D.P.U. 94-49-1

Petition of Boston Edison Company, pursuant to General Laws Chapter 164, §§ 69I, 76, 94, and 94A, and 220 C.M.R. § 10.00 et seq. for review of the procedures by which additional energy resources are planned, solicited, and procured by Boston Edison Company.

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ORDER ON APPEAL OF HEARING OFFICER RULING ESTABLISHING PROCEDURAL SCHEDULE

I. INTRODUCTION

On March 15, 1994, Boston Edison Company ("Company") submitted its draft initial filing pursuant to 220 C.M.R. § 10.00, the Integrated Resource Management ("IRM") regulations to the Department of Public Utilities ("Department"). On June 15, 1994 the Hearing Officer distributed, among other things, a tentative procedural schedule and provided notice of a Procedural Conference on June 30, 1994.[1] The purpose of the conference was to discuss procedural issues relating to the Department's Phase I review of the Company's petition for approval of the procedures by which additional resources are planned, solicited, and procured.[2] On July 7, 1994, the Hearing Officer issued a ruling establishing a procedural schedule ("Hearing Officer Ruling").[3] On July

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[1] The conference was informal in nature and was not recorded.

[2] Specifically, procedural ground rules and a procedural schedule were discussed. At the conference, the Company and Conservation Law Foundation ("CLF") presented alternative schedules. The alternative schedules provided for the submission of intervenor testimony on or about September 22, 1994, rebuttal testimony on or about October 13, 1994, and evidentiary hearing to commence on or about October 24, 1994 (Intervenor Appeal, Exhibit C and D). In addition, the alternative schedule proposed by CLF provided for the filing of intervenor initial briefs two weeks after the close of hearings, the Company initial brief two week after the intervenor initial briefs, intervenor reply briefs two week after the Company's initial brief, and the Company's reply brief two week after intervenor reply briefs (Intervenor Appeal, Exhibit C.)

[3] The Hearing Officer Ruling was based on the regulatory period established by the IRM regulations, and incorporated, to the extent

15, 1994, the Company submitted its initial filing for review by the Department.

On July 22, 1994, the Office of the Attorney General, Division of Energy Resources, Conservation Law Foundation, Massachusetts Public Interest Research Group (together, "Non-Utility Parties"), Massachusetts Energy Efficiency Council ("MEEC", with the Non-Utility Parties, "Intervenor Appellants") jointly, and the Company, separately, filed appeals of the Hearing Officer Ruling.[4]

II. POSITIONS OF THE PARTIES

A. The Company

The Company stated that the Hearing Officer Ruling establishes a briefing schedule requiring the simultaneous submission of initial and reply briefs by the Company and intervenors (Company Appeal at 2).

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possible, comments received at the conference. Specifically, the procedural schedule provided for the submission of intervenor testimony on August 26, 1994, the submission of rebuttal testimony on September 22, 1994, and evidentiary hearing to commence on September 26, 1994. In addition, the adjudicatory proceeding schedule provided for the submission of Company and intervenor initial briefs two weeks after the close of hearings and reply briefs one week after initial briefs.
The Hearing Officer Ruling provided that persons aggrieved by the ruling may appeal to the Commission by filing a written appeal, with supporting documentation by July 22, 1994, and responses to any appeal must be filed by July 29, 1994.

[4] No response to either the Intervenor Appellants or Company appeals were filed.

The Company contended that in a complex proceeding involving numerous issues and parties, simultaneous briefing is likely to result in arguments not being fully articulated or rebutted (id. at 4).

The Company expressed concern that where there are complex issues raised by different parties, that the proponent of a particular filing cannot always anticipate, in its initial brief precisely which issues will be contested (id.). Therefore, the Company requested that the Department establish a briefing schedule requiring the sequential submission of initial and reply briefs (id.).[5] The Company noted that its request would add two weeks to the procedural schedule established in the Hearing Officer Ruling, but that sequential briefing would better clarify and sharpen the issues for decision by the Department (id. at 5).[6]

B. The Intervenor Appellants

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[5] The briefing schedule requested, on appeal, by the Company provided for the filing of intervenor initial briefs two weeks after the close of hearings, the Company initial brief one week after the intervenor initial briefs, intervenor reply briefs one week after the Company's initial brief, and the Company's reply brief one week after intervenor reply briefs (Company Appeal at 4).

[6] The Company also noted that it anticipates a request for additional time for prefiling of intervenor testimony by certain intervenor parties (Company Appeal at 3). The Company stated that so long as the additional time for prefiling of intervenor testimony does not diminish the time for the filing of rebuttal testimony, the Company does not object to such a request (id.). The Company, however, contended that all reasonable efforts should be made to have an order issued within the period established by the IRM regulations (id.).

The Intervenor Appellants contended that this docket raises important and complex issues including planning assumptions concerning the effect of federally mandated efficiency standards, the implementation of demand-side management ("DSM") in addressing transmission and distribution as well as capacity and energy needs, the method of delivering DSM measures to customers, and the role of competition in doing so (Intervenor Appeal at 2). The Intervenor Appellants contended that the procedural schedule established by the Hearing Officer Ruling is inadequate to provide reasonable opportunity for the parties to participate in the proceeding (id.).

The Non-Utility Parties stated that they intend to sponsor joint direct and rebuttal testimony in this docket, and that, although the schedule provides four weeks from the submission of prefiled testimony by the Company, persons responsible for development of the testimony will be unavailable at different times during some or all of this period (id. at 3). The Intervenor Appellants contended that the development of joint testimony in the time allowed by the procedural schedule established in the Hearing Officer Ruling will be virtually impossible (id.). In addition, the Intervenor Appellants stated that counsel for MEEC will be unavailable during this time (id.). The Intervenor Appellants therefore requested that the time for submission of intervenor testimony in the procedural schedule established by the

Hearing Officer Ruling be extended by two weeks.[7]

The Intervenor Appellants also contended that in a complex proceeding involving numerous issues and parties, simultaneous briefing is likely to result in arguments not being fully articulated or rebutted (id.). The Intervenor Appellants stated that parties would be deprived of the opportunity to make their best cases, and the Department would be forced to resolve disputes on a record that fails to focus precisely on the differences between the parties positions (id.). Therefore, the Intervenor Appellants requested that the Department establish a briefing schedule requiring the sequential submission of initial and reply briefs (id.).[8] The Intervenor Appellants noted that their request would add two weeks to the procedural schedule established in the Hearing Officer Ruling, but that sequential briefing would better clarify and sharpen the issues for decision by the Department (id.).

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[7] In order to minimize delay in the conclusion of hearings, the Intervenor Appellants, on appeal, proposed that hearings begin before submittal of rebuttal testimony, and that the net effect is an extension of only one week in the procedural schedule established by the Hearing Officer Ruling (Intervenor Appeal at 3).

[8] The briefing schedule requested, on appeal, by the Intervenor Appellants provided for the filing of intervenor initial briefs two weeks after the close of hearings, the Company initial brief one week after the intervenor initial briefs, intervenor reply briefs one week after the Company's initial brief, and the Company's reply brief one week after intervenor reply briefs (Company Appeal at 4).

III. ANALYSIS AND FINDINGS

The Hearing Officer's Ruling was based on the five-month period established by the IRM regulations.[9] With respect to the submission of intervenor and rebuttal testimony, the procedural schedule established by the Hearing Officer Ruling provided an opportunity for discovery of the Company's initial filing, preparation of intervenor testimony (if any), discovery of intervenor testimony, preparation of rebuttal testimony (if necessary), and evidentiary hearings within the requirements of the regulations. In addition, the procedural schedule established by the Hearing Officer Ruling provided for Department review and Order writing within the five-month period.[10] The Department is not convinced that the schedule proposed by the Intervenor Appellants provides adequate opportunity to accomplish discovery, preparation of intervenor and rebuttal testimony, evidentiary hearings, and Order writing within the period established by the IRM

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[9] The IRM regulations provide for a five month review of an electric company's initial filing. 220 C.M.R. § 10.03(11)(b). The Company submitted its initial filing on July 15, 1994. Therefore, the Department should issue its Order by December 15, 1994.

[10] On June 15, 1994, the Hearing Officer provided a tentative procedural schedule which indicated the Department's intent to review the Company's filing within the period established by the IRM regulations. The Intervenor Appellants have had adequate notice of the schedule for review of the Company's filing, and ample opportunity to prepare their cases.

regulations. The Department recognizes the importance of a maintaining a schedule within the period established by the IRM regulations. The scope and particulars of the Company's case have been known since the draft initial filing on March 15, 1994. The submission of the Company's initial filing on July 15, 1994, and its triggering of the regulation's five-month review cannot come as an unexpected event to any party to this docket. The Intervenor Appellants' claim that they may be unable to prepare joint testimony is arresting and untenable. Therefore, the appeal of the Intervenor Appellants, with respect to the submission of intervenor and rebuttal testimony, is denied.

With respect to the submission of briefs, the Department finds that the sequential submission of initial and reply briefs, as requested by the Company and Intervenor Appellants, would, in this proceeding, better clarify and sharpen the issues for decision by the Department. Therefore, the Department directs the Hearing Officer to establish a procedural schedule which provides for the sequential submission of initial and reply briefs within the period established by the IRM regulations. Further, in order to assist the Department in reviewing briefs, and consistent with the Company's burden to support its case, the Department directs the Hearing Officer to establish a briefing schedule which provides for submission of the Company's initial brief,

intervenor initial briefs, Company reply brief, and intervenor reply briefs.[11]

[11] The Department leaves to the discretion of the Hearing Officer the appropriate timing for submission of briefs.

IV. ORDER

After due consideration, it is

ORDERED: That the appeal of the Intervenor Appellants with respect to the submission of intervenor and rebuttal testimony is denied; and it is

FURTHER ORDERED: That the appeal of the Intervenor Appellants and the Company with respect to the submission of briefs is granted, subject to the discretion of the Hearing Officer, and consistent with the directives contained herein.

By Order of the Department,

_____
Kenneth Gordon, Chairman

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Barbara Kates-Garnick, Commissioner

_____
Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).