

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF PUBLIC UTILITIES**

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INVESTIGATION BY THE DEPARTMENT OF :  
PUBLIC UTILITIES ON ITS OWN MOTION :  
INTO INITIATIVES TO PROMOTE AND : D.P.U. 19-07  
PROTECT CONSUMER INTERESTS IN THE :  
RETAIL ELECTRIC COMPETITIVE SUPPLY :  
MARKET :  
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**RETAIL ENERGY SUPPLY ASSOCIATION’S COMMENTS**  
**RE NOVEMBER 19, 2020 REQUEST FOR COMMENTS**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby submits its comments in response to the request for comments on the proposals (“Proposals”) identified in the Department of Public Utilities’ (“Department”) November 19, 2020 Memorandum.<sup>2</sup>

**BACKGROUND**

On January 18, 2019, 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.”<sup>3</sup> On June 6, 2019, the Department convened a technical session, during which Department staff (“Staff”) announced that they intended to investigate the initiatives in the instant proceeding “in a tiered manner,”<sup>4</sup> with three

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<sup>1</sup> 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](http://www.resausa.org).

<sup>2</sup> See Memorandum re Request for Comments (Nov. 19, 2020) (“Memorandum”).

<sup>3</sup> Vote and Order Opening Investigation (Jan. 18, 2019), at 1.

<sup>4</sup> Memorandum re Request for Comments (Feb. 5, 2020), at 1.

tiers: Tier One - initiatives that can be resolved in the timeliest manner (“Tier One Initiatives”); Tier Two - initiatives that require additional information before the Department can determine how best to proceed; and Tier Three - initiatives that require fundamental changes to the way in which the retail competitive markets operate.<sup>5</sup>

On May 22, 2020, the Department issued D.P.U. 19-07-A, Order on Tier One Initiatives, in which it set forth initiatives related to: (1) review of license applications; (2) door-to-door marketing notification; (3) identification of third-party marketing vendors; (4) disclosure of product information; (5) marketing scripts; (6) recording of marketing interactions; (7) review of marketing materials; (8) automatic renewal notification and reports; (9) enrollment reports; and (10) display of municipal aggregation products on the Energy Switch MA website (“Website”).<sup>6</sup> Subsequently, the Department held two Zoom meetings to discuss D.P.U. 19-07-A<sup>7</sup> and issued a memorandum providing certain clarifications about the requirements of D.P.U. 19-07-A.<sup>8</sup>

On November 19, 2020, the Department issued the Memorandum.<sup>9</sup> In the Memorandum, Staff identified the Proposals for consideration, most of which relate to issues discussed at the August 6, 2020 Zoom meeting.<sup>10</sup> RESA now hereby submits its comments on the Proposals.

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<sup>5</sup> See Memorandum re Request for Comments (Feb. 5, 2020), at 1-2.

<sup>6</sup> D.P.U. 19-07-A, Order on Tier One Initiatives (May 22, 2020) (“D.P.U. 19-07-A”).

<sup>7</sup> See D.P.U. 19-07-A Tier One Initiatives Issues for Further Discussion Slide Presentation (Aug. 6, 2020); D.P.U. 19-07-A Implementation Details Slide Presentation (Jun. 18, 2020).

<sup>8</sup> See Memorandum re Tier One Initiatives - Further Direction and Issues for Further Discussion (Jul. 17, 2020).

<sup>9</sup> Memorandum.

<sup>10</sup> See *id.* at 2.

## COMMENTS

RESA appreciates the Department's thoughtful consideration of its prior comments and supports the Department's continued consideration and implementation of initiatives to improve the competitive retail energy supply market. However, before Staff's Proposals are adopted in final, for the reasons discussed more fully below, the Department should clarify and/or revise certain elements of the Proposals.

### **I. THE DEPARTMENT SHOULD CLARIFY THE LICENSE RENEWAL APPLICATION REQUIREMENTS**

In the Memorandum, Staff proposed "to add information related to licensees' corporate structure to the license renewal application."<sup>11</sup> In particular, Question 7 of the license renewal application would require "a description of the corporate structure of the applicant (e.g., identification of parent company, affiliates, owners)."<sup>12</sup> However, the meaning of the term "owners" is unclear.

Owners generally refer to a licensee's parent company. However, because the examples already include the "identification of parent company," it is unclear what information the Department is seeking to require. For instance, the term owners could be understood more broadly to mean the licensee's shareholders, members or partners. This level of information should not be required on a license renewal application. For private companies, many shareholders often regard their investment decisions as information that is confidential. Further, as a practical matter, for publicly traded companies, identifying shareholders could be a burdensome task. Thus, prior to finalizing the license renewal application proposal, the Department should clarify that it is not expecting suppliers to

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<sup>11</sup> Memorandum, at 3.

<sup>12</sup> *Id.* at 25 (underlining in original).

disclose information about each of their individual shareholders. To the extent the Department believes further information about corporate structure is necessary, consistent with its regulations, it should require suppliers to disclose “the name, address and title of each officer and director, partners, or other similar officers.”<sup>13</sup>

## **II. THE DEPARTMENT SHOULD MODIFY ITS DOOR-TO-DOOR MARKETING NOTIFICATION PROPOSAL**

In D.P.U. 19-07-A, the Department required Competitive Entities<sup>14</sup> engaged in door-to-door marketing to residential consumers to submit daily notifications to the Department and the Attorney General in advance of the marketing date.<sup>15</sup> Only five municipalities (or neighborhoods of the City of Boston) may be identified in each notification.<sup>16</sup> In the Memorandum, the Staff proposed three potential changes to the door-to-door marketing notification initiative related to: (a) notifying municipal officials; (b) implementing the municipality limit on a regional or vendor basis; and (c) applying the neighborhood requirement to additional municipalities.<sup>17</sup>

### **A. Nondisclosure Agreements Should Protect Confidential Information Sent To Municipalities**

As proposed by Staff, for municipalities that provide contact information for a designated official(s), a Competitive Entity intending to door-to-door market would be required to send an email to the designated official(s) of each municipality with specified information, including contact information and the date(s) of expected door-to-door

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<sup>13</sup> See 220 CMR 11.05(2)(b)(3)(e).

<sup>14</sup> The term “Competitive Entity” refers to competitive suppliers, gas suppliers, electricity brokers, and gas retail agents. See Memorandum, at 2.

<sup>15</sup> See *id.* at 4; D.P.U. 19-07-A, at 19-30.

<sup>16</sup> See D.P.U. 19-07-A, at 21-22, 23-24.

<sup>17</sup> See Memorandum, at 4.

marketing two business days in advance of the marketing.<sup>18</sup> However, “[t]he requirement to notify a municipality would be contingent upon the Competitive Entity and municipality arranging for the transfer of confidential information.”<sup>19</sup>

RESA appreciates the Department’s recognition that information about future door-to-door marketing activity is confidential. Indeed, in D.P.U. 19-07-A, the Department issued a standing order protecting all information included in the daily notifications other than competitive supplier contact information.<sup>20</sup> The exchange of such confidential information with municipalities could be accomplished pursuant to nondisclosure agreements between Competitive Entities and municipalities, in a similar way as the exchange of confidential information with the Attorney General’s office occurs pursuant to nondisclosure agreements.<sup>21</sup> However, Competitive Entities should have flexibility to tailor their nondisclosure agreements to particularities of the municipalities receiving their confidential information. For example, the nondisclosure agreement should be permitted to vary based on individual municipalities’ data security protocols.

**B. The Five Municipality Limit Should Be Applied On A Distribution Company Service Territory Basis**

In D.P.U. 19-07-A, the Department imposed a limit of five municipalities that Competitive Entities can identify in a door-to-door marketing notification.<sup>22</sup> In the Memorandum, Staff requested comments on the possibility of “impos[ing] the five-

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<sup>18</sup> See Memorandum, at 5.

<sup>19</sup> *Id.*

<sup>20</sup> See D.P.U. 19-07-A, at 29.

<sup>21</sup> See *id.* n.17 (“The requirement to submit the daily notifications to the Attorney General is contingent upon the Attorney General executing a non-disclosure agreement with competitive suppliers.”) (citation omitted).

<sup>22</sup> See Memorandum, at 4.

municipality limit on a regional or vendor basis.”<sup>23</sup> As a condition of allowing such an approach, Staff is also considering requiring each Competitive Entity to agree “to use global positioning system/geotracking technology to track the location of its employees and vendor agents that are door-to-door marketing on the Competitive Entity’s behalf.”<sup>24</sup> RESA supports imposing the five-municipality limit on a distribution utility service territory basis and the use of global positioning system/geotracking technology to track the location of a supplier’s door-to-door marketing representatives.

Limiting suppliers to a maximum of five municipalities statewide on each notification is too restrictive. Some suppliers, or their door-to-door marketing vendors, may have multiple offices in the Commonwealth and may be able to market in multiple regions at the same time. A five-municipality statewide limit could deny such suppliers the flexibility to adapt to changing conditions due to circumstances beyond their control, such as traffic delays, weather, or comparable unexpected events. For example, a supplier, or its marketing vendor, with offices in Fall River, Holyoke, Lowell, Lynn, and Pittsfield could notify the Department that it will be marketing in those municipalities. However, with a five-municipality statewide limit, it could not easily respond to changing conditions in one of these locations (e.g., a water main break)<sup>25</sup> by simply shifting its operations to another of these locations. For instance, it may not be practical to shift its Fall River operations to Lowell or Pittsfield. As consequence, a five-municipality

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<sup>23</sup> Memorandum, at 6.

<sup>24</sup> *Id.* at 7.

<sup>25</sup> Roads Reopen After Water Main Break in Boston Closes Part of I-93, <https://www.nbcboston.com/news/local/water-main-break-in-boston-closes-part-of-i-93-near-oneill-tunnel/2214158/> (Oct. 18, 2020; updated Oct. 19, 2020) (last visited Jan. 10, 2021); WCVB5, Water main break floods Fall River neighborhood streets, causing them to crumble, <https://www.wcvb.com/article/fall-river-new-years-day-water-main-break/30372266> (Jan. 1, 2020) (last visited Jan. 10, 2021).

statewide limit could frustrate reasonable efforts of suppliers to market in multiple geographic regions in the Commonwealth.

To mitigate against this potential impact, the Department should apply the five municipality limitation on a distribution company service territory basis. This approach will allow suppliers the flexibility to more easily modify their marketing plans due to events beyond their control. Further, a distribution company service territory approach is preferable to one that imposes a limitation on a vendor basis because it will not disadvantage suppliers that choose to conduct door-to-door sales with their own employees, rather than through vendors. It also will not disadvantage suppliers that choose to conduct their marketing through a single vendor, rather than multiple vendors. Thus, RESA encourages the Department to permit suppliers to identify up to five municipalities per distribution company service territory on each door-to-door marketing notice.

**C. Neighborhoods Of Municipalities Other Than Boston Should Not Be Counted Toward The Five Municipality Limit**

Each of the neighborhoods of the City of Boston listed on a door-to-door notification is counted toward the five municipality limit,<sup>26</sup> with the result that suppliers must identify specific neighborhoods in Boston in which they may be engaging in door-to-door marketing.<sup>27</sup> In the Memorandum, Staff proposed to treat the neighborhoods of the Cities of Springfield and Worcester similarly and to count them toward the five municipality limit for the purposes of the door-to-door notification requirement.<sup>28</sup>

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<sup>26</sup> See D.P.U. 19-07-A, at 23.

<sup>27</sup> See *id.*; Memorandum, at 4.

<sup>28</sup> See Memorandum, at 8.

Limiting suppliers to a maximum of five neighborhoods on each notification in municipalities other than Boston is inappropriate. Boston has a population that is significantly higher than other cities in the Commonwealth.<sup>29</sup> Staff attempts to address this by identifying larger “neighborhoods” in Springfield and Worcester for the purposes of the door-to-door marketing notification.<sup>30</sup> However, the “neighborhoods” identified for Springfield have populations that range from 24,143 to 36,226.<sup>31</sup> This is far smaller than the population in many Massachusetts municipalities<sup>32</sup> and in several Boston neighborhoods, such as Brighton (51,785), Dorchester (125,947), East Boston (46,655), and Roxbury (52,944).<sup>33</sup>

Moreover, neighborhood limitations in Springfield and Worcester would be inappropriate because the population density of those cities is significantly less than that of Boston. In fact, the population density in both Springfield and Worcester is less than forty percent (40%) of that of Boston.<sup>34</sup> As a consequence, suppliers conducting door-to-door marketing in Boston are able to visit far more potential customers in five

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<sup>29</sup> See, e.g., UMass Donahue Institute, Massachusetts Population Estimates Program, <http://www.donahue.umassp.edu/business-groups/economic-public-policy-research/massachusetts-population-estimates-program/population-estimates-by-massachusetts-geography/by-city-and-town> (last visited Jan. 10, 2021).

<sup>30</sup> See Memorandum, at 27.

<sup>31</sup> *Id.* at 28.

<sup>32</sup> See, e.g., UMass Donahue Institute, Massachusetts Population Estimates Program, <http://www.donahue.umassp.edu/business-groups/economic-public-policy-research/massachusetts-population-estimates-program/population-estimates-by-massachusetts-geography/by-city-and-town> (identifying Massachusetts cities and towns with populations in excess of 50,000) (last visited Jan. 10, 2021).

<sup>33</sup> Boston Neighborhood Demographics, 2013-2017, Analyze Boston, <https://data.boston.gov/dataset/neighborhood-demographics/resource/e684798f-e175-4ab1-8f70-ed80e4e260cc> (listing Boston neighborhood populations based on data from U.S. Census, 2013-2017 American Community Survey, BPDA Research Division Analysis) (last visited Jan. 10, 2021).

<sup>34</sup> See United States Census Bureau, Quick Facts, <https://www.census.gov/quickfacts> (showing, as of 2010, Boston’s population density as 12,792.7/sq. mi., Springfield’s population density as 4,803.4/sq. mi., and Worcester’s population density as 4,844.5/sq. mi.) (last visited Jan. 10, 2021).

neighborhoods in Boston than they would be able to visit in Springfield and Worcester in a single day if neighborhood limitations were applied in those cities as well. Thus, the Department should forgo further dividing the Cities of Springfield and Worcester into smaller “neighborhoods.”

If despite the foregoing, the Department still believes that Springfield and Worcester should be divided into “neighborhoods” for purposes of the five-municipality door-to-door marketing restriction, neither city should be divided into more than two “neighborhoods” and the boundaries of those neighborhoods should be clearly defined.<sup>35</sup> If Springfield were divided into two “neighborhoods” with the same population (i.e., 76,803),<sup>36</sup> each “neighborhood” would have a population similar to that of the City of Framingham.<sup>37</sup> Likewise, if Worcester were divided into two “neighborhoods” with the same population (i.e., 92,714),<sup>38</sup> each “neighborhood” would have a population similar to that of the City of Quincy.<sup>39</sup>

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<sup>35</sup> Marketing representatives will need to know the precise geographic boundaries of the neighborhoods in order to avoid inadvertently crossing a neighborhood boundary and marketing in a neighborhood that had not been disclosed. This can be accomplished through the creation of maps, like those in the Memorandum, that identify the precise geographic boundaries of each neighborhood.

<sup>36</sup> See United States Census Bureau, Quick Facts, Springfield city, Massachusetts, <https://www.census.gov/quickfacts/springfieldcitymassachusetts> (identifying the population in Springfield as of July 1, 2019 as 153,606) (last visited Jan. 10, 2021).

<sup>37</sup> See United States Census Bureau, Quick Facts, Framingham city, Massachusetts, <https://www.census.gov/quickfacts/fact/table/framinghamcitymassachusetts/PST045219> (identifying the population in Framingham as of July 1, 2019 as 74,416) (last visited Jan. 10, 2021).

<sup>38</sup> See United States Census Bureau, Quick Facts, Worcester city, Massachusetts, <https://www.census.gov/quickfacts/worcestercitymassachusetts> (identifying the population in Worcester as of July 1, 2019 as 185,428) (last visited Jan. 10, 2021).

<sup>39</sup> See United States Census Bureau, Quick Facts, Quincy city, Massachusetts, <https://www.census.gov/quickfacts/quincycitymassachusetts> (identifying the population in Quincy as of July 1, 2019 as 94,470) (last visited Jan. 10, 2021).

### **III. THE CONTRACT SUMMARY FORM SHOULD PRESENT KEY CONTRACT TERMS IN AN UNDERSTANDABLE AND TRUE SUMMARY FORMAT**

In D.P.U. 19-07-A, the Department required Competitive Entities to provide consumers, at the point of sale, with a contract summary form that includes certain specified information (“Contract Summary Form”).<sup>40</sup> In the Memorandum, Staff proposed two changes to the Contract Summary Form.<sup>41</sup> Both of these proposed changes would add more information to the Contract Summary Form.<sup>42</sup>

As a general matter, to be useful for customers, the Contract Summary Form should present only the key terms of the contract. This presentation should be concise. All of the key contract terms should be summarized on a single page.<sup>43</sup> If additional information is needed to explain a particular contractual provision, that explanation should be provided in the full terms of service. If too much information is provided on the Contract Summary Form, it will cease to be a true summary and will lose its effectiveness. For this reason, RESA urges Staff to revise the paragraph-length proposed text<sup>44</sup> to be shorter. To accomplish this, the Contract Summary Form need not present information in full paragraphs or sentences, as long as the information presented is clear.

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<sup>40</sup> See D.P.U. 19-07-A, at 39-50, Attachment E.1, Attachment E.2.

<sup>41</sup> See Memorandum, at 10-16.

<sup>42</sup> The first proposed change sets forth specific language to be used on the Contract Summary Form for (i) voluntary renewable products that include renewable resources located outside the New England region; (ii) voluntary renewable products for which all of the voluntary renewable resources are located within the New England region, but are not RPS Class I resources; and (iii) voluntary renewable products for which all of the voluntary renewable resources are located within the New England region and are RPS Class I resources. See Memorandum, at 12-13. The second proposed change addressed the presentation of the current basic service or default gas supply rate and would require that the Contract Summary Form (i) identify the current basic service or default gas supply rate, and the month through which the rate will be in effect; and (ii) identify the upcoming basic service or default gas supply rate (if known at time of enrollment), and the effective date and term of the new rate. See *id.* at 14-15.

<sup>43</sup> See Competitive Supplier Working Group Correspondence (Sep. 20, 2019), Appendix A (proposing a contract summary form contained on a single page).

<sup>44</sup> See Memorandum, at 12-13, 15.

For example, the Contract Summary Form could describe the location of the renewable resources used to support a product as follows: “Location of Clean Energy Resources: New England.”

Further, additional changes should be made to the proposed descriptions of voluntary renewable products. These descriptions refer to “premium resources,” which are defined as RPS Class I resources.<sup>45</sup> Describing RPS Class I resources as “premium resources” has the potential to lead to customer confusion. It possible that customers will not understand what “premium resources” are or will have difficulty determining what renewable energy resources qualify as “premium resources.” For example, simple internet searches for “ma premium renewable energy resources” do not produce a clear answer.<sup>46</sup> For this reason, the Contract Summary Form should simply refer to these resources as RPS Class I resources. Customers looking for more information about RPS Class I resources will be able to learn about these resources more readily. In fact, the first result of a Google search of “MA RPS Class I resources” is a list of resources from the

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<sup>45</sup> See Memorandum, at 12 n.25.

<sup>46</sup> See Google,

[https://www.google.com/search?rlz=1C1GCEB\\_enUS928US928&ei=fDP7X\\_HNB8qz5gLT\\_YSoBg&q=ma+premium+renewable+energy+resources&oq=ma+premium+renewable+energy+resources&gs\\_lcp=CgZwc3ktYWIQAzIFCCEQqwI6BAGAEec6BggAEAoQQzoLCC4QxwEQrweQkOI6BQgAEJECogQILhBDOgsILhCxAXDHARCjAjoICAAQsQMOgwE6BwguEEMQkwI6BAGAEEM6BQguELEDOgkIABDJAXAKEEM6DgguELEDEIMBEMcBEK8BOgUIABCxA1Ch1AJYjtgCYKjdAmgAcAJ4AIABuwGIAcEDkgEDMy4xmAEAoAEBoAECqgEHZ3dzLXdpsgBCMABAQ&sclient=psy-ab&ved=0ahUKEwjx--Ky7JHuAhXKmVkkHdM-AWUQ4dUDCA0&uact=5](https://www.google.com/search?rlz=1C1GCEB_enUS928US928&ei=fDP7X_HNB8qz5gLT_YSoBg&q=ma+premium+renewable+energy+resources&oq=ma+premium+renewable+energy+resources&gs_lcp=CgZwc3ktYWIQAzIFCCEQqwI6BAGAEec6BggAEAoQQzoLCC4QxwEQrweQkOI6BQgAEJECogQILhBDOgsILhCxAXDHARCjAjoICAAQsQMOgwE6BwguEEMQkwI6BAGAEEM6BQguELEDOgkIABDJAXAKEEM6DgguELEDEIMBEMcBEK8BOgUIABCxA1Ch1AJYjtgCYKjdAmgAcAJ4AIABuwGIAcEDkgEDMy4xmAEAoAEBoAECqgEHZ3dzLXdpsgBCMABAQ&sclient=psy-ab&ved=0ahUKEwjx--Ky7JHuAhXKmVkkHdM-AWUQ4dUDCA0&uact=5) (last visited Jan. 10, 2021); Microsoft Bing, [https://www.bing.com/search?q=ma+premium+renewable+energy+resources&qs=n&form=QBRE&msbrank=0\\_0\\_0&sp=-1&pq=ma+premium+renewable+energy+resources&sc=0-37&sk=&cvid=188AE1D1E3D743418024712C73AE5C91](https://www.bing.com/search?q=ma+premium+renewable+energy+resources&qs=n&form=QBRE&msbrank=0_0_0&sp=-1&pq=ma+premium+renewable+energy+resources&sc=0-37&sk=&cvid=188AE1D1E3D743418024712C73AE5C91) (last visited Jan. 10, 2021).

Program Summaries webpage on the Department of Energy Resources’ (“DOER”) website.<sup>47</sup>

To ensure the Contract Summary Form remains an effective tool, RESA encourages the Department to adopt these changes so that customers receive clear, concise summaries of important contract terms in understandable terms. For instance, for renewable energy content, the following could be used to disclose the key elements about the renewable content of a product offering:

<b>Renewable Energy Content</b>	This product [meets/exceeds] the required minimum of clean energy resources.
	Total Percentage and Type of Clean Energy Resources: [percentage] [RPS Class I/non-RPS Class I]
	Location of Clean Energy Resources: [New England/Outside New England]

#### **IV. THE PURPOSE OF PROVIDING DIRECT MAIL MARKETING MATERIALS TO THE ATTORNEY GENERAL IS UNCLEAR**

In D.P.U. 19-07-A, the Department adopted an initiative that requires Competitive Entities to submit their direct mail marketing materials to the Department for review.<sup>48</sup> In the Memorandum, Staff proposed that the Department include the Attorney General on the email that it sends to Competitive Entities informing them that they can proceed with using the marketing material.<sup>49</sup> However, because the material will already have been expressly approved by the Department, the purpose of providing this information to the Attorney General is not clear. Further, because RESA is not aware of any other

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<sup>47</sup> See Google, [https://www.google.com/search?q=ma+rps+class+i+resources&rlz=1C1GCEB\\_enUS928US928&oq=ma+rps+class+i+resources&aqs=chrome..69i57j69i64.3473j1j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=ma+rps+class+i+resources&rlz=1C1GCEB_enUS928US928&oq=ma+rps+class+i+resources&aqs=chrome..69i57j69i64.3473j1j4&sourceid=chrome&ie=UTF-8) (last visited Dec. 18, 2020).

<sup>48</sup> D.P.U. 19-07-A, at 60-64.

<sup>49</sup> See Memorandum, at 17.

restructured energy markets that have created comparable requirements for approved direct mail marketing material, it has not been able to infer the purpose of this proposal.

Is the Department simply providing the materials to the Attorney General so that she is aware that the materials exist and/or the Department has approved the materials? If so, the universe of materials will be incomplete because the Department may not affirmatively approve all of the materials submitted.<sup>50</sup>

Is the Department providing the materials to the Attorney General so that she can provide input on material that the Department has already authorized for use? If so, suppliers will be forced into a difficult position. First and foremost, if the Department and Attorney General provide conflicting feedback, how will such a conflict be resolved and how quickly? Second, will suppliers be permitted to proceed to use the materials based solely on the Department's approval or will they be required to await feedback from the Attorney General? Third, unlike the Department,<sup>51</sup> the Attorney General has not provided or agreed to any set deadline by which it would provide feedback on such materials. Thus, supplier marketing efforts could be significantly delayed and, depending on the nature of the offer, could lose their value proposition if too much time passes. For example, material designed around seasonal themes (such as winter heating or summer cooling) is most effective in advance of those seasons and would be decidedly less effective if approved once those seasons start. Given the foregoing, absent a compelling reason for doing so, the Department should not provide direct marketing materials to the Attorney General.

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<sup>50</sup> See D.P.U. 19-07-A, at 63 (“If the Department does not respond within ten business days of receiving a competitive supplier’s direct mail marketing material, the competitive supplier is permitted to use the material as submitted.”).

<sup>51</sup> See *id.*

## V. FURTHER INFORMATION IS NEEDED TO CHARACTERIZE NEW COMMERCIAL AND INDUSTRIAL CONSUMERS

Some of the initiatives adopted by the Department apply to both residential and small commercial and industrial (“C&I”) consumers.<sup>52</sup> However, pending further clarification of the definition of a small C&I consumer, the Department excluded small C&I consumers from the requirements of D.P.U. 19-07-A during initial implementation.<sup>53</sup> In the Memorandum, Staff proposed definitions for small C&I gas and electric consumers and how those definitions would be applied to consumers with multiple accounts.<sup>54</sup> RESA support those proposals.

The Memorandum also sought comment on how new gas or electric distribution customers for whom historical annual usage is not available should be treated for purposes of these definitions.<sup>55</sup> In order to assist stakeholders, including RESA, in providing meaningful feedback on this issue, the Department should require the distribution companies to explain how they determine the appropriate rate class to assign to commercial and industrial customers for whom they do not have historical usage. Once stakeholders have this information, they should then be given the opportunity to comment on whether that same process could/should be used for determining the applicability of the small C&I definition.

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<sup>52</sup> See Memorandum, at 18; D.P.U. 19-07-A, at 7.

<sup>53</sup> See Memorandum, at 18; Memorandum re Tier One Initiatives - Further Direction and Issues for Further Discussion (Jul. 17, 2020), at 2.

<sup>54</sup> See Memorandum, at 18.

<sup>55</sup> See *id.* at 19.

## **VI. THE DEPARTMENT SHOULD PROVIDE FOR ONGOING REVIEW OF THE WEBSITE**

Staff proposed updating the Website to display information related to the voluntary renewable energy content of all products that exceed the content required by the Commonwealth, irrespective of whether the product is composed entirely of RPS Class I resources.<sup>56</sup> RESA supports this proposal and encourages the Department to engage in periodic reviews of the Website.

The Website is an excellent tool that allows customers to explore electric supply offerings and to understand the options available to them in the competitive energy marketplace. However, it is also important to recognize that technological change and innovation affect website design and functionality generally. Similarly, the products and services provided in the competitive energy markets develop over time. To ensure that the Website keeps pace with this change, innovation, and development, the Department should establish a process for regular review and, as needed, update of the Website. To facilitate this review, RESA recommends that the Department create a working group that would meet periodically (e.g., semiannually) to review the Website and to consider potential updates or enhancements that will continue to ensure that it remains an effective tool for customers.

## **VII. RESA SUPPORTS THE DEPARTMENT'S OTHER PROPOSALS**

The Memorandum presented a proposal regarding the provision of recordings of telemarketing calls to the Department. Specifically, Staff proposed that suppliers be

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<sup>56</sup> See Memorandum, at 18.

required to submit recordings of telemarketing calls to the Department within three business days of the Department's request.<sup>57</sup> RESA supports this proposal.

Staff also proposed notifying Competitive Entities at specified intervals before the due date of license renewal applications and proposed enforcement mechanisms to address any failures to submit timely license renewal applications.<sup>58</sup> RESA supports these proposals and appreciates the Department taking into account its prior request for advance notification of license renewal deadlines.

In D.P.U. 14-140, *Investigation by the Department of Public Utilities on its own Motion into Initiatives to Improve the Retail Electric Competitive Supply Market*, the Department established rules for the assignment of customers between electric competitive suppliers.<sup>59</sup> Staff proposed to extend those rules to gas suppliers.<sup>60</sup> RESA supports this proposal.

## CONCLUSION

RESA appreciates the opportunity to offer these comments and looks forward to submitting additional comments and working with the other stakeholders as this proceeding continues to develop.

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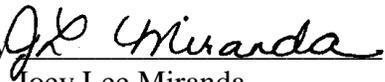
<sup>57</sup> See Memorandum, at 16.

<sup>58</sup> See *id.* at 20-21.

<sup>59</sup> D.P.U. 14-140, *Investigation by the Department of Public Utilities on its own Motion into Initiatives to Improve the Retail Electric Competitive Supply Market*, Order Establishing Reporting Requirements and Rules for the Assignment of Customers from one Competitive Supplier to another Competitive Supplier, D.P.U. 14-140-D (Sep. 16, 2016).

<sup>60</sup> See Memorandum, at 22.

Respectfully submitted,  
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