

August 8, 2003

D.T.E. 98-84/EFSB 98-5

Investigation by the Department of Telecommunications and Energy and the Energy Facilities Siting Board, on their own motions, commencing a Notice of Inquiry and Rulemaking, pursuant to M.G.L. c. 164 §§, 69H, 69I, 76C, and 220 C.M.R. §§ 2.00 et seq., into (1) rescinding 220 C.M.R. §§ 10.00 et seq., and (2) exempting electric companies from any or all of the provisions of G.L. c. 164, § 69I.

I. INTRODUCTION

G.L. c. 164, §69I requires each Massachusetts investor-owned electric company to file with the Department of Telecommunications and Energy (“Department”) biennial forecasts of the electric power needs and requirements of its market area for the ensuing ten-year period.

In the early 1990s, the Department implemented this long-range forecast requirement through a comprehensive integrated resource planning framework governing the procurement of and cost recovery associated with, resources to meet customers’ electricity needs.

220 C.M.R. §§ 10.00 et seq. This framework provided for a regular, two-year planning cycle for all electric companies, encompassing several distinct phases including forecasting, need determination, negotiation, competitive solicitation, and contract approval.

On November 25, 1997, the Governor signed into law Chapter 164 of the Acts of 1997, entitled, “An Act Relative to Restructuring the Electric Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein” (“Restructuring Act”). The Restructuring Act introduced retail competition to the generation sector of the electric industry and relieved electric companies of the obligation to plan for and serve the generation needs of their customers, except for those customers with standard offer or default service. In accordance with G.L. c. 164, § 69I, of the Restructuring Act, the Department is authorized “to exempt any electric ... company from any or all provisions of [G.L. 164, § 69I] upon a determination of the [D]epartment and the [Energy Facilities] [S]iting [B]oard that an alternative process is in the public interest....”

II. THE ALTERNATIVE PROCESS

On April 22, 2003, after notice and hearing, the Department issued an Order that established the alternative process to the long-range electric forecast review required by G.L. c. 164, § 69I, and found that the alternative process is in the public interest. Order Commencing a Notice of Inquiry and Rulemaking into (1) rescinding 220 C.M.R. §§ 10.00 et seq. and (2) exempting electric companies from any or all of the provisions of G.L. c. 164, § 69I, D.T.E. 98-84 (2003) ("D.T.E. 98-84"). The alternative process has two components: (1) an annual planning report, to be filed by investor-owned electric companies, which focuses on the management of their distribution systems; and (2) an annual listing by the same companies of all transmission projects planned to be built within, or partially within, their service territories. D.T.E. 98-84, at 24-28 ;see NSTAR Electric, D.T.E. 01-65 (2002); Western Massachusetts Electric Company, D.T.E. 01-66 (2002); Fitchburg Gas and Electric Light Company, D.T.E. 01-67 (2002); Massachusetts Electric Company & Nantucket Electric Company, D.T.E. 01-68 (2002). The annual planning report, which focuses on the distribution system, must include:

1. ten-year peak demand forecasts for the distribution companies' service area;
2. planning criteria and guidelines for the distribution system planning process;
3. an operating study showing power flows and voltages under normal and emergency conditions;
4. a listing of critical loads (e.g., hospitals) by towns and the circuits by which they are fed;
5. a listing of significant reliability and infrastructure improvement projects planned for construction within the next five years; and
6. a prioritization of future projects.

D.T.E. 98-84, at 25.

The second component of the alternative process, a transmission project report to be filed annually by any investor-owned electric company that owns or operates transmission within Massachusetts, must include:

1. a map of transmission facilities;
2. a list of existing 69 kV or higher transmission facilities, indicating electrical characteristics and ratings;
3. a list of existing transmission substations with a voltage rating of 69 kV or higher, indicating electrical characteristics and ratings; and
4. a description of all transmission system needs identified within the ten-year planning horizon and, where information is available, all transmission-level projects that are being developed to meet these needs.

Id.

For purposes of this requirement, the Department determined that transmission projects shall include the construction of any new transmission line (including any line with a voltage of 69 kV or greater), regardless of the purpose of the project. Id.

The Department reserved its right to clarify the scope and level of detail required in the annual planning report. Id. In addition, the Department stated that, consistent with its responsibility to ensure distribution system reliability and to oversee transmission system planning and reliability, it may, on its own motion, determine whether an investigation of either report is necessary. Id. at 26.

Since G.L. c. 164, § 69I requires both the Department and the Siting Board to determine that the alternative process is in the public interest, the Department deferred a final determination on the exemption from the requirements of Section 69I for investor-owned electric companies, or rescind 220 C.M.R. 10.00 et seq., until the Siting Board could consider whether the alternative process was in the public interest. The Department Order stated that

this docket shall remain open until such time as the Energy Facilities Siting Board issues a decision in EFSB 98-5, so that the Department can issue an order exempting electric companies from the provisions of G.L. c. 164, § 69I and rescinding 220 C.M.R. §§ 10.00 et seq.

D.T.E. 98-84, at 28.

On June 13, 2003, the Energy Facilities Siting Board (“Siting Board”) issued a final decision in Notice of Inquiry on Adoption of an Alternative Process to Exempt Electric Companies from the Provisions of G.L. c. 164, § 69I, EFSB 98-5 (2003). In this decision, the Siting Board found that the alternative process approved by the Department in D.T.E 98-84 is in the public interest, and adopted that alternative process. EFSB 98-5, at 6-7.

III. CONCLUSION

The Department and the Siting Board both have found that the alternative process set forth in D.T.E. 98-84, and summarized here, is in the public interest. Accordingly, the Department hereby exempts investor-owned electric companies from the provisions of G.L. c. 164, § 69I, and instead requires them to comply with the alternative process as set forth in D.T.E. 98-84.

As part of D.T.E. 98-84, pursuant to G.L. c. 164, §§ 69H, 69I, 76C, and 220 C.M.R. §§ 2.00 et seq., the Department also initiated a rulemaking proceeding to rescind 220 C.M.R. §§ 10.00 et seq., entitled “Rules Governing the Procedure by Which Additional Resources Are Planned, Solicited, and Procured by Certain Investor Owned Electric Companies Operating in the Commonwealth of Massachusetts.” See Integrated Resource Planning Rulemaking, D.P.U. 94-162 (1995); see Integrated Resource Management Rulemaking, D.P.U. 89-239 (1990). These rules address forecasts of electricity demand and

supply; evaluations of resource need and potential; requests for resource proposals; solicitations and evaluations of alternative project proposals; and plans to meet additional resource requirements as they apply to the rates, terms, and conditions of contracts between resource suppliers and electric companies. 220 C.M.R. § 10.01(2). The Department finds that, with the passage of the Restructuring Act and the establishment of the alternative process, this regulatory framework is no longer appropriate. Accordingly, the Department rescinds 220 C.M.R. §§ 10.00 et seq.

IV. ORDER

Accordingly, after due notice, hearing, and consideration, the Department hereby ORDERS: That Massachusetts investor-owned electric companies comply with the alternative process established in this proceeding; and it is

FURTHER ORDERED: That in accordance with G.L. c. 164, § 69I, electric companies are hereby exempted from the provisions of G.L. c. 164, § 69I; and it is

FURTHER ORDERED: That, in accordance with G.L. c. 164, §§, 69H, 69I, 76C, and 220 C.M.R. §§ 2.00 et seq., 220 C.M.R. §§ 10.00 et seq., is hereby RESCINDED; and it is

FURTHER ORDERED: That the Secretary of the Department attest to a true copy of this Order rescinding 220 C.M.R. §§ 10.00 et seq., and transmit said attested true copy to the Office of the Secretary of State for the Commonwealth for publication in the Massachusetts Register; and it is

FURTHER ORDERED: That the rescission of the regulations noted in this Order shall take effect upon publication in the Massachusetts Register.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner