COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Bay State Gas Company	)	**D.T.E. 01-81**
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MASSACHUSETTS DIVISION OF ENERGY RESOURCES'
RESPONSE TO MOTION FOR CLARIFICATION

INTRODUCTION

On December 24, 2002 Bay State Gas Company ("Bay State") filed a Motion for Clarification (the "Motion") concerning two provisions of the Department's December 4, 2002 Order (the "Order") approving, with modifications, Bay's State petition to implement a Gas Cost Incentive Mechanism ("GCIM").

Bay State sought clarification concerning: (1) the transactions subject to the GCIM, and (2) the period of time applicable to the calculation of the reliability premium.

On January 3, 2003, the Department Hearing Officer issued a memorandum requesting parties to submit any responses to Bay State's Motion no later than January 10, 2003. On January 10, 2003, the Massachusetts Division of Energy Resources ("DOER") filed a Motion to Extend Time to Respond, to which Bay State assented and no other party objected. DOER's Response to Bay State's Motion is set forth below.

DOER RESPONSE

Standard of Review

DOER agrees that the Order is ambiguous, concerning program implementation under the GCIM, as to the Department's directive that "…the Company implement its GCIM program on 25 percent of its normal residential requirements portfolio."[1] DOER also agrees that the Order is ambiguous as to the Department's intent concerning the application of, "… a three-year historical average [as proposed by DOER] in determining the reliability premium associated with its GCIM."[2]

The Department's Standard of Review provides that, "Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning." Western Massachusetts Electric Company, D.T.E. 97-120-C (December 30, 1999), citing Boston Edison Company, D.P.U. 92-1A-B at 4[3] (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). DOER believes that the Motion meets this standard as to both issues and should be granted.

1 Order at 32.

2 Order at 31.

3 Bay State similarly cites this case, but inadvertently cites it as "D.P.U. 92-1A-**8**" rather than "D.P.U. 92-1A-B" which is the correct citation.

The Department Should Clarify that Bay State's Financial Transactions are Limited to 25% of Normal Requirements but That All Physical Domestic Purchases are Included

The Order appears to draw no distinction between financial transactions and physical domestic purchases limited under the GCIM. This apparent merger of two distinct concepts and two separate aspects of Bay State's proposal creates some ambiguity about the Department's intent concerning the transactions subject to the GCIM.

Bay State's proposal contemplated an 80% limitation upon the financial transactions subject to the GCIM, not an 80% limitation upon the physical domestic purchases. Directing Bay State to, "limit the Company's hedging activity to a level not to exceed 25% of normal requirements associated with the customer class(es)[4] served under Bay State's GCIM program" injects a real question about the actual limitation(s) contemplated by the Department.

DOER believes the Department should clarify this ambiguity by expressly providing that, while financial transactions are limited to 25% of total residential requirements,[5] (such provision to be included in the tariff) all physical domestic purchases may be included in the GCIM. Such a clarification will implement the Department's goal of maximizing customer savings while also preventing the potential for market abuse.[6]

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4 The Order, at 28, limits the GCIM program to residential customers only.

5 With regard to DOER's recommendation concerning the extent of hedging, DOER points out that the 25% of the normal residential requirements portfolio referred to at page 32 of the Order approximates 80% of total normal domestic pipeline purchases delivered to residential customers. See Ex. DOER 1-12; see also and Tran. at page 128.

6 While Bay State does not propose 100% of physical domestic purchases be included under the GCIM, DOER concurs with the Company's observation, at page 3 of its Motion, that such inclusion would limit the potential for gaming.

The Department Should Clarify that the Calculation of the Reliability Premium is Based Upon the Fixed, Three Year Historical Average Contemplated During the GCIM Proceeding

The Department stated that, "We find that the reliability premium proposed by DOER would be more representative of the fluctuating market conditions than would reliance on one isolated year, as proposed by the Company. The Department, therefore, directs the Company to apply a three-year historical average in determining the reliability premium associated with its GCIM."[7]

Bay State raises two issues concerning this directive: (1) which three year period is applicable, and (2) whether the data (and as a result, the reliability premium) should be updated annually to reflect the most recent three year period.

DOER's proposal, as correctly identified at page 8 of Bay State's Reply Brief, contemplates using the data compiled for the three winter periods preceding the commencement of the GCIM in order to fix the time period necessary for calculating the reliability premium and the amount of the reliability premium; this data set was also used by AllEnergy in its calculations; Ex. AllEnergy 1-16. DOER recommends that the Department direct Bay State to use this three-year data set as the appropriate historical period.[8]

DOER also recommends that the data remain fixed over the term of the GCIM; that the

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7 Order at 32.

8 DOER points out that, should the Department determine that this period is appropriate, the amount of the reliability premium would change to $0.0084 per MMBTu, which was also addressed, without objection, in Bay State's Reply Brief at 8.

data set not be revised annually. To allow annual revisions to the data opens the door to revising the reliability premium over the course of the GCIM. This introduces a potential for gaming[9] that was not contemplated and would be inconsistent with the Order and Department policy.

CONCLUSION

For the above-stated reasons, DOER recommends that the Department:

(1) Grant the Motion for Clarification;

(2) Clarify that 25% of the financial transactions associated with residential customers may be hedged by Bay State;

(3) Clarify that all physical domestic purchases are included;

(4) Clarify that Bay State use the three-years of historical data identified above such data to be fixed, without annual revisions, for the term of the GCIM; and

(5) Order any further clarifications as may be deemed appropriate.

Respectfully submitted,

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Dated: January 13, 2003

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9 See Ex. AG-1; see also Trans. At 237 – 238; 241.