

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 24-160

January 27, 2025

Joint Petition of NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil, for Approval of Settlement Agreement on Amendment of Transmission Service Agreements.

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I. INTRODUCTION

A. Background

On June 13, 2018, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”), Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (“National Grid”), and Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) (together, “Distribution Companies”) each entered into transmission service agreements (“TSAs”) with Central Maine Power Company (“CMP”). Under the TSAs, NECEC Transmission LLC (“NECEC”), as assignee of CMP, agreed to construct, own, operate, and maintain a transmission line for hydroelectric power from the U.S. border in Beattie Township, Maine to an existing substation in Lewiston, Maine (“Transmission Project”) (Petition at 2). Each Distribution Company also entered into a power purchase agreement (“PPA”) with H.Q. Energy Services (U.S.) Inc. (“HQUS”) to purchase hydroelectric power from HQUS (Petition at 3). On June 25, 2019, the Department of Public Utilities (“Department”) approved the PPAs between each Distribution Company and HQUS, in NSTAR Electric Company, D.P.U. 18-64, Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 18-65, and Fitchburg Gas and Electric Light Company, D.P.U. 18-66. The Department’s approval of the PPAs provided for full recovery of the Distribution Companies’ costs under the TSAs. D.P.U. 18-64, D.P.U. 18-65, D.P.U. 18-66, at 146.

Thereafter, a protracted legal and political dispute in Maine delayed construction of the Transmission Project. On November 2, 2021, Maine voters approved a ballot initiative “to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve all other such projects anywhere in Maine, both retroactively

to 2020, and to require the Legislature, retroactively to 2014, to approve by a two-thirds vote such projects using public land” (“Maine Initiative”) (Exh. JU-2-4 at 5). On November 23, 2021, the Maine Department of Environmental Protection (“MDEP”) suspended its permits for construction of the Transmission Project, after which NECEC suspended construction of the Transmission Project (Exh. JU-2-5). NECEC did not resume construction of the Transmission Project until August 2023, after successfully challenging the Maine Initiative’s retroactive application to the Transmission Project and revocation of MDEP’s suspension order (Exh. JU-2-8).¹

In January 2023, the Distribution Companies and NECEC (together, the “TSA Parties”) agreed to commence negotiations regarding NECEC’s alleged economic losses arising from the construction delays occasioned by the Maine Initiative (Petition at 6). The TSA Parties worked with the Massachusetts Department of Energy Resources (“DOER”) and the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) (together, the “Settling Parties”) to negotiate and prepare the Settlement Agreement (Petition at 6).

On December 4, 2023, Governor Healey signed legislation providing that, “the department of public utilities may allow recovery by electric distribution companies of transmission service agreement expenditures and payments associated with clean energy

¹ NECEC sought a preliminary injunction from the Maine Business Court, which the Court denied, but referred to the Maine Supreme Judicial Court, sitting as the Law Court, to determine whether retroactive application of the Maine Initiative to the Transmission Project was unconstitutional (Petition at 5). On August 30, 2022, the Maine Law Court held that the Maine Initiative was unconstitutional to the extent it applied retroactively to the Transmission Project (Exh. JU-2-6). Following remand, the Maine Business Court entered a final judgement in NECEC’s favor on April 20, 2023 determining that NECEC had the vested rights to continue the work as authorized (Exh. JU-2-8).

generation . . . in connection with a change in law in the state of Maine, subsequently causing suspension of development construction; provided, however, that if the department elects to allow such recovery, it shall allow recovery for such expenditures and payments that the department determines to be associated with the subsequent construction delay.” St. 2023, c. 77, § 207 (“Section 207”).

B. Procedural History

On October 28, 2024, the Distribution Companies jointly filed with the Department a petition for approval of a proposed settlement agreement (“Settlement”) between the Distribution Companies, NECEC, the Attorney General, and DOER. The Settlement permits recovery of the incremental costs required by amendments to the TSAs associated with the PPAs approved in D.P.U. 18-64, D.P.U. 18-65, and D.P.U. 18-66 through each Distribution Company’s respective Long-Term Renewable Contract Adjustment Mechanism. The Department docketed this matter as D.P.U. 24-160.

The Attorney General intervened as of right pursuant to G.L. c. 12, § 11E and is also a Settling Party. The Department granted the timely filed petitions to intervene of NECEC and DOER, both of which are also Settling Parties. Pursuant to notice duly issued, the Department held a public hearing on December 16, 2024. The Department received one written comment in support of the Settlement from State Representative Jeffrey Roy, House Chair of the Joint Committee on Telecommunications, Utilities and Energy.

In support of their petition, the Distribution Companies sponsored the testimony of the following witnesses: (1) Monica Kachru, director of wholesale power contracting at Eversource Energy Service Company on behalf of NSTAR Electric, (2) James Holodak, Jr., vice president,

energy supply, for National Grid USA Service Company on behalf of National Grid, and (3) Robert S. Furino, director, clean energy transition for Until Service Corp. on behalf of Until (Exh. JU-1). The Distribution Companies responded to six information requests from the Department.²

II. DESCRIPTION OF THE PROPOSED SETTLEMENT

A. Overview

The Settlement resolves issues related to cost recovery associated with the construction delay of the Transmission Project (Petition at 7). In conjunction with the Settlement, the Settling Parties included a Fourth Amendment (“Fourth Amendment”) to the TSAs (Settlement at § 2.1). The Fourth Amendment to the TSAs requires, among other changes, an increase to the transmission service payments to account for an alleged change in applicable law and resulting cost increases of constructing the transmission project due to delays caused by the Maine Initiative (Exh. JU-1 at 13). The Fourth Amendment includes an increase in the price that the Distribution Companies will pay NECEC for transmission service on a monthly basis (Exh. JU-1 at 15). According to the Distribution Companies’ estimates, the price increase is approximately \$521 million in 2017 dollars (Exh. JU-1 at 20). The total recoverable cost of the TSAs, including the Fourth Amendment costs, is \$1,411 million (nominal) over the life of the TSAs (Exh. JU-1 at 21). The Settlement does not create any new rate mechanisms or programs (Petition at 7).

² The Department, on its own motion, moves the initial filing (Exhs. JU-1 through JU-5) and the Distribution Companies’ responses to information requests (Exhs. DPU 1-1, DPU 1-2, DPU 2-1 through DPU 2-4) into the evidentiary record.

B. Settlement Terms

The terms of the Settlement comprise seven acknowledgements (Settlement at § 2.1). First, HQUS has provided its prior written consent to the TSA Amendments (Settlement at § 2.1.a.). Second, NECEC acknowledges that it has exhausted its “change in Applicable Law” claims and that it will not make any additional “change in Applicable Law” claim(s), except for a schedule extension without an associated monetary demand (Settlement at § 2.1.b.). Third, NECEC agrees that Section 19.2(b) of the TSAs for any other “change in Applicable Law” is materially modified (Settlement at § 2.1.c.). Fourth, the Distribution Companies shall be entitled to full recovery of costs associated with the settlement of NECEC Claims and the TSA Amendments (Settlement at § 2.1.d.). Fifth, any further schedule extensions under the TSAs agreed to by the Distribution Companies and NECEC require the prior written consent of HQUS (Settlement at § 2.1.e.). Sixth, NECEC represents and warrants that the increase in the unit price for contract year one relates directly to, and mitigates the impacts of, the increased costs to NECEC due to the Maine Initiative and the subsequent construction delay (Settlement at § 2.1.f.). Seventh, Section 19.2(b) (ii) of the TSAs shall be amended to apply only to changes in Applicable Law that take effect prior to the third anniversary of the Commercial Operation Date (Settlement at § 2.1.g.).

C. Fourth Amendment to TSAs

In conjunction with the Settlement, the Distribution Companies provided the Fourth Amendment to the TSAs for Department review (Exh. JU-1 at 15-16).³ A primary provision of

³ The Distribution Companies previously notified the Department of three earlier amendments (Exh. JU-1, at 11).

the Fourth Amendment is an increase to the amended unit price, which refers to the price the Distribution Companies will pay NECEC for transmission service (“Amended Unit Price”) (Exh. JU-1 at 15). The Settling Parties agreed to revise the contract year one unit price from \$9.29 to \$13.61 per kW-Month (Exh. JU-1 at 15). Prices in subsequent contract years will increase according to the escalation factor in the TSAs resulting in a unit price of \$19.82 per kW-Month in contract year 20 (Exh. JU-3, Att. J).⁴

In addition to the Amended Unit Price, there are amendments to Section 1.1 related to the definition of “Municipal Owner Approval Deadline,” Sections 4.1(c) and 4.2(a) pertaining to Critical Milestones and extension rights, and Section 19.2(b) through (d) of the TSAs pertaining to changes in applicable law and adverse determinations (Exh. JU-3, at 2).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D, at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15; D.P.U. 88-28/88-48/89-100, at 9.

⁴ No change in the escalation factor is proposed in the Settlement. The escalation factor approved as part of the Second Amendment to the TSAs is used to derive the prices for contract year two through contract year 20 (Exhs. JU-1 at 12-13; JU-3, Att. J).

IV. ANALYSIS AND FINDINGS

A. Introduction

As discussed above, the Settlement is intended to resolve issues related to cost recovery associated with the construction delay of the Transmission Project. The Department has reviewed the Settlement in light of the information submitted by the Distribution Companies in their initial filing regarding the increased costs associated with the construction delay, as well as the Distribution Companies' responses to information requests. The Department has also considered the Settlement in light of Section 207 and the underlying cases in which the Department approved the PPAs and found that the contracts were in the public interest. D.P.U. 18-64, D.P.U. 18-65, D.P.U. 18-66, at 118.

B. Section 207

As an initial matter, the Department must determine whether the increased costs included in the Fourth Amendment are due to the construction delay associated with the Maine Initiative, in accordance with Section 207. The Distribution Companies and the other Settling Parties provided testimony and significant evidence supporting such a finding, including: the results of the vote on the Maine Initiative; the rulings on NECEC's challenges to the Maine Initiative; NECEC's grounds for assertion that the Maine Initiative constitutes a change in applicable law triggering Section 19.2(b) of the TSAs; and NECEC's analyses, cost projections, contracts, and invoices supporting NECEC's claims of harm resulting from the Maine Initiative (Exhs. JU-4; JU-5; JU-6; JU-7; JU-8; JU-9; DPU 1-1, Atts.). The costs that NECEC claims to have incurred, as evidenced by the various analyses, cost projections, contracts and invoices the Distribution Companies provided, formed the basis for the negotiations among the Settling Parties

(Exhs. JU-1, at 16). The incremental cost increase negotiated by the Settling Parties is less than the costs NECEC claims to have incurred due to the Maine Initiative (Exh. DPU 1-1). This evidence, combined with the timeline of events described above in Section I.A, provides sufficient basis showing that the incremental cost increase of \$521 million (in 2017 dollars) is based on costs directly associated with the Maine Initiative. The Department, therefore, finds that the increased costs associated with the Fourth Amendment are attributable to the construction delay associated with the Maine Initiative and that the Settlement will permit the Distribution Companies to recover those increased costs.

C. Public Interest

Next the Department must determine whether the Settlement is consistent with Department precedent and the public interest. In D.P.U. 18-64, D.P.U. 18-65, D.P.U.18-66, the Department found that the PPAs were in the public interest. D.P.U. 18-64, D.P.U. 18-65, D.P.U.18-66, at 118. The Department also found that the Distribution Companies had shown that the aggregate delivered cost for energy and environmental attributes under the PPAs is less than the forecasted market prices for delivered energy and clean energy certificates by \$3.962 billion (nominal) over the life of the PPAs. D.P.U. 18-64, D.P.U. 18-65, D.P.U.18-66, at 110. The Department further found that significant qualitative benefits will flow to customers under the PPAs in the areas of reliability, mitigated environmental impacts, and economic development. D.P.U. 18-64, D.P.U. 18-65, D.P.U.18-66, at 110. The Department ultimately found that the PPAs are a cost-effective mechanism for procuring low-cost renewable energy on a long-term basis.

As described in detail above, events outside of the Settling Parties' control beginning with the adoption of the Maine Initiative took place, causing serious delays in the construction of the Transmission Project (Petition at 4-5). As a result, NECEC incurred significant unanticipated costs (Exh. DPU 1-1, Atts.). The Department found, above, that these unanticipated costs were incurred by NECEC because of the Maine Initiative. As a result of the construction delay costs, NECEC sought to renegotiate the price for transmission service pursuant to the TSAs, Section 19.2(b), citing the Maine Initiative as a change in applicable law (Exh. JU-1, at 13). The Settling Parties reached an agreement that raised the transmission service payments for year one from \$9.29 to \$13.61 per kW-month, an increase of \$4.32 per kW-month (Exh. JU-1, at 15). Prior to reaching this Amended Unit Price, NECEC requested an increase of \$4.98 per kW-month (Exh. DPU 1-1). The Distribution Companies did not conduct a new net benefits analysis as a result of the Fourth Amendment, but they represent that the previously determined net benefit of \$3.962 billion less the Fourth Amendment cost increase still netted a benefit of approximately \$3.380 billion (in 2017 dollars) (Exh. JU-1, at 20). The Department notes that: (1) we previously found the PPAs to be in the public interest with net benefits in the billions of dollars; (2) the Distribution Companies negotiated with NECEC and the other Settling Parties to reach an agreement to pay an amount less than the costs NECEC claims to have incurred as a result of the Maine Initiative; and (3) the previously determined net benefits less the costs associated with the Fourth Amendment still amount to approximately \$3.380 billion (in 2017 dollars) in net benefits. In addition, the Department gives considerable weight to the participation in the Settlement by the Attorney General, given her broad common law and statutory powers to represent the public interest, and also acknowledges the role played

by DOER, as the agency charged with implementing the Commonwealth's clean energy policies, in the underlying negotiations that led to the Settlement. Taking these circumstances into account, and based on the evidentiary record, the Department finds that the Settlement is consistent with Department precedent and the public interest, and will result in a just and reasonable outcome.

V. ORDER

Accordingly, after due consideration, it is

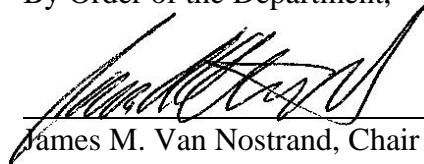
ORDERED: That the Joint Petition of NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil requesting approval of a Settlement Agreement is GRANTED; and it is

FURTHER ORDERED: That the Settlement Agreement by and among NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, Fitchburg Gas and Electric Light Company d/b/a Unitil, the Office of the Attorney General, the Massachusetts Department of Energy Resources, and NECEC Transmission LLC and filed by NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil is consistent with Department precedent, and consistent with the public interest and is hereby APPROVED; and it is

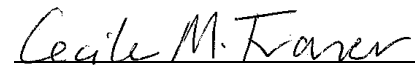
FURTHER ORDERED: That the recovery of the increased costs associated with the Fourth Amendment are attributable to the construction delay associated with the Maine Initiative, and are therefore APPROVED; and it is

FURTHER ORDERED: That NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil shall comply with all directives contained in this Order.

By Order of the Department,



James M. Van Nostrand, Chair



Cecile M. Fraser, Commissioner



Staci Rubin, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, 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. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.