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BY HAND AND ELECTRONIC MAIL

Mary L. Cottrell, Secretary
Department of Telecommunications
and Energy
1 South Station
Boston, MA 02110

Re: NSTAR Electric DTE – 03-121 – Settlement Agreement

Dear Secretary Cottrell:

Pursuant to the schedule established by the Hearing Examiner in his Rulings issued on June 2, 2004 and June 7, 2004 in this proceeding the Western Massachusetts Industrial Customers Group ("WMICG") submits for filing its Comments on the proposed Settlement Agreement ("Settlement") submitted by Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company (collectively "NSTAR" or "Companies"), the Division of Energy Resources ("DOER"), Associated Industries of Massachusetts, Conservation Law Foundation, the Joint Supporters and the Solar Energy Business Association of New England (collectively the "Settling Parties") dated June 4, 2004. WMICG is not a signatory to the Settlement and was not notified by or invited to attend any of the negotiations regarding the Settlement.

While the Settlement does provide for a more limited application of the standby rates initially proposed by the Companies excluding several types and sizes of customer owned distributed generating facilities ("DG") and reduce the level of the standby charges to those DG customers that would remain subject to the standby rates, Settlement Agreement Section 2.2, the Settling Parties provide no evidence that justifies adoption of separate rates for customers that own DG facilities. While the proposed Settlement may exclude several proposed or existing DG projects from the application of the standby rates, others would be arbitrarily subjected to the standby rates set forth in the Settlement. Thus under the Settlement some customers with DG

facilities would be served on the existing general service rates while other DG customers would be served under different and presumably higher standby rates. Unless there is a demonstrated cost justification for the differentiation in rates between DG customers on the proposed standby rates, the Settlement creates undue discrimination and should be rejected.

WMICG does not agree that the proposed Settlement and the standby rates set forth therein are consistent with existing precedent of the Department. Clearly, the Settlement should not establish any Department policies which would be applicable to any other electric distribution company in the Commonwealth.

Under the standby rates proposed in the Settlement customers subject to the rate would be required to pay for distribution services based on the Contract Demand which is an amount equal to the generating capability or expected output of the customer's generating units times the distribution demand charge (including any distribution charge recovered in an energy charge) in the otherwise applicable rate. This is equivalent to a demand ratchet equal to the nameplate rating of the DG facilities. The Department precedent rejects demand ratchets. See, *e.g.*, *Cambridge Electric Light Company and Massachusetts Institute of Technology*, D.P.U./ D.T.E. 94-101/95-36 (1996) ("MIT"); *Massachusetts Electric Company*, D.P.U. 92-78 at 188 (1992); *Western Massachusetts Electric Company*, D.P.U. 86-280, at 196 (1987); *Boston Edison Company*, D.P.U. 85-266-A/85-271-A at 247; *Western Massachusetts Electric Company*, D.P.U. 84-25, at 199 (1984); *Fitchburg Gas and Electric Light Company*, D.P.U. 84-145-A. In the MIT case the Department specifically rejected a demand ratchet for a new standby service where that company did not provide such service to customers. The Department said:

> "The Company has presented no evidence or argument that would persuade the Department to alter its policy on this matter. Moreover, in the absence of standby class-specific load data, the Department is not convinced that assessing a distribution demand charge on the basis of actual demand would cause the Company to under-recover distribution-related costs. Indeed, the opposite could also hold true. That is, the Company, over the course of the year, may over-recover distribution related costs if it were to assess the distribution demand charge on the basis of contracted demand. This is because a customer's total annual billing demand is likely to be lower than 12 times the maximum monthly demand since no customer has exactly the same demand in every month. Accordingly, the Company's proposal to apply the local T&D capacity charge on a customer's contracted demand is hereby denied. Instead , the Company is directed to apply the distribution

> demand charge approved by the Department on a customer's actual monthly demand. D.P.U./D.T.E. 94-101/95-36, at 50-51."

As in the MIT case, the Companies have presented no evidence that justifies adoption of demand ratchets by the Department in this case. Moreover, there is no such evidence presented in the Settlement.

NSTAR presented no evidence that usage patterns of its exiting customers with DG facilities are different than other non-DG customers. The Settlement presented no evidence that certain DG customers have different load characteristics that require different rate treatment than the excluded DG customers or the non-DG customers. In fact, the only evidence shows that the average and peak demands of DG and non-DG customers is remarkably the same. Compare Exh. TEC 3-5 with Exh. NSTAR - HCL-10.

The Department precedent recognizes that end-use rates are not appropriate to differentiate customer usage characteristics, see *e.g.*, *Boston Edison Company*, D.P.U. 1720 (1984); D.P.U. 84-194 (1986); *Massachusetts Electric Company*, D.P.U. 85-146 (1986) at 89; and that new rate classes are only appropriate if the usage characteristics of a subset of customers is sufficiently different to create inappropriate cross-subsidies. The Companies entire case is based on its undocumented assumption that the usage characteristics of DG facilities in the future may be different and thus warrants a new rate class with a Contract Demand charge contrary to established Department precedent. The Companies apparently seek simply to avoid lost revenues. However, when Mr. LaMontagne was questioned as to the impact of the proposed standby rates on existing DG customers, assuming that they were not grandfathered, he was unable to indicate whether they would pay more or less than under the current otherwise applicable rate without the standby rates and their Contract Demand provision. This demonstrates that the Companies have no evidence that the *status quo*, without separate standby rates creates any cross-subsidy as suggested by the Companies.

As there is clear evidence in this case that each of the Companies is currently providing service to DG customers in their respective service territories and thus service to DG customers is not a "new service offering" *cf. Cambridge Electric Light Company and Massachusetts Institute of Technology, supra,* at 48, the standby rate cannot be designed in this proceeding on full marginal costs without appropriate cost or load data that establishes a proper allocated revenue requirement for the standby class and that a separate standby class is warranted at all. No such data was presented in this case.

As stated in its Initial Comments in this proceeding WMICG accepts and agrees with the Department's statement in DTE 02-38 that

> "Ideally, standby or backup service tariffs should ensure that customers pay an appropriate share of distribution system costs. When determining these costs, it is important to provide an appropriate price signal to customers seeking to install distributed generation. Back-up rates that are too high may inappropriately discourage the development of distributed generation. However, back-up rates that are below the actual cost of providing service could shift these costs to other customers."

However, the Companies have presented no credible evidence that indicates that a separate rate class should be established for DG customers or a subset of DG customers as contemplated by the Settlement. There is no evidence of cross-subsidization between DG customers and other customers. To design a rate based on the otherwise applicable rate and then insert a Contract Demand ratchet creates discriminatory rate treatment between DG and non-DG customers. If the Companies want to change rate design and cost allocation methods for all customers including DG customers, it should file appropriate allocated cost of service data and billing determinations based on the revised rate design methods. If appropriate, such a proposal can be reviewed and commented on by all parties.

Under the Public Utility Regulatory Policies Act of 1978 ("PURPA") Sections 201 and 210, and regulations promulgated by FERC in 18 C.F.R. Part 292, utilities are required to charge just and reasonable rates for back-up service to qualifying facilities. Exh. TEC-3-22.

As noted by Dr. Parmesano, the rebuttal witness for all of the distribution utilities

> "Rates [for qualifying facilities] are not considered discriminatory if they are based on accurate data and consistent system-wide costing principles applicable to other customers with similar load or other cost-related characteristics." Id.

However, the use of a Contract Demand ratchet for some DG customers when none is imposed on other customers with similar load is by definition discriminatory and in violation of PURPA and the requirement that the rates for standby service be just and reasonable. In addition, the Department has adopted regulations to establish the terms and conditions upon which a Distribution Company must provide service to a Qualifying Facility or an On-site Generating

Facility. See 220 CMR 8.00 *et. seq.* "Qualifying Facility" means "small power producers and cogenerators that meet the criteria specified by FERC in 18 C.F.R. §§292,203(a) and (b)." 220 CMR 8.02. The clear language of the regulations states that, upon request, a Distribution Company must supply a Qualifying Facility with service under rate schedules applicable to all customers, regardless of whether they generate their own power**.** 220 CMR 8.06(1) states as follows:

> "(1) Each Distribution Company shall, upon request by a Qualifying Facility or On-Site Generating Facility, supply to a Qualifying Facility or On-site Generating Facility supplementary, back-up, maintenance, and interruptible power pursuant to 18 C.F.R. 292.305(b) under rate schedules applicable to all customers, regardless of whether they generate their own power." *220 CMR 8.06(1)*

The language of the Department's regulations could not be more clear. NSTAR Electric must provide service to a Qualifying Facility under rate schedules applicable to all customers with similar voltage and load characteristics, regardless of whether they generate their own power.

Thus, the NSTAR initial filing, the rebuttal filing and the Settlement standby rates would violate the requirements of PURPA and the Department's regulations. Qualifying Facilities must be totally excluded from any standby rates and allowed to purchase service under the rate schedules applicable to customers that do not generate their own power.

The Companies in rebuttal testimony proposed to limit the application of standby rates where the DG facility capacity is 20% or less of the total customer's internal load to limit the application of the standby rates where the amount of DG facilities would not create a low average demand in comparison to the peak demand of a customer. This exemption was limited to DG facilities of 500 kW or less. In the Settlement the percentage was increased to 30% and the cap increased to 1,000 kW.

WMICG does not agree that there is any evidence that DG facilities have lower average demand in comparison to their peak demand than the existing customers served on the general service rates. WMICG did suggest in its Initial Comments in this proceeding a way to avoid "possible" variations in DG customers average and peak monthly demand and put DG customers on a similar footing with non-DG customers with similar variations in their average and peak demand. WMICG Initial Comments, at 4. WMICG noted that distribution companies often have non-DG customers with variable maximum monthly demands. See e.g. Exh. NSTAR – HCL-10. The solution would be establishment of minimum annual distribution demand based on the ratio of the average and peak demands of the bottom quartile of non-DG customers. This ratio or minimum annual demand would then apply to both DG and non-DG customers. The implementation of a minimum demand ratio would increase total billing units and this should lower the per unit distribution charge for all customers.

The proposed Settlement is not in accord with existing Department precedent, regulations regarding Qualified Facilities and would create discriminatory rates. Accordingly, the Settlement as well as the standby rates proposed by the Companies in this proceeding should be rejected.

Very truly yours,

Andrew J. Newman

AJN/lms

Enclosure

cc: William Stevens, Hearing Officer (8 copies)
John Cope-Flanagan, Hearing Officer
Claude Francisco, Rates and Revenue Requirements Division
Jeff Hall, Rates and Revenue Requirements Division
Joseph Passaggio, Rates and Revenue Requirements Division
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Service List