D.T.E. 97-115/98-120

Petition of Fitchburg Gas and Electric Light Company, pursuant to General Laws, Chapter 164, §§ 1, 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal.

APPEARANCES:

Scott J. Mueller, Esq.

Patricia M. French, Esq.

Susan L. Geiser, Esq.

LeBoeuf, Lamb, Greene & MacRae, LLP

260 Franklin Street

Boston, Massachusetts 02110

FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

Petitioner

L. Scott Harshbarger, Attorney General

By: George B. Dean

Joseph W. Rogers

Rebeca C. Perez

Assistant Attorneys General

200 Portland Street

Boston, Massachusetts 02114

William S. Stowe, Esq.

800 Boylston Street

Boston, Massachusetts 02199

FOR: BOSTON EDISON COMPANY

Intervenor

John Cope-Flanagan, Esq.

ComEnergy Services Company

One Main Street

P.O. Box 9150

Cambridge, Massachusetts 02142

-and-

Robert N. Werlin, Esq.

Keegan, Werlin & Pabian

21 Custom House Street

Boston, Massachusetts 02110

FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND CANAL ELECTRIC COMPANY

Intervenors

Robert Sydney, Esq.

Steven I. Venezia, Esq.

100 Cambridge Street, Room 1500

Boston, Massachusetts 02202

FOR: COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ENERGY RESOURCES

Intervenor

David A. Fazzone, Esq.

Doron F. Ezickson, Esq.

Laura S. Olton, Esq.

Emily E. Smith-Lee, Esq.

McDermott, Will & Emery

75 State Street

Boston, Massachusetts 02109

FOR: EASTERN EDISON COMPANY

Intervenor

Alan R. Johnson

2000 West Park Drive, Suite 300

Westborough, Massachusetts 01581

FOR: ENERGY EXPRESS

Intervenor

John A. DeTore, Esq.

Robert D. Shapiro, Esq.

Rubin and Rudman LLP

50 Rowes Wharf

Boston, Massachusetts 02110

FOR: ENRON ENERGY SERVICES COMPANY

Intervenor

Jerrold Oppenheim, Esq.

National Consumer Law Center, Inc.

18 Tremont Street, Suite 400

Boston, Massachusetts 02108

FOR: ACTION, INC.; MASSACHUSETTS ENERGY DIRECTORS ASSOCIATION; MASSACHUSETTS COMMUNITY ACTION ASSOCIATION; MASSACHUSETTS SENIOR ACTION COUNCIL; AND CAPE ORGANIZATION FOR RIGHTS OF THE DISABLED

Intervenors

Peter W. Brown, Esq.

David K. Wiesner, Esq.

Brown, Olson & Wilson, P.C.

501 South Street

Concord, New Hampshire 03304

FOR: PINETREE POWER FITCHBURG LLP

Intervenor

Stephen Klionsky, Esq.

260 Franklin Street, 21st Floor

Boston, Massachusetts 02110

FOR: WESTERN MASSACHUSETTS ELECTRIC COMPANY

Intervenor

TABLE OF CONTENTS

I. INTRODUCTION

On December 31, 1997, pursuant to the Electric Restructuring Act, St. 1997, c. 164 (the "Act"),[1] Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed with the Department of Telecommunications and Energy ("Department"), its electric restructuring plan ("Plan"). The Department docketed this matter as D.T.E. 97-115.

This Order presents the background, procedural history, rulings on two procedural issues (a Motion for Protective Treatment and a Motion for Exemption), the applicable standard of review, an issue by issue summary of the Plan, and our analysis and findings. The analysis and findings address whether the Plan complies with the Act. While approving the implementation of the Plan, this Order directs Fitchburg to make an additional filing to comply with certain directives contained herein.

II. BACKGROUND

On March 15, 1996, the Department opened a generic rulemaking to guide the development and evaluation of individual electric company restructuring plans. Electric Industry Restructuring, D.P.U. 96-100 (1996) ("D.P.U. 96-100"). On May 1, 1996, the Department issued proposed rules. D.P.U. 96-100, Explanatory Statement and Proposed Rules, May 1, 1996. On December 30, 1996, the Department, in the same docket, issued its plan for a restructured electric industry, including Model Rules and a Legislative Proposal. D.P.U. 96-100, Electric Restructuring Plan: Model Rules and Legislative Proposal, December 30, 1996. On January 16, 1998, the Department proposed draft rules implementing the Act for public comment. D.P.U./D.T.E. 96-100, Order Proposing Regulations and Soliciting Comment, January 16, 1998. On February 20, 1998, the Department issued final rules implementing the Act. D.P.U./D.T.E. 96-100, Electric Industry Restructuring Rules, February 20, 1998.[2]

III. PROCEDURAL HISTORY

Pursuant to notice duly issued, the Department conducted a public hearing in Fitchburg on January 22, 1998, to afford interested persons an opportunity to comment. The Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention in the proceeding pursuant to G.L. c. 12, § 11E. In addition, the Department granted the petitions for leave to intervene filed by the following entities: Boston Edison Company ("BECo"); ComEnergy Services Company [filed jointly on behalf of Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth"), and Canal Electric Company]; Commonwealth of Massachusetts Division of Energy Resources ("DOER"); Eastern Edison Company ("EECo"); Energy Express; Enron Energy Services Company; National Consumer Law Center, Inc. (representing Action Inc., Massachusetts Energy Directors Association, Massachusetts Community Action Association, Massachusetts Senior Action Council

and Cape Organization for Rights of the Disabled) ("Low-income Intervenors" or "LII"); Pinetree Power Fitchburg LLP; and Western Massachusetts Electric Company.

On February 26, 1998, the Department issued an Initial Order approving Fitchburg's Plan, subject to review and reconciliation.

The Department conducted four days of evidentiary hearings at its offices in Boston on March 18 and 20 and April 8 and 15, 1998. In support of its filing, the Company sponsored the testimony of four witnesses: George R. Gantz, senior vice president of Unitil Service Company ("USC")[(3)]; David K. Foote, senior vice president of Fitchburg and vice president of energy resources of USC; Mark H. Collin, treasurer of Fitchburg and vice president of finance of USC; and Karen M. Asbury, manager of regulatory services of USC.

Initial briefs were filed by the Company, the Attorney General, and the Low-income Intervenors. The Attorney General and the Low-income Intervenors filed reply briefs.

IV. PROCEDURAL ISSUES

A. Motion for Protective Treatment

1. Introduction

At the time that Fitchburg filed its plan, the Company filed a Motion for Protective Treatment of information or materials, pursuant to G.L. c. 25, § 5D, concerning the Company's negotiations of contracts designed to mitigate the stranded costs related to its obligation to supply power to its customers (Exh. FGE-1, Tab C). Fitchburg states that it provided assurances to the entities involved in the negotiations that the details of the financial terms would not be publicly disclosed (id. at 3). According to Fitchburg, disclosure of these or other terms would alert a potential purchaser of Fitchburg's assets to the assessment of the value of such assets (id.). This, the Company argues, could jeopardize Fitchburg's current and future attempts to obtain the highest price for the assets (id.). Finally, Fitchburg requested non-disclosure treatment of (1) the Power Contract Mitigation Report, designated as Attachment Tab I; and (2) the plans for divestiture of purchased power entitlements and generation assets, also designated as Attachment Tab I. No party opposes the Company's Motion.[(4)]

2. Standard of Review

G.L. c. 25, § 5D provides that the Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings before the Department. Section 5D also states that "[t]here

shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection." Thus, the burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such a need, the Department must consider the presumption in favor of disclosure and the specific reasons that disclosure of the information benefits the public interest. The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994).

3. Analysis and Findings

The Department agrees with the Company that the negotiation of contracts designed to mitigate the stranded costs related to the obligation to supply power to its customers should be protected from disclosure. Disclosure of the financial or other terms of the mitigation efforts discussed during negotiations, would alert a potential purchaser to Fitchburg's assessment of the value of its assets. As a result of obtaining this information, the potential purchaser could offer Fitchburg a lower price. For this reason, the Department finds that the Company's negotiations of contracts to mitigate the stranded costs related to its obligation to supply power is competitively sensitive information, and should be protected from public disclosure.

The Department also agrees that non-disclosure of the Company's asset evaluation information that is given to marketers as part of the negotiation process is warranted. The asset evaluation information is used by marketers to establish the maximum price that each marketer is willing to offer Fitchburg for its assets. Disclosing this information could result in the Company's inability to obtain the highest market price for its assets. Thus, the Department finds that asset evaluation information that is given to marketers as part of the negotiation process is competitively sensitive, and should be accorded non-disclosure status.

Finally, the Department agrees with the Company that information concerning the auction bidders should be protected from public disclosure. Marketers might be dissuaded from bidding if information regarding the bidder's offering terms was disseminated to the public. Thus, the Department finds that offers from bidders are competitively sensitive, and should be afforded non-disclosure status. Accordingly, the Department finds that the Company has provided sufficient reasons to protect (1) the negotiation of contracts designed to mitigate the stranded costs related to the obligation to supply power to their customers, (2) its asset evaluation information given to marketers as part of the negotiation process, and (3) its auction bidding information, in accordance with G.L. c. 25, § 5D, and hereby grants the Company's Motion. Materials described in the Company's Motion will be excepted from public disclosure under G.L. c. 25. § 5D, and G.L. c. 66, § 10 and G.L. c. 4, § cl. 26(a).

B. Motion for Exemption

1. Introduction

Pursuant to 220 C.M.R. § 12.03(17), Fitchburg filed a Motion for Exemption requesting that the Department allow USC personnel to provide professional services to both Fitchburg and Unitil Resources, Inc. ("URI").[(5)] Fitchburg, URI and USC are wholly-owned subsidiaries of Unitil Corporation.[(6)] URI is a competitive energy affiliate. Department regulations prohibit employees of a distribution company from being shared with those of a competitive energy affiliate, and require that the distribution company fully and transparently allocate costs for any shared facilities or general and administrative support services provided to any competitive affiliate. 220 C.M.R. § 12.03(15). The Department may approve an exemption from the separation requirements if the distribution company shows that sharing employees or facilities would (1) be in the best interests of the ratepayers, (2) have minimal anticompetitive effect, and (3) allow the costs of sharing employees to be fully and accurately allocated between the distribution company and the competitive affiliate. 220 C.M.R.

§ 12.03(17).

2. Positions of the Parties

a. The Attorney General

The Attorney General argues that the Company's request should be denied because it is anticompetitive and Fitchburg has not established that the use of utility employees and facilities by its unregulated energy service affiliate is in the "best interests" of ratepayers (Attorney General Brief at 29-34). The Attorney General contends that the use of USC employees would allow Unitil to leverage its monopoly status to the advantage of URI without any corresponding benefits to ratepayers (id. at 29). Specifically, the Attorney General states that since URI is likely to target the same customers that Fitchburg is currently serving, the competitive market would be undermined (id. at 30-31). Moreover, the Attorney General states that although the Company claims that internal procedures are in place to ensure compliance with the Department's standards of conduct, no specific information concerning those internal procedures was provided (id. at 31).

The Attorney General also argues that while URI can use Fitchburg's facilities and employees, competitors must establish separate facilities and hire employees who have no knowledge of the requirements of Fitchburg's customers (id. at 32-33). Thus, if the use of USC's facilities results in costs that are lower than those of other market participants or potential entrants, according to the Attorney General, URI could use this cost difference to drive out current competitors from the marketplace or to prevent potential competitors from entering the market (id.). The Attorney General notes that Fitchburg has given assurances that savings would be passed through to the customers and that the customers would not subsidize URI (id. at 33). The Attorney General claims that while the competitive subsidiaries of other utilities must pay fair market value for the employees and facilities needed to operate, URI would pay the lower service company rate, thereby placing URI at a competitive advantage (id.).

b. The Company

The Company argues that granting Fitchburg an exemption from the prohibition against two affiliates sharing employees and/or facilities would be in the best interests of the ratepayers and would have minimal anticompetitive effect since all costs could be fully and accurately allocated between the affiliates (Motion for Exemption at 2).

The Company notes that Unitil, a registered public utility holding company, is pervasively regulated by various state and federal agencies (id.). State public utility commissions regulate the rates, cost of service and affiliated transactions of its three distribution companies, including Fitchburg (id.). The Federal Energy Regulatory Commission ("FERC") regulates wholesale power supply and transmission arrangements, and the Securities and Exchange Commission regulates the accounting and allocation systems for all of the Unitil companies (id.).

The Company argues that Unitil's acquisition of Fitchburg in 1992 has contributed to a more efficient operation to the benefit of its customers (Company Brief at 52). The Company indicates that the efficiencies resulting from the acquisition are one reason that no base rate increases have been sought since 1984 (id.). Fitchburg argues that its customers will continue to benefit from the use of experienced USC staff (id.). The Company states that no anticompetitive effect can be shown since both Fitchburg and Unitil have extensive internal procedures concerning conduct rules, rate scrutiny and pricing regulations designed to foster competition (id.). Also, the Company notes, no anticompetitive effect would materialize given that the combined Unitil Companies have only a 1 percent share of the electric market in New England (Motion for Exemption at 5). Finally, the Company contends that the costs of the service company can be fully and completely allocated between Fitchburg and its affiliates since USC's costs are billed to all affiliates on direct labor hours (Company Brief at 53).

3. Analysis and Findings

In establishing the standards of conduct governing the relationship between a distribution company and its competitive affiliates, the Department implemented regulations designed to allow utility affiliates to compete in non-energy-related markets where "their relatively unfettered participation may help bring the benefits of competition to consumers" while simultaneously providing appropriate safeguards that protect customers of the regulated distribution companies subject to Department jurisdiction. Standards of Conduct D.P.U./D.T.E. 97-96, at 3 (1998).

The Department is aware that small companies, such as Fitchburg, may need the flexibility to share some resources with a competitive affiliate. Therefore, the Department provided for an exemption to 220 C.M.R. § 12.03(15), the regulation that prohibits the sharing of employees between a distribution company and a competitive energy affiliate. Specifically, if the distribution company can establish that the sharing of employees or facilities is in the best interests of the ratepayers and has minimal

anticompetitive effect, and that the costs can be fully and accurately allocated between the distribution company and its competitive energy affiliate, an exemption to 220 C.M.R. § 12.03(15) may be granted. 220 C.M.R. § 12.03(17).

In evaluating an exemption request, the Department shall balance the benefits to ratepayers with the risk of anticompetitive effect. In all instances, the Department requires that the costs be fully and accurately allocated between the distribution company and its competitive energy affiliates.

The Department agrees with the Company that there could be cost savings as a result of sharing employees. Specifically, the Company has stated that employees with experience in the New Hampshire pilot program and the New Hampshire restructuring proceedings have provided a direct benefit to Fitchburg's restructuring process in Massachusetts (Motion for Exemption at 4). Hence, there has been cost savings by using the same, experienced employees in New Hampshire and Massachusetts rather than hiring separate employees to provide service on each state's restructuring proceeding. Another example cited by the Company is the consolidation of customer service functions into one center (id.). This, the Company notes, has achieved a more efficient customer service system that has resulted in savings to Fitchburg (id.). Moreover, the Company states that these costs savings have allowed Fitchburg to avoid a base rate increase (id. at 3). Based on this information, the Department finds that Fitchburg has established that sharing employees has reduced costs, thereby benefitting ratepayers.

While the Company has established that sharing employees has some cost savings, it has not met the burden of demonstrating that sharing employees will have little anticompetitive effect. Separating the functions of an integrated company always involves tradeoffs between maximizing scope economies and establishing the structural conditions necessary for a competitive market. In order to be granted an exemption to 220 C.M.R. § 12.03(15), a company must demonstrate convincingly, that the expected costs savings outweigh the risk of anticompetitive effect. The Company has not done so in this case.

Fitchburg argues that sharing employees has minimal anticompetitive effect because Unitil has implemented internal procedures to ensure that a competitive affiliate gains no benefit from specific knowledge of, or direct access to, customer information not available to non-affiliated suppliers. However, as noted by the Attorney General, the Company has not submitted these internal procedures for the Department's review. Therefore, the Company has not met its burden to establish that there would be minimal anticompetitive effect from sharing USC personnel between Fitchburg and URI.[7]

Nevertheless, the Department acknowledges that sharing resources enables Fitchburg to realize savings through efficiency. Therefore, the Department grants the Company's Motion for Exemption with the following condition. The competitive risk associated with sharing information between a distribution company and its competitive affiliate is

relevant only in the distribution company's service territory, we will grant the requested waiver subject to the condition that URI may not compete within Fitchburg's service territory, if it shares employees with Fitchburg. Further, the Department notes that Unitil is required to allocate costs among competitive and regulated affiliates in accordance with the Department's Standards of Conduct (220 C.M.R. § 12.03(15)), regardless of whether is seeks or is granted a waiver.

V. STANDARD OF REVIEW

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

c. 164, § 1.

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

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

Plans must also include the following important provisions:

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

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

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

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

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

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

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

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

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

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

The Department is governed by the statutory directives in determining whether a plan should be approved for implementation. In doing so, the Department applies a two-part standard of review. First, for those sections of a plan governed by G.L. c. 164, the Department must determine whether the plan "substantially" complies or is consistent with G.L. c. 164. For all other features of the plan, the Department must determine unqualified compliance of those features with applicable provisions of the Act.

We first state the standard of review in determining whether a plan substantially complies or is consistent with G.L. c. 164, § 1A(a)). Although the word "substantially" is not defined in the Act, its meaning may be determined from usage and context. In applying this standard, the Department considers that an action "substantially complies" if it achieves "compliance with the essential requirements" of G.L. c. 164. Black's Law Dictionary, Sixth Edition (1991). An action that is compatible with and not contradictory of a statute is "consistent" with the statute. Id. The use of these terms in the disjunctive leads to the conclusion that the Legislature has given the Department a measure of discretion to effect the important public purposes of the Act. Because the phrase "substantially complies or is consistent with" is imprecise, the Department supplements its understanding of the words in the statute (customarily, "the principal source of insight into legislative purpose" Bronstein v. Prudential Insurance Co. 390 Mass. 701, 704 (1984)), with a consideration of the "statute's purpose and history." Sterilite Corp. v. Continental Casualty Co., 397 Mass. 837 at 839. A more limiting interpretation would defeat the Act's purposes and fail to give "a fair consideration of the conditions attending its passage." Fickett v. Boston Fireman's Relief Fund, 220 Mass. 319, 320 (1915).

Next, we address the standard of review for those sections of a restructuring plan that are not governed by G.L. c. 164. In such instances, the Department must require

unqualified compliance with the Act's mandates. Thus, in reviewing sections of a restructuring plan not governed by G.L. c. 164, the Department must determine that those sections conform to the Act before it may approve a restructuring plan.

VI. ISSUES

A. Standard Offer

- The Act

The Act requires that a distribution company provide a standard service transition rate for the period from March 1, 1998, to January 1, 2004, at prices and terms approved by the Department. St. 1997 c. 164, § 193 (G.L. c. 164, § 1B(b)). The Act requires that distribution companies purchase electricity for standard offer service after a competitive bid process. Id.

- The Plan

Standard offer service is designed to implement several objectives of the Plan. First, standard offer service represents a 10 percent reduction in total rates from a representative 1997 rate level for those customers who elect it (Exh. FGE-1 at V.2). Second, standard offer service is designed to facilitate the transition to retail competition by establishing a schedule of generation or supply rates that increase over time, thereby encouraging customers to move into the competitive market during the seven-year term of standard offer service. The retail price for the generation component of standard offer service is 2.8 cents per kilowatthour ("KWH") in 1998; 3.1 cents per KWH in 1999; 3.4 cents per KWH in 2000; 3.8 cents per KWH in 2002; 4.2 cents per KWH in 2003; 4.7 cents per KWH in 2003; and 5.1 cents per KWH in 2004-5 (id.). Third, the plan provides that electricity for standard offer service be secured through a competitive bid process (id.).

- Positions of the Parties

a. The Attorney General

The Attorney General requests that the Department order the Company to increase the price of generation for its standard offer service to a level equal to the full cost of providing that generation service (Attorney General Brief at 27). The Attorney General notes that the Department has been reluctant to require modifications to the proposed pricing of the standard offer to reflect the actual costs of the provision of that service, but argues that it is warranted in this case (id.). Specifically, the Attorney General states that unlike other restructuring plans approved by the Department, Fitchburg's request for standard offer cost deferral authority is merely an advance against likely access charge reductions resulting from asset sales, since the Company has few non-nuclear generation assets (id.). Also, the Attorney General maintains that the generation

component of Fitchburg's standard offer service would not be above that of other companies since BECo has increased its standard offer generation price to 3.2 cents per KWH and, according to the Attorney General, MECo is expected to do the same (id.).[8]

The Attorney General claims that given the distribution service rate reduction to which the Company's customers are legally entitled, the Department can require the Company to increase the retail price of the generation component of its standard offer to cover fully the costs of providing that service, provide a slight acceleration in the Company's recovery of its stranded costs, and meet the 10 percent rate reduction threshold mandated by the Legislature (id.).

In addition, the Attorney General argues that as a result of an "external transmission charge"[9] collected under the Company's plan, the true price against which sellers of delivered power are competing is 2.8 cents per KWH for the standard offer plus 0.394 cents per KWH for external transmission (id. at 26). Therefore, according to the Attorney General, the Company is now charging its customers approximately 3.2 cents per KWH for standard offer service and the Department should order the Company to modify its plan to account properly for these standard offer revenues (id.).

b. The Company

The Company claims that its standard offer meets the requirements of the Act and that the Attorney General's recommended changes should be denied (Company Brief at 40). The Company contends that, consistent with the Act, the proposed standard offer will run for seven years and provide 10 percent savings from rates in effect in August 1997 (id.). The Company states that its standard offer includes a fuel adjustment trigger that, while not explicitly described in the Act, is designed to be implemented for payments to suppliers in severe upside price escalation circumstances (id.). Fitchburg states that this is in compliance with the Act since the rate reductions are achieved through the provision of standard offer service (id.). Fitchburg argues that without the fuel adjustment trigger, which would not be available to the Company if the standard offer generation rate were increased to 3.2 cents per KWH, the Company could have unrecoverable losses in its provision of a statutorily-mandated service (id. at 41). Fitchburg claims that the inability to recover these losses would be confiscatory (id.). Fitchburg states that it will defer the difference between the retail price for standard offer generation and the price at which standard offer supplies are procured (id.). The Company maintains that this deferral mechanism, which guarantees the standard offer service price, has already been found by the Department to be consistent with the Act (id. at 41).

With respect to the Attorney General's argument that the supply component of Fitchburg's standard offer price should include the external transmission charge, Fitchburg asserts that the proposed standard offer price is for generation only and if a competitive supplier provides transmission to the Company's system at an all-in price,

the Company will credit the charge for external transmission to the customer (id. at 39). Thus, according to Fitchburg, the rate against which an alternative supplier is competing is the Company's standard offer generation price only (id.).

4. Analysis and Findings

a. Introduction

The Company's proposal provides standard offer service to customers with a 10 percent rate reduction from rates that were in effect during August 1997. Fitchburg's standard offer service began on March 1, 1998. As required by the Act, the Company will offer standard offer service until March 1, 2004. The Plan also provides a detailed description of how the standard offer supply will be procured through a competitive bidding process. The Department must determine whether the Company's proposal regarding standard offer service is consistent with or substantially complies with the requirements of the Act in terms of rates for the total service package (i.e., the sum of all unbundled rate components including generation), years to be provided, and the supply procurement process.

b. Background and Principles

In order to assess Fitchburg's standard offer proposal, it is useful to consider the nature of standard offer service and to outline the Department's principles for evaluating distribution company standard offer proposals.

As noted earlier, the Act requires that standard offer service be priced so that the sum of the rates charged for all unbundled components is 10 percent less than the rates in effect in August 1997, and that supplies for standard offer service be competitively procured. In addition to the specific requirements for standard offer service, the Act declares that "[t]he introduction of competition in the electric generation market will encourage innovation, efficiency and improved service from all market participants…" St. 1997, c. 164, § 193

(G.L. c. 164, § 1(f)). The Act also states that "[t]he transition to a competitive generation market should be orderly and be completed as expeditiously as possible…" St. 1997, c. 164, § 193 (G.L. c. 164, § 1(s)). Standard offer service is intended to be a transitional service between the formerly regulated system and a competitive generation market where electricity customers will be free to choose their suppliers. St. 1997, c. 164, § 193 (G.L. c. 164, § 1B(b)). This directive from the General Court requires the Department to evaluate standard offer proposals in terms of their effect on the development of competitive generation markets, as well as for compliance with the Act's specific requirements (i.e., rate reduction and competitive procurement).

The standard offer service represents a regulated alternative to competitively procured electricity supplies for existing customers who do not choose another supplier. To prevent distortions in the competitive generation market, the price for standard offer generation ideally would be set in the following manner: first, the cost of providing standard offer generation would be determined through a competitive auction with no set or capped bid prices;[(10)] and second, the price for standard offer generation would be set to recover its cost, as determined by the unconstrained auction. If customers see the market-determined cost of standard offer generation, they are able to make choices between the distribution company's standard offer and competitive alternatives based on efficient signals from the marketplace.

The Department acknowledges that we have approved distribution company standard offer proposals that deviate from this model. In the cases of BECo, Massachusetts Electric Company ("MECo") and EECo, the Department considered their standard offer proposals in light of the entirety of the settlements presented and determined that on balance these restructuring settlements were in the public interest, and substantially complied or were consistent with the Act. Boston Edison Company, D.P.U./D.T.E. 96-23, at 18 (1998); Eastern Edison Company, D.P.U./D.T.E. 96-24, at 111-112 (1997); Massachusetts Electric Company, D.P.U./D.T.E. 96-25-B at 11-12 (1997). In the case of Cambridge and Commonwealth, the Department approved their standard offer proposal based on a weighing of the effect on transition costs against the effect on the development of a competitive market. At that time, we determined that their proposal substantially complied or was consistent with the Act. Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company, D.P.U./D.T.E. 97-111, at 23 (1998).

Here again, the Department is presented with a standard offer proposal that differs in two respects from the model we have just outlined: first, the Company's competitive auction included capped bid prices; and second, the standard offer retail generation price is lower than its costs in 1999 and 2000. As we discuss in more detail below, the Department declines to change the competitive auction process that Fitchburg has undertaken and completed in good faith, even though it is not consistent with the policy we have just outlined. However, we will modify the Company's proposed retail standard offer generation prices for 1999 and 2000 so that they recover Fitchburg's supply costs for this service.

c. Fitchburg's Competitive Auction

Fitchburg's proposed Request For Qualifications ("RFQ") process was approved by the Department in our February 27, 1998 interim Order in D.T.E. 97-115. Fitchburg pursued this process pending the Final Order.

In its Plan, Fitchburg anticipated (1) issuing an RFQ to potential suppliers to initiate its procurement process; (2) inviting responses for all potential power suppliers; (3) reviewing the responses; (4) notifying qualified bidders about the auction; and (5) conducting the auction to determine the suppliers, the share of load responsibility and

the fixed prices of energy[11] associated with the load responsibility between January 1999 and February 2005 (Exh. FGE-1, at V.3).

On October 30, 1998, pursuant to G.L. c. 164, §§ 1B(b) and 94A, Fitchburg filed for Department approval of a contract for 100 percent of the Company's standard offer service to be supplied by Constellation Power Sources, Inc.[12] ("Constellation") between January 1, 1999 and February 28, 2005 (Petition at 1).[13] The Company states that Constellation was selected pursuant to the RFQ procedures outlined in the Company's initial filing (id.).

With the standard offer service contract, the Company submitted a Motion for Protective Order requesting non-disclosure status for the power sales price and the terms negotiated as part of the price under the contract (Motion for Protective Order at 1). The Company argues that Constellation is an active participant in competitive electricity markets in New England, and that releasing the wholesale price at which it is providing power, and the terms which were negotiated as part of that price, would compromise Constellation's competitive position and place them at a competitive disadvantage in other business endeavors (id. at 2). Finally, the Company states that requiring Constellation to divulge the wholesale power price publicly, as well as the terms negotiated with regard to that price, would likely chill competitive markets because of the fear of public and regulatory intrusion into private business dealings (id.).

On December 7, 1998, the Department issued a notice inviting interested persons to comment on whether approval of the contract and the Motion for Protective Order were warranted. A public hearing was held on December 18, 1998, to afford interested persons the opportunity to comment. Comments were received by Fitchburg, the Attorney General, and Constellation.

i. The Attorney General's Comments

While the Attorney General does not object to approval of the contract, he argues that in accordance with G.L. c. 164, § 1B(b), the Department must review the specific competitive bid process implemented by the Company prior to signing the standard offer service contract with Constellation (Letter from the Attorney General, dated December 18, 1998, at 1-2). Moreover, the Attorney General argues that the Company's Motion for Protective Order should be denied (id. at 2). The Attorney General contends that the contract's price terms will be disclosed to the public in one or more filings that Constellation is required to submit to FERC (id.). Finally, the Attorney General argues that the pricing information should be publicly disclosed due to the "substantial public interest" in allowing consumers to determine the actual costs associated with the provision of electric service under the Restructuring Act (id.).

ii. Constellation's Comments

Constellation argues that the Department should approve the Motion for Protective Order (Letters from Constellation dated December 18, 1998 and December 23, 1998).

Constellation notes that the Department has consistently granted confidential treatment to commercially sensitive pricing provisions of supply contracts (Letter from Constellation, dated December 18, 1998, at 2). Moreover, Constellation states that in Eastern Edison Company, D.P.U. 96-24 (1997), the Department determined that a competitive supplier's price information is competitively sensitive and is entitled to protection from public disclosure (id.). Constellation contends that no fundamental distinction can be drawn between the information that the Department granted non-disclosure status to in D.P.U. 96-24 and that for which Fitchburg now requests non-disclosure status (id.). Moreover, Constellation argues that public disclosure of the contract's pricing information would (1) allow Constellation's competitors in future standard offer auctions or similar solicitations to use the information to their competitive advantage; (2) undermine Constellation's negotiating leverage in future transactions; and (3) reveal Constellation's profit margin, thus eroding their future negotiating leverage in the unregulated marketplace (id.).

Regarding the Attorney General's assertion that Constellation is obligated to publicly disclose the terms of this agreement to FERC, Constellation states that FERC's general filing requirements have been relaxed for power marketers (Constellation Letter, dated December 23, 1998, at 2). FERC's decision granting Constellation's power marketer application requires Constellation to submit a quarterly informational filing that details the purchase and sale transactions undertaken in the prior quarter (id.). Constellation's value of the contract would not be revealed in the FERC filings (id.). Finally, Constellation disagrees with the Attorney General's statement that the information for which it seeks protection is "subject to a substantial public interest" standard (id. at 2-3).

iii. The Company's Comments

The Company indicates that in accordance with the process approved by the Department in the interim Order, the RFQ was issued to 160 potential power suppliers that Fitchburg believed were interested in providing standard offer service (D.T.E. 98-120, DTE-IR-1-1(a)). Additionally, the Company issued a press release to 50 news organizations and media outlets and posted the press release on Unitil's website (id.). To be eligible to participate in the auction, each potential supplier was required to (1) be a NEPOOL member and have an own-load dispatch or settlement account established with the NEPOOL billing system or (2) be under agreement with a NEPOOL member to include the load to be served by the supplier in that supplier's own-load dispatch or settlement account (id.).

In its proposal, Fitchburg stated the prices it would pay to suppliers, reduced by their applicable bid discounts, for energy delivered to standard offer service customers in accordance with its load responsibility for each year (id.). A blind auction was conducted on October 5, 1998, via facsimile; Constellation Power was confirmed as the winner shortly thereafter (id. at 1-1(c)).

iv. Analysis and Findings

Upon our review of the Company's RFQ process, the Department finds that the requirements that each potential bidder had to meet provided for a competitive process in compliance with the Act. These bidding eligibility criteria include NEPOOL (or its successor) membership or agreement requirements, demonstration of financial resources, payment of an administration fee, and the submission of specific requested information (Exh. FGE-2, Tab J at 5). Thus, the Department approves Fitchburg's competitive bid process.

Concerning the Company's Motion for Protective Treatment, the Department details below that to provide an expedient and orderly transition from regulation to competition, Fitchburg must implement a standard offer retail price that is equal to the price that Fitchburg is paying suppliers for standard offer service. Given this directive that retail and wholesale standard offer rates be equal, which will unavoidably disclose the price that Constellation is receiving, the Department denies that portion of the Company's Motion for Protective Order that requests non-disclosure of the price that Constellation would receive to provide standard offer service. However, the Department agrees with the Company that the terms that were negotiated to achieve that price are competitively sensitive, and finds that the Company has met its burden to establish the need for protection of that information. Therefore, the Department will grant non-disclosure status to the terms which were negotiated as part of the price for Constellation's provision of standard offer service.

d. Standard Offer Pricing

The Department notes again that standard offer generation is a regulated alternative to competitive procurement of electricity supplies. Economic theory dictates that competitive generation suppliers should be able to attract customers as long as the suppliers' going-forward cost of producing electricity are lower than the distribution company's cost of procuring electricity for standard offer service, all else being equal. A necessary corollary to this theory is that customers receive accurate price signals about the relative costs of the two services. Fitchburg's standard offer proposal includes a retail price for standard offer generation service that is less than the Company's wholesale costs for 1999 and 2000. This prevents customers from seeing efficient price signals in those years. If the retail price for standard offer generation is lower than the distribution company's cost of procuring that supply, other equally or more efficient suppliers may be unable to compete, thereby undermining the development of a robust competitive generation market. Retail standard offer generation prices that equal Fitchburg's standard offer generation supply costs are more likely to enhance efficient competition and the Department's and the Legislature's goal of an expeditious transition to competitive generation markets.[(14)] Because the Company's proposed schedule of retail standard offer generation prices is below Fitchburg's supply costs for the years 1999 and 2000, the Department rejects the Company's proposed schedule of standard offer generation prices for those two years.

In D.P.U./D.T.E. 97-111, at 20, the Department found that an expedient and orderly transition from regulation to competition in the generation sector could be achieved even where the retail price was lower than the wholesale price. The Department's decision in that case, however, was issued prior to the retail access date of March 1, 1998. Based on our observation of market activity in Massachusetts and other jurisdictions during the past year, the Department now believes that the transition to a competitive market may be slowed unnecessarily by the divergence of retail and wholesale prices. A three-year delay before convergence of the retail standard offer generation price with standard offer supply costs undermines our goal of promoting the development of competitive generation markets in an expeditious manner. Where there is an opportunity for the Department to ensure that these prices coincide, the Legislature's direction to us to advance competitive generation markets requires us to act to achieve that goal.

We note that converging wholesale and retail prices eliminates the need for a deferral of a wholesale/retail differential, and also requires the Company to reduce its transition cost recovery in 1999 and 2000 in order for the Company to meet the statutorily-prescribed discount for standard offer service. The Department notes that Fitchburg's ability to recover net non-mitigable transition costs will not be harmed by this change since the Company will continue to have the opportunity to fully recover its transition costs, albeit on a different schedule than that proposed.[(15)]

In the Company's Plan, the retail/wholesale differential in 1999 and 2000 would be deferred for recovery and would be assessed interest charges equal to the prime rate (Exh. FGE-1, Tab D at V.5). Matching the retail and wholesale rates would eliminate this differential, but would require instead the deferral of some transition cost recovery. The Company earns a return of 12.46 percent on its transition costs, which is currently greater than the prime rate, and the deferral of transition costs would also earn this higher return, rather than the lower interest rate on the retail/wholesale differential (Exh. FGE-6, Sch. 1, at 14). In D.P.U./D.T.E. 97-111, at 21, the Department found that implementing a retail standard offer price that is equal to or greater than the wholesale standard offer price would result in a deferral of a portion of the Company's transition costs. This, we stated, would result in ratepayers paying a higher interest rate (the rate of return on capital) on the deferral of transition costs than they would pay on a deferral of the wholesale/retail differential. In that Order, the Department noted that the payment of interest on the deferred transition costs would likely raise rates for customers and would thereby jeopardize our goal of recovery of net non-mitigable transition costs "on a non-bypassable basis and in a manner that does not result in an increase in rates to customers of electricity corporations." Id. at 20. However, as noted above, D.P.U./D.T.E. 97-111 was issued prior to the start of retail access in the Commonwealth, and the weight that we gave to minimizing transition costs relative to promoting the development of competitive markets must now be re-evaluated in light of what we have observed in the market.

We believe that an expeditious transition to a fully competitive generation would supply power to customers at lower prices than a regulated monopoly, and that having retail standard offer prices below standard offer supply costs is likely to hamper the development of a competitive market. While the deferral of a retail/wholesale price

differential can be appropriate for the short-term transition period (through the end of 1998 in this case), the negative impact of such a differential on the development of competition becomes a more significant factor as the market develops. Thus, the Department finds that the potential benefits of increased competition and long-term efficiency gains outweigh the costs that would result from increased interest payments on the deferred transition costs.

Moreover, the Department believes it is important to provide a degree of certainty with respect to the standard offer price to enable customers to make ready comparisons to competitive supply offers. Fitchburg's Plan provides for an adjustment to standard offer generation prices when it divests its generation assets. If the Company's entire portfolio were not divested at once, but rather in more than one piece,[(16)] customers could be subject to periodic adjustments to the standard offer generation rate. The Department believes that the convergence of the wholesale costs and retail price for standard offer generation now will protect the Company's customers from variations in the standard offer generation price that would make comparison with competitive offers difficult.

To meet the Act's goals of providing an expedient and orderly transition from regulation to competition, the Department directs the Company to implement a standard offer retail price that is equal to the price Fitchburg is paying suppliers for standard offer service, beginning the first day of the calendar month following the issuance of this order. We note that this requirement results in changes to Fitchburg's retail standard offer prices for 1999 and 2000.[(17)]

Regarding the external transmission charge, Fitchburg separately tracks its cost of internal and external transmission service. However, that does not mean that we can expect a significant number of customers to avoid the Company's external transmission service when choosing competitive suppliers or that Fitchburg is significantly different than any other electric company in its transmission of power. The Department agrees with Fitchburg that the standard offer price is for generation only. Therefore, the Department finds that the internal and external transmission charges shall be combined and billed as one transmission charge, unless a customer receives this service from an alternative supplier. In that case, the Company would credit the customer's bill for the amount of the external transmission charge.

B. Default Service

1. The Plan

The Company proposed to arrange for default service as of the retail access date for (1) its customers who have chosen retail electricity from a non-utility affiliated generation company or supplier but who require electric service because of a failure of such company or the supplier to provide contracted service; (2) customers, who for any reason, have stopped receiving such service; and (3) all customers at the end of the term of the standard offer service (Exh. FGE-1 at V.6-V.7). Any supplier that bids for this service will be required to offer a six-month fixed, non-rate-class-differentiated, energy

price with no demand charges that will be billed according to consumption as measured at the customer's meter (id.).

Currently, the Company calculates default service prices by first estimating a monthly energy rate (Tr. 3, at 41). Second, Fitchburg adjusts that rate for the fact that energy consumption is higher during the more expensive on-peak hours (id.). Third, the Company estimates the cost of capacity for a given month and multiplies that amount by capacity reserves that are coincident with the peak load (id.). Finally, the Company converts that number into a cents per KWH figure assuming a certain capacity factor (id.). According to Fitchburg, this amount adjusted for losses is the total cost of wholesale power to serve retail load (Tr. 3, at 42). For example the default service price was 4.46 cents per KWH in March 1998 and 3.89 cents per KWH in April 1998 (id. at 40).

2. Positions of the Parties

a. The Attorney General

The Attorney General argues that since New England lacks a wholesale competitive market, the Department should order the Company to modify its default service pricing so that it is equal to the standard offer price (id.). The Attorney General contends that the Company is currently providing default service to its customers at rates that have been as high as 4.6 cents per KWH, but because of wholesale market conditions, are not consistent with the express provisions of the Act that require default service to be based upon an average market price (Attorney General Brief at 28).

b. The LII

The LII concur with the Attorney General that the Company fails to comply with the statutory directive to limit its default rate so as not to exceed the average monthly market price of electricity (LII Brief at 2). The LII request that the Department order the Company to reduce its default rate to a level that complies with the statute and to provide refunds to those customers who are taking electricity on the default rate (id.).

c. The Company

The Company states that its default service substantially complies with the statute and disagrees with the intervenors' positions with regard to pricing (Company Brief at 43). The Company claims that the Attorney General's suggestion to tie default service to the standard offer price is neither lawful nor consistent with the Act and would generate rate deferrals (id.). The Company also argues that the LII's belief that there is an alternative method of calculating the average monthly market price of electricity is unsupported by the record (id.).

3. Analysis and Findings

G.L. c. 164 § 1B(d) states that each distribution company shall provide its customers with default service and shall offer a default service rate to its customers who have chosen retail electricity service from a non-utility affiliated generation company or supplier but who require electric service for any reason. Moreover, the statute requires that the distribution company procure its default service through competitive bidding, provided, however, that the procured default service rate shall not exceed the average monthly market price of electricity. In a February 1998 Order, the Department implemented regulations incorporating the requirements of the statute. See D.P.U./D.T.E. 96-100 at 18-20 (1998). See also 220 C.M.R. §11.00 et seq.

While the Company states that its proposed default service pricing "substantially complies" with the statute, the Department agrees with the intervenors' positions that the default service proposal concerning pricing does not meet the requirements of the Act. Both the statute and Department regulations require rates for default service to be established through competitive bidding without exceeding the average monthly market price for electricity. However, the electricity market to date has not become fully operational. The Department finds that because the electricity market is not fully developed, it is necessary to establish a price for default service. While the Company's default service prices may recover its costs, there is not sufficient evidence on the record to support the Company's method for determining its default service prices as being an adequate proxy for a market price. Currently, in the absence of a readily available average monthly market price for electricity, other electric companies in Massachusetts have set default service prices equal to either their retail standard offer generation rates (BECo, M.D.T.E. No. 885; Cambridge, M.D.T.E. No. 659; Commonwealth, M.D.T.E. No. 406; MECo, cover sheets to tariffs), or the wholesale standard offer generation rate (EECo, M.D.T.E. No. 385). The recent standard offer supply contract between Fitchburg and Constellation (D.T.E. 98-120) is a more appropriate proxy for the market price for default service than what the Company proposed because the Constellation contract is the result of an open, competitive bid process, albeit with capped bid prices. Therefore, the Department finds the Company's wholesale standard offer price, i.e., 3.5 cents per KWH for 1999 to be the most appropriate substitute for a market price.[(18)]

C. Retail Delivery Rates and Rate Reductions

1. Introduction

a. The Act

The Act specifies that the retail access date ("RAD") will be no later than March 1, 1998. St. 1997, c. 164, § 193 (G.L. c. 164, § 1A). The Act further states that, beginning on March 1, 1998, a distribution company must design rates so that (1) all customers on standard offer service will receive at least a 10 percent reduction in the cost for electric service when compared to the undiscounted rates in effect during August 1997 or such other date as the Department may determine to be representative of 1997 rates for such company; and (2) all rates are unbundled and identify the individual charges for distribution service, transmission service, transition service, standard offer, and any other

charges added pursuant to any provision of law. St. 1997, c. 164, § 193 (G.L. c. 164, §§ 1B(b), 1D).

b. The Plan

Fitchburg based the design of its unbundled retail rates on its 1995 cost-of-service study ("COSS"), which was part of the Company's rate unbundling compliance filing

(D.P.U. 97-44), and the fuel and conservation charges that were in effect in August 1997 (Exh. FGE-1, Tab D at IV.6). Fitchburg used these costs to determine the amount attributed to generation, transmission, and distribution charges, the Seabrook amortization surcharge ("SAS"), fuel-related charges, and conservation-related charges (Tr. 1, at 94). Its transmission costs were developed in preparation for a filing with the FERC where it was necessary to separate FERC-jurisdictional transmission costs from local distribution costs (id. at 94-95). The Company identified its generation costs through invoices and plant records of its joint ownership shares with Wyman 4, New Haven Harbor, Millstone III, and its leased facility in Fitchburg (id. at 95). Specifically, the Company tracks costs associated with the SAS, fuel-related charges and conservation charges separately, so those costs were easily determined. The remaining costs were labeled as distribution-related (id. at 96-97). Based on these calculations, Fitchburg determined the percentage of its current revenue requirement that represented distribution costs, transmission costs, and generation costs, and unbundled all of its per KWH and per kilowatt ("KW") rates consistent with those percentages. These unbundled rates consist of (1) a total customer charge (consisting of a monthly service charge and an energy conservation service ("ECS") charge), (2) a distribution charge, (3) an SAS, (4) a transmission charge (with internal and external components and a New England Power ("NEP") - Pool Transmission Facilities Credit), (5) an access charge (with fuel-related and base-related components), (6) a conservation charge, and (7) a generation charge (Exh. FGE-2, at Tab H).

The Company calculated the rate reduction by reducing the customer charge by 10 percent. The Company proposes to eliminate the ECS charge by rolling it into the new energy efficiency charge. Fitchburg added to the distribution rate the difference between the present and proposed monthly service charge revenues, so that the base distribution revenue remains unchanged. The Company proposes to use forecasted 1998 billing determinants to determine the revenues (id.; Tr. 1, at 133). Third, the Company set the generation charge at 2.8 cents per KWH (Exh. FGE-2, Tab H). Fourth, Fitchburg set the class-specific internal transmission charges[(19)] equal to the FERC-approved rates. The Company also added an external transmission charge of 0.394 cents per KWH that covers the cost of providing electricity to its service territory (Exh. FGE-1, Tab D at IV.4; Tr. 1, at 59-60). According to Fitchburg, customers would be credited this amount if they receive service from an alternative supplier who provides such service (Exh. FGE-2, Tab H). Fifth, the fuel-related component of the access charge was eliminated leaving the base component as described in Section VI.K.1.2.a, below. Since the access charge was the last component designed in the rates, the Company input whatever access charge would result in a 10 percent rate reduction for each class; therefore, the Company

proposes class-specific access charges (Exh. FGE-1, Tab D at IV.6-IV.7). The Company designed demand components for the access charges for classes that have distribution demand charges (id. at IV.5-IV.7).

c. Positions of the Parties

i. The Attorney General

The Attorney General asserts that the Company's distribution rates are excessive and that the Department should reduce the rates by 15 percent (Attorney General Brief at 7). Specifically, the Attorney General notes that between 1995 and 1997, the Company's annual rate of return on its combined gas and electric service ranged from 15.5 percent to 17.6 percent, and that the rate of return on its electric service in 1995 was 23.8 percent (id. at 8). Moreover, the Attorney General states that the Act requires that efforts be made to minimize the impact of stranded cost recovery with lower distribution rates (id. at 9). Therefore, the Attorney General submits that the Department must either reject the Company's Plan or order that it be modified to incorporate new distribution rates that implement a uniform per-KWH credit for all ratepayers (id. at 10).

ii. The Company

Fitchburg contends that the Attorney General's proposal constitutes a single-issue rate case and that adoption of any rate change outside of a rate case is both bad policy and arbitrary (Company Brief at 26). Further, the Company asserts that both its level of distribution revenues and its return on equity comply with the law (id.). Finally, according to Fitchburg, the Attorney General's proposed 15 percent reduction is unsupported by the record (id. at 27).

- Analysis and Findings

The Act requires that there be a 10 percent rate reduction beginning March 1, 1998 applied against the average of the undiscounted rates for the sale of electricity in effect during August 1997 rates. St. 1997 c. 164, § 193 (G.L. c. 164, § 1B(b)). The rates used by the Company in its calculation were in effect in August 1997 and are the acceptable baseline for determining the 10 percent rate reduction. Therefore, the Department finds that the Plan meets the requirement of the Act with respect to the baseline for determining the 10 percent rate reduction and the resulting 10 percent rate reduction.

Further, the Act requires that, beginning January 1, 1998, all electric and gas bills sent to a retail customer be unbundled to identify separately the rates charged for generation, transmission, and distribution services. St. 1997 c. 164, § 193 (G.L. c. 164, § 1D). Fitchburg has presented unbundled rates, and, except as noted below, the Department finds that the bills properly delineate charges for generation, transmission and distribution. Thus, the Department finds that the Plan is consistent with and substantially complies with the rate unbundling required by the Act.[(20)]

The Department notes that the Attorney General's request to decrease the Company's distribution rates would require a thorough review of the costs included in a COSS. This proceeding is not the proper forum to investigate the Company's distribution rates. This investigation is to ensure that the Company has met the requirements of the Act concerning the rate reduction and unbundled rates. Since the Department has found that Fitchburg's proposal regarding the unbundled rates is consistent with and substantially complies with the Act, the Department approves Fitchburg's proposed distribution costs. However, the Department notes that the Act gives the Department the authority to establish performance-based rates. St. 1997, c. 164, § 193 (G.L. c. 164, § 1E). The Department must determine the appropriate "cast-off" rates before establishing performance-based rates for distribution rates. Boston Gas Company, D.P.U. 96-50, at 346-347 (1996). When performance-based rates are set, a thorough review of the COSS may be necessary to establish the appropriate "cast-off" rates. 2. Uniform Access Charges, Negative Charges and Equal Peak and Off-Peak Charges on Tariffs

The Company proposed a different access charge for each rate. At the Department's request, the Company also provided a calculation of the rates redesigned with a uniform access charge of $0.02482 per KWH exclusive of the special contract and Energy Bank Service ("EBS") customers (RR-DTE-5). The Company indicated it would not object to the rates provided in response to the Department's request.

The Department finds that a uniform access charge for all rates is the proper way to design rates and is consistent with other companies' rates. See D.P.U./D.T.E. 97-111. Uniformity among all classes ensures fairness and avoids discrimination. Therefore, the Department directs the Company to implement rates that include a uniform access charge. Rate classes with demand charges shall include demand access charge components. As discussed in Section VI.F.3 below, the Company is directed to assess the same access charge for EBS and special contract customers as for Fitchburg's other customers. Therefore, the Company must also revise its tariffs to reflect a uniform access charge inclusive of the special contract and EBS.

The Department has two concerns with the redesign of Fitchburg's rates. First, for time-of-use Rates R-4 and G-6, the Company's rate design resulted in negative off-peak access charges. Negative charges do not provide a reasonable representation of a company's costs and could send a perverse price signal. Therefore, for Rates R-4 and G-6, the Department directs Fitchburg to decrease the peak access charge and increase the off-peak access charge until the negative charges are eliminated, on a revenue-neutral basis. Second, because the rate design for Rates R-4, G-3, G-4, and G-6 provided for equal peak and off-peak distribution KWH charges, the customer would receive an unbundled bill and could assume that the cost of using the Company's distribution facilities is the same during both time periods. This is not an accurate representation of cost conditions and thus not a signal the Department wants to send to customers. Therefore, for Rates R-4, G-3, G-4, and G-6, the Department directs Fitchburg to increase the peak KWH distribution charge and decrease the off-peak KWH distribution charge, while collecting the amount of revenues that would, together with the implementation of a uniform access charge, result in an overall 10 percent decrease.

3. Streetlighting Rates

Fitchburg's proposed streetlighting rate, Rate S - Outdoor Lighting ("Rate S"), includes KWH charges that are unbundled into transmission, distribution, access, and generation charges (Exh. FGE-1, Tab H, Exh. 6, at 10). The design of this rate results in a negative KWH distribution and internal transmission charges (id. at 10).

The Act requires electric companies to separate generation, transmission, distribution, and any other charges as added to customer bills, pursuant to any provision of law. St. 1997 c. 164, § 193 (G.L. c. 164, § 1D). Although not required by the Act to separate streetlight ownership and maintenance costs to reflect the ability of municipalities to purchase and maintain streetlights, the Department previously has directed electric companies to redesign streetlighting tariffs to include the streetlight ownership and maintenance costs with distribution costs, and provide the rate reductions from the total of all charges as required by the Act. Massachusetts Electric Company, D.T.E 96-25-C at 17 (1998); Eastern Edison Company, D.T.E. 96-24-C at 16 (1998). The Department has also found in Section VI.C.2, above that negative charges are inappropriate, because they send inaccurate price signals to customers. Fitchburg is directed to redesign Rate S to (1) combine the distribution charge with the monthly luminaire charge, (2) provide for a positive internal transmission charge, and (3) incorporate a uniform access charge while providing the rate reductions from the total of all charges as required by the Act.

D. Special Rates

1. Low-Income Tariffs

a. The Act

The Act requires that distribution companies provide discounted rates for low-income customers comparable to the low-income discount rates in effect prior to March 1, 1998. St. 1997 c. 164, § 193 (G.L. c. 164, § 1F(4)(i)). The Act sets forth the low-income eligibility requirements to be used by all distribution companies in the Commonwealth with the following language:

Eligibility for the discount rates established herein shall be established upon verification of a customer's eligibility for the low-income home energy assistance program, or its successor program, or verification of a customer's receipt of any means tested public benefit, for which eligibility does not exceed 175 percent of the federal poverty level based on a household's gross income, or other criteria approved by the Department.

See also 220 C.M.R. § 11.04(5)(b). In addition, the Act states that each distribution company shall guarantee payment to the generation supplier for all power sold to low-income customers at said discounted rates. St. 1997 c. 164, § 193 (G.L. c. 164, § 1F(4)(i)); see also 220 C.M.R. § 11.04 (5)(e).

b. The Plan

The Company proposes eligibility criteria for its residential low-income rate (Rate RD-2) more stringent than those required by the Act. Although G.L. c. 164, § 1F(4)(1) states that eligibility for the low-income rate should be established upon verification of a low-income consumer's receipt of any means-tested public benefit, or verification of eligibility for the low-income home energy assistance program, the Company would also require that the low-income customer (1) be living in a home or apartment owned or rented in his/her name; (2) be the head of the household or principal wage earner; and (3) meet the income guidelines as stated in the Act (Exh. FGE-2, Tab G, M.D.T.E. No. 5, at 1).

c. Positions of the Parties

i. The Attorney General

The Attorney General maintains that the Department should reject the additional language in the proposed Rate RD-2, since it goes beyond the requirements of the Act and Department precedent (Attorney General Brief at 35-36).

ii. The LII

The LII state that any language regarding eligibility for Rate RD-2 in addition to that contained in the Act is unlawful (LII Brief at 1). Therefore, the LII request that the Department order the Company to remove any additional conditions from its tariffs (id. at 2).

The LII state that although the Company's outreach to low-income customers is extremely limited, the Company has expressed a willingness to consider implementing a computer matching program to identify those customers eligible for the low-income rate and thereby increase low-income discount rate participation (id. at 1-2).

iii. The Company

Fitchburg maintains that it will work with the LII on outreach and that it will change the language in Rate RD-2 as requested by the Attorney General and the LII (Company Brief at 44).

d. Analysis and Findings

Fitchburg has agreed to modify its low-income tariffs by eliminating any eligibility criteria not in conformance with the Act. Therefore, Fitchburg is directed to submit tariffs that allow electric delivery service under a low income rate upon verification of a customer's eligibility for the low-income home energy assistance program, or its successor program, or verification of a customer's receipt of any means tested public benefit, for which eligibility does not exceed 175 percent of the federal poverty level based on a household's gross income, in accordance with St. 1997 c. 164, § 193 (G.L. c. 164, § 1F(4)(i)); 220 C.M.R.

§ 11.04(5)(b).[(21)]

The Department encourages the Company to implement procedures that would increase a low-income customer's chance of taking advantage of the discounted rate. Finally, in accordance with the Act, the Department also directs Fitchburg to add the following language to its low-income tariffs: "The Company shall guarantee payment to the generation supplier for all power sold to low-income customers at the discounted rates." Id.

2. Energy Bank Delivery Service Rate

Under the Energy Bank Delivery Service ("EBDS") Rate, Fitchburg sells market-based power to new or expanding industrial customers. Fitchburg Gas and Electric Light Company, D.P.U. 95-75, at 3 (1995). The power supply component of the rate is based on market-based marginal cost pricing as opposed to average power costs. Id. The Company proposes to cancel the Energy Bank Market Supply Cost Adjustment ("EBMSCA"), which prices variable energy costs and variable and fixed demand costs since, under the Plan, EBS customers would be eligible for supply through default service or competitive suppliers (id.). However, Fitchburg retained the $3.50 per KW demand adjustment portion of the EBMSCA by adding it to the external transmission charge and the access charge of the EBDS Rate (Exhs. FGE-1, Tab D at IV.5; FGE-2, Tab G, at M.D.T.E. No. 8).[(22)] The design resulted in a negative KWH distribution charge (Exh. FGE-2, Tab G at M.D.T.E. No. 8).

The Department finds that it is inappropriate for any rate to include a negative distribution charge, because it sends inaccurate price signals to customers and is so anomalous that it would not ordinarily be accepted in a conventional rate proceeding. Also, as discussed below, Energy Bank Service ("EBS") customers shall be assessed the same access charge as the Company's other customers. Therefore, the Department directs Fitchburg to provide an EBDS Rate with a positive KWH distribution charge using the same access charge as the other customers.

- Terms and Conditions

The Company's Terms and Conditions for Distribution Service allow for the recovery of fees for off-cycle meter reads and returned checks, and an account restoration charge, but do not have dollar amounts listed (Exh. FGE-2, Tab G, M.D.T.E. No. 2, at 20). The

Department directs the Company to provide those fees and the charge in its compliance filing. See, Model Terms and Conditions, D.T.E. 97-65 (1997).

F. Discounting of Access Charges

1. The Plan

Fitchburg proposes to provide its EBS and special contract customers with access charges that are less than those for the Company's other customers (Exhs. FGE-2, Tab H at M.D.T.E. No. 8, Tab H; RR-DTE-5; RR-AG-1). In addition, the Company proposes that an access charge not be applicable to a specific special contract customer, because the customer did not cause the Company to incur any investment (Tr. 3, at 71, 103).

2. Positions of the Parties

a. The Attorney General

The Attorney General maintains that the Plan allows some customers to bypass the access charge thereby requiring that remaining customers absorb additional costs (Attorney General Brief at 34). The Attorney General asserts that this approach is contrary to both (1) the terms under which the Department authorized the Company's special contracts and EBDS Rate, and (2) the legislative direction that access charges be non-bypassable (Attorney General Brief at 34, citing Fitchburg Gas and Electric Light Company, D.P.U. 95-75, at 21 (1995) and G.L. c. 164, § 1G(a)(1)). The Attorney General urges the Department to reject this aspect of the Plan and to require that the Company incorporate a uniform access charge that is applicable to all customers (Attorney General Brief at 34).

b. The Company

Fitchburg contends that it set the access charges for EBS customers at the level of power supply costs previously included in its bundled rates less the market price of energy (Company Brief at 22). The Company maintains that this formula for determining each class's access charge is similar for the other customer classes (id.). Therefore, the Company claims that the access charges are appropriately different for each class (id.). The Company argues that EBS customers paid full incremental power supply costs and contributed to system power supply costs but did not contribute to the costs currently stranded (id. at 24). For the special contract customers who receive a discount off of the Company's Large General Service Rate G-3 ("Rate G-3"), the Company asserts that the access charge is less because the access rates were calculated as the difference between the pre- and post-March 1, 1998 transmission, distribution, and standard offer rates (id.). Since the special contract customers receive a discount from Rate G-3, the Company argues that the access charge would be discounted as well (id.).

With respect to the special contract customer whose rates are not discounted from Rate G-3, Fitchburg asserts that the customer does not receive energy from the Company's traditional power supply portfolio, but that power is purchased in the market and resold at incremental costs (id. at 24-25). Since the customer did not contribute to the stranded costs, Fitchburg contends that the customer should not be to be subject to the access charge (id.).

3. Analysis and Findings

In the Department's Order on Fitchburg's EBDS Rate proposal, the Department stated that

Fitchburg's restructuring proposal must include a stranded cost recovery mechanism applicable to all customers, including EBS customers. We expect that to the extent that the Company's restructuring plan contains a stranded cost charge, consistent with the principle enunciated in D.P.U. 95-30 that stranded cost recovery mechanisms shall be non-bypassable and non-discriminatory, such stranded cost charge will apply to all customers, including EBS customers.

Fitchburg Gas and Electric Light Company, D.P.U. 95-75, at 21.

Similarly, with respect to special contract customers, the Department has stated that any stranded cost recovery mechanism should provide for a non-discriminatory charge that cannot be bypassed (Letter dated July 2, 1996 approving EC 96-20, special contract between Fitchburg and PWA Decor). In light of our precedent and G.L. c. 164, § 1G(a)(1), which states that access charges be non-bypassable, the Company's explanation for determining the differing access charges for the EBS and special contract customers is not compelling. Therefore, the Department directs the Company to assess a uniform access charge across all classes, including the EBDS Rate and all special contract customers.

G. New England Power Transmission Credit

The New England Power Company ("NEP") transmission credit is a temporary credit of $0.00107 per KWH on the Company's internal transmission charge (Exh. FGE-1, at IV.3-IV.4). This credit is attributable to revenues received from NEP pursuant to an agreement whereby NEP compensates Fitchburg for its Pool Transmission Facilities. The Company proposes to include this credit with the internal and external transmission charges on customers' bills. The Attorney General contends that the credit should be included as mitigation revenue in the access cost calculation (Attorney General Brief at 10). Fitchburg agrees with the Attorney General and states that it will attribute the credit to the access charge (Company Brief at 28). Therefore, the Department directs the Company to include the NEP transmission credit in the access cost calculation.

H. Tariff Cancellations

The Company proposes to cancel the following tariffs: (1) M.D.P.U. No. 69, Interruptible Electric, Schedule I-N ("Schedule I-N"); (2) M.D.P.U. No. 70, Interruptible Load Credit, Schedule I-FGE ("Schedule I-FGE"); (3) M.D.P.U. No. 77, Energy Conservation Service Surcharge, Schedule E-ECS ("Schedule E-ECS"); (4) M.D.P.U. No. 80, Economic Development Rider, Schedule Rider-ED ("Schedule Rider-ED"); (5) M.D.P.U. No. 83, Supplemental Base Rate Reduction, Rate SBRR ("Rate SBRR"); and (6) M.D.P.U. No. 87, Energy Bank Market Supply Cost Adjustment, Rate EBMSCA ("Rate EBMSCA").

Interruptible rates are cost-based and compensate for avoided marginal capacity and transmission costs. Commonwealth Electric Company, D.P.U. 89-114/90-331/91-80, at 308 (1991); Cambridge Electric Light Company, D.P.U. 89-109, at 111 (1991). Therefore, the Department sees no reason to discontinue such rates. Moreover, other electric companies have retained their interruptible rates. Fitchburg should continue its interruptible rates for those customers who remain on standard offer service, since the benefit of having interruptible load would flow to the entity that serves the load. Accordingly, the Department directs the Company to reinstate Schedule I-N and Schedule I-FGE.

Under the Plan, the ECS charge would be rolled into the new energy efficiency charge (Exh. FGE-1, Tab D at IV.7). This treatment of the ECS charge is reasonable. Therefore, the Department finds the cancellation of Schedule E-ECS to be acceptable.

The Department previously has found that discounted tariffs and special contracts may help business operations maintain viability. D.P.U./D.T.E. 97-111, at 53. One of the primary objectives of offering retail choice to electricity consumers is to increase the options to meet customers' energy needs. Id. Retail choice will provide consumers with the opportunity to purchase power from a competitive supplier or remain with their incumbent electric utility through the standard offer service period. Id. Therefore, because other options are available for customers who remain in the Company's service territory, the Department finds the cancellation of Fitchburg's economic development rate, Schedule Rider-ED to be acceptable.

The supplemental base rate reduction was incorporated in the Company's rate unbundling filing in D.P.U. 97-44. Therefore, the Department finds the cancellation of Rate SBRR to be acceptable. For the reasons stated in Section VI.D.2 above, the Department finds the cancellation of Rate EBMSCA to be acceptable.

- Appearance of Charges on Bills

The Company proposes to combine the energy conservation charge and the renewable resources charge into an energy efficiency charge. Fitchburg's tariffs indicate that the energy efficiency charge and the SAS would be combined with the distribution charge for billing purposes (Exh. FGE-1, Tab D at IV.3). In addition, Fitchburg proposes that the

internal transmission charge and the external transmission charge be combined and billed as one transmission charge (id.). No party commented on this aspect of the Plan.

To prevent customer confusion and to encourage competition, and to comply with the Act, the Department requires that customer bills separately identify (a) charges for generation, transmission, and distribution services; (b) charges for energy efficiency and renewable resources; (c) the access charge; and (d) any other charges. St. 1997, c. 164, § 193

(G.L. c. 164, § 1D); 220 C.M.R. §§ 11.02 and 11.04(10)(c). Therefore, the Plan does not comply with the Act. The Company presented no compelling argument to allow the Company to combine certain charges on customer bills. Therefore, the Department directs Fitchburg to separate the energy efficiency and renewable energy charges and list them separately from the distribution charge on customers' bills.

J. Seabrook Amortization Surcharge

1. The Plan

The SAS is a class-specific KWH charge[23] established through a Department-approved settlement agreement entered into by the Company and the Attorney General in 1985. Fitchburg Gas and Electric Light Company, D.P.U. 85-235 (1985). The charge allows Fitchburg to recover a portion of its net investment in Seabrook Units 1 and 2. Id. at 3. Fitchburg characterizes this charge as distribution-related and proposes to include the SAS with the distribution rate on customers' bills. The charge would be assessed until the unrecovered Seabrook balance is zero, which the Company projects to occur in 2010 (Exh. AG-2-5-D, Att. at 1).

2. Positions of the Parties

a. The Attorney General

The Attorney General puts forth three arguments regarding the SAS. First, he asserts that because the unrecovered Seabrook loss is a generation-related regulatory asset, and the Legislature intended that such losses be treated as transition costs, it should be considered a transition cost and be charged accordingly (Attorney General Brief at 6). Second, according to the Attorney General, the unrecovered Seabrook balance at the end of 1997 should be $7.6 million instead of $10.2 million (id., at 11; Exh. AG-2-5-D; RR-AG-62). The Attorney General maintains that the disparity lies with terminology that the loss "be amortized over 30 years, with carrying charges of 14 percent allowed on [the] average unamortized balance" (Attorney General Brief at 12). According to the Attorney General, the Company used excess surcharge revenues to divert a portion of the sales growth benefit to carrying charge collections beyond that necessary to achieve a 14 percent return (id.). Third, the Attorney General contends that the Company should be required to pass on to its customers state tax benefits attributable to the write-off of the Seabrook investment. According to the Attorney General, although the Company stated that both

the tax benefits and tax costs flow through to customers, the state tax benefits were not credited to customers (id. at 13, citing Tr. 4, at 94). The Attorney General asserts that state tax benefits were not reflected in the computation of the initial recoverable amount, but that the Company seeks to recoup monies to offset state taxes on the surcharge as if it had no corresponding tax deduction (id. at 13).

b. The Company

Fitchburg interprets the language contained in the Settlement to indicate that the SAS applies to all KWHs billed to customers for supporting the treatment of the SAS as a distribution-related charge (Company Brief at 31-32, citing D.P.U. 85-235, at 4). However, the Company states that should the Department order the Company to include the SAS in the transition charge, the class-specific rate should be added to the access charge for each class, because this approach is essential to maintaining the integrity of the SAS (id. at 35). Fitchburg asserts that the Settlement in D.P.U. 85-235 states that the carrying charge was to be calculated "on the *averaged* unamortized balance" which is how it was calculated by the Company (id. at 33). The Company maintains that the use of the averaged balance is confirmed by Exhibit B attached to the Settlement, which calls for a levelized carrying charge of $1,273,844 or 14 percent of $9,098,886, which is the averaged balance of $18,197,772. Conversely, Fitchburg states that the Attorney General applied the 14 percent return on a declining balance, but that it should be applied to the full balance averaged over the full recovery period (id. at 34). Fitchburg submits that all excess revenues were divided between amortization, taxes and return in order for the intent and purpose of the Settlement to be achieved and that the levelized carrying charge is part of that Settlement (id.).[(24)]

With respect to sales growth, the Company asserts that the amortization of the SAS has accelerated, which is proven by the fact that although the SAS was approved to be recovered over a 30-year period, because of increased sales, it will be fully recovered in 22 years (id. at 37, citing Exh. DTE-8).

With respect to state taxes, Fitchburg maintains that the parties to the Settlement agreed that the calculation of revenues received under the amortization would reflect all changes in taxes (id.). According to the Company, the Settlement can only be interpreted to net tax benefits against the amortized balance (id.).

3. Analysis and Findings

Because the SAS recovers costs associated with Fitchburg's investment in a generating unit, the SAS is more generation-related than distribution-related. However, adding the SAS to the access charge in the manner proposed by the Company would result in the appearance of non-uniform access charges on the bill. The Department has already determined, above, that uniformity of access charges among all classes ensures fairness, avoids discrimination and provides consistency with the other companies in the Commonwealth and that Fitchburg shall design uniform access charges. Separately identifying the SAS on customers' bills would cause customer confusion since the charge

has been part of distribution rates since its inception. Therefore, the SAS shall remain combined with distribution rates on customers' bills.

The Settlement in D.P.U. 85-235, at 5 states, "Sixty (60) percent of the net investment in Unit 1, as of October 31, 1985, will be amortized over thirty (30) years, with carrying charges of 14 percent allowed on the *averaged* unamortized balance." In summarizing the terms of the Settlement, the Department stated: "Over the next thirty years, the Company would recover 60 percent of its net investment in Seabrook Unit 1, with carrying charges of 14 percent allowed on the *average* unamortized balance." Id. at 3. The terminology used in the Settlement would be the controlling language. With respect to carrying charges, the Department notes that the Company's calculations are not consistent with the directives in the Settlement. There is no evidence in this case or the Settlement that would support the Company's method of allocating SAS revenues to net amortization costs, taxes and carrying charges. The Settlement clearly called for a levelized carrying charge of 14 percent on half of

the unamortized balance, or $1,273,844.[(25)] The Attorney General's calculation of the unrecovered Seabrook balance incorporates a levelized carrying charge, while the Company's does not (Exh. AG-2-5-D, Att. at 1; RR-AG-62). Therefore, the Department directs the Company to recalculate the Seabrook unrecovered balance using a levelized carrying charge of $1,234,919.[(26)]

With respect to the issue of state taxes, the Department defers making a finding until a comprehensive audit[(27)] has verified the exact amount of state tax benefits and charges from the time of the write-off to the present. Likewise, the Department will direct the auditors to verify federal tax benefits and charges during the same time period. Therefore, this issue will be resolved after review and approval of the comprehensive audit.[(28)]

K. Transition Costs

1. Introduction

The Act defines four principal types of transition costs: (1) the depreciated book value of owned generating plant that cannot be recovered at market prices; (2) the amount by which obligations under power purchase agreements ("PPAs") exceed the price of energy and capacity that could be bought or sold in the competitive market ("above-market PPA costs"), including buyout and buydown payments[(29)] for liquidating above-market PPAs; (3) the as-yet unamortized generation-related Department approved regulatory assets; and (4) post-shutdown nuclear costs. St. 1997 c. 164, § 193 (G.L. c. 164, § 1G(b)(1)). The Act allows three other

types of transition costs: (1) employee-related costs such as severance pay and employee retraining; (2) property taxes or payments in lieu of property taxes; and (3) removal and decommissioning costs for certain fossil-fueled generation. St. 1997 c. 164, § 193

(G.L. c. 164, § 1G(b)(2)). The Act delineates several methods that a Company can use to reduce transition costs and overall rates including (1) selling generating plant, (2) renegotiating PPAs to decrease the buyers' obligations, (3) netting above-market generating assets against below market ones, (4) reviewing past PPA performance for possible change, and (5) any other mitigation mechanisms that the Department deems to be reasonable and effective. St. 1997

c. 164, § 193 (G.L. c. 164, § 1G(d)(1)).

According to Fitchburg's Plan, the present value of its estimated transition costs amounts to $82.8 million in the base case, in which no mitigation occurs (Exh. FGE-6, at 1).[30]

2. Categories and Amounts of Transition Costs: Overview

Fitchburg's estimated transition costs include both fixed and variable costs (Exh. FGE-1, Tab E at Exh. 1, Sch. 1, at 1-7; Tab D at II.1-II.2).[31] In the base case, fixed costs represent almost 17 percent of Fitchburg's estimated total transition costs (Exh. FGE-6, at 1-3). Fixed costs consist of the return on investment and the return on regulatory assets (id.). The net book value balance of generating plant as of March 1, 1998 was $10.95 million and the book value of regulatory assets as of March 1, 1998 was $3.127 million (Exh. FGE-1, Tab E at Exh. 1, Sch. 1, at 6, 13).

Estimated above-market costs of PPAs account for 98.7 percent ($67.9 million) of Fitchburg's estimated variable transition costs, which total $68.8 million in the base case (Exh. FGE-6, at 1-3). Therefore, PPAs account for 82 percent of Fitchburg's total transition costs (id.). The remainder of the variable component is divided between estimated nuclear decommissioning costs and transmission in support of remote generation, which are 0.45 percent and 0.85 percent of the variable component, respectively (id.). The dollar amounts of PPA buyouts, payments in lieu of property taxes, employee severance and retraining, and damage claims, are four types of transition costs that will be determined after the Company's divestiture of generation assets (id.). These costs have been assumed to be zero for the purposes of calculating the access charge. The variable component shall be adjusted through a Reconciliation Account in which differences between Fitchburg's estimated and actual variable costs will be accumulated and added to or subtracted from the access charge (Exh. FGE-1, Tab E at Exh. 1, Sch. 1, at 4).

The Company proposes to collect the transition costs in an access charge over twelve years for fixed charges and over the lives of the obligations for variable charges (id., Sch. 1, at 2-3). The Company proposes an initial access charge of 2.42 cents per KWH in 1998, which declines to 2.37 cents per KWH in 1999, rises to 2.39 cents per KWH in 2000 and thereafter gradually decreases each year, to 0.34 cents per KWH in 2025 (id., Sch. 1, at 1).

Table 1

Regulatory Asset	Balance as of December 31, 1996 (Dollars in Thousands)	Balance as of March 1, 1998 (Dollars in Thousands)
Unamortized Investment Tax Credit	($187)	($161)
FAS 109	$3,286	$3,244
Other regulatory assets under jointly owned agreements (assumed to be zero)	$0	$0
Gas Turbine Deferral	$46	$44
Total Regulatory Assets	$3,145	$3,127

3. Recovery of Regulatory Asset Balances and Going Forward Costs of Millstone III Operations

a. Introduction

The Company proposes to recover net book balances of regulatory assets, including the generation-related unrecovered net book balances as shown in Table 1 above (Exh. FGE-1, Tab E at 1, Sch. 1, at 6). The Attorney General has contested three of the regulatory asset balances that the Company proposes to recover -- unamortized investment tax credit, FAS 109 costs, and the gas turbine deferral. The Company also seeks to recover the going forward costs of Millstone III operations. Each of these issues is discussed below.

b. Unamortized Investment Tax Credit ("ITC")

i. Introduction

The Company has included in its transition costs, as a deduction to its regulatory assets, an unamortized ITC of $161,000 (id.). ITCs were created as a result of investments that the Company made prior to 1987 (Tr. 4, at 51-52). The ITCs are attributable to all of the Company's utility assets, including distribution plant, transmission plant, and generation D.P.U. 1270, at 115 (1983). The credits are amortized over the life of the assets that gave rise to those credits (id.). Historically, ITCs have been used to reduce the Company's base rate revenue requirement. Id.

ii. Positions of the Parties

(A) The Attorney General

According to the Attorney General, because the Company was unable to determine an exact amount of generation-related unamortized ITCs, it relied on an estimated unamortized ITC (Attorney General Brief at 20).[32] Specifically, the Attorney General contends that the Company's method of allocating the year-end 1996 ITCs by that year's relative net generation plant to total net utility plant is flawed (id.).

First, the Attorney General alleges that the Company included non-depreciable property, such as transmission and distribution rights-of-way in its net plant formula (id. at 21). The Attorney General states that the inclusion of non-depreciable property improperly allocates the balance of the unamortized ITC to transmission and distribution plant (id.). Second, according to the Attorney General, the Company's estimation method improperly includes post-1987 plant in the net plant balances (id.). The Attorney General states that the inclusion of post-1987 plant over-allocates the unamortized ITCs to transmission and distribution plant (id.). The Attorney General states that these errors resulted in the under-estimation of generation-related unamortized ITCs (id.).

The Attorney General recommends that the Department reject the Company's method for calculating the unamortized balance of the ITC and instead require the Company to multiply the most recent balance of the ITC by the ratio of the 1987 year-end balance of net depreciable generation plant to the 1987 year-end balance of net depreciable total plant, which he calculates would increase the unamortized ITC to $293,411 (id.). The Attorney General also urges the Department to specify that the amount of generation-related unamortized ITCs to be determined in the comprehensive audit be based on the specific assets that gave rise to those ITCs and not the assets that were placed in service after 1987 (Attorney General Reply Brief at 8).

(B) The Company

According to the Company, $101,000 of the total unamortized ITC of $187,000 (i.e., the unamortized ITC balance as of December 31, 1996) was specifically identified as being directly related to the Company's investment in Millstone III (Company Brief at 17). Therefore, according to the Company, the only portion of the unamortized ITC that remains in question is the portion related to non-nuclear generation plant (id.). The Company states that the Attorney General's method for calculating the unamortized ITC results in an allocation of $86,392 to the non-nuclear generation plant (id.). When this balance is added to the portion of the unamortized ITC related to Millstone III, the total amount is $187,392, essentially the same as the initial unamortized ITC that was proposed by the Company (id.). Therefore, the Company maintains that the Department should reject the Attorney General's calculation (id. at 18).

iii. Analysis and Findings

The Department agrees with the Attorney General's method of calculating the unamortized ITC balance. The record indicates that the Company has been unable to determine the exact ITC balance and that both the nuclear and the non-nuclear

generation-related unamortized ITCs have indeed been estimated by the Company (Exh. AG-1-8;

RR-AG-30, Att. a; Tr. 4, at 53). Furthermore, the Company has failed to address the issues of the inclusion of non-depreciable property and post-1987 plant in the net plant balances. The Attorney General's method accounts for the inclusion of non-depreciable property and post-1987 plant in the net plant balances, which the Department finds to be a more accurate representation of the unamortized ITC balance.

Therefore, the Department directs the Company to use an unamortized ITC balance of $293,411, conditionally, until the specific amount of generation-related unamortized ITCs can be determined in the comprehensive audit. St. 1997 c. 164, § 193 (G.L. c. 164, § 1G(a)(1)). The Department directs the Company to make the corresponding adjustments, if any, to the unamortized ITC balance reconciling actual transition costs to estimated transition costs based on the results of the comprehensive audit.

c. FAS 109

i. The Plan

The Plan includes a regulatory asset balance as of March 1, 1998 of $3,244,000 as a FAS 109 liability associated with a claimed income tax deficiency not recovered from ratepayers (Exh. FGE-1, Sch. 1, at 6). The Company proposes to recover a deferred income tax liability from ratepayers by recognizing the entire amount as a regulatory asset (id.).[33]

ii. Positions of the Parties

(A) The Attorney General

The Attorney General opposes the Company's proposed recovery of the FAS 109 regulatory asset balance on three counts. First, the Attorney General argues that the Company is proposing to collect as a stranded cost, all of the deferred income taxes associated with generation plant, even though it already has collected those costs from ratepayers (Attorney General Brief at 17). The Attorney General notes that the Company has an accumulated deferred income tax balance of over $12.5 million on its balance sheet as of December 31, 1997 (id. at 16-17).

Second, the Attorney General refutes the value of the FAS 109 deferred tax regulatory asset balance by stating that the asset should be offset by accumulated deferred tax liabilities accrued prior to adopting FAS 109 (id. at 17-18). The Attorney General states that the total balance of deferred income taxes required for generation-related assets at issue in the transition charge calculation is composed of two components, one for plant and the other for regulatory assets (id. at 17). The Attorney General claims that, since the deferred income taxes associated with regulatory assets have been fully provided for, any payment for future reversals should be limited to deferred income taxes associated with

the Company's generation plant, where such payment should not exceed $2,003,795 (id. at 18). However, the Attorney General points out that the Company is essentially trying to recover this amount of deferred taxes through a FAS 109 regulatory asset balance instead of recovering it through the deferred income taxes associated with the Company's generation plant (id.).

Third, the Attorney General contends that since the Company has used a tax-normalization method for the timing differences associated with generation plant, it can be assumed that the Company has recovered all of the deferred income taxes (id. at 18-19).

The Attorney General argues that the Company has not met its burden of proof that it has any deferred income tax deficiency and states that the record establishes that taxes have been normalized for both book and regulatory purposes since 1977, not since 1993 as the Company claims (Attorney General Reply Brief at 7). The Attorney General states that the Department should reject the Company's proposed recovery of the FAS 109 regulatory asset balances and urges the Department to specify that any deficiency identified in the comprehensive audit must be supported by the identification of specific tax items whose benefits were flowed through to customers (id.; Attorney General Brief at 20).

(B) The Company

The Company explains that it is entitled to future recovery of deferred tax liabilities which, until the adoption of FAS 109 in 1993, were not normalized for certain timing differences for book accounting and ratemaking purposes (Company Brief at 14). The Company states that when its deferred tax liabilities were recalculated under FAS 109, those deferred liabilities were adjusted upward and a regulatory asset was recorded (id.). The Company notes that a portion of its deferred tax liabilities recorded prior to the adoption of FAS 109 is attributable to the generation assets and that the Company is undertaking a comprehensive effort to identify specifically those amounts, based on the historical records that are available (id. at 16).

The Company states that ultimately the FAS 109 amounts will become final after the divestiture is complete (id. at 13). Consequently, the Company sees no reason to withhold approval of its Plan (id.).

iii. Analysis and Findings

The verification of the FAS 109 regulatory asset balance requires a comprehensive audit. Accordingly, the Department hereby defers making a finding on this issue until the comprehensive audit has verified the exact FAS 109 regulatory asset balance. St. 1997 c. 164, § 193 (G.L. c. 164, § 1G(a)(1)). In the interim, the Department provisionally approves the Company's proposed FAS 109 regulatory balance. The provisional FAS 109 regulatory asset balance should then be adjusted to reconcile actual transition costs with estimated transition costs. The Company is on notice that any difference between the

actual and estimated costs recovered is subject to refund plus interest calculated at the Company's return on transition costs through the Company's transition cost mechanism.

d. Turbine Expense Deferral

i. The Plan

The Company has included a balance of $44,000 as the regulatory asset balance for the unamortized turbine overhaul expense that it incurred in 1979 for maintenance work done on the Company's Number 7 Turbine (Exh. FGE-1, Sch. 1, at 6; RR-AG-31). This expense was subsequently deferred at the Company's own volition (RR-AG-31).

ii. Positions of the Parties

(A) The Attorney General

The Attorney General contends that in accordance with Department precedent, the costs associated with the Number 7 Turbine overhaul should have been expensed on the Company's books in 1979, the year in which they were incurred (Attorney General Brief at 22).

The Attorney General argues that the Department would have denied the Company's request for a deferral between rate cases since the Company would have been unable to establish that a denial of its petition would significantly harm the financial condition of the Company (id. at 23). The Attorney General points out that the Company has not presented any evidence that would require the Department to change its precedent regarding the deferral of operations and maintenance expenses (id.). Therefore, according to the Attorney General, the Department should deny the Company's proposed deferral treatment of the Number 7 Turbine overhaul expenses and reduce the Company's regulatory asset balance accordingly (id. at 24).

(B) The Company

The Company asserts that the Department had approved the deferral of expenses pertaining to the Number 7 Turbine overhaul in a previous rate case, and therefore, the Company's accounting treatment of those expenses was accepted (Company Brief at 18-19 citing Fitchburg Gas & Electric Light Company, D.P.U. 1270 (1983); AG-RR-31).

iii. Analysis and Findings

The Department agrees with the Company that the accounting treatment of the deferred expense and the corresponding COSS was approved previously by the Department in a fully litigated rate case. Fitchburg Gas and Electric Light Company, D.P.U. 1270 (1983).

With respect to the Attorney General's argument that the Company has not provided any evidence in this case that would persuade the Department to change its precedent regarding the deferral of operations and maintenance expenses, the Department notes that the Company is not seeking approval of its accounting treatment of the deferred expense in this proceeding; instead, the Company is seeking to include the already approved unamortized deferred expense in the regulatory asset balance. Therefore, the Department finds that the inclusion of the deferred overhaul expenses in the regulatory asset balance is allowable. Accordingly, the Department authorizes the Company to include the $44,000 regulatory asset balance for the unamortized Number 7 turbine overhaul expense in the Company's calculation of regulatory assets.[34]

e. Recovery of the Going Forward Costs of Millstone III Operations

i. The Plan

Fitchburg's Plan specifies that in the event the Company is unsuccessful in selling its interest in Millstone III, it would include its share of the costs of ongoing obligations under the Joint Ownership Agreement in the variable component of transition costs (Exh. FGE-1, Tab E, Exh. 1, at 5). This calculation would be net of wholesale revenues received for the sale of the output of the unit (id.).

ii. Positions of the Parties

(A) The Attorney General

The Attorney General states that, pursuant to G.L. c. 164, § 1G(b)(1)(ii), the Department is authorized to allow recovery of Fitchburg's nuclear entitlements and those known liabilities previously incurred for post-shutdown and decommissioning costs associated with nuclear power plants which are not recoverable from the decommissioning fund (Attorney General Brief at 13-14). The Attorney General asserts that ratepayers are not responsible for the going forward costs of Millstone III after March 1, 1998, and at most are required to provide funding for the Company's capital investment in Millstone III and associated decommissioning and shutdown costs (id.). The Attorney General contends that the going forward costs of Millstone III operations should not be treated differently from the going forward costs of the Company's fossil generating facilities; i.e., they should not be included in the transition costs (id.). The Attorney General states that if the Company is unable to sell its Millstone interest within a reasonable time, the Department should determine the market value of the unit and reduce recovery of the Company's entitlement accordingly (id. at 14).

(B) The Company

The Company disagrees with the Attorney General's interpretation of G.L. c. 164,

§ 16(b)(1)(i) (Company Brief at 11). The Company reiterates that it is seeking recovery of Millstone III ongoing expenses only in the instance that its nuclear investment cannot be divested (id.). The Company asserts that it entered into the Millstone III Joint Ownership Agreement with the Department's knowledge, in order to meet the energy and reliability needs of Fitchburg's customers under a cost-based rate system (id.). The Company states that if the Department prohibits the recovery of net ongoing expenses for Millstone III, such denial would constitute an illegal taking of the Company's property (id.).

iii. Analysis and Findings

The Department notes that Fitchburg is seeking recovery of the ongoing expenses associated with the operation of Millstone III only in the instance that its nuclear investment cannot be divested. Therefore the Department defers making a finding on this issue until the Company's divestiture filing. The Department determines that a deferral on making a finding will not only give the Company an opportunity to sell its interest in Millstone III, but also will allow the Company a time period within which it may seek the highest value possible for its ownership share. Additionally, in the event that the Company is unable to sell its share of Millstone III, the Fitchburg divestiture proceeding will provide all parties an opportunity to determine an appropriate treatment of those costs including a cost/revenue sharing mechanism.

4. Taxes

The Company proposes to determine pro forma state income taxes using a combined gas and electric operations state income tax rate (Exh. AG-1-20). These taxes are part of the calculation of the weighted cost of capital used in determining the return on the fixed component of the access charge (Exh. FGE-6, at 14). The Attorney General argues that the tax should be 6.5 percent instead of 6.6 percent (Attorney General Brief at 25). According to the Attorney General, 0.1 percent reflects state income taxes paid by Fitchburg to West Virginia, Pennsylvania, and New York as a result of the gas storage services provided by underground storage facilities in those states (id., citing RR-AG-32). Since these taxes are not a cost of providing the Company's electric service, the Attorney General contends that they should not be included in the determination of the tax rate (id.). The Company did not address this issue on brief.

A portion of these taxes, i.e., 0.1 percent, is not a cost of providing the Company's electric service. Since this case concerns the Company's electric restructuring plan, the Department finds that the pro forma state income taxes shall be adjusted to include the Company's electric operations only. Therefore, the Company is directed to revise the calculation of its access charge accordingly.

5. Mitigation Incentive

a. The Plan

The Company's proposed mitigation incentive is based on reducing the cumulative average access charge below proposed access charge caps (Exh. FGE-1, Revised Sch. 1, at 4). According to the incentive schedule, Fitchburg would begin to receive an incentive for reducing the average access charge below 2.42 cents per KWH (id.). In the base case, in which no mitigation occurs, Fitchburg would receive an incentive of $276,000 (id.). Fitchburg would receive a maximum incentive of $712,000 for reducing the cumulative access charge to 1.00 cent per KWH (id.). The Company would receive no additional incentives for reducing the access charge further (id.). During the hearings the Company revised the incentive mechanism to apply separately to the fixed and variable components of the access charge and set the incentive mechanism at 4 percent of net incremental mitigation (RR-DTE-4). No party commented on this issue.

b. Analysis and Findings

The record establishes that under the Plan, approximately 39 percent of the incentive payments are tied to the base-case level of the access charge rather than the amount of actual mitigation achieved, and therefore would flow to the Company regardless of any mitigation. The Department finds that the revised incentive mechanism is designed to provide greater benefit for ratepayers when compared to the Company's original proposal because it encourages the Company to maximize the net proceeds of the divestiture and to fully mitigate transition costs. The Act provides that all proceeds from divestiture, less any adjustments approved by the Department that inure to the benefit of ratepayers, shall be applied to reduce transition costs. G.L. c. 164, § 1A(b)(3). In Eastern Edison Company, D.P.U./D.T.E. 96-24, at 84 (1997), the Department accepted the premise that an incentive for an electric company to reduce transition costs can inure to the benefit of ratepayers. In particular, the Department agreed that an incentive can motivate a company to (1) seek the highest price for its divested assets while minimizing its transaction costs in doing so and (2) renegotiate above-market PPAs more aggressively and creatively than command-type regulation could induce. Id. In this case, the Department finds that since the revised incentive mechanism would provide greater benefits for ratepayers, such incentive would comply with the intent of the Act that any adjustments to the proceeds from the divestiture result in lower transition costs. G.L. c. 164, § 1A(b)(3). Therefore, the Department directs the Company to file the revised mitigation incentive proposal, as provided in the Company's response to RR-DTE-4, and to revise all schedules used to calculate stranded costs accordingly.[(35)]

6. Mitigation

a. The Plan

According to the Plan, the Company was to commence the divestiture process on January 5, 1998 (Exh. FGE-1,Tab D at I.3). Fitchburg proposes to divest its entire portfolio of

owned, leased and purchased power supply entitlements (including nuclear) (id.). The Company adds that over the past twelve years, it has pursued a strategy of securing power supplies from the wholesale market and that this strategy, along with ongoing programs of cost and contract management, has already led to a reduction in stranded costs (id.). The Company has listed specific power supply mitigation efforts that it has undertaken and has provided specific dates for the divestiture process (Exh. FGE-2, Tab I at A1.1-A2.5). The Company states that the proceeds of the sales will be used to reduce, or mitigate, the amount of transition costs and in turn reduce the access charge via a residual value credit and through a reconciliation account (Exh. FGE-1, Tab E, Exhibit 1, at 3-4; Company Brief at 25; Tr. 1, at 19-20, 40).

The Company's Plan provides that the variable component of the access charge be adjusted through a Reconciliation Adjustment in which differences, whether positive or negative, between the Company's estimated variable costs and the actual variable costs will be accumulated in an account and reconciled annually (Exh. FGE-1, Tab E, Exh. 1, at 4). In addition, the Company is selling its nitrogen oxide allowances to mitigate transition costs (Exh. FGE-1, Tab D at III.3).

b. Analysis and Findings

The Act requires that companies take all reasonable steps to mitigate their transition costs and encourages them to divest their generating assets. St. 1997 c. 164, § 193 (G.L. c. 164, §§ 1A, 1G). The Act further provides that the Department may allow a distribution company to recover its transition costs if it divests its generating assets, mitigates its transition costs, and complies with other important provisions of the Act. St. 1997 c. 164, § 193 (G.L. c. 164, § 1G(b)(1)). The Department finds that the Company has taken adequate steps to mitigate transition costs. Fitchburg's divestiture process included the issuance of a solicitation to 375 prospective bidders and to 18 companies that also expressed an interest. One bid was received for the divestiture of Fitchburg's interest in New Haven Harbor Station. On November 20, 1998, Fitchburg submitted for the Department's approval its purchase and sale agreement for the divestiture of its percentage interest in the New Haven Harbor Station, D.T.E. 98-121. Based on our review of the record and the foregoing, the Department finds that the Company is committed to full mitigation of its transition costs by demonstrating its intent to sell or auction its generating assets and PPAs. Therefore, the Plan complies with the Act. The Department will determine whether the Company has maximized the level of mitigation, as required by the Act, once the results of the divestiture of generation resources have been submitted by the Company for Department review. St. 1997 c. 164, § 193 (G.L. c. 164, § 1G(d)(1)).

However, the Department finds that one aspect of the Company's proposal, i.e., to deduct net standard offer service administration and operational costs (for the period from the Retail Access Date through the divestiture date) from the proceeds of the sale of the Company's generating portfolio, requires modification (Exh. FGE-1, Tab E, Exhibit 1, at 3). The Department determines that the costs of providing standard offer service and the recovery thereof, and the proceeds from the Company's divestiture are two separate

issues. The Department maintains that adjustments concerning the recovery of standard offer service costs must be made only through a standard offer service reconciliation mechanism. The Department has determined that the Residual Value Credit should not be adjusted to include reconciled standard offer service revenues and costs. The Company explained that its proposal to deduct reconciled standard offer service revenues and costs from the divestiture proceeds was inadvertent and that it would revise the proposed plan accordingly (Tr. 2, at 115-118). Based on the foregoing, the Department hereby directs the Company to exclude reconciled standard offer service revenues and costs from any adjustments made to the Residual Value Credit. Pursuant to the Department's directives with respect to the approval of the standard offer supply contract with Constellation, the Department notes that the standard offer retail and wholesale prices will be equal and the contract will take effect the first day of the month following the contract's approval, which is contained in this Order. Therefore, in the event that the Company is unable to recover net standard offer service administration and operational costs for the period from the Retail Access Date through effective date of the Constellation contract, the Company may recover those costs through its STS reconciliation mechanism.

With respect to Reconciliation Account adjustments, the Department understands that Reconciliation Account adjustments to the access charge shall not cause the access charge to exceed 2.42 cents per KWH, and that the Company will continue to maintain compliance with the provisions of the Act with respect to the 10 percent rate reduction and the 15 percent rate reductions in 1998 and 1999, respectively.

Finally, the Act requires a total rate reduction of 15 percent by September 1, 1999. St. 1997 c. 164, § 193 (G.L. c. 164, § 1B(b)). Based on our review of the record, the Department finds that the Company's mitigation plan shows the potential to achieve such a rate reduction by the required date, and therefore that the Plan is consistent with and substantially complies with the Act on this point. The Department will review the results of the Company's mitigation efforts to determine whether they will result in the required rate reduction by the stated date, or whether other measures specified in the Act also will be required.

In light of the above considerations, and noting that the Company's mitigation efforts are already well under way, pursuant to G.L. c. 164, § 1G(b)(1), the Department authorizes the Company to collect an access charge for net non-mitigable past investments that are classified as transition costs, subject to reconciliation based on the rates proposed in the Company's Plan as modified in accordance with the directives in this Order.

L. Other Issues

- Demand-Side Management ("DSM")

a. The Act

The Act directs the Department to require a mandatory charge per KWH for all electricity customers (except those of municipal light plants) to fund energy efficiency activities,

including DSM, in amounts not to exceed the following: 3.3 mills ($0.00330), 3.1 mills, 2.85 mills, 2.7 mills, and 2.5 mills per KWH in the years 1998 through 2002, respectively. St. 1997, c. 164, § 37 (G.L. c. 25, § 19).

b. The Plan

The Company's Plan includes funding for energy efficiency programs (Exh. FGE-1 at Tab D, page VI.1). The Company proposed to finalize the energy efficiency programs and

budgets prior to filing its Five Year Energy Efficiency Plan; however, it proposed to include in its Five Year Energy Efficiency Plan programs such as residential low-income, customer education, and new construction (id. at VI.5, VI.7). On May 1, 1998, the Company filed its Five Year Energy Efficiency Plan, which maintains and continues the development of existing programs (Company Brief at 45; Fitchburg Gas and Electric Light Company, D.T.E. 98-49 (pending)). No party commented on the Company's energy efficiency programs.

c. Analysis and Findings

The Act directs the Department to require a mandatory charge as outlined above to fund energy efficiency activities. The Company's Plan provides for the energy efficiency charge at the levels required in the Act. Thus, the Department finds that the Company's plan for funding energy efficiency complies with the Act. The specifics of program design and program budgets will be resolved within the Company's Five Year Energy Efficiency Plan, D.T.E. 98-48.

- Renewable Resources

a. The Act

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

(G.L. c. 25, § 20(c)). In addition, the Act provides for the continuation of net metering, for on-site generation or cogeneration facilities, including renewable facilities, of 60 KW or less (G.L. c. 164, § 1G(g)).

b. The Plan

The Plan includes proposed funding levels that conform to the Act's mandate to fund renewable resource programs (Exh. FGE-1, at VI.1). The Plan states that the revenues generated by renewable resource programs would be deposited in the Fund and administered by the MTPC (id.). No party commented on the Company's proposal for renewable resources.

c. Analysis and Findings

The Company has proposed a mandatory charge per KWH in compliance with the Act. Therefore, the Department finds that the Company's Plan for renewable resource programs complies with the Act.

3. Impact on Employees and Communities

- The Act

The Act requires that all plans include discussions about how the company's employees and the communities served by the company would be affected. St. 1997, c. 164, § 193 (G.L. c. 164, § 1A(a)).

b. The Plan

The Company states that it provides electric restructuring information to employees in the form of meetings, training, updates in the employee newsletter, written guides, and a Company "intranet" (Exh. FGE-1, at VIII.1). Although the Company is in the process of consolidating and centralizing its customer service and credit functions, and union employees may be affected through relocation, Fitchburg contends that there will be no reduction in the number of jobs as a result of this Plan (id. at VIII.2). Similarly, Fitchburg anticipates no reduction in personnel as a result of Company-wide restructuring (id.).

Fitchburg claims that it is educating customers on the restructuring of the electric industry through consumer guides and newsletters, Unitil's web site, a toll-free information line, participation in DOER's Consumer Education Task Force, press releases, and local media interviews (id. at VII.3). Fitchburg maintains that these efforts will ensure that consumers have available the necessary information to make informed decisions (id.). No party commented on the Company's efforts to address the impact on employees and communities.

c. Analysis and Findings

The Company presented a detailed plan for addressing customer and employee concerns regarding restructuring and its effects. Therefore, the Department finds that the Plan regarding its effects on the Company's employees and the community it serves is in compliance with the Act.

VII. CONCLUSION

Upon review, the Department has determined that after compliance with directives contained herein, those portions of the Plan governed by G.L. c. 164 substantially comply or are consistent with the Act. Specifically, the Plan includes provisions relating to (1) the estimate and detailed accounting of total transition costs eligible for recovery; (2) a description of the Company's strategies to mitigate transition costs; (3) unbundled prices or rates for generation, distribution, and other services; (4) charges for the recovery of transition costs; (5) programs to provide universal service for all customers; (6) procedures for ensuring direct retail access to all electric generation suppliers; and (7) the effect of the Plan on the Company's employees and the communities served by the Company. In addition, the Department finds that the mandatory charge per KWH for all consumers to support energy efficiency activities, including DSM and the development and promotion of renewable energy projects strictly complies with the Act.

Therefore, the Department finds that the Plan substantially complies or is consistent with G.L. c. 164 and is in full compliance with other provisions of the Act. Accordingly, the Department hereby approves the Plan and allows it to be implemented. Further, upon approval of the Company's compliance filing, the Department authorizes the Company to collect an access charge as specified in the Act, according to the formulas embodied in the Plan, as modified. This authorization is contingent upon the Company's commencement of actual mitigation efforts, and subject to reconciliation as specified in the Act.

VIII. ORDER

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

ORDERED: That tariffs M.D.T.E. Nos. 1 through 20, filed by Fitchburg Gas and Electric Light Company, which would apply to electric service consumed on or after the date of this Order be and hereby are DISALLOWED; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company shall design and file tariffs in compliance with this Order; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company shall comply with all other orders and directives contained herein; and it is

FURTHER ORDERED: That the new rates shall apply to electricity consumed on or

after the date of this Order, but unless otherwise ordered by the Department, shall not become effective earlier than seven (7) days after they are filed with supporting data demonstrating that such rates comply with this Order.

By Order of the Department,

_____

Janet Gail Besser, Chair

_____

James Connelly, Commissioner

_____

W. Robert Keating, Commissioner

_____

Paul B. Vasington, Commissioner

_____

Eugene J. Sullivan, Jr., Commissioner

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

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

1. Chapter 164 of the Acts of 1997, is entitled "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein."

2. In addition, the Department approved a settlement of the Massachusetts Electric Company ("MECo") Restructuring Plan, D.P.U. 96-25, on February 26, 1997, and an amendment of its restructuring plan on July 14, 1997, D.P.U. 96-25-A. On December 23, 1997, the Department issued an Order finding that the settlement previously approved by the Department substantially complies or is consistent with the Act, D.P.U./D.T.E. 96-25-B, and approved MECo's compliance filing on January 20, 1998. The Department approved a settlement of the restructuring plan of Eastern Edison Company,

D.P.U./D.T.E. 96-24, on December 23, 1997. On January 20, 1998, the Department approved its compliance filing. The Department also approved a settlement of the restructuring plan of Boston Edison Company, D.P.U./D.T.E. 96-23, on January 28, 1998. The Department approved Boston Edison's compliance filing on February 27, 1998; the Order is on appeal before the Supreme Judicial Court of the Commonwealth. On February 20, 1998, the Department issued an Initial Order approving, subject to review and reconciliation, the restructuring plan of Western Massachusetts Electric Company, D.T.E. 97-120. On February 27, 1998, the Department approved the restructuring plan of Cambridge Electric Light Company, Commonwealth Electric Company and Canal Electric Company, D.P.U./D.T.E. 97-111 (1998).

3. USC provides management and support services to Fitchburg (Motion for Exemption at 1).

4. The Department notes that the Company has entered into non-disclosure agreements with parties seeking access to the information for which the Company has moved for protective treatment.

5. USC provides management and support services to all of the Unitil Companies. Unitil Resources, Inc., provides energy-related products and services in the competitive market (Motion for Exemption at 1).

6. Unitil Corporation also owns and operates two New Hampshire electric distribution companies (Concord Electric Company ("CECo") and Exeter & Hampton Electric Company ("E&H")). Unitil's other subsidiaries include Unitil Power Corporation, a public utility that provides wholesale power to CECo and E&H; and Unitil Realty Corp., which owns and leases Unitil's headquarters facility (Motion for Exemption at 1).

7. Moreover, the issue of anticompetitive effect is not resolved by Fitchburg's or URI's small share of the overall market. It is the distribution company's monopoly in its own service territory that gives rise to concerns about competition, not the relative size of that monopoly compared to others.

8. MECo increased its standard offer generation price on September 8, 1998.

9. The Plan includes an external transmission charge of 0.394 cents per KWH to recover Fitchburg's cost of providing electricity to its service territory (Tr. 1, at 59-60). Customers would be credited this amount if they received service from an alternative supplier and that supplier provided such transmission service (Exh. FGE-1, Tab D at IV.4; Tr. 3, at 88). This charge would be one component of the Company's total transmission charge (Exh. FGE-1, Tab D at IV.3).

10. In Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 98-78/83, at 10-11 (1998), the Department noted that "[a]n open, rational, transparent,

and fairly managed auction tests the market for, and value of, an asset at the time of the offering. The bid results of such a market test under proven fair conditions are strong evidence of an asset's worth." Similarly, an unconstrained auction for the provision of a service is the best way to determine the market-based cost of that service.

11. The RFQ listed the prices that Fitchburg would pay potential suppliers, minus any bid discounts for all energy delivered to standard offer service customers (Exh. FGE-2, Tab J at 3).

12. This filing has been docketed as D.T.E. 98-120, and on the Department's own motion, is hereby consolidated.

13. On December 15, 1998, the Company informed the Department that, if approved, Constellation would implement the terms of the standard offer service contract on the first day of the calendar month following the approval.

14. We note that even when retail and wholesale prices are the same, our approval of Fitchburg's auction with capped bid prices may result in standard offer prices that do not equal market-based supply costs.

15. We acknowledge that the Act prescribes a limited time-period for recovery of fixed transition costs, which may necessitate a change to Fitchburg's recovery schedule for variable transition costs only. St. 1997, c. 164, § 193 (G.L. c. 164, § 1G(b)(3)(d). To the extent that Fitchburg needs to borrow money to pay its purchased power agreement obligations as part of the variable transition costs, the Department will entertain such a request.

16. This is in fact illustrated by the Company's proposed purchase and sale agreement for the divestiture of its percentage interest in the New Haven Harbor Station, D.T.E. 98-121, only one of the assets in Fitchburg's generation portfolio.

17. The higher standard offer generation price should not impede the imposition of the fuel adjustment trigger as outlined in Exhibit FGE-2, Tab G at M.D.T.E. No. 17.

18. The Department notes that on December 17, 1998, FERC issued an order conditionally accepting market rules, and conditionally approving market-based rates that will allow NEPOOL and the ISO to establish a competitive market for energy products (NEPOOL Nos. OA97-237-000, ER97-1079-000, ER97-3574-000, OA97-608-000, ER97-4421-000, ER98-499-000, ER98-3568-000, ER99-387-000). The Department will be opening a generic proceeding on default service pricing shortly and anticipates establishing default service pricing on a schedule consistent with the availability of ISO market information.

19. These are initial charges that will be adjusted annually by an internal transmission service cost adjustment (Exh. FGE-2, Tab G at M.D.T.E. No. 14). Any change in the factor will be filed with the Department for review (id.).

20. The Department addresses the appearance of certain rates in bills, below.

21. The Department has opened docket D.T.E. 98-124, an investigation into expansion of the eligibility requirements for the low income rate.

22. In the case on Fitchburg's EBDS Rate, the Company indicated that the fixed demand cost was set to recover its fixed power supply costs in addition to wholesale capacity and energy costs. The Company defined these additional costs as transmission, services provided by NEPOOL, supply management and administrative services. D.P.U. 95-75, at 5-6, n.4. Therefore, retaining this charge by applying part of it to the external transmission charge and the remainder to the access charge appears reasonable.

23. The charge is $0.00819 per KWH for Residential Rates RD-1 and RD-40; $0.00492 for Residential Rate RD-2; $0.00932 per KWH for Commercial Rates GD-1, GD-2, GD-4, and GD-6; $0.00710 per KWH for Industrial Rates GD-3 and EBDS; and $0.00766 per KWH for Lighting Rate SD (Exh. FGE-2, Tab G, at M.D.T.E. No. 12).

24. The Company states that the SAS was designed on the basis of a levelized calculation of total amortization, total carrying costs and total taxes, so that the relative portions attributable to each component are fixed. Net amortization costs are equal to SAS revenues multiplied by 19.82 percent. Income taxes are equal to the SAS revenues multiplied by 38.57 percent. Carrying charges are equal to the SAS revenues multiplied by 41.61 percent (Exh. AG-2-5-B, D, Att. at 1, 2; Tr. 4, at 76-82). These ratios vary slightly depending on the actual tax rate in a given year (Tr. 4, at 81). The unrecovered Seabrook balance is determined by subtracting the net amortization costs from the previous year's balance (net of any adjustments) (Exh. AG-2-5-B, D, Att. at 1, 2; Tr. 4, at 76-82).

25. This amount was revised downward in 1987 to $1,234,919 to reflect the Seabrook sale and tax adjustment.

26. The Company should indicate to the Department if the carrying charge amount should be revised because of the adjustments in the last column of the attachment to Exhibit AG-2-5-D.

27. The Act requires the Department to conduct a comprehensive audit of all electric companies' transition costs. St. 1997, c. 164, § 193 (G.L. c. 164, § 1G).

28. The Act requires a comprehensive audit of Fitchburg to be completed by December 31, 1998. The draft audit report has been completed and submitted to the Department for review. Before approval of the audit, the Department will provide an opportunity for comments on its contents. That schedule will be announced shortly. St. 1997 c. 164, § 193 (G.L. c. 164, § 1G(a)(1)).

29. Such payments can also be viewed as mitigation of transition costs, when considered together with reductions in minimum payments under PPAs.

30. All calculations of the Company's stranded costs assume a discount rate of 9.05 percent, the Company's weighted average cost of capital.

31. Fixed costs include generation-related investments and regulatory assets (Exh. FGE-1, at 3). Variable costs include amounts related to nuclear entitlements, PPAs, and decommissioning and related post-shut down obligations (id. at 4-5).

32. The unamortized ITC balance as of December 31, 1996 was $187,000; this figure is used in the Attorney General's calculations.

33. A FAS 109 liability arises when a corporation has recovered insufficient deferred income taxes to cover the amount that it expects to pay out in the future at current income tax rates. A corporation can also record FAS 109 assets as the result of over-collections of deferred income taxes. The net liability amount that a corporation must then record in its books results from the recognition of any deferred income tax deficiency (Tr. 4, at 22-23).

34. This amount is the balance as of March 1, 1998.

35. The Department's directives concerning the standard offer prices will have no effect on the mitigation incentive, as revised. Instead, the mitigation incentive will be a function of actual mitigation only, and not reductions to the access charge due to the increase in standard offer prices.