

940 CMR 19.00: RETAIL MARKETING AND SALE OF ELECTRICITY

Section

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19.01: Purpose

The Attorney General has determined that the promulgation of regulations is necessary in a competitive electricity market in order to protect Massachusetts consumers from unfair or deceptive acts or practices and to provide retail electricity sellers and marketers with notice of the illegality of such acts or practices. The Attorney General promulgates 940 CMR 19.00 pursuant to the authority granted by M.G.L. c. 164, § 102C(a) and M.G.L. c. 93A, § 2 (c). Any violation of any provision of 940 CMR 19.00 shall be a violation of M.G.L. c. 93A, § 2(a).

19.02: Scope

940 CMR 19.00 applies to the retail marketing and sale of electricity to consumers.

19.03: Definitions

Competitive Generation Service - the generation or procurement of electricity for a consumer by a competitive supplier, at a price which is not regulated by the Department.

Competitive Generation Service Price - the price charged to a consumer for competitive generation service.

Competitive Supplier - a retail seller of electricity whose price to a consumer is not regulated by the Department of Telecommunications and Energy and which is not a municipal light department or a distribution company.

Consumer - any person or entity that is an end-user or prospective end-user of electricity purchased or to be purchased not for resale from a retail seller of electricity.

Default Generation Service - the service provided by the distribution company to a consumer who is not receiving either standard offer generation service or competitive generation service.

Delivered Price - the total price a consumer will pay for electricity; the total of the generation price, the distribution price and all other lawful charges.

Department - the Massachusetts Department of Telecommunications and Energy (formerly the Department of Public Utilities).

Distribution Company - a business entity, which is not a competitive seller of electricity, engaging in the distribution of electricity at retail or owning, operating, or controlling distribution facilities; provided, however, a distribution company shall not include any entity that owns or operates plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation prior to January 1, 1986.

Distribution Price - the price, as allowed by the Department of Telecommunications and Energy, to be charged by the distribution company for distribution service.

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Distribution Service - the delivery of electricity to the consumer by the Distribution Company over lines that operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts.

Electricity, or Electricity Products and Services - the commodity of electric power, or the directly related products and services formerly offered only by distribution companies.

Electricity Information Label - the graphic mechanism for informational disclosure as required by 220 CMR 11.06.

Generation - the act or process of converting one form of energy or matter into electricity; also the quantity of electricity so produced.

Public Aggregator - a municipality or group of municipalities that groups interested electricity consumers within its municipal boundaries to facilitate or otherwise arrange the purchase and sale of electricity pursuant to M.G.L. c. 164, § 134.

Retail Seller of Electricity - any business, person or entity selling, offering to sell, arranging for the sale of, or engaged to market electricity or related products or services to consumers, including but not limited to all entities which are regulated, or which are required to be licensed, by the Department for these purposes.

Standard Offer Generation Service - the service provided by the distribution company for a term of seven years after March 1, 1998, in accordance with 220 CMR 11.04(9).

19.04: Misrepresentations Prohibited

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:

- (a) the quality, environmental or other characteristics, or source of any product or service being offered for sale by any retail seller of electricity.
- (b) the business relationship between any retail seller of electricity and any distribution company.
- (c) benefits to the consumer arising from the business relationship between a retail seller of electricity and a distribution company.
- (d) any term of any agreement to be entered into by the retail seller of electricity and a consumer.
- (e) 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.
- (f) the likelihood that a consumer will be able to purchase electricity or related products or services at a particular price, where the price depends upon the level of the consumer's electricity usage or any other variable.
- (g) 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.
- (h) 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.
- (i) the time period during which any offered price will be available.
- (j) the period of time for which any price will remain in effect.
- (k) the informational disclosures required to be provided by 220 CMR 11.06 including but not limited to the electricity information label.

19.05: Disclosures Required

- (1) 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) Except with respect to default generation service, in which case information shall be provided in accordance with 220 CMR 11.06(3) and (4), it is an unfair or deceptive act or practice for a retail seller of competitive generation service to initiate service to a consumer, or to provide any product or service to a consumer, or in any way obligate a consumer to accept or pay for any product or service, unless and until the retail seller of electricity has provided the consumer with the following information, in writing, 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 ends, where appropriate.
 - (c) For consumers that are presently on the standard offer generation service, the retail seller of electricity shall disclose:
 1. the availability to the consumer, whenever needed, of default generation service.
 2. any differences in the time periods over which the price(s) offered by the seller is (are) fixed as compared to the terms governing standard offer generation service.
 3. that it makes no representations beyond the expiration date of its contracted price as compared to the standard offer generation service.
 4. that the service that the customer is currently receiving is the standard offer generation service, with a full explanation of the conditions under which the customer may or may not return to standard offer generation service if the customer decides to purchase from the retail seller of electricity and thereafter should wish to return to the standard offer generation service or, alternatively, shall provide the following notice as part of the information which must be disclosed prior to the initiation of service:

**NOTICE TO CUSTOMERS ON
STANDARD OFFER GENERATION SERVICE**

"Be aware that the service you are currently receiving from your distribution company is "standard offer generation service," the rate for which has been approved by the Department of Telecommunications and Energy and which, subject to adjustment for potential developments such as inflation, must result in a 10% discount from the rate in effect during August 1997. You may remain on this service until the end of February 2005. Should you choose to receive service from a competitive supplier rather than your distribution company prior to February 2005, you will not be eligible to return to standard offer generation service unless you qualify as a low-income customer or you have notified your distribution company, prior to February 28, 1999 and within 120 days (180 days if you are receiving service through a public aggregator) of when you first received competitive service, of your desire to return to standard offer generation service."

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- (d) A complete explanation of any applicable connection, re-connection or termination procedures or fees, including, but not limited to, entry or re-entry fees, off-cycle meter reading fees, exit fees, or early cancellation fees or penalties; any fee charged by a distribution company when a consumer changes to another retail seller of electricity; any fee prescribed by the Department; and any other fee that may be charged to a consumer and which is required to be disclosed pursuant to M.G.L. c. 164, § 1F(5)(I).
- (e) A complete explanation of the terms on which credit may be extended to a consumer, and of any permissible deposit requirements.
- (f) A complete description and explanation of any product or service being provided in connection with the purchase of electricity from the retail seller of electricity.
- (g) The period of time for which any agreement will obligate the consumer to accept and pay for any product or service from the retail seller of electricity.
- (h) The three-day right of the consumer to rescind its decision to purchase from the retail seller of electricity provided by M.G.L. c. 164, § 1F(8)(a)(v).

(4) Where more than one retail seller of electricity is involved in the marketing and/or sale of a particular competitive generation service to a particular consumer, each such individual retail seller shall not be required to individually provide the disclosure required by 940 CMR 19.05(4) so long as the disclosure provided by at least one of the retail sellers satisfies the requirements of 940 CMR 19.05(4); provided that, irrespective of any agreement to the contrary, each such retail seller will continue to be responsible, jointly and severally, for compliance with 940 CMR 19.00.

19.06: Other Unfair or Deceptive Acts or Practices

- (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 M.G.L. c. 164, § 1B(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) It is an unfair or deceptive act or practice for a retail seller of electricity to compare any of its electricity prices, products or services through any form of marketing to the electricity prices, products or services of an entity that could not possibly provide such to the consumer because that entity is not licensed by the Department pursuant to M.G.L. c. 164, § 1F(1), or because that entity is not otherwise permitted, to engage in the retail sale or marketing of electricity to the Massachusetts public, unless full disclosure of the status of the entity to which it is being compared is made contemporaneously.

- (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.

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(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.

19.07: Severability

If any provision of 940 CMR 19.00 is held invalid, it shall not affect the validity of any other provision of 940 CMR 19.00. If the application of any provision of 940 CMR 19.00 to any person or entity, or under any particular circumstance is held to be invalid, it shall not affect the validity of the application of the provision to any other person or entity or under any other circumstance.

REGULATORY AUTHORITY

940 CMR 19.00: M.G.L. c. 164, § 102C(a); c. 93A, §§ 2(a) and (c).