on EDC customer bills would enhance customer awareness of the site and regularly remind customers of its existence. The EDCs, however, should only provide customers with the Competitive Supply Website address. Other information, such as the number of suppliers or offers available, changes regularly. As a consequence, by the time customers were to receive the information in their bills, it would already be outdated.

Question No. 4: What other steps could the Department take to increase customer awareness of the value that the Competitive Supply Website can provide?

RESA appreciates the efforts that went into developing the Competitive Supply Website. It is an excellent resource for customers exploring the competitive supply market or shopping for

¹⁵ See Response to Question No. 3.

electric supply. Of course, like websites used by companies to market and sell products in other industries, the Competitive Supply Website will benefit from regular updates and enhancements to ensure that it is a best-in-class competitive supply shopping website.

One particular update that would enhance the value of the Competitive Supply Website would be allowing competitive suppliers to list all of their offers. Currently, each competitive supplier may list a maximum of eight unique fixed-price supply offers for each customer class within each ISO New England Inc. load zone located within each EDC's service territory.¹⁶ Removing these limitations would allow competitive suppliers to list more offers on the Competitive Supply Website, and prospective customers could consider these additional offers as they explore their electric supply options. The filtering tools on the Competitive Supply Website, with appropriate enhancements,¹⁷ would allow customers to evaluate only the offerings that meet criteria that they deem essential or otherwise compelling when selecting a competitive supply product.

Additional functionality or information could also be added to the Competitive Supply Website. This functionality could include alerts for price changes and mechanisms for sharing information about the website on social media.¹⁸ For example, interested customers could be given the option of subscribing to receive emails when the prices of product offerings change. Links could also be provided to allow Competitive Supply Website visitors to share the website with friends or connections on social media platforms. In addition, information about consumer

¹⁶ Energy Switch Massachusetts Website Rules (Oct. 17, 2017) (available at: <http://www.energyswitchma.gov/Content/documents/website-rules.pdf>).

¹⁷ For example, filtering by terms and conditions of service could be added, like is available on the Pennsylvania electric shopping website. See PAPowerSwitch, *Shop for Your Home's Electricity in Pennsylvania* (available at: <https://www.papowerswitch.com/shop-for-electricity/shop-for-your-home>) (last visited Mar. 5, 2019).

¹⁸ The Pennsylvania electric shopping website allows for such sharing. See PAPowerSwitch (available at <https://www.papowerswitch.com>) (last visited Mar. 5, 2019).

rights and protections could be presented on the Competitive Supply Website, including information about how customers may obtain assistance paying their electric bills.¹⁹

The Department may wish to consider enhancing customer awareness of the value of the Competitive Supply Website by providing a link to the site in a more prominent location on the Department's website. Currently, a link to the Competitive Supply Website may be found on the webpage providing Information for Consumers about the Electric Industry,²⁰ but not on the Department's main webpage.²¹ Providing a link to the Competitive Supply Website in a prominent place on the Department's main webpage (such as in the "Quick Links" section) could enhance consumer awareness of the Competitive Supply Website. Other state utility commissions provide such links on their main webpages.²²

In addition, the Department should ensure that its personnel who have regular interactions with customers, such as members of the Department's Consumer Division, are familiar with the competitive supply market, including the Competitive Supply Website. Accordingly, to the extent that it does not already, the Department should schedule appropriate periodic refresher training for these personnel on the competitive market generally, including the Competitive Supply Website, and additional training when significant changes occur in the market or to the Competitive Supply Website. In this way, the Department can ensure that its staff is fully armed with the most current information to educate consumers.

¹⁹ See PAPowerSwitch (available at <https://www.papowerswitch.com>) (last visited Mar. 5, 2019).

²⁰ Information for Consumers about the Electric Industry (available at: <https://www.mass.gov/information-for-consumers-about-the-electric-industry>) (last visited Mar. 5, 2019).

²¹ Department of Public Utilities (available at: <https://www.mass.gov/orgs/departement-of-public-utilities>).

²² See, e.g., State of Rhode Island Public Utilities Commission and Division of Public Utilities and Carriers (available at: <http://www.ripuc.org>); State of Connecticut Public Utilities Regulatory Authority (available at: <https://www.ct.gov/pura/site/default.asp>); State of New Jersey Board of Public Utilities (available at: <https://www.bpu.state.nj.us>); Maryland Public Service Commission (available at: <https://www.psc.state.md.us>); Ohio Public Utilities Commission (available at: <https://www.puco.ohio.gov>).

Question No. 5: Would it be reasonable and appropriate for the Department to establish uniform requirements by which competitive suppliers would notify customers of the automatic renewal provision in their supply contracts? If no, explain why not. If yes:

- a. What information should competitive suppliers be required to provide to customers (e.g., the date on which the automatic renewal will take effect, the price and pricing structure to which the contract will automatically renew)?**
- b. How long before the automatic renewal takes effect should competitive suppliers be required to provide such notification to customers?**
- c. What method(s) should competitive suppliers be allowed to use to provide the notification (e.g., direct mail, e-mail)?**
- d. If the contract would renew to a monthly-priced product, should competitive suppliers be required to notify customers on an ongoing basis regarding the price that will be in effect during the upcoming month? If no, explain why not.**
- e. What state(s) have established automatic renewal notification requirements? For each state, discuss the manner in which the state implements such a requirement.**

As has been done in other states,²³ the Department has the authority to and should implement uniform requirements by which competitive suppliers would notify customers of the automatic renewal provisions in their supply contracts. Although some competitive suppliers already provide customers with notices of the automatic renewal of their contracts, establishing uniform requirements would ensure that all competitive supplier customers receive such notices.

The following jurisdictions have established automatic renewal notification requirements:

Connecticut,²⁴ Delaware,²⁵ Illinois,²⁶ Maryland,²⁷ New Jersey,²⁸ New York,²⁹ Ohio,³⁰

²³ See, e.g., Conn. Gen. Stat. § 16-245o(g); 26-3001-8 Del. Admin. Code § 1; Ill. Admin. Code 83, § 412.240; Md. Code Regs. 20.53.07.08(D); N.J. Admin. Code § 14:4.7.6(k); New York Uniform Business Practices, § 5(B)(5) (d)-(g); Ohio Admin. Code § 4901:1-21-11(G); 52 Pa. Code § 54.10; 815-30 R.I. Code R. § 5-2.5(L)-(N).

²⁴ Conn. Gen. Stat. § 16-245o(g) (available at: https://www.cga.ct.gov/current/pub/chap_283.htm#sec_16-245o).

²⁵ 26-3001-8 Del. Admin. Code § 1 (available at: <http://regulations.delaware.gov/AdminCode/title26/3000/3001.shtml#TopOfPage>) (last visited Mar. 5, 2019).

²⁶ Ill. Admin. Code 83, § 412.240 (available at: <ftp://www.ilga.gov/jcar/admincode/083/083004120C02400R.html>) (last visited Mar. 5, 2019).

²⁷ Md. Code Regs. 20.53.07.08(D) (available at: <http://www.dsd.state.md.us/comar/comarhtml/20/20.53.07.08.htm>) (last visited Mar. 5, 2019).

²⁸ N.J. Admin. Code § 14:4.7.6(k) (available at: <https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=b908a5f7-b776-473b-8f1a-af7008d44b39&nodeid=AAUAAEAAJAAG&nodepath=%2FROOT%2FAAU%2FAAUAAE%2FAAUAAEAAJ%2FAAUAAEAAJAAG&level=4&haschildren=&populated=false&title=%20A7+14%3A4->

Pennsylvania,³¹ and Rhode Island.³² The specifics of each jurisdiction's requirements are available at the links provided. While a review of the requirements in each of these states can provide assistance to the Department in evaluating the manner in which it could implement an automatic renewal notice requirement, RESA recommends that the Department adopt a standard that incorporates the best parts of the programs from these other states and require suppliers to send a single notice to customers, thirty to sixty days in advance of the current term expiration date, that describes the material terms of the renewal.

Specifically, the Department should require that the automatic renewal notices describe any material changes to the terms of the customer's arrangement with the competitive supplier (e.g., pricing), the date on which the change(s) will be effective, the telephone number and internet address of the Department, the Competitive Supply Website address, the customer's options for electric supply at the expiration of the customer's arrangement with the competitive supplier, and an indication of what will happen if the customer fails to respond to the notice (for example, that the contract will renew automatically for a specified term).³³ If the notice is sent by U.S. Mail, the Department should require language clearly visible on the front of the envelope stating that it contains important information regarding the expiration or changes in terms of the

[7.6+Contracts&config=00JAA1YTg5OGJIYi04MTI4LTRlNjQtYTc4Yi03NTQxN2E5NmE0ZjQKAFBvZENhdGFsb2ftaXPxZTR7bRPtX1Jok9kz&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A5VCM-3KM0-00BY-KOMT-00008-00&ecomp=k357kkk&prid=5be01057-ad67-4d30-aa6f-527dfe3940b0](https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/$FILE/UBP%20Manual%20Feb%202016%20Clean.pdf) (last visited Mar. 5, 2019).

²⁹ New York Uniform Business Practices, § 5(B)(5) (d)-(g) (available at: [http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/\\$FILE/UBP%20Manual%20Feb%202016%20Clean.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/$FILE/UBP%20Manual%20Feb%202016%20Clean.pdf)).

³⁰ Ohio Admin. Code 4901:1-21-11(G) (available at: <http://codes.ohio.gov/oac/4901:1-21-11v1>) (last visited Mar. 5, 2019).

³¹ 52 Pa. Code § 54.10 (available at: <https://www.pacode.com/secure/data/052/chapter54/chap54toc.html#54.10>) (last visited Mar. 5, 2019).

³² 815-30 R.I. Code R. § 5-2.5(L)-(N) (available at: <https://rules.sos.ri.gov/regulations/part/815-30-05-2>) (last visited Mar. 5, 2019).

³³ Cf. 52 Pa. Code § 54.10(2) (available at: <https://www.pacode.com/secure/data/052/chapter54/chap54toc.html#54.10>) (last visited Mar. 5, 2019).

customer's electric supply contract.³⁴ If the notice is sent by electronic mail, the subject line should contain comparable information.

The Department should require that a notice be provided within a reasonable period before the expiration of the customer's current arrangement with his or her competitive supplier. RESA recommends, consistent with requirements implemented in other states,³⁵ a period between thirty days and sixty days before the expiration of the customer's current arrangement with his or her competitive supplier. This interval of time is sufficient to allow the customer to evaluate his or her options for electric supply and to make changes if (s)he so desires, but should not create a significant risk that the customer will ignore the notice because the expiration is too far in the future.

Competitive suppliers should provide the notices in whatever manner the customer has indicated that (s)he prefers to receive notices (e.g., U.S. Mail or electronic mail). If a customer receives a notice in a way that is different from his or her preferred method, the customer may be less likely to accord it appropriate significance. For example, a customer may create an electronic mail account for the sole purpose of receiving important notices from companies with which (s)he does business. If the notice is not sent to that account, the customer may not regard it as a significant notice that may require action.

If the contract renews to a monthly-priced product, competitive suppliers should not be required to notify customers on an ongoing basis regarding the price to be in effect during the upcoming month. Requiring competitive suppliers to provide such notices could cause customer confusion. For instance, if a customer receives a notice with a new price for the next month

³⁴ Cf. 52 Pa. Code § 54.10(2)(iv) (available at: <https://www.pacode.com/secure/data/052/chapter54/chap54toc.html#54.10>) (last visited Mar. 5, 2019).

³⁵ See, e.g., Conn. Gen. Stat. § 16-245o(g); Ill. Admin. Code 83, § 412.240; New York Uniform Business Practices, § 5(B)(5) (d)-(g).

before receiving a bill for the last month, the customer may be confused about the applicable price during any given billing period.

Nevertheless, RESA recognizes that it is important that customers have access to material information about their competitive supply options that will best allow them to make informed decisions. Maryland has adopted a regulation that addresses this situation. Under this regulation, when a Maryland customer's rate changes, a supplier must make the applicable rate for the next billing period available to the customer,³⁶ but it is not required to send a notice. Instead, suppliers are required to inform customers how to access their rates at the time of contracting, in the contract summary, when sending required notices, upon request, and if the supplier changes the directions for accessing the rate.³⁷ The Department should consider adopting a comparable approach, like the approach that it adopted for EDC notification of changes in Basic Service rates.³⁸ By doing so, it would ensure that customers have access to the price to be in effect in the coming month without unnecessarily increasing costs or creating customer confusion.

Question No. 6: Would it be reasonable and appropriate for the Department to require the electric distribution companies to use their monthly bills to provide information to competitive supply customers about the automatic renewal provision in their supply contracts? If no, explain why not. If yes:

- a. What information should be provided through the bills (e.g., the date on which the automatic renewal will take effect, the price and pricing structure to which the contract will automatically renew)?**
- b. How often should the electric distribution companies be required to provide this information (e.g., on all bills to competitive supply customers for whom**

³⁶ Md. Code Regs. 20.53.07.13 (available at: <http://www.dsd.state.md.us/comar/comarhtml/20/20.53.07.13.htm>) (last visited Mar. 5, 2019) (“When a customer’s rate changes, a supplier shall make available to a customer his or her rate for the next billing period.”).

³⁷ See Md. Code Regs. 20.53.07.13(A) (available at: <http://www.dsd.state.md.us/comar/comarhtml/20/20.53.07.13.htm>) (last visited Mar. 5, 2019).

³⁸ See, e.g., D.T.E. 99-60-C (Oct. 6, 2000), at 4-8 (requiring that changes in Basic Service rates be made available through EDC websites and toll-free telephone numbers); - D.P.U. 19-BSF-B1, NSTAR Electric Company d/b/a Eversource Energy's Basic Service Filing for Western Massachusetts Electric Company (Feb. 11, 2019), at 3 (“Eversource will continue to comply with the Department’s order in D.T.E. 99-60-C, with respect to notifying customers of the change in Basic Service rates. Accordingly, the Company will post the new rates on its website and make them available via a toll-free telephone number.”).

- the supply contract includes an automatic renewal provision, only on the bill preceding the month in which the renewal takes effect)?**
- c. What other supply product-related information should the electric distribution companies be required to provide to competitive supply customers through the bills (e.g., early termination fees)?**

The Department should not require the EDCs to use their monthly bills to provide information to competitive supply customers about the automatic renewal provisions in their supply contracts. To provide this information to customers, competitive suppliers would have to provide it to the EDCs. However, providing this information to the distribution companies would be a complex undertaking that would require the development of electronic data interchange (“EDI”) transactions, for which there could be significant costs associated with developing protocols to ensure that this information is provided accurately and timely. Moreover, putting a third party (and possibly fourth and fifth parties, if the competitive suppliers and/or the EDCs use EDI vendors) between competitive suppliers and their customers increases the potential for errors in this information. Accordingly, it would be better to require direct communication through renewal notices from competitive suppliers to customers, as discussed above.³⁹

Nevertheless, EDC bills could include a standard message advising customers to consult their competitive supply contracts or to contact their competitive suppliers for information about their supply arrangements (including renewal provisions). Such messages would encourage direct communication between customers and their competitive suppliers; thereby, substantially reducing the likelihood of errors.

³⁹ See *supra* Response to Question No. 5.

Question No. 7: How could the presentation of competitive supply information on electric distribution companies' bills be revised to provide competitive supply customers with improved awareness of their competitive supplier and their competitive supply product (e.g., a separate page dedicated to the competitive supply component of customers' electric service, the insertion of competitive supplier logos on the bill)?

As discussed more fully below, EDC bills could be revised by requiring a separate bill page and/or bill message to allow competitive suppliers to improve customer awareness of the retail supply market, suppliers and competitive supply products. To facilitate this messaging, an EDI transaction could be established. To ensure that the content of these messages is appropriate, the Department could establish guidelines for the types of information that suppliers would be permitted to be include. However, competitive supplier-provided bill messages should not be subject to modification or manipulation by the EDCs.

Separate Bill Page

Allowing a competitive supplier to present information, including its logo and information about the customer's competitive supply product, on a separate page of the EDC bill would enhance customer awareness of competitive supply generally as well as provide opportunities for suppliers to educate customers about their supply agreement. Additionally, the separate bill page could be used for general educational purposes, including providing customers with information about innovate product offerings and tips to reduce their electricity usage, and information on account support services, including how to contact their competitive suppliers should they have any questions regarding their charges, renewal terms, etc. The separate bill page would also allow competitive suppliers to provide customers with information on low-income energy assistance programs offered by the competitive supplier, the Commonwealth, social service agencies, and/or the federal government.

Competitive suppliers would be able to use the separate bill page to establish more direct "one-on-one" relationships with their customers, something that is not possible under utility

consolidated billing. While competitive suppliers can accomplish this through dual billing, in RESA's experience, residential customers prefer to receive one bill. Thus, by providing suppliers with a separate page in the EDC bills, the Department can provide suppliers with opportunity for direct interaction with their customers while still preserving a customer's choice to receive only one bill.

Bill Message

Including a competitive supplier's logo and a brief message on the first page of the customer's bill also could enhance customer awareness. However, due to space limitations, it would not be as effective or as informative as an entire page dedicated to information about the customer's competitive supplier and product. A bill message, however, could function together with the separate supply page of the customer's bill discussed above to inform the customer about his or her competitive supplier and competitive supply product.⁴⁰

Question No. 8: Would it be reasonable and appropriate for the Department to establish door-to-door marketing standards of conduct for competitive suppliers related to the disclosure of supply product information? If no, explain why not. If yes:

- a. What supply product information should door-to-door marketers be required to disclose to customers?**
- b. Should the Department establish uniform language (and a uniform format) that suppliers would be required to use to disclose this information?**

The Department should require door-to-door marketers to disclose, during a solicitation, certain specified information to ensure that customers are informed about the competitive supplier and of the material terms of the products being marketed. This information should consist of: (1) the name of the competitive supplier; (2) the price of the product or plan; (3) the term or length of the term of service; (4) other fees (e.g., enrollment fees); (5) the presence or absence of early termination fees or penalties, and applicable amounts; and (6) a statement that

⁴⁰ Cf. D.T.E. 01-54-A (Oct. 15, 2001), at 25 (requiring messages be printed on customer bills to alert customers to inserts included with the same customer bills).

the customer will receive a written or electronic copy (based on customer's preference) of the terms of service document that will explain all the terms of the arrangement and how to exercise any applicable right of rescission (collectively, the "Product Information").

However, the Department should not require uniform language or a uniform format for oral disclosures. Door-to-door marketing interactions often are free-flowing and develop organically. Requiring a marketing agent to use specific language to disclose required information could interrupt the natural flow of the conversation between the customer and the marketing agent, to the detriment of the customer's experience.

At the end of a solicitation, however, if requested, the Department could require door-to-door marketing agents, if requested, to provide customers with information in a written form (either in a hardcopy or electronic format) about the product(s) being marketed, as is done in New York.⁴¹ Uniformity in language and format for such written product descriptions would reduce confusion both for the customer and competitive suppliers and assist in educating the customer on contract terms.

Question No. 9: What other standards should the Department add to the door-to-door marketing standards of conduct established in D.P.U. 14-140-G?

Currently, "[p]ersonnel engaging in a door-to-door marketing campaign may not represent, in any way, that he/she is affiliated with the local distribution company serving the customer."⁴² However, the Department should require that door-to-door representatives to indicate affirmatively that they are *not* affiliated with the EDC.

⁴¹ See New York Uniform Business Practices, § 10(C)(1)(f) (available at: [http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/\\$FILE/UBP%20Manual%20Feb%202016%20Clean.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/$FILE/UBP%20Manual%20Feb%202016%20Clean.pdf)) ("An ESCO marketing representative must provide the customer with written information regarding ESCO products and services immediately upon request which must include the ESCOs name and telephone number for inquires, verification and complaints.").

⁴² D.P.U. 14-140-G, Attachment 2 (May 4, 2018).

As noted above, door-to-door agents should also be required to disclose the Product Information.⁴³ In addition, they could also be required to explain to customers the process for verifying enrollments. Doing so would increase customers' understanding of the enrollment process and could lead to greater customer satisfaction. To the extent suppliers fail to comply with these requirements, the Department should use its existing authority to take appropriate enforcement action.⁴⁴

Question No. 10: Would it be reasonable and appropriate for the Department to establish standards of conduct for marketing channels such as telemarketing and direct mail? If no, explain why not. If yes, identify the marketing channels for which the Department should establish standards of conduct and, for each marketing channel, discuss how the standards of conduct should differ from the standards of conduct for door-to-door marketing.

The Department should adopt standards of conduct for other marketing channels. However, such standards should be appropriately tailored to the marketing channel to which they are applicable.

Telemarketing

A telemarketing agent should be required to provide the customer with information sufficient to identify the agent, including the agent's first name and identification number and the name of the supplier on whose behalf the agent is calling. The agent should not, however, be required to disclose his or her last name.⁴⁵ In other markets, the provision of a marketing agent's full name has resulted in some agents being stalked and harassed through social media channels by persons with whom they have engaged in marketing activities. Telemarketing agents should

⁴³ See *supra* Response to Question No. 8.

⁴⁴ See M.G.L. c. 164, § 1F(7) ("Any . . . supplier . . . doing business in the commonwealth who violates any provisions of . . . any rule or regulation promulgated by the department pursuant to sections 1A to 1H, inclusive, or any provision of chapter 93A, pursuant to authority established by section 102C, shall be subject to a civil penalty not to exceed \$25,000 for each violation for each day that the violation persists; provided, however, that the maximum civil penalty shall not exceed \$5,000,000 for any related series of violations.").

⁴⁵ Cf. 14-140-G, at Attachment 2 ¶1 (requiring that each door-to-door representative wear identification that includes only the representative's first name).

also be required to disclose the purpose of their call and the Product Information⁴⁶ and to state affirmatively that they do *not* represent the EDC.

Further, presuming that the customer consents to recording, a competitive supplier should be required to record the entirety of the customer's verification. Automated verification systems should provide the customer with either the option of speaking to a live person at any time during the call or to exit the call and cancel the enrollment.

Direct Mail/Electronic Mail

For direct mail/electronic mail marketing, the Department should require the competitive supplier's license number⁴⁷ and a toll-free telephone number be included on all marketing materials. This information will allow the customer to reach the competitive supplier and to confirm that the competitive supplier is properly licensed.

Direct mail marketing that specifically allows a customer to enroll in a competitive supply product (and does not simply provide general information about a competitive supplier or prompt the customer to call the competitive supplier or access the competitive supplier's website to enroll) should disclose the Product Information.⁴⁸ Such direct mail marketing should also contain a separate document (or easily separable document) that would satisfy the statutory requirements for a letter of authorization when executed and dated by the customer or direct the

⁴⁶ See *supra* Response to Question No. 8.

⁴⁷ Accord 940 C.M.R. 19.05(3) (“[I]t is an unfair or deceptive act or practice for a retail seller of competitive generation service to initiate service to a consumer, or to provide any product or service to a consumer, or in any way obligate a consumer to accept or pay for any product or service, unless and until the retail seller of electricity has provided the consumer with the following information, in writing, . . . , and the consumer has affirmatively chosen the product or service: (a) The retail seller of electricity's complete business name, business address, toll-free business telephone number, and license number issued by the Department.”).

⁴⁸ See *supra* Response to Question No. 8.

customer to a website for enrollment with a process that satisfies those letter of authorization requirements.⁴⁹

Internet Marketing

As with direct mail marketing, the Department should require the competitive supplier's license number⁵⁰ and toll-free telephone number be included on all internet marketing materials. Internet marketing that allows a customer to enroll in a competitive supply product (and does not simply provide general information about a competitive supplier or prompt the customer to call the competitive supplier or access the competitive supplier's website to enroll) should disclose the Product Information,⁵¹ should be presented in legible type, should use clear and unambiguous language, and provide a way for the customer to indicate his or her affirmative choice to enroll.⁵²

Question No. 11: Would it be reasonable and appropriate for the Department to expand the role of TPV to include confirmation that a competitive supplier has complied with the marketing standards of conduct. If no, explain why not. If yes, should the Department establish uniform language that TPV service providers would be required to use to confirm that suppliers have complied with the marketing standards of conduct?

The Department should expand the role of Third-Party Verifications ("TPVs") to include confirmation that a competitive supplier has complied with the marketing standards of conduct.

TPVs provide contemporaneous indications that enrollments comply with applicable

⁴⁹ See M.G.L. c. 164, § 1F(8)(a)(vi) (requiring that a letter of authorization be clearly legible and contain clear and unambiguous language that confirms: the consumer's billing name and address; the decision to change electricity service to the prospective supplier; that the consumer understands that only one supplier may be designated as the consumer's competitive supplier; and that the consumer understands that changing suppliers may involve a charge to the consumer); see also D.T.E. 01-54-B (Jul. 29, 2002), at 26-28 (establishing affirmative choice criteria for electronic authorizations).

⁵⁰ *Accord* 940 C.M.R. 19.05(3) ("[I]t is an unfair or deceptive act or practice for a retail seller of competitive generation service to initiate service to a consumer, or to provide any product or service to a consumer, or in any way obligate a consumer to accept or pay for any product or service, unless and until the retail seller of electricity has provided the consumer with the following information, in writing, . . . , and the consumer has affirmatively chosen the product or service: (a) The retail seller of electricity's complete business name, business address, toll-free business telephone number, and license number issued by the Department.").

⁵¹ See *supra* Response to Question No. 8.

⁵² See D.T.E. 01-54-B (Jul. 29, 2002), at 26-28 (establishing affirmative choice criteria for electronic authorizations).

requirements. In doing so, they protect customers from enrolling before these requirements are met. They also provide protections to competitive suppliers by creating a record that enrollments were compliant with the applicable requirements. In case there are subsequent questions about the validity of an enrollment, TPVs may be reviewed by the competitive supplier's management, the Department, and other stakeholders.

However, it would not be appropriate to create a TPV process that is unduly long or complicated. Customers may become frustrated with a long or complicated TPV process. If this happens, they may rush through the TPV process without engaging with it as actively as they might otherwise or they might elect not to continue with the TPV process and terminate their enrollment. A TPV process that creates these risks is not customer friendly and could undermine the TPV's intended purpose.

Question No. 12: Would it be reasonable and appropriate for the Department to require competitive suppliers to periodically provide the Department with data on the types of marketing channels through which they have signed up customers? If no, explain why not. If yes:

- a. What data should competitive suppliers be required to provide the Department?**
- b. How often should competitive suppliers be required to provide this data to the Department?**

Competitive suppliers are already required to inform the Department, before being licensed, of the marketing channels through which they intend to sign up customers,⁵³ and annually thereafter, to update this information.⁵⁴ Also, the required door-to-door marketing notices provide the Department with additional information about competitive supplier

⁵³ Competitive Supplier License Application for New Applicants, at 4 (requiring applicants to identify all methods by which they intend to market to customers in Massachusetts and, for applicants seeking to serve residential customers, to provide copies of marketing materials that reflect the applicants' latest practices).

⁵⁴ Competitive Supplier License Application Renewal, at 3 (requiring applicants to identify all methods by which they intend to market to customers in Massachusetts); 220 C.M.R. 11.05(2)(d) (indicating that approved license applications are valid for one year).

marketing activity.⁵⁵ It is not clear to RESA why the Department would require additional information or may need the information more frequently. To the extent that the Department is concerned about specific supplier conduct, pursuant to its jurisdictional oversight of retail suppliers,⁵⁶ it can request further information on a case-by-case basis.⁵⁷

Moreover, if the Department becomes aware of matters of concern related to a particular competitive supplier's marketing activity between the competitive suppliers' annual reviews, the Department's informal review process allows the Department to gather information and to take appropriate action.⁵⁸ Furthermore, the Department may initiate formal proceedings against a competitive supplier when appropriate.⁵⁹ Thus, it is not necessary for the Department to require regular disclosure of additional information about each competitive supplier's marketing activity to develop other means to investigate competitive supplier marketing activity.

If, despite the foregoing, the Department requires suppliers to provide more specific information about their individual marketing efforts, the Department should keep in mind that this information may implicate elements of the competitive supplier's marketing strategy, such as the locations where a competitive supplier chooses to market and the effectiveness of particular marketing channels. Thus, if the Department requires that this information be submitted, it should issue a standing order protecting this information from public disclosure, as it did when it required notices of door-to-door marketing activity.⁶⁰

⁵⁵ See D.P.U. 14-140-G (May 4, 2018), Attachment 1 (listing information about door-to-door marketing to be provided by competitive suppliers engaging in this type of marketing).

⁵⁶ See M.G.L. c. 164, § 1F(7).

⁵⁷ See, generally, D.P.U. 16-156-A, Attachment A (Jul. 6, 2017).

⁵⁸ See *id.* at § 3.

⁵⁹ See *id.* at § 4; see also 220 C.M.R. 11.07(4)(c).

⁶⁰ See D.P.U. 14-140-G (May 4, 2018), at 24-25 (granting protective treatment of the names of cities and towns where competitive suppliers are engaged in door-to-door marketing).

Question No. 13: How else could the Department improve its ability to investigate suppliers' marketing activities?

RESA supports the Department's use of its investigation and enforcement authority to address particular issues associated with specific competitive suppliers. Existing regulations, orders, and protocols already provide the Department with appropriate means to investigate and address competitive suppliers' marketing activity. For example, the annual relicensing process allows the Department to conduct a regular reviews of competitive suppliers' marketing activity.⁶¹ Thus, it is not necessary for the Department to develop or implement new measures to improve its ability to investigate competitive supplier marketing activities.

Question No. 14: Would it be reasonable and appropriate for the Department to make competitive supplier complaint and/or performance information available to customers and other stakeholders? If no, explain why not. If yes:

- a. Identify other state(s) that make this information publicly available; and for each state, discuss the usefulness of (1) the information that is provided and (2) the manner in which that information is presented.**
- b. Identify best practices for (1) determining which competitive supplier complaint and/or performance information should be made publicly available, and (2) presenting that information (stakeholders are welcome to provide a visual representation of such best practices).**

Making complaint⁶² information available to customers and other stakeholders can provide benefits, such as allowing customers to evaluate potential suppliers and encouraging competitive suppliers to emphasize compliance to minimize the number of complaints they receive. However, because there are risks that complaint information could be misleading, it is important that the information made available be meaningful and present competitive suppliers' performance accurately.

⁶¹ See 220 C.M.R. 11.05(2)(d) (providing for Department review of competitive supplier license applications and providing that licenses are valid for periods of one year).

⁶² Although Question No. 14 refers to performance information, it is not clear what "performance information" the Department would want to make available. If the Department contemplates making specific types of "performance information" beyond complaint data available, RESA requests that the Department clarify what types of information it would like to disclose and allow further comment on the matter.

Best Practices for Publishing Complaint Information

Developing best practices for publishing complaint information involves avoiding various pitfalls. First, the Department should report complaint data for all entities subject to its jurisdiction, not just competitive suppliers. Consumers can benefit from understanding the performance of all entities with whom they may do business.

Second, the Department should establish a uniform definition of what qualifies as a complaint. For instance, a customer inquiry about a supplier or terms of service should not be classified as a complaint. Presenting data about substantiated complaints together with information about unsubstantiated complaints, meritless complaints, or inquiries improperly identified as complaints would not accurately reflect a competitive supplier's compliance history. Thus, the Department should not make raw, unqualified complaint information available because it has the potential to mislead.

Complaints represent allegations—some may have merit; others may not. For example, a customer may file a complaint against a competitive supplier when (s)he is aggrieved by matters beyond the control of the competitive supplier, such as EDC billing errors. Similarly, a customer may file a complaint because of a misunderstanding of circumstances applicable to his or her electric supply. For instance, a customer who overlooks a notice that his or her supply contract was assigned to another competitive supplier, may conclude incorrectly, upon learning that (s)he is receiving electric supply from a different competitive supplier, that (s)he was slammed, even though the contract was properly assigned under the Department's directives.⁶³

When presenting complaint information, it is also important to consider the time periods reflected and the number of customers that a competitive supplier serves. The information

⁶³ See, generally, D.P.U. 14-140-D (Sep. 16, 2016) (setting parameters for assigning customers from one competitive supplier to another).

reported should be designed with sufficient precision so as not to mislead customers. For example, reporting complaint data annually or biennially would not show quarterly or monthly trends in complaints or performance. In fact, it could be misleading to report the number of complaints that a competitive supplier receives in a two-year period if the vast majority of the complaints in that period were received in one or two months at beginning of that two-year time period.

Additionally, complaint information that does not account for the relative size or sales activity of competitive suppliers may be misleading. Competitive suppliers that are larger or that operate more active marketing campaigns may receive more complaints than competitive suppliers that are smaller or that do not market as actively. Presenting complaint data for these two types of suppliers together, without qualification or explanation, however, might give the misimpression that their complaint information is comparable. However, a situation in which a competitive supplier that serves eighty customers receives eighty complaints is far different from a situation in which a competitive supplier that serves eight thousand customers receives eighty complaints. Thus, reporting the ratio of a competitive supplier's complaints to the total number of customers served would be more meaningful than reporting the absolute number of complaints that a competitive supplier received.

Further, publishing complaint information for a particular competitive supplier before that competitive supplier has had an opportunity to validate that information has the potential to be misleading. The Department has established a process for the EDCs to dispute the classification of complaints.⁶⁴ The Department compiles and aggregates, on a monthly basis, the frequency of complaints per 1,000 residential customers, and provides the customer complaint

⁶⁴ See D.P.U. 12-120-D (Dec. 18, 2015), at 43-44; *id.*, Attachment A, ("Service Quality Guidelines") at 11.

information to the EDCs on a monthly basis.⁶⁵ Once the Department provides the data to the EDC, the EDC has forty-five (45) days to dispute the classification of a complaint as a customer complaint.⁶⁶ Competitive supplier validation of complaint information has the potential to eliminate erroneous information from the published complaint data, such as a service inquiry improperly classified as a complaint.

The best approach to publishing complaint information for competitive suppliers would involve publishing monthly complaint data, on a supplier-by-supplier basis for the most recent twelve-month period. The data should categorize complaints by type (e.g., billing, quality of service) and only include substantiated and validated complaints. Further, any presentation of complaint information should be accompanied by the number of customers or be presented as a ratio of the number of the competitive supplier's complaints to the number of its customers.

Other States' Approaches to Publishing Complaint Information

While other state programs can offer the Department guidance as it develops its own method for publishing complaint data, the process outlined above incorporates the key elements of the programs in other states in order to provide the Department with a set of proposed best practices. By adopting these best practices, the Department can avoid some of the pitfalls that other states have experienced.

Other jurisdictions make supplier complaint information available in various ways. For example, the Public Utility Commission of Texas presents summary statistics for complaints on a supplier-by-supplier basis for the most-recently-ended six-month period.⁶⁷ This approach ensures

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Public Utility Commission of Texas, *Consumer Complaint Statistics* (available at: <https://www.puc.texas.gov/consumer/electricity/CustomerComplaintStats.aspx>) (last visited Mar. 5, 2019).

the published data present information about recent performance. Complaints are categorized by type, and can be viewed by the number of complaints received per supplier per month.⁶⁸

The Pennsylvania Public Utility Commission allows a search of its docket for formal consumer complaints filed against particular suppliers.⁶⁹ This approach allows customers to locate detailed information about specific formally docketed complaints, but it does not allow customers to compare suppliers with ease. The Pennsylvania Public Utility Commission also has an informal complaint process.⁷⁰ Informal complaints are confidential and not available for public inspection.⁷¹

The Connecticut Public Utilities Regulatory Authority (“PURA”) lists annual complaint statistics on a supplier-by-supplier basis.⁷² Readily accessible information is available from 2012 through the present.⁷³ This approach allows customers to review many years of complaint data, but these older data are no longer relevant because they do not reflect current activity and any regulatory changes or changes to supplier policies. This approach also does not reveal monthly or quarterly trends in complaint performance. PURA also has a process for ensuring that the complaint statistics that are publicly accessible reflect substantiated complaints.⁷⁴

⁶⁸ *Id.*

⁶⁹ Pennsylvania Public Utility Commission, *Search for Consumer Complaints – Electric Utilities* (available at: http://www.puc.state.pa.us/consumer_info/electricity/electric_complaints_search.aspx) (last visited Mar. 5, 2019).

⁷⁰ Pennsylvania Public Utility Commission, *Filing Complaints* (available at: http://www.puc.state.pa.us/filing_resources/filing_complaints.aspx) (last visited Mar. 5, 2019).

⁷¹ Pennsylvania Public Utility Commission, *Filing Complaints* (available at: http://www.puc.state.pa.us/filing_resources/filing_complaints.aspx) (last visited Mar. 5, 2019).

⁷² Public Utilities Regulatory Authority, *Complaints Scorecard* (available at: [http://www.dpuc.state.ct.us/PURACAIU.NSF/\\$FormWebWebComplaintsScorecardView?OpenForm&Start=1&Count=1000&Expand=1.6.8&Seq=3&scrollTop=0](http://www.dpuc.state.ct.us/PURACAIU.NSF/$FormWebWebComplaintsScorecardView?OpenForm&Start=1&Count=1000&Expand=1.6.8&Seq=3&scrollTop=0)) (last visited Mar. 5, 2019).

⁷³ *Id.*

⁷⁴ See, e.g., Docket No. 13-07-18, *PURA Establishment of Rules for Electric Suppliers and Electric Distribution Companies Concerning Operations and Marketing in the Electric Retail Market*, Supplier Working Group 16th Meeting – Agenda & Notes (Sep. 30, 2016) (available at: [http://www.dpuc.state.ct.us/dockhistpost2000.nsf/8e6fc37a54110e3e852576190052b64d/60f59ba07971f5e58525829c00736161/\\$FILE/9-13-16%2016th%20SWG%20Mtg%20Final%20Agenda%20&%20Notes.docx](http://www.dpuc.state.ct.us/dockhistpost2000.nsf/8e6fc37a54110e3e852576190052b64d/60f59ba07971f5e58525829c00736161/$FILE/9-13-16%2016th%20SWG%20Mtg%20Final%20Agenda%20&%20Notes.docx)), at 3 (“PURA staff indicated that the process for challenging a complaint begins with the [PURA] representative that received the

The New York Department of Public Service (“DPS”) publishes a report of complaint activity associated with a variety of entities, including competitive energy service companies.⁷⁵ Complaints are categorized as initial complaints or escalated complaints.⁷⁶ All complaints are first categorized as initial complaints.⁷⁷ An initial complaint is categorized as an escalated complaint if the customer informs the DPS that the company failed to satisfy the complaint.⁷⁸ Escalated complaints are subject to investigation.⁷⁹ Among other things, the DPS monthly complaint reports provide the number of initial and escalated complaints for competitive energy service companies⁸⁰ and separately report consumer reports of deceptive marketing practices by energy services companies.⁸¹ Compared to other jurisdictions’ reports, the New York reports are long and more difficult for consumers to understand.

The Illinois Commerce Commission makes available complaint scorecards showing how each of the retail electric suppliers’ rate of complaints compares to the average rate of complaints for the entire residential market and complaint summary information showing the total number and type of complaints received for each retail electric supplier over the last six months.⁸² The

original complaint. . . . Upon receiving an investigating a complaint, a supplier may believe that the original reason for the complaint should be revised. That discussion should take place between the [PURA]’s Consumer Affairs representative and the supplier liaison responsible for customer complaints.”).

⁷⁵ See, e.g., Office of Consumer Services, Monthly Report on Consumer Complaint Activity (Jan. 30, 2019) (available at

[http://www3.dps.ny.gov/W/PSCWeb.nsf/ca7cd46b41e6d01f0525685800545955/448c499468e952c085257687006f3a82/\\$FILE/December%202018%20MR.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/ca7cd46b41e6d01f0525685800545955/448c499468e952c085257687006f3a82/$FILE/December%202018%20MR.pdf)), at 3.

⁷⁶ See, e.g., *id.* at 3.

⁷⁷ See, e.g., *id.* at 5.

⁷⁸ See, e.g., *id.*

⁷⁹ See, e.g., *id.*

⁸⁰ See, e.g., *id.* at 8-12.

⁸¹ See, e.g., *id.* at 18-19.

⁸² Plug In Illinois Power of Choice, *Customer Complaint Statistics* (available at: <https://www.pluginillinois.org/complaints.aspx>) (last visited Mar. 5, 2019).

scorecard rates suppliers by awarding them between one and five stars based on a six-month rolling average of complaint rates per 1,000 customers relative to other companies.⁸³

Question No. 15: Would it be reasonable and appropriate for the Department to direct the electric distribution companies to initiate competitive supply service during a customer's meter read cycle? If no, explain why not. If yes:

- a. Discuss how this would improve the value that the market can provide customers.**
- b. Identify other states that allow the initiation of supply service during a customer's meter read cycle. For each state, describe the manner in which the state implements such an approach.**

The Department should direct the EDCs to initiate competitive supply service during a customer's meter read cycle. Doing this would improve the value that the market can provide to customers by allowing their choices to be effected more quickly than at the beginning of the next meter read cycle. As a consequence, customers could quickly switch to products that best meet their needs, including products that lower or stabilize their prices. Presently, from the point of a customer's meter read date, it can take one to two billing cycles for a customer to enroll/de-enroll or switch to alternative pricing plans. Customers should be able to act quickly to switch competitive suppliers and choose products that meet their needs. When consumers see prices changing dramatically, as can occur during extreme weather events, they should have the ability to select products that offer better pricing or price protection and to effectuate that change almost immediately.

Pennsylvania has adopted rules allowing for accelerated switching of electric supply service.⁸⁴ When a customer has provided oral confirmation or written authorization to select the new supplier, consistent with electric data transfer and exchange standards, the EDC is required

⁸³ See, e.g., *Retail Electric Supplier Complaint Scorecard*, April 2018 through September 2018 (available at: http://www.icc.illinois.gov/downloads/public/Scorecard_October2018.pdf).

⁸⁴ See 52 Pa. Code § 57.171 *et seq.* (available at <https://www.pacode.com/secure/data/052/chapter57/subchapMtoc.html>) (last visited Mar. 5, 2019).

make the change within three business days of its receipt of the electronic enrollment transaction.⁸⁵ Distribution companies are required to obtain a meter read to effectuate the switch of service within the three-business-day timeframe.⁸⁶ In instances when the EDC does not have advanced or automated metering capability, it must obtain an actual meter read, use an estimated meter read, or use a customer-provided meter read.⁸⁷ RESA encourages the Department to consider the implementation of a similar accelerated switching protocol to allow customers to more quickly take advantage of pricing and product offerings that best suit their needs.

Question No. 16: Would it be reasonable and appropriate for the Department to eliminate the customer account numbers as required information on an enrollment transaction? If no, explain why not. If yes:

- a. Discuss how this would improve the value that the market can provide to customers.**
- b. Identify alternate piece(s) of information that could be required on enrollment transactions in order to provide the same level of customer protection that a customer's account number provides.**

As discussed in further detail below, the Department should eliminate the customer account number as required information for an enrollment transaction, and follow the practices that have been undertaken in Ohio.⁸⁸ Doing so will improve the value that the market can provide to customers by facilitating customer enrollment.

⁸⁵ See 52 Pa. Code § 57.174 (available at: <https://www.pacode.com/secure/data/052/chapter57/s57.174.html>) (last visited Mar. 5, 2019).

⁸⁶ See *id.*.

⁸⁷ See *id.*

⁸⁸ See PUCO Case No. 16-1852-EL-SSO, *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, and PUCO Case No. 16-EL-AAM, *In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority*, Opinion and Order (Apr. 25, 2018) (available at: <http://www.aepohiocbp.com/assets/files/Opinion%20and%20Order%20-%20April%2025.%202018.pdf>), at 47-48.

Value of Enrolling Without EDC Account Numbers

Under the current paradigm, customers must know their account number to switch to a new supplier.⁸⁹ However, allowing customer to enroll using other unique identifying information, such as a picture ID that links to the service or billing address, should also be permitted. Typically, customers do not know their account numbers. If a customer wishes to enroll with a competitive supplier and is required to provide an account number to do so, (s)he would need to locate the account number first. Doing so typically involves locating a mailing containing the account number (such as a bill) or logging into an EDC website. To do this, a customer may require a certain amount of time, which can vary based on the customer's ability to locate such a mailing or log into the EDC website.

If the customer has all of the information needed to enroll readily at hand, the enrollment process can proceed smoothly enough. However, if the customer does not, the enrollment process can be delayed, and this delay could create customer frustration. This frustration may be particularly acute during a door-to-door sales interaction because the customer who has decided to enroll with a competitive supplier would have to search for an EDC mailing or website login credentials when the marketing representative is present at the customer's residence. Further, on occasion, customers misplace EDC mailings or forget EDC login credentials. If a customer is able to enroll, after spending some time searching for his or her account number, especially if a sales agent is present at the customer's residence while the customer is looking for this information, (s)he may become frustrated and disillusioned with the competitive market.

Furthermore, allowing enrollment without EDC account numbers will allow the industry to rely less on "in-home" customer interactions (where the customer may be most likely able to

⁸⁹ See Order, at 14.

access his or her utility account number) and engage in more traditional types of retail customer engagements, such as through retail stores and kiosks. This model works very well within the cellular industry and is being deployed in the retail electric and gas industries in more evolved markets.⁹⁰

Alternate Information to Allow Enrollment

Allowing a customer to enroll with uniquely identifying information that is readily known by (or easily accessible to) the customer would eliminate or mitigate potential customer frustration. This information could include the customer's telephone number, the customer's driver's license number, the last four digits of the customer's social security number.

Ohio Power Company d/b/a AEP Ohio is implementing such a program.⁹¹ It allows a customer to enroll with a supplier by proving his or her telephone number and the last four digits of his or her social security number (or one of the last three amounts that (s)he had been billed for electric service).⁹² While bill amounts may be more accessible than account numbers (for example, if a customer has a record of having paid a billed amount in financial records), other more readily accessible information should be permitted to be used for enrollment, like a driver's license number.

⁹⁰ See Just Energy Has Funnel of Over 700 Retail Storefronts (*available at: <http://www.energychoicematters.com/stories/20170214a.html>*) (last visited Mar. 5, 2019).

⁹¹ See PUCO Case No. 16-1852-EL-SSO, *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, and PUCO Case No. 16-EL-AAM, *In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority*, Opinion and Order (Apr. 25, 2018) (*available at: <http://www.aepohiocbp.com/assets/files/Opinion%20and%20Order%20-%20April%2025,%202018.pdf>*), at 47-48.

⁹² See *id.*

Question No. 17: What other rules may act as barriers to a more efficient competitive market? For each answer, propose ways to mitigate those barriers.

RESA appreciates the Department's consideration of ways to mitigate barriers to a more efficient competitive retail market and proposes the following enhancements to improve the customer experience in the market.

Improved Access to Customer Data

Smart meters and their related functionality, as well as the level of customer data available from such meters, have the potential to revolutionize how customers purchase electricity and change the way electricity is offered by giving customers and their competitive suppliers the information necessary to transform customer behavior. With the propagation of smart meters, distribution companies will be in a position to collect more valuable and detailed information about consumer usage patterns. The Department should adopt standards that allow for efficient and cost-effective access to such data by competitive providers.

Such data will help competitive retail suppliers develop and offer customers high value products, including dynamic pricing products that encourage conservation, energy efficiency and renewable energy solutions, as has occurred in other states. For instance, in Texas and Pennsylvania, competitive providers have offered a plethora of competitive supply products enabled by smart meters that encourage customers to move their consumption away from peak price periods where customers can take advantage of options such as free power during the evenings or on the weekends.⁹³ Similarly, the use of advanced meter technology will allow retail suppliers in Massachusetts to offer price responsive demand ("PRD") products to their customers

⁹³ See, e.g., TXU Energy, *Free Nights & Solar Days* (available at: <https://www.txu.com/residential/plans/free-nights-solar-days.aspx>) (last visited Mar. 5, 2019); Direct Energy, *Free Power Nights 13* (available at: <https://www.directenergy.com/pa/electricity-plans/free-power-nights-12>) (last visited Mar. 5, 2019).

that will encourage load shifting, conservation, and energy efficiency, resulting in real cost savings for customers and the EDCs.⁹⁴

By providing these innovative programs on a competitive basis, retail suppliers will be able to either reduce the amount of ratepayer dollars needed to fund these types of programs or to offer additional programs that supplement those funded by ratepayers. However, competitive suppliers can only provide these high value offerings when they have access to the data needed to support these offerings. Thus, RESA encourages the Department to enhance competitive supplier access to customer data.

Supplier Consolidated Billing

Allowing competitive supplier consolidated billing as an additional billing option would not only also mitigate barriers to a more efficient competitive market but would also serve as an important consumer protection and education tool. Under supplier consolidated billing, the competitive supplier would be responsible for billing the customer, including the customers' costs for transmission and distribution services as well as any regulatory fees, surcharges, or other assessments approved by the Department.

Currently, the EDCs are required to offer two billing options, passthrough billing and complete billing.⁹⁵ Under passthrough billing, the EDC issues a bill to the customer for certain charges and the competitive supplier issues a bill for generation service and any other services provided by the competitive supplier.⁹⁶ Under complete billing, the customer receives a single bill from the EDC; this bill includes generation services.⁹⁷ Under supplier consolidated billing,

⁹⁴ See Global Power Best Practice Series, *Time-Varying Dynamic Rate Design* (July 2012) (available at: http://magrid.raabassociates.org/Articles/RAP_TimeVaryingDynamicRateDesign_2012.07.23.pdf), at 9.

⁹⁵ 220 C.M.R. 11.04(10)(c).

⁹⁶ 220 C.M.R. 11.04(10)(c)(1).

⁹⁷ 220 C.M.R. 11.04(10)(c)(2).

the customer would receive one bill from the competitive supplier that would include all services provided by the competitive supplier and the EDC.

Through supplier consolidated billing, customers would become better informed about the retail market for electricity and would be provided with more choices – not only who issues their bills but also the opportunity to take advantage of innovative pricing and product offerings which better suit their needs but which are not accessible under the existing billing options’ limitations. RESA members are today offering more innovative energy related products and services in markets that have adopted supplier consolidated billing due to the flexibility that it provides, and look forward to the opportunity to offer such products to Massachusetts residents should the Department decide to implement it in the Commonwealth. Because of the historical technical capabilities of the EDCs’ billing systems and space limitations, competitive suppliers are limited in the type and amount of information they can provide to customers on EDC issued bills. Supplier consolidated billing would allow competitive suppliers to offer innovative, time-varying pricing or rate plans.

In addition, because of the current regulatory construct, the distribution companies are the point of primary interaction with customers – whether or not those customers are receiving generation service from competitive suppliers.⁹⁸ Supplier consolidated billing would provide for more direct interaction and communication between customers and their competitive suppliers and, thereby, further awareness and education about the retail competitive market, including a monthly reminder of who is providing their energy supply.

Supplier consolidated billing would also reduce the administrative burden imposed on the EDCs in addressing billing questions. Because, under existing billing protocols, the EDCs issue

⁹⁸ See, generally, 220 C.M.R. 11.04.

bills, customers frequently call the EDCs to address any billing questions or concerns – even if the questions or concerns relate to electric generation service charges of a competitive supplier. Under supplier consolidated billing, competitive suppliers would become the primary point of contact for billing questions. This would reduce the number of calls that must be handled by the EDCs and the administrative burden associated with addressing such calls. Thus, RESA encourages the Department to adopt supplier consolidated billing as another means of reducing barriers to market efficiency.

Initial Choice of Competitive Supplier

Currently, new EDC customers may not enroll with a competitive supplier when they first initiate electric delivery service at a new service location.⁹⁹ However, rather than requiring that customers default to Basic Service, customers should be free to choose who provides their electricity service when they first enter an EDC’s service territory. In other words, a new EDC customer (if not remaining on an existing competitive supply product) should be permitted to name a new competitive supplier affirmatively or be required to affirmatively select the EDC’s Basic Service option at the time (s)he commences distribution service. In Pennsylvania, consumers are permitted to do this.¹⁰⁰ Allowing customers to enroll on a competitive supply product when they first initiate electric delivery service would further educate consumers about the competitive supply market and provide them with opportunities to immediately enroll in products that best suit their needs, including products that provide cost savings or increased predictability.

⁹⁹ See D.T.E. 01-54-B (Jul. 29, 2002), at 9-10 (indicating that a customer is switched to a competitive supplier on the customer’s next meter read date after the competitive supplier submits an electronic transaction to the customer’s distribution company).

¹⁰⁰ See, e.g., M-2014-2401103, *PPL Electric Utilities Corporation Plan for Seamless Moves and Instant Connects*, Final Order (Oct. 1, 2015), at 11 (“[C]ustomers should be able to start new service with a supplier without first going onto default service. The current system inappropriately elevates default service to a favored, primary service role. Instant connects will help end this undesirable practice.”).

Seamless Moves

From time-to-time, customers relocate, whether to other locations within an EDC's service territory or to locations in the service territory of a different EDC. Ensuring that competitive supply customers are able to remain enrolled with the same competitive supplier if they relocate would mitigate barriers to a more efficient competitive market. Moreover, it honors the customer's choice of a competitive supply product. Indeed, by ensuring that a customer is not forced onto Basic Service¹⁰¹ and, as a result, potentially being required to pay a higher price for Basic Service than the customer would have paid if (s)he remained with his or her competitive supplier, it prevents customer frustration. Accordingly, ensuring that a customer's competitive supply service transitions seamlessly when the customer relocates will enhance the competitive market, as it does in, for example, Rhode Island and Pennsylvania.¹⁰²

Question No. 18: In what ways could the electric distribution companies better inform customers of their ability to prevent distribution companies from providing their account information to competitive suppliers and electricity brokers?

The Department has already implemented an effective means of notifying customers of their ability to prevent distribution companies from providing customer account information to competitive suppliers and electricity brokers.¹⁰³ Specifically, the Department has concluded that

¹⁰¹ See M.D.P.U. 1349, Massachusetts Electric Company and Nantucket Electric Company, Terms and Conditions for Competitive Suppliers, at 8 (“In those instances when a Customer moves into a Distribution Company’s service territory, the Customer’s existing Competitive Supplier must submit an ‘enroll customer’ transaction to the new Distribution Company in order to initiate Generation Service. Otherwise, the Customer shall receive Basic Service, in accordance with the Company’s respective tariffs.”).

¹⁰² See 815-30 R.I. Code R. § 5-2.5(D) (available at <http://www.ripuc.org/rulesregs/divrules/npp%20bill%20of%20rights.pdf>) (“Notwithstanding any other provision of the Rhode Island General Laws, nothing shall prohibit a residential customer who moves from one dwelling to another dwelling within Rhode Island from immediately receiving electric generation service from a nonregulated power producer, provided such customer was receiving such service from a nonregulated power producer immediately prior to such move.”); M-2014-2401103, *PPL Electric Utilities Corporation Plan for Seamless Moves and Instant Connects*, Final Order (Oct. 1, 2015), at 11 (“A customer should not have to obtain new supplier service simply because they moved locations within an EDC’s service territory. It is reasonable for customers to expect that their supplier choice and contract be simply ‘ported’ to their new location.”).

¹⁰³ See D.T.E. 01-54-A (Oct. 15, 2001), at 26.

using bill inserts describing the details of the opt-out process, together with bill messages directing customers' attention to the bill inserts, was the most appropriate manner to inform customers about the opt-out process to opt-out.¹⁰⁴

Bill inserts and messages remain highly effective ways of informing and educating customers. Thus, they should continue to be used by the EDCs to periodically inform customers about the opt-out process.¹⁰⁵

Question No. 19: Would it reasonable and appropriate for the Department to require the electric distribution companies to establish a “do not switch” list, which would preclude a company from switching a customer to a competitive supplier? If no, explain why not. If yes:

- a. Discuss the manner in which the “do not switch” list should be implemented.**
- b. Identify other states that have established such a list, and, for each state, describe the manner in which the state has implemented the list.**

The Department should not require the EDCs to establish a “do not switch” list to preclude an EDC from switching customers to a competitive supplier. In fact, the Department should specifically prohibit the EDCs from doing so.¹⁰⁶ Fundamentally, a “do not switch” list operates to restrict the rights of the individuals on it to contract freely. It is markedly different from a “do not call” or a “do not knock” list. These lists simply allow individuals to opt-out of certain marketing activity. However, customers retain their ability to participate as fully as they choose in the competitive supply market and to contract freely for electric supply. A “do not switch” list would effectively extinguish an individual’s ability to do so and prevent participation in the market entirely.

¹⁰⁴ See *id.* (“After the initial opt-out period . . . it is appropriate for distribution companies to use periodic bill inserts and messages to remind customers of their ability to opt-out [of having their account information provided to competitive suppliers and electricity brokers].”).

¹⁰⁵ See *id.*

¹⁰⁶ See D.P.U. 16-10 (Aug, 23, 2017), at 6 (recognizing that National Grid maintains lists of customers who “have requested to have their accounts blocked to prevent enrollment with competitive suppliers”).

Existing regulations already protect customers from enrolling in an competitive supply product without their express consent. No competitive supplier may initiate electric supply service to a customer without having obtained the customer's affirmative choice, as evidenced by a TPV or a letter of authorization.¹⁰⁷ Any competitive supplier that initiates service to an individual without proper authorization may be subject to enforcement action.¹⁰⁸ With these regulations in place, there is no need for a "do not switch list" to protect customers from unauthorized enrollment.

Moreover, the dynamic character of the competitive supply market makes any "do not switch list" unreasonable. Competitive suppliers develop new products frequently, and Basic Service rates change regularly. Even customers who, at one point, think that they will not participate in the retail competitive supply market, may, as the market develops (or Basic Service rates change), conclude that the retail competitive supply market offers them benefits that are worth exploring. However, a customer who elects to join a "do not switch," but, after developments in the market,¹⁰⁹ later wishes to enroll with a competitive supplier may be delayed or prevented from enrolling, which would lead to customer frustration and dissatisfaction with the competitive market.

¹⁰⁷ 220 C.M.R. 11.05(4)(b); 220 C.M.R. 11.05(4)(c).

¹⁰⁸ *See* 220 C.M.R. 11.07(3).

¹⁰⁹ *See* Competitive Supply Website.

Question No. 20: The issues raised in this NOI, and the questions presented above, relate solely to the electric competitive supply market for residential customers. Would it be reasonable and appropriate for the Department to investigate any (or all) of these issues as they relate to the electric competitive supply market for small C&I customers? If no, explain why not. If yes, identify the issues that the Department should investigate, and for each issue, discuss whether the Department’s resolution of the issue should differ between residential and small C&I customers.

The Department should not investigate the issues identified in the Order as they might be applied to small commercial and industrial customers. However, a natural consequence of any enhancements to the Competitive Supply Website or reduction of barriers to market efficiency¹¹⁰ will likely inure to the benefit of all customers, not just residential customers.

First and foremost, the EDCs’ designations for small commercial customers vary within and between EDCs. In fact, NSTAR Electric (“NSTAR”) alone uses the following different small commercial thresholds across its service territories:

- all non-residential uses of electricity to all Customers whose load for billing purposes does not exceed or is estimated not to exceed 10 kilowatts (“kW”),¹¹¹
- all non-residential uses of electricity to all Customers whose load for billing purposes does not exceed or is estimated not to exceed 10 kilowatts in any three (3) consecutive billing months;¹¹² and
- all non-residential uses of electricity to all Customers except those customers whose load for billing purposes either exceeds or is estimated to exceed 100 kilowatts in each of 12 consecutive billing months.¹¹³

Moreover, none of these thresholds match those of the other EDCs. National Grid designates a non-residential customer for which it estimates the customer’s “average use will not exceed 10,000 kWh/month or 200 kW of demand” as small commercial.¹¹⁴ Unitil makes available small general delivery service “for all customers with non-residential loads consistently

¹¹⁰ See *supra* Response to Question No. 17.

¹¹¹ NSTAR Electric (Greater Boston Service Area), M.D.P.U. No. 11C (Rate G-1).

¹¹² NSTAR Electric (Cambridge Service Area), M.D.P.U. No. 18C (Rate G-0).

¹¹³ NSTAR Electric (South Shore, Cape Cod & Martha’s Vineyard Service Area), M.D.P.U. No. 29C (Rate G-1).

¹¹⁴ Nantucket Electric Company, M.D.P.U. 591 (General Service - Small Commercial and Industrial G-1); Massachusetts Electric Company, M.D.P.U. 1308 (General Service - Small Commercial and Industrial G-1).

under four (4) kilowatts and energy consumption less than eight hundred fifty (850) kilowatt-hours per month.”¹¹⁵ Western Massachusetts Electric Company (“WMECO”) designates small general service customers as those with service at a single location that does “not exceed 349 kW.”¹¹⁶

However, a 349 kW monthly demand threshold captures customers with significant usage and energy spends and captures many medium and larger sized customers, including big box retailers (e.g., Staples, TJ Maxx), condominium developments, large grocery stores, and movie theaters. These customers typically have significant usage patterns and energy spends. For example, a customer at 349 kW and a 55% load factor paying a delivered price of \$0.16/kWh will pay almost \$270,000/year for electricity.¹¹⁷

Moreover, smaller commercial and industrial customers are not generally comparable to residential customers. Commercial and industrial customers are typically more sophisticated about the retail competitive electric market and contracting for products and services. Businesses with commercial or industrial operations, regardless of their size, regularly contract and receive bills for a variety of goods and services, from the space in which they run their operations, to the supplies that they need to conduct their operations, to professional services for assistance with preparing tax returns or complying with applicable legal and regulatory requirements. Such commercial and industrial customers are well aware of the need to evaluate offers for products and services and to choose products and services that are appropriate for their operations. Accordingly, the regulatory requirements that might be adopted for residential customers do not need to be investigated with respect to small commercial and industrial customers.

¹¹⁵ See *Unitil Energy for Businesses*, (available at: https://unitil.com/sites/default/files/tariffs/E_dpu291_GD.pdf) (last visited Mar. 5, 2019) (General Delivery Service Schedule GD).

¹¹⁶ Western Massachusetts Electric Company, M.D.P.U. No. 38C (Small General Service Schedule G-0).

¹¹⁷ 349 kW *8760 hours/year * 0.55 load factor * \$0.16/kWh.

Residential Customer Clarification

To ensure that commercial accounts are not inadvertently captured in any of the requirements being considered in this proceeding, RESA requests that the Department clarify that the determination of whether a customer qualifies as a residential customer will be based on the competitive supplier's contractual counterparty (i.e., at the customer, not the meter/account level). For example, a competitive supplier may have a contract with a customer that is a college or university, which would have a significant demand. However, that college/university customer may have several meters/accounts assigned to it by the EDC. One of those meters/accounts could be the dean's residence, which the EDC has classified as residential. However, since the college/university is the contractual counterparty, the college/university is the customer, not the dean. Thus, the customer should be designated as commercial.

In addition, current EDC procedures for assigning accounts to rate classes are inexact and insufficient for correctly identifying residential customers because not all accounts classified by the EDCs as residential *accounts* are managed by, or the responsibility of, residential *customers*. For instance, it is RESA's understanding that the EDCs may assign residential rate classifications to commercial customers, such as towns, cemeteries, banks, ambulance services, schools, YMCAs, hardware companies, campgrounds, rehabilitation centers, marinas, clinics, lighting companies, and a multitude of limited liability companies. In these circumstances, while the accounts may all be classified as residential by the EDCs, the contractual counterparties are commercial entities. As a consequence, these accounts should also qualify as commercial, not residential. Thus, RESA requests that the Department find that the determination of which accounts qualify as commercial will be based on the competitive supplier's contractual

counterparty, rather than the EDCs' rate class designations. Such clarification will ensure that all accounts under a single contract with a particular customer are treated similarly.

Question No. 21: The issues raised in this NOI, and the questions presented above, relate solely to the electric competitive supply market for residential customers. Would it be reasonable and appropriate for the Department to investigate any (or all) of these issues as they relate to the competitive gas market for residential customers? If no, explain why not. If yes, identify the issues that the Department should investigate, and for each issue, discuss whether the Department's resolution of the issue should differ between the electric and gas markets, and why.

The residential gas competitive market in Massachusetts is not particularly active. In fact, it is RESA's understanding that the majority of residential gas accounts served by competitive suppliers arose from commercial sources (e.g., when a business owner enrolls his/her business, (s)he also enrolls his/her home). Given these accounts arose from commercial transaction, until the residential gas competitive market develops, the Department should not develop additional regulatory requirements applicable to that market.

CONCLUSION

RESA appreciates the opportunity to offer comments in this important docket and asks that the Department hold a technical meeting and subsequently offer an opportunity for reply comments to assist it in formulating initiatives that are clear and workable and protect the interests of all stakeholders.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

By 
Jey Lee Miranda
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Tel. No.: (860) 275-8200
Fax No.: (860) 275-8299
E-mail: jmiranda@rc.com

March 8, 2019