

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 24-11

February 23, 2024

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

INTERLOCUTORY ORDER ON PETITIONS TO INTERVENE OF
GLOUCESTER ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION
AND WILLIAMS COLLEGE

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I. INTRODUCTION AND RELEVANT PROCEDURAL HISTORY

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

On January 29, 2024, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (“National Grid” or “Company”) filed for approval by the Department a proposed ESMP. The Company submitted the filing pursuant to G.L. c. 164, § 92B. The Department docketed the matter as D.P.U. 24-11.

On August 7, 2023, and November 14, 2023, the Department provided procedural guidance, including intervention requirements, and established the initial procedural schedule for the proceeding. In particular, the Department established two procedural tracks, a General Track and an Alternate Track, and intervention deadlines for each track of January 30, 2024, and February 14, 2024, respectively. For this proceeding, the Department defined General Track participants as members of the Grid Modernization Advisory Council (“GMAC” or “Council”), or entities whose interests are represented on the GMAC. The Department defined Alternate Track participants as any other entity that may be found by the

Department, pursuant to G.L. c. 30A, § 10, to be substantially and specifically affected by this proceeding but that did not participate in or whose interests were not adequately represented in the Council process.

On September 15, 2023, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E(a). Additionally, the Department has granted full intervenor status to each of the following entities: (1) the Massachusetts Department of Energy Resources (“DOER”); (2) Acadia Center; (3) Conservation Law Foundation; (4) Direct Energy Business, LLC, Direct Energy Services, LLC, Energy Plus Holdings, LLC, Green Mountain Energy Company, Inc., NRG Home f/k/a Reliant Energy Northeast, LLC, and Xoom Energy Massachusetts, LLC; (5) Green Energy Consumers Alliance; and (6) Northeast Clean Energy Council, Inc., Coalition for Community Solar Access, Inc., Advanced Energy United, Inc., and Solar Energy Industries Association, Inc., working jointly. The Department has granted limited participant status to: (1) NSTAR Electric Company d/b/a Eversource Energy; (2) PowerOptions, Inc.; (3) The Energy Consortium; and (4) Fitchburg Gas and Electric Light Company d/b/a Unitil. Finally, the Department has granted limited intervenor status to EVGo Services, LLC, and Tesla, Inc.

On February 14, 2024, the Gloucester Economic Development and Industrial Corporation (“EDIC”) and Williams College (“Williams College”) each filed a petition to intervene as a full party. On February 16, 2024, National Grid filed a response to these two

petitions, opposing full party status but supporting limited participant status for both entities.¹ On February 20, 2024, the Department issued an Interlocutory Order addressing the scope of the proceeding.²

For the reasons outlined below, the Department grants Williams College's petition to intervene but denies the petition to intervene filed by the EDIC. The Department finds, however, that the EDIC may participate as a limited participant in this matter.

II. PETITIONS TO INTERVENE

A. EDIC

The EDIC states that it is a state-chartered corporation under G.L. c. 121C, with authority to acquire, fund, and develop land and buildings that support economic development and job creation in the city of Gloucester, Massachusetts, with a primary focus on industrial and manufacturing projects and collateral activities (EDIC Petition at 1). The EDIC is independent of, but works closely with, the City of Gloucester (EDIC Petition at 1). The EDIC seeks to intervene as a full party to potentially participate in hearings and submit evidence with respect to the Company's filing (EDIC Petition at 1, 5).

¹ The Company did not oppose any other intervention request.

² On February 22, 2024, Williams College submitted a motion for leave to submit a reply along with reply comments to National Grid's opposition to the college's petition to intervene. Given the Department's decision to grant the college's petition, we deem the motion filed by Williams College to be moot. Thus, the Department does not consider nor make any findings on the February 22 motion.

The EDIC argues that it represents the economic interests of coastal communities at the greatest risk of impact by climate change and that the economic interests of these communities and businesses were not represented by the GMAC (EDIC Petition at 3-4). Further, the EDIC states that it is substantially affected by this proceeding and in a unique position to offer information and perspective to help inform the Department's deliberations (EDIC Petition at 3-4). The EDIC maintains that it has relevant and material information, including its commissioned report on the inability of the current transmission and distribution systems serving Gloucester and the towns of Rockport, Manchester-by-the-Sea, Essex, Hamilton, Wenham, and parts of northeast Beverly ("the Region"), to support economic development and accommodate electrification (EDIC Petition at 3). The EDIC states that National Grid's ESMP does not adequately address questions about the Company's forecasted loads, power quality upgrades, reliability and resiliency, proactive system planning, long-term cost allocation, non-wire alternatives, and distributed energy interconnection (EDIC Petition at 4-5). The EDIC also states that National Grid's filing offers no clear plan to address grid needs in the Region or a comprehensive cost recovery and tariff mechanism to ensure that the proactive build out of the grid does not stifle business expansion and economic development (EDIC Petition at 5).

B. Williams College

Williams College is an institution of higher learning located in Williamstown, Massachusetts, and is a customer of Massachusetts Electric Company with more than 100 accounts (Williams College Petition at 1). In 2018, the college entered into a consortium

with multiple other colleges to procure renewable energy from a utility-scale generation resource in Maine to offset emissions (Williams College Petition at 2). In 2021, Williams College drafted a Climate Action Plan that details the goals and actions the institution will take to decarbonize its operations, identifies its greenhouse gas emissions reductions target, and identifies electrification as a key strategy to align its operations with the Commonwealth's climate goals (Williams College Petition at 3 & n.4, citing Massachusetts Executive Office of Energy and Environmental Affairs, Clean Energy and Climate Plan for 2050, at xiv (December 21, 2022)). Williams College also states that it is now developing a broader Energy and Carbon Master Plan, which additionally documents the institution's decarbonization plan but also includes details on planned investments towards electrification (Williams College Petition at 3-4).

Williams College argues that, as an educational institution planning to significantly increase its load in the coming years, it is substantially and specifically affected as both a customer of National Grid but also with respect to the utility infrastructure needed to support implementation of Williams College's decarbonization and infrastructure renewal plans (Williams College Petition at 4-6). Williams College states that its plans depend on its ability to obtain adequate and timely service from National Grid and that the terms of the Company's ESMP will affect whether and on what terms the college will be able to implement its own plans (Williams College Petition at 6). Williams College seeks to work with National Grid through this proceeding to ensure that the college's decarbonization efforts will not be frustrated (Williams College Petition at 4).

Williams College maintains that it did not participate in nor were its interests adequately represented on the GMAC (Williams College Petition at 4). Williams College observes that the Council did not include any institutional consumer located in Western Massachusetts or any other non-urban area and did not include a participant designated to represent the interests of colleges, universities, or other campus-like facilities (Williams College Petition at 4-5). Williams College states that its participation as a full party, Alternate Track participant will ensure that perspectives from Western Massachusetts and large-scale, non-business customers are accounted for in analyzing net benefits for customers and meeting the criteria enumerated in G.L. c. 164, § 92B(a) (Williams College Petition at 5, 7). Moreover, Williams College contends that its intervention will not be duplicative of other parties and will help to achieve an efficient and effective outcome in this proceeding (Williams College Petition at 6-7).

III. COMPANY RESPONSE

National Grid objects to the petitions for full party intervenor status filed by the EDIC and Williams College (Response at 2-3, 7-11). According to the Company, these entities failed to demonstrate that they will be substantially and specifically affected by this proceeding and have not disclosed any unique interest or peculiar damage that would entitle them to be intervenors as a matter of law or right (Response at 2, 7-10). The Company does not object, however, to the Department granting limited participant status to either entity (Response at 3, 11).

Further, National Grid asserts that each entity's interests are already represented on the GMAC, pointing to the Council's representative for municipal and regional interests as representing the EDIC and the representative for commercial and industrial end-use customers for Williams College (Response at 2, 11-12). The Company maintains that Williams College, in particular, frames its interest in a narrow manner to differentiate its interest from those represented on the GMAC but that, from an electric grid perspective, Williams College is a large commercial customer seeking to electrify its heating and other end uses (Response at 12). Because each entity's interests were represented on the Council, National Grid argues that both petitions to intervene should be considered late-filed and should have been more appropriately submitted with the General Track intervention deadline (Response at 11-12). The Company points to similar determinations made by the Department in the most recent three-year energy efficiency plan proceedings (Response at 11, citing 2022-2024 Three-Year Plans, D.P.U. 21-120 through D.P.U. 21-129, Interlocutory Order at 7-8 (November 29, 2021)).

Finally, National Grid argues that, to the extent that Williams College's interest is to understand electric system upgrades to meet its individual energy demand and timelines, Williams College is seeking to raise issues outside the scope of this proceeding and, thus, its petition to intervene should be denied (Response at 9). The Company maintains that the ESMP proceeding is not the appropriate forum for analysis and assessment of distribution, substation, or transmission upgrades for an individual customer, and that adjudicating system upgrades on a customer-by-customer basis would be impractical (Response at 9). The

Company states that it is willing to discuss Williams College's particular plans for increasing its electric demand outside of this proceeding, however (Response at 9).

IV. STANDARD OF REVIEW

The Department's regulations require that a petition to intervene or participate be in writing. 220 CMR 1.03(1)(a). To intervene, the petitioner must be substantially and specifically affected by the proceeding. 220 CMR 1.03(1)(b); see also G.L. c. 30A, § 10. To participate, a petitioner must demonstrate a sufficient interest in a proceeding. Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978), cert. denied, 439 U.S. 921 (1978). The Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216-217 (1983); Boston Edison, 375 Mass. at 45-46; City of Newton v. Department of Public Utilities, 339 Mass. 535, 543-544 (1959); see also Robinson v. Department of Public Utilities, 835 F.2d 19, 22 (1st Cir. 1987).

When ruling on a petition to intervene or participate, the Department may consider, among other factors, the interests of the petitioner, whether the petitioner's interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding. Based on these factors, the Department may limit intervention and participation. Robinson v. Department of Public Utilities, 416 Mass. 668, 673-674 (1993); Boston Edison, 375 Mass. at 46; Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 672

(1975); City of Newton, 339 Mass. at 543-544. The Department exercises the discretion afforded it under G.L. c. 30A, § 10, so that it may conduct a proceeding with the goal of issuing a reasoned, fair, impartial, and timely decision that achieves its statutory mandate.

Eastern Edison Company, D.P.U. 96-24, at 6 (1997); New England Telephone and Telegraph Company, D.P.U. 91-30, at 2 (1991), citing Boston Edison, 375 Mass. at 46.

V. ANALYSIS AND FINDINGS

A. Introduction

The petitioners do not present a constitutional or statutory basis for intervention and, therefore, the Department considers their petitions under our broad discretion to determine whether to allow participation, and the extent of participation. Attorney General, 390 Mass. at 216; Boston Edison, 375 Mass. at 45; Robinson v. Department of Public Utilities, 835 F.2d 19 (1st Cir. 1987). In determining whether the petitioners are substantially and specifically affected by this proceeding, the Department considers whether each petitioner's interests were represented on the GMAC; each petitioner's industry position, as well as its specific stated interests, arguments, and concerns relative to this proceeding; whether the petitioner's interests are unique and cannot be raised by any other party; the unique circumstances of the instant proceeding, including the magnitude and nature of the issues presented; the potential effect of the petitioner's intervention on the proceeding; and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding. Further, the Department considers our need to address the numerous issues presented in this case and to conduct an orderly and efficient proceeding.

Finally, the rulings below are specific determinations made on the basis of the particular case at hand, with a consideration of the factors above. The Department rules on each petition to intervene in a proceeding based on its merit, including the form and contents of that petition and the specific facts before the Department at that time. No argument can be made that intervention in one proceeding serves as a basis for intervention in another, even similar proceeding. Accordingly, arguments based upon participation in other Department proceedings do not preclude a different finding in this case.

B. Representation on GMAC

Section 92C(a) of G.L. c. 164 outlines the membership requirements for participation on the GMAC, which includes the Commissioner or their designee from DOER, the Attorney General or their designee, the executive director of the Massachusetts Clean Energy Center or their designee (“MassCEC”), and those appointed by the Governor, including, among others, one representative from an environmental advocacy community (*i.e.*, Acadia Center), one representative of the building electrification industry, one representative of municipal or regional interests, and one representative of businesses, including large commercial and industrial end-use customers, appointed by the Governor. As noted above, the Department established certain requirements to govern these proceedings, including a dual track procedural process where an entity’s membership or representation on the GMAC determines the procedural track and corresponding deadlines applicable to that an entity. Electric Sector Modernization Plans, D.P.U. 24-10/D.P.U. 24-11/D.P.U. 24-12, Procedural Memorandum at 2-3 (November 14, 2023) (“Procedural Memorandum”). While this dual track procedural

process is employed in the Department's investigations of the three-year energy efficiency plans, it departs from the process used for the vast majority of proceedings before the Department.

EDIC and Williams College each filed their petition to intervene on February 14, 2024, *i.e.*, the Alternate Track deadline. National Grid, however, argues that the interests of both the EDIC and Williams College are represented on the GMAC and, thus, both petitions to intervene should be treated as late-filed, with an additional burden to demonstrate that they have met the Department's standard for intervention as full parties (Response at 11-12).

As a preliminary matter, the Department finds that the interests of both entities were indeed represented by the GMAC. In particular, as an entity that represents municipal and regional interests, the EDIC was represented by the GMAC member appointed to represent municipal or regional interests; as a large end-use customer, Williams College was represented by the GMAC member appointed to represent large business customers; and both entities are generally represented by additional Council members, including the DOER, Attorney General, MassCEC, Acadia Center. See G.L. c. 164, § 92C; GMAC website, available at: <https://www.mass.gov/orgs/grid-modernization-advisory-council-gmac> (last viewed February 23, 2024). Accordingly, both entities and other similarly-situated entities qualify as General Track participants.

The Department has previously found that a petition to intervene is late-filed where a person or entity that qualifies as a General Track participant files its petition on the Alternate Track procedural schedule. See D.P.U. 21-120 through D.P.U. 21-129, Interlocutory Order

at 8 (November 29, 2021) (identifying this requirement for three-year energy efficiency plan filings).³ As a result, the Department should treat the petitions to intervene by EDIC and Williams College as late-filed. Based on the specific circumstances of this case and for the reasons outlined below, however, we do not.

Specifically, this docket is one of three being conducted concurrently and all are cases of first impression before the Department involving plans filed pursuant to G.L. c. 164, § 92B. These proceedings involve numerous complex issues that must be resolved not only for the current filings, but also to inform future ESMP filings going forward. Electric Sector Modernization Plans, D.P.U. 24-10/D.P.U. 24-11/D.P.U. 24-12, Interlocutory Order on Scope of Proceedings at 2-3, 13-16 (February 20, 2024) (“Interlocutory Order”). For instance, as part of these first ESMP proceedings, the Department must establish and provide guidance on the procedural process for the current investigations and for future ESMP filings. Interlocutory Order at 2-3, 15-16. As noted above, the Department established a dual track procedural process for these proceedings based on the process utilized in the three-year energy efficiency plan dockets. We determine, however, that the criteria to qualify as a General or Alternate Track participant requires clarification.

In the Procedural Memorandum, the Department defined an Alternate Track participant as any entity that may be found by the Department to be substantially and

³ The Department relied on the energy efficiency approach in adopting its intervention requirements and establishing the procedural schedule for the first ESMP dockets. Procedural Memorandum at 2 n.2.

specifically affected by these proceedings but that did not participate in or whose interests were not adequately represented in the GMAC process, whereas the General Track participant is one that is a GMAC member or any other entity whose interests are represented on the GMAC. Williams College represents that it did not participate in the GMAC process (Williams College Petition at 4) and, based on a review of GMAC materials, it appears that EDIC also did not participate in the GMAC process. Both petitioning entities also maintain that the interests that they represent were not represented by the GMAC, specifically, the communities and businesses of coastal communities (EDIC) and large-scale, non-business customers from non-urban areas or located in Western Massachusetts (Williams College) (EDIC Petition at 4; Williams College Petition at 4-5, 7). Seemingly, this would qualify the petitioners to pursue intervention under the Alternate Track notwithstanding the eligibility criteria for the General Track. Because of this, we will not deem EDIC's and Williams College's petitions as late-filed. The Department clarifies, however, that going forward any entity whose interest is sufficiently represented by the GMAC process, regardless of whether they participated in the GMAC process, must seek to intervene and participate under the General Track.

Additionally, for purposes of this proceeding and any future process to be adopted for the ESMPs going forward, the Department expects that interested persons or entities that may be affected by ESMPs will engage in the GMAC process, which is open for non-voting participation to all persons. Therefore, interested persons or entities should be familiar with: (1) the content of the plans when they are filed with the Department; and (2) the issues they

likely may seek to address during the course of the adjudicatory process. Although the procedural schedule provides for an Alternate Track, the Department fully expects that, like the energy efficiency three-year plan dockets, most, if not all, intervenors will be on the General Track. See D.P.U. 21-120 through D.P.U. 21-129, Interlocutory Order at 7-8 (November 29, 2021); Energy Efficiency Guidelines, D.P.U. 08-50-B at 32 n.16 (2009).

The Department now turns to examining whether each entity is substantially and specifically affected by this proceeding.

C. EDIC

Based on the Department's review of the issues raised and representations made by the EDIC, and after consideration of the factors set forth above in Sections IV and V.A, the Department finds that the EDIC has failed to demonstrate that it will be substantially and specifically affected by this proceeding and, therefore, shall not be permitted to participate in this case as either an intervenor or limited intervenor.

The EDIC bears the burden of establishing that it will experience peculiar damage to qualify for intervenor status. See Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 15-155, Interlocutory Order at 6-7 (January 22, 2016); Bay State Gas Company, D.P.U. 15-39, Interlocutory Order at 15 (June 19, 2015); Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 10-54, Interlocutory Order at 7-8 (August 20, 2010) (petitioner must demonstrate that the impact of the proceeding on petitioner would be different from the impact on others); see also Robinson, 416 Mass. at 673 (1993); Attorney General, 390 Mass. at 217. While the EDIC raises various claims as

to how this proceeding might affect the interests of the entities it represents (see, e.g., EDIC Petition at 3-4), it has failed to demonstrate how the potential impact from this proceeding may be any different than the potential impact on any other entity with municipal or regional interests (i.e., the EDIC has failed to show a peculiar impact from this proceeding).

D.P.U. 15-155, Interlocutory Order at 6-7; D.P.U. 15-39, Interlocutory Order at 15; D.P.U. 10-54, Interlocutory Order at 7-8; see also Robinson, 416 Mass. at 673; Attorney General, 390 Mass. at 217. Further, the Attorney General, who is authorized by statute to represent utility customers and represents ratepayers on the GMAC, is a party to this proceeding and will participate extensively in the case on behalf of ratepayers. Similarly, the DOER, which develops and implements policies and programs aimed at ensuring the adequacy, security, diversity, and cost-effectiveness of the Commonwealth's energy supply to create a clean, affordable, equitable and resilient energy future for all residents, businesses, communities, and institutions, is also a party to this proceeding. Moreover, the EDIC's interests and questions overlap with the interests of other full party intervenors. Thus, the EDIC has failed to demonstrate that its interests are unique.

For these reasons, the Department finds that the EDIC has not made the requisite showing to qualify for full party intervenor status. Accordingly, its petition for full party status is denied. Nevertheless, in recognition of the EDIC's sufficient interest in the case, the Department finds that it is appropriate to allow the EDIC to participate in this matter as a limited participant. As a result, the EDIC shall be allowed to attend but shall not cross examine party witnesses or sponsor its own witnesses at evidentiary hearings, receive copies

of non-confidential pleadings, discovery requests, and responses, and submit comments in accordance with the briefing schedule. Procedural Memorandum at 2 (November 14, 2023). The granting of limited participant status will enable the EDIC to monitor the progress of this proceeding and will provide it with multiple opportunities to comment on relevant issues for the Department's consideration. Further, conferring limited participation status upon the EDIC is consistent with the Department's important interest of conducting this proceeding in an efficient and orderly manner, taking into account the seven-month statutory timeframe prescribed by G.L. c. 164, § 92B(d).

D. Williams College

As noted above, the Department exercises the discretion afforded it under G.L. c. 30A, § 10, so that it may conduct a proceeding with the goal of issuing a reasoned, fair, impartial, and timely decision that achieves its statutory mandate. D.P.U. 96-24, at 6; D.P.U. 91-30, at 2, citing Boston Edison, 375 Mass. at 46. The Department has reviewed the relevant pleadings and we find that it is appropriate in this instance to exercise our discretion and allow Williams College to participate in this proceeding as a full party intervenor. G.L. c. 30A, § 10; 220 CMR 1.03 (1)(e). In particular, the facts and circumstances of this particular case, including Williams College's non-urban status as a higher education provider in Western Massachusetts with a significant electric load and an active longer-term electrification and decarbonization plan, as well as the potential impacts of the Company's distribution system planning, such as its procurement of renewable energy from a utility-scale generation source outside of the Commonwealth, support allowing

Williams College to intervene and represent its own interests. Therefore, we find that Williams College's participation may assist the Department in evaluating the Company's filing and related proposals that are within the scope of this proceeding. To the extent that Williams College's interest is to understand electric system upgrades to meet its individual energy demand and timelines, the Department finds that those issues are beyond the scope of this proceeding. The Department's review during the statutorily-mandated review period involves a review of the Company's filing as a strategic plan. Interlocutory Order at 13-16, 19-20, 22, 23-24. Moreover, the ESMP proceeding is not the appropriate forum for analysis and assessment of distribution, substation, or transmission upgrades for an individual customer, and adjudicating system upgrades on a customer-by-customer basis would be impractical.

VI. ORDER

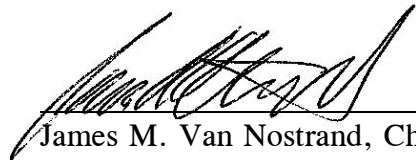
Accordingly, after due consideration, it is hereby

ORDERED: That the petition to intervene as a full party filed by Gloucester Economic Development and Industrial Corporation is DENIED; and it is


FURTHER ORDERED: That the Gloucester Economic Development and Industrial Corporation is granted limited participant status in this proceeding, subject to the findings above; and it is

FURTHER ORDERED: That the petition to intervene as a fully party filed by Williams College consistent with the findings herein is APPROVED.

By Order of the Department,



James M. Van Nostrand, Chair



Cecile M. Fraser, Commissioner



Staci Rubin, Commissioner