COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

INVESTIGATION BY THE DEPARTMENT OF PUBLIC UTILITIES ON ITS OWN MOTION INTO THE PROVISION OF BASIC SERVICE	)	D.P.U. 23-50

INITIAL COMMENTS OF NRG RETAIL COMPANIES

Direct Energy Business, LLC; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Green Mountain Energy Company, Inc.; NRG Home f/k/a Reliant Energy Northeast LLC; XOOM Energy Massachusetts, LLC (collectively, "NRG" or "NRG Retail Companies ")[1] hereby submit its initial comments in response to the Department of Public Utilities' ("Department" or "DPU") January 4, 2023 Vote and Order Opening Investigation in D.P.U. 23-50 ("Order" or "D.P.U. 23-50") in the above-captioned proceeding.

EXECUTIVE SUMMARY

The NRG Retail Companies appreciate the opportunity to provide comments regarding the Department's proposals regarding the procurement and pricing of basic service. In these Initial Comments, the NRG Retail Companies make it clear that the current process requiring wholesale suppliers to offer full requirements service ("FRS") to serve basic service customers correctly places certain risks, which are inherent in the power business, on suppliers rather than customers. The Department's proposals in this docket could inappropriately shift that risk to all

[1] NRG Energy, Inc. is a leading, integrated energy and home services company in North America. A publicly traded, Fortune 500 company, NRG's retail brand affiliates maintained one of the largest combined competitive retail energy portfolios serving millions residential, small commercial and large commercial & industrial customers.

distribution customers, and also would operate to flatten or mask accurate price signals in a manner that will discourage customers from participating in conservation and other demand-size measures. The Commission should largely move beyond the proposals in this phase of this proceeding, and instead focus on Phase II, which would be targeted at "providing customers with the opportunity to respond to the actual varying costs of electricity." D.P.U. 23-50, at 18.

The Department's proposals also fail to acknowledge the pivotal role that individual competitive supply and municipal aggregation alternatives can play in addressing increased basic service rates due to procurements with poor bidder response, particularly when volatile economic conditions and high commodity prices are present. Based on analysis provided in these comments, basic service customers in the National Grid service territory alone could have saved more than $329 million if they had shopped for an alternative supplier. Similarly, more timely Department review and approval of proposed municipal aggregation plans would provide an opportunity for savings to customers and remove some of the uncertainty that increases the risk premium in wholesale suppliers' full requirements proposals for Basic Service.

The NRG Retail Companies address the Department's specific proposals in these initial comments.

BACKGROUND

On January 4, 2023, the Department issued an Order opening an investigation into the provision of default service (known as Basic Service in Massachusetts). This investigation will consider proposals for modifications to the Commonwealth's electric distribution companies' ("EDCs") existing Basic Service procurement and pricing policies that focus on (1) alleviating the burdensome regulatory process that has resulted from recent failed Basic Service

solicitations; and (2) lessening the differences in Basic Service rates between fixed-rate periods and across the electric distribution companies. D.P.U. 23-50, at 17-18.

The Department requests comments on six different elements of its proposal: (1) the criteria to be used to determine a failed solicitation; (2) alternative procurement strategies; (3) alternative pricing strategies; (4) reconciliation of basic service under- and over-recoveries; (5) regulatory process; and (6) basic service fixed-rate periods and procurement periods. NRG addresses each of these in turn, following introductory comments.

COMMENTS

Basic Service supply solicitations during the past year have led to record high rates, which are a reflection of two things. First, abnormally high prices in the wholesale electricity market have been driven by the underlying cost of fuel. Second, the basic service rate naturally incorporates a risk premium, entailing the volume and price uncertainty associated with a supplier's making good on its promise to offer FRS. In providing FRS, the suppliers of basic service provide energy at a stated rate to an unknown quantity of customers at an unknown volume of total consumption. The full-requirements structure of Massachusetts' procurement process correctly places these risks, which are inherent in the power business, onto suppliers rather than customers.

The Department's proposal in this proceeding would open the door to shifting more of these risks to customers, if FRS is not the universal rule and EDCs are allowed to break the contemporaneous match of rates to the provision of service and instead shift the recoupment of the costs of supplying basic service from one period to future periods. This would necessarily occur if a FRS procurement were judged to have "failed" and EDCs instead are permitted to "self-supply." In this situation, customers would face a potential surcharge if the cost of supply

ultimately exceeds expectations. Worse, the Department appears to suggest that the reconciliation of possible under-recoveries should be recouped not just from basic service customers—but from *all* customers, including those who struck a bargain with third-party suppliers who *did* offer a fixed-rate guarantee to customers – either via a direct arrangement with a competitive supplier or through a DPU-approved municipal aggregation plan. Such an outcome would make chumps out of those customers who prudently locked in a rate for supply in advance of a winter where the markets were volatile, but who then would be forced to pay *other customers'* energy costs in addition to paying the rate they willingly bargained for (presumably including a risk premium associated with their supplier accepting the risk in question). The proposal is thus unfair to shopping customers, and it would also create a marketplace with a glaring asymmetry, where one segment of residential customers could be served by suppliers who did not bear the fundamental risks of this industry, while the other segment of customers were served by suppliers who did. Such an approach is incompatible with a competitive retail market and the statutory intent of the Restructuring Act.

The Department also proposes to break the winter pricing of basic service into two periods: (1) February through July, and (2) August through January. This is another bad idea, as this proposal does not reduce costs to consumers—it hides the ball from them. As the NRG Retail Companies note herein, Massachusetts' basic service customers should receive a price signal that clearly and unambiguously indicates the region's extraordinary reliance on natural gas and even oil during certain hours of the winter - encouraging demand flexibility, investments in energy efficiency, and prudent shopping. The Department's proposed regulatory intervention here would move in precisely the opposite direction, even while the Department itself suggests that the *right* direction is one where "existing procurement and pricing policies can be modified

to improve the accuracy of the price signals sent to basic service customers regarding the underlying cost of electricity."[2]

Fortunately, competitive electricity suppliers provide a viable alternative to utility basic service, including and perhaps especially at times like these. Regrettably, the instant Order never mentions the pivotal role that individual competitive supply and municipal aggregation alternatives can play in addressing increased utility basic-service rates due to procurements with poor bidder response—particularly when volatile economic conditions and high commodity prices are present.

At this very moment, the NRG Retail Companies, including Direct Energy and Green Mountain Energy, offer Massachusetts residential customers a fixed-price rate plan that is 100% renewable energy with no early termination penalty (meaning that the customer is not bound to the contract and with proper notice can de-enroll from supply service) that can save between 51% and 36% respectively in the National Grid and Eversource service territories.[3] Right now, Massachusetts electric customers may log onto the Department's Energy Switch Massachusetts shopping website[4], sign up, and begin saving on their energy bills this winter. Massachusetts electricity consumers need only to examine the Energy Switch website to learn that in the Eversource East (Metro Boston) service territory, 29 out of 30 posted residential competitive rate

[2] As the Department states in full, this is a policy goal to be pursued only in a second phase of this docket, apparently after this phase has moved basic service policy in the completely opposite direction. "In a second phase of this investigation, the Department will examine ways in which the existing basic service procurement and pricing policies can be modified to improve the accuracy of the price signals sent to basic service customers regarding the underlying cost of electricity, consistent with the Department's Orders in New Technologies and Advanced Metering Infrastructure Proposals." D.P.U. 23-50, at 18.

[3] Applicable rate plan offers as of February 6, 2023. *See* Applicable screen shots from the MA DPU Energy Switch website – for National Grid (Attachment A) and for Eversource East (Attachment B.)

[4] https://www.energyswitchma.gov/#/

plan offers beat the Eversource Basic Service rate of 25.776 cents/kWh.[5] The average of these competitive rate plan offers is 17.552 cents/kWh, which equates to an 8.224 cent/kWh, or approximately 32% savings, compared to the current basic service rate. Similarly, in the National Grid service territory, 32 out of 32 posted residential competitive rate plan offers beat the National Grid Basic Service rate of 33.891 cents/kWh.[6] The average of these competitive rate plan offers is 18.658 cents/kWh which equates to a 15.233 cent/kWh or an approximately 45% savings compared to the current basic service rate.

Taking only the National Grid service territory, in the Company's basic service filing, it projected that approximately 49 percent of its residential customers, using a projected 2.2 billion kWh, would be served under basic service this winter. If those numbers held, then those customers will be paying a cumulative total of $329 million more this winter than they would have, had they shopped and entered into a contract with an average (not even the least expensive) retail offering available. These additional costs are attributable just to residential customers in National Grid service territory. If one were to include Eversource and Unitil in the analysis, it is reasonable to expect that consumers paid the better part of a billion dollars more than they should have, because a large number of customers regrettably did not shop heading into this winter. That is an unfortunate outcome and the omission of any discussion of this from the Order is striking.

The presence of this robust competitive market should obviate the need for the DPU's proposals in this phase of the basic service investigation almost in its entirety. Instead, the Department, the Healey-Driscoll Administration, the Attorney General and non-governmental

[5] Applicable rate plan offers as of February 6, 2023.
[6] Applicable rate plan offers as of February 6, 2023.

stakeholders should take this opportunity to empower customers by urging them to shop for an alternative energy supplier as an adequate protection against rising basic-service rates, and the Department should consider how to amplify customers' options during times of price volatility. Meanwhile, the Department should focus its basic service reforms on ensuring that the basic service rate is actually reflective of the wholesale market, including by having a time-varying component—something which the Department has relegated to a second phase of this docket.

I. Criteria for Failed Solicitation

EDCs must use a competitive bidding process to procure default service consistent with state law.[7] This statute also provides that "the default service rate shall not exceed the average monthly market price of electricity and all bids shall include payment options with rates that remain uniform for periods of up to six months."[8] Default service (now basic service) prices should include all costs of providing default service in order to allow competitive suppliers a fair and reasonable opportunity to compete for default service customers.[9]

NRG believes FRS coheres to these requirements in a way that a basic service whose costs are collected or rebated in arrears inherently does not. Basic service should represent prevailing energy prices that have resulted from global events, regional gas capacity constraints, state regulatory policies, and the risk premium associated with the uncertainties of offering FRS in the context of these other factors. Therefore, for a procurement to be judged to have "failed" merely because the price appears too high should be disfavored as an approach, unless there is clear and convincing evidence of it.

[7] G.L. c. 164, Sec. 1B(d)
[8] *Id.*
[9] D.T.E. 02-40-B, at 14

The Department proposes that a procurement should be judged to have "failed" if the offered per-MWh price exceeds a benchmark calculated by the EDC, based on the NYMEX futures energy prices on the day prior to the day the EDC receives final bids, plus the EDCs' projections of other supply costs (such as capacity), plus a certain and yet-to-be-defined adder that is presumably intended to represent the risk premium associated with the volume risk described in the introduction to these comments. The Department suggests that a 20 percent risk premium might be an acceptable figure. D.P.U. 23-50, at 20. However, NRG notes that for energy pricing alone—not including volume risk—the forward strip for a particular month can demonstrate changes well in excess of 20 percent. For example, trading for the February 2023 round-the-clock energy strip vacillated between $308 per MWh (if it were purchased on Dec. 1, 2022) and $88 per MWh (if it were purchased on Jan. 31, 2023).[10] Other years could trade in the opposite direction if predicted supply and weather conditions suddenly worsened. If energy-pricing risk is in some sense a contributory factor to volume risk—and, indeed, it is, since additional volumes are required to be sold under the fixed-price FRS construct when severe weather drives up both demand and prices—then a 20 percent adder likely is an inadequate representation of the plausible risk of a FRS wholesale supplier of basic service, when the underlying energy-price risk demonstrates that a 300 percent spread in energy pricing for the same period is possible in as short a period of time as 60 days. Whatever figure the Department selects, this adder in essence is the key variable in any eventual determination that a procurement had "failed" because price offers for FRS were too high. This adder should be calculated on some reasonable basis. Meanwhile, the Department should again be cognizant that if it refuses to

[10] This information is sourced from data housed in NRG's Aligne risk system, which NRG uses for reporting its positions and evaluating new proposals in its own procurements.

accept the market-based price offer containing this risk, it is not *eliminating* the risk—it is merely shifting it to consumers.

The Department does possess some ability to make elements of the risk inherent in FRS more predictable. Apart from the volume uncertainty driven by weather's effects on demand, load migration is a consideration; that is, how many customers (and associated volumes) will take basic service. The Department could take steps of its own to institute greater certainty around this key variable. Presently, the Department has pending before it numerous petitions for approval of municipal aggregation plans, many of which have been pending for more than a year. Indeed, in recent years, it is uncommon for a municipal aggregation plan to be approved in less than a year, and in many cases, approval can take longer than two years. Whether or not a municipal aggregation is implemented during the tenor of a basic service is a major concern weighing on volume uncertainty.[11] The Department should impose a "shot clock" on itself for the approval (or rejection) of these municipal aggregation plans, which would then allow FRS bidders for basic service to know when, if approved, these aggregations would take effect.

Finally, to the extent a procurement has genuinely failed, because the EDC has received no bids, then the procurement should be reconducted for an abbreviated period, closer in time forward to the window of FRS obligation (e.g., conducting a 100% procurement for each month of the six-month window two to four weeks ahead of the month). For the reasons expressed herein, only if each alternative approach to obtaining bids fails should an EDC be allowed to

[11] Indeed, "the uncertainty associated with the City of Fitchburg's municipal aggregation program" was a significant factor in the Department's decision to allow Unitil to deviate from standard FRS procurement and pricing and instead charge a below-market Basic Service rate with unrecovered costs collected later from all distribution customers. *See Fitchburg Gas and Electric Light Company d/b/a Unitil*, Order on Mitigating the Impact of the Increase of Standard Basic Service Rates of Fitchburg Gas and Electric Light Company, D.P.U. 21-BSF-A4 (2021) at 12, 16.

self-supply. Similarly, any other procurement and pricing strategy that involves ultimate reconciliations and rate true-ups should only be contemplated as truly a last resort.

II. Alternative Procurement Strategies

NRG supports any procurement strategy whereby successive attempts are made to supply FRS so that utility "self-supply" can be avoided, as described in the previous section and for the reasons articulated in the introduction to these comments. Accordingly, while NRG generally supports the Department's proposal in this regard, it should not countenance any resort to self-supply except as a true last resort.

III. Alternative Pricing Strategies

NRG strongly agrees with the Department that, "Providing customers with the opportunity to respond to the actual varying costs of electricity will allow them to reduce their electric bills by reducing their usage during hours in which electricity prices are highest." D.P.U. 23-50, at 18-19. For that reason, NRG believes that this discussion should be front and center of this proceeding, and not relegated to a second phase—especially where the first phase of this docket appears all to be focused on proposals that may dilute accurate retail price signals and, in effect, concealing (rather than minimizing) costs associated with high winter-time prices.

By flattening the basic service price, rather than allowing it to reflect the wholesale price volatility, the Department is foregoing one powerful tool it has to actually discipline costs in the marketplace, which is the activation of demand in response to prices. To the extent it is in the Department's discretion to determine how to express prices to the demand side of the retail market for basic service, decisions on rate design and pricing of basic service will either encourage or discourage demand-side participation and conservation in the marketplace. The Department's proposal here tends to fall on the side of *discouraging* demand-side participation

by attempting to flatten and mask the actual price signal. Instead, the Department should be attempting to reflect in basic service pricing the time-contingent nature of wholesale costs to encourage consumers to avoid the use of the expensive fuels that have driven wholesale and basic service costs to record levels.

The Department's recent approval of the EDCs' Grid Modernization Plans[12] and the anticipated deployment of Advanced Metering Infrastructure ("AMI") technology means that Bay Staters can expect to see full deployment of AMI by mid-decade. With AMI, there is no hardware technology barrier to TVR rates. Across the United States, smart meters are well on their way to ubiquitous deployment, with 75 percent of U.S. households estimated to have a smart meter, and 115 million of them deployed in 2021, growing to 124 million in 2022.[13] A 93 percent deployment rate is projected by the end of this decade. Meanwhile, a half-dozen jurisdictions have adopted TOU/TVR rates as the default rate design for the residential and small-commercial customer class, and this rate design is empirically demonstrated to result in substantial response and customer savings.[14]

In NRG's view, the basic service rate should be a time-varying rate that reflects both the typical trends of intra-day wholesale costs and also the inflection points, like certain days this past winter, when a wholesale marketplace is especially reliant on high-cost fuels or performing under tight supply conditions. These considerations are especially profound for New England, where oil made up 11.3 percent of the fuel mix in ISO-New England in January 2022, almost ten

[12] *NSTAR Electric Company/Massachusetts Electric Company and Nantucket Electric Company/Fitchburg Gas and Electric Light Company*, D.P.U. 21-80-B/21-81-B/21-82-B, Order on New Technologies and Advanced Metering Infrastructure Proposals (November 30, 2022) ("2022 Grid Modernization Order").
[13] Travis Kavulla, "Why Is the Smart Grid So Dumb? Missing Incentives in Regulatory Policy for an Active Demand Side in the Electricity Sector," Energy Systems Integration Group (January 2023), at 5. https://www.esig.energy/missing-incentives-in-regulatory-policy-for-active-demand-side/
[14] *Id*, at 9-11.

times what it did on average throughout that year. There is reason to believe that Winter 2022-2023 saw this statistic, and concomitant pricing, arise even more profoundly. While basic service should not be a mirror to real-time wholesale pricing, it should generally be reflective of these trends. A TOU/TVR rate structure, incorporating a critical-peak-price component, is a crucial step for basic service in that regard.[15]

In its 2022 Grid Modernization Order, the Department required the EDCs to convene and facilitate an AMI Stakeholder Group to discuss certain issues related to implementation of their respective AMI implementation plans. Specifically, the Department directed the AMI Stakeholder Group to focus on: (1) customer and third-party access to customer usage data; (2) customer education and engagement; (3) billing of TVR offered by competitive suppliers; and (4) AMI deployment strategies that may expedite the ability for competitive suppliers to offer TVR products. 2022 Grid Modernization Order at 327. Within the context of the AMI Stakeholder Group which commenced on February 1, 2023, and is expected to continue through August 1, 2024, the NRG Retail Companies believe it is entirely appropriate to expand the scope of the Stakeholder Group to develop a TOU/TVR procurement and pricing approach for basic service.

IV. Reconciliation of Basic Service Under- and Over-Recoveries

The NRG Retail Companies urge the Department not to deviate from the Department-approved and customary basic service procurement practices by allowing the EDCs to utilize a self-supply mechanism. However, in the event that EDCs are permitted to self-supply a portion of their load, any over- or under-recovery should be exclusively priced into the costs of basic

[15] NRG recommended terming this to convey the environmental as well as price significance of such a day, such as an "Oil Peak Day."

service, and not spread across all distribution ratepayers, notwithstanding instances to the contrary. D.P.U. 23-50, at 7-8. Simply put, allocating costs related to energy supply under basic service to customers who have elected to receive energy through another provider is grossly unfair to shopping customers. To that end, if procurements do not succeed in selecting sufficient suppliers for FRS in the ordinary course of business, then the ratemaking associated with basic service should be modified in order to more closely track over- and under-collections, collecting each month's deferral in the succeeding month of basic service. While not ideal, this would present the method likeliest to ensure the customers receiving basic service paid for its associated cost on as contemporaneous a basis as possible, while avoiding a broad-based allocation to distribution customers that punishes customers for having prudently locked in a rate when EDC-offered basic service itself conspicuously failed to do so.

V. Regulatory Process

To the extent possible, the NRG Retail Companies urge the Department to provide an adequate transition interval for retailers to update any customer-facing marketing materials and communication outreach, when basic service solicitations fail. For example, NRG and other competitive suppliers engage in marketing campaigns with direct-mail materials that have been approved by the Department, reflecting a price comparison to the existing utility Basic Service rate period, and these competitive suppliers require time to make appropriate revisions. Consequently, in not providing an adequate transition period, the Department risks the potential of creating customer confusion and retail market disruption.

VI. Basic Service Fixed-Rate Periods and Procurement Periods

The Department has set forth a plan to have each EDC include the monthly Basic Service rates for January and February in separate fixed-rate periods in order to minimize the significant

changes in Basic Service rates that customers currently experience between periods. Consistent with this goal, the Department proposes that each distribution company adopt the following six-month fixed-rate periods for residential and small commercial customers: (1) February through July and (2) August though January. For large C&I customers, the Department proposes that each distribution company adopt the following three-month fixed-rate periods: (1) February through April; (2) May through July; (3) August through October; and (4) November through January. D.P.U. 23-50, at 26.

As described in the introduction to our comments, splitting up January and February into separate fixed-rate periods merely hides costs, diluting the customer-facing price signal. It may also *increase* the risk premium associated with FRS offers, thus increasing costs overall. The Department should not adopt this approach.

Meanwhile, it may be reasonable to place all the EDCs on the same basic service procurement schedule. This would allow consumer education campaigns in a particular media market to use information relevant to all electric-utility customers. At the same time as the Department adopts any adjustment to have uniform timing of these fixed-rate periods, the Department also should incorporate plans for an educational campaign to inform customers of their rights and opportunities to shop for an alternative supplier, since it is the choice to shop that ultimately may serve to best protect customers against basic service rates that may appear unfavorable. To better assist residential and small commercial customers avoid the price shock impact of utility basic service, especially during highly volatile periods like we are currently experiencing, a concerted consumer outreach initiative should be implemented. This outreach

would be conducted during the "shoulder periods"[16] in advance of high energy demand periods in the winter and summer. The NRG retail brand affiliates have been market leaders regarding customer outreach that is designed to help their customers obtain the best rate plan offer to meet their needs. As such, it may make sense to adopt National Grid's November through April and May through October fixed-rate periods as the standard for all EDCs, since these periods commence at or around the shoulder season (rather than in January, as with Eversource, or in December, as with Unitil).

CONCLUSION

NRG appreciates the opportunity to provide comments in this proceeding and looks forward to participating further in any manner allowed by the Department.

Respectfully Submitted,

NRG RETAIL COMPANIES

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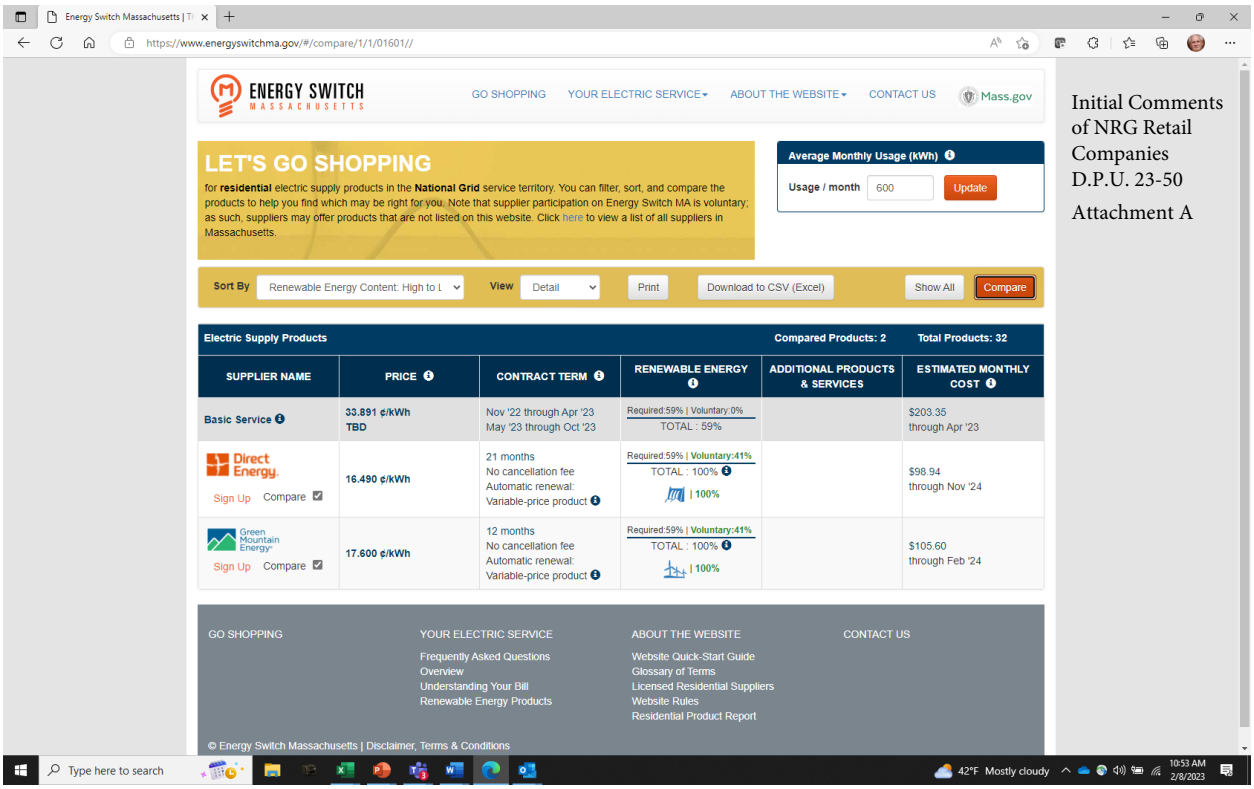
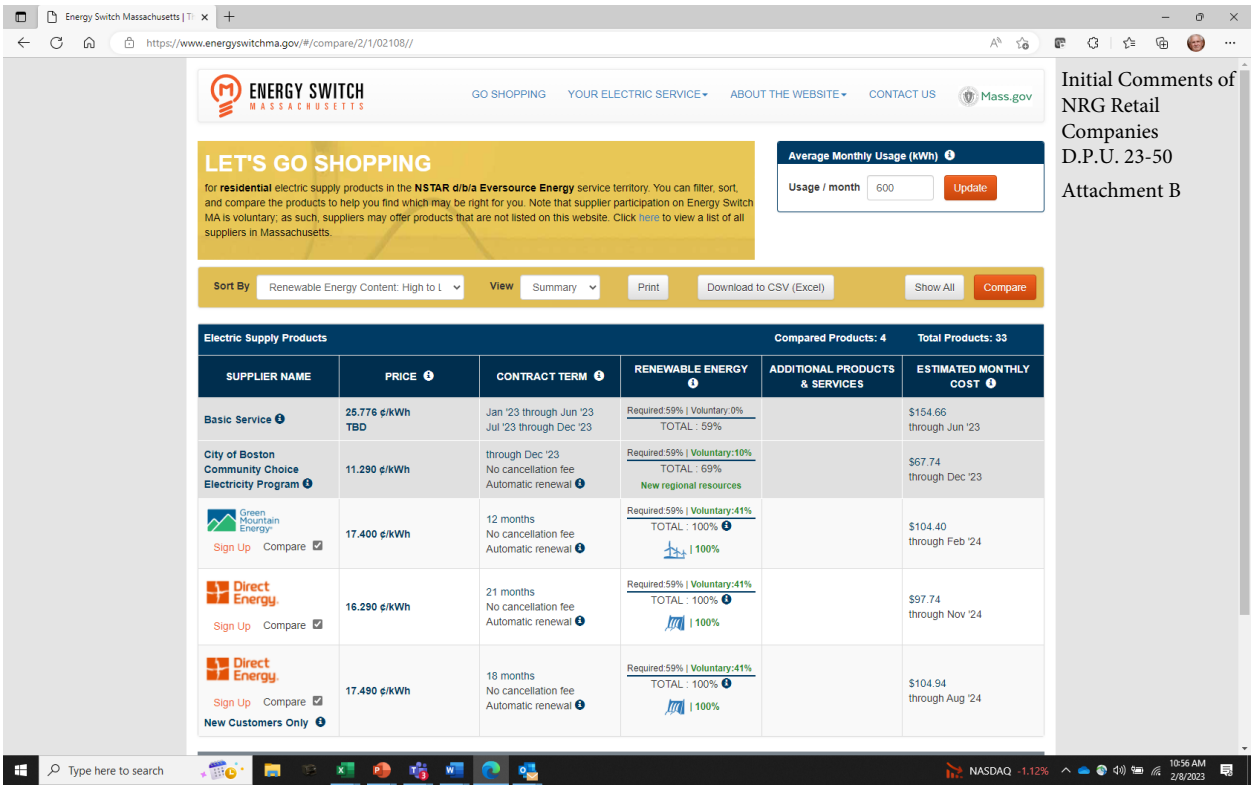
[16] Typically noted as September and October and April and May.



Initial Comments of NRG Retail Companies
D.P.U. 23-50
Attachment A



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Attachment B