

January 31, 2007

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

**Re: D.T.E. 06-113**

Dear Secretary Cottrell:

On behalf of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid ("National Grid"), I am responding to the Department's request for comments in the above-captioned proceeding. National Grid appreciates this opportunity to respond.

The Department has requested comments on the December 21, 2006 petition of the Division of Energy Resources ("DOER") asking the Department to conduct an investigation into establishing an energy efficiency performance standard ("EPS") for basic service ("DOER Petition"). DOER has proposed that electric distribution companies be required to purchase a minimum percentage of their basic service supply through energy efficiency resources, the cost of which would be included in the basic service charge. DOER Petition at 3. This energy efficiency procurement would be in addition to the system benefit charge for energy efficiency authorized by Mass. Gen. Laws c. 25, § 19. DOER Petition at 4. DOER recommends the establishment of a formal stakeholder collaborative process to assess the potential for additional efficiency, review design options for an EPS and address various implementation issues. DOER Petition at 4.

National Grid supports DOER's desire to encourage more energy efficiency in Massachusetts. Further, National Grid commends DOER and the Department for their sustained commitment and focus on energy efficiency over the last several years. As noted in the DOER Petition, under the stewardship of DOER and the Department, the energy efficiency programs funded by the system benefit charge have, from the start of electric industry restructuring in 1997 through 2005, cumulatively achieved 40,000 GWh in lifetime energy savings and produced lifetime reductions in peak demand of 747 GW, reducing the rate of growth in annual electricity consumption by 37%. DOER Petition at 5, *fn* 4. For several years prior to the statutorily based systems benefits charge, the Department set one administratively, which facilitated the growth and development of significant energy efficiency programs for customers.

In addition, National Grid appreciates that DOER is thinking creatively about ways to enable additional energy efficiency opportunities in Massachusetts. Nevertheless, National Grid believes that DOER's proposed EPS is not consistent with Massachusetts law. Therefore, National Grid recommends that the Department not investigate the EPS, as it could not be implemented. As

discussed below, National Grid also believes that the EPS presents significant structural problems which cannot be overcome. Accordingly, National Grid would not advocate seeking legislative changes to remove the statutory barriers to implementing the EPS. National Grid believes that the viable alternative to the EPS is to seek an increase in the current funding for energy efficiency.

DOER's proposal is inconsistent with Massachusetts law in two ways. First, Mass. Gen. Laws c. 25, § 19, which authorizes the system benefit charge, states that "[a] distribution company shall not be allowed to assess any other charge relative to energy efficiency programs which would exceed the levels permitted herein." DOER acknowledges the existence of this requirement, DOER Petition at 5, but argues that it should be read merely as a limit on the energy efficiency charge on the distribution portion of the customer bill. DOER Petition at 11. This constrained reading is not consistent with the plain language of the statute, though, which bars "*the distribution company*" from "*assessing any other charge relative to energy efficiency programs.*" There is simply no way to implement the EPS and not run afoul of this statute. Attempting to do so could subject the distribution companies to legal challenges by third parties for refunds.

Second, DOER's proposal is inconsistent with the statutory requirement that the basic service rate cannot exceed the average monthly market price of electricity, Mass. Gen. Laws c. 164, §1B(d). However structured, an EPS will make the basic service rate higher than the average monthly market price of electricity. DOER proposes that a distribution company amortize the cost recovery over five years and embed it in the basic service rate charged only to basic service customers. DOER Petition at 16. The carrying costs associated with payment over time will make the price greater than the market price for default service, though. Customers leaving basic service to take competitive supply will exacerbate this problem by leaving behind fewer customers to pay the five year tab for the energy efficiency procurement. Should Massachusetts ever implement an EPS, National Grid would strongly recommend against amortization, for the reasons discussed below. National Grid would recommend cost recovery concurrent with its payment obligation. Under this model, though, the basic service rate would still be higher than the average monthly market price of electricity. The basic service rate would include recovery for the kWh that customers are using and the kWhs that are being conserved. This is clearly counter to Mass. Gen. Laws c. 164, §1B(d).

The ability of customers to leave basic service is a significant structural problem of the EPS. While customer choice was a major reason for electric restructuring in the first place, and the development of the competitive market remains a significant goal in this state, (see e.g. the Department's open investigation on improving competitive options for residential and small commercial customers, D.T.E. 04-115) in order for this program to work, customers would need to stay on basic service. In a perverse way, the EPS could help the development of the competitive market. National Grid supports both the development of the competitive market and expanded energy efficiency opportunities, but National Grid strongly disagrees with any approach which sets one goal against the other. The EPS does this. The proposal imposes no obligation on competitive suppliers to include energy efficiency costs in the prices they offer to customers. Thus, once the amortized costs of new energy efficiency projects are embedded in basic service rates, suppliers will be able to offer lower commodity prices to customers. Customers are likely to start leaving basic service to avoid its higher cost. As this happens, the base of customers over which the

amortized energy efficiency costs are recovered will dwindle. As it dwindles, the average cost of basic service will continue to rise, thereby increasing the migration off basic service in a potential “snow ball” effect. The state’s ability to promote energy efficiency in this manner will be compromised if customers leave basic service and avoid cost recovery. Thus, if the goal is to get energy efficiency, the EPS may never achieve that goal. Another troubling scenario the EPS could create is the ability of customers to take basic service to get energy efficiency projects installed and then switch to competitive supply, leaving the remaining customers to pay for their project.

Funding energy efficiency projects through a capitalization approach is another structural problem of the EPS. The Department rejected this approach when it first approved energy efficiency programs in Massachusetts. Capitalization would create new regulatory assets on the distribution companies’ books, with no real assets behind them. Under DOER’s argument that the energy efficiency portion of the basic service cost constitutes basic service supply costs rather than energy efficiency costs, customers leaving basic service for competitive supply would cause the creation of new stranded costs. Mass. Gen. Laws c. 25, §19 would be a barrier to creating a separate charge to recover any residual amortized costs from customers not on basic service.

Finally, National Grid notes that any avalanche of additional energy efficiency projects resulting from the EPS could create lost revenues that would challenge National Grid’s financial integrity. National Grid suspects that this issue exists for the other Massachusetts distribution companies as well. Hypothetically, if the EPS withstood legal scrutiny and was successful, the Department would need to implement revenue decoupling to address lost revenue concerns. DOER notes that California and New York are examples of states that have implemented or are in the process of revenue decoupling to address lost revenue concerns. DOER Petition at 16, ftnt. 18.

For these reasons, both legal and structural, National Grid recommends against a Department investigation on the implementation of an EPS. As noted above, the EPS could not go forward without changes to Massachusetts law. National Grid recommends against seeking these changes, though, as the EPS would still conflict with the basic structure of retail choice, create stranded costs, and require revenue decoupling. Thus, instead of seeking changes to the law to implement an EPS with significant flaws, National Grid would support seeking legislative approval to increase the level of the system benefit charge under Mass. Gen. Laws c. 25, § 19, provided that steps are also taken to address resulting lost distribution revenues. The energy efficiency programs run by the distribution companies and overseen by the DOER and Department have brought tremendous energy efficiency opportunities to Massachusetts and can continue to do so. Expanding them would also avoid the significant difficulties of integrating the EPS and existing programs implemented by the distribution companies. These challenges include, for example, (1) the timing of EPS procurement vs. the current energy efficiency program planning cycle and (2) the EPS criteria of the price of electricity (do energy efficiency that lowers the cost of procurement) vs. the current energy efficiency program standards (do energy efficiency that has a benefit cost ratio of one or better). There is no need to develop an entirely new framework with the problems identified above.

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Thank you very much for the opportunity to provide these comments.

Very truly yours,

A handwritten signature in black ink, reading "Amy G. Rabinowitz". The signature is written in a cursive, flowing style.

Amy G. Rabinowitz