The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 11-120-A, Phase II January 31, 2013

Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines.

ORDER APPROVING REVISED ENERGY EFFICIENCY GUIDELINES

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I. INTRODUCTION

To expand energy efficiency efforts in the Commonwealth, the Green Communities Act[1] requires all electric and gas distribution companies and approved municipal aggregators[2] (together, "Program Administrators") to develop three-year energy efficiency plans that are designed to "provide for the acquisition of all available energy efficiency and demand resources that are cost effective or less expensive than supply." G.L. c. 25, § 21(b)(1). On November 29, 2011, the Department of Public Utilities ("Department") opened this investigation to examine a number of issues associated with the three-year energy efficiency plans. Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines, D.P.U. 11-120 (2011).

On May 25, 2012, the Department issued an Order opening the second phase of this investigation.[3] Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines, D.P.U. 11-120, Phase II (2012). In that Order, the Department presented a straw proposal ("Straw Proposal") for a new way to address the recurring filings made each year during the first term of the three-year plans: (1) performance reports submitted by each Program Administrator annually, which include a determination of the

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1 An Act Relative to Green Communities, Acts of 2008, chapter 169, section 11.

2 See G.L. c. 164, § 134(b).

3 In the first phase of the investigation, the Department is examining the following issues associated with energy efficiency program benefits that are included in the cost-effectiveness determination: (1) the method used to calculate program net savings; and (2) the method used to calculate reasonably anticipated environmental compliance costs, in particular those associated with the emission of carbon dioxide. Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines, D.P.U. 11-120, at 3 (2011).

performance incentive payment; (2) annual calculation and reconciliation of each Program Administrator's energy efficiency surcharge ("EES"); and (3) mid-term modification filings. D.P.U. 11-120, Phase II, at 2-3.

During the first term, the Program Administrators, stakeholders, and the Department essentially viewed the three-year plans as a compilation of three, one-year plans.[4] While such treatment was appropriate during the first three-year term, the experience gained during this time allows us to consider approaches to reviewing energy efficiency plans that are more consistent with the three-year planning and performance construct envisioned by the Green Communities Act. G.L. c. 25, § 21(d); D.P.U. 11-120, Phase II at 2-3. Such approaches will allow: (1) the Program Administrators and stakeholders to focus on successful implementation of the three-year plans, while maintaining accountability in the delivery of energy efficiency programs; and (2) the Department to fulfill its regulatory oversight responsibilities in a more administratively efficient and effective manner. See D.P.U. 11-120, Phase II at 2-3.

On June 19, 2012, the Department held a technical session to discuss the Straw Proposal with the Program Administrators and interested stakeholders. The Department received comments on the Straw Proposal from the Program Administrators,[5] NSTAR Electric and

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4 Annual performance reports and EES filings were made by each of the twelve Program Administrators in 2010 and 2011. Mid-term modification filings were made by twelve Program Administrators in 2011 and eleven Program Administrators in 2012.

5 Joint comments were filed by the following Program Administrators: Bay State Gas Company d/b/a Columbia Gas of Massachusetts; The Berkshire Gas Company; Blackstone Gas Company, Boston Gas Company and Colonial Gas Company, each d/b/a National Grid; Cape Light Compact ("Compact"); Fitchburg Gas and Electric Light Company d/b/a Unitil; Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid; New England Gas Company, NSTAR Electric

NSTAR Gas (together, "NSTAR"),[6] the Attorney General of the Commonwealth of Massachusetts ("Attorney General"), the Energy Efficiency Advisory Council ("Council") and the Green Justice Coalition ("GJC") on July 12, 2012 ("Comments"). On August 16, 2012, the Department conducted a second technical session on the Straw Proposal. On September 21, 2012, the Department sought comment on a mark-up of the Department's energy efficiency Guidelines, based on the comments received, designed to implement the proposal ("Proposed Revised Guidelines").[7] See September 21, 2012 Hearing Officer Memo. The Department received comments on the Proposed Revised Guidelines from the Program Administrators, the Compact,[8] the Department of Energy Resources ("DOER"), Environment Northeast ("ENE"), the Low-Income Energy Affordability Network ("LEAN") and the Attorney General on October 15, 2012 ("Reply Comments").

Company ("NSTAR Electric"); NSTAR Gas Company ("NSTAR Gas"); and Western Massachusetts Electric Company.

6 NSTAR also filed separate comments to address issues related to its merger with Northeast Utilities in NSTAR/Northeast Utilities, D.P.U. 10-170 (2012).

7 The energy efficiency Guidelines were first established in Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines Consistent with An Act Relative to Green Communities, D.P.U. 08-50-B at 44-57 (2009) ("Guidelines"). The Guidelines set forth the filing requirements applicable to Program Administrators and process by which the Department will review energy efficiency plans and performance reports. In particular, the Guidelines addresss: (1) funding sources; (2) budgets; (3) program cost-effectiveness test; (4) evaluation plans; (5) performance incentives; (6) review of three-year plans; (7) mid-term modifications, and (8) performance reports.

8 The Compact also filed separate reply comments regarding its EES. The Department addresses the Compact's EES in 2013-2015 Energy Efficiency Plans Order, D.P.U. 12-100 through D.P.U. 12-111, at 124 n.106 (January 31, 2012) ("2013-2015 Energy Efficiency Plans Order").

The Straw Proposal and Proposed Revised Guidelines would eliminate, except in limited circumstances, the annual proceedings associated with energy efficiency performance reports, EES rate adjustments and reconciliations, and mid-term modifications. The Department proposed, instead, to: (1) review each Program Administrator's performance and approve final recovery of its energy efficiency costs and actual performance incentive after completion of the three-year term; (2) approve, for each Program Administrator, EESs for each program year at the beginning of the three-year term and to reconcile any over- or under-recoveries after completion of the term; and (3) expand the range of mid-term modifications that would not require Department approval, conditioned upon a Program Administrator obtaining approval from the Council. D.P.U. 11-120, Phase II at 2-3.

In this Order, the Department sets forth the new approach by which we will review, going forward, energy efficiency performance reports (including performance incentive payments), EESs, and mid-term modifications. Attached to the Order is a final version of the Guidelines, revised to implement this new approach ("Final Revised Guidelines"). Certain details remain to be determined regarding the implementation of this new approach. As discussed below, the Department will convene a working group to aid us in resolving these remaining issues.

II. REVIEW OF PERFORMANCE REPORTS AND PERFORMANCE INCENTIVES

A. Current Approach

1. Performance Reports

The Department currently requires each Program Administrator to submit an annual report that documents its performance in delivering energy efficiency services during the applicable plan year.[9] The Department reviews the performance reports to ensure that, in delivering these services, the Program Administrator complied with all applicable statutory requirements and Department precedent. Based on the findings made, the Department approves the Program Administrator's final recovery[10] of energy efficiency costs incurred during the program year, including its performance incentive payment and lost base revenues, where applicable.

2. Performance Incentives

The performance incentive mechanism in effect during the first three-year plan term included three components through which the Program Administrators could earn incentive payments: (1) a savings component based on total benefits; (2) a value component based on net benefits; and (3) a performance metrics component. For each Program Administrator, the incentive payment that could be earned through each component and the manner in which the payments were calculated was established annually, based on projected performance for the plan year. Electric Three-Year Plans Order at 93-99, 124-125; Gas Three-Year Plans Order at 79-84,

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9 The Department established a template for the content of and format for the performance reports in Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines Consistent with An Act Relative to Green Communities, D.P.U. 08-50-C, Annual Report Template at 1 (2011).

10 Program Administrators collect in their EESs, subject to reconciliation after investigation, projected energy efficiency program costs during each plan year, based on budgets approved in the three-year plans. See, e.g., Electric Energy Efficiency Three-Year Plans, D.P.U. 09-116 through D.P.U. 09-120, at 55-59 (2010) ("Electric Three-Year Plans Order"). Electric Program Administrators recover through their EESs the difference between (1) their program budgets, and (2) revenue from the system benefits charge, proceeds from their participation in the forward capacity market, and proceeds from the Regional Greenhouse Gas Initiative. Gas Program Administrators recover the entirety of their program budges through their EESs. See, e.g., 2013-2015 Energy Efficiency Plans Order at 108-109.

114-115.[11] Electric Program Administrators currently collect incentive payments at design levels (based on projected performance during the year) during the applicable program year and reconcile final versus design incentive payments annually (based on actual performance during the plan year) after Department review and approval of their annual reports. See, e.g., Electric Three-Year Plans Order at Tables IV.B.3.6 and IV.C.1. Gas Program Administrators currently do not collect performance incentive payments until after the Department's review and approval of their annual reports. Gas Three-Year Plans Order at 58.

B. Proposed Revised Guidelines

1. Performance Reports

Pursuant to the Proposed Revised Guidelines,[12] each Program Administrator would be required to submit a performance report upon completion of each three-year term that documents its performance during the term ("Three-Year Term Report"). Proposed Revised Guidelines § 4.1. The Department would review the Three-Year Term Report to determine, among other things, whether the Program Administrator (1) reported its program savings, benefits, and costs accurately and reliably, and (2) implemented its energy efficiency programs in a manner that was consistent with the Department-approved three-year plan. Proposed Revised Guidelines § 4.1.1. Based on the results of our investigation, the Department would approve final recovery of costs

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[11] Gas Energy Efficiency Three-Year Plans, D.P.U. 09-121 through D.P.U. 09-128 (2010) ("Gas Three-Year Plans Order").

[12] The elements of the Proposed Revised Guidelines related to the Department's review of performance reports and performance incentives were unchanged from the Straw Proposal.

incurred during the three-year term, including actual performance incentive payments and, where applicable, actual lost base revenues. Proposed Revised Guidelines § 4.1.2.

To allow the Department and stakeholders to monitor the status of a Program Administrator's performance in implementing its plan, the Proposed Revised Guidelines would require each Program Administrator to submit a performance report upon completion of each plan year that documents its performance during the applicable year ("Plan-Year Report"). D.P.U. 11-120, Phase II at 7; Proposed Revised Guidelines § 4.2. Pursuant to the Proposed Revised Guidelines, the Department may investigate a Program Administrator's performance during the three-year term on its own motion or upon request of the Council. Proposed Revised Guidelines § 4.3.

2. Performance Incentives

Under the Proposed Revised Guidelines, the Program Administrators would calculate design performance incentive payment levels based on projections of performance for the entire three-year term. D.P.U. 11-120, Phase II at 7-8. As part of their three-year plan filings, Program Administrators would: (1) identify a statewide incentive pool for the three-year term; (2) allocate the incentive pool to the components based on percentages established for the term; (3) calculate payout rates for the savings and value components based on the three-year projections of total and net program benefits; and (4) establish three-year (rather than annual) targets for the performance metrics. D.P.U. 11-120, Phase II at 7-8. Each Program Administrator (gas and electric) would collect design-level performance incentive payments each year during the term of the plan, and would reconcile its actual versus design-level incentive payments after the Department has completed its review of the Three-Year Term Reports. D.P.U. 11-120, Phase II at 7-8.

C. Summary of Comments

1. Attorney General

The Attorney General contends that the proposal to allow Program Administrators to collect design incentive payments during each plan year and defer reconciliation of actual versus design incentive payments until after the term represents a significant departure from the Department's current practice of annual reconciliations. The Attorney General argues that a deferred reconciliation will result in the collection of "tens of millions of dollars" in performance incentives by Program Administrators over the plan term before the Department has established whether the performance incentives were, in fact, earned (Attorney General Reply Comments at 6-7). Should the Department adopt the proposed three-year review, the Attorney General argues that Program Administrators should not be allowed to collect any performance incentives until the Department has verified that the incentives actually have been earned (Attorney General Reply Comments at 7).

1. Energy Efficiency Advisory Council and Department of Energy Resources

The Council and DOER support an approach in which the Department (1) conducts a full investigation of each Program Administrator's performance after the conclusion of each three-year term, (2) requires each Program Administrator to submit an annual Plan-Year Report, and (3) investigates a Program Administrator's performance mid-term upon the Department's own motion or a Council resolution (Council Comments at 2; DOER Reply Comments at 3). DOER recommends that the Department require the Program Administrators to file their

Plan-Year Reports with the Council as well as the Department, with such reports "compiled in an aggregated manner to reflect statewide totals" (DOER Reply Comments at 3-4). In addition, DOER recommends that the Council review each Program Administrator's Plan-Year Report and "provide the Department with a report of its determinations" (DOER Reply Comments at 3-4). The Council and DOER further recommend that the Department explicitly state that it will open an investigation in those instances in which the performance incentives collected by a Program Administrator during the plan year do not appear to be consistent with the Program Administrator's actual performance (Council Comments at 2; DOER Reply Comments at 2).

The Council and DOER oppose the Department's proposal to defer reconciliation of actual versus design incentive payments until the end of the three-year term (Council Comments at 2; DOER Reply Comments at 3). Instead, the Council and DOER recommend that the reconciliation occur annually based on the information included in the Plan-Year Reports, stating that this would result in a more timely and accurate performance signal to the Program Administrators (Council Comments at 2; DOER Reply Comments at 3).

2. Environment Northeast

ENE supports the Three-Year Term Report and performance incentive component of the Revised Straw Proposal, arguing that it will streamline the energy efficiency reporting process while leaving unchanged the Department's essential role of adjudicating issues with respect to each Program Administrator's performance and ability to recover costs, incentives, and lost base revenues (ENE Reply Comments at 6). ENE recommends that the Department require the Program Administrators to submit their Three-Year Term Reports and the Plan-Year Reports to the Council, as well as to the Department (ENE Reply Comments at 6).

3. Green Justice Coalition

GJC supports the Department's proposal to require Program Administrators to file Three-Year Term Reports at the conclusion of the plan term and Plan-Year Reports annually (GJC Comments at 1). GJC asserts that the Plan-Year Reports should contain the same information as the existing annual reports but should also provide information about energy efficiency program participants, including their geographic distribution (GJC Comments at 1).[13]

4. Program Administrators

The Program Administrators support the Department's proposal to examine performance over the three-year term (Program Administrator Comments at 5; Program Administrator Reply Comments at 12). They argue that this approach is consistent with the Green Communities Act and may better show how energy efficiency programs operate over time (Program Administrator Comments at 5; Program Administrator Reply Comments at 12). The Program Administrators assert that the existing annual report template, which requires significant time and resources to complete, is not appropriate for the Plan-Year Reports; they argue, instead, that a streamlined report template would be more efficient (Program Administrator Reply Comments at 12). Accordingly, the Program Administrators request that the Department convene a working group to develop a Plan-Year Report template (Program Administrator Comments at 6).

The Program Administrators support the Department's proposal to allow gas and electric Program Administrators to collect design level performance incentives during the plan term and argue that such treatment should also be applied to the recovery of lost base revenues by gas

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13 The Department addresses GJC's arguments regarding data collection in the 2013-2015 Energy Efficiency Plans Order at 60 and, therefore, we will not address them here.

companies (Program Administrator Comments at 4-5). They argue that allowing gas Program Administrators to recover lost base revenues during the three-year plan term will reduce the existing regulatory lag in the collection of those charges (Program Administrator Comments at 4). Finally, the Program Administrators recommend that the Department consider synchronizing the current biennial schedule for updating avoided costs with the proposed three-year review cycle (Program Administrator Comments at 8).

In addition, NSTAR argues that the terms of its merger settlement may conflict with the Department's proposal to eliminate the annual energy efficiency verification process (NSTAR Comments at 1, citing NSTAR/Northeast Utilities, D.P.U. 10-170 (2012). In particular, NSTAR argues that, for NSTAR Electric, the settlement requires that lost base revenues be calculated each year based on savings as determined in NSTAR Electric's annual energy efficiency report (NSTAR Comments at 1). Similarly, NSTAR argues that the calculation of lost base revenues for NSTAR Gas requires annual savings data (NSTAR Comments at 3).

D. Analysis and Findings

1. Performance Reports

The Department's primary objective in putting forth the Proposed Revised Guidelines was to establish an energy efficiency regulatory process that was consistent with the three-year planning construct envisioned by the Green Communities Act. D.P.U. 11-120, Phase II at 2-3. The Department remains convinced that best method to evaluate Program Administrator performance in implementing its energy efficiency programs is to examine performance over the entire three-year term of the plan, rather than to examine performance in any individual plan year. D.P.U. 11-120, Phase II at 8. After consideration of the comments received, the

Department concludes that the provisions in the Proposed Revised Guidelines related to our review of Program Administrator performance will improve the efficiency and effectiveness of the regulatory process, while ensuring that the Department, the Council, and other stakeholders have sufficient information to monitor and review each Program Administrator's performance during the term of the plan.

As discussed in Section V, below, this new regulatory approach is fully consistent with the Green Communities Act. Accordingly, starting with the three-year plan term for 2013 through 2015, the Department adopts the approach set forth in the Proposed Revised Guidelines regarding our review of Program Administrator performance. Final Revised Guidelines § 4. The Final Revised Guidelines require each Program Administrator to submit copies of its Plan-Year Report to the Council. Final Revised Guidelines § 4.2. Although we do not have the authority to require the Council to review the Plan-Year Reports as requested by DOER, we would welcome the Council's comments on these reports (see DOER Reply Comments at 3-4). In addition, as memorialized in the Final Revised Guidelines, the Department may investigate a Program Administrator's performance any time during the three-year term on its own motion or if the Council requests that we do so. Final Revised Guidelines § 4.3. Finally, in light of the significant changes outlined here regarding the reporting and review of Program Administrator performance, the Department finds that it is appropriate to revisit the content and format requirements established for the performance reports in D.P.U. 08-50-C (see Program Administrator Reply Comments at 12).

The Department leaves unresolved certain implementation details associated with the Plan-Year Reports and the Three-Year Plan Reports and will finalize these issues through a working group process. With respect to our review of performance reports, these implementation details are (1) the schedules on which Program Administrators shall submit their Three-Year Term Reports and Plan-Year Reports to the Department, and (2) the content and format of the information to be included in the Three-Year Term Reports and Plan-Year Reports.[14]

2. Performance Incentives

Consistent with the Department's intention to examine Program Administrator performance over the entire three-year term, the Proposed Revised Guidelines called for Program Administrators, as part of the investigation of the three-year plans, to calculate design-level incentive payments based on projections of performance for the term. The Department would not investigate and reconcile actual versus design-level incentive payments annually.[15] Instead, the Department would reconcile and approve final recovery of actual incentive payments as part of our investigation of the Three-Year Term Reports. See D.P.U. 11-120, Phase II at 7-8. The Council and DOER recommend that the Department not adopt this element of the proposal and, instead, continue to conduct such reconciliations annually (Council Comments at 2; DOER Reply Comments at 3). The Attorney General recommends that the Program Administrators not collect any performance incentives until the Department has verified in the Three-Year Term

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14 The Department also will address in the working group DOER's recommendation that the Program Administrators aggregate the data included in their Plan-Year Reports to reflect statewide totals (DOER Reply Comments at 3-4).

15 The Program Administrators would collect design incentive payment levels as part of' their EESs during the three-year term.

Report investigations that the incentives have been earned (Attorney General Reply Comments at 7).

We are not persuaded, as the Council and DOER suggest, that an annual reconciliation of performance incentives is required in order to send a timely signal to the Program Administrators with regard to their performance. As part of the Plan-Year Reports, the Program Administrators will be required to document their performance, including an illustrative calculation of their actual performance incentive, annually. While the performance incentive will not be reconciled in an annual adjudicatory proceeding, the Program Administrators, Department, and other stakeholders will be informed regarding the status of the Program Administrators' performance during the plan term. The Department notes that a significant deviation between the design-level performance incentive payments that the Program Administrator is collecting during a plan year and its actual performance may be cause for the Department to investigate (either upon our own motion or at the request of the Council) the Program Administrator's performance during the term. Further, we do not agree that it is appropriate to defer collection of any performance incentive until the conclusion of our Three-Year Term Report investigations, as the Attorney General suggests. As noted above, electric Program Administrators currently collect design-level performance incentives during the plan year and such collection is fully reconciling. In order to avoid a significant under-collection of program costs at the end of the three-year term, we find that it is appropriate for the Program Administrators to collect design-level incentives during the plan year.

In addition, the Council's and DOER's recommendations regarding performance incentives are inconsistent with our objective of establishing an efficient regulatory processes that appropriately reflects the three-year planning construct envisioned by the Green Communities Act. As we have stated earlier, we are of the view that the Department can best evaluate a Program Administrator's performance in implementing its plan by reviewing its performance over the entire three-year term of the plan. Consistent with this view, the Department has adopted a three-year performance incentive mechanism as part of the Program Administrators' three-year plans approved in dockets D.P.U. 12-100 through D.P.U. 12-111. See, 2013-2015 Energy Efficiency Plans Order at 95-97.

After consideration of the comments received, the Department adopts the approach set forth in the Proposed Revised Guidelines regarding the calculation and collection of performance incentive payments during each plan term. See Final Revised Guidelines § 3.6.4. It is important to ensure that the reconciliation of actual versus design incentive payments associated with a plan term occurs in a timely manner (i.e., as early as possible during the subsequent term). Requiring such reconciliation to await the completion of our investigation into the Three-Year Term Reports may not result in a timely reconciliation. Accordingly, the Department will resolve issues associated with the timing of the reconciliation of actual and design incentive payments in the working group.

In addition, the Department will adopt this approach for the collection of lost base revenues. NSTAR Electric and gas Program Administrators may collect lost base revenues during the plan term, and reconcile actual lost base revenues at the end of the term. Final Revised Guidelines § 4.1.2 While NSTAR's merger settlement requires that final lost base revenue recovery be based on verified savings, it does not prevent NSTAR Gas or NSTAR

Electric from collecting estimated lost base revenues during this plan year. D.P.U. 10-170-B, Attorney General Merger Settlement at Art. II(7).

III. ENERGY EFFICIENCY SURCHARGE FILINGS

A. Current Approach

On an annual basis, each Program Administrator currently submits an updated EES for Department review, based on: (1) the Program Administrator's most recent projections of budgets, revenues from non-EES funding sources (for electric Program Administrators), and sales for the current year; and (2) a reconciliation of any under- or over-recovery of costs from the previous year. Each electric Program Administrator submits its updated EES in a separate filing, with an effective date that coincides with the first semi-annual change in residential basic service rates. Each gas Program Administrator submits its updated EESs as part of its annual or semi-annual local distribution adjustment factor ("LDAF") filing, with an effective date of November 1st or, for those gas Program Administrators that change their LDAF twice per year, effective dates of May 1st and November 1st.

B. Proposed Revised Guidelines

Under the Proposed Revised Guidelines,[16] at the beginning of each three-year term, the Department would approve, for each Program Administrator, a separate EES for each year of the term based on: (1) plan-year budgets; (2) expected revenues from non-EES funding sources (for electric Program Administrators); and (3) projected sales. Proposed Revised Guidelines §§ 3.2.1.6; 3.2.2. The Department-approved EES for each year would remain fixed during the

16 Unless otherwise noted, the elements of the Revised Straw Proposal related to the EES remain unchanged from the Straw Proposal.

term of the plan, except as described below. Proposed Revised Guidelines §§ 3.2.1.6.3, 3.2.2.2. So long as it remains within the bandwidths discussed below, any under- or over-recovery of costs during the three-year term would be collected from, or credited to, ratepayers during the subsequent three-year term. D.P.U. 11-120, Phase II at 12.

The Proposed Revised Guidelines include two thresholds designed to ensure that if a Program Administrator's energy efficiency-related revenues deviate significantly from its costs in any plan-year, its EES would be revised. Specifically, a revised EES filing would be required when: (1) a projected under- or over-recovery of costs for a customer sector would result in a bill impact greater than two percent for an average customer ("bill impact theshold"); or (2) a projected under- or over-recovery of total costs would exceed 25 percent of the total revenues the Program Administrator projects to recover through its EES[17] ("percentage of revenues threshold"). Proposed Revised Guidelines §§ 3.2.1.6.3.1, 3.2.2.3.1.

C. Summary of Comments

1. Attorney General

The Attorney General argues that the Department should continue to require Program Administrators to submit annual EES filings for review and approval, stating that this approach would be "more fiscally prudent, less subjective, and less burdensome" than the Department's proposed approach (Attorney General Reply Comments at 2-3). The Attorney General argues that, under the Department's proposed bill impact percent threshold, annual filings may still occur, based on the experience of the initial three-year term. The Attorney General contends that

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[17] The percentage of revenues threshold was not included in the Straw Proposal. As discussed below, it was added to the Proposed Revised Guidelines in response to the Program Administrators' comments.

a Program Administrator could conceivably over-collect millions of dollars from a customer sector before a reconciliation would be required (Attorney General Comments at 6; Attorney General Reply Comments at 2-3). Finally, the Attorney General notes that the proposal is silent on how soon Program Administrators would be required to submit a revised EES filing once a threshold is met (Attorney General Comments at 6; Attorney General Reply Comments at 3).

2. Energy Efficiency Advisory Counsel and Department of Energy Resources

DOER and the Council support the Department's proposal to establish a fixed set of EESs for the entire three-year term, subject to appropriate safeguards to avoid significant reconciliations at the end of the term (Council Comments at 2; DOER Reply Comments at 2). DOER and the Council recommend that the Department engage stakeholders in further discussions regarding the specific bill impact that would require a Program Administrator to submit a revised EES (Council Comments at 2; DOER Reply Comments at 2).

3. Environment Northeast

ENE supports the EES component of the Proposed Revised Guidelines, arguing that it will streamline the process of collecting energy efficiency funds, without any risk to customers and while preserving the appropriate level of review by the Department (ENE Reply Comments at 3). ENE recommends that the Department require Program Administrators to make a "simple declaratory" filing each year affirming that their under- or over-recovery of costs does not exceed the specified thresholds requiring a reconciliation. In addition, ENE argues that the Department should apply the percentage of revenues threshold at the customer sector level, rather than company-wide (ENE Reply Comments at 3). Finally, ENE requests that Department clarify whether one or both of the thresholds must be exceeded in order to trigger a revised EES filing (ENE Reply Comments at 3).

4. Green Justice Coalition

GJC supports the Department's proposed changes to the process for establishing EESs for each program year at the start of the three-year term and reconciling over- or under-recoveries at the end of the plan term (GJC Comments at 2).

5. Low-Income Energy Affordability Network

LEAN argues that the Department should not adopt the bill impact and percentage of revenues thresholds, arguing that they are inflexible standards that do not appropriately account for external conditions. Instead, LEAN asserts that the Department should continue to rely on its judgment to determine whether a particular energy efficiency bill impact is reasonable[18] (LEAN Comments at 2-3).

6. Program Administrators

The Program Administrators generally support the EES component of the Proposed Revised Guidelines, with certain recommended revisions (Program Administrator Reply Comments at 10). First, the Program Administrators recommend that the Department adopt the percentage of revenues threshold as the sole requirement for filing a revised EES, arguing that the bill impact threshold: (1) requires a complex calculation that will be affected by commodity costs at the time the calculation is made; and (2) requires assumptions regarding the

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[18] The Department notes that application of the bill impact threshold and percentage of revenues threshold would not affect approved energy efficiency programs or budgets, as implied by LEAN in its comments. Instead, the thresholds would determine whether an annual EES established at the start of a plan term requires a mid-term adjustment to account for an over- or under-collection of approved energy efficiency costs.

identification of average customers (Program Administrator Reply Comments at 11). The Program Administrators argue that, by comparison, the percentage of revenues threshold: (1) is simpler to administer; (2) better isolates the energy efficiency effects that the Department is seeking to assess; and (3) will be more stable because it is not subject to other changing factors (Program Administrator Reply Comments at10-11). Second, the Program Administrators recommend that they be allowed to submit revised EESs in instances where the thresholds are not exceeded but, in their judgment, there is a significant under- or over-recovery of energy efficiency costs (Program Administrator Reply Comments at 11).

D. Analysis and Findings

The review and reconciliation of annual EES filings consumes significant Department, Program Administrator, and stakeholder resources. In D.P.U. 11-120, Phase II at 12, the Department stated that establishing an EES for each plan year at the beginning of the three-year term and reconciling cost under- or over-recoveries at the end of the term appropriately accounts for the fluctuations in program budgets, revenues, and sales expected to occur over each term and, therefore, is consistent with the three-year planning structure contemplated by the Green Communities Act. We reaffirm that finding here. Provided that appropriate thresholds are in place to adjust the EES mid-term in the event of a significant under- or over-recovery, as discussed below, we conclude that the framework for establishing and reconciling EESs contained in the Proposed Revised Guidelines will improve the efficiency and effectiveness of our regulatory review, while ensuring that the collection of Program Administrators' energy efficiency revenues does not deviate significantly from their costs.

The two thresholds included in the Proposed Revised Guidelines are intended to serve different purposes. The bill impact threshold is intended to ensure that a significant under- or over-recovery of costs would not need to be collected from (or credited to) customers in future plan years. Because the threshold will be applied separately for each customer sector, the bill impact threshold could be triggered for a particular customer sector even if, on a company-wide basis, a Program Administrator's recovery of energy efficiency costs did not exceed the specified threshold. Eliminating this threshold and relying solely on the percentage of revenues threshold, as recommended by the Program Administrators, would remove an essential protection against a large cost over- or under-recovery that could occur during a plan term (see Program Administrator Reply Comments at 10). Even given the complexities required in calculating bill impacts, the Department finds that the calculation of bill impacts is an effective way to assess the effect on customers of any under- or over-recovery of energy efficiency costs.

By contrast, the percentage of revenues threshold is intended to provide protection to Program Administrators against significant under-recovery of costs that might occur during a plan term. Because this threshold is applied on a company-wide basis, the percentage of revenues threshold could be triggered even if the bill impact threshold is not triggered for any customer sector. Calculating the percentage of revenues threshold at the sector level, as recommended by ENE, would, in large part (1) make the two thresholds redundant, and (2) eliminate the protection that the threshold is intended to provide to Program Administrators (see ENE Reply Comments at 3).

The Department concludes that, operating together, the bill impact threshold and the percentage of revenues threshold provide sufficient protection against the need to credit or collect significant cost under- or over-recoveries from customers in future plan terms. We find that allowing Program Administrators also to submit revised EES filings at their discretion is not necessary and would largely obviate the efficiency of our new regulatory approach (see Program Administrator Reply Comments at 10).

Finally, the Department sees no reason to engage stakeholders in further discussions, at this time, regarding the values to be applied to the bill impacts and percentage of revenues thresholds, as recommended by the Council and DOER (Council Comments at 2; DOER Reply Comments at 2). Instead, we find that it is appropriate to use the values specified in the Proposed Revised Guidelines in the initial implementation of this approach. If experience gained informs us that, because of the specified values, the thresholds are not adequately serving their intended purposes, we will revisit this issue.

After consideration of the comments received, the Department adopts the framework for establishing and reconciling EESs (including the bill impact and percentage of revenues thresholds) contained in the in Proposed Revised Guidelines. On an annual basis, consistent with the schedule by which its currently submits EES filings for Department review, each Program Administrator shall perform the required calculations and submit either: (1) revised EES filings for Department review when either threshold is exceeded; or (2) a statement to the Department and the Council (with supporting documentation) indicating that neither threshold has been exceeded. See Final Revised Guidelines §§ 3.2.1.6.4, 3.2.2.3.1.

IV. MID-TERM MODIFICATIONS

A. Current Approach

Currently, Program Administrators must seek Department approval for all "significant" modifications, defined as: (1) the addition or termination of a program; (2) a change in a three-year program budget of greater than 20 percent; or (3) a modification in a program design that leads to a change in savings goals or performance incentives that exceeds 20 percent. Guidelines § 3.8.2. Program Administrators are not currently required to obtain Council approval for significant modifications but they are required to submit them to the Council for review before filing them with the Department. Guidelines § 3.8.2. Any request for Department approval must be accompanied by: (1) sufficient justification for the modification; and (2) the results of the Council's review of the modification. Guidelines § 3.8.2.

B. Proposed Revised Guidelines

The Proposed Revised Guidelines would establish two categories of significant mid-term modifications. The first category ("Category One") includes: (1) the addition of a hard-to-measure energy efficiency program;[19] (2) the termination of an existing energy efficiency or hard-to-measure program; (3) a change in the three-year budget of an energy efficiency or hard-to-measure program in excess of 20 percent; and (4) a modification to the design of an energy efficiency program that is projected to result in a greater than 20 percent change in program benefits over the three-year term. Proposed Revised Guidelines § 3.8.1. For

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19 A hard-to-measure program is a program that might not have immediate energy savings or for which energy savings may be difficult to quantify, including, but not limited to, programs for research, development and commercialization of energy efficiency products, and pilot programs. Proposed Revised Guidelines § 2.

these modifications, a Program Administrator would be required to submit the proposed modification to the Council for review. Proposed Revised Guidelines § 3.8.1. If the Council passes a resolution supporting the proposed modification, the Program Administrator would be permitted to implement the modification. Intervenors in the Program Administrator's three-year plan proceeding would have 60 days from the date of the Council resolution to request that the Department open an investigation to review the proposed modification. Proposed Revised Guidelines § 3.8.1.1. If the Council passes a resolution opposing the proposed modification, the Program Administrator would be precluded from implementing the modification, unless the Department orders otherwise. The Program Administrator would have 60 days from the date of the Council resolution to request that the Department open an investigation to review the proposed modification. Proposed Revised Guidelines § 3.8.1.2.

The second category of mid-term term modifications ("Category Two") includes: (1) the addition of a new energy efficiency program; (2) the transition of a hard-to-measure program to an energy efficiency program; and (3) an increase in a customer sector budget such that the resulting bill increase for an average customer in that sector would exceed two percent. Proposed Revised Guidelines § 3.8.2. For these modifications, Program Administrators would be required to first submit the proposed modification for review by the Council and then for review and approval of the Department. Proposed Revised Guidelines § 3.8.2.

C. Summary of Comments

1. Attorney General

The Attorney General argues that the Department should not change the existing process for reviewing mid-term modifications, stating that the Proposed Revised Guidelines does not improve upon the existing process but, instead, makes the process more "ambiguous and cumbersome" (Attorney General Reply Comments at 4). The Attorney General argues that the Department should amend the proposal to treat the addition of a hard-to measure program in the same manner as the addition of other energy efficiency programs, because the savings from hard-to-measure programs are difficult to quantify and, therefore, should be reviewed by the Department before being implemented (Attorney General Reply Comments at 5). Finally, the Attorney General argues that the treatment of a proposed modification associated with a customer bill increase appears to duplicate the bill impact threshold included in the EES component of the Proposed Revised Guidelines (Attorney General Reply Comments at 5).

2. Energy Efficiency Advisory Council and Department of Energy Resources

The Council supports the concept of a streamlined process for reviewing mid-term modifications and believes that it has the ability to review and approve significant modifications, as described in the Proposed Revised Guidelines (Council Comments at 2). The Council and DOER recommend that the Department revise the proposal so that the budget-related requirement for a mid-term modification filing includes not only a percentage threshold but also a maximum and minimum dollar threshold (Council Comments at 2-3; DOER Reply Comments at 2-3). The Council and DOER argue that this revision will ensure that there is an appropriate level of review of: (1) larger programs for which significant proposed budget changes may fall below the 20 percent threshold; and (2) smaller programs for which proposed budget changes may exceed 20 percent but have a small overall dollar impact (Council Comments at 2-3; DOER Reply Comments at 2-3).

3. Environment Northeast

ENE generally supports the mid-term modification component of the Proposed Revised Guidelines, arguing that it strikes an appropriate balance between administrative efficiency and proper oversight by the Department and Council (ENE Reply Comments at 4-5). ENE recommends that the Department amend the proposal so that: (1) inaction by the Council on a proposed modification would be treated in the same manner as a Council resolution opposing the modification; and (2) a Program Administrators that seeks to terminate an energy efficiency program would be required to obtain Department approval (ENE Reply Comments at 4-5).

4. Green Justice Coalition

GJC states that it supports the Department's proposal regarding mid-term modifications as outlined in the Proposed Revised Guidelines (GJC Comments at 2).

5. Program Administrators

The Program Administrators argue that the mid-term modification component of the Proposed Revised Guidelines appropriately retains the Department's regulatory oversight of such modifications, consistent with the authority delegated to the Department under the Green Communities Act (Program Administrators Reply Comments at 6). The Program Administrators, however, recommend certain changes to the Proposed Revised Guidelines that they argue would further reduce the number of required mid-term modification filings. First, the Program Administrators argue that budget and benefit variances that require Council approval should be limited to increases in budgets and decreases in benefits, because decreases in budgets and increases in benefits are positive outcomes that should not require further review (Program Administrator Reply Comments at 7). Second, the Program Administrators argue that any budget and benefit variances that require Council approval should be considered at the sector, rather than the program, level (Program Administrator Reply Comments at 8). Third, the Program Administrators argue that increases in customer sector budgets that would result in a bill impact for an average customer that exceeds two percent should not require Department approval because the Department has the opportunity to review potential cost and revenue impacts associated with budget increases through EES proceedings (Program Administrator Reply Comments at 8). Finally, the Program Administrators argue that they should be able to petition the Department for approval of a proposed modification if the Council fails to act on a proposal (Program Administrators Reply Comments at 9).

D. Analysis and Findings

In establishing guidelines for the review and approval of proposed mid-term modifications, the Department sought to provide Program Administrators with the flexibility to respond to changing circumstance, while ensuring that they implement their plans in a manner consistent with the Department-approved plan. D.P.U. 08-50-A at 63-64. As the Department stated in D.P.U. 11-120 Phase II at 17, the primary purpose of a mid-term modification should be to improve upon how a three-year plan provides for the acquisition of all available cost-effective energy efficiency resources. The Council, given its role in developing the three-year plans and tracking Program Administrator progress in implementing the plans,[20] is well positioned to play a key role in advising the Department on the merits of a proposed mid-term modification. See D.P.U. 11-120 Phase II at 17.

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[20] G.L. c.25, §§ 21(b)(1), 22(d).

The Department-approved three-year plans contain a portfolio of programs for each customer sector. For each program, the Department approves a projected budget and level of benefits for the plan term. Consistent with this, we find that it is appropriate that Category One mid-term modifications be assessed at the program (and not the sector) level. In addition, we find it appropriate that both significant increases and significant decreases in the Department-approved program budgets (i.e., greater than 20 percent) be treated as Category One mid-term modifications. However, we agree with the Program Administrators that a modification to the design of a program that results in increases in projected program benefits does not require review as a mid-term modification (see Program Administrator Reply Comments at 7-9). The Department also agrees with the Council and DOER that the Category One modification associated with changes in program budgets should include a dollar, as well as a percentage, threshold (Council Comments at 2-3; DOER Reply Comments at 2-3). The Department will determine the appropriate dollar thresholds through the working group process. Therefore, after review of the comments received, with the changes discussed above, the Department adopts the provisions for Category One modifications included in the Proposed Revised Guidelines. See Final Revised Guidelines § 3.8.1.

The Category Two mid-term modifications, which Program Administrators may not implement until they receive Department approval, are tied directly to requirements in the Green Communities Act that the Department must (1) review program cost-effectiveness,[21] and

[21] The Category Two modifications that relate to a review program cost-effectiveness are (1) the addition of a new energy efficiency program, and (2) the transition of a hard-to-measure program to an energy efficiency program. Proposed Revised Guidelines § 3.8.2.

(2) consider rate and bill impacts.[22] G.L. c.25, §§ 19(a) and 21(b); Proposed Revised Guidelines § 3.8.2. The Attorney General and ENE recommend that the Department expand Category Two modifications to include proposals to: (1) add a hard-to-measure program; and (2) terminate an existing program (see Attorney General Reply Comments at 5; ENE Reply Comments at 6). Because neither of these changes to the Department-approved portfolio of energy programs is tied to the statutory requirements to review program cost-effectiveness or bill impacts, we find that they are more appropriately treated as Category One modifications.

The treatment of Category Two modifications associated with customer bill increases is not duplicative of the EES bill impact included in the Final Revised Guidelines § 3.8.1.6.3.1, as suggested by the Attorney General and the Program Administrators (see Attorney General Reply Comments at 5; Program Administrator Reply Comments at 7-9). The treatment of Category Two modifications associated with customer bill increases ensures that the bill impacts associated with an increase in actual customer sector spending during a plan term remain within the range of bill impacts found reasonable by the Department in the three-year plan investigations. By contrast, the bill impact threshold protects customers from a later collection or credit of a significant under- or over-recovery of energy efficiency costs that may occur during a plan term due to changes in the factors on which EES is based. Because the EES calculation is based on factors in addition to projected budgets (i.e., expected revenues from non-EES funding sources and sales), the bill impact threshold could be triggered absent a change in a customer sector budget. After review of the comments received, the Department adopts the

22 The Category Two modification that relates to rate and bill impacts is an increase in a customer sector budget which would result in a bill increase in excess of two percent for an average customer in that sector. Proposed Revised Guidelines § 3.8.2.

requirements for Category Two modifications included in the Proposed Revised Guidelines. See Final Revised Guidelines § 3.8.2. The Department clarifies that, just as with Category One modifications, if the Council passes a resolution opposing a proposed Category Two modification, the Program Administrator would have 60 days from the date of the Council resolution to request that the Department open an investigation to review the proposed modification. See Final Revised Guidelines § 3.8.2.1.

For all proposed Category One and Category Two modifications, the Department will treat Council inaction in the same manner as we treat a Council resolution opposing a proposed modification (see ENE Reply Comments at 4-5; Program Administrator Reply Comments at 7-9). In the event that the Council fails to act within 45 days of the date of the submission of a proposed modification by a Program Administrator, the Program Administrator may file its proposal with the Department for review. Final Revised Guidelines § 3.8.3.

V. DEPARTMENT AUTHORITY TO IMPLEMENT PROPOSED CHANGES

A. Introduction

As discussed above, the Green Communities Act establishes a three-year framework for energy efficiency planning and implementation. Within this construct, the Green Communities Act states that the Department "shall determine the effectiveness of the plan on an annual basis." G.L. c. 25, § 21(d)(2). Further, G.L. c. 25, § 21(b)(3) provides that "program cost effectiveness shall be reviewed periodically" by the Department and the Council and, if a program is not cost-effective, the program shall either be modified or terminated. In light of these and other requirements of the Green Communities Act, the Department discusses our authority to implement the Proposed Revised Guidelines.

B. Summary of Comments

1. Attorney General

The Attorney General states that she supports the Department's objective to improve the regulatory processes associated with the three-year energy efficiency plans (Attorney General Comments at 1; Attorney General Reply Comments at 1). She concludes, however, that the Department's Proposed Revised Guidelines conflict with the plain language of the Green Communities Act (Attorney General Comments at 1, citing G.L. c. 25, §§ 21(d)(2), 21(b)(3)). The Attorney General acknowledges that a reasonable interpretation of a statute by an administrative agency is entitled to judicial deference but argues that an erroneous interpretation or an interpretation that collides with a statute's plain meaning must give way (Attorney General Comments at 3-4, citing Woods v. Executive Office of Communities & Dev., 411 Mass. 599, 606 (1992); Attorney General Reply Comments at 6 (citations omitted)). She further argues that the Department's policy preference, namely to ameliorate regulatory burden, cannot alter the plain meaning of unambiguous statutory language (Attorney General Comments at 4, citing M.H. Gordon & Son, Inc. v. Alcoholic Bevs. Control Comm., 371 Mass. 584, 588-590 (1976); Attorney General Reply Comments at 6 (citations omitted)). Accordingly, she asserts that the Department should not implement its proposed changes and, instead, should maintain the status quo (Attorney General Comments at 1-2; Attorney General Reply Comments at 2).

Specifically, the Attorney General argues that the Department's proposal to evaluate the effectiveness of the three-year plans at the conclusion of the term does not comport with the statutory requirement that the Department "shall determine the effectiveness of the plan on an annual basis" (Attorney General Comments at 2; Attorney General Reply Comments at 6, each citing G.L. c. 25, § 21(d)(2)). Further, the Attorney General asserts that, pursuant to G.L. c. 25, § 21(b)(3), "energy efficiency plans" must be screened for cost-effectiveness before implementation and then reviewed periodically by the Department and the Council for continued cost-effectiveness (Attorney General Comments at 2; Attorney General Reply Comments at 6).[23]

In addition, the Attorney General argues that the Department's proposal to investigate a Program Administrator's performance during the term of the plan on the Department's own motion or if requested to do so by the Council inappropriately limits her statutory right to intercede as the ratepayer advocate in proceedings affecting utility rates before the Department because the Council is not authorized to conduct adjudicatory proceedings under G.L. c. 30A (Attorney General Comments at 4, citing, G.L. c.12, § 11E; Attorney General Reply Comments at 7-8).

The Attorney General also opposes the Department's proposal to revise the mid-term modification process because she argues that, in instances where the Council alone approves or rejects a significant mid-term modification, it would be an inappropriate delegation of the Department's adjudicatory function to the Council (Attorney General Comments at 7; Attorney General Reply Comments at 4). The Attorney General argues that a mid-term modification is, by definition, a modification to a three-year plan and that both the approval of a plan and any modifications thereto must be done by the Department and not the Council (Attorney General Comments at 8). The Attorney General argues that allowing the Council to consider issues regarding cost-effectiveness, bill impacts, and budgets in the context of a mid-term modification

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23 We note that G.L. c. 25, § 21(b)(3) requires that energy efficiency programs, not plans, be screened for cost-effectiveness.

would be inappropriate because the Council has no authority to issue determinations based on evidence (Attorney General Comments at 9).

2. Program Administrators

The Program Administrators support the Department's proposal to review their performance under the three-year energy efficiency plans over the entire term as opposed to over three one-year terms (Program Administrator Reply Comments at 5). The Program Administrators argue that the Department's proposal to review one performance report at the end of the three-year term is fully consistent with the Green Communities Act (Program Administrator Comments at 5; Program Administrator Reply Comments at 12). In addition, the Program Administrators argue that the Department's mid-term modification proposal, as reflected in the Proposed Revised Guidelines, appropriately retains the Department's regulatory oversight of mid-term modifications and is consistent with the authority delegated to it under the Green Communities Act (Program Administrator Reply Comments at 6).

C. Analysis and Finding

As summarized above, the Attorney General takes issue with the Department's authority to implement several elements of the Proposed Revised Guidelines. First, she argues that the Department's proposal to evaluate the Program Administrators' performance in implementing the plans at the conclusion of the three-year term conflicts with the statutory requirement that the Department "determine the effectiveness of the plan on an annual basis" (Attorney General Comments at 2; Attorney General Reply Comments at 6, each citing G.L. c. 25, § 21(d)(2)). Second, she argues that the Department's proposal to investigate performance during the three-year term on its own motion or upon Council request limits the Attorney General's rights as the ratepayer advocate. Finally, the Attorney General argues that certain elements of the Department's proposal regarding mid-term modifications are an inappropriate delegation of the Department's regulatory oversight authority to the Council (Attorney General Comments at 7; Attorney General Reply Comments at 4). We address each argument in turn.

Regarding the statutory requirements, the Attorney General argues that the sentence, the "Department shall determine the effectiveness of the plan on an annual basis" requires the Department to determine in an annual adjudicatory proceeding for each Program Administrator's plan whether each plan was cost-effective that year. This reading is inconsistent with the plain language of the statute. The plain language of this sentence requires the Department to determine "effectiveness," not "cost-effectiveness" as argued by the Attorney General.[24] While the statute does not define "effectiveness," the dictionary defines "effectiveness" as "the degree to which something is successful in producing a desired result." The Oxford English Dictionary (2013).

The Attorney General further argues that the phrase "on an annual basis" requires the Department to conduct annual adjudicatory proceedings during the three-year term. However, this language does not require that the Department conduct annual adjudicatory proceedings for

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24 In contrast, G.L. c. 25, § 21(b)(3) requires the Department and the Council to periodically review program cost-effectiveness. Consistent therewith, in D.P.U. 08-50, the Department noted that programs must be screened for cost-effectiveness before being deployed and once deployed, they must be periodically monitored for continued cost-effectiveness. D.P.U. 08-50, at 38. Thus, the Department conducts a review of each program's cost-effectiveness every three years before approving the Program Administrators' three-year plans for that time period. Under the Final Revised Guidelines, the Department also will review cost-effectiveness, among other things, through the annual Plan-Year Report that the Program Administrators will file pursuant to the Proposed Revised Guidelines.

each Program Administrator's plan. The paragraph in which this sentence appears addresses the Department's review of a Program Administrator's proposed three-year plans. G.L. c. 25, § 21(d)(2) ("Not later than 90 days after submission of a plan, the department shall issue a decision on the plan . . . ."). Thus, within this context, the sentence requires the Department, during its adjudicatory review of a proposed three-year plan, to determine whether the plan will produce the desired results in each of the three plan years i.e., on an annual basis. State Tax Commission v. LaTouraine Coffee Co., 361 Mass. 773, 778 (1972) (legislative intent is to be ascertained from the statute as a whole).

Because the Proposed Revised Guidelines contemplate that, as part of the Department's triennial adjudicatory review of the three-year plans the Department will determine whether a plan will be successful in producing its desired results, both on an annual basis and over the entire three-year term, we find that the Proposed Revised Guidelines are consistent with the statutory requirement to determine the effectiveness of the plan on an annual basis. G.L. c. 25, § 21(d)(2). It is also important to note that during the three-year term, Program Administrators are required to file annual Plan-Year Reports. Proposed Revised Guidelines § 4.2. It is not the Department's intent to routinely investigate the annual Plan-Year Reports in the context of an adjudicatory proceeding; nor are we required to do so by the plain language of G.L. c. 25, § 21(d)(2). However, the Department will review these reports and may investigate a Program Administrator's performance any time during the three-year term on its own motion or upon the Council's request. Final Revised Guidelines § 4.3.

Our proposal also does not affect the Attorney General's statutory right of intervention under G.L. c. 12, § 11E in three-year plan investigations or other energy efficiency adjudicatory proceedings. Nothing we adopt today precludes the Attorney General from requesting that the Department investigate a violation of a Department energy efficiency order, statute or regulation for cause during the three-year term. Further, all energy efficiency costs collected by Program Administrators during the plan term will be fully reconciling; final recovery of such costs will not be approved until the Department has concluded an adjudicatory proceeding to review such costs. Finally, the Attorney General, as a voting member of the Council, can pursue a Council resolution requesting that the Department open a performance investigation.

We also reject the Attorney General's argument that elements of the Department's proposal regarding mid-term modifications are an inappropriate delegation of the Department's regulatory oversight authority. The Green Communities Act does not address energy efficiency plan modifications. The Department, however, allows Program Administrators to modify their energy efficiency plans during the three-year term as new information or new opportunities become available. D.P.U. 08-50, at 36. As discussed in Section IV.D, above, based on the experience gained during the first three-year plan term, the Department has modified its approach to reviewing mid-term modifications, but the basic concept remains the same -- Program Administrators will be permitted to make certain modifications without Department approval; significant modifications will require approval from the Council and/or the Department. D.P.U. 11-120, Phase II at 14-16; Final Revised Guidelines § 3.8.2.

Program Administrators will be allowed, without approval by the Department or the Council, to change a program budget or hard-to-measure program budget (over the three-year term) by up to 20 percent, and to change a program design that is projected to result in a reduction in program benefits (over the three-year term) of up to 20 percent. Final Revised

Guidelines § 3.8. Where a modification exceeds these thresholds or where it involves the termination of a program or the addition of a hard-to-measure program, the Council must approve the proposed modification. D.P.U. 11-120 Phase II, at 12-13, citing G.L. c. 25, § 21(b)(1); Final Revised Guidelines § 3.8. A Program Administrator will be allowed to make such modification upon securing Council approval, subject to change if challenged and otherwise ordered by the Department. D.P.U. 11-120, Phase II at 14; Final Revised Guidelines § 3.8.1.

This element of our proposal (i.e., allowing Program Administrators to implement certain mid-term modifications with only Council approval) does not result in an inappropriate delegation of the Department's oversight authority to the Council, as suggested by the Attorney General. The Council has primary responsibility for program design under the Green Communities Act and the modifications at issue implicate program design. See G.L. c. 25, § 22(b). Further, intervenors in the three-year plan proceedings have 60 days from the date of any Council approval to request that the Department investigate the modification. Final Revised Guidelines § 3.8.1.1. Accordingly, intervenors who are aggrieved by the Council's approval will have an opportunity to raise the issue with the Department. Finally, in those instances where the proposed modification directly implicates the Department's statutory review (i.e., determining program cost-effectiveness or the appropriateness of a bill impact exceeding the approved threshold), the Program Administrator would have to obtain Department approval before the modification could be made. Final Revised Guidelines § 3.8.2. In short, our approval of a three-year plan incorporates a prescribed degree of latitude within which a Program Administrator may modify its programs with Council approval. Beyond the prescribed latitude, the Program Administrator must secure Department approval before the proposed modification can be made.

The new regulatory approach adopted by the Department today will give meaning to the three-year energy efficiency planning and performance construct established in the Green Communities Act. For the reasons discussed above, the Department finds that it has the authority to implement this approach as it will allow the Department to fulfill its regulatory oversight responsibilities in a manner that is consistent with the Green Communities Act.

VI. ORDER

After consideration of the comments received, it is

ORDERED: That the revised Energy Efficiency Guidelines adopted in this Order shall apply to the Department's review of three-year energy efficiency plans and energy efficiency program performance; and it is

FURTHER ORDERED: That the Program Admnistrators shall comply with all directives contained herein.

By Order of the Department,

/s/
Ann G. Berwick, Chair

/s/
Jolette A. Westbrook, Commissioner

/s/
David W. Cash, Commissioner

VII. APPENDIX -- GUIDELINES

Guidelines for the Methods and Procedures for the Evaluation and Approval of Energy Efficiency Plans and Energy Efficiency Reports

Sections

Section 1: Purpose and Scope

(1) Purpose. These Guidelines set forth (a) the filing requirements applicable to Program Administrators, and (b) the standards by which the Department will review Energy Efficiency Plans, Energy Efficiency Annual Performance Reports and Energy Efficiency Three-Year Term Performance Reports.

(2) Scope. These Guidelines apply to all Program Administrators.

Section 2: Definitions

(1) "Cap and Trade Pollution Control Program" refers to any state, regional or national program as defined by G.L. c. 21A §22(a), including, but not limited to, the carbon dioxide allowance trading mechanism established under the Regional Greenhouse Gas Initiative Memorandum of Understanding, as defined in G.L. c. 21A §22(a).

(2) "Council" refers to the Energy Efficiency Advisory Council established pursuant to G.L. c. 25 § 22.

(3) "Department" refers to the Massachusetts Department of Public Utilities.

(4) "Distribution Company" refers to a gas company or an electric company as defined in G.L. c. 164 § 1.

(5) "DRIPE" refers to demand-reduction-induced price effect, which is the reduction in wholesale market electric energy and capacity prices that occur as a result of a reduction in energy or capacity demand.

(6) "Energy Efficiency Plan-Year Performance Report" or "Plan-Year Report" refers to a report filed annually by a Program Administrator regarding the implementation of its Energy Efficiency Plan during the prior year.

(6a) "Energy Efficiency Three-Year Term Performance Report" or "Three-Year Term Report" refers to a report filed by a Program Administrator after the completion of each three-year term regarding the implementation of its Energy Efficiency Plan during the applicable term.

(7) "Energy Efficiency Plan" or "Plan" refers to a three-year portfolio of Energy Efficiency Programs developed by a Program Administrator, in consultation with the Council, and filed with the Department pursuant to G.L. c. 25 §§ 19 through 21.

(8) "Energy Efficiency Program" refers to a program implemented by a Program Administrator that is intended to reduce or minimize the amount of energy required to produce a desired or given output, including, but not limited to, programs described in G.L. c. 25 § 21(b)(2).

(9) "Energy Efficiency Surcharge" refers to a surcharge included in (a) an electric Distribution Company's distribution rates, pursuant to G.L. c. 25, § 19(a), that collects additional money for approved Energy Efficiency Programs when the cost of implementing those programs exceeds the funding provided through other funding sources, or (b) a gas Distribution Company's distribution rates, pursuant to G.L. c. 25, § 19(b), that collects money for approved Energy Efficiency Programs.

(10) "Forward Capacity Market" refers to the wholesale electric capacity market administered by the Independent System Operator-New England.

(11) "Hard-to-Measure Energy Efficiency Program" refers to a program that might not have immediate energy savings or whose energy savings may be difficult to quantify including, but not limited to: (a) programs for research, development and commercialization of efficiency products; (b) programs to support new appliance and product efficiency standards; (c) programs to integrate efficiency products with building energy codes or high performance sustainable buildings that exceed code; (d) programs for public education regarding energy efficiency; (e) pilot programs; and (f) new types of programs (e.g., combined heat and power projects and demand response programs).

(12) "Low-Income Customer" refers to a customer of a Distribution Company who is eligible to participate in a Program Administrator's low-income Energy Efficiency Programs.

(13) "Municipal Aggregator" refers to a municipality or group of municipalities that aggregates the electric load of interested electric consumers within its boundaries pursuant to G.L. c. 164, § 134.

(14) "Program Administrator" refers to an entity that administers Energy Efficiency Programs.

(15) "Program Participant" refers to a customer of a Distribution Company who receives an incentive to participate in, or is encouraged to implement energy efficiency measures by, an Energy Efficiency Program.

(16) "System Benefits Charge" refers to the $0.0025 per kilowatt-hour charge established by G.L. c. 25, § 19(a) to partially fund electric Energy Efficiency Programs.

Section 3: Energy Efficiency Plans

3.1 Purpose. This section of the Guidelines sets forth the information that a Program Administrator shall include in its Energy Efficiency Plan regarding:

- Funding Sources (§ 3.2);
- Program Administrator Budgets (§ 3.3);
- Energy Efficiency Program Cost-Effectiveness (§ 3.4);
- Evaluation Plans (§ 3.5); and
- Performance Incentives (§ 3.6).

This section also sets forth the procedures and standards by which the Department will review an Energy Efficiency Plan (§ 3.7).

3.2 Funding Sources

3.2.1 Electric Funding Sources. An electric Program Administrator shall use the following sources to fund the implementation of its Energy Efficiency Plan:

- System Benefits Charge;
- Revenues from the Forward Capacity Market;
- Revenues from Cap and Trade Pollution Control Programs;
- Other Funding; and
- Energy Efficiency Surcharge.

3.2.1.1 An electric Program Administrator shall (a) present information regarding funding sources consistent with the format approved in Energy Efficiency Guidelines, D.P.U. 08-50-B, as may be revised from time to time, and (b) provide supporting documentation for the calculation of the revenue from each funding source.

3.2.1.2 An electric Program Administrator shall allocate revenue from the System Benefits Charge to its residential, low-income, and commercial and industrial customer sectors in proportion to the sector's kilowatt-hour consumption.

3.2.1.3 An electric Program Administrator shall allocate revenue from the Forward Capacity Market to its residential, low-income, and commercial and industrial customer sectors in proportion to the sector's kilowatt-hour consumption.

3.2.1.4 An electric Program Administrator shall allocate revenue from Cap and Trade Pollution Control Programs to its residential, low-income, and commercial and industrial customer sectors in proportion to the sector's kilowatt-hour consumption.

3.2.1.5 Other funding revenue refers to revenue received by an electric Program Administrator in excess of revenue from the funding sources listed in §§ 3.2.1.2 through 3.2.1.4 for the purpose of funding its Energy Efficiency Programs. An electric Program Administrator shall allocate other funding revenue to its residential, low-income, and commercial and industrial customer sectors in the proportion to the sector's kilowatt-hour consumption. An electric Program Administrator's Energy Efficiency Plan shall include a detailed description of all other funding revenue sources that it considered, including, but not limited to: (a) the different other funding sources identified by the electric Program Administrator; (b) whether or not the electric Program Administrator attempted to access those other funding revenue sources; (c) if the electric Program Administrator chose not to access those other funding revenues, the reason behind that decision; (d) a statement of the amount of the other funding revenues available; (e) whether the other funding revenue source is a recurring source; (f) any conditions placed on the use of the other funding revenue sources; and (g) whether receiving other funding revenue allowed the electric Program Administrator to seek less money from ratepayers.

3.2.1.6 For each year of the three-year term, an electric Program Administrator shall calculate the revenue required from the Energy Efficiency Surcharge for each customer sector as the difference between each sector's (a) program administration budget for the applicable year, defined in § 3.3, and (b) revenue allocation for the applicable year made pursuant to §§ 3.2.1.2 through 3.2.1.5. An electric Program Administrator shall calculate a separate Energy Efficiency Surcharge for its low-income, residential, and commercial and industrial customer sectors in the following manner:

(a) The Low-Income Customer Energy Efficiency Surcharge for each year of the three-year term shall be calculated by dividing (i) the Energy Efficiency Surcharge revenue required to fund low-income programs for the applicable year, by (ii) the total company-wide (i.e., the sum of all customer sectors) kilowatt-hour sales for that year;

(b) The residential customer Energy Efficiency Surcharge for each year of the three-year term shall be calculated by adding (i) the Energy Efficiency Surcharge revenue required to fund residential programs for the applicable year divided by total residential kilowatt-hour sales for that year, and (ii) the Low-Income Customer Energy Efficiency Surcharge for the applicable year; and

(c) The commercial and industrial customer Energy Efficiency Surcharge for each year of the three-year term shall be calculated by adding (i) the Energy Efficiency Surcharge revenue required to fund commercial and industrial programs for the applicable year divided by total commercial and industrial kilowatt-hour sales for that year, and (ii) the Low-Income Customer Energy Efficiency Surcharge for the applicable year.

3.2.1.6.1 If, in any year of the three-year term, funding for a customer sector from the System Benefits Charge, Forward Capacity Market, Cap and Trade Pollution Control Programs, and other sources (as allocated pursuant to §§ 3.2.1.2 through 3.2.1.5) exceeds the customer sector's budget, as defined in § 3.3, the electric Program Administrator: (a) shall not recover an Energy Efficiency Surcharge for that customer sector in that year; and (b) shall carry over any excess funding to the customer sector's budget for the subsequent year.

3.2.1.6.2 The Department will review and approve Energy Efficiency Surcharges for each year of the three-year term after considering: (a) the effect of any rate and average bill impact on customers; (b) the availability of other private or public funds, utility administered or otherwise, that may be available; and (c) whether past Energy Efficiency Programs have lowered the cost of meeting customers' electricity or gas needs.

3.2.1.6.3 Rate and Average Bill Impacts. An electric Program Administrator's Energy Efficiency Plan shall present information regarding rate and average bill impacts consistent with the Department's directives in Energy Efficiency Guidelines, D.P.U. 08-50-D.

3.2.1.6.4 An electric Program Administrator's Energy Efficiency Surcharges, as approved by the Department, will remain in effect during the three-year term, except as described in § 3.2.1.6.4.1. The surcharges for each year of the three-year term will take effect according to a schedule determined by the Department. Reconciliation of Energy Efficiency Surcharge costs and revenue will occur during the subsequent term, on a schedule established by the Department.

3.2.1.6.4.1 Consistent with the schedule by which its Energy Efficiency Surcharges take effect during each year of the three-year term, an electric Program Administrator shall calculate an updated cents per kilowatt-hour charge for each customer sector, using the most current information and the method described in §§ 3.2.1.6(a) through (c).

(a) For each customer sector, the Program Administrator shall determine the impact on a typical customer's bill that would result from replacing the Department-approved Energy Efficiency Surcharge for the applicable year with the updated cents per kilowatt-hour charge. If the bill impact for a customer sector would exceed two percent, the Program Administrator shall file a revised Energy Efficiency Surcharge for that customer sector. The Program Administrator shall provide all information necessary to support the revised Energy Efficiency Surcharge.

(b) For each customer sector, the Program Administrator shall calculate the difference between the revenue it would collect using (i) the updated cents per kilowatt-hour charge, and (ii) the Department-approved Energy Efficiency Surcharge for the applicable year. If the sum of these differences exceeds 25 percent of the total revenue the Program Administrator projects to collect through its Department-approved Energy Efficiency Surcharges for the applicable year, the Program Administrator shall file revised Energy Efficiency Surcharges. The Program Administrator shall provide all information necessary to support the revised Energy Efficiency Surcharges.

3.2.1.6.4.2 If an electric Program Administrator is not required to file revised Energy Efficiency Surcharges pursuant to §§ 3.2.1.6.4.1(a) or (b), the Program Administrator shall submit a statement to the Department, including supporting documentation, indicating that such a filing is not required. The Program Administrator shall provide a copy of the statement to the Council.

3.2.1.7 If any one of an electric Program Administrator's proposed funding sources, expressed as a percentage of total funding, differs by more than 20 percent from the statewide percentage of total funding for that funding source, the electric Program Administrator shall provide a detailed description and supporting documentation regarding the difference. If this information is not available at the time of the filing of the Energy Efficiency Plan, the electric Program Administrator shall state when such information will be available for filing.

3.2.2 Gas Funding Sources. A gas Program Administrator shall fund the implementation of its Energy Efficiency Plan through the Energy Efficiency Surcharge, which is included in its Local Distribution Adjustment Clause tariff.

3.2.2.1 Other funding revenue refers to revenue received by a gas Program Administrator in excess of revenue from the funding source listed in § 3.2.2 for the purpose of funding its Energy Efficiency Programs. A gas Program Administrator shall allocate other funding revenue to its residential, low-income, and commercial and industrial customer sectors in the proportion to the sector's therm consumption. A gas Program Administrator's Energy Efficiency Plan shall include a detailed description of all other funding revenue sources that it considered, including, but not limited to: (a) the different other funding sources identified by the gas Program Administrator; (b) whether or not the gas Program Administrator attempted to access those other funding revenue sources; (c) if the gas Program Administrator chose not to access those other funding revenues, the reason behind that decision; (d) a statement of the amount of the other funding revenues available; (e) whether the other funding revenue source is a recurring source;

(f) any conditions placed on the use of the other funding revenue sources; and (g) whether receiving other funding revenue allowed the gas Program Administrator to seek less money from ratepayers.

3.2.2.2 Rate and Average Bill Impacts. A gas Program Administrator's Energy Efficiency Plan shall present information regarding rate and average bill impacts consistent with the Department's directives in Energy Efficiency Guidelines, D.P.U. 08-50-D.

3.2.2.3 The Department-approved Energy Efficiency Surcharges will remain in effect during the three-year term, except as described in § 3.2.2.3.1. The surcharges for each year of the three-year term will take effect according to a schedule determined by the Department.

3.2.2.3.1 Upon completion of each year of the three-year term, a gas Program Administrator shall calculate, using the most current information, an updated cents per therm charge for each customer sector.

(a) For each customer sector, the Program Administrator shall determine the impact on a typical customer's bill that would result from replacing the Department-approved Energy Efficiency Surcharge for the applicable year with the updated cents per therm charge. If the bill impact for a customer sector would exceed two percent, the Program Administrator shall file a revised Energy Efficiency Surcharge for that customer sector. The Program Administrator shall provide all information necessary to support the revised Energy Efficiency Surcharge.

(b) For each customer sector, the Program Administrator shall calculate the difference between the revenue it would collect using (i) the updated cents per therm charge, and (ii) the Department-approved Energy Efficiency Surcharge for the applicable year. If the sum of these differences exceeds 25 percent of the total revenue the Program Administrator projects to collect through its Department-approved Energy Efficiency Surcharges for the applicable year, the Program Administrator shall file revised Energy Efficiency Surcharges. The Program Administrator shall provide all information necessary to support the revised Energy Efficiency Surcharges.

3.2.2.3.2 If a gas Program Administrator is not required to file revised Energy Efficiency Surcharges pursuant to §§ 3.2.2.3.1(a) or (b), the Program Administrator shall submit a statement to the Department, including supporting documentation, indicating that such a filing is not required. The Program Administrator shall provide a copy of the statement to the Council.

3.2.2.4 If any one of a gas Program Administrator's proposed funding sources, expressed as a percentage of total funding, differs by more than 20 percent from the statewide percentage of total funding for that funding source, the gas Program Administrator shall provide a detailed description and supporting documentation regarding the difference. If this information is not available at the time of the filing of the Energy Efficiency Plan, the gas Program Administrator shall state when such information will be available for filing.

3.3 Program Administrator Budgets

3.3.1 A Program Administrator's budget for each year of the three-year term shall be comprised of, for the applicable year, its Energy Efficiency Program implementation costs, its performance incentive, and recovery of lost base revenues, as approved by the Department.

3.3.2 A Program Administrator shall present: (a) information regarding its budget sources consistent with the format approved in Energy Efficiency Guidelines, D.P.U. 08-50-B, as may be revised from time to time; and (b) supporting documentation for the budget sources.

3.3.3 Program implementation costs shall include all costs incurred by a Program Administrator to implement its Energy Efficiency Programs, including, but not limited to: (a) program planning and administration; (b) marketing and advertising; (c) Program Participant incentive; (d) sales, technical assistance and training; and (e) evaluation and market research.

3.3.4 Performance incentives are funds earned by a Program Administrator based on its performance in implementing its Energy Efficiency Programs and shall be determined pursuant to § 3.6, below.

3.3.5 If any one of a Program Administrator's proposed budget categories, as expressed as a percentage of total budget, differs by more than 20 percent from the statewide percentage of total budget for that budget category, the Program Administrator shall provide a detailed description and supporting documentation regarding the difference. If this information is not available at the time of the filing of the Energy Efficiency Plan, the Program Administrator shall state when such information will be available for filing.

3.3.6 Minimization of Administrative Costs. A Program Administrator, in delivering its Energy Efficiency Programs, shall minimize administrative costs to the fullest extent practicable and include in its Energy Efficiency Plan a detailed description and supporting documentation of the steps taken to minimize administrative costs.

3.3.7 Competitive Procurement. A Program Administrator, in delivering its Energy Efficiency Programs, shall use competitive procurement processes to the fullest extent possible and present information regarding competitive procurement consistent with the format approved in Energy Efficiency Guidelines, D.P.U. 08-50-B, as may be revised from time to time. If any one of a Program Administrator's competitive procurement categories, as expressed as a percentage of a total budget category, differs by more than 20 percent from the statewide percentage of total competitive procurement for that budget category, the Program Administrator shall provide a detailed description and supporting documentation regarding the difference. If this information is not available at the time of the filing of the Energy Efficiency Plan, the Program Administrator shall state when such information will be available for filing.

3.4 Energy Efficiency Program Cost-Effectiveness

3.4.1 Purpose. This section of the Guidelines establishes the method by which the Department will review and determine the cost-effectiveness of an Energy Efficiency Program.

3.4.2 An Energy Efficiency Plan shall include and present information regarding Energy Efficiency Program cost-effectiveness consistent with the format approved by the Department in Energy Efficiency Guidelines, D.P.U. 08-50-B, as may be revised from time to time.

3.4.3 The Department will rely on the Total Resource Cost Test to determine cost-effectiveness. The Total Resource Cost Test includes all benefits and costs associated with the energy system, as well as all benefits and costs associated with Program Participants.

3.4.3.1 A Program Administrator shall perform cost-effectiveness screening on an Energy Efficiency Program-specific basis, except for Hard-To-Measure Energy Efficiency Programs discussed in § 3.4.3.2. An Energy Efficiency Program shall be deemed cost-effective if the cumulative present value of its benefits, defined in § 3.4.4, below, are equal to or greater than the cumulative present value of its costs, defined in § 3.4.5, below.

3.4.3.2 Hard-to-Measure Energy Efficiency Programs. A Program Administrator shall allocate the benefits and costs of Hard-to-Measure Energy Efficiency Programs to the program's customer sector. If such inclusion causes the sector's benefit-cost ratio to fall below one, then that Hard-To-Measure Energy Efficiency Program shall be deemed to be not cost-effective. An Energy Efficiency Plan shall include the following information regarding a Hard-to-Measure Energy Efficiency Program: (a) the best estimates available regarding the Hard-To-Measure Energy Efficiency Program's savings, costs and benefits; (b) detailed descriptions of the purpose, scope and design of the Hard-To-Measure Energy Efficiency Program; (c) supporting documentation for why the program is qualified to be treated as Hard-to-Measure Energy Efficiency Program; and (d) any recommendations made by the Council regarding the Hard-To-Measure Energy Efficiency Program.

3.4.3.3 An Energy Efficiency Plan shall include sufficient information to allow a determination of the cost-effectiveness on an energy efficiency measure-specific basis.

3.4.4 Energy Efficiency Program Benefits. An electric Program Administrator shall calculate Energy Efficiency Program benefits in accordance with § 3.4.4.1, below. A gas Program Administrator shall calculate Energy Efficiency Program benefits in accordance with § 3.4.4.2, below.

3.4.4.1 Electric Energy Efficiency Program Benefits. An electric Energy Efficiency Program's benefits shall be comprised of electric benefits and non-electric benefits.

(a) Electric benefits shall be comprised of the following:

(i) Avoided capacity benefits, consisting of avoided: (A) summer-period; and (B) winter-period capacity benefits. For each time period, the avoided capacity benefit shall be calculated as the product of: (A) the capacity savings in that period; and (B) the period's avoided capacity cost factor. The avoided capacity cost factors shall be uniform for all electric Program Administrators and shall be updated every two years or as necessitated by changing market conditions, as approved by the Department.

(ii) Avoided energy benefits, consisting of avoided: (A) summer-period peak; (B) summer-period off-peak; (C) winter-period peak; and (D) winter-period off-peak energy benefits. For each time period, the avoided energy benefit shall be calculated as the product of: (A) the energy savings in that time period; and (B) the period's avoided energy cost factor. The avoided energy cost factors shall be uniform for all electric Program Administrators and shall be updated every two years or as necessitated by changing market conditions, as approved by the Department.

(iii) Avoided transmission benefits, calculated as the product of: (A) an Energy Efficiency Program's capacity savings; and (B) an avoided transmission cost factor. The avoided transmission cost factor shall be based on the transmission costs specific to each electric Distribution Company. An Energy Efficiency Plan shall include a detailed description and supporting documentation of the method used to calculate the avoided transmission cost factor.

(iv) Avoided distribution benefits, calculated as the product of: (A) an Energy Efficiency Program's capacity savings; and (B) an avoided distribution cost factor. The avoided distribution cost factor shall be based on the distribution costs specific to each electric Distribution Company. An Energy Efficiency Plan shall include a full description of the method used to calculate the avoided distribution cost factor.

(v) The avoided capacity, energy, transmission and distribution cost factors shall include related environmental compliance costs that are reasonably projected to be incurred in the future because of state or federal laws, rules and/or regulatory requirements that are currently in effect, or are projected to take effect in the future.

(vi) Capacity DRIPE benefits, calculated as the product of: (A) an Energy Efficiency Program's capacity savings; and (B) a capacity DRIPE factor. The capacity DRIPE factor shall be uniform for all electric Program Administrators, shall include only those capacity DRIPE benefits that accrue to customers in Massachusetts, and shall be updated every two years or as necessitated by changing market conditions, as approved by the Department.

(vii) Energy DRIPE benefits, calculated as the product of: (A) an Energy Efficiency Program's energy savings; and (B) an energy DRIPE factor. The energy DRIPE factor shall be uniform for all electric Program Administrators, shall include only those energy DRIPE benefits that accrue to customers in Massachusetts, and shall be updated every two years or as necessitated by changing market conditions, as approved by the Department.

(viii) Reductions in all costs to the electric Distribution Company associated with reduced customer arrearages and reduced service terminations and reconnections.

(b) Non-electric benefits shall account for those benefits that are specific to Program Participants and shall be comprised of the following:

(i) Resource benefits, which account for the avoided costs of natural gas, oil, propane, wood, kerosene, water, and other resources for which consumption is reduced as a result of the implementation of an Energy Efficiency Program. Resource benefits shall be calculated as the product of: (A) the reduction in consumption of the identified resource and (B) the avoided cost factor for each resource.

(ii) Non-resource benefits, which include, but are not limited to: (A) reduced costs for operation and maintenance associated with efficient equipment or practices; (B) the value of longer equipment replacement cycles and/or productivity improvements associated with efficient equipment; (C) reduced environmental and safety costs, such as those for changes in a waste stream or disposal of lamp ballasts or ozone-depleting chemicals; and (D) all benefits associated with providing energy efficiency services to Low-Income Customers.

(c) For each identified non-electric benefit, an Energy Efficiency Plan shall: (i) identify the non-electric benefit; (ii) provide a complete description of the calculation used to determine the benefit amount; and (iii) provide all supporting documentation.

3.4.4.2 Gas Energy Efficiency Program Benefits. A gas Energy Efficiency Program's benefits shall be comprised of gas benefits and non-gas benefits.

(a) Gas benefits shall be comprised of the following:

(i) Avoided gas supply benefits, calculated as the product of: (A) an Energy Efficiency Program's gas commodity savings; and (B) an avoided gas supply cost factor, as appropriate. The avoided gas supply cost factor shall be based on the gas supply costs specific to each gas Distribution Company.

(ii) Avoided distribution benefits, calculated as the product of: (A) an Energy Efficiency Program's gas commodity savings; and (B) an avoided distribution cost factor. The avoided distribution cost factor shall be based on the distribution costs specific to each gas Distribution Company.

(iii) The avoided gas and distribution cost factors shall include distribution-related environmental compliance costs that are reasonably projected to be incurred in the future because of state or federal laws, rules and/or regulatory requirements that are currently in effect, or are projected to take effect in the future.

(iv) Reductions in all costs to the gas Distribution Company associated with reduced customer arrearages and reduced service terminations and reconnections.

(b) Non-gas benefits shall account for those benefits that are specific to Program Participants, and shall be comprised of the following:

(i) Resource benefits, which account for the avoided costs of electric, oil, water, sewage disposal, and other resources for which consumption is reduced as a result of the implementation of an Energy Efficiency Program. Resource benefits shall be calculated as the product of: (A) the reduction in consumption of the identified resource; and (B) the avoided cost factor for each resource.

(ii) Non-resource benefits, which include, but are not limited to: (A) reduced costs for operation and maintenance associated with efficient equipment or practices; (B) the value of longer equipment replacement cycles and/or productivity improvements associated with efficient equipment; (C) reduced environmental and safety costs, such as those for changes in a waste stream or disposal of lamp ballasts or ozone-depleting chemicals; and (D) all benefits associated with providing energy efficiency services to Low-Income Customers.

(c) For each identified non-gas benefit, an Energy Efficiency Plan shall: (i) identify the non-electric benefit; (ii) provide a complete description of the calculation used to determine the benefit amount; and (iii) provide all supporting documentation.

3.4.4.3 For each Energy Efficiency Program, if any one of a Program Administrator's proposed benefit categories, as expressed as a percentage of total benefits, differs by more than 20 percent from the statewide percentage of total benefits for that benefit category, the Program Administrator shall provide a detailed description and supporting documentation regarding the difference. If this information is not available at the time of the filing of the Energy Efficiency Plan, the Program Administrator shall state when such information will be available for filing.

3.4.5 Energy Efficiency Program Costs. A Program Administrator shall categorize program costs as program implementation costs, performance incentives, or Program Participant costs.

3.4.5.1 Program implementation costs shall include costs as described in § 3.3.3, above.

3.4.5.2 Performance incentives shall include costs as described in § 3.3.4, above.

3.4.5.3 Program Participant costs shall include all expenses incurred by a Program Participant as a result of its participation in an Energy Efficiency Program, including, but not limited to: (a) the net cost of energy efficient equipment; (b) the cost to plan for and install energy efficient equipment; and (c) the cost of energy efficiency services, such as energy audits or inspections for proper equipment functioning.

3.4.6 Discount Rate. Benefits and costs that are projected to occur over the term of each Energy Efficiency Program shall be stated in present value terms, using a discount rate that is equal to a twelve-month average of the historic yields from the ten-year United States Treasury note, using the previous calendar year to determine the twelve-month average.

3.4.7 All Available Energy Efficiency. An Energy Efficiency Plan shall include an assessment of all available energy efficiency and demand reduction resources that are cost-effective. A Program Administrator shall seek to implement all available cost-effective energy efficiency and demand reduction resources that are cost-effective. If an Energy Efficiency Plan does not achieve all available cost-effective energy efficiency, the Program Administrator shall provide a detailed explanation why it is not able to achieve this goal.

3.5 Evaluation Plans

3.5.1 Purpose. This section of the Guidelines sets forth the information that a Program Administrator shall include in its Energy Efficiency Plan regarding its plans to evaluate its Energy Efficiency Programs over the term of the Energy Efficiency Plan.

3.5.2 Each three-year Energy Efficiency Plan shall include an evaluation plan describing how the Program Administrator will evaluate the Energy Efficiency Programs during the course of its Energy Efficiency Plan. The evaluation plan should include at least the following information: (a) how the evaluation plan is consistent with any statewide evaluation plans; (b) how the activities of the evaluation plan will be coordinated with the activities of other Program Administrators; (c) how the electric and gas evaluation efforts have been integrated; and (d) how the Program Administrator incorporated directives or resolutions from the Council in forming its evaluation plans. A Program Administrator should fully document and justify all areas where its evaluation plan deviates from either (a) any statewide evaluation plan, or (b) any directives or resolutions from the Council. If this information is not available at the time of the filing of the Energy Efficiency Plan, the Program Administrator shall state when such information will be available for filing.

3.5.3 A Program Administrator shall provide the following information for each evaluation study that it plans to participate in over the term of the Energy Efficiency Programs:

(a) name of study;
(b) whether the Program Administrator plans to undertake the study by itself or with other Program Administrators;
(c) name of entity conducting the study;
(d) if a third party is conducting the study, the method by which the Program Administrator selected the third party;
(e) Energy Efficiency Program(s) (and energy efficiency measures, as appropriate) that are the subject of, or will be affected by, the study;
(f) type of study (e.g., impact or process evaluation), and the reason the Program Administrator chose to participate in the study;
(g) description of evaluation method(s) (e.g., site-specific measurement analysis, billing analysis, survey-based evaluation);
(h) how the results of the study will be used to revise the applicable Energy Efficiency Program;
(i) projected start and completion dates; and
(j) the role of the study in the Program Administrator's overall evaluation plan.

3.6 Performance Incentives

3.6.1 Purpose. This section of the Guidelines sets forth the principles by which Program Administrators shall design, and the Department will review, a performance incentive mechanism.

3.6.2 Guiding Principles. A performance incentive mechanism shall be:

- designed to encourage Distribution Companies to pursue all available cost-effective energy efficiency;
- designed in such a way as to encourage Energy Efficiency Program designs that will best achieve the Commonwealth's energy goals, particularly with regard to the goals stated in Chapter 169 or the Acts of 2008;
- based on clearly-defined goals and activities that can be sufficiently monitored, quantified and verified after the fact;
- available only for activities where the Distribution Company plays a distinct and clear role in bringing about the desired outcome;
- as consistent as possible across all electric and gas Distribution Companies, with clear justification for any deviations across Distribution Companies; and
- created in such a way to avoid any perverse incentives.

3.6.3 The amount of funds available for a performance incentive mechanism should be kept as low as possible, in consideration of the other principles contained herein, in order to minimize the costs to electric and gas customers.

3.6.4 For each Program Administrator, performance incentive payments shall be calculated based on performance over the term of its Energy Efficiency Plan, rather than performance in each year of the Plan.

3.6.4.1 Each Program Administrators shall be allowed to collect design performance incentive payments during the term of its Plan, based on projected performance during the term, as approved by the Department.

3.6.4.2 Each Program Administrator shall reconcile actual and design performance incentive payments at the end of each term, on a schedule established by the Department.

3.6.5 Any proposed modifications to a previously approved performance incentive mechanism shall include sufficient justification demonstrating how the proposed modifications will improve upon the performance incentive mechanism with consideration for each of the design principles listed above.

3.6.6 Penalty Provision. In reviewing a Distribution Company's Energy Efficiency Annual Report, the Department will consider whether the Distribution Company has reasonably complied with its Three-Year Energy Efficiency Plan and whether it is appropriate to impose a penalty pursuant to G.L. c. 25, § 21(e).

3.7 Department Review of Energy Efficiency Plans

3.7.1 The Department will review an Energy Efficiency Plan consistent with the procedures and timeline set forth below, subject to modification by the Department, as necessary, in a particular proceeding.

3.7.2 Procedures

(a) Procedural Tracks:

(i) Council Track Participants

A Council participant and a party whose interests are represented on the Council, pursuant to G.L. c. 25, § 22(a), is presumed to be familiar with the content of an Energy Efficiency Plan and the issues that it may likely seek to address during the course of the adjudicatory process and will be treated as putative intervenors in such proceeding until the Department has issued rulings on intervention.

(ii) Non-Council Track Participants/Parties

If there are any persons who petition to intervene in a proceeding and who are found, pursuant to G.L. c. 30A, § 10, by the Department to be substantially and specifically affected by these proceedings but who otherwise did not participate in or whose interests were not represented in the Council process, a reasonable opportunity will be provided for such parties to formulate their respective positions on an Energy Efficiency Plan in the context of the 90-day period of time provided by G.L. c. 25, § 21(d)(2) to review an Energy Efficiency Plan.

(b) Pre-Hearing Statements

Each party will be required to: (1) file a pre-hearing statement pursuant to the schedule established for a proceeding, and (2) timely update its pre-hearing statement as warranted. To the extent that the information required in a pre-hearing statement is set forth in a Program Administrator's Energy Efficiency Plan, a Program Administrator's reference to the provision in its Energy Efficiency Plan containing that information will satisfy the pre-hearing statement in that regard. Each pre-hearing statement shall set forth the following information:

- the name of all witnesses who may be called to testify by the party, along with the subject matter of each such witness' testimony;
- a description of all exhibits that may be used by the party in presenting its case and the witness sponsoring each;
- a statement of the party's basic position in the proceeding;
- a statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue, and, where applicable, the names of the party's witness(es) who will address each issue;
- a statement of issues to which the parties have stipulated;
- a statement of all pending motions or other matters the party seeks action upon;
- a statement identifying the party's pending requests or claims for confidentiality; and
- any objections to a witness' qualifications as an expert.

(c) Technical Session

The Department may conduct a joint technical session after the filing of the Energy Efficiency Plans. The focus of the technical session will be to reduce the need for non-substantive discovery requests.

(d) Joint Hearing for Common Issues

The Department may conduct joint evidentiary hearings on issues common to some or all of the individual Energy Efficiency Plans.

3.7.3 Model Procedural Schedule

The model procedural schedule is intended to guide the expectations of the parties as to the general schedule that will be observed in a proceeding to review an Energy Efficiency Plan. An actual procedural schedule will be established for the review of each Program Administrator's filing and may depart from the model.

Event	Date
Energy Efficiency Plan filed	On or before October 31 (F)
Council Track: intervention petition; discovery commences	F+1 business day (all references in this table are to business days)
Notice and Order of Notice issues	F+1
Council Track: intervention answer	F+3
Council Track: pre-hearing statement	F+5
Notice published	F+6
Non-Council Track: intervention petition	F+9
Technical session	F+9
Council Track: intervenor testimony	F+11
Non-Council Track: intervention answer	F+11
Non-Council Track: discovery commences	Upon Department ruling on a petition to intervene
Non-Council Track: pre-hearing statement; intervenor testimony	F+15
Discovery closes	F+16
Discovery responses	F+21
Public hearing	F+21
Evidentiary hearings	F+22 through 28
Simultaneous initial brief	10 days after close of evidentiary hearing
Simultaneous reply brief	15 days after close of evidentiary hearing, but not later than F+43

3.8 Mid-Term Modifications

3.8.1 A Program Administrator that seeks to make the following significant modifications to its Energy Efficiency Plan shall submit its proposed modifications to the Council for review:

(1) the addition of a Hard-to-Measure Energy Efficiency Program;

(2) the termination of an existing Energy Efficiency Program or Hard-to-Measure Energy Efficiency Program;

(3) a change in the three-year term budget of an Energy Efficiency Program or Hard-to-Measure Energy Efficiency Program of greater than (1) 20 percent, or (2) a dollar value to be specified by the Department; or

(4) a modification to the design of an Energy Efficiency Program that is projected to result in a decrease in program benefits over the three-year term that is greater than 20 percent.

3.8.1.1 If the Council passes a resolution supporting the proposed modification, the Program Administrator mayimplement the modification. Intervenors in the Program Administrator's

Energy Efficiency Plan proceeding would then have 60 days from the date of the Council resolution to request that the Department open an investigation to review the proposed modification. Any such request must be accompanied by (a) a copy of the Council resolution, and (b) justification, including supporting documentation, showing why the proposed modification should be denied.

3.8.1.2 If the Council passes a resolution opposing the proposed modification, the Program Administrator may not implement the modification. The Program Administrator and intervenors in the Program Administrator's Energy Efficiency Plan proceeding would then have 60 days from the date of the Council resolution to request that the Department open an investigation to review the proposed modification. Any such request must be accompanied by (a) a copy of the Council resolution and (b) justification, including supporting testimony and documentation, showing why the proposed modification should be approved.

3.8.2 A Program Administrator that seeks to make the following significant modifications to its Energy Efficiency Plan shall submit its proposed modifications first for review by the Council, and then for review and approval by the Department:

(1) the addition of a new Energy Efficiency Program;

(2) the transition of a Hard-to-Measure Energy Efficiency Program to an Energy Efficiency Program; or

(3) a change in the three-year term budget of a customer sector that would require a cents per kilowatt-hour (calculated using the method described in § 3.2.1.6) or cents per therm charge for the sector that, if it were to replace the Department-approved Energy Efficiency Surcharge for the applicable year, would result in a bill increase for an average customer in the sector exceeding two percent.

The Program Administrator may not implement the modification pending review and approval by the Department.

3.8.2.1 If the Council passes a resolution opposing the proposed modification, the Program Administrator and intervenors in the Program Administrator's Energy Efficiency Plan proceeding would then have 60 days from the date of the Council resolution to request that the Department open an investigation to review the proposed modification. Any such request must be accompanied by (a) a copy of the Council resolution and (b) justification, including supporting testimony and documentation, showing why the proposed modification should be approved.

3.8.3 If the Council fails to act on a proposed modification within 45 days of filing, the Program Administrator and intervenors in the Program Administrator's Energy Efficiency Plan proceeding would have 60 days to request that the Department open an investigation to review the proposed modification. Any such request must be accompanied by justification, including supporting testimony and documentation, showing why the proposed modification should be approved.

Section 4: Energy Efficiency Plan-Year Performance Reports and Energy Efficiency Three-Year Term Performance Reports

4.1 Upon completion of each three-year term, on a schedule set by the Department, each Program Administrator shall submit an Energy Efficiency Three-Year Term Performance Report that details its performance during the the applicable term. The Three-Year Term Report shall include information in a format specified by the Department.

4.1.1 The Department will review the Energy Efficiency Three-Year Term Performance Report to determine whether the Program Administrator (a) reported its program savings, benefits, and costs accurately and reliably, and (b) implemented its Energy Efficiency Plan during the term in a manner that is consistent with its Department-approved Energy Efficiency Plan.

4.1.2 Pursuant to the results of our investigation of the Energy Efficiency Three-Year Term Performance Report, the Department will approve recovery of (a) actual costs incurred during the term, (b) actual performance incentive payments earned during the term, and (c) actual lost base revenue during the term, where applicable.

4.2 Upon completion of each year of the three-year term, on a schedule set by the Department, each Program Administrator shall submit an Energy Efficiency Annual Performance Report that details its performance during the applicable year. The Annual Report shall include information in a format as specified by the Department. Each Program Administrator shall provide a copy of its Annual Report to the Council.

4.3 The Department may investigate a Program Administrator’s performance at any time during a three-year term on its motion, or if the Council passes a resolution requesting that the Department do so.

Section 5: Exceptions

These Guidelines set forth (a) the filing requirements applicable to Program Administrators, and (b) the standards by which the Department will review Energy Efficiency Plans and Energy Efficiency Reports. A Program Administrator that seeks an exception to any provision included herein shall have the burden to demonstrate the compelling nature of such request.