The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 08-50 August 22, 2008

Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines Consistent with An Act Relative to Green Communities.

VOTE AND ORDER OPENING INVESTIGATION

I. INTRODUCTION

On July 2, 2008 An Act Relative to Green Communities, Acts of 2008, chapter 169 ("Green Communities Act" or "Act") was signed into law. The goal of the Act is to significantly enhance the development of renewable energy and energy efficiency in Massachusetts. Green Communities Act, preamble. To expand existing energy efficiency efforts, the Act requires all electric and gas distribution companies ("distribution companies") and municipal aggregators (together, "Program Administrators") to develop energy efficiency plans that will "provide for the acquisition of all available energy efficiency and demand resources that are cost effective or less expensive than supply." G.L. c. 25, § 21(b)(1).[1] Specifically, the Act directs Program Administrators to develop three-year, statewide energy efficiency plans, specifies the components of the energy efficiency plans, establishes a new Energy Efficiency Advisory Council ("Council"), and creates a new stakeholder and regulatory review process of the energy efficiency plans. G.L. c. 25, §§ 21, 22.

The Department of Public Utilities ("Department") anticipates that the Green Communities Act, working in tandem with the Department's recent Order in Investigation Into Rate Structures to Promote Efficient Deployment of Demand Resources, D.P.U. 07-50-A (2008), will lead to a significant expansion of energy efficiency activity in Massachusetts. In D.P.U. 07-50-A, the Department set forth a plan for allowing jurisdictional electric and gas distribution companies to set new rate designs that will "decouple" a company's revenues from

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[1] References to G.L. c. 25 contained herein, unless noted otherwise, are as amended by the Green Communities Act.

its sales. The Department expects that decoupling will eliminate a critical financial barrier to energy efficiency programs and facilitate the full engagement and participation of the Commonwealth's investor-owned distribution companies in activities to promote energy efficiency and other demand resources. Id. at 32-33.

With the expansion in energy efficiency activities brought by the Green Communities Act and decoupling, the Department anticipates there will be new questions and new challenges with regard to the design, planning, and regulatory review of energy efficiency programs going forward. In Massachusetts, energy efficiency programs date back to regulatory policies the Department established in the 1980s. See, e.g., Investigation into Pricing and Ratemaking Treatment of New Electric Generating Facilities which are not Qualifying Facilities, D.P.U. 86-36-F at 7-36 (1988). In 1997, following the passage of An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein, Acts of 1997, chapter 164, section 37 ("Restructuring Act"), the Department established a set of energy efficiency guidelines covering the methods and procedures for reviewing and evaluating energy efficiency programs. Investigation to Establish Methods and Procedures to Evaluate and Approve Energy Efficiency Programs, D.T.E. 98-100 (2000) ("Energy Efficiency Guidelines").[2] These guidelines address the energy efficiency topics for which the Department

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[2] On November 3, 1999, the Department issued an order with proposed guidelines and solicited stakeholder comments. Following its review of these comments, the Department issued its final order together with the final Energy Efficiency Guidelines. Herein, these orders are referred to as D.T.E. 98-100 (Proposed) and D.T.E. 98-100 (continued…)

had primary responsibility, including: energy efficiency program cost-effectiveness, monitoring and evaluation of energy efficiency programs, shareholder incentives, and Department review of energy efficiency programs.

The Department opens this investigation to update its Energy Efficiency Guidelines to ensure that they are consistent with the Green Communities Act. It is not our objective to revisit or make significant modifications to the long-standing policies that have served Massachusetts electric and gas customers well; our existing energy efficiency policies are largely consistent with the language and the spirit of the Act. In this investigation, we will confirm and clarify those policies, as appropriate, and modify the Energy Efficiency Guidelines, as needed, to respond to the requirements of the Green Communities Act.

The Department understands that Program Administrators face a significant challenge in preparing the first three-year, statewide energy efficiency plans by the statutory deadline of April 30, 2009. G.L. c. 25, § 21(b)(1). Our goal is to provide guidance as early as possible, in order to facilitate and expedite that planning process.

We will focus this inquiry on energy efficiency program cost-effectiveness, shareholder incentives, Department review of energy efficiency plans, and Department review of energy efficiency annual reports. The Department seeks comments from all interested persons on our specific proposals on these topics. See Section V, below.

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[2] (…continued)
(Final), respectively.

II. EXISTING ENERGY EFFICIENCY GUIDELINES

A. Cost-Effectiveness

If a cost-benefit analysis reveals that an energy efficiency program has benefits equal to or greater than its costs in present value terms,[3] then it is deemed cost-effective. Energy Efficiency Guidelines § 3.5. In issuing the Energy Efficiency Guidelines, the Department examined three measures of an energy efficiency program's cost-effectiveness -- the Utility Cost test, the Total Resource Cost test, and the Societal test -- and determined the Total Resource Cost test to be the most appropriate determinant of a program's cost-effectiveness. D.T.E. 98-100 (Proposed) at 15; Energy Efficiency Guidelines § 3.

The Total Resource Cost test considers the costs and benefits of an energy efficiency program to both the energy system and the participating customers.[4] Energy system costs are the sum of Program Administrator costs (i.e., those costs incurred to deploy a program) and a performance-based shareholder incentive. Energy Efficiency Guidelines § 3.2.2. Program participant costs include costs such as net equipment costs, net installation costs, and energy efficiency services costs. Id. § 3.2.3. Energy system benefits include avoided electric

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[3] The Energy Efficiency Guidelines use a discount rate equal to the yield on 30-year United States Treasury Bonds at the close of trading on the first business day each year. Energy Efficiency Guidelines § 3.4.

[4] The Utility Cost test is more narrowly drawn than the Total Resource Cost test, looking only at costs and benefits to the energy system to the exclusion of cost and benefits associated with participating customers. Alternatively, the Societal test builds on the Total Resource Cost test by adding those benefits and costs that accrue to society at large. D.T.E. 98-100 (Proposed) at 7-8.

generation and gas supply costs, avoided transmission costs, avoided distribution costs,[5] and low-income benefits. Id. § 3.3.2. Finally, program participant benefits consist of both participant non-resource benefits and participant resource benefits that flow to both participants and individuals in the energy efficiency program's target market. Id. § 3.3.3.

B. Monitoring and Evaluation

In D.T.E. 98-100, at 32 (Proposed), the Department stated that the goal of energy efficiency program evaluations is to derive accurate energy savings estimates. Historically, these savings estimates have been determined from retrospective evaluations of deployed energy efficiency programs. Id. at 27. The Department also reaffirmed the requirement that savings evaluations be reviewable, appropriate, and reliable.[6] Id. at 31. Under § 4.1 of the Energy Efficiency Guidelines, the Department established a two-step, pre- and post-implementation evaluation process. Before implementation, for all programs, a Program

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[5] Added to these avoided costs are reasonably projected future environmental compliance costs. Energy Efficiency Guidelines § 3.3.3(d).

[6] In Massachusetts Electric Company, D.P.U. 92-217-B at 6-7 (1994), the Department announced that it would accept savings estimates if the company demonstrates that the evaluations are "reviewable, appropriate, and reliable." The Department further stated that a company's filing will be considered reviewable "if the record is complete, clearly presented, and contains a summary that sufficiently explains all assumptions and data presented." Id. An evaluation will be considered appropriate "if evaluation techniques selected are reasonable given consideration of the characteristics of a particular [demand-side management ("DSM")] program, the company's resources, and the available methods for determining demand and energy savings estimates." Id. Finally, the savings estimates will be considered reliable "if the estimates are sufficiently unbiased and are measured to a sufficient level of precision, again, given consideration of the characteristics of a particular DSM program, the company's resources and the available methods for determining demand and energy savings estimates." Id.

Administrator must provide the Department with (1) information supporting a determination that a program is cost-effective, and (2) a description of how savings will be quantified. Energy Efficiency Guidelines § 4.2.1(a). For those efficiency programs aimed at market transformation or at customers generally,[7] a Program Administrator must provide a description of the expected effects of the program on energy use and/or market indicators. Id. § 4.2.1(b). After implementation, a Program Administrator must file with the Department evaluations of the savings achieved by each energy efficiency program. Id. § 4.2.2(a). For programs aimed at market transformation or at customers generally, where statistical precision may be undefinable, the target level of precision for market indicators and expected savings from energy conservation measures to be installed in future years should reflect a reasonable assessment of their importance in determining whether a program is cost effective. Id. § 4.2.2(b).

C. Shareholder Incentives

As a mechanism to promote effective energy efficiency programs, the Department allows Program Administrators to earn a shareholder incentive based on energy efficiency achievements. D.T.E. 98-100 (Proposed) at 37. In formulating the appropriate shareholder incentive, the Department seeks to strike a balance between promoting energy efficiency

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[7] Market transformation programs are designed to create long-term changes that reap continuous energy savings at a low cost. Electric Industry Restructuring, D.P.U. 96-100, May 1 Statement at 67 (1996). With market transformation programs and with those programs aimed at customers generally (i.e., whose identities are not known), savings cannot be determined promptly after a year of implementation. Energy Efficiency Guidelines § 4.2.1(b).

programs and protecting ratepayer interests. Id. To further this objective, the Department utilizes a three-tiered incentive structure with threshold, design, and exemplary performance levels. Id. The design performance level is the level of performance that a Program Administrator expects to achieve in implementing its energy efficiency programs. Energy Efficiency Guidelines § 5.2(a). The threshold performance level is 75 percent of the design level. Id. § 5.2(b). The exemplary performance level is 125 percent of the design level. Id. § 5.2(c).

As described in the Energy Efficiency Guidelines, the shareholder incentive is calculated as the product of the Program Administrator's total program implementation costs, the average yield of the three-month United States Treasury bill, and the percentage of the design performance level achieved. No incentive will be earned if the actual performance of the energy efficiency program is below the threshold level; the exemplary performance level serves as a cap to the incentive payment. Id. § 5.3.

Given the volatility in the Treasury Bill rate, the Department has allowed the use of a fixed interest rate of five percent in place of the three-month Treasury Bill rate contained in the Energy Efficiency Guidelines; the alternative rate provides companies with an incentive that is large enough to promote good program management, while ensuring that sufficient funds are available for energy efficiency activities. See, e.g., Western Massachusetts Electric Company, D.T.E. 03-43, at 12 (2003); KeySpan Energy Delivery New England, D.T.E. 03-86, at 14-15 (2004). The Department has also accepted proposals that set the threshold level of performance at 70 percent and the exemplary level of performance at 110 percent of the design

level of performance. NSTAR Electric Company, D.T.E. 03-48, at 13 (2003); Fitchburg Gas and Electric Company, D.T.E. 03-44, at 12 (2003); Western Massachusetts Electric Company, D.T.E. 03-43, at 13 (2003); Massachusetts Electric Company, D.T.E. 03-2, at 18 (2003). In those instances, the Department noted that tightening the performance bandwidth was justified based on the ability, gained from experience in implementing energy efficiency programs, to chart program performance with greater accuracy. D.T.E. 03-48, at 13; D.T.E. 03-44, at 12; D.T.E. 03-43, at 13; D.T.E. 03-2, at 18.

D. Department Review of Energy Efficiency Programs

The Energy Efficiency Guidelines describe a coordinated review of electric distribution company energy efficiency plans by the Department and the Department of Energy Resources ("DOER").[8] This procedure requires each electric distribution company annually to submit its energy efficiency plan to DOER for review. Energy Efficiency Guidelines § 6.2. After completing its review, DOER files a report with the Department, together with a copy of the plan. Id. In the report, DOER provides its conclusions regarding whether the proposed plan, including proposed program budgets, is consistent with DOER's statewide energy efficiency goals; any inconsistencies with these goals are identified in the report. Id. If DOER reports that the plan is consistent with the statewide energy efficiency goals and no objections have been filed, then the Department limits its review to cost-effectiveness issues and whether the

[8] Under G.L. c. 25A, § 11G and 225 C.M.R. §§ 11.00 et seq., DOER has the authority to oversee and coordinate ratepayer-funded energy efficiency programs and is required to file annual reports with the Department regarding proposed funding levels for said programs.

electric distribution company used competitive processes to procure its programs. Id. If, however, there is a dispute concerning any conclusions contained in DOER's report, then the Department will resolve the dispute pursuant to applicable law. Id.

Unlike the provisions for electric distribution companies, the Restructuring Act did not provide for coordinated review between the Department and DOER regarding gas energy efficiency plans. However, in July 2004, DOER's oversight and coordination of ratepayer-funded energy efficiency programs under G.L. c. 25A, § 11G was extended to gas programs. Acts of 2004, chapter 149, section 54 (adding G.L. c. 25A, § 11H). Under G.L. c. 25, § 11H, the process for the Department's review of gas energy efficiency programs follows that employed for electric programs, with the exception that gas Program Administrators have been filing five-year energy efficiency settlement agreements every five years.

Finally, energy efficiency plans proposed by municipal aggregators are reviewed pursuant to G.L. c. 164, § 134(b). Energy Efficiency Guidelines § 6.3. Presently, the Cape Light Compact is the only municipal aggregator which acts as a Program Administrator. The Cape Light Compact has designed and implemented Department-approved demand-side management and electric energy efficiency programs since 2001. Cape Light Compact, D.T.E. 00-47-C (2001).

III. ENERGY EFFICIENCY REQUIREMENTS OF THE GREEN COMMUNITIES ACT

A. Introduction

In pursuit of the goal to expand energy efficiency resources in the Commonwealth, the Green Communities Act substantially revamps and expands the existing statutory scheme pertaining to energy efficiency programs currently set forth in G.L. c. 25, § 19. Green Communities Act, § 11. Specifically, the Act replaces § 19 and adds §§ 20, 21 and 22 to G.L. c. 25. General Laws c. 25, § 19 provides increased funding for electric energy efficiency programs, as well as funding for gas energy efficiency programs, and provides for the allocation of energy efficiency funds among rate classes and low-income customers. Section 21 establishes funding levels for renewable energy and provides guidelines for municipal lighting plants that choose to participate in the renewable energy program. Section 21 contains an energy efficiency policy statement and sets forth particulars for the statewide energy efficiency plans. Finally, § 22 creates the Council, representing a broad range of stakeholders and charged with reviewing the statewide energy efficiency plans.

B. Energy Efficiency Program Funding

For both electric and gas energy efficiency programs, the Act requires that "the [D]epartment shall ensure that [programs] are delivered in a cost-effective manner capturing all available efficiency opportunities, minimizing administrative costs to the fullest extent practicable and utilizing competitive procurement processes to the fullest extent practicable." G.L. c. 25, §§ 19(a), 19(b). The Green Communities Act expands upon the Restructuring

Act's provisions regarding electric energy efficiency programs and explicitly provides for gas energy efficiency programs.

Before the Act's passage, funding for electric energy efficiency programs was limited to 2.5 mills per kilowatt-hour ("kWh") assessed to all customers, except those served by municipal lighting plants.[9] The Green Communities Act removes the existing funding cap on electric energy efficiency programs. G.L. c. 25, § 19(a). As revised, § 19 sets 2.5 mills per kWh as the energy efficiency funding level floor, with additional funding from amounts generated from Independent System Operator-New England's ("ISO-NE") Forward Capacity Market ("FCM"), cap and trade pollution control programs, and other funding approved by the Department.[10] Id.

Newly-enacted G.L. c. 25, § 19(b) provides that the Department may approve and fund energy efficiency programs proposed by gas distribution companies. The Act explicitly notes that eligible energy efficiency activities include combined heat and power and geothermal heating and cooling projects. G.L. c. 25, § 19(b). Prior to the Green Communities Act, gas distribution companies would file five-year energy efficiency plans, along with settlement agreements, executed by the gas distribution company, DOER, and other stakeholders. A

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9 The energy efficiency charge ratcheted down to this level (from 3.3 mills) over a span of four years. G.L. c. 25, § 19 (pre-Green Communities Act). Section 19 also prohibited the assessment of other charges that would exceed this prescribed level of funding for electric energy efficiency programs.

10 The Department's approval of such funding must give consideration to the effect of any rate increases on residential and commercial customers, the availability of other funding for energy efficiency or demand resources, and whether past efficiency programs have lowered electricity costs to residential and commercial customers. G.L. c. 25, § 19(a).

settlement agreement would set forth the annual budget for each of the five years of the company's energy efficiency programs. The gas distribution company would recover expenditures for these ratepayer-funded programs through the company's Local Distribution Adjustment Factor ("LDAF").

C. Requirement to Achieve all Cost-Effective Energy Efficiency

The Green Communities Act requires, as a means to mitigate capacity and energy costs, that electric and gas resource needs "shall first be met through all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply." G.L. c. 25, § 21(a). To effect this intent, the Act requires (1) electric distribution companies and municipal aggregators to jointly prepare a statewide electric efficiency plan and, (2) gas distribution companies to jointly prepare a statewide gas plan. G.L. c. 25, §§ 25(b)(1), 25(d)(1). These joint statewide plans, to be prepared every three years, "shall provide for the acquisition of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply . . . ." G.L. c. 25, § 21(d)(1).

D. Elements of Statewide Energy Efficiency Plans

According to the Act, each joint gas and electric statewide energy efficiency plan must contain: (1) an assessment of the costs, reliability and magnitude of energy efficiency resources; (2) the amount of energy efficiency resources to be acquired; (3) an estimate of customers' energy cost savings; (4) a description of energy efficiency programs; (5) a proposed performance incentive, budget, and fully reconciling funding mechanism; (6) an estimate of peak load reduction and economic benefits; and (7) data showing the percentage of monies

collected to be spent on customer benefits. G.L. c. 25, § 21(b)(2). As described in the following sections, the statewide plan -- gas or electric -- is the basis for each Program Administrator to develop its own gas or electric efficiency plan.

E. Energy Efficiency Advisory Council

The Green Communities Act establishes an eleven member Council. G.L. c. 25, § 22(a). The Council will be appointed by the Department and have representatives from the following groups: residential, low income, environmental, business, manufacturing, energy efficiency, organized labor, the Massachusetts Department of Environmental Protection, the Massachusetts Attorney General, the Massachusetts Executive Office of Housing and Economic Development, and DOER. The Council will be chaired by the Commissioner of Energy Resources. Id. As discussed below, the Council is charged with reviewing, in the first instance, statewide energy efficiency plans.

F. Filing Requirements

Program Administrators must prepare their own electric and gas efficiency plans every three years and submit them to the Council by April 30th for approval or comment. G.L. c. 25, § 21(c). The Council has 90 days within which to review a plan and submit its approval or comments to the Program Administrators, whereupon a Program Administrator may revise its individual plan based on the Council's comments. Id. By October 31st following the submission of a plan to the Council, Program Administrators must submit their respective plans to the Department, together with the Council's approval or comments and a statement of any unresolved issues. G.L. c. 25, § 21(d)(1). Upon receipt of an individual

Program Administrator's plan, the Department will hold a public hearing, allowing for interested parties to be heard. Id. Within 90 days of receiving the plan, the Department must conclude its review of the plan "which ensures that the electric and natural gas distribution companies have identified and shall capture all energy efficiency and demand reduction resources that are cost effective or less expensive than supply and shall approve, modify and approve, or reject and require the resubmission of the plan accordingly." G.L. c. 25, § 21(d)(2).

For an approved plan, the Department must also approve a fully reconciling funding mechanism. Id. Additionally, for a municipal aggregator's approved plan, the reconciling mechanism must require coordination between the distribution company and the municipal aggregator to ensure that costs are collected, allocated and distributed in a cost-effective, fair, and equitable manner. Id. Though each plan remains in effect for three years, the Department is obliged to determine a plan's effectiveness annually.[11] Id.

A Program Administrator that fails to reasonably comply with its energy efficiency plan may be subject to a fine, following a Department-conducted investigation where the Program Administrator has the burden to show good cause for its noncompliance. G.L. c. 25, § 21(e). Any fine levied by the Department will be paid to the Massachusetts Technology Park Corporation and cannot subsequently be collected from ratepayers. Id.

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[11] The implications of this provision of the Act are discussed in Section IV.D below.

IV. ISSUES TO BE ADDRESSED IN THIS INVESTIGATION

A. Criteria for Establishing Program Cost-Effectiveness

1. Cost-Effectiveness Test

As described in Section II above, the Department has a long-standing history of using the Total Resource Cost test to determine the cost-effectiveness of energy efficiency programs. This test includes all benefits and costs associated with the energy system, as well as all benefits and costs associated with the energy efficiency program participants. An energy efficiency program is considered cost-effective if the cumulative present value of its benefits exceeds the cumulative present value of its costs.

The Act contains multiple references to energy efficiency program cost-effectiveness. Some are of a general nature, for example, requiring the Department to ensure that energy efficiency programs are "delivered in a cost-effective manner capturing all available efficiency opportunities." G.L. c. 25, §§ 19(a), 19(b). Other references to cost-effectiveness in the Act are in conjunction with energy supply. For example, the Act requires the Department to ensure that "electric and natural gas resource needs shall first be met through all available energy efficiency and demand reduction resources that are cost-effective or less expensive than supply. The cost of supply shall be determined by the Department with consideration of the average cost of generation to all customer classes over the previous 24 months." G.L. c. 25, § 21(a); see also G.L. c. 25, §§ 21(b)(1), 21(d)(2). In yet other instances, the Act requires that energy efficiency programs be screened through "cost-effectiveness testing which compares the value of program benefits to program costs to ensure that the program is

designed to obtain energy savings and system benefits with value greater than the costs of the program." G.L. c. 25, §§ 19(c), 21(b)(3).

For the reasons discussed below, we believe that the continued use of the Total Resource Cost test is consistent with the Act and that no change is necessary to our long-standing policy of employing this test to determine the cost-effectiveness of energy efficiency programs. First, as noted above, the Act does not specify how cost-effectiveness should be determined. Absent any specific statutory requirements defining program cost-effectiveness, the Department will retain its well-settled practice of determining an energy efficiency program's cost-effectiveness based on the Total Resource Cost test.

Second, we view the Act's references to cost-effectiveness in conjunction with energy supply to be consistent with the Total Resource Cost test. The cost of supply (be it generation, transmission and distribution for electricity, or procurement, transportation, storage and distribution of gas) is a central component of the Total Resource Cost test; the test includes the avoided cost of supply as one of the most significant benefits of a program. An energy efficiency program will not pass the Total Resource Cost test unless the program costs are less than the program benefits, where the program benefits include the cost of energy "supply."

Moreover, the Green Communities Act states that the "cost of supply" shall be determined by the Department with consideration of the average cost of generation to all customer classes over the previous 24 months." G.L. c. 25, § 21(a). This provision gives the Department considerable flexibility in determining the cost of supply. In addition, our long-standing practice requires energy efficiency Program Administrators to use forecasts of

energy supply costs that would be avoided by energy efficiency programs in determining program cost-effectiveness. These forecasts of avoided costs are typically made for 20 to 30 years into the future, in order to cover the expected lives of the energy efficiency measures being installed.[12] Many factors are considered in preparing these forecasts of energy supply costs. The cost of generation in recent years is typically considered as an input in preparing forecasts for future years. Consequently, we believe that the existing practices of estimating avoided costs and applying the Total Resource Cost test are consistent with these provisions of the Act that refer to energy supply.

Third, with regard to references in the Green Communities Act to cost-effectiveness screening, we reach the same conclusion. Under the Total Resource Cost test, an energy efficiency program is considered cost-effective only if the value of the energy savings and system benefits are greater than the costs of the program. The Act's requirement that cost-effectiveness testing compare program benefits to program costs to ensure that the program will obtain energy savings and system benefits that are greater than the costs of the program is entirely consistent with the Total Resource Cost test.

The Department seeks comments on our interpretation of the cost-effectiveness requirements of the Green Communities Act, including our proposal to continue to use the Total Resource Cost test to assess an energy efficiency program's cost-effectiveness. We request that any interested person recommending an alternative approach discuss whether the

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[12] In recent years, the Massachusetts Program Administrators have used avoided costs that have been prepared for and used by gas and electric Program Administrators throughout New England.

Green Communities Act permits the use of the Energy System test, the Societal test, or some other cost-effectiveness test. Further, we request that any interested person recommending an alternative approach explain how such an approach is consistent with existing Department precedent on cost-effectiveness.

2. Activities That May Not Have Immediate or Quantifiable Savings

The Green Communities Act allows energy efficiency plans to include some programs and activities that might not have immediate energy savings or whose energy savings may be difficult to quantify. Such programs include: (1) programs for research, development and commercialization of efficiency products; (2) programs to support new appliance and product efficiency standards; (3) programs to integrate efficiency products with building energy codes or high performance sustainable buildings that exceed code; and (4) programs for public education regarding energy efficiency. G.L. c. 25, § 21(b)(2). Given the emphasis placed on these programs and activities by the Green Communities Act, as well as the mandate to achieve all cost-effective efficiency savings, the Department believes that it would be helpful to clarify our policies with regard to the cost-effectiveness of programs and activities where savings may take several years to be experienced or may be difficult to quantify.

The Department recognizes that certain activities can be expected to lead to program savings and benefits, despite the fact that such savings may take several years to be experienced or may be very difficult to quantify. Also, activities such as research and development of products or customer education of efficiency opportunities may be necessary to

support the implementation of other cost-effective programs and, thus, may indirectly result in cost-effective energy savings.

The Green Communities Act contains additional rationale for some of these programs where savings may be difficult to quantify. The Act describes a long-term policy goal to meet at least 25 percent of the Commonwealth's electric load by year 2020 with demand-side resources. Green Communities Act, § 116(a)(1). The Green Communities Act also requires the Council to seek to "maximize net economic benefits through energy efficiency and load management resources and to achieve energy, capacity, climate and environmental goals through a sustained and integrated statewide energy efficiency effort." G.L. c. 25, § 22(b). Achieving such long-term goals will require that Program Administrators implement a full array of energy efficiency activities to achieve both short-term and long-term savings. Education programs, research and development programs, appliance standards, and building code programs will need to be a part of that mix of activities.

The Department is concerned that many such activities might not be considered cost-effective because their benefits are difficult to quantify -- even though their long-term benefits might exceed their costs and even though they may be useful or necessary to enable other cost-effective energy efficiency programs. We, therefore, propose to permit Program Administrators to include the costs and benefits of activities that may not have immediate or easily quantifiable savings within the cost-effectiveness evaluation of the most relevant energy efficiency program associated with the activity (e.g., research and development of automated home energy management systems could be included in residential retrofit programs). Any

program that includes the costs and benefits of such activities must have a benefit-cost ratio greater than one to be considered cost-effective.[13] Furthermore, any such activity must be fully described in the energy efficiency plan, with as much quantification of costs and benefits as possible including a description of how the costs and benefits are accounted for in the most relevant energy efficiency program. The Department seeks comments on this proposed approach to assessing the cost-effectiveness of activities that may not have immediate or quantifiable benefits, including whether this approach (1) is consistent with the Green Communities Act, and (2) provides sufficient flexibility for Program Administrators to undertake such activities.

3. New Types of Energy Efficiency Programs

The Green Communities Act permits Program Administrators to propose energy efficiency programs that may be different from those implemented in the past. For example, energy efficiency plans may include combined heat and power projects and demand response programs. G.L. c. 25, § 19(b). In addition, energy efficiency programs need not be limited to those specified in the Green Communities Act. G.L. c. 25, § 21(b)(2)(iv).

We propose that the Total Resource Cost test be applied universally to traditional energy efficiency programs, demand response programs, combined heat and power projects, or any other new type of efficiency program. The Department seeks comments on whether our

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[13] We note that this approach is consistent with how we have considered such costs in past energy efficiency plans.

Energy Efficiency Guidelines should address the unique aspects of determining the cost-effectiveness of new types of energy efficiency programs.

4. Demand-Reduction-Induced Price Effects

In recent years, Program Administrators have proposed to evaluate a relatively new benefit from electric energy efficiency programs, referred to as demand-reduction-induced price effects ("DRIPE") as part of cost-effectiveness assessments. These are the benefits of reduced prices in the wholesale energy and capacity markets in New England as a result of the reduction in demand caused by energy efficiency programs. Recent studies have indicated that, while the reduction in prices in the wholesale capacity and energy markets from energy efficiency programs might be relatively small, the benefits of those reduced prices can be significant because they are experienced by all entities purchasing from the New England wholesale electric markets. Synapse Energy Economics, Inc., Avoided Energy Supply Costs in New England: 2007 Final Report (2007); ICF Consulting, Avoided Energy Supply Costs in New England: 2005 Final Report (2005) (collectively, "AESC Reports").

DRIPE benefits were first introduced by the Program Administrators in their 2006 energy efficiency plans. In reviewing those plans, the Department found that DRIPE is likely to represent positive benefits to Massachusetts electric customers and accorded DRIPE appropriate weight when considering the cost-effectiveness of the 2006 electric energy efficiency programs. Western Massachusetts Electric Company, D.T.E./D.P.U. 06-69, at 6 (2007); NSTAR Electric Company, D.T.E./D.P.U. 06-45, at 6-7 (2007); Massachusetts Electric Company, D.T.E./D.P.U. 06-34, at 6-7 (2007). DRIPE benefits were also included

in the 2007 energy efficiency plans. In approving these plans, the Department reiterated that DRIPE should be accorded due weight when considering the cost-effectiveness of energy efficiency programs. NSTAR Electric Company, D.P.U. 07-55, at 5-6 (2007); Massachusetts Electric Company, D.P.U. 07-48, at 5-6 (2007).

The Department continues to believe that DRIPE is likely to represent positive benefits to Massachusetts electric customers and that it should be given appropriate weight when considering the cost-effectiveness of energy efficiency programs. However, we would like to clarify in this proceeding how DRIPE should be used when evaluating the cost-effectiveness of future energy efficiency programs. We expect that such a clarification will assist in the planning and design of energy efficiency programs that achieve all cost-effective energy efficiency savings.

It is useful to note that DRIPE has recently been demonstrated in practice. Demand resources played a significant role in the 2008 FCM auction, representing roughly two-thirds of the bids awarded, and clearly having a dampening effect on the market price of capacity. Also, the estimates of DRIPE have improved over time, as a result of experience in wholesale electricity markets. See AESC Reports.

The Department believes that both the energy and capacity DRIPE values should be used in energy efficiency cost-effectiveness evaluations. It is clear that the effect is real on wholesale energy and capacity markets in New England. However, the Department questions whether the full New England DRIPE effect should be credited to the Massachusetts energy efficiency programs. While it is clear that all entities in New England that participate in the

wholesale energy and capacity markets will experience DRIPE benefits caused by the Massachusetts energy efficiency programs, it is not clear that including all of these benefits is consistent with the Department's Total Resource Cost test. As described above, the Total Resource Cost test includes all costs and benefits of energy efficiency programs that can be attributed to either the energy system or the program participants. Reduced prices for wholesale energy and capacity should clearly be considered benefits to the energy system. It is not clear, however, whether the Program Administrators' application of the Total Resource Cost test should include DRIPE benefits that accrue to the entire New England energy system. Stated more broadly, we question whether the Massachusetts Total Resource Cost test should extend to electric system costs and benefits that accrue outside of Massachusetts.

The Department proposes that Program Administrators include only the DRIPE benefits that accrue to Massachusetts electric customers in their cost-effectiveness evaluations.[14] This boundary is appropriate because the Department's jurisdiction extends only to Massachusetts electric customers. The primary responsibility of the Program Administrators and the Department is to the electric customers within the Commonwealth. Furthermore, the inclusion of statewide DRIPE benefits in the evaluation of energy efficiency programs is consistent with the provision of the Green Communities Act that requires electric Program Administrators to prepare joint statewide energy efficiency plans for review by the Council. G.L. c. 25, § 21(b)(1).

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[14] This would represent roughly half of the DRIPE benefits, given that Massachusetts' electricity sales are roughly half of those of New England.

The Department seeks comments on our proposed treatment of DRIPE in future energy efficiency program cost-effectiveness evaluations. Specifically, we request that commenters address (1) whether energy and capacity DRIPE values should be included in the cost-effectiveness evaluations, and (2) whether the Total Resource Cost test should be defined so as to include the DRIPE benefits only from Massachusetts or whether it should be defined in some other way.

5. Presentation of Cost-Effectiveness Results

The Green Communities Act requires that electric and gas distribution companies prepare individual energy efficiency plans that span a three-year period. This is a deviation from recent practices, where electric distribution companies prepare one-year plans and gas distribution companies prepare five-year plans.

The Department proposes to require that all energy efficiency plans include cost-effectiveness results for each of the three years of the planning period, as well as for the total three years combined. Further, the Department proposes that if an energy efficiency program is not cost-effective for one or more years but is cost-effective for the three-year planning period combined, then it should still be considered to be a cost-effective program. This is consistent with the use of multi-year plans which are intended to provide program planners and implementers some flexibility across years. Such treatment may also assist in ramping up new programs that have relatively high administrative costs in the short-term but greater energy efficiency savings over the long-term. The Department seeks comments on our proposal that plans include cost-effectiveness results for both one- and three-year periods.

B. Shareholder Incentives

1. Performance Incentive

As described in Section II above, § 5 of the Department's Energy Efficiency Guidelines contains provisions regarding the recovery of shareholder incentives for successful implementation of energy efficiency programs. In sum, these provisions create a cap on the amount of incentives that will be available for shareholders, and they allow distribution companies to earn shareholder incentives for achieving energy efficiency savings anywhere in the range from 75 percent to 125 percent of energy savings goals.

In recent years, the Department has allowed electric and gas distribution companies to deviate from these shareholder incentive provisions in two ways. First, as discussed above, the interest-rate cap on the amount of incentives has been changed to now equal five percent of total program budgets. See, e.g., D.T.E. 03-43, at 12; D.T.E. 03-86, at 14-15. Second, the exemplary level of performance has been reduced from 125 percent of energy savings goals to 110 percent of goals.[15] See, e.g., D.T.E. 03-48, at 13.

The Green Communities Act contemplates the continued use of shareholder incentives for implementing successful energy efficiency programs. It states that an energy efficiency plan shall include "a proposed mechanism which provides performance incentives to the companies based on their success in meeting or exceeding the goals in the plan." G.L. c. 25, § 21(b)(2)(v). However, the Act does not provide any specific guidance on how

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[15] Several gas Program Administrators continue to work with an exemplary threshold of 125 percent.

incentive mechanisms should be structured or how much money should be made available for shareholder incentives.

In addition, the Department's recent decoupling Order has implications for shareholder incentives. Specifically, the Department will permit electric and gas distribution companies to implement base rate adjustment mechanisms that will ensure that such companies would not experience reduced revenues as a result of successful energy efficiency programs. D.P.U. 07-50-A at 31-32. In so doing, the Department has eliminated an important financial barrier that distribution companies face in planning for and implementing energy efficiency programs.

In D.P.U. 07-50-A, the Department received a wide range of comments regarding the use of shareholder incentives to support energy efficiency programs. Some commenters argued that implementing decoupling would eliminate the need for energy efficiency shareholder incentives. Alternately, many commenters argued that decoupling is a necessary but not sufficient measure to encourage distribution companies to implement all cost-effective energy efficiency resources, and that the existing shareholder incentives should be maintained even with decoupling. Some commenters suggested that the existing shareholder incentives should be increased if distribution companies are to implement greater amounts of energy efficiency, while others recommended that a system including both penalties and rewards might be warranted. Id. at 34-35.

In our decoupling Order, the Department did not make any specific findings or conclusions regarding shareholder incentives. Instead, we noted that the implementation of

decoupling warrants a review of the current shareholder incentive mechanism and that any specific determination was outside the scope of that docket. Id. at 36-37.

The Green Communities Act permits Program Administrators to propose shareholder incentive mechanisms as part of their energy efficiency plans. We expect that these proposals will be discussed and reviewed by the Council and will eventually be filed with the Department for approval as part of the plans.

The Department proposes to modify the shareholder incentive section of the Energy Efficiency Guidelines, in order to bring it up to date and to make it consistent with the Green Communities Act. Specifically, we propose to remove any prescriptive requirements for how such incentive mechanisms should be structured -- either with regard to the incentive cap, the specific ways that incentives can be earned, or other aspects of such mechanisms. Experience has demonstrated that shareholder incentive mechanisms may need to be modified over time to reflect changing conditions or changing perspectives of the distribution companies or energy efficiency stakeholders. Guidelines that include specific details of shareholder incentives might quickly become outdated or inappropriate. As noted above, our current Energy Efficiency Guidelines are already inconsistent with current practice regarding interest rates and exemplary performance levels. See Energy Efficiency Guidelines §§ 5.2, 5.3.

Nonetheless, the Department believes that at this time we can play an important role in providing guidance on how energy efficiency shareholder incentives should be structured. It has been and continues to be Department policy that energy efficiency shareholder incentive mechanisms should be designed in such a way as to strike the appropriate balance between

(1) promoting effective, successful efficiency programs, and (2) protecting the interests of electric and gas customers. D.T.E. 98-100 (Proposed) at 37. It is our expectation that guidance provided as part of this proceeding will help the distribution companies and all relevant stakeholders design shareholder incentive mechanisms that achieve this balance.

Accordingly, we present below a set of principles to be used in designing energy efficiency shareholder incentives. We intend to apply these principles when reviewing shareholder incentive proposals included in energy efficiency plans.

- Shareholder incentive mechanisms should be designed to encourage distribution company executives, managers and energy efficiency staff to pursue all available cost-effective energy efficiency;

- The amount of funds available for shareholder incentive mechanisms should be kept as low as possible in order to minimize the costs to electric and gas customers;

- Shareholder incentive mechanisms should be designed in such a way as to encourage energy efficiency program designs that will best achieve the Commonwealth's energy goals, particularly with regard to the goals stated in the Green Communities Act;

- Shareholder incentives should be based on clearly-defined goals and activities that can be sufficiently monitored, quantified, and verified after the fact;

- Shareholder incentives should be available only for activities where the Program Administrator plays a distinct and clear role in bringing about the desired outcome;

- Now that the Green Communities Act requires statewide energy efficiency plans, shareholder incentive mechanisms should be as consistent as possible across all electric and gas distribution companies. Any deviations across distribution companies should be clearly justified; and

- Shareholder incentive mechanisms should account for the fact that the implementation of decoupling eliminates a critical financial barrier to energy efficiency programs.

The Department seeks comments regarding the above principles and whether there are other principles that we should adopt. In addition, the Department seeks comments as to

whether we should be more prescriptive with regard to energy efficiency shareholder incentives in our Energy Efficiency Guidelines, and if so, how.

2. Green Communities Act Penalty Provision

The Green Communities Act authorizes the Department to assess a penalty for Program Administrators that do not reasonably comply with the energy efficiency plan. Pursuant to G.L. c. 25, § 21(e), if, after investigation, the Department determines that a Program Administrator has not demonstrated good cause for failing to reasonably comply with the plan, the Department "may levy a fine of not more than the product of $0.05 per [kWh] or $1 per therm times the shortfall of [kWhs] or therms saved . . . ."

The Department is concerned that, without clarification, this provision could have a dampening effect on energy efficiency savings goals. A Program Administrator might have an incentive to understate its energy and capacity savings goals in order to ensure that it is able to meet such goals and, thus, not be subject to penalties under this provision of the Green Communities Act. The Department understands that there are many uncertainties inherent in energy efficiency program planning and implementation and that the new requirements of achieving all cost-effective energy efficiency and preparing three-year plans will increase those uncertainties significantly. Consistent with the intent of the Green Communities Act, we do not want to encourage Program Administrators to be over-cautious in designing efficiency programs. On the contrary, we wish to encourage Program Administrators to be ambitious and innovative.

It is our hope that providing guidance on this issue will provide Program Administrators with some certainty regarding the shareholder risks associated with this provision of the Green Communities Act. The Department seeks comments on whether we should provide guidance on the issue of penalties in our Energy Efficiency Guidelines. If so, we seek comments on the circumstances under which it would be appropriate for the Department to open a specific investigation under this provision of the Green Communities Act. One option would be for the Department to establish performance thresholds that, when reached, would indicate such an investigation is warranted. Such thresholds could provide guidance on how much flexibility a Program Administrator has before risking a shareholder penalty. For example, the Department could establish a threshold of energy or capacity savings goals (e.g., 75 percent) whereby programs that achieve at least this threshold level of performance would not be subject to investigation.

C. Department Review of Three-Year Energy Efficiency Plans

1. Introduction

The Green Communities Act establishes the process by which (1) Program Administrators submit a jointly-developed electric and a jointly-developed gas statewide energy efficiency plan to the Council, (2) the Council approves or comments on the plans, (3) the Program Administrators develop individual energy efficiency plans, based on the statewide plans and the comments received from the Council, and (4) the Department reviews the individual Program Administrator's energy efficiency plan.

The Green Communities Act also specifies the funding mechanisms that Program Administrators can use to pay for their energy efficiency programs. For electric Program Administrators, the funding mechanisms include: (1) a mandatory charge of 2.5 mills per kWh for all electric consumers; (2) the revenues generated by selling capacity from the energy efficiency programs into the FCM; (3) at least 80 percent of the revenues generated by the carbon dioxide allowance auction of the Regional Greenhouse Gas Initiative ("RGGI"); and (4) other funding as approved by the Department, including ratepayer funds collected through a fully reconciling mechanism. G.L. c. 25, §§ 19(a), 21(b)(2). For gas Program Administrators, the energy efficiency programs will be funded by ratepayers through a fully reconciling mechanism. G.L. c. 25, §§ 19(b), 21(b)(2). In this section, we discuss filing requirements and the review process that will apply to a Program Administrator's energy efficiency plan, including the filing requirements and review associated with the fully reconciling funding mechanism.

2. Contents of Three-Year Energy Efficiency Plans

The Department expects that the individual three-year energy efficiency plans will include much of the same information that is included in current energy efficiency filings.[16] Here, we explicitly identify several elements that should be included in the three-year plans to ensure that they contain all of the information necessary for the Department to determine whether they meet the requirements of the Green Communities Act. The Department proposes

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[16] Much of the format and content of the current energy efficiency plans is dictated by the DOER Draft Guidelines on Energy Efficiency, July 2004.

that each individual Program Administrator include the following information in its individual energy efficiency plan:

- Documentation of the Council's review of the applicable statewide plan, including any pertinent comments and a statement of any unresolved issues regarding the applicable statewide plan. If the Council has submitted comments recommending revisions to the statewide plans, each Program Administrator should summarize how it has addressed the comments in its individual plan;

- If the Program Administrator's energy efficiency plan deviates from the applicable statewide plan, it should include a complete description of how it deviates, along with a justification for all such deviations;

- Sufficient information to allow the Department to review each efficiency program, including program descriptions, program budgets, program savings goals, customer participation rates, program benefit-cost ratios, and all of the relevant assumptions underlying the cost-effectiveness evaluation. This information should be presented separately for each year of the three-year plan, as well as in a total for all three years combined;

- Sufficient information to allow the Department to determine whether Program Administrators have identified and will capture all energy efficiency and demand resources that are cost-effective, as required by G.L. c. 25, § 21(d)(2);

- Sufficient information to allow the Department to make determinations regarding the effect of any resulting rate increases on residential and commercial customers, as required by G.L. c. 25, § 19(a). This should include bill impact assessments that (1) identify the impacts on the entire gas or electric bill, in addition to the impacts on the distribution portion of the bill, (2) account for the reduction in costs due to efficiency program savings, as well as the increase in costs required for program implementation, and (3) indicate the bill impacts over at least a ten-year period in order to capture most of the savings available from the efficiency programs;

- Sufficient information to allow the Department to review shareholder incentive proposals, including all inputs and assumptions used;

- Sufficient information to allow the Department to make determinations regarding the minimization of administrative costs, to the fullest extent practicable, as required by G.L. c. 25, § 19(a);

- Documentation of how energy efficiency program funds are allocated to customer classes according to their contributions to those funds, as required by G.L. c. 25, § 19(c); and

- All relevant background documents, including but not limited to, technical reference manuals, program planning manuals, the workbooks and models used to screen energy efficiency programs for cost-effectiveness, and the study or studies used to estimate avoided costs.

In addition, the three-year energy efficiency plans must include sufficient information to allow the Department to review program budgets and funding sources, including information necessary to support the fully reconciling funding mechanism. Accordingly, the Department will require each electric Program Administrator to include the following program funding information for each year of the three-year plan:

- An estimate of the revenues to be collected from the 2.5 mills per kWh charge; including projections of the annual electricity sales, accounting for the projected savings to be achieved by past and current energy efficiency programs;

- An estimate of the revenues to be collected from the demand resource capacity sold into the FCM; including estimates of the amounts of capacity to be sold and the price for capacity sold into the FCM;

- An estimate of the revenues to be obtained from the RGGI auction, including estimates of the prices of carbon allowances, and estimates of the portion of the Massachusetts RGGI allowances that will be allocated to the Program Administrator; and

- An estimate of the remaining revenues that will need to be collected through the fully reconciling funding mechanism in order to provide enough funds to cover all costs associated with the three-year energy efficiency plans.

Furthermore, the three-year energy efficiency plans should include all necessary information to enable the Department to either (1) adjust the LDAF for gas efficiency programs or (2) establish a new reconciling charge for the electric efficiency programs.

Accordingly, the Department proposes to require each Program Administrator to include the following information in its three-year plan:

- A description of how the proposed reconciling charge is to be calculated;
- A description of how the proposed reconciling charge will be applied to each rate class;
- A description of how the reconciliation will be conducted; including the timing of the reconciliation, the regulatory review process, how carrying costs will be applied, and any other feature of the reconciliation process;
- A proposed tariff thoroughly describing the new fully reconciling charge; and
- Any other information necessary for the Department to establish the reconciling charge.

The Department seeks comments on whether the items listed above fully capture the material that Program Administrators should provide to the Department in filing their three-year energy efficiency plans. Commenters should address whether any further or more detailed requirements are necessary to ensure expeditious review of energy efficiency plans and funding mechanisms.

3. Energy Efficiency Plan Review Process

Section 6 of our current Energy Efficiency Guidelines contains a description of how the Department reviews energy efficiency plans and the energy efficiency programs contained therein. The Department currently relies upon DOER's assessment of whether the programs are consistent with statewide energy efficiency goals. If DOER reports that the programs are consistent with such goals, and if no objection to the DOER report is raised by any interested persons, then the Department's review is limited to cost-effectiveness issues and the use of competitive processes as required by the Energy Efficiency Guidelines § 6.2(4). The

Department proposes to apply a similar approach to our review of future energy efficiency plans, with the Council's approval or comments replacing the role of DOER.

In accordance with the Act, the Department must receive individual Program Administrators' plans by October 31st of the filing year. G.L. c. 25, § 21(d)(1). The Department must then issue a decision on each plan within 90 days of its filing. G.L. c. 25, § 21(d)(2). With such a short amount of time to review the Program Administrators' individual plans, the Department will need to conduct an expeditious review while, at the same time, allowing interested stakeholders an opportunity to comment and allowing parties any required due process rights.

Accordingly, the Department will issue a notice as early as is practicable following receipt of an energy efficiency plan. The notice will include a date for a public hearing, as required by statute, to allow interested persons to comment on the individual plan. G.L. c. 25, § 21(d)(1). Depending upon the issues presented in an energy efficiency plan, the notice may also allow interested persons an opportunity to request that the Department initiate an adjudicatory proceeding conducted pursuant to G.L. c. 30A.

The Department's review of each energy efficiency plan will accord due weight to the Council's review of the statewide plan, as well as any comments the Council may submit to the Department regarding an individual Program Administrator's plan. If comments are submitted in opposition to an individual plan, on any topic, the Department will resolve the dispute pursuant to applicable law, policy, and precedent.

We note that in reviewing the three-year energy efficiency plans, the Department may need to establish new, or modify existing, fully reconciling funding mechanisms to support the energy efficiency programs. It is the Department's view that, for electric Program Administrators, this fully reconciling funding mechanism should be applied to all distribution customers (on a per kWh basis) because this approach is consistent with current practice and is the most equitable way to collect these funds. Gas Program Administrators should continue to use the LDAF to recover gas energy efficiency program costs; electric Program Administrators will need to establish new reconciling funding mechanisms.

The Department will review proposals for the fully reconciling mechanisms as part of the 90-day review of the energy efficiency plans. Information necessary for the Department to conduct such a review should be included in the plan filings, as described above.

Furthermore, the Department expects that Program Administrators may wish to make modifications to energy efficiency programs during a plan's three-year term, in order to improve upon programs as new information, new opportunities or new program concepts become available. We expect that minor modifications would be made as a matter of course, but that significant modifications would require a petition and proposal in the form of a revised plan filed with the Department for review and approval.

We propose that the following criteria would be used to determine whether a program modification is significant enough to warrant a revised plan for Department review: (1) the discontinuation of a program; (2) a change in a program budget of greater than ten percent; (3) adjustments in savings goals that are greater than ten percent; or (4) a program

modification that leads to a change in shareholder incentives of greater than ten percent. The Department contemplates that review of any revised plan will be consistent with any procedures adopted for review of initial plans.

The Department seeks comments on what procedures are appropriate to follow when reviewing the Program Administrators' individual three-year energy efficiency plans. Commenters should address what procedures they believe are legally required as well as whether there are any procedures that, while not legally required, may be useful to assist the Department in its review of the plans. When addressing such procedures, commenters should describe how each will lead to an efficient and expeditious review of the three-year energy efficiency plans or revised plans. Finally, commenters should address whether Program Administrators and other stakeholders would benefit from more specific guidance with regard to the Department's proposed substantive and procedural review of the plans, including the establishment of a model procedural schedule to ensure that the Department's review can be completed within the required 90 days.

D. Department Review of Annual Energy Efficiency Reports

As discussed in Section II.B, above, under § 4 of the Energy Efficiency Guidelines the Department employs a pre- and post-deployment cost-effectiveness evaluation of energy efficiency programs. Before deployment, a Program Administrator must file with the Department an energy efficiency plan that supports a determination of a program's cost-effectiveness. Energy Efficiency Guidelines § 4.2.1. Following deployment, a Program Administrator must file an annual report which provides cost-effectiveness evaluations of the

savings achieved by each program. Id. § 4.2.2. Based on the results of these evaluations, a Program Administrator may inform the Department of its intent to continue a program's implementation or to modify the program. Id.

Similarly, under the Green Communities Act, an energy efficiency program must be screened for cost-effectiveness before its deployment and, once deployed, the Department and Council must periodically monitor it for continued cost-effectiveness. G.L. c. 25, § 21(b)(3). A program that fails a subsequent cost-effectiveness evaluation must either be modified to meet the cost-effectiveness test or be terminated. Id. To fulfill this oversight provision, we propose to continue to require Program Administrators to file with us annual reports on energy efficiency activities.[17] The Department proposes that the content of these energy efficiency annual reports should be substantially similar to the annual reports that have been filed with the Department by Program Administrators in the past.

Several provisions of § 4 of the Energy Efficiency Guidelines are out of date or less relevant as a result of the Green Communities Act. We propose to replace this section with a more focused set of guidelines regarding the content and Department review of the energy efficiency annual reports.

There is no statutory deadline with respect to the Department review of annual energy efficiency reports. However, as with our review of the energy efficiency plans, the

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[17] We note that the Green Communities Act requires the Council to provide an annual report on energy efficiency to the Department. G.L. c. 25, § 22(d). We do not expect this report to be sufficient for the Department to conduct its annual review, because we will need information that is specific to each Program Administrator and we will be required to make findings relevant to each Program Administrator.

Department must strike an appropriate balance between expeditious review of the Council's annual reports and allowing interested stakeholders due process to investigate valid concerns they might have. Accordingly, the Department will issue a notice as soon is practicable after receipt of the energy efficiency annual reports. The notice will include a date for a public hearing and will solicit comments from interested stakeholders. In addition, interested persons who demonstrate that they are substantially and specifically affected will be allowed to intervene in the proceeding. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1). The Department seeks comments on whether the review process described above is appropriate and will lead to efficient and expeditious review of the Council's annual reports.

V. PUBLIC PARTICIPATION IN THIS INVESTIGATION

The Department invites all interested persons to participate in this investigation. Interested persons may file comments on the issues and questions discussed above, and the Department welcomes comments on any issues related to this investigation that are not specifically discussed in the Order. The Department anticipates that a number of persons will be interested in this proceeding. Therefore, the Department encourages interested persons to present consensus positions and submit comments jointly, when possible. Initial written comments must be filed no later than the close of business on September 22, 2008.

Comments may not exceed 40 pages in length. All comments must be accompanied by an executive summary. One original and seven copies[18] of all comments should be filed with

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[18] Where possible, copies should be printed on both sides of each page. All copies must be three-hole punched.

Mary L. Cottrell, Secretary, Department of Public Utilities, One South Station - 2nd Floor, Boston, Massachusetts 02110. All comments also should be submitted to the Department in electronic format.[19] Comments will be available for public inspection at the Department's offices during business hours. Also, copies of comments that are filed electronically will be available on the Department's website.[20]

The Department will issue a procedural notice following receipt of initial comments. At this time, the Department anticipates holding a technical session during the week of October 6, 2008. Following this technical session, interested persons will be given an opportunity to file reply comments. After reviewing the comments, the Department will determine the appropriate next steps.

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[19] All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dpu.efiling@state.ma.us; or (2) on a 3.5" disk or CD-ROM. The text of the e-mail, disk label, or CD-ROM must specify: (1) the docket number of the proceeding (D.P.U. 08-50); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. Text responses should be created in either Corel WordPerfect, Microsoft Word, or Adobe Acrobat (version 7 or higher). Data or spreadsheet responses should be compatible with Microsoft Excel (version 2000). The Department strongly encourages filers to avoid submitting scanned files but will accept them for posting when an alternative version does not exist in electronic format. In addition, if the petitioner, applicant, or any other participant has already filed a document relevant to this proceeding, such as the initial petition, application, or filing, without providing an electronic copy of that document, such entity is directed to do so in compliance with the above electronic filing requirements as soon as practicable. All documents submitted in electronic format will be posted on the Department's website: http://www.mass.gov/dpu.

[20] The Department has created a new location on its website -- http://www.mass.gov/dpu -- dedicated to materials related to energy efficiency -- under both the Electric Power Division and Gas Division home pages find a link entitled "Energy Efficiency Information." Materials from this investigation will be made available at this location.

VI. ORDER

Accordingly, the Department

VOTES: To open an investigation into updating its Energy Efficiency Guidelines consistent with the energy efficiency provisions of the Green Communities Act; and it is

ORDERED: That the Secretary of the Department shall publish notice of this investigation in a statewide paper of daily circulation within the Commonwealth; and it is

FURTHER ORDERED: That the Secretary of the Department shall serve a copy of this Order upon all persons on the Department's official service list.

By Order of the Department,

/s/

Paul J. Hibbard, Chairman

/s/

W. Robert Keating, Commissioner

/s/

Tim Woolf, Commissioner