D.P.U. 93-125

Investigation by the Department of Public Utilities on its own motion as to the propriety of the rates and charges set forth in tariff schedules M.D.P.U. Nos. 10 and 15, filed with the Department on June 14, 1993 to become effective July 14, 1993 by New England Telephone and Telegraph Company.

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# ORDER ON APPEAL BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCALS 2222, 2322, AND 2325 OF HEARING OFFICER RULING DENYING PETITION TO INTERVENE

## I. INTRODUCTION

On July 28, 1993, the International Brotherhood of Electrical Workers, Locals 2222, 2322, and 2325 ("IBEW Locals" or "Petitioner"), filed with the Department of Public Utilities ("Department") an appeal from the Hearing Officer's Ruling denying them intervention as full parties. [1]

The IBEW Locals filed a petition to intervene in this proceeding on July 19, 1993. [2] At a procedural conference held on July 19, 1993, the Hearing Officer denied the IBEW Locals petition to intervene and granted the Petitioner limited

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[1] With its appeal, the IBEW Locals also filed a motion for an extension of the July 28, 1993 deadline for appealing the Hearing Officer Ruling, to allow for an evidentiary hearing to demonstrate how the Petitioner is substantially and specifically affected by the proceeding. New England Telephone and Telegraph Company ("NET" or "Company") opposed extending the appeal period and allowing an evidentiary hearing, claiming it was unwarranted and would "unnecessarily" delay the procedural schedule in the case (NET Comments at 1-2). On July 30, 1993, the Hearing Officer issued a Ruling denying the Petitioner's request for an evidentiary hearing but granting an extension until August 4, 1993 of the appeal period to allow the IBEW Locals to submit additional documentation in support of their appeal. The IBEW Locals did not file such additional supporting documentation.

[2] Myles Calvey, Richard R. Cappi ello, and John Runkal, business managers of Locals 2222, 2322, and 2325, respectively, had filed individual petitions to intervene on behalf of their IBEW Locals on July 11, 1993. On July 19, 1993, these three IBEW Locals filed an amended j oint petition for intervention.

participant status (Tr. at 13-14, 25). [3] The Hearing Officer issued a written decision of the Ruling on July 26, 1993.

In the IBEW Locals' petition to intervene, the Petitioner stated that as the collective bargaining representatives of approximately 6,100 NET employees in Massachusetts, the IBEW Locals have a particular interest in ensuring that these employees are fairly compensated for the value of services provided to NET, and in minimizing the impact of an announced corporate downsizing on union workers (Petition at 2). [4] The Petitioner contended that this proceeding "will dramatically alter the composition of the Company's revenue" and such changes in "revenue composition will greatly effect the manner in which the proposed force reductions are implemented" ( id. ). In addition, the Petitioner claimed that NET's allocations of costs within its Cost of Service Study understates the value of union employees' services and does not adequately reflect "planned force reductions" ( id. at 3).

On July 29, 1993, NET filed its response in opposition to the appeal and argued that the Department should affirm the

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[3] In denying intervention, the Hearing Officer stated that the re were not "special circumstances" to justify intervenor statu s.

[4] The petition stated that NET and its parent, NYNEX, have announced combined reductions of approximately 25 percent of the "collectively bargained for employees" over the next two years.

Hearing Officer's ruling.

II. POSITIONS OF THE PARTIES

A. IBEW Locals

In its appeal, the IBEW Locals reiterate their contention that they are "substantially and specifically" affected by the proceeding in that the "many specific tariff changes proposed by the Company ... will impact upon the [Company's] announced corporate downsizing" (Appeal at 1). The Petitioner also claims that the denial of intervention was arbitrary.

B. The Company

NET contends that the IBEW Locals have no right under law to intervene, and have failed to meet their burden of proof to demonstrate that they would be substantially and specifically affected by the proceedings in order to justify a grant of intervention (NET Comments at 2, 4, citing G.L. c. 30A, § 10(4)). The Company also argues that the "labor/management issues" raised in the IBEW Locals petition are outside the scope of the proceeding ( id. at 4). Moreover, the Company contends that the IBEW Locals have failed to demonstrate how the proposed tariffs would impact on "any future corporate downsizing" ( id. at 5-6).

III. STANDARD OF REVIEW

Department regulations require that any person who desires to participate in a proceeding as an intervenor or limited participant file a petition at least seven days prior to the

public hearing, describing the manner in which that petitioner is substantially and specifically affected by the proceeding. 220 C.M.R. § 1.03(1). The Department has broad discretion in ruling on petitions to intervene or participate in its proceedings. Western Massachusetts Electric Company, D.P.U. 92-8C-A (1993), citing Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978), cert. denied 439 U.S. 921 (1978) (" Boston Edison "); see also Robinson v. Department of Public Utilities, 835 F.2d 19 (1st Cir. 1987). However, when ruling on such petitions, the hearing officer must consider the Department's procedural rules and balance the interests of the petitioner against the Department's need to conduct each proceeding in a complete, efficient, and orderly fashion. Id., see also New England Telephone and Telegraph Company, D.P.U. 89-300, at 5 (1990). The Department is authorized to allow interested persons not substantially and specifically affected to participate in proceedings for limited purposes as the agency deems appropriate. Id., citing G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. at 45. However, the Department is not required by statute or regulation to allow every petitioner to participate whenever a petition to intervene is filed. The petitioner still must demonstrate a sufficient "interest" in the proceeding. Id.,

citing Boston Edison , 375 Mass. at 45-46.

## IV. ANALYSIS AND FINDINGS

The IBEW Locals' assertion that it is "substantially and specifically affected" by this proceeding, because of the impact of the proposed tariffs on the Company's potential future downsizing, is a conclusion without adequate explanation. [5] See Western Massachusetts Electric Company , D.P.U. 92-8C-A, at 5 (1993). This proceeding is one in a series of compliance filings to restructure and reprice NET's rates on a revenue-neutral basis. It does not involve a determination of the Company's total revenue requirement or how costs are allocated among customer groups. It also does not involve quality-of-service issues. Therefore, without more explanation, we fail to see how the result of this limited proceeding would substantially and specifically affect the IBEW Locals' union members.

Based on their petition, we have determined that the IBEW Locals have not demonstrated "special circumstances" to justify allowing them full-party status in this proceeding. In addition, they have not shown that they possess such a high degree of expertise on matters relevant to this proceeding that the Department's review would suffer from limiting their

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[5] We note that the Petitioner was given ample opportunity, including an extension of the appeal period, to more fully articulate its reasons for intervening.

participation. See Boston Edison , supra . Therefore, we find that the Hearing Officer's Ruling denying the IBEW Locals intervenor status, but allowing them to participate as limited participants, was proper and consistent with the purpose and efficient conduct of this proceeding. Accordingly, the Hearing Officer's Ruling is affirmed.

## IV. ORDER

Accordingly, after due consideration, it is hereby ORDERED : That the appeal of the IBEW Locals from the Hearing Officer's Ruling denying their petition to intervene in this proceeding be and hereby is DENIED.

By order of the Department,