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June 12, 2005

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

RE: Bay State Gas, DTE 05-27 – MASSCAP et al. appeal of Hearing Officer's Procedural Schedule

Dear Secretary Cottrell:

This is the appeal of MASSCAP et al. of the Hearing Office's Memorandum Order dated June 10, 2005, adopting a Procedural Schedule for the above-captioned case. The reason for the appeal is that the Order unreasonably terminates discovery with only ten days notice.

Although this case was filed in mid-April, 2005, MASSCAP et al. have been engaged in good faith negotiations ever since with the mutual objective of resolving all issues between the parties in order to obviate the need for MASSCAP et al.'s active participation in this case. At the Company's specific request, MASSCAP et al. forbore from discovery in order to enhance the possibility of settlement.[1]

In addition, MASSCAP et al. have devoted substantial resources to the aforementioned negotiation, diverting resources from preparing an affirmative case in this proceeding.

Unfortunately, MASSCAP et al. cannot at this time represent to the Department that there is any likelihood that the prolonged negotiations with the Company will bear any fruit.

Under the schedule as proposed, if MASSCAP et al. file discovery this week, it will not receive responses until it is too late to promulgate follow-up discovery. This is almost tantamount to denying discovery altogether since the Company will be able to withhold

[1] The concern was that the filing of discovery could harden and inflame positions on both sides. An exception was made for the request of a few items already on the public record. The need for this discovery was occasioned in part on the Company's response to MASSCAP's informal request for a copy of the filing in this case. The Company responded by providing only five volumes out of the 11 volumes that were filed.

information – as the Attorney General explains in his motions the Company has been doing – free from the discipline of follow-up questions. Furthermore, the proposed schedule provides intervenors only four weeks to obtain (minimal) discovery and prepare direct testimony.

The Commission's policy of encouraging settlement of issues is not well served by such a schedule, which sends the clear message that good faith settlement efforts will be punished by the effective denial of discovery.

For all these reasons, MASSCAP et al. proposes that the intervenor discovery deadline be amended to the first day of hearings (July 5, 2005) and that the deadline for intervenor testimony be adjusted by one week to July 15, 2005. Neither change need impact the schedule for hearings or briefs. Indeed, allowing the continuation of discovery can only contribute to more efficient conduct of the hearings since more of the hunt for Company information will have been conducted outside the hearing room.

Respectfully submitted,

MASSCAP et al., by

Jerrold Oppenheim

cc: Hearing Officer, Service List