The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 17-05-D March 20, 2018

Petition of NSTAR Electric Company and Western Massachusetts Electric Company, each doing business as Eversource Energy, Pursuant to G.L. c. 164, § 94 and 220 CMR 5.00 for Approval of General Increases in Base Distribution Rates for Electric Service and a Performance Based Ratemaking Mechanism.

ORDER ON ATTORNEY GENERAL'S (1) MOTION FOR RECONSIDERATION AND CLARIFICATION; and (2) MOTION FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD

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I. INTRODUCTION AND RELEVANT PROCEDURAL HISTORY[1]

On January 17, 2017, NSTAR Electric Company ("NSTAR Electric") and Western Massachusetts Electric Company ("WMECo"), each doing business as Eversource Energy (collectively, "Eversource" or "Companies") filed a petition with the Department of Public Utilities ("Department") seeking approval of increases in base distribution rates for electric service pursuant to G.L. c. 164, § 94 ("Section 94"), as well as other proposals. The Department docketed this matter as D.P.U. 17-05. On January 25, 2017, the Attorney General of the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E (a).[2]

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[1] For a complete procedural history of this proceeding, refer to NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05, at 5-11 (November 30, 2017).

[2] The other full party intervenors in this case are: (1) Acadia Center; (2) Associated Industries of Massachusetts; (3) the City of Cambridge; (4) the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, as well as Barnstable County and Dukes County, acting together as the Cape Light Compact; (5) Conservation Law Foundation; (6) Department of Energy Resources; (7) the Federal Executive Agencies; (8) Low-Income Weatherization and Fuel Assistance Program Network and the Massachusetts Energy Directors Association; (9) Northeast Clean Energy Council; (10) Retail Energy Supply Association; (11) The Energy Consortium; (12) University of Massachusetts; and (13) Western Massachusetts Industrial Group. The following entities were granted limited intervenor status: (1) the Town of Barnstable; (2) Cape and Vineyard Electric Cooperative; (3) ChargePoint, Inc.; (4) Choice Energy, LLC; (5) Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, and Direct Energy Solar, LLC; (6) the Energy Consumers Alliance of New England, Inc., d/b/a Massachusetts Energy Consumers Alliance and the Sierra Club; (7) the City of Newton and the Towns of Arlington, Lexington, Natick and Weston; (8) PowerOptions, Inc.; (9) Sunrun, Inc. and the Energy Freedom Coalition of America, LLC; and (10) Vote Solar.

On November 30, 2017, the Department issued a final Order establishing Eversource's revenue requirement. NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05 (November 30, 2017). On January 5, 2018, the Department issued a final Order establishing Eversource's rate structure. NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05-B (January 5, 2018). Eversource's new rates took effect on February 1, 2018, following approval of the Companies' compliance filing. NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05-C (February 2, 2018).

II. ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION AND CLARIFICATION

A. Introduction

In D.P.U. 17-05, at 370-414, the Department approved a five-year performance based ratemaking ("PBR") mechanism for Eversource. The approved PBR mechanism uses a revenue cap formula, which is adjusted by a productivity offset to account for the difference between the differential in expected productivity growth between the electric distribution industry and the overall economy and the differential in expected input price growth between the overall economy and the electric distribution industry. D.P.U. 17-05, at 334-336, 381-392, citing Exhs. ES-PBRM-1, at 44; ES-GWPP-1, at 46; ES-PBRM-1, at 34; RR-DPU-51, Att. (a) at 329-334 (proposed M.D.P.U. No. 532).

In the D.P.U. 17-05, at 581-593, the Department also addressed Eversource's vegetation management costs. In particular, the Department noted that from 2012 through 2015, Eversource capitalized a total of $37,378,200 in enhanced tree trimming ("ETT") costs

and $14,808,500 in enhanced tree removal ("ETR") costs for a total of $52,186,700. D.P.U. 17-05, at 585, citing RR-AG-13. At the end of the test year in this proceeding (i.e., June 30, 2016), Eversource had capitalized a total depreciable balance of $48,671,800 ($34.8 million for ETT, and $13.8 million for ETR). D.P.U. 17-05, at 585-586, citing RR-AG-13. The Department approved Eversource's capitalization treatment of these costs. D.P.U. 17-05, at 591-593.

As discussed in detail below, on December 20, 2017, the Attorney General filed a Motion for Reconsideration and Clarification ("Motion I") related to: (1) certain findings made by the Department relative to its approval of the PBR; and (2) the Department's approval of the capitalization of NSTAR Electric's 2012 through 2015 ETT and ETR costs. On January 19, 2018, Eversource filed a response to Motion I ("Companies' Response"). No other party responded to Motion I.

B. Standards of Review

1. Reconsideration

The Department's Procedural Rule, 220 CMR 1.11(10), authorizes a party to file a motion for reconsideration within 20 days of service of a final Department Order. The Department's policy on reconsideration is well-settled. See, e.g., Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1981). Reconsideration of previously decided issues is granted when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. The Berkshire Gas

Company, D.P.U. 905-C at 6-7 (1982) (finding extraordinary circumstances where union contract expiration and subsequent strike prevented company from providing ratified union contract payroll increases until several days after final Order issued); cf. Boston Gas Company, D.P.U. 96-50-C (Phase I) at 25 (1997) (finding creation of nonunion compensation pool after the close of the record was not an extraordinary circumstance). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. See, e.g., Boston Gas Company, D.P.U. 96-50-C (Phase I) at 22 (1997); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2, 25-26 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

A motion for reconsideration should not attempt to reargue issues considered and decided in the main case. See, e.g., Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3, 7-9 (1991); Boston Edison Company, D.P.U. 1350-A at 4-5 (1983). The Department has denied reconsideration where the request rests upon information that could have been provided during the course of the proceeding and before issuance of the final Order. See, e.g., Boston Gas Company, D.P.U. 96-50-C (Phase I) at 36-37 (1997); Boston Gas Company, D.P.U. 96-50-B (Phase I) at 8 (1997). The Department has stated that the record in a proceeding closes, at the latest, when an Order is issued. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987). Thus, the Department may deny reconsideration when the request rests on a new issue or updated information presented for the first time in the motion for

reconsideration. See, e.g., Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987).

2. Clarification

The Department's Procedural Rule, 220 CMR 1.11(11), authorizes a party to file a motion for clarification within 20 days of service of a final Department Order. Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992); Fitchburg Gas and Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

C. Positions of the Parties

1. Attorney General

a. PBR Mechanism – Total Factor Productivity Study/Productivity Offset

The Attorney General asserts that Eversource's revenue cap formula takes the allowed revenues for delivery services from the previous year and multiplies it by one minus a productivity offset to determine the revenues for the new rates for the current year (Motion I at 11, citing D.P.U. 17-05, at 335-336). Accordingly, the Attorney General contends that the revenue cap formula implicitly increases Eversource's recovery of all costs related to the provision of delivery services because the annual increase is calculated by using all of the

Companies' revenues (Motion I at 11 (emphasis in original) citing D.P.U. 17-05, at 334-335).

Further, according to the Attorney General, Eversource's total factor productivity ("TFP") study,[3] which was used to derive the revenue cap formula, includes only distribution plant and distribution expenses as its inputs, and specifically omits intangible plant and general plant costs, as well as customer accounts expenses, sales expenses, administrative and general expenses, and portions of costs associated with income taxes and taxes other than income taxes (Motion I at 11, citing Exh. AG/DED-1, at 53-54). The Attorney General asserts, however, that the revenue cap formula increases recovery of the carrying costs associated with capital investments in intangible plant, distribution plant and general plant (Motion I at 11, citing Exhs. ES-DPH-2, Schs. DPH-23, 27, 28 (East); ES-DPH-2, Schs. DPH-23, 27, 28 (West)). Further, the Attorney General maintains that the revenue cap formula increases Eversource's recovery of costs for all operations and maintenance expenses including those associated with distribution expenses, customer accounts expenses, sales expenses, administrative and general expenses, income taxes, and taxes other than income taxes (Motion I at 11, citing Exhs. ES-DPH-2, Sch. DPH-6 (East); ES-DPH-2, Sch. DPH-6 (West)).

The Attorney General asserts that the Department made "three mistakes or inadvertences" in its analysis of Eversource's productivity offset (Motion I at 10, 12-14).

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[3] Eversource's TFP study yielded a productivity offset equal to -2.64 percent; however, to account for the removal of certain grid modernization investments from the PBR, the Department approved a productivity offset of -1.56 percent. D.P.U. 17-05, at 337 & n.173, 392.

First, the Attorney General argues that the Department's intent "appears" to be to match the inputs used in Eversource's TFP study to the components in Eversource's distribution revenues (Motion I at 13). However, the Attorney General claims that the Department mistakenly assumed for purposes of the TFP study that Eversource's distribution revenue requirement does not include non-distribution related expenses (e.g., customer accounts expenses, sales expenses, administrative and general expenses) and costs associated with non-distribution related plant (e.g., intangible plant and general plant) (Motion I at 12-13, citing D.P.U. 17-05, at 389). According to the Attorney General, Eversource's cost of service does include non-distribution related expenses and costs associated with non-distribution related plant (Motion I at 13). Therefore, the Attorney General asserts that these costs should have been included in the TFP study in order to "properly align the determination of Eversource's [p]roductivity [offset] with the Department's apparent intent" (Motion I at 13).

Second, the Attorney General argues that in analyzing Eversource's TFP study, the Department mistakenly failed to recognize productivity improvements associated with technology costs and those associated with back office cost reductions that result from mergers and acquisitions (Motion I at 14). According to the Attorney General, it is generally recognized that electric delivery utilities have had their greatest improvement in productivity in these categories of costs (Motion I at 14, citing Exh. AG/DED-1, at 50-54). The Attorney General claims, however, that the Department's approval of Eversource's productivity offset fails to recognize demonstrated cost improvements associated with intangible plant, general

plant, customer accounts expenses, sales expenses, and administrative and general expenses (Motion I at 14, citing Exh. AG/DED-1, at 50-54). For this reason, the Attorney General contends that the productivity offset has been improperly biased toward a larger negative value that will result in annual increases that are inappropriately high and would result in rates that are not just and reasonable (Motion I at 14).

Finally, the Attorney General argues that the Department mistakenly applied the productivity offset to all revenues under the revenue cap formula (Motion I at 13). The Attorney General contends that because Eversource's productivity offset only considers those accounts labelled "distribution plant" and "distribution expenses," the Department can only properly apply the revenue cap formula to that portion of the delivery revenues associated with these costs from those same accounts, and not to other accounts like intangible plant, general plant, etc. (Motion I at 13 & n.5).

Based on the foregoing, the Attorney General asserts that the Department should reconsider D.P.U. 17-05, reject Eversource's proposed productivity offset, and instead rely on the Attorney General's recommended adjustments to the proposed productivity offset (Motion I at 14). Alternatively, the Attorney General argues that the Department should reject Eversource's revenue cap formula and the associated PBR mechanism (Motion I at 14).

b. Capitalization of ETT and ETR Costs

i. Reconsideration

The Attorney General asserts that NSTAR Electric's 2012 through 2105 ETT and ETR costs represent regular maintenance to existing distribution lines rather than tree

trimming costs incurred for the initial clearing of new distribution systems and, therefore, it was a mistake for the Department to allow NSTAR Electric to capitalize these costs (Motion I at 3, 8, citing Attorney General Brief at 175-178). She raises three arguments in support of this position.

First, the Attorney General argues that capitalization of these costs is prohibited by the Federal Energy Regulatory Commission's ("FERC") rules and regulations, which she submits have been adopted by the Department (Motion I at 3-4, citing 18 CFR Pt. 101; 220 CMR 51.01(1)). In particular, the Attorney General contends that FERC regulations require these costs to be booked as an expense (Motion I at 4, citing 18 CFR Pt. 101, Accounts 365, 593; Instruction No. 2(A)). Thus, she asserts that it was a mistake for the Department to "ignore" the regulatory requirements that govern the accounting treatment of these costs (Motion I at 6, 7).

Second, the Attorney General argues that a recent audit report issued by FERC provides persuasive authority concerning the proper accounting treatment of the subject costs (Motion I at 4, citing Audit of Formula Rates of American Transmission Systems, Inc., Docket No. FA11-8-00 (2013)). According to the Attorney General, American Transmission Systems, Inc. ("ATSI") capitalized the removal of priority trees and other tree limbs, all of which occurred post-initial clearing, and justified the accounting treatment based on similar arguments made by NSTAR Electric in this proceeding (Motion I at 4-5). The Attorney General notes that FERC rejected ATSI's capitalization of these costs (Motion I at 5-6). According to the Attorney General, NSTAR Electric should have questioned whether

capitalization of the subject vegetation management costs was appropriate in light of the FERC audit report, and it was a mistake for the Department to "ignore" FERC's guidance on this issue (Motion I at 6).

Finally, the Attorney General argues that the Department's aforementioned purported mistakes are precipitated by the fact that the Department did not address WMECo's ETT accounting practices in that company's last rate case (Motion I at 7, citing Western Massachusetts Electric Company, D.P.U. 10-70 (2011)). She contends that the Department's silence on WMECo's capitalization of its ETT costs, however, does not operate to amend or repeal the Department's accounting regulations as they apply to the treatment of vegetation management costs not associated with the initial installation of a distribution line (Motion I at 8). Thus, according to the Attorney General, the fact that the Department did not previously recognize the prohibited accounting treatment does not preclude the Department from later correcting the matter to protect ratepayer interests (Motion I at 8, citing Western Massachusetts Electric Company, D.T.E./D.P.U. 06-35-A/06-105-B/07-11-A, at 22 (2008); Western Massachusetts Electric Company, D.P.U. 03-34, at 6 (2004); Fitchburg Gas and Electric Light Company, D.T.E. 99-66-A, at 24 (2001); Boston Gas Company, D.P.U. 96-50-C (Phase I) at 33 (1997); NYNEX Price Cap, D.P.U. 94-50, at 444 (1995); Robinson v. Department of Public Utilities, 416 Mass. 668, 673 (1993).

Based on the foregoing, the Attorney General reiterates that it was a mistake for the Department to allow NSTAR Electric to capitalize its 2012-2015 ETT and ETR costs

(Motion I at 8). Therefore, she submits that Department should require NSTAR Electric to remove these costs from rate base (Motion I at 8).

ii. Clarification

The Attorney General argues that beginning in 2012, when NSTAR Electric initiated its four-year ETT and ETR vegetation management program, NSTAR Electric was already recovering vegetation management costs from customers as an operations and management ("O&M") expense through rates that were in effect pursuant to NSTAR/Northeast Utilities Merger, D.P.U. 10-170 (2012) (Motion I at 8, citing Exh. AG-25-7, Att. (a)). Further, she contends that from 2012 through 2015, NSTAR Electric also capitalized a total of $52,168,700 in ETT and ETR costs, which provided for a deferral and recovery of those costs from customers over the composite remaining life of the overhead lines (i.e., 37.6 years) (Motion I at 8, citing Exh. ES-JJS-2, 365 Overhead Conductors and Devices, at 50; RR-AG-13). Thus, according to the Attorney General, if NSTAR Electric is allowed to capitalize the 2012 through 2015 ETT and ETR costs, NSTAR Electric will effectively recover tree trimming costs from customers twice (Motion I at 8-9).

The Attorney General contends that Eversource acknowledged the double recovery argument, but offered no evidence to demonstrate that double recovery would not occur (Motion I at 9, citing Companies Brief at 168). Further, she notes that although the Department referenced the double recovery argument in D.P.U. 17-05, the Order is silent on whether NSTAR Electric is allowed to double recover vegetation management costs from customers (Motion I at 9). Thus, she asserts that the Department should clarify whether

Eversource is permitted to recover NSTAR Electric's 2012-2015 vegetation management costs as both an O&M expense and as a capital cost (Motion at 9).

2. Companies

a. PBR Mechanism – TFP Study/Productivity Offset

Eversource argues that the Department already has addressed and decided in D.P.U. 17-05 the issues raised by the Attorney General in Motion I and that the Attorney General has not provided any basis for reconsideration (Companies' Response at 11). With respect to the Attorney General's first argument regarding the various inputs of the TFP study, Eversource submits that the TFP study evaluates the cost trends of distribution expenses and excludes the effect of the non-distribution accounts that the Attorney General identifies in order to develop a "pure" distribution cost trend that is not impacted by factors other than distribution activities (Companies' Response at 12). Eversource notes that the productivity offset then is applied to only the distribution cost of service (Companies' Response at 12). Accordingly, Eversource disputes the Attorney General assertion that the cost of service includes "non-distribution" related expenses (Companies' Response at 12). Further, Eversource reiterates that the Attorney General's argument regarding the TFP study already was fully litigated in this proceeding (Companies' Response at 12-15, citing Exhs. ES-PBRM-Rebuttal-1, at 38, 44-46; AG/DED-1; AG/DED-Surrebuttal-1, at 8; Tr. 13, at 2684, 2686-2700).

Regarding the Attorney General's second argument that in analyzing Eversource's TFP study, the Department mistakenly failed to recognize productivity improvements,

Eversource contends that it is not appropriate for the TFP study to consider non-distribution plant, labor productivity, or advanced technology because the analysis is based on the productivity of distribution service (Companies' Response at 15). Eversource asserts that the Attorney General's argument in this regard was unsubstantiated during the proceedings and that she has offered nothing her to warrant a change to the Department's decision (Companies' Response at 15).

Finally, with respect to the Attorney General's third argument concerning application of the productivity offset, Eversource contends that the Attorney General "actively litigated" the proposed revenue cap formula and never raised the issue of applying the productivity offset only to accounts labelled "distribution plant" and "distribution expenses" (Companies' Response at 15). Further, Eversource submits that the Attorney General has offered no basis for "restructuring" the PBR mechanism to function in this manner (Companies' Response at 15).

Based on the foregoing, Eversource asserts that the Attorney General has failed to meet the standard for reconsideration of the Department's decision with respect to the PBR mechanism (Companies' Response at 16). Accordingly, Eversource submits that the Attorney General's motion should be denied (Companies' Response at 16).

b. Capitalization of ETT and ETR Costs

i. Reconsideration

Eversource submits that from 2012 through 2015, NSTAR Electric performed enhanced vegetation management work through an ETT program and it developed an ETR

plan to target the removal of risk and hazard trees, which it conducted in parallel with scheduled miles based on a four-year cycle (Companies' Response at 4, citing Exh. ES-VLA-1, at 11-12). According to Eversource, NSTAR Electric capitalized the expenditures for the initial cycle implementing the ETT program because ETT increased the clearance corridor beyond the clearance achieved with its traditional trim cycle (Companies' Response at 4, citing Exh. ES-VLA-1, at 12).

Eversource argues that during the proceedings in this matter the Department thoroughly reviewed the issue of NSTAR Electric's capitalization of ETT and ETR costs, and rejected the Attorney General's arguments that such accounting treatment conflicts with the Department's and FERC's regulations (Companies' Response at 5, citing D.P.U. 17-05, at 591-593). Eversource contends that in her motion, the Attorney General simply repeats the same arguments made on brief and fails to demonstrate any mistake or inadvertence by the Department or otherwise show that reconsideration is warranted (Companies' Response at 5-6).

Further, Eversource notes that during the proceedings, it demonstrated that NSTAR Electric's capitalization treatment of the subject costs was consistent with that approved by the Department for WMECo in D.P.U. 10-70 (Companies' Response at 6, citing Tr.15, at 3167-3168). Moreover, Eversource notes that the Attorney General did not contest WMECo's capitalization practice in that case (Companies' Response at 6-7). According to Eversource, although the Department is not limited to deciding issues contested by the Attorney General in any given proceeding, the Department's "silence" on an issue raised

during the proceeding makes it clear that there has been no challenge by the Attorney General on that issue (Companies' Response at 7).

Finally, Eversource argues that the Attorney General's arguments regarding NSTAR Electric's capitalization of vegetation management costs are "disingenuous" because the Attorney General has, in the past, supported such treatment for WMECo (Companies' Motion at 7, citing Western Massachusetts Electric Company, D.P.U. 15-149, Exhibit AG-HWS-1, at 7). Thus, according to Eversource, its accounting treatment for first-cycle ETT and ETR costs, and the Department's acceptance thereof, is completely consistent with accounting and ratemaking principles, as previously suggested by the Attorney General (Motion at 8).

Based on the foregoing, Eversource asserts that the Attorney General has failed to meet the standard for reconsideration of the Department's decision with respect to NSTAR Electric's capitalization of the subject ETT and ETR costs (Companies' Response at 8-9). As such, Eversource submits that the Attorney General's motion should be denied (Companies' Response at 8).

ii. Clarification

Regarding the Attorney General's double recovery arguments, Eversource contends that the Department already addressed, and rejected, these arguments in D.P.U. 17-05 (Companies' Response at 9, citing D.P.U. 17-05, at 587-588). Further, Eversource maintains that during the proceedings in this case, the Attorney General failed to present any analysis or factual basis showing that there may be double recovery of any amount of

vegetation management costs (Companies' Response at 9). Thus, according to Eversource, there is no evidence for the Department to clarify (Companies' Response at 9). In addition, Eversource argues that granting clarification would require a parsing of base rates set in NSTAR Electric Company, D.T.E. 05-85 (2005), despite the fact that the cost of service ultimately approved in that proceeding resulted from a settlement that did not grant the company full recovery of its requested rate increase (Companies' Response at 9). Based on the reasons, Eversource asserts that the Attorney General's motion should be denied (Companies' Response at 9).

D. Analysis and Findings

1. PBR Mechanism – TFP Study/Productivity Offset

As noted above, the Attorney General raises three arguments with respect to Eversource's TFP study and productivity offset. First, she contends that the Department was mistaken when it determined that Eversource's cost of service does include non-distribution related expenses and costs associated with non-distribution related plant (Motion I at 13). Rather, she asserts that these costs should have been considered in Eversource's TFP study in order to properly align the determination of Eversource's productivity offset with the Department's apparent intent to match the TFP study inputs with the components of Eversource's distribution revenues (Motion I at 13). Second, the Attorney General argues that in analyzing Eversource's TFP study, the Department mistakenly failed to recognize Eversource's purported cost improvements associated with intangible plant, general plant,

customer accounts expenses, sales expenses, and administrative and general expenses (Motion I at 14, citing Exh. AG/DED-1, at 50-54).

The Attorney General had a reasonable opportunity to present evidence and argument on these two issues during the course of the proceeding (see, e.g., Exhs. AG/DED-1, at 50-55; AG-DED-Surrebuttal-1, at 8; Tr. 13, at 2693-2694; Attorney General Brief at 28-30). The Department considered the Attorney General's evidence and arguments in evaluating Eversource's TFP study, including appropriate inputs and outputs, and the resulting productivity offset. D.P.U. 17-05 at 346, 381-392. The Department rejected the Attorney General's arguments in D.P.U. 17-05, at 389:

> [T]he Attorney General argues that the Companies' inputs should include not only labor and materials costs booked to distribution O&M expense but also an allocated portion of labor and materials costs associated with customer accounts, sales, administrative and general expenses, and general plant .... The Companies counter that these accounts should not be included because they contain non-distribution expenses .... As the adjustments affect the distribution revenue requirement, the Department finds that it is not appropriate to include any non-distribution cost elements in the input index.

As noted above, a motion for reconsideration should not attempt to reargue issues already considered and decided in the main case. D.P.U. 92-3C-1A at 3-6; D.P.U. 90-270-A at 2-3, 7-9; D.P.U. 1350-A at 4-5. Yet this is precisely what the Attorney General seeks to do with respect to these two issues. The Department finds that the Attorney General has failed to demonstrate any extraordinary circumstances that would justify modifying our decision. D.P.U. 905-C at 6-7 (1982). Further, we are not persuaded by the Attorney General's arguments that the Department's treatment of Eversource's TFP study or productivity offset was the result of mistake or inadvertence that now requires

reconsideration. D.P.U. 96-50-C (Phase I) at 22; D.P.U. 86-33-J at 2, 25-26; D.P.U. 1350-A at 5. Accordingly, we find that the Attorney General has failed to meet the standard for reconsideration on these two issues.

Next, the Attorney General argues that the Department mistakenly applied the productivity offset to all revenues under the revenue cap formula, rather than to only those labelled "distribution plant" and "distribution expenses" (Motion I at 13). The Attorney General had ample opportunity to raise this issue during the proceedings but she failed to do so.

This failure aside, we are not persuaded by the Attorney General's arguments. In particular, we find no mistake or inadvertence in our approval of Eversource's TFP study or productivity offset. Our decision in this regard is consistent the application of the productivity offset in previously-approved PBR mechanisms. See, e.g., Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company, D.T.E. 05-85, at 3-5 (2006): Bay State Gas Company, D.T.E. 05-27, at 406 407 (2005); Boston Gas Company, D.T.E. 03-40, at 502-503 (2003): The Berkshire Gas Company, D.T.E. 01-56, at 26-27 (2002); Boston Gas Company, D.P.U. 96-50 (Phase One) at 333-334 (1996).[4] Nor do we find that the Attorney General otherwise has met the standard for reconsideration as to this issue.

[4] While previous Department-approved PBRs have used price caps and not a revenue cap as is the case here, the Department has consistently applied the PBR formulas to the level of prices intended to recover the entire distribution cost of service, not just to a subset of costs linked to distribution-labelled accounts. Similarly, here, the

Based on the foregoing, we find that the Attorney General has not met the standard for reconsideration with respect to the Department's acceptance of Eversource's TFP study and the approval of a productivity offset. Accordingly, the Attorney General's motion for reconsideration on these issues is denied.

2. Capitalization of ETT and ETR Costs

a. Reconsideration

The Attorney General argues that it was a mistake for the Department to allow NSTAR Electric to capitalize its 2012 through 2015 ETT and ETR costs (Motion I at 8). In particular, she claims that this accounting treatment is inconsistent with Department and FERC regulations, as well as a recent decision by FERC (Motion I at 3-6). She also contends that the Department's "mistakes" are amplified by the fact that the Department did not address WMECo's ETT accounting practices in that company's last rate case (Motion I at 7). Similar to our findings above, the Attorney General had a reasonable opportunity to present evidence and argument regarding Eversource's ETT and ETR practices and expenditures during the course of the proceeding (see, e.g., AG-11-10; AG-11-11; AG-11-12; AG-11-22; AG-25-7; AG-37-6; AG-51-6; Tr. 13, at 2755-2758; RR-AG-13; RR-AG-14; Attorney General Brief at 165, 174-178; Attorney General Reply Brief at 48-49). The Department considered the Attorney General's evidence and arguments in evaluating Eversource's proposal to capitalize the subject ETT and ETR costs. D.P.U. 17-05, at 586-588. We also considered WMECo's prior capitalization of initial costs associated with

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Department applies the PBR formula to the level of revenues intended to recover the entire distribution cost of service. See D.P.U. 17-05, at 381-392.

its own enhanced vegetation management programs. D.P.U. 17-05, at 591-592 & n.317, citing Exhs. AG-37-6; AG-51-6; Tr. 15, at 3167-3168; RR-AG-14. Further, we considered Eversource's proposal in light of FERC's report regarding ATSI's capitalization of similar costs. D.P.U. 17-05, at 592-593, citing Docket No. FA11-8-000, at 15-18 (2013).

Ultimately, the Department was not persuaded that a shift exists as to the capitalizable nature of these types of activities; however, we instructed any electric distribution company seeking to capitalize distribution system vegetation management costs, except where those costs are associated with the initial installation of a distribution line, to do so only with specific authorization by the Department, pursuant to 220 CMR 51.01(1), 51.02(1)(a), 18 CFR Pt. 101, General Instruction 5. D.P.U. 17-05, at 593. Further, the Department placed Eversource on notice that the issue of the appropriate accounting treatment of vegetation management cost would continue to be investigated in the Companies' next base rate case. See D.P.U. 17-05, at 593.[5]

We are not persuaded by the Attorney General's arguments that the Department's approval of NSTAR Electric's accounting treatment of these costs was the result of mistake or inadvertence that now requires reconsideration. D.P.U. 96-50-C (Phase I) at 22; D.P.U. 86-33-J at 2, 25-26; D.P.U. 1350-A at 5 (1983). Further, we find that the Attorney General has failed to demonstrate any extraordinary circumstances that would justify modifying our decision regarding NSTAR Electric's capitalization of 2012-2015 ETT and

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[5] Regarding this point, we note that our statement in D.P.U. 17-05, at 593 was inadvertently incomplete and, therefore, we take this opportunity to clarify the Department's intention.

ETR costs. D.P.U. 905-C at 6-7 (1982). Nor do we find that the Attorney General otherwise has met the standard for reconsideration as to this issue. Rather, the Attorney General inappropriately seeks to reargue issues already considered and decided in the main case. D.P.U. 92-3C-1A at 3-6; D.P.U. 90-270-A at 2-3, 7-9; D.P.U. 1350-A at 4-5.

Based on the foregoing, we find that the Attorney General has not met the standard for reconsideration with respect to NSTAR Electric's capitalization of its 2012 through 2015 ETT and ETR costs. Accordingly, the Attorney General's motion for reconsideration on this issue is denied.

b. Clarification

The Attorney General argues that during the time that NSTAR Electric capitalized its ETT and ETR costs (i.e., 2012 through 2015) it already was recovering vegetation management costs from customers as an O&M expense (Motion I at 8). She claims that D.P.U. 17-05 is silent on whether Eversource is permitted to recover NSTAR Electric's 2012 through 2015 vegetation management costs as both an O&M expense and as a capital cost (Motion I at 9). Thus, she asserts that the Department should clarify this point (Motion at 9).

As noted, the Attorney General explored Eversource's ETT and ETR practices and expenditures during the course of the proceeding (see, e.g., AG-11-10; AG-11-11; AG-11-12; AG-11-22; AG-25-7; AG-37-6; AG-51-6; Tr. 13, at 2755-2758; RR-AG-13; RR-AG-14). Further, she raised the issue of "double recovery" on brief (Attorney General

Brief at 177-178; Attorney General Reply Brief at 49). The Department acknowledged the Attorney General's "double recovery" argument in the D.P.U. 17-05, at 587-588.

The record in this proceeding shows that from 2012 through 2015, Eversource treated the initial cycle of corridor-expanding tree work as a capitalized improvement to its system rather than an O&M activity because of the nature of the work – an initial cycle of ETT and ETR activities designed to go beyond the level of routine tree trimming in order to significantly improve reliability and extend the useful life of the related conductor (see, e.g., Exhs. ES-VLA-1, at 12-13, 16; AG-11-10; AG-11-12; AG-37-6; Tr. 13, at 2755-2758; Tr. 15, at 3162-3168). Eversource's internal capitalization policy supported the capitalization of the costs of these activities (Exhs. AG-19-31; AG-37-6).

The Department ultimately determined that it would not disturb Eversource's accounting treatment of NSTAR Electric's ETT and ETR costs. D.P.U. 17-05, at 592. As demonstrated by our approval of Eversource's accounting treatment of ETT and ETR costs as capitalized costs, and given that the initial-cycle ETT and ETR activities are sufficiently distinct from and go beyond the level of routine tree trimming, for which NSTAR Electric recovered expenses through base distribution rates, the Department was, and remains, satisfied that NSTAR Electric's accounting treatment of the subject costs will not result in "double recovery" of vegetation management costs from ratepayers (see, e.g., Exhs. ES-VLA-1, at 12-13, 16; AG-11-10; AG-11-12; AG-37-6; AG-51-6; Tr. 13, at 2755-2758; Tr. 15, at 3162-3168).

Based on the foregoing, we disagree with the Attorney General that D.P.U. 17-05 is silent as to the purported double recovery issue or contains language that is sufficiently ambiguous to warrant clarification. D.P.U. 92-1A-B at 4; D.P.U. 89-67-A at 1-2. Accordingly, the Attorney General's motion for clarification is denied.

III. ATTORNEY GENERAL'S MOTION FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD

A. Introduction

On December 20, 2017, in conjunction with Motion I discussed above, the Attorney General filed a Motion for Extension of the Judicial Appeal Period ("Motion II"). The Attorney General requests that the judicial appeal period be tolled until such time as the Department issues its ruling on Motion I and also to allow her 13 days thereafter to consider a judicial appeal (Motion II at 2). According to the Attorney General, at the time that she filed Motion I, 13 days remained in the 20-day deadline to file an appeal (Motion II at 1-2). Alternatively, the Attorney General requests at least five days after the Department's Order to consider a judicial appeal (Motion II at 2).

The Attorney General argues that good cause exists to grant the requested extension of time because, without such extension, she may be required to file a judicial appeal before a Department ruling on Motion I, which would be "meaningless and potentially unnecessary" (Motion II at 2). The Attorney General further submits that the requested extension of time is reasonable under the circumstances of this case, and that allowing the requested extension will not prejudice any party or cause the Department any delay (Motion II at 3). Finally, the Attorney General notes that the Department has previously provided short extensions of the

judicial appeal period where parties seek an extension because of an outstanding motion for reconsideration (Motion II at 3, citing Fitchburg Gas and Electric Light Company, D.P.U. 15-80-B, at 11 (2016); Nandy, D.P.U. 94-AD-4-A, at 6 n. 6 (1994)). No party, including the Companies, responded to Motion II.

B. Standard of Review

General Law c. 25, § 5, provides in pertinent part that a petition for appeal of a Department order must be filed with the Department no later than 20 days after service of the order "or within such further time as the commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling." See also 220 CMR 1.11(12). The 20-day appeal period indicates a clear intention on the part of the legislature to ensure that the decision to appeal a final order of the Department be made expeditiously. Nunnally, D.P.U. 92-34-A at 4, 9-10 (1993); see also Silvia v. Laurie, 594 F.2d 892, 893 (1st Cir. 1979). The Department's procedural rule, 220 CMR 1.11(12), states that reasonable extensions shall be granted upon a showing of good cause. The Department has stated that good cause is a relative term and depends on the circumstances of an individual case. Boston Edison Company, D.P.U. 90-335-A at 4 (1992). Whether good cause has been shown "is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party." D.P.U. 90-335-A at 4. The filing of a motion for extension of the judicial appeal period automatically tolls the

appeal period for the movant until the Department has ruled on the motion. D.P.U. 94-AD-4-A at 6 n.6; D.P.U. 92-34-A at 6 n.6.

C. Analysis and Findings

The Department finds that the Attorney General has demonstrated good cause for the requested extension of time, as it would have been administratively inefficient for the Attorney General to file an appeal while Motion I was pending. Further, there are important issues raised in D.P.U. 17-05 and we find that the Attorney General has a legitimate interest in having adequate time to fully evaluate our decision and determine whether judicial intervention is appropriate. Accordingly, under the circumstances of the instant case, we find that the Attorney General's interests, when balanced against the important interest of finality of Department decisions, weigh in favor of granting an extension. Based on these considerations, the Department allows Motion II.

At the time Attorney General filed Motion I and Motion II, there were 13 days remaining in the appeal period. D.P.U. 17-05-A at 8-9. Accordingly, the judicial appeal period shall be extended by 13 days to April 2, 2018.

IV. ORDER

Accordingly, after opportunity for comment and consideration, it is

ORDERED: That the Motion of the Attorney General of the Commonwealth of Massachusetts for Reconsideration and Clarification is DENIED; and it is

FURTHER ORDERED: That the Motion of the Attorney General of the Commonwealth of Massachusetts for Extension of the Judicial Appeal Period is GRANTED; and it is

FURTHER ORDERED: That NSTAR Electric Company and Western Massachusetts Electric Company shall comply with all other directives contained in this Order.

By Order of the Department,

/s/

Angela M. O'Connor, Chairman

/s/

Robert E. Hayden, Commissioner

/s/

Cecile M. Fraser, Commissioner