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October 1, 2008

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: Docket # 3975: Wiley Center Exhibit

Dear Luly:

The George Wiley Center would like to introduce a copy of the "Order Expanding Low-Income Consumer Protections and Assistance" of the Massachusetts Department of Public Utilities (MDPU) in D.P.U. 08-4, dated September 15, 2008 (MDPU Order) as an exhibit in Docket # 3975. I enclose nine copies of this decision for filing.

In this Order, the MDPU "take[s] steps to **increase consumer protections, improve the affordability** of electricity and natural gas **for low-income** consumers and **expand consumer participation in the arrearage management plans** administered by the regulated utilities." MDPU Order at 3 (emphasis supplied).

The MDPU took these protective steps even though Massachusetts was already providing far greater relief to low-income customers than is provided in Rhode Island, including mandatory discounts and flexible forgiveness plans. *See* MDPU Order at 11, citing Mass. St. 2005, ch. 140, § 17; *id.* at 23 *et seq.*, citing G.L. c. 164, § 1F and 220 C.M.R. § 14.03(2A).

The steps the Massachusetts DPU took two weeks ago include:

- Immediately increasing low-income discounts for both gas and electric rates (by October 15, 2008). MDPU Order at 2, 52.
- Increasing enrollment in arrearage management plans (AMPs), which Massachusetts law requires for all low-income gas and electric customers. AMPs

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must include affordable payments and arrearage forgiveness. MDPU Order at 2 and Mass. St. 2005, ch. 140, § 17.

- Suggesting that the parties consider increasing eligibility for low-income discounts from 200% of poverty to 60% of median income. MDPU Order at 11.
- Suggesting that the parties consider retroactive application of the discount rate, going back up to a year. MDPU Order at 37-38.
- Suggesting that the parties consider tiered discounts (similar to the PIPP program proposed by the Wiley Center). MDPU Order at 37.

The MDPU has thus exercised its discretion under Massachusetts law to increase the relief available to low-income customers in light of the disproportionate impact of recent price increases on these customers.

The George Wiley respectfully asks that the Commission exercise its discretion similarly under Rhode Island law. At a minimum, the Center asks that the Commission amend its rules to require no more than 10% down on all back bills for the protected and financial hardship classes.

Thank you.

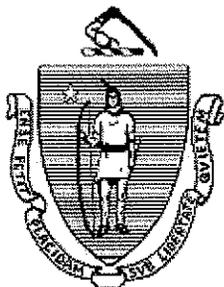
Sincerely,



B. Jean Rosiello

Encls.

cc: Service List by email



The Commonwealth of Massachusetts
DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 08-4

September 15, 2008

Investigation by the Department of Public Utilities on its own motion into Expanding Low-Income Consumer Protections and Assistance, Including Standards For Arrearage Management Programs, Discount Rate, Service Termination, and Energy Efficiency Programs.

ORDER EXPANDING LOW-INCOME CONSUMER PROTECTIONS AND ASSISTANCE

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I. Summary

In today's Order, the Massachusetts Department of Public Utilities ("Department") takes several steps to address the challenging conditions faced by low-income consumers, who must cope with significant increases in energy costs at a time of decreasing federal assistance. While the Department does not directly oversee fuel assistance programs, we do play an important role in enforcing laws and regulations of the Commonwealth established to protect and support natural gas and electricity consumers, particularly low-income consumers. In particular, the Department oversees utility administration of low-income discounts, arrearage management plans ("AMPs"), payment plans, and other consumer protection obligations and procedures. In this Order, we take steps to increase consumer protections, improve the affordability of electricity and natural gas for low income consumers, and expand consumer participation in the arrearage management plans administered by the regulated utilities.

The need for Department action is clear. Commodity fuel prices – in particular natural gas and home heating oil – are causing major increases in the costs of basic heating and electricity needs for all consumers. These price increases have a disproportionate effect on low-income consumers, increasing the number of consumers challenged by energy costs as well as the magnitude of that challenge. Further, these difficulties may be particularly acute in the coming heating season.

These conditions warrant the Department's comprehensive reevaluation and reinforcement of our consumer protection regulations and policies. Consequently, the Department opened this investigation into expanding protections and assistance for low-income

consumers in the Commonwealth. During the investigation, the Department heard testimony on how to strengthen company arrearage management programs, discount rate offerings, consumer protection regulations, and low-income energy efficiency programs.

In this Order, we require several changes to company low-income programs and protections, and direct companies to consider and design further improvements through a collaborative process aimed at establishing best practices. Most significantly, we find that:

- A. Electricity and natural gas companies shall immediately increase discount rates for eligible low-income consumers, and consider further discount rate increases and modifications through the Best Practices collaborative process, with the goal of restoring the low-income discount rate to the level that was in effect prior to March 1, 1998;
- B. Companies shall increase enrollment and effectiveness of AMP payment plans by building on existing community actions programs (“CAPs”), providing all low-income consumers who have an account in arrears the opportunity to participate in AMPs, and working with the Best Practices group to develop standard AMP payment plan features to increase program scope and benefit;
- C. Companies shall improve the coordination of low-income discount, AMP, and low-income energy efficiency programs; and
- D. The Department will initiate a rulemaking to enhance consumer protection measures and regulations governing service termination and service restoration.

II. Introduction

On February 12, 2008, the Department issued a Notice of Investigation (“NOI”) on its own motion into expanding low-income consumer protections and assistance, including AMPs, discount rate, service terminations, and energy efficiency programs, noting that much has changed over the past several years that bears fundamentally upon the design, commitment to, and implementation of the Department’s policies and regulations addressing the challenges faced by low-income consumers. Order Opening Investigation into Low-Income Protections and Assistance, D.P.U. 08-4. More importantly, commodity prices have increased dramatically, a trend that is expected to persist in the coming years. This trend in costs of underlying energy commodities directly affects the costs of natural gas or electricity, and in turn affects the affordability of essential energy needs.

The Department opened the NOI to ensure adequate consumer protection for all, and to address the fact that the recent energy price increases are having a disproportionate impact on low-income consumers. D.P.U. 08-4 at 2-3. As Attachment A to the NOI, the Department issued one set of information requests and invited interested parties to respond.¹ During the investigation, the Department solicited two rounds of comments and convened three days of public hearings² on the topics specified in the NOI. Initial comments (“Comments”) were filed by 18 interested persons and reply comments (“Reply Comments”) were filed by 16 interested

¹ Pursuant to 220 C.M.R. § 1.10, the Department on its own motion moves each Company’s responses to the Department’s information requests (i.e., DPU 1-1 through DPU 1-31) into the record as evidence.

² April 8, 2008; April 9, 2008; and April 28, 2008.

persons.³ Twelve parties participated in the public hearings, and raised numerous issues both in the comments and at the hearings.

III. Arrearage Management Programs

A. Introduction

In 2005, the General Court enacted Chapter 140, An Act Relative to Heating Energy Assistance and Tax Relief, also known as the HEAT Law (“Chapter 140”). Chapter 140 requires each gas and electric distribution company to establish an AMP to offer low-income consumers with an arrearage an affordable payment plan with credits toward their accumulated arrearages for compliance with the program. St. 2005, c. 140, § 17. AMPs provide low-income utility consumers an opportunity to have all or a portion of an arrearage forgiven in exchange for payments of an amount and on a schedule designed individually for each participant. In general, income-qualified consumers with a utility bill in arrears must at least make all current payments to remain on the AMP plan. In exchange for compliance with these terms consumers are forgiven all or a portion of the arrearage by the utility company through a credit to the balance in arrears. Currently, most AMPs are administered by CAP agencies on

³ Associated Industries of Massachusetts; The Attorney General of the Commonwealth; Bay State Gas Company; Berkshire Gas Company; Blackstone Gas Company; Cape Cod Times Needy Fund; Cape Light Compact; Department of Housing and Community Department; Division of Energy Resources; Executive Office of Elder Affairs; State Representative Jennifer Flanagan; Medical and Legal Partnership for Children; Municipal Electric Association of Massachusetts; Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association; National Grid; New England Gas Company; NSTAR Gas & Electric Company; Fitchburg Gas & Electric Company d/b/a Unitil; Unitarian Universalist Fellowship; and Western Massachusetts Electric Company.

behalf of the utility company. The participation of the CAP agencies include consumer referrals for the AMP and income verification of eligible consumers.

Since the inception of AMPs, significant progress has been made in implementing the programs administered by CAP agencies on behalf of the utility companies. However, AMPs have been under-enrolled, perhaps caused in part by the newness of the AMP, and in part because of limited CAP resources (Tr. at 290-291). Concurrently, energy commodity prices have increased. Between 2005 and 2008, the commodity price of electricity in Massachusetts has increased by approximately 66 percent;⁴ the commodity price for natural gas has increased an average of 51 percent.⁵ Consequently, Massachusetts is facing a winter season when the cost of energy for all consumers could be far higher than past winters, at the same time that availability of federal fuel assistance has declined.^{6 7}

The Department considers issues related to AMP enrollment and program design—as well as all matters considered in this proceeding—against the backdrop of increasing energy costs in general, and anticipated high prices through the coming winter in particular. These price conditions call for expansion of the AMPs. It is more important than ever that the

⁴ The percent increase is based upon the approved residential basic service rates in effect for Summer 2005 compared to Summer 2008, taking the percent average change in basic service rates for the six electric distribution companies.

⁵ Source: NYMEX index, gas commodity prices from July 2005 to July 2008.

⁶ <http://www.acf.hhs.gov/programs/ocs/liheap/grantees/approp.html>

⁷ In response to these immediate challenges, Governor Deval Patrick, Senate President Therese Murray, and House Speaker Salvatore DiMasi announced the formation of a task force to help citizens manage high energy costs this winter. See Press Release, Office of the Governor, July 23, 2008.

Commonwealth and its utility companies aggressively pursue opportunities to assist consumers in managing energy costs and provide flexibility for those who are struggling to meet payment obligations.

As described in the NOI, the Department seeks to increase enrollment in the AMPs, thereby increasing the ability of low-income consumers with an arrearage to pay their bills. In the NOI, the Department sought comments on whether AMP eligibility should be changed; whether companies should automatically enroll eligible consumers in AMPs; whether the companies may play a more active role in AMP design and enrollment; and how to maximize participant success.

B. Relevant Statutes, Regulations, and Department Orders

1. St. 2005, c. 140, § 17

Section 17 (a) and (b) of Chapter 140 sets forth distinct requirements for AMPs applicable to jurisdictional electric and gas companies (“companies”) organized pursuant to G.L. c. 164. Subsection (a) requires each company to offer an AMP to “eligible low-income consumers, as defined under chapter 164;” establishes general requirements for all AMPs; and authorizes the Department to set additional requirements. Id. Chapter 140 states that AMPs must offer low-income consumers an affordable payment plan with credits toward an accumulated arrearage to be awarded when the consumer complies with the program. Id. Chapter 140 requires each company to include in its AMP a plan to be coordinated with the low-income weatherization and fuel assistance agencies and services. Id.

Subsection (b) of Chapter 140 contains details regarding the payment plans. It requires that each company offer all low-income consumers with an account in arrears, if utility service has not yet been terminated, a payment plan of no less than four months, with a down payment of no more than 25 percent of the total arrearage. Id. at (b). The remaining arrears balance is divided into equal payments. Id. A company may seek approval from the Department for a payment agreement of less than four months for “good cause shown,” and must inform the consumer of the request. Id. Consumers may seek and obtain a payment plan greater than four months, and the Department may order a payment plan greater than four months. Id. Companies need not seek Department approval for granting a payment plan greater than four months.

2. Implementation of St. 2005, c. 140, § 17

On February 28, 2006, the Department issued an Order adopting the broad standards set forth in Chapter 140. Order Establishing Standards for Arrearage Programs for Low-income Customers, D.T.E. 05-86, at 14. In that Order, the Department noted that although Chapter 140 provides authority for further regulation of down payments, forgiveness credits, and payment terms, the Department would refrain from setting any supplemental requirements until the AMPs operated for an initial period of time to provide for data collection and analysis. Id. at 15. The Department encouraged the development of innovative and cost-effective programs. Id. In accordance with Chapter 140, each company files an AMP annually for the Department’s review, modification or approval no later than February of each year. St. 2005, c. 140, § 17 (a).

After the issuance of D.T.E. 05-86, the Department convened a working group of interested parties so that a method of evaluating AMP effectiveness could be established in cooperation with companies and low-income advocates. Currently, this group, which has become known as the “Best Practices Group,” continues to meet and members of the group actively participated in the public hearings in this proceeding.

C. Enrollment in AMPs

1. Introduction

In the NOI, the Department noted a number of concerns based on initial implementation of the AMPs – in particular the very low enrollment for nearly all AMPs – and highlighted the concern that low enrollment in AMPs may run counter to the intent of the Act. D.P.U. 08-4, at 6-7. Therefore, the Department sought comment on increasing enrollment by establishing company-administered AMPs in addition to the AMPs administered by the CAPs on behalf of the companies. Id. at 7-8. The Department proposed that companies enroll all income-qualified consumers when the consumer reaches a certain level of arrears. Id. at 8. This so-called “automatic enrollment” would increase participation and provide more consumers with the opportunity to avail themselves of AMPs. Id. The Department also proposed that companies take additional actions to assist eligible low-income consumers at the time of enrollment in an AMP, including, but not limited to, notifying consumers of other assistance programs, enrolling consumers in the discount rate, and scheduling energy efficiency audit of their residences. Id.

2. Summary of Comments

a. Support for Automatic Enrollment in AMPs

Berkshire Gas Company (“Berkshire Gas”) supports the concept of automatic enrollment in company-administered AMPs. In fact, Berkshire Gas is the only company that already has an automatic enrollment program. Berkshire Gas automatically enrolls in the AMP all recipients of the low-income discount who are in arrears and receive fuel assistance, with an opt-out provision for those who do not wish to participate (Berkshire Gas Comments at 3-4). Berkshire Gas reports that as a result of its policy, it has achieved the highest enrollment rate of all companies in the state with 15 percent enrollment (id. at 1). Berkshire Gas states that the reason for its success is predicated on a design that maximizes enrollment, promotes administrative efficiencies, and encourages positive behavior (Berkshire Gas Reply Comments at 7). The Division of Energy Resources (“DOER”) attributes Berkshire Gas’ high enrollment levels to automatic enrollment (Tr. at 114). DOER suggests that automatic enrollment, rather than requiring a consumer to affirmatively opt-in, should be adopted by other companies (id.). DOER suggests that the Department consider making the Berkshire Gas AMP the model program across the state (id.).

The Attorney General of the Commonwealth (“Attorney General”) would support statewide automatic enrollment if the benefits of the program outweigh the cost (Attorney General Comments at A-1). The Attorney General states that she might support automatic enrollment on a pilot basis (id.). The Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association (“Network”) also support

automatic enrollment as a pilot program (Network Comments at 5). The Network states that the fundamental cause of the rising non-payment of utility bills by low-income consumers is that they do not have enough money to afford their current energy bills (id. at 4). Therefore, the Network recommends that prior to implementing a change in AMPs, the Department should first facilitate a substantial increase in the discount rate and expand energy efficiency programs for low-income consumers (id. at 4).

b. Opposition to Automatic Enrollment in AMPs

A number of commenters oppose the Department's proposal for automatic enrollment as part of a company-administered AMP for two main reasons. First, these commenters claim that the CAP agencies, not the companies, are in a better position to identify eligible consumers and verify income. Second, they claim that automatic enrollment may undermine successful participation in the AMP. Fitchburg Gas & Electric Company, d/b/a Unitil ("Unitil") states that automatic enrollment undermines the AMP's key design feature which is empowering the customer through a voluntary, self-directed enrollment (Tr. at 253). NSTAR Gas & Electric Company ("NSTAR") states that automatic enrollment allows customers to be passive, and they might not understand why they are being enrolled and the level of participation that the program requires (NSTAR Comments at 9). Also, NSTAR argues that Chapter 140, by directing the Department to set eligibility criteria for AMPs, did not contemplate that every low-income customer with an account in arrears would enroll in an AMP (id. at 8).

D. Eligibility

1. Introduction

Chapter 140 states that companies shall offer an AMP to “eligible, low-income customers, as defined in chapter 164.” St. 2005, c. 140, §17(a). G.L. c. 164, § 1F states that eligibility for the low-income discount rate is established upon verification of receipt of any means-tested public benefit, or verification of eligibility for LIHEAP. Qualified LIHEAP and discount rate recipients have household incomes not exceeding 200 percent of the federal poverty level. In D.T.E. 05-86, every company proposed linking eligibility for AMPs with eligibility for LIHEAP or the low-income discount rate, and the Department endorsed this interpretation of “low-income” as being consistent with the Act. D.T.E. 05-86, at 8. Therefore, consumers with an arrearage are currently eligible for AMPs if they have household incomes not exceeding 200 percent of the federal poverty level. In D.T.E. 05-86, the Department declined to limit eligibility on any other basis, such as whether the consumer’s account was heating or non-heating. Id.

In the NOI, the Department requested comments on changing the eligibility for AMPs to include consumers whose incomes are above 200 percent of the federal poverty level. The Department suggested using another income level, such as 60 percent of median state income, which is the eligibility threshold for certain energy efficiency programs.⁸

⁸ Sixty percent of the state median income is a higher income than an income at 200 percent of the federal poverty level; therefore more consumers would become eligible if the sixty percent eligibility level was adopted for AMPs. The income eligibility for the low-income energy efficiency programs is set forth in individual energy efficiency program plans, which typically are developed through collaborative processes including

2. Summary of Comments

a. Support for Changing Eligibility Requirements

The Network and Cape Light Compact (“Compact”) support changing the income eligibility from 200 percent of the federal poverty level to 60 percent of the state median income (Network Comments at 23; Compact Comments at 7). The Network argues that higher income consumers (those closer to 60 percent of state median income) will be more successful in an AMP because they might have more available income to pay energy bills than those with lower incomes (Network Comments at 23). The Compact states that raising the income eligibility to 60 percent of state median income level would provide consistency among the various low-income programs by aligning eligibility requirements for AMPs with the eligibility requirements for the low-income energy efficiency programs (Compact Comments at 7). The Compact states that consistency could do the following: avoid confusion on the part of the consumer; ease the administrative burden on program administrators keeping track of multiple programs and guidelines; allow for better coordination among the programs; and facilitate consumers taking full advantages of all the benefits available (*id.* at 18). Moreover, the Compact recommends going a step further and expanding the income eligibility requirement to 80 percent of state median income (*id.* at 7).

b. Opposition to Changing Eligibility Requirements

A number of participants oppose changing the current income eligibility guidelines for AMPs primarily because of the potential cost impact on other consumers. Bay State notes that

a variety of energy efficiency stakeholders.

the potential cost of full implementation and the ability of non-low-income consumers to tolerate those costs are unknown (Bay State Comments at 17). National Grid opposes expanding eligibility because the program is too new and recommends further analysis (National Grid Comments at 3). Unitil suggests improving the existing initiative within the current eligibility level, but also states that eligibility levels among programs should be consistent (Unitil Comments in Response to DPU 1-4). Western Massachusetts Electric Company (“WMECo”) states that increasing the AMP eligibility requirement above 200 percent increases the financial burden placed on other customers (WMECo Comments at 10).

The Attorney General states that the Department does not have authority to change the eligibility level (Attorney General Comments at A-2). The Attorney General refers to Section 17 of Chapter 140 that defines eligible low-income customers as those qualifying as low-income pursuant to G.L. c. 164 (id.). The Attorney General also stated that in D.T.E. 05-86, the Department defined “low-income” as consumers who are eligible for either any means tested based public benefit program or low-income home energy assistance programs (id.). The Attorney General therefore argues that the Department, by its own definition of “eligible low-income consumer” in a previous Order, admits that it would require statutory modifications to change income eligibility for AMPs (id.).

Some commenters also argue that changing the current eligibility requirements will drain company resources. Unitil states that the utilities and the CAP agencies do not have the necessary resources to manage even the current programs (Tr. at 291; Unitil Response to

DPU 1-4). Again, Unitil states that the Department should focus on ways to improve the current initiatives within the current eligibility requirements (Unitil Response to DPU 1-4).

E. Program Standardization of AMPs

1. Introduction

Although Chapter 140 grants the Department authority to regulate the down payment, forgiveness credits, and payment terms associated with AMPs, in D.T.E. 05-86 the Department refrained from standardizing these aspects of the programs. D.T.E. 05-86, at 15. The Department stated that it would allow the AMPs to operate for a sufficient period of time to provide an opportunity for data collection and analysis. Id. As indicated above, rather than require uniformity among the AMPs provided by each gas and electric distribution company, the Department convened the Best Practices Group among the utility companies. Id. Each company files an annual AMP, with a unique set of program characteristics and the Department reviews and approves each company's AMP each year. In the NOI, the Department sought comments regarding program standardization based on the best practices of the different AMPs implemented by the companies. D.P.U. 08-4, at 8.

2. Summary of Comments

a. Support for Standardization

A number of commenters, including three investor-owned utility companies support standardization of AMPs.⁹ The Attorney General argues that standardization would allow all citizens of the Commonwealth to access the same level of program benefits (Tr. at 429). Other proponents of standardization claim that it will promote fairness and consistency across service territories (Bay State Reply Comments at 18; Unitil Response to DPU 1-5; WMECo Comments at 11).

b. Opposition to Standardization

Opponents of standardization argue that statewide uniformity of AMPs would be difficult because of regional differences among service territories (Berkshire Gas Reply Comments at 8). Berkshire Gas opposes statewide uniformity of AMPs because each service territory and service type (gas or electric) has distinct demographics and economic issues that are region-specific (*id.*). Berkshire Gas also argues that because of these different populations, the CAP agencies in each region serve the companies in a different manner (*id.*). Moreover, Berkshire Gas argues that the Best Practices Group should not be designing AMPs, but only sharing information so that each company can design programs that are best suited for its

⁹ Attorney General's Comments at 2; Bay State Gas Company; Cape Light Compact Comments at 7; Fitchburg Gas & Electric Company d/b/a Unitil; Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association Comments at 24; and Western Massachusetts Electric Company.

region's particular needs (*id.*). National Grid argues against standardization because each company uses a different computer system to deliver and track its company specific AMP (National Grid Comments at 4).

F. Analysis and Conclusion

1. Enrollment in AMPs

Chapter 140 requires each company to offer an AMP to eligible low-income consumers. Currently, most companies enroll only those consumers identified by CAP agencies as good candidates for successful completion of the AMP. However, while Chapter 140 reserves a wide range of discretion for the Department with respect to AMP design, standards, and content, in our view it does not provide the authority to restrict AMP opportunities to any subset of consumers that are otherwise eligible (that is, low income and in arrears). The Department interprets the Act to require that companies offer any eligible low-income consumer with an arrearage the opportunity to participate in an AMP. While we recognize that not every eligible consumer may successfully complete an AMP, it is the Department's view that every eligible consumer should be made aware of the AMP and afforded the opportunity to participate.

Therefore, the Department directs every company to develop a company-administered AMP that provides every consumer who is low-income and is in arrears an opportunity to enroll. Such a company-administered AMP should be coordinated with other company-administered low-income programs. Specifically, companies shall also enroll eligible AMP participants in the low-income discount rate and offer them information on fuel

assistance and energy efficiency programs, if they do not do so already. Each company shall continue to coordinate with CAP agencies, as required by Chapter 140, and CAP agencies may continue to assist with screening, enrolling and providing support to AMP participants pursuant to their agreements with the companies.

The Department received numerous comments on whether consumers should be “automatically enrolled” in AMPs. Automatically enrolling every eligible consumer would certainly achieve the Department’s goal of increased participation in AMPs, and we suspect that requiring a consumer to affirmatively opt-in would result in lower participation than automatic enrollment. The Department agrees with DOER and Berkshire Gas regarding the value of automatically enrolling in an AMP all income eligible consumers with a bill in arrears, and the higher level of enrollment of the Berkshire automatic enrollment program is evidence to its effectiveness from the standpoint of successful program administration.¹⁰ On the other hand, many commenters highlighted the value of an affirmative commitment by consumers to improve individual participants’ knowledge of and engagement in completing an AMP payment plan.

In consideration of these comments, the Department will allow companies to determine whether enrollment in the AMP will be “automatic” with an opt-out provision, or whether

¹⁰ While the Department expects that making AMP payment plans available to all eligible consumers will improve program success from the perspective of the number of successful participants, we also recognize that it has the potential to decrease the percentage of participants who successfully complete the program. In order to track both measures of program effectiveness, we expect companies to monitor both changes in the total number of participants, and the percentage of participants who complete payment plans.

enrollment will be “opt-in,” requiring an affirmative act of the consumer. At a minimum, the Department directs companies to send notification of the program’s existence to each consumer whose account is enrolled in the low-income discount rate and is in arrears for an amount and length of time that is specified in the company’s AMP. Allowing companies to select a method of enrollment may create an opportunity in the future to compare enrollment and program success across these two methods.

2. Eligibility

The Department concurs with the Attorney General’s interpretation that Chapter 140 contains plain language establishing eligibility levels, and does not authorize the Department to expand eligibility above 200 percent of the federal poverty level. St. 2005, c. 140, § 17. However, Chapter 140 clearly authorizes the Department to regulate certain specified aspects of AMPs, including down payments, forgiveness credits, and payment terms. Therefore, rather than changing the eligibility for AMPs, the Department will focus on other measures to increase enrollment and improve program success.

3. Program Standardization

Most commenters agree that an affordable bill is an important factor in AMP success. Increasing the dollar amount of the forgiveness credit and the frequency that the credit is applied will make bills more affordable, thereby increasing the chance of participants’ success. The companies currently provide varying dollar amounts of forgiveness credits and on varying schedules. For example, Berkshire Gas caps forgiveness credits at \$3,000 over the participant’s lifetime (Tr. at 419). WMECo places no dollar limit on the amount per customer

that may be forgiven, and therefore may provide up to 100 percent arrearage forgiveness (WMECo Comments at 11). Other companies have capped the forgiveness credits per consumer at a much lower dollar amount. For example, NSTAR caps its forgiveness credit at \$599, while National Grid caps its forgiveness credits at \$1,000 per year (NSTAR Comments at 5; National Grid Comments, Appendix A at 2). Unitil states that programs should be designed to allow for 100 percent arrearage forgiveness (Unitil Response to DPU 1-4).

The companies also apply forgiveness credits to consumer's bills on varying schedules. The Network states that credits should be applied monthly to provide consumers with frequent, positive reinforcement (Network Comments at 24). While most companies apply a monthly credit, the dollar amount varies widely depending on the forgiveness cap. NSTAR allows each participant to receive a monthly credit against the customer's arrearage balance, but the dollar amount depends on the customer's arrearage repayment term, which may be up to 36 months (NSTAR Comments at 5). A consumer who is successfully participating in NSTAR's AMP pursuant to a 36-month payment plan is credited monthly with an amount equivalent to 1/36th of the customer's arrearage (id.).

While many companies include the balance of the arrears in current bills, WMECo creates a stand-alone account for the arrears. (Tr. at 413). WMECo removes the arrearage balance from the consumer's account and places it in a holding account (id.). WMECo then establishes a budget payment plan and every month that the customer successfully makes a budget payment, a portion of the arrearage balance is forgiven (id. at 414). WMECo states that its AMP is successful because the consumer's bill becomes more affordable (WMECo

Reply Comments at 6). WMECO asserts that affordability can only be accomplished by removing the arrearage from the monthly bill (id.).

In D.T.E. 05-86, the Department adopted broad program standards and in doing so authorized companies to develop innovative and cost-effective programs suiting the needs of their service territories. As the Department has noted above, we refrained from setting uniform requirements until the AMPs operated for a sufficient period of time to gather information on program components which encourage successful completion of the AMP. Based on the evidence presented in this proceeding, the Department believes that the companies are now in a position to identify lessons learned from the current AMP, to recognize some of the best practices from the current AMP, and to investigate opportunities to standardize and improve AMPs.

Accordingly, we encourage the Best Practices Group to discuss opportunities to improve program enrollment and consumer success rates through the use of best practices in AMP design. We are particularly interested in the following design elements, and encourage the Best Practices Group to investigate whether and how these should be incorporated into each company's AMP. First, create a stand-alone account for arrears, so that the customer's current bill becomes more affordable and the amount of arrearage is easier to track. Second, allow the consumer to remain in the AMP as long as the current bills are paid. Third, reduce the arrearage by the same amount (e.g., \$100) per month, each time the consumer pays a bill. Fourth, create a consistent cap on the amount of arrearage forgiveness available to each participating consumer. The Department encourages consideration of a forgiveness cap high

enough to provide a strong incentive for consumers to stay on the program. Fifth, establish a standard program term that is defined by the monthly forgiveness amount and the total arrearage forgiveness cap. For example, a \$100 per month forgiveness with a \$3,000 forgiveness cap would lead to a maximum program term of thirty months.

While the Department would like to promote as much standardization across companies as is possible and practical, we understand that there may be valid reasons why some companies may prefer or need to use design elements that are different from other companies. If a company chooses to adopt a design element that is different than what is proposed by the Best Practices Group and adopted by most companies, we expect that company to provide an explanation as to why the different approach is appropriate.

_____ 4. Conclusion

In the next AMP plan submitted to the Department for review and approval, each company is directed to propose a company-administered AMP that contains the following features.¹¹ First, the company must provide an opportunity to enroll every consumer who (a) has an arrearage of the size or duration specified in the AMP plan and (b) is known by the company to meet the low-income eligibility criteria because the consumer is enrolled in the low-income discount rate or the account is flagged as protected. Second, the company shall specify whether it will automatically enroll eligible consumers or whether it will require the consumer to opt-in. The process for opting-in should be as simple as possible. Third,

¹¹ Pursuant to D.T.E. 05-86, each company files an arrearage management program plan every year no later than February 28th for the Department's review and approval. D.T.E. 05-86, at 15.

simultaneous with either automatically enrolling a consumer or notifying a consumer of the availability of the AMP, the company shall also provide information on the discount rate, fuel assistance and energy efficiency programs. Fourth, in the AMP plan, each company shall describe the procedures for mailing notices to all residential consumers who have an arrearage, but are not identified as low-income. Such mailings shall provide information on the availability of AMPs and would inform consumers how to identify whether they are eligible for the AMP and how to enroll. Finally, in addition to the company-administered AMP, companies shall continue to work with the local CAP agencies, and allow the CAP agencies to continue to assist with screening and enrollment of consumers pursuant to individual agreements with the companies.

IV. Low-Income Discount Rate

A. Introduction

The Department's investigation posed several questions regarding the low-income discount rate, including the effect of the drastic rise in commodity costs on the current value of the discount rate. D.P.U. 08-4, at 18. The Department sought comments regarding whether the discount should be increased and more specifically, whether companies are offering the discount at the levels that were in effect prior to March 1, 1998 as required by St. 1997, c. 164, § 193. In addition, the Department sought comment on whether the commodity costs should be discounted; how to increase enrollment in the discount rate; and whether the discount should be applied retroactively to consumer accounts. Commenters also addressed

whether the discount rate should be tiered so that the level of the discount correlates to income brackets.

B. Relevant Statutes, Regulations, and Department Orders

Massachusetts General Laws establishes a discount rate for low-income electricity consumers. G.L. c. 164, § 1F(4)(i). Eligibility for the electricity discount rate is based upon a consumer's "receipt of any means tested public benefit" or eligibility for LIHEAP. As stated above, the current eligibility requirement for LIHEAP is 200 percent of the federal poverty level. Chapter 164 explicitly provides that for electricity consumers, the level of the discount be comparable to the low-income discount in effect prior to March 1, 1998. For natural gas consumers, the discount rate and eligibility are established by the Department in 220 C.M.R. § 14.03(2A). The current eligibility requirement for the gas low-income discount rate is also 200 percent of the federal poverty level.¹²

¹² In August 2003, the Department established an automatic enrollment program for the purpose of increasing participation in the low-income discount rate. Low-Income Discount Rate Participation Rate, D.T.E. 01-106-A (2004). The Department directed gas and electric companies to exchange information with the Executive Office of Health and Human Services on a quarterly basis so that every recipient of a means-tested public benefit, who is also the "customer of record," would be automatically enrolled in the discount rate without the usual paper application. The automatic enrollment program established in D.T.E. 01-106, often referred to as "the computer matching program," has resulted in the enrollment of an estimated 90,000 additional low-income consumers. Source: Quarterly Reports provided by gas and electric companies. The Department determined that the appropriate cost recovery mechanism for AMP expenses and the revenue shortfall caused by the discount rate was the Residential Assistance Adjustment Factor (RAAF) . D.T.E. 01-106-C/05-55/05-56; D.T.E. 05-86 at 12-13.

The discount for low-income consumers is administered by the utility companies by reducing the distribution portion of a consumer's bill. The amount of the discount rate has been set in individual rate cases for each of the electric and gas utilities. Consequently, the level of the discount is inconsistent among companies, currently ranging from roughly twelve to twenty-one percent of total electric or gas bills.

C. Summary of Comments

1. Bay State Gas Company

Bay State would support an increase in the amount of the low-income discount, provided that any increase is balanced against the rate impact on non-low-income customers (Bay State Comments at 20). Bay State opposes applying the low-income discount to the commodity portion of the bill because distortions in the commodity price make it difficult for Bay State to compete with other fuels, and consequently would discourage beneficial system growth (Bay State Comments at 20). Bay State also states that any increase in the discount must be included in the costs that Bay State recovers through the Residential Assistance Adjustment Factor ("RAAF") (Bay State Comments at 21). Bay State explains that the company might retroactively apply the discount rate to some customer accounts by giving customers credit for the discount on previous bills, and determines whether to do so on a case-by-case basis (id. at 21). However, Bay State does not agree with any policy that would result in a large number of retroactive adjustments, as it would pose administrative difficulty (id.).

2. Berkshire Gas Company

Berkshire Gas states that it would consider increasing its discount to the customer charge portion of the bill, as long as such an increase is treated consistently by all companies and the resulting costs are recoverable through the appropriate adjustment clause (Berkshire Gas Comments at 7-8). Berkshire Gas is strongly opposed to discounting the commodity portion of the bill (Berkshire Gas Comments at 8; Tr. at 80). Berkshire Gas argues that discounting the commodity portion of the bill would require the company to have additional cash available to cover the costs of the discount on the commodity to ensure the supplier gets paid (Berkshire Gas Comments at 8). Due to the volatility of the commodity portion, this could result in a significant cash outlay (*id.*). Berkshire Gas is also concerned that a tiered rate structure would lead to greater administrative costs, which must be borne by all customers (Tr. at 87).

Berkshire Gas states that the current eligibility level is appropriate (Berkshire Gas Comments at 7). Berkshire Gas is concerned that changing the eligibility would result in significant increases in costs to its non-low-income customers, especially in light of the demographics of the service territory, which includes 3,000 heating and 300 non-heating low-income consumers. (Berkshire Gas Comments at 7; Tr. at 79; Berkshire Gas Reply Comments at 2). In addition, Berkshire Gas is concerned about the administrative costs of increasing eligibility (Berkshire Gas Reply Comments at 2). Berkshire Gas argues that energy costs for all customer classes be strongly considered before increasing the low-income discount or creating multi-tier levels of discounts that correspond to customer income brackets

(Berkshire Gas Comments at 8-9; Berkshire Gas Reply Comments at 4). Specifically, Berkshire Gas argues that any increase in the RAAF will have disproportionate impact on large commercial and industrial customers (Berkshire Gas Reply Comments at 3; Tr. at 79)

Berkshire Gas avers that enrollment would increase by expanding the computer-matching program to include more means-tested programs (Berkshire Gas Comments at 8; Berkshire Gas Reply Comments at 4). Berkshire Gas also opposes any retroactive application of the low-income discount as it would be costly and difficult to implement (Berkshire Gas Comments at 9).

3. Blackstone Gas Company

Blackstone Gas Company notes that any increase in the eligibility will increase costs, which must be recovered from other customers (Blackstone Gas Comments at 1). Blackstone Gas Company also states that any additional costs from the expansion of the low-income programs must be fully recoverable by a company (Blackstone Gas Comments at 2).

4. Cape Light Compact

The Cape Light Compact believes that the discount rate eligibility should be expanded to include consumers at 60 percent of the state median income level, at a minimum, and, ideally, 80 percent of the state median income level (Cape Light Compact Initial Comments at 9-10; Cape Light Compact Reply Comments at 4). The Compact also avers that the Department has the discretion to increase the eligibility level without legislative action (Cape Light Compact Comments at 10; Cape Light Compact Reply Comments at 4).

The Compact supports a tiered approach to the low-income discount level (Cape Light Compact Comments at 10-11; Cape Light Compact Reply Comments at 4). The Compact also supports a discount on the commodity portion of the bill, if it is possible (Cape Light Compact Comments at 11). The Compact also states that the discount should be applied retroactively to the date of application (Cape Light Compact Comments at 12; Cape Light Compact Reply Comments at 5).

5. National Grid

National Grid states that the Department should restore the value of the low-income discount that the company provided prior to March 1, 1998 (National Grid Comments at 2; Tr. at 25). National Grid recommends that recovery of the incremental discount should be through the Default Service Adjustment Provision for electric companies and through the Local Distribution Adjustment Clause for gas companies (National Grid Comments at 2).

National Grid does not think it is appropriate to expand the eligibility for the low-income discount because it will impose higher costs on all ratepayers (National Grid Comments, Appendix A at 5). National Grid also states that an expansion in eligibility will increase the administrative costs of verifying customer income (National Grid Comments, Appendix A at 6; Tr. at 41). National Grid states that eligibility cannot be increased without a legislative change on the electric side and a change to Department regulations on the gas side (National Grid Comments, Appendix A at 6).

For electric customers, National Grid adjusts no more than 150 low-income customers bills each year bills by retroactively applying the discount (National Grid Comments, Appendix

A at 8). Customer bills are adjusted for no longer than the past 16 months and the adjustment is recovered through the RAAF (National Grid Comments, Appendix A at 8). For gas customers, National Grid retroactively adjusts customer bills back to the beginning of the heating season (November 1st) for those qualifying for the discount based upon enrollment in LIHEAP (National Grid Comments, Appendix A at 8; Tr. 63-64).

6. New England Gas Company

New England Gas Company believes that the Department must balance expanding the availability and scope of discount rates with the cost impacts on non-low-income customers (New England Gas Company Comments at 3). New England Gas Company states that the demographics of its service territory are such that an increase in the eligibility level could result in a majority of customers qualifying for the discount (New England Gas Company Comments at 4; New England Gas Company Reply Comments at 2). New England Gas Company supports increasing the low-income discount if the cost burden is spread across the entire state (New England Gas Company Comments at 2).

7. NSTAR

NSTAR agrees with the concept of expanding the availability and scope of low-income discount rates as long as the Department can balance the benefit of such policies with the cost impacts on non-low-income customers (NSTAR Comments at 9-10). NSTAR points out that any expansion to eligibility for electric customers will require a legislative change, but also acknowledges that no legislative action is required for gas customers (NSTAR Comments at 10). NSTAR also states that expansion of eligibility may increase the administrative burden

on NSTAR as it may be difficult for NSTAR to identify those customers who qualify (NSTAR Comments at 11).

NSTAR is willing to discuss tiered low-income discount rates, but expressed concern that a tiered approach to low-income rates could create confusion among consumers; would require additional consumer education; and would make income verification more difficult (NSTAR Reply Comments at 3; Tr. at 85-86). In addition, NSTAR is concerned that a tiered rate structure would lead to significant programming costs to modify its billing system (Tr. at 86). NSTAR proposes that the bill impacts from expansion of the low-income discount be capped for the average residential customer (NSTAR Comments at 13). NSTAR is not in favor of applying the low-income discount to the commodity portion of the bill (NSTAR Reply Comments at 3).

NSTAR also commented on the creation of a statewide pool to pay for the low-income discount. NSTAR believes that such a pool can only be created through legislative action (NSTAR Reply Comments at 5). However, NSTAR argues against a statewide pool because it is unfair for the ratepayers of one utility to pay the costs of another utility through distribution rates (NSTAR Reply Comments at 5). Finally, NSTAR does not favor retroactive applicability of the discount rate because of the administrative burden that it would impose upon NSTAR (NSTAR Comments at 12; NSTAR Reply Comments at 3).

8. Unitil

Unitil recommends a multi-tiered low-income discount rate similar to the tiers that Unitil's New Hampshire affiliate offers its low-income customers (Unitil Comments at 3;

Unitil Reply Comments at 2; Tr. at 52). Unitil notes that New Hampshire's multi-tiered discount was established by the New Hampshire State Legislature (Tr. at 60). Such a multi-tiered approach would increase the level of the discount and expand the discount to include the commodity portion of the bill (Unitil Response to DPU 1-10). However, Unitil only supports this approach if the costs of the increased levels of the low-income discount are distributed evenly across the state (Unitil Comments at 3; Unitil Reply Comments at 1-2; Tr. at 9).

Unitil believes that changing the eligibility would be beneficial, however, the rate impacts on all customers should be considered before any increase is implemented (Unitil Response to DPU 1-4). Unitil also states that it does not support increasing the eligibility beyond the current level as it would require additional administrative resources (Unitil Reply Comments at 2). In addition, Unitil states that enrollment in the low-income discount rate could be increased through the development of a clearinghouse that would identify customers who qualify for the low-income discount and provide that information to the companies (Unitil Response to DPU 1-11).

Unitil states that customers newly identified as eligible for the low-income discount rate should have the rate applied retroactively to November 1, which is the beginning of the winter heating season (Unitil Response to DPU 1-12; Tr. at 63). Unitil points out that the retroactive application of the discount rate would ensure that the consumer receives the benefit from the start of the heating season (Unitil Response to DPU 1-12).

9. WMECo

WMECo notes that currently 27 percent of their customers qualify for low-income rates and that the costs of these programs are borne by all WMECo customers (WMECo Comments at 4; Tr. at 77-78). WMECo states that the eligibility requirement for low-income discount rates should not be changed (WMECo Comments at 14). WMECo avers that no changes should be made to the eligibility requirements of the various programs until the impact of any change is quantified (WMECo Reply Comments at 3). WMECo states that changing the eligibility will place an increased burden on all customers (WMECo Comments at 14). WMECo notes that the eligibility cannot be changed without a statutory amendment (WMECo Comments at 14).

WMECo's discount is approximately 94 percent of the distribution portion of the customer bill (Tr. at 75). WMECO states that additional increases in the discount could result in a credit to the distribution portion of the bill for its low-income customers, further increasing the costs burden on all customers (WMECo Comments at 14-15). Therefore, WMECo opposes increasing the discount amount (WMECo Comments at 15). WMECo also opposes extending the discount to the commodity portion of the bill (WMECo Comments at 15). WMECo argues that discounting the commodity portion of the bill will cause a revenue shortfall because while basic service customers pay a fixed price, WMECo must pay basic service suppliers for the variable price of basic service (WMECo Comments at 15). WMECO states that the revenue shortfall will increase costs for all customers (WMECo Comments at 15).

WMECo recommends requiring customers whose accounts are protected pursuant to the Department's regulations at 220 C.M.R. 25.00 to enroll in the discount rate (WMECo Comments at 16). WMECo also states that the computer-matching program should be used to remove customers who are no longer eligible to receive the low-income discount rate (WMECo Comments at 18).

In addition, WMECo recommends against offering the discount retroactively to newly identified eligible customers (WMECo Comments at 16). WMECo states that retroactively billing eligible low-income customers increases administrative costs for little benefit (WMECo Comments at 17).

10. The Network

The Network argues that a larger low-income discount, including a discount on the commodity portion of the bill, is needed (Network Comments at 9, Tr. at 19). The Network argues that G.L. c. 164 does not cap income eligibility for the discount rates, but only establishes a floor that the discount rate cannot fall below, and that the discount level must be comparable to those in existence as of March 1, 1998 (Network Comments at 10-11; Tr. at 35-36). The Network recommends that the Department change the eligibility for the discount to 60 percent of state median income (Network Comments at 12, 26; Tr. at 40-41).

The Network states that the level of the discount should be uniform across all companies and that the companies should offer a tiered discount, tied to a consumer's income (Network Comments at 9, 27). The first tier would include consumers with a household income of up to 150 percent of the federal poverty level (*id.* at 12). These consumers would

be entitled to a 65 percent discount off the total bill, including the commodity portion (id.). The second tier includes consumers with a household income from 150 percent to 200 percent of the federal poverty level (id.). These consumers would receive a 40 percent discount off the total bill, including the commodity portion (id.). The final tier includes consumers from 200 percent of the federal poverty level to 60 percent of the state median income level (id.). These consumers would be eligible for a 25 percent discount off the total bill, including the commodity portion (id.). The Network estimates the cost of the three tiered program to be \$1 dollar per month for the average customer (id. at 13).

The Network recommends making internet applications available so that applying for the low-income discount is easier (Network Comments at 10). The Network also recommends allowing consumers to submit the applications via facsimile (id.). The Network also recommends expanding the existing computer-matching program to include more means-tested programs (Network Comments at 28).

The Network favors retroactively applying the discount rate for varying lengths of time, depending on the circumstances of the individual consumer (Network Comments at 28-29). The Network proposes retroactive application of the discount: to November 1 for fuel assistance customers; to the application date for those customers seeking the discount independently; or for up to one year for customers demonstrating that they were income-eligible for a period longer than one year (Network Comments at 29).

Finally, the Network supports a collaborative approach to resolving many of the low-income issues raised in this docket (Tr. at 70-71).

11. Associated Industries of Massachusetts

Associated Industries of Massachusetts (“AIM”) states that any increase in the low-income discount must consider the rate impacts on other customers, especially those large commercial and industrial customers with high usage (AIM Comments at 4-5; AIM Reply Comments at 3; Tr. at 73). AIM argues that the Department should not act until a more complete record can be accumulated concerning the cost of the current low-income program, the potential cost of the existing program should all eligible participants take advantage of it, and the potential costs of expanded programs and the effect this cost shifting will have on other rate classes (AIM Reply Comments at 4).

12. Attorney General

The Attorney General states that Chapter 164, § 1F(4)(i) precludes a change in the eligibility for electric rates (Attorney General Reply Comments at 12). The Attorney General refutes the Network’s position and points to the plain language of the statute (id.). The phrase “eligibility does not exceed 200 percent” in the statute establishes the eligibility cap for electric low-income programs (id. at 13). In addition to capping the benefit, the Attorney General argues that the Legislature also included a safety valve provision which would only allow eligibility for Massachusetts low-income programs to be increased if the federal eligibility standards or its successor program get increased (id.).

The Attorney General recommends that the Department make the low-income discount uniform across the state (Attorney General Initial Comments at 11; Tr. at 29). Such uniform discounts could include a tiered system (Attorney General Comments at 11-12). The Attorney

General states that phasing in the revised discount levels may be necessary in order to address rate continuity issues (Attorney General Comments at 13). In addition, the Attorney General states that any changes made to the low-income discount level must include an analysis of the rate impact that such an increase will have on all customers (Attorney General Comments at 14). At this time, the Attorney General does not endorse any specific level of increased funding for low-income discounts until further investigation is completed (Attorney General Comments at 14-15; Tr. at 48-49).

Regarding enrollment of eligible low-income customers, the Attorney General recommends that the Department consider expanding the computer-matching program and consider adding a computer-matching system with federal benefit agencies (Attorney General Comments at A-5). Finally, the Attorney General supports the retroactive application of the low-income discount for a period of no more than one year, or the date that a customer became eligible, whichever is more recent (Attorney General Comments at A-5-6).

13. DOER/DHCD

DOER/DHCD supports a tiered approach to low-income discount rates (DOER/DHCD Comments at 3). DOER/DHCD also states that any increase in the low-income discount should be balanced against the rate impacts on other utility customers (DOER/DHCD Comments at 3). DOER/DHCD also argue that discount levels should be consistent across utilities (DOER/DHCD Comments at 3). Finally, DOER/DHCD state that any change to the eligibility criteria would require a statutory change (DOER/DHCD Comments at 3).

D. Analysis and Conclusion

Although there is some support among the parties for changing the discount eligibility, the Department concurs with several parties, including the Attorney General, that a statutory change to G.L. c. 164, § 1F would be necessary, and that changing the income eligibility level is beyond the Department's jurisdiction. The plain language of the statute, specifically the phrase "eligibility does not exceed 200 percent" clearly establishes the eligibility for the electric low-income discount (See Attorney General Reply Comments at 13). The Legislature did not provide the Department with authority to amend the specified eligibility requirement in G. L. c. 164, § 1F.

Nevertheless, the Department does have the authority to enforce G.L.c. 164, § 1F. Section 1F states, "The Department shall require that distribution companies provide discounted rates for low-income customers comparable to the low-income discount rate in effect prior to March 1, 1998." Id. Thus, the Department interprets G.L. c. 164, § 1F as requiring distribution companies to provide a discount rate with a percentage discount off the bill to achieve the 1998 discount level. The Department recognizes that companies may not achieve the 1998 discount level by solely reducing the distribution portion of the bill. In such instance, the companies should reduce the distribution rate of the bill to zero. Companies are directed to file the adjusted low-income discount rate with the Department by October 15, 2008, which will take effect after Department review and approval. The Department directs each distribution company to provide bill impacts for the adjusted low-income discount rate. This analysis should include the bill impacts on all rate classes.

As indicated above, the Department is not requiring companies to discount charges other than the distribution rate in order to achieve the 1998 discount level. The Department directs the companies to work with the Best Practices Group to develop recommendations on how other portions of the bill could be reduced to achieve the 1998 discount level, if appropriate. This proposal should be filed with the Department no later than December 1, 2008, and must include bill impacts for each consumer class, accompanied by supporting documentation of all inputs and assumptions used in the analyses.

The Department also directs companies to work with the Best Practices Group to consider some of the concepts that were proposed in this docket, such as developing tiered discount rates, applying the low-income rate retroactively, and expanding the existing computer matching program. With regard to tiered discount rates, while the Department supports the concept of varying the rate based on need, we are constrained by G.L. c. 164, § 1F. The Department cannot direct companies to provide a discount greater than the 1998 discount level prescribed by statute, nor can we direct companies to offer a discount rate to consumers whose incomes are above 200 percent of the federal poverty level. Nevertheless, the Department will consider proposals that seek to provide tiered discounts that operate within the above statutory constraints, are practical from a program administration standpoint, and are supported by analyses of associated rate and bill impacts.

With regard to retroactive application of the low-income discount rate, the Department concurs with the Attorney General that, if companies propose such application, it should be limited for a period of no more than one year or the date the consumer became eligible,

whichever time period is less (Attorney General Comments A-5-6). If the companies apply the discount retroactively, it should be limited to consumers who are enrolled on the low-income discount after November 1, 2008. Any consumer enrolled prior to November 1, 2008, cannot avail themselves of the new discount rate retroactively.

Finally, we note that previously the Department determined that the Residential Assistance Adjustment Factor (“RAAF”) was the appropriate cost recovery mechanism for the revenue shortfall caused by the discount rate. Low-Income Discount Rate Participation, D.T.E. 01-106-C/05-55/05-56. At this time, we see no reason to adopt a different recovery mechanism to recover the costs associated with any expansion or modification of the low-income discount rate.

V. Statewide Cost Recovery

A. Introduction

As stated above, the Department previously determined that the appropriate cost recovery mechanism for AMP expenses and the revenue shortfall caused by the low-income discount rate was the RAAF. D.T.E. 01-106-C/05-55/05-56; D.T.E. 05-86 at 12-13. Each company recovers the incremental costs associated with low-income programs through the RAAF. Therefore, consumers within each company’s service territory bear the cost of low-income programs within that service territory. Some participants in this proceeding suggest that costs of these programs should be shared on a statewide basis, that is, spreading the costs uniformly across the state.

B. Summary of Comments

1. Support for Sharing Costs Statewide

Commenters supporting a system of sharing costs and benefits on a statewide basis typically serve geographic areas with a greater number of consumers eligible for low-income assistance programs. Unitil supports a statewide cost sharing approach to spread additional costs associated with low-income programs across a larger base, including the higher income areas of the Commonwealth (Unitil Reply Comments at 1). Unitil argues that because income levels differ widely by region, many consumers do not contribute as much in their rates to support low-income program costs as other consumers (id. at 2). Specifically, Unitil states that in North Central Massachusetts, existing consumers already face a significant cost burden from supporting the low-income program costs (id.). At this time, imposing additional costs on these consumers would be difficult when all consumers are struggling to pay rising utility bills (id.).

2. Opposition to Sharing Costs Statewide

Commenters opposing statewide cost sharing argue that it is inequitable for consumers of one service territory to pay distribution rates that fund programs serving other service territories (NSTAR Reply Comments at 5). In addition, NSTAR and the Attorney General believe that a statewide fund would require legislative action (NSTAR Reply Comments at 5; Attorney General Reply Comments at 11). However, the Attorney General states that the Department should adopt a statewide fund for programs administered by gas companies only if the Legislature authorizes a statewide fund in an effort to promote uniformity among

low-income programs (Attorney General Reply Comments at 10-11 at 12). The Attorney General believes that pooling ratepayer funds has drawbacks including reducing a company's incentive to keep administrative costs low and to work with low-income consumers to manage utility bills (id. at 11).

C. Analysis and Conclusion

The Department supports, in principle, sharing the costs of low-income programs on a statewide basis to more evenly spread the expense among all consumers, and to address the unique and difficult circumstances of consumers of companies characterized by small service territories and high low-income populations. Statewide cost sharing would ease the burden on consumers residing in more economically depressed regions. The Department notes that several companies stated that changing the eligibility would have significant bill impacts on their customers because a large percentage of residential customers may qualify as low-income (New England Gas Comments at 2; New England Gas Reply Comments at 1-2; Unitil Comments at 2). These companies argue that if the costs were spread uniformly among all customers in the state, the burden that customers in those service territories would have to bear would be significantly reduced (New England Gas Reply Comments at 2; Unitil Comments at 2; Unitil Reply Comments at 1-2). However, as noted by several parties, this proposal likely requires legislation and would take additional time to implement. Therefore, the Department directs companies to continue to recover costs associated with their low-income programs through their RAAF. On a going-forward basis, the Department recommends that the Best Practices Group consider the potential benefits of and mechanisms for a statewide pool to fund

the low-income discount, and access the steps that would be required for proposing legislation to establish such a fund.

VI. Service Termination

A. Introduction

In the NOI, the Department sought comments on whether and how we should clarify, modify or expand our service termination regulations (220 C.M.R. 25.00). The Department also asked whether additional regulations are necessary to address the rights of consumers whose service has been terminated and the rights of tenants who are at risk of losing service because the landlord is in arrears. The comments raised several other issues, including whether the regulations should limit the length of the protection period.

B. Relevant Statutes and Regulations

The Department's regulations offer service protection to consumers with a financial hardship under certain circumstances. 220 C.M.R. § 25.01 defines "financial hardship" as the inability to pay an overdue bill and such consumer meets the income eligibility requirements for LIHEAP.¹³ Regulations prohibit termination of service or refusal to restore service if a consumer is unable to pay because of a financial hardship and one of the following conditions is present: someone in the home is seriously ill; a child under twelve months of age lives in the home and service has not been terminated prior to the birth of the child; or the service provides

¹³ Pursuant to Department regulations, the consumer need only meet income-eligibility requirements for LIHEAP, and need not actually receive LIHEAP.

heat and the termination will occur during the heating season which runs from November 15 through March 15. 220 C.M.R. § 25.03.¹⁴

G.L. c. 164, §124E states that no gas or electric company shall shut off service to any household where all of the residents are 65 years of age or older without written permission from the Department. In accordance with the statute, the Department promulgated 220 C.M.R. § 25.05, which prohibits gas and electric companies from terminating service to households where it is certified that all residents are 65 years or older, regardless of income, without written permission from the Department. 220 C.M.R. § 25.05(3).

The Department may order a company to resume electric or gas service if the company has not complied with the proper procedure for terminating service. 220 C.M.R. 25.02(3). However, the Department's regulations do not establish a procedure for consumers seeking to reinstate service after the company has followed the proper procedure.

Chapter 140 sets a clear, maximum payment of no more than 25 percent of the balance owed that may be required of a consumer who is in arrears to maintain service (St. 2005, c. 140, § 17(b)). The Act does not set a comparable maximum payment for a consumer whose service has been terminated, and would like to reestablish service.

C. Summary of Comments

Overall, panelists and interested parties agree that amending service termination regulations is secondary in importance to improving the discount rate, AMPs, and other

¹⁴ G.L.c. 164, § 124F prohibits companies from shutting off service between November 15 and March 15th when the consumer is suffering a financial hardship and the service is used to heat the residence. In recent years, many companies voluntarily extended the winter protection period to mid-April.

financial assistance to the benefit of low-income consumers because lower, more affordable bills will result in fewer service terminations (Bay State Comments at 22). Unitil suggests that year-round financial assistance is necessary (Unitil Response to DPU 1-13). The Compact concurs that financial assistance is key to preventing service termination (Cape Light Compact Comments at). National Grid observed that few changes to service terminations regulations were suggested in the responses to the Department's information requests because changes are anticipated in the discount rate and AMPs (Tr. At 128-129). National Grid notes that the service termination section of the NOI received less attention than the discount rate and AMP sections because some parties want to "wait and see" what the effect of changes in the discount rate and AMPs are before recommending amendments to the termination regulations (Tr. at 129). In fact, National Grid suggested that the Department "wait and see" the effect of any changes in the discount rate and AMPs prior to changing service termination regulations. (id.)

1. Length of Service Protection Period

Commenters note that under some circumstances the Department's regulations do not limit how long a consumer may be protected from service termination (NSTAR Comments at 14; Tr. at 129; Tr. at 242). Some commenters conclude that for consumers with protected accounts, no incentive exists for making payments toward their utility bills (New England Comments at 5). New England Gas Company notes that service termination is the only tool a company has to provide an incentive for payment and that this incentive does not apply to protected accounts. (id. at 5). Unitil recommends setting a time limit on account protection

for a financial hardship because it would encourage more consumers to make payments toward their bills during the protection period (Unitil Response to DPU 1-14). WMECO suggests that a minimum payment during the protection period should be required (WMECO Comments at 18). WMECO also suggests that if service termination is a possibility, then the company should make certain that the consumer is enrolled in all other assistance available, such as fuel assistance or AMPs (id. 18).

NSTAR notes that 275 customers are responsible for \$4 million in overdue balances, and that the majority of these customers have had protected service and have made no payments for several years (NSTAR Comments at 14). According to NSTAR, their bills may be as high as \$400 per month, yet these consumers have no incentive to reduce energy usage (Tr. at 139). NSTAR acknowledges that these are not typical customers, but attributed this very large amount of unpaid bills to a very small number of customers (NSTAR Comments at 14). NSTAR states because protected consumers cannot be terminated they have no incentive to pay their bills nor reduce energy usage and, as a result, a small number of consumers are responsible for a very large amount of unpaid bills (NSTAR Comments at 14).

2. Winter Moratorium

The winter protection period runs from November 15 through March 15. 220 C.M.R. § 25.03(1)(a)(3). In recent years, most companies have complied with the Department's request that they voluntarily extend the winter protection period beyond March 15. During the 2007-2008 heating season, in response to the Department's request, companies

agreed to postpone service terminations until May 1, 2008. (See Letter to Companies from Chairman Paul Hibbard, dated February 12, 2008).

Although the winter protection period provides account protection for a defined time period, some commenters state that the winter moratorium results in the accumulation of large arrearages because there is no incentive for consumers with protected accounts to pay their utility bills during this period (Bay State Comments at 19, WMECO Comments at 18, NSTAR at 14). As a result, at the end of the moratorium, consumers must pay large arrearages or face the threat of service termination (NSTAR Comments at 14-15; WMECo Comments at 18). Unitil further explains that some customers do not seek fuel assistance until after the winter moratorium has ended and their service is in jeopardy of termination (*id.*). Unitil notes that at the end of the winter moratorium, the fuel assistance benefit is no longer available to eligible customers (*id.*).

3. Recommended Changes

WMECO suggests defining the term “serious illness,” as used in regulations at 220 C.M.R. 25.03, and providing guidance as to what constitutes a serious medical condition (Tr. at 135-136). The Department’s regulations do not define “serious illness”, but rather accept certification of a serious illness by a certified medical physician or local board of health as conclusive evidence of the existence of the condition. 220 C.M.R. § 25.03. The Attorney General cautioned that Department regulations should not require excessive disclosure of a person’s medical condition in order to obtain the protection (Tr. at 138).

The Network states that because of the increased number of foreclosures on rental income properties, more tenants are facing the loss of utility service if the landlord is responsible for the bill and does not pay it (Network Reply Comments at 5). Both Unitil and the Network suggest that the Department amend its regulations at 220 C.M.R. § 25.04, and direct companies to notify the local board of health when the companies send a termination notice to a landlord account (id.; Tr. at 131-132) Id.

The Executive Office of Elder Affairs (“Elder Affairs”) notes that qualifying elders should not be excluded from the protection provided by 220 C.M.R. § 25.05 when minor grandchildren reside with them (Elder Affairs Reply Comments at 2). Protection from service termination is available pursuant to § 25.05 when all residents of the home are 65 years or older. Therefore, pursuant to the Department’s current regulations, persons over 65 years with minor child in the household would not be eligible for service protection because all persons in the home are not 65 years or older.

4. Reinstating Service After Termination

The Department’s regulations do not address the rights of consumers whose service has been terminated. WMECO states that service termination is an essential tool for the collection of arrearages and reduction of bad debt (WMECO Comments at 19). Bay State concurs that without the “tool” of service termination, bad debt write-offs will grow, and that the termination process is expensive for the company (Bay State Comments at 19, 22). Similarly, NSTAR states that terminations are a last resort, and are expensive because of the letters, telephone calls and multiple notices required in the termination process (NSTAR Comments

at 13). NSTAR states that if the Department facilitates service restoration to terminated accounts, bad debt will increase (NSTAR Comments at 15). NSTAR recommends that the Department not relax its service termination regulations (id. 15). Unitil recommends that the Department provide clear and concise rules to address the rights of consumers when service has been terminated in addition to existing rules for residential customers (Unitil Response to DPU 1-15).

The Attorney General recommends filing legislation to amend G.L. c. 164, § 124G, so that the Department, rather than utility companies, deems what constitutes a satisfactory payment for restoring terminated service (Attorney General Comments at A-6). Further, the Attorney General supports measures that would reduce the discretion of utility companies, and increase equitable treatment of consumers (Attorney General Comments at A-6).

D. Analysis and Conclusion

As an initial matter, the Department sought comments from interested parties regarding what additional action may be taken to reduce service terminations. Overall, commenters agreed that amending service termination regulations is secondary in importance to improving financial assistance for low-income consumers, such as the discount rate and AMPs.

Numerous participants stated that enhancing consumers' resources and enabling payment of the bill is preferable to broadening shut-off protections. Commenters stated that service protection may have the unintended consequence of allowing consumers to accumulate large arrearages and delay payments. As a result, the Department received fewer recommendations on changes to service terminations than recommendations related to AMPs and the discount rate. The

Department notes that many of the recommendations would not expand protections for low-income consumers, the stated purpose of this NOI. Therefore, the Department will not address those recommendations at this time.

Through a future proceeding, the Department intends to address several issues raised in this proceeding that would expand protections for low-income consumers: the rights of consumers 65 years or older when minor grandchildren reside with them; notification to the local board of health when a company sends a termination notice to a landlord account; and establishment of a more uniform process for companies to reinstate service after a termination for non-payment of an account. The Department anticipates opening such a docket in the near future.

VII. Energy Efficiency

A. Introduction

In the NOI, the Department noted that energy efficiency programs not only help reduce low-income consumers' electric and gas bills, but also help reduce the cost of the low-income discount rate, make it easier for participating customers to maintain bill payments, reduce participating consumers' arrearages if they do not make bill payments, and help reduce company bad debt. D.P.U. 08-4, at 12. We encouraged energy efficiency Program Administrators¹⁵ to actively identify low-income consumers, and to serve as many eligible consumers as possible. We solicited comments on whether opportunities exist to increase

¹⁵ By "Program Administrators," we are referring to the Massachusetts electric distribution companies, gas distribution companies and municipal aggregators that implement the energy efficiency programs funded by the system benefits charge.

enrollment in low-income energy efficiency programs, including opportunities to better coordinate and integrate the energy efficiency programs with other low-income services provided by electric and gas companies.

B. Summary of Comments

Most of the comments that the Department received with regard to energy efficiency address three issues: (1) the amount of funding available for low-income energy efficiency programs, (2) coordination of energy efficiency programs with other low-income services, and (3) the eligibility for low-income energy efficiency programs. Most of the commenters agree that limited funding represents the most significant barrier to increasing participation in low-income energy efficiency programs (Network Reply Comments at 8; Tr. at 503, 509). Most low-income energy efficiency programs are fully subscribed, and without additional funding there is little more that the Program Administrators can do to increase energy efficiency services to low-income customers (National Grid Comments at 11; NSTAR Reply Comments at 4).

Most of the commenters also agree that the low-income energy efficiency programs are currently well-coordinated with other low-income services offered by electric and gas companies (Network Comments at 39; Tr. at 565). Parties do not raise any concerns regarding the current practices, nor did they offer any recommendations for improving current practices.

There is less agreement with regard to changing the eligibility for low-income energy efficiency programs. Many commenters recommend maintaining the current eligibility threshold (i.e., 60 percent of state median income) (Bay State Gas Comments at 26; WMECo

Comments at 21). Several commenters also recommend that the eligibility threshold for the energy efficiency programs should be the same as the threshold for the AMP and the low-income discount rate (Cape Light Compact Comments at 7; Unitil Reply Comments at 2-3; Tr. at 519-520). Other commenters recommend that the eligibility threshold for the low-income energy efficiency programs be increased to 80% of the state median income (Cape Light Compact Reply Comments at 6).¹⁶

C. Analysis and Conclusion

We note that since the comments and reply comments were submitted in this proceeding, the Green Communities Act was enacted into Law. (St. 2008, c. 169) This Act requires, among other things, energy efficiency Program Administrators to identify and implement all cost-effective energy efficiency resources available, and to dedicate a certain portion of energy efficiency program funding to low-income efficiency programs.¹⁷ Consequently, the Department expects that the most significant issue limiting the implementation of low-income energy efficiency programs – program funding – will be addressed by the Program Administrators in their future energy efficiency plan filings.¹⁸

¹⁶ This would make the eligibility threshold equal to that used by the US Department of Housing and Urban Development for its weatherization program, which the Massachusetts low-income energy efficiency programs are frequently coordinated with (Network Comments at 39).

¹⁷ Electric Program Administrators are required to dedicate 10 percent of efficiency program funds to low-income customers, and gas Program Administrators are required to dedicate 20 percent of program funds to low-income customers.

¹⁸ Electric and gas Program Administrators have already made proposals to increase the budgets for their low-income energy efficiency programs for the remainder of 2008. See Department of Public Utilities Letter dated July 25, 2008 and the Hearing Officer

In Sections III.F.1 and IV.D above, the Department directs the electric and gas companies to continue to coordinate the enrollment of customers across arrearage management programs, low-income discount rates, and low-income energy efficiency programs. Based on the comments received from the parties, we conclude that no further directives on this issue are necessary from the Department at this time. Nonetheless, we encourage the members of the Best Practices Group to consider new approaches to the coordination and integration of low-income energy efficiency services as new ideas or opportunities arise over time.

In Sections III.F.2 and IV.D above, the Department concludes that it cannot change eligibility for either the arrearage management programs or the low-income discount rates, because eligibility is statutorily established. In contrast, low-income energy efficiency program eligibility is not set by statute, but is established in the energy efficiency planning process with input from a variety of energy efficiency stakeholders.

At this time, the Department refrains from addressing changes to the eligibility level for the low-income energy efficiency programs. While it would be ideal to have the same eligibility level for the AMPs, the low-income discount rate, and low-income energy efficiency programs, this would result in less consumers being eligible for the low-income energy efficiency programs and thus would deprive some needy consumers of this important service. Similarly, the Department recognizes that broadening eligibility might provide additional efficiency services to deserving consumers. However, such a change is best implemented as part of the energy efficiency planning process, with input from the energy efficiency

stakeholders. Any Program Administrator that wishes to broaden eligibility for low-income energy efficiency programs should make a proposal to do so in future energy efficiency plan filings with the Department, along with justification as to why such a change is appropriate. Any such proposal should recognize the value of applying consistent income eligibility levels for low-income energy efficiency programs across all the Program Administrators in the state.

VIII. Directive to the Companies

The Department is acutely aware of the difficulty that paying for energy expenses causes all residents of the Commonwealth, but especially recognizes the annual challenge this poses to low-income consumers. Given the rapidly rising energy crisis, the Department anticipates that the plight of low-income consumers will only worsen in the next winter season. Therefore, each gas and electric distribution company shall submit a proposal to the Department by Wednesday, October 15, 2008. Specifically, each company's filing must contain adjusted discount rate tariffs that restore the discount level that was in effect prior to March 1, 1998, to the extent possible by reducing the distribution portion of the bill. The proposed tariff should provide a percentage discount on the bill similar to the low-income discount rate that was in existence on February 28, 1998. In order to evaluate the reasonableness and accuracy of the proposals, the Department requests that the proposals contain supporting rationales and data.

No later than February 28, 2009, each gas and electric distribution company shall submit its annual proposed AMP plan to the Department. In its filing, each gas and electric distribution company shall propose a company-administered AMP that affords all eligible

consumers the opportunity to enroll either through automatic enrollment with an opt-out provision or, at a minimum, notify consumers of the existence of its AMP and allow them to affirmatively opt-in.

The Department directs the companies to continue participating in the Best Practices Group and to convene, discuss and make recommendations on further standardizing AMPs, specifically with regard to creating stand-alone accounts, the conditions required for a consumer to remain within the AMP, the amount of forgiveness provided each month, the cap on the total forgiveness offered, and the program term. We also direct the companies to work with the Best Practices Group to make recommendations with regard to the low-income discount rates, particularly with regard to introducing tiered discount rates, expanding the computer-matching program, and applying the low-income discount rate retroactively. The Department directs the Best Practices Group to report its recommendations no later than December 1, 2008.

The Department directs the companies to provide, for all proposed changes to low-income programs, the bill impacts for each consumer class, accompanied by complete and supporting documentation of all inputs and assumptions used in the analyses. These analyses should also include estimates of potential benefits (in total dollars and bill impacts), such as the reduction in arrearages that could result from the proposed changes.

IX. Motion of the Massachusetts Energy Directors Association and Low-Income Weatherization and Fuel Assistance Network

On May 28, 2008, the Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association (“Network”) filed a Motion (“Network’s Motion”) requesting that the Department authorize and direct: A collaborative approach among the parties with a mandate to develop a proposal that can be adopted quickly for enhancing the low-income discount rate; an interim AMP protocol to be in effect until a decision on the low-income discount rate is effective; and the continuation and expansion of the Best Practices Group for AMPs (Network’s Motion at 2-3). The Network stated that the Department can act relatively quickly on these measures in order to increase protections for low-income consumers by making their bills more affordable (*id.* at 1). Thirteen interested parties filed responses to the Network’s Motion.¹⁹

Through this Order, the Department grants the Network’s Motion in part and denies it in part. The issues raised in the Department’s investigation, specifically enhancing the discount rate and AMP, are ripe for a collaborative approach and most, if not all, parties to the proceeding agree that such a cooperative, on-going process will build upon the success of each company. Given the widespread support for a collaborative approach, the Department grants

¹⁹ Associated Industries of Massachusetts; The Attorney General of the Commonwealth; Bay State Gas Company; Berkshire Gas Company; Cape Light Compact; The Energy Consortium, TEC; Greater Boston Real Estate Board; Massachusetts Food Association; National Grid; NSTAR; Retailers Association of Massachusetts; Fitchburg Gas & Electric Company d/b/a Unitil; and Western Massachusetts Electric Company.

the Network's Motion as to a discount rates collaborative and the continuation of the AMP Best Practices Group.

However, the Department denies the Network's Motion requesting an interim AMP. The Network requested establishing an interim AMP to be in effect until a decision on the low-income discount is reached (Network Motion at 1-2). In this Order, the Department has reached a decision on the discount rate by directing that companies revise the low-income discount rate to the level in effect on the total bill as of March 1, 1998. Therefore, an interim AMP is unnecessary. The Department also denies the interim AMP because it was developed by the Network and Bay State Gas Company only ("Bay State"). Adoption of an interim AMP developed by only a few participants contradicts the collaborative approach emphasized by participants in this proceeding, including the Network and Bay State.

X. ORDER

Accordingly, it is

ORDERED: That each gas and electric distribution company provide all low-income consumers with an account in arrears the opportunity to participate in an arrearage management program; and it is

FURTHER ORDERED: That each gas and electric distribution company shall file, no later than February 28, 2009, an arrearage management program plan that includes a company-administered program, with either automatic enrollment of eligible consumers or, at a minimum, a procedure for notifying all consumers in arrears of the existence of the arrearage management program; and it is

FURTHER ORDERED: That each gas and electric distribution company enroll arrearage management program participants in the low-income discount rate; and it is

FURTHER ORDERED: That each gas and electric distribution company refer eligible arrearage management program participants to local energy efficiency programs; and it is

FURTHER ORDERED: That each gas and electric distribution company shall file, no later than October 15, 2008, the revised low-income discount rate; and it is

FURTHER ORDERED: That each gas and electric distribution company continue participating in the Best Practices Group to discuss and make recommendations to the Department regarding arrearage management programs and the low-income discount no later than December 1, 2008; and it is

FURTHER ORDERED; That each gas and electric company comply with all directives contained in this Order.

By Order of the Department,

/s/
Paul J. Hibbard, Chairman

/s/
W. Robert Keating, Commissioner

/s/
Tim Woolf, Commissioner

cc: Service List

