

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Eastern Energy Corporation

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HIDDEN POWER: THE ELUSIVE CLEANER, CHEAPER ALTERNATIVES
TO THE
NEW BEDFORD COAL-FIRED POWER PLANT

Amicus Comments of the
Massachusetts Public Interest Research Group
(MASSPIRG)

to the

Tentative Decision
(On Remand)

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I. INTRODUCTION AND SUMMARY

The Massachusetts Public Interest Research Group ("MASSPIRG") urges the Energy Facilities Siting Board ("the Board" or "EFSB") to reject the application of the Eastern Energy Corporation ("EEC" or "the Company") to build a 300 megawatt ("MW") coal-fired power plant in New Bedford, Massachusetts. The reasons for rejecting the Tentative Decision ("TD") of the Siting Board staff are summarized below.

1) The TD energy forecast and finding of a "need" for power is inconsistent with utility forecast decisions, inconsistent with the state's own energy forecast published in April, 1993, and inconsistent with sound forecasting methods.

2) The TD fails to meet its statutory obligation to approve only facilities which provide reliable energy with the minimal environmental impact at the lowest possible cost by failing to consider any of the many cleaner, less expensive alternatives available in the energy marketplace today.

A. The TD fails to consider additional energy efficiency improvements, or Demand-Side Management ("DSM"), as an alternative to the proposed facility, despite clear state policy treating DSM as an energy resource. This failure is especially outrageous in view of recent Department of Public Utilities ("DPU") decisions and statements prohibiting or attempting to prohibit utilities from expanding their DSM programs.

B. The TD ignores the statutory requirement to consider renewable energy options, including solar, wind, and biomass energy sources as alternatives, by setting up an arbitrary and impossible standard for such facilities to meet.

C. The TD fails to consider actual proposed natural gas-fired plants, and relies instead on phantom "generic" cost estimates provided by the coal plant developer.

3. The TD rejects the use of the DPU's environmental externality values, which were developed expressly for the purpose of balancing environmental impacts against energy costs, the same task required by the Board's enabling statute. The TD also fails to consider in any way the serious impacts associated with emissions of toxic metals into the atmosphere, and appears to be biased against the coal gasification alternative.

4. The TD misstates the intent of the Reorganization Act of 1992, which was to avoid any substantive changes in the energy facilities siting process as a consequence of the reorganization, not to put a legislative stamp of approval on particular Siting Council precedents under review by the courts. Ironically, the Reorganization Act was sold to the public as a means of avoiding potential inconsistencies between DPU and EFSB decisions. Such inconsistencies have perhaps never been more marked than in the Tentative Decision in this proceeding.

II. NEED FOR POWER

The TD's accepted energy forecast and "need" for power is completely inconsistent with utility forecast decisions implicitly accepted by the DPU. As the Tentative Decision observes, in the Siting Council's enabling statute, the fact that proposed facilities must be consistent with the most recently approved long-range utility forecast "shows the Legislature's intended connection between the utilities forecast of need and resource selection process and approval of a proposed project." (TD at 32), footnote 53, emphasis added).

The subsequent creation of a non-utility generation industry by Congressional passage of the Public Utilities Regulatory Policy Act ("PURPA") does not alter the fact that the issue of concern is whether the Commonwealth's utilities need additional power to provide reliable energy with a minimal environmental impact at the lowest possible cost.

As the Board is certainly aware, none of the Commonwealth's major investor-owned utilities forecasts a need for power this decade. Their forecasts do not indicate capacity deficiencies until 2002 for Boston Edison (Boston Edison, Motion to Reopen the Record, DPU 92-130, Affidavit of James Judge, June 25, 1993), 2000 for Massachusetts Electric (IRM Intercycle Filing, November 20, 1992), 2004/5 for Western Massachusetts Electric (DPU 92-88, Technical Volume III, Evaluation of Resource Need, p. 3-2), 2004 for Commonwealth and Cambridge Electric (DPU 91-234, Executive Summary, p. 1.11); and 2000 for Eastern Edison (Long-Range Forecast and Resource Supply Plan, May 1992). Where is the need?¹

The TD finding that the Commonwealth will likely need 300 MW of new power by 1998 and "clearly" by 1999 represents a serious inconsistency between the DPU and the EFSB. Every recent forecast case before the DPU, with the exception of Commonwealth/Cambridge, has resulted in settlements consistent with the utility forecasts showing no need for power. If the DPU/EFSB seriously believes that some utility or utilities actually do need additional power supplies, the DPU cannot have acted responsibly in accepting settlements that will leave some utility or utilities short of meeting their energy demands.

In the one case in which non-utility generators evidently believed the utility's forecast was weak enough to litigate, the DPU has yet to

1. MASSPIRG also has serious problems with the Company's forecast methodologies, and the TD reliance on the quantity of forecasts that lead to a certain result, rather than the quality. Most especially, the Board should be embarrassed about TD acceptance of linear regression and compound annual regression forecasts. Such trend forecasting has been thoroughly discredited and abandoned by every major utility and regulatory agency in the United States. Among their most obvious problems, they are completely unable to capture the effect of significant discontinuous events, such as the oil price shocks of the 1970s, the emergence of DSM as an energy resource in the mid-1980s, and the structural changes in the economy relating to the high-tech and defense industries in the late-1980s and 1990s. The EFSB would not accept trend forecasts from any major Massachusetts utility, and it should not accept them from non-utility generators either. In general, the methodologies employed by the Attorney General's witness, Dr. Shakow, are such to be preferred to EEC's.

rule on the issue of need. Even there, however, the Department has ordered Commonwealth/Cambridge to proceed with a Request for Proposals for Demand-Side Management ("DSM") programs that presumes no need for new generating capacity. Inconsistencies between the TD findings and other utility DSM cases will be discussed in greater detail below.

Ironically, the Massachusetts Division of Energy Resources forecast, published in April 1993, like the utilities' forecasts, found no need for power this decade. Yet the TD makes no attempt to explain the discrepancy between the state's own forecast, the utilities' forecasts, and the need forecast of the coal plant developer accepted in the Tentative Decision.

III. HIDDEN POWER: THE ELUSIVE CLEANER, CHEAPER ALTERNATIVES

A. Introduction

The EFSB statute requires examining alternatives to proposed energy facilities to determine if the proposal provides reliable energy with the minimum environmental impact at the lowest possible cost. The Supreme Judicial Court remanded the EFSC's first attempt to approve the Eastern Energy facility because of the failure to consider such alternatives. In this second attempt, hearings were held, but somehow the TD has failed to hear, see, or speak of any of the many cleaner, cheaper resources clamoring for attention in the crowded energy marketplace. These options include utility Demand-Side Management programs, renewable resources, real (i.e., non-generic) natural gas-fired power plant proposals.

B. Demand-Side Management Resources

The Tentative Decision seeks to overthrow the long-standing state policy treating energy efficiency improvements, acquired through utility conservation and load management ("C&LM") or Demand-Side Management ("DSM") programs, as an alternative to new power supply options. Relying on a narrow, tortured construction of the Board's enabling statute, the Board concludes that it is not required by law to consider conservation as an alternative (although it must consider both load management and no action). Instead, the TD considers energy efficiency improvements only as a variable to be forecast, not as a resource option (TD at 56).

Obviously, currently planned utility DSM programs must be considered in any forecast. Just as obviously, expanding those programs must be considered an option to meeting any forecast need for additional power. Even if the statute arguably can be interpreted as not requiring considering that option, the Supreme Judicial Court required that the proposed project be found to be "consistent with the resource and development policies of the Commonwealth." (TD at 44, emphasis added)

For many years, DPU policy has clearly required utilities to consider C&LM as a resource option. This policy was increasingly made explicit in a four year process, in docket DPU 86-36, leading to the adoption of formal Integrated Resource Management ("IRM") regulations:

It has long been the Department's policy that electric companies should pursue -- through purchase, expenditure or investment -- C&LM and generation options (including purchases

from small power producers and cogenerators) to the extent that such actions are cost-effective for the company's ratepayers. See Western Massachusetts Electric Company, D.P.U. 86-260, p. 252 (1987); Boston Edison Company, D.P.U. 19494 (1981). The Department requires that electric companies use consistent criteria to evaluate both supply and demand options.... DPU 86-36-F at 7 (1988), emphasis added.

D.P.U. 84-276-A (1986) and D.P.U. 86-36-A (1987) focused on ratemaking treatment for new sources of electric generation. However, the Department received comments in the current proceeding indicating that the development of an appropriate framework for electric company investment should also consider other alternatives, including (1) C&LM, and (2) purchases from non-QF independent power producers ("IPPs").... D.P.U. 86-36-B, pp. 1-2 (1987).

The Department endorsed these comments and found that it:

- should consider in this docket ways in which the regulatory structure can encourage electric utilities to consider on a systematic, equitable and integrated basis all supply and demand options and to implement those measures that will result in providing reliable service in a cost-effective manner. Id., pp. 2-3.

Since the time these Orders were issued, the Department has found no reason to modify these findings. The Department reaffirms the need for a regulatory structure that considers all potential resources on a systematic, equitable and integrated basis and whose objective is to supply reliable service at the least cost. DPU 86-36-F at 40 (1988), emphasis added.

This policy was reaffirmed by the legislature in Section 244 of c. 150 of the Acts of 1990, authorizing an IRM section within the Department to ensure adequate planning "to provide reliable energy from all options, including C&LM and cogeneration. Id." (TD at 26, footnote 45.) The IRM regulations also explicitly require utilities to acquire "all cost-effective C&LM programs for all customer sectors and subsectors." 220 CMR 10.03(5)(a)5.

Additionally, this policy was reaffirmed in the Administrations Massachusetts Energy Plan, published in April, 1993:

A valuable approach to lower costs and increase the state's competitiveness is for utilities to acquire all cost-effective demand-side management (DSM) resources... DOER will also promote the development of procedures that appropriately compare competing utility and non-utility DSM bids and assure full and fair competition between demand-side and supply-side resources. (Id., p. 26)

The Attorney General presented the testimony of Paul Horowitz that utilities could double their current DSM program savings, displacing the need for the proposed coal facility with a minimum environmental impact (zero emissions) at a lower cost. The failure

of the TD to consider additional DSM as an alternative to the coal plant is particularly unjustifiable given recent DPU decisions prohibiting or attempting to prohibit utilities from increasing cost-effective investment in DSM.

In Western Mass. Electric, the Department rejected a proposed settlement by the utility, the Attorney General, Division of Energy Resources, and the Conservation Law Foundation to shift unspent funds from the Company's 1992 DSM budget into 1993, pursuant to a two-year settlement agreement. (DPU 92-13, Letter of February 5, 1993.) The settling parties agreed that additional DSM resources could be cost-effectively acquired (with no change in utility rates from 1992), yet the DPU rejected the settlement offer.

In the Boston Edison IRM, (DPU 92-265), a settlement of the utility's DSM budget for 1993 was submitted to the Department, which included an agreement to submit a new filing for 1994 and 1995. The DPU formally requested the parties instead to consider modifying the settlement to cap budgets at current levels. (Letter of April 6, 1993). The parties rejected the Department's request, stating the need to reevaluate budgets based on possible changes in circumstances.

In a case currently before the Department, Commonwealth and Cambridge Electric have proposed capping their conservation budgets at 1992 levels through the year 1996. MASSPIRG has opposed capping the budgets at this time, pending receipt of bids in the utilities' DSM Request for Proposals, analyzing the bids for inclusion in the least-cost plan, and evaluating changes in circumstances over time. The Department staff asked the utilities to consider various alternative proposals, all of which would have reduced DSM spending below the level proposed by the utilities (DPU 91-234-A, Ex. MP-DSM-20). An order in this proceeding is expected very shortly.

Adoption of the TD would create several new inconsistencies in the acquisition of demand-side versus supply-side resources by utilities. Currently, all utilities are screening DSM measures and programs on their based on demand forecasts and avoided costs which assume no capacity needs this decade. These avoided costs have been accepted by the Department. The TD now finds that the planned level of DSM investment will lead to a capacity deficiency within a few years, however.¹ Acceptance of the TD will make future settlements on appropriate avoided costs for DSM screening and DSM budget levels more difficult.

C. Renewable energy resources.

In 1986, the Energy Facilities Siting Council statute was expanded to require explicit consideration of "facilities which operate on solar or geothermal energy and wind..." to actions which must be considered as alternatives to planned action to meet forecasted energy needs (TD at 17, Footnote 27).

¹ Additionally, in order to find natural gas power plants more expensive than coal, the TD almost certainly had to rely upon natural gas price forecasts that are much higher than those utilities are using to screen DSM measures and programs for cost-effectiveness.

The TD states that "[i]n previous decisions, technology alternatives were eliminated if they were generally not capable of providing for all of the identified need, either as a result of capacity limitations, commercial unavailability, or amenability to only one site." (*Id.* at 54). Additionally, alternatives to cogeneration proposals are also evaluated in terms of "their ability to provide steam as required by the proposed project's steam host." (*ibid.*, footnote 93.)

Thus, the Tentative Decision finds:

The record demonstrates that non-conventional technologies such as municipal solid waste, biomass, wind, solar-photovoltaic cells, and fuel cells are typically too small to satisfy a need of 300 MW and that it would not be cost-effective or practical to construct multiple facilities at the proposed site. Therefore, for the purposes of this review, the Siting Board finds that municipal solid waste, biomass, wind, solar-photovoltaic cells, fuel cells, geothermal and hydroelectric technologies are not reasonable alternative approaches to meeting a need of 300 MW and, therefore the Siting Board does not analyze these approaches. (*Id.* at 67)

This conclusion is flawed in several respects. First, the so-called record demonstration cited consists solely of an assertion of Eastern Energy to this effect. While it is certainly true that renewable technologies typically come in modules much smaller than 300 MW, the Siting Board must also be aware, given its expertise, that such modules may be aggregated into larger sizes.¹

Second, it does not make any sense to eliminate consideration of individual technologies as alternatives if they cannot meet the entire identified need. A combination of technologies (of any kinds) which together would produce a lesser environmental impact and lower costs should be preferred to a single project with greater impact and costs. The TD policy would create a Catch-22 for new, innovative technologies. They cannot be considered as alternatives until they are capable of meeting the entire regional or state energy need. But new technologies will never be capable of meeting the entire need until experience is gained with the first, smaller projects. Worse, the faster energy demand is growing, and therefore the greater the need for new power, the less likely new technologies could be considered as alternatives.

Third, the TD appears to eliminate consideration of technologies that cannot meet the entire identified regional or Commonwealth need at the proposed site, even if the technology could

1. According to NEES' recent "Green RFP" filing with the DPC, for example, the developer of a proposed windfarm, 20 MW of which constitutes one project in the NEES' Award Group, is in the process of applying for permits to develop a total of 250 MW. "Request for Approval of Contracts Executed as Part of the Companies' Renewable Resource Initiative," Volume 2, Project Summaries, p. 001 (August 1993.)

meet the full need if dispersed over a number of sites.¹ This proposition would virtually rule out ever considering solar, wind and other renewable energy alternatives, because they typically require much larger sites than thermal stations for a given amount of power. The modularity and site dispersion of renewables may provide distinct advantages in contributing to utility and regional reliability, which must be weighed against the land-use environmental impact, not just dismissed.

The absurdity of this proposition can be further illustrated by considering what would happen if the regional energy need were to resume growing by 5% per year, creating a need for an additional 1100 - 1200 MW each year. Would the Siting Board rule that no alternatives could be considered to a proposed 1150 MW nuclear plant because there are no other alternatives available in such large sizes?

The TD's arbitrary standard would thus entirely rule out any consideration of renewable energy resources as alternatives, despite the statutory requirement to do so, and the clear policy benefits of doing so. (See, e.g. the Massachusetts Energy Plan, pp. 31-32)

D. Real projects

Several times, the TD states that the EFSC has had concerns about comparing proposed facilities to generic technologies since the 1989 MASSPOWER decision (e.g., TD at 35) and that it continues to have those concerns today (TD at 52, footnote 89). While stating that it is willing to review real project proposals being reviewed in separate dockets, it labels that approach "problematic" because "most, if not all, dockets have documents that are protected from disclosure..." (TD at 53).

The cost of the proposed Altresco-Lynn natural gas-fired plant is included in the record of the Board's review of Eastern Energy's sister plant, Silver City. The Altresco-Lynn levelized electricity cost is put at 7.43 cents per kWh (EFSB 91-100, Ex. EFSB-4), compared to the TD conclusion that Eastern Energy would cost 8.309 cents per kWh (TD at 144).²

The EFSB must also be aware that there is public access to price and emissions information on a number of facilities which already have filed contracts with the Department (or with the Federal Energy Regulatory Commission), but which still have

1. The TD is not clear if this requirement is meant to apply only to alternatives to proposed cogeneration technologies. Even if this is the intent, there is no valid reason for not considering proposals to meet the regional or Commonwealth need at multiple sites, along with site specific alternatives for steam to the steam host. In accordance with the statute, that alternative could include no action to meet the steam host need, i.e., no change from existing conditions. There is no societal obligation to provide new steam sources to any site that proposes it. The total environmental impact, including existing or alternative means of supplying steam to the steam host should be compared to the proposed facility. We also are not aware of any demonstration in this proceeding that the steam host requires a generating unit as large as the 300 MW proposed here to provide steam.

2. Some caution must be used in comparing levelized prices, since their calculations may use somewhat different assumptions. Comparing annual price streams, as in the attachments discussed below, presents a clearer picture.

additional capacity which has not been contracted for, as well as for fully subscribed facilities and for some proposed facilities.

Attachment 1 presents a graph of the Eastern Energy contract¹ with Commonwealth Electric (DPU 91-234-A, Ex. MP-DSM-19), in comparison to contracts signed by Enron (Milford) with New England Power Company (Petition of Enron Power Enterprise Corp., Federal Energy Regulatory Commission, March 28, 1990); Altresco-Lynn and Commonwealth Electric (filed with the DPU on February 20, 1992, Supplemented February 21, 1992); a DLS Energy proposal to Boston Edison (DLS Energy, Inc., Petition to Intervene, DPU 92-130, June 1, 1992), and Boston Edison's proposed Edgar Energy Park (EFSC 90-12/12A). All of the gas plants are clearly lower cost than the Eastern Energy project.²

As the Board is certainly aware, the Enron plant, which it approved in 1991, has been completed but currently sits idle for lack of power purchasers. The 60 MW of unsubscribed capacity was recently declared in the Award Group of New England Power's RFP, which includes a buyout clause, however, making NEP's commitment uncertain. The Altresco-Lynn plant had 132 MW accepted Boston Edison's RFP3 Award Group, but the utility has been trying to terminate that process. The Edgar proposal was (appropriately) rejected by the EFSC as unneeded in April, 1992, although it would have been considerably less expensive and cleaner than the Eastern Energy proposal.³

Attachment 2 illustrates the Eastern Energy/Commonwealth Electric price in comparison to the U.S. Windpower/New England Electric contract. ("Request for Approval of Contracts Executed as Part of the Companies' Renewable Resource Initiative," Volume 1: Contracts, U.S. Windpower, page 31) The wind plant has prices equal to or far below the price of the coal plant in every year of the contract lives, with zero emissions. Attachment 3 shows the contract prices of the two other coal plants the DPU/EFSC will be considering this fall, the Silver City plant in Taunton, and Newbay, in East Providence, Rhode Island, demonstrating that all three coal plants are significantly more expensive than the U.S. Windpower

1. The contract price falls to 99% of the utility's avoided cost in the last five years of the 20 year contract. Because Commonwealth Electric's avoided cost is proprietary, the graph portrays Boston Edison's avoided cost.

2. Because of intense competition, more recent bids are undoubtedly below the contract prices shown here for all facilities. While Eastern Energy did not bid in NEES' recent IRM RFP, its sister plant, Silver City, proposed by the same developer, finished tied for next to last among 35 proposals, with or without consideration of environmental externalities.

3. It is likely that the unsubscribed capacity of each of the projects in Attachment 1 are being offered at a lower price today than the contract prices illustrated, as a result of increasing competition and the utilities' forecasts showing a declining need for power.

project.¹

Attachment 4 illustrates the cost per kWh saved from NEES' 1993 DSM programs in comparison to real levelized prices of unsubscribed proposals from NEES' Green RFP, the state-of-the-art currently proposed natural gas combined-cycle plant, according to NEES, the above-mentioned natural-gas plants, and the Eastern Energy contract with Commonwealth Electric. Attachment 5 illustrates the cost per kWh of the same projects with the DPU's environmental externality values.²

E. Utility avoided costs

At several points, the TD states that proposed facilities must be below utility avoided costs, the utilities' estimates of what it would cost to generate and/or buy power itself without the proposed facility. (e.g., TD at 65) The TD does not review any such current comparison, however, but relies on a finding from the original decision (TD at 132, footnote 198).

In considering approving construction of a new facility at this time, the EFSB has an obligation to ensure that the facility is cost-effective at this time. However cost-effective the plant may have appeared relative to avoided costs when it signed a contract with Commonwealth Electric in 1989, or when the EFSB reviewed it before the SJC remand, it is no longer even close to cost-effective today. Attachment 6 compares the EEC contract with the current avoided costs of Boston Edison (Boston Edison, Motion to Reopen the Record, DPU 92-130, Affidavit of James Judge, June 25, 1993) and of New England Electric, from its Green RFP (*ibid.*).³

IV. ENVIRONMENTAL AND DIVERSITY ISSUES

Because other parties are expected to emphasize these issues, MASSPIRG will touch on this area only very briefly. First, the TD fails to give any mention to atmospheric emissions of toxic metals. Eastern Energy will emit substantial quantities of mercury, lead, arsenic and other toxics. The failure to consider and weight EEC air toxics against alternatives invalidates the TD's purported balancing tests.

Second, the failure of the TD to consider environmental externalities values used by the DPU also invalidates its balancing

1. Electricity prices provide an important first look, but are not necessarily sufficient for determining comparative value, especially for resources with very different operating characteristics. Intermittent resources will be more valuable when output is correlated with the utility's loads. Thus, in New England, where winds tend to be stronger in winter, wind energy will be more valuable to winter-peaking than summer-peaking utilities. Ideally, one would compare simulations of the utility system with and without different resources.

2. The externalities show for landfill gas projects do not count offsets from avoided landfill methane emissions. According to NEES, counting such offsets would yield externality values of negative 2.8 cents per kWh. (*ibid.*, Volume 2, Testimony of Mike Bachev at 49).

3. Commonwealth Electric's avoided costs are filed in a sealed exhibit under a confidentiality agreement in DPU 91-234-A, MASSPIRG Exhibit WP-DSM-71.

of the greater environmental impact of the fluidized bed coal plant against the "higher cost" natural gas alternatives. The rationalization that the DPU has not assigned monetary values to all impacts (TD at 60) is hollow, given the larger emissions associated with coal for the most significant currently unmonetized impacts -- such as air toxics and solid waste -- as well.

The rationalization that the DPU's externalities values were developed for another purpose (TD at 59) is without any substance. They were developed -- at great time and expense by numerous parties -- precisely for the purpose of balancing environmental impacts against cost in selecting which energy resources would lead to the lowest total cost to society. The use of environmental externality values is a critical component of the state's environmental/energy policy and must not be abandoned.

Finally, while we MASSPIRG is aware that coal gasification plants are no environmental panacea, the TD is the first discussion we have ever seen concluding they are environmentally inferior to fluidized-bed plants. The EFSB should revisit this issue. Gasification is not only an important option to consider on its own merits, it is also an avenue to fuel diversification through natural gas combined-cycle plants.

In its discussion of diversity, the TD downplays the fact that New England uses less gas than coal (1992 CELT) and ignores the prospect of burning gasified coal or biomass in gas combined-cycle plants, should the region eventually become too dependent on natural gas and gas prices increase well beyond current forecasts. Additionally, the TD's concern for diversity would be far better served by the renewables options it earlier dismissed. Renewables may use no fuel and produce no emissions, like wind, or use domestic fuel sources, like biomass.

V. THE REORGANIZATION ACT OF 1992

The Tentative Decision seeks to use the Reorganization Act of 1992 -- which merged the Energy Facilities Siting Council into the DPU and renamed it the Energy Facilities Siting Board -- to infer legislative support for the standards it used to determine need for power in its original Eastern Energy decision, despite the Supreme Judicial Court's subsequent rejection of that standard. (Tentative Decision at 11-14, 27-28)

The Tentative Decision cites a 1945 case in which the legislature enacted an amendment which changed the law as interpreted in two previous court decisions. The Court subsequently presumed that the legislature had been familiar with two court cases when it acted, and that the legislature had "intended to change a presumption of that statute which the Court had interpreted otherwise." (Tentative Decision at 13, footnote 20). The Tentative Decision then argues that, in the Eastern Energy case

...the Legislature has specifically endorsed the precedent of the Siting Board making it reasonable to presume the Legislature was familiar with the Siting Council's decisions when it acted. (ibid.)

This revisionist history of the Reorganization Act is disingenuous and misleading. The intent of the clause at issue was not to explicitly affirm any particular Siting Council precedent, but merely to ensure that nothing in the Act itself should be interpreted as changing the Siting Board's body of precedent. (TD' at 11, footnote 18).

The intent of the Act was to restructure the Council "without making substantive changes to the statute or affecting procedural rights." (Cover Letter of Governor Weld To the Honorable Senate and House of Representatives, May 1, 1992). The language at issue was included after the first version of the reorganization, which proposed substantive changes in Siting Council standards and procedures, was defeated (Id. at 27, footnote 46). MASSPIRG and other environmental groups had strongly opposed the Administration's attempt to accomplish such substantive changes through Article LXXXVII, the reorganization provision of the state Constitution. This article allows no legislative amendments and requires no affirmative legislative approval, allowing proposed reorganizations to take effect automatically if not disapproved by the legislature within 60 days of filing.¹

After extensive discussions environmental advocacy groups and other interested parties (and a second version was circulated and withdrawn), the Administration filed a third version of the Reorganization Act which was appropriately limited only to a change in the structure of the agencies, without creating any substantive changes in the siting process or standards. All parties agreed not to oppose the Reorganization Act on these grounds.

The intent of carrying over prior Siting Council precedent was thus clearly not to enshrine each and every EFSC standard in perpetuity, but to carry over the existing body of precedent, unaffected by the reorganization without substantive change or tipping the balance of interests in the ongoing evolution of siting policies and precedents. There is no basis for suggesting that any party intended the reorganization to explicitly reaffirm the EFSC's Eastern Energy decision, and insulate the Board from the pending court appeal of that decision.

VII. CONCLUSIONS AND RECOMMENDATION

For all of the above reasons, the Tentative Decision and the Eastern Energy coal plant should be rejected. The proposed facility is clearly inferior to virtually all other alternatives in the energy marketplace on both cost and environmental criteria.

1. The opposition of the environmental community was based on the view that the proposed reorganization would largely replace adjudicatory siting review with the more limited environmental review under the Massachusetts Environmental Policy Act, and shift the burden of proof on environmental issues from project developers to intervenors. Environmentalists cited decisions like the Eastern Energy decision as evidenced that the process was already tilted too much in favor of developers, and that any reform of the process must include intervenor funding. In the Senate debate over the first Reorganization Act, Senator William MacLean, who represented New Bedford, spoke against the Act on the Senate floor on the grounds that it would make projects like Eastern Energy facility even more likely to be approved.

In addition, the Decision should be reconsidered and rewritten to reject obsolete and unsound forecast methodologies, reconcile any state forecast with actual utility forecasts, evaluate additional DSM as an alternative to project proposals, to articulate reasonable criteria for the evaluation of renewables, to consider the environmental impacts of air toxic emissions, to examine externalities, to compare costs with real available gas and other alternatives, to take a more objective look at coal gasification, and to develop a more reasoned approach to diversity issues. Moreover, the discussion of the Reorganization Act should be struck or rewritten to reflect its actual history.

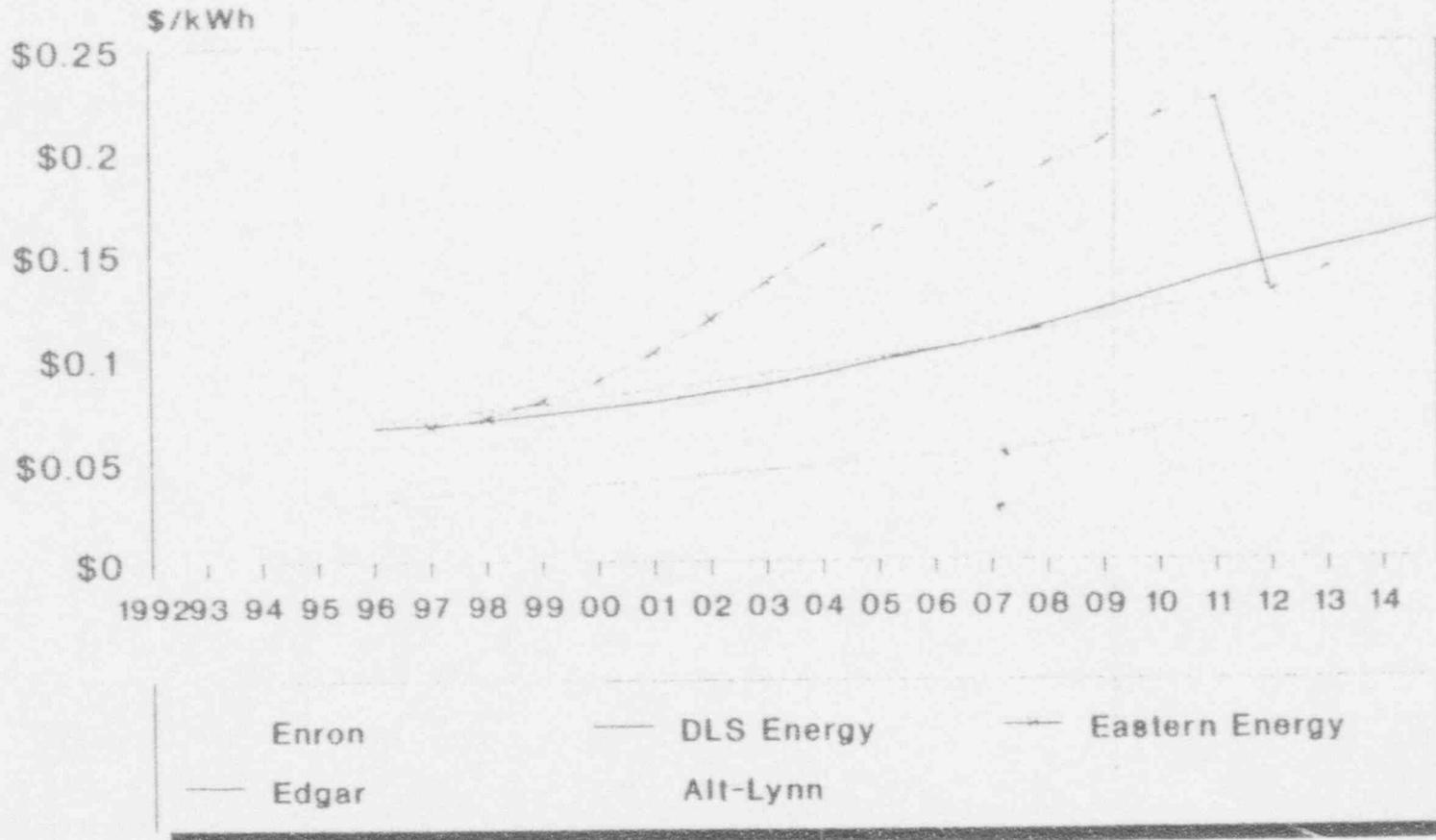
It is vital to the state's environmental and economic future that the Siting Board avoid accepting decisions which violate its statute, stretch and tear long-established and critical state energy policies, ignore entire categories of significant environmentally harmful emissions, create serious inconsistencies with Department of Public Utilities policies and findings, and ignore the very real cleaner alternatives ready to compete in the energy marketplace. Thank you for accepting these comments.

Respectfully submitted,

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EASTERN ENERGY VS. NATURAL GAS PLANTS

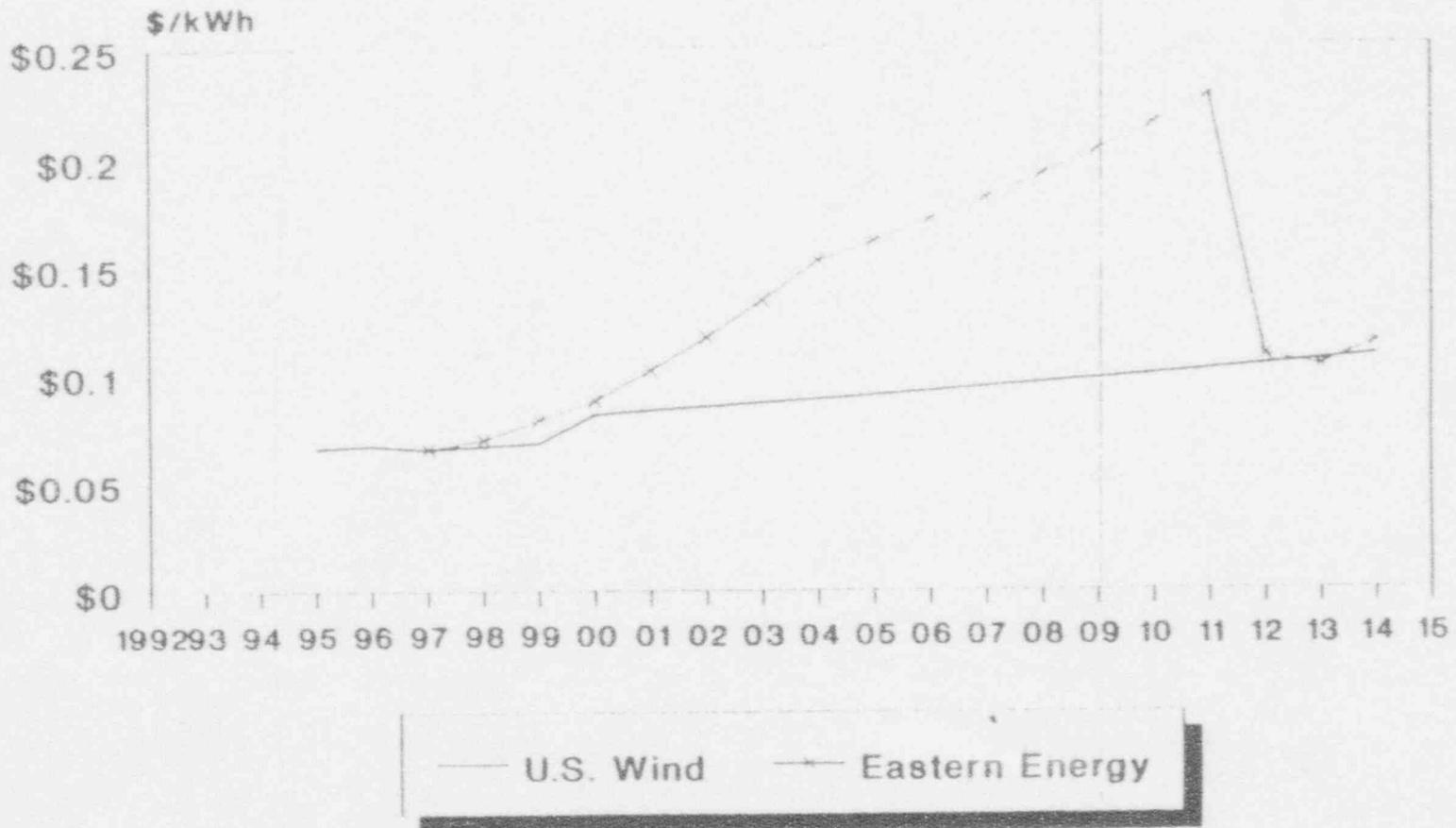
Contract Prices



Sources: Eastern Energy/Comm. contract
Natural gas plants/utility contracts

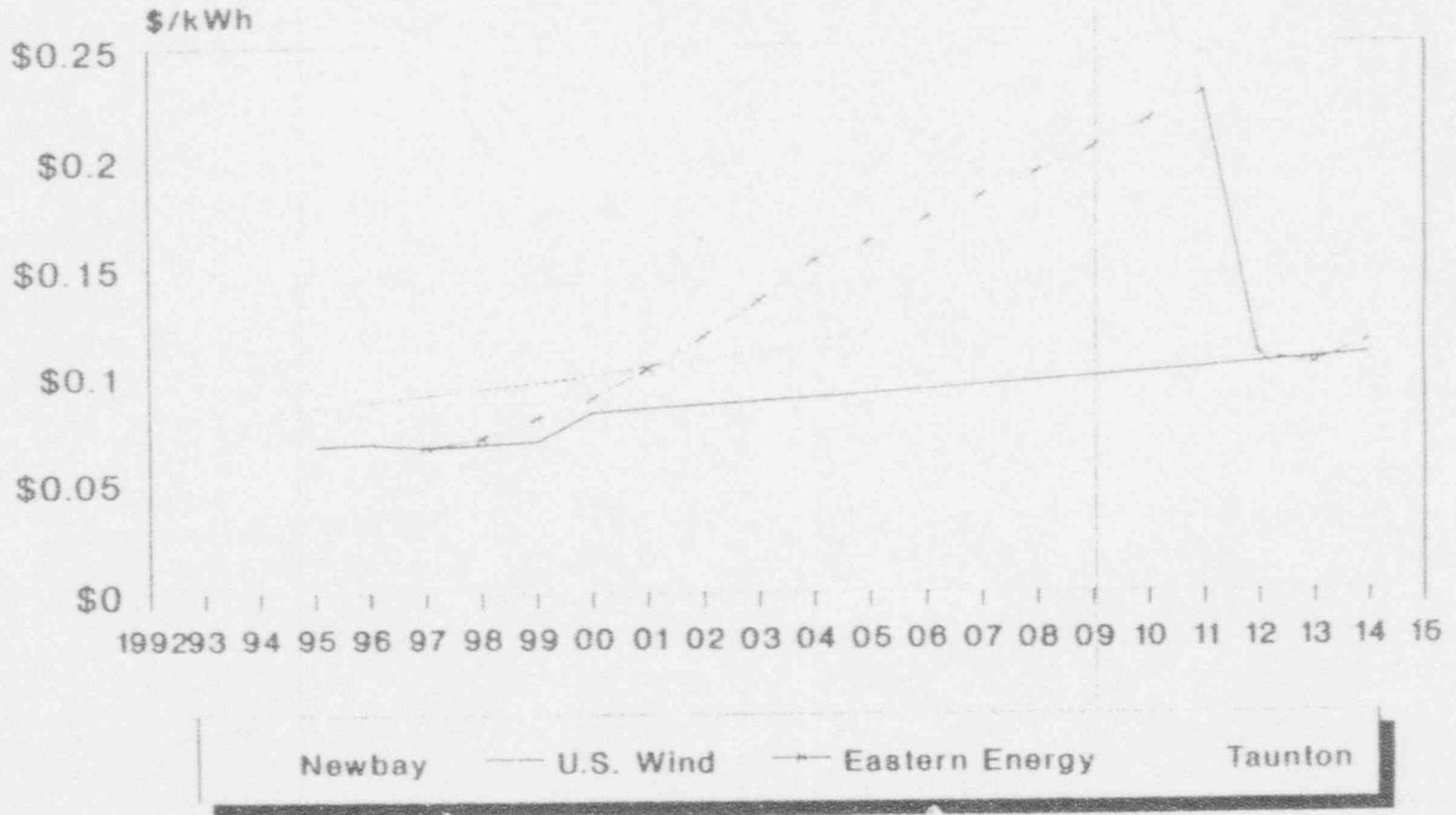
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EASTERN ENERGY VS. U.S. WIND Contract Prices



Sources: US Wind/NEES contract
Eastern Energy/Comm Energy contract
Newbay/TMLP contract; Taunton/TMLP

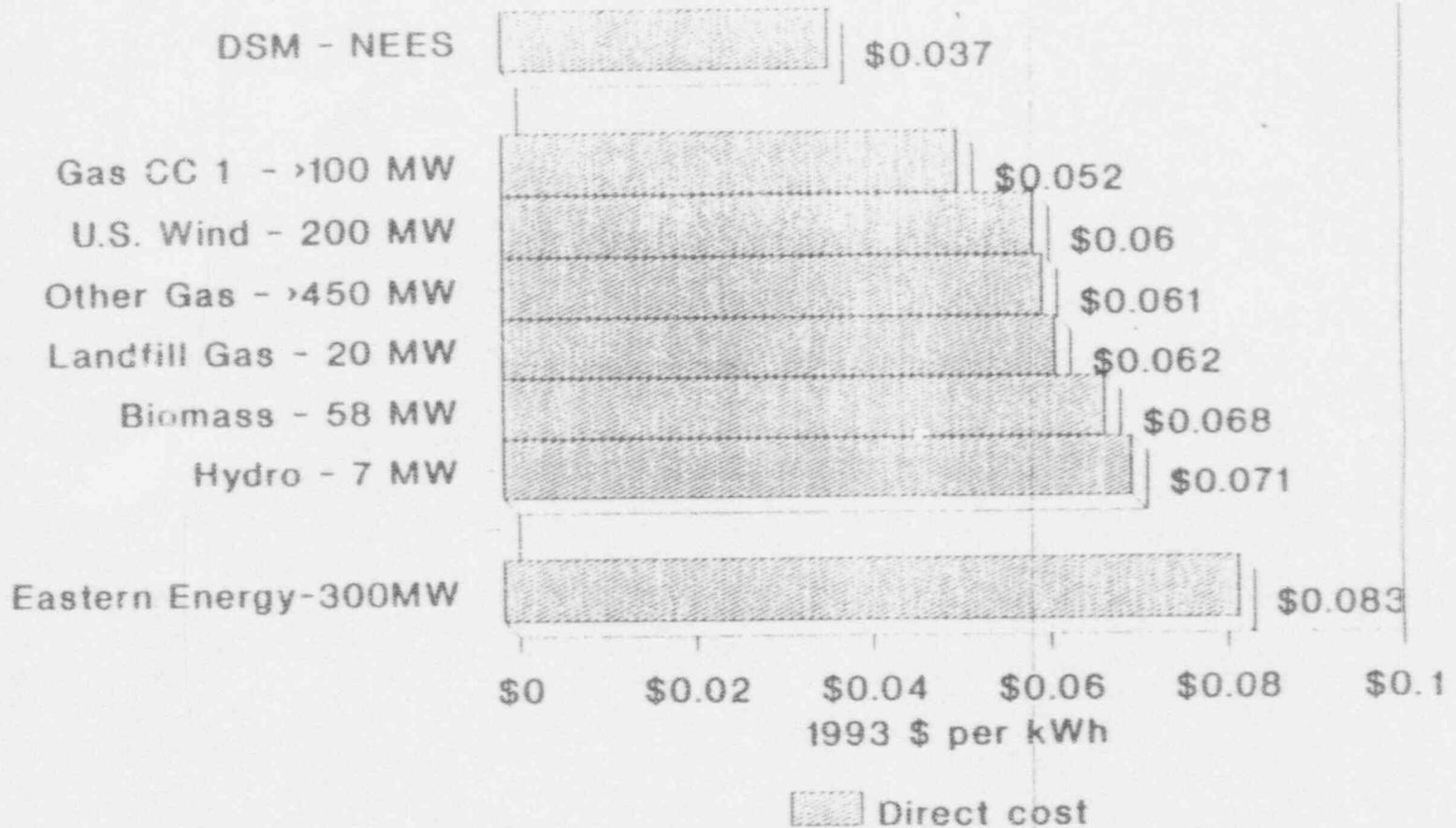
COAL VS. U.S. WIND Contract Prices



Sources: US Wind/NEES contract
Eastern Energy/Comm Energy contract
Newbay/TMLP contract; Taunton/TMLP

ENERGY ALTERNATIVES

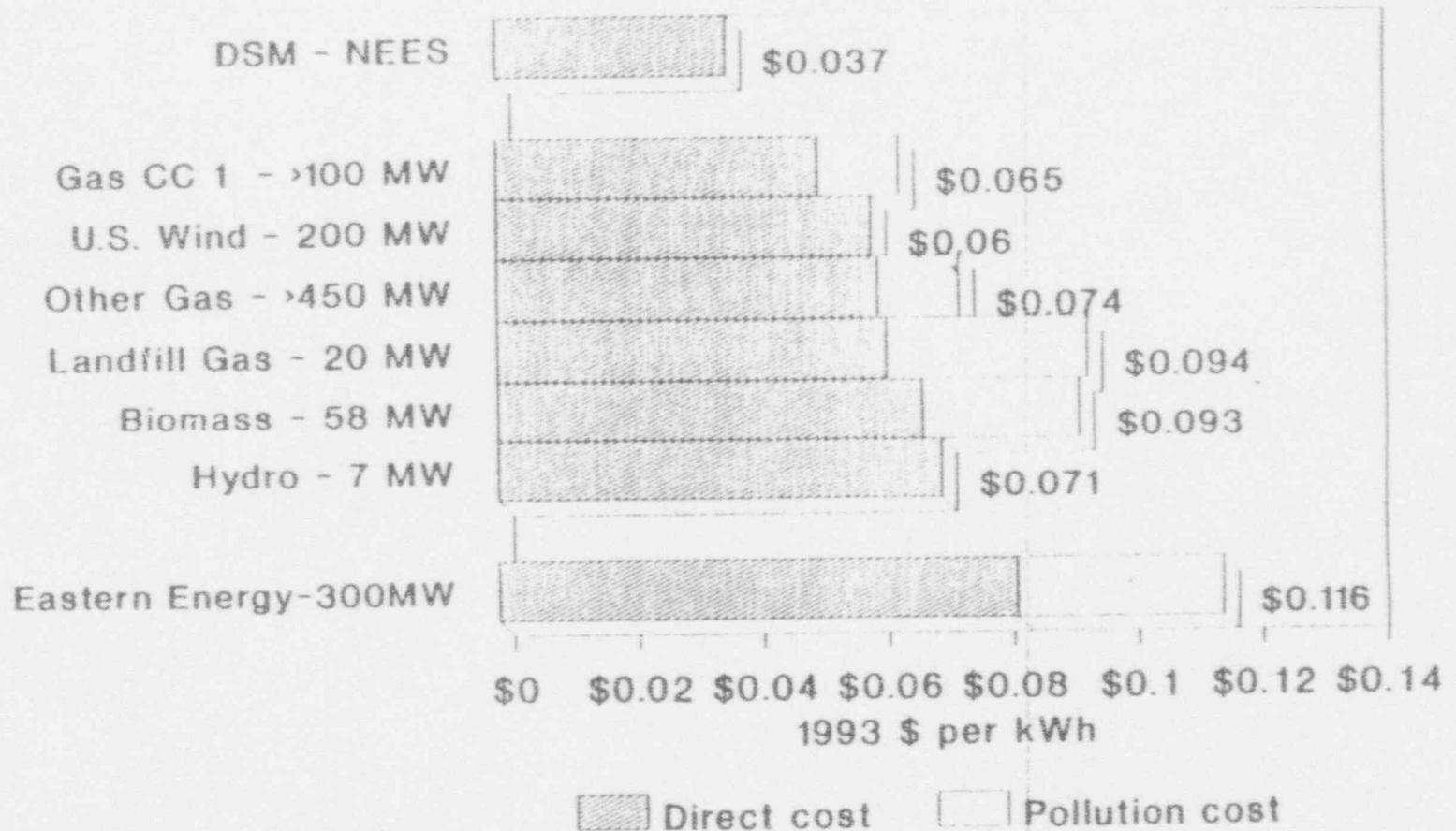
Direct Costs



Sources: Massachusetts utilities

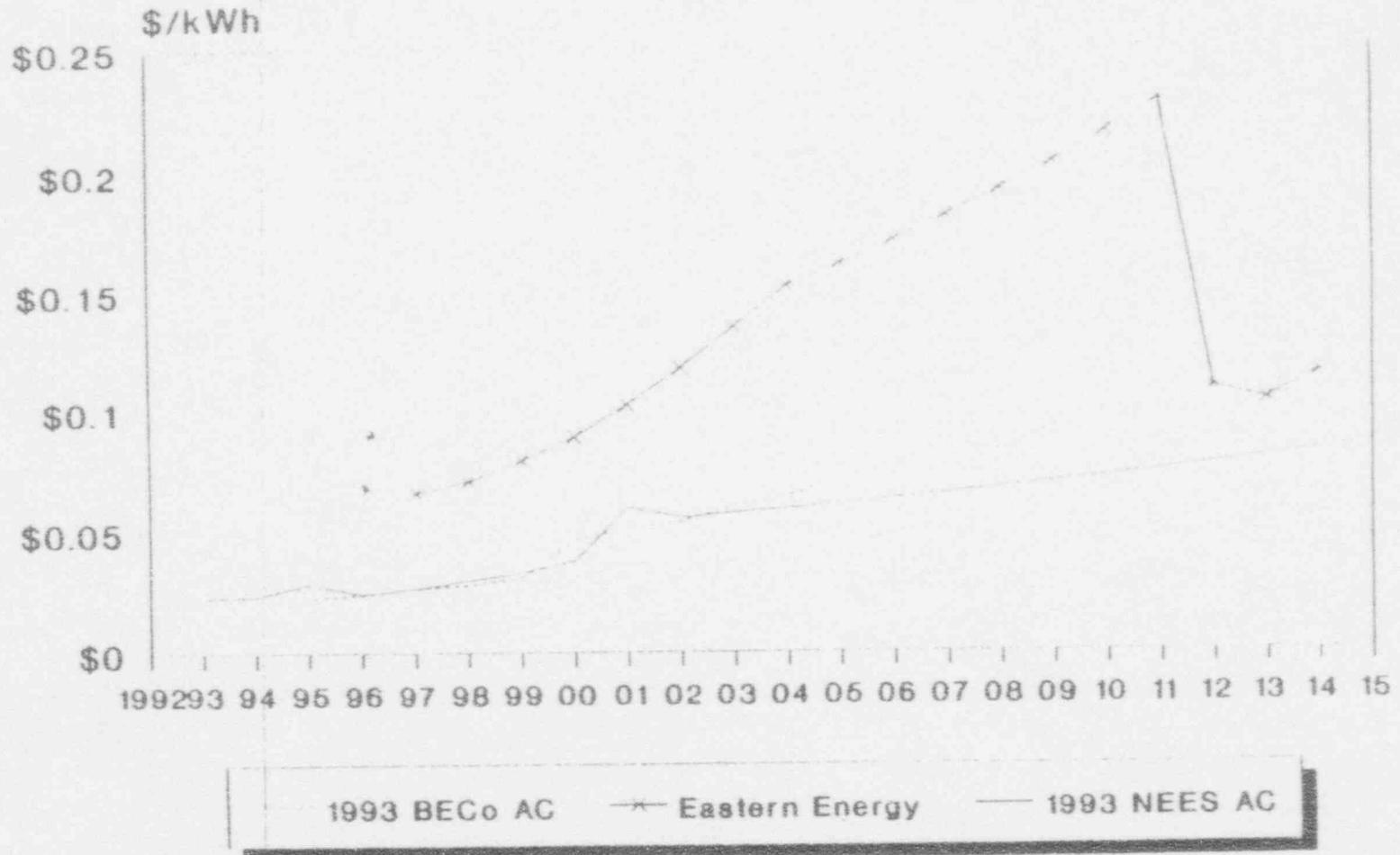
ENERGY ALTERNATIVES

Direct + Pollution Costs



Sources: Massachusetts utilities

EASTERN ENERGY VS. UTILITY AVOIDED COSTS



Sources: Avoided costs - utility filings
 Eastern Energy/Comm Energy contracts

September 15, 1993

His Excellency William F. Weld
Governor
Commonwealth of Massachusetts
State House Room 300
Boston, MA 02133

Dear Governor Weld,

Last December 17, the Conservation Law Foundation, MASSPIRG, the Environmental Lobby of Massachusetts, Massachusetts Audubon Society, Clean Water Action, Center for Ecological Technology, Association for the Preservation of Cape Cod, and Cape and Islands Self-Reliance wrote you to express our strong opposition to new coal plants in Massachusetts. The letter stressed the critical importance to both the economy and the environment of choosing more energy efficiency and renewable energy over coal. To date, we have received no response from your office.

We now understand that the first of three coal plant decisions (siting decisions for New Bedford and Taunton, and contract decisions for Newbay, 1 1/2 miles across the Rhode Island border) by the Department of Public Utilities/Energy Facilities Siting Council is likely to take place within about a month. Since we wrote to you last year, changing circumstances only make the case for energy efficiency and renewables over coal even more compelling:

- * new evidence on ozone-related health effects indicates that the EPA's current standards are too lax -- the three coal plants would emit more ozone-producing chemicals than 290,000 new cars, offsetting 2/3 of the gain expected from the enhanced auto inspection and maintenance program;

- * new evidence shows that particulates cause more deaths than previously believed -- the coal plants would emit more than 700,000 pounds of soot each year;

- * the Clinton administration has adopted international carbon dioxide reduction goals -- the plants would produce 8 billion pounds of carbon dioxide annually, the equivalent of cutting down over 200 million trees covering 900 square miles;

- * a new Clean Water Action study found mercury contamination of fish in the majority of Massachusetts lakes and ponds -- the coal plants would emit over 700 pounds of mercury each year, equal to incinerating more than 26 million alkaline batteries;

- * a recent MASSPIRG/CLF analysis found that the Newbay power plant, which is seeking DPU approval of contracts with 11 Massachusetts municipal utilities, would add at least \$212 million to electricity bills and create \$146 million in excess environmental costs in comparison to proposed natural gas power plants;

- * new advances in wind power have made that zero-emission technology a competitive option, with the New England Power Company recently having signed a contract for a portion of the output of a

proposed Maine windfarm;

* a completed natural gas-fired plant lies idle because a power glut has left utilities with no need for additional power supply; and

* perhaps most importantly, the Department of Public Utilities has ordered utilities to cap or cut proposed spending on cost-effective energy efficiency programs, with a decision on Commonwealth and Cambridge Electric's programs due next month.

Capping or cutting spending on energy efficiency programs means that no-cost and negative-cost emission reductions from existing power plants will be foregone, increasing the cost to other industries of complying with Clean Air Act goals. It would be impossible to reconcile the DPU finding no need for increased efficiency with a finding that expensive and polluting coal plants are needed instead.

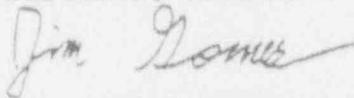
As a courtesy, we also want to inform you that we have begun to recruit additional endorsements and letters to you urging you to establish a clear state policy of choosing increasing energy efficiency over expensive and environmentally disastrous new coal plants, as urged in the letter of last December. We have attached four new endorsements, from the American Lung Association of Massachusetts, the Northeast Sustainable Energy Association, Action Energy (Gloucester), and Fundamental Action to Conserve Energy (Pittsburg).

Please feel free to request additional documentation of any of the above points. Thank you for your consideration.

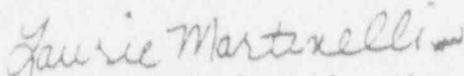
Sincerely,



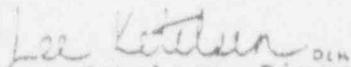
Alan Noguee, Energy Program
Director, MASSPIRG



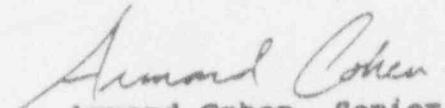
Jim Gomes, Executive Director
Environmental Lobby of
Massachusetts



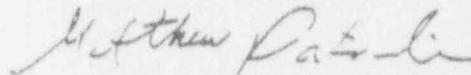
Laurie Martinelli, Director of Public
Policy, Massachusetts Audubon Society



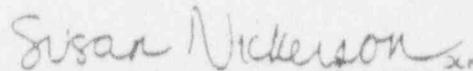
Lee Ketelsen, Director
Clean Water Action Alliance
Alliance of Massachusetts



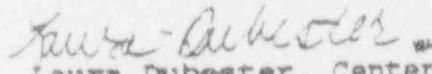
Armond Cohen, Senior Attorney
Conservation Law Foundation



Matthew Patrick,
Cape and Islands Self-Reliance



Susan Nickerson, Director
Association for the Preservation
of Cape Cod



Laura Dubester, Center for
Ecological Technology

MORE ENERGY EFFICIENCY, NOT COAL PLANTS
ENDORSEMENTS

ORGANIZATIONS

Massachusetts Public Interest Research Group (MASSPIRG)
Conservation Law Foundation
Clean Water Action Alliance of Massachusetts
Environmental Lobby of Massachusetts
Massachusetts Audubon Society
Cape and Islands Self-Reliance
Center for Ecological Technology
Association for the Preservation of Cape Cod
Action Energy, Gloucester
American Lung Association of Massachusetts
Blackstone Park Improvement Association
Boston Recycling Coalition
Cambridge-Somerville CAC
Citizen Research and Environmental Watch
Citizens Awareness Network
Coalition for Buzzards Bay
Coal-FACTS Committee, Taunton
Coastal Access Project
Community Action Program, Chelsea
Community Teamwork, Inc.
Community Teamwork Inc., Lowell
Franklin County Community Action Council
Friends of the Five Mile River
Fundamental Action to Conserve Energy, Fitchburg
Haverhill Community Action Inc.
Lynn Economic Opportunity, Inc.
Massachusetts Energy Directors Assn.
Massachusetts Campaign to Cleanup Hazardous Waste
Menotomy, Arlington
Monachusetts Opportunity Council
Nashobans Organized to Conserve Our Air And Life
North Shore Citizen Action
North Shore Community Action Program
Northeast Sustainable Energy Association
Quincy Community Action Program
South Middlesex Opportunity Council
Tri-CAP
Tri-CAP Fuel Assistance
Waltham Council of Neighborhood Associations
Walpole Board of Selectmen
Ware River Preservation Society
Worcester Community Action Council

INDIVIDUALS

John DeVillars, former Mass. Secretary of Environmental Affairs
David P. Dionne, Selectman, Westport
Therese Goulet, Recycling Coordinator, Town of New Braintree
William Lee, Science Specialist, Atwell School
L. Hunter Lovins, President, Rocky Mountain Institute
Marybeth Mead, Program Coordinator, Renew America
Donald Oberacker, Prof. of Biology, Greenfield Community College
Tom Riddell, Dean, First-Year Class, Smith College
Nancy Smith, Managing Director, Sweet Water Trust
William Taylor, Executive Director, EarthWorks Action
Eleanore Zeeb, League of Women Voters of Lower Cape Cod

December 17, 1992

Honorable William F. Weld
Governor of the Commonwealth
State House
Boston, MA 02133

Dear Governor Weld:

The undersigned organizations are deeply concerned about the outcome of several important energy-related decisions presently before state agencies which will have significant environmental and economic impacts. We invite your close attention to these matters. Their outcome will play a significant role in defining your administration's energy and environmental policy.

The first, and more immediately troublesome, issue concerns the Energy Facility Siting Board's consideration of yet two more coal-fired electric power generating stations (the New Bedford and Taunton projects) in the already heavily coal power-saturated southeastern part of the state. As you know, the Siting Board's predecessor was rebuked in August by the Supreme Judicial Court for unlawfully failing to consider the actual Massachusetts need for the proposed New Bedford coal-fired generating station, and its merits as compared with those of increased energy efficiency or gas-fired electricity. Now the issue is squarely back before the Siting Board in both cases.

As context for these decisions, we wish to note the following critical points:

o The New Bedford and Taunton plants will, between them, emit more than 5,200 tons/year of nitrogen oxides, a 2% increase in the state total and as much pollution as is emitted by more than half a million late-model cars. These additional emissions come at a time when the Commonwealth will likely be required by the Clean Air Act Amendments of 1990 to reduce nitrogen oxide emissions by well over 50% by the end of this decade. By definition, every ton of nitrogen oxides emitted by these plants will have to be reduced elsewhere in the state -- from other industries, utility plants, dry cleaning shops, or automobiles. Many observers believe that our 50%-plus reduction goal will be difficult and expensive enough to achieve -- without additional emissions from these proposed power plants. Licensing of these plants will exacerbate the Commonwealth's Clean Air Act compliance mission -- a mission which you have stated to be a major priority of your administration.

o These plants pose other significant environmental hazards, including emissions of sulfur dioxide, carbon dioxide particulates, and toxic heavy metals. For example, they will

each year emit some 700 pounds a year of mercury, with which fish in Southeastern Massachusetts are already heavily contaminated.

o Licensing of these plants is unnecessary, even if the demand for new power is expected to materialize. The Commonwealth has at its disposal abundant potential for cleaner energy resources to meet any such demand. These include not only utility-sponsored energy efficiency programs and renewable energy forms such as wind and biomass, but also gas-fired cogeneration. Ironically, energy efficiency programs are presently running at less-than-maximum levels, as a result of DPU and utility policy predicated upon the Commonwealth's current excess generating capacity. Energy efficiency and renewable energy forms such as windpower emit no air pollutants, while gas-fired combined cycle cogeneration of equivalent capacity would emit seven times less smog-causing nitrogen oxides and substantially less carbon dioxide than the New Bedford and Taunton plants. Licensing of these plants would be puzzling at best when energy efficiency programs are being strenuously capped by the state's electric companies with the assent of the DPU, and when cleaner supply sources are available.

o Restraints on Utility Energy Efficiency Programs. The second set of looming issues directly concerns the timing and pacing of energy efficiency investments by Bay State utilities. As demonstrated in Power to Spare II: Energy Efficiency and New England's Economic Recovery, which we co-sponsored and released in June of this year, robust and even expanded energy efficiency investment by Massachusetts utilities is critically necessary to reduce power costs, clean the Commonwealth's air, improve the state's industrial competitiveness, and create thousands of high-quality jobs. Analysis by the Massachusetts Institute of Technology's Energy Laboratory has estimated that the Commonwealth's ratepayers could save \$7 billion over the next twenty years from expanded efficiency programs. Recently, the Boston Business Journal editorialized strongly in favor of efficiency programs as a long term investment in state competitiveness (see attached). And, just this month, Massachusetts Electric's energy efficiency program received the President's Environment and Conservation Challenge Award -- the nation's highest environmental honor.

Yet, inexplicably, some utilities have called for a decrease in utilities' energy efficiency activity. This issue will be addressed by your administration in the forthcoming state energy plan, as well as utility-by-utility adjudications before the DPU over the next two years.

Your administration's leadership on these important decisions will be critical -- and an important indicator of the degree to which you favor win/win solutions to our environmental and economic development dilemmas. We urge you to ensure that

decisions by your executive agencies do not worsen the state's already serious air pollution problems, and thereby exacerbate our current economic problems while forgoing opportunity for clean growth. We urge you to make it a personal priority that the Commonwealth choose clean and inexpensive energy efficiency and renewable power over expensive and environmentally disastrous boondoggles such as the New Bedford and Taunton coal plants.

Sincerely,

Judy Shope (cc)

Judy Shope, Director
Environmental Lobby
of Massachusetts

Douglas I. Foy

Douglas I. Foy, Executive Director
Conservation Law Foundation

Laurie Martinelli (cc)

Laurie Martinelli,
Director of Public Policy
Massachusetts Audubon Society

Alan Noguee (cc)

Alan Noguee, Energy Director
MASSPIRG

Lee Ketelsen (cc)

Lee Ketelsen, Director
Clean Water Action Alliance
of Massachusetts

Susan Nickerson (cc)

Susan Nickerson, Director
Association for the
Preservation of Cape Cod

Laura Dubester (cc)

Laura Dubester
Center for Ecological
Technology

Matthew Patrick (cc)

Matthew Patrick
Cape and Islands Self-Reliance

Boston Business Journal

200 High Street, Boston, Mass. 02110

James C. Menneto, *Publisher*

Bennie DiNardo, *Editor*

Stephanie M. Gelston, *Managing Editor*

Hold on to conservation

The Weid administration has reached a critical juncture in its quandary over energy policy. Gov. William Weid's choice for the next Department of Public Utilities chairman is fraught with implications for the state's utilities and business community.

For the most part, Weid has been able to keep his promise that he would be both an environmentalist and a business advocate. Not so in energy policy. There has been heated debate as to whether he should continue policies begun by former Gov. Michael Dukakis to encourage energy conservation, or step out of the way and allow utilities to build plants and increase supply.

During the energy shortage in the 1980s, conservationists and utilities agreed that the best way to meet energy needs and stay profitable was to encourage customers to save energy. But with energy now plentiful because of the recession, utilities are not as willing to encourage customers to buy less of their product. Utilities are also balking at a cost-estimating measure promoted by Dukakis that would force them to take into account the cost of pollution any time they propose building a new plant.

The many split decisions by members of the DPU on utility rate requests and the abrupt resignation of former DPU chairman Jonathan Yardley demonstrate that Weid has yet to develop a coherent energy policy. Weid needs to reaffirm his commitment as a pro-environment and pro-business governor and not back down from the many innovative conservation measures Massachusetts pioneered in the 1980s. While there may be no energy shortage at the moment, that is almost certainly a short-term phenomenon; in the long term, the more efficiently we use energy here in the Northeast, the more competitive we can remain in the global economy.