



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 09-34

July 21, 2009

Petition by Western Massachusetts Electric Company for approval of a smart grid pilot program.

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### ORDER ON MOTION TO DISMISS

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## I. INTRODUCTION

On July 2, 2008, Governor Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”). The Green Communities Act requires electric distribution companies to file with the Department of Public Utilities (“Department”) a smart grid pilot program no later than April 1, 2009. St. 2008, c. 169, § 85 (“Section 85”). Section 85 provides that,

Each such pilot program shall utilize advanced technology to operate an integrated grid network communication system in a limited geographic area. Each pilot program shall include, but not be limited to advanced (“smart”) meters that provide real time measurement and communication of energy consumption, automated load management systems embedded within current demand-side management programs and remote status detection and operation of distribution system equipment. On or before April 1, 2009, each electric distribution company shall file a proposal with the department of public utilities to implement a pilot program that requires time of use or hourly pricing for commodity service for a minimum of 0.25 per cent of the company’s customers. A specific objective of the pilot shall be to reduce, for those customers who actively participate in the pilot, peak and average loads by a minimum of 5 per cent. The department shall work with the electric distribution companies to identify specific areas of study, and may incorporate and utilize information from past relevant studies or pilot programs. . . . The programs filed by the distribution company shall include proposals for rate treatment of incremental program costs; provided, however, that such program costs shall be deemed by the department to be a cost of basic service and recovered in rates charged for basic service.

On April 1, 2009, Western Massachusetts Electric Company (“WMECo” or “Company”) submitted its smart grid pilot program proposal to the Department (“Filing”) in compliance with Section 85. This matter was docketed as D.P.U. 09-34.

The Attorney General of the Commonwealth (“Attorney General”) filed a notice of intervention, pursuant to G.L. c. 12, § 11E, on April 4, 2009. Pursuant to

220 C.M.R. § 1.03, the Department granted petitions to intervene filed by the Low-Income Weatherization and Fuel Assistance Network and Massachusetts Energy Directors' Association, jointly (together, "Network and MEDA") and the Department of Energy Resources ("DOER").<sup>1</sup>

On June 15, 2009, a public hearing and procedural conference was held. On June 15, 2009, Network and MEDA filed comments together with a motion to dismiss ("Motion") WMECo's pilot program proposal, as currently designed. On June 15, 2009, the Attorney General also filed comments.<sup>2</sup> On June 23, 2009, the Company filed a response to the Network and MEDA Motion and comments ("Response").

## II. SUMMARY OF THE COMPANY'S PROPOSED SMART GRID PILOT PROGRAM

### A. Introduction

WMECo smart grid proposal offers two types of programs to its low-income customers on a voluntary basis: (1) the "Pay-As-You-Go" program, in which participants would be required to pre-pay for their electricity; and (2) an Inclining Block Rate program, in which participants would pay a discounted rate for the first block of kilowatt-hours ("kWh") of

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<sup>1</sup> Pursuant to 220 C.M.R. § 1.03, the Department also granted petitions for limited participant status filed by the Cape Light Compact, Environment Northeast, NSTAR Electric Company, Retail Energy Supply Association, as well as Associated Industries of Massachusetts and The Energy Consortium, jointly.

<sup>2</sup> The Attorney General's comments identify several concerns about the Company's smart grid pilot proposal. Although the Attorney General references Network and MEDA's motion to dismiss, she offers no comment on the Motion (Attorney General Comments at 3). Instead, the Attorney General recommends that the Department thoroughly review the Filing to "ensure that it not only fulfills Section 85's mandate, but also remains consistent with all applicable laws and regulations" (*id.*).

electricity consumed in a given billing period, and a higher rate for all consumption in excess of that first block (WMECo Filing at 6, 10-13). The Company proposes to offer these programs to 600 to 800 of its low-income customers located in the Springfield, Massachusetts area (id. at 16). The Company proposes to operate the pilot program for a six-month period, May through October (id. at 18). WMECo estimates that it will cost \$2.5 million to implement its smart grid pilot program, based on the budget of the smart grid pilot program developed by its affiliate, Connecticut Light and Power (“CL&P”) which is scheduled to be completed during the summer of 2009 (id. at 24). The Company states that it will not seek recovery of the costs of its smart grid pilot program until it is completed (id. at 24).

B. Pay-As-You-Go Program

The Company proposes to provide low-income customers who participate in the Pay-As-You-Go program with a system that includes: (1) a prepayment meter; (2) a smart card to make or record payments made in advance of usage by mail, phone, in-person or online; and (3) an in-home display unit that will provide real-time information such as consumption, cost, available balance, and expected time until the balance reaches zero (id. at 10-13, 21). The Company states that when a customer’s pre-payment balance reaches zero, it could either allow meters to go into negative balances on weeknights and weekends without shutting power off, or limit power for a period of time (e.g., 45 minutes of power followed by 15 minutes without power) (id.). The Company states that it cannot finalize the specific procedures for program participants until it “selects a technology and works with the vendor to determine what features best fit the pilot objectives” (id.). In order to implement the

Pay-As-You-Go program, WMECo requests that the Department approve the temporary suspension of the billing and termination provisions of 220 C.M.R. § 25.00 et seq. for program participants (id. at 12). In their place, the Company proposes to: (1) provide participating customers with multiple ways to pay for electricity, including locations to pay in person; (2) eliminate fees for disconnection and reconnection of service; and (3) reduce or eliminate deposit requirements (id.).

Additionally, WMECo proposes to test the effect of pre-payment technology on low-income customers participating in its NUStart arrearage management program (id. at 13). For existing NUStart customers who participate in the Pay-As-You-Go program, the Company proposes to provide 100 percent arrearage forgiveness if they remain in the program for the entire six-month period (id. at 13).<sup>3</sup>

#### C. Inclining Block Rate Program

The Company proposes to bill low-income customers who participate in the Inclining Block Rate program at a discounted rate for the first 300 kWh of electricity usage in a given month and a higher rate for all usage over 300 kWh (id. at 8). The Company states that it established the 300 kWh block breakpoint based on average monthly consumption for basic necessities including clothes-washing, water-heating, cooking, and refrigeration (id.). The Company states that it sought to achieve two results when designing its proposed rates: (1) absent any change in consumption, the average customer would incur the same basic

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<sup>3</sup> Ordinarily, NUStart customer arrearages are forgiven if they remain current on payments for twelve consecutive months (id. at 13).



service costs as they would under the existing flat rate design; and (2) the differential would produce a five percent reduction in energy consumption. Based on its current low-income basic service rate, the Company calculates a rate of 8.0 cents per kWh for the discounted block and a rate of 20.0 cents per kWh for the second, higher block (id. at 9-10). The actual rates will be based on the basic service rates in effect at the time of implementation of the pilot (id.).

The Company proposes to provide a subset of customers participating in the Inclining Block Rate program with an in-home display unit (id. at 7-8). The in-home display unit would identify monthly electricity usage in kWh, which would enable these customers to know when their electricity consumption is approaching the threshold for the lower rate block before they become subject to the higher rate block (id.).

### III. POSITIONS OF THE PARTIES

#### A. Low-Income Network and Massachusetts Energy Directors' Association

##### 1. Introduction

Network and MEDA request that the Department dismiss WMECo's smart grid pilot program proposal, as currently designed, including WMECo's proposed use of inclining block rates and prepayment meters (Network and MEDA Comments at 10). Network and MEDA state that WMECo's proposed smart grid pilot program is not lawful, is not good public policy, and should be rejected (Network and MEDA Motion at 1; Network and MEDA Comments at 1).

##### 2. Pay-As-You-Go Program

Network and MEDA oppose WMECo's Pay-As-You-Go program for multiple reasons. First, Network and MEDA claim that allowing prepayment provides distribution companies

with an expensive means of reducing new arrearages (Network and MEDA Comments at 5-6). In support of their claims about costs, Network and MEDA contend that Great Britain's experience with prepayment meters has shown that: (1) prepayment meters are more expensive to purchase and operate than standard credit meters; (2) the increased cost of these meters are passed on to customers through surcharges; and (3) low-income households are more likely than their higher income counterparts to use expensive service that may be frequently interrupted (id. at 7-8).

Additionally, Network and MEDA argue that prepayment will allow WMECo to bypass the existing consumer protection framework in place in the Commonwealth (id. at 5-6). Network and MEDA assert that WMECo's proposed prepayment program allows the Company to remotely shut-off electric service to a customer in the event that the customer fails to make a payment (id. at 6, 9). Network and MEDA state that this would require the Department to suspend its customer protection regulations at 220 C.M.R. § 25.00 et seq. (id. at 9). Network and MEDA urge the Department not to grant a suspension of these regulations because such a suspension would be in violation of the consumer protection provisions of the Restructuring Act (id., citing G.L. c. 164, §§ 1F(2), 1F(7), 124A, 124E, 124F, 124H; 220 C.M.R. §§ 25.02(1), 25.02(3), 25.02(6), 25.03, 25.03(5), 25.03(7), 25.05(2), 25.05(3), 25.05(5), 25.05(6)). Further, Network and MEDA state that replacing credit-based service with prepayment will result in a degradation of service for low-income customers because it is likely to increase the rate of service interruptions and threaten the health and safety of customers who

are susceptible to the effects of interrupted electric service (Network and MEDA Comments at 5).

3. Inclining Block Rates

Network and MEDA recommend that the Department reject WMECo's proposed inclining block rate structure and not consider any such structure unless it is part of a general rate case where all underlying assumptions, costs, and benefits and their effect on different groups of ratepayers can be considered (id. at 5). In particular, Network and MEDA claim that the Company's decision to establish the maximum electricity consumption for the first rate block at 300 kWh is insufficient because it does not include lighting end-uses and lighting is a basic need that should be accounted for in any inclining block rate structure (id. at 3-4).

4. Focus on Low-Income Customers

Network and MEDA oppose WMECo's proposal to target low-income customers in its smart grid pilot program because they believe that the program will harm these customers (id. at 2). Specifically, Network and MEDA argue that WMECo's proposed smart grid pilot program will raise electric bills and introduce technologies and payment structures that increase health and safety risks for some low-income households (id.). Network and MEDA acknowledge that low-income customers tend to use more electricity per square foot of living space than higher income households (id.). However, Network and MEDA claim that there is a lack of consistent evidence demonstrating that low-income households, whether high-usage or low-usage, are able to shift or modify electricity consumption in response to price signals (id.). Instead of focusing the Company's smart grid pilot program on low-income households,

Network and MEDA recommend that WMECo redesign its program to target high-usage and higher income households that may more readily respond to the types of price signals embedded in an inclining block rate structure (id. at 3).

5. Compliance with Section 85 of the Green Communities Act

Network and MEDA contend that WMECo's smart grid pilot program fails to comply with Section 85 which requires pilot programs to include smart meters that provide automated load management systems embedded within current demand-side management programs (id. at 2). Network and MEDA argue that WMECo instead proposes to introduce inverted rate blocks for low-income customers with the hope that raising bills for participating customers will force them to manually shift or reduce their electricity loads (id.).

Additionally, Network and MEDA state that WMECo's proposed pilot program fails to comply with the provisions of Section 85 that a specific objective of the pilot be to reduce, for customers who actively participate in the pilot, peak and average loads by a minimum of five percent (id.). Network and MEDA claim that low-income customers already consume approximately 15 percent less electricity than other residential customers (id.). They assert that WMECo's proposal to focus only on low-income customers fails to consider whether an additional five percent reduction can be achieved without causing harm to those customers and fails to account for the harm that would be caused by low-income consumers forgoing essential electricity use (id.).

B. Company

1. Introduction

WMECo states that it used several principles to guide the development of its smart grid pilot program. Specifically, WMECo states that it sought to: (1) leverage the experience of other pilot programs and efforts to gain insights into areas that had not been studied; (2) provide a meaningful and valuable program to its customers; (3) consider all possible smart grid functions; (4) manage technology and implementation risk through testing and long-term planning; and (5) ensure that any benefits can be measured, quantified, and scaled to larger deployments (id., citing WMECo Filing at 2-3). WMECo claims that there is nothing unlawful about its proposed pilot program and that Network and MEDA have not met their burden in substantiating a motion to dismiss (WMECo Response at 1-4).

2. Pay-As-You-Go Program

WMECo refutes Network and MEDA's claims that its proposed Pay-As-You-Go program would violate statute and Department regulations (id. at 7). Instead, WMECo states that it has requested that the Department waive the billing and termination provisions of 220 C.M.R. § 25.00 et seq. solely for the purposes of this pilot program and, in their place, apply what it characterizes as alternate customer protections (id. at 6, citing WMECo Filing at 12). WMECo acknowledges that certain program design details<sup>4</sup> would need Department

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<sup>4</sup> As an example, WMECo states that participating Pay-As-You-Go program customers may need real-time access to billing information as opposed to receiving conventional monthly paper bills (WMECo Response at 7).

approval before they could be implemented but no customer would be obligated to participate in its proposed program (WMECo Response at 7).

3. Inclining Block Rate Program

WMECo contends that the inclining block rate structures it included in its proposed smart grid pilot program are a price-response tool to promote energy efficiency and conservation which provides customers with the opportunity to voluntarily reduce their consumption and lower bills (id. at 5). WMECo acknowledges that Section 85 specifically refers to time-of-use or hourly pricing; however, it argues that the Department has encouraged the use of inverted block rates in a recent rate case (id., citing New England Gas Company, D.P.U. 08-35, at 249 (2009)). Therefore, WMECo argues that its proposal to test these rate structures in a voluntary pilot program is reasonable (WMECo Response at 5).

4. Focus on Low-Income Customers

WMECo argues that Network and MEDA have failed to make a compelling case that its proposed smart grid pilot program should be dismissed due to its focus on low-income customers (id. at 3-4). WMECo claims that there is nothing in the language of Section 85 to preclude it from focusing exclusively on low-income customers (id. at 4).

WMECo argues that a smart grid pilot program that is focused on low-income customers is valuable because these customers are often ignored in other pilot programs (id. at 2-3). WMECo claims that in order to develop a comprehensive view of what is achievable with smart grid technology, all customer sectors, including low-income customers, should be studied (id. at 2, citing WMECo Filing at 5). According to WMECo, Section 85 requires it to

conduct a pilot program which tests the application of smart grid technology in order to inform the feasibility of large-scale deployment (WMECo Response at 2). WMECo argues that, due to the small scale of the pilot program, targeting a segment of its customer base is the best way to develop meaningful results (id.). Additionally, WMECo states that low-income customers are a key constituency for all Massachusetts utilities. Accordingly, the Company argues that it is important to understand the extent to which smart grid enabled tools can benefit this customer group (id.). WMECo concludes that its proposed smart grid pilot program will complement the smart grid pilot programs developed by other Massachusetts distribution companies and collect data necessary to make decisions about a wide-scale deployment of smart grid technology across the Commonwealth (id. at 3).

5. Compliance with Section 85 of the Green Communities Act

WMECo refutes Network and MEDA's contention that low-income customers are less likely to be able to shift load and, therefore, WMECo's proposal cannot properly test demand management or load-shifting, as required by Section 85 (id. at 4). WMECo argues that there is a benefit to providing all customers with information to help them manage their energy usage and, while there are substantial data quantifying the benefit of these tools for the general population, there are less data quantifying the ability of low-income customers to manage energy consumption in response to information (id. at 4-5). WMECo argues that the purpose of its pilot is to test how technology impacts load response in order to determine the merits of a full-scale deployment. WMECo states that it plans to coordinate the pilot program with its existing conservation and load management offerings for low-income customers (id. at 5).

WMECo states that its objective will be to determine whether low-income customers' access to real-time usage information encourages greater energy conservation (id.). WMECo concludes that while the Network and MEDA may prefer that it study a different objective, there are reasons to support of its chosen objective and no reason to justify the dismissal of its proposed smart grid pilot program (id.).

WMECo disputes Network and MEDA's contention that the Company's proposed Pay-As-You-Go and Inclining Block Rate programs will not allow it to reduce peak and average loads by five percent, as required by Section 85 (id. at 6). WMECo argues that its ability to achieve reductions of five percent in peak and average loads is the subject of the smart grid pilot program itself (id.).

Further, WMECo asserts that it designed an inclining block rate structure that should result in a five percent reduction in load (id.). WMECo notes that two electric cooperatives have successfully used pay-as-you-go technology to reduce average consumption by twelve to 13 percent (id., citing WMECo Filing at 12).

#### IV. STANDARD OF REVIEW

The Department's Procedural Rule, 220 C.M.R. § 1.06(6)(e), authorizes a party to move for dismissal of "all issues or any issue in [a] case" at any time after the filing of an initial pleading. The Department's current standard for ruling on a motion to dismiss for failure to state a claim upon which relief can be granted was articulated in Riverside Steam &



Electric Company, D.P.U. 88-123, at 26-27 (1988) (“Riverside”).<sup>5</sup> In Riverside at 26-27, the Department denied the respondent’s motion to dismiss, finding that it did not appear “beyond doubt that [the petitioner] could prove no set of facts in support of its petition.”<sup>6</sup>

In determining whether to grant a motion to dismiss, the Department takes the assertions of fact as true and construes them in favor of the non-moving party. Id. at 26-27. Dismissal will be granted by the Department if it appears that the non-moving party would be entitled to no relief under any statement of facts that could be proven in support of its claim.

Id.

## V. ANALYSIS AND FINDINGS

### A. Request for Waiver from Billing and Termination Regulations

One component of WMECo’s smart grid pilot is its proposal to study the effects of a Pay-As-You-Go program. In order to implement the proposed Pay-As-You-Go program, the Company has requested a waiver of the Department’s billing and termination provisions of 220 C.M.R. § 25.00 et seq.

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<sup>5</sup> Procedures for dismissal and summary judgment properly can be applied by an administrative agency where the pleadings and filings conclusively show that the absence of a hearing could not affect the decision. Massachusetts Outdoor Advertising Counsel v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 783-786 (1980); Hess and Clark, Div. of Rhodia, Inc. v. Food and Drug Administration, 495 F. 2d 975, 985 (D.C. Cir. 1974).

<sup>6</sup> Although Riverside refers to Massachusetts Rule of Civil Procedure 12(b)(6), the Department has not adopted formally Rule 12(b)(6). See Attorney General v. Department of Public Utilities, 390 Mass. 208, 212-213 (1983) (rules of court do not govern procedure in executive Department). Rules of court, while not binding on the Department, may provide instructive guidance. Massachusetts Institute of Technology, D.P.U. 94-101/95-36, at 11 n.5 (1995).

The statutory rights of customers against the shut-off of electric service are addressed in G.L. c. 164, §§ 124 through 124H. Among other things, G.L. c. 164, § 124 states that, unless otherwise provided by statute, a gas or electric company may stop the service of any person who fails to pay the amount due for service.<sup>7</sup> General Laws c. 164, § 124 further states that, in order to stop service for non-payment, agents of a company must first provide three days' notice by mail, exclusive of Saturdays, Sundays and legal holidays. After that notice, such agents may enter the customer's premises between the hours of 8:00 A.M. and 4:00 P.M. to disconnect service.

The Department's regulations at 220 C.M.R. § 25.00 et seq. address billing and termination procedures for electric service. Pursuant to 220 C.M.R. § 25.02(3), customers are allowed a minimum of 45 days after issuance of a bill before an electric distribution company may terminate their electric service. At the end of the 45 day period, a company must provide at least three days' notice (excluding weekends and legal holidays) before shutting service off. There are a number of other procedures that an electric distribution company must follow

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<sup>7</sup> Specifically, electric distribution companies cannot stop the electric service of a residential customer if the customer is suffering financial hardship and: (1) there is a serious illness in the household; (2) there is a child less than twelve months old residing in the household; or (3) there is an elderly person residing in the household. G.L. c. 164, §§ 124A, 124E, 124H. Because WMECo does not propose to enroll residential low-income customers who would be protected under G.L. c. 164, §§ 124A, 124E, and 124H, we need not address their eligibility for the pilot program. Additionally, because WMECo proposes to conduct its pilot program for a total of six months, including three summer months, we need not address G.L. c. 164, § 124F, which protects residential customers from the shut-off of electricity during peak heating months if electricity is their primary source of heat.

before terminating a customer's electric service for non-payment, which are outlined in these regulations. 220 C.M.R. § 25.00 et seq.

The Department's regulations at 220 C.M.R. § 25.01 permit deviation "upon demonstration of good cause, not contrary to statute." A three-day notice period is, however, mandated by G.L. c. 164, § 124. Accordingly, we find that as a matter of law, the Department has no authority to grant a waiver from the three-day notice period as it would be contrary to statute. Further, to the extent that the Department could consider other deviations to the billing and termination protections included in 220 C.M.R. § 25.00 et seq., we would do so only in the context of a proceeding that comprehensively addressed our customer protection regulations. It would be inappropriate for the Department to consider making targeted revisions to these important consumer protections in an investigation of a company's smart grid pilot program. For these reasons, the Department denies the Company's request for the temporary suspension of the billing and termination provisions of 220 C.M.R. § 25.00 et seq. for pilot program participants.

As noted above, a waiver of the billing and termination provisions of 220 C.M.R. § 25.00 et seq. is necessary for WMECo to study Pay-As-You-Go as a part of its smart grid pilot program. Having denied the Company's request for such a waiver above, we find that the Company would be entitled to no relief under any statement of facts that could be proven in support of its Pay-As-You-Go program. Accordingly, we grant Network and MEDA's motion to dismiss the Pay-As-You-Go program from WMECo's smart grid pilot program filing.

B. Compliance with the Green Communities Act

Section 85 of the Green Communities Act requires that a smart grid pilot program include the following components: (1) advanced meters that provide real-time measurement and communication of energy consumption; (2) automated load management systems; (3) remote status detection and operation of distribution system equipment; and (4) time-of-use or hourly pricing for commodity service for a minimum of 0.25 percent of the company's customers. Section 85 requires that each company's pilot program include a proposal for rate treatment of incremental program costs. For the reasons discussed below, the Department concludes that WMECo's pilot program proposal fails to comply with the requirements of Section 85.

First, as stated above, Section 85 requires time-of-use or critical peak pricing structures, which are not included in the Company's proposed pilot program. The Company states that, instead of including these pricing structures in its pilot, it intends to leverage the results of the pilot program being implemented by its affiliate, CL&P, which does include critical peak pricing and is scheduled to be completed during the summer of 2009 (WMECo Filing at 19).<sup>8</sup> While the results of the CL&P pilot may provide valuable insight to the Company on how to design dynamic pricing, reliance on the results of a pilot program from another jurisdiction cannot substitute for compliance with Section 85.

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<sup>8</sup> Although the Company cites to the importance of the CL&P pilot in designing its own proposed program, its filing includes few details regarding what the CL&P pilot entails.

In addition, WMECo's proposed pilot does not include automated load management technologies, another requirement identified in Section 85. Again WMECo states that, rather than including these technologies in its pilot, it intends to leverage the results of the CL&P pilot (WMECo Filing at 19). As stated above, reliance on the results of a pilot program from another jurisdiction is not a substitute for compliance with the requirements of Section 85.

Finally, Section 85 requires the inclusion of a proposed rate treatment for costs related to the pilot programs. WMECo's filing does not include any proposed rate treatment for recovery of the program costs. Instead, the Company states that that it will track the incremental costs associated with the program and will present the detailed costs to the Department for recovery through basic service rates once the pilot program is complete (id. at 24).

We find that the WMECo's proposed smart grid pilot program does not comply with the requirements of Section 85 because it does not include: (1) time-of-use or critical peak pricing; (2) automated load management technologies; and (3) rate treatment for program costs. Because the proposed smart grid pilot program does not comply with the requirements of Section 85, we conclude that the Company would be entitled to no relief under any statement of facts that could be proven in support of its proposal. Accordingly, we grant Network and MEDA's motion to dismiss WMECo's smart grid pilot program filing. The Department directs WMECo to submit a revised smart grid pilot program that complies with the requirements set forth in Section 85 of the Green Communities Act within 90 days of the

date of this Order. To assist the Company when designing its revised smart grid pilot program, the Department provides additional guidance and direction below.

C. Guidance for the Company's Revised Filing

1. Focus on Low-Income Customers

In support of its proposal to focus its pilot program exclusively on low-income customers, the Company argues that, because little research has been conducted into the potential to reduce or manage electricity consumption among low-income customers, its pilot program could yield information that is not likely to be provided through other companies' programs. The Department finds merit in the Company's proposal to gain information on approaches that may lead to greater efficiency and reduced consumption behavior, and thus potentially lower bills, for low-income customers and we encourage the Company to consider such approaches in the context of their energy efficiency programs. However, limiting the smart grid pilot program to low-income customers is overly restrictive because it constrains the ability of the Company to more broadly apply the results of the pilot program to its customer population and is, therefore, less effective from the standpoint of the public policy objectives of Section 85 pilot programs. Therefore, the Department directs the Company to include a broader group of customers in its revised pilot program.

2. Inclining Block Rate Program

Another component of WMECo's smart grid pilot program is its proposal to study the effects of inclining block rates. The Department has encouraged companies to implement

inclining block rates because this type of rate design encourages conservation.<sup>9</sup> D.P.U. 08-35, at 249. As such, there is merit in the Company's proposal to use its pilot to gain information on the effectiveness of applying an inclining block rate approach to commodity (i.e., basic service) prices. However, to the extent that the Company seeks to retain an inclining block rate component in its smart grid pilot program, the Department encourages the Company to broaden its proposal to investigate other issues, such as how different block thresholds may affect consumption behavior, and how inclining block rates can be structured to reduce peak loads.

### 3. Distribution Automation Technology

Section 85 requires the inclusion of distribution automation technology in companies' smart grid pilot programs. WMECo has indicated that it does not propose to include distribution automation technology because it: (1) is already undertaking a number of initiatives on distribution automation technology, and (2) believes that many of these technologies are proven and it expects little incremental benefit would result from testing them in a temporary pilot environment (WMECo Filing at 19). The Company's filing, however, provides no details on the distribution automation technologies it is undertaking outside of the pilot or the technologies it considered for the inclusion in the pilot, but ultimately rejected (id.). To the extent that the Company seeks to rely on its existing distribution automation

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<sup>9</sup> Inclining block rates have already been implemented for several water companies in Massachusetts. See e.g., Dover Water Company, D.P.U. 18080 (1975); Sheffield Water Company, D.P.U. 339 (1981); Milford Water Company, D.T.E. 05-61 (2006); Plymouth Water Company, D.T.E. 06-53 (2007); Assabet Water Company, D.T.E./D.P.U. 07-29-B (2007); Aquarion Water Company, D.P.U. 08-27 (2009).

activities to satisfy the requirements of Section 85, it must include complete and detailed information regarding these activities as well as a full explanation of how such activities satisfy the policy goals and requirements of Section 85.

4. Program Cost Estimates

WMECo provided a cost estimate of \$2.5 million to implement its smart grid pilot program, based on the budget of the smart grid pilot program developed by CL&P which is scheduled to be conducted during summer of 2009 (WMECo Filing at 24). In its initial filing, WMECo stated that once it “has line of sight” to the actual costs of its pilot, it will submit this budget to the Department for approval (id.). In response to discovery, the Company offered no further detail on its original budget estimate (WMECo Response to Information Request DPU-1-10).

Evaluating the merits of a pilot program requires an examination of both its costs and benefits. While all budgets for the smart grid pilot programs are based on estimates, the Department nonetheless expects a breakdown of estimated costs to a level of precision that allows all interested parties a reasonable opportunity to investigate the merits of these programs as compared to the costs. Therefore, the Department directs the Company to include a detailed budget estimate addressing all aspects of its proposed pilot program in its revised submission.



VI. ORDER

Accordingly, after consideration, it is

ORDERED: That the Motion to Dismiss filed jointly by the Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors' Association is GRANTED; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company shall submit a revised smart grid pilot program consistent with the directives contained in this Order no later than ninety (90) days from the date of this Order; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company shall comply with all other directives contained in this Order.

By Order of the Department,

/s/

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Paul J. Hibbard, Chairman

/s/

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Tim Woolf, Commissioner

/s/

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Jolette A. Westbrook, 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.