**COMMONWEALTH OF MASSACHUSETTS**
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**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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| **Investigation by the Department of** | **)** | |
| **Telecommunications and Energy into** | **)** | |
| **The Costs that Should Be Included** | **)** | **D.T.E. 03-88F** |
| **In Default Rates for Western** | **)** | |
| **Massachusetts Electric Company** | **)** | |

**JOINT COMMENTS OF DIRECT ENERGY/CENTRICA AND DOMINION RETAIL, INC.**

The Department opened this proceeding in November 17, 2003 in order to implement its finding in Default Service, D.T.E. 02-40-B (April 24, 2003) that "it is appropriate to include the costs that distribution companies incur in providing default service in their default service prices." D.T.E. 02-40-B, at 15. In identifying the costs that would be moved from distribution rates to default service prices, the Department focused on costs that were incurred only on behalf of default service customers. The Department thus identified two types of such costs, namely "wholesale costs" and "direct retail costs." Wholesale costs include such procurement-related expenses as "(1) the design and implementation of the competitive bidding process, including the evaluation of supplier bids and contract negotiations; and (2) the ongoing administration and execution of contracts with suppliers, including accounting activities necessary to track payments made to suppliers." Direct retail costs include (1) unrecovered bad debt; (2) compliance with the Department's default service regulatory requirements, including required communications with its default service customers pursuant to 220 C.M.R. § 11.06; and (3) compliance with the Massachusetts Renewable Energy Portfolio Standard. D.T.E. 03-88, at 2-3.

The Department declined to change the ratemaking treatment of what it called "indirect retail costs," which include costs such as billing and customer service. The Department also rejected other proposals that would have resulted in more fundamental changes to default service, such as the designation of alternative default service providers pursuant to G.L. c. 164, § 1B(d). D.T.E. 02-40-B, at 31. Proponents of these options argued that such fundamental change is necessary if Massachusetts customers (especially residential and small business customers) are to have any viable options to remaining captive utility default service customers when the standard offer expires next year.

More comprehensive alternatives having been eliminated, no party who has taken an interest in this proceeding is under any illusion that it will lead to the development of a robust retail market that will offer real choice to mass market customers by next March, or any time in the foreseeable future. The amounts at issue are small. The utility filings show that default service prices would rise by amounts ranging from 0.021 cents in the Cambridge Electric Light Company service territory to 0.149 cents in the Western Massachusetts Electric Company service territory. There was no evidence presented in D.T.E. 02-40 or in any other docket showing that such changes in default service pricing, while analytically appropriate, were sufficient to substitute for what many see as the need for a re-examination of the basic structure of the Massachusetts market.

At least one key member of the Legislature agrees with this assessment. Rep. Dan Bosley, the House Chairman of the Joint Committee on Government Regulations and one of the co-authors of the 1997 Restructuring Act, has released a legislative proposal that will likely be introduced as a bill in the current legislative session. The Bosley Proposal was presented to the general public at the January 30, 2004 Electric Restructuring Roundtable, and its contents are

well-known to the participants in this case (and to the Department, as well). The centerpiece of the proposal is the structural separation of the utilities' distribution and retail functions, similar to the approach to restructuring taken in Texas and the United Kingdom, which are generally considered to have well-developed competitive retail electric markets. Under the Bosley Proposal, the current utility would be replaced by two affiliated companies. One of the companies (the "Distribution Company") would be responsible solely for the "wires" function; it would own and operate the distribution plant, including customer premises equipment such as meters.[1] The other company (the "Affiliated Retail Service Provider," or "ARSP") would be responsible for the "customer-facing" retail services; that company would own and operate the commodity procurement, billing, customer service, and collections operations.

Should the Bosley Proposal become law, any barrier to the Department examining what it has characterized as "indirect retail costs" would be removed. The law's implementation would, in fact, **require** the Department to identify, in a proceeding much like the current one, **all** of the costs of providing retail service, (including costs of billing, collections, and customer service) in order to transfer the operations associated with those costs to the utility's newly-created retail affiliate.

Given the pendency of the Bosley Proposal, Direct Energy and Dominion urge the Department to take the following actions with respect to the current proceeding. Because, as all parties agreed at the procedural conference, the numbers involved are small, the case should be delayed to allow the Department to focus on more pressing matters.[2] The pressing matters to

[1] The proposal envisions that the distribution utilities would continue to be responsible for customer metering, although customers and retail service providers ("RSPs") should be given ready access to customer data produced by whatever metering technology the utility uses.

[2] There would certainly be no harm in the parties attempting to fashion a settlement during the time that the case is dormant at the Department. It appears that there will be little formal activity in the case for at least several weeks, as the Department considers the utilities' opposition to the petitions to intervene of various competitive retail suppliers.

which the Department should turn its attention are those that would be required to implement the Bosley Proposal. The implementation of the Bosley Proposal would require a substantial amount of work by the Department to accomplish the separation of the four existing utilities in time to have the new market structure in place by the expiration of standard offer service. There is little time to lose.

The utilities also made clear at the procedural conference in this case that cooperation is not likely to be the hallmark of their approach to matters relating to the structure of the retail markets. All four utilities opposed the intervention of competitive retail suppliers in a docket that will set a new default service price, which is the very price against which suppliers must compete to win customers. The Department should set a more cooperative and inclusive tone by broadening the scope of this proceeding to begin examining the costs and functions that would be separated between the two utility affiliates under the Bosley Proposal, and by welcoming the participation of competitive retail suppliers and other interested parties in that process.

This action by the Department would serve two broad purposes. First, as discussed above, it would give the Department a valuable head start on restructuring proceedings the Legislature may well direct the Department to undertake within the next several months. Second, such a re-focused proceeding would serve to inform the legislative process itself, which has and will likely continue to focus on the proper treatment of these retail services within a market structure that will allow the development of a sustained robust competitive retail market for all Massachusetts customers. The Legislature's consideration of these issues, which the Department has followed closely over the past two years, would benefit greatly from access to information that the Department could gather from the utilities in relatively short order. Indeed, the potential value to the Legislature of a broadened and re-directed effort in these dockets would

ensure that the Department's efforts would not be in vain, even if the Bosley Proposal does not become law.

For the foregoing reasons, Direct Energy and Dominion respectfully request that the Department (1) delay these dockets in their current form, during which delay the parties will discuss settlement of the issues presented in the Department's order opening the investigations, and (2) set a new scope for the proceeding, which would focus on examining the manner in which the costs and functions of the four utilities would be separated as called for in the Bosley Proposal.

Respectfully submitted,

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