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December 22, 2023

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 3rd Floor
Boston, MA 02110

Re: *NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 22-143*

Dear Secretary Marini:

Enclosed for filing in the above-captioned matters please find the Office of the Attorney General's Initial Brief. Please contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

/s/ Jacquelyn K. Bihrlé
Jacquelyn K. Bihrlé
Assistant Attorney General

Enclosures

cc: Julianne Desmet, Hearing Officer
Service List

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

NSTAR Electric Company d/b/a
Eversource Energy

D.P.U. 22-143

INITIAL BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL

I. INTRODUCTION

On December 30, 2022, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric” or the “Company”) filed a petition with the Department of Public Utilities (the “Department”) for recovery of approximately \$220.94 million in incremental operations and maintenance (“O&M”) costs, including carrying charges, associated Tropical Storm Henri and the October Nor’easter, occurring in August 2021 and October 2021, respectively. *See* Exh. ES-ANB-1. In addition, in its supplemental filing, the Company is requesting approximately \$117.6 million in storm preparation and response costs associated with Winter Storm Kenan inclusive of carrying charges. *See* Exh. ES-MKC-4. The Company’s total updated request for all three storms is \$339.453 million including carrying charges. *Id.*

The AGO recommends that the Department disallow \$23,288,398 of recovery requested by NSTAR Electric because the Company failed to demonstrate that these costs were reasonable under the circumstances and therefore prudently incurred. *See* Exh. JD-1, at 4. Specifically, the Company incurred the following costs that ratepayers should not be forced to pay: (1) excessive outside contractor mobilization and demobilization costs of \$17,445,404; (2) excessive logistics costs of

\$5,143,413; and (3) \$102,545 in capitalization costs for non-incremental expenses. *See* Exh. JD-1, at 11, 17, and 18.

II. STANDARD OF REVIEW

A utility may recover storm costs only to the extent the company can “demonstrate that the costs are incremental, storm-related, and were reasonably and prudently incurred.” *Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid*, D.P.U. 11-56, at 4 (2013) (*citing Fitchburg Gas and Electric Light Company d/b/a Unutil*, D.P.U. 11-01/11-02, at 50, 56 (2011)); *see also NSTAR Electric Company d/b/a Eversource Energy*, D.P.U. 18-125-A, at 14 (2020); *Massachusetts Electric Company and Nantucket Electric Company*, 09-39, at 209, 212 (2009) (the Department “cannot, however, approve recovery of any costs until the company demonstrates costs are reasonable and prudently incurred.”); *NSTAR Electric Company*, 13-52, at 10 (2013).

The Department must determine whether the company’s actions—and by extension the costs the company incurred—were reasonable and prudent in light of the then-existing circumstances. *Fitchburg Gas and Electric Light Company d/b/a Unutil*, D.P.U. 09-09, at 38 (2009) (*citing Milford Water Company*, D.P.U. 08-5, at 12–13 (2008)); *Boston Gas Company*, D.P.U. 93-60, at 24–25 (1993); *Western Massachusetts Electric Company*, D.P.U. 85-270, at 22–23 (1986); *Boston Edison Company*, D.P.U. 906, at 165 (1982). The Department evaluates the propriety of storm-related costs “based on the circumstances for a specific storm event.” D.P.U. 19-113, at 23 (2023). The Department must assess the company’s actions based on all the company knew *or should have known* at the time of the subject storm incidents, and the Department may deny expenses that are directly attributable to imprudent management decisions. *Massachusetts-American Water Company*, D.P.U. 95-118, at 46, 50, 51, 57 (1996).

The company has the burden of proof and the burden of production to avoid disallowance of costs. *See Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid*, D.P.U. 13-85, at 43 (2016). The company also has the burden to rebut evidence of imprudence when such evidence is levied against it. *Id.* Further,

For purposes of a prudence determination and eligibility for cost recovery, and consistent with long-standing Department precedent, a company is obligated to present information to the Department in a clear and reviewable manner. A company must track its costs in a reviewable manner and include adequate detail in its initial filing that reduces the administrative burden and allows for the efficient review of those costs by the Department and parties. A failure to provide clear, cohesive, and reviewable evidence demonstrating eligibility for recovery may result in the disallowance of cost recovery for the expenditures in question. The Department cannot and will not make determinations based upon evidence that is ill-defined, ambiguous, speculative, based on supposition, or otherwise unreliable.

D.P.U. 19-113, at 51–52 (2023) (internal citations omitted).

III. ARGUMENT

The AGO acknowledges that NSTAR Electric must proactively plan for storm restoration activities and that outside services and contractors serve an important role in that planning and preparation. That said, the Company’s discretion is not without limits. While the Department should not “substitute its own judgment for the judgment of the management of the utility,”¹ the Company’s actions are—and must be—subject to both a prudence and a reasonableness review and to the extent the Company imprudently incurs unreasonable costs, the Department should protect ratepayers from having to subsidize the Company’s errors.²

¹ *Attorney General v. Department of Public Utilities*, 390 Mass. 208, 229 (1983).

² In its Rebuttal Testimony, the Company attempted to challenge the testimony of the expert witness retained by the AGO—Mr. John Defever—by claiming that he lacks professional expertise in “monitoring, preparing for and responding to weather events, extreme or otherwise, that impact an electric distribution system.” Exh. ES-REBUTTAL, at 4. First, while Mr. Defever may not have firsthand experience handling extreme weather events on behalf of a utility, he has worked in the field

In this case, the Company incurred certain costs that are unsupported by the Company's record evidence or by any objective means of verification. The Company also incurred costs that were unreasonable, even when considering the circumstances known at the time of the storms. As a result, the AGO recommends that the Department disallow recovery for these costs, as described in detail below. The Department must exercise its oversight authority to ensure that only reasonably and prudently incurred costs are passed onto ratepayers and also to deter Companies from incurring egregious and unnecessary costs in future storm response activities.

A. The Department should reduce the Company's recovery of costs for mobilization and demobilization for overhead line contractors by \$17,445,404.

The Company is requesting to recover from ratepayers a significant amount of money for contractors' mobilization and demobilization time. According to John Defever, mobilization and demobilization costs make up approximately 29 percent of the Company's claimed labor costs for the subject storms.³ However, the Company employs a vague, unsupported policy to assess contractors' mobilization and demobilization time, and the Company fails to exercise consistent oversight to even ensure contractors' compliance with the Company's policy. Accordingly, the Department should conduct a careful review of the Company's claimed mobilization and demobilization costs to ensure

of utility regulation for over 14 years, and he has participated in many storm cases. Exh. JD-Surrebuttal, at 1. In addition, the Company's attack on Mr. Defever's credentials implies that only the Company is competent to evaluate its own actions in a storm case. Exh. JD-Surrebuttal, at 2. Obviously, this is a problematic position, and it is not consistent with Department precedent requiring the Company to *prove* that any storm-related costs the Company wishes to pass onto ratepayers were reasonable and prudently incurred. *See, e.g.*, D.P.U. 19-113, at 51-52.

³ Exh. JD-1, at 11. This estimate is conservative, as not all of the mobilization / demobilization times could be identified due to lack of sufficient documentation provided with the invoices. *See* Exh. JD-1, at 11. Nonetheless, the estimated mobilization / demobilization was 51.20 percent for Tropical Storm Henri, 19.42 percent for October Nor'easter, and 35.44 percent for Winter storm Kenan. *Id.*

that any and all costs passed onto ratepayers are adequately supported by record evidence and that they were reasonably and prudently incurred.

NSTAR Electric claims to use a “multi-step review process to validate mobilization and demobilization costs.” For travel time, the Company said it uses “a formula to determine the reasonableness of travel time that calculates the maximum daily travel time capability of a line crew driving 60 mph for 10 hours (maximum drive time), or approximately 600 miles per day.” Without providing detail, the Company also said that “[t]raffic, weather, road conditions, and fuel availability can all adversely affect this maximum of 600 miles per day.” Exh. AG-1-8.

As a preliminary matter, the Company fails to support the reasonableness of its formula. The Company produced no analyses, calculations, or other support for its “standard” of 60 mph. *See* Exh. JD-1, at 5–6. Instead, the Company asserts vaguely that its “practice” is based on “knowledge gained from the Company’s experience.” *Id.*, at 5; *see also* Exh. AG-1-8. And while the 60 mph is at least calculable, the Company’s incorporation of the “overall projected impact of the weather event (i.e., duration number of potentially impacted states, availability of local or regional resources)”⁴ does not lend itself to an objective review and is therefore an insufficient mechanism to pass on millions of dollars of expenses to ratepayers.

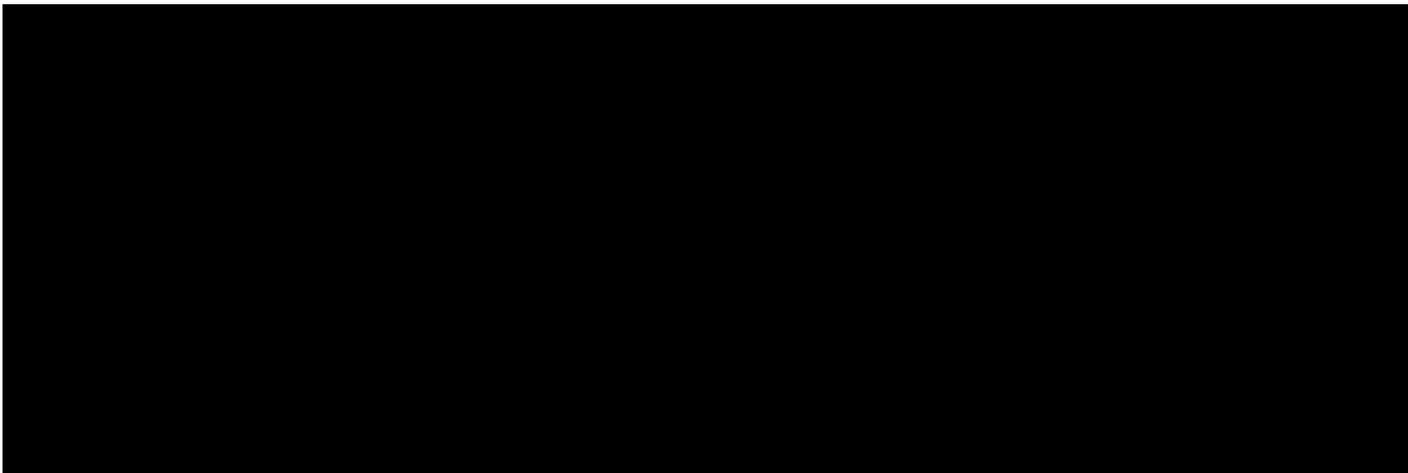
One way to objectively verify contractors’ billed travel time would be to use readily available maps that calculate the distance and theoretical travel time between a starting and ending location. The Company seemingly recognizes the value in this objective verification tool and insists that the Company “consults” Google Maps during its internal “invoice review process.” Exh. AG-2-15. However, the Company produced no maps—Google or otherwise—to support its requested cost

⁴ *See* Exh. JD-1, at 5.

recovery, even after the AGO asked about the Company’s use of maps in discovery. *Id*; *see also* Exh. JD-1, at 9. If the Company “consulted” maps, the Company should have produced those maps as “reviewable” evidence. This complete lack of production of course fails to meet the Company’s burden of production and it similarly prevents the Department from actually “reviewing” evidence supporting the Company’s claimed cost recovery. *See* D.P.U. 19-113, at 51–52; D.P.U. 13-85, at 43.

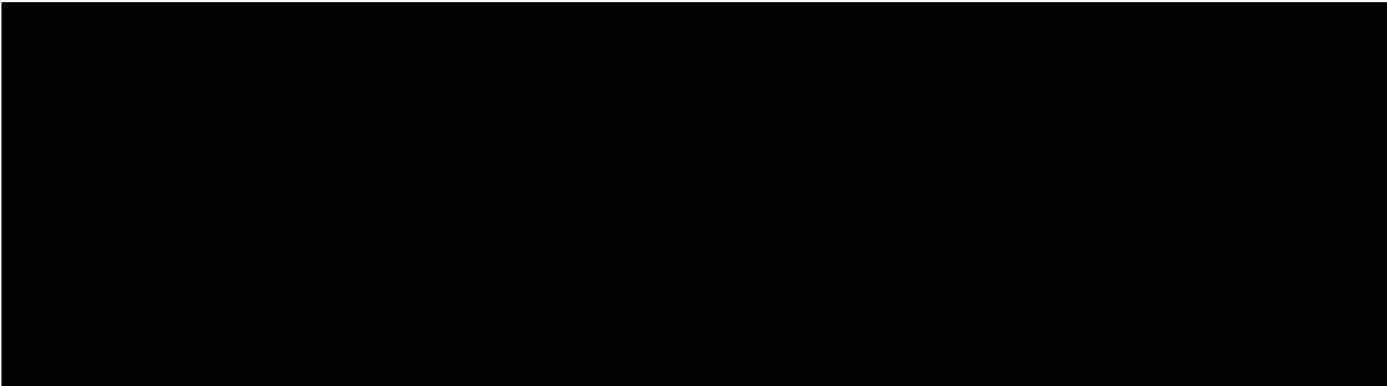
Additionally, even if NSTAR Electric did have an objective, supported formula that allowed it to quantify whether a contractors’ travel time was reasonable, the Company failed to implement its own policy consistently.⁵ For example, costs were allowed for travel time that exceeded the stated limit of “maximum drive time” of 10 hours per day or approximately 600 miles. Exh. JD-1, at 7. The following chart provides examples of the Company failing to follow its own policy:

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⁵ If the Company had produced any of the maps it allegedly consulted, the Department might have been able to determine whether the Company actually implemented its own policy with any consistency.

⁶ Exh. Eversource-2-INVOICES, at 2195.



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As shown, the Company paid contractors for travel time hours that were significantly higher than those that should have been allowed under the Company’s formula. *See* Exh. JD-1, at 7. The travel time hours for which contractors were paid are also significantly higher than those indicated by MapQuest. *Id.* If the Company had actually “consulted” Google Maps, as it claims it did as part of its “invoice review process,” it would have noticed these discrepancies and limited payment of those invoices. *See* Exh. AG-2-15.

Despite the Company’s purported “formula” and claimed oversight, the Company appears to have paid for travel time that exceeded any reasonable estimate by 45.99 percent. *See* Exh. JD-1, at 10–11; *see also* Exh. JD-5. The amount paid by the Company results in a calculated average travel speed of only 33.4 mph—well under the Company’s claimed “standard” of 60 mph (which theoretically already accounts for meals, refueling, and traffic and weather delays). *See* Exh. JD-1,

⁷ Exh. Eversource-4-INVOICES, at 2873.

⁸ Note that this travel time suggests a speed of only 10 mph.

⁹ Exh. Eversource-2-INVOICES, at 1061.

¹⁰ Exh. Eversource-3-INVOICES, at 5342.

at 18–19. To compensate ratepayers for this gross overpayment, the AGO recommends an adjustment to travel time of [REDACTED]. *Id.*

Ultimately, the Company’s policy is both inadequate due to lack of support as well as ineffective due to lack of consistent implementation. If the Company does not follow its own policy, that is equivalent to not having a policy at all. In either case, the Company has failed to provide sufficient oversight over travel time and ratepayers should not have to pay for this lack of oversight. Therefore, the AGO recommends that the Department disallow \$17,445,404 of the Company’s requested cost recovery in this case.

B. The Department should reduce the Company’s recovery of logistics costs by \$5,143,413.

NSTAR Electric is requesting recovery of “logistics costs” for Tropical Storm Henri, which are 14 times higher than those for the October Nor’easter or Winter Storm Kenan.¹¹ Exh. JD-1, at 13. This disparity is especially concerning as Tropical Storm Henri had the lowest total costs and lowest number of contractors retained of the three storms. Exh. JD-1, at 14; *see also* Exhs. Eversource-2-Summary (Revised) at 1, Eversource-3-Summary (Revised) at 1, Eversource-4-Summary (Revised) at 1. As such, like mobilization and demobilization costs, the Department should conduct a careful review of the Company’s claimed logistics costs to ensure that any and all costs passed onto ratepayers are adequately supported by record evidence and that they were reasonably and prudently incurred.

The entire reason for this disparity is a single expense—the Company hired a vendor to set up a “base camp” to provide food and lodging during Tropical Storm Henri, [REDACTED]

11 [REDACTED]

██████████. Exh. JD-1, at 14. The Company stated that its decision to use this vendor was based on a shortage of available hotel rooms due to summer travelers. Exh. AG-5-3(d); *see also* Exh. ES-REBUTTAL, at 23. The Company also cited its obligation to restore service to customers safely and promptly in an attempt to justify this expense.¹² Exh. ES-REBUTTAL, at 20.

First, the Company failed to substantiate its claim that there was any shortage of lodging due to summer travelers. *See* Exh. JD-Surrebuttal at 9. The Company produced no evidence that it attempted or failed to secure more reasonably priced lodging for contractors during this storm. *Id.* Further, even if the Company had produced such evidence—which it did not—that evidence would have been undermined by the fact that 2,784 contractors managed to secure non-“base camp” lodging during Tropical Storm Henri. Exh. JD-Surrebuttal at 10.

Further, even if the Company’s decision to secure this “base camp” was reasonable under the circumstances—which it was not, the Company essentially threw ██████████ in ratepayer money down the drain when it clearly failed to notify contractors that this lodging was available. Although the base camp was set up and available for seven nights, only 239 *contractors* stayed at the base camp for *a single night* (and had only three meals). Exh. JD-1, at 14–15 (emphasis added). The other 2,784 contractors secured *alternative* food and lodging which resulted in duplicative costs. *Id.* Additionally, despite this extreme overspending for a “base camp,” a number of crews reported trouble finding accommodations, arriving at hotels that did not know the crews were coming, and having no rooms available for lodging. Exh. JD-1, at 16. Crews reported long waits, confusion, and

¹² In its Rebuttal Testimony, the Company criticized Mr. Defever for failing to reference the Company’s 2021 ERP. Exh. ES-Rebuttal, at 12. While the AGO acknowledges the Company’s obligation to restore service to customers, the ERP guidelines require the Company to “estimate[e] *necessary* crew, material, and other resource needs.” Exh. ES-Rebuttal, at 6 (emphasis added). The ERP provides no protection for the Company from its actions which incurred unnecessary costs.

sleeping three per room. *Id.* The Company clearly did not alert its contractors to the existence and availability of this food and lodging, and its failure directly resulted in duplicative and unnecessary additional costs.

This “base camp” was both completely unnecessary and almost entirely unutilized and therefore the expense was unreasonable and imprudently incurred. The Company cannot hide behind its obligation to restore service in a “reasonably prompt manner” when it makes such gross errors in judgment. NSTAR Electric’s responses to these storms must be subject to careful scrutiny and the Company should not be given a blank, ratepayer-funded check to respond to storms. *See* Exh. JD-Surrebuttal, at 7. In this case, the Company’s egregious error in judgment resulted in a cost of \$20,000 per contractor to spend a single night in a hotel and receive three meals. Exh. JD-Surrebuttal, at 8 (the Company paid ██████████ for 239 contractors). This level of excessive overspending and complete failure to take advantage of purchased services cannot be condoned by the Department and ratepayers should not be forced to compensate the Company for its callous actions. Rather, the Department should impose consequences—namely denied cost recovery—to deter this level of abuse of discretion in the future. The AGO, therefore, recommends that the Department reduce the Company’s cost recovery by \$5,143,413, which reflects a more reasonable \$325 per night per contractor. Exh. JD-1, at 17.

C. The Department should reduce the Company’s recovery by \$102,545 for improper capitalization of non-incremental costs.

For Tropical Storm Henri, the October Nor’easter, and Winter Storm Kenan, the Company included ***BEGIN CONFIDENTIAL*** ██████████ ***END CONFIDENTIAL of non-incremental straight-time labor, respectively. *See* Exh. JD-3, Sch. L. As non-incremental costs are already recovered in rate base, they should not be recovered as part of this

case. Although the Company did not include these amounts in the Company's labor exhibits,¹³ a portion of non-incremental labor was charged to capital. Exh. JD-Surrebuttal, at 9. Therefore, to prevent double-recovery from ratepayers, the AGO recommends that the Department reduce the Company's recovery by \$102,545. See Exh. JD-1, at 18.

IV. CONCLUSION

For the reasons stated above, the AGO respectfully requests that the Department accept the AGO's recommendations as set forth in its Initial Brief.

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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Dated: December 22, 2023

¹³ See Exh. ES-REBUTTAL, at 25.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

**NSTAR Electric Company d/b/a
Eversource Energy**

D.P.U. 22-143

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 22nd day of December, 2023.

/s/ Jacquelyn K. Bihrlé
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