RUBIN AND RUDMAN LLP
COUNSELLORS AT LAW
50 ROWES WHARF • BOSTON, MASSACHUSETTS 02110-3319
TELEPHONE: (617) 330-7000 • FACSIMILE: (617) 330-7550 • EMAIL: FIRM@RUBINRUDMAN.COM

February 15, 2006

By Hand Delivery

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

Re: D.T.E. 05-84, Wal-Mart Stores East, LP. Comments in Support of RESA's Motion for Reconsideration and Clarification

Dear Secretary Cottrell:

In response to the Hearing Officer's February 3, 2006 Memorandum in this proceeding, Wal-Mart Stores East, LP. ("Wal-Mart") appreciates the opportunity to submit comments relative to the February 1, 2006 Motion for Reconsideration and Clarification filed by the Retail Energy Supply Association ("RESA") with respect to the January 12, 2006 Order of the Department of Telecommunications and Energy ("Department") in NSTAR Electric, D.T.E. 05-84 (2006).

As set forth below, it is Wal-Mart's view that the Department should (1) reconsider its January 12, 2006 Order and not allow NSTAR Electric to inhibit customer choice through its six-month ban on a customer's return from Default Service to its previous Competitive Supplier, and (2) stay the implementation of NSTAR Electric's tariff in this matter until such time as RESA's Motion has been resolved. Should the Department decide not to reconsider and reverse its January 12, 2006 Order, then the Department should take all necessary steps to ensure that NSTAR Electric's role in monitoring customer and supplier compliance with its tariff be strictly limited. In particular, Wal-Mart has concerns with the exception in the tariff which allows customers to return from Default Service to their previous suppliers within six months if the Customer's contract with a previous supplier has expired. In this regard, Wal-Mart respectfully requests that the Department explicitly determine that customers and/or suppliers need not provide NSTAR Electric with contracts -- expired or otherwise - in order to demonstrate to NSTAR Electric's satisfaction that a previous contract between customer and supplier has expired.

1. RESA's Motion for Reconsideration

Wal-Mart supports RESA's position that in issuing its Final Order, the Department failed to consider arguments made by commenters in this proceeding that NSTAR Electric's proposed six-month ban on a customer's return from Default Service to its previous Competitive Supplier would have serious adverse impacts on customers, suppliers and the retail market as a whole. *See* RESA Motion at 5. As Wal-Mart indicated in its December 27, 2005 comments in this proceeding, proposals which impose restrictions on customers moving to and from competitive suppliers will hamper competition in Massachusetts. Moreover, as one of the only customers commenting in this proceeding, Wal-Mart noted that its broad experience in other states reveals that "the most successful competitive markets have short minimum stay requirements, usually 30 days or less." December 27, 2005 Wal-Mart Comments.

Moreover, Wal-Mart believes that RESA has accurately noted that the record in D.T.E. 05-84 does not support the conclusion that customer switching was the cause of the higher Default Service price bids in NSTAR Electric's Fall 2005 Default Service procurement. Here, RESA has pointed to a number of other factors which likely affected that Default Service procurement, including a projected colder than normal heating season, uncertainties regarding natural gas and oil supplies in light of Hurricanes Katrina and Rita, and uncertainties regarding capacity charges that might apply on a going-forward basis because of ISO-New England's LICAP proposal and modifications to that proposal. *See* RESA Motion at 6-7. Where numerous factors may have contributed to the results of NSTAR Electric's Fall 2005 Default Service procurement, at a minimum, the Department should reconsider its January 12, 2006 Order in this docket and assess the effects of all these factors, including customer switching, before allowing a tariff with such adverse consequences for the retail market to go into effect.

2. NSTAR's Role in Implementing Tariff

Should the Department decide not to reconsider and reverse its January 12, 2006 Order, then the Department should take all necessary steps to strictly limit NSTAR Electric's role in monitoring customer and supplier compliance with its tariff, particularly with respect to the exception in the tariff which allows customers to return from Default Service to their previous suppliers within six months if the Customer's contract with a previous supplier has expired. In this regard, Wal-Mart also shares RESA's view that it would be unwise to allow NSTAR Electric to act as a compliance monitor for this particular tariff. The Department is the entity charged with licensing and monitoring Competitive Suppliers, and the task of compliance monitoring for this tariff similarly should fall to the Department. *See* RESA Motion at 9-10.

In Wal-Mart's view, the Department should be extremely cautious about granting NSTAR Electric *any* role with respect to determining that a Customer returning from Default Service to a Competitive Supplier within a six-month period may do so because its contract with that Competitive Supplier has expired. If, however, the Department continues to believe that NSTAR Electric should serve this compliance monitoring function, then the Department should strictly limit NSTAR Electric's activities in this regard. Most importantly, under no circumstances should NSTAR Electric be allowed to request or require copies of Customer/Supplier contracts, even expired contracts, from either the Customer or the Competitive Supplier as a condition for allowing a Customer to return from Default Service to its previous Competitive Supplier during the relevant six-month period. These contracts include competitively sensitive information which should not be shared with the distribution company and this information becomes no less sensitive upon contract termination or expiration.

In its January 20, 2006 compliance filing, NSTAR Electric states that the "enrolling supplier will .... have the opportunity to provide NSTAR Electric with sufficient documentation demonstrating that the customer's prior contract with the supplier had expired." While Wal-Mart sees no reason to limit the different ways in which a Supplier may make such a demonstration,[1] it is critical that the Department make it clear that submission of customer contracts may not be required.[2]

As a customer who has secured competitive electricity in 12 different states and 19 different markets, Wal-Mart has insight into which markets work best and why. The restrictions on customer choice included in the approved tariff in this proceeding will only operate to hinder a Large C&I competitive market that has worked well in Massachusetts. Allowing NSTAR Electric to function as a compliance monitor for these restrictions potentially will allow NSTAR Electric to involve itself in business relationships and transactions that have nothing to do with the distribution company. Accordingly, Wal-Mart respectfully urges the Department to grant RESA's motion for reconsideration and clarification. Wal-Mart also requests that the Department remove NSTAR Electric from its proposed compliance monitoring role or strictly limit NSTAR Electric's compliance monitoring role consistent with these comments.

---

[1] For example, it appears reasonable that the Competitive Supplier be allowed to provide an affidavit regarding the expiration date of its most recent contract with a Customer.

[2] If upon receiving such documentation NSTAR Electric still believes that a Customer does not qualify for the exception allowing a Customer's return from Default Service to its previous Competitive Supplier, then NSTAR Electric can choose to bring its concerns to the Department's attention. In raising this possible scenario, however, Wal-Mart does not imply that NSTAR Electric should be allowed to bring every such case to the Department's attention. The Department should presume that both Competitive Suppliers and Customers are obeying the tariff and NSTAR Electric should be required to base its compliance monitoring on that same presumption. Those situations which require Department action should be rare.

Please date stamp a copy of this letter and return it to the messenger for our files.

Thank you for your attention to this matter.

Respectfully submitted

WAL-MART STORES EAST, LP.

By: Robert D. Shapiro

Robert D. Shapiro
Rubin and Rudman LLP
50 Rowes Wharf
Boston, MA 02110

cc: Jeanne Voveris, Hearing Officer