D.P.U./D.T.E. 96-23

Petition of Boston Edison Company, pursuant to G.L. c. 164, '' 76 and 94, and 220 C.M.R. '' 1.00 et seq., for review of its electric industry restructuring proposal.

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I. INTRODUCTION

This Order addresses the Offer of Settlement ("Settlement") of electric industry restructuring issues for Boston Edison Company ("BECo" or "Company") filed with the Department of Public Utilities, now known as the Department of Telecommunications and Energy ("Department"), by BECo and certain other parties.[1] This Order presents the procedural history, a description of the Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 ("Act")[2], a general overview of the Settlement, the Department's standard of review, an issue-by-issue summary of the comments on the Act and the Settlement, and our analysis and findings. The analysis and findings first address whether the Settlement is

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1 The Settlement was signed by the Company, the Attorney General, the Massachusetts Division of Energy Resources (ADOER@), Alternative Power Source, American National Power, Citizens Power, Competitive Power Coalition, Conservation Law Foundation, Greater Boston Chamber of Commerce, Intercontinental Energy Corporation, Massachusetts High Technology Council, Northeast Energy and Commerce Association, Northeast Energy Efficiency Council, Polaroid Corporation, the Retailers Association of Massachusetts, The Energy Consortium, and U.S. Generating Company.

2 On November 25, 1997, Chapter 164 of the Acts of 1997, entitled AAn Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer

consistent, complies or substantially complies with applicable provisions of the Act and second address whether the Settlement is consistent with Department precedent and in the public interest, the Department standard for reviewing all settlements. While approving the implementation of the Company=s restructuring plan, this Order directs the Company to make an additional filing to comply with the Department=s directives contained herein.

II. PROCEDURAL HISTORY

Protection Therein,@ was signed by the Governor.

In Electric Industry Restructuring, D.P.U. 95-30, at 47 (1995), the Department required each Massachusetts electric company to submit a restructuring proposal that includes, among other things, a plan (including any negotiated resolution) for moving from the current regulated industry structure to a competitive generation market and to increased customer choice. On February 16, 1996, BECo submitted its restructuring proposal, which the Department docketed as D.P.U. 96-23.[3] The Department conducted a public hearing in the Company=s service

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[3] On March 15, 1996, the Department opened a generic rulemaking to guide the development and evaluation of individual electric company restructuring plans. Electric Industry Restructuring, D.P.U. 96-100 (1996) ("D.P.U. 96-100"). On May 1, 1996, the Department issued proposed rules. D.P.U. 96-100, Explanatory Statement and Proposed Rules, May 1, 1996. On December 30, 1996, the Department, in the same docket, issued its plan for a restructured electric industry, including Model Rules and a Legislative Proposal. D.P.U. 96-100, Electric Restructuring Plan: Model Rules and Legislative Proposal, December 30, 1996. On January 16, 1998, the Department

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proposed draft rules implementing the Act for public comment. D.P.U./D.T.E. 96-100, Order Proposing Regulations and Soliciting Comment, January 16, 1998.

In addition, the Department approved a settlement of the Massachusetts Electric Company restructuring plan, D.P.U. 96-25, on February 26, 1997 and an amendment of it on July 14, 1997, D.P.U. 96-25-A. On December 23, 1997, the Department issued an Order finding that the Settlement previously approved by the Department substantially complies or is consistent with the Act. D.P.U./D.T.E. 96-25-B. The Department also approved the restructuring plan of Eastern Edison Company, D.P.U./D.T.E. 96-24, on December 23, 1997. That Order is the subject of several motions for reconsideration, now pending.

territory on March 13, 1996. On July 9, 1997, BECo submitted an Offer of Settlement (ASettlement@) of the Company's restructuring proposal, along with a Joint Motion for Approval.

Pursuant to notice duly issued, the Department received public comments on August 11, 1997,[4] and conducted a public hearing in the Company's service territory on August 13, 1997. The Department conducted a procedural conference on August 19, 1997, at which it granted petitions to intervene.[5] The Department conducted five days of evidentiary hearings between

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[4] The Department received comments from six entities: Cablevision Systems Corporation (ACablevision@); City of Boston; City of Everett; Enron Capital & Trade Resources ("Enron"); Action Inc., Massachusetts Energy Directors Association, Massachusetts Community Action Association, Massachusetts Senior Action Council, Cape Organization for Rights of the Disabled (together ALow Income Intervenors"); and XENERGY, Inc (AXENERGY@).

[5] The Department received a notice of intervention from the Attorney General pursuant to G.L. c. 12 ' 11E and granted the petitions to intervene of Cambridge Electric Light Company/Commonwealth Electric Company; City of Everett; CRSS, Inc.; DOER; Duke Energy Trading & Marketing, L.L.C., Eastern Power Distribution, Inc., Electric Clearinghouse, Inc., and NorAm Energy Management, Inc. (collectively, AIndicated Parties@); Enova Energy; Enron; Intercontinental Energy Corporation; Massachusetts Water Resources Authority (AMWRA@); Low Income Intervenors (ALII@); New Energy Ventures, Inc. (New England) (ANEV@); Shaw's Supermarkets; Town of Lexington; Town of Plymouth; Union of Concerned Scientists (AUCS@); Unitil/Fitchburg Gas & Electric Light Company; Utility Workers Union of America, AFL-CIO, Local 369; Utility Workers Union of America, AFL-CIO, Local 387 and Massachusetts Alliance of Utility Unions (jointly AUnions@); Western Massachusetts Electric Company; Westwood Energy Group; Wheeled Electric Power Company (AWEPCo@); and XENERGY. The petitions for leave to intervene of Citizens Awareness Network (ACAN@) and Massachusetts Citizens for Safe Energy (AMCSE@) were granted for a limited issue.

The following persons or entities were granted limited participant status:
Herbert B. Levesque; Eastern Edison Company; EnergyExpress; Cablevision; and New

September 15 and September 29, 1997. In support of the Settlement, the Company presented the testimony of Douglas H. Horan, senior vice-president and general counsel of BECo, James J. Judge, senior vice-president and treasurer of BECo, and Geoffrey O. Lubbock, director of generation divestiture of BECo.

In opposition to the Settlement, the Town of Plymouth (APlymouth@) presented the testimony of Raymond G. Torto, principal and managing director of CB Commercial Torto Wheaton Research and Francis X. Moynihan, manager of real estate data consulting services for Torto Wheaton Research. The MWRA presented the testimony of Richard La Capra, principal of La Capra Associates. The Unions presented the testimony of Paul L. Chernick, president of Resource Insight. WEPCo presented the testimony of Dr. John O=Brien, president of WEPCo. The evidentiary record consists of approximately 200 exhibits and the responses to 47 record requests.[6] Pursuant to the procedural schedule, the Department received initial briefs on October 9, and received reply briefs on October 16, 1997.[7]

England Cable Television Association (ANECTA@).

[6] The Company moved to protect from public disclosure, pursuant to G.L. c. 25, ' 5D, Exhibit DPU-7, which contains copies of surveys reflecting customer ratings and opinions. The Company also moved to protect from public disclosure the attachments to DPU-RR-3, also consisting of customer rating and opinion surveys. There was no opposition to either motion. Nevertheless, pursuant to G.L. c. 25, ' 5D, a proponent of confidential treatment has the burden of establishing the need for such protective treatment. The Company has failed to establish the need for protective treatment of either document. The Company merely stated that the information was confidential and competitively sensitive with no supporting argument, explanation or rationale. Accordingly, the Company=s motions are denied, and both Exhibit DPU-7 and DPU-RR-3 will be placed in the public docket.

[7] Initial briefs were submitted by the Company; the Attorney General; Cablevision;

DOER; Enron; Indicated Parties; Unions; Low Income Intervenors; MCSE/CAN; MWRA; NECTA; NEV and XENERGY; Plymouth; and WEPCo. Reply briefs were filed by the Company, the Attorney General, DOER, Enron, Low Income Intervenors, MCSE/CAN, MWRA, Plymouth, UCS, and the Unions.

The Company moved to strike the initial brief of MCSE/CAN, arguing that the initial brief and exhibits attached thereto consist almost entirely of material outside the scope of the record of this proceeding and rely on Aevidence@ not contained in the record (Company Motion to Strike Brief at 1). The Company also moved to strike portions of MCSE/CAN=s reply brief on the grounds that those portions contain citations to, discussion of, or argument concerning matters that are not part of the record (Company Motion to Strike Portions of Reply Brief at 1). In opposition and in reply, MCSE/CAN moved to strike the Company=s brief and reply brief. The Department finds that MCSE/CAN have disregarded the Department=s procedures and guidelines governing admission of evidence and submitting briefs. See 220 C.M.R. '' 1.10, 1.11; D.P.U. 96-23, Notice of Procedural Conference, Schedule and Ground Rules, (August 8, 1997). This failure may be attributed to MCSE/CAN=s lack of legal representation but is not excused. The Department recognizes the effort expended by the parties but determines that MCSE/CAN have submitted an initial brief so filled with information not contained in the evidentiary record that the Department is left with no alternative but to strike the initial brief in toto. The Department notes that the future interests of these parties would be served better by aid of counsel experienced in regulatory and administrative procedures. With regard to MCSE/CAN=s reply brief, the Department finds that the arguments at issue made therein are based on evidence that is beyond either the scope of the proceeding or the record. Accordingly, we grant the Company=s motions. The Department has the benefit, however, of MCSE/CAN=s arguments as presented in previous filings in this proceeding, and will consider them in due course. Finally, MCSE/CAN=s argument that the Company=s brief should be stricken is without merit, and thus is denied.

On December 8, 1997, the Department issued a notice seeking comments to establish whether the Settlement complies or is consistent with the Act.[8] On December 18, 1997, the Department issued a letter indicating that several issues in the Settlement required clarification and that final action on the Settlement would be deferred until receipt of clarifying amendments. The Department provided an opportunity for amendment of the Settlement and comments on any amendments (December 18, 1997 Letter at 3). On December 24, 1997, the Company submitted revisions to the Settlement intended to address the Department's concerns. The Department marks the December 18, 1997 letter from the Department and the December 24, 1997 letter and the attachments thereto from the Company as Exhibit DPU-67 and Exhibit BE-13, respectively, and on its own motion, makes them exhibits in this proceeding. Finally, the

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8 On or about December 15, 1997, the Department received comments from the following: the Company; Competitive Power Coalition of New England; Northeast Energy Efficiency Council; MWRA; Attorney General and DOER; Enron; MCSE/CAN; UCS; Low Income Intervenors; Cablevision and NECTA; and the Unions. A non-party, John T. O=Connor and the Committee for Fair Electric Rates, also filed comments.

Department received comments from Cablevision and Low Income Intervenors on the Company=s proposed revisions.[9]

III. DESCRIPTION OF THE ACT

In the Act, the Legislature found that ratepayers would be best served by moving from the existing regulatory framework, in which retail electricity service is provided principally by public utility corporations obligated to provide consumers in exclusive service territories with reliable electric service at regulated rates, to a framework within which competitive suppliers will produce electric power and customers will gain the right to choose their electric power supplier. St. 1997, c. 164, ' 1(c). The Legislature found that the transition to a competitive generation market should be orderly and completed as expeditiously as possible, should protect electric system reliability, and should provide electric utility investors with a reasonable opportunity to recover prudently incurred costs associated with generation-related assets and obligations. Id. at ' 1(s). Further, the Legislature found that the initial benefit of this transition to a competitive market should be a rate reduction of at least 10 percent beginning on March 1, 1998, and 15 percent upon divestiture of generation assets and securitization. Id. at ' 1(w).

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9 On January 5, 1997, Cablevision, NECTA and the Low Income Intervenors, unsolicited and without leave, filed reply comments to the Company=s December 15 comments.

The Act requires electric companies to file plans with the Department that implement a restructured electric generation market and offer retail access to customers by March 1, 1998. The plans must include the following: (1) an estimate and detailed accounting of total transition costs[10] eligible for recovery pursuant to St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1G(b)); (2) a description of the company=s strategy to mitigate transition costs; (3) unbundled prices or rates for generation, distribution, transmission, and other services; (4) proposed charges for the recovery of transition costs; (5) proposed programs to provide universal service for all customers; (6) proposed programs and recovery mechanisms to promote energy conservation and demand-side management; (7) procedures for ensuring direct retail access to all electric generation suppliers; and (8) a discussion of the impact of the plan on the Company's employees and the communities served by the Company. Id. (G.L. c. 164, ' 1A(a)). The Act further requires each plan to include a mandatory charge for all consumers to support the development and promotion of renewable energy projects. Id. at ' 37 (G.L. c. 25, ' 20(a)(1)).

10 Transition costs are also known as Astranded.@ AStranded@ costs are embedded costs that remain after accounting for maximum possible mitigation of such costs. See discussion at Section VI.D., below.

The Act mandates that the Department evaluate the substance of the plans filed prior to enactment and judge their compliance with the law.

Section 193 of the Act adds eight sections to G.L. Chapter 164. The eight sections added to Chapter 164 deal with retail access and divestiture of generating plants (Section 1A), require overall rate decreases and service offerings (Section 1B), set rules for electric companies and their marketing affiliates (Section 1C), unbundle costs on customer bills (Section 1D), set standards for performance-based rates (Section 1E), delineate consumer protection and information disclosure rules for marketers and other electricity suppliers (Section 1F), require mitigation and collection of identified transition costs (Section 1G), and allow for financial securitization to reduce transition costs (Section 1H).

IV. GENERAL OVERVIEW OF SETTLEMENT

The Settlement would restructure BECo in a way that furthers the Department=s competitive market structure objectives and to implement the restructuring plan of the Attorney General (Exh. BE-1, at 2). The Settlement includes a commitment by the Company to divest its fossil generation business voluntarily through a sale or an affiliate transfer of 100 percent of that business (id.). The Settlement further provides for the assurance of stranded cost recovery by the Company (id.). The Settlement addresses certain ratemaking issues as well as other issues necessary to implement retail choice for the Company=s customers (id.).

Under the Settlement, the Company will reduce its retail rates to customers by 10 percent and will provide retail delivery tariffs with a standard offer option (id. at 3).[11] The

[11] The Settlement states that "[r]etail customers include all customers of Boston Edison with

retail delivery rates will become effective for usage on and after the Retail Access Date (ARAD@), defined as the later of January 1, 1998, or the date when retail access is made available to all customers of the investor-owned utilities in Massachusetts (id. at 2, 5).

The Settlement commits the Company to implement the old source performance and generation performance standards that have been included in MECO=s settlement proposal (id. at 270). The Settlement notes that BECo=s New Boston and Mystic units would be covered by such standards (id.). The Settlement also includes provisions for demand-side management (ADSM@) and renewable energy (id. at 37-42).

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the exception of those customers which at the time of the approval of this Settlement are being served by Boston Edison pursuant to contracts approved by the Federal Energy Regulatory Commission" (Exh. BE-1, at 11, n.2).

V. STANDARD OF REVIEW

The Department set forth a standard for reviewing restructuring plans and settlements in D.P.U./D.T.E. 96-24, at 30-36. As noted, above, there are several motions for reconsideration of the Department=s Order in D.P.U./D.T.E. 96-24 now pending. Based on our review of those motions, the Department concludes that it is appropriate to modify our standard of review to better conform it to the terms of the Act. The standard of review, as modified, applies to this plan.

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 25, '' 5, 9, 18, 19, and 20; c. 111, '' 5K and 142N; and c. 164, '' 1 through 33, 69G through 69R, 71 through 75, and 76 et seq. This authority was most recently revised and augmented by the Act. The primary goal of the Act is to establish a new electric utility "framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier" in order to "promote reduced electricity rates." St. 1997, c. 164, ' 1.

Among other things, the Act authorizes and directs the Department to "require electric companies organized pursuant to the provisions of [G.L. c. 164] to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by this chapter. Such companies shall file plans that include, but shall not be limited to, the provisions set forth in this section." St. 1997, c. 164, ' 193 (G.L. c. 164, 1A(a)). Pursuant to

this statutory authority, the Department will review a Company's restructuring plan for compliance with applicable provisions of the Act.

The Act sets forth explicit directions for the Department's review of restructuring plans. Plans must contain two key features. First, they must provide, by March 1, 1998, a rate reduction of 10 percent for customers choosing the standard service transition rate from the average of undiscounted rates for the sale of electricity in effect during August 1997, or such other date as the Department may determine. Id. Second, each plan must be designed to implement a restructured electric generation market by March 1, 1998 by requiring the electric company to offer retail access to all customers as of that date. Id.

Plans must also include the following important provisions:

(1) an estimate and detailed accounting of total transition costs eligible for recovery pursuant to G.L. c. 164, ' 1G(b);

(2) a description of the company's strategies to mitigate transition costs;

(3) unbundled prices or rates for generation, distribution, transmission, and other services;

(4) proposed charges for the recovery of transition costs;

(5) proposed programs to provide universal service for all customers;

(6) proposed programs and mandatory charges to promote energy conservation and demand-side management;

(7) procedures for ensuring direct retail access to all electric generation suppliers;

(8) discussions of the impact of the plan on the Company's employees and the communities served by the Company; and

(9) a mandatory charge per kilowatthour for all consumers to support the development and promotion of renewable energy projects;

Id. at ' 37 (G.L. c. 25, ' 20(a)(1)), ' 193 (G.L. c. 164, 1A(a)).

The Act directs the Department to allow the implementation of plans filed before the enactment date: "An electric company that has filed a plan which substantially complies or is consistent with this chapter [i.e., G.L. c. 164, as amended] as determined by the [D]epartment shall not be required to file a new plan, and the [D]epartment shall allow such plans previously approved or pending before the [D]epartment to be implemented." Id. at ' 193 (G.L. c. 164, ' 1A(a)). The Department is governed by the statutory directives in determining whether a plan should be approved for implementation. In doing so, the Department applies a two-part standard of review. First, for those sections of a plan governed by G.L. c. 164, the Department must determine whether the plan Asubstantially@ complies or is consistent with the Act as it amends G.L. c. 164. For all other features of the plan, the Department must determine unqualified compliance of those features with applicable provisions of the Act.

We first state the standard of review in determining whether a plan substantially complies or is consistent with G.L. c. 164. The statute directs the Department to approve any plan that was filed before enactment, provided it substantially complies or is consistent with G.L. c. 164, as amended. Id. at ' 193 (G.L. c. 164, ' 1A(a)). Although the word Asubstantially@ is not defined in the Act, its meaning may be determined from usage and context. G.L. c. 4, ' 6, cl. Third. In applying this standard, the Department considers that an action Asubstantially complies" if it achieves Acompliance with the essential requirements" of G.L. c. 164. Black's Law Dictionary, Sixth Edition (1991). An action that is compatible with and

not contradictory of a statute is "consistent" with the statute. Id. The use of these terms in the disjunctive leads to the conclusion that the Legislature has given the Department a measure of discretion to effect the important public purposes of the Act. In addition, the Legislature has mandated swift implementation of the Act (i.e., before March 1, 1998). Because the phrase Asubstantially complies or is consistent with" is imprecise, the Department supplements its understanding of the words in the statute (customarily, Athe principal source of insight into legislative purpose," Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984)), with a consideration of Athe statute's purpose and history." Sterilite Corp. v. Continental Casualty Co., 397 Mass. at 839. A more limiting interpretation would defeat the Act's purposes and fail to give Aa fair consideration of the conditions attending its passage.@ Fickett v. Boston Fireman's Relief Fund, 220 Mass. 319, 320 (1915).

Next, we address the standard of review for those sections of a restructuring plan that are not governed by G.L. c. 164. In such instances, the Department must require unqualified compliance with the Act=s mandates. Thus, in reviewing sections of a restructuring plan not governed by G.L. c. 164, the Department must determine that those sections conform to the Act before it may approve a restructuring plan.

In this case, the Company has filed its restructuring plan in the form of a settlement. Therefore, the Department also applies our standard of review for settlements. In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, including relevant provisions of the Act, Department precedent, and the public

interest. Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U 96-50, at 7 (Phase I) (1996); Massachusetts Electric Company, D.P.U. 96-59, at 7 (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

In assessing whether an electric company's proposed settlement of restructuring issues is consistent with applicable law and Department precedent, the Department will consider whether the settlement is consistent with the statutory requirements and the overall goal and principles for restructuring that were established in the Act and with the Department's two major restructuring orders, D.P.U. 95-30 and D.P.U. 96-100, to the extent the terms of those orders are not superseded by the Act. A plan, filed as a settlement, that strikes an appropriate balance among the various competing interests in electric restructuring and that achieves an orderly transition, all consistent with the Act, other applicable law, Department precedent, and the public interest, should be approved for implementation.

VI. ISSUES

A. Standard Offer[12]

1. Standard Offer and Competitive Pricing

a. The Act

The Act requires that a distribution company provide a standard service transition rate for the period from March 1, 1998, to January 1, 2004, at prices and terms approved by the Department. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1B). The Act requires distribution companies to purchase electricity to supply the standard service customers through a competitive bid process. Id. The Act further requires that, if and to the extent that retail prices for standard offer power are below the wholesale costs of standard offer power, the Department shall investigate whether it is appropriate to extend, through new legislation, a comparability credit to non-standard offer customers. Id. at ' 308.

b. The Settlement

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12 As originally filed, the Settlement included a retail delivery tariff for a service the Settlement designated as AStandard Offer.@ The Act designates this service as AStandard Service.@ The Company revised its tariffs to reflect the term AStandard Service@

(Exh. BE-13, Att. A). The Department uses these terms interchangeably.

The standard offer is the mechanism by which several objectives of the Settlement are implemented. The standard offer provides a price reduction of 10 percent or more for those customers who elect standard offer service. The standard offer also facilitates the transition to retail competition by establishing a schedule of rates for standard offer service that increase gradually over time, thereby encouraging customers to move into the competitive market during the term of standard offer service. The Settlement establishes standard offer service for a transition period of seven years (Exh. BE-1, at 11). The Settlement provides that standard offer supply be put out for bid (id.). Standard offer prices begin at 2.8 cents per kilowatthour (AKWH@) in 1998 and increase each year until they reach 5.1 cents per KWH in 2004 (id.).[13]

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[13] The maximum rates the Company would pay to wholesale suppliers bidding to supply standard offer load increase from 3.2 cents in 1998 to 5.1 cents in 2004 (Exh. BE-1, at 261).

c. Positions of the Parties

(1) Marketers/Third Party Suppliers

Several parties assert that standard offer prices will be so far below market prices that they will hinder the participation of alternative suppliers. The Indicated Parties, Enron, WEPCo, XENERGY and NEV argue that, because the standard offer price will be below market prices, alternative suppliers will not be able to compete for customers during the seven-year standard offer transition period. These parties offer several possible solutions to this perceived problem.

The Indicated Parties offer two alternative solutions: (1) modify the terms of the standard offer according to their recommendations made in D.P.U./D.T.E. 96-24; or (2) leave the terms of the standard offer unmodified, but closely monitor the seven-year transition period, retaining jurisdiction in case competition in generation remains dormant, and intervening as necessary to assure retail choice (Indicated Parties Brief at 3-4). According to the Indicated Parties, the Department should intervene if there is no competition in generation after 2001 (id.). Enron states that the Department should modify the terms of the standard offer to provide for the establishment of the price through a market process, while maintaining the 10 percent discount in the first year of retail access (Enron Brief at 8).

XENERGY and NEV propose the use of a "comparability credit." Customers would receive a credit equal to the difference between the price BECo pays to purchase power and the standard offer generation price. Competitive suppliers could then sell to retail customers at the price they paid to purchase the power less the comparability credit (XENERGY and NEV Brief

at 5). The final price paid by retail customers would then be at or below the standard offer price.

WEPCo recommends that BECo be required to sell electricity to alternative suppliers at the retail standard offer price, provided that the power is then resold to retail customers in the BECo service territory (WEPCo Brief at 1). WEPCo asserts that its proposal would not impose costs upon or harm BECo (id. at 4).

(2) Company

In support of the standard offer proposal contained in the Settlement and in opposition to the statements of the Indicated Parties, WEPCo, Enron, XENERGY and NEV, BECo states that the standard offer is designed as a transitional mechanism and is not intended to mirror market prices, but rather to guarantee a certain schedule of prices, regardless of the market situation, for customers who are not ready to move to competition (BECo Brief at 10). The standard offer should be evaluated based on the balance it strikes between encouraging competition and protecting the interests of customers by providing near-term rate relief and an orderly transition to competition, the Company argues (id.). According to the Company, the increasing standard offer price stream is designed to give customers an escalating incentive to seek competitive suppliers, consistent with the Department's Order in D.P.U. 96-100 (id. at 11; BECo Reply Brief at 25). BECo also points out that several entities that expected to participate in a competitive electricity market in Massachusetts were parties to the Settlement (BECo Reply Brief at 26).

(3) Attorney General

The Attorney General states that Enron=s and WEPCo's proposed modifications should be rejected because there is no credible evidence to support their claims and because their proposed modifications would upset the carefully crafted and reasonable balance embodied in the Settlement (AG Brief at 16). Further, according to the Attorney General, standard offer service is being offered as a transitional service to ensure that restructuring is a success for consumers, not just to ensure that all would-be competitors can attract customers (id. at 19).

(4) DOER

DOER asserts that the Enron and WEPCo proposals should be rejected because the standard offer meets the Department's stated goals of restructuring (DOER Brief at 6). The standard offer guarantees an initial 10 percent rate reduction, with prices escalating over time to provide an incentive to customers to move into the competitive marketplace (id.). DOER states that the standard offer is not a competitive service, but a transitional generation service offered to retail customers by a regulated distribution company designed to satisfy several public policy goals (id. at 8).

d. Analysis and Findings

The Act requires that a distribution company provide standard service for a seven-year period beginning March 1, 1998, at prices and terms approved by the Department. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1B(b)). The Company has agreed to provide standard offer service to its customers beginning on March 1, 1998 and continuing through December 31, 2004. Thus, the duration of the standard offer contained in the Settlement substantially complies with the Act.

As required by the Act, the prices and terms of the Company's standard offer service proposal are subject to approval by the Department. Several parties take issue with the Company's proposed pricing of standard offer service. The Department notes that the parties raised substantially similar arguments with respect to standard offer pricing in D.P.U. 96-24, where they were rejected with extensive rationale. In that proceeding, marketers and third-party suppliers contended (1) that EECo=s standard offer service would be sold below its cost of acquisition, (2) that EECo would avoid financial losses normally expected from below-cost sales, and (3) that EECo=s standard offer prices would be too low, i.e., below expected market prices. D.P.U./D.T.E. 96-24, at 49. The Department found that, among other things, below-cost claims were unsupported by evidence; EECo=s standard offer service was a reasonable transition mechanism; and evidence delineating the future price of power was deficient. Id. at 45-46, 59-60. The Department rejects the arguments here for the same reasons.

Again, a number of parties have argued that the record demonstrates that standard offer prices will be below market prices at the time of retail access. While the parties= contentions

may be true in the early years of the standard offer, the Department emphasizes the transitional character of the standard offer. Moreover, in the event that BECo is able to sell its generation facilities at above-market prices, the Company will decrease the access charge and increase standard offer prices accordingly at that time. The Department finds that the standard offer rate schedule, which increases steadily over time, will also provide standard offer customers with a continuous incentive to move into the competitive market.

WEPCo's proposal would require BECo to sell its standard offer power to competitive suppliers provided that the power is resold to customers in BECo's service territory (WEPCo Brief at 1). The Department notes that sales for resale fall under the authority of the Federal Energy Regulatory Commission ("FERC"). Thus, as a sale for resale, WEPCo's proposal lies outside the scope of the Department's authority. Even assuming the Department=s authority extended to the resale arrangement WEPCo proposes, the Legislature provided a remedy.

Cognizant of the potential competitive problem posed by standard offer rates below market rates, the Act requires that, if the retail prices for standard offer power are below the wholesale price, then the Department shall investigate whether it is appropriate to extend, through new legislation, a comparability credit (a deferral mechanism for competitive suppliers intended to be comparable to the Company=s deferral mechanism under the standard offer) to non-standard offer customers. St. 1997, c. 164, ' 308. Accordingly, the Department will monitor the relationship between standard offer prices and wholesale costs and will initiate an investigation in the future if circumstances warrant.

Consistent with principles developed in earlier restructuring proceedings, the Department regards the standard offer as an important and necessary step towards development of a competitive retail market. D.P.U. 96-100, at 135-138; Electric Industry Restructuring, D.P.U. 95-30, at 45. Moreover, because the Company's standard offer approximates the Department's framework for standard offer service as indicated in D.P.U. 96-100, and because, as a product of settlement negotiations, the Company's standard offer represents a balance among competing interests, the Department finds that the Company's proposal substantially complies with the Act and is consistent with Department precedent and the public interest. Accordingly, the Department approves the Company's standard offer pricing proposal.

2. Standard Offer and Backstop Service

a. Introduction

Backstop service is the electricity supply provided by a purchaser of a distribution company=s generating assets or purchased power contracts to supply a distribution company=s standard offer customers. If the purchase and sale agreement includes the backstop service obligation, the purchaser is obligated to provide the electricity supply at guaranteed wholesale rates. The obligation to provide backstop service arises only if a distribution company=s standard offer auction does not generate a sufficient resources to serve all its standard offer customers. The Act is silent on the issue of backstop service.

b. The Settlement

The Settlement provides a schedule of rates that serve as the maximum wholesale prices that the Company will pay to standard offer suppliers. The rate schedule begins at 3.2 cents per KWH in 1998 and increases to 5.1 cents per KWH in 2004 (Exh. BE-1, at 261). If the standard offer auction does not result in sufficient supply, purchased power contracts, generation at BECo's Pilgrim Station ("Pilgrim"), and market purchases will be used in a least-cost manner to provide electricity for standard offer customers (id. at 31; Tr. 1, at 197).

The Settlement does not assign any portion of the standard offer obligation to the fossil-fired generating units that are being divested (Exh. ECT-4, at 1). However, while BECo has not imposed a backstop requirement on the potential purchasers of its fossil-fired generating units, it has imposed such a requirement on buyers of its purchased power contracts whereby if any contract is divested before the standard offer auction or the standard offer is not fully subscribed, the electricity provided under the contract shall be made available to backup the standard offer supply (Exh. BE-1, at 47).

c. Position of the Parties

(1) Enron

Enron states that BECo's proposed standard offer scheme is superior to those offered in the settlement agreements filed by MECo and EECo because the Company's scheme does not impose a backstop requirement on the fossil units (Enron Brief at 2). However, Enron argues that the imposition of the backstop requirement on the new owners of the Company's divested purchased power contracts will reduce the price paid for them by a purchaser and will therefore

not maximize mitigation of the Company's stranded costs (id. at 6-7). Enron recommends that the Settlement be amended so that the standard offer price for electricity is determined through a market mechanism while maintaining the 10 percent discount in the first year of retail access (id. at 8).

(2) DOER

DOER states that BECo's proposed treatment of its purchased power contracts serves ratepayer interests (DOER Brief at 10). DOER argues that there is uncertainty about the extent to which the standard offer auction will be subscribed; therefore, the Company should delay the sale of the purchased power contracts until after the standard offer solicitation and release the backstop obligation if the Company finds it does not need the power (id. at 11). DOER states that another benefit of retaining purchased power contracts for backstop requirements is that transaction costs are minimized (id.). Further, DOER argues that if the market price were higher than the contract price, the Company would be able to provide power to customers at lower prices if the contracts were retained to provide backstop service (id.).

(3) The Company

The Company argues that the intervenors who have raised concerns about the backstop obligation on purchased power contracts have not provided any support for their arguments (BECo Brief at 22). The Company states that the standard offer provides a reasonable transition to a competitive market and balances the two goals of encouraging competition and providing near-term rate stability for customers (id. at 25). It asserts that the cap on the wholesale rates, which are a part of the backstop obligation, allows it to obtain electricity for

standard offer customers at the lowest possible price, while encouraging customers to choose competitive suppliers as the standard offer rates increase over time (id.).

d. Analysis and Findings

Enron argues that the backstop requirement will depress the price a purchaser of the purchased power contracts would be willing to pay for the contracts and thus will not allow the Company to maximize its mitigation of stranded costs. DOER counters that the Company=s ratepayers benefit from the Company=s backstop service obligation proposal by reducing transaction costs. Enron has not provided any estimates of the effects of the removal of the backstop requirement on (1) the prices of the purchased power contracts, (2) the wholesale rates for standard offer supply, or (3) the deferral accounts which accumulate excess payments to suppliers. DOER=s position is likewise speculative. While there may be abstract merit to Enron=s argument, there is insufficient information in the record to reach this conclusion.

The Department notes that the Act envisions a transition period during which standard offer service would be offered to customers who do not choose a competitive supplier. St. 1997, c. 164, '193 (G.L. c.164, ' 1B(b),(e)). Similarly, in the Department's proposed rules, standard offer service was designed for the transition period from a monopoly system to a competitive industry to meet the needs of customers who decide, at least initially, not to choose a competitive supplier. D.P.U. 96-100, at 136. Our objectives for the transition period, adopted by the Act, are to ensure that the transition is orderly and expeditious and protects against customer confusion, while providing near-term rate relief for all customers. D.P.U. 95-30, at 30. The Department expected that if a company's standard offer proposal provided near-

term rate relief and was the result of a competitive solicitation, the Department's review would be minimal. D.P.U. 96-100, at 137.

The Company's standard offer proposal along with the backstop requirements is consistent with the objectives of the Act and of the Department to provide near-term rate relief and stability and an orderly transition to a competitive industry. The cap on the wholesale rates, which is part of the backstop obligation, will allow the Company to procure electricity for standard offer customers at set prices regardless of the future wholesale price of power. In the event that future wholesale prices exceed the cap, there will be a benefit to standard offer customers. Thus, the backstop obligation is consistent with the goal of providing near-term rate relief. The standard offer with the backstop obligation is further consistent with providing a smooth transition to competition and encouraging customers to choose competitive suppliers given that the standard offer rates increase over time. As a result of settlement negotiations, the backstop obligation is a just and reasonable balance of interests. While we do not endorse the backstop obligation for general application, we find that the Company's negotiated backstop proposal is consistent with an orderly transition to a competitive industry and near-term rate relief for customers as required by the law and Department precedent and therefore substantially complies with G.L. c. 164, as amended, and is in the public interest.

B. Retail Delivery Rates and Rate Reductions

1. The Act

The Act specifies that the RAD will be no later than March 1, 1998. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1A). The Act further requires that a distribution company shall provide a standard service transition rate, which, when combined with other charges, results in an overall rate reduction of 10 percent beginning on March 1, 1998 over rates in effect during August 1997, or such other date as the Department determines to be representative of 1997 rates. Id. (G.L. c. 164, ' 1B(b)). The Act also requires that distribution companies provide by September 1, 1999, through a combination of the 1998 rate reduction, net proceeds from divestiture, and net savings through securitization, an overall rate reduction of 15 percent over inflation-adjusted August 1997 rate levels, or such other date as the Department may determine to be representative of 1997 rates. Id. Additionally, the Act requires distribution companies to furnish electricity to persons or corporations engaged in the business of agriculture or farming at a rate set at least an additional 10 percent below any other rate, price, or charge category. Id. at ' 315.

2. The Settlement

The Settlement unbundles BECo's existing rates and freezes them until the RAD (Exh. BE-1, at 23). Effective on the RAD, the Company will reduce its rates to all customers by 10 percent (id. at 22). The Settlement contains retail delivery rates represented as offering a 10 percent rate reduction for all rate classes to be effective on the RAD (id.). The retail delivery rates for all rate classes unbundle the charges into four components: (1) distribution charge; (2) transmission charge; (3) access charge (referred to as "transition charge" in the

Act); and (4) standard offer generation service ("standard offer") charge (id. at 24).[14] The distribution charge will remain in effect through December 31, 2000 and may be superseded by a filing that becomes effective, after suspension, on January 1, 2001 (id.). The transmission charge will be recovered on a fully reconciling basis through the Transmission Service Cost Adjustment factor to be established annually (id. at 24-25, 197). The access charge will recover, on a fully reconciling basis through the Access Cost Adjustment, all of the Company's stranded costs (id. at 25, 198). The standard offer charge is annually fixed, for the standard offer transition period from 1998 through 2004: the year 1998 - 2.8 cents per KWH; 1999 - 3.1 cents per KWH; 2000 - 3.4 cents per KWH; 2001 - 3.8 cents per KWH; 2002 - 4.2 cents per KWH; 2003 - 4.7 cents per KWH; and 2004 - 5.1 cents per KWH (id. at 25). In designing the unbundled delivery rates, the Settlement reduces by 10 percent the total annual revenues (referred to as "baseline revenues") computed on the basis of the Company's actual 1995 consumption levels, its existing base rates, and its periodically-adjusted charges in effect in

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[14] The Settlement states that, although the distribution and access cost components will be separately identified on the tariff sheets, these two components will be combined into a single item in the customers' bills (Exh. BE-1, at 76).

November 1996 (id. at 75-76).[15] The Settlement states that the unbundled discounted retail delivery rates maintain both class and customer revenue neutrality (id.).

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[15] The periodically adjusted charges consist of fuel and purchased power (3.709 cents per KWH); New Performance Adjustment Clause ("NPAC") (0.481 cent per KWH); Conservation Service Charge ($0.15 per bill); and Conservation (DSM) Charges (0.249 cent per KWH for R-1, R-3, and R-4; 0.354 cent per KWH for G-1 and T-1; 0.381 cent per KWH for G-2 and T-2; and 0.403 cent per KWH for G-3) (Exh. BE-1, at 75).

3. Positions of the Parties

a. Cablevision, NECTA, Low Income Intervenors, Unions

Cablevision, NECTA, Low Income Intervenors, and the Unions assert that the Settlement does not meet the requirement of the Act to reduce customers' rates by 15 percent (Cablevision/NECTA Joint December 15 Comments at 3, January 5 Reply Comments at 1; LII January 5 Comments at 1; Unions December 15 Comments at 2). Cablevision and NECTA assert that the essential bargain in exchange for allowing electric utilities full recovery of stranded costs is the mitigation of such costs to the maximum extent possible and the rate reductions of 10 percent and a cumulative reduction of 15 percent after divestiture and securitization (Cablevision/NECTA Joint December 15 Comments at 1-2). Cablevision and NECTA, observing that rate reduction is a central purpose of the Act, conclude that any plan that does not provide for the statutorily mandated rate reductions cannot be in substantial compliance or consistent with the Act (id. at 3-4).

Cablevision, NECTA, and the Unions further assert that the inflation cap specified in Section 1.B.9 of the Settlement is inconsistent with the Act because this Settlement inflation cap excludes cost increases due to adjustments in fuel index, equity floor, and tax and accounting changes (id. at 4; Unions December 15 Comments at 4-5). Low Income Intervenors and the Unions assert that the 10 percent rate reduction provided for in the Settlement is not "real" because the Company can defer with interest the recovery of the costs of providing standard offer in excess of the standard offer charges set in the Settlement (LII Brief at 7; LII December 15 Comments at 4; January 5 Comments at 1; Unions December 15 Comments at 3-

4). The Unions also note that if, under Section 1.B.5(d) of the Settlement, the deferred costs under the standard offer exceed $50 million, the Company may apply to recover immediately all such amounts in excess of $50 million with such recovery not constrained by the inflation cap (Unions December 15 Comments at 4). The Unions claims that the Act makes no provision for such costs to be excluded from the inflation cap (id., citing St. 1997, c.164, '193 (G.L. c. 164, '1B(e))).

b. The Attorney General and DOER

The Attorney General and DOER assert that the Settlement will result in a 10 percent rate reduction for all customers (Attorney General Brief at 10; DOER Brief at 6). Regarding the Settlement provisions that adjust rates arising from changes in tax laws and accounting rules and arising from the Company's earnings on distribution operations falling below six percent (equity floor provision), the Attorney General asserts that these changes would not impair the value of the 10 percent rate reduction (Attorney General Brief at 11). The Attorney General notes that changes in tax laws and accounting rules are outside a utility's control (id. at 11-12). In addition, the Attorney General claims that the likelihood of the equity floor provision becoming operative is remote (id.).

Although the Attorney General and DOER did not specifically address the issue of whether the Settlement rate reduction substantially complies with the Act, they assert that the broad terms of the Settlement are consistent with the purpose and features of the electric restructuring legislation (Attorney General/ DOER December 15 Joint Comments at 2).

Therefore, the Attorney General and DOER submit that the Department can and should find that the Settlement substantially complies with the Act (id. at 4).

c. Company

The Company asserts that the Settlement complies with the initial 10 percent rate reduction as required by the Act (BECo December 15 Comments at 13). The Company states that it expects to comply fully with the cumulative 15 percent rate reduction following completion of generation divestiture and securitization (id.).

The Company states that using the rates in effect in August 1997 as the basis for establishing the baseline revenues grossly misstates the mandated 10 percent reduction in annual customer bills because BECo's rate structure includes classes with seasonally differing rates whose summer season rates are significantly higher than the winter rates (id. at 7).[16] The Company, therefore, proposes to use the baseline revenues calculated on the basis of a full year's worth of consumption and rates (id. at 7-8).[17] The Company states that by using the average 1997 fuel and purchased power and NPAC charges as a basis for calculating the

[16] For example, the existing winter and summer base energy charges for R-2 (with space heating) are: 0.03871 (winter) and 0.05269 (summer) $/KWH; for R-3: 0.06451 (winter) and 0.08781 (summer) $/KWH; and for R-4: 0.12962 (winter on-peak), 0.01950 (winter off-peak) and 0.30761 (summer on-peak), 0.02289 (summer off-peak). Exhibit BE-1 at 86-88. A similar structure of rates exists for Rates G-1, G-2, G-3, T-1 and T-2. Id. at 89-94.

[17] The Company notes that the fuel and purchased power and NPAC total for 1997 varied from 4.038 to 4.661 cents per KWH with annual simple and sales-weighted averages of 4.248 and 4.244 cents per KWH, respectively (BECo Comments at 7). In the case of the Settlement, it uses a lower average value of 4.190 cents per KWH (id.).

baseline revenues, the proposed rates in the Settlement would result in approximately a 10.4 percent rate reduction (id. at 8).

3. Analysis and Findings

The Settlement provides for departure from the proposed date of January 1, 1998 (Exh. BE-1, at 21). The Act's choice of March 1, 1998 as the RAD supersedes the Settlement's January 1, 1998 date. Thus, the operative RAD under the Settlement is March 1, 1998.

The Act provides that the Department may select a baseline period different from August 1997 for calculating the 10 percent rate reduction for customers taking standard offer service. St. 1997, c. 164, ' 93 (G.L. c. 164, ' 1B(a)). We exercise that discretion to choose the baseline proposed in the Settlement for the following reasons. First, the Department notes that if the base rates in effect in August 1997 were used as a basis for calculating the 10 percent rate reduction, the rate impacts to customers could be misstated, because the rates of some customer classes are seasonally-differentiated. Second, the Department notes that the average value of the periodically-adjusted charges used in the Settlement is less than the 1997 average value thereby giving a rate reduction on the RAD that would be greater than 10 percent. Accordingly, the Department finds that the use of base rates in effect for the entire year of 1997 and the periodically-adjusted charges in effect in November 1996 for calculating the baseline revenues in the Settlement results in a 10 percent rate decrease and therefore substantially complies or is consistent with the requirements of G.L. c. 164 and is in the public interest.

Regarding the absence of a specific provision in the Settlement that would provide an additional 5 percent rate reduction on or before September 1, 1999, the Department notes that the Company has indicated that it will fully comply with this provision of the Act (BECo December 15 Comments at 13). Moreover, there is nothing in the Settlement that precludes the Company from implementing the additional 5 percent rate reduction under the Act by September 1, 1999 through a combination of divestiture and securitization, and the Act requires the Company to do so. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1B(a)). Based on the Department's interpretation of the Settlement and the Company's representation that it will comply with the Act's mandated 15 percent rate reduction, the Department finds that the Settlement substantially complies or is consistent with the rate reductions requirements of G.L. c. 164. This determination is subject to review of later filings the Company has represented that it will make (BECo December 15 Comments at 5-6, 13).

Several parties contend that the Settlement=s provisions governing the inflation cap and deferral mechanism are not consistent with the Act. The Department determines that the parties= contention lacks merit. First, operation of the inflation cap as proposed by the Settlement would not impair the value of the rate reductions mandated by the Act and committed to by the Company. Second, the deferral mechanism is consistent with constitutional law, ratemaking precedent and the Act. The Act must be interpreted as not to render it contrary to the terms of the Constitution. Commonwealth v. S.S. Kresge Company, 267 Mass. 145, 148 (1929); Hayes v. City of Brockton, 313 Mass. 641, 645-646 (1943). In so interpreting the Act, the Department determines that the Company cannot be precluded from

collecting all of the reasonable costs incurred in providing standard offer service at the mandatory rate reductions. See Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 605 (1944); Bluefield Water Works v. West Virginia 262 U.S. 679, 688 (1923) (prohibiting confiscatory ratemaking by entitling utilities to collect reasonable operating costs and providing an opportunity to earn a just and reasonable return on investment). The Department finds that the proposed deferral mechanism is a reasonable manner by which the Company may provide the mandatory rate reductions during the transitional period of the standard offer. The Department notes that the Act is silent on the Company=s rate structure beyond the seven-year transition period.[18] Finally, with respect to the Settlement provision regarding the immediate recovery of deferral costs in excess of $50 million, the Department considers this feature of the Company=s deferral mechanism also appropriate. The Settlement indicates that the Company would file with the Department a standard offer surcharge. The Department, of course, is required to review and approve the filing to ensure that recovery does not impair the mandated rate reductions. Accordingly, the Department finds that the

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18 The Legislature=s awareness and acceptance of a deferral mechanism such as the one proposed in the Settlement is evidenced by St. 1997, c. 164, ' 308, which contemplates Department consideration of a comparability credit under certain circumstances.

Settlement=s inflation cap and deferral mechanism substantially comply with G.L. c. 164, and are in the public interest.

The Department notes that in its December 24, 1997 filing, the Company revised the applicable tariffs filed with the Settlement providing an additional 10 percent Afarm discount" to eligible customers engaged in the business of agriculture or farming. The Department finds that this revision to the applicable tariffs complies with Section 315 of the Act and is in the public interest.[19]

C. Rate WR

1. Description

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19 As provided by the Settlement, the rates approved in this proceeding are subject to refunds from the Company=s generating unit performance review cases or the Department=s determination with regard to any sale, transfer, or use of the Company's assets to any affiliate (Exh. BE-1, at 23, 54).

The Act provides for rate reductions of 10 percent beginning on March 1, 1998 and a cumulative 15 percent reduction on or before September 1, 1999, to all customers including the MWRA's Deer Island facility. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1B(b)).

The MWRA currently takes service from the Company under a tariffed rate, Rate WR, for its waste-water treatment facility on Deer Island, Boston.[20] The Settlement, as filed, did not include a tariff for Rate WR that provides a 10 percent rate reduction.

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[20] In Harbor Electric Energy Company ("HEEC")/Boston Edison Company, D.P.U. 90-288 (1991), the Department approved, among other things, a Power Supply Agreement between BECo and MWRA and an Interconnection and Facilities Support Agreement among BECo, HEEC, and MWRA that would allow BECo to deliver electric power to MWRA's waste-water treatment facilities on Deer Island, Boston. The Agreement was approved in accordance with Department authority under G.L. c. 164, ' 94, **&** 3, although it partakes of mixed characteristics of a customer-specific contract and a tariffed rate.

Following the passage of the Act, the Company proposed a revised Rate WR that unbundles the existing rate into four component charges of distribution, transmission, access and standard offer charges, consistent with the rate unbundling method applied in the Settlement for all other rate classes (BECo Letter dated January 5, 1998, Attachment). The revised Rate WR reflects a 10 percent reduction in the average rate from 6.485 to 5.836 cents per KWH (BECo Letter dated December 24, 1997, Appendix C). The Company developed the component charges to reflect the average rates of 2.8 cents per KWH for standard offer, 3.51 cents per KWH for access charge, 0.25 cent per KWH for transmission charge, and (0.724) cent per KWH for distribution charge (a negative charge), which was calculated as a residual value consistent with the Settlement rate unbundling method (id.). The proposed revised tariff for Rate WR includes a standard offer charge of 2.8 cents per KW, a fixed monthly transmission charge of $23,343.94, an access charge recovered through a fixed monthly charge of $86,505.27 and demand and energy charges, and a negative fixed monthly distribution charge of ($67,621.63) (BECo Letter dated January 5, 1998, Attachment).

2. Positions of the Parties

Although granted leave to do so, MWRA did not comment on the revised Rate WR filed by the Company on January 5, 1998. Initially, the Company opposed giving the 10 percent discount to MWRA, arguing that the MWRA was a special contract customer and that Rate WR already reflected a variety of concessions and rate reductions not available to non-contract customers (BECo Brief at 15-22; BECo Reply Brief at 28-31; BECo December 15

Comments at 13).[21] Passage of the Act, of course, mooted this dispute. Noting that the Act resolves the issue in favor of MWRA, the Company stated that it would file a Atransition rate" for Rate WR to provide a 10 percent rate reduction as required by Section 1B(b) of the Act (BECo December 15 Comments at 14). The Company states that it does not see the need for any additional ruling or modification of the Settlement in regard to this matter (id.). On January 5, 1998, the Company filed a tariff for Rate WR to comport with the requirements of the Act (BECo Letter dated January 5, 1998).

3. Analysis and Findings

In reviewing the revised Rate WR filed by the Company on January 5, 1998, the Department must determine whether it substantially complies with or is consistent with the Act and whether it is consistent with Department rate design precedent. Although the revised Rate WR provides for a 10 percent rate reduction by March 1, 1998, consistent with the requirement of the Act, it includes a feature not normally accepted in rate design, i.e., a negative distribution charge. We address this issue below.

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[21] MWRA stated that it does not take issue with the Settlement except for the interpretation of the Settlement that would deny Rate WR the 10 percent rate reduction (MWRA Brief at 3). MWRA had argued that the Rate WR is not discounted but instead a "fully compensatory rate" that recovers the class' fully allocated costs, including the allocated low-income subsidy, and the rate is subject to change together with all of the other tariffed rates as part of a general rate proceeding (MWRA Brief at 4-6, citing, D.P.U. 90-288 (1991), at 13; Boston Edison Company, D.P.U. 92-92 (1992)). MWRA stated that freezing Rate WR and providing a 10 percent rate reduction to all other rate classes would represent a de facto 10 percent increase for Rate WR making MWRA customers subsidize all other customers and therefore would violate Department rate design principles (id. at 11-12).

The Department notes that the existing service under Rate WR was established as a separate rate applicable to the Power Supply Agreement between BECo and MWRA in D.P.U. 90-288. In that docket, the Department noted that:

> The Applicants [BECo and HEEC] contend that a separate rate agreement is necessary for the MWRA's Deer Island load because BECo does not have an existing rate class that reflects the characteristics of that load. Specifically, the MWRA's load is unique in that it will not be delivered below the 115 kilovolt level.

D.P.U. 90-288, at 9. Accordingly, the Department found that the rate structure designed for the specific delivered voltage level, load characteristics, and other requirements of the MWRA was reasonable and that the proposed Rate WR reflected anticipated costs and revenues. Id. at 13. The Department here notes that this approval of a separate rate class, although for a single customer, is consistent with long-standing Department precedent for rate reclassification based on cost of service. See, Boston Gas Company, D.P.U. 88-67, Phase II, at 18-19 (1989); Boston Gas Company, D.P.U. 84-236-A, at 11 (1986); Boston Edison Company, D.P.U. 1720, at 136 (1984).

The Department further notes that the Rate WR has been revised, together with all other rates in the Company's general rate case following its approval, in a manner that recovers allocated costs, including the class' allocated low-income subsidy. The Department also notes that, the Act by giving Rate WR the same rate reductions provided to all other rate classes, has effectively treated Rate WR as a separate rate class and therefore implicitly affirmed the Department's long-standing precedent for rate reclassification based on cost of service.

Given the unique load characteristics of MWRA's Deer Island facility and the corresponding relatively low average unit cost of service, a strict application of the unbundling method applied to all other rate classes contained in the Settlement,[22] which determines the distribution charge as a residual, would result in a negative distribution charge for Rate WR as shown in the Company's January 5, 1998 filing. The Department is concerned that this structure of charges does not provide a reasonable representation of BECo's cost of distribution service to MWRA's Deer Island facility and could send a perverse price signal. A negative distribution charge is so anomalous that it would not ordinarily be accepted in a conventional rate proceeding. A zero distribution charge is one thing; forcing the Company to pay the customer to provide distribution service is another thing altogether. The Department cannot conclude the Act intended such an effect and therefore adopts the partial unbundling approach described below. Accordingly, the Department rejects the Company's proposed revised Rate WR filed on January 5, 1998.

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[22] The Department notes that the Settlement does not specifically cover the Rate WR.

MWRA presented four alternative proposed tariffs that would provide Rate WR a 10 percent rate reduction (DPU-RR-21). The Department notes that three of these four proposals indicate the standard offer charge of 2.8 cents per KWH ("Proposed Tariffs 1, 3, 4"). Although these three tariffs do not fully unbundle Rate WR into the components of transmission, distribution, and access charges, they do not include a negative distribution charge, unlike BECo's proposed revision to Rate WR. Since the structure of Proposed Tariff 3 is similar to the structure of the existing Rate WR and provides for a separate standard offer charge, the Department finds that this rate structure offers a reasonable design for a transition rate that meets the rate reduction requirement of the Act.[23] Accordingly, the Department directs the Company in its compliance filing to this Order to revise Rate WR, following the structure of Proposed Tariff 3 shown in Department Record Request DPU-21, such that the revised charges would recover approximately 90 percent of the baseline revenues for Rate WR.

The Department notes the Company is engaged in negotiations with MWRA to resolve a number of matters involving the Power Sales Agreement, the Rate WR, and the interconnection agreement between the MWRA and the Company's subsidiary, HEEC. If successful, the parties will file the resulting agreement for Department review and approval (BECo December 15 Comments at 14). The Department encourages the Company and MWRA to continue such negotiations and to file, at the earliest time possible, any agreements reached for Department review and approval.

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[23] The Department notes that the Proposed Tariff 3 slightly overcollects the reduced baseline revenues for Rate WR. The Department directs the Company to redesign the charges to resolve this problem.

D. Stranded Costs

1. The Act

The Act defines transition costs as the embedded costs that remain after accounting for maximum possible mitigation of such costs. St. 1997, c. 164, ' 192 (G.L. c. 164). According to the Act, categories that may be included in transition costs are the following: (1) the amount of any unrecovered fixed costs for generation-related assets and obligations; (2) the amount of any previously incurred or known liabilities related to nuclear decommissioning and post-shutdown obligations associated with nuclear power plants; (3) the unrecovered amount of the reported book balances of existing generation-related regulatory assets; (4) the amount by which the costs of existing purchased power contract commitments exceed the competitive market price for electricity, or the amount necessary to liquidate such contracts; (5) employee-related transition costs; (6) any payment of taxes or payments in lieu of taxes; and (7) any costs to remove and decommission retired structures at certain fossil fuel-fired generation facilities. In addition, the Act requires that companies undertake all possible efforts to maximize the mitigation of transition costs through asset divestiture or transfer, renegotiation of purchased power agreements (APPA@), and any other activities that can reduce stranded costs. St. 1997, c. 164, ' 193 (G.L. c. 164 ' 1G).

2. The Settlement

Pursuant to the Settlement, the Company=s access charge is designed to collect 100 percent of BECo's stranded costs over time subject to reconciliation after determination of

actual costs. The base access charge (before mitigation) begins at 3.51 cents per KWH in 1998 (Exh. BE-1, Att. 3, Sch. 1, at 1).

a. Categories and Amounts of Stranded Costs

The Settlement's estimated stranded costs include both fixed and variable components.[24] The fixed component consists of (1) amounts sufficient to amortize the balance of plant and regulatory assets, (2) revenues sufficient to provide an overall pre-tax carrying charge of 10.88 percent on balance of plant and regulatory assets and on deferred taxes, and (3) the forecasted costs associated with transmission wheeling charges from BECo=s entitlement in Wyman Unit 4 (Exh. BE-1, Att. 3, at 2-9). In addition, the fixed component allows for the application of credits for the residual value of company assets as determined through the sale of the Company=s non-nuclear generation; the valuation of Pilgrim; changes in carrying charges due to refinancings, repurchases, retirements of securities, actual Financial Accounting Standard 106 balances, and securitization; and updated balances on certain regulatory assets (id.).

The variable component consists of charges that are forecast and reconciled to actual charges, including (1) amounts associated with the fixed operating, decommissioning, and post-shutdown costs of Pilgrim; (2) above-market payments associated with purchased power and fuel transportation contracts; (3) payments to cities and towns in lieu of property taxes; (4) costs associated with adjustments in workforces that result from retail access such as employee severance and retraining; (5) damages, costs, or net recoveries associated with legal claims; and

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[24] In general, dollar amounts in the fixed component are set in the Settlement and do not change. The dollar amounts in the variable component are forecast and will be reconciled to actual charges (Exh. BE-1, Att. 3, at 2).

(6) net costs associated with operation of Pilgrim through the year 2000, including 25 percent of reasonable operating costs less revenues, costs associated with the final nuclear core at shutdown, and specified prices in the event that Pilgrim is used to support standard offer service (id. at 9-13). In addition, the base variable component will be adjusted over time through the reconciliation account to reconcile projected stranded costs to actual stranded costs (id. at 13-15).

b. Mitigation

The Settlement requires that BECo divest, or sell, its non-nuclear generating plant (Exh. BE-1, at 25-26). Pursuant to the Settlement, BECo filed a divestiture plan with the Department for informational purposes. BECo anticipates completing the sale of its generating plant within six months of receiving all necessary regulatory approvals (id.).[25] The net proceeds of the divestiture will be used to reduce, or mitigate, the amount of stranded costs and, in turn, reduce the access charge, via a residual value credit, in equal annual amounts through December 31, 2009, starting three months after asset sales (Exh. BE-1, Att. 3, at 5-7).

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25 On December 10, 1997, the Company and Sithe Energies, Inc. (ASithe@) entered into an agreement by which Sithe would purchase the fossil generating units of the Company.

According to the Settlement, the Department=s review of the Company=s divestiture plan is to conclude 75 days after the date of this Order. By letter dated January 14, 1998, the Company indicated that Department action is not required until April 30, 1998. Assuming this extension is agreeable to Sithe, from whom we have not heard directly as of the date of this Order, the Department will complete our review and issue an order by that date. If divestiture is not accomplished within three years, BECo will report the reason for non-completion to the Department (Exh. BE-1, at 26).

The Settlement requires that BECo conduct a valuation of Pilgrim subject to Department approval and implement a residual value credit for the net Pilgrim valuation to directly offset the access charge in equal annual amounts through December 31, 2009, starting three months after completion of the Pilgrim market valuation (id. at 5). Under the terms of the Settlement, the Company will file with the Department a plan for the market valuation of Pilgrim by January 1, 1999, in order to complete the valuation by December 31, 2002 (id. at 5-6). If Pilgrim continues to operate between the retail access date and December 31, 2000, BECo will collect operating costs, less revenues associated with 25 percent of Pilgrim=s output, through a performance-based mechanism (id. at 12-13).

The Settlement states that BECo will try to sell, assign, or otherwise dispose of its PPA obligations to non-affiliates (Exh. BE-1, at 28). The Settlement provides that any income derived from sale of PPA power or any reduction in PPA obligations associated with sale of said obligations shall be reflected in the reconciliation account of the access charge (id. at 28-29). The Settlement also provides that BECo will receive an incentive from January 1, 2001 through December 31, 2009 for reducing the cumulative average access charge below 3.51 cents per KWH, calculated according to a table in the Settlement (id. Att. 3, at 14).

3. Positions of the Parties

a. Transfer of Non-Generation Assets

Cablevision argues (1) that the Department should state explicitly that approval of the Settlement does not constitute approval of the $150 million transfer to BETG contemplated under Section V.D of the Settlement, and (2) that the formula for calculating access charges in

the Settlement does not provide for including as mitigation the proceeds of the sale, transfer, or auction of non-generating assets (Cablevision Brief at 5). Cablevision states that the principles of stranded cost mitigation adopted in D.P.U. 96-100 require modification of the Settlement to include an offset to the access charge for the transfer of any utility assets (id.). DOER and BECo argue that this issue is appropriately addressed in a separate Department proceeding (D.P.U. 97-63), and should not be considered as a reason to reject the Settlement (DOER Reply Brief at 3; BECo Reply Brief at 25).

b. Pilgrim Cost Recovery

Enron, Low Income Intervenors, and UCS argue that the Settlement should not be approved because it provides for collection of continuing costs (including post-1995 capital costs) incurred at Pilgrim. These parties assert that such provision will only postpone market valuation, may reduce the ultimate level of mitigation achieved, and is anti-competitive (Enron Brief at 10-12; LII Brief at 5-6; and UCS Reply Brief at 1-2). BECo, the Attorney General, and DOER argue that the treatment of continuing costs at Pilgrim in the Settlement provides for an appropriate transition mechanism, may avoid uneconomic shutdown of the facility, and is consistent with the treatment of similar facilities in other settlements (BECo Reply Brief at 18-21; Attorney General Reply Brief at 5; and DOER Reply Brief at 5). BECo urges the Department to consider this issue within the context of the overall Settlement (BECo Reply Brief at 18).

UCS also argues that the nuclear safety incentives in the current cost recovery treatment of Pilgrim should not be eliminated or reduced, as they are in the Settlement (UCS Reply Brief

at 2). UCS argues that the Settlement should not be approved unless language concerning cost recovery treatment of nuclear entitlements is added either to match that included in the MECo settlement (scaled up to reflect BECo=s ownership of Pilgrim) or to maintain the safety incentives/indicators that are included in the New Performance Adjustment Charge currently in effect for Pilgrim (id.). BECo argues that it has sufficient incentives and requirements to operate the plant safely (BECo Reply Brief at 22).

4. Analysis and Findings

The Department must determine if the provisions of the Settlement related to transition costs are consistent or substantially comply with the Act and are in the public interest. The parties raise two major issues concerning transition costs. The first issue relates to investments in BETG and the future transfer of BECo assets that are not related to the generation function. The second issue concerns the appropriateness and the implications for public safety of the stranded cost recovery provisions as related to Pilgrim.

Concerning the transfer of funds to BETG, the Department notes that Section V.D of the Settlement only states that signatories to the Settlement agree to support the Company=s request to transfer the funds. Approval of the Settlement thus would not constitute any approval by the Department of a transfer of $150 million to BETG. With respect to the future transfer of non-generation assets, the Act requires companies to consider the value of all assets not classified to the transmission or distribution function in the mitigation of stranded costs and to net the value of all such assets that are below-market against those that are above-market in the calculation of stranded costs. Further, the Act prohibits distribution companies from selling,

leasing, renting, or otherwise transferring all, or any portion, of its assets until the Department has approved such transfer, including a determination that such transfers will mitigate to the maximum extent possible the transition costs of the company. St. 1997, c. 164, ' 193 (G.L. c. 164 ' 1A(b)(1)). The Department agrees with the Company that whether certain transmission or distribution assets may be transferred, and the value to be placed on such assets for the purpose of setting company rates, is currently and appropriately addressed in the Department=s investigation in D.P.U. 97-63. The Department notes that its findings in that proceeding must comply with the provisions of the Act governing the valuation of transferred assets. Consequently, the Department finds that it will not deny or place conditions on the approval of the Settlement in this docket on the basis of the issues raised by Cablevision.

The second issue is whether the cost recovery scheme in the Settlement for ongoing operation and ultimate valuation of Pilgrim is likely to result in higher costs for ratepayers in the long run. The Department has insisted, and the Act requires, that companies achieve the maximum level of mitigation of stranded costs possible in their treatment and disposition of company assets. The Settlement contains a cost recovery proposal for Pilgrim that allows for the recovery of the balance of plant investment, certain capital and operation and maintenance costs between the date of retail access and Pilgrim valuation, and charges necessary to ensure the shutdown and decommissioning of Pilgrim at the end of its economically useful life. In addition, the Settlement contains a proposal that shareholders receive 25 percent of the operating costs of Pilgrim, less 25 percent of revenues associated with the output from the plant, through the year 2000 (at which time shareholders would be responsible for 100 percent of

such costs). The proposed performance-based mechanism in the Settlement thus provides for a short-term transition under which ratepayers are responsible for no more than 25 percent of operating costs. This mechanism fairly distributes the risks associated with future costs and revenues related to Pilgrim between shareholders and ratepayers. Consequently, the Department finds that the proposed ratemaking treatment of Pilgrim in the Settlement strikes an appropriate balance among competing interests.

With respect to the safety implications of the Settlement provisions related to Pilgrim, the Department notes that BECo must operate the plant consistent with federal regulations concerning the safe operation and decommissioning of nuclear power facilities, as exclusively administered by the Nuclear Regulatory Commission (ANRC@).[26] Regulation of Pilgrim for compliance with such provision is within neither the purview nor the expertise of the Department. The Department notes that it is certainly the Company=s responsibility at all times under any cost structure to operate that plant in a manner that reduces adverse effects on workers, the public, and the environment, and that holds to a minimum the risk of events that could result in economic or public health consequences. Based upon the evidence in this proceeding, however, the Department cannot conclude that the cost structure of the Settlement is likely to cause operational practices that could increase the risks associated with plant operation. As a practical matter, actions that might increase risk are not in BECo=s interest, for they would prompt NRC intervention. Negative interest on NRC=s part is not likely to enhance

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[26] The Department notes that the application of safety indicators through the NPAC was one component of a previous rate case settlement. The Settlement proposes a new balancing of interests related to the recovery of costs associated with Pilgrim.

the economic value of the plant or its attractiveness to potential purchasers. The Department believes that the findings urged by UCS are insupportable on this record and, therefore, we will not reject, or require amendment of, the Settlement on this point.

In consideration of its findings above, the Department concludes that the transition cost recovery provisions of the proposed Settlement are consistent or substantially comply with the essential requirements of the Act, are consistent with Department precedent, will contribute to an orderly transition, and are in the public interest. Thus, the Department finds that the Settlement need not be changed or rejected on the basis of the provisions related to recovery of transition costs.

E. Performance Standards

1. The Act

The Act authorizes the Department to promulgate rules and regulations to establish performance-based rates for distribution companies, including a number of standards which are specified under the Act. St. 1997, c. 164, '193 (G.L. c. 164, ' 1E). The Act also permits the Department to penalize a distribution company that fails to meet the service quality standards adopted under the Act in an amount up to two percent of such company's transmission and distribution service revenue for the previous calendar year. Id. The Act further requires that the Department ensure that the quality and reliability of service are the same or better than levels that existed on November 1, 1997. Id. (G.L. c. 164, '1F(7)). Through these provisions, the Act's goal of maintaining service quality through the transition period of restructuring is made manifest.

2. The Settlement

The Settlement proposes performance standards for two measures: service reliability and customer service, based on the Company's historical performance in these areas (Exh. BE-1, at 266-288). In addition, on August 14, 1997, the Company filed a performance standard for line losses[27] (Exh. BE-3). While the Company stated that the line loss standard might be appropriately reviewed in the instant proceeding, the Settlement is not conditioned upon the Department=s approval of the line loss standard (id. at 3).

a. Service Reliability Performance Standard

The service reliability performance standard is based on the total length of time in minutes per year that an average customer is without service (Exh. BE-1, at 266). Excluded

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[27] Line losses refer to the energy that is lost in the distribution system and consist of three components (Exh. BE-3, at 3). The first component represents the energy loss that occurs because of the heating of the distribution lines and other equipment in the distribution system such as transformers, and depends on the physical properties of the wires, transformers, and other equipment (id.). The second component includes the energy lost because of diversion, theft, and other unmetered use (id. at 3-4). The last component does not represent physical losses but results from the accounting system for energy and from the timing differences between meter-reading for retail sales and meter-reading for the territory's wholesale load (id.).

from this measurement are outages less than five minutes and extraordinary events, such as hurricanes, severe storms and other weather events beyond the control of the Company (id.). In developing the standard, BECo calculated the average and standard deviation of the outage durations since 1986 (id. at 268). The performance standard is set at the average plus one standard deviation (id.).

According to the Settlement, the penalties for poor service reliability are:

Duration of Outages (minutes)	Penalties
Less than 142	0
143 to 154	$125,000
155 to 166	$250,000
167 to 177	$500,000
More than 177	$1,000,000

(id.).

b. Customer Service Performance Standard

The customer service standard is based on the percentage of "favorable" and "very favorable" responses to the annual survey that the Company undertakes to ask customers their opinion of the Company=s performance (id. at 267-268). In developing the standard, BECo calculated the average and the standard deviation of the historical performance of the Company since 1987 (id. at 268). The standard is set at the average plus one and a half standard deviations (id.). The penalties for poor customer service performance are:

Percentage of Responses Favorable or Very Favorable	Penalties
77 or greater	0
74% to 76%	$125,000
71% to 73%	$250,000
68% to 70%	$500,000
Less than 67%	$1,000,000

(Exh. BE-1, at 268).

c. Line Loss Standard

In its Settlement, BECo proposed a performance standard for distribution line losses (Exh. BE-3, Att. 1). The Company reviewed the historical line losses for the period from 1984 to 1993 and calculated the average and standard deviation for these losses (id.). The performance standard is set at 5.52 percent, which is equal to the average losses plus one standard deviation (id.). The penalties for line losses compared to this benchmark are:

Percent Losses	Penalties
0% to 5.52%	$0
5.53% to 5.96%	$125,000
5.97% to 6.41%	$250,000
6.42% to 6.85%	$500,000
6.86% to 7.30%	$1,000,000

(id.).

3. Positions of the Parties

a. Unions

The Unions argue that the Company has failed to demonstrate that reliability and customer service quality will not deteriorate under the proposed Settlement (Unions Brief

at 17-23, 26-27). The Unions state that the performance standards proposed in the Settlement are inadequate because the proposed penalties are very small compared to the Company's revenues and, if the standards are implemented, employee lay-offs and poor service quality would result (id. at 4-5, 12-13).[28] Noting that the Settlement provides that the Company's rates

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[28] In support of the assertion that the Company is likely to reduce staffing levels and sacrifice quality of service, the Unions refer to a Reliability Centered Maintenance Report (ARCM Report@) (Union Brief at 21, citing Union-RR-3). According to the Unions, the RCM Report recommends that the Company reduce maintenance and testing and rely instead on alternative monitoring methods (id.).

The Unions sought additional information on this point. On October 1, 1997, the day after evidentiary hearings concluded, the Unions moved the Department to issue an order compelling the Company to produce a witness for cross-examination that was knowledgeable about the RCM Report. The Hearing Officer denied the Unions= motion. The Unions appealed the Hearing Officer=s ruling requesting that the Department require the Company to produce an additional witness or, in the alternative,

will be frozen for three years, the Unions argue that the incentive to avoid penalties in future rate cases will not exist (id. at 11). In addition, according to the Unions, the Company may respond by sacrificing service quality to the financial pressure caused by rate reductions (id.). The Unions state that the performance standards must protect against these pressures, but contend that the proposed standards are inadequate in structure, scope, and magnitude (id. at 11-12).

While the Unions recommend rejection of the Settlement, they state that at a minimum the Department should condition the approval of the Settlement on making the penalties increase

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if the appeal were denied, find, as a matter of law, that the Company has failed to demonstrate that the Settlement will not have an adverse impact on system maintenance and hence on reliability and service quality.

The Department concurs with the Hearing Officer=s ruling that the Union=s motion is untimely, and that the Union has not established the need for additional information for the reasons stated therein. Accordingly, the Union appeal is denied.

(or decrease) in direct proportion with degradation (or improvement) in service, and they provide a suggested schedule of penalties (id. at 16). The Unions state that these revised performance standards should be considered temporary and recommend that the Department open a new proceeding to develop a comprehensive set of performance standards (id.).

b. Low Income Intervenors

The Low Income Intervenors assert that the outage duration standard is inadequate and that the penalty is structured so that BECo has an extremely low chance (once in 3.5 million years, according to the Unions= calculation) of receiving the maximum penalty (LII Brief at 8, citing Exh. UWUA-53, at 12). Similarly, they state that the customer satisfaction and distribution losses standards are inadequate. The Low Income Intervenors note that other measures of quality of service, such as momentary outages, slow recovery from storms, and reduced safety were ignored (id.). In addition, according to the Low Income Intervenors, the customer satisfaction surveys, which are conducted by phone, are biased against low-income customers who are more likely not to have telephones compared to the general population. The Low Income Intervenors also state that trouble reports would be a more effective measure of customers' experiences with the Company (id. at 10). The Low Income Intervenors recommend that the Department open a generic proceeding on quality of service to set performance standards and penalties (id. at 15).

The Low Income Intervenors further assert that the Company has been neglecting distribution system maintenance in the poor, minority neighborhoods of Roxbury and Dorchester (LII Reply Brief at 2). As evidence, they present data said to show that these two

neighborhoods suffered 3.5 times their per capita share of outages and three times their per capita share of the worst performing circuits (id. at 3). The Low Income Intervenors recommend that the Department open an investigation of BECo's service performance in Roxbury and Dorchester (id. at 14).

c. Attorney General

The Attorney General states that the proposed performance standards in the Settlement are not designed for long-term application, nor are they meant to be a final resolution of the issue of service quality. Rather, they are a temporary measure to prevent degradation of service (AG Brief at 15). The Attorney General also points out that these standards can be superseded by more stringent standards developed through a generic proceeding and recommends that the Department conduct such an investigation (AG Brief at 15-16).

d. DOER

DOER agrees that the line loss performance standard is inadequate. But DOER notes that approval of the line loss proposal is not a condition of the Settlement (DOER Reply Brief at 6).

e. Company

BECo states that the performance standards are "substantially identical" to those in the MECo and EECo settlement agreements and are also consistent with the directives in D.P.U. 96-100 (BECo Brief at 27). Further, BECo maintains that the Department can require implementation of performance-based ratemaking in the next rate case or in a generic state-wide proceeding (id. at 28). BECo also points out that the Settlement does not affect the

Department's authority to investigate issues of service quality and issue orders to remedy the situation if the need arises (BECo Reply Brief at 15).[29] Regarding the size of the penalty, BECo points out that since the penalty represents a reduction in earnings, it would be appropriate to compare the penalty to its earnings rather than its annual revenues (Exh. DPU-10). On this basis, a penalty of $1 million represents approximately one percent of

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[29] Both the MECo and EECo settlement agreements stated that the Companies would implement more stringent performance standards if they were established by the Department for all electric utilities in the Commonwealth. BECo's Settlement, as filed, did not include this provision. However, in response to a record request, the Company agreed to include this provision in the Settlement (DPU-RR-18). In any event, the Department=s authority -- indeed, its obligation -- to ensure that a distribution company maintain acceptable quality of service throughout its franchise cannot be superseded by acceptance of any settlement. That authority and duty subsist and supersede. The Company=s brief concedes this point (BECo Brief at 15).

earnings (Exh. DPU-28). Lastly, BECo states that as the Department investigates competition in metering, billing, and information services, even distribution service will become increasingly competitive. Customer satisfaction will be a key driver of success in a competitive environment, with performance standards playing a secondary role (BECo Brief at 28-29).

4. Analysis and Findings

We note the concerns raised by the Unions and the Low Income Intervenors regarding the adequacy of the performance standards in the Settlement. Regarding the size of the penalties and other features of the performance standards such as the non-linearity of the penalty schedule, the absence of other measures of service quality, the design of the customer satisfaction surveys, and the maintenance of the distribution systems in poor, minority neighborhoods, the Department determines that these are important issues that may need to be addressed in the development of comprehensive quality of service standards. However, we believe that a generic proceeding would be the appropriate forum for addressing these issues, for it would allow a consideration of performance and service quality issues across all distribution companies and would lead to a fair and consistent treatment of all the distribution companies in the Commonwealth.

While the performance standards proposed in the Settlement are less comprehensive than those that the Act requires the Department to incorporate into a performance-based rate mechanism, the Department finds that the performance-based regulation features of the Settlement are not intended to serve as a broad-based incentive regulation framework, but to provide ratepayers with a level of protection against a decline in service standards by ensuring

historic levels of reliability and customer service. In addition, we note that the Company has agreed to comply with additional performance-based rate standards promulgated by the Department, on either a generic or company-specific basis, pursuant to the Act. We approve the Settlement upon the premise that its terms do not preclude the adoption of additional or more stringent criteria in either a Company-specific or industry-wide proceeding.[30] Meanwhile, the purpose of the performance standards proposed by the Company is to protect against degradation of service during the transition between the retail access date and the time the generic proceeding is completed, and we find the proposed standards adequate for that purpose. Accordingly, the Department finds that the performance standards provided as part of the Settlement, as an interim measure, substantially comply with the Act and are in the public interest.

F. Other Issues

1. Demand-Side Management (ADSM@)

a. The Act

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[30] The Company would appear to accede in this construction of the Settlement (BECo Reply Brief at 15). We will so construe its Brief on this point, unless the Company tells us otherwise.

The Act directs the Department to require a mandatory charge per KWH for all electricity customers of the Commonwealth (except those of municipal light plants) to fund energy efficiency activities, including DSM, in amounts not to exceed the following: 3.3 mills ($0.0033), 3.1 mills, 2.85 mills, 2.7 mills, 2.5 mills per KWH in each of the years 1998 through 2002, respectively. St. 1997, c. 164, ' 37 (G.L. c. 25, ' 19). At least 20 percent of the amount to be spent on residential DSM, and at least 0.25 mills per KWH (which charge shall also be continued in the years after 2002), must be spent on comprehensive low-income DSM and education programs, to be implemented through the existing low-income weatherization and fuel assistance program network, and coordinated with all gas and electric companies in the Commonwealth. Id. The Act authorizes DOER to oversee and coordinate ratepayer-funded DSM in order to achieve goals that include equity in the allocation of funds among customer classes, support for "lost opportunity" programs, elimination of market barriers through state-wide market transformation activities, and the provision of weatherization and efficiency services to low-income customers. Id. at ' 50 (G.L. c. 25A, ' 11G). The DOER must file a report annually with the Department on proposed funding levels for energy efficiency programs, and the Department must review and approve expenditures for programs found to be cost-effective. Id.

b. The Settlement

The Settlement includes a combined budget for DSM and renewables of $54.2 million per year for each of the next four years (Exh. BE-1, at 38). At least 15 percent of the amount budgeted for residential programs in any given year is to be spent on DSM programs for low-income customers (id.). Over the four-year period, expenditures on DSM gradually decline, while those for renewables increase (id.). The Settlement calls for an overrecovery of DSM revenues in 1996 and 1997 to be used as part of the funding to support the budget level, yet the Settlement also calls for BECo to increase the currently effective conservation charges (ACCs@) on January 1, 1998 to collect revenues at the $54.2 million level, if the RAD has not occurred by then (id. at 38-39). On December 24, 1997, the Company proposed to maintain current CC levels to fund ongoing DSM implementation until March 1, 1998, when significant rate changes are scheduled to take effect (BECo Letter dated December 24, 1997).

According to the Settlement, the DSM budgets are designed to fund a collaborative approach to energy efficiency and renewables, the Energy Conservation Service program, BECo's DSM programs that are being implemented pursuant to the Company's Integrated Resource Management plan, market transformation activities, conservation voltage regulation, metering and control systems, overhead, amortized investment and incentives earned from previously implemented DSM programs, and an incentive to be earned according to a prescribed level of savings achieved on programs implemented pursuant to the Settlement (id. at 39).

c. Positions of the Parties

(1) The Attorney General and DOER

In joint comments concerning the compliance of the Settlement with the Act, the Attorney General and DOER state that Athe Settlement was submitted in express contemplation of the fact that >the General Court [could] ... resolve the matters addressed [therein] ... in a different fashion=" (AG/DOER December 15 Comments at 3, citing Exh. BE-1, at 54). With respect to DSM funding, the Attorney General and DOER state that the Settlement will not control BECo's DSM funding levels, nor what items can be included in the DSM budgets, because the Act mandates funding levels and provides directives regarding expenditures (id., n.5). Specifically, the Attorney General and DOER note that the Settlement includes $22.6 million for amortization of past expenditures, but contend that the intent of the Act is clearly to fund only future energy efficiency activities[31] (id.). In addition, the Attorney General and DOER assert that deferred cost recovery of regulatory assets such as the unamortized balance of DSM expenditures are expressly covered by another provision of the Act and not through future DSM charges (id., citing St.1997, c. 164 ' 193 (G.L. c. 164 ' 1G(b)(1)(iii)).

[31] The Attorney General and DOER also assert that, since BECo did not use competitive procurement to the fullest extent practicable to implement DSM programs, as required by the Act, past DSM costs do not qualify for recovery under the Act in any event (id.).

(2) Low Income Intervenors

The Low Income Intervenors state that Department precedent requires the return of the overcollected DSM dollars from 1996 and 1997 to ratepayers (LII Brief at 5). They state that periodic reconciliation reports account for any over- or under-recoveries, so that unspent monies are returned to ratepayers and utilities do not reap windfalls by budgeting for conservation programs that they do not fund (id.).

As for the Settlement's compliance with the Act regarding DSM funding, the Low Income Intervenors note that the section of the Act that sets forth a five-year schedule for energy efficiency charges and a permanent charge to fund comprehensive low-income customer DSM and education programs amends G.L. c. 25, ' 19, not G.L. c. 164. Thus, there is no allowance for Asubstantial compliance." Rather, the charges as set forth in the Act must be incorporated into any restructuring plan approved by the Department (LII December 15 Comments at 6). In addition, the Low Income Intervenors noted that the Company acknowledged that the Settlement remained out of compliance with the requirements of the Act for both its DSM program and cost recovery mechanisms (LII January 5 Comments at 2, citing BECo December 15 Comments).

(3) The Company

The Company acknowledges that the Act sets forth mandatory charges per KWH for DSM, and that allocation of expenditures between DSM and renewables will need to be adjusted to be consistent with the Act (BECo December 15 Comments at 10). However, BECo also states that the total dollar amount budgeted for DSM and renewables together in the Settlement was calculated based on collecting 4.0 mills per KWH and is, therefore, substantially equivalent to the per-KWH charges in the Act (id.). The Company states that budget details at the individual program level, including amounts to be allocated to low-income programs, can be most appropriately addressed in the Company's ongoing collaboration on DSM with other parties and in the pending docket D.P.U. 97-86 regarding BECo's five-year energy efficiency plan (id.). In addition, BECo voiced a strong objection to the position taken by the Attorney General and DOER regarding BECo's ability to collect previously amortized costs through the new charges (BECo Letter dated December 24, 1997, at 3). BECo asserts that the Act should be interpreted in light of precedent and that the collection of amortized expenses through DSM charges is a well accepted practice (id.).

d. Analysis and Findings

The Settlement requires the Company to submit plans to the Department to implement DSM programs subject to the budgets embedded in the Settlement. The Settlement does not specify a charge per KWH to be collected from all customers to support those budgets. The Act specifies such a charge in each of the first five years after retail access begins. The Company has agreed that it must adjust its charges and allocation of budgets between DSM and renewables to be consistent with the Act (BECo December 15 Comments). Accordingly, the

Department directs the Company to revise its funding levels for DSM to be consistent with those found in Section 37 of the Act.

Regarding the allocation of budget dollars, the Company has stated that it is collaborating with other parties to develop market transformation initiatives and to work out details of other components of the budgets. These issues will be dealt with in the Company's five-year energy efficiency plan filing with DOER and will be presented to the Department to determine cost-effectiveness. Thus, the Department will not make findings in this Order on issues such as the recovery of past amortized DSM expenditures or details of cost allocation among programs and other expenditures.

2. Renewable Resources

a. The Act

To support the development and promotion of renewable energy projects, the Act authorizes and directs the Department to require a mandatory charge per KWH for all electricity consumers in the Commonwealth (except those consumers served by a municipal lighting plant that does not supply generation service outside its own service territory or does not open its service territory to competition at the retail level). St. 1997, c. 164, ' 37 (G.L. c. 25, ' 20(a)(1)). The Act sets the non-bypassable charge at the following levels: 0.75 mills per KWH in 1998, followed by 1.00, 1.25, 1.00, and 0.75 mills in each of the years 1999 to 2002, respectively, and 0.50 mills per KWH thereafter. Id. The Act further requires that in each year, 0.25 mills per KWH be dedicated to the retirement or retrofit of municipal solid waste (AMSW@) facilities. Id. (G.L. c. 25, ' 20(a)(2)). The revenues generated by this charge shall

be remitted to the Massachusetts Technology Park Corporation ("MTPC") and deposited into the Massachusetts Renewable Energy Trust Fund (AFund@). Id. (G.L. c. 25, ' 20(c)). The Fund, whose stated public purpose is to maximize economic and environmental benefits over time from renewable energy to the ratepayers of the Commonwealth, will be administered by the MTPC, in consultation with an advisory committee, the Department, and DOER. Id. (G.L. c. 25, ' 20(b)). The Act states that renewable energy, eligible for funding from the ratepayer charge, comprises solar photovoltaic and solar thermal energy; wind; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; conventional MSW; hydroelectric; advanced biomass technologies such as gasification; and storage and conversion technologies connected to qualifying projects. Id. at ' 68 (G.L. c. 40J, ' 4E(f)(1)). In addition, the Act provides for the continuation of Anet metering," for on-site generation or cogeneration facilities, including renewable facilities, of 60 kilowatts (AKW@) or less. Id. at ' 193 (G.L. c. 164, ' 1G(g)).[32]

b. The Settlement

[32] A distribution company customer with an on-site generation source has the option to run the meter backward and may choose to receive a credit from the distribution company equal to the average market price of generation per KWH in any month during which there was a positive net difference between KWHs generated and consumed. D.P.U. 96-100 (December 30, 1996), Model Rule 11.06(5) (1996).

The Settlement requires BECo to submit renewable energy budgets to the Department for 1998, 1999, 2000, and 2001 based on charges of 0.25, 0.55, 0.85, and 1.25 mills per KWH, respectively (Exh. BE-1, at 19). The Settlement defines eligible renewable energy sources generally as those specified in Section 68 of the Act, but does not include MSW, hydroelectric, and storage and conversion technologies (id. at 22-23). In addition, the Settlement allows for Anet metering" for facilities of 30 KW or less.

c. Positions of the Parties

UCS argues that, in order for the Settlement to be consistent with the Act, the renewables funding levels in the Settlement would have to be revised to equal those in the Act for each year (UCS December 15 Comments at 1). The Unions also note the disparity in funding levels between the Settlement and the Act (Unions December 15 Comments at 5). Regarding the apparent discrepancy between the two levels of funding, the Attorney General notes that the Settlement was submitted in express contemplation of the fact that Athe General Court [could] ... resolve the matters addressed [therein] ... in a different fashion@ (AG December 15 Comments at 3, citing Exh. BE-1, at 54). Finally, the Company acknowledges that the allocation of expenditures between DSM and renewables will need to be adjusted to be consistent with the Act (BECo December 15 Comments at 10).

d. Analysis and Findings

The Department finds that the Settlement's renewables provisions accord with past Department findings of substantial benefits, including reducing the environmental impacts of electricity generation, and are consistent with the Department's statutory mandate and with

furthering the goals of environmental regulation. See D.P.U. 95-30, at 16-17, 30, 44-45. However, the Settlement requires the Company to submit budgets to the Department for renewable energy that for 1998 through 2000 yield roughly half of the income that would be generated from the renewable energy charge set by the Act, although the budget specified for 2001 in the Settlement is somewhat higher than that provided for by the Act. In addition, the Settlement does not provide for funds dedicated to the retrofit and retirement of MSW facilities. The Department notes that the Company acknowledges a need to adjust the spending levels contained in the Settlement in order to achieve consistency with the Act (BECO December 15 Comments). Therefore, the Department directs the Company to revise its funding levels for renewable energy to be consistent with G.L. c. 25, ' 20.[33]

Regarding the Anet metering" issue, the Department finds that the Company must comply with the Act, and extend the practice of net metering to on-site generation or cogeneration facilities of 60 KW or less.

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[33] In making the above findings on the 10 percent rate reductions for all rate classes including the Rate WR and the additional 10 percent farm discount, the Department notes that implementation of revised levels of DSM and renewables charges consistent with the Act could adversely affect the rate reductions approved as substantially complying with the Act. The Department directs the Company to revise the DSM and renewables charges, ensuring that the initial 10 percent rate reduction is maintained.

3. R-2 (Low-Income) Tariff Modifications

a. The Act

The Act requires that electric companies provide discounted rates for low-income customers, comparable to those in effect prior to March 1, 1998, with guaranteed payments to suppliers. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1F(4)(i)). The Act also requires that eligibility for the low-income discount be uniform across all distribution companies and that it include all customers receiving any means-tested public benefit (at or below 175 percent of the Federal poverty level), as well as those certified eligible for the Low-Income Home Energy Assistance Program. Id. The Act mandates that distribution companies guarantee payments to competitive suppliers on behalf of their low-income customers. Id. Further, distribution companies must allow low-income customers to return to standard offer service at any time during the term of the standard offer. Id. (G.L. c. 164, ' 1F(4)(iii)). Distribution companies are further required to engage in Asubstantial outreach@ to potential recipients, which may include establishing an automated program of matching customer accounts with lists of those receiving benefits and presumptively offering a low-income discount rate to eligible customers so identified. Id. (G.L. c. 164, ' 1F(4)(i)).

b. The Settlement

The Settlement includes a tariff for the General Service Rate R-2, available to low-income customers, that provides for a discount of 40 percent applied to distribution costs (Exh. BE-1, Attachment 1, at 160). The eligibility criteria in the tariff are limited to certain

enumerated public benefit programs (some of which no longer exist) and to only current qualified customers (id.).

c. Positions of the Parties

The Low Income Intervenors contend that the Settlement is not consistent with the Act because the eligibility criteria of the proposed low-income tariff is not as inclusive as the Act and because the Settlement lacks a plan for Asubstantial outreach@ to low-income customers (LII December 15 Comments at 5, January 5 Comments at 2).

The Company provided clarification of the following issues: (1) to be eligible, a customer need only receive benefits from one assistance program; (2) in the event that qualifying assistance programs have been or are discontinued, customers receiving benefits under their successor programs will be eligible for the low-income discount so long as eligibility for the successor programs is consistent with that of the original qualifying programs; and (3) the phrase "service under this rate is available . . . only to >current qualified customers=@ refers to customers who have certified eligibility at the time the application for the low-income discount is made, and is not meant to exclude customers who become eligible after the date of the Settlement agreement (DPU-RR-22; DPU-RR-23).

The Company submitted a revised low-income tariff, in response to the Department's request for clarification of these issues (Exh. BE-13, Attachment A). The Company represented that the revised tariff provides that low-income customers may return to standard offer at any time during the term of the standard offer and that the eligibility requirements are consistent with the Act (BECo Letter dated December 24, 1997). The revised tariff includes

language guaranteeing payment to suppliers for customers on the low-income rate (Exh. BE-13, Attachment A).

d. Analysis and Findings

The Department finds that the Settlement provides for discounted rates for low-income customers that are comparable to BECo's current General Service Rate R-2. The Company also guarantees payment for low-income customers to competitive suppliers. The Department notes that, while the Company represented that the revised tariff complies with the Act=s requirements regarding availability of standard offer service and eligibility requirements, the actual tariff language could be clearer. Based on the Company=s representations, however, the Department finds that the Company=s proposed low-income tariff is consistent with or substantially complies with the Act. The Department directs the Company to amend the language of the tariff itself so that it clearly comports with the Company=s representations and the Act. We note that these issues will be addressed in our rulemaking proceeding, D.P.U./D.T.E. 96-100.

The Company=s failure to address the issue of Asubstantial outreach@ is not fatal to the Department=s finding. Although the Act requires distribution companies to pursue efforts to make the low-income discount available to eligible customers, the Act directs DOER to monitor such activities. Each distribution company is required to report annually to DOER. There is nothing in the Settlement that would prohibit the Company from making outreach efforts and reporting to DOER. Therefore, the Settlement is not inconsistent with the Act. The Department expects that the Company will make such outreach efforts and reports to DOER.

4. Transferability of Standard Offer Service

The Act requires that a residential customer, eligible for the low-income discount and receiving standard offer service, retain eligibility for standard offer service upon moving within the service territory of a distribution company. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1F(iii)). The Settlement states that "Standard Offer service shall be available to all retail customers on the Retail Access Date" (Exh. BE-1, at 30). The Settlement is silent regarding those customers who might move within the Company's service territory and wish to take Standard Offer service with them. In its December 24 Filing, the Company provided revised tariffs, including one for "standard service" that permits transferability of that service for any customer who relocates within the Company's service territory. The Attorney General states that he interprets the Settlement to mean that customers of record remain eligible to receive Standard Offer service even if they move within the service territory (AG Brief at 19).

While the Act requires only that residential low-income customers be allowed to retain standard service despite moving within a service territory, BECo's revised tariff extends this right to all customers on the standard service rate.[34] Accordingly, the Department finds that the provision on transferability in the Company's revised tariff is consistent or substantially complies with the Act.

[34] As discussed above, low-income customers may return to standard offer service at any time during the term of the standard offer, regardless whether the low-income customer previously resided in the Company=s service territory.

5. Storm Fund

a. Introduction

The Settlement permits BECo to create a storm reserve fund to pay the incremental operations and maintenance costs associated with major storms, defined as storms resulting in incremental costs exceeding $1.0 million (Exh. BE-1, at 224). The Company will pre-fund the storm reserve with $8 million from proceeds received by the Company through the sale of Clean Air Act Emission Allowances (id.). Whenever storm costs are paid from the fund, BECo will restore the fund=s balance to $8 million by contributions from distribution maintenance expenses, up to a maximum of $3 million a year (id.). Interest on the fund will accrue monthly on any positive or negative balance in the fund, calculated in accordance with the Company=s Terms and Conditions for interest expense on customer deposits (id. at 225).

b. Positions of the Parties

(1) Low Income Intervenors

The Low Income Intervenors assert that the Company's rates already include a $727,000 allowance for major storm expenses (LII Brief at 6). Further, they state that an $8 million storm fund is more than adequate to cover storm expenses which, according to the Low Income Intervenors, have averaged only $1.4 million per year (id. at 6). The Low Income Intervenors state that, under the provisions of the Settlement, BECo would be able to charge ratepayers an additional $3 million per year, a charge the Low Income Intervenors consider duplicative (id. at 6).

(2) Company

The Company states that the Low Income Intervenors' contention about additional charges to ratepayers of $3 million per year is incorrect (BECo Reply Brief at 8). According to the Company, the fund will be replenished from maintenance expense up to a maximum of $3 million per year (id.). Further, the Company states that the additional $3 million per year that may be needed will not require a rate surcharge and has not been included in the proposed rates (id.). The Company argues that, therefore, the storm fund recovery will not affect rates charged to customers (id.).

(3) Attorney General

The Attorney General states that the Low Income Intervenors did not understand that the Settlement only allows increases in expense items on the Company's books for the storm fund without compensating increases in rates (AG Reply Brief at 8). The Attorney General argues that the storm fund provision adds value to the Settlement because, without any effect on rates, it allows the Company to accrue expenses to the fund and thus smooth out the effect of storms and reduce the potential for future rate increases due to storms (id.).

c. Analysis and Findings

The proposed standard offer retail delivery rates, which include provision for a storm fund, will remain in effect through December 31, 2000. The Settlement is silent on the storm fund's continuation after that date. The Department notes that the Act also is silent on the issue of establishing storm funds. The creation of a storm fund was the result of a balancing of interests among various parties. A storm fund will help maintain quality of service and address

some of the staffing issues raised by the Unions. Further, the Low Income Intervenors' concern that BECo is proposing an additional $3 million per year to cover storm expenses is unfounded. In fact, following a storm, BECo will restore the balance to $8 million by using funds from distribution expense accounts up to a maximum of $3 million per year (Exh. BE-1, at 224-225). As the Company points out, this replenishment will occur without any increase in customer rates. The Department finds that this balancing of interests produced a just and reasonable result and is therefore in the public interest. Our acceptance of the Settlement here does not bind the Department to perpetuate the existence of a storm fund in future rate or any other proceedings. See Dover Water Company, D.P.U. 90-86, at 4-5 (1990). Accordingly, considering a balancing of interests among the various parties, the Department finds that this provision is in the public interest.

6. Plymouth Property Tax Issue

Plymouth argues that the Department should reject and disapprove the Settlement because it contains strong incentives for the Company to retire Pilgrim prematurely (Plymouth Brief at 21). This, according to Plymouth, would have severe financial implications for the municipality resulting from decreased property tax revenues (id.). Alternatively, Plymouth requests the Department to suspend final decision on the Settlement until the Company and Plymouth reach a mutually-satisfactory contract for payments in lieu of taxes (id. at 23).

The Company responds that the Settlement appropriately addresses local property tax impacts (Company Reply Brief at 23). The Settlement recognizes the potential property tax impacts of a Pilgrim shutdown and provides for payments in lieu of taxes in order to mitigate

the loss of revenues that Plymouth would otherwise incur in connection with restructuring (Exh. BE-1, Attachment 3, at 237). The Act categorizes costs associated with any payment of taxes or payment in lieu of taxes as stranded costs. St. 1997, c. 164, ' 193 (G.L. c. 164, ' 1G). The Settlement establishes an access charge designed to collect the Company=s stranded costs (Exh. BE-1, Attachment 3, Schedule 1, at 1). Among the charges making up the variable component of the access charge are payments to cities and towns in lieu of taxes (id. at 9-13). Further, the Act requires the Company to enter into an agreement for payments in lieu of taxes with Plymouth. St. 1997, c. 164, ' 71 (G.L. c. 59, ' 38H).

Given that the Settlement contemplates a payment in lieu of tax agreement as mandated by the Act and allows the Company to recover the costs associated with such agreement through its access charge as allowed by the Act, the Department finds that the Settlement substantially complies or is consistent with the Act. The Company is required by law to enter into an agreement for payment in lieu of taxes with Plymouth, and must do so.

VII. CONCLUSION

In determining whether the Company's plan substantially complies or is consistent with G.L. c. 164 and meets the requirements of any other applicable law, the Department has considered the stated purposes and major features of the Act and determined that the portions of the plan governed by G.L. c. 164 substantially comply or are consistent with the Act. We find that those portions of the Settlement are consistent with or substantially comply with the stated goal and main features of the G.L. c. 164: provision of customer choice of generation supplier by March 1, 1998; a 10 percent rate reduction for customers choosing the standard offer; an

accounting of stranded costs and a mitigation plan based on sale of the generating plant; a non-bypassable charge to collect stranded costs; the provision of standard offer for seven years; unbundled rates; a general inflation cap and a cap on the stranded cost charge; default service; continuation of low-income discounts, and universal service. Further, the Settlement does not prevent the Company from complying with regulations implementing performance standards and rules of conduct regarding affiliates. In addition, the Department finds that the Settlement is consistent with the provision for payments in lieu of property taxes. Finally, the Company has committed as part of this Settlement and the Department directs the Company to amend its charges for renewables and DSM in accordance with G.L. c. 25, '' 19, 20.

Therefore, the Department finds that the Settlement is consistent with or substantially complies with the G.L. c. 164 and that the Company has agreed to comply with other provisions of the Act. Accordingly, the Department hereby approves the Settlement and will allow the plan in the Settlement to be implemented. Further, upon approval of the Company=s compliance filing, the Department authorizes the Company to collect a transition cost charge as specified in the Act, according to the formulas embodied in the Settlement. This authorization is contingent upon the Company=s commencement of actual mitigation efforts and implementation of retail access.

In conclusion, the Department finds that the provisions of the Settlement, including the revisions submitted on December 24, 1997, are consistent with (1) G.L. c. 164; (2) our primary objective to reduce costs over time for all consumers of electricity; (3) our goal to develop an efficient industry structure and regulatory framework that minimize costs to

consumers while maintaining safe and reliable electric service with minimum impact on the environment; and (4) the Department's electric industry restructuring principles and proposal. We also direct the Company to amend the Settlement to comply with the other provisions of the Act, apart from the provisions amending G.L. c. 164. Therefore, the Department finds that the provisions of the Settlement before us represent, on balance, a just and reasonable resolution of restructuring issues for the Company and its ratepayers, and thus, are in the public interest. Accordingly, pursuant to the Act and to our authority to regulate the operations of the electric utility companies in Massachusetts under G.L. c. 164, '' 76 and 94,[35] the Department approves the following provisions of the Settlement:

' I. Price Reductions for All Customers, including (A) a 10 percent price reduction for BECo's customers, including recovery of stranded costs in a retail access charge, and (B) a distribution rate freeze;

' II. Benefits of Competition Extended to All Customers, including (A) the opportunity to choose alternative suppliers and a guarantee of significant rate reductions for customers who choose the standard offer and (B) the implementation of retail access;

' III. Protect the Environment and Promote Conservation, as it applies to emissions reductions;

35 See also D.P.U. 96-100 (December 30, 1996) at 22-23 n.16, n.17, 231-234, 264-268; D.P.U. 95-30, at 33-34, 40-44.

' IV. Protect Low-Income Customers, including the continuance of the low-income customer discount and the continuance of programs and mechanisms that enable residential customers with low incomes to manage and afford electricity requirements;[36]

' VI. Miscellaneous Provisions, concerning the protection of settlement negotiations and the precedential effect of the Settlement.

The Department notes that our acceptance of the Settlement does not result in a finding on the merits of any issue outside the context of the Settlement.

VIII. ORDER

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[36] The Department does not act at this time on the provisions of ' V that include (A) Regional Reform and (B) the jurisdictional separation between transmission and distribution. With respect to Regional Reform, the Settlement is not conditional upon the adoption, approval, or implementation of the regional reforms (Exh. BE-1, at 43-44). Pursuant to the Settlement, approval of the jurisdictional separation of facilities without change is not a condition of the Settlement (id.). The jurisdictional separation issue will be addressed in D.P.U. 97-93.

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the tariffs M.D.P.U. Nos. 840 through 861 of Boston Edison Company contained in the Settlement filed on July 8, 1997, which would apply to electric service consumed on or after the March 1, 1998 Retail Access Date, be and hereby are DISALLOWED, and it is

FURTHER ORDERED: That the revised tariffs M.D.T.E. Nos. 840 through 861 filed on December 24, 1997 and the tariff M.D.T.E. 862 filed on January 5, 1998, which would apply to electric service consumed on or after the March 1, 1998 Retail Access Date, be and hereby are DISALLOWED, and it is

FURTHER ORDERED: That Boston Edison Company shall file tariffs, also to be designated as M.D.T.E. Nos. 840 through 862, which shall be consistent with the directives of this Order and shall apply to electric service consumed on or after the March 1, 1998 Retail Access Date, and it is

FURTHER ORDERED: That Boston Edison Company shall comply with all orders and directives contained herein.

By Order of the Department,

Janet Gail Besser, Acting Chair

John D. Patrone, Commissioner

James Connelly, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).