

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of the Massachusetts Division)
of Energy Resources for an Investigation)
Into Establishing an Electric Efficiency) D.T.E. 06-113
Performance Standard as a Component of)
the Supply of Basic Service Electricity)

COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION

INTRODUCTION

The Retail Energy Supply Association (“RESA”) is a nonprofit organization and trade association that represents the interests of its members in regulatory proceedings in the New England, New York, Mid-Atlantic and Great Lakes regions. RESA’s members include providers of competitive supply products to electricity consumers in the five New England states – including Massachusetts – that have restructured their electricity markets.¹

RESA is pleased to file these Comments with respect to the December 21, 2006 Petition of the Massachusetts Division of Energy Resources (“DOER”) requesting that the Department of Telecommunications and Energy (“Department”) conduct an investigation into the establishment of an Efficiency Performance Standard (“EPS” or “Standard”) to serve customers who receive basic service supply (previously called “default service”) in the Commonwealth (“DOER Petition” or “Petition”).

¹ RESA member companies include Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Hess Corporation, Reliant Retail Services, LLC, Sempra Energy Solutions, Strategic Energy, LLC, SUEZ Energy Resources NA, Inc. and U.S. Energy Savings Corp. The opinions expressed in this filing may not represent the views of all members of RESA.

RESA commends DOER for seeking ways to foster savings for Massachusetts electricity consumers and improve the performance of the wholesale markets. RESA also appreciates DOER's recommendation that the Department conduct its investigation through a collaborative stakeholder process and consider design options that differ from the EPS as proposed.

RESA believes that new energy efficiency programs are a worthy goal and supports the investigation proposed by DOER. RESA does not endorse the EPS as proposed, however, because it is not authorized by the law and it is not competitively neutral. With respect to the latter point, the EPS requires customers to stay on basic service for one-year to be eligible to receive an EPS-funded efficiency resource, creating a disincentive for customers to choose competitive supply. Conversely, upon installation of the efficiency resource the EPS provides an incentive for customers to switch to competitive supply to avoid paying the cost of the resource over the five-year amortization period. RESA believes that customer choice should be based on competitive market forces, not artificial incentives such as these.

The Department should use this investigation to explore alternate program designs that would avoid these problems, maximize the utilization of new efficiency resources, and incorporate recovery mechanisms that are more consistent with the broader societal goals that such programs are intended to serve. The best way to achieve these objectives is to make new energy efficiency programs available to all customers, including those on competitive supply, and to require all customers to pay for them through the System Benefit Charge ("SBC") or another rate component that is charged to all customers. Although RESA's recommended approach would require legislative action, this

proceeding provides the perfect opportunity for the Department to partner with DOER and work with stakeholders to select the optimal design of new energy efficiency programs for presentation to the Legislature. In the event that the Department chooses not to recommend new programs to the Legislature, the Department should not adopt the EPS as proposed or any other energy efficiency program that is not neutral to retail competition.

OVERVIEW OF THE DOER PETITION

Pursuant to the Electricity Industry Restructuring Act of 1997 (“Electricity Restructuring Act”),² the Legislature granted the Department authority to promulgate rules and regulations for the procurement of basic service power as set forth in G.L. c. 164, § 1B (“Section 1B”).³ That statute requires distribution companies to procure power supplies through competitive bidding and to offer such power to their basic service customers at a rate that “shall not exceed the average monthly market price of electricity.”⁴ Section 1B further provides that any department-approved provider may participate in the competitive bidding process.⁵ DOER maintains that Section 1B provides the legal authority for the Department to adopt the EPS proposed in its Petition.⁶

² See An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, St. 1997, c. 164 codified as G.L. c. 164, §§ 1 et seq.

³ G.L. c. 164, § 1B(f).

⁴ G.L. c. 164, § 1B(d).

⁵ Id.

⁶ DOER Petition, pp. 3, 20-22.

The new EPS would expand on existing energy efficiency programs that are funded through the SBC under other provisions of the Electricity Restructuring Act.⁷

The cited legal authority for the EPS necessarily shapes DOER's proposed design of the Standard. Specifically, the efficiency resources procured through the EPS would be available only to basic service customers.⁸ The distribution companies would be responsible for implementing the EPS by procuring resources from third-party efficiency vendors through a competitive bidding process.⁹ Distribution companies would be required to purchase a target percentage of projected basic service sales in the form of efficiency resources, which target would be set at .25% in year one and increased incrementally to 1.5% in year six.¹⁰ Contracts for efficiency resources would be consummated whenever the cost to purchase such resources is at or below the then-prevailing cost of power supplies for that distribution company as measured by its most recent basic service rate.¹¹ Although the distribution companies would pay the efficiency provider for the cost of the resources upon installation, they would recover such cost from basic service customers in sixty equal monthly installments over the five-year period that the resources are expected to deliver savings.¹² The amortized cost of the efficiency resources would be consolidated with power supply costs into a single line-item

⁷ The SBC efficiency programs are authorized by G.L. c. 25, § 19.

⁸ Id. at 3, 10.

⁹ Id. at 11.

¹⁰ Id. at 12.

¹¹ Id. at 15.

¹² Id. at 15-16.

charge on customer bills, as opposed to being grouped with the charges for SBC efficiency programs.¹³

The distribution companies would be free to select eligible projects to serve any or all basic service customer classes.¹⁴ DOER anticipates, though, that efficiency providers will seek out projects with large and medium-sized C&I customers on basic service as they would provide significant economies of scale.¹⁵ In order to be eligible to receive a resource funded by the EPS, a customer would be required to stay on basic service for at least one year prior to installation.¹⁶ However, a customer would not be required to remain on basic service after the project is installed in order for the savings to be counted toward the distribution companies' percentage targets.¹⁷ The EPS program would be administered by DOER.¹⁸

COMMENTS ON THE DOER PETITION

I. THE DEPARTMENT SHOULD INVESTIGATE NEW ENERGY EFFICIENCY PROGRAMS THAT ARE NEUTRAL TO RETAIL COMPETITION

RESA commends DOER for leading the charge to propose new programs that will conserve energy, improve the performance of the wholesale markets and yield consumer savings. In October 2006, DOER urged the Department to investigate the

¹³ The Petition states that the Electricity Restructuring Act allows only one energy efficiency charge on Customer bills. As that charge is presently occupied by the SBC energy efficiency program, a separate EPS charge is not allowed. Id. at 11.

¹⁴ Id. at 17-18.

¹⁵ Id. at 18.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 19.

implementation of dynamic pricing for basic service customers that would promote more efficient use of electricity, particularly during peak times, and enhance the efficiency of the electric system for the benefit of all consumers.¹⁹ RESA strongly supports DOER's dynamic pricing proposal.²⁰ In this docket, DOER asks the Department to investigate an EPS that is aimed at reducing the electricity consumption of basic service customers throughout the year by installing energy efficiency resources in their homes and businesses.

RESA supports the investigation of additional energy efficiency programs, but it opposes the EPS as proposed in the Petition for two reasons: (1) the EPS is not authorized by the law; and (2) it is not competitively neutral. RESA therefore recommends that the Department investigate alternate program designs that would avoid these problems and maximize the deployment of new energy efficiency resources in the Commonwealth.

A. Energy Efficiency Programs Advance Important Societal Goals

As DOER notes in its Petition, investments in energy efficiency programs can bring significant benefits to Massachusetts electricity consumers.²¹ First, they allow consumers to curtail their energy consumption and realize substantial savings on their electricity bills. Second, reducing consumption can lower the energy market clearing price for the benefit of all consumers by shrinking the bid stack, thereby allowing more efficient generators to serve load. Third, the savings that flow from energy efficiency can

¹⁹ Petition of the Massachusetts Division of Energy Resources for an Investigation into Dynamic Pricing for Basic Service (Oct 31, 2006), Docket No. 06-101.

²⁰ Comments of RESA (Nov. 28, 2006), pp. 2-3, Docket No. 06-101.

²¹ DOER Petition, p. 5.

improve the competitive posture of Massachusetts businesses and strengthen the state's economy. Fourth, reducing energy consumption conserves oil and gas and allows these resources to be deployed for alternative uses in the region. Finally, energy efficiency yields significant environmental benefits by reducing emissions from power plants. All of these goals are important and, consequently, the Department should investigate the feasibility of additional energy efficiency programs. The Department, however, should not consider in its investigation the proposed EPS for the reasons discussed below.

B. The EPS is not Authorized Under the Default Service Statute

As DOER properly notes, G.L. c. 25, § 19 explicitly prohibits distribution companies from making any assessments for energy efficiency resources beyond the charges for the SBC programs.²² Despite this statement, DOER maintains that the Department has the authority to adopt the EPS because Section 1B of the Electricity Restructuring Act allows default service to be procured through any entity approved by the Department.²³ Accordingly to DOER, this includes energy efficiency vendors. RESA disagrees. A reading of Section 1B together with other statutes makes clear that default service pertains to the provision of electricity supplies and does not encompass energy efficiency resources.

Section 1B states in pertinent part:

Beginning on March 1, 1998, each distribution company shall provide its customers with default service and shall offer a default service rate to its customers who have chosen retail *electricity service* from a non-utility affiliated generation company or supplier but who require *electric service* because of a failure of such company or the supplier to

²² G.L. c. 25, § 19 (“A distribution company shall not be allowed to assess any other charge relative to energy efficiency programs, which would exceed the levels permitted herein”).

²³ Id. at 21.

provide contracted service or who, for any reason, have stopped receiving such service, and to all customers at the end of the term of standard offer. The distribution company shall procure *such service* through competitive bidding; provided, however, that the default service rate so procured shall not exceed the average monthly market price of *electricity* Any department-approved provider of service, including an affiliate of a distribution company, shall be eligible to participate in the competitive bidding process The department may authorize an alternate generation company or supplier to provide default service, as described herein, if such alternate service is in the public interest.²⁴

Section 1B by its face authorizes only the procurement of electricity service and makes no mention of energy efficiency resources for default service customers. Moreover, Section 1 of G.L. c. 164 (“Definition Section”) defines “default service” to mean “the electricity services provided to a retail customer”

The term “electricity services” is not sufficiently broad to encompass energy efficiency resources. Although that term is not defined in G.L. c. 164, § 1, it is used interchangeably with the term “electric services,” which is defined as “the provision of generation, transmission, distribution, or ancillary services.”²⁵ That definition cannot possibly include resources for energy efficiency. Indeed, the term “energy efficiency” is separately defined in the Definition Section to mean “the implementation of an action, policy, or measure which entails the application of the least amount of energy required to produce a desired or given output.”²⁶ Put simply, these statutory provisions, when construed together, make clear that the Department’s authorization with respect to default service (now known as “basic service”) is limited to the procurement of electricity supplies and does not reach the procurement of energy efficiency resources.

²⁴ G.L. c. 164, § 1B(d) (emphasis added).

²⁵ G.L. c. 164, § 1.

²⁶ Id.

C. The EPS is not Competitively Neutral

RESA believes that basic service should be provided in a competitively-neutral fashion. The EPS as proposed, however, does not achieve that goal. Instead, it provides customers with an incentive to stay on standard service until the efficiency resource is installed and then depart to the competitive market immediately thereafter to avoid paying the cost of the resource over the five-year amortization period. RESA believes that customer choice should be based on competitive market forces, not artificial incentives.

1. The One-Year Stay on Basic Service

The DOER Petition recommends that a customer be required to remain on basic service for one year before it is eligible to receive an efficiency resource that is funded through the EPS.²⁷ DOER's apparent goal in recommending this stay is to prevent customers from moving onto basic service temporarily for the purpose of participating in the EPS and transitioning shortly thereafter to the competitive market. DOER does attempt to retain retail choice to some extent by suggesting that customers should not be required to remain on basic service once the efficiency resources are installed.²⁸ While RESA appreciates the delicate balance that DOER seeks to achieve, it nonetheless believes that the one-year stay as it applies to large and medium-sized C&I customers is inconsistent with the purpose of basic service and would undermine retail competition.

²⁷ Id. at 18.

²⁸ Id.

The Department has made clear that basic service ideally should be a short-term last resort service for larger customers.²⁹ The eligibility requirement proposed by DOER, however, would provide an incentive for large and medium-sized customers to switch to basic service and remain there for at least one year in order to qualify for the EPS. That result not only contravenes the last-resort purpose of basic service, but it also undermines retail competition. Furthermore, customers should not be required to forego attractive competitive offerings in order to participate in a government-sponsored energy efficiency program.

2. Incentives after Resource Installation

Under DOER's proposed design, the cost of the efficiency resources procured by the distribution companies would be recovered from basic service customers over a five-year period.³⁰ As noted above, customers need not remain on basic service after installation of the efficiency resources. This feature of the proposed EPS provides an incentive for customers who have received an efficiency resource to switch to the competitive market to avoid paying for the cost of such resource. Incentives such as these interfere with competitive markets and ought not be endorsed any more than the one-year stay should be.

II. NEW ENERGY EFFICIENCY PROGRAMS SHOULD BE AVAILABLE TO AND FUNDED BY ALL CUSTOMERS

²⁹ Department Order (2000) Docket No. 02-40-B, p. 7.

³⁰ DOER Petition, pp. 15-16.

RESA believes that new energy efficiency programs would be far more effective if they were made available to all customers, including those on competitive supply, and funded through the SBC or some other rate component that is charged to all customers. Given the relatively large percentage of Massachusetts C&I customers on competitive supply, this approach would achieve greater utilization of efficiency resources; it also would be competitively neutral. Recovering the cost of new energy efficiency resources through the SBC or some other rate component that is charged to all customers is more reflective of the broader societal purposes that these programs are designed to serve.

RESA recognizes that this alternate approach also would require legislative action as it goes beyond the authority of the Electricity Restructuring Act. RESA nonetheless urges the Department to use this proceeding to evaluate various designs of new energy efficiency programs and to select an optimal model to recommend to the Legislature. If the Department declines to pursue this course, it should not adopt the EPS as proposed because it lacks the requisite legal authority and interferes with the competitive markets.

CONCLUSION

As discussed above, RESA supports DOER's Petition to open an investigation into new energy efficiency programs, but urges the Department to ensure that any new program is competitively neutral. RESA appreciates the opportunity to participate in and provide written comments in this proceeding.

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