COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company and Commonwealth Electric Company d/b/a NSTAR Electric for Approvals Relating to the Termination of Purchase Power Agreements with MASSPOWER.	)	D.T.E. 04-61

PETITION TO INTERVENE OF THE CAPE LIGHT COMPACT

Pursuant to 220 CMR §1.03(1), the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"), hereby respectfully petition the Department of Telecommunications and Energy (the "Department") for leave to intervene in DTE 04-61. In support of this Petition, the Compact states as follows:

1. The Cape Light Compact is a governmental aggregator under G.L. c. 164, §134 and consists of the twenty-one towns in Barnstable and Dukes Counties, as listed above, as well as the two counties themselves. It is organized through a formal Inter-Governmental Agreement (the "Compact Intergovernmental Agreement") signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, §4A. The Compact's Aggregation Plan was approved by the Department in DTE 00-47. The Compact maintains a business office within the Barnstable County offices located at the Superior Courthouse at 3195 Main Street in Barnstable, MA 02630.

2. The purpose of the Compact, among other things, is to acquire the best market rate for electricity supply and transparent pricing, to provide equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department and generally to advance the interest of consumers in a competitive electric supply market. Compact Intergovernmental Agreement at Article I. Toward that end, the Compact presently operates a municipal aggregation Pilot Project, which provides electric power supply on an opt-out basis to more than 50,000 customers who are located within the Compact's service territory and would otherwise be served as Default Service customers. The Department approved the Compact's Pilot Project in DTE 01-63 and extended it in DTE 03-61 until December 31, 2003; more recently, in DTE 03-99, the Department further extended the Pilot until December 31, 2004. In addition, the Compact recently executed a one-year competitive electric supply agreement to begin servicing all customer classes on the Cape and Vineyard on an opt-out basis in 2005 (the "2005 Power Supply Program"). The Department approved this agreement in D.T.E. 04-32. The Compact also operates an Energy Efficiency Plan that was approved by the Department in D.T.E. 00-47C and again in D.T.E. 03-39.[1]

3. In this proceeding, Boston Edison Company d/b/a NSTAR Electric ("BECo") and Commonwealth Electric Company d/b/a NSTAR Electric ("Commonwealth" and, together with BECO, "NSTAR") are asking for (i) approval of a Termination Agreement that would terminate one power purchase agreement between BECo and MASSPOWER and two power purchase agreements between Commonwealth and MASSPOWER and (ii) approval of ratemaking treatment

[1] A portion of the decisions is subject to reconsideration, pursuant to the November 12, 2003 Motion for Reconsideration filed by the Compact.

relating to the Termination Agreement. Among other things, NSTAR seeks approval to pass the costs relating to the Termination Agreement with MASSPOWER through its transition charge.

4. Decisions made by the Department in this proceeding will directly affect customers of Commonwealth and may substantially affect the development of a competitive electric supply market in the Commonwealth. As Commonwealth is the local distribution company servicing all of the customers within the Compact's member municipalities, the Compact is substantially and specifically affected by this proceeding. Further, as a municipal aggregator currently serving Default Service customers and with its 2005 Power Supply Program about to commence, the Compact has a significant interest in the development of a robust competitive electric supply market in the Commonwealth and will therefore be substantially and specifically affected by this proceeding.

5. The Compact's intervention will not unduly burden NSTAR, the Department or any of the parties that filed or may intervene in this proceeding, in that the Compact will not introduce duplicative or repetitive material and will cooperate in ensuring a speedy and efficient proceeding.

STATEMENT OF PETITIONER'S CLAIMS

6. Section 1G(b)(1) of Chapter 164 of the Acts of 1997 allows qualified distribution companies to collect a charge for net, non-mitigable past investment commitments incurred prior to January 1, 1996. Such transition costs may include "the amount by which the costs of existing contractual commitments for purchased power exceeds the competitive market price for such power, upon the reaffirmation,

restructuring, renegotiation, or termination of such contracts, or the liquidated payments associated with the disposal of these contracts in a department-approved divestiture plan." St. 1997, c. 164, § 1G(b)(1).

7. By the same token, a company seeking to recover transition costs is required to mitigate those costs and the Department must find that the company has taken "all reasonable steps to mitigate to the maximum extent possible the total amount of transition costs that will be recovered and to minimize the impact of recovery of such transitions costs on ratepayers in the Commonwealth." *Id.* § 1G(d)(1). Mitigation measures must include good faith efforts to, *inter alia*, renegotiate, terminate or dispose of purchase power agreements determined by the Department to be above-market. *Id.* §§ 1G(d)(1) and 1G(d)(2)(i). Remaining amounts in excess of market value associated with above-market purchase power agreements may be included in transition charges if the Department finds that a contract buyout "is likely to achieve savings to the ratepayers and is otherwise in the public interest." *Id.* § 1G(d)(2)(ii).

8. If allowed to intervene, the Compact will seek to determine whether NSTAR has established its entitlement under applicable law to impose the proposed transition charges. Based on NSTAR's bare filing in its docket, the Compact questions whether NSTAR has made an adequate showing.

EVIDENCE TO BE PRESENTED

9. If the petition is granted, the Compact may introduce evidence regarding the potential impacts of approval and disapproval of NSTAR's proposals both on customers within Compact's service territory and on the competitiveness of the electric supply market in the Commonwealth, the market for buyouts of above-market purchase power agreements and such other evidence as the Compact deems appropriate.

PETITIONER'S REQUEST FOR RELIEF

10. The Compact asks the Department to allow it to intervene and participate fully in these proceedings, in order that its interests as stated above may be fully protected.

For all the above reasons, the Compact respectfully moves that the Department allow this petition to intervene. The Compact hereby notices the appearance of the undersigned counsel.

Respectfully submitted,

THE CAPE LIGHT COMPACT

By its attorneys,

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