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September 15, 2006

BY HAND AND ELECTRONIC MAIL

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

Re: D.T.E. 06-40, NSTAR Electric Merger

Dear Secretary Cottrell:

Enclosed is an original and nine (9) copies of the Reply Brief of the Massachusetts Institute of Technology (MIT) and President and Fellows of Harvard College (Harvard or jointly MIT/Harvard) in the above-captioned docket. In the interests of efficiency, MIT and Harvard agreed to submit a single reply brief on behalf of both parties.

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

Thank you for your attention to this matter.

Sincerely,

John A. DeTore (df)

John A. DeTore

JAD/df
Enclosures

cc: Service List

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of NSTAR Electric Company	)	D.T.E. 6-40

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon each person on the service list by the Secretary in this matter. Dated at Boston this 15th day of September, 2006.

Donna C. Sharkey, Esq.
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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of NSTAR Electric Company	)	D.T.E. 06-40

REPLY BRIEF OF MASSACHUSETTS INSTITUTE OF TECHNOLOGY AND THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE

I. *INTRODUCTION*

In response to the Initial Briefs filed in this proceeding, the Massachusetts Institute of Technology ("MIT") and President and Fellows of Harvard College ("Harvard") (jointly "MIT/Harvard") submit that the record in this proceeding is insufficient to support a finding that the Petition as filed is consistent with the public interest and adequately protects ratepayers. In our initial Brief in this docket, MIT/Harvard demonstrated that the deficiencies associated with the proposed rates filed in this proceeding should compel the Department of Telecommunications and Energy ("Department") to deny the Petition as filed. The briefs of the other interveners support that determination for a variety of reasons. The Department should either deny the Petition outright or direct Boston Edison Company ("BECO"), Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth") and Canal Electric Company ("Canal") (collectively NSTAR Electric or the Companies) to amend and refile rates in a separate proceeding consistent with the public interest and to defer any determination on the standby rates to a separate proceeding.

II. *THE SETTLEMENT IN D.T.E. 05-85 DOES NOT PERMIT THE TRANSFER OF THE 13.8 KILOVOLT FACILITIES TO DISTRIBUTION AT THIS TIME.*

1. The Settling Parties In D.T.E. 05-85 Are At Odds With The Timing Of The Transfer Contemplated By The Settlement Agreement

On December 6, 2005, pursuant to G.L. c. 164, § 94 and 220 CMR § 5.00 et seq., BECo, Cambridge), Canal Company and Commonwealth filed a petition with the Department seeking approval of a settlement agreement ("Settlement") entered into with the Attorney General of the Commonwealth ("Attorney General"), the Low-Income Energy Affordability Network and the Associated Industries of Massachusetts. The Settlement contemplated the filing of the Petition in this above-captioned proceeding as part of the corporate restructuring of the Companies into a single corporate entity and related rate matters. This Settlement was approved by the Department on December 30, 2005 in D.T.E. 05-85.

The Attorney General, a key signatory to the Settlement, does not agree with the Companies' characterization of the timing of the transfer contemplated by the Settlement. In the Attorney General's Initial Brief, the Attorney General asserts that the Settlement Agreement allowed the Company to reclassify the 13.8 kV facilities as distribution facilities and recover the associated costs in distribution only after the consummation of the merger and after a separate proceeding which developed cost-based rates for those facilities. See Attorney General Initial Brief at 13. NSTAR appears to disagree.

Further, the Attorney General states that the parties to the Settlement agreed that the Department would transfer the facilities only in the context of a rate case proceeding which would apply the Department's ratemaking standards to ensure the development of cost-based rates, thereby meeting the Department's obligations pursuant to G.L. c. 164, Sec. 94. Clearly, the parties to the Settlement have divergent views of the Settlement's terms relating to the transfer and the Department should clarify the meaning of the Settlement Agreement as filed and

approved in D.T.E. 05-85.

The appropriate manner in which to transfer the 13.8 kV facilities to Cambridge's distribution rates is clear. The Department's decision to allow the transfer of the 13.8 kV facilities must be delayed until NSTAR Electric can provide cost-based distribution rates for Cambridge consistent with the Department's ratemaking standards and G.L. c. 164, Section 94 in a separate filing. NSTAR Electric's proposal to transfer the revenues estimated on the revenue requirement under negotiation in the pending Federal Energy Regulatory Commission proceeding to a distribution revenue increase is not revenue neutral or based on the Department's rate case precedent. See MIT/Harvard Brief, pp. 12-13. We agree with the Attorney General and TEC that the transfer as proposed not be approved at this time. AG Brief, pp. 8-13; TEC Brief, pp. 7-10. The Department should hold a complete investigation of the transfer and the appropriate revenue requirement associated with the 13.8 kV facilities in a separate proceeding.

2. The Individual Rate Structures For The Distribution Companies Should Be Maintained Until 2010 Consistent With The Date For The Merger Of The Rates For All Companies.

The determination of the 13.8 kV facilities transfer has a tremendous impact on the rates charged to Cambridge customers. In the course of the proceeding, numerous information responses and record responses regarding the potential impacts of the 13.8 kV facilities transfer as well as the impacts of the merger of transmission costs for Cambridge customers have been supplied. The uncertainties associated with what future costs will be have hampered the resolution of what the actual rate impacts on customers of NSTAR Electric's Petition will be. In MIT/Harvard's Initial Brief, we identified the potential negative impacts on Cambridge customers. MIT/Harvard Brief, pp. 12-16. In other intervenor initial briefs, the same concerns regarding uncertain rate impacts were raised for Cambridge and other service territories. See e.g. Cape Light Compact Initial Brief, pp. 7-14; Attorney General Initial Brief, pp. 14-16. In

particular, the Attorney General asserts that based on rate continuity concerns, the Department should not consolidate rates until cost information supporting the bill impact analyses can be required. AG Brief at 16.

MIT/Harvard notes that the Department has been explicit in its application of the no net harm standard in reviewing the proposed consolidation of rates as part of a merger proposal. In reviewing rate impacts related to a merger, the Department has relied on the public interest standard set forth in G.L. c. 164, § 94. "a Section 94 review is necessary for the public interest standard that is statutorily explicit in G.L. c.96, lies also at the heart of G.L. c. 164, § 94 by judicial construction." See *Massachusetts Electric Company et. al*, D.T.E. 99-47, p. 18 (2000). In that case, the Department approved a plan to protect customers of one of the merging electric distribution companies, Eastern Edison, from rate increases otherwise associated with the merger of the rates of Eastern Edison with the rates of Massachusetts Electric. D.T.E. 99-47 at 22. In that instance, the approved merger of rates protected the customers who would otherwise receive increases from being adversely affected by the merger, thus meeting the no net harm standard for the merger request.

In order to satisfy the no net harm standard, the Companies must demonstrate that the negligible benefits of merger at least balance only insignificant harm to Cambridge ratepayers, which the Companies have failed to do. The uncertainties regarding rate impacts, NSTAR did not offer a solid basis on which the Department can approve just and reasonable rates in this proceeding pursuant to Section 94 of chapter 164 or ensure that ratepayers are adequately protected from negative rate impacts from the proposed manner in the Petition in which the merger would be effectuated.

In conclusion, NSTAR Electric has failed to demonstrate that the proposed rates presented in the Petition as filed should be approved.

III. *THE DEPARTMENT SHOULD DEFER ANY DETERMINATION REGARDING PROPOSED STANDBY RATES UNTIL THE DEPARTMENT COMPLETES ITS INVESTIGATION INTO STANDBY RATES IN COMPLIANCE WITH THE GOVERNOR'S ENERGY PLAN*

MIT/Harvard submitted a copy of the Governor's Energy Plan (Massachusetts Energy Future: A Balanced Approach) as an exhibit in this proceeding. Exh. MIT-1. The Plan includes a specific recommendation to encourage on-site generation and to reduce standby rates to promote that objective. Since the hearings, the Department has received a pleading from the Division of Energy Resources ("DOER") in D.T.E. 02-38-C filed September 7, 2006 which petitions the Department to continue its investigation in D.T.E. 02-38-C or in a new docket in order to examine the economic barriers to the development of distributed generation caused by standby rates. Specifically, DOER requests the Department to open a generic proceeding, pursuant to its authority under G.L. c. 164, Sec. 76 to investigate standby rates. MIT/Harvard asserts that if the Department opens a generic proceeding pursuant to the Governor's directive and the DOER's request, the Department should defer consideration of the proposed standby rates for Cambridge until the proceeding is complete. In any event, the Department should deny the proposed standby rates filed in this record.

IV. *CONCLUSION*

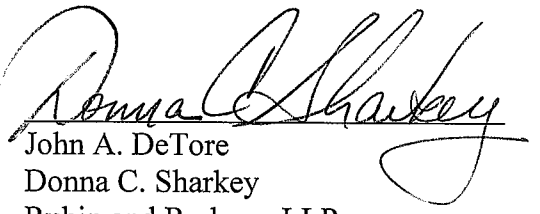
In making its determination on this record, the Department has the obligation to weigh the benefits and harm to the ratepayers associated with the Companies' proposed rate consolidation associated with the merger. As set forth in the Initial Brief of MIT/Harvard and in this Reply, MIT/Harvard asserts that the proposed implementation of the rates presented in this Petition would harm Cambridge ratepayers. In this proceeding, the Companies have neither offered any ratepayer protection mechanism as that proposed and approved in the Eastern

Edison/Massachusetts Electric Company merger[1] nor adequately explained how Cambridge ratepayers will not see any ill effects from the merger.

Based on the record in this proceeding, it is clear that the proposed benefits of the merger, primarily qualitative and relating to administrative efficiencies, are outweighed by the demonstrable harm associated with the Companies' Petition in the docket. Consistent with Department precedent, the Department must deny the Petition as filed.

WHEREFORE, Massachusetts Institute of Technology and President and Fellows of Harvard College respectfully request that the Department deny the Companies' Petition as filed to ensure ratepayers are fully protected.

Respectfully submitted,
MASSACHUSETTS INSTITUTE OF TECHNOLOGY
and
THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE
By its attorneys,



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Dated: September 15, 2006

[1] See *Massachusetts Electric Company et. al*, D.T.E. 99-47,pp. 18-22 (2000).