

comments on the Collaborative Report, DOER requests leave to answer the reply comments of the Attorney General and NSTAR Electric pursuant to 220 C.M.R. 1.04(5).²

II. The Currently Effective NSTAR Standby Rates Are Not the Same Rates Approved in D.T.E. 03-121 and Have Been Superseded by the Settlement of D.T.E. 05-85

NSTAR Electric presents a summary of the background and proceedings that led up to the standby rates approved as part of a comprehensive settlement in D.T.E. 03-121 (2004). Both the Attorney General and NSTAR Electric rely on this settlement as the basis of their opposition to opening an investigation of standby rates at this time. NSTAR Electric asserts that these rates are “cost-based, fair and designed in accordance with Department ratemaking principles” and concludes that they should not be reopened. NSTAR Reply Comments, at 5. However, these are not the rates that are currently in effect and would be subject to investigation. While DOER does not agree with or accept the Attorney General’s and NSTAR Electric’s characterization of the precedential effect of the settlement in the D.T.E. 03-121, these arguments are irrelevant given the comprehensive settlement of all of NSTAR’s distribution rates in D.T.E. 05-85 (2006). Indeed, the filing of a superseding rate case that would change the settled standby rates was clearly contemplated under the settlement in D.T.E. 03-121. See section 2.3 of that Settlement. The Attorney General also expected that these rates would be superseded in stating “[T]he Department should approve the Agreement only if the rates in the settlement standby tariffs are temporary.” AG Comments at 8 filed on June 11, 2004. DOER concurred with that statement in its Responsive Comments stating, “Nothing in the Settlement preserves the effectiveness of the settled rates to a date certain.” DOER Responsive Comments filed on June 18, 2004, at page 1.

² DOER’s Petition was not limited to the standby rates of NSTAR Electric even though it is the only utility in the state that currently has such rates on file. Our intent in seeking such an investigation is to address standby rates generically so as to affect future standby rate filings of the other utilities. DOER has been told anecdotally by DG developers that the threat of the potential filing of such rates by the other utilities has hampered DG development throughout the state. Thus, there is a need to address the issue with respect to all utilities, not just NSTAR Electric.

In sum, the Attorney General's and NSTAR Electric's reliance on the settlement in D.T.E. 03-121 is misplaced and not controlling. The more important inquiry is the appropriateness of the standby rates in effect as the result of the settlement in D.T.E. 05-85. Under that settlement, standby rates increased over the rates settled in D.T.E. 03-121. As the Department is fully aware, the Settlement in 05-85 provided that NSTAR Electric would increase its distribution prices on May 1, 2006 in an amount calculated to result in a \$30M rate increase. That increase was then offset in whole by a simultaneous reduction in transition charges. The effect was intended to result in no rate increase – except for standby rate customers. Since standby rates do not include a transition charge, per NSTAR Electric's filing in D.T.E. 03-121, standby rates actually increased on May 1, 2006. See table of before and after rates for comparison, Attachment A. This Settlement expressly did not make a determination of the appropriateness of the cost of service submitted by NSTAR in support of the Settlement. See Settlement Agreement at 3.1. Further, unlike the Order approving the settlement of D.T.E. 03-121, the Order approving this Settlement made no findings that the rates are cost based. Rather, the Department simply found them to be just and reasonable and consistent with the public interest. Order at 31. Consequently, contrary to the contentions of the Attorney General and NSTAR Electric, the currently effective standby rates for NSTAR Electric's customers are not cost based.

As the Department is aware, the Settlement of 05-85 established a performance-based rate (PBR) called the "Simplified Incentive Plan" ("SIP"). A performance based rate, by definition, is not cost based. The SIP is a performance based revenue mechanism that establishes the parameters of NSTAR Electric's rate recovery for a five year period starting in 2007. In seeking to revisit NSTAR Electric's standby rates, DOER is not suggesting that such an investigation could reopen the terms of the SIP. DOER submits that the SIP, and any other PBR, simply establishes a revenue level for a utility for a set period of time but does not necessarily lock-in the rate design for the recovery of such revenues. To the extent NSTAR Electric believes that an investigation of standby rates would result in their under-recovery of revenues established under the SIP, that is simply not the case.

III. The Department Is Fully Within Its Discretion To Open An Investigation Into Standby Rates

The Attorney General asserts that DOER has not established that the NSTAR's rates are unjust, unreasonable or discriminatory. AG's Comments, at 4. Furthermore, the Attorney General suggests that the Department must meet the standard for appellate review in order to open an investigation into standby rates. *Id.*, citing G.L. c. 30A, § 1(6). Such a standard for review is contrary to the Department's broad discretion and legislation authority to open a generic investigation into standby rates.

Pursuant to G.L. c. 164, §§ 76, 93 and 94, the Department has the authority to investigate, consider and approve any matter relating to rates. Furthermore, the Department itself has recognized that a regulatory agency's approval of any particular rate plan, whether presented by petition or by settlement motion, cannot trump the requirements of statute. Eastern Enterprises/Essex County Gas Company Merger, D.T.E. 98-27, at 14 (1998). ("Approval of a Rate Plan does not – indeed, cannot – contradict the authority made by § 93" to the Attorney General, the mayor of a city, the selectmen of a town, 20 customers, or the Department itself, *sua sponte*). In fact, in its order approving the most recent NSTAR Settlement, the Department acknowledged that public interest may require a change to an approved rate. "While the Department neither would nor should lightly disturb matters established by a settlement approved or a petition allowed, the public interest requirement of Chapter 164 remains paramount. Matters so established remain, at least in principle - and, if need be, in fact – subject to further adjustment as the public interest may require." Order on Offer of Settlement, NSTAR Electric, D.T.E. 05-85, at 29 (2005).

Thus, the Department is well within its statutory authority in opening an investigation into standby rates. There is no need for DOER or the Department to prove that existing rates are "unjust, unreasonable or discriminatory." While that standard may be appropriate for appellate review, it is not applicable to the Department's discretionary authority to investigate distributed generation and standby rates.

IV. **The Time is Ripe for the Department to Investigate Standby Rates**

Both the AG and NSTAR recognize the need for further investigation into the barriers for distributed generation. AG Comments at 3, NSTAR Comments at 10. However, both claim that such an independent investigation is premature until additional data or evidence becomes available.

In 2002, the Department clearly identified standby or backup rates as a potential hurdle for DG: “Back-up rates that are too high may inappropriately discourage the development of distributed generation.” NOI, at 4. Therefore, the Department included the issue of standby rates as one of the three areas to be investigated in this docket. However, the nature of the DG Collaborative between all stakeholders made it difficult for the participants to constructively discuss or reach agreement on such a controversial issue. While distribution companies would benefit from high standby rates, developers would prefer low (or no) standby rates. Thus, this controversial issue was explicitly excluded from the list of issues which the Department assigned to the DG Collaborative.

To date, neither the Department nor the DG Collaborative has taken on the controversial issue of standby rates as a barrier to distributed generation. The AG and NSTAR comments only highlight the nature of the controversy and the need for an independent investigation. DOER respectfully requests the Department to now address this issue in a new generic proceeding.

Respectfully submitted,

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Attachment A

NSTAR Standby Delivery Rates for Large C & I

(before and after Settlement of D.T.E. 05-85)

Company	Level of Rates Charged	Previous Standby Rate		Current Settled Rate		Percentage Increase in Settled Rate	
		Oct.-May	Jun.-Sep.	Oct.-May	Jun.-Sep.	Oct.-May	Jun.-Sep.
Boston Edison	Distribution Charge CD>1000 kW	\$3.58	\$6.65	\$4.57	\$7.48	27.7%	12.5 %
	CD<=1000 kW	\$5.02	\$9.33	\$6.39	\$10.49	27.2%	12.4%
Cambridge Electric Company	Distribution CD <1000 kVA	\$1.62 /kilovolt-amp.		\$1.79/kilovolt-amp.		10.5%	
	First 100 kilovolt-ampere	\$2.13/kilovolt-amp.		\$2.40/kilovolt-amp.		12.7%	
	Over 100 kilovolt-ampere	\$2.53/kilovolt-amp.		\$2.82/kilovolt-amp.		11.5%	
	CD>= 1000kVA	\$3.36/kilovolt-amp.		\$3.77/kiolvolt-amp.		12.2%	
Commonwealth Electric Company	Distribution Chg.	\$2.25		\$2.47		9.8%	
	Supplemental Delivery Service Distribution Chg.	\$3.00		\$3.42		14.0%	

Source: NSTAR Rate Sheets MDTE 136B, 136D
MDTE 255C, 255E
MDTE 337B, 337D