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May 26, 2017

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Re: NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource Energy, D.P.U. 17-05

Dear Secretary Marini:

Attached for filing is the Motion of the Attorney General to Protect Intervenors' Due Process Rights.

Thank you for your attention to this matter.

Sincerely,

Joseph W. Rogers

Enclosures
cc: Mark Tassone, Hearing Officer
Cheryl Kimball

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

NSTAR ELECTRIC COMPANY AND WESTERN MASSACHUSETTS ELECTRIC COMPANY, D/B/A EVERSOURCE ENERGY	**D.P.U. 17-05**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 26th day of May, 2017.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL

By:

Joseph W. Rogers
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Dated: May 26, 2017

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

NSTAR Electric Company and Western Massachusetts Electric Company, each d/b/a Eversource Energy	)	D.P.U. 17-05

Motion of the Attorney General to Protect Intervenors' Due Process Rights

Last Friday night, May 19, 2017, NSTAR Electric Company and Western Massachusetts Electric Company (together, "Eversource" or "Company") filed rebuttal testimony of its Rate Design Panel wherein it announced to the Department and the other parties that the Company intends to change its rate design proposal. "[T]he Company will be submitting a refined rate design to address certain concerns raised in public and written comments, and in testimony." Exh. ES-RDP-Rebuttal-1, p. 2.

In a short 6-page narrative within its rebuttal testimony, the Company indicates that its new proposal will: shift revenues between the Eastern and Western regions; change the way transmission costs are allocated; alter the way automatic adjustment mechanisms are calculated; change rate class definitions; change the proposed rate for the Massachusetts Water Resources Authority; and delay implementation of the MMRC to residential customers. As a consequence, the Company intends to propose vastly different rates than originally submitted. Exh. ES-RDP-Rebuttal-1, pp. 14-20. The Company stated that it would file its new design on Thursday, June 1, 2017, one business day before the start of the evidentiary hearings and only two business days before the rate design panel's first day of testimony.[1]

[1] Last night (May 25, 2017), the night before intervenors' surrebuttal is due, the Company additionally filed a three-page letter that attempts to persuade the Department that the Company's new rate design proposal is not a "broad modification" but rather only a "targeted" reform of its originally proposed rate design and that the "principal

The Company May Not Unilaterally Change the Rate Design Proposed in the Petition; The Company Must Obtain Leave of the Department to do so

Under the Department's rules, the Company may not unilaterally change the rate design included in its January 17 petition. The Company must seek Department leave to do so. The Company states that it is "refining" its original rate design to respond to the outcry of criticism it heard throughout the state about its rate design proposal.[2] Exh. ES-RPD-Rebuttal-1 at 1-2. The Department regulations do not preclude a company from amending its petition in response to public comments. However, any company seeking to amend its petition in this way, must first seek leave of the Department. The Department's regulations at 220 CMR 1.04(3) provide:

> Amendments to Pleadings. Leave to file amendments to any pleading will be allowed or denied as a matter of discretion. If amendment is made to an initial pleading, an answer to said amended pleading, if permitted, shall be filed within such time as may be directed by the Commission or the presiding officer.

Thus, a company may not amend its petition unilaterally, nor may it dictate to the Department the processes and time necessary pursuant to G.L. c. 30A to provide other parties with adequate process to address the company's proposed changes.

aspect" of the design has not changed. The Company does not dispute that it is amending its original proposal and that it needs to file an entirely new bill impact analysis. As addressed further below, whether the amendments are "targeted" or not, the legal due process requirements regarding notice, opportunity to prepare and present evidence, and prior leave from the Department are the same.

[2] In its May 25 letter, the Company states that it was "compelled" to address the problem with the original rate design that resulted in "relatively greater impacts that certain customer classes would experience."

If the Department Grants the Company Leave, the Public Must Be Notified and Given the Opportunity to Comment

Pursuant to G.L c. 164, § 94 and 220 CMR 5.06, the Company published public notice of its filing. See Order of Notice, January 30, 2017; Proof of Service, Filed March 2, 2017, Supplemental Proof of Service, Filed March 22, 2017. As required, the notice included the "typical bill impact of the proposed increase." 220 CMR 5.06(2)(c). Specifically, the notice included over three pages of bill impacts covering both companies and both rate phases for residential heating, non-heating, low-income heating and non-heating and commercial and industrial customers. See January 30, Notice of Filing. The notice specifically tells customers the rate they will pay if the Company's proposal is approved i.e., whether their rates will increase or decrease and the specific dollar amount and percentage increase.

Now, the Company has indicated that it will file a new "full bill impact analysis" with the Department on June 1. May 25 letter at 2-3. Based on the Company's description of the June 1 filing, it appears that customer bill impacts will differ significantly from the bill impacts noticed earlier. A customer that reviewed the Company's original notice and saw that his rate increase was not too high or that his rate would decrease may have decided not to intervene or comment on the petition. That same customer could have a very different view now if he sees that his rate under the Company's "targeted modifications" would increase significantly more or would increase instead of decrease. Customers have the right to know the impact of the modified rate proposals on their individual bills and the opportunity to exercise their statutory and constitutional rights in regards to that increase. Thus, pursuant to G.L c. 164, § 94 and 220 CMR 5.06, should the Department grant leave for the Company to amend its rate proposals, it should order the Company to re-notice the June 1 filing in compliance with G.L. c. 94 and Department rules and allow for further comments.

If the Department Grants the Company Leave, the Department Must Provide Other Parties with Reasonable Opportunity to Prepare and Present Evidence and Argument about the New Proposal

If the Department allows an amendment, the Department must then consider the due process requirements necessary to ensure that all parties are afforded an opportunity for full and fair hearing. G.L. c. 30A, § 10 ("In conducting adjudicatory proceedings, as defined in this chapter, agencies shall afford all parties an opportunity for full and fair hearing." emphasis added). The procedural due process rights described in G.L. c. 30A, § 11 are among the "essential elements of due process" in Massachusetts administrative proceedings. In re Foley, 439 Mass. 324, 336 (2003). Among other requirements, Section 11 sets forth the due process the Department is required to provide here regarding the Company's amendment. G.L. c. 30A, § 11 provides in relevant part:

> "Parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases . . . where subsequent amendment of the issues is necessary, sufficient time shall be allowed after . . . amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues."
>
> G.L. c. 30, § 11 (emphasis added).

Importantly, 30A protects not only the petitioner in a case, but provides that all "parties" must have sufficient notice of, and opportunity to address issue changes. The issue of rate design is one of the most important and complicated in a rate case. This is particularly true here where the Company has not redesigned its rates in years and proposes to consolidate some rates and not others. The Company's petition included a three volume rate design proposal that the parties have analyzed in depth since the case was filed more than four months ago.

Now, the Company seeks to drop on the laps of the Department and the other parties an amended rate design proposal mere days before the relevant witnesses are to testify and be cross-

examined. The Company's amendment also comes after the close of discovery and the deadline for intervenors to file surrebuttal. The Company's proposed timeline barely provides any time for parties to read, and certainly not "sufficient time" to prepare rebuttal evidence or cross-examination of, the amended rate filing. As stated by the Attorney General's rate design witness, Mr. Rubin, in his surrebuttal testimony:

> [I]t will be impossible to fully analyze the proposal in just a few days, or even a few weeks. Eversource's rate design workpapers originally were provided on electronic media totaling more than 70 files containing more than 1,000 MB of data. It is not a simple matter to review, analyze and understand a filing of that complexity, and it cannot be done over just a few days. Exhibit AG-SJR-S-1, p. 2.[3]

It Matters Not Whether the Proposed Changes are "Targeted"; The Company Must Seek Leave to Make Them and Re-notice the Filing and the Department Must Adhere to Chapter 30A

The Company's "protest-too-much" May 25 letter attempting to characterize the yet-to-be filed June 1 rate design changes as "targeted modifications" is not only irrelevant, it is wrong. The Company does not dispute that it is amending its original proposal. See May 25 letter (referencing the "proposed modifications to the originally filed rate design."). As for the scope of that modification, given the inherent customer trade-offs associated with designing rates (since all rates must sum to the Company's revenue requirement) it is absurd to assert that one can "target" only certain customers' rates and have no impact on others. For example, the Company states that it intends to change the allocation of the revenue requirement for WMECo and NSTAR residential customers by using a consolidated revenue requirement. Such a proposal will impact *every single* WMECo and NSTAR residential customer, and will necessarily result in

[3] The Federal Executive Agencies have indicated that they believe an additional 4-6 weeks will be required. Exhibit FEA-MPG-25, p. 10.

one company's customers subsidizing the other companies' customers.[4] Indeed, the Company admits it will need to provide an entirely new bill impact analysis. May 25 letter at 3.

Finally, even if the proposed changes only impact a "targeted" number of customers, which cannot be the case, the Company is still significantly changing the rate design for the "targeted" customers. These customers still require notice; the Intervenors and the Department still need adequate time to review the impacts of these changes; and the Intervenors still need the opportunity to address, file testimony and conduct cross-examination about them.

It is Not Possible to Maintain the Current Procedural Schedule and Meet Due Process Requirements

Because the Company is proposing this amendment on the eve of hearings, it is not possible for the Department to maintain the current procedural schedule and provide "sufficient time" to allow other parties a reasonable opportunity to prepare and present evidence and argument. Thus, the Attorney General renews her request to phase this proceeding and address the rate design, consolidation and alignment issues in a second, subsequent phase of this case. As was the case in *Boston Edison Co.*, D.P.U. 18515 (1976), there is now "substantial danger that the important question of rate design [will] not receive adequate attention within the statutory suspension period." In *Boston Edison*, the Department "had hoped that both the rate relief and rate design aspects of this case could be completed" together. However, like here, circumstances changed and the Department was not able to do so. In order to ensure that rate design issues receive adequate attention and all parties are afforded a full and fair hearing, the

[4] The Company also asserts that the "principal aspects" of the rate design proposal are not changing. Even if the principal aspects like rate class definitions and general rate structure are not changing (which we will not know until the parties can see and review the filing), all of the details -- the specific allocations of revenue among customer classes and rate areas, as well as the specific rates that would be charged -- appear to be changing. As with all rate design proposals, the devil is in the details.

Department must provide more time to consider rate design issues outside the parameters of the current procedural schedule.

If the Department Maintains the Original Schedule Parameters, It Should Provide Some Process Mitigation

If the Department provides the Company with leave to amend its petition and does not phase the proceeding, the Department should, at a minimum, amend the procedural schedule to allow at least some time for Intervenors to review the new proposal and to ask questions, present responsive testimony, and cross examine Company witnesses about such changes. See e.g., Town of Burlington v. Dep't of Educ. for Com. of Mass., 736 F.2d 773, 782 (1st Cir. 1984), aff'd sub nom. Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359 (1985) (Where question arose about adequate notice of issues, hearing officer provided an opportunity for parties to submit rebuttal evidence as well as argument in written closing statements and extended the filing deadline by three weeks). In this regard, the Department at minimum should:

1. Move the Rate Design panel's first two days of testimony from June 6 and 7 to June 20 and 21. Move Mr. Rubin's testimony to June 29 and 30. This change to the schedule will allow the Department to keep within its original time parameters for the evidentiary hearings (June hearing days), while providing minimal disruption to other witnesses. Mr. Rubin has indicated that he could be available on the 29th and 30th.

2. Allow parties to submit discovery requests to the Company regarding the proposed changes to the Company's rate design proposal and require the Company to reply to each request within 2-days.

3. Allow other parties, if they so elect, to submit oral or written (at the Internerors' choice) surrebuttal testimony regarding the new rate design proposal. Because the other parties' rate design witnesses were deprived of the opportunity to submit written surrebuttal on this new proposal, the Department should allow the evidence into the record during the evidentiary hearings.

4. Allow Intervenors an additional week to submit their initial briefs.

To be clear, the AGO does not believe that these accommodations alone are adequate to satisfy the due process requirements of G.L. c. 30A, § 1. Accordingly, the AGO does not waive any objection to the Company's amended filing and expressly reserves her right to appeal on this ground. But if the Department decides to move ahead within the original time parameters for the evidentiary hearings, these minor schedule modifications could provide some mitigation.

Respectfully submitted,

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Dated: May 26, 2017