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January 31, 2012

VIA EMAIL

Patricia A. Hoffman
Assistance Secretary
Office of Electricity Delivery and Energy Reliability
U.S. Department of Energy
1000 Independence Avenue SW.
Washington, DC 20585

RE: Comments of the Massachusetts Department of Public Utilities on the
U.S. Department of Energy's Preparation for the 2012 Congestion Study

Dear Assistant Secretary Hoffman:

Thank you for your November 10, 2011 letter regarding the 2012 National Electric Transmission Congestion Study (the "2012 Congestion Study"). The Massachusetts Department of Public Utilities ("Mass DPU") is pleased to respond to your request for input and to the U.S. Department of Energy's ("DOE") general request for comments on its preparation for conducting the 2012 Congestion Study.¹

¹ *Plan for Conduct of 2012 Electric Transmission Congestion Study*, U.S. Department of Energy, 76 Fed. Reg. 70122 (November 10, 2011).

The Mass DPU concurs with DOE’s finding in the 2009 Congestion Study that New England should be removed as a “Congestion Area of Concern.” The data and information available to perform your 2012 analysis will continue to support this conclusion. As DOE noted in its 2009 study, New England continues to demonstrate that “it can permit, site, finance, cost-allocate and build new generation and transmission, while encouraging demand-side resources as well.”² Additionally, New England has been able to maintain energy prices at steady levels across zones, indicating little congestion in the region. In short, while there is always room for improvement, New England has a proven planning process that proactively addresses emerging challenges.

We support the comments filed today by the New England States Committee on Electricity (“NESCOE”) on your plan for the 2012 Congestion Study. NESCOE’s comments include a response to DOE’s request for data and information that should be considered in performing the 2012 Congestion Study.

Accordingly, rather than restate NESCOE’s comments, we largely focus on two of the requests in your letter: (1) actions in Massachusetts since your 2009 study that we believe are relevant to your 2012 analysis, and (2) obstacles to the removal or mitigation of significant transmission congestion. We also highlight concerns regarding DOE’s proposed use of analytic results from the Eastern Interconnection Planning Collaborative (“EIPC”).

I. ACTIONS IN MASSACHUSETTS SINCE 2009

A. Energy Efficiency

The benefits of energy efficiency are well known and documented, including its ability to reduce congestion and defer (if not completely avoid) new investment in transmission and/or generation. In 2008, Massachusetts enacted the Green Communities Act, which included a requirement for electric distribution companies to procure all cost-effective energy efficiency

² 2009 National Electric Transmission Congestion Study at 54, *available at* http://congestion09.anl.gov/documents/docs/Congestion_Study_2009.pdf.

and demand response resources.³ Massachusetts utilities will achieve compliance with this mandate by developing and implementing three-year energy efficiency plans to deliver savings for ratepayers.⁴

On January 28, 2010, following a series of regulatory proceedings, the Mass DPU approved the 2010-2012 energy efficiency plans submitted by our state's four electric distribution utilities and one municipal aggregator.⁵ The total estimated savings projected over this period is approximately 2,649,000 MWh.⁶

Massachusetts' ramp-up in energy efficiency has made our state a leader in producing energy savings. The American Council for an Energy-Efficient Economy ("ACEEE") ranked Massachusetts the #1 state in the nation for energy efficiency in its 2011 State Energy Efficiency Scorecard.⁷ The ACEEE noted in its report that Massachusetts "established energy efficiency as the state's 'first-priority' resource" and that we have "the most aggressive [energy savings] target in the nation."⁸

Additionally, going forward, greater levels of energy savings from all of the New England states will be incorporated into the regional load forecast and transmission planning process. Presently, expected energy efficiency growth is incorporated in the load forecast only to the extent these resources have obligations in the forward capacity market, which procures

³ An Act Relative to Green Communities, Chapter 169 of the Acts of 2008. *See* Massachusetts General Laws, Chapter 25, §§ 19(b), 21.

⁴ *See Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines Consistent with An Act Relative to Green Communities*, D.P.U. 08-50 (2008); D.P.U. 08-50-B; D.P.U. 08-50-C; Revised Energy Efficiency Guidelines (October 26, 2009).

⁵ National Grid, NSTAR, Unitil, Western Massachusetts Electric Co., and Cape Light Compact, Approval of 2010–2012 Three-Year Electric Energy Efficiency Plans, Docket Nos. D.P.U. 09-116 through D.P.U. 09-120 (2010), available at <http://www.env.state.ma.us/dpu/docs/electric/09-116/12810dpuord.pdf>.

⁶ *Id.* at 32.

⁷ The 2011 Energy Efficiency Scorecard, published in October, 2011, is publicly available at <http://aceee.org/research-report/e115>. ACEEE ranked four New England states, including Massachusetts, in its top ten.

⁸ ACEEE, 2011 Energy Efficiency Scorecard, at 29.

resources three years in advance but short of covering the entire ten-year planning horizon. In response to concerns expressed by states and regional stakeholders, ISO New England Inc. (“ISO-NE”) developed a methodology in 2011 intended to capture energy efficiency savings more accurately. ISO-NE’s proposed methodology attempts to incorporate expected energy efficiency savings in the years beyond those covered by capacity market obligations, with a commitment to include this energy efficiency growth in the load forecast beginning in 2012.

The analysis undertaken in connection with the 2012 Congestion Study should take into account the ramp-up in energy efficiency experienced in Massachusetts and other states, as well as changes ISO-NE is implementing to reflect greater energy efficiency savings in the regional process.

B. Major Transmission Project Underway

In 2010, the Massachusetts Energy Facilities Siting Board approved, with conditions, the Massachusetts portion of the Greater Springfield Reliability Project (“GSRP”), a 39-mile, 115/345 kV project proposed by Western Massachusetts Electric Company, a subsidiary of Northeast Utilities.⁹ The GSRP spans both Connecticut and Massachusetts. It is one of four major projects encompassing what is known as the New England East-West Solution, or NEEWS, which was initiated to address reliability issues and increase the east-west transfer capability in southern New England.¹⁰

The GSRP similarly received siting approval in Connecticut and the project is currently under construction with an expected in-service date of 2013. Other projects associated with NEEWS are in various stages of planning or construction, and DOE should consider these significant transmission projects as it undertakes the analysis for the 2012 study.

⁹ Western Massachusetts Electric Co., Docket Nos. EFSB 08-2, D.P.U. 08-105, D.P.U. 08-106 (Sept. 28, 2010), available at <http://www.env.state.ma.us/dpu/docs/siting/efsb08-2/dpu08-105/08-106/92810efsbord.pdf>.

¹⁰ See ISO-NE 2011 Regional System Plan (October 21, 2011) at §§ 1, 7.

II. OBSTACLES TO THE REMOVAL OR MITIGATION OF SIGNIFICANT TRANSMISSION CONGESTION

To the extent the 2012 Congestion Study analyzes obstacles to constructing transmission that would connect new generating resources and/or relieving existing constraints, DOE should consider the impact that excessive transmission costs and cost overruns have in engendering opposition to new projects. New England has been successful over the last decade in enhancing reliability and decreasing price volatility through transmission investments. However, the potential for rising transmission costs presents a greater likelihood of challenges to new projects absent mechanisms to control costs and the alignment of cost recovery with current economic conditions.

A. High Base Return on Equity

An excessive return on investments in transmission facilities results in consumers being overcharged for infrastructure and creates an atmosphere ripe for challenge to new projects. There is active litigation in New England regarding the base return on equity (“ROE”) that the Federal Energy Regulatory Commission (the “Commission”) allows transmission owners to earn on transmission investments.¹¹ The Mass DPU joined the Massachusetts Attorney General, fellow state commissions, and others in filing a complaint against the current 11.14 percent base ROE. The complaint, which is an active and open docket before the Commission, calls for an investigation into whether this base ROE is just and reasonable in light of significantly altered economic conditions and lower costs of raising capital since the base ROE was set in 2006.

¹¹ See *Attorney General of the Commonwealth of Massachusetts, et al. v. Bangor Hydro-Electric Company, et al.*, Docket No. EL11-66-000 (filed Sept. 30, 2011).

B. Transmission Incentives

In addition to the base ROE, the Commission may grant adders or incentives on a case-by-case basis to promote transmission development.¹² These adders and incentives, which include both bonus rates of return and risk mitigation mechanisms, has substantially increased—perhaps by hundreds of millions of dollars collectively¹³—the costs of new projects. However, to those like the Mass DPU that are active in the transmission planning process, it is not clear that this full suite of incentives is needed to drive development.

The Commission has signaled an interest in addressing its policy on transmission incentives, which could help reduce opposition to new projects that may be needed to remove congestion. In 2011, the Commission issued a notice of inquiry (“NOI”) into its transmission incentive policies.¹⁴ The Mass DPU, along with many other state commissions, consumer advocates, transmission owners, and other interested parties, submitted comments on the NOI.¹⁵ We understand that the Commission is still considering responses to its NOI and what additional action, if any, to take in reforming transmission incentives policies.

C. Cost Overruns

Mechanisms to address project cost overruns would also militate against opposition to new transmission projects. New England has experienced numerous projects whose final costs

¹² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294, 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh’g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

¹³ *See* Comments of Certain State and Consumer-Owned Entities, *Promoting Transmission Investment Through Pricing Reform*, 135 FERC ¶ 61,146 (2011), at 23-24.

¹⁴ *Promoting Transmission Investment Through Pricing Reform*, 135 FERC ¶ 61,146 (2011).

¹⁵ *See* Comments of the Massachusetts Department of Public Utilities, *Promoting Transmission Investment Through Pricing Reform*, 135 FERC ¶ 61,146 (2011), available at <http://www.mass.gov/eea/docs/dpu/regional-and-federal-affairs/2011-9-12-dpu-comments.pdf>.

substantially exceeded the initial estimates (by as much as 100% or more) put forward during the process of selecting the most cost-effective solution to an identified reliability need.¹⁶ In response to such cost overruns, New England undertook a process to improve and standardize cost-estimating practices across the region, which will hopefully mitigate the degree of such overruns. Even so, the problem of even modest and prudently incurred cost overruns is exacerbated by the application of unnecessary transmission incentives and adds to these cost overruns.

In short, routine and significant cost overruns erode the public confidence in the stated benefits of new infrastructure. The policy regarding cost overruns should be revisited to limit applicability of incentives and ensure that consumers do not bear the full risk of escalating costs.

III. USING EASTERN INTERCONNECTION PLANNING STUDIES IN THE 2012 CONGESTION STUDY

Massachusetts has been an active participant in the EIPC, both through our engagement as a member of the Eastern Interconnection States' Planning Council ("EISPC") and as a

¹⁶ The New England Conference of Public Utility Commissioners ("NECPUC") filed a complaint at FERC in 2008 claiming that application of incentive rates of return on transmission project costs that significantly exceeded initial estimates was unjust and unreasonable. *New England Conference of Pub. Utils. Comm'rs, Inc. v. Bangor Hydro-Elec. Co. et al.*, Docket No. EL08-69-001 (filed June 12, 2008). The complaint covered New England projects identified in 2004 that were in-service or expected to be in-service by the end of 2008 and estimated that total cost overruns for these projects, while challenging to estimate, was approximately \$160 million. *Id.* at n.8. FERC denied NECPUC's complaint and subsequent request for rehearing. *New England Conference of Pub. Utils. Comm'rs, Inc. v. Bangor Hydro-Elec. Co. et al.*, 124 FERC ¶ 61,291 (2008), *order on reh'g*, 135 FERC ¶ 61,140 (2011).

As an additional example, a 2010 FERC technical conference on revisions to the California Independent System Operator's ("Cal-ISO") planning process highlighted issues related to cost overruns in California. At the technical conference, counsel to the California Municipal Utilities Association testified that some project costs were double or triple the amount estimated. Federal Energy Regulatory Commission, Technical Conference on Cal-ISO Proposed Revised Transmission Planning Process (RTPP) (ER10-1401-000) (Aug. 24, 2010) (comments of Tony Braun). An attorney for Cal-ISO also stated that there was no recourse available to address project estimates two or three times lower than actual costs. *Id.* (comments of Anthony Ivancovich). See Esther Whieldon, *Merchant developers continue to fight for more rights to compete for Cal-ISO grid projects*, Inside FERC, Aug. 30, 2010, at 10.

participant in EIPC working groups. The EIPC and EISPC processes have facilitated important collaboration among states, transmission planners, generators, developers, and others actively involved in energy policy and innovation. The analyses produced in the EIPC study provide useful information about how energy policies might impact the electric system in the years ahead. However, for the reasons set forth below, it would not be appropriate for DOE to utilize results from EIPC or EISPC in conducting the 2012 Congestion Study.

The EIPC analyses are intended to reflect *hypothetical* future scenarios based on assumptions that required delicately negotiated trade-offs among stakeholders participating in the process, including how transfer limits would be set and which generation and transmission projects could reasonably be assumed to be in service by 2020. Many stakeholders, including Massachusetts, would have had deep reservations about participating in the EIPC and EISPC if they knew that the study results would be used to identify congestion in a formal DOE study, with implications for the identification of National Interest Electric Transmission Corridors and potential assertion of federal backstop siting authority.

Moreover, given the multitude of trade-offs required to reach consensus on the EIPC studies, including the hundreds of inputs and assumptions underlying these studies, they cannot reliably be viewed as precise indicators of resource locations and congestion. We agree with the comments submitted today by NESCOE that any data or information produced through the EIPC process should be viewed only as scenario analysis and should not be accepted as a reasonable proxy for the presence of congestion.

IV. CONCLUSION

The Mass DPU appreciates the opportunity to respond to DOE’s request for comments on its plan to conduct the 2012 Congestion Study. We look forward to reviewing the draft study and to working with DOE on its analysis of Massachusetts and the New England region.

Sincerely,

/s/ Ann G. Berwick
Ann G. Berwick
Chair

/s/ Jollette A. Westbrook
Jollette A. Westbrook
Commissioner

/s/ David W. Cash
David W. Cash
Commissioner