220 CMR 11.00: RULES GOVERNING THE RESTRUCTURING OF THE ELECTRIC INDUSTRY

Section

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11.01: Purpose and Scope

(1) Purpose. 220 CMR 11.00 establishes the rules that will govern the restructuring of the electric industry and will apply thereafter to the restructured electric industry in the Commonwealth. Their purpose is to provide a regulatory framework for an efficient industry structure that will minimize long-term costs to consumers while maintaining the safety and reliability of electric services with minimum impact on the environment.

(2) Scope. 220 CMR 11.00 applies to the Distribution Companies, Competitive Suppliers and Electricity Brokers that will participate in the electric industry in the Commonwealth, including the following Distribution Companies and their successors or assigns:
   (a) NSTAR
   (b) National Grid
   (c) Unitil
   (d) Western Massachusetts Electric Company

11.02: General Definitions

For the purposes of 220 CMR 11.00, the terms set forth below shall be defined as follows, unless the context otherwise requires.

Affiliate means any "affiliated company" as defined in M.G.L. c. 164, § 85.

Aggregator means an entity that groups together electricity customers for retail sale purposes, except for public entities, quasi-public entities or authorities, or subsidiary organizations thereof, established pursuant to the laws of the Commonwealth.

Alternative Energy Producer means any person, firm, partnership, association, public or private corporation, or any agency, department, board, commission or authority of the Commonwealth or of a subdivision of the Commonwealth, that owns or operates a

cogeneration facility or small power production facility as defined in M.G.L. c. 164, and does not engage in the retail sale of electricity other than sales to customers that are within the confines of an industrial park, which existed prior to March 1, 1982, and in which park there existed as of said date electrical generating capacity of more than fifteen megawatts.

Ancillary Services means those functions that support generation, transmission, and distribution, including the following services:

(a) reactive power/voltage control;
(b) loss compensation;
(c) scheduling and dispatch;
(d) load following;
(e) system protection service; and
(f) energy imbalance service.

Applicant means any entity that has filed an application for licensure as a Competitive Supplier or Electricity Broker as required by the Massachusetts General Laws or by 220 CMR 11.00.

Basic Generation Service means Default Generation Service provided on or after March 1, 2005 by a Distribution Company to a Customer who is not receiving Generation Service from a Competitive Supplier. The Department approved the use of the term "Basic Generation Service" in D.T.E. 04- 115A. Basic Generation Service is also known as Default Generation Service or Default/Basic Generation Service.

Bill means a written statement from a Distribution Company or a Competitive Supplier to its Customer setting forth, for the billing period identified in the Distribution Company's tariff:

(a) the amount of electricity consumed or estimated to have been consumed;
(b) charges for Generation, Transmission, and Distribution Services, as appropriate;
(c) charges for Energy Efficiency and Renewable Resources;
(d) the Transition Charge, as appropriate; and
(e) any other charges.

Capacity means the load for which a generating unit, generating station, or other electrical apparatus is rated either by the user or by the manufacturer.

Competitive Supplier means an entity licensed by the Department to sell electricity and related services to Retail Customers, with the following exceptions:

(a) a Distribution Company providing Standard Offer Generation Service and Default/Basic Generation Service to its Distribution Customers; and
(b) a municipal light department that is acting as a Distribution Company.

Default Generation Service means the service provided by the Distribution Company to

a Customer who is not receiving either Generation Service from a Competitive Supplier or Standard Offer Generation Service, in accordance with 220 CMR 11.04(9)(c) and the provisions set forth in the Distribution Company's Default Generation Service tariff on file with the Department. Default Generation Service is also known as Basic Generation Service or Default/Basic Generation Service.

Demand-Side Management ("DSM") means any technology, measure, or action designed to decrease the kilowatt or kilowatthour use, or to alter the time pattern of that use by consumers of electricity.

Department means the Department of Public Utilities.

Distribution Company means a company engaging in the distribution of electricity to Retail Customers or owning, operating, or controlling Distribution Facilities; provided, however, a Distribution Company shall not include any entity that owns or operates plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation prior to January 1, 1986.

Distribution Customer means a recipient of Distribution Service provided by a Distribution Company.

Distribution Facility means plant or equipment used for the distribution of electricity to Retail Customers and that is not a Transmission Facility, a cogeneration facility, a Generation Facility or a small power production facility.

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

Electric Company means a corporation organized under the laws of the Commonwealth for the purpose of making electricity by means of water power, steam power or otherwise and selling, or distributing and selling, or only distributing, such electricity within the Commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas; provided, however, that Electric Company shall not mean an alternative energy producer, and provided further, that an electric company shall not include any entity that owns or operates a plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation prior to January 1, 1986.

Electric Service means the provision of Generation, Transmission, Distribution, or Ancillary Services.

Electricity Broker means an entity, including but not limited to an Aggregator, that facilitates or otherwise arranges for the purchase and sale of electricity and related services to Retail Customers, but does not sell electricity. Public Aggregators shall not be considered Electricity Brokers.

Energy means the amount of electricity used over a period of time, typically measured in kilowatthours.

Energy Efficiency means the implementation of an action, policy, or measure which entails the application of the least amount of energy required to produce a desired or given output and includes demand-side management and energy conservation services.

Generation Company means an entity engaging in the business of producing, manufacturing, or generating electricity for sale to Retail Customers.

Generation Facility means plant or equipment that is used to produce, manufacture, or otherwise generate electricity and that is not a Transmission Facility.

Generation Service means the provision of electricity and related services to a Retail Customer by a Competitive Supplier.

Independent System Operator or ISO means the New England ISO Corporation, which operates pursuant to a contract with the New England Power Pool.

Low-income Customers means those Customers who meet the low-income eligibility criteria set forth in 220 CMR 11.04(5).

Mitigation means all actions or occurrences that reduce the amount of money that a Distribution Company seeks to collect through the Transition Charge, including those amounts resulting both from matters within the Distribution Company's control and from matters not wholly within its control. Mitigation, in accordance with M.G.L. c. 164, §1G, includes, but is not limited to, the following:

(a) sales of Capacity, Energy, Ancillary Services, reserves, and emission allowances from Generating Facilities that are wholly or partly owned by the company;
(b) sales of Capacity, Energy, Ancillary Services, reserves, and emission allowances from Generating Facilities with which the Distribution Company has a purchased power agreement;
(c) adjustments to the company's minimum obligations under purchased power agreements that decrease such obligations, such as those that may be obtained through contract buy-out or renegotiation;
(d) Residual Value;

(e) sales and voluntary write-downs of company generation-related assets;

(f) any market value in excess of net book value associated with the sale, lease, transfer, or other use of the assets of the Distribution Company unrelated to the provision of Transmission Service or Distribution Service at regulated prices, including, but not limited to, rights-of-way, property, and intangible assets when the costs associated with the acquisition of the assets have been reflected in the Distribution Company's rates for regulated service; provided, however, that market values are based on the highest prices that such assets could reasonably realize after an open and competitive sale; and

(g) any allowed refinancing of stranded assets or other debt obligations as provided by law.

NEPOOL means the New England Power Pool and its successors.

New England Region means the geographic area consisting of the states Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

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

Renewable Resources means a type of Generation Facility or energy source including either:

(a) resources whose common characteristic is that they are nondepletable or are naturally replenishable but flow-limited, or

(b) existing or emerging non-fossil fuel energy sources or technologies that have significant potential for commercialization in New England and New York, and includes the following: solar photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; and low emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel.

The following technologies or fuels shall not be considered Renewable Resources: coal, oil, natural gas except when used in fuel cells, and nuclear power.

Residual Value means the value of Electric Company assets, not including the income that may be obtained through Generation Facility operation.

Retail Access means the use of Transmission and Distribution Facilities owned by a Transmission Company or a Distribution Company to transmit or distribute electricity

from a Competitive Supplier to a Retail Customer.

Retail Access Date means March 1, 1998.

Retail Customer or Customer means a customer located in Massachusetts that purchases electricity for its own consumption and not for resale in whole or in part.

Securitization means the use of rate reduction bonds to refinance debt and equity associated with Transition Costs pursuant to M.G.L. c. 164.

Service Territory means the service territory actually served by the Distribution Company on July 1, 1997 and following to the extent possible municipal boundaries.

Standard Offer Generation Service means the service provided by the Distribution Company until March 1, 2005, in accordance with 220 CMR 11.04(9)(b) and the provisions set forth in the Distribution Company's Standard Offer Generation Service tariff on file with the Department.

Transition Charge means the charge that provides the mechanism for recovery of Transition Costs.

Transition Costs means that portion of the costs identified in accordance with 220 CMR 11.03(2)(d) and (e) that remains after accounting for maximum possible mitigation, subject to determination by the Department.

Transmission Company means a company engaging in the transmission of electricity or owning, operating, or controlling Transmission Facilities.

Transmission Facility means plant or equipment used to provide Transmission Service.

Transmission Service means the delivery of electricity over lines that operate at a voltage level typically equal to or greater than 69,000 volts from generating facilities across interconnected high voltage lines to where it enters a distribution system.

Unbundled Rates means rates that separately identify:

(a) charges for Generation, Transmission and Distribution Services, as appropriate;
(b) charges for Energy Efficiency and Renewable Resources;
(c) the Transition Charge, as appropriate; and
(d) any other charges.

Unit Contract shall be as defined in the Restated NEPOOL Agreement, or the successor agreement(s).

11.03: Transition Cost Recovery

(1) Purpose. 220 CMR 11.03 establishes the procedures governing the identification, mitigation, and collection of Transition Costs.

(2) Filing Requirements. No Transition Costs may be collected by a Distribution Company unless the collection of those costs has been approved by the Department. In order to recover eligible Transition Costs, a Distribution Company must file an application for review and approval with the Department, that includes the following information:

(a) Documentation that the Distribution Company has filed on or before March 1, 1998, a plan to provide all of its Retail Customers the ability to purchase electricity from a Competitive Supplier as of March 1, 1998;

(b) Documentation that the Distribution Company, through the applicable Electric Company, has developed and will implement a plan to divest itself of its portfolio of all non-nuclear Generation assets by August 1, 1999;

(c) Documentation that the plan formulated pursuant to 220 CMR 11.03(2)(a) provides a Standard Offer Generation Service rate and rate reduction as required pursuant to 220 CMR 11.04(9)(b)3.;

(d) Identification of the following costs, incurred prior to January 1, 1996, for which the Distribution Company seeks recovery pursuant to M.G.L. c. 164, § 1G(b)(1):

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; and
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.

(e) Identification of the following costs, incurred after January 1, 1996, for which the Distribution Company seeks recovery pursuant to M.G.L. c. 164,§ 1G(b)(2):

1. Employee-related Transition Costs;
2. Any payment of taxes or payments in lieu of taxes made pursuant to M.G.L. c. 59, § 38H; and
3. Any costs to remove and decommission retired structures at fossil fuel-fired generation facilities required pursuant to M.G.L. c. 164, § 1A(b)(2).

(f) Documentation that the Distribution Company has taken all reasonable steps to mitigate to the maximum extent possible the total amount of Transition Costs for which recovery is sought pursuant to M.G.L. c. 164, § 1G; and

(g) Documentation that the company's recovery of Transition Costs is net of

the value in excess of book value for any company assets not classified to the transmission or distribution function.

(3) Mitigation.

(a) General Mitigation Requirements. Each Distribution Company seeking to recover Transition Costs pursuant to 220 CMR 11.03 shall, in accordance with the provisions of 220 CMR 11.03, mitigate any such Transition Costs pursuant to M.G.L. c. 164, § 1G(d). Mitigation efforts in which a company shall engage include, but not be limited to, the following:

1. The divestiture of non-nuclear Generation Facilities pursuant to M.G.L. c. 164, § 1A;
2. A netting against book value of nuclear generating units of the net present value of the revenues in excess of operating costs expected to be earned by these units, and any other factors that should be recognized in assessing their value;
3. Good-faith efforts to renegotiate, restructure, reaffirm, terminate, or dispose of existing contractual commitments for purchased power pursuant to M.G.L. c. 164, § 1G(d)(1)(ii) and M.G.L. c. 164, § 1G(d)(2);
4. An examination and analysis of the historic level of performance over the life of such contractual commitments for purchased power, regardless of whether the purchased power contracts exceed the competitive market price for electricity;
5. The netting against above-market costs of any below-market assets other than those assets classified to the distribution or transmission function; and
6. Any other Mitigation and analytical activities that the Department determines to be reasonable and effective mechanisms for reducing Transition Costs.

(b) Company Asset Valuation.

1. If an Electric Company chooses to divest itself of its existing non-nuclear Generation Facilities, pursuant to M.G.L. c. 164, § 1A(b)(2), such Electric Company shall transfer or separate ownership of Generation, Transmission, and Distribution Facilities or functionally separate such facilities consistent with M.G.L. c. 164, § 1A(b). A Distribution Company shall be prohibited from selling, leasing, renting, or otherwise transferring all or a portion of any assets it obtains from the Electric Company pursuant to M.G.L. c. 164, § 1A(b) without the express approval of the Department.
   a. In the event that an Electric Company chooses to sell its existing Generation Facilities, such Electric Company shall demonstrate to the Department that the sale process is equitable and maximizes the value of the existing

Generation Facilities being sold. All proceeds from any divestiture of Generation Facilities, net of tax effects and less any other adjustments approved by the Department that inure to the benefit of Customers, shall be applied to reduce the amount of the selling company's Transition Costs.

b. If an Electric Company chooses not to sell its existing non-nuclear Generation Facilities, then the Electric Company shall transfer all of its non-nuclear Generation Facilities and purchased power contracts to an Affiliate that is a Generation Company, and shall value its nuclear and non-nuclear Generation Facilities and its purchased power contracts in accordance with M.G.L. c. 164, § 1A(c).

2. An Electric Company that chooses not to divest all of its non-nuclear Generation Facilities shall subject its nuclear and non-nuclear Generation Facilities and purchased power contracts to a valuation pursuant to M.G.L. c. 164, § 1A(c). Should any Generation Facility transferred by the Electric Company to an unregulated affiliate or subsidiary be further sold, transferred to, or disposed of, to a third party within 48 months of the Generation Facility's transfer to an unregulated Affiliate or subsidiary of the Electric Company, then any amount recovered in such a sale, transfer, or disposition in excess of the remaining net book value of the Generation Facility shall be applied to reduce the amount of the selling company's Transition Costs.

3. In the event that an Electric Company with Generation Facilities in the Commonwealth owns, or has an affiliate that owns, Generation Facilities in another state in the New England region, and the Electric Company chooses not to divest its existing fossil-fuel fired Generation Facilities and its existing hydroelectric Generation Facilities, the facilities shall be valued in accordance with M.G.L. c. 164, § 1A(d).

4. An Electric Company that fails to commence and complete the divestiture of its non-nuclear Generation assets shall not be eligible to benefit from the Securitization provisions and the issuance of electric rate reduction bonds pursuant to M.G.L. c. 164, § 1H.

(c) Purchased Power Contracts. Pursuant to the provisions of M.G.L. c. 164, § 1G(d)(1)(ii), and M.G.L. c. 164, § 1G(d)(2), an Electric Company and the sellers under its purchased power contracts shall make good-faith efforts to renegotiate those contracts that contain a price for electricity that is above-market as of March 1, 1998. For the purpose of 220 CMR 11.03, the standard of good faith shall not require either party to agree to a proposal or require the making of concessions,

but shall require active participation in negotiations and a willingness to make reasonable concessions in order to equitably mitigate Transition Costs, and to provide justification for proposals, and shall demonstrate a sincere effort to reach agreement. Beginning July 1, 1998, and at least annually thereafter, a Distribution Company shall file information with the Department demonstrating whether or not each of the purchased power contracts contains a price for electricity that is above-market as of the date of review. If the prices in such contract are above-market, the Distribution Company and the seller under such contract shall, in accordance with the provisions of M.G.L. c. 164, § 1G(d)(2), make a good-faith effort to renegotiate such contract in order to achieve further reductions in the Transition Charge. The requirements of this subsection shall not apply to facilities that burn trash to generate electricity as specified in M.G.L. c. 164, § 1G(d)(2)(i).

(d) Securitization. Each Distribution Company seeking approval to securitize Transition Costs pursuant to M.G.L. c. 164, § 1H must include in its filing:

1. Documentation of fully mitigated Transition Costs as approved by the Department;
2. Documentation that savings derived from Securitization will inure to the benefit of the Distribution Company's Customers;
3. Written commitments that purchasers of divested operations will offer employment to affected employees;
4. Documentation that the Distribution Company has established, with the approval of the Department, an order of preference for use of bond proceeds such that the Transition Costs having the greatest impact on customer rates will be first to be reduced by the proceeds;
5. Identification of financial entity to provide Securitization;
6. Specification that the amounts collected from the Distribution Company's Customers shall be allocated first to current and past due Transition Charges and then other charges and that, upon the issuance of the electric rate reduction bond, Transition Charges collected shall be allocated first to transition property and second to Transition Charges, if any, that are not subject to a financing order; and
7. A stipulation that Transition Charges be paid over to the financing entity within one calendar month of collection.

(4) Transition Charge Calculation and Department Review.

(a) The Department shall review Company Transition Cost filings to ensure that they comply with the provisions of M.G.L. c. 164, §§ 1A, 1G, and 1H.

(b) The Department may allow any approved Transition Costs to be recovered from a Distribution Company's Customers through a

non-bypassable Transition Charge in accordance with M.G.L. c. 164, § 1G(e).

(c) For purposes computing any carrying costs that the Department may allow in a Transition Charge calculation, the cost of equity component of any such computation shall be determined in accordance with M.G.L. c. 164, § 1G(b)(3).

(d) The Department shall determine whether an exit fee may be charged to a Retail Customer that reduces purchases of electricity through the operation of, or purchases from, on-site generation or cogeneration equipment in accordance with the provisions of M.G.L. c. 164, § 1G(g). Facilities eligible for net metering shall be exempt from the six-month notice provisions of M.G.L. c. 164, § 1G(g).

(e) Periodic review and reconciliation of the Transition Costs and Transition Charge of a company by the Department shall be conducted in accordance with the provisions of M.G.L. c. 164, §§ 1A(a) and 1G(a)(2).

11.04: Distribution Company Requirements

(1) Purpose and Scope.

(a) Purpose. 220 CMR 11.04 establishes the rules of procedure by which Distribution Companies shall

1. Provide Distribution Service to Distribution Customers in their Service Territories;
2. Provide Electric Service to Low-income Customers in their Service Territories;
3. Provide funding for Renewable Resources;
4. Provide Energy Efficiency and DSM services to Retail Customers in their Service Territories;
5. Provide Standard Offer Generation Service and Default/Basic Generation Service to Retail Customers in their Service Territories that are not receiving Generation Service from a Competitive Supplier;
6. Bill Retail Customers in their Service Territories; and
7. Terminate Electric Service to Retail Customers for non-payment of bills.

(b) Scope. These rules apply to all Distribution Companies subject to the jurisdiction of the Department.

(2) Distribution Service.

(a) Each Distribution Company shall have the exclusive obligation to provide Distribution Service to all Customers within its Service Territory. No other entity may provide Distribution Service within such Service Territory without the written consent of the Distribution Company. Such consent shall be filed with the Department and the clerk

of the municipality so affected.

(b) Each Distribution Company shall file, for Department approval, a Distribution Service tariff for each rate class.

(c) Each Distribution Company shall file, for Department approval, terms and conditions governing the manner in which Distribution Service is provided to its Distribution Customers. These terms and conditions shall be consistent with the Model Terms and Conditions for Distribution Service established by the Department.

(3) Transmission Service. Each Distribution Company shall file, for Department approval, terms governing the provision of Transmission Service to its Distribution Customers.

(4) Interconnection Standards. Each Distribution Company shall establish non-discriminatory Interconnection Standards that govern the connection of Generation Facilities to its Distribution Facilities. Such standards shall ensure that all Generation Facilities have fair access on reasonable terms to the Company's Distribution Facilities. The Interconnection Standards shall be on file at the Department.

(5) Low-income Customer Tariff.

(a) Each Distribution Company shall file, for Department approval, a Low-income Customer Tariff that provides a level of discount to Customers taking Distribution Service under such tariff equivalent to the discount provided under its low-income tariff in effect prior to March 1, 1998. The discount shall be in addition to any reduction in rates provided by the Distribution Company on or after March 1, 1998. The discount shall be provided to Low-income Customers through a reduction in the distribution and Transition Charges to which such Customers would otherwise be subject.

(b) Each Distribution Company shall establish Customer eligibility criteria for its Low-income Customer Tariff based upon verification of a Customer's receipt of any means-tested public-benefit program or verification of eligibility for the low-income home energy assistance program or its successor program, for which eligibility does not exceed 200% of the federal poverty level based on a household's gross income or other criteria approved by the Department. Eligibility for the low-income discount rate shall be indexed to changes in the federal poverty level percentage income-criterion, and households satisfying that criterion shall qualify for the rate discount.

(c) Each Distribution Company shall periodically notify all Customers of the availability of and method of obtaining service on the Low-income Customer Tariff.

(d) Each Distribution Company shall allocate to other rate classes, as part of a general rate case, the revenue deficiency resulting from the

Low-income Customer Tariff using an allocation method approved by the Department for the Distribution Company.

(e) Each Distribution Company shall guarantee payment to a Competitive Supplier for Generation Service provided to a Customer taking Distribution Service under the Company's Low-income Customer Tariff in the event of non-payment by such Customer, where non-payment shall be determined consistent with 220 CMR 11.05(3)(c) and (d). Upon determination that such a Customer has failed to pay the amount owed to the Competitive Supplier, the Distribution Company shall pay the Competitive Supplier, except that such payment shall not exceed the prices that the Distribution Company charges to Customers for Standard Offer Generation Service. The Distribution Company shall guarantee payment only for the period of time prior to the earliest date that the Competitive Supplier could have terminated Generation Service to the Customer, in accordance with 220 CMR 11.05(3)(c) and the Distribution Company's Terms and Conditions for Competitive Suppliers.

(6) Farm Discount.

(a) Each Distribution Company shall provide Customers who meet the eligibility requirements for being engaged in the business of agriculture or farming, as defined in M.G.L. c. 128, § 1A, a ten percent reduction in the rates to which such Customers would otherwise be subject. Each Distribution Company shall allocate to other rate classes, as part of a general rate case, the revenue deficiency resulting from the farm discount using an allocation method approved by the Department for the Distribution Company.

(b) Eligibility Verification. Eligibility for the farm discount shall be verified according to criteria established by the Department.

(7) Renewable Resources.

(a) Funding of Renewable Resources.

1. Funding Levels. Each Distribution Company shall collect a charge to support the Massachusetts Renewable Energy Trust Fund beginning March 1, 1998, in accordance with the following schedule of charges per kilowatthour: $0.00075 in 1998; $0.001 in 1999; $0.00125 in 2000; $0.001 in 2001; $0.00075 in 2002; and $0.0005 in each calendar year thereafter. The revenues generated by this charge shall be remitted to the Massachusetts Technology Park Corporation.

2. Public Purpose. The public purpose of this fund shall be to generate the maximum economic and environmental benefits over time from renewable energy to the ratepayers of the Commonwealth by promoting the increased availability, use, and affordability of renewable energy.

(b) Availability of Information. Each Distribution Company shall make

available to its Customers upon request non-proprietary information in its possession, custody, or control regarding Renewable Resources and emerging energy technologies and the methods by which these technologies can be acquired and installed.

(c) Net Metering. A Customer of a Distribution Company with an on-site Generation Facility of 60 kilowatts or less in size has the option to run the meter backward and may choose to receive a credit from the Distribution Company equal to the average monthly market price of generation per kilowatthour, as determined by the Department, in any month during which there was a positive net difference between kilowatthours generated and consumed. Such credit shall appear on the following month's bill. Distribution Companies shall be prohibited from imposing special fees on net metering Customers, such as backup charges and demand charges, or additional controls, or liability insurance, as long as the Generation Facility meets the Interconnection Standards and all relevant safety and power quality standards. Net metering customers must still pay the minimum charge for Distribution Service (as shown in an appropriate rate schedule on file with the Department) and all other charges for each net kilowatthour delivered by the Distribution Company in each billing period.

(8) Energy Efficiency.

(a) Funding of Energy Efficiency Services. Energy Efficiency services provided by a Distribution Company to Customers shall be funded by a charge to be collected beginning on March 1, 1998, according to the following schedule of charges per kilowatthour: $0.0033 in 1998; $0.0031 in 1999; $0.00285 in 2000; $0.0027 in 2001; and $0.0025 in 2002 through 2012. In each year, at least 20 percent of residential DSM expenditures, and in no event less than 0.25 mills per kilowatthour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive DSM programs and education for Low-income Customers.

(b) Department Review. The Department shall review energy efficiency expenditures in accordance with M.G.L. c. 25A, § 11G.

(c) Availability of Information.

1. Each Distribution Company shall make available to its Customers upon request non-proprietary information in its possession, custody, or control regarding Energy Efficiency technologies, measures, or practices and the programs offered by the Distribution Company through which these technologies, measures, or practices can be installed or implemented.

2. Each Distribution Company shall make provisions to ensure confidentiality for those Customers who indicate that their Customer specific Energy Efficiency information is to remain confidential.

(9) Standard Offer Generation Service and Default/Basic Generation Service.

(a) Each Distribution Company shall have the obligation to provide Standard Offer Generation Service and Default/Basic Generation Service to Customers within its Service Territory who are not receiving Generation Service from a Competitive Supplier, consistent with the provisions set forth in 220 CMR 11.04(9)(b) and (c).

(b) Standard Offer Generation Service.

1. Term. Standard Offer Generation Service shall be available for a period of seven years after the Retail Access Date.

2. Availability.

a. Standard Offer Generation Service shall be available to each Customer within a Distribution Company's Service Territory who:

i. Was a Customer of the Distribution Company as of the Retail Access Date; and

ii. Has not received Generation Service from a Competitive Supplier since the Retail Access Date, except as provided in 220 CMR 11.04(9)(b)2.d.

b. A Customer receiving Standard Offer Generation Service shall be allowed to retain such service upon moving within a Distribution Company's Service Territory.

c. A Customer who moves into a Distribution Company's Service Territory after the Retail Access Date is not eligible to receive Standard Offer Generation Service, except that a Low-income Customer who moves into a Distribution Company's Service Territory after the Retail Access Date shall be eligible to receive Standard Offer Generation Service.

d. A Customer who has received Generation Service from a Competitive Supplier since the Retail Access Date is not eligible to receive Standard Offer Generation Service, except that

i. A Low-income Customer may receive Standard Offer Generation Service at any time, regardless of whether the Customer previously has received Generation Service from a Competitive Supplier;

ii. A residential or small commercial and industrial Customer who has received Generation Service from a Competitive Supplier since the Retail Access Date is eligible to receive Standard Offer Generation Service by so notifying the Distribution Company within 120 days of the date when the Customer first began to receive Generation Service from a Competitive Supplier, provided that such notification occurs during the first year following

the Retail Access Date; and

iii. A Customer who has received Generation Service pursuant to an agreement with a Public Aggregator is eligible to receive Standard Offer Generation Service by so notifying the Distribution Company within 180 days of the date when the Customer first began to receive Generation Service through such agreement.

3. Rates.

a. The initial rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, Renewable Resources, Energy Efficiency, and Transition Charges, Customers' average rates are reduced by not less than ten percent from 1997 average rates, as determined by the Department.

b. As of March 1, 1999, the rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, Renewable Resources, Energy Efficiency, and Transition Charges, Customers' average rates shall increase by not more than the rate of inflation, as determined by the Department.

c. As of September 1, 1999, the rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, Renewable Resources, Energy Efficiency, and Transition Charges, Customers' average rates are reduced by at least 15 percent from 1997 average rates, as adjusted for inflation.

d. A Distribution Company that is unable to meet the rate reductions set forth in 220 CMR 11.04(9)(b)3.a. and c. may petition the Department for relief pursuant to M.G.L. c.164, § 1G(3)(c).

e. Each Distribution Company shall file, for Department approval, the annual rates that Customers shall be charged for Standard Offer Generation Service for the seven-year period that this service will be available.

4. Procurement. Each Distribution Company shall procure electricity for Standard Offer Generation Service through competitive bidding, subject to review by the Department.

5. Terms and Conditions. Each Distribution Company shall file, for Department approval, a tariff for the provision of Standard Offer Generation Service. This tariff shall be consistent with the Model Tariff for Standard Offer Generation Service established by the

Department.

(c) Default/Basic Generation Service.

1. Availability. Default/Basic Generation Service shall be available to any Customer who is not receiving either Generation Service from a Competitive Supplier or Standard Offer Generation Service.

2. Rates.

a. The rate(s) for Default/Basic Generation Service shall be as established through competitive bidding, but in no case shall they exceed the average monthly market price for electricity, as determined by the Department.

b. Each Distribution Company shall offer a Default/Basic Generation Service rate option to Customers in which the rate remains constant for a period of up to six months.

c. Each Distribution Company shall file, for Department approval, the rates that Customers shall be charged for Default/Basic Generation Service.

3. Procurement. Each Distribution Company shall procure electricity for Default/Basic Generation Service through competitive bidding, subject to review by the Department. The provider of Default/Basic Generation Service shall be entitled to furnish a one-page insert in the Distribution Company Bill.

4. Terms and Conditions. Each Distribution Company shall file, for Department approval, a tariff for the provision of Default/Basic Generation Service. This tariff shall be consistent with the Model Tariff for Default/Basic Generation Service established by the Department.

(d) Fee. There shall be no fee for initiating or terminating Standard Offer Generation Service or Default/Basic Generation Service when the initiation or termination is made concurrent with a scheduled meter read, or involuntary on the part of the Customer.

(e) Low-income Customers. Each Distribution Company shall make a determination whether a Low-income Customer shall be placed on Standard Offer Generation Service or Default/Basic Generation Service based on which service has the lower rate, unless otherwise requested by the Customer. This determination shall be made at the time the service is initiated.

(f) Terms and Conditions for Competitive Suppliers. Each Distribution Company shall file, for Department approval, terms and conditions that will govern the relationship between the Distribution Company and Competitive Suppliers providing Generation Service to Customers in the Distribution Company's Service Territory. These terms and conditions shall be consistent with the Model Terms and Conditions for Competitive Generation Service established by the Department.

(10) Billing and Payment.

(a) Each Distribution Company shall bill its residential Customers in accordance with 220 CMR 25.00.

(b) Each Distribution Company shall issue a single Bill, reflecting Unbundled Rates, to each Customer in its Service Territory receiving Standard Offer Generation Service or Default /Basic Generation Service.

(c) Each Distribution Company shall offer two billing options to a Customer receiving Generation Service from a Competitive Supplier:

1. Passthrough billing, under which the Customer would receive one Bill for Distribution Service, Transmission Service (if appropriate), the Renewable Resources charge, the Energy Efficiency charge, and the Transition Charge from the Distribution Company and a second Bill from the Competitive Supplier for Generation Service and other services provided by the Competitive Supplier; and

2. Complete billing, under which the Customer would receive a single Bill from the Distribution Company for Distribution Service, Transmission Service (if appropriate), the Renewable Resources charge, the Energy Efficiency charge, the Transition Charge, and Generation Service provided by the Competitive Supplier.

(d) Each Distribution Company shall inform a Customer when Generation Service for the Customer has been initiated by a Competitive Supplier, along with information on how the Customer may file a complaint regarding an unauthorized initiation of Generation Service. This information shall be included on the first Distribution Company Bill rendered to the Customer after such initiation.

(e) Each Distribution Company may recover bad debt expenses associated with Distribution Service, Transmission Service, Standard Offer Generation Service, Default /Basic Generation Service, and guaranteed payments to Competitive Suppliers for Customers taking service under the Company's Low-income Customer Tariff, incurred as a result of Customers' failure to pay. The amount and method of recovery of such expenses shall be established by the Department.

(f) Each Distribution Company may, as appropriate, require a security deposit from, and impose late payment charges on, commercial and industrial customers in accordance with 220 CMR 26.00.

(g) Each Distribution Company shall bill condominium common areas and facilities in accordance with 220 CMR 28.00.

(11) Termination Protections.

(a) All residential Customers shall be protected from termination of Electric Service pursuant to 220 CMR 25.00.

(b) Each Distribution Company shall remain responsible for determining eligibility for termination protections pursuant to 220 CMR 25.00 and

for administering such protections for Customers within its Service Territory.

(c) Each Distribution Company shall be prohibited from disconnecting or discontinuing Electric Service to a Customer for a disputed amount if that Customer has filed a complaint that is pending with the Department, in accordance with 220 CMR 25.02 and 220 CMR 11.07.

(12) Disclosure of Customer Usage Information.

(a) Each Distribution Company shall be required to provide a Customer's historic usage information to Competitive Suppliers and Electricity Brokers that have received the required Customer authorization, as established in 220 CMR 11.05(4)(a). The type of usage information shall be as provided below.

1. Demand Customers. For Customers that have been billed at least in part on a demand basis during the 36-month period prior to the release of information, the historic usage information shall include, for the most recent 12 months, the Energy consumption for each month, and the highest demand level for each month as well as the average monthly demand for the month. The Distribution Company shall indicate if any of the Energy and demand measurements were not based on actual recorded usage, and provide a description of the method used to determine the estimated measurements.

2. Energy-only Customers. For Customers that have been billed on an Energy-only basis during the 36-month period prior to the release of information, the historic usage information shall include the monthly Energy consumption for the most recent 12 months. The Distribution Company shall indicate if any of the Energy measurements were not based on actual recorded usage and provide a description of the method used to determine the estimated measurements.

(b) Each Distribution Company shall be required to provide a Customer's historic usage information to the Customer, upon the Customer's request. Distribution Companies shall be required to exercise best efforts to furnish the data requested by the Customer on a timely basis. The Distribution Company shall indicate if any of the usage information was not based on actual recorded usage and provide a description of the method used to determine the estimated usage.

(13) Dispute Resolution. Disputes between a Customer and a Distribution Company shall be resolved in accordance with 220 CMR 25.00 and 220 CMR 11.07.

(14) Conducting Business with Unauthorized Entities. A Distribution Company may provide services associated with the provision of Generation Service only to entities that are licensed as a Competitive Supplier or Electricity Broker by the

Department pursuant to 220 CMR 11.05(2).

(15) Dissemination of Information. Each Distribution Company shall produce information, in the form of a mailing, or other method approved by the Department, to inform consumers about available rebates, discounts, credits, and other cost-saving mechanisms that assist consumers in lowering utility bills. Each Distribution Company will disseminate this information no less than semi-annually, and consistent with a plan filed with the Department.

11.05: Competitive Supplier and Electricity Broker Requirements

(1) Purpose and Scope. The purpose of 220 CMR 11.05 is to establish the requirements applicable to all Competitive Suppliers and Electricity Brokers.

(2) Licensing Requirements.

(a) Scope. 220 CMR 11.05(2) governs application for initial license and for renewal of license.

(b) Information Filing Requirements. Before initiating service to Retail Customers, each Applicant shall apply for a license and shall file for review and approval with the Department's Secretary, in such form as is prescribed by the Secretary, a notarized document, signed by two officers of the Applicant, that includes the information identified below, except that an Electricity Broker shall not be required to provide the information described in 220 CMR 11.05(2)(b)10.and 14.:

1. Legal name;
2. Business address;
3. A description of the company's form of ownership. If a corporation, association, or partnership
   a. the name of the state where organized,
   b. the date of organization,
   c. a copy of the Articles of Organization or Incorporation (filed with the Secretary of State under M.G.L. c. 156B or, if incorporated in another state, by the cognizant approving authority established by law) or Association, partnership agreement, or other similar document regarding legal organization,
   d. by-laws, and
   e. the name, address and title of each officer and director, partners, or other similar officers;
4. A statement (with appropriate citation to corporate articles or by-laws or other operative documents) that acting as a Competitive Supplier or Electricity Broker is not an *ultra vires* purpose (beyond the scope) of the entity;
5. A summary of any history of bankruptcy, dissolution, merger or acquisition of the entity in the two calendar years immediately

preceding application;

6. Name, title, and an 800 or toll-free telephone number of customer service department or contact person available to customers;
7. Name, title, and telephone number of regulatory contact person;
8. Name and address of Resident Agent for Service of Process in Massachusetts for purposes of M.G.L. c. 223A, § 3;
9. Brief description of the nature of business being conducted, including types of customers to be served and geographic area in which services are to be provided;
10. A statement that the Applicant will comply with 220 CMR 11.06;
11. Documentation regarding any valid purchased power contract between the Applicant, its Affiliates, its parent or subsidiary, and any electric company formed pursuant to the provisions of M.G.L. c. 164 including documentation that contracts approved by the Department on or before December 31, 1995, except contracts with facilities that burn trash to generate electricity, that are above-market are currently subject to renegotiation pursuant to the provisions of M.G.L. c. 164, § 1(G)(d)(2);
12. Documentation of technical ability to generate or otherwise obtain and deliver electricity, or provide other proposed services;
13. Documentation of financial capability (such as the level of capitalization or corporate parent backing) to provide proposed services;
14. Documentation that the Competitive Supplier is a NEPOOL participant or will meet its transaction requirements through a contractual arrangement with a NEPOOL participant. Such documentation may satisfy the requirements set forth in 220 CMR 11.05(2)(b)12. and 13.;
15. Evidence or documentation of attendance at a Competitive Supplier training session to be sponsored by the Massachusetts Distribution Companies, as set forth in the Electronic Business Transaction Standards Working Group Report, as amended from time to time, on file with the Department;
16. One sample Bill demonstrating the Applicant's familiarity with 220 CMR 11.05 from each Competitive Supplier that plans to bill Retail Customers in accordance with the passthrough billing option, as set forth in 220 CMR 11.04(10)(c);
17. A statement whether any director, officer, or other similar official has in the five years immediately preceding application been convicted of a felony as defined by M.G.L. c. 274, § 1, or the equivalent law of any other jurisdiction, involving business fraud, or held liable for any antitrust violation pursuant to M.G.L. c. 93, c. 93A or the equivalent law of any other jurisdiction and whether the applicant business entity has itself been held liable for business fraud or antitrust violation

(including the date and place of conviction or verdict, and nature of offense found); and

18. Declaration under penalties of perjury pursuant to M.G.L. c. 268, § 6, that all statements made in the application are true and complete. The declaration shall include evidence that the declarants are authorized as agents of the Applicant to apply for license on its behalf; and

19. A statement demonstrating the Applicant's familiarity with 220 CMR § 11.07 (4) and the sample statement that will be provided to the customer in writing at the time service is initiated to notify customers of the availability of mediation for disputes greater than $100 as required by G.L. c. 164, § 1F (2).

Applicants are required to file an original application, with two copies and a copy on diskette. Within 30 days of any material or organic (M.G.L. c. 156B) change in the information required, the Applicant shall file updated information with the Department. The Applicant also shall file an updated application annually. If there has been no material or organic change to the relevant information, an Applicant may submit an updated application indicating that there has been no change since the previous application. Any Applicant who knowingly submits misleading, incomplete, or inaccurate information may be penalized in accordance with statute and with the regulations promulgated by the Department.

(c) Fees. Each Applicant shall pay an annual filing fee of $100 to the Department.

(d) Department Review. The Department will review the information described above. The Department will inform the Applicant within 20 business days of submission of a complete application whether the licensing application has been approved or rejected. Approved license applications will be valid for one year from the date of approval.

(e) Information Disclosure. As a condition of maintaining or renewing a license, each Competitive Supplier shall comply with the requirements of M.G.L. c. 164 and 220 CMR 11.06. Failure to comply with this statute and 220 CMR 11.00 may result in suspension, revocation, or non-renewal of the Applicant's license following a hearing before the Department in conformance with M.G.L. c.30A.

(3) Billing and Termination of Generation Service Requirements. Each Competitive Supplier shall comply with the Department's regulations set forth in 220 CMR 25.00, 27.00, 28.00, and 29.00 as provided below.

(a) Each Bill for Generation Service shall, at a minimum, separately identify:

1. Electricity consumption, and indicate whether the consumption was based on actual recorded usage or estimated usage;

2. The pricing structure by which the Customer will be billed, as

shown on the Customer's Terms of Service, as described in 220 CMR 11.06(3);

3. The total charge for Generation Service; and

4. The total charge for Transmission Service, when applicable.

(b) A Competitive Supplier that bills a Retail Customer in accordance with the passthrough billing option described in 220 CMR 11.04(10)(c), may issue a Bill less frequently than the billing period defined in a Distribution Company's terms and conditions for Distribution Service provided that the Bill includes electricity consumption information for each billing period and indicates whether the consumption for each billing period was based on actual recorded usage or estimated usage

(c) A Bill for Generation Service provided to a residential Retail Customer shall not be considered “due” under 220 CMR 11.00 in less than 45 days from receipt. In those instances when a Competitive Supplier issues a Bill less frequently than the billing period defined in a Distribution Company's terms and conditions for Distribution Service, pursuant to 220 CMR 11.05(3)(b), the Bill shall not be considered “due” in less time than has elapsed between receipt of the current Bill and receipt of the previous Bill from the Competitive Supplier. No disputed portion of the Bill shall be considered "due" if the Customer has filed a complaint that is pending with the Department, in accordance with 220 CMR 25.00 and 220 CMR 11.07.

(d) A Competitive Supplier may terminate Generation Service to a residential Retail Customer during the term of service only if a Bill is not paid within 48 days from receipt, or such longer time as may be permitted by 220 CMR 11.05(3)(c). Prior to termination of Generation Service, the Competitive Supplier shall render a second request for payment not earlier than 27 days after the rendering of the Bill (*i.e.*, the first request for payment). The second request for payment shall state the Competitive Supplier's intention to terminate Generation Service on a date not earlier than 48 days after the Customer’s receipt of the Bill. The Competitive Supplier shall render a final notice of termination not earlier than 45 days after the Customer’s receipt of the Bill. Such notice shall be rendered at least 72 hours, but in no event more than 14 days, prior to termination of Generation Service. The Competitive Supplier may terminate Generation Service if the Bill remains unpaid on the indicated termination date, except that a Competitive Supplier may not terminate Generation Service to a Customer if the unpaid Bill is the subject of a dispute resolution, in accordance with 220 CMR 25.00 and 220 CMR 11.07.

(e) A Competitive Supplier may terminate Generation Service at the end of the term of the contract for Generation Service.

(f) A Competitive Supplier must notify a Customer of termination of Generation Service at least ten days before termination, when such termination is due to reasons other than non-payment. Such notice must

be in writing, addressed to the customer's billing address, and mailed first-class.

(4) Customer Authorization Requirements.

(a) Release of Customer Usage Information. Each Competitive Supplier or Electricity Broker must obtain verification that a Customer has affirmatively chosen to allow the release of the Customer's historic usage information to the Competitive Supplier or Electricity Broker, in accordance with 220 CMR 11.05(4)(c).

(b) Initiation of Service by a Competitive Supplier or Electricity Broker.

1. Competitive Supplier. Each Competitive Supplier must obtain verification that each Customer choosing that Competitive Supplier has affirmatively chosen such entity, in accordance with 220 CMR 11.05(4)(c). No Competitive Supplier may initiate Generation Service to a Customer without first obtaining said affirmative choice from the Customer.

2. Electricity Broker. An Electricity Broker must obtain verification that each Customer choosing that Electricity Broker has affirmatively chosen to allow the Electricity Broker to represent the Customer for the purposes of selecting a Competitive Supplier on behalf of the Customer. Such affirmative choice shall be in accordance with 220 CMR 11.05(4)(c).

(c) Affirmative Choice. For the purposes of 220 CMR 11.00, the term "affirmative choice" may be evidenced by a customer-signed Letter of Authorization, Third-party Verification, or the completion of a toll-free call made by the Customer to an independent third party operating in a location physically separate from the telemarketing representative who has obtained the Customer's initial oral authorization to change to a new Competitive Supplier.

1. Letter of Authorization. For the purposes of 220 CMR 11.05, the term "Letter of Authorization" means an easily separable document whose sole purpose is to authorize a Competitive Supplier to initiate Generation Service for a Customer or an Electricity Broker to represent the Customer for the purposes of selecting a Competitive Supplier on behalf of the Customer. The Letter of Authorization must be signed and dated by the Customer and must conform to the specifications in M.G.L. c. 164, § 1F(8)(a).

2. Third-party Verification. For the purposes of 220 CMR 11.00, the term "Third-party Verification" means an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative who has obtained the Customer's oral authorization to change to a new Competitive Supplier, such authorization to include appropriate

verification data, such as the Customer's date of birth and social security number or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing purposes, and shall not be sold, delivered, or shared with any other party for such purposes.

(d) Rescission Period. A Competitive Supplier may not initiate Generation Service to a Customer choosing the Competitive Supplier prior to midnight on the third day following the Customer's receipt of a written confirmation of an agreement to purchase electricity and a statement entitled "Terms of Service," as described in 220 CMR 11.06(3), during which period the Customer shall have the right to rescind, without charge or penalty, his affirmative choice of Competitive Supplier.

(5) Conducting business with unauthorized entities. A Competitive Supplier may not use the services of any entity to facilitate or otherwise arrange for the purchase and sale of electricity to Retail Customers, unless such entity has been licensed as an Electricity Broker by the Department pursuant to 220 CMR 11.05(2).

(6) Security Deposits and Late Payment Charges. A Competitive Supplier or Electricity Broker shall be precluded from requiring security deposits or assessing late payment charges from Retail Customers except as specifically provided for in 220 CMR 26.00.

11.06: Information Disclosure Requirements

(1) Purpose and Scope.

(a) Purpose. The purpose of 220 CMR 11.06 is to ensure that Customers are presented with consistent information by which to evaluate services offered by Competitive Suppliers and Distribution Companies.

(b) Scope. 220 CMR 11.06 applies to all Competitive Suppliers and to Distribution Companies as specified in 220 CMR 11.06.

(2) Information Disclosure Label.

(a) Each Competitive Supplier and each Distribution Company providing Standard Offer Generation Service or Default/Basic Generation Service shall prepare information on a label, or labels, for Retail Customers in a consistent format, as determined by the Department. Such label, or labels, shall be a condition of licensure for Competitive Suppliers pursuant to 220 CMR 11.05(2)(e). The label, or labels, shall present information in accordance with 220 CMR 11.06(2)(b) through 11.06(2)(e), and shall conform to all applicable rules and regulations of the Attorney General. The label, or labels, shall be distributed in

accordance with 220 CMR 11.06(4) beginning on September 1, 1998.

(b) Price to be charged and price variability. A label shall present the price of Generation Service, Standard Offer Generation Service or Default/Basic Generation Service, as an average unit price in cents per kilowatthour as measured at the customer meter over the course of an annualized period, regardless of actual price structure. This unit price shall not include charges associated with Distribution Service, other Department regulated services, or other non-generation products or services except as provided below. The label shall contain the following information on average price and price variability.

1. Average price information.

a. Average prices shall be shown for four levels of use. The average price for each usage level shall be the total charge for Generation Service, Standard Offer Generation Service or Default /Basic Generation Service for the specified usage level, divided by the kilowatthours for the particular usage level. Average prices shall be rounded to the nearest one tenth of a cent per kilowatthour.

i. Residential. Average prices for residential consumers shall be shown for usage levels of 250, 500, 1000 and 2000 kilowatthours per month.

ii. Commercial. Average prices for commercial consumers shall be shown for 1,000, 10,000, 20,000 and 40,000 kilowatthours per month.

b. Average prices for time-of-use and seasonal price structures shall be based on New England-wide load profiles.

c. Average prices for service tied to spot or other variable prices shall be shown based on the average prices that would have been charged in the last month of the prior quarter.

d. Bundled Generation Service. Competitive Suppliers that offer Generation Service where electricity is bundled with any other product or service may display the charge for Generation Service as one of the following:

i. The average price for which the Retail Customer can purchase unbundled Generation Service from the Competitive Supplier, or

ii. An average price, assuming the entire price of the bundled service is attributable to electricity. If this option is selected the label may include a statement, in the same font size as subheadings, that identifies what is included in the average price, or

iii. For any generation offering that includes Energy

Efficiency measures, and that includes an explicit guarantee of annual Bill savings to result from such measures, an average unit price that reflects the guaranteed reduction of customer Bills and all costs to be charged to customers for provision or installation of such measures over the contract term.

e. Inducements. Average prices shall not reflect any adjustment for cash or non-cash sales inducements except as provided elsewhere in 220 CMR 11.00.

2. Price variability information. If average prices vary by time of use or by volume, a subheading shall be printed below the average prices stating one or both of the following:

a. If average prices vary by time of use, including seasonal prices, the statement shall read "Your average electricity price will vary according to when and how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices."

b. If average prices vary only by volume of sales, including prices that have a fixed charge and a flat energy charge, the statement shall read "Your average generation price will vary according to how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices."

(c) Customer service information. The label shall contain a toll-free number for customer service and complaints.

(d) Fuel, Emissions, and Labor Characteristics. The label shall contain information on the fuel mix, emissions, and labor characteristics associated with the Competitive Supplier's company resource portfolio, a product or segment of the Competitive Supplier's company resource portfolio, or the company resource portfolio used in the provision of Standard Offer Generation Service or Default/Basic Generation Service, as provided in 220 CMR 11.06.

1. Determining the Company Resource Portfolio.

a. Company resource portfolio. The company resource portfolio shall derive from quarterly determinations of the resources used by a Competitive Supplier to meet its load obligations in New England over the label reporting period. Such generating resources shall reflect resources as discussed in 220 CMR 11.06(2)(d)1.b. through f. The company resource portfolio shall be determined using market settlement data or equivalent data provided by the Independent System Operator. Company resource portfolio information shall be updated on a quarterly

basis.

b. Label reporting period. The label reporting period shall be the most recent one-year period prior to the quarter for which resource portfolio information has been updated with the following exceptions:

   i. If a Competitive Supplier has operated for less than a full year, but more than three months, the Competitive Supplier shall rely on the historic information that is available for the portion of the year that the Competitive Supplier has operated.

   ii. If a Competitive Supplier has operated for less than three months, the Competitive Supplier shall rely on a reasonable estimate of its company resource portfolio based on the Competitive Supplier's unit entitlements or contracts that specify the associated generation units, and the average regional system mix.

c. Known resources. Where the company resource portfolio includes kilowatthours that are associated with specific generating units in which the Competitive Supplier holds, or is assigned, unit entitlements or contracts that specify the associated generation units, such kilowatthours shall be deemed to derive from known resources. Where a Competitive Supplier holds, or is assigned, and can verify a contract for the output from a facility of one megawatt or less, which is not reflected in market settlement data from the Independent System Operator, the Competitive Supplier may include such resource in its company resource portfolio. For the purpose of determining fuel mix, emissions, and labor characteristics required by 220 CMR 11.06(2)(d)4. through 6., kilowatthours from known resources shall be ascribed the characteristics of the associated generating units.

d. System power. Where the company resource portfolio includes kilowatthours that are not associated with known resources determined in accordance with 220 CMR 11.06(2)(d)1.c., such kilowatthours shall be deemed to derive from system power. For the purpose of determining fuel mix and emissions in accordance with 220 CMR 11.06(2)(d)4. and 5., kilowatthours from system power shall be ascribed the characteristics of the residual system mix. The residual system mix shall be the mix of generating resources in New England net of known resources. Until such time as data are available on the residual system mix, system power shall be ascribed the

characteristics of the average regional system mix.

e. Imports. Where the company resource portfolio includes kilowatthours that are associated with imports to New England, such kilowatthours shall be called "imports" for the purposes of disclosing fuel mix. For the purpose of disclosing emissions, imports shall be ascribed representative emissions rates as determined in consultation with the Massachusetts Department of Environmental Protection. Until such time as said representative emissions rates are determined, kilowatthours associated with such imports shall be ascribed the same characteristics as system power.

f. Energy Storage Facilities. Where the resource portfolio includes kilowatthours that are associated with energy storage facilities, such kilowatthours shall be deemed system power and shall be ascribed the same characteristics as system power. The characteristics disclosed shall include any losses incurred as a result of storage.

2. Determining Products or Segments of a Competitive Supplier's Company Resource Portfolio. For the purpose of developing information disclosure labels for distribution to Retail Customers pursuant to 220 CMR 11.06(4), a Competitive Supplier may disaggregate its company resource portfolio, as determined in accordance with 220 CMR 11.06(2)(d)1., into segments, or products, under the following conditions:

a. Disaggregation of the Competitive Supplier's company resource portfolio into segments is verified by the Independent System Operator, or, prior to March 1, 1999, by an independent auditor; and

b. The Competitive Supplier provides an annual statement from an independent auditor certifying that, over the label reporting period, the kilowatthours from resources associated with each product or segment of the company resource portfolio are not less than the total kilowatthours of load obligation associated with Retail Customers that are assigned said products or segments.

3. Annual Report. A Competitive Supplier shall present an annual report to the Department documenting the following:

a. Determination of the company resource portfolio, including market settlement data or equivalent data provided by the Independent System Operator;

b. Disaggregation of the company resource portfolio into segments or products;

c. Matching over the label reporting period of kilowatthours

from product resources to load obligations associated with Retail Customers assigned such products; and

d. Statements of verification by the Independent System Operator, or an independent auditor, as required pursuant to 220 CMR 11.06(2)(d)2.

4. Fuel Source Characteristics.

a. Each Competitive Supplier and each Distribution Company providing Standard Offer Generation Service or Default /Basic Generation Service shall determine its company resource portfolio in accordance with 220 CMR 11.06(2)d.1. and shall report on information disclosure labels the fuel mix of said company resource portfolio or of an allocated segment of said company resource portfolio, as determined in accordance with 220 CMR 11.06(2)(d)2..

b. At least the following fuel sources shall be separately identified on the label and listed in alphabetical order: biomass; coal; hydro-large; hydro-small; imports; municipal trash; natural gas; nuclear; oil; other Renewable Resources (including fuel cells utilizing renewable fuel sources, landfill gas, and ocean thermal); solar; and wind. Fuel mix percentages shall be rounded to the nearest full percentage point. For the purpose of 220 CMR 11.06, hydro resources of greater than 30 megawatts shall be deemed large hydro; all other hydro resources shall be deemed small hydro.

5. Emissions Characteristics.

a. Each Competitive Supplier or Distribution Company providing Standard Offer Generation Service or Default/Basic Generation Service shall identify its company resource portfolio in accordance with 220 CMR 11.06(2)(d)1. and shall report on information disclosure labels the emission characteristics of said company resource portfolio or of an allocated segment of said company resource portfolio, as determined in 220 CMR 11.06(2)(d)2..

b. For the purpose of emission characteristics disclosure, at least the following pollutants shall be separately identified on the label: carbon dioxide (CO_2), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and, when the Massachusetts Department of Environmental Protection determines that reliable and accurate information becomes available, heavy metals. The Department will determine, in consultation with the Massachusetts Department of Environmental Protection, whether additional pollutants

should be disclosed.

c. Emissions for each emission category shall be computed as an annual emission rate in pounds per kilowatthour. For each emission category, the emission rate of the company resource portfolio, or segment thereof, shall be presented as a percentage of the New England regional average emission rate and shall be compared to emissions from a new unit as determined in consultation with the Massachusetts Department of Environmental Protection.

d. Emission characteristics of the company resource portfolio, or segment thereof, shall be calculated using annual emission rates for each Generating Facility as determined in consultation with the Massachusetts Department of Environmental Protection and the United States Environmental Protection Agency. Until such annual emission rates are identified, the annual emission rates for a generating unit shall be calculated based on one of the following:

   i. Continuous emissions monitoring data for the most recent reporting year divided by net electric generation for the same period; or

   ii. If continuous emissions monitoring data are not available, emission factors currently approved or provided by state environmental protection agencies or the United States Environmental Protection Agency; or

   iii. If continuous emissions monitoring data are not available, and state environmental protection agencies or the United States Environmental Protection Agency have not determined emissions factors associated with the generating unit, for NO_x and SO_2, permitted emissions levels and for CO_2 , the carbon content of the fuel.

e. The following types of generating units shall be assigned emissions characteristics as provided in this section:

   i. Cogeneration facilities may make a reasonable allocation of emissions between electricity production and other useful output based on measured heat balances. Said allocation shall be reviewed in consultation with the Massachusetts Department of Environmental Protection.

   ii. The use of offsets associated with facilities that emit CO_2 shall be as determined by the Massachusetts Department of Environmental Protection.

6. Labor Characteristics.

a. Each Competitive Supplier or Distribution Company offering Standard Offer Generation Service or Default/Basic Generation Service shall determine its company resource portfolio in accordance with 220 CMR 11.06(2)(d)1. and shall report on information disclosure labels the labor characteristics of said company resource portfolio, or of a segment of said company resource portfolio, as determined in 220 CMR 11.06(2)(d)2.

b. Competitive Suppliers with known resources in their company resource portfolio shall be required to determine whether a majority of employees operating at each known generation plant are employed under collective bargaining agreements and, if such plants experienced a labor dispute in the most recent calendar year, whether any replacement workers were hired. For system power, the information used on the label pertaining to collective bargaining agreements and the use of replacement labor during labor disputes shall be based on the New England Region system average in the most recent calendar year available. The labor data on the label shall be based on a kilowatthour weighted average for all known resources and system power.

(e) Format of Information Disclosure Label. Information disclosure labels shall be presented in formats as determined by the Department.

(3) Terms of Service Requirement. Each Competitive Supplier shall prepare a statement entitled "Terms of Service" as described in 220 CMR 11.06. The Terms of Service shall be distributed in accordance with 220 CMR 11.06(4), and shall conform to all applicable rules and regulations of the Attorney General. The Terms of Service shall present the following information:

(a) Actual pricing structure according to which the Retail Customer will be billed, including an explanation of price variability and price level adjustments that can cause the price to vary;
(b) Length and kind of contract;
(c) Due date of Bills and consequences of late payment;
(d) Conditions under which a credit agency is contacted;
(e) Deposit requirements and interest on deposits;
(f) Limits on warranty and damages;
(g) Any and all charges, fees, and penalties;
(h) Information on consumer rights pertaining to estimated Bills, third-party billing, deferred payments, and rescission of supplier switch within three days of receipt of confirmation;
(i) A toll-free number for service complaints;
(j) Low-income rate eligibility;

(k) Provisions for Default /Basic Generation Service;
(l) Applicable provisions of M.G.L. c.164, § 1F; and
(m) Method whereby the Retail Customer will be notified of changes to items in the Terms of Service.

(4) Distribution of Disclosure Label and Terms of Service. The label and the Terms of Service shall be distributed as follows:

(a) Prior to initiation of service by a Competitive Supplier. Following a Retail Customer's affirmative choice of a Competitive Supplier, the Competitive Supplier shall provide the Retail Customer with a disclosure label prepared pursuant to 220 CMR 11.06(2), based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1., and with the Terms of Service prepared pursuant to 220 CMR 11.06(3). A Competitive Supplier may also provide the Retail Customer with a disclosure label reflecting a product or a segment of the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)2. Said documents shall accompany written confirmation by the Competitive Supplier of the Retail Customer's agreement to take Generation Service; and the Retail Customer's receipt of said documents shall trigger the three-day rescission period required in 220 CMR 11.05(4)(d).

(b) Default /Basic Generation Service. With the first bill rendered to a Retail Customer following the initiation of Default /Basic Generation Service, the Distribution Company shall provide the Retail Customer with a disclosure label prepared pursuant to 220 CMR 11.06(2) and notify the Retail Customer that the tariff for such service and the Distribution Company's terms and conditions for Distribution Service are on file with the Department and are available upon request.

(c) Quarterly Notification. Competitive Suppliers and Distribution Companies providing Standard Offer Generation Service or Default/Basic Generation Service shall provide an information disclosure label to their Retail Customers quarterly. A Competitive Supplier may provide a label reflecting a segment of its company resource portfolio pursuant to 220 CMR 11.06(2)(d)2., provided that once a year the Competitive Supplier shall provide a disclosure label based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1. Until such time as the conditions specified in 220 CMR 11.06(2)(d)2. are met, quarterly information disclosure labels shall be based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1..

(d) Upon request. An information disclosure label based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1., and the Terms of Service, or terms and conditions, for any available generation offerings shall be available to any person upon request.

(5) Annual booklet. Any Competitive Supplier licensed by the Department to do

business in the Commonwealth pursuant to 220 CMR 11.05 shall prepare an information booklet describing a Retail Customer's rights under the provisions of M.G.L. c. 164. The annual booklet must provide information about a customer's right to mediation pursuant to G.L. c. 164, § 1F (2) and 220 CMR § 11.07 (4). Competitive Suppliers shall annually mail this booklet to their Retail Customers.

(6) Information disclosure in Advertising.

(a) All advertisements shall comply with state and federal regulations governing advertising, including the Attorney General's regulations (940 CMR), and shall be consistent with the Federal Trade Commission's guidelines for the use of environmental marketing claims. The Department does not represent that labels prepared pursuant to these regulations constitute compliance with state and federal regulations governing advertising.

(b) Any advertising or marketing of electricity rates shall indicate the rate to be charged in bold print, in the case of printed and Internet materials, or through clear and deliberate speech in the case of television or radio advertisements.

(c) A Competitive Supplier shall print in a prominent position in all written marketing materials describing Generation Service, including newspaper, magazine, and other written advertisements; direct mail materials; and electronically-published advertising including Internet materials, that a Retail Customer may obtain an information disclosure label upon request. Where Generation Service is marketed in non-print media, the marketing materials shall indicate that the Retail Customer may obtain an information disclosure label upon request.

(d) A Competitive Supplier shall be allowed to advertise the percentage of its resource portfolio that is generated by employers that operate under collective bargaining agreements or that operate with employees hired as replacements during the course of a labor dispute when said percentage is derived from known resources as determined in accordance with 220 CMR 11.06(2)(d)1..

(e) A Competitive Supplier shall be allowed to advertise the percentage of its resource portfolio that connotes or signifies to the ratepayer the relative environmentally beneficial effects of the power or energy sold by said Competitive Supplier under the following circumstance:

1. The percentage is derived from known resources as determined in accordance with 220 CMR 11.06(2)(d)1.; and
2. The percentage exceeds percentages mandated under any rules promulgated by the Division of Energy Resources pertaining to a renewable portfolio standard;
3. The percentage exceeds levels required for compliance with any other regulatory requirements such as a generation performance standard.

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

11.07: Complaint and Damage Claim Resolution; Penalties

(1) Purpose and Scope.

(a) Purpose. The purpose of 220 CMR 11.07 is to establish the complaint and dispute resolution procedures and associated penalties applicable to Customer complaints or damage claims between Customers and Distribution Companies, Competitive Suppliers, or Electricity Brokers.

(b) Scope. 220 CMR 11.07 applies to all Distribution Companies, Competitive Suppliers, and Electricity Brokers doing business in the Commonwealth.

(2) Liability Claims. A Customer may file a complaint with the Department alleging property damage under $100. The Department will refer any such complaints for mediation and/or arbitration. Any claims for damages will be resolved within 60 days from the date the claim was filed with the Department.

(3) Unauthorized Initiation of Generation Service Complaints.

(a) Complaint Procedure.

1. A Customer may file a complaint with the Department stating that a Competitive Supplier has initiated Generation Service to the Customer, or an Electricity Broker has selected a Competitive Supplier on behalf of the Customer, without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c). The complaint must be filed within 30 days after the statement date of a Bill or notice from the Distribution Company indicating that Generation Service has been initiated by the Competitive Supplier.

2. Within ten business days of filing the complaint, the Customer will receive from the Department a request asking for the following: a copy of the Customer's Bill or notice that included the information regarding the initiation of Generation Service; the name of the original Competitive Supplier or Electricity Broker, if applicable; and any other information the Department deems relevant.

3. The Customer shall, within 15 business days of the Department's notifying the Customer, respond to the Department's request for information.

4. Within 15 business days of receiving the requested information from the Customer, the Department will send the following:

a. A letter to the Customer acknowledging receipt of the

information;

b. A letter to the Distribution Company or original Competitive Supplier informing it of the pending complaint and requesting that information relevant to the initiation of Generation Service be furnished; and

c. A letter informing the new Competitive Supplier or Electricity Broker, if applicable, of the pending complaint, requesting evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) to initiate Generation Service, and requesting any additional information the Department deems relevant.

5. The Distribution Company or original Competitive Supplier and the new Competitive Supplier or Electricity Broker, if applicable, shall respond to the Department's request within five business days from the issuance of said requests.

6. Within 25 business days after receiving evidence of the Customer's affirmative choice and all relevant information as required herein, the Department will determine if the Customer authorized the new Competitive Supplier to initiate Generation Service.

(b) Refunds. If the Department determines that the new Competitive Supplier or Electricity Broker, if applicable, does not possess the required evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c), the Department will require the new Competitive Supplier or Electricity Broker to refund the following:

1. To the Customer, the difference between what the Customer would have paid to the Distribution Company or previous Competitive Supplier and actual charges paid to the new Competitive Supplier;

2. To the Customer, any reasonable expense the Customer incurred in switching back to the Distribution Company or original Competitive Supplier; and

3. To the Distribution Company or original Competitive Supplier, the gross revenue the Distribution Company or original Competitive Supplier would have received from the Customer during the time the Customer received Generation Service from the new Competitive Supplier.

(c) Civil Penalties. Pursuant to M.G.L. c. 164, § 1F(8)(d), any Competitive Supplier who initiated Generation Service to a Customer or Electricity Broker who selected a Competitive Supplier on behalf of a Customer without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) one or more times in a 12-month period shall be subject to a civil penalty not to exceed $1,000 for the first offense and not less than $2,000 nor more than $3,000 for any subsequent offense per Customer. In determining the amount of the civil

penalty, the Department will consider the nature, circumstances, and gravity of the violation, the degree of the Competitive Supplier or Electricity Broker's culpability, and the Competitive Supplier or Electricity Broker's history of prior offenses.

Pursuant to M.G.L. c. 164, § 1F(8)(e), any Competitive Supplier who initiated Generation Service to a Customer or Electricity Broker who selected a Competitive Supplier on behalf of a Customer without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) more than 20 times in a 12-month period may, after a full hearing and determination by the Department that such Competitive Supplier or Electricity Broker intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, be prohibited from selling electricity in the Commonwealth for a period of up to one year. In determining the length of suspension, the Department will consider the nature, circumstances and gravity of each violation and the degree of culpability of the Competitive Supplier or Electricity Broker.

(4) Other Customer Complaints.

(a) All other complaints brought by a Customer against a Distribution Company, Competitive Supplier or Electricity Broker shall follow the procedures set forth in 220 CMR 25.02(4), except as provided in 220 CMR 11.07(4)(b).

(b) Alternative Dispute Resolution.

1. Pursuant to M.G.L. c. 164, § 1F(2), each Distribution Company, Competitive Supplier, and Electricity Broker shall make available to Customers alternative dispute resolution procedures, including mediation, arbitration, facilitation or other dispute resolution procedures.

2. Allegation of Unfair or Deceptive Trade Practice. Pursuant to M.G.L. c. 164, § 102C, each Distribution Company, Competitive Supplier, and Electricity Broker shall submit to arbitration upon the request of a Customer alleging that an unfair or deceptive trade practice has occurred. The Department also will make a voluntary mediation process available to consenting parties.

3. Alternative dispute resolution pursuant to 220 CMR 11.07(4)(b)1. and 2. may only be requested after the Customer and Distribution Company, Competitive Supplier or Electricity Broker have attempted to resolve the dispute pursuant to 220 CMR 25.02(4)(a).

(c) Penalties. Each Distribution Company, Competitive Supplier, and Electricity Broker doing business in Massachusetts shall be subject to a range of sanctions for violations of the Department's regulations. Such sanctions may only be imposed following a hearing before the

Department in conformance with M.G.L. c. 30A and 220 CMR 25.00.

1. Licensure Action. In the case of egregious misconduct or a pattern of misconduct, the Department may take licensure action against a Competitive Supplier or Electricity Broker. Such action may result in the Competitive Supplier or Electricity Broker being
   a. Required to notify existing and prospective Customers of probationary status;
   b. Prohibited from signing up new Customers for a specified period of time; and/or
   c. Subject to suspension, revocation or non-renewal of its license.
2. Civil Penalties. Each Distribution Company, Competitive Supplier, or Electricity Broker who violates any regulation promulgated by the Department pursuant to M.G.L. c. 164, §§ 1A-1F, shall be subject to a civil penalty not to exceed $25,000 for each violation for each day that the violation persists; provided however, that the maximum civil penalty shall not exceed $1,000,000 for any related series of violations. In determining the amount of the penalty, the Department shall consider the following: the appropriateness of the penalty to the size of the business of the person, firm, or corporation charged; the gravity of the violation; and the good faith of the person, firm, or corporation charged in attempting to achieve compliance after notification of a violation, consistent with M.G.L. c. 164,§ 1F(7).

11.08: Exceptions

The Department on its own motion or for good cause shown by a petitioner may grant an exception to any provision of 220 CMR 11.00.

REGULATORY AUTHORITY

220 CMR 11.00: M.G.L. c.164, c.25