



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 24-171

March 5, 2025

Petition of NSTAR Electric Company d/b/a Eversource Energy for approval of its 2024 electric reconciliation filing effective January 1, 2025, pursuant to G.L. c. 164, §§ 1A(a) through 1H and 220 CMR 11.03(4)(e).

ORDER ON COMPANY'S MOTION TO STAY

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FOR: NSTAR Electric Company d/b/a Eversource
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I. INTRODUCTION AND PROCEDURAL HISTORY

On October 31, 2024, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric” or “Company”) filed with the Department of Public Utilities (“Department”) its annual electric reconciliation filing (“annual reconciliation filing”), pursuant to G.L. c. 164, §§ 1A(a) through 1H and 220 CMR 11.03(4)(e). The Company proposed updated charges to be effective January 1, 2025.

On November 12, 2024, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E(a). On November 22, 2024, the Department issued a notice of filing and request for comments. The Department did not receive any comments on the Company’s proposal. On November 22, 2024, the Company submitted a revised Net Metering Recovery Surcharge (“NMRS”), in compliance with the Phase II Order in the Company’s 2023 electric reconciliation filing, D.P.U. 23-111-A. On November 27, 2024, the Company submitted an umbrella filing and updated rate filing including all rate elements proposed for effect on January 1, 2025, including Basic Service rates for effect February 1, 2025, along with Basic Service Cost Adjustment factors. On December 13, 2024, the Attorney General notified the Department that she required no further process in this matter.

On December 30, 2024, the Department issued a Phase I Order for D.P.U. 24-171 (“Phase I Order”). In the Phase I Order, the Department approved summary rate tariff M.D.P.U. No. 1-25-A. Included in this tariff was a revised NMRS submitted pursuant to the Department’s direction in D.P.U. 23-111-A. On December 31, 2024, the Company

submitted a Motion for Limited Stay pertaining to the NMRS approved in D.P.U. 24-171. Subsequently, on January 3, 2025, the Company submitted a Motion for Reconsideration of the NMRS rates approved in D.P.U. 24-171. The Motion for Limited Stay and Motion for Reconsideration both reflect the Company's concern with the Department's decision in D.P.U. 23-111-A, specifically a directive that NSTAR change its NMRS calculation to comply with its associated tariff. Through the motions, the Company seeks reconsideration—or at a minimum, a stay—of the Department's NMRS directive until a complete investigation of the impacts and ramifications of the directed change can occur.

The Department issued a Hearing Officer Memorandum on January 7, 2025 requesting comments regarding the Company's Motions for Stay and Reconsideration. On January 15, 2025, the Department received comments from the Attorney General, and Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("National Grid"). The Attorney General supports the Company's Motion to Stay to the extent that it requests the NMRS rate to continue as it did before the correction made in D.P.U. 23-111-A, and until the impacts and ramifications of the Department's changed NMRS rate can be fully investigated. Further, the Attorney General does not oppose the Company's Motion for Reconsideration to the extent that it seeks an investigation of the impacts and ramifications of the Department's change to collection practices as decided in D.P.U. 23-111-A. National Grid supports the Company's motions and expressed its intent to submit a late-filed petition for intervention so that it may fully participate and provide evidence regarding NMRS uniformity across all electric distribution companies.

II. ISSUES

A. History of NMRS Tariff

To support the development of distributed generation in the Commonwealth, the Green Communities Act of 2008 directed the Department to adopt rules and regulations to promote net metering. Among other net metering policies and procedures, the electric distribution companies, including NSTAR Electric, recover from all ratepayers the costs for compensating net metering customers through the NMRS tariff.

The Company's NMRS tariff was first approved by the Department on November 19, 2009. NSTAR Electric Company, D.P.U. 09-71/09-72/09-73/09-74. The Company may recover from ratepayers distribution revenue lost as a result of net metering and net metering credits paid for excess generation. NSTAR Electric Company, D.P.U. 09-71/09-72/09-73/09-74 at 12, citing G.L. c. 164, s. 139(c); D.P.U. 09-03-A, at 15, n.26; 220 C.M.R. 18.09(4). The Company implemented this collection practice for the annual NMRS filings for the 2011 and 2012 NMRS rate adjustments. NSTAR Electric Company Approval of 2011 and 2012 Annual Net Metering Recovery Surcharges, D.P.U. 10-169- A/11-94-A, at 1. In D.P.U. 10-169-A/11-94-A, the Company included the prior year revenues from the NMRS as an offset to the costs in the prior year. In 2013, the Department issued a decision in D.P.U. 10-169-A/11-94-A, which directed the Company to remove the revenues it collected in the prior year from the calculation of the NMRS. NSTAR Electric Company, D.P.U. 10-169-A/11-94-A at 9-10.

In reviewing the Company's 2012 filing, the Department identified an error in the Company's calculation of the past period reconciliation in the NMRS factor. Pursuant to the net metering tariff, the net metering credits that NSTAR Electric paid to net metering customers and the displaced distribution revenues from the electricity generated by net metering customers are offset by the energy market payments received from ISO-NE for the electricity generated by net metering customers (M.D.P.U. No. 163A, § 1.08(4)). We determined that the net metering tariff does not include revenues from the NMRS as part of this offset. The Department concluded that such revenues should be used only to calculate the past period reconciliation amount (M.D.P.U. No. 163A, § 1.08(4)). Therefore, the Department found that the Company had incorrectly calculated its 2012 NMRS and its 2012 NMRS factor, and directed NSTAR Electric to revise its 2013 NMRS factor by removing from the offset the revenues it collected from the NMRS in 2012. NSTAR Electric Company, D.P.U. 12-116-B, at 3 (2014).

B. D.P.U. 23-111

On October 1, 2024, the Company submitted its 2024 electric reconciliation filing for rates effective January 1, 2025, including an NMRS rate adjustment calculated in accordance with the Department's directives from D.P.U. 23-111. NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 24-171. On November 1, 2024, the Department issued its Phase II decision for the Company's 2023 annual reconciliation filing. NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 23-111-A. There, the Department identified an error in the Company's calculation of the past period reconciliation ("PPRAx-2") component of its

NMRS calculation. Pursuant to the net metering tariff, the Company should have included the revenues it billed in the prior year from the NMRS as part of the PPRAx-2 (M.D.P.U. No. 68K). The Department noted that its previous guidance regarding calculation of the NMRS was not correct. (NSTAR Electric Company, D.P.U. 12-116-B, at 2-3 (2014); NSTAR Electric Company, D.P.U. 10-169-1/11-94-A, at 9-10 (2013). Specifically, in D.P.U. 23-111-A, the Department noted that the NMRS calculation deviates from the tariff, that the Department erred in D.P.U. 12-116-B, and that the Company must include NMRS revenues it billed in the prior year as part of the revenue offset component pursuant to M.D.P.U. No. 68K. Therefore, the Department directed the Company to include NMRS revenues it billed in the prior year as part of the PPRAx-2 component pursuant to M.D.P.U. No. 68K in its upcoming reconciliation filing, which is D.P.U. 24-171. NSTAR Electric Company, D.P.U. 23-111-A at 5-6.

Pursuant to the Department's directives in D.P.U. 23-111-A, the Company submitted a revised rate for the NMRS on November 22, 2024. The Company did not file a motion for reconsideration of D.P.U. 23-111-A, nor did it raise concerns about the revised NMRS tariff until filing its Motion for Limited Stay of D.P.U. 24-171 on December 31, 2024, one day before the revised NMRS was to take effect. The Company claimed that the revision to the NMRS rate caused by the change in collection practices would reduce the 2025 revenue collection from \$307.7 million to \$58.7 million. NSTAR Electric Motion for Limited Stay of Phase I Decision at 10, D.P.U. 24-171

III. STANDARD OF REVIEW

A motion to stay proceedings is ordinarily a matter within the discretion of the Department. See Travenol Labs Inc. v. Zotal Ltd, 394 Mass. 95, 97 (1985), citing Landis v. North American Company, 299 U.S. 248, 254-256 (1936); Itel Corporation v. MIS Victoria U, 710 F.2d 199, 202-203 (5th Cir. 1983); Ohio Environmental Council v. United States District Court, 565 F.2d 393, 396 (6th Cir. 1977). “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” Landis v. North American Company, 299 U.S. 248, 254-255 (1936) (citations omitted).

The Department’s regulations do not explicitly provide for a stay; however, pursuant to G.L. c. 30A, § 14(3), the Department may grant a stay pending a judicial appeal (or post-hearing motion). The Department has found that a motion to stay proceedings is ordinarily a matter within the discretion of the Department. Liberty Utilities, D.P.U. 22-32-A at 9 (2022). In deciding whether to grant a stay, the Department must exercise judgment and balance competing interests. Stow Municipal Electric Light Department, D.P.U. 94-176-A at 2.

IV. COMMENTS

On January 7, 2025, the Department issued a Hearing Officer Memorandum requesting written comment on the Company's Motion for Stay and Motion for Reconsideration from interested parties by Friday, January 17, 2025.

On January 15, 2025, the Attorney General submitted comments. The Attorney General supports the Company's Motion to Stay to the extent that it avoids any fluctuation in the NMRS rate until the impacts and ramifications of any change to the NMRS rate are fully investigated by the Department. The Attorney General supports the motions because of the significant impact to ratepayers projected by the Company. Further, the Attorney General indicated that she does not oppose the Motion for Reconsideration to the extent that it seeks an investigation of any potential impacts following D.P.U. 23-111-A (Attorney General Letter at 2).

On January 17, 2025, National Grid submitted comments.¹ National Grid notes that the Department's decisions on the motions will affect its practices because "National Grid recovers its annual net metering expense in arrears." (National Grid Letter at 1). Additionally, National Grid points out that its expenses associated with the provision of net metering credits have risen significantly, and its annual collection of interest increases such expenses. Accordingly, National Grid supports the Company's motions (National Grid Letter at 2).

¹ As of the date of this Order, National Grid is not a party to this proceeding and has not made a motion to the Department to intervene.

V. ANALYSIS AND FINDINGS

The Department's regulations define four types of motions that may be filed by the parties after a final order of the Department: (1) recalculation; (2) reconsideration; (3) clarification; and (4) extension of the judicial appeal period. 220 CMR 1.11(9)-(12). A final Department order remains in effect when a party files one of these motions and during the pendency of a judicial appeal. G.L. c. 25, § 5; G.L. c. 30A, § 14(3); New England Telephone and Telegraph Company, D.T.E. 98-57, at 8 (2000); Appeal of Robert K.M. Lynch, D.P.U. 88-203-A, at 5 (1990). Therefore, a party must request and be granted a stay of a Department order if the order is not to become effective pending a subsequent decision on the matter. New England Telephone and Telegraph Company, D.T.E. 98-57, at 8.

While the Department's regulations do not explicitly provide for a stay, the Department has found that it has specific statutory authority to grant a stay pending a judicial appeal, pursuant to G.L. c. 30A, § 14(3). Aquarion Water Company of Massachusetts, D.P.U. 08-27-A at 7 (2009); Western Massachusetts Electric Company, D.T.E. 00-110-C at 18 (2001); MediaOne Telecommunications of Massachusetts, Inc. et al., D.T.E. 99-42/43/D.T.E. 99-52, at 44 (2000); Boston Edison Company, D.P.U. 92-130-A at 7 (1993); cf. G.L. c. 25, § 5 (“[t]he procedure before the court, except as otherwise set forth herein, shall be that prescribed by its rules, which shall state upon what terms the operation or enforcement of the decision, order or ruling shall be stayed”); see also D.P.U. 94-176-A at 1-2 (rejecting an argument that G.L. c. 25, § 5 precludes the Department from ordering a stay pending a judicial appeal).

Under the Department's standard of review governing stays, the Department may grant a stay in two circumstances. In the first circumstance, the Department examines: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be harmed irreparably absent a stay; (3) the prospect that others will be harmed if the Department grants the stay; and (4) the public interest in granting the stay. In the second circumstance, the Department examines whether: (1) the consequences of the adjudicatory decision are far-reaching; (2) the immediate impact upon the parties in a novel and complex case is substantial; or (3) significant legal issues are involved. Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 15-138-B/D.P.U. 16-163-C at 5 (citing D.T.E. 99-66-B at 3; D.T.E. 98-57, at 8; Stow Municipal Electric Department, D.P.U. 94-176-A, at 2 (1996)); D.T.E. 00-110-C at 18; D.P.U. 92-130-A at 7; D.P.U. 88-203-A at 5-6. Here, the Department finds that: (1) the Company could prevail on the merits of an appeal; (2) the moving party could be harmed irreparably absent a stay; (3) there will not be harm to others if the Department grants a stay; and (4) there is a public interest in granting the limited stay solely as it pertains to the revised interpretation of the NMRS tariff. Our evaluation of each of these factors—and our overriding concern with protecting ratepayer interests—leads to us to grant the stay.

The Department first finds that the Company could prevail on the merits of an appeal, but it is not guaranteed success. The Company argues that the Department's decision in D.P.U. 23-111-A to revise the NMRS rate in a manner that departed from how the Department had previously interpreted that same tariff will harm the Company and its

customers. NSTAR Electric Motion for Limited Stay of Phase I Decision at 12-13, D.P.U. 24-171. Essentially, the Company contends that the Department's decision suffers from a lack of reasoned consistency, which might allow the Company to prevail on appeal. See Tofias v. Energy Facilities Siting Board, 435 Mass 340, 349 (2001) ("A party to a proceeding before a regulatory agency such as the [board] has a right to expect and obtain reasoned consistency in the agency's decisions." Boston Gas Co. v. Department of Pub. Utils., 367 Mass. 92, 104 (1975)). The requirement of "reasoned consistency" does not mean that an agency "may never deviate from its original position," but rather means only "that any change from an established pattern of conduct must be explained." Robinson v. Department of Pub. Utils., 416 Mass. 668, 673 (1993).

Next, the Department finds that the moving party and its customers may be harmed irreparably absent a stay. The Company asserts that if it implements the change to the NMRS tariff as outlined in D.P.U. 23-111-A, its customers will suffer from rate volatility and will pay unnecessary carrying charges. Additionally, the Company argues that if D.P.U. 23-111-A is implemented as is, its cash flow will be negatively affected. The Company benefits from the issuance of this stay as it allows it to continue to include costs from the prior year without also including the revenues of the prior year in its past period reconciliation calculation.

Lastly, the Department looks to whether there is a public interest in granting the stay. The Department, after balancing all competing interests, finds that a stay is in the public interest and granting it would: (1) provide adequate time for the Department to conduct a

full investigation into the NMRS tariff calculation during the Phase II process in D.P.U. 24-171; and (2) prevent the possibility of a substantial fluctuation in bill impacts for customers should the Company prevail on the merits of its Motion for Reconsideration. Specifically, this limited stay will preclude a sharp decrease in the NMRS factor in 2025 followed by a similarly steep increase in the NMRS factor in 2026.

Though we allow the limited stay for the foregoing reasons, we cannot abide the procedural deficiencies that have brought us to this point. The Company's Motion for Limited Stay amounts to a late-filed motion for reconsideration of the Department's Phase II Order in D.P.U. 23-111-A. Pursuant to the Department's rules at 220 CMR 1.11 (10), the Company was required to file a motion for reconsideration within 20 days of the issuance of D.P.U. 23-111-A. Having missed that deadline, the Company still did not seek relief until the day before the NMRS tariff as approved in D.P.U. 23-111-A was to take effect. Moreover, not having given the Department adequate time to decide this motion, the Company has declined to implement the revised rate,² operating as though the stay was effective immediately upon the filing of the motion. The Company's blatant disregard of appropriate procedure is tempered only by the fact that its action purports to serve the benefit of ratepayers, by avoiding significant rate volatility and carrying charges, as discussed above.

² The Company's current summary rate tariff, found online, includes the following explanatory statement: "Net Metering Recovery Surcharge: rate pending further review by the Department of Public Utilities." NSTAR ELECTRIC COMPANY, D/B/A EVERSOURCE ENERGY, SUMMARY OF ELECTRIC DELIVERY RATES, https://www.eversource.com/content/docs/default-source/rates-tariffs/ma-electric/1-tariff-ma.pdf?sfvrsn=2c5b9f03_12 (last visited February 28, 2025).

Aside from these troubling procedural deficiencies, the Department's Phase II Order in D.P.U. 23-111-A and motion practice in this docket highlight potential significant non-compliance with Department-approved tariffs by Eversource and National Grid. Even though Eversource's, National Grid's, and Unitil's NMRS tariff language is identical, each company interprets and applies the tariff differently. For each of the Electric Distribution Companies, Section 1.08 of the NMRS tariff requires the past period reconciliation component of the NMRS formula to be calculated as the difference between: (1) the sum of the Net Metering Credits and the non-reconciling portion of the revenue displaced from two-years prior; and (2) the revenues collected through the NMRS in the prior year. Yet in calculating their NMRS factors, Eversource and National Grid failed to include their revenues collected through the NMRS in the prior year. Instead, both use the revenues collected through the NMRS from two years prior. Unitil's calculation is consistent with the NMRS tariff. The Department cannot discern a principled reason for the companies to apply the same tariff language so differently. Nonetheless, on the current record, the Department will not order corrective action; rather, in Phase II of D.P.U. 24-171, National Grid, D.P.U. 25-02, and Unitil, D.P.U. 24-168, the Department intends to fully investigate how the companies' practices diverged and to develop appropriate steps necessary to ensure consistency for ratepayers across the Commonwealth.

VI. ORDER

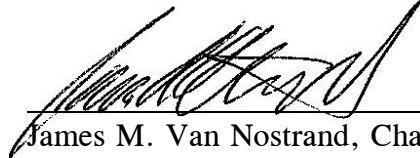
Accordingly, after notice, opportunity for comment, and due consideration, it is ORDERED: That the Company's Motion for Limited Stay relating to the new rate set

for the Net Metering Recovery Surcharge of the Department's Order in D.P.U. 24-171 issued on December 30, 2024, is ALLOWED³; subject to further investigation, and it is


³ The Department's limited stay of the new rate set for the NMRS does not affect any other tariff approved in the Phase I Order. Nor does the limited stay affect any other tariff proposed in this proceeding and otherwise allowed to take effect on January 1, 2025, including: Terms and Conditions – Distribution Service, M.D.P.U. No. 3D; Terms and Conditions – Competitive Suppliers and Competitive REA Suppliers, M.D.P.U. No. 4A; Terms and Conditions – Competitive Suppliers, M.D.P.U. No. 5A; Terms and Conditions – Green Options Suppliers, M.D.P.U. No. 6A; Rate Class Schedules, M.D.P.U. No. 7H through M.D.P.U. No. 45H; Basic Service, M.D.P.U. No. 46F; Basic Service Cost Reconciliation, M.D.P.U. No. 47F; Transmission Service Cost Adjustment, M.D.P.U. No. 48A; Transition Cost Adjustment, M.D.P.U. No. 49B; Energy Efficiency Charge, M.D.P.U. No. 50F; Renewables Charge, M.D.P.U. No. 51A; Off Cycle Meter Read For Switch of Supplier, M.D.P.U. No. 52A; Optional Interval Data Service, M.D.P.U. No. 53A; Power Purchase Rate, M.D.P.U. No. 54C; Farm Discount Rider, M.D.P.U. No. 56A; Miscellaneous Charges, M.D.P.U. No. 57A; Performance Based Revenue Adjustment, M.D.P.U. No. 59H; Pension/PBOP Adjustment Mechanism, M.D.P.U. No. 61E; Residential Assistance Adjustment Clause, M.D.P.U. No. 62G; Storm Cost Recovery Adjustment Factor, M.D.P.U. No. 63H; Storm Reserve Adjustment Mechanism, M.D.P.U. No. 65G; Solar Program Cost Adjustment, M.D.P.U. No. 66F; Solar Expansion Cost Recovery Mechanism, M.D.P.U. No. 67H; Long-Term Renewable Contract Adjustment, M.D.P.U. No. 69F; Attorney General Consultant Expense, M.D.P.U. No. 70G; Transitory Demand Rider, M.D.P.U. No. 71A; Vegetation Management, M.D.P.U. No. 72E; Grid Modernization, M.D.P.U. No. 73K; 2017 Tax Act Credit, M.D.P.U. No. 75D; Electronic Payment Recovery, M.D.P.U. No. 76D; Residential Advance Metering Opt Out, M.D.P.U. No. 77B; Electric Vehicle Program, M.D.P.U. No. 78C; Optional Electric Vehicle Charging (EV-2), M.D.P.U. No. 79B; and Advanced Metering Infrastructure, M.D.P.U. No. 80D.

FURTHER ORDERED: That NSTAR Electric d/b/a Eversource Energy shall comply with all other directives contained in this Order

By Order of the Department,



James M. Van Nostrand, Chair



Cecile M. Fraser, Commissioner



Staci Rubin, Commissioner