

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department of)
Public Utilities on its own Motion into) D.P.U. 11-120, Phase II
Updating its Energy Efficiency Guidelines)

**PRELIMINARY COMMENTS OF
THE ENERGY EFFICIENCY ADVISORY COUNCIL**

The Energy Efficiency Advisory Council (the “EEAC” or the “Council”) appreciates the opportunity to submit these Preliminary Comments in response to the Department of Public Utilities’ (the “Department”) Order on Investigation—Phase II (the “Phase II Order”) issued on May 25, 2012 in the above-referenced docket. In its Phase II Order, the Department set forth a straw proposal containing procedural concepts that would affect Massachusetts energy efficiency program planning and reporting in four key areas: (1) Program Administrator (“PA”) annual performance reporting; (2) PA performance incentives; (3) energy efficiency surcharge (“EES”) treatment; and (4) mid-term modification filings. The Department’s proposal “is designed to eliminate, except in limited circumstances, the annual proceedings associated with performance reports, EES reconciliations, and mid-term modifications.” (Phase II Order at 3).

At the outset, the Council appreciates the Department’s proactive steps to streamline the annual efficiency program process and procedures while preserving an overall commitment to transparency and the Department’s essential regulatory function. We share these goals.

In light of these goals and in the spirit of cooperation, the Council offers the following comments.

General Comments

- The Council shares the Department’s goals of making the process of reviewing and approving the various components of the Program Administrators’ energy efficiency activities efficient, transparent, and streamlined for the Department, the Council, the PAs and all other stakeholders.
- The Council also shares the Department’s goal of ensuring that the review processes are consistent with the three-year plan construct envisioned in the Green Communities Act.
- To protect due process rights, the Council believes that the Department should provide an essential regulatory backstop. The Department must provide an explicit opportunity for

the Council, the PAs and other stakeholders to petition the Department to resolve specific issues that may arise under a revised set of procedures.

Annual Performance Reporting

- The Council supports the concept of requiring each PA to file an annual status report that is consistent with the current Department requirements.
- The Council also supports the proposal for Department investigations of PA performance upon its own motion or a Council resolution. (Phase II Order at 7).
- In order to ensure the integrity of the efficiency programs, we agree that the Department must conduct a full investigation of each PA's performance after each three year planning cycle.

Performance Incentive Planning and Revisions

- While the Council supports the concept of streamlining the process of performance incentive collection with appropriate regulatory review and reconciliations, we believe that this issue requires further discussion and consideration before the Council can endorse the straw proposal.
- The Council has some concerns about allowing a PA to collect its performance incentive through the EES for the first and second years of the Plan based on the *design* level of the performance incentive (subject to reconciliation after DPU review of the three-year performance reports, after the third year of the Plan). Performance incentives collected by the PAs should be based on actual performance, not design level estimates included in the plan.
- Any proposal to allow Program Administrators to collect performance incentives will require a mechanism that will allow the Department to open an investigation in those instances in which the performance incentives collected do not appear to be consistent with actual PA performance and allow the Department to reconcile rates accordingly.

Energy Efficiency Surcharges

- The Council is supportive of the concept of a fixed set of EESs for the 3 year period, subject to appropriate safeguards to avoid significant reconciliations.
- It is essential that the Department act as a regulatory backstop for those instances in which a PA is expected to dramatically over- or under-recover. The Council appreciates the Department's proposal of a two percent bill impact threshold, and believes further discussion of the appropriate trigger is merited.

Mid-Term Modifications

- The Council is supportive of the concept of a streamlined process for reviewing mid-term modifications and believes it has the ability to review MTM proposals (and provide advisory approval) in the manner described in the DPU Straw Proposal.
- We believe that any changes to the MTM process must be accompanied by a review and, where necessary, an update to current Energy Efficiency Guidelines to ensure

consistency. In particular, we believe that the “triggers” for filing an MTM should be revised to include not only the consideration of a percentage trigger, but also a maximum and minimum dollar threshold to ensure that there is an appropriate level of review for (a) a significant dollar change in a program budget that falls below the 20% threshold and (b) a proposed budget change for smaller programs that is greater than 20% but has a small overall dollar impact.

The Council appreciates the opportunity to submit these Preliminary Comments and looks forward to working with the Department, the PAs and other interested stakeholders in this proceeding.