D.T.E. 01-71A

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 164, §§ 1E, 76 and 93, into Boston Edison Company's, Commonwealth Electric Company's and Cambridge Electric Light Company's d/b/a NSTAR Electric, service quality filings, including but not limited to, their service quality filings submitted in response to Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84.

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I. INTRODUCTION

On September 7, 2001, the Department of Telecommunications and Energy ("Department") opened an investigation into the quality of electric service provided by the Massachusetts electric distribution companies pursuant to G.L. c. 164, §§ 1E, 76, 93 and G.L. c. 30A, §§ 10, 11. Investigation into Quality of Electric Service, D.T.E. 01-71 (2001). In that Order, the Department stated that the investigation would include, but would not be limited to, the service quality ("SQ") plans filed by the electric distribution companies pursuant to Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001). D.T.E. 01-71, at 1.[1]

On August 22, 2001, the Department directed Boston Edison Company ("BECo"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge") d/b/a NSTAR Electric ("NSTAR" or "Company") to submit an SQ plan that complies with the Department's directives in D.T.E. 99-84 and to calculate penalties for NSTAR's failure to meet any of the established service quality benchmarks from September 1, 1999 through August 31, 2001 (Letter dated August 22, 2001 from Department's General Counsel).[2]

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[1] On June 29, 2001, the Department established service quality performance measures that, if unmet by a distribution company, would subject that company to a penalty. Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001). In D.T.E. 99-84, the Department directed distribution companies to file a service quality plan that complies with the directives contained therein, by October 29, 2000. Id.

[2] In BEC Energy/ComEnergy Acquisition, D.T.E. 99-19 (2000), the Department approved a rate plan for NSTAR pursuant to G.L. c. 164. In that Order, the

(continued…)

On December 5, 2001, the Department approved BECo's, Commonwealth's and Cambridge's service quality plans as in compliance with the service-quality standards established by the Department in D.T.E. 99-84 (Letter Order at 2 (December 5, 2001)). On December 6, 2001, the Department issued a Procedural Order setting forth the scope of the proceeding in the NSTAR-specific docket (i.e., D.T.E. 01-71A). [3] The Department stated that we would focus our investigation on: (1) whether NSTAR met the service quality thresholds established by the Department in D.T.E. 99-84 beginning September 1, 1999; and (2) if not, what penalties should be imposed by the Department on the Company. Investigation into NSTAR's Service Quality, D.T.E. 01-71A.

Pursuant to notice duly issued, the Department conducted public hearings throughout NSTAR's service territory.[4] On January 22, 2002, the Department conducted an evidentiary

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[2](…continued)
Department also approved a service quality plan for NSTAR, but noted that a generic proceeding (i.e., D.T.E. 99-84) would be opened to investigate issues relating to service quality. Id. at 106-107. The service quality plan approved by the Department in D.T.E. 99-19 did not include a penalty mechanism. Id. However, the Department directed the Company to file a proposal for a penalty mechanism within six months of the date of the merger. Id. at 7. At NSTAR's request, the Department deferred any decision concerning the penalty mechanism pending the completion of the Department's generic investigation in D.T.E. 99-84. In the instant case, the Company does not contest the Department's directive to calculate penalties from September 1, 1999 through August 31, 2001, and averred that it would calculate the penalty amount in accordance with the mechanism delineated by the Department in D.T.E. 99-84 (NSTAR Brief at 16, n. 19).

[3] The other companies subject to investigation in D.T.E. 01-71 are: Massachusetts Electric Company (D.T.E. 01-71B); Fitchburg Gas and Electric Light Company (D.T.E. 01-71C); and Western Massachusetts Electric Company (D.T.E. 01-71D).

[4] Public hearings were held in Stoneham and Brookline on November 26, 2001,
(continued…)

hearing. The Company sponsored the testimony of Henry C. LaMontagne, director of regulatory policy and rates. The evidentiary record consists of 39 exhibits, and responses to 19 record requests.

The Attorney General intervened in this matter as of right, pursuant to G.L. c. 12, § 11E. The Department granted the petitions to intervene of the Commonwealth of Massachusetts Division of Energy Resources ("DOER") and The Utility Workers Union of America ("UWUA" or "Union"). The Cape Light Compact was granted intervenor status for the limited purpose of submitting written comments on issues investigated in this docket.

On January 24, 2002, UWUA filed an Appeal of the Hearing Officer's Evidentiary Rulings on Scope, or in the alternative, a Motion for Clarification of Scope and Schedule ("Appeal"). On January 25, 2002, the Attorney General submitted a Motion to Compel Discovery ("Motion"). On January 31, 2002, NSTAR submitted its opposition to the Attorney General's Motion and the Union's Appeal.

The Attorney General and DOER submitted initial and reply briefs jointly on February 5, 2002 and February 13, 2002, respectively. NSTAR submitted initial and reply briefs on February 6, 2002 and February 13, 2002, respectively.

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[4](…continued)

New Bedford and Boston on November 27, 2001, Medfield and Hyannis on November 28, 2001, and Arlington on November 29, 2001.

II. PROCEDURAL MATTERS

A. Motion to Compel Discovery

1. Introduction

On January 4, 2002, the Attorney General propounded 23 information requests on NSTAR. The Company objected to eight of those discovery requests, claiming that the Attorney General sought information that is outside the scope of this proceeding. The Attorney General requests that the Department compel the Company to respond to those eight discovery requests. Specifically, the eight discovery questions request service quality data for calendar year 2001 (AG 1-9), benchmarks and standard deviation used for each NSTAR company in calendar year 2001 (AG 1-12 and AG 1-13), information on how the data were collected for each company and how the data were subsequently consolidated for use system-wide (AG 1-15), statistics dating from 1991 on each company's service quality benchmarks (AG 1-17 and AG 1-23), customer surveys conducted by NSTAR companies since 1991 (AG 1-18), and NSTAR's policies regarding customer notification of scheduled service interruptions (AG 1-22).

2. Positions of the Parties

a. Attorney General

The Attorney General contends that the eight discovery requests are relevant to this proceeding for three reasons. First, the Attorney General argues that complete responses to Information Requests AG 1-9, 1-12, 1-13, 1-15, 1-17 and 1-23, would assist him in evaluating the data that the Company relied on to calculate the penalty to be imposed for their failure to

meet service quality benchmarks (Motion to Compel at 2). Second, the Attorney General maintains that responses to Information Requests AG 1-13 and 1-15 would permit him to evaluate the consistency of the penalty calculation methodology between the NSTAR companies (id. at 5). Finally, the Attorney General contends that responses to Information Requests AG 1-17, 1-18, and 1-23 would provide him with a basis on which to form an opinion on whether the Company's service quality has deteriorated since the merger between Commonwealth Energy Systems and BEC Energy (id.).

b. Company

The Company contends that questions regarding (1) NSTAR's service quality performance in calendar year 2001, (2) the service quality plan that the Company filed in March 2002, (3) consolidation of NSTAR's data post-merger, and (4) customer service data since 1991, are outside the scope of this investigation (NSTAR Opposition at 5). Specifically, NSTAR argues that because the scope of this proceeding is limited to NSTAR's service quality performance from September 1999 through August 2001, questions concerning how NSTAR's service quality plan would be implemented in the future, or data that pertain to NSTAR's 2002 service quality plan have no bearing on this proceeding (id. at 5-6).

3. Analysis and Findings

On December 6, 2001, the Department issued a procedural order setting forth the scope of the proceeding in D.T.E. 01-71A. Specifically, the Department stated that we would focus our investigation on: (1) whether NSTAR met the service quality thresholds established by the Department in D.T.E. 99-84 beginning September 1, 1999; and (2) if not, what penalties

should be imposed by the Department on the Company. Investigation into NSTAR's Service Quality, D.T.E. 01-71A Procedural Order (December 6, 2001).

In AG 1-9, AG 1-12, AG 1-13, the Attorney General requests data and other information pertaining to the Company's service quality for January through December 2001. In accordance with our directives on August 22, 2001, the Company filed data pertaining to NSTAR's service quality from September 1, 1999 through August 31, 2001 (Exh. NSTAR-3 (supplement)). The Department notes that data regarding NSTAR's service quality from September 1, 2001 through December 31, 2001 will be reviewed in the proceeding that evaluates NSTAR's service quality plan, as filed by the Company in March 2002. Thus, the Department finds that the Attorney General's request for information on the Company's service quality from September 1, 2001 through December 31, 2001 is outside the scope of this proceeding.

In AG 1-15, AG 1-17, AG 1- 18, AG 1-22 and AG 1-23, the Attorney General seeks information on whether the Company was in compliance with the Department's directives pertaining to service quality as detailed in D.T.E. 99-84. On December 5, 2001, the Department issued a Letter Order wherein we found that NSTAR's service quality plan was in compliance with the Department's directives in D.T.E. 99-84. The Department notes that questions on (1) how the service quality data was consolidated (i.e., AG 1-15); (2) historical statistics for service quality benchmarks (i.e., AG 1-17; 1-18; and 1-23); and (3) customer service policies (i.e., AG 1-22), seek information on whether NSTAR's service quality plan complies with D.T.E. 99-84 and our directives in letters written to NSTAR on

August 22, 2001. As the Department has found previously that the SQ plan complies with our directives, and because the scope of this proceeding is limited to performance in light of the plan and to the calculation of penalties, the Department finds that eight of the 23 discovery requests issued by the Attorney General seek information that is beyond the limited scope of this proceeding. Accordingly, the Attorney General's Motion to Compel Discovery is denied.

B. Appeal of Hearing Officer's Ruling on Scope of the Proceeding

1. Positions of the Parties

a. UWUA

UWUA appeals the Hearing Officer's decision that cross-examination of the Company's witness concerning NSTAR's staffing level benchmarks is outside the scope of this proceeding (Appeal at 2). While the UWUA acknowledges that the Hearing Officer's ruling is facially consistent with the scope of the proceeding outlined by the Department on December 6, 2001, UWUA indicates that it filed this appeal because the Procedural Order does not allow interested parties any scheduled opportunity to address the staffing level issues that it believes are germane to the service quality docket (id. at 2-3). Thus, UWUA asks that the Department either overrule the Hearing Officer's evidentiary ruling, or alternatively, establish a schedule for addressing those issues not dealt with in this phase of the proceeding (id. at 3).

b. Company

The Company states that the Hearing Officer ruled correctly when he limited the scope of UWUA's cross-examination and did not allow questions concerning the Company's staffing levels (NSTAR Opposition at 4). NSTAR notes that the UWUA will have an opportunity to

evaluate the Company's service quality plan on a going-forward basis in the next phase of this proceeding (id.).

2. Analysis and Findings

In its Appeal, the UWUA acknowledged that the Hearing Officer's ruling was facially consistent with the Department's Procedural Order in this matter. At the evidentiary hearing, the Hearing Officer stated that the Department limited this phase of the investigation into NSTAR's service quality to determine: (1) whether NSTAR has met the service quality thresholds established by the Department in D.T.E. 99-84 beginning September 1, 1999 and, (2) if not, what penalties should be imposed by the Department on the Company (Tr. at 68). The Department finds that the Hearing Officer accurately stated the Department's limitation on the scope of this proceeding and appropriately prohibited questions from UWUA regarding the Company's staffing levels. Additionally, the Department notes that the statutory requirement related to staffing levels applies to companies that file to begin operating under a PBR, G.L. c. 164, §1E(c), and none of the NSTAR companies currently are operating under a PBR. Accordingly, UWUA's Appeal of the Hearing Officer's Ruling is denied.

III. SERVICE QUALITY PLAN

A. Introduction

In this Order, the Department addresses (1) whether BECo, Commonwealth, and Cambridge have met the service quality thresholds established by the Department in D.T.E. 99-84 beginning in September 1, 1999 and if not, what penalties should be imposed by the Department on the companies; (2) whether, as proposed by NSTAR, the penalty amount

should be offset by the payments made by BECo to specific customers during the Summer of 2001; and (3) how penalties imposed as a result of the failure of BECo, Commonwealth, and/or Cambridge to meet established service quality benchmarks should be credited to customers. Each of these issues is discussed below.

B. Service Quality Thresholds September 1, 1999 through August 31, 2001

1. Introduction

BECo, Commonwealth, and Cambridge submitted service quality plans that provide for the following performance measures: (1) percentage of calls answered; (2) percentage of service appointments met; (3) percentage of on-cycle meter reads; (4) lost work-day accident rate; (5) System Average Interruption Duration Index ("SAIDI"); (6) System Average Interruption Frequency Index ("SAIFI"); (7) number of Department Consumer Division cases; and (8) number billing adjustments (Exhs. NSTAR-2; NSTAR-3 (supplement)).

For the performance period September 1, 1999 through August 31, 2000, Cambridge failed to comply with the benchmarks established for SAIFI and Consumer Division cases (Exh. NSTAR-3 (supplement)). However, because of the penalty offset mechanism, whereby superior performance in a particular performance category may be applied to offset penalties that might otherwise be imposed for failure to meet other performance measures, no penalty amount was calculated for the period from September 1, 1999 through August 31, 2000 (id.; RR AG-8). From September 1, 2000 through August 31, 2001, NSTAR calculated an electric system-wide net penalty of $3,249,499 as a result of sub-par service quality performance (id.). Specifically, from September 1, 2000 through August 31, 2001, BECo failed to meet

benchmarks established for on-cycle meter reads, SAIDI, and SAIFI, resulting in a penalty amount of $3,207,141 (Exh. NSTAR-3 (supplement)). During that same period, Commonwealth failed to meet benchmarks established for calls answered, resulting in a penalty amount of $42,358 (id.). Finally, from September 1, 2000 through August 31, 2001, Cambridge failed to meet the established benchmarks for calls answered (id.). However, because of Cambridge's superior service in the other performance-measured areas, the penalty amount was offset, thereby resulting in a credit amount of $131,117 (id.).[5]

2. Positions of the Parties

a. Attorney General and DOER

The Attorney General and DOER argue that the Department should reject the Company's calculation of approximately $3.2 million in penalties system-wide, and instead impose on NSTAR the maximum penalty permitted by G.L. c. 164, §1E, which the Attorney General and DOER state totals $22.5 million (Attorney General/DOER Brief at 11).[6] The Attorney General and DOER opine that since the merger of BEC Energy[7] and Commonwealth

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5 Pursuant to D.T.E. 99-84, excess offset credits have no value between companies, but have value only within a company. D.T.E. 99-84, at 44-45; D.T.E. 99-84-B, at 4-5.

6 In pertinent part, G.L. c. 164, § 1E authorizes the Department to promulgate rules and regulations to establish service quality standards as part of a performance-based rate scheme. Moreover, the Department is authorized to levy a penalty against a distribution company which fails to meet the service quality standards in an amount up to and including 2 percent of the company's transmission and distribution service revenues for the previous calendar year.

7 BEC Energy is the parent company of BECo. D.T.E. 99-19 (2000).

Energy System[8] to form NSTAR, consumers in BECo's service territory have received electric service marred by widespread outages (id. at 4-5). Given their contention, the Attorney General and DOER believe that the imposition of a $22.5 million penalty on the Company would serve to ensure that NSTAR is given appropriate motivation to improve its service quality system-wide (id. at 5-6).

Finally, the Attorney General and DOER request that the Department order NSTAR to conduct an independent audit of its service quality benchmark and compliance data in order to verify compliance with the Department's standards (id. at 10). Alternatively, the Attorney General and DOER request that the Department re-open the evidentiary hearings to assure data accuracy for establishing benchmarks and assessing penalties (Attorney General/DOER Reply Brief at 4-5).

b. Company

NSTAR explains that $22.5 million represents two percent of BECo's distribution and transmission revenues for the years 2000 and 2001 (NSTAR Brief at 14). NSTAR states that such a penalty should be imposed by the Department only if BECo was to under-perform by two standard deviations on all measures for both the first and second reporting periods (id.). The Company claims that BECo's performance for the period between September 1, 1999 and August 31, 2000 met or exceeded every benchmark (id. at 14-15). Thus, the Company

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[8] Commonwealth Energy System is the parent company of Cambridge, Commonwealth, and Commonwealth Gas Company. D.T.E. 99-19 (2000).

contends that the penalty attributed to service quality from September 1, 1999 through August 31, 2000 as suggested by the Attorney General and DOER is unsupported by the record (id. at 15). Regarding the period from September 1, 2000 through August 31, 2001, the Company states that the $3.2 million system-wide penalty amount was calculated based on the mechanism approved by the Department in D.T.E. 99-84 (NSTAR Reply Brief at 9).

3. Analysis and Findings

The NSTAR companies have been directed to measure their performance in accordance with the service quality guidelines established by the Department in D.T.E. 99-84 and to pay a penalty for their failure to meet approved service quality benchmarks.[9] Regarding the level of penalty that BECo, Commonwealth and Cambridge calculated for its failure to meet the service quality benchmarks, the Department notes that the penalty level is in accordance with levels that have been ordered previously by the Department in our approval of service quality penalty mechanisms as part of merger and acquisition dockets. See e.g., Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47 (2000) (where the maximum potential penalty was two percent of distribution revenues); NIPSCo/Bay State Gas Company Acquisition, D.T.E. 98-31 (where the maximum potential penalty represented 1.62 percent of distribution revenues).

The Department has reviewed the performance of BECo, Cambridge, and Commonwealth for the twelve months ending August 31, 2000 using the eight performance

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[9] Prior to the issuance of the D.T.E. 99-84 guidelines, NSTAR did not measure the percentage of service appointments met as scheduled. Thus, no historical data were available for the Department's review.

measures prescribed in D.T.E. 99-84. Because each of the three NSTAR company's is evaluated on its own performance and superior performance (and hence offsets) on the part of one company cannot be credited to another, we describe the separate result of each review below.

From September 1, 1999 through August 31, 2000, BECo met its performance goals for three measures (i.e., telephone response, SAIDI, and SAIFI), and exceeded them on four measures (i.e., on-cycle meter reads, lost work day accidents, Consumer Division cases, and billing adjustments), thereby earning a penalty offset of $2,119,290 (Exh. NSTAR-3 (Supp.) at 1).

Similarly, from September 1, 1999 through August 31, 2000, Cambridge met its performance goals for two measures (i.e., lost work day accidents and billing adjustments) but incurred penalties of $88,061 for its failure to meet two measures (i.e., SAIFI and Consumer Division cases). However, because of Cambridge's performance regarding SAIDI, the penalty amount was offset by $169,524. This calculates to a penalty offset for Cambridge of $81,464 (id.).

Finally, from September 1, 1999 through August 31, 2000, Commonwealth met its performance goals for the three safety and reliability measures. Commonwealth, however, incurred penalty offsets totaling $162,959 for the two Consumer Division statistics measures (id.).

We find that BECo, Cambridge, and Commonwealth have properly applied the performance standards prescribed in D.T.E. 99-84 to its actual performance for the twelve

months ending August 31, 2000. Therefore, we find that from September 1, 1999 through August 31, 2000, BECo's actual performance results in a penalty offset of $2,119,290, Cambridge's actual performance results in a penalty offset of $81,464, and Commonwealth's actual performance results in a penalty offset of $162,959 (id.).

Similarly, the Department has reviewed the performance of BECo, Cambridge, and Commonwealth for the twelve months ending August 31, 2001. During this period (i.e., September 1, 2000 through August 31, 2001), BECo met its performance goals for three measures (i.e., telephone response, lost work day accidents, and Consumer Division cases) , and failed to meet its performance goals for three measures (i.e., on-cycle meter reads, SAIDI, and SAIFI), resulting in a penalty of $3,794,200. This penalty level was offset by $587,059 because of its performance for billing adjustments (id.). Thus, BECo's resultant net penalty amounts to $3,201,141 (id.).

From September 1, 2000 through August 31, 2001, Cambridge met its performance goals for four measures (i.e., on-cycle meter reads, SAIFI, Consumer Division cases and billing adjustments) and incurred a penalty of $34,513 for its failure to meet the goals established for telephone response time (id.). This penalty was offset by $165,630 because of Cambridge's performance for lost work day accidents and SAIDI, resulting in a net penalty offset for Cambridge of $131,117 (id.). The net offset cannot, of course, be banked, nor can it be credited to an affiliate company. It expires.

Finally, from September 1, 2000 through August 31, 2001, Commonwealth met its performance goals for four measures (i.e., on-cycle meter reads, SAIDI, SAIFI, and Consumer

Division cases) and incurred a penalty of $168,561 for its failure to meet the threshold established for telephone response time (id.). This penalty was offset by $126,204 because of Commonwealth's performance on lost work day accidents and billing adjustments, resulting in a net penalty of $42,358 (id.).

In our Letter Order (December 5, 2001) to NSTAR, the Department indicated that the service quality plans as submitted for BECo, Commonwealth, and Cambridge, accurately incorporated the Department's service-quality guidelines and determined that each company's service quality plan complies with the directives we set forth in D.T.E. 99-84. Based on our consideration of the individual SQ plans, we find that BECo, Cambridge, and Commonwealth have properly applied the performance standards prescribed in D.T.E. 99-84 to their actual performance from September 1, 1999 through August 31, 2001. Accordingly, we find that from September 1, 1999 through August 31, 2001, BECo's actual performance results in a penalty of $3,207,141, and Commonwealth's actual performance results in a penalty of $42,358 (id.). As noted above, because Cambridge's penalty offset amount exceeded the penalty amount, the Department finds that no penalty is applicable to Cambridge for this reporting period.

The Attorney General's and DOER's recommendation that NSTAR be fined $22.5 million is inconsistent with D.T.E. 99-84 and with the level of penalties approved in previous merger rate plans. Moreover, the Department notes that the calculation and level of penalties for BECo, Commonwealth and Cambridge is quite similar to the calculation and level that the Attorney General and DOER agreed to in the Massachusetts Electric Company/Eastern Edison

Company merger settlement. They failed to justify their proposed disparate treatment of the NSTAR and Massachusetts Electric companies. The Attorney General and DOER offer no evidence to indicate that pursuant to the Department-approved penalty mechanism (i.e., D.T.E. 99-84), NSTAR's failure to meet certain of prescribed service quality benchmarks would result in a penalty of $22.5 million. Instead, the Attorney General and DOER merely offer a broad conclusory statement about NSTAR's service quality since 1999 and assert a penalty of $22.5 million without providing any documentation or pointing to any record evidence to support their penalty calculation. To depart so precipitately from our SQ rules without any supporting record evidence cannot be justified. The Department is mindful that "a party to a proceeding before a regulatory agency such as the Department has a right to expect and obtain reasoned consistency in the agency's decisions." Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 104 (1975).

In D.T.E. 99-84, the Department conducted a comprehensive investigation into the establishment of service-quality standards. The Attorney General and DOER were active participants in that proceeding. To declare that a service quality proceeding is a prudence review in the final hour does not comply with the due process requirements of administrative law. Accordingly, the Department will impose the correctly calculated penalties of $3,207,141 on BECo and $42,358 on Commonwealth for their failure to meet the Department-approved service quality benchmarks during the period from September 1, 2000 through August 31, 2001.

Finally, we address the Attorney General's and DOER's request that the Department order an independent review of the Company's service quality data. The Attorney General and DOER argue that an independent review is necessary to ensure that the data used to calculate penalties are accurate and compiled in a manner consistent with the Department's directives. However, the Attorney General and DOER did not present or cite any evidence or reason to conclude that the Company's data were inaccurate or incomplete. Instead, the Attorney General and DOER base their argument on the Company's refusal to respond to eight information requests issued by the Attorney General. In fact, the Company responded to those discovery requests by stating their objection concerning the relevance of the information sought. The Department sustained that objection in this Order (see §II.A, above). Accordingly, the Department finds no basis on which to order an independent audit of NSTAR's service quality data.

The Company is aware of its records-keeping requirement under G.L. c. 164, §§ 76 and 80 et seq. and under 220 C.M.R. § 75.00. Moreover, the penal provisions of G.L. c. 268, § 6, concerning false entries in required business records have been recently drawn to the attention of the general counsels of all electric companies (ORP Letter (August 24, 2001)). No indicia of records-keeping unreliability are evident on the record, and none has been advanced by the Attorney General or DOER. Little, if anything, could be gained by the suggested approach. The review is vested by statute in these proceedings and has been conducted. The Company will pay its penalty and focus on the actions it must take to improve future service in Summer 2002 and beyond. That is where the Company's focus and energies

should be -- not on a reiterated review of what has already been examined. Therefore, the Attorney General's and DOER's request to reopen the evidentiary record is denied.

C. Offset to Penalties

1. Introduction

NSTAR proposes to deduct $725,633 from the $3,207,141 million penalty, which represents the amount that the Company voluntarily paid to approximately 2,551 customers in BECo's service territory. According to the Company, specific customers were given the opportunity to be reimbursed for actual losses that the customer demonstrated resulted from a non-storm-related outage with a duration in excess of 12 hours (Exh. NSTAR-2, at 7; RR- UWUA-1).

2. Positions of the Parties

a. Attorney General and DOER

The Attorney General and DOER argue that the Company should not be permitted to deduct from the overall penalty calculation amounts paid to customers voluntarily as part of a public relations campaign to reimburse those consumers for losses attributed to outages of electric service during the Summer 2001 (Attorney General/DOER Brief at 7). The Attorney General and DOER argue that the Department should distinguish those monies voluntarily reimbursed to customers for pecuniary losses incurred as a result of substandard electric service from penalties imposed on companies for their failure to meet service quality standards (id. at 8-9).

b. Company

The Company argues that it is reasonable and appropriate to offset the total penalty calculation by the amount paid by BECo to reimburse customers (i.e., $725,633) (NSTAR Reply Brief at 14). The Company argues that in lieu of a service quality-related billing credit, which could not be specifically targeted to affected customers, the Company instituted a claims program to provide immediate relief in the form of a direct payment to BECo customers who could demonstrate they incurred losses as a direct result of the extended electric service outages (id.). Because the penalty amount calculated by BECo exceeds the amount distributed in direct payments under the claims program, NSTAR proposed to offset this amount from the penalty to be imposed by the Department (id.).

3. Analysis and Findings

The Company characterized the payments made to BECo customers as a result of electric outages in Summer 2001 as "voluntary payments" and referred repeatedly to the $3.2 million as a penalty to be imposed on BECo for its failure to meet service quality measures (see e.g., Tr. at 88-106). Similarly, the Department distinguishes *payments* made by BECo voluntarily to reimburse 2,551 BECo customers for damages they experienced as a result of electric service disruptions, from *penalties* imposed on BECo as a result of BECo's failure to meet Department-established and approved service quality guidelines.

While the Department acknowledges BECo's efforts to reimburse consumers for documented pecuniary losses, the Department's policies as set forth in D.T.E. 99-84 are designed to evaluate objectively a company's service quality and to enable the Department to

impose penalties in an accurate, consistent, and expeditious manner. While BECo's voluntary reimbursement program might have been warranted as a matter of sound customer-relations practices, there is no evidence to enable the Department to make findings that any payments attributed to the claims program were, in fact, penalties for BECo's failure to meet service quality benchmarks. Thus, the offset claim must be denied.

D. Refund Mechanism

1. NSTAR's Proposal

NSTAR proposed to refund the penalty to customers through a flat one-time credit on all customer bills (Exhs. DTE 1-4; DTE 1-11). The actual credit would depend on the customer rate class, would be uniform for each customer within each rate class, and would be determined by allocating 50 percent of the penalty on the basis of annual kilowatthour sales and 50 percent on the basis of the average number of monthly bills in each rate class (Exh. DTE 1-11; Tr. at 110). Under NSTAR's proposal, BECo and Commonwealth customers would receive a total of $2,481,508 ($3,207,141 less $725,633 (from direct reimbursements), and Commonwealth customers would receive $42,358 (Exhs. NSTAR-3, at 1; DTE 1-3; DTE 1-5).

2. Analysis and Findings

NSTAR proposed to pass back its penalties, net of direct refunds to customers, through a uniform class-specific refund factor applied to all customer billings in a single month (Exh. DTE 1-11). Under this method, customers in a particular rate class would receive the same refund, regardless of their consumption (id.). The Department believes that this method

may create intra-class rate inequities, and therefore does not approve the Company's proposed refund method. Instead, the Department finds that a one-month refund period based on individual customer consumption would represent a more equitable disbursement of the revenue penalty. Within five days of the date of this Order, the Company shall file, consistent with the directives contained herein, appropriate schedules showing the total refund of $3,207,141 in net penalties for customers of BECo and $42,358 in net penalties for customers of Commonwealth over a one-month period, including all supporting workpapers, calculations, and assumptions. BECo, Commonwealth and Cambridge must also submit proposed wording for customer bills to explain the credit when it is made.

IV. ORDER

Accordingly, after due notice, hearing and consideration, it is:

ORDERED: That Boston Edison Company shall be subject to a penalty of $3,207,141, and Commonwealth Electric Company shall be subject to a penalty of $42,358 for failure to meet established service quality benchmarks from September 1, 2000 through August 31, 2001; and it is

FURTHER ORDERED: That Boston Edison Company's request to offset $725,633 from its penalty amount is denied; and it is

FURTHER ORDERED: That NSTAR and its subsidiaries, Boston Edison Company,

Cambridge Electric Light Company and Commonwealth Electric Company shall comply with the directives contained herein.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).