The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 24-10 February 20, 2024

Petition of NSTAR Electric Company d/b/a Eversource Energy for approval by the Department of Public Utilities of its Electric Sector Modernization Plan filed pursuant to G.L. c. 164, § 92B.

D.P.U. 24-11

Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, for approval by the Department of Public Utilities of its Electric Sector Modernization Plan filed pursuant to G.L. c. 164, § 92B.

D.P.U. 24-12

Petition of Fitchburg Gas and Electric Light Company d/b/a Unitil for approval by the Department of Public Utilities of its Electric Sector Modernization Plan filed pursuant to G.L. c. 164, § 92B.

INTERLOCUTORY ORDER ON SCOPE OF PROCEEDINGS

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I. INTRODUCTION

On August 11, 2022, the Legislature enacted An Act Driving Clean Energy and Offshore Wind, St. 2022, c. 179 ("2022 Clean Energy Act"). Section 53 of the 2022 Clean Energy Act, codified at G.L. c. 164, § 92B, requires each of the Massachusetts electric distribution companies to submit with the Department of Public Utilities ("Department") an electric sector modernization plan ("ESMP") to proactively upgrade the company's distribution and, where applicable, transmission system. Within seven months after filing, the Department must approve, approve with modification, or reject the ESMP filings. G.L. c. 164, § 92B(d).

On January 29, 2024, NSTAR Electric Company d/b/a Eversource Energy ("NSTAR Electric"), Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid ("National Grid"), and Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil") (collectively, "the Companies"; individually, "company") each filed for approval by the Department a proposed ESMP.[1] Each company filed its ESMP pursuant to G.L. c. 164, § 92B, and requested Department approval of the plan for the period January 1, 2025, through December 31, 2029. The Department docketed these matters as D.P.U. 24-10, D.P.U. 24-11, and D.P.U. 24-12, respectively.[2]

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[1] On its own motion pursuant to 220 CMR 1.10(3), the Department moves into the evidentiary record: (1) in D.P.U. 24-10, NSTAR Electric's filing exhibits; (2) in D.P.U. 24-11, National Grid's filing exhibits; and (3) in D.P.U. 24-12, Unitil's filing exhibits.

[2] These cases have not been consolidated and remain separate proceedings.

In this Order, the Department establishes the scope of these proceedings. Specifically, during the seven-month statutory ESMP review period, the Department will review these first ESMPs as each company's strategic plan for proactively upgrading its electric distribution and, where applicable, transmission system to assist the Commonwealth in achieving its statewide greenhouse gas emissions ("GHG") limits and sublimits under Chapter 21N. As part of its seven-month review, the Department will assess whether the plans as filed comply with statutory requirements, will investigate each company's forecasting methods and net benefits proposals, and consider the appropriate cost recovery framework (i.e., through base distribution rates and/or through annual reconciling mechanism(s)) that should be applied to proposed investments identified in the ESMPs. The Department will also establish relevant standards of review that will apply to the instant ESMPs as well as future ESMP filings.

During the seven-month review period, the Department will not be adjudicating: (1) the Companies' budget pre-approval requests, including for newly proposed capital investment projects ("CIPs"), collectively totaling more than $3.7 billion above and beyond the Companies' planned investments through 2029; (2) cost allocation proposals; or (3) rate design or rate redesign proposals. Rather, the Department will review costs, benefits, investment proposals, alternative approaches to financing, and rate design matters in the context of strategic planning documents. In addition, the Department anticipates providing guidance on the procedural process for subsequent phases of these proceedings and for future

ESMP filings. Lastly, the Department also defers to a subsequent phase of these proceedings the investigation of any performance metrics.

II. PROCEDURAL HISTORY

On August 7, 2023, the Department pre-assigned docket numbers to each company's first ESMP filing and established initial procedural requirements for the filings. On November 14, 2023, the Department provided additional procedural guidance, including intervention requirements, and established the initial procedural schedule for the proceedings. In particular, the Department established two procedural tracks for the proceedings, a General Track and an Alternate Track,[3] and established intervention deadlines for each track of January 30, 2024, and February 14, 2024, respectively.

On September 15, 2023, the Attorney General of the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E(a) in each proceeding. Additionally, the Department has to date granted full intervenor status to each of the following entities for all three proceedings: (1) the Massachusetts Department of Energy Resources ("DOER"); (2) Acadia Center; (3) Conservation Law Foundation; and (4) Northeast Clean Energy Council, Inc., Coalition for Community Solar Access, Inc.,

[3] For purposes of these proceedings, the Department defined General Track participants as members of the Grid Modernization Advisory Council ("GMAC"), or entities whose interests are represented on the GMAC. The Department defined Alternate Track participants as any other entity that may be found by the Department, pursuant to G.L. c. 30A, § 10, to be substantially and specifically affected by these proceedings but that did not participate in or whose interests were not adequately represented in the GMAC process.

Advanced Energy United, Inc., and Solar Energy Industries Association, Inc., working jointly. The Department has granted full intervenor status to the Cape Light Compact JPE for D.P.U. 24-10, and to each of the following entities for D.P.U. 24-10 and D.P.U. 24-11 only: (1) Green Energy Consumers Alliance; and (2) Direct Energy Business, LLC, Direct Energy Services, LLC, Energy Plus Holdings, LLC, Green Mountain Energy Company, Inc., NRG Home f/k/a Reliant Energy Northeast, LLC, and Xoom Energy Massachusetts, LLC. The Department has granted limited participant status to: (1) NSTAR Electric in D.P.U. 24-11 and D.P.U. 24-12; (2) National Grid in D.P.U. 24-10 and D.P.U. 24-12; and (3) Unitil, PowerOptions, Inc., and The Energy Consortium in D.P.U. 24-10 and D.P.U. 24-11. Finally, the Department has granted limited intervenor status to EVGo Services, LLC, and Tesla, Inc., in D.P.U. 24-10 and D.P.U. 24-11.[4]

III. DESCRIPTION OF THE PROPOSALS[5]

A. Overview

NSTAR Electric, National Grid, and Unitil each request Department approval of its ESMP for the period January 1, 2025, through December 31, 2029 (D.P.U. 24-10, Petition at 1, 4, 15; D.P.U. 24-11, Petition at 1, 4, 15; D.P.U. 24-12, Petition at 1, 4, 15).

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4 The Department has also received intervention requests from the Gloucester Economic Development and Industrial Corporation and Williams College in D.P.U. 24-11. Those requests, which National Grid opposed, remain pending.

5 This Order provides a high-level summary of key elements of the Companies' filings and proposals and is not intended to be an exhaustive list of proposals set forth in each company's filing.

Additionally, the Companies each request Department authorization to implement several categories of proposed investments identified in the ESMPs and, as explained in further detail below, Department pre-approval of the associated budgets and cost recovery proposals for those investments totaling approximately $820 million for NSTAR Electric, $2.4 billion for National Grid, and $49 million to $52 million[6] for Unitil (D.P.U. 24-10, Petition at 12-13, 15-16, Exhs. ES-ESMP-1, at 432-438; ES-Bill Impacts-1, at 5, 22; ES-Net Benefits-1, at 22; D.P.U. 24-11, Petition at 12-13, 15-16; Exhs. NG-ESMP-1, at 356-362; NG-Net Benefits-1, at 22; D.P.U. 24-12, Petition at 12-13, 15; Exhs. UN-ESMP-1, at 154-165; UN-Net Benefits-1, at 19).[7] The Companies jointly propose: (1) standards for the

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6 In its petition, Unitil identified an ESMP budget request of approximately $52 million; however, this amount does not align with estimated costs identified elsewhere in the filing.

7 Each of the Companies state that it will continue planned and Department-approved investments, as well as investments proposed for Department approval in other proceedings, in energy efficiency, demand response, grid modernization technologies, and distribution infrastructure, including the construction or rebuild of new substations and upgrades of existing substations, to meet its forecasted demand increase and integration of distributed energy resources such as solar (D.P.U. 24-10, Exhs. ES-ESMP-1, at 432-438; ES-Bill Impacts-1, at 5-16; ES-Policy/Solutions-1, at 132-136; D.P.U. 24-11, Exh. NG-ESMP-1, at 356-362; D.P.U. 24-12, Exhs. UN-ESMP-1, at 152-166; UN-Bill Impacts-1, at 6-10). Each company anticipates that these investments will be funded by its base distribution rates or through programs and existing cost recovery mechanisms already approved by the Department (D.P.U. 24-10, Exhs. ES-ESMP-1, at 432-438; ES-Bill Impacts-1, at 5-16; ES-Policy/Solutions-1, at 132-136; D.P.U. 24-11, Exh. NG-ESMP-1, at 356-362; D.P.U. 24-12, Exhs. UN-ESMP-1, at 152-166; UN-Bill Impacts-1, at 6-10).

Department's review of their filings, including for analyzing their proposed forecasts and for determining whether their plans provide net benefits; and (2) performance metrics applicable to the plans (D.P.U. 24-10, Petition at 11, 13-14, 16; Exh. ES-Metrics-1, at 4; D.P.U. 24-11, Petition at 11, 13-14, 16; Exh. NG-Metrics-1, at 6; D.P.U. 24-12, Petition at 11, 13-14, 16; Exh. UN-Metrics-1, at 4).

The Companies also jointly request that the Department defer certain issues to other proceedings or a different phase of the existing proceedings (D.P.U. 24-10, Petition at 14-16 & n.1; D.P.U. 24-11, Petition at 14-16 & n.1; D.P.U. 24-12, Petition at 14-16 & n.1). In particular, the Companies request that the Department defer: (1) consideration of potential rate redesign options, including time varying rates ("TVR"), to a generic proceeding, or other dockets currently open to consider such options; (2) review of opportunities to dispatch energy storage technologies to currently open dockets involving energy storage systems; (3) review of alternative approaches to financing proposed ESMP CIP investments to a generic proceeding, but allow the Companies during the ESMP term to propose CIPs that would be funded pursuant to the Department cost allocation paradigm established in Provisional System Planning Program, D.P.U. 20-75-B (2021); and (4) consideration of ESMP-related performance metrics to a later phase of the current proceedings (D.P.U. 24-10, Petition at 14-16 & n.1; Exhs. ES-ESMP-1, at 35; ES-Metrics-1, at 7 & n.1; D.P.U. 24-11, Petition at 14-16 & n.1; Exhs. NG-ESMP-1, at 37; NG-Metrics-1, at 10 & n.1; D.P.U. 24-12, Petition at 14-16 & n.1; Exhs. UN-ESMP-1, at 34; UN-Metrics-1, at 7-8 & n.1).

B. NSTAR Electric, D.P.U. 24-10

NSTAR Electric's proposed ESMP includes forecasts of electric demand on its distribution system over the next five years, ten years, and through calendar year 2050 (D.P.U. 24-10, Petition at 9; Exhs. ES-ESMP-1, § 5.0; ES-Forecast-1). The company forecasts that electric demand in its service territory is expected to grow by 20 percent over the next ten years, with peak demand increasing from 6.1 gigawatts ("GW") to 7.4 GW by 2033 (D.P.U. 24-10, Exhs. ES-ESMP-1, at 12, 23, 204; ES-Forecast-1, at 30).

NSTAR Electric proposes investments identified in the ESMPs that the company states will be necessary to meet the forecasted demand and achieve the requirements of G.L. c. 164, § 92B. Specifically, as part of its 2025-2029 ESMP, the company requests Department approval to spend an estimated $820 million in capital ($609 million) and incremental operations and maintenance ("O&M") ($211 million) expenses on the following categories of investments: (1) customer and grid technology investments to fund new programs and demonstrations to advance virtual power plants ("VPPs") and use distributed energy resources ("DERs") for grid service, and deploy new clean energy customer portals and enabling technologies ($59 million); (2) platform investments, including for advanced distribution management systems ("ADMS"), DER management systems ("DERMS"), billing capabilities to support TVR, cybersecurity, telecommunications, and intelligent data capture ($55 million); (3) resiliency investments, including undergrounding, reconductoring, and storm hardening infrastructure ($225 million); (4) electric vehicle ("EV") programs to extend the EV make-ready and charging infrastructure enablement program through 2029

($169 million); (5) solar investments to support a low- and moderate-income solar program ($50 million); and (6) new CIPs to enable timely DER interconnection ($261 million) (D.P.U. 24-10, Petition at 13; Exhs. ES-ESMP-1, at 432-438; ES-Bill Impacts-1, at 5, 22; ES-Net Benefits-1, at 22). NSTAR Electric states that the Department's approval of the estimated $820 million for ESMP investments would have no other effect than to establish a total cap for eligible ESMP funding recoverable through the designated rate mechanisms (D.P.U. 24-10, Petition at 13).

NSTAR Electric proposes to recover from ratepayers in future filings the costs of incremental ESMP expenditures through existing cost recovery mechanisms, including its grid modernization tariff, EV program tariff, provisional system planning tariff, resiliency tree work tariff, SMART tariff, etc., as the Department deems appropriate for particular investments (D.P.U. 24-10, Exhs. ES-ESMP-1, at 434-438; ES-Bill Impacts-1, at 7-9, 17-22). For CIP investments included in the proposed ESMP and/or new CIP proposals to be submitted to the Department during the term of the proposed ESMP, the company requests that the Department allow the company to recover the associated costs from ratepayers and interconnecting distributed generation ("DG") customers consistent with the cost recovery mechanism approved in D.P.U. 20-75-B (D.P.U. 24-10, Exhs. ES-Bill Impacts-1, at 18; ES-Policy/Solutions-1, at 33, 144).

C. National Grid, D.P.U. 24-11

National Grid's proposed ESMP includes forecasts of electric demand on its distribution system over the next five years, ten years, and through calendar year 2050

(D.P.U. 24-11, Petition at 9; Exhs. NG-ESMP-1, § 5.0; NG-Forecast-1). The company projects that peak demand will increase from 4.9 GW to 6.3 GW by 2034 (D.P.U. 24-11, Exhs. NG-ESMP-1, at 13; NG-Forecast-1, at 4, 10-11, 19).

National Grid proposes incremental investments that the company states will be necessary to meet the forecasted demand and achieve the requirements of G.L. c. 164, § 92B. Specifically, as part of its 2025-2029 ESMP, the company requests Department approval to spend an estimated $2.4 billion in capital ($2.05 billion) and incremental O&M ($469 million) expenses on the following categories of investments: (1) customer and grid technology investments to fund new programs and demonstration projects to advance VPPs and use DERs for grid service, and deploy new clean energy customer portals and enabling technologies ($100 million); (2) platform investments, including for ADMS, DERMS, active power restoration services, new network management capabilities, conservation voltage reduction and volt/var optimization ("VVO"), early fault detection, billing capabilities to support TVR, cybersecurity, and communications ($400 million); (3) network investments to fund new substation and distribution line upgrades to support electrification and DER interconnections, as well as to install and manage additional technology to improve network operations and management ($1.6 billion); and (4) EV programs to extend and expand EV make-ready and charging infrastructure enablement programs through 2029 ($299 million) (D.P.U. 24-11, Petition at 12-13, 16; Exhs. NG-ESMP-1, at 356-362; NG-Net Benefits-1, at 22). Further, the company states that it will seek Department approval to expend an additional $71 million for new CIPs in future separate proceedings to enable timely DER interconnection (D.P.U. 24-11, Petition at 13; Exh. NG-ESMP-1, at 23). National Grid states that the Department's approval of the proposed $2.4 billion ESMP budget will establish a planned level of eligible ESMP funding recoverable through the designated rate mechanisms (D.P.U. 24-11, Petition at 13; Exh. NG-Bill Impacts-1 (Rev.) at 9).

National Grid proposes to recover from ratepayers in future filings ESMP-related capital investment costs and incremental ESMP-related O&M costs through a new annual reconciling mechanism, which the company refers to as the Infrastructure, Safety, Reliability and Electrification ("ISRE") mechanism (D.P.U. 24-11, Petition at 12; Exhs. NG-ESMP-1, at 356; NG-Bill Impacts-1 (Rev.) at 5, 9-11). The company seeks Department approval of its proposed ISRE mechanism in its pending base distribution rate proceeding, Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 23-150. For incremental investments with costs permitted for recovery through existing reconciling mechanisms (e.g., energy efficiency ("EE") investments, grid modernization and advanced metering infrastructure ("AMI") investments, EV investments, and CIPs), the company proposes to continue recovering the costs of those investments from ratepayers through those separate reconciling mechanisms (D.P.U. 24-11, Exhs. NG-ESMP-1, at 359, 362; NG-Bill Impacts-1 (Rev.) at 11). For proposed CIP investments included in the ESMP and/or new CIP proposals to be submitted to the Department during the term of the proposed ESMP, National Grid requests that the Department allow the company to recover the associated costs from ratepayers and interconnecting DG customers consistent with the cost recovery mechanism approved in D.P.U. 20-75-B (D.P.U. 24-11, Exhs. NG-ESMP-1, at 37, 87, 112, 308, 315, 327, 359, 371; NG-Bill Impacts-1 (Rev.) at 8).

D. Unitil, D.P.U. 24-12

Unitil's proposed ESMP includes forecasts of electric demand on its distribution system over the next five years, ten years, and through calendar year 2050 (D.P.U. 24-12, Petition at 7; Exh. UN-Forecast-1). The company projects that peak demand will increase from 105.3 MW to 118.5 MW by 2034 (D.P.U. 24-12, Exh. UN-ESMP-1, at 135).

Unitil proposes incremental investments that the company states will be necessary to meet the forecasted demand and achieve the requirements of G.L. c. 164, § 92B. Specifically, as part of its 2025-2029 ESMP, the company requests Department approval to spend an estimated $49 million to $52 million in capital ($49.2 million to $49.7 million) and incremental O&M ($2.5 million to $2.6 million) expenses on the following categories of investments: (1) customer investments to fund new programs and demonstration projects to enable VPPs and use DERs as grid assets, and deploy new customer portals and enabling technologies ($1 million); (2) platform investments, including for ADMS, DERMS, billing capabilities to support TVR, cybersecurity, and telecommunications ($0.7 million); (3) network investments for new substation and distribution line upgrades to support electrification and DER interconnections, as well as VVO ($42.5 million); (4) grid modernization ($1 million); (5) resiliency investments through targeted spacer cable and undergrounding projects ($5 million); and (6) EV programs to extend EV make-ready and charging infrastructure enablement programs through 2029 ($1.2 million) (D.P.U. 24-12, Petition at 12-13, 15; Exhs. UN-ESMP-1, at 154, 160, 166; UN-Net Benefits-1, at 19). Unitil proposes to recover from ratepayers in future filings the costs of incremental ESMP expenditures through its grid modernization factor (D.P.U. 24-12, Petition at 22; Exhs. UN-ESMP-1, at 2, 27, 152; UN-Bill Impacts-1, at 6; UN-Policy/Solutions-1, at 24, 26).

E. Joint Performance Metrics Proposal

The Companies jointly propose three stakeholder engagement performance metrics and five metrics related to the proposed incremental ESMP investments (D.P.U. 24-10, Exh. ES-Metrics-1, at 4; D.P.U. 24-11, Exh. NG-Metrics-1, at 6; D.P.U. 24-12, Exh. UN-Metrics-1, at 4). Additionally, each company provides a list of its existing performance metrics currently reported to the Department, including those that are common between the Companies and those that are company-specific (D.P.U. 24-10, Exh. ES-Metrics-3; D.P.U. 24-11, Exh. NG-Metrics-3; D.P.U. 24-12, Exh. UN-Metrics-3). Unitil also states that it has proposed in its pending base distribution rate proceeding, Fitchburg Gas and Electric Light Company (Electric Division), D.P.U. 23-80, three categories of metrics applicable to its proposed ESMP investments (D.P.U. 24-12, UN-Metrics-1, at 4).

IV. ANALYSIS AND FINDINGS

A. Introduction

Section 92B of G.L. c. 164 established a new regulatory construct for electric sector grid modernization and long-term electric system planning. This new regulatory construct incorporates an integrated and comprehensive approach to distribution and transmission system planning and places at the forefront the achievement of the Commonwealth's clean energy and decarbonizing goals. The instant dockets are cases of first impression before the Department involving plans filed pursuant to this statutory provision and involve numerous complex issues. Additionally, these first ESMPs overlap in time and substance with several of the Companies' previously approved investments that are recovered through reconciling mechanisms outlined in existing tariffs (e.g., grid modernization plans, EV programs, CIPs). As such, we must carefully consider how to transition the preexisting regulatory framework to the regulatory construct and system planning framework established in G.L. c. 164, § 92B. Accordingly, to ensure an administratively efficient investigation and resolution of the Companies' ESMP filings, the Department outlines the parameters and defines the scope of review for these filings, including deferral of certain issues to separate Department proceedings or a later phase of the instant proceedings.

B. Strategic Plans

Where the Legislature enacts a comprehensive scheme of legislation such as the 2022 Clean Energy Act, there are likely to be gaps in the statutory provisions. Memorial Drive Tenants Corp. v. Fire Chief of Cambridge, 424 Mass. 661, 663 (1997); Mailhor v. Travelers Ins. Co., 375 Mass. 342, 345 (1978); NSTAR Electric Company, D.P.U. 09-33, at 70 (2010). It is first the agency itself, here the Department, that must fulfill the responsibility of interpreting statutes applicable to the agency. D.P.U. 09-33, at 71, citing City Council of Agawam v. Energy Facilities Siting Board, 437 Mass. 821, 828 (2002);

AT&T v. Automatic Sprinkler Appeals Board, 52 Mass.App.Ct. 11, 15 (2001); Greater Media v. Department of Public Utilities, 415 Mass. 409, 414 (1993). In determining the scope of the Department's review of the ESMPs, we must give effect to the statutory language "consistent with its plain meaning, and in light of the aim of the Legislature unless to do so would achieve an illogical result." Olmstead v. Department of Telecommunications and Cable, 466 Mass. 582, 588 (2013), quoting Sullivan v. Brookline, 435 Mass 353, 360 (2001). The statutory provisions relating to the ESMPs include: (1) several enumerated objectives that the plans must achieve; (2) a robust but non-exhaustive list of the detailed information that each plan must include; and (3) requirements for when and how the Companies must develop the plans. G.L. c. 164, § 92B(a)-(e). With respect to the Department's review, the statute requires the Department to "approve, approve with modification or reject the plan within seven months of submittal" and provides that "a plan shall provide net benefits for customers and meet the criteria enumerated in . . . subsection (a)." G.L. c. 164, § 92B(d) (emphasis added).

Consistent with the plain meaning of the statutory language and in consideration of the breadth of the ESMP requirements, the statutory review period, the unresolved cost recovery issues described below, and as cases of first impression, the Department finds it appropriate to review the first ESMPs as long-term, strategic planning documents that endeavor to meet the objectives of the 2022 Clean Energy Act, an examination that we characterize as a "strategic plan approach." Our decision to review the proposed ESMPs in this manner is guided by the strategic plan approach we used in our grid modernization proceedings, where the short term investment plan proposals were separate and distinct from the strategic plans. In those proceedings, the Companies' strategic plans were each company's roadmap outlining how the company intended to achieve the Department's grid modernization objectives, covering all grid modernization planning and investments, not only investments that were incremental or eligible for short-term targeted cost recovery through a reconciling mechanism. Second Grid Modernization Plans, D.P.U. 21-80-B/D.P.U. 21-81-B/ D.P.U. 21-82-B at 199 (2022) ("Second Grid Modernization Order (Track 2)"); Grid Modernization – Phase II, D.P.U. 20-69-A at 28-29 (2021); Grid Modernization, D.P.U. 15-120/D.P.U. 15-121/D.P.U. 15-122, at 106-107 (2018) ("Grid Modernization Order"); Modernization of the Electric Grid, D.P.U. 12-76-B at 15 (2014); D.P.U. 12-76-A at 16 (2013).

Here, the Department finds that the strategic plan approach is essential to provide the parties and the Department a sufficient opportunity to develop a more complete record on a narrower range of issues, given the constraints of a seven-month review period. For instance, given that the Companies' proposed net benefits method and analyses were first presented in their ESMP filings with the Department, we do not have the benefit of the Grid Modernization Advisory Council's ("GMAC's") pre-filing review and recommendations. G.L. c. 164, § 92B(d); G.L. c. 164, § 92C(b); see also D.P.U. 24-10/D.P.U. 24-11/ D.P.U. 24-12, GMAC Report at 7, 9. Further, this strategic plan approach will allow the Department the opportunity to establish the necessary standards of review that will govern: (1) the instant proceedings; (2) any potential additional phases of these proceedings or separate, ESMP-related proceedings, as necessary; and (3) future ESMP filings. The standards of review to be established include, but are not limited to, standards for reviewing the forecast methods relied upon the Companies and for determining whether each plan provides net benefits. Additionally, the Department must also assess whether each plan complies with the requirements of G.L. c. 164, § 92B and whether a strategic plan approach is appropriate for future plan filings.

In sum, the Department will review each company's proposed strategic planning solutions to determine whether and how they support the Commonwealth's statewide GHG emissions limits and sublimits under G.L. c. 21N, meet the requirements of G.L. c. 25, § 1A, and otherwise comport with the requirements outlined in G.L. c. 164, § 92B.

C. Budget Pre-Approval and Cost Recovery

As discussed above, the Companies each request that the Department pre-approve budgets for cost recovery based on the estimated costs of the new investments proposed in the ESMPs and as described in the plans (see Section III). Pursuant to the statute, approval requires that an ESMP provide net benefits for customers. G.L. c. 164, § 92B(d). Evaluation of the net benefits of the Companies' ESMPs will necessarily require review of the Companies' cost estimates. Nonetheless, the statute does not include any provision that requires the Companies to submit costs for pre-approval or directs the Department to pre-approve a budget. G.L. c. 164, § 92B. When courts interpret the requirements of a statute, "the omission of particular language . . . is deemed deliberate where the Legislature included such omitted language in related or similar statutes." Fernandes v. Attleboro

Housing Authority, 470 Mass. 117, 129 (2014); compare G.L. c. 164, § 92B; with G.L. c. 25, §§ 19, 21 (outlining the parameters for EE program funding and requiring EE plans to include, and for the Department to approve, a budget); and G.L. c. 164, § 1A(f) (permitting pre-approval for cost recovery of solar generation facilities). Therefore, the omission of a statutory requirement for the Department to review and pre-approve a budget for the implementation of the Companies' ESMPs evinces a legislative intent to leave to the Department's discretion when, if at all, such determination shall be made.

Given that the Department has yet to determine the appropriate framework for cost recovery of proposed investments identified in the ESMPs, including whether the appropriate cost recovery framework is one that requires budget pre-approval for those proposed investments, the Companies' requests for pre-approval and cost recovery through separate reconciling mechanisms is not only premature but would add an unnecessary administrative burden to an already challenging adjudicatory process. Moreover, in consideration of the scale of the pre-approval requests, which collectively total over $3.7 billion above and beyond the Companies' planned investments through 2029, and the inherent uncertainty in projecting costs for a five-year period, the public interest and ratepayer considerations necessitate more than a cursory review of the proposed investments. Therefore, the Department finds that each company's request for pre-approval of costs is premature and beyond the scope of the Department's seven-month review of the Companies' first plans. Accordingly, the Department will not adjudicate these requests or the associated cost recovery proposals within the seven-month review period.

Notwithstanding, consistent with the statutory language, the Department will review the costs and benefits of the Companies' proposed planning solutions, in accordance with the requirements of G.L. c. 164, § 92B and in the context of a strategic plan. The Department will otherwise investigate the appropriate cost recovery framework (i.e., through base distribution rates and/or reconciling cost recovery mechanisms) for proposed ESMP investments and address in the final Order the appropriate cost recovery framework that will apply to those investments.[8] To the extent that the Department determines that accelerated cost recovery through annual reconciling mechanisms for proposed investments identified in the ESMPs is appropriate, we anticipate establishing the appropriate parameters for those mechanisms through a separate phase of these proceedings to be conducted after August 29, 2024.[9]

D. CIP Proposals and Cost Allocation

The Department recognizes that the development of suitably sited renewable energy facilities and supporting infrastructure is vital to achieving the Commonwealth's GHG emissions targets and clean energy goals, and that the Companies play a critical role in the interconnection of DG facilities in the advancement of these policies. D.P.U. 20-75-B at 27. Consistent with the Department's finding that the pre-approval of costs is beyond the scope of

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8 For example, the Department must consider the statutory provision that, "[t]he electric company shall be permitted to include in base electric distribution rates all prudently incurred plant additions that are used and are useful." See G.L. c. 164, § 92B.

9 In D.P.U. 23-150, the Department will consider the implications of this decision in our review of National Grid's ISRE mechanism proposals.

the seven-month strategic plan review of the current proceedings, the Department also finds that pre-approval of costs and any proposed cost allocation methods for CIPs is beyond the scope of the Department's statutory review of the ESMPs as well. Because common system modifications required to interconnect DG facilities play a role in long-term distribution system planning, however, the proposed CIPs must be included in the ESMPs for the Department to perform the necessary review. See Department Letter Order to Companies at 2 (September 12, 2022) ("ESMP Letter Order"), citing D.P.U. 20-75-B at 29-30. Accordingly, the Department clarifies that any proposed CIPs identified in a company's ESMP as components of a company's planning solutions will be analyzed in these proceedings in the context of the company's particular forecasting methods and net benefit analysis.

Further, the statute requires the Companies to describe in detail alternative approaches to financing proposed investments, "including but not limited to cost allocation arrangements between developers and ratepayers." G.L. c. 164, § 92B(b)(ix). Because the Department has yet to determine the appropriate framework for cost recovery of proposed investments identified in the ESMPs, including for the Companies' proposed and future CIPs, the Department determines it is also premature to consider any cost allocation arrangements within the seven-month review of the ESMPs. Accordingly, consistent with the strategic plan framework discussed above, the Department will review whether and to what extent the Companies have considered alternative approaches to financing their proposed and future

CIPs, including cost allocation arrangements and the potential benefits of those alternatives, as part of their overall planning solutions.

E. Rate Design

The Department will review whether the Companies complied with the statutory requirements outlined in G.L. c. 164, § 92B, including the requirement that each ESMP describe in detail alternatives to proposed investments, including changes in rate design. G.L. c. 164, § 94B(b)(viii). Nonetheless, the Department finds that final determinations on potential rate redesign options and energy affordability will necessarily depend on the final determination of the appropriate cost recovery framework for proposed investments identified in the ESMPs and are better addressed through meaningful review in separate proceedings outside the ESMP review process. Therefore, those particular elements of rate design will not be adjudicated in the instant proceedings, either through the initial seven-month review or in a subsequent phase of these proceedings. The exclusion of review of rate redesign options, and the related issue of energy affordability, from the ESMP proceedings will allow resolution of several pending matters applicable to rate design issues and, in turn, will be considered in separate dockets that will ultimately inform and influence future planning and investment.

For instance, representatives from the Executive Office of Energy and Environmental Affairs, DOER, the Massachusetts Clean Energy Center, and the Attorney General are all members of the Interagency Rates Working Group ("IRWG"), which was formed to advance near- and long-term electric rate designs that align with the Commonwealth's decarbonization goals. The IRWG plans to issue a final report providing: (1) an electric rates assessment; (2) a near-term rates strategy to address barriers to near-term electrification through rate design offerings for electric consumers receiving AMI meters; and (3) a long-term ratemaking study. See IRWG website, available at https://www.mass.gov/info-details/interagency-rates-working-group (last viewed February 20, 2024). Additionally, the Department has recently opened investigations into optional EV time-of-use rates proposals submitted by NSTAR Electric and National Grid pursuant to Chapter 179 of the 2022 Clean Energy Act, and an inquiry to examine energy burden with a focus on energy affordability for residential ratepayers. Energy Burden Notice of Inquiry, D.P.U. 24-15, at 1 (January 4, 2024); NSTAR Electric Company, D.P.U. 23-84, Notice of Public Hearing, Stakeholder Meeting, and Request for Comments (November 14, 2023); Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 23-85, Notice of Public Hearing, Stakeholder Meeting, and Request for Comments (November 14, 2023).

Moreover, the AMI Stakeholder Working Group established in the grid modernization proceedings will submit a final report to the Department on August 1, 2024, addressing the following matters: (1) customer and third-party access to customer usage data; (2) customer education and engagement; (3) billing of TVR offered by competitive suppliers; and (4) AMI deployment strategies that may expedite the ability for competitive suppliers to offer TVR products. Second Grid Modernization Plans (Track 2) at 326-329. Additionally, the Department intends to address TVR for basic service, as well as potential TVR for transmission and distribution, in a separate investigation. Investigation by the Department of

Public Utilities on its own Motion into the Provision of Basic Service, D.P.U. 23-50, at 18 (2023); Second Grid Modernization Plans (Track 2) at 327 n.136.

Given these pending matters, the Department determines that adjudication of any rate redesign proposals that may be submitted in these proceedings would be premature and, thus, outside the scope of the instant proceedings. Accordingly, the Department will not consider rate design in these dockets. Rather, the Department will review in the instant proceedings the limited issue of the Companies' compliance with the statutory requirements applicable to rate designs, including whether and how the Companies considered the potential changes in rate design in their ESMP forecasting and analyses, as well as whether and how such considerations on this issue should be addressed and/or incorporated into future ESMP filings.

F. Performance Metrics

The only mention of performance metrics in the statute requires that the Companies include "any performance metrics included in the approved plans" in biannual reports to the Department and the Joint Committee on Telecommunications, Utilities and Energy. G.L. c. 164, § 92B. Because the statute does not explicitly require the Companies to include performance metrics in their plan filings – unlike the many components explicitly required in the plans – or the Department to approve performance metrics, we find that the Legislature left it to the Department's discretion to determine if and when to adjudicate performance metrics. G.L. c. 164, § 92B(b); Fernandes, 470 Mass. 129. We find that it would be premature and unproductive to establish final performance metrics in our decision due by

August 29, 2024. For these first ESMP filings, the Department will address any initial performance metrics in a separate phase of the current proceedings, including whether any current grid modernization or EV performance metrics should be applied to the plans. For future ESMP filings, the Department may reassess whether this approach continues to be appropriate. The Department finds this approach to be reasonable and consistent with our process in the grid modernization and EV proceedings. Second Grid Modernization Plans (Track 2) at 324; Electric Vehicles, D.P.U. 21-90/D.P.U. 21-91/D.P.U. 21-92, at 176 (2022) ("EV Programs Order").

G. Conclusion

In sum, based on the foregoing considerations, and without prejudice to the Companies, the Department will review these first ESMP filings as strategic plans and determine whether the plans as filed comply with the requirements established in G.L. c. 164, § 92B, and align with G.L. c. 21N, § 3A and G.L. c. 25, § 1A. The Department will investigate the forecast methods and net benefits proposals relied on by the Companies, the appropriate cost recovery framework for proposed ESMP investments (i.e., through base distribution rates and/or through annual reconciling mechanism(s)), as well as the relevant standards of review to be utilized. As strategic plans, the Department will not adjudicate: (1) the Companies' budget pre-approval requests, including for newly proposed CIPs; (2) cost allocation proposals; or (3) rate design or rate redesign proposals. The Department will review costs, benefits, investment proposals, alternative approaches to financing, and rate design matters in the context of strategic planning documents only. The

Department also defers to a subsequent phase of these proceedings the investigation of any performance metrics.[10]

We find this decision to be wholly consistent with the Department's obligation to conduct its proceedings in an efficient and orderly manner within the statutory timeframe prescribed by G.L. c. 164, § 92B(d). We also find the strategic plan approach builds upon and is consistent with our prior decisions to consider additional proposed grid modernization, EV, and CIP investments as part of each company's ESMP filing. G.L. c. 164, § 92B(b), (c)(ii) (directing the EDCs include in their ESMPs, in part, a summary of all proposed and related investments and to identify customer benefits associated with those proposed investments); ESMP Letter Order at 2; EV Programs Order at 97, 131, 157-158, 205 (instructing that future EV charging infrastructure program proposals, including any distribution system-related investments and adjustments to existing EV programs, would be filed and developed through the process set forth in G.L. c. 164, §§ 92B, 92C); Second Grid Modernization Plans (Track 2) at 290-291, 303, 330-336 (determining that the new regulatory construct established in the legislation superseded the Department's grid modernization regulatory construct established in D.P.U. 12-76-B, as subsequently modified). Further, we conclude that our decision will not adversely impact the evaluation and resolution

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10 Notwithstanding any alignment with the Companies' deferral request regarding performance metrics, or generally on rate design, energy storage, or financing alternatives, the Department clarifies that all issues, unless explicitly excluded herein, will be investigated consistent with the scope established in this Order, i.e., in the context of a strategic plan.

of the many remaining issues presented in the instant matter. In the interest of administrative efficiency, we direct the parties to proceed accordingly, based on the guidance in this Order, in conducting discovery, cross-examining witnesses at the evidentiary hearings, and submitting comments in accordance with the briefing schedule to be established.

V. ORDER

Accordingly, after due consideration, it is hereby

ORDERED: That the scope of these proceedings shall be as set forth in this Order unless otherwise determined by the Department; and it is

FURTHER ORDERED: That the parties to these proceedings shall comply with all directives contained in this Order.

By Order of the Department,

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James M. Van Nostrand, Chair

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Cecile M. Fraser, Commissioner

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Staci Rubin, Commissioner