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BY HAND

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02202

Re: D.T.E. 04-70 - Petition of Boston Edison Company and Commonwealth Electric Company d/b/a NSTAR Electric for Approvals Relating to the Issuance of Rate Reduction Bonds Pursuant to G.L. c. 164, § 1H

Dear Secretary Cottrell:

On August 31, 2004, Boston Edison Company ("Boston Edison") and Commonwealth Electric Company ("Commonwealth", and together with Boston Edison, the "Companies"), filed a Petition (the "Petition") for Approvals Relating to the Issuance of Rate Reduction Bonds pursuant to G.L. c. 164, §§ 1G and 1H. On Thursday October 7, 2004, the Companies, represented by their attorneys, attended a Public Hearing and Procedural Conference convened by the Department of Telecommunications and Energy (the "Department") with respect to their Petition. At the hearing, the Attorney General voiced concern with respect to the proposed procedural schedule and put forth an alternative to the proposed procedural schedule (the "Alternative Schedule"). The Alternative Schedule, however, raises an issue with respect to G.L. c. 164, §1H(b)(5).

The Massachusetts General Laws Chapter 164, §1H(b)(5) provides that:

> The [D]epartment shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval thereof within 120 days of the electric company filing; provided, however, that an electric company shall file a new application with the department within 45 days of any such disapproval, if so ordered by the [D]epartment."

It appears that, to date, the Department has not yet adopted regulations specifically implementing the 120 day requirement specified in §1H(b)(5).[1] However, it is the clear statutory intent that

[1] See Rules Governing the Restructuring of the Electric Industry, 220 CMR 11.00.

such regulations be adopted and in the absence of such regulations the statute might be read to establish a 120 day limit for a Department order.

Even if the Department had adopted regulations implementing the 120 days limit, 220 CMR §11.08 provides that the "Department on its own motion or for good cause shown by a petitioner may grant an exception to any provision of 220 CMR 11.00." In addition, the Department's general procedural regulations, 220 CMR § 1.02(5), provides that "in the discretion of the [Department] or the presiding officer, for good cause shown, any time limit prescribed or allowed by 220 CMR 1.00 may be extended."

Consequently, while we hope that the Department will issue a Finance Order as expeditiously as possible, we believe that a Finance Order issued after 120 days would, upon expiration of any appeal period, be valid and would properly authorize issuance of Rate Reduction Bonds.

Very truly yours,

David A. Fine

cc: Joan Foster Evans, Hearing Officer
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