D.T.E. 98-100

Investigation by the Department of Telecommunications and Energy on its own motion to establish methods and procedures to evaluate and approve Energy Efficiency Programs, pursuant to G.L. c. 25, § 19 and c. 25A, § 11G.

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ORDER PROMULGATING FINAL GUIDELINES TO EVALUATE

AND APPROVE ENERGY EFFICIENCY PROGRAMS

I. INTRODUCTION

On January 8, 1999, the Department of Telecommunications and Energy ("Department") voted to open a notice of inquiry/generic proceeding to establish methods and procedures to evaluate and approve energy efficiency programs, pursuant to G.L. c. 25, § 19, and c. 25A, § 11G. NOI - Energy Efficiency Cost-Effectiveness, D.T.E. 98-100, Order Instituting a Notice of Inquiry/Generic Proceeding to Establish Methods And Procedures to Evaluate and Approve Energy Efficiency Programs at 19 (1999) ("NOI"). Specifically, the Department indicated that it intended to address four broad issues in this investigation: (1) the process by which the Department will review energy efficiency programs pursuant to G.L. c. 25, § 19, and c. 25A, § 11G; (2) the criteria that the Department will employ to determine whether a proposed energy efficiency program is cost-effective; (3) the monitoring and evaluation of savings that result from implementation of energy efficiency programs in order to determine program cost-effectiveness; and (4) the shareholder incentives that are included in energy efficiency plans. NOI at Att. II.

Following the issuance of the NOI, the Department conducted a procedural conference and a series of technical sessions concerning the processes and procedures the Department would use to evaluate and approve rate-payer funded energy efficiency programs as cost-effective. At the conclusion of those sessions, the Department invited interested persons to submit comments -- jointly or singly -- concerning any or all of the issues identified and addressed either in the NOI or during the technical sessions.

After consideration of the many comments received, on November 3, 1999, the Department promulgated, for further comment, proposed guidelines for the methods and procedures for the evaluation and approval of energy efficiency programs ("Proposed Guidelines").[(1)] NOI - Energy Efficiency Cost-Effectiveness, D.T.E. 98-100 Order Promulgating Proposed Guidelines at Att. I (Nov. 3, 1999) ("November Order"). The following interested persons submitted timely comments regarding the Proposed Guidelines: a group of 14 natural gas and electricity distribution companies ("Utility

Group");[2] the Cape Light Compact ("CLC"); the Conservation Law Foundation ("CLF"); the Division of Energy Resources ("DOER"); the National Consumer Law Center, Inc. on behalf of the Low-Income Fuel Assistance and Weatherization Network ("NCLC"); the Northeast Energy Efficiency Council ("NEEC"); and the Northeast Energy Efficiency Partnerships, Inc. ("NEEP").

In this Order, the Department reviews the issues raised by the commenters and promulgates the final Guidelines for the Methods and Procedures for the Evaluation and Approval of Energy Efficiency Programs ("Final Guidelines"), included as Attachment I to this Order. As we have previously noted, the Department intends these Final Guidelines to constitute a uniform set of administrative policies and procedures that we will use to assess energy efficiency program cost-effectiveness.[4] NOI at 2 n.5 and Att. II; November Order at 6-7. Accordingly, we expect that all program administrators will use these Final Guidelines as they prepare their forthcoming energy efficiency program filings for our review.

II. THE DEPARTMENT'S FINAL GUIDELINES

A. Introduction

The Department's Final Guidelines include the following six sections: (1) Purpose and Scope; (2) Definitions; (3) Criteria for Establishing Program Cost-Effectiveness; (4) Monitoring and Evaluation of Energy Efficiency Programs; (5) Shareholder Incentives; and (6) Department Review of Energy Efficiency Programs. The Department addresses these sections below, focusing on issues within each section that were raised by commenters.

B. Purpose and Scope

The Proposed Guidelines state that

The Department intends that the policies, methods and procedures provided in these Guidelines will be utilized to review and approve all Energy Efficiency Programs . . . . While an entity seeking the Department's approval of a proposed Energy Efficiency Plan will not be precluded from requesting that an alternate policy, method or procedure be utilized by the department due to entity-specific circumstances, the burden will be on that entity to demonstrate the compelling nature of such a request.

Proposed Guidelines at § 1(2). The Utility Group proposes that this language be revised so as to allow approval of energy efficiency plans that use policies, methods, or procedures that differ modestly from those established in the Guidelines, provided that such Plans are part of "a broadly-supported settlement agreement which, taken in its entirety, is in the public interest" (Utility Group Comments at 9). The Utility Group states

that its proposed revision would promote continued collaboration among interested parties (id.).

The Department continues to encourage collaboration among interested parties that results in broadly-supported settlement agreements that are in the public interest. However, the Department does not believe that the language included in Section 1(2) of the Proposed Guidelines needs to be revised in order to accommodate these settlement agreements. Instead, the Department considers it appropriate to require parties to such agreements to demonstrate the reasonableness of any proposed policies, methods, or procedures that differ from those established in the Final Guidelines. Therefore, the Final Guidelines provide that the burden will be on the applicant to demonstrate that such a request should be granted.

C. Definitions

1. Issues Raised by Commenters

NCLC proposes a revision to the definition of low-income customers in the Proposed Guidelines, which states that low-income customers are those customers that are eligible to receive services from a distribution company under its low-income tariff or the equivalent. See Proposed Guidelines at § 2(8). NCLC states that this definition is unduly narrow in that it would exclude "households that, for reasons related to housing status (e.g., public housing status) or other mitigating income circumstances, are not eligible to receive service" under a low-income tariff (NCLC Comments at 4). NCLC proposes that the definition of eligible low-income customer be expanded to include "other target populations agreed upon by the Distribution Companies and the Low-Income Energy Affordability Network" (id.).

2. Analysis and Conclusions

The Department notes that the eligibility criteria for the low-income rate is established both in the Restructuring Act and in 220 C.M.R. §§ 11.00 et seq., the Department's electric industry restructuring regulations. NCLC has suggested that the Proposed Guidelines' definition of low-income customers is too narrow. However, NCLC has not provided enough detail in its comments to demonstrate how the definition should be changed. Accordingly, rather than change the definition of low-income customers in the Final Guidelines, the Department will consider an alternative definition, and the reasons for it, when it is proposed in the context of a specific energy efficiency program filing. See Final Guidelines at § 1(2).

D. Criteria for Establishing Program Cost-Effectiveness

1. Introduction

The Proposed Guidelines establish two categories of benefits and costs that should be included in cost-effectiveness analyses of energy efficiency programs: those benefits and

costs associated with the energy system, and those associated with program participants. Proposed Guidelines at § 3. The Proposed Guidelines identify five categories of energy system benefits: (1) avoided electric generation and gas supply costs; (2) avoided transmission costs; (3) avoided distribution costs; (4) avoided future environmental compliance costs; and (5) low-income benefits. Id. at § 3.3.2. In addition, the Proposed Guidelines identify two categories of program participant benefits: (1) participant non-resource benefits; and (2) participant resource benefits. Id. at § 3.3.3. Commenters raised issues associated with the environmental and economic benefits, low-income benefits, and participant non-resource benefits that may be included in cost-effectiveness analyses. The Department addresses these comments below.

2. Environmental and Economic Benefits

a. Introduction

In our November Order, the Department rejected a proposal that called for the inclusion of a broad range of environmental and economic benefits that are not taken into account when calculating avoided electric generation or gas supply, transmission, and distribution costs. November Order at 12-16. The Department stated that, consistent with our role as a rate regulator, our primary function is to ensure that the rates charged to electric and gas distribution company customers are just and reasonable. Id. The Department cited a series of decisions related to electric industry restructuring, in which we (1) carefully articulated a policy delineating the respective responsibilities of our agency and the environmental regulatory agencies, and (2) pledged to support and further the goals of environmental regulation, within the bounds of our statutory authority, through closer coordination among economic and environmental regulators. Id. at 14-15, citing NOI - Electric Industry Restructuring, D.P.U. 96-100 Model Rules and Legislative Proposal at 156 (1996) and NOI - Electric Industry Restructuring, D.P.U. 95-30, at 25-27 (1995). The Department also noted that the General Court did not direct economic or environmental regulators to act in each other's arenas, but to coordinate and consult. Id. at 15. Based on this analysis, the Department adopted a Total Resource Test, which includes only those program implementation benefits and costs that are directly incurred by distribution companies and program participants.[(5)] Consistent with the use of the Total Resource Test, the Proposed Guidelines allow for the inclusion of those environmental benefits that are related to environmental compliance costs that are reasonably projected to be incurred in the future because of rules and/or regulatory requirements that are not currently in effect, but which are projected to take effect in the foreseeable future. Proposed Guidelines at § 3.3.2(d).

b. Issues Raised by Commenters

Six commenters argue that the Department's Final Guidelines should allow for the inclusion of environmental, economic, and low-income benefits that result from the implementation of energy efficiency programs in the cost-effectiveness analyses of these programs (DOER Comments at 1-8; NEEC Comments at 2-4; NEEP Comments at 1-5; NCLC Comments at 2-6; CLF Comments at 1-2; CLC Comments at 2-12). Consistent

with this, these commenters recommend that the Department adopt the Societal Test, rather than the Total Resource Test, in evaluating the programs' cost-effectiveness (id.).

These commenters use five principal arguments to support their case. First, these commenters state that inclusion of these benefits would be consistent with one of the specified goals of the Act, viz environmental protection (id., citing St. 1997, c. 164, § 1 (uncodified but appearing as a historical and statutory note at G.L. c. 164, § 1A (West supp. 1999)). DOER, CLF, and NEEP maintain that, if the Department's Guidelines do not allow for the inclusion of environmental benefits, the legislature's mandate to enhance environmental protection goals would be frustrated (DOER Comments at 7; CLF Comments at 2; NEEP Comments at 3-5). DOER argues that the Act legally obligates the Department to consider the environmental benefits of energy efficiency programs when determining energy efficiency program cost-effectiveness (DOER Comments at 6-7).

Second, DOER, NEEP, NEEC, and CLC contend that use of environmental (and other) benefits is consistent with the Supreme Judicial Court's holding in MECo v. DPU[(6)] because such inclusion (1) would not result in higher rates, given the fixed funding levels for energy efficiency programs under the Act, and (2) would not hold electric generation to a higher environmental standard than that established by environmental regulators (DOER Comments at 3-5; NEEP Comments at 2; NEEC Comments at 2-3; CLC Comments at 8-10).

Third, DOER contends that the implementation of energy efficiency programs provides environmental and economic benefits that should be accounted for in cost-effectiveness analyses because these benefits are real and significant (DOER Comments at 2-3, 7-8). DOER restates the economic benefits enumerated in its first-round comments: increased employment, economic multiplier effects, downward pressure on energy prices, and reduced energy imports (id. at 2). NEEP adds that energy efficiency programs mitigate the risks of major energy price increases and supply disruptions (NEEP Comments at 5). DOER and NEEP reiterate that energy efficiency avoids air pollution emissions, such as "greenhouse gas" emissions, which would have value for society through the resulting improvement in air quality (DOER Comments at 7-8; NEEP Comments at 4).

Fourth, NEEC and CLC state that the Department's rejection of environmental adders is contrary to the advice of DEP, and thus would be inconsistent with the Department's recognized need to coordinate, consult, and seek the advice of that environmental agency (NEEC Comments at 3; CLC Comments at 4). CLF and CLC add that the rejection of environmental and economic benefits is also contrary to the advice of another state agency, DOER (CLF Comments at 2; CLC Comments at 4-5). CLF urges the Department to support DOER's mandate to meet statewide energy efficiency goals, beginning with the overall goal to "protect the environment and strengthen the economy" (CLF Comments at 2).

Fifth, DOER claims that without consideration of environmental and economic benefits, many programs targeted at residential and low-income customers will not pass the cost-effectiveness screening test, resulting in proposals by program administrators to allocate

most energy efficiency funds to commercial and industrial customer classes, where benefits are typically higher relative to costs than for residential classes (DOER Comments at 8). DOER argues that this type of disproportionate allocation would violate the provision of the Restructuring Act that calls for equitable allocation of funds among customer classes (id. at 8, citing G.L. c. 25A, § 11G). As a case in point, CLC adds that certain energy efficiency programs, including fuel switching, designed to help residential customers on the Cape who cope with high heating bills in uninsulated homes by "going cold" and/or by running up large arrearages before a spring shut-off, appear to be far less cost-effective without the inclusion of environmental and economic adders than under the other two tests considered by the Department (CLC Comments at 3).[(7)]

Finally, CLC, a municipal aggregator, urges the Department to authorize use of the Energy System Test,[(8)] in the event the Department does not adopt the Societal Test (CLC Comments at 8). CLC argues that the Energy System Test is fairer than the Total Resource Test and easier to administer (id.). The CLC notes that, as a municipal aggregator governed by G.L. c. 164, § 134(b), it has broad discretion to deliver energy efficiency measures consistent with any state energy conservation goals, so long as the measures do not violate Massachusetts law (id. at 11-12). CLC then states that it, as a municipal aggregator, could use adders, even if regulated investor-owned utilities do not, because adders that account for environmental, economic, and low income benefits do not violate Massachusetts law and are consistent with state energy conservation goals as interpreted by DOER (id. at 12).

c. Analysis and Conclusions

The Department concludes that, with the exception of the effect of our Proposed Guidelines on programs targeted at residential and low-income customers, the issues raised by commenters were sufficiently addressed in our November Order. Therefore, the Department will not further address these issues in this Order. With respect to programs targeted at residential and low-income customers, the Department supports the equitable allocation of energy efficiency funds to programs serving these customer classes, as required by G.L. c. 25A, § 11G. However, the objective of equitable allocation of energy efficiency funds can be achieved in concert with the objective of ensuring that these funds are expended in a cost-effective manner (i.e., that the benefits from such expenditures exceed the costs). The Department notes that, as described above, the Total Resource Test allows for the inclusion of three categories of benefits that should address the concerns expressed by commenters: (1) benefits associated with future environmental compliance costs; (2) program participant benefits; and (3) low-income benefits to the energy system. The Department concludes that the implementation of those programs that are not shown to be cost-effective using the Total Resource Test are not in the best interest of ratepayers. Accordingly, the Department reiterates our conclusion that the Total Resource Test is appropriate for determining the cost-effectiveness of energy efficiency programs.

Finally, the Department considers the issue raised by CLC: that municipal aggregators should be able to use different criteria for evaluating program cost-effectiveness than the

criteria used by distribution companies, when the Department considers a municipal aggregator's energy plan that asks for such treatment. The Department notes that a primary objective of this proceeding is to establish guidelines that would apply equally to all administrators of energy efficiency programs. We see no reason to create, a priori, a standing exception for municipal aggregators with respect to this issue. The Final Guidelines provide that an entity that seeks approval of an alternate policy, method or procedure bears the burden of demonstrating that such a request should be granted. Thus, CLC (and any other municipal aggregator) remains free to seek application of a differing cost-effectiveness assessment method in an appropriate case.

3. Low-Income Benefits

a. Introduction

In our November Order, the Department recognized that there are energy system and program participant benefits that result from the implementation of programs targeted at low-income customers. November Order at 25-26. However, the Department rejected a proposal that called for the inclusion of a generalized adder to account for these benefits. Id. Instead, the Proposed Guidelines call for distribution companies to identify those benefits specific to their own systems. Id. In addition, the Department stated that "specific, quantifiable, and significant" benefits that accrue to low-income program participants should be included in the cost-effectiveness analyses of these programs. Id.

b. Issues Raised by Commenters

NEEC and NCLC contend that specific low-income benefits are subject to substantial uncertainty in measurement, as are price forecasts, making the cost of documenting them on a case-by-case basis high (NEEC Comments at 4; NCLC Comments at 2-3). NCLC, NEEC, and the Utility Group note that the Department, in its November Order, endorsed the use of savings evaluation studies that would be jointly implemented by utilities, as a means of minimizing administrative costs (NCLC Comments at 3). Consistent with this, NEEC and the Utility Group recommend that the Department state that, where territory or program specific data on specific benefits is not directly available, joint studies or other analogous research data and analyses be used to reasonably document that the benefits are known and quantifiable (NEEC Comments at 4; Utility Group Comments at 9-10). NCLC additionally recommends that a generic low-income adder, at the level proposed by the Joint Commenters in the first round of comments, be used on an interim basis for low-income benefits until relevant studies are completed (NCLC Comments at 3).

c. Analysis and Conclusions

The Department restates our conclusion that the most appropriate way to account for low-income benefits is for each distribution company to identify the benefits specific to its system. However, as an interim solution, where company-specific information has not yet been compiled regarding low-income benefits, the Department considers it acceptable for companies to use joint studies or other analogous research data to reasonably document

and quantify the level of these benefits. The Department expects the studies used, and any adaptation of them, to be reviewable, appropriate, and sufficiently unbiased.

4. Participant Non-Resource Benefits

a. Summary of Proposed Guidelines

The Proposed Guidelines state that program participant non-resource benefits should account for those benefits that are specific to program participants, as well as to people reached in the target markets for those programs that target markets. Proposed Guidelines at § 3.3.3. The Proposed Guidelines also provide that such non-resource benefits should include factors such as, but not limited to, a reduction in operation and maintenance costs, the value of longer equipment replacement cycles, productivity improvements, and reduced environmental and safety costs. Id.

b. Issues Raised by Commenters

Four commenters claim that the provision in the Department's Proposed Guidelines that calls for the identification and quantification of program-specific benefits will be difficult to implement. (DOER Comments at 8; Utility Group Comments at 9-10; NCLC Comments at 2-3; NEEC Comments at 4). DOER maintains that the high costs associated with identifying and quantifying these environmental, economic, and low-income benefits will discourage program administrators from doing so, with the result that the benefits will be overlooked, resulting in the potential deletion of cost-effective programs (DOER Comments at 8).

c. Analysis and Conclusions

The Department's intention regarding participant non-resource benefits was to ensure that these relevant benefits be quantified and included in cost-effectiveness analyses. The Department is persuaded by the comments that the provisions in the Proposed Guidelines may unintentionally result in distribution companies incurring unnecessarily high administrative costs in attempting to quantify these benefits. The Department concludes that program administrators should generally use existing research data and analyses of the benefits of energy efficiency program, adapting them if necessary to their service territories or programs, to quantify and document benefits to themselves and program participants. In cases where relevant studies do not exist, the Department encourages program administrators to undertake these studies jointly when it is appropriate and cost-effective to do so. The Department recognizes the uncertainty that exists in estimates of non-resource benefits from energy efficiency programs that accrue to program participants, as we recognize the uncertainty inherent in forecasts of price and load and in estimates of energy savings. The Department will not hold estimates of known, quantifiable, and significant non-resource benefits to a higher standard of certainty than other estimates, but will require that they be appropriate and sufficiently unbiased, and directs program administrators to make an appropriate trade-off between benefits and costs in seeking accuracy.

E. Market Transformation Programs

1. Summary of Comments

NEEP and CLF raised issues that were specific to market transformation programs. NEEP stated that the Department's Proposed Guidelines were unclear regarding the savings that should be included in the cost-effectiveness analyses for these programs and recommended that the Final Guidelines explicitly state that cost-effectiveness analyses for market transformation programs should include benefits to both program participants and non-participants, by estimating savings based on the projected market response to the program (NEEP Comments at 7). CLF raised an objection to the statement included in the Proposed Guidelines to the effect that market transformation programs, while receiving due emphasis, should not comprise an unduly large proportion of a portfolio of energy efficiency programs (CLF Comments at 3-4). CLF recommended that this statement be removed from the Final Guidelines (id.).

2. Analysis and Conclusions

NEEP has pointed out an important absence in our Proposed Guidelines. Accordingly, our Final Guidelines state that cost-effectiveness analyses for market transformation programs include benefits to identifiable program participants and to the rest of the target market reached, using savings from the estimated market response to the program. See Final Guidelines at § 4.2.1(b).

With respect to CLF's comments, the Department remains concerned that, because of the inherent and greater uncertainty concerning the results of market transformation programs, such programs should not comprise an excessive portion of the portfolio of programs contained within a particular energy efficiency plan. This, concern, however, affects program design, which is a responsibility assigned to DOER for electric ratepayer-funded programs (but not for gas); therefore, the concern is not referenced in the Final Guidelines. See NOI - Energy Efficiency Cost Effectiveness, D.T.E. 98-100 Order Promulgating Proposed Guidelines at 43 (1999).

F. Shareholder Incentives

1. Summary of Proposed Guidelines

The Department's Proposed Guidelines established a method for calculating shareholder incentives in which a distribution company that achieved its "design" performance level (i.e., the performance level that the distribution company expects to achieve) would earn a shareholder incentive equal to the product of (1) the average yield of the three-month United States Treasury bill ("T-bill"),[(9)] and (2) the direct program implementation costs.[(10)] Proposed Guidelines at § 5. Under the Proposed Guidelines, a distribution company that did not achieve at least 75 percent of its design performance level would receive no shareholder incentive, while a distribution company whose performance level

exceeded the 75 percent threshold would receive a shareholder incentive that would vary based on its actual performance level, up to 125 percent of the design performance level.

2. Issues Raised by Commenters

Many commenters took issue with the Proposed Guidelines's provision that only direct program implementation costs should be included in the calculation of shareholder incentives. These commenters maintain that all costs associated with implementing energy efficiency programs (i.e., costs associated with program development, administration, marketing, market research, and monitoring and evaluation) should be included in the calculation of shareholder incentives (Utility Group Comments at 1-2; CLF Comments at 4-5; NEEC Comments at 5-6; NEEP Comments at 5-6). These commenters argue that costs associated with program development, administration, marketing, market research, and monitoring and evaluation ("M&E") are necessary and legitimate aspects of delivering an optimal and successful program, and that the exclusion of these costs in the incentive calculation would discourage expenditure on those activities, thus decreasing the effectiveness of the programs (id.). In support of the inclusion of marketing costs, DOER asserts that marketing is essential to stimulate customer awareness and acceptance of energy efficiency programs approved by the Department (DOER Comments at 9). DOER claims that inadequate marketing efforts will compromise the viability of the program and, therefore, should be promoted by including related costs in the incentive calculation (id. at 9). In support of the inclusion of market research and M&E costs, DOER contends that these activities are essential in determining the effectiveness of a program, as well as the proper level of shareholder incentives (id. at 10). DOER claims that not providing an incentive for market research and M&E expenses may lead to an under-funded effort, to an expenditure of funds on the wrong activities, and to a shoddy program analysis, potentially skewing shareholder incentives as well as program funding (id. at 10). NEEP and the Utility Group point out that excluding marketing and market research costs would particularly deter the implementation of market transformation initiatives, in which more money is spent on marketing and education efforts, and less on direct implementation and rebates (NEEP Comments at 6; Utility Group Comments at 6). NEEP and the Utility Group state that this would be inconsistent with the Restructuring Act's mandate that the development of these programs be encouraged (NEEP Comments at 6; Utility Group Comments at 7, citing, G.L. c. 25A, § 11G (the DOER shall "seek to achieve goals including . . . (iii) [to] give due emphasis to statewide market transformation programs in order to systematically eliminate market barriers to energy efficiency goods and services.").

The Utility Group provides several other reasons for the inclusion of all costs in the calculation of shareholder incentives. First, the Utility Group contends that the exclusion of these costs would establish an inappropriate incentive for distribution companies to outsource certain services to contractors and outside vendors, even though it may be more cost-effective to use internal staff, because the costs associated with such outsourcing could be included in the shareholder incentive calculation, while costs associated with distribution company staff providing these same services could not be included in the calculation (Utility Group Comments at 4). Second, the Utility Group claims that

allowing all costs to be included ensures consistency between utility companies and discourages arguments on how costs should be categorized (id. at 7-8).

The Utility Group argues that including administration costs in the incentive calculation would not increase costs, since a company's administration budget needs to be approved by the Department in its review of a company's budget (id. at 5). The Utility Group contends that it is during the budget review process that administration costs should be scrutinized (id.). Finally, the Utility Group states that incentives for electric companies are already being substantially decreased, in addition to reducing the costs that are included in the incentive calculation (id. at 5).

The Utility Group raised a second issue with respect to the calculation of shareholder incentives, that being the appropriate interest rate that should be used in the calculation. The Utility Group advocates use of the average yield on the three-year "T-bill" [sic] in place of the three-month T-bill rate (Utility Group Comments at 8). The Utility Group claims that using the three-year T-bill rate provides a symmetry between the maturity period for the T-bill rate and the time period for the programs currently under development by the electric distribution companies (id.). The Utility Group states that on November 5, 1999, the average three-month T-bill was 5.14 percent and the average three-year T-bill rate was 5.80 percent (id.). Citing this difference, the Utility Group argues that adopting the proposed change, to the use of the three-year rate, would not result in undue bill impacts to customers (id.).

3. Analysis and Conclusions

In the November Order, the Department stated our objective of reaching a balance between (1) promoting effective programs, and (2) protecting the interest of ratepayers. November Order at 33. The commenters have brought up valid points as to why this goal would not be achieved by limiting costs that are included in the calculation of shareholder incentives. It is not the Department's intention to promote unnecessary outsourcing of services, discourage market transformation initiatives, cause undue time and resources to be spent on determining how costs should be categorized, or to promote shoddy analyses and skew program incentives. In light of the comments, the Department recognizes that these are possible outcomes resulting from the exclusion of certain costs from the incentive calculation. Therefore, the Final Guidelines provide that all costs associated with program implementation shall be included in the calculation of shareholder incentives.

The Department recognizes the importance that a program administrator's internal staff plays in the design and implementation of effective energy efficiency programs. However, program administrators still need to work to reduce administrative costs and to increase monies that are put into activities that provide direct customer benefits. To this end, during the budget review process, the Department will be able to scrutinize how a utility company designs its energy efficiency budget.

As to the interest rate to be included in the calculation of the shareholder incentive, the Department is not persuaded by the Utility Group's argument. The time period of a proposed energy efficiency plan has no bearing on how long it takes for a company to be reimbursed for its expenditures, which occurs more or less immediately. Because there is no connection between the length of the program and the reimbursement for the costs of the program, the Department finds no need to establish symmetry between the program length and the interest rate used to calculate the incentive payment. Therefore, the Final Guidelines continue to state that incentives shall be calculated using the three-month T-bill rate defined as the arithmetic average of the yields of the three-month United States Treasury bills issued during the most recent twelve-month period, or as the arithmetic average of the three-month T-bill's twelve-month high and twelve-month low.

G. Other Issues

1. Summary of Comments

NCLC claims that considering a reduction in the number of low-income rate customers a benefit of energy efficiency programs is not consistent with the Restructuring Act. According to NCLC, the Restructuring Act directs distribution companies to undertake customer outreach efforts in order to maximize the number of eligible discount rate participants (NCLC Comments at 3, citing G.L. c. 164, § 1F(4)(i)).

The Utility Group also asks the Department to clarify the Proposed Guidelines to indicate that price forecasts would normally be updated every two years rather than twice a year (Utility Group Comments at 10).

2. Analysis and Conclusions

The Department supports outreach efforts by distribution companies to maximize the number of eligible customers who use the low-income discount rate. The fifth example of Low-Income Benefits in the Proposed Guidelines was imprecise; therefore, the Final Guidelines contain four examples of such benefits.

With respect to the frequency of updates to the energy and capacity cost forecasts, the Final Guidelines call for updates every two years as a standard operating procedure.

III. ORDER

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

ORDERED: That all electric distribution companies, natural gas local distribution companies, and municipal aggregators shall comply with the terms of this Order; and it is

FURTHER ORDERED: That within seven days of the date of this Order, the Secretary of the Department shall make available a copy of this document on our Internet website, http://www.magnet.state.ma.us/dpu/catalog/5751.htm.

By Order of the Department,

_____

James Connelly, Commissioner

_____

W. Robert Keating, Commissioner

_____

Paul B. Vasington, Commissioner

_____

Eugene J. Sullivan, Jr., Commissioner

ATTACHMENT I

Guidelines for the Methods and Procedures for the Evaluation and Approval of Energy Efficiency Programs

Sections

1. Purpose and Scope

2. Definitions

3. Criteria for Establishing Program Cost-Effectiveness

4. Monitoring and Evaluation of Energy Efficiency Programs

5. Shareholder Incentives

6. Department Review of Energy Efficiency Programs

Section 1: Purpose and Scope

(1) Purpose. These Guidelines set forth the methods and procedures to be used by the Department of Telecommunications and Energy in its evaluation and approval of Energy Efficiency Programs.

(2) Scope. These Guidelines apply to all Distribution Companies and to all Municipal Aggregators that file Municipal Energy Plans for Department review.

The Department intends that the policies, methods and procedures provided in these Guidelines will be utilized to review and approve all Energy Efficiency Programs funded by either a systems benefit charge on the sales of kilowatt-hours of electricity, or by monies collected by the Natural Gas Local Distribution Companies for Energy Efficiency Programs. While an entity seeking the Department's approval of a proposed Energy Efficiency Plan will not be precluded from requesting that an alternate policy, method or procedure be utilized by the Department due to entity-specific circumstances, the burden will be on that entity to demonstrate the compelling nature of such a request.

Section 2: Definitions

(1) Department refers to the Department of Telecommunications and Energy.

(2) Distribution Company refers to a Natural Gas Local Distribution Company or Electric Company that provides distribution service under the Department's jurisdiction.

(3) DOER refers to the Division of Energy Resources.

(4) ECM refers to an Energy Conservation Measure, that is, installed equipment and/or a modification to the operation and maintenance of a building or facility and installations therein, which is designed to reduce total and/or peak energy consumption in such building or facility.

(5) Electric Company is defined as in G.L. c. 164, § 1.

(6) Energy Efficiency Plans refer to a portfolio of Energy Efficiency Programs submitted to the Department and/or DOER for review.

(7) Energy Efficiency Programs refer to programs administered by Distribution Companies and Municipal Aggregators that are intended to reduce or minimize the amount of energy required to produce a desired or given output. They include demand-side management and energy conservation services.

(8) Low-Income Customers refer to persons that are eligible to receive service from a Distribution Company under its low-income tariff or equivalent.

(9) Municipal Aggregators refer to any municipality or group of municipalities that aggregates the electric load of interested electricity consumers within its boundaries, pursuant to G.L. c. 164, § 134 (a).

(10) Municipal Energy Plans refers to energy efficiency plans filed with the Department by Municipal Aggregators pursuant to G.L. c. 164, § 134(b)

(11) Program Administrators refers to entities that administer Energy Efficiency Programs, including Distribution Companies and Municipal Aggregators.

Section 3: Criteria for Establishing Program Cost-Effectiveness

3.1 Purpose. This section of the Guidelines establishes the method by which Distribution Companies and Municipal Aggregators shall determine the cost-effectiveness of Energy Efficiency Programs, based on the energy and capacity savings estimates determined pursuant to Section 4 of these Guidelines. In particular, Section 3 establishes the benefits and costs to be included in cost-effectiveness analyses, and the discount rate to be used to express benefits and costs in present value terms.

3.2 Costs

3.2.1 Program Administrators shall categorize costs associated with the implementation of Energy Efficiency Programs as either Energy System Costs or Program Participant Costs.

3.2.2 Energy System Costs shall be comprised of the following components:

(a) Program Administrator Costs shall include (i) payments to vendors for energy efficient equipment and services; (ii) payments to contractors to plan for and/or install energy efficient equipment; (iii) rebates or incentives paid to program participants or vendors for energy efficient equipment and/or services; (iv) costs to check for proper functioning of and maintenance of equipment installed; (v) costs to market energy efficient equipment and services to customers and to seek participation in Energy Efficiency Programs; and (vi) costs to develop, plan, administer, monitor, and evaluate Energy Efficiency Programs.

(b) Shareholder Incentives shall be the funds earned by a Program Administrator based on its performance in implementing its Energy Efficiency Programs. Shareholder Incentives shall be determined pursuant to Section 5, below.

3.2.3 Program Participant Costs shall include all expenses incurred by program participants as a result of their participation in Energy Efficiency Programs, such as, but not limited to, (i) the net cost of energy efficient equipment; (ii) the cost to plan for and

install energy efficient equipment; and (iii) the cost of energy efficiency services, such as inspections for proper equipment functioning.

3.3 Benefits

3.3.1 Program Administrators shall categorize benefits associated with the implementation of Energy Efficiency Programs as either Energy System Benefits or Program Participant Benefits.

3.3.2 Energy System Benefits shall be comprised of the following components:

(a) Avoided Electric Generation and Gas Supply Costs shall be calculated as the product of (1) a program's energy, commodity and capacity savings, as appropriate, and (2) an avoided electric generation or gas supply cost factor, as appropriate. The avoided electric generation factor shall be uniform for all Electric Companies and Municipal Aggregators and shall be updated every two years or as necessitated by changing market conditions, as approved by the Department. The avoided gas supply cost factor shall be based on the gas supply costs specific to each Natural Gas Local Distribution Company, except for those Energy Efficiency Programs that are jointly implemented, for which the avoided gas supply factor shall be based on the weighted average of the gas supply costs of the Natural Gas Local Distribution Companies participating in the program.

(b) Avoided Transmission Costs shall be calculated as the product of (1) a program's energy and capacity savings, and (2) an avoided transmission cost factor. The avoided transmission cost factor shall be based on the transmission costs specific to each Distribution Company, except for those Energy Efficiency Programs that are jointly implemented, for which the avoided transmission cost factor shall be based on the weighted average of the transmission costs of the Distribution Companies participating in the program. For Energy Efficiency Programs that are targeted at specific locations within a Distribution Company's service territory, the avoided transmission cost factor may be based on transmission costs specific to the targeted locations.

(c) Avoided Distribution Costs shall be calculated as the product of (1) a program's energy, commodity and capacity savings, as appropriate, and (2) an avoided distribution cost factor. The avoided distribution cost factor shall be based on the distribution costs specific to each Distribution Company, except for those Energy Efficiency Programs that are jointly implemented, for which the avoided distribution cost factor shall be based on the weighted average of the distribution costs of the Distribution Companies participating in the program. For Energy Efficiency Programs that are targeted at specific locations within a Distribution Company's service territory, the avoided distribution cost factor shall be based on distribution costs specific to the targeted locations.

(d) Avoided Electric Generation and Gas Supply Costs, Avoided Transmission Costs, and Avoided Distribution Costs shall include environmental compliance costs that are reasonably projected to be incurred in the future because of rules and/or regulatory requirements that are not currently in effect, but which are projected to take effect in the foreseeable future. Avoided Projected Compliance Costs shall be calculated as the product of (1) a program's energy, commodity and capacity savings, as appropriate, and (2) an avoided cost factor that is calculated specific to each identified rule and/or regulatory requirement.

(e) Low-Income Benefits shall account for quantifiable cost savings to Distribution Companies that reasonably result from the implementation of Energy Efficiency Programs that are targeted at Low-Income Customers. Low-Income Benefits shall include cost savings from factors such as, but not limited to, (i) reduced account write-offs; (ii) reduced arrearages, late payments, and late payment administrative costs; (iii) reduced shut-off and reconnect charges; and (iv) reduced credit and collection expenses.

3.3.3 Program Participant Benefits shall account for those benefits that are specific to identifiable program participants, as well as to people reached in the target markets for those programs that target markets instead of, or in addition to, identifiable participants, and shall be comprised of the following components:

(a) Participant Non-Resource Benefits shall include factors such as, but not limited to, (i) reduced costs for operation and maintenance associated with efficient equipment or practices; (ii) the value of longer equipment replacement cycles and/or productivity

improvements associated with efficient equipment; (iii) reduced environmental and safety costs, such as those for changes in a waste stream or disposal of lamp ballasts or ozone-depleting chemicals; and (iv) reduced disconnections for inability to pay.

(b) Participant Resource Benefits shall account for the avoided costs of oil, water, sewage disposal, and other resources for which consumption is reduced as a result of the implementation of Energy Efficiency Programs. Participant Resource Benefits shall be calculated as the product of (1) the reduction in consumption of oil, water, sewage disposal, and other resources, and (2) avoided costs factors for each of these resources. For those Energy Efficiency Programs that are implemented on a statewide or regional basis, the avoided cost factors for each resource shall be uniform for each Distribution Company and Municipal Aggregator participating in the program.

3.4 Discount Rate. Benefits and costs that are projected to occur over the term of each Energy Efficiency Program shall be stated in present value terms, using a discount rate that is equal to the yield on 30-year United States Treasury Bonds available at the close of trading on the first business day each year.

3.5 Cost-effectiveness. An Energy Efficiency Program shall be deemed cost-effective if its benefits are equal to or greater than its costs, as expressed in present value terms.

Section 4: Monitoring and Evaluation of Energy Efficiency Programs

4.1 Purpose. This section of the Guidelines establishes the method by which Distribution Companies and Municipal Aggregators shall monitor and evaluate the performance of their Energy Efficiency Programs and the method by which the Department will review these efforts. In establishing monitoring and evaluation requirements, Section 4 distinguishes between efforts taken before and after program implementation. Section 4 also establishes additional requirements for programs designed to affect primarily non-participants.

4.2 Distribution Companies

4.2.1 Before Implementation

(a) All Programs: Each Program Administrator shall file with the Department sufficient information, including assumptions, to support the determination of cost-effectiveness for all proposed Energy Efficiency Programs. A Program Administrator of a jointly implemented or co-ordinated program should file with the Department the information needed to determine such program's cost-effectiveness. A Program Administrator in a jointly sponsored program may also file service area-specific analyses of program cost-effectiveness.

Each Program Administrator shall provide the Department with a description of how the net energy, commodity and capacity savings, together with any other kinds of savings or market indicators proposed by the Program Administrator and/or required by the Department, that will result from program implementation will be quantified.

(b) Programs Aimed at Markets: For programs, notably market transformation programs, that are aimed at markets or customers generally, many or all of whom are not identifiable, and in which savings cannot be determined promptly after a year of program implementation, the Program Administrator shall provide a description of expected effects of the program on energy use and/or on market indicators,[(11)] i.e., views of the future with and without the program. For such programs, the Program Administrator may provide alternative scenarios or sensitivity analyses, with discussion of how alternative assumptions affect projections of program savings and cost-effectiveness.

Savings from any energy efficient equipment expected to be installed after such a program ends shall be distinguished from savings from such equipment expected to be installed while the program is implemented.

4.2.2 After Implementation

(a) All Programs: Each Program Administrator shall file evaluations of the savings achieved by each Energy Efficiency Program. All such evaluations shall be reviewable, appropriate, and reliable, consistent with Department precedent concerning these terms. A variety of evaluation and assessment methods are appropriate, depending on the nature of the programs and markets being addressed. Reliable evaluations are sufficiently unbiased and sufficiently precise.

A Distribution Company shall file program evaluations for review with the Department annually, unless the Department directs otherwise for programs or sets of programs for which past evaluations have largely confirmed pre-evaluation savings estimates. A Municipal Aggregator shall file program evaluations with the Department as provided in its certified energy plan.

A Program Administrator of a jointly implemented or co-ordinated program shall file a joint monitoring report and/or evaluation covering such program, on behalf of all participating Distribution Companies and Municipal Aggregators. A Program Administrator in such a program may also file a service area specific evaluation of such program.

Each Program Administrator shall report estimated energy, commodity and capacity savings for each program evaluated, together with any other kinds of savings or market indicators proposed by the Program Administrator and/or required by the Department. In estimating savings, the Program Administrator should treat consistently savings that would have occurred absent the program, savings among non-participants due to the

program (market transformation), and additional savings among participants indirectly due to the program.

Each Program Administrator shall use cost-effectiveness evaluations to inform decisions about continued implementation of, or modifications to, a program. A Program Administrator shall inform the Department of plans to discontinue a program earlier than planned, or about proposed significant program modifications, at least 30 days before such plans are implemented.

Each Program Administrator shall file with the Department and DOER on July 1 of each year an Energy Efficiency Annual Report. The Report shall describe the programs and include information on expenditures, savings, value of the savings, and participation for the most recent program year and any other specified years, in a format specified jointly by the Department and DOER.

(b) Programs Aimed at Markets: For some market transformation programs, statistical precision of net (but not gross) savings estimates, an element of reliability, may be undefinable and therefore unreported. The target level of precision for market indicators and savings from ECMs expected to be installed in future years should reflect a reasonable assessment of their importance in determining whether a program is cost-effective.

Savings from any energy efficient equipment expected to be installed in the future due to a current program shall be distinguished from savings from such equipment installed to date.

4.3 Municipal Aggregators. Any Municipal Aggregator that receives Department approval for its energy plan shall, within two years of approval of its plan or such further time as the Department may allow, provide written notice to the Department that its plan is implemented. Thereafter, such a Municipal Aggregator shall provide the Department each year with summary information showing that it is substantially implementing its Municipal Energy Plan. The Department may revoke certification of the Municipal Energy Plan if the Municipal Aggregator fails to substantially implement its plan or if an independent audit determines that the funds were misspent within the time allowed by G.L. c. 164, § 134(b).

Section 5: Shareholder Incentives

5.1 Purpose. This section of the Guidelines establishes the method by which Distribution Companies shall calculate the Shareholder Incentives that may result from the implementation of Energy Efficiency Programs.

5.2 Performance Levels. Each Distribution Company shall establish, in its proposed Energy Efficiency Plan, the following three levels of performance:

(a) The design performance level shall represent the level of performance that the Distribution Company expects to achieve in the implementation of the Energy Efficiency Programs included in its proposed plan (i.e., a Distribution Company that achieves 100 percent of its performance goals would reach its design performance level). The design performance level shall be expressed in levels of savings, in energy, commodity and capacity, and in other measures of performance as appropriate.

(b) The threshold performance level shall represent 75 percent of a Distribution Company's design performance level.

(c) The exemplary performance level shall represent 125 percent of a Distribution Company's design performance level.

5.3 Calculation of Shareholder Incentives.

A Distribution Company that achieves its design performance level shall calculate its after-tax Shareholder Incentive as the product of (1) the average yield of the three-month United States Treasury bill (as defined below), and (2) total program implementation

costs as included in a distribution company's Energy Efficiency Plan. The average yield of the three-month United States Treasury bill shall be calculated as the arithmetic average of the yields of the three-month United States Treasury bills issued during the most recent twelve-month period, or as the arithmetic average of the three-month United States Treasury bill's twelve-month high and twelve-month low.

A Distribution Company shall calculate its after-tax Shareholder Incentive as the product of (1) the percentage of the design performance level achieved, and (2) the design performance Shareholder Incentive level, provided that a Distribution Company shall earn no Shareholder Incentive if its actual performance is below its threshold performance level, and shall earn no more than its exemplary performance level Shareholder Incentive, even if its actual performance exceeds its exemplary performance level.

Section 6: Department Review of Energy Efficiency Programs

6.1 Purpose. This section of the Guidelines establishes the manner in which the Department will review the proposed Energy Efficiency Plans submitted by Distribution Companies and Municipal Aggregators. In addition, for Electric Companies and Municipal Aggregators, Section 6 establishes the manner in which the Department will coordinate its review process with the review process of DOER, consistent with G.L. c. 25, § 19 and c. 25A, § 11G (for Electric Companies) and G.L. c. 164, § 134(b) (for Municipal Aggregators).

6.2 Electric Companies

(a) The Department and DOER will conduct reviews of Electric Company Energy Efficiency Programs pursuant to the following steps:

(1) Each Electric Company shall submit its proposed Energy Efficiency Plan to DOER, according to a schedule established by the Department and DOER.

(2) DOER will file a report with the Department, for each Electric Company, concerning the Electric Company's proposed Energy Efficiency Plan, consistent with G.L. c. 25A, § 11G, according to a schedule established by the Department and DOER. Concurrent with the filing of the DOER report, DOER will file a copy of the Electric Company's proposed Energy Efficiency Plan. The DOER report will state DOER's conclusions regarding whether the proposed Energy Efficiency Plan, including the proposed program budgets, is consistent with the statewide energy efficiency goals established by DOER. If the DOER report concludes that the proposed Energy Efficiency Plan is not consistent with the statewide energy efficiency goals, the DOER report will identify the sections of the proposed plan that are not consistent with the goals and will include revisions that DOER considers necessary to make the affected sections consistent with the goals.

(3) Following the receipt of the DOER's report on an Electric Company's proposed Energy Efficiency Plan, the Department will open a docket and use appropriate procedures.

(4) If the DOER's report concludes that the proposed Energy Efficiency Plan is consistent with state energy efficiency goals, and if no objection to the DOER report is raised, the Department's review of the Energy Efficiency Plan will be limited to cost-effectiveness issues and the use of competitive processes. The Department will evaluate the cost-effectiveness of Energy Efficiency Programs pursuant to Section 3 of these Guidelines.

In the event of a dispute concerning any conclusions contained in the DOER's report, then the Department will resolve the dispute pursuant to applicable law.

(5) Consistent with DOER's responsibility to oversee and coordinate ratepayer-funded Energy Efficiency Programs, DOER's conclusions concerning the consistency of the

proposed Energy Efficiency Plan with the statewide energy efficiency goals and budgets will be accorded due weight.

6.3 Natural Gas Local Distribution Companies

(a) The Department will conduct reviews of Natural Gas Local Distribution Company Energy Efficiency Programs pursuant to the following steps:

(1) Each Natural Gas Local Distribution Company shall submit its proposed Energy Efficiency Plan to the Department for review, pursuant to a schedule established by the Department.

(2) The Department will review each Natural Gas Local Distribution Company's proposed Energy Efficiency Plan. The Department will open a docket according to its established procedures, including issuing public notice and providing the opportunity to petition to intervene.

6.3 Municipal Energy Plans. The Department will review the Energy Efficiency Plans proposed by Municipal Aggregators consistent with G.L. c. 164, § 134(b).

1. Copies of the Proposed Guidelines are available from the Department's Offices during business hours and are posted on the Department's website, http://www.magnet.state.ma.us/dpu/electric/98-100/order.htm. In brief, the Proposed Guidelines provide: (a) criteria for establishing program cost-effectiveness including the calculation of energy system costs, program participant costs, energy system benefits, program participant benefits, and the selection of an appropriate discount rate; (b) standards concerning the monitoring and evaluation of energy efficiency programs both before and after implementation; (c) the method by which a distribution company may calculate and claim a shareholder incentive arising from the successful implementation of an energy efficiency program; and (d) the mechanism by which the

Department would review the proposed energy efficiency plans of distribution companies and municipal aggregators.

2. The group of 14 natural gas and electricity distribution companies[(3)]

3.

4. Although we seek uniformity, we recognize that certain circumstances may merit departure from the generic rules. Accordingly, the Final Guidelines do not preclude administrators of energy efficiency programs from requesting that an alternative policy, method or procedure be used by the Department due to their specific circumstances. Final Guidelines at § 1(2). However, the burden will be on the program administrator to demonstrate that such a request should be granted. Id.; see NOI at 2 n.5 and Att. II; November Order at 6-7.

5. The Department reviewed and rejected two other cost-effectiveness tests: (1) the Energy System Test, which considers only those benefits and costs incurred by distribution companies; and (2) the Societal Test, which includes program implementation benefits and costs incurred by distribution companies and program participants, plus additional benefits and costs incurred by society as a whole. Id. at 12-16.

6. Massachusetts Electric Co. v. Dep't of Pub. Util., 419 Mass. 239 (1994) ("MECo v. DPU").

7. Moreover, CLC states that its program would also appear more cost-effective using the Energy System Test; that is, without including either participant benefits or costs, than it would with the Department's proposed test (CLC Comments at 3-4).

8. As noted in the November Order, the term "Energy System Test" is essentially analogous to the term "Utility Cost Test" as historically applied. November Order at 7, n.6. However, with industry restructuring, integrated electric companies have desegregated into distribution and transmission companies, and generation companies. Energy and capacity costs, which were previously incurred primarily by the integrated electric companies, are now incurred primarily by competitive generation companies. Thus, the term "Utility Cost Test" would fail to indicate that these costs are included in the application of the test.

9. The Proposed Guidelines defined the average yield of the three-month United States T-bill as the arithmetic average of the yields of the three-month T-bills issued during the most recent twelve-month period, or as the arithmetic average of the three-month T-bill's twelve-month high and twelve-month low. Proposed Guidelines at § 5.3.

10. The Proposed Guidelines defined direct program implementation costs as:
(i) payments to vendors for energy efficiency equipment and services; (ii) payments to contractors for plan for and/or install energy efficiency equipment; (iii) rebates or

incentive paid to program participants or vendors for energy efficiency equipment and services; and (iv) costs to inspect for proper installation, functioning and maintenance of equipment installed. Proposed Guidelines at § 5.3.

11.

[10] Market indicators include, for example, a product's market share, price, and availability.