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December 20, 2017

Mark D. Marini, Secretary  
Department of Public Utilities  
One South Station, 2nd Floor  
Boston, Massachusetts 02110

**Re: NSTAR Electric Company and Western Massachusetts Electric  
Company d/b/a Eversource Energy, D.P.U. 17-05**

Dear Secretary Marini:

Enclosed please find the Office of the Attorney General's Motion for Reconsideration, Motion to Reopen the Hearings, or in the alternative, Complaint filed pursuant to G.L. c. 164, § 93.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions about this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph W. Rogers", written in a cursive style.

Joseph W. Rogers  
Assistant Attorney General

Enclosure

cc: Mark Tassone, Hearing Officer  
Cheryl Kimball, Esq.  
Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

\_\_\_\_\_  
NSTAR ELECTRIC COMPANY AND )  
WESTERN MASSACHUSETTS ELECTRIC )  
COMPANY d/b/a EVERSOURCE ENERGY )  
\_\_\_\_\_

**D.P.U. 17-05**

**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Boston this 20th day of December, 2017.



Joseph W. Rogers  
Assistant Attorney General  
Massachusetts Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, Massachusetts 02108  
(617) 727-2200

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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<b>NSTAR ELECTRIC COMPANY AND</b>	)	
<b>WESTERN MASSACHUSETTS ELECTRIC</b>	)	
<b>COMPANY d/b/a EVERSOURCE ENERGY</b>	)	<b>D.P.U. 17-05</b>
	)	

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**ATTORNEY GENERAL’S MOTION FOR RECONSIDERATION  
AND TO REOPEN THE HEARINGS, OR IN THE ALTERNATIVE,  
COMPLAINT PURSUANT TO G.L. c. 164, § 93**

**I. INTRODUCTION**

The Office of the Attorney General (“AGO”) hereby moves, pursuant to 220 C.M.R. § 1.11(8) and (10), for reconsideration and to reopen the hearings in this matter to reflect the impact of the federal tax legislation passed by Congress on December 20, short titled as the “Tax Cuts and Jobs Act” (hereafter, the “Tax Cuts and Jobs Act”),<sup>1</sup> on federal corporate tax rates used to determine NSTAR Electric Company’s (“NSTAR”) and Western Massachusetts Electric Company’s (“WMECo”) d/b/a Eversource Energy (together, “Eversource” or the “Companies”) distribution rates that will be effective February 1, 2018 through the Companies’ five-year Performance Based Rate Plan (the “Five-Year Rate Plan”).<sup>2</sup> See Final Order, (NSTAR) Sch. 4, p. 769; (WMECO) Sch. 4, p. 778. In the alternative, the AGO requests that the Department of

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<sup>1</sup> The official title of the law is “To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.”

<sup>2</sup> The rates based on that revenue requirement are scheduled to become effective February 1, 2018. See Eversource Motion to Delay Implementation of Base Distribution Rates (Stamped Approved by the Department, December 14, 2017).

Public Utilities (the “Department”) treat this pleading as a complaint filed pursuant to G.L. c. 164, § 93.

As discussed further below, the Tax Cuts and Jobs Act reduces the federal corporate income tax rate from 35 to 21 percent. Unless the Department adjusts the Companies’ revenue requirements to reflect this federal income tax reduction, Eversource customers will be *over-paying* for their electric service by hundreds of millions of dollars during the Five-Year Rate Plan. The Department should take immediate steps to avoid this major corporate windfall and ensure that customers are paying just and reasonable rates by adjusting the Companies’ distribution rates before they go into effect on February 1, 2018. *See* Final Order, (NSTAR) Sch. 4, p. 769; (WMECO) Sch. 4, p. 778. Specifically, the Department should reduce NSTAR’s annual revenue requirement by \$62.252 million and WMECo’s annual revenue requirement by \$11.834 million. Doing so will result in a total net *rate decrease* of \$50 million for NSTAR customers. Similarly, WMECo’s \$25 million *rate increase will be reduced* by almost 50 percent, decreasing it to \$13 million.

## **II. BACKGROUND**

On January 17, 2017, NSTAR and WMECo, pursuant to G.L. c. 164, § 94 (“Section 94”), filed two requests seeking approval from the Department for a general increase in base rates, as well as other proposals. On November 30, 2017, the Department issued an order increasing NSTAR’s cost of service to \$866,483,950 annually and WMECo’s to \$161,048,552 annually. Final Revenue Requirement Order, D.P.U. 17-05 (November 30, 2017) (“Final Order”). As part of the Companies’ cost of service, the Department allowed NSTAR and WMECo to recover

\$80,647,196 and \$14,958,039, respectively, annually for the payment of federal income taxes<sup>3</sup> and recognized a balance of the Reserve for Deferred Income Tax of \$984,848,121 and \$167,876,539, respectively, for each of the Company.<sup>4</sup> These calculations were based on a corporate income tax rate of 35 percent.

On December 20, 2017, both Houses of Congress passed the Tax Cuts and Jobs Act. Effective January 1, 2018, the Act reduces the federal corporate income tax rate on corporations from 35 percent to 21 percent. The Department's Final Order does not reflect this known and measurable change in federal corporate income tax rates that will be in effect during the Five-Year Rate Plan.

### **III. STANDARD OF REVIEW**

#### **A. Reconsideration**

The Department's standard for reviewing a motion for reconsideration is well established. Reconsideration of previously decided issues is granted when circumstances dictate that the Department take a fresh look at the record for the purpose of modifying a decision reached after review and deliberation. *Berkshire Gas Company*, D.P.U. 905-C, pp. 6–7 (1982). Rather than simply rearguing issues considered and decided, a motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. *Boston Edison Company*, D.P.U. 90-270-A, p. 3 (1991). The Department has denied reconsideration where the request rests upon information that could have

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<sup>3</sup> These federal income tax dollar amounts are before the amortization of income tax credits which are not dependent on the federal corporate income tax rate. Final Order, (NSTAR) Sch. 8, p. 773; (WMECO) Sch. 8, p. 782.

<sup>4</sup> The balance of Reserve for Deferred Income Tax includes amounts associated with deferred federal income taxes and deferred state income taxes.

been provided during the course of the proceeding and before issuance of the Final Order.

*Boston Gas Company*, D.P.U. 96-50-C (Phase I), pp. 36–37 (1997).

### **B. Reopen Proceedings**

The Department’s Procedural Rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part, “[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause.” Good cause for purposes of reopening has been defined by the Department as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. *Boston Gas Company*, D.P.U. 88-67 (Phase II), p. 7 (1989); *Boston Edison Company and Commonwealth Electric Company*, D.T.E. 04-61, p. 5 (2005).

## **IV. The Department Should Adjust the Companies’ Distribution Rates to Reflect The Decrease in the Federal Corporate Income Tax Rate**

### **A. Extraordinary Circumstances and Department Precedent Require that the Department Reopen the Record and Adjust the Companies’ Distribution Rates.**

The reduction in the federal corporate income tax rate is an extraordinary circumstance that requires a fresh look at the record for the express purpose of substantively modifying the Department’s final revenue requirements decision. *Berkshire Gas Company*, D.P.U. 905-A p. 6 (1982) (Company’s union wage, salary and payroll tax expense did not become known and measurable because of a strike). This change in federal law was not known until after the Department closed hearings and issued the Final Order. Accordingly, until Congress passed the Tax Cuts and Job Act, the AGO could not address its impact on the Companies’ cost of service. The change in corporate income taxes is a material issue that has a significant impact on the

Department's decision. As discussed at greater length below, the Tax Cuts and Jobs Act significantly impacts both (1) the level of the current corporate income tax expense allowed in the Companies' rates and (2) the amount of deferred income taxes.

Adjusting the Companies' rates to reflect a reduction in corporate taxes is consistent with Department precedent. In 1986, President Reagan signed a new tax law that reduced corporate tax rates from 46 to 34 percent. Thereafter, to ensure that rates remained just and reasonable, the Department opened an investigation

to consider *an immediate adjustment* to utility rates to pass through to ratepayers any benefits of the decrease in the federal corporate tax rate that result from the ratemaking calculation of the tax expense.

*Reduction in Federal Income Tax Rates*, D.P.U. 87-82 (1997), p. 2 (emphasis supplied). Then, the Department required all utilities (except for some small companies) to recalculate their revenue requirement to reflect the decrease in the federal corporate tax rate. *Reduction in Federal Income Tax Rates*, D.P.U. 87-21-A, p. 5 (1987).

Like the utilities in 1986, the Companies' rates approved in the Final Order are based on a federal income tax expense computed with a now outdated, and therefore incorrect, corporate tax rate. This tax rate reduction was unknown at the time the Order issued, and this new information will certainly have a significant impact on the Companies' cost of service, reducing it by millions of dollars. "Accordingly, if the cost of service reduction were not reflected in rates to consumers, utilities would be permitted to reap an inappropriate windfall." D.P.U. 87-21-A, pp. 7-8.

## **B. Federal Income Tax Expense**

In determining a company's total revenue requirement, the Department permits a company to include as an expense in its cost of service a normalized level of federal income taxes. D.P.U. 87-21-A, p. 8. This tax expense is based largely on applying the corporate tax rate to the equity portion of the allowed return on rate base. *Fitchburg Gas and Electric Light Company*, D.P.U. 1270/1414, pp. 45–46 (1983) (Requiring companies to submit a tax calculation based on rate base method). *See* Final Order, pp. 773, 782 (NSTAR & WMECo Electric Schedule 8 – Income Taxes). Using this method, for NSTAR, the Department's Final Order includes \$80,647,196 in federal income tax expense at the 35 percent rate. *Id.*, p. 773. For WMECo, the Department's Final Order includes \$14,958,039 in federal income tax expense at the 35 percent rate.<sup>5</sup> *Id.*, p. 782.

Attached is an affidavit by AGO witness David Efron, who has calculated the significant, known and measurable reduction in federal corporate income tax expense for each Company, applying the new 21 percent federal income tax expense rate to the NSTAR and WMECo taxable income. *See* Attached Affidavit of David J. Efron ("Efron Affidavit"). As a result, NSTAR must reduce rates by \$44.7 million and WMECo by \$8.336 million, after applying the respective Gross Revenue Conversion Factor. *See* Efron Affidavit, Sch. 1. The Tax Cuts and Jobs Act requires a total federal income tax expense reduction of \$53.036 million for both companies to reflect current taxes. Failure to include these tax reductions in the Companies' rates that will be effective in February 1, 2018 will (1) result in unjust and

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<sup>5</sup> These federal income tax dollar amounts are before the amortization of income tax credits which are not dependent on the federal corporate income tax rate. Final Order, (NSTAR) Sch. 8, p. 773; (WMECO) Sch. 8, p. 782.

unreasonable rates and (2) allow the Companies to earn well in excess of their authorized return on equity.

### **C. Excess Deferred Federal Income Taxes**

Income tax timing differences arise when a utility's actual income taxes do not match income taxes recognized on the utility's accounting books for the same period. Deferred income taxes are accrued when a utility has a current deduction or credit for tax purposes, but not for book purposes. Through the end of the test year in this case, the Companies accrued these deferred federal income taxes at the 35 percent tax rates.

The Tax Cuts and Jobs Act significantly decreases marginal federal income tax rates from 35 percent to 21 percent. Thus, the Companies have recovered an excess of deferred income taxes from customers because the Companies accumulated those deferred income taxes at the higher rate of 35 percent rather than the 21 percent that will actually be paid to the Internal Revenue Service. The Department must return to customers the Companies' excess reserve for deferred federal income taxes. Both NSTAR and WMECo have excess deferred income taxes with the adoption of this new tax rate. *Massachusetts Electric Company and Nantucket Electric Company*, D.P.U. 15-155, pp. 256–59 (2016); *NSTAR Gas Company*, D.P.U. 14-150, pp. 241–42 (2015); *Boston Gas Company and Colonial Gas Company*, D.P.U. 10-55, p. 637 (2010) (Amortization of Excess Deferred Income Taxes); *Berkshire Gas Company*, D.P.U. 90-121, p. 136 (1990) (The Department required the flow back to ratepayers all of the excess deferred income taxes paid through rates).

Therefore, in order to prevent utilities from reaping a windfall from the change in federal corporate income tax rates, the Department should immediately reduce rates to reflect the

Companies pass back of the excess deferred income taxes over the remaining lives of the property which gave rise to the reserve. *Id.* This is known as the “average rate assumption method” (“ABA”). *Id.*

AGO witness David Effron has calculated the changes in the Companies’ required balance of deferred federal income taxes. *See* Effron Affidavit. The Department found that NSTAR has a Reserve for Deferred Income Tax of \$984.848 million. WMECo’s reserve is \$167.877 million. *See* Final Order, pp. 769 and 778, respectively. NSTAR has Excess Deferred Income Taxes in the amount of \$315.543 million and WMECo in the amount of \$53.787 million. *See* Effron Affidavit, Sch. 1. The remaining lives for NSTAR and WMECo’s assets are 24.9 years and 21.4 years, respectively. *Id.* Applying the ABA method to these balances of excess deferred federal income taxes and applying the respective Gross Revenue Conversion Factors, NSTAR’s Annual Amortization of Excess Deferred Taxes reduces the Company’s revenue requirement by \$17.550 million. WMECo’s corresponding reduction is \$3.498 million. *Id.*

## **V. AGO Complaint Pursuant to G.L. c. 164, § 93**

In the alternative, the AGO requests that the Department treat this Motion as a complaint pursuant to G.L. c. 164, § 93, regarding the price of the electricity sold and delivered by NSTAR and WMECo. “Once a price-related issue is properly raised by a s. 93 complaint, the Department is compelled by statute to give appropriate notice, hold a public hearing and order any suitable change in the price of gas or electricity.” *Petition of the Attorney General of the Commonwealth*, D.T.E. 99-118, p. 5 (Interlocutory Order March 13, 2001).

Eversource’s shareholders will realize an earnings windfall if the Department does not reduce rates to reflect the reduction in the federal corporate income tax rate. In his affidavit, Mr. Effron has established a prima facie case that the effective returns on common equity embedded

in the Companies' rates will be in excess of 13 percent, if the Department fails to reduce rates to reflect the reduction in the federal income tax rate from the 35 percent to 21 percent in rates. *See* Effron Affidavit, Sch. 2. Thus, the AGO's burden of proof under the section 93 has been satisfied. *Petition of the Attorney General of the Commonwealth*, D.T.E. 99-118, p. 8 (Final Order). The burden of production now shifts to the Company to produce evidence necessary to rebut the allegations that it will over earn its authorized return. *Id.*, p. 9. Here, the Companies cannot produce evidence to rebut the fact that there will be a tax reduction, and as a result, the Companies' current revenue requirement is incorrect.

Absent a Department adjustment, NSTAR's rates will be set based on a rate of return of 13.08 percent and WMECo's will be set based on a rate of return of 13.57 percent. These returns are well in excess of the cost of equity capital that the Department has found reasonable in this case. *See* Final Order, pp. 708–14. Therefore, if the Department fails to reduce rates to reflect the lower federal corporate income tax rate, the rates charged to customers for electric distribution service will be unjust and unreasonable and the Companies' shareholders will realize an earnings windfall.

## VI. CONCLUSION

Given the reduction in federal corporate income tax expense and flow back of the excess deferred federal income taxes, the Department should reduce Eversource's revenue requirement by a total of **\$74.086 million: \$62.252 million for NSTAR and \$11.834 million for WMECo.**

The significant known and measurable reduction in NSTAR and WMECo's cost of service makes clear that the rates resulting from the Department's Final Order, which are currently scheduled to be effective February 2018, will not be just and reasonable. Accordingly, if NSTAR and WMECo's cost of service reduction is not reflected in rates to customers, the Companies will be permitted to reap an inappropriate windfall. *Reduction in Federal Income Tax Rates*, D.P.U. 87-21-A, pp. 7-8.

Respectfully submitted,

MAURA HEALEY  
ATTORNEY GENERAL

By:



Joseph W. Rogers  
Assistant Attorney General  
Massachusetts Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, Massachusetts 02108

Dated: December 20, 2017



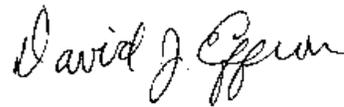
5. The Department's calculation of income taxes was determined assuming a federal corporate income tax rate of 35 percent and a state income tax rate of 8 percent. *See* Order, pp. 773 and 782.
6. The U.S. Federal "Tax Cuts and Jobs Act," that was passed by Congress on December 20, 2017, reduces the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018.
7. The new rates associated with docket D.P.U. 17-05 will go into effect after the new lower federal corporate tax rate becomes effective.
8. Since the Department assumed a federal corporate income tax rate of 35 percent in determining the revenue requirements for the Companies and the actual rate will be 21 percent, the Companies will be charging customers rates in excess of the Companies' expected costs to serve.
9. I have calculated that the new federal corporate income tax rate will reduce NSTAR's revenue requirement as determined by the Department by \$44,702,000. *See* the attached Schedule 1, line 6 for NSTAR.
10. I have calculated that the new federal corporate income tax rate will reduce WMECo's revenue requirement as determined by the Department by \$8,336,000. *See* the attached Schedule 1, line 6 for WMECo.
11. The rates that the Companies charge customers result in an accumulation of deferred federal income taxes into the Reserve for Deferred Income Taxes. *See* Order, pp. 769 and 778.
12. The deferred federal income taxes were accumulated at the old federal corporate income tax rate of 35 percent.
13. The reduction in the federal corporate income tax rate creates an excess amount in the Companies' balances of Reserve for Deferred Income Tax, since the Companies will be paying those income taxes back at the new lower rate of 21 percent.

14. The excess balance of Reserve for Deferred Income Tax associated with federal corporate income taxes for NSTAR is \$315,543,000. *See* attached Schedule 1, line 11 for NSTAR.
15. The average remaining service life of the assets that gave rise to those deferred taxes is 24.9 years for NSTAR. *See* attached Schedule 1, line 25 for NSTAR.
16. The balance of excess deferred federal corporate income taxes for NSTAR should flow back to customers over the average remaining life at the rate of \$12,665,000 per year. *See* attached Schedule 1, line 13 for NSTAR.
17. The revenue requirement reduction associated with the annual flow back of the excess deferred income taxes is determine by using the Gross Revenue Conversion Factor of 1.3857 to account for the income taxes and the uncollectible costs associated with the flow back or \$17,550,000 for NSTAR. *See* attached Schedule 1, lines 22 and 15, respectively for NSTAR.
18. The excess balance of Reserve for Deferred Income Tax associated with federal corporate income taxes for WMECo is \$53,787,000. *See* attached Schedule 1, line 11 for WMECo.
19. The average remaining service life of the assets that gave rise to those deferred taxes is 21.4 years for WMECo. *See* attached Schedule 1, line 25 for WMECo.
20. The balance of excess deferred federal corporate income taxes for WMECo should flow back to customers over the average remaining life at the rate of \$2,511,000 per year. *See* attached Schedule 1, line 13 for WMECo.
21. The revenue requirement reduction associated with the annual flow back of the excess deferred income taxes is determine by using the Gross Revenue Conversion Factor of 1.3932 to account for the income taxes and the uncollectible costs associated with the flow back or \$3,498,000 for WMECo. *See* attached Schedule 1, lines 22 and 15, respectively for WMECo.

22. I have calculated the return on common equity as shown in the attached Schedule 2 for each Company, assuming the Department does not decrease the distribution rates the Companies charge customers to reflect the reduction in the federal corporate income tax rate.
23. The return on common equity will be 13.08 percent for NSTAR and 13.57 percent for WMECo. *See* attached Schedule 2, line 8.

The foregoing affidavit is true, correct, accurate and complete, to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this 20<sup>h</sup> day of December 2017.



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David J. Efron

NSTAR ELECTRIC/WMECO  
DPU 17-05  
EFFECT OF TAX RATE CHANGE ON REVENUE REQUIREMENT  
(\$000)

		<u>NSTAR ELECTRIC</u>	<u>WMECO</u>
1	Federal Taxable Income	\$230,421	\$42,737
2	Federal Income Tax Expense at 35%	80,647	14,958
3	<i>Federal Income Tax Expense at 21%</i>	<u>48,388</u>	<u>8,975</u>
4	Difference	32,259	5,983
5	Gross Revenue Conversion Factor	<u>1.3857</u>	<u>1.3932</u>
6	Reduction to Revenue Requirement	<u>\$44,702</u>	<u>\$8,336</u>
7	Reserve for Deferred Income Tax	984,848	167,877
8	State Deferred Income Tax 0.1990	195,990	33,408
9	Federal Deferred Income Tax 0.8010	788,858	134,469
10	Proportional Reduction to FIT Rate	<u>0.4000</u>	<u>0.4000</u>
11	Excess Deferred Income Taxes	315,543	53,787
12	Remaining Life	<u>24.9</u>	<u>21.4</u>
13	Annual Amortization of Excess Deferred Taxes	12,665	2,511
14	Gross Revenue Conversion Factor	<u>1.3857</u>	<u>1.3932</u>
15	Reduction to Revenue Requirement	<u>\$17,550</u>	<u>\$3,498</u>
 <u>Gross Revenue Conversion Factor</u>			
16	Revenue	100.00%	100.00%
17	Bad Debt Percentage	<u>0.7084%</u>	<u>1.2435%</u>
18	Net Revenues	99.29%	98.76%
19	State Income Tax 8%	7.94%	7.90%
20	Federal Income Tax 21%	<u>19.18%</u>	<u>19.08%</u>
21	Operating Income Percentage	72.17%	71.78%
22	Revenue Conversion Factor	<u>1.3857</u>	<u>1.3932</u>
 <u>Remaining Life</u>			
23	Net Utility Plant in Service	3,628,307	578,014
24	Depreciation Expense	<u>145,627</u>	<u>26,984</u>
25	Remaining Life	<u>24.9</u>	<u>21.4</u>

NSTAR ELECTRIC/WMECO  
DPU 17-05  
EFFECT OF TAX RATE CHANGE ON ROE  
(\$000)

		<u>NSTAR ELECTRIC</u>	<u>WMECO</u>
1	Rate Base	\$2,732,852	\$436,373
2	Common Equity Ratio	<u>53.34%</u>	<u>54.51%</u>
3	Equity Supporting Rate Base	A      1,457,703	237,867
4	Return on Equity	<u>10.00%</u>	<u>10.00%</u>
5	Income on Common Equity Supporting Rate Base	145,770	23,787
6	Reduction to Income Tax Expense	<u>44,924</u>	<u>8,494</u>
7	Income with Reduced Income Tax Rate	B <u>\$190,694</u>	<u>\$32,281</u>
8	Return on Equity	B/A <u>13.08%</u>	<u>13.57%</u>