COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation re: Discount Program Penetration Rate	)	D.T.E. 01-106

COMMENTS OF WESTERN MASSACHUSETTS ELECTRIC COMPANY

I. INTRODUCTION

Western Massachusetts Electric Company ("WMECO") is pleased to be able to comment on the briefing question set forth by the Department of Telecommunications and Energy ("Department") on June 19, 2003. The Department asked parties to discuss

> any legal impediments and legal justification for utility participation in a computer matching program with EOHHS [Massachusetts Executive Office of Health and Human Services] that would involve the electronic transfer of all residential accounts to EOHHS for the sole purpose of identifying customers eligible for discounted service with subsequent destruction of non-matching data.

WMECO applauds the Department's effort to investigate ways to make more efficient the enrollment of customers on low-income rates. Currently, WMECO expends a good deal of resources on customer outreach in order to ensure that low-income customers are aware of their eligibility for low-income discount rates. For WMECO these rates are R-2 (MDTE No. 1034D) and R-4 (MDTE No. 1035D). Any procedure that would streamline this process is a positive development.

The Department's question goes to the legal impediments of providing certain residential customer information, information that has always been treated as

confidential, to EOHHS for purposes of computer matching. After running a match of the residential information provided against customer information held by certain agencies in the EOHHS secretariat, EOHHS would provide the utility a list of residential customers eligible for the discounted low-income rate.

II. PRIVACY CONCERNS

The Department's question does not specify the customer data that would be provided to EOHHS. It has been WMECO's practice, as well as the Department's, to be extremely cautious concerning the disclosure of customer information. In one, limited, circumstance the Department has ordered WMECO and other electric distribution companies to divulge to private, third-parties customers' names, addresses and a unique identifying number. *See* D.T.E. 01-54-B (July 29, 2002). Importantly, this information is subject to a customer 'opt-out' and is provided only subject to the third party's written agreement not to further disclose the information. The Department has also decided that certain other information, customer account numbers, is too sensitive to divulge, even to a private third party. *Id*.

The Department conceivably could take the position that customer names and addresses should be disclosed to EOHHS as was ordered in D.T.E. 01-54-B.[1] EOHHS could also enter into a non-disclosure agreement with WMECO and the other electric distribution companies with respect to this information.

The Department, however, should be cognizant that when it comes to disclosure of information a public agency does not stand in the same position as a private one. A public agency labors under the heavy presumption that all

---

[1] Legally permissible or not, it is likely that some customers will object to their data being shared with a government agency and complain to WMECO and the Department.

information it has in its possession is public. Definition of Public Records, G.L. c. 4, § 7, cl. 26. In addition, a public agency is subject to an obligation to open its records for public inspection. G.L. c. 66, § 10. It is not clear to WMECO that, if challenged, a non-disclosure agreement would be effective against the statutory presumption that information is public. In addition, the Department's question indicates that non-matching data would be destroyed. This presumably means that EOHHS would destroy the non-matching data. If this destruction is done for the purpose of avoiding the provision of the data to a third party subject to a Freedom of Information Act request, WMECO questions its legality. *See, e.g.*, G.L. c. 66, § 8. If such a practice was permitted, it would appear to eviscerate substantially the Commonwealth's public records laws.

Another customer identifier is his/her Social Security number, but for practical and legal reasons, the use of Social Security numbers should be avoided. First, many customers consider Social Security numbers as confidential and have not provided their Social Security numbers to WMECO.[2] For this reason, WMECO has no Social Security number for a very substantial number of residential customers. Second, for the very reason that customers perceive Social Security numbers as confidential, and have not provided them, disclosure of the numbers should be avoided as invasive of customers' privacy – unless the customer has given explicit permission. Disclosure of a customer's Social Security number may run afoul of different federal and state statutes and regulations. *See, e.g.*, G.L. c. 214, § 1B.

---

[2] The Commonwealth itself has given confidentiality as a rationale in allowing a Massachusetts' driver the option of choosing an identifying number other than a Social Security number to appear on his/her driver's license.

In order for the computer matching that the Department is considering to work, data would have to be transferred from EOHHS to WMECO. However, as the Department is undoubtedly aware, some customers may not wish to be identified by the Commonwealth as a recipient of state assistance. In addition, the enabling statutes and regulations of two agencies within EOHHS, the Department of Transitional Assistance and the Department of Medical Assistance, may preclude providing such information to WMECO. *See, e.g.*, G.L. c. 118E, § 49. Further, the recently enacted federal legislation, the Health Insurance Portability and Accountability Act, may conceivably limit the information that can be divulged. It would be preferable for all government agencies to release data only after privacy waivers are obtained. The comments of the Massachusetts Community Action Program Directors Association and the Massachusetts Energy Directors Association ("MASSCAP") indicates that obtaining such waivers, while voluntary, is primarily a question only of revising applicable application forms. MASSCAP Comments, January 31, 2001, p. 25; MASSCAP Comments, June 27, 2003, pp. 5-6.

When and if the Department decides to move to a computer matching system it should carefully learn from other programs in other states. MASSCAP, in its comments, refers to only one other state, Texas, with an electric utility computer matching program. Texas does have a statute, Section 39.903(j) of the Texas Public Utility Regulatory Act, which requires the Texas Department of Human Services to participate and rules that require the state to contract with a independent third party as a low-income discount administrator. This structure differs substantially from that being discussed in Massachusetts. In Texas, the match allowed by statute is between data from the Electric Reliability Council of Texas ("ERCOT") and an independent third-party administrator. In addition, MASSCAP suggests in its

comments that 615,000 customers were enrolled in the electric discount program as a result of the computerized match program. However, the report cited, "Report to the 78th Texas Legislature: Scope of Competition in Electric Markets in Texas" (January 2003) (MASSCAP comments, p. 3), appears to indicate that the 615,000 customers were enrolled through traditional outreach efforts. Although the report is lengthy, it does not seem to indicate that computer matching was used in 2002. Whether that was due to privacy concerns or other problems is not discussed.

III. LOGISTICS AND RATES

WMECO wishes to make two points in closing that are related to the Department's question. First, should the Department resolve all concerns regarding legal impediments of the transfer of data, it should be aware that a number of logistical/resource issues remain. It is beyond the scope of these comments to detail these issues but they must be resolved before any matching program is initiated. Testing in December 2002 demonstrated that WMECO could transfer data to EOHHS but many questions remain as to if and how data can be received back.

Second, two levels of expense will be incurred by electric distribution companies in going forward with any computer matching regimen. The companies will incur administrative expenses, relating to the new matching program. This is particularly true if the electric distribution companies somehow have to pay for the state agencies program costs. WMECO believes that there is precedent for reimbursing electric distribution companies for such costs (*see, e.g.*, 02-40-B (April 4, 2003)). Further, current rates are predicated on a certain percentage of discount rate customers. It is possible that should this program go forward the percentage of discounted rate customers will increase significantly. A method should be devised to allow for compensation for any abrupt change in the percentage of discount

customers. The statute that authorizes a matching program recognizes that other customers will be responsible for the discount provided to low-income customers. G.L. c. 164, § 1F(4)(i). Commenting parties have not argued against compensation. MASSCAP, for example, in its earlier comments, was not opposed to such a policy. MASSCAP Comments, January 31, 2002, p. 29. In addition, the Texas discount program MASSCAP cites appears to provide recovery through a system benefits charge. If there is an abrupt change upward in the percentage of discounted rates without compensation, there may be an incentive for WMECO and other companies to obtain rate relief through general rate case requests.

Thank you for the opportunity to present these comments.