The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 25-138 September 15, 2025

CleanChoice Energy, Inc.
Notice of Probable Violation

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I. INTRODUCTION

CleanChoice Energy, Inc. ("CleanChoice" or "Respondent") is a competitive supplier licensed by the Department of Public Utilities ("Department") to sell electricity to retail customers in the Commonwealth of Massachusetts. G.L. c. 164, § 1F(1); 220 CMR 11.02, 11.05. In my capacity as Delegated Commissioner, pursuant to the Department's Competitive Supply Interim Guidelines, D.P.U. 16-156-A (2017) ("Guidelines"), I issue this Notice of Probable Violation ("NOPV") for the purpose of initiating a formal proceeding regarding the business practices of CleanChoice.[1]

During the period April 2022 through April 2024, the Department's Consumer Division ("Consumer Division") received complaints from 66 electricity customers, served by CleanChoice in the Commonwealth, regarding a range of problematic business practices. Prompted by these complaints, the Department's Prosecuting Officer[2] issued to CleanChoice five sets of information requests.[3] Based on the complaints and CleanChoice's response to the information requests, I identify problematic business practices that CleanChoice employed in marketing electric supply service to residents of the Commonwealth. Specifically, CleanChoice's conduct (1) precluded customers from affirmatively choosing CleanChoice as their electricity supplier and (2) constituted egregious misconduct and a pattern of misconduct in violation of the applicable provisions of G.L. c. 164, §§ 1A through 1F; 220 CMR 11.00; Investigation into Initiatives to Promote and Protect Consumer Interests in the Retail Competitive Supply Market, Order on Tier One Initiatives, D.P.U. 19-07-A (2020); Mega Energy of New England, LLC, D.P.U. 20-47 (2022); and Palmco Power MA, LLC, D.P.U. 20-48 (2023).

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1 The Delegated Commissioner refers to the commissioner whom the Chairman of the Department, with authorization from the Commission, delegates the authority to, among other things, issue a NOPV to investigate a competitive supplier's conduct. D.P.U. 16-156-A, Att. A, Guidelines Section 2(2). The Guidelines set forth the procedures by which the Department will investigate competitive suppliers upon receipt of a complaint or report of a suspected or alleged violation the Department's consumer protection standards.

2 The Prosecuting Officer refers to the hearing officer to whom the Delegated Commissioner delegated the authority to (1) conduct informal reviews, and (2) participate as a party in a formal proceeding.

3 The information requests were issued on March 12, 2024, July 16, 2024, September 19, 2024, October 3, 2024, and October 17, 2024.

II. APPLICABLE LAW

A. Introduction

In overseeing the restructured electricity market, the Department has a broad legislative mandate to promulgate rules and regulations to "provide retail customers with the utmost consumer protections contained in law," which are applicable to all participants in the electric supply market (i.e., generation companies, aggregators, competitive suppliers, energy marketers, and energy brokers). G.L. c. 164, § 1F. As discussed below, pursuant to statutory provisions, Department regulations, and Department Orders, the Department ensures consumer protections including: licensure requirements, performance requirements, and sanctions that the Department may impose for violations of these consumer protection requirements.

B. Licensure

The Department must license all generation companies, aggregators, competitive suppliers, energy marketers, and energy brokers in the Commonwealth. G.L. c. 164, § 1F(1). For competitive supplier and electricity broker applicants, the Department reviews an applicant's technical ability to generate or otherwise obtain and deliver electricity and provide any other proposed services. Our review examines an applicant's experience providing competitive supply service in other jurisdictions, ability to conduct electronic business transactions, experience as a load serving entity, and completion of competitive supplier/electricity broker training sessions (Competitive Supplier License Application § III).

The Department also reviews an applicant's financial ability to provide the proposed competitive supplier services. Here, our inquiry ensures that the applicant will meet the transaction requirements established by the New England Power Pool and has an appropriate financial risk management plan (Competitive Supplier License Application § IV).

Finally, the Department reviews an applicant's ability to meet the Commonwealth's and the Department's consumer protection standards. We examine information regarding: (1) the qualifications and criminal and civil action histories of the applicant's directors, officers, or other company officials; (2) regulatory actions and complaint history regarding the applicant in other jurisdictions; and (3) the applicant's marketing and customer service capabilities, including copies of marketing materials and staff training materials (Competitive Supplier License Application §§ I, III, IV, VI, V). 220 CMR 11.05(2). In addition, the application requires competitive suppliers to identify all methods by which the applicant intends to market to residential customers in Massachusetts (Competitive Supplier License Application §§ II, V).

C. Performance Requirements

1. Introduction

Competitive suppliers must adhere to the following requirements while providing service to residents in the Commonwealth. As discussed in Section III, below, CleanChoice has not complied with certain of these requirements.

2. Rate Disclosure

Before a competitive supplier may initiate service, it must disclose, in writing, information that includes the "rate to be charged," conditions imposed for switching suppliers during the term of a contract (e.g., charges, fees, penalties), toll-free telephone number for service complaints. G.L. c. 164, § 1F(5)(i).

3. Affirmative Choice

"Each customer choosing a … supplier … shall be required to affirmatively choose such entity." "It shall be unlawful for a … supplier … to provide power or other services to such a customer without first obtaining said affirmative choice from the customer." G.L. c. 164, § 1F(8)(a)(i).

4. Release of Usage Information

"Each competitive supplier … must obtain verification that a customer has affirmatively chosen to allow the release of the customer's historic usage information to the competitive supplier …." 220 CMR 11.05(4)(a).[4] "Each competitive supplier must obtain verification that each customer choosing the competitive supplier has affirmatively chosen such entity …." 220 CMR 11.05(4)(b)1.

5. Terms of Service Requirement

To ensure that customers are presented with consistent information by which to evaluate services offered by competitive suppliers (220 CMR 11.06(1)), each competitive supplier shall prepare terms of service to be distributed before supplier service and upon request, which shall conform to the Attorney General's regulations (940 CMR 19.00) and present the following information:

> "actual pricing structure according to which retail customer will be billed, including an explanation of price variability and price level adjustments that can cause the price to vary," 220 CMR 11.06(3)(a);
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> "length and kind of contract," 220 CMR 11.06(3)(b);
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> "any and all charges, fees, and penalties," 220 CMR 11.06(3)(g);
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> "method whereby retail customer will be notified of changes to items in the Terms of Service," 220 CMR 11.06(3)(m).

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4 Affirmative choice must be shown by a signed letter of authorization, third-party verification, or tollfree call by the customer to an independent third-party. G.L. c. 164,§ 1F(8)(iii); 220 CMR 11.05(4)(c).

6. Information Disclosure in Advertising

To ensure that customers are presented with consistent information with which to evaluate services offered by competitive suppliers, 220 CMR 11.06(1) requires that all advertisements shall comply with state and federal regulations governing advertising, including the Attorney General's regulations (940 CMR, discussed below), and shall be consistent with the Federal Trade Commission's guidelines for use of environmental marketing claims. 220 CMR 11.06(6)(a).

7. Attorney General, Retail Marketing and Sale of Electricity Regulations – 940 CMR 19.00[5]

a. Misrepresentations Prohibited – 940 CMR 19.04

940 CMR 19.04 provides that it is an unfair or deceptive act or practice for a retail seller of electricity to make any material representation to the public or to any consumer, either directly or through any type of marketing or agreement, or through the use of any misleading symbol or representation, which the seller knows or should know has the capacity or tendency to deceive or mislead a reasonable consumer, or that has the effect of deceiving or misleading a reasonable consumer, in any material respect, including but not limited to representations relating to:

- The quality, environmental, or other characteristics, or source of any product or service being offered for sale by any retail seller of electricity, 940 CMR 19.04(a);
- any term of any agreement to be entered into by the retail seller of electricity and a consumer, 940 CMR 19.04(d);
- the distribution price, the generation price or the total delivered price of electricity or the price of any related electricity products or service to be charged to a consumer, 940 CMR 19.04(e);
- the likelihood that a consumer will be able to purchase electricity … at a particular price, where the price depends upon the level of the consumer's electricity usage or any other variable, 940 CMR 19.04(f);
- the difference between any price being charged by any retail seller of electricity, including a distribution company, and any price being charged by any other retail seller of electricity, including a distribution company, 940 CMR 19.04(g);

5 In addition, the Attorney General has promulgated general regulations addressing unfair methods of competition or unfair or deceptive acts or practices in violation of G.L. c. 93A, § 2(a). 940 CMR 3.00.

- the amount of money to be saved by a consumer, expressed in any manner, if a consumer chooses one retail seller of electricity, including a distribution company, over any other entity selling electricity, 940 CMR 19.04(h);

- the time period during which any offered price will be available, 940 CMR 19.04(i);

- the period of time for which any price will remain in effect, 940 CMR 19.04(j).

b. Attorney General Disclosures Required – 940 CMR 19.05

Pursuant to 940 CMR 19.05:

(l) It is an unfair or deceptive act or practice for a retail seller of electricity to fail to disclose material information about its products, services, or business, where such failure has the capacity or tendency to deceive or mislead a reasonable consumer, or has the effect of deceiving or misleading such a consumer, in any material respect.

(2) It is an unfair or deceptive act or practice for a retail seller of electricity to fail to disclose to a consumer any material fact the disclosure of which may have influenced a reasonable consumer not to enter into a transaction.

(3) It is an unfair or deceptive act or practice for a retail seller of competitive generation service to initiate 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, in no less than ten point type for textual material and eight point type for footnotes, and in print that contrasts clearly with the material on which it is printed, 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.

(b) Complete, accurate pricing information, including materials demonstrating the relationship between usage levels or information specific to the consumer's actual electricity usage history; a definition and a complete explanation of each and every charge that the retail seller may bill to a consumer; an explanation of any applicable restriction, geographic or otherwise, on the actual availability of any price to a consumer; and the precise dates on which any offered price is available and when that offered price ends, where appropriate.

c. Attorney General, Other Unfair or Deceptive Acts or Practices – 940 CMR 19.06

Pursuant to 940 CMR 19.06:

(1) It is an unfair or deceptive act or practice for a retail seller of electricity to:

(a) fail to provide to a consumer relevant, material facts to substantiate any material representation including those representations required to be provided by 220 CMR 11.06, made by the retail seller of electricity, upon request.

(b) refuse to provide any electricity product or service to a consumer at the price that, and upon such terms as, the retail seller of electricity has offered and the consumer has accepted for such product or service.

(c) offer to sell electricity to a consumer at a price that is lower than the retail seller of electricity will actually agree to accept, for the purpose of obligating the consumer to accept and pay for the delivery of electricity at a price higher than that offered.

(d) replace or arrange to replace a consumer's current provider of electricity service with its own service or with the service of any other retail seller of electricity, without the consumer's express, affirmative consent, except as provided by G.L. c. 164, § lB(d) or § 134.

(e) refuse, for any unlawful reason, to sell electricity to any consumer who seeks to purchase electricity from a retail seller of electricity.

(f) continue to offer to sell electricity to a consumer with the intent to take advantage of the limited or impaired ability of such consumer to understand the essential sum and substance of the transaction, with intent to defraud the consumer.

(2) [omitted]

(3) It is an unfair or deceptive act or practice for a retail seller of electricity, including a distribution company, to make any comparison of any price to any other price without stating the relevant, material facts upon which that comparison is based, including but not limited to any comparison of the amount of money to be saved, expressed in any manner, by purchasing electricity from one retail seller of electricity rather than any other.

(4) It is an unfair or deceptive act or practice for a retail seller of electricity, including a distribution company, to make, in any form of marketing, any material representation, or use any graphic image to convey a message, about the impact of its products, practices or services on the natural environment, unless the retail seller makes available upon request factual bases for that representation sufficient to allow a reasonable consumer to make an informed decision about such impact. Where a retail seller of electricity, including a distribution company, makes any representation about the impact of any of its products, practices or services on the natural

environment or the type(s) of fuels or technologies used to generate any portion of the electricity it sells or distributes, the retail seller of electricity must maintain for a period of 18 months from the time the representation is made, and must make available to any consumer upon request, documentation of the relevant, material facts upon which the representation is based.

8. Initiatives to Promote and Protect Consumer Interests in Retail Electric Competitive Supply Market, D.P.U. 19-07-A

Competitive suppliers must provide consumers with a contract summary form that includes: (1) product information related to price, term, early cancellation fee, automatic renewal, and renewable energy content and (2) general information about the competitive supplier, the customer's distribution company, and products listed on the Department's Energy Switch Website. D.P.U. 19-07-A at 39-48. The Department requires competitive suppliers to submit the contract summary form for Department review for products that include: (1) price changes over the contract term; (2) voluntary renewable content for which a competitive supplier seeks to include additional descriptive language; (3) fees other than early cancellation or enrollment fees; and/or (4) additional incentives or "value-added" products and services. D.P.U. 19-07-A at 39-50. Contract summary forms must be presented to consumers during the enrollment process. D.P.U. 19-07-A at 51.[6]

9. Mega Energy of New England, LLC, D.P.U. 20-47

In D.P.U. 20-47 (2022),[7] the Department observed that electricity is an essential service and identified the significant obligations required for competitive suppliers to properly operate in Massachusetts. D.P.U. 20-47, at 18. Specifically, the Department stated that to ensure that consumers taking part in the competitive electricity market in Massachusetts benefit from the Legislature's retail choice initiative, a consumer's election of a supplier must be transparent and informed. D.P.U. 20-47, at 18. To this end, the Department stated that the regulatory structure governing the competitive electricity supply market includes safeguards intended to ensure the veracity of the customer's election: verification that a customer affirmatively chose the supplier to provide service; and no competitive supplier may initiate service without first obtaining affirmative choice from supplier. D.P.U. 20-47, at 18. Further, the Department noted that a competitive supplier's failure to obtain conforming customer authorization is a serious breach of duty, which causes harm to the customers, contributes to a lack of confidence in the competitive electricity supply market, and can thwart the Legislature's plan for broad participation in this market with substantial consumer benefits. D.P.U. 20-47, at 19-20. Any benefit of a competitive electricity supply market will be destroyed unless information presented through telemarketing, advertising, and other means is accurate and nondeceptive. D.P.U. 20-47, at 20.

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6 The contract summary form implementation date was September 8, 2020. D.P.U. 19-07-A at 52.

7 The Department's discussion and findings in Palmco Power MA, LLC, D.P.U. 20-48, are substantially the same as those articulated in D.P.U. 20-47.

Consumer confidence in any competitive market is based on informed choices, especially in the competitive electricity supply market, where electricity is essential, the information presented for a customer's choice must be clear, accurate, complete, and free from deceptive sales practices and aggressive marketing. D.P.U. 20-47, at 21. Competitive supplier management has an obligation to ensure accurate, nondeceptive information disclosure to customers about price, service offerings, and terms of service. D.P.U. 20-47, at 21. To protect against unfair and deceptive practices, competitive suppliers' internal practices should employ training and quality control. D.P.U. 20-47, at 21. As such, telemarketing representatives must be fully conversant in the retail choice market in Massachusetts, the customer protections governing the competitive electricity market in Massachusetts, and the state and federal legal requirements governing telemarketing. D.P.U. 20-47, at 21-22. The Department concluded that "[A] failure to ensure informed customer choice is a substantial breach of a competitive supplier's duty of care causing harm to customers and thwarts the Legislature's intent for consumer benefits from retail choice." D.P.U. 20-47, at 22. Accordingly, suppliers and their agents are presumed to know and are required to adhere to Department regulations and the Interim Guidelines pursuant to which they are authorized to provide service. D.P.U. 20-47, at 22.

D. Sanctions

1. General Authority

Any person, firm, electric or generation company, competitive supplier, or other corporation doing business in the Commonwealth who violates any provisions of said code or 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. Any such civil penalty shall be determined by the Department after a public hearing. In determining the amount of the penalty, the Department shall consider the following: the appropriateness of the penalty to the size of the business of the person, firm, or corporation charged; the gravity of the violation; and the good faith of the person, firm, or corporation charged in attempting to achieve compliance after notification of a violation. G.L. c. 164, § 1F(7).

2. Unauthorized Switching

Refunds. If the Department determines that a competitive supplier does not possess the required evidence of affirmative choice, the Department will require the competitive supplier to refund the following: (1) to the customer, the difference between what the customer would have paid to the distribution company or previous competitive supplier and the actual charges paid to the new competitive supplier; (2) to the customer, any reasonable expenses the customer incurred in switching back to the distribution company or previous competitive supplier; and (3) to the distribution company or original competitive supplier, the gross revenue either entity would have received from the customer during the time the customer received service from the new competitive supplier. G.L. c. 164, § 1F(8)(c); 220 CMR 11.07(3)(b)1-3.

Civil Penalties. A competitive supplier that initiated supplier service without first obtaining evidence of the customer's affirmative choice, one or more times in a twelve-month period, shall be subject to a civil penalty not to exceed $1,000 for the first offense and not less than $2,000 nor more than $3,000 for any subsequent offense per customer. In determining the amount of the penalty, the Department shall consider the nature, circumstances, and gravity of the violation and the degree of culpability of the competitive supplier and history of prior offenses. G.L. c. 164, § 1F(8)(e); 220 CMR 11.07(3)(c).

Licensure. A competitive supplier found to have intentionally, maliciously, or fraudulently initiated supplier service without first obtaining evidence of the customer's affirmative choice more than 20 times in a twelve-month period, or switched the service of more than 20 customers in a twelve-month period, may be prohibited from selling electricity in the Commonwealth for a period of up to one year. In determining the length of suspension, the Department shall consider the nature, circumstances, and gravity of each violation and the degree of culpability of the competitive supplier. G.L. c. 164, § 1F(8)(e); 220 CMR 11.07(3)(c).

3. Information Disclosure in Advertising

Dissemination of inaccurate information, or failure to comply with the Department's regulations on information disclosure, may result in suspension, revocation, or non-renewal of competitive supplier license pursuant to 220 CMR 11.05(2)(e). 220 CMR 11.06(7).

4. Other Customer Complaints

A competitive supplier shall be subject to a range of sanctions for violations of the Department's regulations:

1. Licensure Action. In the case of egregious misconduct or a pattern of misconduct, the Department may take licensure action against a competitive supplier or electricity broker. Such action may result in the competitive supplier or electricity broker being:

   a. Required to notify existing and prospective customers of probationary status;
   b. Prohibited from signing up new customers for a specified period of time; and/or
   c. Subject to suspension, revocation or non-renewal of its license.

220 CMR 11.07(4)(c)1.

2. Civil Penalties. Each distribution company, competitive supplier, or electricity broker who violates any regulation promulgated by the Department pursuant to G.L. c. 164, §§ 1A through 1F, 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. In determining the amount of the penalty, the Department shall consider the following: the appropriateness of the penalty to the size of the business of the person, firm, or corporation charged; the gravity of the violation; and the good faith of the person, firm, or corporation charged in attempting to achieve compliance

after notification of a violation, consistent with G.L. c. 164, § 1F(7). G.L. c. 164, § 1F(7); 220 CMR 11.07(4)(c)2.

III. ALLEGATIONS AND VIOLATIONS

A. Introduction

Below, I set forth the facts that lead me to conclude that it is probable that CleanChoice has engaged in business acts or practices that violate the statutes, regulations, and Orders identified in Section II, above. CleanChoice markets and presents information to its potential customers in its direct mail advertising material, sales agent telephone conversations, contract summary forms, and contracts.

Under Massachusetts law, a customer must affirmatively choose a competitive supplier. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a); see also D.P.U. 20-47, at 18. In addition, if a competitive supplier provides supply service without having obtained the customer's affirmative choice, then the competitive supplier is unlawfully providing supplier service to that customer. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a). In this construct, "choice" is the operative provision. The Department requires that a customer's choice of a competitive supplier be transparent and informed, both of which rely on the competitive supplier presenting information that is accurate, nondeceptive, clear, and complete. D.P.U. 20-47, at 20-21. The Department further stated that the failure to ensure informed customer choice violates G.L. c. 164, § 1F(8)(a)(i) and 220 CMR 11.05(4)(a) and is a breach of a competitive supplier's duty of care, which harms the customer and thwarts the Legislature's intent for consumer benefits from retail choice. D.P.U. 20-47, at 22.

The Department's regulations, which make applicable specific regulations promulgated by the Attorney General, further define what is required for competitive suppliers to ensure obtaining informed customer choice when marketing their electric supply products to residents in the Commonwealth. In general, a competitive supplier may not disseminate inaccurate information. 220 CMR 11.06(7). More specifically, it is an unfair or deceptive act or practice for a competitive supplier to make material misrepresentations of fact and, conversely, to fail to make material disclosures of fact that have the tendency or capacity to mislead or deceive, or actually do mislead or deceive, reasonable consumers. 940 CMR 19.04, 19.05, 19.06. As more fully set forth in Section II, above, prohibited actions include misrepresentations relating to the following: the price to be charged for electric supply service, the difference between the price to be charged and the price charged by a distribution company for basic service, the amount of money to be saved by a consumer compared to what it would cost to purchase supply from another supplier of electricity, a failure to disclose facts that may influence a customer not to enter a transaction with a competitive supplier. 940 CMR 19.04, 19.05, 19.06.

Below I describe the multiple actions by CleanChoice that violated the consumer protection laws of the Commonwealth and thereby: (1) nullified any manifestation of choice a customer may have provided to select CleanChoice as their electric supplier, and (2) constituted egregious misconduct and a pattern of misconduct.

B. Inaccurate and Deceptive Basic Service Rate Comparison in Direct Mail Marketing Materials

The Consumer Division received complaints from two recipients of CleanChoice's direct mail advertising material. The complainants assert that the advertising was deceptive because the Respondent compared its price offering to expired basic service rates. In fact, the expired basic service rates were higher than the basic service rates in effect when the customer received the marketing material.

Complainant #1 received the advertising material on July 31, 2023, which compared CleanChoice's price to Eversource East's basic service rate that expired June 30, 2023. The expired rate was 25.776 cents per kWh, which was 9.698 cents per kWh, or 160 percent, higher than the 16.078 cents per kWh basic service rate in effect when the advertising material was received (Exh. DC-Respondent's March 26, 2024 Letter at 3).[8] Complainant #1 filed his complaint and a copy of the marketing material on August 9, 2023 (Exhs. DC-Complainant #1 Complaint; DC-Complainant #1 Mail).

[redacted] (Exh. DC-Respondent's March 26, 2024 Letter at 3).

Complainant #2 received CleanChoice's advertising material on May 16, 2023 and filed his complaint the same day (Exh. DC-Complainant #2 Complaint). CleanChoice compared its price offering to National Grid's winter basic service rate that expired April 30, 2023. The expired rate was 33.891 cents per kWh, which was 19.776 cents per kWh, or 140 percent, higher than the 14.155 cents per kWh basic service rate then in effect (Exh. DC-Respondent's March 26, 2024 Letter at 3).[9]

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8 Eversource East's residential basic service rate was 25.776 cents per kilowatt-hour ("kWh") from January 1, 2023 to June 30, 2023, and 16.078 cents per kWh from July 1, 2023 to December 31, 2023. NSTAR Electric Company, D.P.U. 22-BSF-C4 (2022); NSTAR Electric Company, D.P.U. 22-131 (2022); NSTAR Electric Company, D.P.U. 23-BSF-C2 (2023). Eversource East's 16.078 cents per kWh rate was made public May 19, 2024 and approved by the Department on May 26, 2024. D.P.U. 23-BSF-C2.

9 National Grid's residential basic service rate was 33.891 cents per kWh from November 1, 2022 to April 30, 2023, and 14.115 cents per kWh from May 1, 2023 to October 31, 2023. Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 22-BSF-D3 (2022); Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 23-BSF-D1 (2023). National Grid's 14.115 cents per kWh rate was made public March 14, 2023 and approved by the Department on March 21, 2023. D.P.U. 23-BSF-D1.

[redacted] (Exh. DC-Respondent's March 26, 2024 Letter at 3).

In advertising its product, CleanChoice provided prospective customers with vastly inflated, inaccurate basic service rates as points of comparison to its product offerings. Under the Attorney General's regulations, CleanChoice engaged in unfair or deceptive acts or practices by providing consumers with marketing materials that made material misrepresentations that CleanChoice knew or reasonably should have known had the capacity or tendency to deceive or mislead, or actually did deceive or mislead reasonable consumers, in any material respect relating to the basic service price being charged by Eversource East and National Grid and the price CleanChoice was advertising. 940 CMR 19.04(g). Additionally, CleanChoice [redacted] (Exh. DC-Respondent's August 6, 2024 Letter at 5).[10] In other words, CleanChoice [redacted]

CleanChoice's advertising materials were inaccurate and deceptive. As such, the affected customers' election of the Respondent's product was not transparent or informed, thus nullifying any manifestation of affirmative choice made by customers that received these advertising materials. Accordingly, CleanChoice did not receive affirmative customer consent and, thus, unlawfully provided each customer with supply service. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a).

Additionally, CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7).

Further, CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00 (material representation any term of agreement, 940 CMR 19.04(d); material representation generation/basic service price, 940 CMR 19.04(e); material representation price comparison, 940 CMR 19.04(g); failure to

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[10] In response to an information request regarding having provided incorrect basic service rates for comparison purposes, CleanChoice [redacted] (Exh. DC-Respondent's August 6, 2024 Letter at 5). CleanChoice further stated [redacted] (Exh. DC-Respondent's August 6, 2024 Letter at 5). Clean Choice concluded that: [redacted] (Exh. DC-Respondent's August 6, 2024 Letter at 5).

disclose material information that deceives/misleads, 940 CMR 19.05(1); failure to disclose material fact that affects decision not to enter into a transaction, 940 CMR 19.05(2); making price comparison without providing relevant material facts, 940 CMR 19.06(3). The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). In failing to do so and engaging in unfair or deceptive acts or practices, CleanChoice's business practices constitute egregious misconduct and a pattern of misconduct under 220 CMR 11.07(4)(c)1. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2.

In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

C. Deceptive Pricing Practices

The Respondent offers electricity supply products that have a three-month fixed introductory price, which then renews to a variable monthly price if the customer does not cancel service or choose a new product. CleanChoice's contract summary form provides that "your price is subject to change monthly, based on market conditions and CleanChoice Energy's costs to provide energy supply service" (Exh. DC-Contract Summary Form at 1).[11] Eight customers (i.e., Complainants #3, #5 (meter 1 and 2), #6, #8, #9, #10, #11, and Enrolling Customer #3) chose such a product. Seven of these eight customers filed complaints with the Consumer Division based on the high variable prices their respective contracts reached (Exhs. DC-Complainant #3 Complaint; DC-Complainant #5 Complaint; DC-Complainant #6 Complaint; DC-Complainant #8 Complaint; DC-Complainant #9 Complaint; DC-Complainant #10 Complaint; DC-Complainant #11 Complaint).

For these eight customers, the introductory prices ranged from approximately 12 to 19 cents per kWh. Following the expiration of the fixed-rate introductory period, these customers were placed on a monthly variable price that increased each month for five to nine months. Following these multiple months of price increases, these customers were charged prices between 34.7 and 59.4 cents per kWh or price increases between 133 percent and 214 percent (Exh. DC-Customer Rate History, tab Complainant # 3, 5(1), 5(2), 6, 8, 9, 10, 11, Enrolling Customer 3, Table 1).

The highest prices charged to these customers are, in and of themselves, concerning. However, it is the number of months that these customers were charged a variable price, which only increased, that concerns me here. CleanChoice represented that its prices are subject to

[11] CleanChoice's contract for these customers limits price variations to "market conditions," which arguably is more stringent than "market conditions and CleanChoice's costs to provide energy supply service" provided in its contract summary form (Exh. DC-Contract Summary Form at 1; Exh. DC-Contract at 4).

change monthly "based on market conditions and CleanChoice Energy's costs."[12] Typically, market conditions, energy costs, and seasonality would cause the electricity supply price to increase and decrease over time. That did not happen for these customers. Table 1, below, shows the time periods and price increases that customers experienced before experiencing a decrease in their variable prices.

Table 1 - Summary of Customer Range of Prices Without Experiencing a Price Decrease From One Month to the Next

Customer	**Starting rate ($/kWh)**	**Meter initiation date**	**Highest rate without any decreases from month to month ($/kWh)**	**Meter read date for highest rate with no decrease**	**Number of months Rate increase**
Complainant 3	0.189	6/24/2022	0.594	5/24/2023	8 mos. 214%
Complainant 5, meter 1	0.176	3/1/2022	0.411	10/31/2022	5 mos. 134%
Complainant 5, meter 2	0.176	2/1/2022	0.542	2/3/2023	9 mos. 208%
Complainant 6	0.124	3/9/2021	0.347	2/9/2022	8 mos. 180%
Complainant 8	0.189	6/1/2022	0.594	5/2/2023	8 mos. 214%
Complainant 9	0.176	3/1/2022	0.411	10/28/2022	5 mos. 134%
Complainant 10	0.178	3/3/2022	0.414	11/2/2022	5 mos. 133%
Complainant 11	0.189	6/15/2022	0.594	5/15/2023	8 mos. 214%
Enrolling Customer 3	0.131	2/19/2021	0.350	2/16/2022	9 mos. 167%

Accordingly, CleanChoice's contract summary form, and contract, conflicted with CleanChoice's actual business practice of raising prices regardless of market conditions and its energy costs. CleanChoice's contract summary forms and contract were inaccurate and deceptive. As such, these customers' election of the Respondent's product was not transparent or informed, thus nullifying any manifestation of affirmative choice made by customers that

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12 See footnote 11, above.

received these contract summary forms and contracts. Accordingly, CleanChoice did not receive affirmative customer consent and, thus, unlawfully provided each customer with supply service. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a).

Additionally, CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7).

Further, CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00 (material representation any term of agreement, 940 CMR 19.04(d); failure to disclose material information that deceives/misleads, 940 CMR 19.05(1); failure to disclose material fact that affects decision not to enter into a transaction, 940 CMR 19.05(2)). The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). In engaging in multiple unfair or deceptive acts or practices, CleanChoice's business practices constitute egregious misconduct and a pattern of misconduct under 220 CMR 11.07(4)(c)1. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2.

In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

D. Deceptive Marketing and Price Increases

The Respondent provides disclosures regarding its variable prices in its direct mail advertising materials -- "Your variable rate may be higher than your utility rate or other suppliers' rates" -- and in its contract summary form -- "your future monthly prices may be higher or lower than the introductory price" (Exhs. DC-Direct Mail 1, at 2; DC-Contract Summary Form at 1). Although the disclosures provide customers with a generic warning of the product's price volatility, the direct mail advertising material and contract summary form do not provide any information regarding the potential extreme magnitude of the Respondent's variable price levels, as discussed in Section III.C, above (see Table 1). Before enrolling, prospective customers are not informed of the monthly variable price(s) in effect at that time, prior history of monthly variable prices, nor any warning that its monthly variable prices could be significantly higher than the price offered for the fixed introductory price period.[13] Following enrollment, the Respondent does not notify customers of the expiration of the introductory price nor what the customer's variable price will be.

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[13] Paragraph 7 of the contract, in fine print, states that the price "may increase, or decrease, possibly significantly" (Exh. DC-Contract at 4).

Additionally, for three customers[14] who called the Respondent to enroll after receiving the direct mail advertising material, the sales agents did not disclose that at the end of the introductory period the Respondent's prices could be subject to extreme increases. Quite to the contrary, each of the three sales agents made claims that the enrolling customers would benefit from the Company's pricing after the introductory period. CleanChoice's sales agents made these representations despite not having any way to know what the Respondent's prices would be in the future. To illustrate, below are excerpts from conversations between CleanChoice's sales agents and customers who enrolled in a product with a fixed introductory price.

1. <u>Enrolling Customer #1</u>

[redacted]

(Exh. DC-Enrolling Customer #1 Recording).[15]

Starting at 7:41

[redacted]

[redacted]

[redacted]

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[14] The Department reviewed twelve calls of customers enrolling in response to the direct mail advertising and found that three, or 25 percent, contained false or misleading statements from sales agents (Exh. DC-Respondent's October 3, 2024 Letter; Enrolling Customers #1-3). It is reasonable to expect that the Respondent has conducted substantially more enrollment calls that have not been reviewed by the Department to date. The three enrolling customers referenced did not file a complaint with the Consumer Division (Enrolling Customer #1-3).

[15] The complaints filed with the Consumer Division and the recordings provided by CleanChoice include personally identifying information that, in accordance with the Commonwealth's public records law, G.L. c. 4, § 7(26)(c), should be withheld from public disclosure. This information includes names, addresses, phone numbers, and utility account numbers. If publicly disclosed, the personally identifying information may constitute an unwarranted invasion of personal privacy. CleanChoice has access to all of this information. In this NOPV, the Delegated Commissioner only discloses information that is not considered confidential pursuant to G.L. c. 4, § 7(26)(c). The Delegated Commissioner has filed confidential exhibits with the Presiding Officer with a request for confidential treatment.

[redacted]

Starting at 12:16

[redacted]

Enrolling Customer #1 [redacted]. Nevertheless, the customer service agent [redacted] The sales agent did not provide the customer transparent and accurate information on which to choose this product.

2. Enrolling Customer #2

Enrolling Customer #2 [redacted] (Exh. DC-Enrolling Customer #2, Recording 1).

Starting at 3:10

[redacted]

Starting at 5:39

[redacted]

Starting at 6:14

[redacted]

Starting at 8:49

[redacted]

Starting at 9:42

[redacted]

[redacted]
(Exh. DC-Enrolling Customer #2, Recording 2).

Starting at 0:17

[redacted]

Starting at 0:58

[redacted]

Enrolling Customer #2's price following the introductory period went from 11.5 cents per kWh to a monthly variable rate of 13.6 cents per kWh for one month. The customer called the Respondent on February 27, 2023 and enrolled in a new fixed rate plan of 18.2 cents per kWh. Following the introductory period, the monthly variable price increased by approximately 18 percent and the fixed renewal price increased by approximately 34 percent. (Exh. DC-Customer Rate History, tab Enrolling Customer 2). Yet, the sales agent claimed [redacted]

3. Enrolling Customer #3

Enrolling Customer #3 [redacted]
(Exh. DC-Enrolling Customer #3 Recording).

Starting at 12:19

[redacted]

[redacted]

Starting at 14:24

[redacted]

[redacted]

[redacted]

Starting at 15:32

[redacted]

[redacted]

[redacted]

Enrolling Customer #3's price following the introductory period increased approximately 18 percent from 13.1 cents per kWh to 15.5 cents per kWh for the following two months (May and June 2021) then increased monthly for the following seven months to 35 cents per kWh. During 2022, the customer experienced no change in price for two of the months, a decrease in price for two of the months, and price increases for the remaining eight months of the year, which resulted in the customer paying [redacted] cents per kWh for the month of December. During the first four months of 2023, CleanChoice charged the customer [redacted] cents per kWh. (Exh. DC-Customer Rate History, tab Enrolling Customer 3). Yet, [redacted] (Exh. DC-Enrolling Customer #3 Recording). The sales agent did not provide the customer transparent and informed information on which to choose this product.

The Respondent's marketing practices are inaccurate and deceptive. The marketing agents misrepresented the true outcome of CleanChoice's fixed- to variable-rate products, which invariably led to much higher prices than customers were told to expect, rather than the lower or stable prices promised. The lower introductory priced product and methods of selling it constitutes a short-term "teaser" product to entice customers to enroll with CleanChoice. After the introductory fixed-price period, customers are switched to a monthly variable price that rapidly increases to levels that can be two or three times the price of basic service prices, competitors' offers, or even CleanChoice's own fixed price offers. The Respondent's business practice lacks sufficient warning prior to purchasing, lacks notification of extreme price changes following enrollment, uses false disclosures regarding causes of price increases (as described in Section III.C above), and permits its sales agents to mislead prospective customers into enrolling. These misrepresentations induced customers to enroll in CleanChoice's product offerings to their detriment. In my view, the practice creates a false impression for reasonable consumers about the price of the product following the introductory period. Accordingly, CleanChoice did not receive affirmative customer consent and, thus, unlawfully provided each customer with supply service. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a).

Additionally, CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7).

Further, CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00 (material representation any term of agreement, 940 CMR 19.04(d); material representation price to be paid for electricity, 940 CMR 19.04(f); material representation money to be saved relative to other supplier, 940 CMR 19.04(h); failure to disclose material information that deceives/misleads, 940 CMR 19.05(1); failure to disclose material fact that affects decision not to enter into a transaction, 940 CMR 19.05(2)). The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). In engaging in unfair or deceptive acts or practices, CleanChoice's business practices constitute egregious misconduct and a pattern of misconduct under 220 CMR 11.07(4)(c)1. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2.

In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

E. Monthly Variable Price Disclosures

For its variable-priced products, CleanChoice provides multiple disclosures describing the Respondent's prices and tying them to market conditions. First, when CleanChoice enrolls a customer, the Respondent provides each customer with a contract summary form, required by D.P.U. 19-07-A. The contract summary form states: "your price is subject to change monthly, based on market conditions and CleanChoice Energy's costs to provide energy supply service" (Exh. DC-Contract Summary Form at 1) (emphasis added)). Next, CleanChoice's contract contains the following provision: "this Agreement will automatically renew on a month-to-month basis at a price per kWh that may vary monthly depending on market conditions" (Exh. DC-Contract at 4) (emphasis added)). And for customers that receive direct mail advertising, the advertising material contains a summary table that states: "your price is subject to change monthly, based on market conditions and CleanChoice Energy's costs to provide energy supply" (Exh. DC-Direct Mail 1, at 2) (emphasis added)).[16]

Complainants #3, #5, #7, #8, #9, #10, and #11 each received the contract summary form and contract with the above-quoted language (Exhs. DC-Complaint Response 3; DC-Complaint Response 5; DC-Complaint Response 7; DC-Complaint Response 8; DC-Complaint Response 9; DC-Complaint Response 10; DC-Complaint Response 11). Complainant #7 and Enrolling Customer #3 each received the direct mail advertisement with the above language (Exhs. DC-Complaint Response 7; DC-Direct Mail 3).

The complainants and enrolling customer mentioned above demonstrate that a subset of CleanChoice's customers were enrolled with the understanding that their rate would vary based on market conditions. However, once the fixed introductory prices expired for a certain number of its customers, CleanChoice increased customers' expiring fixed price by approximately 18 percent for the first month of the contract's variable month-to-month pricing component (Exh. DC-Customer Rate History, tab Table 2; see Table 2, below).

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16 The direct mail advertising includes the following disclaimer:

> Your price is subject to change monthly based on a number of costs which may include, but are not limited to: energy, transmission, capacity, ancillary services, renewable energy certificates, RTO system fees and other factors, plus CleanChoice Energy operating costs, expenses, and margins. This list of factors is not exhaustive and no single factor will determine the rate. Additionally, we seek to acquire a majority of our anticipated electricity supply in advance rather than from the spot market. For all of these reasons, your variable rate may not correlate with changes in wholesale market prices or your utility's rates. Your variable rate may be higher than your utility rate or other suppliers' rates (Exh. DC-Direct Mail 1, at 2).

Table 2 - Summary of Customers With an 18 Percent Increase				
Customer	**Starting rate ($/kWh)**	**Subsequent rate ($/kWh)**	**Rate increase**	**Meter initiation date**
Complainant 3	0.189	0.224	18.51%	9/21/2022
Complainant 5 meter 1	0.176	0.209	18.76%	3/1/2022
Complainant 5 meter 2	0.176	0.209	18.75%	2/1/2022
Complainant 7	0.347	0.412	18.74%	4/5/2023
Complainant 8	0.189	0.224	18.52%	6/1/2022
Complainant 9	0.176	0.209	18.75%	3/1/2022
Complainant 10	0.178	0.211	18.55%	3/3/2022
Complainant 11	0.189	0.224	18.52%	6/15/2022
Enrolling Customer 2	0.115	0.136	18.26%	12/20/2022
Enrolling Customer 3	0.131	0.155	18.32%	2/19/2021

The term “market conditions” indicates a tie to market prices and related costs incurred by the Respondent. Yet, the Respondent increased prices by approximately 18 percent for the first month of variable month-to-month pricing for customers that had different introductory prices. One would expect the price increase for customers with different introductory prices to have different percentage increases after the introductory offer once the Respondent accounts for market conditions and its costs. Further, the 18 percent price increase did not occur due to market seasonality because the increases occurred during different months for different customers (Exh. DC-Customer Rate History, tab Table 2). Finally, as demonstrated in Table 1, above, there are several instances where a customer’s rate increases continuously from month-to-month for a period of five to nine consecutive months. If the Respondent’s rates were truly based on market conditions, one would expect to see a rate decrease for some of these customers as well. The 18 percent increase appears to be a set price increase for when CleanChoice’s variable rate terms expire, instead of being related to market conditions or the Respondent’s costs. It appears that each document misrepresented how the Company would determine future monthly prices because (1) the increases bear no relation to market conditions over the meter initiation date, and (2) there is not an explanation for how CleanChoice’s costs to provide energy supply service could support the uniform rate of price increases.

CleanChoice’s practice of increasing all contract rates by 18 percent for the first variable priced month demonstrates that the Respondent’s language in its contract summary form, direct mail advertising, and contract does not accurately reflect how the Company determines its monthly variable price increases. As such, these customers’ selection of the Respondent’s product was not transparent or informed, thus nullifying any manifestation of affirmative choice made by customers that received these documents. Accordingly, CleanChoice did not receive affirmative customer consent and, thus, unlawfully provided each customer with supply service. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11,05(4)(a).

Additionally, CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7).

Further, the use of false statements in the contract summary form likely constitutes a violation of Department regulations pursuant to D.P.U 19-07-A.

Finally, CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00 (material representation any term of agreement, 940 CMR 19.04(d); failure to disclose material information that deceives/misleads, 940 CMR 19.05(1); failure to disclose material fact that affects decision not to enter into a transaction, 940 CMR 19.05(2)). The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). In engaging in unfair or deceptive acts or practices, CleanChoice's business practices constitute egregious misconduct and a pattern of misconduct under 220 CMR 11.07(4)(c)1. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2.

In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

F. Bill Impact FAQ

CleanChoice's direct mail advertising material contains a frequently asked question ("FAQ") section. The Respondent used language that varied for the FAQ related to bill impacts. In one direct mail piece, the FAQ states: "Q. What will happen to my electricity bills? A. In short, supporting new renewable energy costs more than polluting energy. Please see important offer details for more information about price and average costs based on usage" (Exh. DC-Direct Mail 1). In another direct mail piece, the FAQ states: "Q. What will happen to my electricity bills? A. In short, supporting new renewable energy costs more than polluting energy. For most consumers, the biggest factor determining the size of their bill is the amount of electricity they use. Residential electricity use is typically higher in the winter and summer months when usage is almost always the biggest factor influencing electricity bills" (Exh. DC-Direct Mail 2).

The omission of price as a factor in "determining the size of their bill" in one of the marketing pieces, implies that price is not significant. Yet, it is a primary factor for customers on CleanChoice's monthly variable price. For example, during the period March 2021 to September 2023, Enrolling Customer #3's lowest price was 13.1 cents per kWh and the customer's highest price was 59.4 cents per kWh in a given month (Exh. DC-Customer Rate History, tab Enrolling Customer 3). For customers that received the direct mail advertisement claiming the biggest factor is the amount of electricity they use, the claim is misleading. CleanChoice's omission was inaccurate and deceptive. As such, these customers' election of the Respondent's product was not transparent or informed, thus nullifying any manifestation of affirmative choice made by customers that received these FAQs.

Accordingly, CleanChoice did not receive affirmative customer consent and, thus, unlawfully provided each customer with supply service. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a).

Additionally, CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7).

Further, CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00 (material representation any term of agreement, 940 CMR 19.04(d); failure to disclose material information that deceives/misleads, 940 CMR 19.05(1); failure to disclose material fact that affects decision not to enter into a transaction, 940 CMR 19.05(2)). The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). In engaging in unfair or deceptive acts or practices, CleanChoice's business practices constitute egregious misconduct and a pattern of misconduct under 220 CMR 11.07(4)(c)1. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2.

In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

G. <u>Unauthorized Customer Enrollment</u>

Among the call recordings provided to the Department by the Respondent, Complainants #3, #5, #8, #10, and #12 [redacted] (Exhs. DC-Customer Service Recording 6, at 00:27; DC-Customer Service Recording 4, at 00:17; DC-Customer Service Recording 7, at 01:52; DC-Customer Service Recording 8, at 02:47; DC-Customer Service Recording 1, at 00:27). According to CleanChoice, each customer was enrolled through a "tabling" event or sales kiosk in a retail store location (Exhs. DC-Complaint Response 3; DC-Complaint Response 5; DC-Complaint Response 8; DC-Complaint Response 10; DC-Complaint Response 12).

In response to Department staff's request for further information, the Respondent provided the following explanation: [redacted] (Exh. DC-Respondent's August 6, 2024 Letter at 3). One of the four customers, Complainant #10, was a complainant mentioned above. [redacted] (Exh. DC-Respondent's August 6, 2024 Letter at 4).

The Respondent's information provided is sufficient to determine that CleanChoice enrolled four customers without first obtaining their affirmative choice in violation of

G.L. c. 164, § 1F(8)(a)(i) and 220 CMR 11.05(4)(b)(1). In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

H. Deceptive or Misleading Customer Service Conduct

1. Introduction

Department staff reviewed telephone call recordings provided by the Respondent on April 9, 2024. The recordings indicate that certain customer service agents acted in a deceptive or misleading manner in conversations with customers that filed complaints with the Department. Although staff listened to presumably a very small share of the Respondent's customer service calls, the extent to which the Respondent's customer service agents misled its customers is troubling.

2. Distribution Company Basic Service

Electric distribution companies in Massachusetts must meet state mandated clean energy requirements for basic service electricity supply and purchase a minimum amount of clean and renewable energy certificates to comply with the Commonwealth's standards. 310 CMR 7.75; 225 CMR 14.00; 225 CMR 15.00. In 2023, the minimum requirement was at least 59 percent. CleanChoice's sales agents and contracts misrepresented this requirement regarding basic service:

[redacted] (Exh. DC-Customer Service Recording 1 (starting at 16:40)).

[redacted] (Exh. DC-Customer Service Recording 2 (starting at 6:18)).

[redacted] (Exh. DC-Customer Service Recording 3 (starting at 9:21)).

Similarly, CleanChoice's contract states: "Typical grid power in your region is produced primarily from fossil fuels like coal, natural gas, and oil" (Exh. DC-Contract at 3).

The information provided by CleanChoice's marketing agents and in its contract grossly misrepresented the environmental quality of National Grid's and Eversource's basic service product offerings, which reflect the Commonwealth's mandated standards. CleanChoice, by providing this incorrect information, nullified any manifestation of affirmative choice made by customers presented with such misrepresentations by CleanChoice's marketing agents and its contract. Accordingly, CleanChoice did not receive affirmative customer consent and, thus, unlawfully provided each customer with supply service in violation of G.L. c. 164, § 1F(8)(a)(i) and 220 CMR 11.05(4)(a).

Additionally, CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7).

Further, CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00 (material representation environmental characteristics, 940 CMR 19.04(a);[17] material representation any term of agreement, 940 CMR 19.04(d); failure to disclose material information that deceives/misleads, 940 CMR 19.05(1); failure to disclose material fact that affects decision not to enter into a transaction, 940 CMR 19.05(2); failure to substantiate claims about impact of electric supply product on the environment, 940 CMR 19.06(4)). The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). In engaging in unfair or deceptive acts or practices, CleanChoice's business practices constitute egregious misconduct and a pattern of misconduct under 220 CMR 11.07(4)(c)1. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2.

In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

3. Respondent Product Pricing

The Respondent's agents provided misleading statements regarding the variable prices it is charging customers. Statements made during customer service calls are provided below.

[redacted] (Exh. DC-Customer Service Recording 4 (starting at 2:09)).

[redacted]
(Exh. DC-Customer Service Recording 5 (starting at 2:48)).

[redacted]

17 CleanChoice's misrepresentation of the environmental attributes is also contrary to the intent of 220 CMR 11.06(6)(e), which requires a competitive supplier to accurately advertise the environmental attributes of its products.

[redacted] (Exh. DC-Customer Service Recording 2 (starting at 3:19)).

Each of the agent's statements above are misleading because they inform the customer that the Company's high variable price is due to market value or high demand for renewable energy. As explained in Section III.E above, the Company's practice regarding variable rates is to use a fixed percent to increase prices from prior months. The Company's monthly variable prices are not based upon market value, yet agents claim market value is the reason for the increased prices.

Additionally, an agent misled a customer regarding a fixed price offer, claiming that the Respondent's price will be a lot lower than basic service. The agent, however, had no way of knowing what the basic service rate would be during the latter part of the twelve-month term.

[redacted] (Exh. DC-Customer Service Recording 4 (starting at 3:11)).

At the time of the customer call (January 17, 2023), National Grid's basic service rate was 33.891 cents per kWh, the subsequent basic service rate was 14.115 cents per kWh, and the following basic service rate was 18.213 cents per kWh. D.P.U. 23-BSF-D1; D.P.U. 22-BSF-D3; Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 23-BSF-D3 (2023). The agent's offer of a twelve-month fixed price of [redacted] cents per kWh was not a "lot lower" than National Grid's basic service rate during this period; the customer would pay approximately [redacted] more per kWh for twelve months with CleanChoice instead of National Grid's basic service rate.

In my view, the Respondent's customer service agent's statements were inaccurate and deceptive. As such, these customers' selection of Respondent's product was not transparent or informed, thus nullifying any manifestation of affirmative choice made by customers that received these marketing calls. Accordingly, CleanChoice did not receive affirmative customer consent and, thus, unlawfully provided each customer with supply service. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a).

Additionally, CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7).

Further, CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00 (material representation any term of agreement, 940 CMR 19.04(d); material representation generation/basic service price, 940 CMR 19.04(e); material representation price to be paid for electricity, 940 CMR 19.04(f); material representation price comparison, 940 CMR 19.04(g); material representation money to be saved relative to other supplier, 940 CMR 19.04(h); failure to disclose material information that deceives/misleads, 940 CMR 19.05(1); failure to disclose material fact that affects decision not to enter into a transaction, 940 CMR 19.05(2); making price comparison without providing relevant material facts, 940 CMR 19.06(3). The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). In engaging in unfair or deceptive acts or practices, CleanChoice's business practices constitute egregious misconduct and a pattern of misconduct under 220 CMR 11.07(4)(c)1. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2.

In Section IV, below, I propose sanctions for the Respondent's violations of the Department's consumer protection laws.

IV. PROPOSED SANCTIONS

The problematic business practices identified above demonstrate that the Respondent has failed to comply with the Commonwealth's consumer protection requirements. I consider that the Respondent engaged in business practices that nullified any manifestation of affirmative choice made by customers to select CleanChoice as their electricity supply provider. Accordingly, CleanChoice did not receive affirmative consent and, thus, unlawfully provided each customer with supply service. G.L. c. 164, § 1F(8)(a)(i); 220 CMR 11.05(4)(a). Additionally, I allege that CleanChoice disseminated inaccurate information and, thereby, failed to comply with the Department's regulation on information disclosure. 220 CMR 11.06(7). Further, I allege that CleanChoice engaged in business acts and practices that were unfair and deceptive as defined by the Attorney General in 940 CMR 19.00. As set forth above, the Attorney General's regulations define unfair and deceptive acts and practices. The Department requires competitive suppliers to comply with the Attorney General's regulations. 220 CMR 11.06(3), (6). Further, the Department's regulations allow the Department to take licensure action for egregious misconduct or a pattern of misconduct. 220 CMR 11.07(4)(c)1. The Attorney General regulations, thus provide standards by which the Department may define egregious misconduct and a pattern of misconduct, and take appropriate licensure action. Finally, CleanChoice has engaged in conduct that violates the Department's rules and regulations under 220 CMR 11.07(4)(c)2, for which the Department may impose civil penalties. In some instances (call recording review), the Department's review was limited to a small share of the Respondent's actions related to marketing, sales, and service, and yet CleanChoice's misconduct was severe. In other instances, CleanChoice's violations of the Commonwealth's consumer protection requirements was extensive (basic service rate comparisons, contact summary forms, contracts).

The allegations set forth in Section III, above, demonstrate that CleanChoice's business practices did not abide by the best practices set forth in D.P.U. 20-47, which are designed to ensure the veracity of the customer's election. The failure to do so is a serious breach of a supplier's duty and causes harm to customers, contributes to a lack of confidence in the competitive electricity supply market, and can thwart the Legislature's plan for broad participation in this market with substantial consumer benefits. D.P.U. 20-47, at 18-20. CleanChoice's failure to abide by the best practices set forth in D.P.U. 20-47 should be considered by the Commission in determining appropriate sanctions.

The material presented above, supports the following violations:[18]

- [redacted] direct mail advertisements represented a basic service rate higher than the actual rate (see Section III.B, above);
- eight customers that were provided inaccurate and deceptive information in their contract summary form and/or contract (see Section III.C, above);
- three instances of deceptive sales enrollment calls (see Section III.D, above);
- eight instances of customers who were deceptively offered prices based on market conditions (see Section III.E, above);
- direct mail advertising that includes deceptive information in the frequently asked questions (see Section III.F, above);
- four instances of customers that were enrolled without verification demonstrating affirmative choice (see Section III.G, above); and
- seven instances of the Respondent's agents that provided deceptive or unfair customer service calls (see Section III.H, above).

As such, I propose the following sanctions for CleanChoice pursuant to 220 CMR 11.07(3)(b) and (c).

1. Refunds. For all the customers for whom CleanChoice did not receive affirmative customer choice,[19] the Department should determine and require CleanChoice to refund to (1) the customer the difference in amounts paid to prior supplier and amount paid to CleanChoice and any reasonable expenses incurred switching back to the prior supplier and (2) the prior supplier the amount it would have received from customers during the time served by CleanChoice. G.L. c. 164, § 1F(8)(c); 220 CMR 11.07(3)(b)1-3.

2. Civil Penalty. For all the customers that CleanChoice switched for whom CleanChoice did not receive affirmative customer choice, the Department should

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[18] The instances of violations in the described categories of violations are subject to increase based on discovery during the course of this investigation.

[19] This includes but is not limited to: (1) customers that enrolled as a result of the misleading direct mail advertising, (2) customers that received the contract summary form and contract with deceptive language, and (3) customers that were subject to deceptive statements by the Company's sales and/or service agents.

require CleanChoice to pay a civil penalty in the amount of $1,000 per customer. G.L. c. 164, § 1F(8)(d); 220 CMR 11.07(3)(c).

3. Licensure Action. The Department should prohibit CleanChoice from selling electricity to any customers in the Commonwealth for a period of one year given the violations set forth above. G.L. c. 164, § 1F(8)(e); 220 CMR 11.07(3)(c).

Further, I allege that CleanChoice's business practices constitute unfair and deceptive acts and practices as defined by the Attorney General's consumer protection regulations at 940 CMR 19.04, 19.05, and 19.06. Accordingly, CleanChoice's business practices are in violation of 220 CMR 11.06(6)(a). Such conduct rises to the level of egregious misconduct and a pattern of misconduct, which warrant the Department to take licensure action and impose civil penalties pursuant to 220 CMR 11.07(4)(c)1 and 2. I consider that the Respondent engaged in business practices such that it is appropriate to warrant its removal from the residential market, and for the Respondent to incur financial sanctions.

As such, I propose the following sanctions for CleanChoice pursuant to 220 CMR 11.06(7) and 220 CMR 11.07(4)(c):

1. License Revocation. The Department should revoke CleanChoice's competitive supplier license. 220 CMR 11.06(7); 220 CMR 11.07(4)(c)1. To ensure an effective transition of CleanChoice's customer base, CleanChoice should be provided 90 days to transfer its customers to basic service.

2. Civil penalty. The Department should assess CleanChoice a civil penalty of $5,191,000. 220 CMR 11.07(4)(c)2. The amount is derived from:

   a. [redacted] direct mail pieces at $10 per violation [redacted], subject to the $5,000,000 maximum for any related series of violations (see Section III.B, above);

   b. nine violations of deceptive statements at $1,000 per violation ($9,000) (see Sections III.C and III.E);[20]

   c. three enrollment sales agent violations at $25,000 per violation ($75,000) (see Section III.D, above);

   d. four unauthorized enrollments at $25,000 per violation ($100,000) (see Section III.G, above); and

[20] The nine unauthorized enrollments are: Complainants #3, #5, #6, #7, #8, #9, #10, #11, and Enrolling Customer 3.

e. seven violations of customer service agents at $1,000 per violation ($7,000) (see Section III.H, above).

V. RESPONSE TO THIS NOPV

The Respondent must respond within thirty (30) days from the date of this NOPV. The Respondent should submit one copy of its response to Secretary Mark D. Marini at dpu.efiling@mass.gov, one copy to Lauren Morris, Prosecuting Hearing Officer at lauren.morris@mass.gov, and one copy to Timothy Federico, Presiding Hearing Officer at timothy.m.federico@mass.gov. Should the Respondent fail to respond to the allegations or fail to appear at an adjudicatory hearing, which hearing may be scheduled by the Presiding Officer, the Department will issue a default judgment against the Respondent. Guidelines, Section 4(4). The Respondent must be represented by counsel in this proceeding and has the right to review documentary evidence against it in the record, on which the Nondelegated Commissioners[21] will rely for their decision. Guidelines, Section 4(4). Additional parties may petition the Department to intervene in the proceeding, subject to meeting the "substantially and specifically affected by the proceeding" requirements of 220 CMR 1.03.

Sincerely,

Cecile M. Fraser

Cecile M. Fraser
Delegated Commissioner
Commonwealth of Massachusetts
Department of Public Utilities

[21] "Nondelegated Commissioners" refers to the two remaining Commissioners that were not given delegated authority to initiate and conduct competitive supply informal reviews and formal investigations. Competitive Supply Interim Guidelines, Section 2(9).