January 19, 2021

RE: D.P.U. 20-150, *Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines*

Dear Mr. Ray and Mr. Dorfler:

On December 10, 2020, the Department of Public Utilities ("Department") initiated an investigation into updating its energy efficiency guidelines in the above referenced docket and requested comment from interested parties. Acadia Center, Conservation Law Foundation, Clean Water Action, Green Energy Consumers Alliance, Health Care Without Harm, Sierra Club, and Metropolitan Area Planning Council (MAPC) appreciate the opportunity to comment on the draft revisions to the Energy Efficiency Guidelines ("Draft Revised Guidelines"). While the undersigned parties strongly support the goal of clarifying and fine tuning the guidelines to ensure that the requirements of the Green Communities Act and related statutes governing the energy efficiency programs are met in an efficient and effective manner, we write to express concerns about seven specific proposed revisions concerning cost-effectiveness, efficiency program benefits, the low-income energy efficiency surcharge, triggers for mid-term modifications, performance incentive mechanisms, and demonstration projects.

In addition, we believe it is incumbent on the Department to revise the guidelines with consideration of the draft 2030 Clean Energy and Climate Plan (CECP) - released after the December 10th draft guidelines – in mind. The CECP details the Administration's plan for equitably and cost-effectively achieving 2030 statewide greenhouse gas emissions that are 45% below the 1990 level. Within the buildings sector, the CECP calls for a decrease in emissions by about 9.4 MMTCO2e over the next 10 years, through electrification of space heating in a million households and 300-400 million square feet of commercial real estate, deep energy retrofits in 20% of building stock. Specific to the energy efficiency plans, the CECP calls for limitation of incentives for fossil fuel heating systems during 2022-2024 three-year plan, and all program resources to support clean heating systems no later than the end of 2024. (at p. 31-32) Many of the draft guidelines about which the undersigned organizations have concerns would make accomplishment of these plans more difficult or costly to ratepayers.

In short, we recommend that the Department:

- Remove the requirement for cost-effectiveness screening to be applied on "an Energy Efficiency Program and Core Initiative-specific basis" in Draft Revised Guideline 3.4.3.1
- Revisit the 2019 Order's assignment of the responsibility of testing for "cost-efficiency" to the Program Administrators and remove the requirement in the final sentence of Draft Revised Guideline 3.4.3.1 that "an energy efficiency program and core initiative should be projected to be cost-effective over the term."
- Remove "deliverable fuel benefits" from the list of benefits considered to be part of the natural gas program benefits in Draft Revised Guideline 3.4.4.
- Reject the proposed changes to 3.2.1.4 that would consolidate the energy efficiency surcharge for the residential sector with the low-income surcharge.
- Add a threshold to Draft Revised Guideline 3.8.2 that would specify a bill impact, programmatic budget change, or technology requirement that triggers departmental review of a demonstration project, specify

a time limit for that review, and add a requirement in Guideline 3.8.1 for EEAC review of all other proposed demonstration projects.

- Clarify in Draft Revised Guideline 3.6.2(b) that a performance incentive mechanism shall be "designed in such a way as to encourage energy efficiency program designs that will best achieve the Commonwealth's goals" and
- Clarify in Draft Revised Guideline 3.9.1.1 that "the expectation of measurable savings and benefits does not mean that a Demonstration Project is required to be cost-effective at any time."

Per Statute, the Determinative Cost-Effectiveness Test Applies to Sectors, Not Program and Core Initiatives

In Massachusetts, the energy efficiency offerings are organized into sectors (residential, low income, and commercial and industrial), which are made up of programs (e.g. residential existing buildings, C&I new construction) which, in turn, are made up of core initiatives (e.g. residential retail, residential coordinated delivery, small business). From the beginning of the efficiency plans in 2010, cost-effectiveness was evaluated at the program level – if the program benefit-cost ratio exceeded one, the program was deemed to be cost-effective. In its 2016 Order, the Department approved as cost-effective the three-year plans, but noted that, although all programs were projected to be cost-effective, certain core initiatives were not projected to be cost effective in particular years. The Department then announced a requirement for subsequent plans for the program administrators ("PAs") to either propose core initiatives that were projected to be cost-effective over the plan term or demonstrate how it planned to make them cost-effective. D.P.U. 15-160 to 15-169 at 77. This requirement broke from earlier decisions where the Department had allowed the PAs to consolidate core initiatives into larger program offerings to provide needed flexibility. D.P.U. 15-160 through D.P.U. 15-169, January 28, 2016 ("2016 Order") at p.105.

The Energy Act of 2018, amending the Green Communities Act, was passed after the Department announced this new requirement and, presumably, was informed by it. As the Department highlighted in its Order approving the 2019-2021 Plans, the Energy Act of 2018 changed the cost-effectiveness review threshold to apply at the *"sector level* (i.e. residential, low income, and commercial and industrial)." D.P.U. 18-110 through D.P.U. 18-119 ("2019 Order"), January 29, 2019, at 8, citing St. 2018, c.227, §6 (emphasis added). Now, "[i]f the sector benefit-cost ratio exceeds one, then the sector is deemed to be cost effective." *Id.* This statutory change is very clear – the Governor and Legislature intentionally moved the threshold at which cost-effectiveness is to be evaluated from the program to the sector level, reversing the Department's indication of its intention to apply the screening at even lower levels like core initiatives.

However, the Department refused, in its 2019 Order, to drop its requirement to also apply the cost-effectiveness screen at the program and core initiative level (at p.74), and here seeks to codify that dual and inconsistent requirement in Draft Revised Guideline 3.4.3.1. In its draft revised form, that guideline states that cost-effectiveness screening shall be performed on a sector level, as well as an energy efficiency program and core initiative-specific basis, and that "an energy efficiency program and core initiative should be projected to be cost-effective over the term."

The implication of this draft guideline is that even if a sector screens as cost-effective, unless each individual program or core initiative itself screens as cost-effective, the Department will reject it. This is plainly contrary to the specific language of the 2018 Energy Act, specifying that only when a *sector* fails the cost-effectiveness test shall its component programs be modified so that the sector is cost effective, or the program terminated. To terminate a program or core initiative because it alone is not projected to be cost-effective would negate the very specific change made by the 2018 legislation specifically to allow more flexibility in the programs' design. Such flexibility is necessary to ensure that programs like those targeting renters, moderate income customers, and pre-weatherization barrier mitigation can be combined with cheaper programs to create holistically cost-effective residential sector offerings that serve all customers. The Department should clarify Draft Revised Guideline 3.4.3.1 to state that, while the Department requests data on cost-effectiveness at the program, core initiative, or even measure level, the determinative cost-effectiveness test is only applied at the sector level, in line with statute.

The Department Is the Appropriate Entity to Review Cost and Bill Impacts, Not the PAs

The Department explains in the NOI accompanying the draft revised guidelines that it requires the program administrators to continue to evaluate cost-effectiveness at the program and core initiative levels in Draft Revised Guideline 3.4.3.1 "as a means to assess cost-efficiency." Cost efficiency does not appear in the Department's 2011, 2013, or 2016 Orders approving prior three-year plans, and first arrives in the Order approving the 2019-2021 plan. It has no definition and seems to refer to the concept of keeping the efficiency programs from growing too big too fast.

In the 2019 Order, the Department states that, "in its review of energy efficiency plans, the Department must balance cost effectiveness with cost efficiency to ensure that realized benefits are maximized at the least cost to customers as mandated by the Green Communities Act. (2019 Order at p.128, citing G.L. c. 25, §21(b)(1), (2)(iv)(A)). This phrasing of the requirement is understandable – the Department is required to consider the effect of rate increases on residential and commercial customers when evaluating whether to approve other funding – namely, the energy efficiency surcharges. G.L. c. 25, §19(a)(3). But nowhere is the Department required to provide efficiency and demand management resources at the *absolute least cost* to customers.

More problematic, elsewhere in that Order, the Department places the burden onto the PAs, rather than the Department, to do this balancing of cost efficiency and cost effectiveness and application of prudency. (2019 Order at p.73, citing G.L. c. 25, § 21(a), (b)(1), (b)(2)(iv)(A).)). This burden, as applied to the PAs, is not supported by statute and would lead to the nonsensical result of the PAs deciding how much growth is too much growth. Instead, the PAs should present the Department with a three-year plan informed by stakeholder input and influenced by the EEAC and its consultants that strives to acquire all available energy efficiency and demand reduction resources, for the Department to evaluate for bill impacts and other effects on ratepayers.

It is the PAs' job, under the Green Communities Act, to consider ratepayer impacts only in certain circumstances. The sections of the Green Communities Act cited by the Department in the 2019 Order to support its application of the burden to PAs specify that "each plan shall provide for the acquisition of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply"; that "each plan shall provide for the acquisition, with the lowest reasonable customer contribution, of all the cost effective energy efficiency and demand reduction resources that are available from municipalities and other governmental bodies"; and that the programs may include "strategic electrification, such as measures that are designed to result in cost-effective reductions in greenhouse gas emissions through the use of expanded electricity consumption while minimizing ratepayer costs." G.L. c. 25, § 21(a), (b)(1), (b)(2)(iv)(A). While all of these statutory provisions note a consideration of ratepayer costs, the plain emphasis is on the PAs' duty to acquire all available energy efficiency and demand reduction resources.

Strategic electrification provides a good example of the significance of the shift proposed in the "cost-efficiency" argument underpinning Draft Revised Guideline 3.4.3.1. Electrification of a residence may not be technically "cost-efficient", because it is not the absolute cheapest way to reduce the number of BTUs being consumed to heat the home, at least at current gas prices. But it is cost-effective, particularly when included as part of whole-house treatment, and delivers very significant non-energy benefits, including health and greenhouse gas emissions reductions. Putting a cap on the efficiency programs not based on what resources are available, which are cost-effective, or which deliver the most benefits for the ratepayers, but instead on what efficiency resources are the absolute cheapest would deprive the Commonwealth and the ratepayers of crucial tools, including heat pumps and deep energy retrofits, on which the Commonwealth intends to rely over the next decade. *See* CECP at p.29 (calling for electrification of space heating for one million households by 2030 as a likely cost-effective and technologically feasible approach of achieving the emissions reductions required by the plan).

Elevating the concept of cost-efficiency to be equivalent with cost-effectiveness is inappropriate and contrary to statute. Balancing the impact on bills does not need to be included in the guidelines as a PA duty - it is already accounted for in the Department's mission and review of the plans. The PAs' sense of what would be a reasonable bill impact is irrelevant - it is the Department's determination to make. In addition, both cost-effectiveness and achievable potential are the appropriate ceilings for what the PAs should be aiming to accomplish for their customers and the Commonwealth. Artificially capping the levels to correspond with a PAs' sense of reasonable bills is contrary to the Green Communities Act's explicit requirement to secure *all* available energy efficiency and demand reduction resources.

The Department should revisit its 2019 application of cost-efficiency and elevation of the standard to be a co-equal with cost-effectiveness. It should also remove the requirement, present in the final sentence of Draft Revised Guideline 3.4.3.1, that "an energy efficiency program and core initiative should be projected to be cost-effective over the term".

Gas Program Benefits Should Not Include Delivered Fuels Savings

The current guidelines define benefits separately for gas program administrators in §3.4.4.2 and for electric program administrators in §3.4.4.1. Draft Revised Guideline 3.4.4 would establish a single set of benefits for all program administrators. Draft revised guideline 3.4.4 outlines several categories of benefits, including, "deliverable fuel benefits, which account for the avoided costs of fuels other than natural gas for which consumption is reduced as a result of the implementation of an Energy Efficiency Plan." This category of benefits should not apply to gas programs.

The programs can result in reduced consumption of deliverable fuels in three ways: 1) through weatherization and air sealing of buildings heated by delivered fuels (conducted through the electric programs); 2) through installation of new high efficiency delivered fuels equipment (conducted through the electric programs); and 3) through replacement of delivered fuels equipment with electric (heat pumps) or gas equipment. Only this third category, in which new gas equipment is added to a residence or business that previously used delivered fuels, would result in deliverable fuel benefits that could potentially be claimed by a gas company – but these benefits should not be claimed.

The benefits that come from the gas programs' installation of high efficiency gas equipment in a formerly delivered fuels building are already captured as natural gas benefits in 3.4.4(b) – the avoided gas supply and distribution costs created by moving to a higher efficiency model. Any additional benefits that are created by the fact that it was previously heated by delivered fuels should not be captured by the programs, as the programs are not allowed to encourage gasification.

The efficiency programs are established to reduce the use of electricity and natural gas. Only with the addition of language to the Green Communities Act through the 2018 amendments were the programs allowed to incentivize and work towards "strategic electrification," expanding electricity consumption to result in cost-effective reductions in greenhouse gas emissions, while minimizing ratepayer costs. There is no corresponding provision allowing expanded use of natural gas to reduce emissions or ratepayer costs. As such, since the programs cannot add gas capacity by replacing distributed fuels, there is no justification for assigning a benefit for these avoided fuel costs to the gas programs, and such benefits should fall outside of those claimed by the energy efficiency programs.

In addition, the policy of the Commonwealth, as stated in the CECP for 2030 provides that incentives for fossil fuel equipment in existing buildings are limited as much as possible in the 2022-24 Three Year Plan and eliminated starting with the 2025-28 Three Year Plan. (CECP at p.31-32). Treating gas expansion as a benefit would conflict directly with this policy.

Don't Raise Low Income Efficiency Surcharges, Especially Not During a Pandemic

Draft Revised Guideline 3.2.1.4 proposes to create one energy efficiency surcharge for residential and low-income ratepayers and eliminate the discounted efficiency surcharge that currently applies to low-income rate classes. The Department notes in its Notice of Investigation that, while it initially found the interaction of the EES discount and the low-income discount across the whole bill to be acceptable because it was "relatively small," the subsequent escalation of the low-income discount rate for electric distribution rates means "the Department's prior findings may no longer be applicable." At p.13. The Department should reject this draft guideline and keep the low-income energy efficiency surcharge for two reasons – one practical and policy based, and one grounded in legal precedent.

Although the Department is right that the interaction of the low-income bill discount and the discounted EES for low-income ratepayers has "resulted in a significant subsidy to the low-income sector," it reaches the wrong conclusion by seeking to undo the subsidy. NOI at p.13. Substantial savings are exactly what is needed. As is often raised at both the EEAC and the EEAC's Equity Working Group, low- and moderate-income customers are *people*. They are people struggling with the cost of daily necessities like food, rent, and utilities. The legislature has made a point to provide these customers with deeply discounted rates, and LEAN and the CAP agencies have worked diligently to deliver energy efficiency programs in the income-eligible sector, allowing people who very much need it to have lower bills and healthier, safer homes.

This change in Revised Draft Guideline 3.2.1.4 would result in large escalation of the charges for efficiency on low-income ratepayers' bills. Moreover, the change would be implemented in the middle of a pandemic when many ratepayers are struggling to pay their bills or are already in arrears. Low-income customers are also disproportionately likely to have been impacted by COVID-19, either through job loss or illness. Due to the disparity in size of populations on the residential rate and on the low-income rate, the steep increase on low-income bills would correspond with only a very small decrease in the efficiency charge on market rate bills. Applying this change at this moment in time seems unnecessary, unjust, and discriminatory.

Moreover, the Department notes that the substantial increase in discount rate *may* make its prior findings that the double subsidy is not in conflict with the Department's directives no longer applicable. NOI at p.13. Such a finding of fact should be supported by further investigation and evidence; an investigation is not the appropriate forum for a change requiring adjudication. If considered, such a change should not be instituted through a proceeding intended for housekeeping changes to guidelines. Rather, such a change in rates should be properly noticed so that low-income ratepayers and their advocates may assess the proposal. Assessing such a change requires detailed bill impacts and an opportunity for intervenors to cross examine PAs on cost implications. Such a change should not occur through an investigation without the opportunity for intervention, introducing witnesses, or cross-examining expert testimony.

Mid-Term Modification Triggers Would Make Innovation Difficult, Slacking Easy

The Draft Revised Guidelines regarding Mid-Term Modifications (MTMs) would create a structure that makes it both too easy for a program administrator to abandon potentially significant programs without any notice, and far too hard to innovate at a time when innovation is a crucial necessity.

Under the Draft Revised Guidelines, a PA that wished to make a modification to a core initiative that reduced benefits by under 20% over the three-year term would not need to file *anything* with either the EEAC or the Department, assuming it did not impact the three-year term sector budget by 10% or more. *See* §3.8.1 and §3.8.2. This is still a potentially very large change to the programs - for example, 19% of planned benefits for National Grid's residential retail core initiative for 2019-2021 comes to over $46 million. 2019-2021, Exhibit 1, Appendix C. Applying this standard, to imagine an example, a PA could decide to cut its entire specialty lighting program, without any notice to either the EEAC or Department, and without any inquiry as to what it planned to do to make up the decreased savings and benefits.

In contrast, Section 3.8.2 of the Draft Revised Guidelines would require a program administrator that wished to add a demonstration project to file with both the EEAC and the Department - regardless of the size or potential bill impact. In recent years, similar filings – including an $114,000 demonstration involving six residential batteries that was ultimately approved by the Department without a hearing – have taken nearly a year to secure approval. D.P.U. 16-184, Unitil Demand Response Demonstration Project (filed Nov. 9, 2016, order issued October 30, 2017). *See also* D.P.U. 16-178, Eversource Demand Response Demonstration Project (filed October 31, 2016, order issued October 30, 2017).

Requiring detailed Departmental oversight of demonstration projects – regardless of their size or potential bill impact – is out of proportion to the possible harm of enabling a demonstration project with only EEAC review. Moreover, such a rule will likely stifle innovation at a time when it is most needed. The upcoming three-year plan (2022-2024) will set the precedent for how Massachusetts will roll out one million heat pumps by 2030, as called for in the CECP. The Baker administration is counting on the energy efficiency programs to bear a great deal of the Commonwealth's GHG reductions, and, as such, any changes that further drive electrification and reductions in carbon pollution cannot wait for the next 3-year plan. Allowing for innovation <u>during the 3-year term</u> has never been more crucial. A lengthy proceeding on a very small demonstration project could also waste money, as administrative costs from attorneys and expert witnesses, charged to ratepayers, may easily exceed the cost of the demonstration project itself.

The Department should consider requiring EEAC review of all demonstration projects but limiting Departmental review to only those that trigger a higher threshold. This threshold could be based on cost – for instance, the 10% increase threshold that is already proposed in §3.8.2(c), the bill impact threshold that currently exists in §3.8.2, or the requirement in the GCA to obtain EEAC approval to expend more than 1% of the plan budget on programs for research and development of new products and processes, or development of markets for such products and processes. (G.L. c. 25 §21(b)(2)(c), (d), and (j)). The threshold could also be designed to allow certain improvements to proceed with only EEAC review, and have the added effect of productively channeling innovation. For instance, a demonstration project below a cost threshold that aimed to reduce greenhouse gas emissions by more than 40% or projected to deliver more than 20% improvement to participation rates among underserved customers could be fast-tracked through EEAC review only.

The Department should also consider creating a process to streamline the approval of the demonstration projects that do trigger Departmental review. Although Draft Revised Guideline 3.8.2.1 specifies a deadline by which the EEAC must review and react to a proposed demonstration project, the guidelines provide no limitation or expectations for the Department's own review timeline. This is particularly notable, given that the Department is required to issue a decision on the entire three-year plan within 90 days of its submission. G.L. c. 25 §21(d)(2). Without such a time limit, a demonstration project may sit for the greater part of a year waiting for Department review.

Performance Incentive Mechanisms Should Allow for Additional Commonwealth Goals

Draft Revised Guideline 3.6.2(b) specifies that a performance incentive mechanism must be designed in such a way as to encourage program designs that will best achieve the Commonwealth's energy goals, "particularly those stated in Chapter 169 of the Acts of 2008" (the original Green Communities Act). Given the changes in the Commonwealth's energy goals since 2008 - including the efficiency programs' own expansion to include strategic electrification efforts and programs that result in customers switching to renewable energy sources or other clean energy technologies - the Department should consider removing the specific reference to the 2008 statute and the limitation to "energy goals". Such an edit would enable consideration of performance incentives for meeting the Commonwealth's greenhouse gas targets or environmental justice goals, among other significant commitments of the Commonwealth. This is particularly appropriate given the CECP's reliance on the upcoming 2022-2024 three-year plan to reduce greenhouse gas emissions and deploy a significant amount of heat pumps – both goals that the PAs are not otherwise incentivized to accomplish.

Demonstration Projects Should Not Be Individually Subject to Cost-Effectiveness Screening

Draft Revised Guideline 3.9.1.1 specifies that although demonstration projects are "anticipated to have measurable savings and benefits" this expectation "does not mean that a Demonstration Project is required to be cost-effective at the initial testing and evaluation stage." This creates significant uncertainty around when a requirement for measurable savings and benefits and any separate requirement for cost-effectiveness at the core initiative level might attach. The Department should clarify this ambiguity by omitting language regarding cost-effectiveness testing in this guideline entirely, not just during "the initial testing and evaluation stage.".

The purpose of allowing demonstration projects to be treated as hard-to-measure offerings initially is to allow further investigation of the costs and benefits, including the collection of data to support the calculation of benefit-cost ratios if the project were to be expanded to a full offering. Requiring a demonstration project to test as cost-effective at the beginning would defeat the purpose of it being a demonstration project; requiring it to test as cost-effective at some moment in the middle of the term is similarly unfair. Further, given that the Department should align the Guidelines requirements for cost-effectiveness testing to occur at the sector level only (*see supra*), the most effective solution is to clarify Draft Revised Guideline 3.9.1.1 to specify that a demonstration project is not required to be cost-effective at any point during its tenure as a demonstration project.

Conclusion

The Department's Draft Revised Guidelines would make several improvements to the process for reviewing and providing regulatory oversight to the administration of energy efficiency programs in the Commonwealth. However, as described above, Acadia Center, Conservation Law Foundation, Clean Water Action, Green Energy Consumers Alliance, Health Care Without Harm, Sierra Club, and MAPC believe that proposed revisions concerning cost-effectiveness, efficiency program benefits, the low-income energy efficiency surcharge, triggers for mid-term modifications, performance incentive mechanisms, and demonstration projects should be revised before approval to ensure the continued success of these important programs in line with the enabling statutes.

For the reasons outlined above, in summary, we recommend that the Department:

- Remove the requirement for cost-effectiveness screening to be applied on "an Energy Efficiency Program and Core Initiative-specific basis" in Draft Revised Guideline 3.4.3.1
- Revisit the 2019 Order's assignment of the responsibility of testing for "cost-efficiency" to the Program Administrators and remove the requirement in the final sentence of Draft Revised Guideline 3.4.3.1 that "an energy efficiency program and core initiative should be projected to be cost-effective over the term."
- Remove "deliverable fuel benefits" from the list of benefits considered to be part of the natural gas program benefits in Draft Revised Guideline 3.4.4.
- Reject the proposed changes to 3.2.1.4 that would consolidate the energy efficiency surcharge for the residential sector with the low-income surcharge.
- Add a threshold to Draft Revised Guideline 3.8.2 that would specify a bill impact, programmatic budget change, or technology requirement that triggers departmental review of a demonstration project, specify a time limit for that review, and add a requirement in Guideline 3.8.1 for EEAC review of all other proposed demonstration projects.
- Clarify in Draft Revised Guideline 3.6.2(b) that a performance incentive mechanism shall be "designed in such a way as to encourage energy efficiency program designs that will best achieve the Commonwealth's goals" and
- Clarify in Draft Revised Guideline 3.9.1.1 that "the expectation of measurable savings and benefits does not mean that a Demonstration Project is required to be cost-effective at any time."

Sincerely,

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