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December 15, 2005

## VIA HAND DELIVERY

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

Re: *NSTAR Electric/NSTAR Gas*  
*D.T.E. 05-85*

Dear Secretary Cottrell:

We represent the Cape Light Compact, a municipal aggregator under G.L. c. 164, § 134, that consists of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"). The Compact is organized through a formal Inter-Governmental Agreement signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A.

On December 6, 2005, the Department of Telecommunications and Energy (the "Department") received a Joint Motion for Approval of Settlement Agreement (the "Motion") of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company (collectively, "NSTAR Electric"), NSTAR Gas Company (together with NSTAR Electric, "NSTAR"), the Attorney General of Massachusetts, the Low-Income Energy Affordability Network and Associated Industries of Massachusetts (collectively, the "Settlement Parties"). The Motion seeks approval of a Settlement Agreement (the "Settlement Agreement") that intends to resolve certain issues with regard to a base rate case that NSTAR was planning to file with the Department.<sup>1</sup> The Settlement Parties filed roughly 2,440 pages of exhibits in

<sup>1</sup> A press release issued December 6, 2005 by the Attorney General states that the Settlement was negotiated "after [NSTAR] filed a request in September for an \$89 million rate increase." While NSTAR filed a notice of its intent to file a general rate case, no rate case nor any evidence in support of a rate increase was filed prior to the December 6 filing.

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support of the Motion.<sup>2</sup> The Motion states that the Settlement will be withdrawn if the Department fails to approve the Settlement in its entirety by December 30, 2005.

On December 8, 2005, the Department published public notice of public hearings on the Settlement to be held on December 29, 2005, together with notice of the deadline for intervention or participation in the proceeding by interested parties.

The Compact anticipates intervening in this proceeding and intends to file its request for intervention in due course. In the interim, the Compact respectfully notifies the Department that it will request that the proceeding be structured as a full adjudicatory proceeding with written discovery and evidentiary hearings with opportunities for cross-examination. In addition, the Compact will request that the Department allow for a sufficiently robust process that avoids an inappropriate rush to judgment.

The Compact will formally make these requests because there are serious questions as to whether the Department could find, as it must in this docket, that the Settlement, in light of the entire record, is consistent with applicable law, including relevant provisions of the Act and Department precedent, as well as the public interest, Boston Edison Company, D.P.U./D.T.E. 96-23 at 13 (1998), and that the Settlement will result in a just and reasonable outcome, Bay State Gas Company, D.P.U./D.T.E. 95-104 at 15 (1995). While the Compact has not yet completed its examination of the many exhibits referenced in the filing, the Compact's review to date indicates that the Settlement may in fact be contrary to the public interest and would lead to an unjust and unreasonable outcome. Our initial concerns include the following, among other things:

- *Substituting a private deal negotiated without the benefit of broader participation from interested parties is contrary to the public interest.*

A general rate case is long overdue with respect to NSTAR Electric. As Commissioner Manning aptly noted in her dissenting opinion in D.T.E. 03-121, the "last litigated rate case for [NSTAR] was in 1986," nearly *twenty years ago* and more than a decade before the 1997 restructuring of the electric industry in Massachusetts and prior to a significant corporate merger and various regulatory settlements. D.T.E. 03-121 at 56 (July 23, 2004) (dissent of Commissioner Deirdre Manning). NSTAR's current rates "are likely not cost based" and its returns on equity in recent years (the same range of return on equity sanctioned by the Settlement) "are much higher than the Department allowed rate of return from the early nineties," and "are even higher than one would expect from a [monopoly utility] company that no longer bears the risks from owning generation assets." *Id.* A general rate case would have provided the Department and other interested parties the opportunity to apply rigorous scrutiny to the costs, revenues and activities of a private entity with a valuable monopoly in a vastly different regulatory framework.

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<sup>2</sup> This number excludes the additional pages associated with 12 exhibits that are listed in the Exhibit List attached to the Joint Motion but do not appear to have been posted on the Department's website.

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Moreover, the “informal discovery and negotiations” engaged in by the Settlement Parties, Settlement, recital 2, was conducted outside the public eye, and such “discovery,” if different than the documents filed with the Joint Motion, was not and may never be the subject of appropriate public examination.

- *The claimed “rate relief” is actually a rate increase.*

It appears that under the Settlement, real increases in distribution rates would be hidden by illusory decreases in transition charges. Customers would ultimately receive no overall reduction in transition charges. Collection of a portion of transition charges would apparently be deferred through 2012 (subject to exceptions that should be fully explored in this proceeding), but any deferred transition charges would be recovered from ratepayers, with accumulated interest, after 2012. In essence, customers would be borrowing from themselves to pay NSTAR’s shareholders more today.

- *The plan does not provide “long-term price stability for customers,” as claimed in NSTAR’s December 6, 2005 letter to the Department.*

The Settlement would allow automatic annual distribution rate increases and the flow-through of numerous and unprecedented costs, including the costs of services already included in NSTAR’s rates (e.g., removal of dangerous double poles, prevention of stray voltage that has resulted in electrification of pets). Following the period of automatic increases and flow-throughs, customers would be hit by the accumulated deferral of transition costs, including at least \$50 million deferred in 2006, plus additional deferrals every year under an “Inter-rate Stabilization Adjustment” that reduces transition charges to *temporarily* offset distribution rate increases. In addition, the illusory nature of the purported rate relief and long-term price stability is further underscored by the fact that, if at any point NSTAR is acquired by a third party, NSTAR (and presumably its successor) can simply terminate the Settlement without cause and walk away from all of its commitments. Settlement § 2.7.

- *The Settlement drastically reduces regulatory oversight.*

The Settlement would guaranty NSTAR distribution rate increases every year through 2012 whereas ordinarily NSTAR would have had to file for a rate increase and justify each increase with sufficient evidence that the rate increase is necessary in order to allow the company to recover its prudently incurred costs plus a reasonable rate of return. Rather than give up something for this extraordinary allowance, NSTAR is simply agreeing to collect a portion of its transition costs at a later time plus an unreasonable amount of interest on the deferred cost recovery.

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- *The deferral of transition charges may unnecessarily and illegally extend and increase the charges.*

Chapter 164 of the Acts of 1997, the electric utility industry restructuring act (the "Restructuring Act") aimed to achieve competition and lower rates in the electric industry by requiring that distribution companies exit the generation business. Because the distribution companies had made investments in generation assets with the expectation that ratepayers would bear the cost of those investments, the Restructuring Act allows the distribution companies to recover such "stranded costs" by imposition of "transition charges." But the Restructuring Act only allows recovery of approved transition costs from ratepayers if "collected over a *specific period of time* on a non-bypassable basis and in a manner that *does not result in an increase in rates to customers.*" Restructuring Act, § 1(u) (emphasis added); *see also* G.L. c. 164, § 1G(e). The continued deferral of transition costs with the return of full transition charges in 2012 may also violate the prohibition that "in no event shall the department determine to allow any carrying costs for any period beyond the year 2009 on any unamortized balance of costs" of generation assets that were being recovered in rates as of January 1, 1997 or of nuclear entitlements. G.L. c. 164, § 1G(b)(3)(d). Extending the recovery of transition costs far into the future, and at an inflated interest rate, is contrary to the intent of the Restructuring Act, a poor deal for ratepayers and serves to further delay the implementation of a truly deregulated, competitive electricity market.

- *The rate allowed on deferral of transition costs is exorbitant.*

The 10.88% interest rate the Settlement would impose on the transition deferrals is much higher than NSTAR Electric's current cost of capital, and is an extraordinarily high rate by current standards. The Settlement explains that the 10.88% rate originates in the carrying charge rate approved by the Department in D.P.U./D.T.E. 96-23, Settlement § 2.9, but it is not appropriate to import a carrying charge rate from a 1996-1997 proceeding. An appropriate benchmark for a risk-free rate of return would be U.S. Treasury securities, which are currently at rates of 4.41% to 4.72% (and are roughly 1.8 percentage points below corresponding rates from 1997).

- *The new "arrearage forgiveness" program for low-income customers entails no "forgiveness" on NSTAR's part and is simply a reallocation of costs to other customers.*

Under the Settlement, NSTAR shareholders would apparently pay not a single penny of the cost of new benefits afforded to low-income customers. Instead, NSTAR Electric would recover 100% of the costs, with interest, from other customers. The Compact favors appropriate protections for vulnerable customers. However, in response to a legislative mandate (St. 2005, c. 140, § 17), a generic proceeding (D.T.E. 05-86) is already underway to review arrearage management programs for low-income customers and that proceeding is the most appropriate forum for developing sound, fair, statewide policy decisions on these matters.

- *Ratepayers should not be required to fund services that are already included in NSTAR Electric's duties and mission as a regulated distribution company.*

Removing double poles, preventing electrified manhole covers and engaging in other public safety measures are already part of the duties of an electric distribution company. Indeed, just this month, the Department issued an order requiring distribution companies to begin implementing recommendations to bolster manhole and stray voltage safety and detection practices and to file distribution system safety plans. DTE Press Release dated December 12, 2005. Prior to restructuring, the NSTAR companies did not have particular problems with promptly removing double poles or avoiding the electrocution of pets. Unless NSTAR can provide strong evidence that the costs of undertaking these activities are currently excluded from the distribution costs that form the basis of the current distribution rates, the ratepayers should not have to pay NSTAR a second time to do what it is already being paid to do, and legally required to do. NSTAR has been receiving revenues since restructuring that should have been adequate to operate safely and legally; if it has diverted some of those revenues to benefit shareholders, NSTAR should now return those funds to its utility operations rather than charge ratepayers for the cost of funding such services.

- *The process specified in the Settlement for procurement of electricity for residential customers is unlikely to yield lower prices.*

Although the Restructuring Act aimed to remove distribution companies from selling electricity (as opposed to selling distribution service), the Act requires distribution companies to serve as providers of last resort by providing "default service" to customers who have not chosen to purchase electricity from a competitive supplier or whose competitive supplier has failed to provide electricity.<sup>3</sup> Currently, NSTAR must procure 50% of its basic service supply semi-annually for one-year terms. D.T.E. 02-40-B. The Settlement would require NSTAR to procure 50% of its basic service supply for one-year terms, 25% of its load for two-year terms and 25% of its load for three-year terms. It should be noted that NSTAR has maintained in other proceedings that "the existing procurement practice (50%/1-year term) provides a good balance between price stability, rate continuity and the desire to track market prices, without imposing an administrative burden." D.T.E. 04-115, Initial Comments of NSTAR Electric, at 14 (Jan. 10, 2005). And NSTAR has likewise noted that supply contract terms of more than one year would likely result in greater *price stability* for smaller customers, but that NSTAR "does *not* believe that longer term contracts 'are likely' to produce *lower prices*." *Id.* at 17 (emphasis added).

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<sup>3</sup> The Department recently approved the marketing of default service to consumers as "basic service," D.T.E. 04-115 (Feb. 7, 2005), a practice which is likely to mislead consumers into thinking they are getting a generic product at a bargain price.

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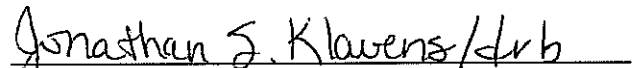
In conclusion, for all the reasons outlined above, the Compact welcomes the Department's initiation of an adjudicatory proceeding to review the Settlement, appreciates the opportunity for interested persons to seek intervention or participation, and trusts that the Department will proceed with deliberate care as the proceeding progresses.

Thank you for your attention to this matter.

Sincerely,

THE CAPE LIGHT COMPACT

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