The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

April 6, 2023

D.P.U. 21-120-D

Petition of The Berkshire Gas Company, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-121-D

Petition of Eversource Gas Company of Massachusetts, d/b/a Eversource Energy, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-122-D

Petition of Fitchburg Gas and Electric Light Company, d/b/a Unitil (Gas Division), pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-123-D

Petition of Liberty Utilities (New England Natural Gas Company) Corp., d/b/a Liberty Utilities, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-124-D

Petition of Boston Gas Company, d/b/a National Grid, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-125-D

Petition of NSTAR Gas Company, d/b/a Eversource Energy, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-126-D

Petition of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and Dukes County, acting together as the Cape Light Compact JPE, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-127-D

Petition of Fitchburg Gas and Electric Light Company, d/b/a Unitil (Electric Division), pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-128-E

Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

D.P.U. 21-129-E

Petition of NSTAR Electric Company, d/b/a Eversource Energy, pursuant to G.L. c. 25, § 21, for approval by the Department of Public Utilities of its Three-Year Energy Efficiency Plan for 2022 through 2024.

ORDER ON KEY PERFORMANCE INDICATORS AND ENERGY EFFICIENCY ADVISORY COUNCIL DATA REQUEST PROCESS

APPEARANCES: Emmett E. Lyne, Esq.
Joseph Dorfler, Esq.
Rich May, P.C.
176 Federal Street, 6th Floor
Boston, Massachusetts 02110
FOR: THE BERKSHIRE GAS COMPANY
Petitioner D.P.U. 21-120

John Habib, Esq.
Ashley Marton, Esq.
Keegan Werlin LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110
FOR: EVERSOURCE GAS COMPANY OF MASSACHUSETTS
Petitioner D.P.U. 21-121

Kevin Penders, Esq.
Keegan Werlin LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110
FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY (GAS DIVISION)
Petitioner D.P.U. 21-122

Danielle Winter, Esq.
Kerri Mahoney, Esq.
Keegan Werlin LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110
FOR: LIBERTY UTILITIES (NEW ENGLAND NATURAL GAS COMPANY) CORP.
Petitioner D.P.U. 21-123

Stacey Donnelly, Esq.
National Grid
170 Data Drive
Waltham, Massachusetts 02451
FOR: BOSTON GAS COMPANY
Petitioner D.P.U. 21-124; Intervenor D.P.U. 21-126

John Habib, Esq.
Ashley Marton, Esq.
Keegan Werlin LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110
FOR: NSTAR GAS COMPANY
Petitioner D.P.U. 21-125

Audrey Eidelman Kiernan, Esq.
KO Law, P.C.
1337 Massachusetts Avenue, Box 301
Arlington, Massachusetts 02476
FOR: CAPE LIGHT COMPACT JPE
Petitioner D.P.U. 21-126

Kevin Penders, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY (ELECTRIC DIVISION)
Petitioner D.P.U. 21-127

Stacey Donnelly, Esq.
National Grid
170 Data Drive
Waltham, Massachusetts 02451
FOR: MASSACHUSETTS ELECTRIC COMPANY
AND NANTUCKET ELECTRIC COMPANY
Petitioners D.P.U. 21-128

John Habib, Esq.
Ashley Marton, Esq.
Keegan Werlin LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110
FOR: NSTAR ELECTRIC COMPANY
Petitioner D.P.U. 21-129

Andrea Joy Campbell, Attorney General
Commonwealth of Massachusetts
By: Jo Ann Bodemer
Donald W. Boecke
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, Massachusetts 02108
Intervenor D.P.U. 21-120 through D.P.U. 21-129

Rachel Graham Evans, Esq.
Sarah McDaniel, Esq.
Massachusetts Department of Energy Resources
100 Cambridge Street, 9th Floor
Boston, Massachusetts 02114
FOR: MASSACHUSETTS DEPARTMENT OF
ENERGY RESOURCES
Intervenor D.P.U. 21-120 through D.P.U. 21-129

Amy E. Boyd, Esq.
Kyle Murray, Esq.
Acadia Center
198 Tremont Street, Suite 415
Boston, Massachusetts 02111
FOR: ACADIA CENTER
Intervenor D.P.U. 21-120 through D.P.U. 21-129

Caitlin Peale Sloan, Esq.
Conservation Law Foundation
62 Summer Street
Boston, Massachusetts 02110
FOR: CONSERVATION LAW FOUNDATION
Intervenor D.P.U. 21-120 through D.P.U. 21-129

Jerrold Oppenheim, Esq.
Democracy and Regulation
57 Middle Street
Gloucester, Massachusetts 01930
FOR: THE LOW-INCOME WEATHERIZATION AND FUEL ASSISTANCE PROGRAM NETWORK
-AND-
THE LOW-INCOME ENERGY AFFORDABILITY NETWORK
Intervenors D.P.U. 21-120 through D.P.U. 21-129

Paul W. Gromer, Esq.
Paul Gromer, LLC
85 Merrimac Street, 3rd Floor
Boston, Massachusetts 02114
FOR: NORTHEAST ENERGY EFFICIENCY COUNCIL
Intervenor D.P.U. 21-120 through D.P.U. 21-129

Jay Myers, Esq.
Locke Lord LLP
111 Huntington Avenue
Boston, Massachusetts 02199
FOR: MASSACHUSETTS ENERGY MARKETERS ASSOCIATION
Intervenor D.P.U. 21-120 through D.P.U. 21-129

Beren Argetsinger, Esq.
Keyes & Fox LLP
P.O. Box 166375
Burdett, New York 14818
FOR: SUNRUN INC.
Intervenor D.P.U. 21-126, D.P.U. 21-127, D.P.U. 21-128, D.P.U. 21-129

William H. Stevens, Jr., Esq.
P.O. Box 386
Winchester, Massachusetts 01890
FOR: NEW ENGLAND GEOTHERMAL PROFESSIONAL ASSOCIATION, INC.
Limited Participant D.P.U. 21-120 through D.P.U. 21-129

Courtney Feeley Karp, Esq.
Jonathan S. Klavens, Esq.
Klavens Law Group
20 Park Plaza, #402
Boston, Massachusetts 02116
FOR: NORTHEAST CLEAN ENERGY COUNCIL
Limited Participant D.P.U. 21-126, D.P.U. 21-128, D.P.U. 21-129

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I. INTRODUCTION AND PROCEDURAL HISTORY

On January 31, 2022, the Department of Public Utilities ("Department") issued a final Order approving the three-year energy efficiency plans for calendar years 2022 through 2024 ("Three-Year Plans") of The Berkshire Gas Company ("Berkshire Gas"), Eversource Gas Company of Massachusetts, d/b/a Eversource Energy ("EGMA"), Fitchburg Gas and Electric Light Company, d/b/a Unitil (Gas Division) ("Unitil (gas)"), Liberty Utilities (New England Natural Gas Company) Corp., d/b/a Liberty ("Liberty"), Boston Gas Company, d/b/a National Grid ("National Grid (gas)"), NSTAR Gas Company, d/b/a Eversource Energy ("NSTAR Gas"), the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and Dukes County, acting together as the Cape Light Compact JPE ("Compact"), Fitchburg Gas and Electric Light Company, d/b/a Unitil (Electric Division) ("Unitil (electric)"), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("National Grid (electric)"), and NSTAR Electric Company, d/b/a Eversource Energy ("NSTAR Electric") (collectively "Program Administrators"). 2022-2024 Three-Year Energy Efficiency Plans, D.P.U. 21-120 through D.P.U. 21-129 (2022) ("Three-Year Plans Order").[1] The Department approved the Three-Year

[1] The Department docketed these matters as follows: (1) D.P.U. 21-120 - Berkshire Gas; (2) D.P.U. 21-121 - EGMA; (3) D.P.U. 21-122 - Unitil (gas); (4) D.P.U. 21-123 - Liberty; (5) D.P.U. 21-124 - National Grid (gas); (6) D.P.U. 21-125 - NSTAR Gas; (7) D.P.U. 21-126 - Compact; (8) D.P.U. 21-127 - Unitil (electric); (9) D.P.U. 21-128 - National Grid (electric); and (10) D.P.U. 21-129 - NSTAR Electric.

Plans subject to certain directives, disallowances, and program modifications. Three-Year Plans Order, at 327.

Pursuant to Three-Year Plans Order, at 327, the Program Administrators were required to submit a number of compliance filings incorporating all directives and required modifications to the Three-Year Plans.[2] In particular, in Three-Year Plans Order, at 149 n.105, the Department directed the Program Administrators to provide, as a compliance filing, a complete list of proposed reporting obligations to the Energy Efficiency Advisory Council ("Council") (i.e., "Key Performance Indicators") for the Three-Year Plan term.[3] On June 1, 2022, the Program Administrators submitted the proposed Key Performance Indicators for Department review (Addendum, Att. 5 (Rev.)). In addition, in Three-Year Plans Order, at 152, the Department deferred consideration of the Program Administrators' late-filed proposal for how Council data requests ("Council Data Request Process") would be addressed during the Three-Year Plan

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2 On December 23, 2022, the Department issued an Order approving, with certain identified exceptions, the Program Administrators' compliance filings. 2022-2024 Three-Year Energy Efficiency Plans, D.P.U. 21-120-C through D.P.U. 21-127-C/ D.P.U. 21-128-D through D.P.U. 21-129-D (2022). For a detailed summary of the Program Administrators' approved compliance filings and identified exceptions thereto, see D.P.U. 21-120-C through D.P.U. 21-127-C/D.P.U. 21-128-D through D.P.U. 21-129-D at 2-4 & n.8.

3 As discussed further below, the Key Performance Indicators are designed to measure progress towards the achievement of the Three-Year Plan goals. Three-Year Plans Order, at 150, citing 2019 Annual Reports, D.P.U. 20-50, App. 6, at 1. The proposed Key Performance Indicators were not included in the Program Administrators' April 1, 2022 compliance filing, as required by Three-Year Plans Order, at 327. Accordingly, the Department directed the Program Administrators to file this missing information on or before June 1, 2022. D.P.U. 21-120 through D.P.U. 21-129, Hearing Officer Memorandum at 4 (May 10, 2022).

term.[4] In this Order, the Department addresses the Program Administrator's proposed: (1) Key Performance Indicators; and (2) Council Data Request Process.

II. BACKGROUND

In implementing the three-year energy efficiency plans, the Program Administrators are required to minimize administrative costs to the fullest extent practicable. G.L. c. 25, §§ 19(a), (b); D.P.U. 20-150-A, Energy Efficiency Guidelines ("Guidelines") §§ 3.3.5, 3.3.6. In 2016, in response to concerns about the growing level of administrative costs, the Department directed the Program Administrators to engage a consultant to study best practices to minimize such costs. 2016-2018 Three-Year Energy Efficiency Plans, D.P.U. 15-160 through D.P.U. 15-169, at 42 (2016) ("2016-2018 Three-Year Plans Order"). The Program Administrators submitted the required administrative cost study report ("Best Practices Report")[5] to the Department as part of their 2019-2021 Three-Year Energy Efficiency Plans.

In 2019-2021 Three-Year Energy Efficiency Plans, D.P.U. 18-110 through D.P.U. 18-119, at 50 (2021) ("2019-2021 Three-Year Plans Order"), the Department reiterated its significant concerns about the overall level of administrative costs and directed the Program

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[4] In Energy Efficiency Guidelines, D.P.U. 20-150-A at 12 n.9 (2021), the Department directed the Program Administrators to include in the Three-Year Plans a formal, agreed-upon process for how Council data requests would be addressed during the Three-Year Plan term. See also D.P.U. 21-120 through D.P.U. 21-129, Hearing Officer Procedural Memorandum at 2-3 (October 5, 2021). The Program Administrators did not submit the final Council Data Request Process proposal for Department review until January 20, 2022 (Exh. DPU-Comm 10-13 (Rev.)).

[5] Best Practices for Minimizing Program Planning and Administrative Cost for Massachusetts Utilities and Energy Efficiency Service Providers (October 25, 2018) filed in D.P.U. 18-110 through D.P.U. 18-119 as Statewide Plan, Exh. 1, App. P.

Administrators to adopt all recommendations contained in the Best Practices Report to minimize such costs.[6] As required by the Department, the Program Administrators provided an explanation in the 2019 Annual Reports of their progress towards implementing the recommendations of the Best Practices Report. Three-Year Plans Order, at 150, citing 2019 Annual Reports, D.P.U. 20-50, App. 6, at 1-2.

An essential recommendation of the Best Practices Report is for the Program Administrators to formalize and streamline the process of responding to data requests from the Council (Best Practices Report at 18). To this end, the Program Administrators first adopted the process of reporting on formalized Key Performance Indicators for the 2019-2021 Three-Year Plan term. Three-Year Plans Order, at 150, citing 2019 Annual Reports, D.P.U. 20-50, App. 6, at 1-2. Nevertheless, the Program Administrators reported that they continued to receive regular data requests from Council stakeholders and acknowledged that additional work was necessary to understand the purpose of these requests and minimize the costs to respond thereto. Three-Year Plans Order, at 150, citing 2019 Annual Reports, D.P.U. 20-50, App. 6, at 1-2.

In D.P.U. 20-150-A at 12 n.9, the Department again directed the Program Administrators to implement the recommendations of the Best Practices Report. Specifically, the Department directed the Program Administrators to work with the Council to develop a formal process to address Council data requests in a way that balances the reporting of beneficial data/information and the minimization of administrative costs. Although the Program Administrators indicated

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6 The Department directed each Program Administrator, as part of its 2019 Annual Report, to explain how it adopted the recommendations to minimize administrative costs. 2019-2021 Three-Year Plans Order, at 50.

that they had worked with the Council to establish agreed-upon Key Performance Indicators for the 2022-2024 Three-Year Plan term, the Key Performance Indicators were not included in the Three-Year Plans. Three-Year Plans Order, at 149 n.105. Accordingly, as noted above, the Department directed the Program Administrators to provide a complete list of Key Performance Indicators for the 2022-2024 Three-Year Plan Term with their required compliance filings. Three-Year Plans Order, at 149 n.105. The Program Administrators submitted the proposed Key Performance Indicators on June 1, 2022 (Addendum, Att. 5 (Rev.)) (see Section III.A, below).

In addition, the Department directed the Program Administrators to include testimony in the Three-Year Plan filings describing a formal, agreed-upon process for how Council data requests will be made and responded to during the 2022-2024 Three-Year Plan term. D.P.U. 20-150-A at 12 n.9; D.P.U. 21-120 through D.P.U. 21-129, Hearing Officer Procedural Memorandum at 2-3 (October 5, 2021). Despite multiple directives, the Program Administrators did not include the proposed Council Data Request Process in their Three-Year Plans. Instead, in response to an information request issued by the Department, the Program Administrators submitted a draft proposal that had not yet been reviewed by the Council. Three-Year Plans Order, at 151, citing Exh. DPU-Comm 4-1. On January 20, 2022, more than five weeks after the close of the evidentiary record and only eleven days before the Department was required by statute to issue the Three-Year Plans Order, the Program Administrators submitted the Council Data Request Process proposal for review (see Section III.B, below). Three-Year Plans Order, at 151, citing Exh. DPU-Comm 10-13 (Rev.).

Given the tardiness of the filing and the late stage of the proceeding, the Department was unable to review the Program Administrators' Council Data Request Proposal at that time and

deferred our consideration to the instant Order. Three-Year Plans Order, at 152. Significantly, the Department conditioned its finding that the Three-Year Plans were designed to minimize administrative costs to the fullest extent practicable on its future review of the adequacy of the Council Data Request Process. Three-Year Plans Order, at 152. Finally, with limited exceptions, the Department found that the Program Administrators would not be allowed to recover administrative costs related to responding to Council data requests and most Key Performance Indicators until such time as the Department has reviewed and approved the Council Data Request Process proposal. Three-Year Plans Order, at 152 & n.106.

III. SUMMARY OF PROPOSALS

A. Key Performance Indicators

On June 1, 2022, the Program Administrators filed reporting templates for proposed Key Performance Indicators for the 2022-2024 Three-Year Plan term that they maintain have been mutually agreed upon with the Council (Addendum, Att. 5 (Rev.)). The Key Performance Indicators are included as part of the quarterly reports they provide to the Council pursuant to G.L. c. 25, § 22(d). With the exception of two Key Performance Indicators that were discontinued and two new income-eligible Key Performance Indicators, the proposed Key Performance Indicators are the same as those used by the Program Administrators for the 2019-2021 Three-Year Plan term (Addendum, Att. 5 (Rev.)).

The Program Administrators propose to report quarterly Key Performance Indicators in the following areas: (1) installation conversion rate for air sealing, insulation, duct sealing, and duct insulation from residential home energy assessments; (2) quantities for all measures in the Residential and Income-Eligible sectors; (3) heating equipment data; (4) ratio of projects that

include lighting controls to the total; (5) electric and gas net lifetime savings from custom HVAC projects and number of projects by Program Administrator; (6) for commercial and industrial ("C&I") turnkey offerings,[7] total savings and net lifetime MMBtu by measure;[8] and (7) for the Income-Eligible Sector, incentive amounts, units served, and net lifetime MMBtu savings (Addendum, Att. 5 (Rev.)).

In addition, the Program Administrators propose to report bi-annual Key Performance Indicators in the following areas: (1) active demand participation and savings by Program Administrator, by technology type for direct load control and targeted/daily dispatch; (2) electrification quantities; (3) number of approved applicants for the moderate-income offering; (4) number of participants (excluding upstream and behavior) by zip code, broken out by: (a) Residential Sector offerings, subtracting participants in the moderate-income offering; (b) moderate-income offering; and (c) Income-Eligible Sector offerings; (5) small business savings, budgets, and participation across all C&I offerings; (6) streetlight conversions; and (7) Income-Eligible Sector savings, incentives, and participants by measure type (i.e., weatherization, heating, or other) by: (a) Community Action Agency territory; and (b) number

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7 The Guidelines do not define the terms "offering" and "initiative," and the Program Administrators use these terms interchangeably in the proposed Key Performance Indicators to refer to components of a core initiative. For consistency, the Department will use the term "offering" in this Order and encourages the Program Administrators to also use this term going forward.

8 The title of the template incorrectly identifies this Key Performance Indicator as "electric;" however, the Program Administrators propose to apply this Key Performance Indicator to both gas and electric (Addendum, Att. 5 (Rev.)).

of Public Housing Authority units for the preceding year and all years total (Addendum, Att. 5 (Rev.)).[9]

B. Council Data Review Process

On January 20, 2022, the Program Administrators filed the proposed Council Data Request Process for Department review (Exh. DPU-Comm 10-13 (Rev.)). The Program Administrators propose to apply the Council Data Request Process to "material" data requests that require: (1) technical upgrades to software systems; or (2) more than four hours of Program Administrator staff time (Exh. DPU-Comm 10-13 (Rev.) at 3).

Pursuant to the proposed Council Data Request Process, all data requests must be submitted to the Council Chair (Exh. DPU-Comm 10-13 (Rev.) at 1). Each data request must include an explanation of the purpose of the request along with supporting information to clarify its purpose (Exh. DPU-Comm 10-13 (Rev.) at 1).

Upon receipt of a data request, the Program Administrators propose that the Council Chair (in coordination with the Council's consultants, the requester, and/or the Council's Executive Committee) will assess the "value and usefulness" of the requested data based on eight factors (Exh. DPU-Comm 10-13 (Rev.) at 1-2). The proposed factors are whether the requested data will be valuable or useful to: (1) monitor progress towards Three-Year Plan goals and priorities; (2) assess whether ratepayer funds are being used effectively and cost-efficiently;

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[9] As noted above, the Program Administrators propose to discontinue reporting two Key Performance Indicators used during the 2019-2021 Three-Year Plan term (i.e., 2019-2021 bi-annual Key Performance Indicator Nos. 2 and 5); however, they did not renumber the remaining bi-annual Key Performance Indicators to allow for comparisons across three-year plan terms (Addendum, Att. 5 (Rev.)).

(3) assess alignment between the Three-Year Plans as implemented and the approved Three-Year Plans or Term Sheet commitments; (4) assess progress towards the Council's established and annual priorities; (5) provide transparency to the public and program participants; (6) respond to and assess public comment and stakeholder questions or concerns; (7) assess program participation and equitable distribution of investments and benefits; and (8) address questions or issues identified by working groups or sub-committees of the Council that are relevant to the Three-Year Plans (Exh. DPU-Comm 10-13 (Rev.) at 1-2).

Following this assessment, Program Administrators propose to review the request with the Council Chair in order to assess whether the value of the data is appropriate given the cost to ratepayers respond to the request (Exh. DPU-Comm 10-13 (Rev.) at 2). The cost consideration will include the time to obtain and prepare the data, whether the costs to provide the data are reasonable, and whether there are any less costly alternatives (Exh. DPU-Comm 10-13 (Rev.) at 2).

Pursuant to the proposed Council Data Request Process, if the Council Chair and the Program Administrators agree that the value and cost are appropriately balanced, then the Program Administrators will provide the requested data (Exh. DPU-Comm 10-13 (Rev.) at 2). Conversely, if the Council Chair and the Program Administrators agree that the value and cost are not appropriately balanced, the Program Administrators will not respond to the data request (Exh. DPU-Comm 10-13 (Rev.) at 2). Finally, if the Council Chair and the Program Administrators cannot reach agreement regarding the balance of value and cost, the Council Chair may request a full Council vote on the request (Exh. DPU-Comm 10-13 (Rev.) at 2). The

Program Administrators may appeal any Council value and cost determination to the Department (Exh. DPU-Comm 10-13 (Rev.) at 2).

IV. ANALYSIS AND FINDINGS

A. Introduction

The ratepayer bill impacts associated with the current Three-Year Plans are both significant and material. Three-Year Plans Order, at 220, 225. In recognition of this extraordinary finding, the Department took a number of steps in the Three-Year Plans Order to mitigate the effect of these bill impacts on ratepayers. Of particular relevance here, the Department directed the Program Administrators to take affirmative steps to minimize a growing level of administrative costs and determined not to allow recovery of certain costs until the Program Administrators received approval of a proposal to address costs associated with Council data requests and reporting. Three-Year Plans Order, at 224.[10] As recognized in the Best Practices Report, "every data request, every meeting, every committee, every point of contact incurs additional [administrative] costs" (Best Practices Report at 19).[11]

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[10] The Department's treatment of administrative costs in the current Three-Year Plans Order builds upon our rising disquiet about the issue in the two prior Three-Year Plan Orders. See, e.g., 2019 2021 Three Year Plans Order, at 50; 2016-2018 Three-Year Plans Order, at 42.

[11] The Program Administrators incur administrative costs associated with the Council process outside of responding to ad hoc data requests and periodic reporting. We do not address other these administrative costs in this Order. Nonetheless, as noted in the Best Practices Report, it may be necessary to periodically examine the Council process to encourage more a streamlined and strategic engagement between the Council and Program Administrators (see Best Practices Report at 19).

Regular Council reporting (including Key Performance Indicators) and the process of responding to ad hoc Council data requests requires the expenditure of significant administrative costs by the Program Administrators. As noted above, in implementing the Three-Year Plans, the Program Administrators must minimize administrative costs to the fullest extent practicable. G.L. c. 25, §§ 19(a), (b); Guidelines §§ 3.3.5, 3.3.6. Accordingly, ensuring that data requests are high value and worthy of the administrative costs to respond must be a high priority for all Council stakeholders (see Best Practices Report at 18).

As a means to minimize administrative costs, the Best Practices Report recommends that the Program Administrators adopt a formal process for responding to Council data requests with clear guidelines as to what information will be provided (Best Practices Report at 18). The process should not overly impinge on the Council's ability to receive relevant information but must ensure stakeholders appropriately distinguish non-critical, irrelevant, and/or excessive information from valuable and essential data (Best Practices Report at 18). The establishment of this process will help ensure that the Program Administrators minimize administrative costs to the fullest extent practicable as required by G.L. c. 25, §§ 19(a), (b). In the sections below, the Department considers the Program Administrators' proposals regarding Key Performance Indicators and the Council Data Request process to determine whether they are reasonably designed to balance the reporting of valuable data and the minimization of administrative costs. See D.P.U. 20-150-A at 12 n.9.

B. Key Performance Indicators

The Department has reviewed the proposed Key Performance Indicators filed on June 1, 2022 by the Program Administrators for the 2022-2024 Three-Year Plan term

(Addendum, Att. 5 (Rev.)) (Exh. DPU-Comm 10-13 (Rev.)). The Department finds that reporting on the proposed Key Performance Indicators will create reasonable, regular reporting obligations for the Program Administrators that are designed to reduce ad hoc Council data requests and minimize administrative costs. Accordingly, the Department approves the Key Performance Indicators as proposed.

Reporting on Key Performance Indicators is an essential part of the Program Administrators' overall strategy to minimize administrative costs to the fullest extent practicable as required by G.L. c. 25, §§ 19(a), (b) and, therefore, the Department has directed the Program Administrators to include all proposed Key Performance Indicators in each future Three-Year Plan. Three-Year Plans Order, at 149. As discussed in Section IV.C, below, the Department expects that the process of reporting on approved Key Performance Indicators will significantly reduce the number of ad hoc Council data requests, thereby minimizing administrative costs. As part of the 2022-2024 Term Report, the Program Administrators must include a full analysis of the Key Performance Indicators for the current Three-Year Plan term including the value of the Key Performance Indicators and how they have operated to minimize administrative costs. The

Program Administrators also shall submit a preliminary version of this analysis to support any proposed Key Performance Indicators for the 2025-2027 Three-Year Plan term.[12,13]

C. Council Data Request Process

The Department has reviewed the Council Data Request Process proposal submitted by the Program Administrators (Exh. DPU-Comm 10-13 (Rev.)). The Department finds that many aspects of the Program Administrators proposal are reasonably designed to minimize the administrative costs associated with responding to ad hoc Council data requests[14] However, as discussed below, certain changes to the proposed process are required in order to distinguish non-critical, irrelevant, and/or excessive information from valuable and essential data.

In the first step in the proposed process, the Council Chair will screen all requests to determine the informational value of the data to the Council (Exh. DPU-Comm 10-13 (Rev.) at 1-2). Next, the Council Chair and the Program Administrators will review the data

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12 The preliminary analysis should address, among other things, whether the Department-approved Key Performance Indicators remain reasonably designed to minimize administrative costs to the fullest extent practicable as required by G.L. c. 25, §§ 19(a), (b) or whether individual Key Performance Indicators should be modified or eliminated entirely for the 2025-2027 Three-Year Plan term.

13 The Department will conduct a review of the prudence of energy efficiency expenditures (including costs associated with the Key Performance Indicators) as part of its investigation of the 2022-2024 Term Reports. However, the 2022-2024 Term Reports will not be filed with the Department until August 2025, after the Department is required by statute to issue an Order addressing the 2025-2027 Three-Year Plans in February 2025. St. 2022, c. 179, § 28.

14 For example, the proposed Council Data Request Process appropriately provides a single point of contact to minimize multiple communications. In addition, each data request must be accompanied by supporting information that will require the requester to clearly understand and articulate the purpose of the request (Exh. DPU Comm 10-13 (Rev.) at 2).

requests to ensure that the administrative cost to produce the data is justified by its informational value (Exh. DPU-Comm 10-13 (Rev.) at 2). Although the Department supports a process that appropriately screens Council data requests for informational value and costs, we find that the specific screening criteria identified in the proposal to assess informational value are overly broad and may enable data requests that go beyond the scope of information required for the Council, in its advisory role, to monitor the effectiveness of the Department-approved Three-Year Plans (Exh. DPU-Comm 10-13 (Rev.) at 1-2).[15]

The criteria for assessing the informational value of any Council data request must be more narrowly focused on whether the data will help the Council understand the Program Administrators' progress toward implementing the Department-approved Three-Year Plans.[16] Screening criteria that allow or encourage data requests beyond the scope of the Council's legislatively established advisory role will not result in a reasonable and prudent expenditure of ratepayer funds, regardless of the magnitude of the costs. Further, overly broad criteria that allow the production of non-critical or irrelevant information will not minimize administrative costs to the fullest extent practicable as required by G.L. c. 25, §§ 19(a), (b). Accordingly, as discussed below, the Program Administrators shall modify the Council Data Request Process to

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15 As proposed, the Council Chair's review of data requests "will include, but not be limited to" consideration of the specified criteria (emphasis added) (Exh. DPU-Comm 10-13 (Rev.) at 1).

16 During plan development, the Council works with the Program Administrators to ensure that the Commonwealth's efficiency and climate goals are appropriately reflected in the Three-Year Plans. G.L. c. 25, § 22(b). During plan implementation, the Council's responsibility is to monitor the Program Administrators' progress towards achieving the goals set forth in the Department-approved plans. G.L. c. 25, § 22(d).

focus the screening criteria more narrowly on data that will help the Council understand the Program Administrators' progress toward implementing the Department-approved Three-Year Plans.

The first and third proposed screening criteria (i.e., "Monitor progress toward [Three-Year Plan] goals and priorities" and "Assess alignment between [Three-Year] Plan implementation, the approved Three-Year Plans and relevant Term Sheet commitments") are similar in that they appear designed to screen for data that will help the Council understand the Program Administrators' progress toward implementing the Three-Year Plans (Exh. DPU-Comm 10-13 (Rev.) at 2). The fourth proposed screening criteria (i.e., "Assess progress towards the Council's established and annual priorities") is designed to screen for data that will help measure progress towards unspecified Council "priorities." The Department finds that these three proposed screening criteria are overly broad as they fail to consistently specify that all referenced "goals," "priorities" or "commitments" must be part of a Department-approved Three-Year Plan.[17] It would not be appropriate to use ratepayer-provided energy efficiency funds to explore goals, priorities or commitments that are not incorporated as part of a Department-approved

[17] A "Term Sheet" typically includes a number of "key terms" agreed to by the Program Administrators and certain Council stakeholders to be included in the final Statewide Plan. However, Term Sheets also may describe a number of approaches, goals, and policies that are not included in the Statewide Plan. Three-Year Plans Order, at 11 & n.15. In the Three-Year Plans Order, at 136 n.100, the Department clarified that a Term Sheet is "not part of the Statewide Plan or a Program Administrator's Three-Year Plan." The Department found that, to the extent the Program Administrators intend to include Term Sheet commitments as part of their proposed Three-Year Plans, "such elements must be fully set forth in the Three-Year Plan[s] (i.e., Statewide [Plan]) and supported by record evidence in order to be considered by the Department." Three-Year Plans Order, at 136 n.100.

Three-Year Plan. Accordingly, the Program Administrators shall consolidate and modify the first, third, and fourth proposed screening criteria to clarify that any referenced goals, priorities or commitments must be part of a Department-approved Three-Year Plan.

Similarly, the Department finds that the seventh proposed screening criteria (i.e., "Assess program participation and equitable distribution of investments and benefits") may result in overly broad requests and be inconsistent with statutory requirements (Exh. DPU-Comm 10-13 (Rev.) at 2). Pursuant to the Energy Act of 2018,[18] the Program Administrators must design programs to achieve equitable access and reduce disparities in program uptake. G.L. c. 25, § 21(b)(2)(xiii). The Department found that the 2022-2024 Three-Year Plans, as modified by the Department, are designed to improve equitable access to energy efficiency programs by reducing barriers to participation for customers that historically have yet to participate in these programs. Three-Year Plans Order, at 15. In order to reach that finding, the Department determined that the Program Administrators' proposals did not address disparities in historic participation rates. The Department directed the Program Administrators to implement several changes to the proposed targeted efforts to increase participation, develop a strategic plan for serving renters, and deliver programs in an equitable manner. Three-Year Plans Order, at 99-101. In addition, the Department reviewed the appropriateness of collecting and tracking certain data for the purpose of evaluating program implementation. Three-Year Plans Order, at 101-102. Council data requests should be designed to assess the implementation of the programs consistent with these determinations. Accordingly, the Program Administrators shall modify the seventh

[18] An Act to Advance Clean Energy, St. 2018, c. 227.

proposed screening criteria to clarify that they will consider the value of the data to assess whether, consistent with the Department's approval of the Three-Year Plans, the programs are implemented in manner to promote equitable access and reduce or eliminate disparities in program uptake.[19]

The second proposed screening criteria would allow data requests designed to assess "whether ratepayer funds are being used effectively and cost-efficiently" (Exh. DPU-Comm 10-13 (Rev.) at 2). The statutory responsibility for making determinations regarding whether energy efficiency costs have been prudently incurred (including whether ratepayer funds have been used cost-effectively and cost-efficiently) rests solely with the Department. 2019-2021 Three-Year Plans Order, at 72-74; see G.L. c. 25, § 19(a); Guidelines § 3.2.2.2.[20] Therefore, Council data requests assessing the prudence and cost-efficiency of program costs are not an appropriate use of ratepayer funds. However, the Council does have a statutory role to recommend an appropriate budget for the Three-Year Plans. G.L. c. 25, §§ 21(b)(2)(vi), 22(b). Therefore, certain data requests may be necessary for the Council to make assessments regarding

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19 Given the scope of the approved Key Performance Indicators, the Department fully expects that most inquires related to program participation and equitable access to energy efficiency programs will be addressed by data that are already reported through Key Performance Indicators or otherwise. As discussed below, the Council must use available information to resolve inquiries before asking the Program Administrators to produce additional information.

20 The Program Administrators and the Council have an obligation to consider both cost-effectiveness and cost-efficiency in program design. 2019-2021 Three Year Plans Order, at 73, 98, 128. The second proposed screening criteria, however, addresses an assessment of the cost-effectiveness and cost-efficiency of actual expenditures related to the Program Administrators' implementation of the Department-approved Three-Year Plans. This analysis rests solely with the Department.

appropriate budget levels. Accordingly, the Program Administrators shall clarify that the second proposed screening criteria is limited to helping the Council assess the appropriate budget level for future Three-Year Plans.

Finally, the Department finds that the fifth, sixth, and eighth proposed screening criteria (i.e., "Provide transparency to the public and program participants," "Respond to and assess public comment and stakeholder questions or concerns," and "Address questions or issues identified by working groups or sub-committees of the Council that are relevant to the energy efficiency plans") are not appropriate as they focus on the entities seeking the data as opposed to the actual data being sought (Exh. DPU-Comm 10-13 (Rev.) at 2). The source of the data request (e.g., a working group or sub-committee of the Council, Council stakeholder, and/or member of the public) should have no bearing on informational value or usefulness of a data request. Accordingly, the Program Administrators shall amend the Council Data Request Process to remove the fifth, sixth, and eighth proposed screening criteria.

As described in Section III.A, above, a significant amount of data are reported through the Key Performance Indicators, as well as through monthly data dashboards, and quarterly reports, Annual Reports, and Term Reports (Addendum, Att. 5 (Rev.)). These data are very comprehensive and measure-level specific. The Council Data Request Process must be implemented as a complement to but not a substitute for the regular reporting on Key Performance Indicators discussed in Section IV.C, above.[21] If the entire process is implemented

[21] If the Council is making relevant inquiries within the scope of its statutory authority that cannot be answered through the regular reporting on approved Key Performance Indicators, then the Key Performance Indicators may need to be revisited.

correctly, there should be far fewer ad hoc Council data requests going forward, allowing the Program Administrators to minimize administrative costs to the fullest extent practicable while still permitting the Council to effectively perform its advisory role.

As part of the Council Data Request Process proposal, the Program Administrators state that they will consider alternative, less costly ways of providing requested information (Exh. DPU-Comm 10-13 (Rev.) at 2). The proposal does not, however, explicitly require stakeholders to first use the myriad of available information (e.g., Key Performance Indicators, quarterly reports to the Council, data tables, monthly data dashboards, Annual Reports, Term Reports, etc.)[22] to resolve inquiries before requesting any new information, presentations, or analyses from the Program Administrators as suggested by the Best Practices Report at 18. In order to ensure that administrative costs are minimized to the fullest extent practicable, the Program Administrators shall amend the Council Data Request Process to explicitly identify why an inquiry cannot be adequately addressed using existing information before consideration of any new information, presentations, or analyses.

The proposed Council Data Request Process provides for an appeal to the Department in the event that the Program Administrators and the Council cannot reach agreement on the value and usefulness of a data request in light of the costs to respond (Exh. DPU-Comm 10-13 (Rev.) at 2). Where application of the process is new, we anticipate that some guidance from the

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[22] In several instances, templates for reporting this information were developed through comprehensive stakeholder processes. See, e.g., Energy Efficiency Guidelines, D.P.U. 11-120-B (2016) (Term Reports); Energy Efficiency Guidelines, D.P.U. 08-50-C (2011) (Annual Reports); Energy Efficiency Guidelines, D.P.U. 08-50-A (2009) (Energy Efficiency Data Tables).

Department may be necessary to clarify the appropriate scope of certain data requests where the Council and the Program Administrators cannot agree. However, depending on how frequently it is invoked, Program Administrator appeals of Council data requests to the Department could meaningfully add to the administrative cost burden for ratepayers, contrary to mandate to minimize administrative costs to the fullest extent practicable under G.L. c. 25, §§ 19(a), (b). Accordingly, frequent appeals to the Department may cause us to reconsider our findings regarding the reasonableness of the proposed Council Data Request Process.

Finally, the Program Administrators propose to apply the Council Data Request Process only to data requests that require more than four hours of Program Administrator time to respond (Exh. DPU-Comm 10-13 (Rev.) at 3).[23] However, responding to Council data requests that require less than four hours of Program Administrator time could nonetheless result in a substantial expenditure of administrative costs. Accordingly, the Program Administrators shall apply the Council Data Request Process as modified herein to all Council data requests, regardless of estimated response time.

With all modifications required above, the Department finds the proposed Council Data Request Process is reasonably designed to enable Council stakeholders to distinguish essential

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[23] In addition, the Program Administrators propose to apply the Council Data Request Process to requests that require technical upgrades to software systems (Exh. DPU-Comm 10-13 (Rev.) at 3). The Department finds that this is a reasonable screening criteria for application of the Council Data Request Process. We do not, however, anticipate that any Council data requests requiring technical upgrades to the Program Administrators' software systems will be deemed a reasonable use of ratepayer funds after screening through the Council Data Request Process. Instead, we expect that such requests will be better addressed through the development of Key Performance Indicators in a future Three-Year Plan.

data from irrelevant, non-critical, and/or excessive information and minimize the administrative costs associated with responding to Council data requests. Accordingly, the Department approves the proposed Council Data Request Process as modified herein. The Program Administrators shall continue to track all costs related to Council data requests and include them in their Annual Reports and Term Report. See Three Year Plans Order, at 151-152.[24,25]

D. Conclusion

As the Department has recognized with increasing concern in the last several Three-Year Plan Orders, administrative costs are high and the ratepayer burden from these costs is significant. Three-Year Plans Order, at 224; 2019 2021 Three Year Plans Order, at 50; 2016-2018 Three-Year Plans Order, at 42. The Council data reporting process is one place where the Program Administrators can and should minimize administrative costs.

Certain information is required for the Council, in its advisory capacity, to evaluate Program Administrator performance in implementing the Department-approved Three-Year Plans. However, when making data requests to the Program Administrators, all Council

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24 As part of this required reporting, the Program Administrators should maintain a log of each Council data request that includes: (1) a description of the screening and other protocols of the Council Data Request Process were applied to the request; (2) the results of the process; and (3) associated costs.

25 The Department directed the Program Administrators, in each future Three-Year Plan filing and Term Report, to file testimony explaining the drivers of administrative costs and specific actions taken to minimize those costs. Three Year Plans Order, at 152. Further, the Department found that the Program Administrators, in the 2022-2024 Term Reports, must demonstrate the specific actions they undertook during the Three-Year Plan term to minimize administrative costs; a demonstration that the Program Administrator underspent its administrative costs budget will not be sufficient to meet this burden. Three-Year Plans Order, at 152-153.

stakeholders must be fully cognizant of the costs associated with each request. In addition, Council stakeholders must carefully consider the purpose of each data request to ensure it is within the scope of the Council's review and, if so, whether the purpose can be achieved using existing information.

Above, the Department found the Key Performance Indicators and Council Data Request Process, as modified herein, are reasonably designed to meet the Compact's data needs, while ensuring that administrative costs are minimized to the fullest extent practicable under G.L. c. 25, §§ 19(a), (b). The Program Administrators shall work with the Council to implement these and other efforts to minimize administrative costs to the fullest extent practicable during this Three-Year Plan term. Three-Year Plans Order, at 148-150.

V. ORDER

Accordingly, after consideration, it is:

ORDERED: That the Key Performance Indicators filed with the Department of Public Utilities on June 1, 2022, by The Berkshire Gas Company, Eversource Gas Company of Massachusetts, d/b/a Eversource Energy, Fitchburg Gas and Electric Light Company, d/b/a Unitil (Gas Division), Liberty Utilities (New England Natural Gas Company) Corp., d/b/a Liberty, Boston Gas Company, d/b/a National Grid, NSTAR Gas Company, d/b/a Eversource Energy, the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and Dukes County, acting together as the Cape Light Compact JPE, Fitchburg Gas and Electric Light Company, d/b/a Unitil (Electric Division), Massachusetts Electric Company and Nantucket Electric Company,

each d/b/a National Grid, and NSTAR Electric Company, d/b/a Eversource Energy, are APPROVED for 2022-2024, subject to all directives contained herein; and it is

FURTHER ORDERED: That the Council Data Request Process filed with the Department of Public Utilities on January 20, 2022, by The Berkshire Gas Company, Eversource Gas Company of Massachusetts, d/b/a Eversource Energy, Fitchburg Gas and Electric Light Company, d/b/a Unitil (Gas Division), Liberty Utilities (New England Natural Gas Company) Corp., d/b/a Liberty, Boston Gas Company, d/b/a National Grid, NSTAR Gas Company, d/b/a Eversource Energy, the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and Dukes County, acting together as the Cape Light Compact JPE, Fitchburg Gas and Electric Light Company, d/b/a Unitil (Electric Division), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and NSTAR Electric Company, d/b/a Eversource Energy is APPROVED as modified herein; and it is

FURTHER ORDERED: That The Berkshire Gas Company, Eversource Gas Company of Massachusetts, d/b/a Eversource Energy, Fitchburg Gas and Electric Light Company, d/b/a Unitil (Gas Division), Liberty Utilities (New England Natural Gas Company) Corp., d/b/a Liberty, Boston Gas Company, d/b/a National Grid, NSTAR Gas Company, d/b/a Eversource Energy, the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and Dukes County, acting together as the Cape Light Compact JPE, Fitchburg Gas and Electric Light Company, d/b/a Unitil (Electric Division), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and NSTAR Electric Company, d/b/a Eversource Energy shall comply with all other directives contained in this Order.

By Order of the Department,

Cecile M. Fraser, Acting Chair

Robert E. Hayden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.