

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

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D.P.U./D.T.E. 96-100

Investigation by the Department of Telecommunications and Energy upon its own motion commencing a Notice of Inquiry/Rulemaking, pursuant to 220 C.M.R. §§ 2.00 et seq., establishing the procedures to be followed in electric industry restructuring by electric companies subject to G.L. c. 164.

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I. INTRODUCTION

In this Order, the Department of Telecommunications and Energy ("Department") promulgates regulations, designated as 220 C.M.R. § 11.00 et seq., pursuant to our authority under G.L. c. 30A and enhanced by the Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 ("Act").¹ These regulations implement the intent of the Legislature manifest in the Act to bring the benefits of retail competition in the electricity generation market to all retail consumers in Massachusetts beginning March 1, 1998, and become effective upon publication in the Massachusetts Register. By this Order, the Department also finalizes our regulations governing licensing of competitive suppliers and electricity brokers as required by G.L. c. 30A, § 2.

II. HISTORY OF THE PROCEEDING

On August 16, 1995, the Department issued its Order in Electric Industry Restructuring, D.P.U. 95-30, setting forth principles for a restructured electric industry and for the transition to a restructured electric industry. On March 15, 1996, the Department issued an Order commencing a Notice of Inquiry/Rulemaking to develop rules and regulations that would implement the principles established in D.P.U. 95-30. The scope of the NOI/Rulemaking covered developing a competitive electric generation market. Order Commencing Notice of Inquiry/Rulemaking and Setting a Procedural Schedule, D.P.U. 96-100, at 5-6 (March 15, 1996). After notice and an opportunity for public comment, on May 1, 1996, the Department issued proposed rules accompanied by a detailed explanatory statement. Draft Rules and Explanatory Statement, D.P.U. 96-100 (May 1,

¹ An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protections Therein.

1996). Thereafter, the Department received two rounds of comments and conducted fifteen days of hearings focusing on issues raised by the Department's draft rules. In addition, the Department held sixteen public hearings around the Commonwealth.

On December 30, 1996, the Department concluded the first phase of our rulemaking proceeding by issuing Electric Industry Restructuring: Model Rules and Legislative Proposal, D.P.U. 96-100 (1996) ("December 30, 1996 Plan"). The Model Rules were to govern the transition and to apply thereafter to the restructured electric industry. The Model Rules provided a regulatory framework for an efficient industry structure that would minimize long-term costs to consumers while maintaining the safety and reliability of electric services with minimum impact on the environment.

The Department delayed promulgation of final rules in deference to the Legislature, under whose delegation the Department acts. During 1997, the Legislature undertook a comprehensive review of electric restructuring, culminating in passage of the Act on November 25, 1997. The Department's Order in D.P.U. 96-100 anticipated that the Legislature might enact different principles, in which case, the Department would modify the final rules consistent with Legislative direction. Id. at 23. The Act requires the Department to implement the Legislature's principles by promulgating rules and regulations on many of the same issues the Department included in our Model Rules.

On January 9, 1998, pursuant to G.L. c. 30A, § 2, the Department promulgated emergency regulations governing the licensing of competitive suppliers and electricity brokers. Order Adopting Emergency Regulations, D.P.U./D.T.E. 96-100 (1998). These emergency regulations were necessary for the public safety and general welfare given the

need to allow new entrants to the electricity market a reasonable period to apply for and receive licenses before March 1, 1998. In our Order promulgating the licensing regulations, the Department noted that, as emergency regulations, the licensing regulations are required to be reviewed within 90 days and provided for comment on the regulations by January 30, 1998. Id. at 1, 7.

On January 16, 1998, the Department issued proposed regulations on other restructuring issues to conform to the Act and solicited public comment on those regulations. Order Proposing Regulations and Soliciting Comment, D.P.U./D.T.E. 96-100 (1998) ("January 16, 1998 Order"). In that Order, the Department also solicited comment on our emergency regulations issued on January 9, 1998. On or about January 30, 1998, the Department received comments on our proposed regulations from the following entities: American Ref-Fuel Co. of SEMASS, L.P. ("SEMASS"); Associated Industries of Massachusetts ("AIM"); Attorney General ("AG"); Boston Edison Company ("BECo"); Cambridge Electric Light Company and Commonwealth Electric Company ("COM/Electric"); Competitive Power Coalition of New England, Inc. ("CPC"); Conservation Law Foundation ("CLF"); Cooperative Development Institute, Inc.; Department of Environmental Protection ("DEP"); Division of Energy Resources ("DOER"); Eastern Edison Company ("EECo"); EnergyEXPRESS, Select Energy, PG & E Energy Services, Green Mountain Energy Resources, TelEnergy, Wheeled Electric Power Company, AllEnergy, Xenergy, Enron Energy Services, New Energy Ventures (together "Competitive Suppliers"); EnergyVision; Fitchburg Gas and Electric Light Company ("FG&E"); General Services Administration ("GSA"); H.Q. Energy Services, Inc.; Harvard University; ISO

New England ("ISO-NE"); Massachusetts Electric Company/Nantucket Electric Company (together "NEES"); Massachusetts Health and Educational Facilities Administration ("HEFA"); Midcon Corp.; Natural Resources Defense Council ("NRDC"); New England Power Service ("NEP"); NorAm Energy Management, Electric Clearinghouse, Amoco Energy Trading Company, Shell Energy Services Company, L.L.C., Eastern Power Distribution, Inc. (together "Indicated Parties"); Northeast Energy Efficiency Council ("NEEC"); U.S. Generating Company ("USGen"); Union of Concerned Scientist ("UCS"); Unitil Resources, Inc. ("UNITIL"); John W. Wadsworth, Esq.; and Western Massachusetts Electric Company ("WMECo").² In addition to filing individual comments, BECo, COM/Electric, EEC Co, FG&E, NEES and WMECo (together "Utilities") jointly filed revised regulations.

III. DISCUSSION AND ANALYSIS

The regulations effect a comprehensive framework for the restructuring of the electric industry under which competitive suppliers will supply electric power and customers will gain the ability to choose their electric power supplier. The regulations consist of the following sections: the purpose and scope (11.01); the applicable definitions (11.02); transition cost recovery (11.03); distribution company requirements (11.04); competitive supplier and electricity broker requirements (11.05); information disclosure

² On February 6, 1998, the National Consumer Law Center, on behalf of the Low Income Intervenor ("LII"), moved for leave to file comments late. In the interest of finalizing these regulations with input from the only commenter exclusively representing low-income customers, the Department accepts the Low Income Intervenor's filing.

requirements (11.06); complaint resolution procedures (11.07); and exceptions (11.08). The regulations are attached to this Order as Attachment A. In this Order, the Department addresses the issues raised in the comments and sets forth our rationale for promulgating the specific regulations. Many of the comments contained suggestions for minor changes of a grammatical or clarifying nature and thus do not require discussion. Other comments raised issues that are more properly addressed in other proceedings.³ These comments are not discussed in this Order.

The Department notes that while these regulations are promulgated as final, they are intended only to allow the restructuring process to move forward. In promulgating these regulations, we have considered the Legislative intent manifested in the Act. We also have anticipated the form of the competitive market, based on limited experience. The Department, however, recognizes that as the market develops and the knowledge and experience of the Department and participants grow, new issues or different perspectives on the existing complex issues may surface. In such an event, interested persons may petition the Department for review and revision of these regulations pursuant to 220 C.M.R. § 2.00 et seq. The Department, of course, also may refine our regulations consistent with statutory authority on our own motion.

³ For example, some comments addressed the issue of fees that distribution companies may charge competitive suppliers for the release of customers' historic usage information. Issues associated with distribution company fees are properly addressed in each company's terms and conditions proceeding.

A. Definitions

The Department received many comments on our proposed definitions. Several commenters note that in certain instances our proposed definition differed from the definition in the Act and suggested that the final rules reflect the Act's definition (see e.g., BECo Comments at 4; SEMASS Comments at 1). Others raised more substantive comments and suggested additional terms to be defined (see e.g., CPC Comments at 3-5; DOER Comments at 2-5). The Department has reviewed all the comments regarding the definitions contained in the regulations and has made a number of changes. We highlight some of those changes below.

First, in response to the commenters requesting additional definitions, the Department includes in our final regulations the definitions of "affiliate," "alternative energy producer," and "ancillary services." These definitions reflect statutory definitions, where applicable. Our final regulations also clarify the distinction between retail and wholesale activities. To this end, the Department includes references to "retail sales" where appropriate and deletes the definitions of "wholesale customer" and "wholesale generation company" since the regulations do not apply to wholesale sales of electricity. Moreover, we deleted several definitions where the term in question was no longer used in our regulations.

In addition, the Department incorporated the revisions proposed by many commenters to add consistency between the definitions contained in the Act and those in our regulations. There are certain notable exceptions, however. Our final regulations continue to distinguish between competitive suppliers and electricity brokers. While the Act's definition of "supplier" includes entities such as power marketers and brokers, the Department determines

that, for the purposes of our regulations, an important distinction must be made between those entities that sell electricity and those that merely facilitate the sale. This becomes evident when applying our licensing regulations, where the Department requires somewhat different documentation from competitive suppliers than from electricity brokers. Another area where this distinction is evident is in the regulations governing information disclosure requirements. The duty to disclose certain information resides with a competitive supplier, not with an electricity broker.

Finally, HEFA recommends that the term "public aggregator" be defined so as to include public bodies, such as independent authorities, that are vested with the statutory authority to create energy procurement groups (HEFA Comments at 1-2). HEFA states that, otherwise, an organization like itself would be subject to the Department's regulations as an electricity broker. HEFA contends that this outcome would not be consistent with the intent of the Act (id.). The Department concludes that it is appropriate for an entity such as HEFA to be subject to our regulations as an electricity broker because, otherwise, it is not clear what rules would apply with respect to issues such as customer authorization and dispute resolution. Unlike its treatment of municipal aggregators, the Act does not specify a comprehensive treatment for entities such as HEFA. The Department determines that the application of our regulations to these entities is particularly important when the entities may serve residential customers as well as health and educational facilities. Finally, as a practical matter, the Department notes that the licensing procedure for electricity brokers will be neither extensive nor expensive for an entity such as HEFA. Therefore, the Department

rejects HEFA's recommendation. However, HEFA may petition the Department for an exception from our rules for good cause shown pursuant to 220 C.M.R. § 11.05(8).

B. Transition Cost Recovery

1. Substantial Compliance Standard and Functional Separation

The Utilities recommend revised rule language indicating that a finding by the Department of "substantial compliance" related to a restructuring plan connotes approval (Utilities' Revised Regulations at A-11, A-12). In addition, the Utilities state that the Act allows for functional separation of generation, transmission, and distribution as an alternative to the full separation or transfer of such facilities, and they propose language to allow for this alternative (*id.* at A-9).

The Department includes language to ensure that the Act's language regarding substantial compliance is encompassed by the Department's final rules. 220 C.M.R. § 11.03(3)(a). In addition, the Act includes functional separation as an option for separation of the ownership of generation, transmission, and distribution assets, and the Department makes the appropriate changes in the final rules to reflect the Act's language.

2. Mitigation Issues

DOER recommends language that would revise the rules to address the treatment of any net positive revenues associated with the operation of retained nuclear facilities (DOER Comments at 5-6). CPC, USGen, and SEMASS suggest that the Department include specific language in the rules, consistent with the Act, excluding waste-to-energy facilities from the requirements related to renegotiation of power purchase contracts (CPC Comments at 10; USGen Comments at 1; SEMASS Comments at 1-2).

As a general matter, the Department notes that any net positive value associated with any company asset -- whether it be a retained generation facility, land holding, other physical or intellectual property, or other asset -- must be applied to reduce the company's transition costs. This is a fundamental component of the company's obligation to mitigate transition costs. As a practical matter, such value is included in the proposed rules under 220 C.M.R. § 11.03(2)(a)(4). However, retained nuclear facilities represent a unique category of generating facility as presented in the Act, and the Department determines that explicit recognition of the net positive revenues from such facilities should be identified in the final rules. Consequently, the Department adopts the language proposed by DOER. Similarly, the Department agrees with CPC, USGen, and SEMASS that the Act singles out waste-to-energy facilities in certain provisions related to purchased power contracts. The Department therefore makes appropriate changes to the rule relating to waste-to-energy facilities. 220 C.M.R. § 11.03(3)(c).

3. Exit Fees

Two issues have been raised with respect to exit fees. First, NEEC and CLF question whether the Department should interpret the six-month notice requirement in the Act's exit fee provisions in a manner that would exempt from such requirement facilities that are eligible for net metering (NEEC Comments at 5-6; CLF Comments at 1). The Department determines that the six-month notice requirement may result in an inappropriate disincentive to customers to install renewable and cogeneration applications that are generally eligible for net metering. Moreover, the requirement would be administratively burdensome and perhaps costly to enforce for those applications. The Department therefore makes

appropriate changes in the final rules to exempt such facilities from the six-month notice requirement. 220 C.M.R. § 11.03(4)(d).

The second issue related to exit fees concerns the level of detail in the Department's regulations (see e.g., NEEC Comments at 2). The Department's proposed rules stated that the Department shall determine whether exit fees may be charged to retail customers in accordance with St. 1997, c. 164, § 193 (G.L. c. 164, § 1G(g)). There are three areas of that section of the Act where additional Department guidance may be helpful in such determinations: (1) how the Department will review whether the retail customer on its own, or in combination with other retail customers within a 36-month time frame, represents greater than ten percent of the annual gross revenues of the service provider; (2) how the Department will review whether the equipment used to reduce purchases from the service provider has a combined efficiency of 50 percent or more; and (3) how the Department will determine the level of the exit fee charged. The Department notes that, in all three cases, Department determinations will require case-specific information that cannot be anticipated at this time, and that standards that may apply in the future will be developed through individual cases.⁴

C. Distribution Company Requirements

1. Low-Income Customer Tariff

The Department addresses three issues regarding the low-income customer tariff:

(1) the billing options that will be available to customers who take service under this tariff;

⁴ For example, Cambridge Electric Light Company has proposed an exit fee in D.T.E. 98-16, currently pending before the Department.

(2) the guarantee of payment to competitive suppliers; and (3) revenue under-recovery due to the possibility of an increased number of customers taking service under a low-income rate. The proposed regulations did not distinguish, in terms of available billing options, between low-income customers and other customers. Instead, the proposed regulations provided that all customers could choose between two billing options: (1) the passthrough billing option, in which a customer would receive one bill from his distribution company and a second bill from his competitive supplier; and (2) the complete billing option, in which a customer would receive a single bill for all services from his distribution company. The proposed regulations required each distribution company to guarantee payment to competitive suppliers that provide generation service to customers who are eligible for the distribution company's low-income customer tariff. The proposed regulations stated that the payment guarantee would not exceed the distribution company's standard offer generation service ("standard offer service") price.

The Utilities make two recommendations regarding the provision of service to low-income customers: (1) customers taking service under the low-income tariff should be billed only under the complete billing option, in order to facilitate the implementation of the payment guarantee; and (2) the payment guarantee to competitive suppliers should apply only to those customers who actually are receiving service under the low-income discount tariff, and not to those customers who simply are eligible for the rate (Utilities' Revised Regulations at A-13, A-14; see also, NEES Comments at 1-2).

The Low Income Intervenors state that the guarantee of payments to competitive suppliers should not be capped at the price for standard offer service because such a limit is

not authorized by the Act (LII Comments at 2). Finally, the Competitive Suppliers state that the Department needs to specify the procedure by which the payment guarantee will be implemented (Competitive Supplier Comments at 5).

With regard to billing options, the Department rejects the Utilities' proposal that customers taking service under the low-income tariff may only be billed under the complete billing option. The Department believes that the Utilities' proposal might significantly limit the competitive generation options that would be available to these customers because competitive suppliers that want to bill separately would not want to provide generation service to these customers. The Department acknowledges that implementation of the payment guarantee would be administratively simplified under the complete billing option. However, the Department concludes that this benefit is outweighed by the negative implications discussed above. In addition, the Act does not authorize a billing distinction between customers taking service under a distribution company's low-income tariff and other customers. Therefore, under the final regulations, both billing options will be available to customers taking service under a distribution company's low-income tariff.

With regard to the guarantee of payment to competitive suppliers, the Act states that the guarantee should apply to low-income customers, which, in the Act, are those customers who receive service under discounted rates. St. 1997, c. 164, § 193 (G.L. c.164, § 1F(4)(i)). Therefore, the Department concludes that this guarantee should apply only to

those customers that are taking service under a distribution company's low-income discount rate.⁵ The final regulations reflect this interpretation. 220 C.M.R. § 11.04(5)(e).

The final regulations retain the provision that the payment guarantee will be capped at the standard offer price. The Department believes that fairness to the other customers of the distribution companies dictates that guaranteed prices not exceed the prices that are otherwise available to customers taking service under the low-income rate. Otherwise, these other customers could be adversely affected because of increased bad-debt recovery by the distribution companies.

With regard to the procedure by which the payment guarantee would be implemented, the Department believes that the Electronic Business Transaction Working Group (the "Working Group")⁶ would be well-suited to develop such a procedure. Therefore, the Department requests and urges the Working Group to submit a proposed procedure for implementing the payment guarantee. The Department requests that the Working Group notify the Department, by March 15, 1998, whether it will be able to develop such a procedure.

⁵ The Department notes that, in contrast to eligibility for the payment guarantee, customers who simply are eligible for the low-income tariff may return to standard offer service at any time; these customers do not have to be taking service under a distribution company's low-income tariff to be eligible to return to standard offer service. St. 1997, c. 164, § 193 (G.L. c.164, § 1F(4)(iii)).

⁶ The Electronic Business Transaction Working Group is an ad hoc group of distribution companies and competitive suppliers that was formed during the course of the Department's Terms and Conditions NOI, D.P.U./D.T.E. 97-65.

Finally, the Department recognizes that the number of customers that receive distribution service under the low-income customer tariff may increase over current levels due to the eligibility criteria established in the final regulations. Distribution companies may defer costs associated with any increased number of low-income customers for consideration in a subsequent general rate case.

2. Standard Offer Generation Service

a. Introduction

The Department addresses the comments of many concerning the eligibility for standard offer service. Our proposed regulations stated that a customer who has received generation service from a competitive supplier since the retail access date is not eligible to receive standard offer service, except that (1) a low-income customer may receive standard offer service at any time; (2) during the first year following the retail access date, a residential or small commercial and industrial customer who has received generation service from a competitive supplier since the retail access date is eligible to receive standard offer service by so notifying the distribution company within 120 days of the date when the customer first began to receive the competitive generation service; and (3) a customer who has received generation service pursuant to an agreement with a public (i.e., municipal) aggregator is eligible to receive standard offer service by so notifying the distribution company within 180 days of the date when the customer first began to receive generation service through such agreement.

The proposed regulations also stated that a distribution company shall make a determination whether a customer who is eligible for the company's low-income tariff will be

placed on standard offer service or default generation service ("default service") based on which service has the lower rate, unless otherwise indicated by the customer. This determination shall be made at the time the service is initiated.

b. Summary of Comments

Several commenters address the circumstances under which a customer should be allowed to return to standard offer service. AIM recommends that all existing customers, not just residential and small commercial and industrial, be able to return to standard offer service within the first year of the retail access date, because of the lack of experience with a competitive generation market and the immaturity of the market itself (AIM Comments at 1). The Indicated Parties recommend that a customer receiving generation service from a competitive supplier be able to return to standard offer service during the first year after the retail access date, regardless of how long the customer was receiving the competitive generation service (Indicated Parties Comments at 5). The Indicated Parties state that this would allow customers to "experiment" with competitive generation service before having to make a decision whether to return to standard offer service (*id.*). Other commenters recommend that standard offer service be available to new customers in a distribution company's service territory, stating that, otherwise, new customers might experience substantial price increases, particularly during the early stages of competition when competitive options may not be available (AIM Comments at 2-3; Wadsworth Comments at 2). These commenters assert that this might affect the decisions of businesses contemplating moving into Massachusetts (*id.*). Finally, the Utilities recommend that a customer receiving generation service through a public aggregator be allowed to return to

standard offer service only if the customer was receiving standard offer service at the time the public aggregation took effect (Utilities' Revised Regulations at A-12).

With respect to the determination of whether a customer who is eligible for a distribution company's low-income tariff will be placed on standard offer service or default service, DOER recommends that the determination be based on a projection of prices for the two services over the subsequent six-month period (DOER Comments at 8). The Low Income Intervenors recommend that the determination be revisited annually based on a comparison of the prices for the two services (LII Comments at 2).

c. Discussion and Analysis

The Department's policies with respect to the circumstances under which customers would be eligible to receive standard offer service were first established in our December 30, 1996 Plan and affirmed in the Act. These policies were further developed in the Department's Terms and Conditions NOI, D.P.U./D.T.E. 97-65 (1997). In D.P.U./D.T.E. 97-65, the Department issued a Model Tariff for Standard Offer Service that was intended to serve as the basis for each distribution company's standard offer tariff. The Department stated that a distribution company must justify any deviations from the Model Tariff when it presents its tariff for review. Id. at 3, 87.

The provisions included in our January 16, 1998 Order reflected the Department's Model Tariff for Standard Offer Service, as well as the requirements mandated by the Act. Among other things, the Act states that "any ratepayer," without limitation, who is receiving generation service under a plan developed by a public aggregator shall be entitled to return to standard offer service provided that he opts out of the public aggregation plan within 180

days. St. 1997, c. 164, § 193 (G.L. c.164, § 134(a)). The Department concludes that the Utilities' proposal limiting the return provision to customers who were receiving standard offer service at the time the aggregation plan took effect would be inconsistent with the letter and spirit of the Act. Therefore, the Department rejects the Utilities' proposal.

The Department's policy that standard offer service would not be available to customers who move into a distribution company's service territory after the retail access date was also first established in our December 30, 1996 Plan. In D.P.U./D.T.E. 97-65, at 85, 88, the Department reaffirmed this policy, based on guidance from the Legislature, stating that allowing new customers to receive standard offer service would create uncertainty regarding the load for which standard offer service providers would be responsible, possibly resulting in higher prices for this service. The Department concludes that adoption of the proposals put forth by AIM and the Indicated Parties would have the same effect. Therefore, the Department rejects these proposals.

The Department does recognize, however, the underlying concerns that motivate the proposals put forth by AIM, the Indicated Parties, and John Wadsworth. Because of the lack of experience customers have with a competitive generation market and because the market itself will take time to develop, customers who find themselves ineligible for standard offer service could face prices for electricity that are higher than the standard offer price. The Department determines that the appropriate way to address this concern is to establish a process for setting rates for default service that ensures that the rates do not exceed the average monthly market price for electricity. As discussed below, the determination of what

constitutes the average monthly market price will be made at the time of the Department's review of the default service plans submitted by the distribution companies.

Finally, the Department rejects the methods proposed by DOER and the Low Income Intervenor regarding the placement of low-income customers⁷ on standard offer or default service. The Department concludes that implementation of these methods would represent an unnecessary burden on distribution companies that would outweigh any benefits to the customers affected. In addition, DOER's proposal would require the Department, or the distribution companies, to forecast default (i.e. market) prices over a six-month period, a potentially contentious undertaking that could be burdensome both for the Department and the distribution companies.

3. Default Generation Service

The proposed regulations required that distribution companies procure electricity for default service through competitive bidding, subject to review by the Department. The proposed regulations stated that rates for default service should be established through competitive bidding, but in no case should they exceed the average monthly market price for electricity, as determined by the Department.

DOER recommends that the Department's regulations state that, once the ISO-NE or some other approved power exchange has established "an operational and workably competitive market or bid-based dispatch system that provides a competitive market price for electricity," the procurement of electricity for default service from the ISO-NE or approved

⁷ Low-income customers are defined in the final regulations as those customers eligible for a distribution company's low-income customer tariff. 220 C.M.R. § 11.02.

power exchange will satisfy the requirement that default service electricity be procured through competitive bidding (DOER Comments at 7-8). DOER asserts that the regional market to be administered by the ISO-NE will represent a form of competitive bidding that will yield benefits to consumers equal to the benefits that would be provided by other forms of competitive bidding (id.). Regarding pricing of this service, the Attorney General states that until a robust spot market for electricity exists, the price for all non-competitive generation service should be set at the standard offer price (AG Comments at 2). Finally, the Competitive Suppliers state that the term "average market prices" must be better defined (Competitive Suppliers Comments at 5).

In principle, the Department supports the concept that electricity purchases for default service from the ISO-NE spot market, once that market is operating in an efficient manner, would satisfy the requirement that such electricity be procured through a competitive bidding process. However, the Department determines that DOER's proposed language is not necessary in the final regulations. The Department can make the determination whether a distribution company's default service procurement satisfies the requirement for competitive bidding at the time that the Department reviews the default service plans submitted by each company. Similarly, the determination of what will constitute the "average monthly market price" is one that would be made most properly at the time of the Department's review of the default service plans submitted by each company.

Finally, the Department has included three new provisions in the final regulations regarding default service: (1) each distribution company must offer a rate option that provides for constant rates over a six-month period; (2) providers of default service for a

distribution company are entitled to include a one-page insert in the bills sent to the distribution company's default service customers; and (3) there will be no fees associated with initiating and terminating default service when it occurs concurrent with a meter read or is involuntary on the part of the customer. 220 C.M.R. §§ 11.04(9)(c) and (d). These provisions are mandated by the Act. St. 1997, c. 164, § 193 (G.L. c.164, §§ 1B(d), 1F(4)(iv)).

4. Billing and Payment

On our own review, the Department has added a provision to the final regulations specifying that distribution companies separately identify on their bills the charges that will be collected from ratepayers for renewable resources and energy efficiency services.⁸ 220 C.M.R. § 11.04(10)(c). The Department concludes that this provision is necessary in order to be consistent with the requirements of the Act. St. 1997, c. 164, § 193 (G.L. c.164, § 1D).

5. Farm Discount

The Department addresses three issues regarding the legislatively-mandated discount for farmers: (1) what eligibility criteria must a customer meet to be classified as a farmer for the purposes of receiving the discount; (2) to which farm facilities' electric consumption should the discount apply; and (3) revenue under-recovery due to the farm discount. The Utilities suggest adding a requirement that reasonable proof of eligibility for the farm

⁸ The Department notes that, in the final regulations, the terms "Bill" and "Unbundled Rates" are defined to require that charges for renewable resources and energy efficiency services be separately identified on distribution company bills. 220 C.M.R. § 11.02.

discount be provided to the distribution company to reduce confusion and avoid potential abuse (BEC Co Comments at 7-8; COM/Electric Comments at 3; EEC Co Comments at 8; FG&E Comments at 3; NEES Comments at 2; WMEC Co Comments at 3). The Utilities further suggest that such proof could include forms by other governmental agencies such as those used for state sales tax exemption (Department of Revenue Form ST-12) real estate abatement (G.L. c. 61A, §§ 1-4) or federal tax purposes (Internal Revenue Service Form 1040-S) (COM/Electric Comments at 3; EEC Co Comments at 9; NEES Comments at 3). Analogizing the farm discount to the low-income discount, EEC Co states that companies would offer the discount to those who have certified that they are eligible for either exemption, rather than making an individual determination of eligibility (EEC Co Comments at 9).

In mandating a discount for those engaged in the business of farming or agriculture, the Act references G.L. c. 128, § 1A, which provides:

"Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

The Act does not specify any verification procedures that distribution companies must follow to determine eligibility for the discounted rate. The Department is collaborating with

the Massachusetts Department of Food and Agriculture ("DFA") to develop a verification process whereby the DFA would certify that a customer meets the definition of a farmer. A customer would then present the distribution company with a copy of the certificate issued by the DFA upon application for the farm discount. The Department recognizes that while we are developing this verification process, distribution companies may receive requests for the farm discount. In the interim, the Department determines that distribution companies might request that such customers provide them with one of the following: (1) any license or permit required by any federal, state or local law prior to engaging in farming or forestry operations; (2) Schedule C, D, or F of the prior year's federal and state income tax returns demonstrating income of at least \$1,000 or a net farm-related loss of at least \$2,000 related to the applicant's gross farm, forest product harvesting or incidental lumbering operations, (3) a copy of the current tax certificate issued by the local assessor demonstrating that the applicant's land is enrolled in and classified pursuant to G.L. c. 61A as being devoted to agricultural or horticultural use or both, and meets the production values in that chapter; or (4) a copy of the current tax certificate issued by the local assessor demonstrating that the applicant's land is classified pursuant to G.L. c. 61 as being forest land.

With regard to the second issue, the Department does not have sufficient information on which to based an informed decision. The Department may address this issue in a subsequent proceeding.

Finally, the Department recognizes that distribution companies may experience under-recoveries associated with implementation of the farm discount. Distribution companies may

defer costs associated with the implementation of the farm discount for consideration in a subsequent general rate case.

6. Net Metering

Several utilities comment that the Act does not require increasing the size of generation facilities eligible for net metering from 30 kilowatts ("KW") to 60 KW (BECO Comments at 8; NEES Comments at 3; COM/Electric Comments at 4-5). In support, the Utilities argue that the reference in the Act to net-metered facilities is applicable to only exit fees (BECO Comments at 8, NEES Comments at 3, citing St. 1997, c. 164, § 193 (G.L. c. 164, § 1G)). These companies recommend that the Department delete the net metering provision contained in these rules, reserving the issue for consideration as part of a review of the Department's rules for qualifying facilities, 220 C.M.R. § 8.00 et seq. (BECO Comments at 8; NEES Comments at 3; COM/Electric Comments at 4-5).

The Act states that a customer shall not be subject to an exit fee if he reduces purchases through the operation of "an on site generation or cogeneration facility of 60 [KW] or less which is eligible for net metering." St. 1997, c. 164, § 193 (G.L. c. 164, § 1G). The Department interprets this statement to mean that facilities of 60 KW or less shall be eligible for net metering, rather than facilities of 30 KW or less, as previously allowed by 220 C.M.R. § 8.04. The Department therefore rejects the Utilities' proposal to delete the net metering provision contained in these rules and finds that eligibility for net metering shall apply to on-site generation or cogeneration facilities of 60 KW or less.

7. Renewable Resources

The comments on renewable resources address the definition of renewable resources and the issue of requiring distribution companies to share information on these resources with customers. The Indicated Parties seek to delete the reference to technologies that have significant potential for commercialization in New England and New York from the definition of renewable resources (Indicated Parties Comments at 4). The definition of renewable resources contained in our rules is consistent with the definition provided in the Act. St. 1997, c. 164, § 190 (G.L. c. 164, § 1). Therefore, the Department finds that this definition should not be modified.

The Utilities seek to modify the rule requiring distribution companies to share information on renewable resources with their customers (Utilities' Revised Regulations at A-15-A-16). In our January 16, 1998 Order, the Department proposed regulations requiring distribution companies to share information on renewables with their customers, stating that each distribution company shall make "any and all non-proprietary information that it has obtained on Renewable Resources . . . available to its customers upon request." 220 C.M.R. § 11.04(7)(c). The Utilities seek to delete the words "any and all" from the definition, claiming that this language would impose an unnecessary burden on the distribution companies (see e.g., COM/Electric Comments at 3). The Department's intent in requiring the companies to provide this information was not to place an undue burden upon the distribution companies, but to ensure that customers have access to information that will enable them to make informed decisions regarding these technologies. Therefore, the Department has modified its rules to attain the objective of providing consumers with useful

information without placing undue hardship upon the distribution companies.

220 C.M.R. § 11.04(7)(b).

8. Energy Efficiency

The Utilities make identical arguments concerning sharing information on renewable resources and energy efficiency (Utilities' Revised Regulations at A-15, A-16). In our January 16, 1998 Order, the Department proposed regulations requiring distribution companies to share information on energy efficiency with their customers, stating that each distribution company shall make "any and all non-proprietary information that it has obtained regarding energy efficiency technologies . . . available to its customers upon request."

220 C.M.R. § 11.04(8)(d)(1). The Utilities seek to delete the words "any and all" from the definition, claiming that this language would impose an unnecessary burden on the distribution companies (see e.g., COM/Electric Comments at 3). The Department's intent in requiring the companies to provide this information was not to place an undue burden upon the distribution companies, but to ensure that customers have access to information that will enable them to make informed decisions regarding these technologies and the programs offered by the distribution companies through which these technologies can be installed. Therefore, the Department has modified its rules to attain the objective of providing consumers with useful information without placing undue hardship upon the distribution companies. 220 C.M.R. § 11.04(8)(c)(1).

DOER seeks clarification of the filing requirements for energy efficiency plans (DOER Comments at 7). DOER proposes additional language in the rules to state that energy efficiency plans must be reviewed first by DOER for consistency with the

Commonwealth's energy efficiency and fuel diversity goals before they are reviewed by the Department for cost-effectiveness (id.).

The Act states that DOER shall oversee and coordinate ratepayer-funded energy efficiency programs, and shall seek to achieve goals including (1) equitable allocation among the customer classes, (2) adequate support for "lost opportunity" efficiency programs, (3) emphasis on statewide market transformation programs, and (4) continuation of weatherization and efficiency services to low-income customers. St. 1997, c. 164, § 50 (G.L. c. 25A, § 11G). The Act further states that DOER shall annually file a report with the Department on the proposed funding levels for energy efficiency programs. Id. The Department shall review and approve energy efficiency expenditures after determining that implementation of these programs was cost-effective. Id. DOER is required to promulgate the necessary rules and regulations to implement the Act no later than March 1, 1999. Id. The Department recognizes the shared responsibilities and need for coordination between the Department and DOER in review of energy efficiency programs. However, reference to DOER's role in review of energy efficiency programs should be made in the rules promulgated by DOER. The Department has modified its rule concerning review of energy efficiency plans, stating that review shall be in accordance with G.L. c. 25A, § 11G.

D. Competitive Supplier And Electricity Broker Requirements

1. Licensing Requirements

a. Confidentiality of the License Application

The Department's proposed regulations on competitive supplier and electricity broker licensing requirements contained several informational requirements, including the following:

(1) documentation regarding valid purchased power contracts pursuant to 220 C.M.R.

§ 11.05(2)(b)(11); and (2) documentation of financial capability pursuant to 220 C.M.R.

§ 11.05(2)(b)(13). Several commenters object to these requirements, stating that purchased power contracts and financial information should be treated as confidential by the Department (AIM Comments at 5; Competitive Suppliers Comments at 6; EnergyVision Comments at 5).

Pursuant to G.L. c. 25, § 5D, the Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information. There is a statutory presumption, however, that information submitted to the Department is public information. Accordingly, proponents of protected treatment of information have the burden to establish the need for protection from disclosure on a case-by-case basis. *Id.* An applicant for licensure may file with the Department a motion requesting protective treatment under G.L. c. 25, § 5D with supporting rationale. Therefore, the Department has made no change to the regulations with regard to this issue.

b. Purchased Power Contract Renegotiation

The Department's proposed regulations required applicants to provide documentation that each above-market contract between the applicant, its affiliates, its parent or subsidiary, and any electric company formed pursuant to the provisions of G.L. c. 164 is the subject of good-faith renegotiation. COM/Electric, CPC, and WMECo state that our requirement language is too broad (COM/Electric Comments at 6; CPC Comments at 5-10; WMECo Comments at 5). The Utilities propose that the Department add language to our rules requiring renegotiation "subject to . . . G.L. c. 164 § 1G(d)(2)" (Utilities' Revised Regulations at A-22). In addition, CPC states that the renegotiation requirement should be

limited to the applicant seeking a license and not extend to the applicant's affiliate, subsidiary, or parent (CPC Comments at 10).

The Act's informational requirements (St. 1997, c. 164, § 193 (G.L. c. 164, § 1F(1))) allow the Department to determine which companies are parties to contracts with above-market prices, including those companies that do not plan to sell to retail customers directly but that might have subsidiaries or affiliates in the retail market. In the interest of reducing the stranded cost burden imposed on all consumers, the Act imposes a renegotiation requirement on all electric companies and sellers with purchase power contracts that have above-market prices. St. 1997, c. 164, § 193 (G.L. c. 164, § 1G(d)). In order to ensure that the intent of the legislation is implemented to the fullest extent, the Department has modified its rules to reflect the spirit of the Utilities' Revised Regulations, and will require contract renegotiation pursuant to St. 1997, c. 164, § 193 (G.L. c. 164, § 1G(d)).

Finally, BECo notes that the Act requires renegotiation of purchased power contracts approved by the Department on or by December 31, 1995, except facilities that burn trash to generate electricity (BECo Comments at 10, citing St. 1997, c. 164, §193 (G.L. c. 164, § 1G(d)(2)(i)). The Department's final rules reflect the technical correction suggested by BECo. 220 C.M.R. § 11.05(2)(b).

c. Reporting Criminal History

In the January 16, 1998 Order, the Department asked commenters whether there would be any value in ascertaining an applicant's criminal history with regard to commercial or business fraud. AIM states that such information would be useful, although applicants should have an opportunity to explain the event (AIM Comments at 5). The Low Income

Intervenors comment that such a conviction would have bearing on the applicant's fitness to do business in the Commonwealth (LII Comments at 2). The Low Income Intervenors further comment that the Department unnecessarily limited the disclosure to convictions for fraud, and state that antitrust convictions should be included as well (*id.* at 2-3).

In order to enhance consumer protection, the Department has revised its proposed licensing rules to include a reporting requirement regarding business fraud and antitrust violations. We further extend this reporting requirement to civil liability, including settled matters, for antitrust violations. Thus, the final regulation requires a statement whether the applicant business or any director, officer, or other official has been convicted of a felony involving business fraud or held liable for any antitrust violation. 220 C.M.R. § 11.05(2)(b).

d. Reporting Information to DOER

The Department's proposed regulations required documentation of competitive supplier information as well as various statements by an applicant with regard to Department requirements. DOER requests that additional language be included in the Department's rules, requiring applicants to agree to comply with reporting requirements yet to be promulgated by DOER (DOER Comments at 9-10). In addition, DOER requests that competitive suppliers be required to submit a copy of their application to DOER (*id.*).

The Department has composed its rules pursuant to its obligations under the Act. The Department supports DOER in its attempts to fulfill that agency's obligations and strongly encourages competitive suppliers and electricity brokers to provide DOER with copies of their licensing applications. However, the Department determines that it is premature for the

Department to require applicants to agree to rules that have yet to be promulgated and that will be developed by another agency. Therefore, the Department has made no change to its rules in response to DOER's comments on this issue.

e. Listing of Licensed Competitive Suppliers and Electricity Brokers

COM/Electric expresses concern that distribution companies would be burdened by trying to determine whether a competitive supplier or electricity broker is licensed by the Department (COM/Electric Comments at 6). The Department will "publish" a current list of competitive suppliers and electricity brokers on our Homepage:

<http://www.magnet.state.ma.us/dpu>.

A current list will also be available at the Department's offices during regular business hours.

f. License Renewal

The Department's proposed regulations required applicants to file updated information within 30 days of any change in the information required. In addition, the Department's proposed regulations required applicants to submit a filing fee of one hundred dollars with the application. However, the proposed regulations were silent on the need for a license renewal process. In the interest of minimizing customers' confusion in their efforts to choose suppliers, the Department hopes to ensure that only those competitive suppliers that are actively involved in serving Massachusetts customers are listed on the Department's register of licensed competitive suppliers and electricity brokers. Therefore, the Department has amended its regulations to require an annual fee of one hundred dollars so that only those

entities that actively choose to continue their licensure remain on the Department's list.

Licensees should submit that fee with an updated application. If there has been no material or organic change to the relevant information, an applicant may submit an updated application indicating that there has been no change since the previous application.

220 C.M.R. § 11.05(2)(b). The Department will treat such applications as approved.

2. Billing and Generation Service Termination Requirements

a. Introduction

The Department addresses the following two issues: (1) the flexibility to be afforded competitive suppliers in designing pricing structures and bill formats; and (2) the application of the Department's consumer protection regulations to competitive suppliers. With respect to price structures and bill formats, the proposed regulations stated that bills sent by competitive suppliers through the passthrough billing option (*i.e.*, the two-bill option, in which one bill is sent by the distribution company and a second bill is sent by the competitive supplier) must include separate lines for electricity consumption, generation price (rate per kilowatthour ("KWH")), generation cost (total dollar amount owed), and, when applicable, transmission price and cost. In addition, the proposed regulations required that competitive suppliers that plan to bill customers through the passthrough billing option submit a sample bill as part of their licensing application. With respect to the Department's rules for consumer protection, the proposed regulations established a procedure by which these bills may be considered overdue that mirrors the procedure established for distribution company bills in 220 C.M.R. § 25.02.

b. Price Structure and Bill Formats

Several commenters state that competitive suppliers should be given the flexibility to design price structures and bill formats that meet their customers' needs (AIM Comments at 4; Indicated Parties Comments at 10; Competitive Suppliers Comments at 8). These commenters maintain that suppliers need the opportunity to respond to consumers' preferences for optional pricing methods, such as a flat fee per month (AIM Comments at 4; Indicated Parties Comments at 10; Competitive Suppliers Comments at 8). Accordingly, these commenters recommend that suppliers not be required to include a separate line on their bills for a per-kilowatthour generation charge (AIM Comments at 4; Indicated Parties Comments at 10; Competitive Suppliers Comments at 8). Finally, EnergyVision stated that the regulations should not preclude suppliers from including on their bills charges for non-generation services such as energy efficiency services (EnergyVision Comments at 5-6).

The Department considers it important to distinguish between affording competitive suppliers the flexibility to design price structures that respond to consumers' preferences and affording suppliers the flexibility to present the appropriate pricing information on customers' bills. The Department fully supports providing competitive suppliers with the flexibility to design price structures that meet customers' needs and expects that optional price structures will be one of many services by which competitive suppliers will try to distinguish themselves. Accordingly, the final regulations do not require that a competitive supplier's bill include a separate line for a per-KWH generation charge. 220 C.M.R. § 11.05(3)(a). Similarly, the final regulations provide that competitive suppliers may issue bills to customers less frequently than the traditional billing period of approximately 30 days. 220

C.M.R. § 11.05(3)(b). Finally, the final regulations allow for the inclusion on competitive suppliers' bills of charges for non-generation services (e.g., energy efficiency services). 220 C.M.R. § 11.04(10)(c).

However, the Department does not support allowing this same level of flexibility with regard to billing formats, at least during the early stages of restructuring. Until such time as customers gain more experience with the competitive generation market and the market itself develops into an efficient, mature market, customers' bills should be presented in such a way that allows for relatively easy computation of bill amounts. The Department concludes that this is essential in order to minimize customer confusion. As such, the final regulations require that supplier bills include the information necessary for customers to calculate their bills -- electricity consumption, the price structure agreed to between the supplier and customer,⁹ and the total charge for generation, identical to the information a customer would see if a distribution company were doing the billing for generation service under the complete billing option. 220 C.M.R. § 11.05(3)(a). The final regulations additionally require that, in those instances when a supplier issues its bills less frequently than the traditional billing period (i.e., monthly), the bills must include electricity consumption information for each traditional billing period, rather than simply the aggregated consumption over the period that the bill covers. 220 C.M.R. § 11.05(3)(c). This would allow customers to compare the consumption levels on which their generation charges are based with the

⁹ The price structure agreed to by the competitive supplier and customer will be included in the Terms of Service that each competitive supplier will be required to send to its customers prior to initiating generation service, in accordance with 220 C.M.R. §§ 11.06(3) and (4).

levels appearing on their distribution company bills. The Department determines that these provisions strike an appropriate balance between the flexibility necessary for competitive suppliers to introduce new product offerings into the marketplace and the need for appropriate and necessary consumer protections.

A final bill format issue that is addressed in the final regulations is the requirement that competitive suppliers submit a sample bill as part of their licensing application if they plan to separately bill customers for generation service pursuant to the passthrough billing option. 220 C.M.R. § 11.05(2)(b). The Department recognizes that suppliers may offer various bill formats from which customers may choose. The Department emphasizes that the sample bill requirement is intended only to demonstrate the suppliers' familiarity with the requirements established in the final regulations. Suppliers will not be required to submit a sample bill for each type of bill format that they may offer.

c. Consumer Protection Regulations

Midcon asserts that the Department's consumer protection rules, as set forth in 220 C.M.R. § 25.00 et seq., § 27.00 et seq., § 28.00 et seq., and § 29.00 et seq. were intended to protect consumers against monopoly service providers and should not apply to a competitive market for generation services, in which consumers dissatisfied with the billing practices of a competitive supplier can readily switch to a different supplier (Midcon Comments at 9-11). UNITIL argues that applying the Department's consumer protection regulations relating to overdue bills to competitive suppliers would unnecessarily hinder the effective functioning of the competitive market, particularly because a supplier's termination of generation service would not interrupt a customer's electric service (UNITIL Comments

at 1-2). EnergyVision states that the Department's billing and termination protection rules should apply only to residential customers, as is currently the case (EnergyVision Comments at 6).

The Competitive Suppliers and UNITIL state that the Department's regulations regarding security deposits, included in 220 C.M.R. § 26.00 et seq., should not apply to competitive suppliers (Competitive Suppliers Comments at 9; UNITIL Comments at 2). The Competitive Suppliers note that the application of these rules to competitive suppliers is not mandated by the Act and argue that such application would inhibit product development and offerings to commercial and industrial customers with poor credit histories (Competitive Suppliers Comments at 9). UNITIL argues that the application of these rules to competitive suppliers would add another constraint on the efficient operation of the competitive market (UNITIL Comments at 2).

In contrast to the comments described above, the Low Income Intervenor maintain that the Act mandates that all of the Department's consumer protection rules included in 220 C.M.R. § 25.00 et seq., § 27.00 et seq., § 28.00 et seq., and § 29.00 et seq. apply to all competitive suppliers (LII Comments at 3). The Low Income Intervenor state that the Department's proposed regulations do not address many of the consumer protections (e.g., payment plans, financial hardship protections) included in the Department's consumer protection rules (id.). Finally, the Low Income Intervenor argue that these protections should apply to competitive suppliers irrespective of the selected billing option, because termination of generation service would have the same consequence to a consumer regardless of whether the supplier or the distribution company is billing for generation service (id.).

In evaluating which of the Department's consumer protection regulations should apply to competitive suppliers, the Department distinguishes between those regulations that address issues associated with billing and those that address issues associated with termination of electric service. In the December 31, 1996 Plan, at 146, the Department stated that our existing billing regulations should apply to competitive suppliers; otherwise, the level of consumer protection afforded a customer would be dependent on the billing option the customer has chosen. The Department recognizes that, once the market for competitive generation services has matured, the marketplace will likely provide the constraints on competitive supplier behavior that our consumer protection regulations are intended to provide. However, during the early stages of restructuring, the Department considers it essential in order to protect customers and to minimize customer confusion that our billing regulations be applied to competitive suppliers. Similarly, our regulations related to billing deposits and late payment charges also should apply to competitive suppliers, at least during the early stages of restructuring. The Department concludes that the application of these regulations to competitive suppliers is consistent with the requirements of the Act. St. 1997, c. 164, § 193 (G.L. c.164, § 1F(7)).

As such, the final regulations establish a procedure for the determination of when a bill for generation service may be considered past-due that mirrors the procedure established for distribution company bills in 220 C.M.R. § 25.02. The final regulations specify that this provision applies only to residential customers. 220 C.M.R. §§ 11.05(3)(c) and (d). In addition, the final regulations preclude competitive suppliers and electricity brokers from requiring security deposits or assessing late payment charges from customers except as

provided in 220 C.M.R. § 26.00 et seq.. Finally, the Department has added a provision to the final regulations specifying that competitive suppliers must notify customers of termination of generation service at least ten days before termination, when such termination is due to reasons other than non-payment. The Department determines that this rule will provide customers with appropriate notification regarding termination of their generation service. 220 C.M.R. § 11.05(3)(f).

With respect to termination protections, the Department distinguishes between the termination of generation service and the termination of electric service. In the restructured electric industry, competitive suppliers will have the ability to terminate generation service only; they will not have the ability to terminate a customer's electric service. Only distribution companies will have the ability to terminate a customer's electric service (i.e., physically disconnect a customer from the electricity grid), as is currently the case. The termination of generation service by a competitive supplier to a customer would not result in an interruption of the customer's electric service; the affected customer would automatically receive either standard offer or default service provided by his distribution company. Because the final regulations provide that all of the Department's billing and termination procedures, as set forth in 220 C.M.R. § 25.00 et seq., shall continue to apply to distribution companies, customers for whom generation service is terminated will be afforded the same protections against termination of electric service that currently exist. Thus, the final regulations provide a level of protection for customers in the restructured electric industry that is equal to the level that is currently provided.

The Department recognizes that termination of generation service by a competitive supplier could affect the price that a consumer would pay for electricity. The Department further recognizes that, for some customers, an increase in the price they pay for electricity could have adverse effects. Under the final regulations, consumers that meet the eligibility criteria for a distribution company's low-income tariff would be eligible to return to standard offer service at any time. This provision would allow these customers to receive the rate reductions that are incorporated into the standard offer price. Therefore, the Department believes that, on the whole, the final regulations provide appropriate protection to those consumers who would be most adversely affected by any increased rates that may result from termination of their generation service

3. Conducting Business With Unlicensed Entities

The proposed regulations precluded distribution companies, competitive suppliers, and electricity brokers from "doing business" with any competitive supplier or electricity broker that is not licensed by the Department. Several commenters state that this language is overly broad and perhaps unduly restrictive (DOER Comments at 10; Interested Parties at 11; Midcon at 12-13). The Indicated Parties added that it is unclear what is meant by the phrase "doing business" (Indicated Parties at 11).

The final regulations focus separately on two business relationships in determining the restrictions that will apply to distribution companies, competitive suppliers, and electricity brokers interacting with only licensed entities. The first relationship is between distribution companies and competitive suppliers, for which the final regulations state that distribution companies may provide services associated with the provision of Generation Service to

entities that are licensed as competitive suppliers or electricity brokers by the Department. 220 C.M.R. § 11.04(14).¹⁰ The second relationship is between competitive suppliers and electricity brokers, for which the final regulations state that competitive suppliers may not use the services of any entity to facilitate or otherwise arrange for the purchase and sale of electricity to retail customers, unless that entity has been licensed as an electricity broker by the Department. 220 C.M.R. § 11.05(5).

E. Information Disclosure

1. Basis for Disclosure

The Department's proposed rules required that a competitive supplier disclose information on its company resource portfolio using market settlement data provided by ISO-NE. In addition, the proposed rules required that a competitive supplier determine its company resource portfolio as the sum, over the label reporting period, of resources used by the provider in each hour to meet its load obligation.

The majority of commenters suggest that the Department's information disclosure policy allow a competitive supplier to disclose segments of its resource portfolio (or "products") to retail customers rather than the company resource portfolio (see e.g., UCS Comments at 1-3; DOER Comments at 11; Competitive Suppliers Comments at 10-11; CPC Comments at 11; NRDC Comments at 2). They state that requiring disclosure of company resource portfolios without allowing disclosure of segments of the resource

¹⁰ The Department notes that distribution company services associated with the provision of Generation Service are addressed in each distribution company's Terms and Conditions for Competitive Suppliers.

portfolio would prevent the development of a strong market for renewable resources and other resources with desirable environmental characteristics (see e.g., UCS Comments at 3; NRDC Comments at 2). Several also suggest that requiring company-based disclosure would hamper efforts to market to retail customers specific segments of a company resource portfolio (see e.g., CLF Comments at 3; CPC Comments at 11). Some commenters state that requiring an hourly matching of resources to load obligation would have an adverse impact upon intermittent resources (UCS Comments at 4; CLF Comments at 6-7). Other commenters state that hourly matching is excessively restrictive (see e.g., CPC Comments at 12; NEP Comments at 1; CLF Comments at 6-7). ISO-NE states that not allowing differentiation among segments of a company resource portfolio could increase operation and administration costs for ISO-NE and for participants (ISO-NE Comments at 2). In its comments, DOER recommends a multi-step verification procedure relying on ISO-NE data and certification by an independent auditor for verifying product-based disclosure (DOER Comments at Att. 1). Finally, two commenters noted that resources smaller than one megawatt will not be included in ISO-NE's market settlement data although some suppliers may wish to include such resources in their information disclosure (ISO-NE Comments at 4; CLF Comments at 6).

In responding to the comments received, the Department notes that our goal with respect to information disclosure is first to enable consumers to make informed choices of supply resources whose development and use they may wish to facilitate, and second, to ensure that consumers are protected from misrepresentations regarding these resources. The Department must ensure that information disclosure labels are not easily misinterpreted by

retail customers. There are several complicated steps in the matching of generation resources in New England to individual competitive suppliers, and in the assignment of segments of an individual competitive supplier's company resource portfolio to the consumption of electricity by its retail customers. These calculations necessarily rely upon information of a confidential nature that is generated hourly by ISO-NE. The Department remains concerned that the complexity of this company resource portfolio calculation and assignment to retail customers will introduce opportunities for competitors to game the Act's disclosure requirements to the detriment of consumers. ISO-NE is ideally and uniquely suited to address this concern through the task of supporting and verifying the calculations underlying information disclosure, given the independent composition of the ISO-NE board, its role in the daily operations of the New England Power Pool ("NEPOOL"), and the access that ISO-NE has to the data necessary to verify company calculations.

Consequently, in our final regulation, we require the calculation of company resource portfolios on a quarterly basis, and provide for the segmentation of such resource portfolios into discreet components, subject to ISO-NE verifying such calculations for competitive suppliers. 220 C.M.R. §11.06(2)(d)(2). In doing so, the Department recognizes that it cannot require that ISO-NE undertake these responsibilities. ISO-NE operates under an interim service contract with NEPOOL, subject to the jurisdiction of the Federal Energy Regulatory Commission. ISO-NE operations, billing, and information dissemination occur pursuant to rules and procedures that must be developed and approved through NEPOOL committees whose voting members consist of the NEPOOL market participants. However, ISO-NE has recommended allowing differentiation of products. The Department is

committed to fostering the development of the ISO-NE's authority to facilitate the implementation of information disclosure policies that may be applied on a consistent regional basis. This has been an important component of recent and ongoing efforts related to the tracking of disclosure data coordinated through the New England Conference of Public Utility Commissioners and the New England Governors' Conference, and we expect that this role will be better defined in the coming year. Given that suppliers may wish to offer products prior to the time that ISO-NE obtains the necessary authority to provide this verification service, the final rules provide for verification by an independent auditor of resource portfolio disaggregation for a transition period prior to March 1, 1999. 220 C.M.R. § 11.06(2)(d)(2). Finally, the rules provide that competitive suppliers with verifiable contracts for resources smaller than one megawatt may include such resources in their company resource portfolio. 220 C.M.R. § 11.06(2)(d)(1)(c).

2. Prospective Disclosure for New Suppliers and Disclosure Prior to Operation of the ISO Markets

The proposed rules provided that, for the first three months that a supplier is in business, label data would be projected based on known resources and average regional system characteristics. The proposed rules did not include any provisions specific to information disclosure in the period between March 1, 1998, the date upon which retail customers may select a competitive supplier, and when the ISO-NE markets become operational.¹¹

¹¹ ISO-NE recently stated that it anticipated that the markets would become operational in the fourth quarter of 1998 (ISO-NE press release Feb. 10, 1998).

Some commenters suggest that the Department expand the period for prospective disclosure for new suppliers (see e.g., DOER Comments at 17; UCS Comments at 5; CLF Comments at 2; Competitive Suppliers Comments at 13). The DEP, on the other hand, strongly supports the Department's proposal (DEP Comments at 2). In addition, some commenters suggest that there be an interim approach to disclosure. For example, UCS suggests that it may be appropriate to allow for prospective disclosure in general for the first three to six months following implementation of a bid-based market in New England to allow time for the ISO structure to become operative (UCS Comments at 5). CLF suggests that the Department implement a "contingency phase" during which competitive suppliers wishing to make a claim pertaining to the fuel or emissions characteristics of their generation service would be required to substantiate the claim, but competitive suppliers who make no claims would disclose certain default characteristics (CLF Comments at 8).

The Department determines that the three-month prospective period should be retained as it represents a time frame that balances the problem of data availability for new competitive suppliers with the need for verifiable information for disclosure purposes. 220 C.M.R. § 11.06(2)(d)(1)(b). The Department determines that it is not necessary to provide for prospective disclosure prior to the implementation of bid-based markets since even prior to the bid-based markets competitive suppliers should have information sufficient to identify settlement resources and distinguish between known resources and system power. Finally, the Department does not consider a claims-based disclosure policy appropriate as we find that disclosure requirements should apply consistently to all competitive suppliers rather than

applying differently depending on specific conditions, such as whether a competitive supplier makes a claim.

3. Data on Characteristics of System Mix, Imports and Labor

The proposed rules required disclosure of system power to be based on information on the average regional system mix, including fuel characteristics, emissions characteristics and labor characteristics. The proposed rules provided for imports of known resources to be assigned characteristics of the appropriate generating unit, and for imports of system power to be assigned the characteristics of the exporting system mix. The proposed rules required that the emissions from a company resource portfolio or a segment of a company resource portfolio be compared on the label to the New England regional average emissions rate.

Several commenters suggest modifications to the proposed rules. For example, DOER suggests that the Department determine the regional average system mix, and the fuel, emissions and labor characteristics of that mix (DOER Comments at 21-22). ISO-NE states that the proposed rules regarding imports presented the opportunity for competitive suppliers to “green-wash” electricity by selling power with undesirable characteristics outside the region and purchasing an equivalent amount of power with more favorable characteristics from outside the region through a unit contract (ISO-NE Comments at 1). ISO-NE recommends that imports be assigned the emissions characteristics of the New England regional average (*id.* at 2). DEP suggests that imports be clearly differentiated from power generated in the NEPOOL region, and that they be assigned default emissions characteristics different from those of the NEPOOL regional system (DEP Comments at 3). In addition, DEP recommends that emissions from a company resource portfolio or a segment of a

company resource portfolio also be compared on the label to the emissions from a new unit (id.).

The Department has modified our proposed rules in two ways. First, in order to avoid the problem of “green-washing,” the final rules require that all imports to the region be identified in the “fuel sources” column as “imports,” without any distinction between known resources and system power. 220 C.M.R. § 11.06(2)(d)(1)(e). Second, the Department has incorporated a comparison to new unit emissions into the final rules and into the sample label attached to this Order. 220 C.M.R. § 11.06(2)(d)(5). In addition, the Department recognizes that implementation of our disclosure policy requires the following information: (1) the average regional system mix; (2) the emissions characteristics of the average regional system mix; (3) the emissions characteristics of imported power; (4) the emissions characteristics of a new unit, and (5) the labor characteristics of the average regional system mix. 220 C.M.R. § 11.06(2)(d). The Department will determine average regional system characteristics, emissions factors, and labor practices in consultation with DEP, and other agencies as appropriate.

4. Information Disclosure for Distribution Companies Providing Standard Offer Generation or Default Generation Service

The proposed rules applied consistently to competitive suppliers and to distribution companies providing standard offer service or default service. The Utilities state that, due to the particular circumstances of distribution companies, the rules should be modified as follows: (1) distribution companies should not be required to prepare terms of service, as they are covered by the Department’s rules governing Terms and Conditions of Distribution

Service; (2) distribution companies should not be required to provide a label to customers prior to initiation of default service; rather, the label should be distributed with the first distribution bill after a customer's switch to default service; (3) disclosure of information for standard offer service and default service should be based on regional information since they are not competitive offerings; and (4) notification could be less frequent for standard offer service and default service customers (see e.g., EEC Co Comments at 6; COM/Electric Comments at 7-8).

The Department agrees with the Utilities that, because they are required to have Terms and Conditions of Distribution Service, the requirement to prepare terms of service is not necessary for distribution companies. The Department also agrees that, because of the ability of customers to switch at any time to default service, it is not appropriate to require that a label be distributed prior to initiation of default service. The Department has incorporated these comments into its final rules. 220 C.M.R. §§ 11.06(3) and (4). The Department agrees that standard offer generation service and default generation service may be served from system power, and thus would bear the characteristics of the regional system, and notes that the proposed rules accommodate this possibility. Therefore, the final rules do not reflect any change on this item. 220 C.M.R. § 11.06(2)(d)(1). Finally, the Department has not modified the quarterly notification requirements so that retail customers receive consistent information on a consistent basis regarding their generation service options. 220 C.M.R. § 11.06(4).

5. Distribution of Terms of Service

The proposed rules stated that terms of service must be available to any person upon request. Two commenters state that the terms of service should not be available to any person upon request as the terms of service contain information that is competitively sensitive and pertain to a contract between a competitive supplier and a particular retail customer (Competitive Suppliers Comments at 2, 15; Indicated Parties Comments at 15).

The Department has clarified in its final rules that the terms of service “for any available generation offerings” should be available upon request. 220 C.M.R. § 11.06(4). The Department does not intend to inhibit competitive suppliers from writing contracts specific to individual retail customers; however, the Department considers that retail customers should be able to obtain terms of service for generation service offerings that are not tailored to an individual customer.

6. Information Disclosure in Advertising

The proposed rules required that the label be presented in all written marketing materials describing generation service. The proposed rules also conditioned a competitive supplier’s ability to advertise or make claims regarding the relative environmentally beneficial effects of its resource portfolio upon compliance with renewable portfolio standards and generation performance standards. Some commenters state that the requirement to include the label in advertising and marketing materials should apply only to materials where a specific product is marketed (UCS Comments at 5; CLF Comments at 7). EnergyVision and the Indicated Parties suggest that marketing materials not include the label but state that the label is available upon request (EnergyVision Comments at 8; Indicated

Parties Comments at 16). The Competitive Suppliers state that implementing the Department's proposal would be "costly, burdensome, and over broad" (Competitive Suppliers Comments at 16). CLF requests that the Department clarify that competitive suppliers may make claims prior to the implementation of renewable portfolio standards and generation portfolio standards (CLF Comments at 8). DOER suggests that the Department should delay conditioning the ability to make claims until renewable portfolio and generation performance standards are in place (DOER Comments at 22).

The Department has modified its final rules to require that marketing and advertising materials pertaining to specific generation service indicate that a label is available upon request. 220 C.M.R. § 11.06(6)(c). As a preliminary matter, the Department is directed in the Act to coordinate its rules and regulations governing advertising or marketing of electricity with the Attorney General. St. 1997, c. 164, § 193 (G.L. c.164, § 1F(5)(iii)). The Attorney General has recently issued for comment regulations governing advertising and marketing of electricity.¹² The Department considers it premature to determine whether the label meets the Attorney General's requirements related to deceptive advertising, and we will coordinate with the Attorney General on the use of the disclosure label in advertising and marketing. In addition, consistent with the Act, the final rules require that, where electricity rates are advertised, the rate to be charged must be included in bold print in the case of print advertisements or conveyed through clear and deliberate speech in the case of television or radio advertisements. St. 1997, c. 164, § 193 (G.L. c.164, § 1F(5)(iii)); 220 C.M.R.

¹² Attorney General's proposed regulations, 940 C.M.R. § 19.00 et seq. (Feb. 6, 1998).

§ 11.06(6)(e). Finally, the Department clarifies here that a competitive supplier's ability to make claims is not conditioned on the existence of renewable portfolio and generation performance standards, but on compliance with those standards once they are implemented by the appropriate agencies. 220 C.M.R. § 11.06(6).

7. Format of the Label

The proposed rules stated that the label should be in a form to be determined by the Department. The Department attached a copy of a label format proposed by DOER to our January 16, 1998 Order and requested comment on that format. DOER suggests several modifications to the label, including modifying the statements regarding the fuel mix and bundled products, and inclusion of explanatory language on the back of the label (DOER Comments at 20-21). Other commenters suggest that the DOER label format is not appropriate, or that there should not be a predetermined format for the label (see e.g., Competitive Suppliers Comments at 11-12; Indicated Parties Comments at 13). The Attorney General requests that the Department require that the text of the disclosure label appear in 10-point type, except for footnotes, which should be in 8-point type since "the label is similar to, and can be used as, an advertising vehicle" (AG Comments at 1).

The Department has attached four label formats to this Order providing for disclosure of historic and prospective information on a product and a company basis. Attachments B-1 through B-4. Competitive suppliers and distribution companies offering standard offer service or default service should prepare disclosure labels using the appropriate format. The sample labels are based upon the format proposed by DOER, with language modifications and inclusion of marks indicating the emissions rates of a new unit. In addition, the

Department adopts DOER's suggestions regarding information to be included on the back of the label as we anticipate that it will assist customers, at least in the beginning, with making informed comparisons among generation service offerings. Each label should present the information shown in Attachment C on the back of all labels distributed to retail customers.

8. Initiation and Revision of the Department's Disclosure Policy

The Utilities suggest that the Department set a date upon which competitive suppliers would begin distribution of their disclosure label since many matters pertaining to the label have not yet been settled (see e.g., COM/Electric Comments at 7; Utilities' Revised Regulations at A-26). The DEP suggests that the Department establish a specific event (e.g., an improved data tracking mechanism) or a date (e.g., 1999) that would trigger a review of the disclosure policy (DEP Comments at 2). DOER recommends that the disclosure requirements expire on March 1, 2000, and that the Department initiate a rulemaking 120 days prior to that date to revise the requirements (DOER Comments at 23).

The Department agrees with the Utilities' suggestion that it is appropriate to establish a date upon which the disclosure requirements become effective. Where appropriate, the Department has constructed the information disclosure rules to allow for their evolution over time as markets evolve and participants and consumers develop experience in retail sales of electricity. As discussed above, there is specific information pertaining to the characteristics of the regional system mix that is not immediately available. Thus, the Department determines that it is appropriate to establish a specific date upon which the disclosure rules become effective by requiring Competitive Suppliers to distribute labels in accordance with the Department's final rules beginning September 1, 1998. 220 C.M.R. § 11.06(2)(a).

The Department has constructed its information disclosure policy and rules to provide retail customers with consistent and useful information using available data concerning resources used to serve retail customers. The Department recognizes, however, that our approach to information disclosure must remain flexible, and will evolve significantly over time as customers gain experience with retail competition, the markets unfold, ISO-NE gains expertise in the operation and settlement of electricity markets, other agencies implement policies that must rely on generating unit tracking (e.g., emission performance standards and renewable portfolio standards), and other states in New England move towards retail competition and develop their own information disclosure requirements. The Department does not anticipate a specific date or event that will trigger review of our rules, but we are committed to adapting our information disclosure policy in response to these developments.

F. Complaint and Damage Claim Resolution; Penalties

Commenters raise the following issues with regard to the Department's proposed rule, 220 C.M.R. § 11.07: (1) competitive suppliers as well as customers should be able to bring slamming complaints to the Department, not just customers; and (2) competitive suppliers should be allowed to substitute their own complaint procedures, not simply follow the procedures set forth in 220 C.M.R. § 25.00 et seq., when consumers have complaints against competitive suppliers.

The Indicated Parties state that the Department should allow competitive suppliers who are the victims of slamming the opportunity to file complaints and "attempt to redress grievances against competitive suppliers who have acted inconsistently with the slamming provisions" (Indicated Parties Comments at 16).

The Act specifies in detail the procedures for bringing a slamming complaint. St. 1997, c. 164, § 193 (G.L. c. 164, § 1F(8)(b), (c)). Specifically, the Act states that a customer may initiate a complaint of unauthorized switching within 30 days of the statement date of the notice indicating that the customer has been switched. If the Department determines that the new service provider does not possess the required proof of the customer's affirmative choice, such new service provider shall be required to (a) refund to the customer the difference between what the customer would have paid to the previous service provider and the actual charges paid to the new service provider; (b) refund to the customer any reasonable expense the customer incurred in switching back to the original service provider; and (c) refund to the original service provider any lost revenue, consisting of what the original service provider would have received for the service used by the customer if the customer's service had not been switched. Id. The Act does not include a provision to allow competitive suppliers to initiate complaints of unauthorized switching. Therefore, the Department will not amend its proposed rule on this issue.

Midcon states that the Department should amend its rules to provide that consumer complaints against competitive suppliers and electricity brokers should not follow the procedures set forth in 220 C.M.R. § 25.00 et seq.; rather, the complaint procedure should be determined by the specific terms and conditions agreed to by the customer and competitive supplier and electricity broker (Midcon Comments at 16-17). Moreover, Midcon states that a customer should only be permitted to seek alternative dispute resolution after having attempted to resolve the complaint in the manner specified in the agreed-upon terms and conditions (id. at 17).

The Act explicitly provides that 220 C.M.R. § 25.00 et seq. shall be applicable to competitive suppliers and electricity brokers. St. 1997, c. 164, § 193 (G.L. c. 164, § 1F(7)). Therefore, the Department will not amend the complaint procedure to require that consumer complaints against competitive suppliers and electricity brokers follow the specific terms and conditions agreed to by the customer and competitive supplier and electricity broker. The Department notes that 220 C.M.R. § 25.04 provides that customers first notify the company of a dispute and allow the company an opportunity to investigate and attempt to resolve the complaint before the customer may come to the Department.

G. Exceptions

The Utilities suggest that the Department add a section to the regulations that would permit the Department to grant exceptions to the regulations, where appropriate (Utilities Revised Regulations at A-38). The Department inadvertently omitted an exceptions provision in the January 16, 1998 proposed regulations. The Department has included an exceptions provision in other regulations. See e.g., 220 C.M.R. § 8.07(3); 220 C.M.R. § 9.05; 220 C.M.R. § 10.07(5). In this proceeding involving resolution of many complex issues of first impression, the need for flexibility provided by an exceptions provision is evident. Accordingly, our final regulations include Section 11.08, entitled "Exceptions." The Department notes that in some areas which these regulations govern, the Department lacks a legislative grant of discretion. In other areas, where the Department has discretion in applying the regulations, proponents of an exception will have the burden of establishing the necessity and reasonableness of such an exception.

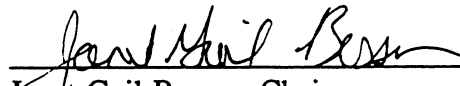
IV. ORDER

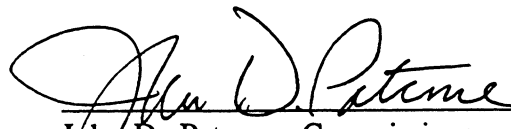
Accordingly, after due notice, public hearing, and consideration, and under the authority of St. 1997, c. 164, G.L. c. 164, §§ 76, 76C and 94, it is

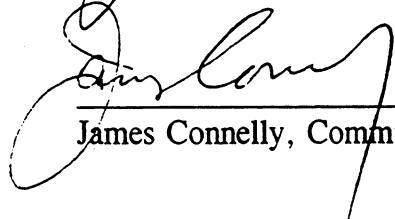
DETERMINED: That the regulations designated as 220 C.M.R. §11.00 et seq. are reasonably necessary for the administration of Chapter 25 and Chapter 164 of the General Laws; and it is

ORDERED: That the regulations designated as 220 C.M.R. §11.00 et seq. shall take effect upon publication in the Massachusetts Register.

By Order of the Department,


Janet Gail Besser, Chair


John D. Patrone, Commissioner


James Connelly, Commissioner

A true copy
Attest:


Mary L. cottrell
Secretary

ATTACHMENT A

220 CMR 11.00: RULES GOVERNING THE RESTRUCTURING OF THE ELECTRIC INDUSTRY

Section

- 11.01: Purpose and Scope
- 11.02: General Definitions
- 11.03: Transition Cost Recovery
- 11.04: Distribution Company Requirements
- 11.05: Competitive Supplier and Electricity Broker Requirements
- 11.06: Information Disclosure Requirements
- 11.07: Complaint and Damage Claim Resolution; Penalties
- 11.08: Exceptions

11.01: Purpose and Scope.

(1) **Purpose.** 220 CMR 11.00 establishes the rules that will govern the restructuring of the electric industry and will apply thereafter to the restructured electric industry in the Commonwealth. Their purpose is to provide a regulatory framework for an efficient industry structure that will minimize long-term costs to consumers while maintaining the safety and reliability of electric services with minimum impact on the environment.

(2) **Scope.** 220 CMR 11.00 applies to the Distribution Companies, Competitive Suppliers and Electricity Brokers that will participate in the electric industry in the Commonwealth, including the following Distribution Companies and their successors or assigns:

- (a) Boston Edison Company
- (b) Cambridge Electric Light Company
- (c) Commonwealth Electric Company
- (d) Eastern Edison Company
- (e) Fitchburg Gas and Electric Light Company
- (f) Massachusetts Electric Company
- (g) Nantucket Electric Company
- (h) Western Massachusetts Electric Company

11.02: General Definitions.

For the purposes of 220 CMR 11.00, the terms set forth below shall be defined as follows, unless the context otherwise requires.

Affiliate means any "affiliated company" as defined in M.G.L. c. 164, § 85.

Aggregator means an entity that groups together electricity customers for retail sale purposes, except for public entities, quasi-public entities or authorities, or subsidiary organizations thereof, established pursuant to the laws of the Commonwealth.

Alternative Energy Producer means any person, firm, partnership, association, public or private corporation, or any agency, department, board, commission or authority of the Commonwealth or of a subdivision of the Commonwealth, that owns or operates a cogeneration facility or small power production facility as defined in M.G.L. c. 164, and does not engage in the retail sale of electricity other than sales to customers that are within the confines of an industrial park, which existed prior to March 1, 1982, and in which park there existed as of said date electrical generating capacity of more than fifteen megawatts.

Ancillary Services means those functions that support generation, transmission, and distribution, including the following services: (a) reactive power/voltage control; (b) loss compensation; (c) scheduling and dispatch; (d) load following; (e) system protection service; and (f) energy imbalance service.

Applicant means any entity that has filed an application for licensure as a Competitive Supplier or Electricity Broker as required by M.G.L. or by 220 CMR 11.00.

Bill means a written statement from a Distribution Company or a Competitive Supplier to its Customer setting forth, for the billing period identified in the Distribution Company's tariff, (a) the amount of electricity consumed or estimated to have been consumed; (b) charges for Generation, Transmission, and Distribution Services, as appropriate; (c) charges for Energy Efficiency and Renewable Resources; (d) the Transition Charge, as appropriate; and (e) any other charges.

Capacity means the load for which a generating unit, generating station, or other electrical apparatus is rated either by the user or by the manufacturer.

Competitive Supplier means an entity licensed by the Department to sell electricity and related services to Retail Customers, with the following exceptions: (a) a Distribution Company providing Standard Offer Generation Service and Default Generation Service to its Distribution Customers; and (b) a municipal light department that is acting as a Distribution Company.

Default Generation Service means the service provided by the Distribution Company to a Customer who is not receiving either Generation Service from a Competitive Supplier or Standard Offer Generation Service, in accordance with 220 CMR 11.04(9)(c) and

the provisions set forth in the Distribution Company's Default Generation Service tariff on file with the Department.

Demand-Side Management ("DSM") means any technology, measure, or action designed to decrease the kilowatt or kilowatthour use, or to alter the time pattern of that use by consumers of electricity.

Department means the Department of Telecommunications and Energy.

Distribution Company means a company engaging in the distribution of electricity to Retail Customers or owning, operating, or controlling Distribution Facilities; provided, however, a Distribution Company shall not include any entity that owns or operates plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation prior to January 1, 1986.

Distribution Customer means a recipient of Distribution Service provided by a Distribution Company.

Distribution Facility means plant or equipment used for the distribution of electricity to Retail Customers and that is not a Transmission Facility, a cogeneration facility, a Generation Facility or a small power production facility.

Distribution Service means the delivery of electricity to the Customer by the Distribution Company over lines that operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts.

Electric Company means a corporation organized under the laws of the Commonwealth for the purpose of making electricity by means of water power, steam power or otherwise and selling, or distributing and selling, or only distributing, such electricity within the Commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas; provided, however, that Electric Company shall not mean an alternative energy producer, and provided further, that an electric company shall not include any entity that owns or operates a plant or equipment used to produce electricity, steam, and chilled water, or any affiliate engaged solely in the provision of such electricity, steam, and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation prior to January 1, 1986.

Electric Service means the provision of Generation, Transmission, Distribution, or Ancillary Services.

Electricity Broker means an entity, including but not limited to an Aggregator, that facilitates or otherwise arranges for the purchase and sale of electricity and related services to Retail Customers, but does not sell electricity. Public Aggregators shall not be considered Electricity Brokers.

Energy means the amount of electricity used over a period of time, typically measured in kilowatthours.

Energy Efficiency means the implementation of an action, policy, or measure which entails the application of the least amount of energy required to produce a desired or given output and includes demand-side management and energy conservation services.

Generation Company means an entity engaging in the business of producing, manufacturing, or generating electricity for sale to Retail Customers.

Generation Facility means plant or equipment that is used to produce, manufacture, or otherwise generate electricity and that is not a Transmission Facility.

Generation Service means the provision of electricity and related services to a Retail Customer by a Competitive Supplier.

Independent System Operator or ISO means the New England ISO Corporation, which operates pursuant to a contract with the New England Power Pool.

Low-income Customers means those Customers who meet the low-income eligibility criteria set forth in 220 CMR 11.04(5).

Mitigation means all actions or occurrences that reduce the amount of money that a Distribution Company seeks to collect through the Transition Charge, including those amounts resulting both from matters within the Distribution Company's control and from matters not wholly within its control. Mitigation, in accordance with M.G.L. c. 164, §1G, includes, but is not limited to, the following: (a) sales of Capacity, Energy, Ancillary Services, reserves, and emission allowances from Generating Facilities that are wholly or partly owned by the company; (b) sales of Capacity, Energy, Ancillary Services, reserves, and emission allowances from Generating Facilities with which the Distribution Company has a purchased power agreement; (c) adjustments to the company's minimum obligations under purchased power agreements that decrease such obligations, such as those that may be obtained through contract buy-out or renegotiation; (d) Residual Value; (e) sales and voluntary write-downs of company generation-related assets; (f) any market value in excess of net

book value associated with the sale, lease, transfer, or other use of the assets of the Distribution Company unrelated to the provision of Transmission Service or Distribution Service at regulated prices, including, but not limited to, rights-of-way, property, and intangible assets when the costs associated with the acquisition of the assets have been reflected in the Distribution Company's rates for regulated service; provided, however, that market values are based on the highest prices that such assets could reasonably realize after an open and competitive sale; and (g) any allowed refinancing of stranded assets or other debt obligations as provided by law.

NEPOOL means the New England Power Pool and its successors.

New England Region means the geographic area consisting of the states Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Public Aggregator means a municipality or group of municipalities that groups interested electricity consumers within its municipal boundaries to facilitate or otherwise arrange the purchase and sale of electricity pursuant to M.G.L. c. 164, § 134.

Renewable Resources means a type of Generation Facility or energy source including either (a) resources whose common characteristic is that they are nondepletable or are naturally replenishable but flow-limited, or (b) existing or emerging non-fossil fuel energy sources or technologies that have significant potential for commercialization in New England and New York, and includes the following: solar photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; and low-emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel. The following technologies or fuels shall not be considered Renewable Resources: coal, oil, natural gas except when used in fuel cells, and nuclear power.

Residual Value means the value of Electric Company assets, not including the income that may be obtained through Generation Facility operation.

Retail Access means the use of Transmission and Distribution Facilities owned by a Transmission Company or a Distribution Company to transmit or distribute electricity from a Competitive Supplier to a Retail Customer.

Retail Access Date means March 1, 1998.

Retail Customer or Customer means a customer located in Massachusetts that purchases electricity for its own consumption and not for resale in whole or in part.

Securitization means the use of rate reduction bonds to refinance debt and equity associated with Transition Costs pursuant to M.G.L. c. 164.

Service Territory means the service territory actually served by the Distribution Company on July 1, 1997 and following to the extent possible municipal boundaries.

Standard Offer Generation Service means the service provided by the Distribution Company for a term of seven years after the Retail Access Date, in accordance with 220 CMR 11.04(9)(b) and the provisions set forth in the Distribution Company's Standard Offer Generation Service tariff on file with the Department.

Transition Charge means the charge that provides the mechanism for recovery of Transition Costs.

Transition Costs means that portion of the costs identified in accordance with 220 CMR 11.03(2)(d) and (e) that remains after accounting for maximum possible mitigation, subject to determination by the Department.

Transmission Company means a company engaging in the transmission of electricity or owning, operating, or controlling Transmission Facilities.

Transmission Facility means plant or equipment used to provide Transmission Service.

Transmission Service means the delivery of electricity over lines that operate at a voltage level typically equal to or greater than 69,000 volts from generating facilities across interconnected high voltage lines to where it enters a distribution system.

Unbundled Rates means rates that separately identify (a) charges for Generation, Transmission and Distribution Services, as appropriate; (b) charges for Energy Efficiency and Renewable Resources; (c) the Transition Charge, as appropriate; and (d) any other charges.

Unit Contract shall be as defined in the Restated NEPOOL Agreement, or the successor agreement(s).

11.03: Transition Cost Recovery.

(1) **Purpose.** This section establishes the procedures governing the identification, mitigation, and collection of Transition Costs.

(2) Filing Requirements. No Transition Costs may be collected by a Distribution Company unless the collection of those costs has been approved by the Department. In order to recover eligible Transition Costs, a Distribution Company must file an application for review and approval with the Department, that includes the following information:

- (a) Documentation that the Distribution Company has filed on or before March 1, 1998, a plan to provide all of its Retail Customers the ability to purchase electricity from a Competitive Supplier as of March 1, 1998;
- (b) Documentation that the Distribution Company, through the applicable Electric Company, has developed and will implement a plan to divest itself of its portfolio of all non-nuclear Generation assets by August 1, 1999;
- (c) Documentation that the plan formulated pursuant to 220 CMR 11.03(2)(a) provides a Standard Offer Generation Service rate and rate reduction as required pursuant to 220 CMR 11.04(9)(b)3.;
- (d) Identification of the following costs, incurred prior to January 1, 1996, for which the Distribution Company seeks recovery pursuant to M.G.L. c. 164, § 1G(b)(1):
 - 1. The amount of any unrecovered fixed costs for Generation-related assets and obligations;
 - 2. The amount of any previously incurred or known liabilities related to nuclear decommissioning and post-shut down obligations associated with nuclear power plants;
 - 3. The unrecovered amount of the reported book balances of existing generation-related regulatory assets; and
 - 4. The amount by which the costs of existing purchased power contract commitments exceed the competitive market price for electricity, or the amount necessary to liquidate such contracts.
- (e) Identification of the following costs, incurred after January 1, 1996, for which the Distribution Company seeks recovery pursuant to M.G.L. c. 164, § 1G(b)(2):
 - 1. Employee-related Transition Costs;

2. Any payment of taxes or payments in lieu of taxes made pursuant to M.G.L. c. 59 § 38H; and

3. Any costs to remove and decommission retired structures at fossil fuel-fired generation facilities required pursuant to M.G.L. c. 164, § 1A(b)(2).

(f) Documentation that the Distribution Company has taken all reasonable steps to mitigate to the maximum extent possible the total amount of Transition Costs for which recovery is sought pursuant to M.G.L. c. 164, §1G; and

(g) Documentation that the company's recovery of Transition Costs is net of the value in excess of book value for any company assets not classified to the transmission or distribution function.

(3) Mitigation.

(a) General Mitigation Requirements. Each Distribution Company seeking to recover Transition Costs pursuant to 220 CMR 11.03 shall, in accordance with the provisions of this section, mitigate any such Transition Costs pursuant to M.G.L. c. 164, § 1G(d). Mitigation efforts in which a company shall engage include, but not be limited to, the following:

1. The divestiture of non-nuclear Generation Facilities pursuant to M.G.L. c. 164, § 1A;

2. A netting against book value of nuclear generating units of the net present value of the revenues in excess of operating costs expected to be earned by these units, and any other factors that should be recognized in assessing their value.

3. Good-faith efforts to renegotiate, restructure, reaffirm, terminate, or dispose of existing contractual commitments for purchased power pursuant to M.G.L. c. 164, § 1G(d)(1)(ii) and M.G.L. c. 164, § 1G(d)(2);

4. An examination and analysis of the historic level of performance over the life of such contractual commitments for purchased power, regardless of whether the purchased power contracts exceed the competitive market price for electricity;

5. The netting against above-market costs of any below-market assets other than those assets classified to the distribution or transmission function; and

6. Any other Mitigation and analytical activities that the Department determines to be reasonable and effective mechanisms for reducing Transition Costs.

(b) Company Asset Valuation.

1. If an Electric Company chooses to divest itself of its existing non-nuclear Generation Facilities, pursuant to M.G.L. c. 164, § 1A(b)(2), such Electric Company shall transfer or separate ownership of Generation, Transmission, and Distribution Facilities or functionally separate such facilities consistent with M.G.L. c. 164, § 1A(b). A Distribution Company shall be prohibited from selling, leasing, renting, or otherwise transferring all or a portion of any assets it obtains from the Electric Company pursuant to M.G.L. c. 164, § 1A(b) without the express approval of the Department.

a. In the event that an Electric Company chooses to sell its existing Generation Facilities, such Electric Company shall demonstrate to the Department that the sale process is equitable and maximizes the value of the existing Generation Facilities being sold. All proceeds from any divestiture of Generation Facilities, net of tax effects and less any other adjustments approved by the Department that inure to the benefit of Customers, shall be applied to reduce the amount of the selling company's Transition Costs.

b. If an Electric Company chooses not to sell its existing non-nuclear Generation Facilities, then the Electric Company shall transfer all of its non-nuclear Generation Facilities and purchased power contracts to an Affiliate that is a Generation Company, and shall value its nuclear and non-nuclear Generation Facilities and its purchased power contracts in accordance with M.G.L. c. 164, § 1A(c).

2. An Electric Company that chooses not to divest all of its non-nuclear Generation Facilities shall subject its nuclear and non-nuclear Generation Facilities and purchased power contracts to a valuation pursuant to M.G.L. c. 164, § 1A(c). Should any Generation Facility transferred by the Electric Company to an unregulated affiliate or

subsidiary be further sold, transferred to, or disposed of, to a third party within 48 months of the Generation Facility's transfer to an unregulated Affiliate or subsidiary of the Electric Company, then any amount recovered in such a sale, transfer, or disposition in excess of the remaining net book value of the Generation Facility shall be applied to reduce the amount of the selling company's Transition Costs.

3. In the event that an Electric Company with Generation Facilities in the Commonwealth owns, or has an affiliate that owns, Generation Facilities in another state in the New England region, and the Electric Company chooses not to divest its existing fossil-fuel fired Generation Facilities and its existing hydroelectric Generation Facilities, the facilities shall be valued in accordance with M.G.L. c. 164, § 1A(d).

4. An Electric Company that fails to commence and complete the divestiture of its non-nuclear Generation assets shall not be eligible to benefit from the Securitization provisions and the issuance of electric rate reduction bonds pursuant to M.G.L. c. 164, § 1H.

- (c) Purchased Power Contracts. Pursuant to the provisions of M.G.L. c. 164, § 1G(d)(1)(ii), and M.G.L. c. 164, § 1G(d)(2), an Electric Company and the sellers under its purchased power contracts shall make good-faith efforts to renegotiate those contracts that contain a price for electricity that is above-market as of March 1, 1998. For the purpose of this section, the standard of good faith shall not require either party to agree to a proposal or require the making of concessions, but shall require active participation in negotiations and a willingness to make reasonable concessions in order to equitably mitigate Transition Costs, and to provide justification for proposals, and shall demonstrate a sincere effort to reach agreement. Beginning July 1, 1998, and at least annually thereafter, a Distribution Company shall file information with the Department demonstrating whether or not each of the purchased power contracts contains a price for electricity that is above-market as of the date of review. If the prices in such contract are above-market, the Distribution Company and the seller under such contract shall, in accordance with the provisions of M.G.L. c. 164, § 1G(d)(2), make a good-faith effort to renegotiate such contract in order to achieve further reductions in the Transition Charge. The requirements of this subsection shall not apply to facilities that burn trash to generate electricity as specified in M.G.L. c. 164, § 1G(d)(2)(i).

(d) Securitization. Each Distribution Company seeking approval to securitize Transition Costs pursuant to M.G.L. c. 164, § 1H must include in its filing:

1. Documentation of fully mitigated Transition Costs as approved by the Department;
2. Documentation that savings derived from Securitization will inure to the benefit of the Distribution Company's Customers;
3. Written commitments that purchasers of divested operations will offer employment to affected employees;
4. Documentation that the Distribution Company has established, with the approval of the Department, an order of preference for use of bond proceeds such that the Transition Costs having the greatest impact on customer rates will be first to be reduced by the proceeds;
5. Identification of financial entity to provide Securitization;
6. Specification that the amounts collected from the Distribution Company's Customers shall be allocated first to current and past due Transition Charges and then other charges and that, upon the issuance of the electric rate reduction bond, Transition Charges collected shall be allocated first to transition property and second to Transition Charges, if any, that are not subject to a financing order; and
7. A stipulation that Transition Charges be paid over to the financing entity within one calendar month of collection.

(4) Transition Charge Calculation and Department Review.

- (a) The Department shall review Company Transition Cost filings to ensure that they comply with the provisions of M.G.L. c. 164, §§ 1A, 1G, and 1H.
- (b) The Department may allow any approved Transition Costs to be recovered from a Distribution Company's Customers through a non-bypassable Transition Charge in accordance with M.G.L. c. 164, § 1G(e).
- (c) For purposes computing any carrying costs that the Department may allow in a Transition Charge calculation, the cost of equity component of any such computation shall be determined in accordance with M.G.L. c. 164, § 1G(b)(3).

(d) The Department shall determine whether an exit fee may be charged to a Retail Customer that reduces purchases of electricity through the operation of, or purchases from, on-site generation or cogeneration equipment in accordance with the provisions of M.G.L. c. 164, § 1G(g). Facilities eligible for net metering shall be exempt from the six-month notice provisions of M.G.L. c. 164, § 1G(g).

(e) Periodic review and reconciliation of the Transition Costs and Transition Charge of a company by the Department shall be conducted in accordance with the provisions of M.G.L. c. 164, §§ 1A(a) and 1G(a)(2).

11.04: Distribution Company Requirements.

(1) Purpose and Scope.

(a) Purpose. This section establishes the rules of procedure by which Distribution Companies shall

1. Provide Distribution Service to Distribution Customers in their Service Territories;
2. Provide Electric Service to Low-income Customers in their Service Territories;
3. Provide funding for Renewable Resources;
4. Provide Energy Efficiency and DSM services to Retail Customers in their Service Territories;
5. Provide Standard Offer Generation Service and Default Generation Service to Retail Customers in their Service Territories that are not receiving Generation Service from a Competitive Supplier;
6. Bill Retail Customers in their Service Territories; and
7. Terminate Electric Service to Retail Customers for non-payment of bills.

(b) Scope. These rules apply to all Distribution Companies subject to the jurisdiction of the Department.

(2) Distribution Service.

(a) Each Distribution Company shall have the exclusive obligation to provide Distribution Service to all Customers within its Service Territory. No other entity may provide Distribution Service within such Service Territory without the written consent of the Distribution Company. Such consent shall be filed with the Department and the clerk of the municipality so affected.

(b) Each Distribution Company shall file, for Department approval, a Distribution Service tariff for each rate class.

(c) Each Distribution Company shall file, for Department approval, terms and conditions governing the manner in which Distribution Service is provided to its Distribution Customers. These terms and conditions shall be consistent with the Model Terms and Conditions for Distribution Service established by the Department.

(3) Transmission Service. Each Distribution Company shall file, for Department approval, terms governing the provision of Transmission Service to its Distribution Customers.

(4) Interconnection Standards. Each Distribution Company shall establish non-discriminatory Interconnection Standards that govern the connection of Generation Facilities to its Distribution Facilities. Such standards shall ensure that all Generation Facilities have fair access on reasonable terms to the Company's Distribution Facilities. The Interconnection Standards shall be on file at the Department.

(5) Low-income Customer Tariff.

(a) Each Distribution Company shall file, for Department approval, a Low-income Customer Tariff that provides a level of discount to Customers taking Distribution Service under such tariff equivalent to the discount provided under its low-income tariff in effect prior to March 1, 1998. The discount shall be in addition to any reduction in rates provided by the Distribution Company on or after March 1, 1998. The discount shall be provided to Low-income Customers through a reduction in the distribution and Transition Charges to which such Customers would otherwise be subject.

(b) Each Distribution Company shall establish Customer eligibility for its Low-income Customer Tariff based on a Customer's eligibility for the low-income home energy assistance program or its successor program, or a Customer's receipt of any means-tested public benefit program for which

eligibility does not exceed 175% of the federal poverty level based on a household's gross income or other criteria approved by the Department.

(c) Each Distribution Company shall periodically notify all Customers of the availability of and method of obtaining service on the Low-income Customer Tariff.

(d) Each Distribution Company shall allocate to other rate classes, as part of a general rate case, the revenue deficiency resulting from the Low-income Customer Tariff using an allocation method approved by the Department for the Distribution Company.

(e) Each Distribution Company shall guarantee payment to a Competitive Supplier for Generation Service provided to a Customer taking Distribution Service under the Company's Low-income Customer Tariff in the event of non-payment by such Customer, where non-payment shall be determined consistent with 220 CMR 11.05(3)(c) and (d). Upon determination that such a Customer has failed to pay the amount owed to the Competitive Supplier, the Distribution Company shall pay the Competitive Supplier, except that such payment shall not exceed the prices that the Distribution Company charges to Customers for Standard Offer Generation Service. The Distribution Company shall guarantee payment only for the period of time prior to the earliest date that the Competitive Supplier could have terminated Generation Service to the Customer, in accordance with 220 CMR 11.05(3)(c) and the Distribution Company's Terms and Conditions for Competitive Suppliers.

(6) Farm Discount.

(a) Each Distribution Company shall provide Customers who meet the eligibility requirements for being engaged in the business of agriculture or farming, as defined in M.G.L. c. 128, § 1A, a ten percent reduction in the rates to which such Customers would otherwise be subject. Each Distribution Company shall allocate to other rate classes, as part of a general rate case, the revenue deficiency resulting from the farm discount using an allocation method approved by the Department for the Distribution Company.

(b) Eligibility Verification. Eligibility for the farm discount shall be verified according to criteria established by the Department.

(7) Renewable Resources.

(a) Funding of Renewable Resources.

1. Funding Levels. Each Distribution Company shall collect a charge to support the Massachusetts Renewable Energy Trust Fund beginning March 1, 1998, in accordance with the following schedule of charges per kilowatthour: \$0.00075 in 1998; \$0.001 in 1999; \$0.00125 in 2000; \$0.001 in 2001; \$0.00075 in 2002; and \$0.0005 in each calendar year thereafter. The revenues generated by this charge shall be remitted to the Massachusetts Technology Park Corporation.

2. Public Purpose. The public purpose of this fund shall be to generate the maximum economic and environmental benefits over time from renewable energy to the ratepayers of the Commonwealth by promoting the increased availability, use, and affordability of renewable energy.

(b) Availability of Information. Each Distribution Company shall make available to its Customers upon request non-proprietary information in its possession, custody, or control regarding Renewable Resources and emerging energy technologies and the methods by which these technologies can be acquired and installed.

(c) Net Metering. A Customer of a Distribution Company with an on-site Generation Facility of 60 kilowatts or less in size has the option to run the meter backward and may choose to receive a credit from the Distribution Company equal to the average monthly market price of generation per kilowatthour, as determined by the Department, in any month during which there was a positive net difference between kilowatthours generated and consumed. Such credit shall appear on the following month's bill. Distribution Companies shall be prohibited from imposing special fees on net metering Customers, such as backup charges and demand charges, or additional controls, or liability insurance, as long as the Generation Facility meets the Interconnection Standards and all relevant safety and power quality standards. Net metering customers must still pay the minimum charge for Distribution Service (as shown in an appropriate rate schedule on file with the Department) and all other charges for each net kilowatthour delivered by the Distribution Company in each billing period.

(8) Energy Efficiency

(a) Funding of Energy Efficiency Services. Energy Efficiency services provided by a Distribution Company to Customers shall be funded by a charge to be collected beginning on March 1, 1998, according to the following schedule of charges per kilowatthour: \$0.0033 in 1998; \$0.0031 in 1999; \$0.00285 in 2000; \$0.0027 in 2001; and \$0.0025 in 2002. In each year, at least 20 percent of residential DSM expenditures, and in no event less than 0.25 mills per kilowatthour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive DSM programs and education for Low-income Customers.

(b) Department Review. The Department shall review energy efficiency expenditures in accordance with M.G.L. c. 25A, § 11G.

(c) Availability of Information.

1. Each Distribution Company shall make available to its Customers upon request non-proprietary information in its possession, custody, or control regarding Energy Efficiency technologies, measures, or practices and the programs offered by the Distribution Company through which these technologies, measures, or practices can be installed or implemented.

2. Each Distribution Company shall make provisions to ensure confidentiality for those Customers who indicate that their Customer-specific Energy Efficiency information is to remain confidential.

(9) Standard Offer Generation Service and Default Generation Service.

(a) Each Distribution Company shall have the obligation to provide Standard Offer Generation Service and Default Generation Service to Customers within its Service Territory who are not receiving Generation Service from a Competitive Supplier, consistent with the provisions set forth in 220 CMR 11.04(9)(b) and (c).

(b) Standard Offer Generation Service.

1. Term. Standard Offer Generation Service shall be available for a period of seven years after the Retail Access Date.

2. Availability

a. Standard Offer Generation Service shall be available to each Customer within a Distribution Company's Service Territory who

1. Was a Customer of the Distribution Company as of the Retail Access Date; and

2. Has not received Generation Service from a Competitive Supplier since the Retail Access Date, except as provided in 220 CMR 11.04(9)(b)2.d.

b. A Customer receiving Standard Offer Generation Service shall be allowed to retain such service upon moving within a Distribution Company's Service Territory.

c. A Customer who moves into a Distribution Company's Service Territory after the Retail Access Date is not eligible to receive Standard Offer Generation Service, except that a Low-income Customer who moves into a Distribution Company's Service Territory after the Retail Access Date shall be eligible to receive Standard Offer Generation Service.

d. A Customer who has received Generation Service from a Competitive Supplier since the Retail Access Date is not eligible to receive Standard Offer Generation Service, except that

1. A Low-income Customer may receive Standard Offer Generation Service at any time, regardless of whether the Customer previously has received Generation Service from a Competitive Supplier;

2. A residential or small commercial and industrial Customer who has received Generation Service from a Competitive Supplier since the Retail Access Date is eligible to receive Standard Offer Generation Service by so notifying the Distribution Company within 120 days of the date when the Customer first began to receive Generation Service from a Competitive Supplier, provided that such notification occurs during the first year following the Retail Access Date; and

3. A Customer who has received Generation Service pursuant to an agreement with a Public Aggregator is eligible to receive Standard Offer Generation Service by so notifying the Distribution Company within 180 days of the date when the Customer first began to receive Generation Service through such agreement.

3. Rates.

a. The initial rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, Renewable Resources, Energy Efficiency, and Transition Charges, Customers' average rates are reduced by not less than ten percent from 1997 average rates, as determined by the Department.

b. As of March 1, 1999, the rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, Renewable Resources, Energy Efficiency, and Transition Charges, Customers' average rates shall increase by not more than the rate of inflation, as determined by the Department.

c. As of September 1, 1999, the rate(s) for Standard Offer Generation Service shall be set so that, when considered in conjunction with Customers' distribution, transmission, Renewable Resources, Energy Efficiency, and Transition Charges, Customers' average rates are reduced by at least 15 percent from 1997 average rates, as adjusted for inflation.

d. A Distribution Company that is unable to meet the rate reductions set forth in 220 CMR 11.04(9)(b)3.a. and c. may petition the Department for relief pursuant to M.G.L. c.164, § 1G(3)(c).

e. Each Distribution Company shall file, for Department approval, the annual rates that Customers shall be charged for Standard Offer Generation Service for the seven-year period that this service will be available.

4. Procurement. Each Distribution Company shall procure electricity for Standard Offer Generation Service through competitive bidding, subject to review by the Department.

5. Terms and Conditions. Each Distribution Company shall file, for Department approval, a tariff for the provision of Standard Offer Generation Service. This tariff shall be consistent with the Model Tariff for Standard Offer Generation Service established by the Department.

(c) Default Generation Service.

1. Availability Default Generation Service shall be available to any Customer who is not receiving either Generation Service from a Competitive Supplier or Standard Offer Generation Service.

2. Rates.

a. The rate(s) for Default Generation Service shall be as established through competitive bidding, but in no case shall they exceed the average monthly market price for electricity, as determined by the Department.

b. Each Distribution Company shall offer a Default Generation Service rate option to Customers in which the rate remains constant for a period of up to six months.

c. Each Distribution Company shall file, for Department approval, the rates that Customers shall be charged for Default Generation Service.

3. Procurement. Each Distribution Company shall procure electricity for Default Generation Service through competitive bidding, subject to review by the Department. The provider of Default Generation Service shall be entitled to furnish a one-page insert in the Distribution Company Bill.

4. Terms and Conditions. Each Distribution Company shall file, for Department approval, a tariff for the provision of Default Generation Service. This tariff shall be consistent with the Model Tariff for Default Generation Service established by the Department.

(d) Fee. There shall be no fee for initiating or terminating Standard Offer Generation Service or Default Generation Service when the initiation or termination is made concurrent with a scheduled meter read, or involuntary on the part of the Customer.

(e) Low-income Customers. Each Distribution Company shall make a determination whether a Low-income Customer shall be placed on Standard Offer Generation Service or Default Generation Service based on which service has the lower rate, unless otherwise requested by the Customer. This determination shall be made at the time the service is initiated.

(f) Terms and Conditions for Competitive Suppliers. Each Distribution Company shall file, for Department approval, terms and conditions that will govern the relationship between the Distribution Company and Competitive Suppliers providing Generation Service to Customers in the Distribution Company's Service Territory. These terms and conditions shall be consistent with the Model Terms and Conditions for Competitive Generation Service established by the Department.

(10) Billing and Payment.

(a) Each Distribution Company shall bill its residential Customers in accordance with 220 CMR 25.00.

(b) Each Distribution Company shall issue a single Bill, reflecting Unbundled Rates, to each Customer in its Service Territory receiving Standard Offer Generation Service or Default Generation Service.

(c) Each Distribution Company shall offer two billing options to a Customer receiving Generation Service from a Competitive Supplier:

1. Passthrough billing, under which the Customer would receive one Bill for Distribution Service, Transmission Service (if appropriate), the Renewable Resources charge, the Energy Efficiency charge, and the Transition Charge from the Distribution Company and a second Bill from the Competitive Supplier for Generation Service and other services provided by the Competitive Supplier; and

2. Complete billing, under which the Customer would receive a single Bill from the Distribution Company for Distribution Service, Transmission Service (if appropriate), the Renewable Resources charge, the Energy Efficiency charge, the Transition Charge, and Generation Service provided by the Competitive Supplier.

(d) Each Distribution Company shall inform a Customer when Generation Service for the Customer has been initiated by a Competitive Supplier, along with information on how the Customer may file a complaint regarding an unauthorized initiation of Generation Service. This information shall be

included on the first Distribution Company Bill rendered to the Customer after such initiation.

(g) Each Distribution Company may recover bad debt expenses associated with Distribution Service, Transmission Service, Standard Offer Generation Service, Default Generation Service, and guaranteed payments to Competitive Suppliers for Customers taking service under the Company's Low-income Customer Tariff, incurred as a result of Customers' failure to pay. The amount and method of recovery of such expenses shall be established by the Department in a general rate case.

(g) Each Distribution Company may, as appropriate, require a security deposit from, and impose late payment charges on, commercial and industrial customers in accordance with 220 CMR 26.00.

(h) Each Distribution Company shall bill condominium common areas and facilities in accordance with 220 CMR 28.00.

(11) Termination Protections.

(a) All residential Customers shall be protected from termination of Electric Service pursuant to 220 CMR 25.00.

(b) Each Distribution Company shall remain responsible for determining eligibility for termination protections pursuant to 220 CMR 25.00 and for administering such protections for Customers within its Service Territory.

(c) Each Distribution Company shall be prohibited from disconnecting or discontinuing Electric Service to a Customer for a disputed amount if that Customer has filed a complaint that is pending with the Department, in accordance with 220 CMR 25.02 and 220 CMR 11.07.

(12) Disclosure of Customer Usage Information

(a) Each Distribution Company shall be required to provide a Customer's historic usage information to Competitive Suppliers and Electricity Brokers that have received the required Customer authorization, as established in 220 CMR 11.05(4)(a). The type of usage information shall be as provided below.

1. Demand Customers. For Customers that have been billed at least in part on a demand basis during the 36-month period prior to the release of information, the historic usage information shall include, for the most

recent 12 months, the Energy consumption for each month, and the highest demand level for each month as well as the average monthly demand for the month. The Distribution Company shall indicate if any of the Energy and demand measurements were not based on actual recorded usage, and provide a description of the method used to determine the estimated measurements.

2. Energy-only Customers. For Customers that have been billed on an Energy-only basis during the 36-month period prior to the release of information, the historic usage information shall include the monthly Energy consumption for the most recent 12 months. The Distribution Company shall indicate if any of the Energy measurements were not based on actual recorded usage and provide a description of the method used to determine the estimated measurements.

(b) Each Distribution Company shall be required to provide a Customer's historic usage information to the Customer, upon the Customer's request. Distribution Companies shall be required to exercise best efforts to furnish the data requested by the Customer on a timely basis. The Distribution Company shall indicate if any of the usage information was not based on actual recorded usage and provide a description of the method used to determine the estimated usage.

- (13) Dispute Resolution. Disputes between a Customer and a Distribution Company shall be resolved in accordance with 220 CMR 25.00 and 220 CMR 11.07.
- (14) Conducting Business with Unauthorized Entities. A Distribution Company may provide services associated with the provision of Generation Service only to entities that are licensed as a Competitive Supplier or Electricity Broker by the Department pursuant to 220 CMR 11.05(2).

11.05: Competitive Supplier and Electricity Broker Requirements.

(1) Purpose and Scope. The purpose of this section is to establish the requirements applicable to all Competitive Suppliers and Electricity Brokers.

(2) Licensing Requirements.

(a) Scope. This section governs application for initial license and for renewal of license.

(b) Information Filing Requirements. Before initiating service to Retail Customers, each Applicant shall apply for a license and shall file for review and

approval with the Department's Secretary, in such form as is prescribed by the Secretary, a notarized document, signed by two officers of the Applicant, that includes the information identified below, except that an Electricity Broker shall not be required to provide the information described in 220 CMR 11.05(2)(b)10. and 14.:

1. Legal name;
2. Business address;
3. A description of the company's form of ownership. If a corporation, association, or partnership
 - a. the name of the state where organized,
 - b. the date of organization,
 - c. a copy of the Articles of Organization or Incorporation (filed with the Secretary of State under M.G.L. c. 156B or, if incorporated in another state, by the cognizant approving authority established by law) or Association, partnership agreement, or other similar document regarding legal organization,
 - d. by-laws, and
 - e. the name, address and title of each officer and director, partners, or other similar officers;
4. A statement (with appropriate citation to corporate articles or by-laws or other operative documents) that acting as a Competitive Supplier or Electricity Broker is not an *ultra vires* purpose (beyond the scope) of the entity;
5. A summary of any history of bankruptcy, dissolution, merger or acquisition of the entity in the two calendar years immediately preceding application;
6. Name, title, and an 800 or toll-free telephone number of customer service department or contact person available to customers;
7. Name, title, and telephone number of regulatory contact person;
8. Name and address of Resident Agent for Service of Process in Massachusetts for purposes of M.G.L. c. 223A, § 3;
9. Brief description of the nature of business being conducted, including types of customers to be served and geographic area in which services are to be provided;
10. A statement that the Applicant will comply with 220 CMR 11.06;
11. Documentation regarding any valid purchased power contract between the Applicant, its Affiliates, its parent or subsidiary, and any electric company formed pursuant to the provisions of M.G.L. c. 164 including documentation that contracts approved by the Department on or before December 31, 1995, except contracts with facilities that burn trash to generate electricity, that are above-market are currently subject

to renegotiation pursuant to the provisions of M.G.L. c. 164, § 1(G)(d)(2);

12. Documentation of technical ability to generate or otherwise obtain and deliver electricity, or provide other proposed services;

13. Documentation of financial capability (such as the level of capitalization or corporate parent backing) to provide proposed services;

14. Documentation that the Competitive Supplier is a NEPOOL participant or will meet its transaction requirements through a contractual arrangement with a NEPOOL participant. Such documentation may satisfy the requirements set forth in 220 CMR 11.05(2)(b)12. and 13.;

15. Evidence or documentation of attendance at a Competitive Supplier training session to be sponsored by the Massachusetts Distribution Companies, as set forth in the Electronic Business Transaction Standards Working Group Report, as amended from time to time, on file with the Department;

16. One sample Bill demonstrating the Applicant's familiarity with 220 CMR 11.05 from each Competitive Supplier that plans to bill Retail Customers in accordance with the passthrough billing option, as set forth in 220 CMR 11.04(10)(c);

17. A statement whether any director, officer, or other similar official has in the five years immediately preceding application been convicted of a felony as defined by M.G.L. c. 274, § 1, or the equivalent law of any other jurisdiction, involving business fraud, or held liable for any antitrust violation pursuant to M.G.L. c. 93, c. 93A or the equivalent law of any other jurisdiction and whether the applicant business entity has itself been held liable for business fraud or antitrust violation (including the date and place of conviction or verdict, and nature of offense found); and

18. Declaration under penalties of perjury pursuant to M.G.L. c. 268, § 6, that all statements made in the application are true and complete. The declaration shall include evidence that the declarants are authorized as agents of the Applicant to apply for license on its behalf.

Applicants are required to file an original application, with two copies and a copy on diskette. Within 30 days of any material or organic (M.G.L. c. 156B) change in the information required, the Applicant shall file updated information with the Department. The Applicant also shall file an updated application annually. If there has been no material or organic change to the relevant information, an Applicant may submit an updated application indicating that there has been no change since the previous application. Any Applicant who knowingly submits misleading, incomplete, or inaccurate information may be penalized in accordance with statute and with the regulations promulgated by the Department.

(c) Fees. Each Applicant shall pay an annual filing fee of \$100 to the Department.

(d) Department Review. The Department will review the information described above. The Department will inform the Applicant within 20 business days of submission of a complete application whether the licensing application has been approved or rejected. Approved license applications will be valid for one year from the date of approval.

(e) Information Disclosure. As a condition of maintaining or renewing a license, each Competitive Supplier shall comply with the requirements of M.G.L. c. 164 and 220 CMR 11.06. Failure to comply with this statute and these regulations may result in suspension, revocation, or non-renewal of the Applicant's license following a hearing before the Department in conformance with M.G.L. c. 30A.

(3) Billing and Termination of Generation Service Requirements. Each Competitive Supplier shall comply with the Department's regulations set forth in 220 CMR 25.00, 27.00, 28.00, and 29.00 as provided below.

(a) Each Bill for Generation Service shall, at a minimum, separately identify

1. Electricity consumption, and indicate whether the consumption was based on actual recorded usage or estimated usage;
2. The pricing structure by which the Customer will be billed, as shown on the Customer's Terms of Service, as described in 220 CMR 11.06(3);
3. The total charge for Generation Service; and
4. The total charge for Transmission Service, when applicable.

(b) A Competitive Supplier that bills a Retail Customer in accordance with the passthrough billing option described in 220 CMR 11.04(10)(c), may issue a Bill less frequently than the billing period defined in a Distribution Company's terms and conditions for Distribution Service provided that the Bill includes electricity consumption information for each billing period and indicates whether the consumption for each billing period was based on actual recorded usage or estimated usage

(c) A Bill for Generation Service provided to a residential Retail Customer shall not be considered "due" under these regulations in less than 45 days from receipt. In those instances when a Competitive Supplier issues a Bill less

frequently than the billing period defined in a Distribution Company's terms and conditions for Distribution Service, pursuant to 220 CMR 11.05(3)(b), the Bill shall not be considered "due" in less time than has elapsed between receipt of the current Bill and receipt of the previous Bill from the Competitive Supplier. No disputed portion of the Bill shall be considered "due" if the Customer has filed a complaint that is pending with the Department, in accordance with 220 CMR 25.00 and 220 CMR 11.07.

(d) A Competitive Supplier may terminate Generation Service to a residential Retail Customer during the term of service only if a Bill is not paid within 48 days from receipt, or such longer time as may be permitted by 220 CMR 11.05(3)(c). Prior to termination of Generation Service, the Competitive Supplier shall render a second request for payment not earlier than 27 days after the rendering of the Bill (i.e., the first request for payment). The second request for payment shall state the Competitive Supplier's intention to terminate Generation Service on a date not earlier than 48 days after the Customer's receipt of the Bill. The Competitive Supplier shall render a final notice of termination not earlier than 45 days after the Customer's receipt of the Bill. Such notice shall be rendered at least 72 hours, but in no event more than 14 days, prior to termination of Generation Service. The Competitive Supplier may terminate Generation Service if the Bill remains unpaid on the indicated termination date, except that a Competitive Supplier may not terminate Generation Service to a Customer if the unpaid Bill is the subject of a dispute resolution, in accordance with 220 CMR 25.00 and 220 CMR 11.07.

(e) A Competitive Supplier may terminate Generation Service at the end of the term of the contract for Generation Service.

(f) A Competitive Supplier must notify a Customer of termination of Generation Service at least ten days before termination, when such termination is due to reasons other than non-payment. Such notice must be in writing, addressed to the customer's billing address, and mailed first-class.

(4) Customer Authorization Requirements.

(a) Release of Customer Usage Information. Each Competitive Supplier or Electricity Broker must obtain verification that a Customer has affirmatively chosen to allow the release of the Customer's historic usage information to the Competitive Supplier or Electricity Broker, in accordance with 220 CMR 11.05(4)(c).

(b) Initiation of Service by a Competitive Supplier or Electricity Broker.

1. Competitive Supplier. Each Competitive Supplier must obtain verification that each Customer choosing that Competitive Supplier has affirmatively chosen such entity, in accordance with 220 CMR 11.05(4)(c). No Competitive Supplier may initiate Generation Service to a Customer without first obtaining said affirmative choice from the Customer.

2. Electricity Broker. An Electricity Broker must obtain verification that each Customer choosing that Electricity Broker has affirmatively chosen to allow the Electricity Broker to represent the Customer for the purposes of selecting a Competitive Supplier on behalf of the Customer. Such affirmative choice shall be in accordance with 220 CMR 11.05(4)(c).

(c) Affirmative Choice. For the purposes of this section, the term "affirmative choice" may be evidenced by a customer-signed Letter of Authorization, Third-party Verification, or the completion of a toll-free call made by the Customer to an independent third party operating in a location physically separate from the telemarketing representative who has obtained the Customer's initial oral authorization to change to a new Competitive Supplier.

1. Letter of Authorization. For the purposes of this section, the term "Letter of Authorization" means an easily separable document whose sole purpose is to authorize a Competitive Supplier to initiate Generation Service for a Customer or an Electricity Broker to represent the Customer for the purposes of selecting a Competitive Supplier on behalf of the Customer. The Letter of Authorization must be signed and dated by the Customer and must conform to the specifications in M.G.L. c. 164, § 1F(8)(a).

2. Third-party Verification. For the purposes of this section, the term "Third-party Verification" means an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative who has obtained the Customer's oral authorization to change to a new Competitive Supplier, such authorization to include appropriate verification data, such as the Customer's date of birth and social security number or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing

purposes, and shall not be sold, delivered, or shared with any other party for such purposes.

(d) Rescission Period. A Competitive Supplier may not initiate Generation Service to a Customer choosing the Competitive Supplier prior to midnight on the third day following the Customer's receipt of a written confirmation of an agreement to purchase electricity and a statement entitled "Terms of Service," as described in 220 CMR 11.06(3), during which period the Customer shall have the right to rescind, without charge or penalty, his affirmative choice of Competitive Supplier.

(5) Conducting business with unauthorized entities. A Competitive Supplier may not use the services of any entity to facilitate or otherwise arrange for the purchase and sale of electricity to Retail Customers, unless such entity has been licensed as an Electricity Broker by the Department pursuant to 220 CMR 11.05(2).

(6) Security Deposits and Late Payment Charges. A Competitive Supplier or Electricity Broker shall be precluded from requiring security deposits or assessing late payment charges from Retail Customers except as specifically provided for in 220 CMR 26.00.

11.06: Information Disclosure Requirements

(1) Purpose and Scope.

(a) Purpose. The purpose of this section is to ensure that Customers are presented with consistent information by which to evaluate services offered by Competitive Suppliers and Distribution Companies.

(b) Scope. This section applies to all Competitive Suppliers and to Distribution Companies as specified in 220 CMR 11.06.

(2) Information Disclosure Label.

(a) Each Competitive Supplier and each Distribution Company providing Standard Offer Generation Service or Default Generation Service shall prepare information on a label, or labels, for Retail Customers in a consistent format, as determined by the Department. Such label, or labels, shall be a condition of licensure for Competitive Suppliers pursuant to 220 CMR 11.05(2)(e). The label, or labels, shall present information in accordance with 220 CMR 11.06(2)(b) through 11.06(2)(e), and shall conform to all applicable rules and regulations of the Attorney General. The label, or labels, shall be distributed in accordance with 220 CMR 11.06(4) beginning on September 1, 1998.

(b) Price to be charged and price variability. A label shall present the price of Generation Service, Standard Offer Generation Service or Default Generation Service, as an average unit price in cents per kilowatthour as measured at the customer meter over the course of an annualized period, regardless of actual price structure. This unit price shall not include charges associated with Distribution Service, other Department regulated services, or other non-generation products or services except as provided below. The label shall contain the following information on average price and price variability.

1. Average price information.

a. Average prices shall be shown for four levels of use. The average price for each usage level shall be the total charge for Generation Service, Standard Offer Generation Service or Default Generation Service for the specified usage level, divided by the kilowatthours for the particular usage level. Average prices shall be rounded to the nearest one tenth of a cent per kilowatthour.

i. Residential. Average prices for residential consumers shall be shown for usage levels of 250, 500, 1000 and 2000 kilowatthours per month.

ii. Commercial. Average prices for commercial consumers shall be shown for 1,000, 10,000, 20,000 and 40,000 kilowatthours per month.

b. Average prices for time-of-use and seasonal price structures shall be based on New England-wide load profiles.

c. Average prices for service tied to spot or other variable prices shall be shown based on the average prices that would have been charged in the last month of the prior quarter.

d. Bundled Generation Service. Competitive Suppliers that offer Generation Service where electricity is bundled with any other product or service may display the charge for Generation Service as one of the following:

i. The average price for which the Retail Customer can purchase unbundled Generation Service from the Competitive Supplier, or

ii. An average price, assuming the entire price of the bundled service is attributable to electricity. If this option is selected the label may include a statement, in the same font size as subheadings, that identifies what is included in the average price, or

iii. For any generation offering that includes Energy Efficiency measures, and that includes an explicit guarantee of annual Bill savings to result from such measures, an average unit price that reflects the guaranteed reduction of customer Bills and all costs to be charged to customers for provision or installation of such measures over the contract term.

e. Inducements. Average prices shall not reflect any adjustment for cash or non-cash sales inducements except as provided elsewhere in these regulations.

2. Price variability information. If average prices vary by time of use or by volume, a subheading shall be printed below the average prices stating one or both of the following:

a. If average prices vary by time of use, including seasonal prices, the statement shall read "Your average electricity price will vary according to when and how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices."

b. If average prices vary only by volume of sales, including prices that have a fixed charge and a flat energy charge, the statement shall read "Your average generation price will vary according to how much electricity you use. See your most recent bill for your monthly use and the Terms of Service or your bill for actual prices."

(c) Customer service information. The label shall contain a toll-free number for customer service and complaints.

(d) Fuel, Emissions, and Labor Characteristics. The label shall contain information on the fuel mix, emissions, and labor characteristics associated with the Competitive Supplier's company resource portfolio, a product or segment of the Competitive Supplier's company resource portfolio, or the company

resource portfolio used in the provision of Standard Offer Generation Service or Default Generation Service, as provided in 220 CMR 11.06.

1. Determining the Company Resource Portfolio.

a. Company resource portfolio. The company resource portfolio shall derive from quarterly determinations of the resources used by a Competitive Supplier to meet its load obligations in New England over the label reporting period. Such generating resources shall reflect resources as discussed below in 220 CMR 11.06(2)(d)1.b. through f. The company resource portfolio shall be determined using market settlement data or equivalent data provided by the Independent System Operator. Company resource portfolio information shall be updated on a quarterly basis.

b. Label reporting period. The label reporting period shall be the most recent one-year period prior to the quarter for which resource portfolio information has been updated with the following exceptions:

i. If a Competitive Supplier has operated for less than a full year, but more than three months, the Competitive Supplier shall rely on the historic information that is available for the portion of the year that the Competitive Supplier has operated.

ii. If a Competitive Supplier has operated for less than three months, the Competitive Supplier shall rely on a reasonable estimate of its company resource portfolio based on the Competitive Supplier's unit entitlements or contracts that specify the associated generation units, and the average regional system mix.

c. Known resources. Where the company resource portfolio includes kilowatthours that are associated with specific generating units in which the Competitive Supplier holds, or is assigned, unit entitlements or contracts that specify the associated generation units, such kilowatthours shall be deemed to derive from known resources. Where a Competitive Supplier holds, or is assigned, and can verify a contract for the output from a facility of one megawatt or less, which is not reflected in market settlement data from the Independent System Operator, the

Competitive Supplier may include such resource in its company resource portfolio. For the purpose of determining fuel mix, emissions, and labor characteristics required by 220 CMR 11.06(2)(d)4. through 6., kilowatthours from known resources shall be ascribed the characteristics of the associated generating units.

d. System power. Where the company resource portfolio includes kilowatthours that are not associated with known resources determined in accordance with 220 CMR 11.06(2)(d)1.c., such kilowatthours shall be deemed to derive from system power. For the purpose of determining fuel mix and emissions in accordance with 220 CMR 11.06(2)(d)4. and 5., kilowatthours from system power shall be ascribed the characteristics of the residual system mix. The residual system mix shall be the mix of generating resources in New England net of known resources. Until such time as data are available on the residual system mix, system power shall be ascribed the characteristics of the average regional system mix.

e. Imports. Where the company resource portfolio includes kilowatthours that are associated with imports to New England, such kilowatthours shall be called "imports" for the purposes of disclosing fuel mix. For the purpose of disclosing emissions, imports shall be ascribed representative emissions rates as determined in consultation with the Massachusetts Department of Environmental Protection. Until such time as said representative emissions rates are determined, kilowatthours associated with such imports shall be ascribed the same characteristics as system power.

f. Energy Storage Facilities. Where the resource portfolio includes kilowatthours that are associated with energy storage facilities, such kilowatthours shall be deemed system power and shall be ascribed the same characteristics as system power. The characteristics disclosed shall include any losses incurred as a result of storage.

2. Determining Products or Segments of a Competitive Supplier's Company Resource Portfolio. For the purpose of developing information disclosure labels for distribution to Retail Customers pursuant to 220 CMR 11.06(4), a Competitive Supplier may disaggregate its company resource portfolio, as determined in

accordance with 220 CMR 11.06(2)(d)1., into segments, or products, under the following conditions:

- a. Disaggregation of the Competitive Supplier's company resource portfolio into segments is verified by the Independent System Operator, or, prior to March 1, 1999, by an independent auditor; and
 - b. The Competitive Supplier provides an annual statement from an independent auditor certifying that, over the label reporting period, the kilowatthours from resources associated with each product or segment of the company resource portfolio are not less than the total kilowatthours of load obligation associated with Retail Customers that are assigned said products or segments.
3. Annual Report. A Competitive Supplier shall present an annual report to the Department documenting the following:
- a. Determination of the company resource portfolio, including market settlement data or equivalent data provided by the Independent System Operator;
 - b. Disaggregation of the company resource portfolio into segments or products;
 - c. Matching over the label reporting period of kilowatthours from product resources to load obligations associated with Retail Customers assigned such products; and
 - d. Statements of verification by the Independent System Operator, or an independent auditor, as required pursuant to 220 CMR 11.06(2)(d)2.
4. Fuel Source Characteristics.
- a. Each Competitive Supplier and each Distribution Company providing Standard Offer Generation Service or Default Generation Service shall determine its company resource portfolio in accordance with 220 CMR 11.06(2)d.1. and shall report on information disclosure labels the fuel mix of said company resource portfolio or of an allocated segment of said

company resource portfolio, as determined in accordance with 220 CMR 11.06(2)(d)2.

b. At least the following fuel sources shall be separately identified on the label and listed in alphabetical order: biomass; coal; hydro-large; hydro-small; imports; municipal trash; natural gas; nuclear; oil; other Renewable Resources (including fuel cells utilizing renewable fuel sources, landfill gas, and ocean thermal); solar; and wind. Fuel mix percentages shall be rounded to the nearest full percentage point. For the purpose of this section, hydro resources of greater than 30 megawatts shall be deemed large hydro; all other hydro resources shall be deemed small hydro.

5. Emissions Characteristics.

a. Each Competitive Supplier or Distribution Company providing Standard Offer Generation Service or Default Generation Service shall identify its company resource portfolio in accordance with 220 CMR 11.06(2)(d)1. and shall report on information disclosure labels the emission characteristics of said company resource portfolio or of an allocated segment of said company resource portfolio, as determined in 220 CMR 11.06(2)(d)2.

b. For the purpose of emission characteristics disclosure, at least the following pollutants shall be separately identified on the label: carbon dioxide (CO₂), nitrogen oxides (NO_x), sulfur dioxide (SO₂), and, when the Massachusetts Department of Environmental Protection determines that reliable and accurate information becomes available, heavy metals. The Department will determine, in consultation with the Massachusetts Department of Environmental Protection, whether additional pollutants should be disclosed.

c. Emissions for each emission category shall be computed as an annual emission rate in pounds per kilowatthour. For each emission category, the emission rate of the company resource portfolio, or segment thereof, shall be presented as a percentage of the New England regional average emission rate and shall be compared to emissions from a new unit as determined in consultation with the Massachusetts Department of Environmental Protection.

d. Emission characteristics of the company resource portfolio, or segment thereof, shall be calculated using annual emission rates for each Generating Facility as determined in consultation with the Massachusetts Department of Environmental Protection and the United States Environmental Protection Agency. Until such annual emission rates are identified, the annual emission rates for a generating unit shall be calculated based on one of the following:

i. Continuous emissions monitoring data for the most recent reporting year divided by net electric generation for the same period; or

ii. If continuous emissions monitoring data are not available, emission factors currently approved or provided by state environmental protection agencies or the United States Environmental Protection Agency; or

iii. If continuous emissions monitoring data are not available, and state environmental protection agencies or the United States Environmental Protection Agency have not determined emissions factors associated with the generating unit: for NO_x and SO₂, permitted emissions levels; and for CO₂, the carbon content of the fuel.

e. The following types of generating units shall be assigned emissions characteristics as provided in this section:

i. Cogeneration facilities may make a reasonable allocation of emissions between electricity production and other useful output based on measured heat balances. Said allocation shall be reviewed in consultation with the Massachusetts Department of Environmental Protection.

ii. The use of offsets associated with facilities that emit CO₂ shall be as determined by the Massachusetts Department of Environmental Protection.

6. Labor Characteristics.

a. Each Competitive Supplier or Distribution Company offering Standard Offer Generation Service or Default Generation Service shall determine its company resource portfolio in

accordance with 220 CMR 11.06(2)(d)1. and shall report on information disclosure labels the labor characteristics of said company resource portfolio, or of a segment of said company resource portfolio, as determined in 220 CMR 11.06(2)(d)2.

b. Competitive Suppliers with known resources in their company resource portfolio shall be required to determine whether a majority of employees operating at each known generation plant are employed under collective bargaining agreements and, if such plants experienced a labor dispute in the most recent calendar year, whether any replacement workers were hired. For system power, the information used on the label pertaining to collective bargaining agreements and the use of replacement labor during labor disputes shall be based on the New England Region system average in the most recent calendar year available. The labor data on the label shall be based on a kilowatthour weighted average for all known resources and system power.

(e) Format of Information Disclosure Label. Information disclosure labels shall be presented in formats as determined by the Department.

(3) Terms of Service Requirement. Each Competitive Supplier shall prepare a statement entitled "Terms of Service" as described in this section. The Terms of Service shall be distributed in accordance with 220 CMR 11.06(4), and shall conform to all applicable rules and regulations of the Attorney General. The Terms of Service shall present the following information:

- (a) Actual pricing structure according to which the Retail Customer will be billed, including an explanation of price variability and price level adjustments that can cause the price to vary;
- (b) Length and kind of contract;
- (c) Due date of Bills and consequences of late payment;
- (d) Conditions under which a credit agency is contacted;
- (e) Deposit requirements and interest on deposits;
- (f) Limits on warranty and damages;
- (g) Any and all charges, fees, and penalties;
- (h) Information on consumer rights pertaining to estimated Bills, third-party billing, deferred payments, and rescission of supplier switch within three days of receipt of confirmation;
- (i) A toll-free number for service complaints;
- (j) Low-income rate eligibility;
- (k) Provisions for Default Generation Service;

- (l) Applicable provisions of M.G.L. c.164, § 1F; and
- (m) Method whereby the Retail Customer will be notified of changes to items in the Terms of Service.

(4) Distribution of Disclosure Label and Terms of Service. The label and the Terms of Service shall be distributed as follows:

(a) Prior to initiation of service by a Competitive Supplier. Following a Retail Customer's affirmative choice of a Competitive Supplier, the Competitive Supplier shall provide the Retail Customer with a disclosure label prepared pursuant to 220 CMR 11.06(2), based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1., and with the Terms of Service prepared pursuant to 220 CMR 11.06(3). A Competitive Supplier may also provide the Retail Customer with a disclosure label reflecting a product or a segment of the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)2. Said documents shall accompany written confirmation by the Competitive Supplier of the Retail Customer's agreement to take Generation Service; and the Retail Customer's receipt of said documents shall trigger the three-day rescission period required in 220 CMR 11.05(4)(d).

(b) Default Generation Service. With the first bill rendered to a Retail Customer following the initiation of Default Generation Service, the Distribution Company shall provide the Retail Customer with a disclosure label prepared pursuant to 220 CMR 11.06(2) and notify the Retail Customer that the tariff for such service and the Distribution Company's terms and conditions for Distribution Service are on file with the Department and are available upon request.

(c) Quarterly Notification. Competitive Suppliers and Distribution Companies providing Standard Offer Generation Service or Default Generation Service shall provide an information disclosure label to their Retail Customers quarterly. A Competitive Supplier may provide a label reflecting a segment of its company resource portfolio pursuant to 220 CMR 11.06(2)(d)2., provided that once a year the Competitive Supplier shall provide a disclosure label based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1. Until such time as the conditions specified in 220 CMR 11.06(2)(d)2. are met, quarterly information disclosure labels shall be based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1.

(d) Upon request. An information disclosure label based on the company resource portfolio identified pursuant to 220 CMR 11.06(2)(d)1., and the Terms of Service, or terms and conditions, for any available generation offerings shall be available to any person upon request.

(5) Annual booklet. Any Competitive Supplier licensed by the Department to do business in the Commonwealth pursuant to 220 CMR 11.05 shall prepare an information booklet describing a Retail Customer's rights under the provisions of M.G.L. c. 164. Competitive Suppliers shall annually mail this booklet to their Retail Customers.

(6) Information disclosure in Advertising.

(a) All advertisements shall comply with state and federal regulations governing advertising, including the Attorney General's regulations, and shall be consistent with the Federal Trade Commission's guidelines for the use of environmental marketing claims. The Department does not represent that labels prepared pursuant to these regulations constitute compliance with state and federal regulations governing advertising.

(b) Any advertising or marketing of electricity rates shall indicate the rate to be charged in bold print, in the case of printed and Internet materials, or through clear and deliberate speech in the case of television or radio advertisements.

(c) A Competitive Supplier shall print in a prominent position in all written marketing materials describing Generation Service, including newspaper, magazine, and other written advertisements; direct mail materials; and electronically-published advertising including Internet materials, that a Retail Customer may obtain an information disclosure label upon request. Where Generation Service is marketed in non-print media, the marketing materials shall indicate that the Retail Customer may obtain an information disclosure label upon request.

(d) A Competitive Supplier shall be allowed to advertise the percentage of its resource portfolio that is generated by employers that operate under collective bargaining agreements or that operate with employees hired as replacements during the course of a labor dispute when said percentage is derived from known resources as determined in accordance with 220 CMR 11.06(2)(d)1.

(e) A Competitive Supplier shall be allowed to advertise the percentage of its resource portfolio that connotes or signifies to the ratepayer the relative environmentally beneficial effects of the power or energy sold by said Competitive Supplier under the following circumstance:

1. The percentage is derived from known resources as determined in accordance with 220 CMR 11.06(2)(d)1.; and

2. The percentage exceeds percentages mandated under any rules promulgated by the Division of Energy Resources pertaining to a renewable portfolio standard;
3. The percentage exceeds levels required for compliance with any other regulatory requirements such as a generation performance standard.

(7) Enforcement. Dissemination of inaccurate information, or failure to comply with the Department's regulations on information disclosure, may result in suspension, revocation, or non-renewal of a Competitive Supplier's license pursuant to 220 CMR 11.05(2)(e).

11.07: Complaint and Damage Claim Resolution; Penalties

(1) Purpose and Scope.

- a. Purpose. The purpose of this section is to establish the complaint and dispute resolution procedures and associated penalties applicable to Customer complaints or damage claims between Customers and Distribution Companies, Competitive Suppliers, or Electricity Brokers.
- b. Scope. This section applies to all Distribution Companies, Competitive Suppliers, and Electricity Brokers doing business in the Commonwealth.

(2) Liability Claims. A Customer may file a complaint with the Department alleging property damage under one hundred dollars. The Department will refer any such complaints for mediation and/or arbitration. Any claims for damages will be resolved within 60 days from the date the claim was filed with the Department.

(3) Unauthorized Initiation of Generation Service Complaints.

a. Complaint Procedure.

1. A Customer may file a complaint with the Department stating that a Competitive Supplier has initiated Generation Service to the Customer, or an Electricity Broker has selected a Competitive Supplier on behalf of the Customer, without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c). The complaint must be filed within 30 days after the statement date of a Bill or notice from the Distribution Company indicating that Generation Service has been initiated by the Competitive Supplier.

2. Within ten business days of filing the complaint, the Customer will receive from the Department a request asking for the following: a copy of the Customer's Bill or notice that included the information regarding the initiation of Generation Service; the name of the original Competitive Supplier or Electricity Broker, if applicable; and any other information the Department deems relevant.

3. The Customer shall, within 15 business days of the Department's notifying the Customer, respond to the Department's request for information.

4. Within 15 business days of receiving the requested information from the Customer, the Department will send the following:

a. A letter to the Customer acknowledging receipt of the information;

b. A letter to the Distribution Company or original Competitive Supplier informing it of the pending complaint and requesting that information relevant to the initiation of Generation Service be furnished; and

c. A letter informing the new Competitive Supplier or Electricity Broker, if applicable, of the pending complaint, requesting evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) to initiate Generation Service, and requesting any additional information the Department deems relevant.

5. The Distribution Company or original Competitive Supplier and the new Competitive Supplier or Electricity Broker, if applicable, shall respond to the Department's request within five business days from the issuance of said requests.

6. Within 25 business days after receiving evidence of the Customer's affirmative choice and all relevant information as required herein, the Department will determine if the Customer authorized the new Competitive Supplier to initiate Generation Service.

(b) Refunds. If the Department determines that the new Competitive Supplier or Electricity Broker, if applicable, does not possess the required evidence of the Customer's affirmative choice as defined in 220 CMR

11.05(4)(c), the Department will require the new Competitive Supplier or Electricity Broker to refund the following:

1. To the Customer, the difference between what the Customer would have paid to the Distribution Company or previous Competitive Supplier and actual charges paid to the new Competitive Supplier;
2. To the Customer, any reasonable expense the Customer incurred in switching back to the Distribution Company or original Competitive Supplier; and
3. To the Distribution Company or original Competitive Supplier, the gross revenue the Distribution Company or original Competitive Supplier would have received from the Customer during the time the Customer received Generation Service from the new Competitive Supplier.

(c) Civil Penalties. Pursuant to M.G.L. c. 164, § 1F(8)(d), any Competitive Supplier who initiated Generation Service to a Customer or Electricity Broker who selected a Competitive Supplier on behalf of a Customer without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) one or more times in a 12-month period shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 nor more than \$3,000 for any subsequent offense per Customer. In determining the amount of the civil penalty, the Department will consider the nature, circumstances, and gravity of the violation, the degree of the Competitive Supplier or Electricity Broker's culpability, and the Competitive Supplier or Electricity Broker's history of prior offenses.

Pursuant to M.G.L. c. 164, § 1F(8)(e), any Competitive Supplier who initiated Generation Service to a Customer or Electricity Broker who selected a Competitive Supplier on behalf of a Customer without first obtaining evidence of the Customer's affirmative choice as defined in 220 CMR 11.05(4)(c) more than 20 times in a 12-month period may, after a full hearing and determination by the Department that such Competitive Supplier or Electricity Broker intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, be prohibited from selling electricity in the Commonwealth for a period of up to one year. In determining the length of suspension, the Department will consider the nature, circumstances and gravity of each violation and the degree of culpability of the Competitive Supplier or Electricity Broker.

(4) Other Customer Complaints.

(a) All other complaints brought by a Customer against a Distribution Company, Competitive Supplier or Electricity Broker shall follow the procedures set forth in 220 CMR 25.02(4), except as provided in 220 CMR 11.07(4)(b).

(b) Alternative Dispute Resolution.

1. Pursuant to M.G.L. c. 164, § 1F(2), each Distribution Company, Competitive Supplier, and Electricity Broker shall make available to Customers alternative dispute resolution procedures, including mediation, arbitration, facilitation or other dispute resolution procedures.

2. Allegation of Unfair or Deceptive Trade Practice. Pursuant to M.G.L. c. 164, § 102C, each Distribution Company, Competitive Supplier, and Electricity Broker shall submit to arbitration upon the request of a Customer alleging that an unfair or deceptive trade practice has occurred. The Department also will make a voluntary mediation process available to consenting parties.

3. Alternative dispute resolution pursuant to 220 CMR 11.07(4)(b)1. and 2. may only be requested after the Customer and Distribution Company, Competitive Supplier or Electricity Broker have attempted to resolve the dispute pursuant to 220 CMR 25.02(4)(a).

(c) Penalties. Each Distribution Company, Competitive Supplier, and Electricity Broker doing business in Massachusetts shall be subject to a range of sanctions for violations of the Department's regulations. Such sanctions may only be imposed following a hearing before the Department in conformance with M.G.L. c. 30A and 220 CMR 25.00.

1. Licensure Action. In the case of egregious misconduct or a pattern of misconduct, the Department may take licensure action against a Competitive Supplier or Electricity Broker. Such action may result in the Competitive Supplier or Electricity Broker being

a. Required to notify existing and prospective Customers of probationary status;

b. Prohibited from signing up new Customers for a specified period of time; and/or

c. Subject to suspension, revocation or non-renewal of its license.

2. Civil Penalties. Each Distribution Company, Competitive Supplier, or Electricity Broker who violates any regulation promulgated by the Department pursuant to M.G.L. c. 164, §§ 1A-1F, shall be subject to a civil penalty not to exceed \$25,000 for each violation for each day that the violation persists; provided however, that the maximum civil penalty shall not exceed \$1,000,000 for any related series of violations. In determining the amount of the penalty, the Department shall consider the following: the appropriateness of the penalty to the size of the business of the person, firm, or corporation charged; the gravity of the violation; and the good faith of the person, firm, or corporation charged in attempting to achieve compliance after notification of a violation, consistent with M.G.L. c. 164, § 1F(7).

11.08: Exceptions

The Department on its own motion or for good cause shown by a petitioner may grant an exception to any provision of 220 CMR 11.00.

REGULATORY AUTHORITY

220 CMR 11.00: M.G.L. c.164, c.25

ELECTRICITY FACTS

XYZ Company

Generation Price

Average price per kWh at different levels of use. Prices do not include regulated charges for customer service and delivery.

Average Use per Month	250 kwh	500 kwh	1000 kwh	2000 kwh
Average Price per kWh	4.5 cents	4.5 cents	4.5 cents	5 cents

Your average generation price will vary according to when and how much electricity you consume. See your most recent bill for your monthly use and your Terms of Service for the actual prices.

Contract

- **Minimum Length:** 3 Years (30-day notice required for termination. Penalties may apply).
- **Contract Terms:** Fixed price over contract period.

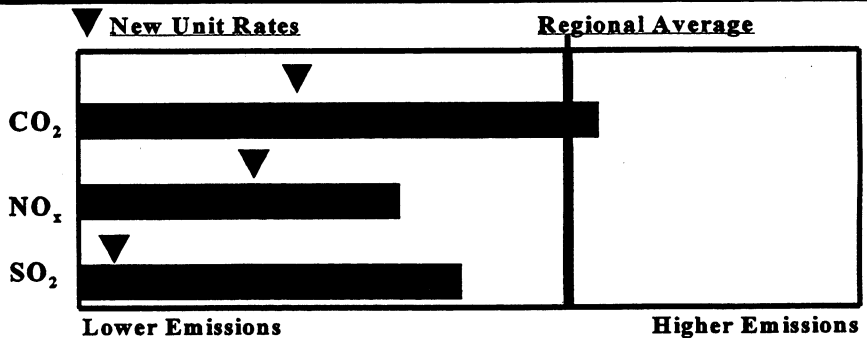
Power Sources

Demand for electricity from all XYZ Company customers in the period 3/1/97-2/28/98 was met by generation from the following sources.

Power Sources	Known Resources	System Power	Total
Biomass	5%	3%	8%
Coal	0%	10%	10%
Hydro: Large	11%	5%	16%
Hydro: Small	0%	2%	2%
Imported Power	0%	5%	5%
Municipal Trash	0%	15%	15%
Natural Gas	5%	0%	5%
Nuclear	0%	4%	4%
Oil	0%	24%	24%
Other Renewable	4%	0%	4%
Solar	5%	0%	5%
Wind	2%	0%	2%

Air Emissions

Carbon dioxide (CO₂), nitrogen oxide (NO_x), and sulfur dioxide (SO₂) emission rates from these sources, relative to the the regional average, and to the emission rates of a new generating unit.

**Labor Information**

95 % of the electricity associated with XYZ Company came from power sources with union contracts with their employees.

0% of the electricity associated with XYZ Company came from power sources that used replacement labor during labor disputes between 3/1/97 and 2/28/98.

NOTES

1. Electricity customers in New England are served by an integrated power grid, not particular generating units. The above information is on generating units owned by, or under contract to XYZ Company in the period 3/1/97 to 2/28/98.
2. See reverse side and your contract terms and conditions for further information on this label. You may also call XYZ Company at 1 (800) 123-4567, or the Massachusetts Division of Energy Resources at 1 (800) 727-1234.

ELECTRICITY FACTS

XYZ Company

Generation Price

Average price per kWh at different levels of use. Prices do not include regulated charges for customer service and delivery.

Average Use per Month	250 kwh	500 kwh	1000 kwh	2000 kwh
Average Price per kWh	4.5 cents	4.5 cents	4.5 cents	5 cents

Your average generation price will vary according to when and how much electricity you consume. See your most recent bill for your monthly use and your Terms of Service for the actual prices.

Contract

- **Minimum Length:** 3 Years (30-day notice required for termination. Penalties may apply).
- **Contract Terms:** Fixed price over contract period.

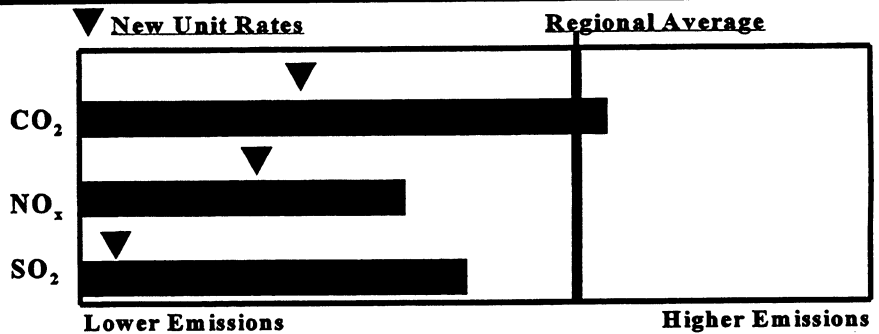
Power Sources

Demand for this electricity product in the period 3/1/97-2/28/98 was assigned generation from the following sources.

Power Sources	Known Resources	System Power	Total
Biomass	5%	3%	8%
Coal	0%	10%	10%
Hydro: Large	11%	5%	16%
Hydro: Small	0%	2%	2%
Imported Power	0%	5%	5%
Municipal Trash	0%	15%	15%
Natural Gas	5%	0%	5%
Nuclear	0%	4%	4%
Oil	0%	24%	24%
Other Renewable	4%	0%	4%
Solar	5%	0%	5%
Wind	2%	0%	2%

Air Emissions

Carbon dioxide (CO₂), nitrogen oxide (NO_x), and sulfur dioxide (SO₂) emission rates from these sources, relative to the the regional average, and to the emission rates of a new generating unit.



Labor Information

95 % of the electricity assigned to this electricity product came from power sources with union contracts with their employees.

0% of the electricity assigned to this electricity product came from power sources that used replacement labor during labor disputes between 3/1/97 and 2/28/98.

NOTES

1. Electricity customers in New England are served by an integrated power grid, not particular generating units. The above information is on generating units assigned to this electricity product. To obtain information on all generating units owned by, or under contract to XYZ Company, call 1 (800) 123-4567.
2. See reverse side and your contract terms and conditions for further information on this label. You may also call XYZ Company at 1 (800) 123-4567, or the Massachusetts Division of Energy Resources at 1 (800) 727-1234.

ELECTRICITY FACTS

XYZ Company

Generation Price

Average price per kWh at different levels of use. Prices do not include regulated charges for customer service and delivery.

Average Use per Month	250 kwh	500 kwh	1000 kwh	2000 kwh
Average Price per kWh	4.5 cents	4.5 cents	4.5 cents	5 cents

Your average generation price will vary according to when and how much electricity you consume. See your most recent bill for your monthly use and your Terms of Service for the actual prices.

Contract

- **Minimum Length:** 3 Years (30-day notice required for termination. Penalties may apply).
- **Contract Terms:** Fixed price over contract period.

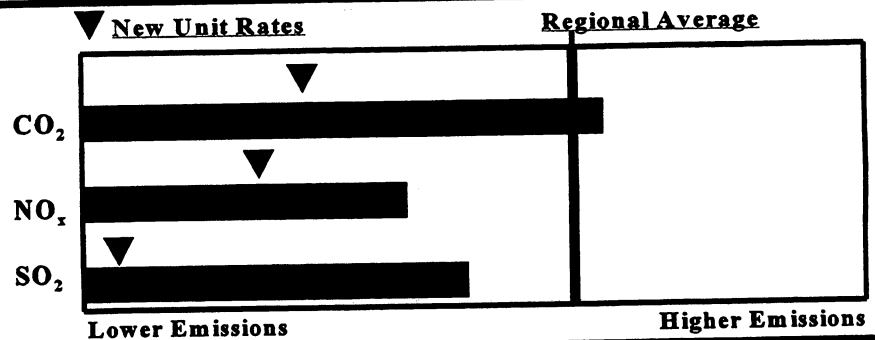
Power Sources

XYZ Company projects that demand for electricity from all its customers in the period 3/1/98-5/31/98 will be met by generation from the following sources.

Power Sources	Known Resources	System Power	Total
Biomass	5%	3%	8%
Coal	0%	10%	10%
Hydro: Large	11%	5%	16%
Hydro: Small	0%	2%	2%
Imported Power	0%	5%	5%
Municipal Trash	0%	15%	15%
Natural Gas	5%	0%	5%
Nuclear	0%	4%	4%
Oil	0%	24%	24%
Other Renewable	4%	0%	4%
Solar	5%	0%	5%
Wind	2%	0%	2%

Air Emissions

Carbon dioxide (CO₂), nitrogen oxide (NO_x), and sulfur dioxide (SO₂) emission rates from these sources, relative to the the regional average, and to the emission rates of a new generating unit.

**Labor Information**

XYZ Company projects that 95 % of the electricity it will use in the period 3/1/98-5/31/98 will come from power sources with union contracts with their employees.

XYZ Company projects that 0% of the electricity it will use in the period 3/1/98-5/31/98 will come from power sources that use replacement labor during labor disputes.

NOTES

1. Electricity customers in New England are served by an integrated power grid, not particular generating units. The above information is on generating units that XYZ Company projects it will own, or have under contract, in the period 3/1/98 to 5/31/98.
2. See reverse side and your contract terms and conditions for further information on this label. You may also call XYZ Company at 1 (800) 123-4567, or the Massachusetts Division of Energy Resources at 1 (800) 727-1234.

ELECTRICITY FACTS

XYZ Company

Generation Price

Average price per kWh at different levels of use. Prices do not include regulated charges for customer service and delivery.

Average Use per Month	250 kwh	500 kwh	1000 kwh	2000 kwh
Average Price per kWh	4.5 cents	4.5 cents	4.5 cents	5 cents

Your average generation price will vary according to when and how much electricity you consume. See your most recent bill for your monthly use and your Terms of Service for the actual prices.

Contract

- **Minimum Length:** 3 Years (30-day notice required for termination. Penalties may apply).
- **Contract Terms:** Fixed price over contract period.

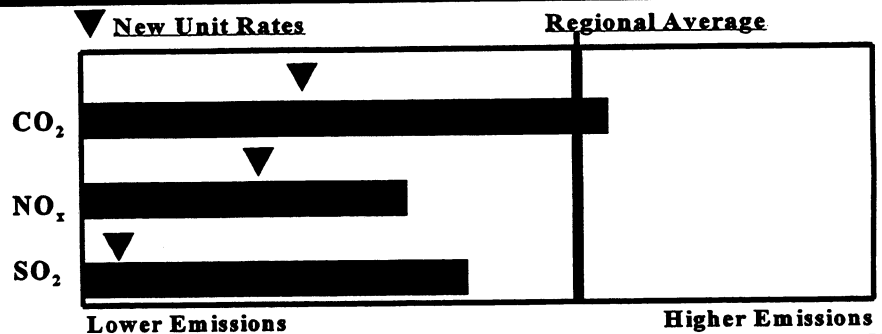
Power Sources

XYZ Company projects that demand for this electricity product in the period 3/1/98-5/31/98 will be assigned generation from the following sources.

Power Sources	Known Resources	System Power	Total
Biomass	5%	3%	8%
Coal	0%	10%	10%
Hydro: Large	11%	5%	16%
Hydro: Small	0%	2%	2%
Imported Power	0%	5%	5%
Municipal Trash	0%	15%	15%
Natural Gas	5%	0%	5%
Nuclear	0%	4%	4%
Oil	0%	24%	24%
Other Renewable	4%	0%	4%
Solar	5%	0%	5%
Wind	2%	0%	2%

Air Emissions

Carbon dioxide (CO₂), nitrogen oxide (NO_x), and sulfur dioxide (SO₂) emission rates from these sources, relative to the the regional average, and to the emission rates of a new generating unit.

**Labor Information**

XYZ Company projects that 95 % of the electricity assigned to this electricity product will come from power sources with union contracts with their employees.

XYZ Company projects that 0% of the electricity assigned to this electricity product will come from power sources that use replacement labor during labor disputes between 3/1/98 and 5/31/98.

NOTES

1. Electricity customers in New England are served by an integrated power grid, not particular generating units. The above information is on generating units that XYZ Company projects will be assigned to this electricity product. To obtain information on all generating units owned by, or under contract to XYZ Company, call 1 (800) 123-4567.
2. See reverse side and your contract terms and conditions for further information on this label. You may also call XYZ Company at 1 (800) 123-4567, or the Massachusetts Division of Energy Resources at 1 (800) 727-1234.

LABEL DESCRIPTION

Generation Price and Contract:

Generation Prices displayed are representative average prices for electricity at usage levels that are typical for residential customers. Contract items displayed present the length of your contract for generation service, and the price terms included in your contract. See your recent bills to determine average monthly use, and your Terms of Service for additional information.

Power Sources:

The electricity you consume comes from the New England power grid, which receives power from a variety of power plants and transmits the power throughout the region as needed to meet the requirements of all customers in New England. When you choose a power supplier, that supplier is responsible for generating and/or purchasing power that is added to the power grid in an amount equivalent to your electricity use. Known Resources include resources that are owned by, or under contract to, the supplier. System Power represents power purchased in the regional electricity market. Biomass refers to power plants that are fueled by wood or other plant matter. Hydro resources of greater than 30 megawatts in size are deemed "large hydro." All other hydro resources are deemed "small hydro." Other Renewables include fuel cells utilizing renewable fuel sources, landfill gas, and ocean thermal.

Emissions:

Emissions for each the following pollutants are presented as a percent of the regional average emission rate. Arrows represent, for each pollutant, the emission rate from a hypothetical new generation facility.

Carbon Dioxide (CO₂) is released when fossil fuels (e.g., coal, oil and natural gas) are burned. Carbon dioxide, a greenhouse gas, is a major contributor to global warming.

Nitrogen Oxides (NO_x) form when fossil fuels and biomass are burned at high temperatures. They contribute to acid rain and ground-level ozone (or smog), and may cause respiratory illness in children with frequent high level exposure. NO_x also contribute to oxygen deprivation of lakes and coastal waters which is destructive to fish and other animal life.

Sulfur Dioxide (SO₂) is formed when fuels containing sulfur are burned, primarily coal and oil. Major health effects associated with SO₂ include asthma, respiratory illness and aggravation of existing cardiovascular disease. SO₂ combines with water and oxygen in the atmosphere to form acid rain, which raises the acid level of lakes and streams, and accelerates the decay of buildings and monuments.

Labor Data:

The information on this label regarding whether generators or suppliers operate under collective bargaining agreements is provided to inform you about whether the energy was produced in plants where employee wages and working conditions are mutually determined by employees and management, and protected by union contracts. The information on this label regarding the use of replacement employees during a labor dispute is provided to inform you of whether or not a generator or supplier during a strike by or lock-out of its employees has replaced them with other workers.

Consent Communication #11 S-157

Communication was received from the Commonwealth of Massachusetts, Dept. of Public Utilities, transmitting information regarding the investigation by The Dept. of Telecommunication and Energy upon its own motion commencing a Notice of Inquiry/Rulemaking, pursuant to 220 C.M.R. Section 2.00 et seq, establishing the procedures to be followed in electric industry restructuring by electric companies subject to G.L. c. 164.

In City Council March 16, 1998

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