

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF PUBLIC UTILITIES**

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	)	
Boston Gas Company and Colonial	)	
Gas Company d/b/a National Grid,	)	D.P.U. 10-140, 10-141,
NSTAR Gas and Electric Company,	)	10-142, 10-143, 10-144,
Fitchburg Gas and Electric Light	)	10-145, 10-146, 10-147,
Company, d/b/a Unitil, New England	)	10-148, 10-149, 10-150
Gas Company, Bay State Gas Company	)	
d/b/a Columbia Gas of Massachusetts,	)	
The Berkshire Gas Company, The Cape	)	
Light Compact, Massachusetts Electric	)	
Company and Nantucket Electric Company	)	
d/b/a National Grid, Western Massachusetts	)	
Electric Company	)	

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**MEMORANDUM OF AGREEMENT**

**WHEREAS**, this Memorandum of Agreement (“Memorandum”) is entered into by and among Bay State Gas Company, d/b/a Columbia Gas of Massachusetts, The Berkshire Gas Company,, Boston Gas Company and Colonial Gas Company, each d/b/a National Grid, the Cape Light Compact, Fitchburg Gas & Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, New England Gas Company, NSTAR Electric Company, NSTAR Gas Company and Western Massachusetts Electric Company (together, the “Program Administrators”), and the Department of Energy Resources (the “DOER”), the Office of the Attorney General (“Attorney General”), the Low-Income Weatherization and Fuel Assistance Network, Massachusetts Energy Directors Association, the Low-Income Energy Affordability Network (the prior three entities, “LEAN”) and Environment Northeast (“ENE”) (collectively, the “Settling Parties”) with regard to the respective

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requests for Mid-Term Modifications (“MTM”) to each Program Administrator’s Three-Year Energy Efficiency (“EE”) Plan, filed on or about October 29, 2010.

**WHEREAS**, the Program Administrators filed their proposals on October 29, 2010, with the Department of Public Utilities (the “Department”) seeking approval for MTMs associated with their Department-approved Three-Year Energy Efficiency Plans, approved in D.P.U. 09-116 through D.P.U. 09-127 (individually a “Plan”, together, the “Plans”);

**WHEREAS**, the DOER, the Attorney General, LEAN and ENE are each full parties to the proceeding initiated by the Department to review the Program Administrators’ proposals;

**WHEREAS**, the Consultants to the Energy Efficiency Advisory Council (“EEAC”), of which the DOER is Chair, prepared a Consultant Report to the EEAC (the “Consultant Report”) reviewing the PAs’ respective 2011 MTM filings, dated December 9, 2010;

**WHEREAS**, the Consultant Report was submitted to the Department in these dockets, along with an EEAC Resolution dated December 14, 2010, regarding each Program Administrator’s respective 2011 MTM filings;

**WHEREAS**, the Settling Parties and the EEAC Consultants, have engaged in negotiations with regard to the matters specified in the articles of this Memorandum;

**WHEREAS**, the *EEAC has reviewed and approved this Memorandum, and adopted a Resolution on April 12, 2011 in support thereof [TO BE DETERMINED];*

**WHEREAS**, this Memorandum is offered with the intent of resolving the issues noted herein, and thus avoiding unnecessary further litigation on these issues, and other

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provisions included in the Program Administrators' October 29, 2010 MTM filings, including avoiding the filing of direct testimony and information requests associated with both the initial MTM filings, and the terms of this Memorandum;

**NOW THEREFORE**, in consideration of the exchange of promises and covenants herein contained, the legal sufficiency of which is hereby acknowledged, the Settling Parties agree, as follows:

### **ARTICLE 1: INTRODUCTION**

1.1 **October 29, 2010 MTM Filings.** On October 29, 2010, the Program Administrators filed their proposed 2011 MTM filings with the Department, consistent with their understanding of the requirements of Section 3.8 of the Department's D.P.U. 08-50-B Guidelines and the terms of each Program Administrator's Department-approved Three-Year Energy Efficiency Plan in D.P.U. docket numbers 09-116 through 09-127. Such MTM filings included the Program Administrators' proposals associated with: (1) adding or terminating energy efficiency programs or pilots; (2) changing energy efficiency program budgets, savings or applicable performance incentives by greater than 20 percent over the three-year period of the Plans, as well as changes involving any annual budget increase at the sector level of 15 percent for commercial and industrial ("C&I") programs, or 20 percent for residential or low-income programs; (3) Evaluation, Measurement and Verification ("EM&V") of the Program Administrators' energy efficiency savings and benefits; and (4) 2011 Performance Incentives, as well as other matters required to be reviewed and approved by the

Department. Such MTM filings also included a 2011 Technical Reference Manual (“TRM”).

1.2 **December 10, 2010 Consultant Report.** On December 10, 2010, the EEAC Consultants filed the Consultant Report with the EEAC. In the Consultant Report, the Consultants provided support for many substantive aspects of the 2011 MTMs as filed and also identified several areas of differences and provided recommendations with respect to other aspects of the 2011 MTMs. Areas of differences and recommendations identified in the Consultant Report included the following topics: 1) savings assumptions and data, including net-to-gross ratio assumptions with respect to certain measures, included in the TRM and 2011 MTMs; 2) aspects of the Program Administrators EM&V plans; 3) aspects of the Program Administrators performance incentive proposals;<sup>1</sup> and 4) program planning processes.

1.3 **December 14, 2010 EEAC Resolution.** With certain notes, on December 14, 2010, the EEAC adopted a Resolution supporting the Program Administrators 2011 MTM filings and supporting and accepting the Consultant Report. In its Resolution, the EEAC encouraged “further collaborative discussion among the Program Administrators and the consulting team regarding the limited open matters identified in the Consultant Report.”

1.4 **Follow Up on the December 14, 2010 EEAC Resolution by All Parties.** Also, in the December 14, 2010 Resolution on 2011 MTMs, the EEAC stated:

We acknowledge and appreciate the hard work of the PAs in implementing these aggressive efficiency programs, in particular their efforts to take on many of the

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<sup>1</sup> Performance incentives do not apply to the Cape Light Compact.

historically challenging areas of energy efficiency work, and their efforts to collaborate thoroughly on a statewide basis. We look forward to continued collaboration and cooperation among PAs, the EEAC, and other interested stakeholders to achieve or exceed the goals of the Plans.

Council Resolution, December 14, 2010

In accordance with the EEAC's Resolution, the Settling Parties (including LEAN's active participation on low-income matters) have met, collaborated and cooperated in order to develop this Memorandum, which addresses, and resolves, all matters relating to 2011 MTMs.

1.5 **Presentation to the EEAC for Meeting on April 12, 2011; Benefits of this**

**Process.** [The Settling Parties presented this Memorandum to the EEAC for its review and consideration at its meeting of April 12, 2011. At its meeting, the EEAC reviewed and approved this Memorandum, and adopted its Resolution of April 12, 2011 in support hereof. Consistent with such meeting, the Settling Parties will present this Memorandum to the Department of Public Utilities ("Department"), along with the April 12, 2011 resolution of the EEAC, in each respective 2011 MTM docket with a goal of removing all issues of contention in such proceedings. This process should foster a focused regulatory hearing process and accelerated resolution regarding 2011 MTMs in order that all interested parties may continue to focus on program implementation and achievement of savings and benefits in 2011, which the Settling Parties agree is a high priority for 2011.]

1.6 **Overall Resolution of all 2011 MTM Matters.** To that end, this Memorandum

presents a framework for resolving open 2011 MTM issues in an overall manner that is pragmatic and meant to allow for such increased focus on program

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implementation during 2011. This Memorandum presents compromises by all parties after productive discussion. The Settling Parties are not bound by this Memorandum past its current purpose (i.e., resolution of all issues related to 2011 MTMs and the other matters specifically referred to herein), and shall be able to take positions counter to those put forth in this Memorandum in future proceedings and in other contexts. Also, the Memorandum fully recognizes that the Three-Year Plans call for a process of continuous analysis and enhancement, and that there are opportunities in the future to update data and resolve issues where the Settling Parties have not been in full agreement in the recent past, but have adopted the compromises and approaches set forth in this Memorandum for 2011 MTM purposes only, in order to move forward in a reasonable and efficient manner. Such “opportunities in the future” include but are not limited to the planning and review processes of the EEAC and the Department, which afford opportunities in the future to update data and determine the final representation of the 2011 program year. Specifically, the 2011 Annual Reports, which will be filed with the Department in summer 2012, are acknowledged as the final representation of the 2011 program year results. In addition, the Council is required to submit an annual report to the legislature in 2012 summarizing the 2011 program year. These reports on the 2011 program year provide opportunities in the future to resolve issues and concerns regarding the 2011 program year. Also, the studies and best available information described below will be used to inform the 2010 Annual Reports and future versions of the TRM. Therefore, the parties to this Memorandum, which applies to *plans* for 2011 as set

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forth in the 2011 MTMs, the Program Administrators' first version of the TRM and the other items set forth below, have made good-faith efforts to reach reasonable compromises, while at the same time acknowledging that there will be opportunities in the future to address further several of the issues (in particular, assumptions and data issues) and that these issues will be informed by studies and best available information as described below. In sum, this Memorandum is intended to resolve those issues noted in Articles 1.2, 1.3, and 1.4, as specified further herein, regarding the issues raised by the December 14, 2010 Resolution and Consultant Report.

## **ARTICLE 2: TERMS OF AGREEMENT**

- 2.1 **2011 Energy Efficiency Programs**. The energy efficiency programs and pilot programs set forth in the Program Administrators' respective 2011 MTMs are supported by each of the Settling Parties for implementation in 2011. Certain updates and enhancements to low-income energy efficiency programs are set forth in Article 2.16 below and are also supported by each of the Settling Parties for implementation in 2011.
- 2.2 **2011 Energy Efficiency Savings, Benefits, Participation, Budgets and Data for 2011**. The energy savings, benefits, participation levels, and budgets for 2011 energy efficiency efforts, and the data representing these quantities, set forth in the Program Administrators' respective 2011 MTMs, are accepted for 2011 MTM purposes only, including and subject to updates and modifications as set forth in the updated D.P.U. 08-50 tables that reflect: a) the provisions of this Memorandum; b) the low-income related matters as set forth in Article 2.16

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below; and c) a limited number of clerical or calculation errors in the 2011 MTMs. These updated D.P.U. 08-50 tables are included in Attachment A, which Attachment is incorporated herein by reference.

2.2.1 While the Consultant Report raised issues about some assumptions and data in the 2011 MTMs, the Settling Parties agree to accept and utilize the quantities and data set forth in the 2011 MTMs for 2011 MTM purposes only as a pragmatic, forward-looking compromise. The Settling Parties acknowledge the opportunities in the future to update data and resolve issues regarding assumptions and data representing the results of the 2011 program year. In particular, the Settling Parties acknowledge and agree that the final numerical representation of the results of the 2011 program year will be in the 2011 Annual Reports, which will be filed with the Department in 2012. Study or evaluation results, where available, and, where studies or evaluation results are not complete, the best available information (as described more fully in Articles 2.8, 2.9, and 2.10 below) will be used to inform 2011 Annual Reports. Given that the planning values for 2011, as represented in the 2011 MTMs, are filed and program activity is continuing in the field, it is acceptable to the Settling Parties to make any adjustments to 2011 assumptions and data in a forward-looking manner and in time to inform the 2011 Annual Reports.

2.2.2 Regarding energy savings and benefits goals for 2011, the DOER, the Attorney General, ENE and LEAN fully support such goals, and the Program Administrators acknowledge the EEAC's expectation and commitment that the energy savings and benefits set forth in the Three-Year Plans should be achieved



over the three-year period. As noted in the EEAC's December 14, 2010 Resolution:

We expect the PAs to achieve all the goals of the original Three-Year Plans, including savings and benefits, as well as net benefits except where, for example, achieving deeper energy savings may justifiably increase costs... we request that the PAs make every effort to achieve all the goals of the Three-Year Plans through continued improvement to the programs. The EEAC is committed to achieving the savings and benefits of the Three-Year Plans; therefore, any shortfall in savings or benefits in any program year should be made up during the remaining time in the three-year period.

Consistent with such EEAC Resolution, the Settling Parties also recognize the challenges of accomplishing these objectives given new information derived through program evaluation efforts and evolving baselines that affect the savings attributed to program efforts.

2.2.3 Regarding the development of the 2012 MTMs, the Program Administrators agree to continue to seek to further enhance common program planning, using consistent assumptions, methods, and data, to support enhanced statewide planning and delivery of programs to customers, and to meet, at the appropriate time in the 2012 MTM development process, to examine and address differences that are known from prior filings (including but not limited to the 2011 MTMs) or observed as the 2012 MTMs are developed. This approach is expected to enhance the 2012 MTM process and facilitate review of assumptions and data, and reduce issues relating to 2012 MTMs.

2.3 **2011 Plan Version TRM**. The 2011 Plan Version of the TRM set forth in the Program Administrators' respective 2011 MTMs is supported for 2011 MTM planning purposes only, subject to the reservations of rights set forth in this

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Memorandum. The Settling Parties agree that the TRM is a living document that will continue to be updated, notably for the 2012 MTMs currently contemplated to be filed in October 2011. In addition, the Settling Parties agree that the 2011 Plan Version of the TRM will be updated to prepare the 2011 Report Version of the TRM associated with the 2011 Annual Reports to be filed in 2012.

2.4 **2011 EM&V Plan and Schedule.** The 2011 EM&V Plan set forth in Exhibit C of the Program Administrators' respective 2011 MTMs is supported by the Settling Parties for 2011 MTM purposes only, subject to the amendments and enhancements set forth below in Sections 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11 and 2.12.

2.5 **Schedule for Studies in 2011.** Consistent with the value placed on EM&V studies by the Settling Parties, the Program Administrators commit to the following regarding the completion of EM&V studies in order to inform the 2010 Annual Reports, the planning and filing of the 2012 MTMs, and the 2012 Plan version TRM:

- For 2010 Annual Reports, currently contemplated to be filed on or about August 1, 2011, the Program Administrators will present 2010 savings figures based on evaluated results or the best available information where evaluation results are not complete.
- For planning of and inclusion in the 2012 Mid-Term Modification filings, currently contemplated to be filed on or about October 2011, the Program Administrators will rely on 2012 planned savings figures based on evaluated

results or the best available information where evaluation results are not complete.

- For the 2012 Plan Version TRM, currently scheduled to be complete in advance of the October 2011 filing of 2012 MTMs, the Program Administrators will present 2012 planned savings figures based on evaluated results or the best available information where evaluation results are not complete. Where applicable, these data are expected to be included in the 2012 Plan Version TRM.
- All EM&V studies, evaluations, and research shall be conducted within the existing EM&V construct and processes, as set forth in the Three-Year Plans.
- With respect to 2010 annual report presentation matters, the exact format of such filings will be determined based on the results of the Department's ongoing D.P.U. 08-50 annual report template development process.
- For both electric and gas EM&V activity in 2011, the use of studies conducted in earlier time frames including 2010 for current reporting and planning is acceptable, provided that the use of such studies is expressly contemplated and approved within the existing EM&V research area construct and process.

2.6 **2010 Electric Annual Reports.** For use in the calculation of reported savings in the PAs' individual 2010 Annual Reports, the electric Program Administrators will determine and apply net-to-gross ratios for at least eighty percent (80%) of 2011 projected annual savings (at a statewide level) in the residential (not including low-income) sector and at least eighty percent (80%) of 2011 projected

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annual savings (at a statewide level) in the non-residential sector. Such determinations will be made by means of completed net-to-gross studies or impact evaluations which include net-to-gross factors. Where studies or evaluation results are not complete, savings and net-to gross ratios shall be reported using the best available information (determined after collaborative discussion, and referring to the best-available preliminary results, research, and comparable data from other jurisdictions, as applicable and if any, and/or market information and intelligence).

- 2.7 **2012 Plan Version TRM (as it Relates to Electric Savings)**. The Program Administrators will present 2012 planned savings information in the 2012 Plan Version TRM based on evaluated results or the best available information where evaluation results are not complete. More specifically, the electric Program Administrators will determine and include in the TRM net-to-gross ratios for at least eighty percent (80%) of 2012 planned annual savings (at a statewide level) in the residential (not including low-income) sector and at least eighty percent (80%) of 2012 planned annual savings (at a statewide level) in the non-residential sector based on completed net-to-gross studies or impact evaluations which include net-to-gross factors. Where studies or evaluation results are not complete, savings and net-to gross ratios shall be included in the TRM using the best available information (determined after collaborative discussion, and referring to the best-available preliminary results, research, and comparable data from other jurisdictions, as applicable and if any, and/or market information and intelligence).

- 2.8 **2012 Electric Mid-Term Modifications.** For use in the planning and filing of the PAs' individual 2012 MTMs, the electric Program Administrators will rely on the net-to-gross ratios determined by the approaches described in the above paragraph, supplemented by any additional net-to-gross studies or impact evaluations that include net-to-gross factors completed in time to inform the MTM process.
- 2.9 **2010 Gas Annual Reports.** The gas Program Administrators will utilize and apply all available net-to gross ratios from completed net-to-gross studies or impact evaluations which include net-to-gross factors in their 2010 Annual Reports, provided that such studies/evaluations are completed by an advance date mutually agreed to by the Program Administrators and the EM&V consultants. Where studies or evaluation results are not complete, for 2010 Annual Reports, savings and net-to gross ratios shall be reported using the best available information (determined after collaborative discussion, and referring to the best-available preliminary results, research, and comparable data from other jurisdictions, as applicable and if any, and/or market information and intelligence). See also Section 2.5 above.
- 2.10 **2012 Plan Version TRM (as it Relates to Gas Savings).** For the 2012 Plan Version TRM, currently scheduled to be complete in advance of the October 2011 filing of 2012 MTMs, the gas Program Administrators will present 2012 planned savings figures based on evaluated results or the best available information where evaluation results are not complete. The gas Program Administrators will determine and include in the TRM net-to-gross ratios for one hundred percent

(100%) of 2012 planned annual savings (at a statewide level) in the non-residential sector based on completed net-to-gross studies or impact evaluations which include net-to-gross factors. In the residential (not including low-income) sector, the gas Program Administrators will use evaluated net-to-gross ratios for as much of the 2012 planned savings (at a statewide level) as practicable in accordance with sound evaluation standards. Where studies or evaluation results are not complete, savings and net-to gross ratios shall be reported using the best available information (determined after collaborative discussion, and referring to the best-available preliminary results, research, and comparable data from other jurisdictions, as applicable and if any, and/or market information and intelligence).

- 2.11 **2012 Gas Mid-Term Modifications.** The gas Program Administrators will determine and apply net-to-gross ratios for one hundred percent (100%) of 2012 projected annual savings (at a statewide level) in the non-residential sector. Such determinations will be made by means of completed net-to-gross studies or impact evaluations which include net-to-gross factors, which will be completed in time to inform the Program Administrators' 2012 mid-term modifications currently contemplated to be filed in October 2011. In the residential (not including low-income) sector, the gas Program Administrators will use evaluated net-to-gross ratios for as much of the 2012 projected annual savings (at a statewide level) residential savings as is practicable, in accordance with sound evaluation standards in their 2012 MTMs. Where studies or evaluation results are not complete, savings and net-to gross ratios shall be reported using the best

available information (determined after collaborative discussion, and referring to the best-available preliminary results, research, and comparable data from other jurisdictions, as applicable and if any, and/or market information and intelligence).

2.12 **Other 2011 EM&V-Related Matters: Early Analysis; Spillover, Use of**

**Deemed Savings by Gas Program Administrators.** Understanding the potential impact of evaluation results, the gas Program Administrators will also begin planning for possible new gas results early in the planning process occurring in 2011, even before any definitive results are in. In addition, the EM&V team (including Program Administrators and the EEAC's Consultants) will research spillover and its effect on savings, as well as other possible programs and areas where potentially attributable savings may currently not be counted or undervalued (e.g., contractor training sessions). With respect to performance incentives and lost-base revenue, the gas Program Administrators will use deemed savings for 2010 data as provided for in the EEAC Resolution of October 13, 2009.

2.13 **2011 Other Program Funding.** The parties recognize the important role that

other program funding can play in the successful achievement of the savings and benefits goals in 2011 and 2012. Therefore, the Program Administrators are strongly committed to actively identifying, advocating for and securing other program funding that reduces bill impacts for customers in 2011 and beyond. The Program Administrators will document efforts in this regard to the EEAC and the Department in applicable quarterly and annual reports. The targets for other

program funding as set forth in the Three-Year Plans remain in place as noted in such Plans. As expressly noted in the Three-Year Plans, the other program funding targets are aggressive and the Program Administrators welcome and need partners, including EEAC members, in their continuing efforts.

2.14 **2011 Performance Incentive Matters.** The 2011 Performance Incentive proposal set forth in Exhibit D of the Program Administrators' respective 2011 MTMs is supported for 2011 MTM purposes only, subject to the amendments and enhancements set forth below in this section. The 2011 performance metrics set forth in Exhibit D of the 2011 MTMs are supported for 2011 MTM purposes only subject to certain updates and modifications set forth in the updated performance incentive supplement attached hereto as Attachment B (the "PI Supplement") that reflects: (1) the terms of this Memorandum and the updated D.P.U. 08-50 tables prepared as noted above; (2) an adjustment in the exemplary target of the "residential deeper savings" metric from 7.5% to 8.75%; (3) the elimination of the "other program funding" metric and the reallocation of all of the dollars associated therewith to the "cost efficiency of program expenditures" metric (with the elimination of the threshold level for the "cost efficiency of program expenditures" metric as set forth in the PI Supplement); and (4) the assignment of final numerical targets to the three low-income metrics, updating of certain applicable measures and targets and development of conforming language. Attachment B is incorporated herein by reference. The Settling Parties recognize the important role that other program funding can play in the successful achievement of the savings and benefits goals. The elimination of the "other



program funding” metric for 2011 in no way diminishes the importance of or commitment of the Settling Parties to other program funding. The performance incentive models set forth in Exhibit D of the Program Administrator’s respective 2011 MTMs are supported for 2011 MTM purposes only, subject to the amendments and enhancements set forth in the Attachment B, hereto, which reflects the allocation of performance metrics (20% to all sector metrics and 80% to segment specific metrics) and the overall allocation of performance metrics incentives to customer segments in the following ratio: 36% residential, 28% low-income and 36% C&I. More specifically, the Program Administrators have provided updated performance incentive models (with live working versions also provided) for the electric Program Administrators and for the gas Program Administrators, as applicable, in the PI Supplement consistent with this Memorandum. The PI Supplement continues to utilize the methods used to establish the comparative weighting of the savings, value, and metrics components for performance incentives, as set forth in the performance incentives models and related materials contained in Exhibit D of the 2011 MTMs.

- 2.15 **Energy Efficiency Guidelines-No Binding Positions on Triggers.** The Settling Parties will have the opportunity to address the appropriate triggers for future MTM proceedings in the separate generic proceeding to address the Energy Efficiency Guidelines expected to be convened by the Department as noted in Cape Light Compact, D.P.U. 10-106 (January 10, 2011). Therefore, this Memorandum establishes no binding positions or precedent with respect to the appropriate triggers for future MTMs. Without limiting the forgoing, the parties

acknowledge that the Attorney General has reserved all rights with respect to the appropriate triggers for MTM filings.

2.16 **Low-Income Matters.** The Settling Parties support the implementation in 2011 of the following updates and enhancements to the low-income efforts initially described the 2011 MTMs:

2.16.1 **Residential Sized Individual Multi-Family Gas Heating Systems.** The Program Administrators will contribute \$500 for each cost-effective ARRA-funded residential size individual multi-family gas heating system, with an AFUE requirement of 90% or higher as an eligible low-income measure. Savings for this measure will be based upon the savings values set forth in the TRM for the applicable gas heating system equipment installed.

2.16.2 **Cost-Effectiveness Screening/Certain Low-Income Processes.** All low-income programs must be cost-effective at the program level pursuant to the Department's Guidelines. In order to ensure program cost-effectiveness, reasonable allowance needs to be made for all other applicable costs (e.g., administrative costs, EM&V and marketing activities). LEAN and each Program Administrator will review low-income multi-family ("LIMF") projects based on each Program Administrator's and LEAN's cost structure with the objective of managing the LIMF program throughout the year in order to achieve and maintain program level cost effectiveness. Projects/measures with unique elements/benefits (e.g., use of new technologies) or that are within a reasonable margin of cost-effectiveness may be deployed with the written agreement of both LEAN and the applicable Program Administrator, provided that such projects do

not cause the overall program level cost-effectiveness to fall below 1.0, as determined by the applicable Program Administrator after factoring in all applicable program costs. For gas LIMF projects, there will be a limit on LEAN project implementation costs (i.e., measure installation costs, that do not include administrative costs, EM&V and marketing activities) of an average of \$15.00 per/therm of savings (unless otherwise agreed to in writing by LEAN and an individual Program Administrator). This cap reflects the Settling Parties' goal of securing deep savings in projects, while maintaining program cost-effectiveness. The LIMF program will be managed with an eye to such issues as measure lives in order to achieve and maintain overall program level cost-effectiveness, as determined by the applicable Program Administrator after factoring in all applicable program costs.

In the long term, similar to current and ongoing efforts on C&I programs, the Program Administrators and LEAN will work to develop a common project screening tool that can be used by the Program Administrators and LEAN and its members that reflects uniform assumptions (with appropriate Program Administrator-specific adjustments) for use in screening LIMF projects. This process, however, will take time. Except as otherwise expressly agreed by LEAN and a Program Administrator based upon their specific implementation arrangements, in the shorter term, and for effect in 2011, LIMF projects will be screened initially by LEAN (or a designee of LEAN such as Action for Boston Community Development. That LEAN screening would then be shared with the applicable Program Administrator who would perform a screening using its tool.

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Where both LEAN and the Program Administrator determine the project is cost-effective, the project could proceed provided that other program requirements are met. Where there is a difference in the analysis and LEAN finds a project to be cost-effective and the Program Administrator does not find it to be cost-effective, the parties will cooperatively seek to work through differences. At a minimum, the parties would share and review all project-related assumptions used in the screening.

2.16.3 **LIMF Program Enhancement for 2011.** The following program enhancement will be used for the LIMF program in 2011. Based upon experience to date in the field, the Program Administrators will not implement absolute project or measure level dollar caps. The parties will, however, review the unique circumstances of each service area when prioritizing and selecting projects, with express consideration of, at a minimum, the following factors: 1) equity among interested participants and the need to provide opportunities for multiple participants; 2) the ability to phase major projects (especially in smaller service areas) over time (e.g., 2-3 years); 3) the benefits of multiple and diverse projects; and 4) the shared desire to achieve all savings goals under the Three-Year Plans.

2.16.4 **Certain LEAN Matters.** In 2011, the LEAN fee for general gas administrative services will be based upon actual costs up to a cap of two percent (2%) of program costs; the expectation is that the amount will be below two percent (2%).

### **ARTICLE 3: CONDITIONS**

3.1 This Memorandum shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in this proceeding is true or false.

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- 3.2 The making of this Memorandum shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation, except as to those issues and proceedings that are stated in this Memorandum as being specifically resolved by approval of this Memorandum.
- 3.3 The Settling Parties agree to not file direct or rebuttal testimony with the Department, issue information requests to each other, or seek evidentiary hearings, relating to the terms of this Memorandum. This provision is not intended to foreclose opportunities for the Department to issue information requests or schedule evidentiary hearings regarding the Memorandum, at its discretion. If the Department schedules such evidentiary hearings, all Settling Parties, expressly including DOER, shall have the right to present witnesses at such hearings and all Settling Parties shall have the right to file comments, at any time, in support of this Memorandum.
- 3.4 This Memorandum is the product of settlement negotiations. The Settling Parties agree that the content of those negotiations (including any workpapers or documents produced in connection with the negotiations) are confidential to the extent allowable by law, that all offers of settlement of are without prejudice to the position of any party or participant presenting such offer or participating in such discussion, and, except to enforce rights related to this Memorandum or defend against claims made under this Memorandum, that they will not use the content of those negotiations in any manner in these or other proceedings involving one or more of the parties to this Memorandum, or otherwise.

- 3.5 The provisions of this Memorandum are not severable. This Memorandum is also contingent upon the provision of accurate and truthful information by the Program Administrators during the settlement negotiation process.
- 3.6 The parties to this Memorandum understand and agree that the obligations of the Program Administrators set forth herein are contingent on approval of the Memorandum by the Department. Accordingly, the Program Administrators shall not be obligated or required to begin implementing the terms of this Memorandum unless and until the Department fully approves the Memorandum.
- 3.7 If the Department does not approve the Memorandum, this filing shall be deemed to be withdrawn and shall not constitute a part of the record in any proceeding or used for any other purpose.
- 3.8 With respect to the Program Administrator specific information set forth in the updated D.P.U. 08-50 tables in Attachment A, and the PI Supplement in Attachment B, each Program Administrator is sponsoring and responsible for only its own specific data.
- 3.9 The Settling Parties incorporate by reference into this Memorandum the following documents: (1) the October 29, 2010 initial filings by the Program Administrators, (2) supplemental information filed by the Program Administrators in dockets D.P.U. 10-140 through D.P.U. 10-150, inclusive; (3) Program Administrator responses to discovery in the above-referenced dockets, (4) the Consultant Report; (5) the Resolutions adopted by the EEAC on December 14, 2010 **and April 12, 2011 [to be confirmed]**. As applicable, all of these materials are updated and superseded by this Memorandum and its attachments.

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The signatories listed below represent that they are authorized on behalf of their principals to enter into this Memorandum.

Respectfully Submitted,

**BAY STATE GAS COMPANY**

By its attorney,

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**FITCHBURG GAS AND ELECTRIC  
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By its attorney,

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**NEW ENGLAND GAS COMPANY**

By its attorney,

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