COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

WESTERN MASSACHUSETTS ELECTRIC COMPANY	)	**D.P.U. 11-102/11-102-A**

I. INTRODUCTION

Pursuant to the briefing schedule established by the Department of Public Utilities ("Department") in this proceeding, the Attorney General's Office ("AGO") submits its Reply Brief responding to the arguments made by Western Massachusetts Electric Company ("WMECO" or "Company").[1] The Department should find that the AGO has demonstrated that the Company's petition fails to satisfy the conditions for drawing from its storm fund. Namely, the Department should find that WMECO's attempt to collect costs should be denied as the Company failed the standard to collect because the Company's storm-preparation and mismanagement during and post-storms events were not (1) prudently incurred, (2) reasonable, (3) storm-related, (4) attributable to WMECO, and (5) incremental. Hence, of the approximately $20 plus million that WMECO seeks to collect, the Department should deny recovery of $15,932,681 from collection through the SRRCA, with carrying charges recomputed for any disallowance.

[1] This brief is not intended to respond to every argument made or position taken by the Company. Rather, this Reply Brief is intended to respond only to the extent necessary to assist the Department in its deliberations. Silence by the Attorney General's Office with respect to any issue addressed in the Company's briefs cannot be construed as assent to its position.

II. STANDARD OF REVIEW

The Company's Initial Brief devotes a number of pages to the complex system of recovery for storm restoration costs that includes a Storm Fund and a Storm Recovery Adjustment Factor ("SRAF") pursuant to the Storm Recovery Reserve Cost Adjustment ("SRRCA"). Co. In. Br., pp. 1-5. Although this case has a complicated procedural history involving different dockets and provisional approvals, the SRRCA/SRAF is a reconciling formula rate, and the Department's power to review costs that flow through such adjustment mechanisms is plenary. *Fitchburg Gas & Electric Light Company v. Department of Telecommunications & Energy*, 440 Mass. 625, 635-639 (2004) (Department can require disgorgement of improperly collected costs through formula rate mechanisms for costs previously reviewed by the Department). No previous provisional approvals of rates filed by the Company can impede the Department's full investigation of, and adjustments to, the costs in this case. The standard of review that the Department must apply here was articulated in WMECO's last rate case. In that case, the Department held that the Company could recover storm costs under the SRRCA that were (1) prudently incurred, (2) reasonable, (3) storm related, (4) attributable to WMECO, and (5) incremental. *Western Massachusetts Electric Company*, D.P.U. 10-70, p. 201. To determine prudence, the Department must evaluate whether the utility's actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances that then existed. *Fitchburg Gas & Electric Light Company*, D.T.E. 98-51, p. 12 (1998).

III. ARGUMENT

A. "STORMS" IN SRRCA

The Company's Initial Brief argues that the AGO's recommendations for the Department to unbundle the Company's aggregation of weather events into "storms" for purposes of recovery under the SRRCA is inappropriate for multiple reasons. Co. In. Br., pp. 29-35. While none of the arguments put forward by the Company are sufficient to rebut the soundness of this recommendation, all of the arguments suffer from a common defect, which is highlighted by the Company's first argument: "Mr. Booth ignores the fact that storm-fund recovery is determined by one factor: whether the total incremental costs of the storm are greater than $300,000." *Id.*, p. 29. There are actually three elements to the Company quoted formulation of costs recoverable under the SCRRA, and not one. Costs must be (1) "incremental", (2) related to a "storm", and (3) over $300,000 in total. Of course, the Department has set out a five-part test for the recoverability of costs under SRRCA. The costs must be (1) prudently incurred, (2) reasonable, (3) storm-related, (4) attributable to WMECO, and (5) incremental. *Western Massachusetts Electric Company,* D.P.U. 10-70, p. 201.[2] The Company's one-factor test seems to boil down to recoverability when the outage costs it books at the same time that there is some inclement weather over its distribution system exceed $300,000. The Department should reject this test for multiple reasons; including the Company essentially has no meaningful definition of what constitutes a storm under its own tariff.

First, costs must be "incremental". As an electric distribution company, WMECO's base rates already include a representative level of outage restoration costs associate with normal

[2] Oddly, although the Company acknowledges this standard, (Co. In. Br., pp. 4-5), WMECO neglects it in this section in favor of the "one factor" test.

system operation, including weather events like routine rain and thunderstorms. The Company neither provides evidence of its level of normal restoration activities related to typical weather or routine system outages included in the last rate case nor the dollar figures associated with these activities as represented in the last cost of service. WMECO has failed to show that the costs the Company books are incremental to test year levels in any meaningful way, and the thunderstorm costs should be rejected on that basis alone. WMECO's "one factor" test completely reads out the requirement that costs must be incremental in practice for recovery under the SCRRA, and instead really means that the Company simply books any outage cost during what it defines as a "storm" in an attempt to break the $300,000 threshold. Approving this process is nothing more than permitting the Company to collect everyday O&M costs that are represented in base rates and also to collect the costs a second time through SCRAA. *Cf. Fitchburg Gas and Electric Light Company*, D.T.E. 99-66.

Second, costs must be related to a storm. Here, the Company's working definition of a storm would roll up as a "storm" cost routine outages that happen to occur on its system over a cloudy five-day period where one drop of rain fell across its distribution system each day. Contrary to the Company's argument that "if the Attorney General's office has an issue with this structure, it is an issue for the next base-rate case" (Co. In. Br., pp. 29-30), the Department has the discretion to define what constitutes a storm for cost-recovery purposes under the SCRRA in this proceeding. See *Boston Gas Company v. Department Telecommunications & Energy*, 436 Mass. 233, 237 & 239 (2002) (Court gives "due weight to the 'experience, technical competence, and specialized knowledge' of the department"). The Department should reject the system impact approach described by WMECO for thunderstorms as a definition of a "storm" as too broad. Such a definition also provides incentives for the Company to not design construct or

maintain a sufficiently robust system since it can collect dollars for activities that should be represented by base rate O&M costs, like vegetation management, as a storm cost as well.

Finally, the costs must be both reasonable and prudent. WMECO's method of bundling costs from routine outage events and thunderstorms results in inflated cost-recovery requests under the SCRRA. Costs of that nature are neither reasonable nor prudent and the Department should either reject them in total or make an appropriate adjustment to the recovery, as recommended by the Attorney General's Office. AG In. Br., pp. 25-26.

In addition to the recommendation the AGO's Initial Brief regarding cost recovery for the thunderstorms, the Attorney General's Office urges that the Department adopt the clear and workable definition of a storm advocated by Mr. Booth. Exh. AG-Exh. GLB–Sur-Rebuttal, p. 20. If the Federal Emergency Management Administration ("FEMA") declares a disaster due to a storm of sufficient significance such that public power communities in Massachusetts, such as where WMECO has storm damage, then the Company may file with FEMA for reimbursement, and then, and only then, an investor-owned utility, like WMECO, should be able to define the event as a storm for reimbursement under SCRAA. *Id*. Such a declaration by FEMA is objectively ascertainable and would be administratively efficient for the Department to apply in future storm cost-recovery proceedings by WMECO and other companies.

B. AFFILIATE CREWS AND UNPRODUCTIVE TIME

WMECO's Initial Brief argues in favor of collecting from customers the "as requested" amount of unproductive time and the full of amount for crews borrowed from its affiliates, even though neither helped improve the Company's restoration time. Co. In. Br., p. 37. While the Company seems to advance the internally inconsistent argument that it both adheres to the Emergency Response Plan ("ERP") Guidelines and would not be limited by them, (*Id.*, pp. 40-

41), it does not rebut the analysis presented by the Attorney General's Office that high amounts of idle time indicate crews in excess of what can be usefully managed to assist with the restoration. This observation, when combined with rising labor costs without improved restoration times, should inform WMECO/NU management that excess crews are being called upon. Even if the Company acted prudently in initially requesting crews in light of the ERP Guidelines, the Company did not act prudently in retaining these crews once field conditions indicated they were unnecessary. WMECO should have reported to the Department that the net effect of applying the ERP guidelines was excessive costs without concomitant benefits during the lessons learned phase of its storm reporting obligations. There is no evidence in this case that it did so. In any event, the Company has provided no convincing argument against the recommended adjustments of the Attorney General.

C. JOINT OWNERSHIP AGREEMENT COSTS

In its Initial Brief, the Company makes a spirited argument against recovery of certain vegetation management costs under the Joint Owners Agreement ("JOA") from Verizon in favor of seeking these costs from its own customers as special storm charges. Co. In. Br., pp. 42-47. The Company's position is flawed in at least two respects. First, it completely ignores the free-rider problem that is created when an electric distribution company performs routine vegetation management functions that also benefit a telecommunications carrier. AG In. Br., p. 32. It strains logic to reach the conclusion at the heart of the Company's position: that WMECO performing routine tree trimming around its facilities provides no benefit to those of other attachers, like Verizon.

Second, the Company's arguments overlook the requirements under the JOA for equal sharing of costs associated with heavy storm work is mandatory: "The Parties agree to a 50/50

basis for heavy storm work", which includes restoration following a "hurricane, wet snow, tornados and ice storms." D.P.U. 11-102, DPU 1-7, Att., p 42 of 48, ¶ 4 ("I.O.P. 8"). Such work will be performed "immediately without prior review," *id.*, which shows that no consent or demonstration of "benefit" is needed before Verizon is obligated to pay half of those vegetation management costs. This conclusion is reinforced by another section of the I.O.P. 8 that states under "Administration": "The full cost of uncoordinated trimming shall be borne by the Company that arranged for the same. Excepting heavy storm work." *Id.*, p. 43 of 48, ¶ 4 (emphasis added). This clause of the contract reinforces the conclusion that WMECO is entitled to half of the heavy storm work vegetation management costs from Verizon regardless of whether the companies have otherwise agreed.

No part of the JOA can be overlooked. When it is called on to interpret a contractual agreement, the Department should construe the terms of the agreement—mindful of its obligation to regulate in the public interest—"to give effect to its plain language and give terms their usual and ordinary meaning," the same way a court construes a contract. *Southern Union Co. v. Department of Public Utilities*, 458 Mass. 812, 820-821 (2011). A court interprets a contract that is free from ambiguity according to its plain meaning. *Freelander v. G. & K. Realty Corp*., 357 Mass. 512, 516 (1970) (emphasis added); see also *Morse v. Boston*, 260 Mass. 255, 262 (1927) (court must construe all words that are plain and free from ambiguity according to their usual and ordinary sense); *NSTAR Elec. Co. v. Department of Public Utilities*, 462 Mass. 381 (2012). Here, it is abundantly clear from unambiguous terms that heavy storm work vegetation management costs are shared on a 50/50 basis with no exceptions.

The Company has the burden of proving the requested costs are not attributable in whole or in part to Verizon, and it has failed to do so. The Department should provide WMECO with

the proper regulatory incentive to enforce the terms of the JOA in a way that provides least cost service for its customers. The Department should denying cost recovery under the SCRRA as recommended for vegetation management by the Attorney General's Office, (AG In. Br., pp. 34-35), and leave WMECO free to pursue Verizon in a private action under the terms of the JOA for reimbursement of these funds instead.

D. DISTRIBUTION SYSTEM DESIGN, CONSTRUCTION & MAINTENANCE STANDARDS

The Company's Initial Brief counsels that the Department should reject the Attorney General's Office's argument that evidence shows WMECO "under-designed, under-constructed and under-maintained" its system because the National Electric Safety Code ("NECS") provides design wind speeds of between 90 and 100 mph while the Company admits it uses a 40 mph standard. Co. In. Br., pp. 34-35. According to the Company, the "calculation of 4lbs/ft^2 of simultaneous pressure due to wind loading equates to a wind speed of approximately 40 M.P.H.," and so the Company "adheres to the NESC by designing its cycle-base tree trimming program to withstand 40 mph winds." *Id.*, p. 35. There are a number of problems with this position.

First, the Company provides no citation to the record evidence to support the derivation that 4 lbs/ft^2 of pressure "equates" to a wind speed of 40 mph winds. As this is the heart of the Company's argument, the derivation here is a critical omission. *Boston Gas Company v. Department Telecommunications & Energy*, 436 Mass. 233, 240 (2002). Second, and more importantly, the Company mixes apples and oranges when it argues that 4 lbs/ft^2 rating somehow support its tree trimming cycle since this rating concerns clearance for ice loadings, not vegetation management practices. There is a material difference between how often and how

much a company should trim trees along its lines under the NESC Rule 218 and how much distance there should be between lines coated with ice and adjacent structures under the other parts of the code. In order to evaluate properly the Company's claim, the Department would need NESC sections that are not in the record, specifically NECS Rule 230, the rule on clearances.[3] The Company does not cite this rule but nonetheless draws conclusions involving clearances under the NESC. The Department should not endorse that tactic.

Based on the justifications provided by the Company on this topic, the Attorney General's Office has no choice but to urge that the Department to adopt the recommendation of Mr. Booth and require an independent assessment of WMECO's distribution system. Given the very poor performance as demonstrated by the number of expensive storm restorations and repeated instances of long duration customer outage events, such a review would be beneficial. Exh. AG - Exh. GLB – Sur-Rebuttal, pp. 13-14.

As part of the alternative process to the long-range electric forecast review required by G.L. c. 164, § 69*I*, the Department required that distribution companies generate annual planning reports. *Alternative to Long Range Forecast*, D.T.E. 98-84/EFSB 98-5 (2003). The annual planning report, which focuses on the distribution system, must include:

> 1. Ten-year peak demand forecasts for the distribution companies' service area;
> 2. Planning criteria and guidelines for the distribution system planning process;
> 3. An operating study showing power flows and voltages under normal and emergency conditions;
> 4. A listing of critical loads (e.g., hospitals) by towns and the circuits by which they are fed;
> 5. A listing of significant reliability and infrastructure improvement projects planned for construction within the next five years; and
> 6. A prioritization of future projects.

[3] The Attorney General's Office recognizes that the Rule 230 is not itself in the record and does not ask the Department to apply its requirements here without that evidence, as the Company has apparently has done.

Id., p. 2. *See also Notice of Inquiry,* D.T.E. 98-84, at 6 (2003) ("The annual planning reports provide information as to whether distribution companies are conducting adequate planning to ensure system reliability."). This information would be highly useful for stakeholders to review from the perspective of system readiness for a storm. An independent assessment of the Company's distribution system design, construction and maintenance practices could efficiently begin with an examination of these reports.

E. NO OPEN STORM WORK ORDERS PERTAINING TO INCREMENTAL O&M COSTS RECOVERED THROUGH THE SRRCA

The AGO disputes the Company's contention that two storms should be included for recovery regardless of whether the work orders have not been closed should be rejected because the "capital costs are not recoverable through the SRRCA," "the capital costs were transferred out of the storm-expense work orders," and that the "capital work orders remain open only to allow for the accounting process that allocates the capital costs to specific FERC plant accounts and to record the retirements associated with these work orders." Co. In. Br., p. 12. The AGO's concern is with the completion of the accounting for storm costs. The two storms referenced by the Company as noted in the Attorney General's Initial Brief were from events in 2010. In addition, the Company failed to reply as to the storms for 2011. AG In. Br., p. 9. This means that the accounting is not complete and that costs could be reclassified by the Company at their discretion. The Attorney General's Office in its Initial Brief also took issue with the fact that the Company used a method for capitalizing storm costs that failed to properly account for incremental capital cost associated with the setting of poles and the replacement of wires. AG In. Br., pp. 15-19. The issues of concern to the Attorney General's Office on the appropriate

amount to expense or capitalize go hand-in-hand. Until the Company finalizes its position as to what plant costs have been closed and what is included as a recoverable storm expense in the SRRCA, the appropriateness of the Company's accounting for the storm costs cannot be finalized. If the Department approves the filing and the Company classifies or reclassifies certain costs from capital to expense after the Department's Order, the net result will be the collection of a capitalized cost as a storm expense in contravention of the Department's requirements that capital costs are excluded from recovery under the SRRCA. The Attorney General's Office recommends that no final determination on the recoverability of the related costs should be made in the Company's favor pending closing out of the work orders and review of the associated costs in an adjudicatory proceeding.

F. MISCELLANEOUS COSTS WERE DIRECTLY RELATED TO STORM RESTORATION ACTIVITY

The AGO disputes the Company's contention that t-shirts and videos about the storm "were expenses directly related to the storm restoration activity and are properly included in the SRRCA." Co. In. Br., p. 20. However, the brief notes that the t-shirts were a "small token of employee appreciation." *Id.* The Company's Initial Brief also claims that the videos provided customers with information regarding "the impact of the storm, the progress of restoring power, and the expected duration of restoration." Co. In. Br., p. 20. The small token of appreciation for t-shirts is not a cost "directly related to the storm restoration" but a discretionary cost the Company chose to make that provided no benefit to ratepayers. An actual review of the videos supplied in response to DPU 1-9 provides ample evidence that the videos were no more than the Company giving itself a pat on the back for the restoration work performed. The image building

and small token of appreciation were not necessary costs associated with the restoration of service and should not be allowed; rather, these costs properly belong to the shareholders.

That a charge proposed for recovery is "directly related" to the storm is not the Department's test for special recovery of the cost under the SCRAA. Only costs that are (1) prudently incurred, (2) reasonable, (3) storm-related, (4) attributable to WMECO, and (5) incremental may be eligible for recovery. *Western Massachusetts Electric Company,* D.P.U. 10-70, p. 201. These costs are unrelated to restoration activities as the Company knows, or should know, and so those costs are not prudently incurred and should be excluded on those grounds. Furthermore, there is no evidence that these types of team building costs are unrepresented in the cost of service, and so the Company has also failed to prove they are incremental. For this additional reason, the costs discussed above should be denied.

G. BONUSES FOR SALARIED EMPLOYEES

The Attorney General disputes the Company's claim that allowing storm bonuses for salaried employees would not essentially allow the Company to collect costs twice. Co. In. Br., pp. 21-22. This claim by the Company is based on the position that the one-time payment provided to employees associated with the 2008 Ice Storm should be recoverable because these employees did not receive any compensation for working extended hours during that event and the one-time bonus payment to these employees is to recognize their significant commitment, time and effort throughout the duration of the 2008 Ice Storm restoration process. *Id.* The Company continues its claim by stating that "the record shows that these extraordinary efforts are not contemplated in the Company's standard incentive compensation policy and were not included in the incentive compensation provided to these employees during 2009 because the incentive awards received by these employees were for the recognition of corporate goals created

at the beginning of 2008, designed to enhance or improve the Company's normal operations, not for unusual emergency situations associated with extraordinary storm events. *Id.* Finally, the Company admits that although there is performance-based compensation included in base rates for employees of the NU Service Company, "there is no goal or metric for storm work within any of their specific incentive plans, and none of it relates to storm work." *Id.*

As noted in the AGO's Initial Brief, this is a discretionary payment--not required for restoration--and that base pay anticipates some level of extended work for storms during the normal course of business. AG In. Br., p. 13. Incentive awards for employees are included in base rates. Approving bonuses for salaried employees for work in the 2008 storm is nothing more than permitting the Company to collect everyday O&M costs that are represented in base rates and also to collect the costs a second time. *Fitchburg Gas and Electric Light Company,* D.T.E. 99-66. The Company in its Initial Brief did not address where the Attorney General's Initial Brief argues that the base pay of salaried employees anticipates some level of work for storms. The Company's second and third point was that incentive compensation does not contemplate storms and is not part of the Company goals, and, therefore, there is no basis for claiming a double-count by collecting the costs under a special mechanism like the SCRRA. Co. In. Br., pp. 21-22. The Company's brief did not identify where in the record, or Department precedent, this position s substantiated. The Company assumes its incentive compensation goals do not provide payment for reliability and customer satisfaction or, conversely, that each and every factual scenario that would give rise to incentive pay must be listed in the plan or else no award can be given. The Company has not made any assertion that reliability and satisfaction are not part of the Company goals or demonstrated instances in the past where above-and-beyond work efforts went unrewarded for lack of specificity in the incentive plan. In any event, since

the Company acknowledges that incentive compensation is already represented in base rates, the cost is not incremental to the storm but already included in base rates. *Id.* The Department should deny the dollar-for-dollar recovery here.

H. ASPLUNDH'S SERVICES FOR VEGETATION MANAGEMENT WERE DIRECTLY RELATED TO STORM RESTORATION EFFORTS

The AGO disputes the Company's claim that all Asplundh's cost from the request should be allowed because they are not incremental. Co. In. Br., pp. 22-24. The basis for the Company's claim is, first, that the AGO's claim is based on inaccurate figures. *Id.*, p. 22-23. Specifically, the AGO's adjustment uses an actual expense of $3,578,935 and argues that the D.T.E. 06-55 Settlement established an annual expense amount of $4,328,101 relating to vegetation-management. *Id.* The Company then claims "the record shows that the Company's actual expense in 2008 was $4,338,068, which eliminates the gap relied upon by the Attorney General" as shown in Exhibit AG-7-52, page 2 of 2. *Id.*, p. 23. The Company then adds that the Attorney General's Office provides no citation for the figure of $3,578,935, that this number is not in the chart presented in Exhibit AG-7-52, page 2 of 2, and, therefore, the assumption is erroneous. *Id.*

The Company is correct that no cite was provided, although contrary to the Company's implication, the figure is in the record. The $3,578,935 is the amount of <u>expense</u> for 2008 as shown on Exhibit HWS-LA-6, line 9 (emphasis added). The $3,578,935 is from the Company response to Exh. AG-14-4 and Exh. AG-14-1 in D.P.U. 10-70. Exh. AG-HWS-LA-6. As noted above, the D.T.E. 06-55 Settlement established an <u>annual expense amount</u> of $4,328,101 (emphasis added). The Company amount of $4,328,101 shown in Exhibit AG-7-52, page 2 of 2 includes not only the expense portion but also capital spending for vegetation management. That

$3,578,935 amount is included in the average cost for 2007-2012 of $4,236,326. Exh. AG-HWS-1, p. 10. This average was not contested by the Company. The Company's use of an apples-to-oranges comparison is not appropriate when comparing the cost included in base rate expense. The amount used by the Attorney General's Office in making its recommendation is an amount that is in the record and was supplied by the Company. The Department should use the $3,578,935 figure in determining whether some of the costs for Asplundh services in base rates should be factored into what incremental costs are for storm recovery. To exclude this in the consideration would allow for double-recovery by the Company.

The Company's second claim is the record shows that tree crews who perform routine vegetation management work for the NU system and who are also relied upon for storm duty do not send invoices for storm work because they are set up to bill through on time sheets. *Id.*, p. 23. The Attorney General's Office does not dispute this fact, and this cost accounting arrangement is precisely why the costs included in base rates that were not actually charged to base Operation and Maintenance ("O&M") expense, but instead reclassified as a storm expense should not be considered incremental costs suitable for recovery in the SRRCA.

The Company's third and fourth claim is similar to the second one discussed above. The Company claims the costs are recoverable because the costs are for the restoration of service due to the storm. *Id.*, pp. 23-24. As explained above, the Attorney General's Office does not dispute the fact that the charges are storm-related. The issue is that base rates assume a specific level of vegetation management expense. In 2008 the Company failed to expense those vegetation management costs approved in base rates because the crews were diverted from routine vegetative management to storm work. The Company should not be entitled to convert a cost represented in base rates to one recovered via a special tracking mechanism by diverting the

work activities of its crews without also crediting base rates by a like amount. The $749,166 in vegetation management costs is not an incremental cost and should be excluded from the SRRCA.

I. CAPITAL COSTS IN THE REQUESTED RECOVERY AMOUNT

WMECO claims that the Attorney General's Office incorrectly asserts that the Company understated the amount of capitalized costs associated with outside contract labor that should be removed from the filing because it is not an eligible storm expense. *Id.*, p. 25. The reasons the Company believes the Attorney General's Office is wrong is because the Company's claims the method used to capitalize costs removes all appropriate costs associated with storm-related capital work. *Id.*, pp. 25-26. According to Company, the portion of storm costs capitalized are determined through the work order process and the work order identifies the materials, such as poles and wires, that would normally be capitalized as well as the labor associated with installing those capital items. *Id.*, p. 25. Once service is restored, all costs are analyzed to identify the capital plant items installed to restore service. *Id.* And the Company's use of the work management standard construction units method ensures that all capital items installed during service restoration receive the appropriate allocation of labor, materials, and vehicle costs which the Company claims that it takes into account, by use of an adder, the additional time and expense. *Id.*, pp. 25-26. The Company argues in its Initial Brief:

> This method also takes into account, ***by use of an adder***, the additional time and expense associated with installing capital plant during difficult storm conditions. (Exh. AG-1-9)

Co. In. Br., pp. 25-26 (emphasis added). The Company also claims that the use of outside contractor estimates would provide less accurate results than use of the work management standard construction unit method. *Id.*

As indicated in the Attorney General's Initial Brief, the Company is simply claiming that the costs used in the development of the capitalized plant include, presumably, an upward adjustment to account for the higher costs associated with storm work without providing any supporting documentation that rates in fact include an "adder". AG In. Br., p. 16. In fact, the Company stated in response to Exh. AG1-9 that the costs are capitalized based on an average system-generated cost estimation to replace specific units of property that are considered to be capital without any explanation or even mention of "an adder". Exh. AG-HWS-1, pp. 8-9. The Company response to AG 1-9 in DPU 11-102-A states, in relevant part, as follows:

> The capitalized costs are based on an average system generated cost estimation to replace specific units of property considered capital items. Below is an explanation of the process.
>
> When a major storm event occurs, a major storm expense work order is established to accumulate all costs associated with the restoration effort. Included in the major storm expense work order are restoration costs required to replace equipment classified as capital items such as poles, conductor, cutouts, switches and lightning arresters. Following the restoration effort, a review of the material issued to the storm work order is performed to identify capital units of property (retirement units). Based upon the units of property identified, an estimate is developed to reflect the capitalization of work performed during a storm, and these costs are then transferred from the major storm expense work order to a capital work order. The estimating process developed for storm capitalization utilizes information from the Company's Work Management System, such as man-hour estimates, to develop the estimated cost associated with the replacement of capital units of property incurred during the storm.

Exh. AG-1-9. There is no "adder" mentioned here as referenced–mistakenly–in WMECO's Initial Brief. No description of the phantom "adder" is provided. Likewise, the Company leaves unsupported the numerical value and derivation of this variable (Exh. WMECO-Rebuttal-1, p. 11 of 28), and its numerical value cannot be presumed without evidence. *Boston Gas Company v. Department Telecommunications & Energy*, 436 Mass. 233, 240 (2002). The Company

confirmed, however, when questioned at hearings, that the capital costs are estimated based on information from the Company's work management system and those estimates are based on historical costs. Tr. Vol.1, pp. 119-120. The Company witness testified in full as follows:

> A: It calculates the cost based on actual materials, and when we talk about standard rates, the standard rates have some adjustments to them.
>
> Q: What are those adjustments?
>
> A: Generally speaking, those adjustments could be related to the fact that we're in a storm event and so therefore there may either be a dollar amount or an hourly rate -- hourly time element that's been added, given that the storm may require more time to work on a particular installation, such as a pole in blue-sky weather may take less time than a pole in a storm-damaged area to get to.

Tr. Vol.1, pp. 121-122. While the witness waivers on the point, a fair reading of the testimony is that some adjustment may be made for "hourly time" to "rates". Regardless of what it adjusts, however, the value of the variable is not quantified in any way. Whether that adjustment ultimately increases or decreases the cost, and by how much, is not revealed.[4] Furthermore, it is not entirely clear what cost the witness is describing as being adjusted. From the context, it could be either those costs that are capitalized or those costs that are expensed. Of course, this issue is important because the rate recovery methods are dramatically different and the Department should not be left to guess at the issue after it was raised in the Direct Testimony of an AGO's witness.[5]

---

[4] For example, the "adder" could have a negative value, meaning that is reduces capital costs rather than increases them.

[5]The Department has stated that "The burden of proof is the duty imposed upon a proponent of a fact whose case requires proof of that fact to persuade the factfinder that the fact exists, or, where a demonstration of non-existence is required, to persuade the factfinder of the non-existence of that fact. *Berkshire Gas Company*, D.T.E. 01-56-A, p. 16 (2002), citing *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, p. 7 (2001).

The Company later noted in hearings that adjustments are made to account for the additional time required because under blue-sky weather it may take less time to install a pole. Tr. Vol.1, pp. 120-122. The Company acknowledged that actual restoration costs for capital work tend to be higher "but it's difficult to say in any particular variety because even under normal blue-sky conditions, poles are replaced, and those costs are estimated and averaged." Tr. Vol.1, pp. 123-124. If the Company has difficulty with cost development under normal conditions then it is unlikely it could develop an accurate average cost for capitalization under storm conditions. More importantly, the work management system capitalizes restoration costs based on the units and time involved.[6] The issue is that the unit cost should be increased because the labor is being performed at a premium under storm conditions, and the Company has not provided any quantitative support that this increased cost has been recognized.

The Company's claim that the use of outside contractor estimates would provide less accurate results than use of the work management standard construction unit method is not supported by the record. In fact, the Company stated that it had no analysis that would show that a material difference between the capitalization of costs based on standard rates for time and material versus the capitalization of contract labor used to perform capital work. Exh. AG-4-10.

In sum, the Company's response to AG 1-9 makes neither a mention of an "adder" to restore the premium associated with work under storm conditions nor is there any quantification for the value of this "adder" or its impact anywhere in the record. Reference to an "adder" came about only in response to the Attorney General's Office taking issue with how the capitalized

[6] The Company stated that an inventory is used to accurately provide an accounting for the inventory used. The Company also stated that the Company does "not possess the copies of the inventories." Tr. Vol.1, pp. 36-37. The use of the Company method that identifies units used, but which cannot be supported because inventories do not exist, has to raise additional concerns as to the amount capitalized.

costs were determined. The Company has not provided any documentation to support this "adder" that is now purported to be included. In spite of its label, it is unclear whether this claimed adjustment ultimately increases or decreases costs or whether the costs it adjusts are capitalized or those that are expensed. The Company failed to properly reflect in the calculation of capitalized costs the higher costs associated with capital additions that are the result of replacing plant damaged during storms. The Attorney Generals recommended adjustment of $1,807,141, or the alternative adjustment of $2,518,174 should be made if the adjustment for normalize thunder storm activity is not made.

J. VEGETATION MANAGEMENT

In its Initial Brief, the Company denies the AGO's assertion that a "poor vegetation management program" was a "major contributor" to the "poor performance" during the storms of 2008, 2010 and 2011. Co. In. Br., pp. 26-27. The Company also denies that there were higher costs for activities besides removal of downed trees and limbs associated with these storms as a direct result of the poor vegetation management practices of the past. The Company attempts to support its position by stating that there is no specific analysis of any storm, and no indication that there were "higher costs" for vegetation management in any one of those storms. The Company contends that there is no showing that vegetation management prior to the storms was a "major contributor" of storm damage. Finally, the Company contends the most significant flaw is that the Attorney General's Office has omitted any discussion of the fact that the changes to the Company's vegetation management program primarily involved condensing the trimming cycle to four years. Co. In. Br., pp. 26-28.

The Company's witness, in cross-examination, acknowledged that nowhere in direct testimony did the Company respond to the AGO's witness's concerns in D.P.U. 10-70 as to

whether storm hardening would impact storm damage costs. Tr. Vol.1, pp. 97-99. The Company stated in response to AG-7-12, AG-7-23 and AG-7-30 that most of the damage to its system was tree related. Exh. AG-HWS-1, p. 19. The average spending for vegetation maintenance increased from $1,717,893 for the period 2000-2006, to $4,236,326 for the period 2007-2012. Exh. AG-HWS-1, pp. 19-20. This average spending for 2007-2012 was more than twice the average in 2000-2006. Exh. AG-HWS-9, p.10. CL&P, a related company, first implemented Enhanced Tree Trimming ("ETT") in 1998. Based on the response to AG-14-3 in D.P.U. 10-70, WMECO initiated ETT in 2000. In 2005 the Company expended $192,000 for ETT, in 2006 $46,000 was expended in 2007 nothing was expended, in 2008 $304,000 was spent, in 2011 $801,000 was expended and in 2012 the Company expended $1,500,000. The Company's response and the Company's rebuttal testimony suggest the Company initiated ETT in 2000 but based on the historical spending, the Company's meaningful implementation of ETT began in 2011. That significant increase in spending occurred 13 years after sister company, Connecticut Light and Power (CL&P) first implemented ETT. Exh. AG-HWS-9, p. 9. WMECO should be remembered that ETT was almost non-existent prior to 2008, which is not the case with CL&P, an affiliate of WMECO. The Company identifies an average annual spending for ETT from 2008 through 2012 of $689,600 with the 2012 spending being $1.5 million. It is difficult to understand how WMECO can claim its lack of spending in the past had relatively no impact on the level of storm damage incurred. Exh. AG-HWS-9, p. 10.

> Mr. Wrona's testimony at page 41, Lines 14 to 22 in DPU 10-70 states:
>
> Enhanced tree-trimming and hazard tree removal: approximately 60 percentage of outage events during storms are caused by trees falling on wires and other equipment. The best way to reduce the number and severity of tree-related outages is to increase the distance between the wires and trees through an enhanced tree-trimming ("ETT"). ETT mandates a larger clearance specification

> than our normal trimming and attempts to achieve a clear zone above the wires of all tree branches as well as the removal of hazard trees. This method is particularly effective in areas that have become overgrown and need to be reclaimed.

Tr. Vol. 1, DPU 11-102/11-102A, pp 107-108.

In response to Exhibit AG-5-2, the Company attempted to explain why ETT would not impact storm costs by claiming that its value is limited during major storm because tree damage is caused by healthy trees. This position was reiterated on page 22 of the Company rebuttal. Tr. Vol. 1, pp. 139-141. But when asked whether damaged and diseased trees or hazard trees don't pose a risk the witness stated that he was not an arborist and that he cannot say only healthy trees caused the damage. When asked how then the witness could attribute the damage to healthy trees he responded "I'm reading the testimony that you asked me to read." Finally, the witness stated that "in my operational experience of the storms that I've been involved in, diseased trees, damaged trees, and healthy trees all cause storm damage." Tr. Vol.1, p. 142.

It is inconceivable how the Company can state that most of the storm damage was caused by trees, even trees that would have been removed through ETT, and at the same time claim a significant increase in trimming would not have had an impact on the level of storm costs. That suggests that nothing can be done to mitigate storm costs with vegetation management. This position is not supported by any evidence on the record--or common sense. This position fails to recognize the fact that had a higher level of vegetation maintenance been performed, especially the ETT referred to by the Attorney General's Office, then the trees that fell on the line would not have existed and would not have fallen on the lines, as the Company claims, to cause the damage to the system incurred during the storms of 2008, 2010 and 2011. The Company claims that its historic vegetation maintenance and lack of system hardening did not impact the storm

restoration cost is not supported by the record, or the logic of performing vegetation management at all. The Company did not provide any support for their claim that damage was done by healthy trees outside the trim zone or that an appropriately structured tree program could not identify for removal even healthy trees that might obviously threaten the system if they fall. [7]The Company did not provide any explanation why an affiliate ("CL&P") had an ETT program in effect when WMECO had nominal spending--or none at all.

The Company's vegetation management practices have failed its customers and the Company should have to share in the cost of restoration by assuming responsibility for its failure to proactively perform adequate vegetation maintenance prior to 2008 and proactively perform storm hardening to its system. The Attorney General's Office is recommending as a primary adjustment a reduction of $4,352,193. However, if the Department does not accept the Attorney General's Office's normalization of thunderstorms recommendation factored into the primary adjustment, the prudency adjustment for failure to perform appropriate vegetative maintenance under the alternative scenario would be $6,134,166.

IV. CONCLUSION

For the foregoing reasons, the Attorney General's Office urges the Department to adopt all of her recommended adjustments. Specifically, the Department should find that WMECO's attempts to collect certain costs should be denied as the Company failed the standard to collect because the Company's storm-preparation and the mismanagement of during and post-storms events were not (1) prudently incurred, (2) reasonable, (3) storm-related, (4) attributable to WMECO, and (5) incremental. Hence, of the approximately $20 plus million, the Department

[7] The scenario is not as far-fetched as the Company's may argue. A healthy tree could very easily grow to lean over distribution lines in a way that would foreshadow significant damage were it to fall in severe weather.

should deny recovery of $15,932,681 from collection through the SRRCA, with carrying charges recomputed for any disallowance. Exh. LA-1, p. 1.

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

/s/ John J. Geary
John J. Geary
Paul A. Stakutis
Joseph W. Rogers
Sandra E. Merrick
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

DATED: June 18, 2013