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Petition of Boston Edison Company and Commonwealth Electric Company for Approvals Relating to the Termination of Purchase Power Agreements with MASSPOWER.

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I. INTRODUCTION

On July 7, 2004, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, Boston Edison Company and Commonwealth Electric Company ("Companies" or "NSTAR Electric"), filed with the Department of Telecommunications and Energy ("Department") for approval of a termination agreement with MASSPOWER ("Termination Agreement"), and approval of ratemaking treatment relating to the Termination Agreement.

The Companies and MASSPOWER have a total of three purchase power agreements ("PPAs") to be terminated by the Termination Agreement. MASSPOWER sells to Boston Edison Company ("Boston Edison") and Boston Edison buys from MASSPOWER electric energy products produced in a generation facility in Indian Orchard, Massachusetts, pursuant to the Boston Edison/MASSPOWER PPA. MASSPOWER sells to Commonwealth Electric Company ("Commonwealth") and Commonwealth buys from MASSPOWER electric energy products from the same facility, pursuant to two Commonwealth/MASSPOWER PPAs. The Boston Edison/MASSPOWER PPA runs through December 31, 2013; the first Commonwealth/MASSPOWER PPA runs through July 31, 2008; and the second Commonwealth/MASSPOWER PPA runs through July 31, 2013.

II. PROCEDURAL HISTORY

Pursuant to notice duly issued, the Department conducted a public hearing and procedural conference on September 8, 2004. The Attorney General of the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention as of right pursuant to G.L. c. 12, § 11E. At the public hearing, the Department granted the petition to intervene of

MASSPOWER. By Hearing Officer Ruling dated September 30, 2004, the Hearing Officer granted limited participant status to the Massachusetts Municipal Wholesale Electric Company and the Cape Light Compact.

The Department conducted an evidentiary hearing on October 20, 2004. The Companies sponsored the testimony of Geoffrey O. Lubbock, vice president, financial strategic planning and policy for NSTAR Electric and Gas Company, and Robert B. Hevert, president of Concentric Energy Advisors, Inc. ("CEA"). The Companies and the Attorney General filed initial briefs on October 29, 2004. On November 5, 2004, the Companies filed a reply brief, and the Attorney General filed a letter in lieu of a reply brief. The evidentiary record includes 91 exhibits and the Companies' responses to eight record requests.

III. MOTION TO REOPEN

A. Introduction

On November 23, 2004, the Attorney General filed a Motion to Reopen the Hearing ("Motion to Reopen"), in which he seeks to reopen the hearings in this proceeding based on a need to examine new information (Motion to Reopen at 1). According to the Attorney General, NSTAR Electric's response to RR-DTE-1, provided after the close of hearings, contained a new energy forecast (the fall 2004 Henwood forecast)[1] that significantly changes the economics of the Termination Agreement (id. at 2). The Attorney General argues that the fall 2004 Henwood forecast may not fully reflect the economic effects of the recently

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[1] As discussed in Section V., the Companies used the Henwood forecast to evaluate customer savings associated with the Termination Agreement.

announced locational installed capacity ("LICAP") charges proposed by the ISO New England Inc. ("ISO-NE") at the Federal Energy Regulatory Commission ("FERC") (id.). In addition, the Attorney General argues that this new forecast information affects the customer savings estimates in this proceeding, and customer savings are a material issue (id. at 3). Accordingly, the Attorney General urges the Department to reopen the hearings to fully evaluate the changes to the Companies' petition from the new forecast (id. at 3).

On December 1, 2004, Boston Edison and Commonwealth jointly, and MASSPOWER, filed responses to the Motion to Reopen ("Companies Response" and "MASSPOWER Response," respectively). The Companies argue that the Motion to Reopen is moot, because relevant data have been presented and no evidentiary hearing is required to address the issue further (Companies Response at 1). The Companies contend that they have updated their forecast of customer savings, and various sensitivity analyses, based on the new Henwood forecast (id.).

Regarding the Attorney General's request to reopen the record to explore whether and how electricity prices should include LICAP charges, the Companies argue that LICAP is not at issue in this proceeding, and the Attorney General already conducted cross-examination on this issue in another proceeding (Boston Edison Company/Commonwealth Electric Company, D.T.E. 04-85 (2005)),[2] and therefore it is unnecessary to conduct further hearings in this docket (id. at 2). Furthermore, the Companies contend that the Attorney General's intention to

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[2] In D.T.E. 04-85, the Department approved the restructuring of four PPAs between Boston Edison and Commonwealth and Northeast Energy Associates.

substitute data for one input to the Henwood model (i.e., to substitute LICAP values for Henwood capacity values), is conceptually flawed and would undermine the value of relying on the totality of the independent judgments of a third-party expert (id.). In addition, the Companies maintain that the use of LICAP in a forecast requires the Department to make assumptions about the outcome of an open FERC proceeding (id. at 3). The Companies maintain that a record on the use of LICAP capacity values has already been compiled in a related proceeding, D.T.E. 04-85, and the Companies would have no objection to the Department incorporating that record into this case (id.). The Companies conclude that the Attorney General has pursued the issue past the point of adding any probative evidence to this case (id. at 4).

MASSPOWER does not oppose the Motion to Reopen (MASSPOWER Response at 1). MASSPOWER argues, however, that even with incorporating the new Henwood forecast, the Termination Agreement still results in significant savings for NSTAR Electric's customers (id. at 2, citing RR-DTE-1(2nd Supp)). MASSPOWER also contends that the Department should reject the Attorney General's suggestion that the Department should base its decision in this proceeding on savings estimates by incorporating the LICAP values filed by ISO-NE at FERC (id.). According to MASSPOWER, the ISO-NE LICAP values are contested at FERC, are untested by the adjudicatory process, and may not ultimately be adopted by FERC (id.).

B. Standard of Review

The Department's Procedural Rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part, "[n]o person may present additional evidence after having rested nor

may any hearing be reopened after having been closed, except upon motion and showing of good cause." Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); Boston Gas Company, D.P.U. 88-67 (Phase II) at 7 (1989); Tennessee Gas Pipeline Company, D.P.U. 85-207-A at 11-12 (1986).

C. Ruling

The Attorney General asks the Department to reopen the record to explore the effect of a new energy forecast in two areas: (1) the Companies' customer savings projections; and (2) the use of LICAP values in the energy forecast. Regarding the effect of the fall 2004 Henwood forecast on the Companies' customer savings projection, the Department required the Companies to update their savings estimates with the new forecast data (RR-DTE-1), as well as to update analyses to determine the sensitivity of customer savings estimates to fluctuations in the price of energy and fuel (RR-DTE-5). The Companies updated existing schedules with the new forecast data, and provided the new schedules in this proceeding (RR-DTE-1(2nd Supp)). The method of how the Companies calculated customer savings was investigated extensively in this proceeding,[3] and in previous proceedings on related

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[3] See Exhs. DTE-1-11, DTE-1-12 (working spreadsheets of schedules); Exhs. DTE-1-14, DTE-1-15, DTE-1-16 (tax calculations); Exhs. DTE-1-22, DTE-1-23, DTE-1-24, AG-1-8, AG-1-9 (discount rates); Exh. AG-1-10, RR-DTE-5 (sensitivity analysis); Exhs. AG-1-31, AG-1-32, AG-1-33, AG-1-37, AG-1-38 (fuel and

(continued…)

transactions. See Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60 (2004); Boston Edison Company, D.T.E. 04-68 (2004); D.T.E. 04-85 (2005). The Department has sufficient evidence on the record of this proceeding to make a determination on the effect of the updated energy forecast on the economics of the Termination Agreement, and therefore will not reopen the record.

Regarding the use of LICAP values in the new energy forecast, the Department addressed the same issue in our Order in D.T.E. 04-85. In that proceeding, the Department rejected the recommendation to include LICAP values in the Henwood forecast when calculating estimated customer savings.[4] D.T.E. 04-85, at 31. The Department stated that it could not rely on the results of including LICAP costs into the Henwood forecast, where changes to the inputs and assumptions of the model would likely produce unanticipated consequences calling into question the validity of the results. D.T.E. 04-85, at 31-32. In addition the Department ruled that "[b]ecause the outcome of the FERC proceedings is unclear, and the lack of the final LICAP costs introduces an additional level of uncertainty, the Department finds that rendering LICAP adjustments to the Henwood forecast is not appropriate at this time." Id.

The same reasoning applies here. FERC has yet to decide how LICAP values are to be implemented. Given this uncertainty surrounding LICAP values, it is premature to use

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[3](…continued)
energy forecasts); see also Tr. at 45-63.

[4] In D.T.E. 04-85, parties attempted to incorporate proposed ISO-NE LICAP values into the fall 2004 Henwood forecast.

proposed LICAP values in customer savings estimates.[5] Accordingly, we confirm our finding in D.T.E. 04-85 that it is not appropriate to use LICAP values in the calculation of savings estimates. Therefore, there is no need to reopen the record to take in more evidence on the effect of LICAP values on savings estimates. The Attorney General's Motion to Reopen fails to demonstrate good cause for his request. Therefore, the Motion to Reopen is denied.[6]

IV. STANDARD OF REVIEW

An electric company that seeks to recover transition costs must take efforts to mitigate those costs to the maximum extent possible. G.L. c. 164, §§ 1G(d)(1) and (2). As part of its mitigation efforts, the company must make a good faith effort to renegotiate any above-market power purchase contracts. Id. If a negotiated contract buyout or other modification to the terms and conditions of such contract is likely to achieve savings to the ratepayers and is otherwise in the public interest, the Department may allow the company to recover the remaining amounts in excess of market value associated with the contract in the transition charge. G.L. c. 164, §§ 1G(b)(1)(iv) and 1G(d)(2).

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[5] In this proceeding, parties did not calculate customer savings based on ISO-NE LICAP values.

[6] The Attorney General asks the Department to take administrative notice of the record in D.T.E. 04-85, in order to include NSTAR Electric's testimony filed with FERC on the issue of LICAP (Motion to Reopen at 2 n.3). The Companies have indicated they have no objection to this request (Companies Response at 3). However, given the ruling above that the Department will not require the Companies to use LICAP values to calculate customer savings estimates, the Attorney General's request for administrative notice is moot.

In determining whether to approve a power contract buyout, buy-down, or renegotiation, the Department has applied its standard of review for settlement agreements, i.e., a standard of reasonableness. See e.g., Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34, at 21 (2002); Cambridge Electric Light Company, D.T.E. 01-94, at 7 (2002); Commonwealth Electric Company, D.T.E. 99-69, at 7 (1999); Boston Edison Company, D.T.E. 99-16, at 5-6 (1999); Western Massachusetts Electric Company, D.T.E. 99-56, at 7-8 (1999); Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 6 (2004). The Department must review all available information to ensure that the agreement is in the public interest. See e.g., Western Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000); Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993). In determining whether a contract amendment or termination is in the public interest, the Department has considered whether the termination is consistent with a company's approved restructuring plan. In Boston Edison Company, D.P.U./D.T.E. 96-23, at 46-47 (1998), the Department found that Boston Edison's restructuring settlement, which provided for the buyout of above-market purchase power obligations, was consistent with or substantially complied with the Electric Industry Restructuring Act (the "Act")[7]. In Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company, D.P.U./D.T.E. 97-111, at 90 (1998), the Department found that Commonwealth's restructuring plan, which provided for the buyout of

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[7] St. 1997, c. 164.

above-market purchase power obligations, was consistent with or substantially complied with the Act.

V. THE AUCTION PROCESS AND THE TERMINATION AGREEMENT

A. Overview

NSTAR Electric proposes to terminate Boston Edison's and Commonwealth's obligations to purchase power from the MASSPOWER generating facility under three existing PPAs (Exh. NSTAR-GOL at 11). The MASSPOWER generating facility is a gas-fired cogeneration facility consisting of two gas turbines and one steam turbine, with a current summer capacity rating of 231.5 megawatts ("MW"), and a winter capacity rating of 270 MW (id.). Under the Boston Edison/MASSPOWER PPA, Boston Edison has a 44.3 percent entitlement in the output of the MASSPOWER facility, which is capped at 117 MW in the winter and 100 MW in the summer (id.). The pricing provisions of the Boston Edison/MASSPOWER PPA for energy and capacity are based on predetermined, fixed monthly prices indexed to fuel costs, the Gross National Product ("GNP"), and the facility's performance (id.). Under the two Commonwealth/MASSPOWER PPAs, Commonwealth has a 11.11 percent entitlement in the output of the MASSPOWER facility, and is capped at 29.67 MW in the winter and 25.45 MW in the summer (id. at 12). The pricing provisions of the Commonwealth/MASSPOWER PPAs for energy are based on a formula that includes variable elements for fuel charges and pipeline commodity rates; capacity is priced at a predetermined level, based on monthly operating, wheeling and investment costs, all escalated by either the GNP or a predetermined percentage increase, and pipeline demand costs (id.).

B. The Auction Process

NSTAR Electric proposes to terminate its existing PPAs with MASSPOWER as a result of a PPA divestiture plan that it initiated in 2003 ("2003 Auction") (Exh. NSTAR-RBH at 10, 23). NSTAR Electric stated that its auction process was designed to be equitable and structured to maximize the mitigation of transition costs associated with its PPAs[8] (Exh. NSTAR-RBH at 6). CEA was selected to assist in the divestiture of these PPAs (Exhs. NSTAR-1, at 3; AG-3-2).

Following NSTAR Electric's October 1, 2003 announcement of sale, an early interest package ("EIP"), which included an early interest letter, a confidentiality agreement, and a request for qualifications, was sent to approximately 90 potential bidders (Exhs. NSTAR-RBH at 10; NSTAR-RBH-3). Bidders were required to execute a confidentiality agreement and submit a completed qualifications package in order to receive further information regarding the PPA entitlements and to be considered "Qualified Bidders" (Exh. NSTAR-RBH at 11-13; Tr. at 107-108). By November 15, 2003, there were 22 Qualified Bidders (Exh. NSTAR-RBH at 11, 13-15).

On October 17, 2003, the due diligence stage began as each Qualified Bidder received an offering memorandum ("OM") and an entitlement transfer agreement ("ETA")[9]

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[8] The 2003 Auction included 24 PPAs held by Boston Edison and Commonwealth, and their affiliate Cambridge Electric Light Company. For a more detailed description of the 2003 Auction, see Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 8-11(2004).

[9] The OM included a detailed description of each PPA, an overview of the bidding

(continued…)

(id. at 13-14). NSTAR Electric stated that this was designed to ensure that each bidder received the information necessary to timely and equitably complete its evaluation of the PPAs (id. at 8-9). Additionally, each Qualified Bidder was assigned a specific CEA staff member for individualized assistance (id.).

On November 6, 2003, bid instructions and a bid form were made available to all Qualified Bidders (Exh. NSTAR-RBH at 15). The bid forms, which set November 21, 2003 as the due date for the receipt of bids, included two pricing options: (1) a lump-sum payment from the bidder to NSTAR Electric or from NSTAR Electric to the bidder; and (2) energy-only pricing, i.e., the price per megawatt-hour a bidder would pay to NSTAR Electric for energy delivered under the specific PPA (Exhs. NSTAR-RBH at 16; NSTAR-RBH-4; DTE-1-1).

On December 3, 2003, NSTAR Electric received twelve bids, including two bids for the entire PPA entitlement portfolio, and one bid for all but one of the PPAs (the latter three bids constituting the "Portfolio Bids") (Exh. NSTAR-RBH at 17). NSTAR Electric received its initial bid for the existing MASSPOWER PPAs from MASSPOWER in February 2004, with MASSPOWER's final bid made on March 26, 2004 (Exhs. NSTAR-RBH at 23; DTE-1-9; Tr. at 98-100). From December 2003 through March 2004, the Companies and CEA evaluated the bids and continued to negotiate the specific aspects of each bidder's proposed

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[9](…continued)
process, and the preliminary terms of sale (Exh. NSTAR-RBH at 14).

financial and contractual terms, with the objective of identifying those combinations of bids that offered the greatest mitigation of transition costs (Exh. NSTAR-RBH at 17; Tr. at 113).

NSTAR Electric and CEA jointly and individually evaluated the bids to identify those combinations of bids that offered the greatest mitigation of transition costs (Exh. NSTAR-RBH at 17). To perform its evaluation of the bids, CEA separately valued each PPA entitlement to determine the total cost for the energy and capacity over the term of the agreement (Exhs. NSTAR-RBH at 18; NSTAR-RBH-5; DTE-1-2; DTE-1-3; DTE-1-4; DTE-1-10; RR-DTE-1). The bids were then disaggregated to allow for a side-by-side comparison (Exhs. NSTAR-RBH at 21-22; DTE-1-5). The reduction in the above-market costs was calculated as the present value of the difference between the expected total cost under the MASSPOWER PPA and the market cost of an equivalent level of power and capacity based on the Henwood forecast[10] (Exhs. NSTAR-RBH at 18; DTE-1-7; AG-1-32; AG-1-37; AG-1-39; RR-DTE-1).

This process resulted in a determination by the Companies that the MASSPOWER bid was the lowest cost viable bid and was therefore most likely to create the greatest reduction in above-market costs (Exhs. NSTAR-RBH at 22; DTE-1-10; AG-1-2; AG-1-3). Additionally, the MASSPOWER bid calls for the termination of the PPAs rather than the transfer of rights and obligations under an ETA, which would have been the principal transaction document for any of the Portfolio Bids (Exh. NSTAR-RBH at 23).

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[10] The Henwood study is an industry-known, independent forecast of key energy variables. The Department has previously approved PPA buyouts where projected customer savings have been based on the Henwood study. See D.T.E. 04-60, at 26.

C. The Termination Agreement

The Termination Agreement that is the result of the 2003 Auction relieves the Companies of their obligations to purchase electricity produced at the MASSPOWER generation facility under the PPAs (Exhs. NSTAR-GOL at 12). In return, the Companies are required to pay MASSPOWER a termination payment[11] ("Termination Payment") under the Termination Agreement (Exh. NSTAR-GOL at 12). The Companies state that the Termination Agreement will result in approximately $89 million[12] of ratepayer savings on a net present value ("NPV") basis when compared to the present value of retaining the PPAs (Exh. NSTAR-GOL at 12-13; RR-DTE-1(2nd Supp), Att. RR-DTE-1(e) and Att. RR-DTE-1(h)) .

In a related proceeding, Boston Edison Company and Commonwealth Electric Company, D.T.E. 04-70, the Companies are seeking approval for the Termination Payment to be financed and securitized through the issuance of rate reduction bonds ("RRBs") pursuant to G.L. c. 164, § 1H. The Termination Agreement is expressly conditioned on the approval of a financing order by the Department that would authorize the issuance of the RRBs

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[11] The Termination Payment shall be reduced for every day after September 30, 2004 through the earlier of the actual termination date, or April 1, 2005 (Exh. NSTAR-GOL at 12). The Termination Date cannot occur until such time the Department approves the related securitization transaction (Exh. NSTAR-1, App. A, ¶ 2.1(b)).

[12] The Companies revised their savings estimates twice during the proceeding. The $89 million is a savings estimate based on the updated fall 2004 Henwood forecast. See Section VII., C, below.

(Exh. NSTAR-1, App. A, ¶ 2.1 (b)).[13] The result of the RRB issuance, according to the Companies, will be to reduce the total transition costs paid by customers compared to the total transition costs to be paid by customers if the financing order was not adopted (Exh. NSTAR-GOL at 15).

VI. POSITIONS OF THE PARTIES

A. Attorney General

The Attorney General does not oppose the Companies' petition (Attorney General Brief at 7). The Attorney General, however, asserts that if the Department approves the Companies' petition, it should ensure that there is a significant margin of savings to customers (id. at 5). The Attorney General states that small changes in the assumptions the Companies used to perform the cost analysis dramatically change the NPV of savings of the buyout of MASSPOWER PPAs as calculated by CEA (id.). The Attorney General contends that a 25 percent increase in energy costs eliminates the savings in CEA's analysis, and a discount rate of 10.5 percent results in the buyout payment equaling CEA's projected costs of holding onto the PPAs (id. at 5-6).

The Attorney General maintains that in order to ensure significant savings to customers, the Department should cap the RRB interest rate,[14] arguing that without a cap on the interest rate the estimated savings to customers are speculative at best (id. at 6). The Attorney General

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[13] The analysis of customer savings for the Termination Agreement is based on the projected payments to be made to repay the RRBs (Exh. NSTAR-GOL at 15-26).

[14] The Attorney General does not recommend a particular interest rate at which the RRBs would be capped.

contends that a significant portion of the NPV of customer savings from the Companies' proposal is from financing the buyout payment through securitized bonds, and that one of the most significant variables determining customer savings is the interest rate of the securitized bonds (Exh. NSTAR-GOL at 15, 23-25; Attorney General Brief at 6). The Attorney General contends that the Companies base all of the NPV analyses of the securitized bonds on a 4.50 percent interest rate, and that the interest rate on the bonds will not be determined until the time of the issuance; if interest rates increase as forecasted (see D.T.E. 04-68, RR-AG-4, Att. at 1), the NPV of customer savings will be reduced (Attorney General Brief at 6).

The Attorney General asserts that by capping the interest rate, the Department would be assuring a reasonable minimum savings percentage (id.). The Attorney General argues that a reasonable minimum savings percentage would be five percent over the NPV of the expected cash flows required under the PPAs, because a five percent minimum cap would provide some margin for any errors in the energy forecast and the discount rate used in CEA's analysis (id.). The Attorney General concludes that the Department should ensure that, even with updates to energy and fuel forecasts, and updates to the market interest rate for the bond issue, there is still a minimum of a five percent savings rate on the NPV of the expected PPA costs (id.).

B. The Companies

The Companies assert that the Termination Agreement is the result of an open and competitive auction and is consistent with the Act's requirement to maximize mitigation of transition costs (NSTAR Electric Brief at 7). The Companies state that the 2003 Auction was recently reviewed and approved by the Department in Cambridge Electric Light

Company/Commonwealth Electric Company, D.T.E. 04-60 (2004) (id. at 10). According to the Companies, there the Department found that the 2003 Auction was "equitable and structured to maximize the value of the contracts sold" (id., citing D.T.E. 04-60, at 22). The Companies argue that based on the evidence presented in this proceeding concerning the auction previously approved by the Department in D.T.E. 04-60, the Department should find that the 2003 Auction was consistent with the Act and the Companies' restructuring settlement and restructuring plan (id. at 10-11)

Regarding estimates of customer savings, the Companies argue they have demonstrated that, even under the most conservative assumptions, the Termination Agreement will produce savings for customers, and, therefore is consistent with the Companies' obligation to mitigate transition costs to the maximum extent possible (id. at 11). The Companies' maintain that the Termination Agreement extinguishes all obligations for Boston Edison and Commonwealth to purchase power under the existing MASSPOWER PPAs (id., citing Exh. NSTAR-GOL at 12). The Companies state that, in return, they are required to make a Termination Payment to MASSPOWER for assuming all of Boston Edison's and Commonwealth's rights and obligations under the PPAs (id., citing Exh. NSTAR-GOL at 12). The Companies contend that the Termination Agreement reduces their overall transition costs from customers by approximately $89 million on an NPV basis[15] (id.; RR-DTE-1(2nd Supp)). The Companies propose that the customer savings from the Termination Agreement be returned to customers

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[15] See Section VII., below, for a description of changes in the customer savings projections.

through the variable portion of each Company's transition charge consistent with the historical treatment of costs associated with the existing MASSPOWER PPAs (NSTAR Electric Brief at 14). The Companies argue that this proposed ratemaking treatment is consistent with Department precedent and should be approved (id. at 13).

The Companies note that the Attorney General does not seek Department rejection of the Termination Agreement and associated ratemaking treatment, nor does the Attorney General dispute any of the evidence, analytical methods or legal standards presented by the Companies (NSTAR Electric Reply Brief at 2). The Companies dispute the Attorney General's proposal that the Department "cap" the interest rate on these bonds in order to guarantee that there are significant savings to customers from the buyout of the MASSPOWER PPAs (id., citing Attorney General Brief at 5). The Companies contend that the Attorney General's proposal would impose an artificial and inappropriate barrier that must be overcome before the Companies can obtain the mitigation savings for their customers from the Termination Agreement (id.). The Companies further argue that such a barrier to mitigation is inconsistent with the Act, which requires that electric companies (including Boston Edison and Commonwealth) make good-faith efforts to renegotiate their above-market PPAs to achieve reductions in their transition charges (i.e., mitigation) (id., citing G.L. c. 164, § 1G(d)(2)(i)). The Companies maintain that they have conducted the required renegotiation in good faith through an open, transparent and fairly managed auction, the result of which is the Termination Agreement, which minimizes the Companies' overall transition costs and provides

the Companies' customers with approximately $89 million in projected savings on an NPV basis (id. at 3; RR-DTE-1(2nd Supp)).

The Companies contend that the Attorney General's proposal to cap the securitized bond interest rate misapplies the legal standard and misinterprets the record evidence (NSTAR Electric Reply Brief at 3). Regarding the legal standard, the Companies maintain that the Attorney General fails to point to a statutory provision or precedent that would establish a minimum level of savings to customers (id. at 4). Furthermore, the Companies argue that the Attorney General is wrong on the facts, as the record demonstrates that savings from the Termination Agreement are so substantial that fuel and energy prices would have to increase by approximately 76 percent in order for the proposed transaction to result in zero customer savings (id. at 5, citing RR-DTE-3).

Finally, the Companies conclude that the Attorney General's proposal to establish a cap on RRB interest is an issue more properly addressed in the securitization proceeding, D.T.E. 04-70, where the details of the financing transaction, including bond interest rates, are being investigated (NSTAR Electric Reply Brief at 6). Accordingly, the Companies urge the Department to reject the Attorney General's proposal and approve the Companies' petition so that these significant customer benefits can be realized (id. at 3).

VII. ANALYSIS AND FINDINGS

A. The Auction Process

In evaluating the divestiture of generation assets, the Department first reviews whether the divestiture process was equitable and structured to maximize the value of the assets being

sold. D.T.E. 04-60, at 21, citing Western Massachusetts Electric Company, D.T.E. 00-68, at 12 (2000). In making these determinations, the Department considers whether the company used a "competitive auction sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale." See G.L. c. 164 §1A(b)(2). The Department has also relied on the auction process to determine whether a transaction involving a non-generation asset maximizes mitigation of transition costs. See D.T.E. 04-60, at 21; D.T.E. 04-68, at 14-15; see also Western Massachusetts Electric Company, D.T.E. 01-99, at 10 (2002).

The Department notes a number of features of the Companies' 2003 Auction that highlight the competitive nature of the auction. First, a large number of parties participated in the auction: up to 90 parties were contacted initially, with 22 of those becoming Qualified Bidders and twelve Qualified Bidders eventually submitting bids (Exhs. NSTAR-RBH at 10-14; NSTAR-RBH-3). Next, Qualified Bidders were provided with contract and invoice data on a uniform basis, and a formal mechanism was established to permit each Qualified Bidder to obtain additional information (Exh. NSTAR-RBH at 14-17). Each Qualified Bidder was assigned a CEA representative who served as that bidder's single point of contact, allowing access to additional information while maintaining confidentiality (id. at 8-9). Finally, Qualified Bidders were free to bid on any combination of NSTAR Electric's 24 PPAs, in order to maximize the value of the portfolio (id. at 6).

The Department notes that MASSPOWER submitted its bids following the final bid date of December 3, 2003; MASSPOWER submitted its initial bid in February 2004 and a

final bid on March 26, 2004 (Exhs. NSTAR-RBH at 23; DTE-1-9; Tr. at 98-100). However, the Companies stated that discussions and negotiations with all bidders carried forward through March and into April 2004 (Exhs. NSTAR-RBH-2; NSTAR-RBH at 23; Tr. at 100, 113). The Companies further stated that every bidder was provided with the opportunity to enhance the value of its bid during this time period (Exh. NSTAR-RBH at 23; Tr. at 112). Given the transparency of the auction process and given further that no bidder disputed the bid results (Tr. at 111), the Department sees no reason to disturb the results of the auction as it relates to the MASSPOWER bid.

In an earlier review of NSTAR Electric's 2003 Auction, the Department found that this auction process was "equitable and structured to maximize the value of the contracts sold." See D.T.E. 04-60, at 22. In that same review the Department also found that "the auction process ensured complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive." Id. at 21-22. The record again demonstrates that the Companies' auction process ensured complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive. Therefore, consistent with the record in this proceeding and our finding in D.T.E. 04-60, the Department finds that the auction process used was equitable and structured to maximize the value of the PPAs sold. See D.T.E. 04-60, at 22; D.T.E. 04-68, at 15. In addition, based on the foregoing, the Department finds the Companies' 2003 Auction to be consistent with Boston Edison's restructuring settlement and Commonwealth's restructuring plan.

B. Maximization of Mitigation

When an auction process is used to divest of contractual entitlements, the marketplace has a chance to value the contracts, and any above-market component should be treated in the same manner as other divestiture costs. Boston Edison Company/Cambridge Electric Light Company, D.T.E. 98-119/126, at 29, 33 (1999). Here, the Department relies on an adequate auction process to set the value of the PPAs. The Department has made its determination that the auction process provided complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive, and, therefore, structured to maximize the value of the PPAs (see Section VII, A, above). Therefore, the Department finds that the proposed Termination Agreement maximizes the value of the PPAs and mitigation of the transition costs.

C. Customer Savings

The Companies contend that as a result of terminating the MASSPOWER PPAs and securitizing the Termination Payment, NSTAR Electric ratepayers will save approximately $89 million on an NPV basis in transition costs ($72.7 million for Boston Edison, and $16.2 million for Commonwealth)[16] (RR-DTE-1(2nd Supp). Att. RR-DTE-1(e) and Att.

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[16] The Companies petition originally estimated customer savings from the Termination Agreement to be $67 million on an NPV basis (Exhs. NSTAR-GOL at 12-13; NSTAR-BEC-GOL-2; NSTAR-COM-GOL-2). On October 15, 2004, the Companies filed (1) updated cost projections that increased the projected costs that would be incurred by Boston Edison's customers if the existing MASSPOWER/Boston Edison PPA were to remain in effect, and (2) updated estimated transaction costs, thereby increasing the customer savings under the Termination Agreement from $67 million to $108 million (Exhs. DTE-1-3(Supp); DTE-1-13 (Supp)). The Companies subsequently

(continued…)

RR-DTE-1(h)). The Companies determined customer savings by comparing the forecasted transition charges to be paid by customers if the existing PPAs were to remain in effect, with the transition charges to be paid by customers under the Termination Agreement [17] (Exhs. NSTAR-GOL at 12-13; NSTAR-BEC-GOL-3 (CONFIDENTIAL); NSTAR-COM-GOL-3 (CONFIDENTIAL); NSTAR-BEC-GOL-4 (CONFIDENTIAL); NSTAR-COM-GOL-4 (CONFIDENTIAL)).

The Companies' calculations of customer savings are based on the Henwood forecast, which forecasts the future market price of electricity. The Department has previously stated that the Henwood forecast is a widely-available and reasonable proxy for a forecast of the price of electricity. See D.T.E. 04-60, at 26. The instant record sustains that view. During this proceeding, Henwood released its fall 2004 forecast of energy and fuel prices. On November 12, 2004, NSTAR Electric filed an update to customer savings based on the revised Henwood forecast (that includes a forecast for the Southeastern Massachusetts-Rhode Island zone, which had been used in the Companies' initial analyses) (RR-DTE-1(2nd Supp)).[18]

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[16](…continued)
reduced their savings estimates to $89 million as a result of the fall 2004 Henwood forecast (RR-DTE-1(2nd Supp)).

[17] The Companies state that the customer savings estimates include savings from terminating the MASSPOWER PPAs, and from financing the Termination Payment through securitization (Tr. at 46). The Companies also state that the original $67 million in savings are due to approximately 40 percent power savings and 60 percent savings due to the securitization of the Termination Payment (Tr. at 50).

[18] The Companies updated the following exhibits: NSTAR-RBH-5, NSTAR-RBH-6, NSTAR-BEC-GOL-2, NSTAR-BEC-GOL-3, NSTAR-BEC-GOL-4,

(continued…)

Although the savings projections under the updated Henwood forecast have reduced customer savings from approximately $108 million to approximately $89 million, the Termination Agreement continues to produce savings under the updated forecast of energy and fuel prices (RR-DTE-1 (2nd Supp), Att. RR-DTE-1(e) and Att. RR-DTE-1(h)).

The Attorney General argues that if the Department approves the Termination Agreement, it should first ensure that there is a significant margin of savings to customers, and that a reasonable minimum savings percentage is five percent over the NPV of the expected cash flows required under the contract (Attorney General Brief at 6). The Attorney General maintains that in order to ensure significant savings to customers, the Department should cap the interest rate of the RRBs used to securitize the Termination Payment (id.).

Neither the Act nor the Department's precedent requires an assurance of a specific minimum level of customer savings. Rather, the Act requires a demonstration that a contract buyout is likely to achieve savings for ratepayers. See G.L. c. 164, § 1G(d)(2)(ii). In addition, the Department currently has a separate open docket (D.T.E. 04-70) for the specific purpose of addressing the issuance of the RRBs; it is there that the Department is investigating the interest rate used to finance the RRBs. Therefore, the Department finds no requirement for a minimum of five percent customer savings and will not impose a interest rate cap on the RRBs in this proceeding.

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[18](…continued)
NSTAR-COM-GOL-2, NSTAR-COM-GOL-3, and NSTAR-COM-GOL-4.

NSTAR Electric calculated its savings analysis under several scenarios including various assumptions regarding the market price of electricity; under all of these scenarios, the Termination Agreement produced savings to customers (RR-DTE-5). After reviewing the Companies' economic analyses, the Department finds the Companies' projections of savings to be credible under several assumptions, and that terminating the MASSPOWER PPAs is likely to achieve savings to ratepayers.

The Companies propose to recover the payments made under the Termination Agreement through the variable portions of Boston Edison's and Commonwealth's respective transition charges (Exhs. NSTAR-GOL at 13-15; NSTAR-BEC-GOL-3; NSTAR-COM-GOL-3). The Department finds that this proposal is consistent with Boston Edison's restructuring settlement and Commonwealth's restructuring plan, and the requirements of the Act. Therefore, the Companies are permitted to recover the payments made pursuant to the Termination Agreement through the variable portions of their transition charges. Consistent with our finding in D.T.E. 04-60, the Department will reconcile all costs associated with the Termination Agreement in the Companies' future transition cost reconciliation filings.

Because terminating the MASSPOWER PPAs is likely to achieve savings for ratepayers and because the savings mitigate the Companies' transition costs, the Department finds that the transaction is in the public interest and consistent with the requirements of G.L. c. 164,

§ 1G(d)(2)(ii). Therefore, the Department approves the Termination Agreement.[19]

VIII. ORDER

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

ORDERED: That the petition of Boston Edison Company and Commonwealth Electric Company for approval of a termination agreement between the Companies and MASSPOWER, is hereby APPROVED; and it is

FURTHER ORDERED: That the amount of the termination payments made by Boston Edison Company and Commonwealth Electric Company to MASSPOWER under the termination agreement shall be included in the principal amount to be securitized as determined in D.T.E. 04-70; and it is

FURTHER ORDERED: That Boston Edison Company and Commonwealth Electric Company's proposed ratemaking treatment relating to the termination agreement, is hereby APPROVED, subject to reconciliation and refund; and it is

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[19] On this same date, the Department has issued its order in D.T.E. 04-70, by which the Department has approved, among other things, NSTAR Electric's request to securitize the Termination Payment made by the Companies to MASSPOWER.

FURTHER ORDERED: That Boston Edison Company and Commonwealth Electric Company shall comply with all directives contained herein.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Judith F. Judson, Commissioner

An 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 the 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. G.L. c. 25, § 5.