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Via Electronic Mail

April 2, 2020

Mark D. Marini, Secretary
Department of Public Utilities
One 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**

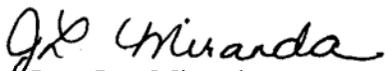
Dear Mr. Marini:

Attached please find the Retail Energy Supply Association's Comments Regarding Tier Two Initiatives in connection with the above-referenced proceeding.

In accordance with the Department of Public Utilities' March 12, 2020 Temporary Changes to Filing Requirements, the attached filing is only being submitted electronically at this time.

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

Sincerely,


Joey Lee Miranda

Attachment

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

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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	:	

RETAIL ENERGY SUPPLY ASSOCIATION’S COMMENTS
REGARDING TIER TWO INITIATIVES

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the request for comments on the Tier Two initiatives (“Tier Two Initiatives”) identified in the Department of Public Utilities’ (“Department”) February 5, 2020 Memorandum.²

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.”³ 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,”⁴ with three tiers: Tier One - initiatives

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 See Memorandum re Request for Comments (Feb. 5, 2020) (“Memorandum”).

³ Vote and Order Opening Investigation (Jan. 18, 2019), at 1.

⁴ Memorandum, at 1.

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.⁵

On February 5, 2020, the Department issued the Memorandum.⁶ In the Memorandum, Staff put forward proposals for Tier One Initiatives and Tier Two Initiatives, and a proposal regarding licensees that fail to submit timely license renewal applications.⁷ On March 5, 2020, RESA submitted comments on the Tier One Initiatives.⁸ RESA now hereby submits its comments on the Tier Two Initiatives.

COMMENTS

RESA supports the Department’s continued consideration of initiatives to improve the retail electric competitive supply market. In particular, RESA strongly supports the initiative to allow customers to exercise the right to choose who provides their electric supply with information that they have readily available. However, before adopting them in final, the Department should modify Staff’s third-party verification (“TPV”) and license renewal proposals. In addition, the Department should ensure that it provides an opportunity for full and robust stakeholder input on any proposals that would infringe on a customer’s right to choose.

I. “ENROLL WITH YOUR WALLET” WILL ENHANCE THE CUSTOMER EXPERIENCE

In the Memorandum, Staff requested “that the distribution companies work jointly to develop a process by which an ‘enroll with your wallet’ approach could be most effectively and

⁵ See Memorandum, at 1-2.

⁶ Memorandum.

⁷ See *id.* at 3.

⁸ Retail Energy Supply Association’s Comments Regarding Tier One Initiatives (Mar. 5, 2020).

efficiently implemented in Massachusetts, while considering the distribution companies' existing customer information systems and electronic business transaction infrastructure.”⁹ RESA supports these efforts and looks forward to working with Staff, the distribution companies and other stakeholders in developing this mechanism.

Enroll with your wallet would enhance the customer experience significantly.¹⁰ Currently, as the Department is aware, customers are required to have access to their utility account numbers in order to enroll with a supplier. Because account numbers appear on customers' bills, customers typically only have access to this information when they are at home. As a consequence, customers make enrollment decisions, and receive solicitations, only while at their homes.

If “Enroll With Your Wallet” were adopted, customers would be able to enroll with a supplier based on information that they have more readily available (e.g., last four digits of social security number, driver's license number, etc.). This would make it easier for customers to shop for electric supply, including at locations outside their homes, such as shopping mall kiosks. This would enhance the customer experience and could reduce the number of unplanned solicitations that customers receive at their homes. Thus, RESA supports the Department's further consideration and adoption of “Enroll With Your Wallet.”

II. THE DEPARTMENT SHOULD MODIFY THE STAFF'S TPV PROPOSAL

As part of the Tier Two Initiatives, Staff proposed to fundamentally alter the way that TPVs are conducted.¹¹ In particular, during the TPV process, customers would be required to affirmatively state the (1) price; (2) contract term; (3) early termination fees; (4) automatic

⁹ Memorandum, at 20.

¹⁰ See Supplier Working Group Enroll With Your Wallet Presentation (Nov. 1, 2019), at 1.

¹¹ See Memorandum, at 19.

renewals; and (5) renewable content.¹² As part of the TPV, customers would also be required to identify the name and telephone number that appears on the customer's caller identification ("Caller ID").¹³ While RESA understands Staff's desire to ensure customers understand the terms of their agreement and to protect against spoofing, both of these changes could unnecessarily cause otherwise valid enrollments to fail. This will cause customer frustration with the enrollment process and, perhaps, the retail competitive market generally.

A. The Verifier Should Confirm The Terms From The Contract Summary Form

Requiring customers to state affirmatively the information from the contract summary form during a TPV will unnecessarily lengthen the TPV process and cause otherwise valid enrollments to fail. Adoption of this proposal would convert the TPV process from a mechanism to demonstrate the customer's affirmative choice to switch suppliers¹⁴ to an oral examination about the details of the supplier's product offering. Thus, rather than requiring that customers parrot back the details of the product offered during the sales presentation, the Department should require that the TPV agent ("Verifier") repeat each of those elements and the customer indicate that (s)he either consents or does not to those terms.

The contract summary form will contain a significant amount of information, including: (1) price; (2) contract term; (3) early termination fees; (4) automatic renewals; and (5) renewable content.¹⁵ Although customers will likely recall the main elements of a product offering, they may not be able to repeat every detail verbatim. For example, a supplier may offer a supply price of 9.235 cents/kWh. However, during the TPV, a customer may only repeat one or two digits of

¹² See Memorandum, at 19, 19 n.25.

¹³ See *id.* at 19.

¹⁴ See 220 CMR 11.05(4)(c)(2).

¹⁵ See Memorandum, at 19 n.25, Attachment 2.

the price. Thus, when asked to repeat the price, the customer may simply say 9 cents or 9.2 cents. Similarly, a customer may recall that (s)he will receive a notice before his/her contract expires and that, if (s)he takes no action, the contract will be automatically renewed. However, the customer may not be able to repeat the exact timeframe in which (s)he will receive that notice (e.g., 30-60 days before contract expiration). Thus, if Staff's proposal is adopted, this customer's TPV may fail. As a consequence, the customer would not be enrolled in a product offering that (s)he had agreed to and understood. Furthermore, if the customer still wanted to enroll in this product offering, (s)he would need to re-engage with the marketing representative again to ensure (s)he could repeat back all of the details and then go through the TPV again. This process is not customer friendly and will only serve to frustrate customers.

The telemarketing call and TPV are already lengthy processes. Requiring that customers memorize or write down every detail about the product offering and be able to repeat it back verbatim to the Verifier will only serve to lengthen that process. For instance, in an attempt to ensure that the customer does not misstate any detail, the marketing representative may engage in a call and response on each detail of the contract summary form with the customer multiple times before transferring the customer to the TPV. For example, if the representative offers a price of 9.235 cents/kWh and asks the customer to repeat it back, the customer may say 9 cents. Since that is not the exact price, the marketing representative may then repeat the price, remind the customer that (s)he must provide the exact price and ask the customer to repeat it back again. If the customer then says 9.23 cents/kWh, because that is still not the exact price, the marketing representative may need to go through the process again and again until the customer repeats the exact detail. The marketing representative and customer would then need to repeat this process for every item on the contract summary form. Assuming a customer was willing to stay on the

telemarketing call for the entire time necessary to do this, the customer would then be transferred to the TPV and be required to repeat all of the same information in precise and complete detail in order to enroll. However, if the customer makes one misstatement or does not repeat the information in sufficient detail (e.g., 9.2 cents v. 9.235 cents, etc.) during the TPV, (s)he would have to go through the entire telemarketing and TPV process again until (s)he could get every detail correct. Even if the customer could successfully complete an oral-exam-type TPV, the customer may find the experience profoundly disagreeable and decide to forgo enrolling in a product offering that (s)he would otherwise find desirable.

Instead of subjecting customers to an oral-exam-type TPV, the Department could achieve the same objective of ensuring that customers fully understand the terms of any agreement, by requiring the Verifier to ask every customer to affirm his/her consent to each element of the contract summary form. Under this process, the Verifier would individually state each item from offer that would appear on the contract summary form and ask the customer to indicate whether (s)he affirmatively accepts each one. This approach would ensure that the customer understands the key elements of the offer without making the telemarketing and/or TPV process unnecessarily lengthy or difficult.

In addition, if the Department wishes to enhance the verification of customer enrollments, it could expand the use of TPVs to door-to-door enrollments. Currently, the customer's affirmative choice to enroll with a supplier can be evidenced by the customer's execution of a letter of authorization or a TPV.¹⁶ Because customers are readily available and able to execute letters of authorization during a door-to-door transaction, customers are not required to authorize those enrollments by TPV. To ensure that door-to-door customers understand all of the key terms

¹⁶ See 220 CMR 11.05(4)(c).

of any product offering, the Department could also require a TPV that confirms the customer's consent to the elements of the offer that would be included in the contract summary form for door-to-door enrollments.

B. The Department Should Not Use TPVs As A Means To Combat Spoofing

RESA appreciates Staff's interest in protecting customers against "spoofing." However, requiring that customers provide the name and telephone number that appears on their caller identification ("Caller ID") during the TPV¹⁷ may not achieve this goal and could unnecessarily cause otherwise proper enrollments to fail.

RESA understands "spoofing" to mean the deliberate transmission of false information to a customer's Caller ID to deceive the customer about the identity of the entity calling. Thus, fundamentally, spoofing is a problem that only can affect customers who have Caller ID. While the vast majority of customers may have Caller ID, some may not. A customer who does not have Caller ID simply could not, in a TPV, convey the telephone number and name that appeared on his/her Caller ID during a telesales call. As a consequence, under Staff's proposal, the TPV would fail and the customer would not be able to enroll in *any* product offering from a supplier.

Moreover, while suppliers (and their marketing representatives) can control what it is *transmitted* to Caller ID, they are not able to control the message *displayed* by the local telephone service provider on the customer's Caller ID. There may be several reasons for this, including but not limited to, the local telephone service provider may not be using an updated database of third-party telephone record information and/or the information contained in that third-party database may be incorrect. Thus, despite reasonable efforts made by suppliers to provide accurate information, the local telephone service provider may not actually display the correct information on the customer's Caller ID. As a consequence, when the customer states the

¹⁷ Memorandum, at 19.

name and telephone number displayed on his/her Caller ID to the Verifier, it may not match the information that the supplier (or its marketing representatives) transmitted. As a consequence, under the Staff's proposal, the TPV would fail and the customer would not be able to enroll in a product offering that (s)he agreed to and fully understood. Thus, the Department should forgo adopting Staff's proposal and rely on other processes to ensure that customers are fully informed and understand with whom they are interacting (e.g., requiring certain disclosures during the marketing presentation, requiring that the TPV confirm the key elements of the offer, etc.).

III. THE DEPARTMENT SHOULD MODIFY STAFF'S LICENSE RENEWAL PROCESS PROPOSAL

In the Memorandum, Staff proposed a process for addressing a competitive supplier's failure to timely submit a license renewal application.¹⁸ RESA generally supports efforts to ensure suppliers timely comply with their obligations. However, the Department should ensure that suppliers are afforded notice before taking any action that would impact a supplier's ability to enroll or serve customers.

Pursuant to Staff's proposal, if a supplier fails to submit a renewal license application within thirty (30) days of the due date, the Department would suspend the supplier's ability to sign up new customers.¹⁹ If the supplier submits its renewal application within ninety (90) days, the suspension would be lifted.²⁰ If not, the Department could take further licensure action.²¹ However, the Department should not suspend a supplier's ability to enroll customers without notice.

¹⁸ Memorandum, at 21.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

Enrolling customers is a significant part of a supplier's business. Depriving a supplier of this ability when, in most cases, the supplier likely inadvertently overlooked the license renewal deadline is unduly severe. By providing notice that the supplier has missed the license renewal deadline, the Department can ensure that mere inattention to the deadline does not result in such draconian consequences.

Moreover, without notice that the Department intends to suspend or, worse yet, has already suspended a supplier's ability to enroll new customers, suppliers could continue to enroll customers during the suspension. If a supplier inadvertently missed the deadline for submitting the renewal application, it is likely because the supplier did not realize the deadline had passed. If the supplier does not realize the license renewal deadline has passed, it also may not realize that thirty (30) days have passed since that deadline. As a consequence, the supplier further will not realize that its ability to enroll new customers has been suspended. Thus, the supplier would mistakenly continue to enroll new customers despite such a suspension.

To avoid this, the Department should modify Staff's proposal to require that Staff provide notice to any supplier who has not submitted its license renewal application within fifteen (15) days after the renewal deadline that the supplier will no longer be able to enroll new customers if it does not submit a renewal application within thirty (30) days from the date of the notice. If the supplier does not submit its renewal application within that timeframe, the Department would then suspend the supplier's ability to enroll new customers. By requiring this notice, the Department could ensure that suppliers are provided notice of the potential suspension and are afforded an opportunity to cure the issue before they are deprived of their ability to enroll new customers. In fact, by providing notice to a supplier that it has not submitted a license renewal application by the deadline, the Department actually could encourage the prompt submission of

license renewal applications without the need to monitor and enforce potentially unnecessary suspensions of supplier enrollment activities.

IV. FUTURE INITIATIVES

The Memorandum also mentions other initiatives that Staff is considering potential supplier pricing limitations.²² However, Staff intends to discuss these potential limitations “individually with competitive suppliers based on the information provided through the competitive supplier . . . reports”²³ It is RESA’s understanding that these proposals may include limitations on the prices that suppliers may be able to charge to low-income and/or automatically renewed customers, including potentially capping prices at the Basic Service rate.²⁴ Before adopting any proposal that would limit supplier pricing, the Department should provide a robust opportunity for stakeholder input on the implications of any such proposal.

Importantly, Basic Service is not well-equipped to serve as a benchmark for supplier pricing. In fact, a limitation that supplier prices may not exceed the applicable the Basic Service rate will deprive customers of the ability to shop for products they need and/or desire. For example, in order to have as much budget certainty as possible, customers may want fixed price contracts with terms that extend beyond the current Basic Service rate period. However, because those types of product offerings require additional hedging, they usually cost more. As a consequence, if pricing limitations are imposed for certain customers, those customers may no longer be able to take advantage of such a product offering if the price would exceed the Basic Service rate. Similarly, if low-income or automatically renewed customers wanted to purchase products that had a higher renewable content than Basic Service, because such power usually

²² See Memorandum, at 20-21.

²³ *Id.* at 20, 21.

²⁴ See *id.* at 20-21; see also Staff Technical Session Presentation (Nov. 1, 2019), at Slides 32-33.

costs more, they would not be able to do so if suppliers could not charge a price higher than the Basic Service rate. Since capping supplier prices would infringe on customer choice, the Department should ensure that it provides a full and robust opportunity for stakeholder input on any such proposals.

CONCLUSION

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

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

By 

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