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plant account (Exhs. ES-JJS-1, at 8-10; ES-JJS-2, at 15, 21). To determine net salvage values, the Company reviewed its actual historical salvage and cost of removal data through 2020 (Exh. ES-JJS-1, at 8, 13-14).

With the exception of general plant assets, the Company relied on the straight-line remaining life method and average service life procedure to determine depreciation accrual rates (Exhs. ES-JJS-1, at 15-16; ES-JJS-2, at 6). For general plant accounts 391.10, 391.20, 393.00, 394.00, 395.00, 397.00, and 389.00, the Company used the straight-line amortization method (Exhs. ES-JJS-1, at 15-16; ES-JJS-3, at 2). Additionally, NSTAR Electric proposed a five-year amortization for its unrecovered reserve (Exhs. ES-JJS-1, at 16; ES-JJS-3, at 2). As part of the depreciation study, the Company also proposed to recover the remaining book value of automated meter reading (“AMR”) meters in account 370.10 by year end 2028, to align with the Company’s AMI deployment plan and proposal (Exhs. ES-REVREQ-1, at 203; ES-AMI-1, at 21; ES-JJS-1, at 19). To accomplish this, NSTAR Electric proposed a terminal retirement date of 2028, resulting in a proposed accrual rate for account 370.10 of 8.62 percent (Exhs. ES-REVREQ-1, at 203; ES-AMI-1, at 21; ES-JJS-2, at 51, 256; ES-JJS-3, at 1).

2. Positions of the Parties

a. Attorney General

The Attorney General argues that the Department should reject the Company’s proposed depreciation accrual rates and instead accept those proposed by her depreciation witness (Attorney General Brief at 143, citing Exh. AG-DJG-1; Attorney General Reply

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Brief at 44). The Attorney General contends that NSTAR Electric underestimates service lives associated with five accounts and asserts that the Company has failed to prove that its depreciation accrual rates are not excessive (Attorney General Brief at 144, 153). The Attorney General argues her proposed depreciation rates are reasonable, based on accepted methodologies, and supported by empirical evidence (Attorney General Brief at 144-145, citing Exh. AG-DJG-1, at 7-9; Attorney Reply Brief at 43-44). Further, the Attorney General rejects the notion that her proposed service lives are only based on mathematical curve fitting, and she contends that while mathematical curve fitting was given primary consideration, visual fitting and professional judgment were also relied upon (Attorney General Reply Brief at 43-44).

Specifically, the Attorney General proposes longer average service lives for accounts 361, 362, 365, 366, and 370.20 (Attorney General Brief at 144, 146-151, 152-153). For Account 361 (Structures and Improvements), Account 362 (Station Equipment), Account 365 (Overhead Conductors and Devices), and Account 366 (Underground Conduit), the Attorney General argues that her proposed curves and average service lives provide a better mathematical fit to the Company's historical retirement data (Attorney General Brief at 146-151, citing Exh. AG-DJG-1, at 17-24; Attorney General Reply Brief at 44). For Account 370.20 (AMI Meters), the Attorney General asserts that a longer average service life of 25 years is more consistent with meter manufacturer and Company representations than NSTAR Electric's proposed average service life of 15 years (Attorney General Brief at 152-153). With respect to Account 370.10 (AMR Meters), the Attorney General proposes

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the same curve and average service life determined by the Company's depreciation study; however, she rejects the application of a terminal retirement date of 2028 and argues that the Company's proposal is driven by an incentive to increase cash flow (Attorney General Brief at 151-152).

Finally, the Attorney General argues the Company has not met its burden of demonstrating that its proposed depreciation expense is not excessive (Attorney General Brief at 153). Based on the above arguments, the Attorney General recommends that the Department approve her proposed depreciation accrual rates and reduce the Company's depreciation expense by approximately \$17 million (Attorney General Brief at 153, citing Exh. AG-DJG-1, at 4).

b. Company

NSTAR Electric argues its depreciation study was based on historic plant data and informed by supplemental information from management and personnel, field reviews of the Company's property, estimates used by other utilities, and expert judgment (Company Brief at 238-239). NSTAR Electric asserts that the Attorney General relies exclusively on statistical analysis of the historical data and mathematical fitting, and the Company maintains that such exclusive reliance is inconsistent with authoritative depreciation texts (Company Brief at 239, 243-244, 250; Company Reply Brief at 49-50). As such, the Company argues that the Attorney General's proposed service lives and resulting depreciation accrual rates are flawed and should be rejected (Company Brief at 244, 250).

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For Account 361.00 (Structures and Improvements), the Company contends its proposed 75-R3 curve is more realistic and representative of future expectations, and that the Attorney General's proposal ignores the change in asset mix from cement block structures to prefabricated steel and modular structures over time (Company Brief at 245). For Account 362.00 (Station Equipment), NSTAR Electric argues the Attorney General's proposal not only ignores more recent data and changes in substation equipment, but that her proposed curve assumes some assets will survive up to 120 years, which the Company claims is unreasonable (Company Brief at 245-256). With respect to Account 365.00 (Overhead Conductors and Devices), the Company asserts the Attorney General's proposed curve is not representative of the underlying assets, claiming her proposed curve unreasonably assumes assets with lifecycles of over 130 years (Company Brief at 246; Company Reply Brief at 50). Moreover, the Company argues the selection of the O1 type curve for Account 365.00 is problematic as it assumes the same level of retirements by age and ignores wear and tear and other influences on asset retirement and replacement (Company Brief at 246-247). Regarding Account 366.00 (Underground Conduit), the Company argues that the insufficient retirement history makes strict mathematical fitting and reliance solely on statistical results irresponsible (Company Brief at 247; Company Reply Brief at 50). Instead, NSTAR Electric contends the Department should maintain the currently approved 73-R3 curve for this account (Company Brief at 247; Company Reply Brief at 50-51).

Regarding the Company's metering accounts, NSTAR Electric avers that a retirement date of 2028 is appropriate and reasonable for Account 370.10 (AMR Meters) because all

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AMR assets will be replaced with newer AMI assets by December 31, 2028 (Company Brief at 247-248). NSTAR Electric argues that if the Department rejects the proposed terminal retirement date but approves the Company's AMI plan, the Company would have approximately \$55.7 million in stranded costs in 2028 (Company Brief at 248-249, citing Exh. ES-JJS-Rebuttal-1, at 20-21). The Company further contends this would lead to intergenerational inequity, as future customers would have to pay for assets that are no longer providing service (Company Brief at 248-249). For Account 370.20 (AMI Meters), NSTAR Electric argues a 15-year average service life is appropriate based on existing data and what other electric utilities use (Company Brief at 249, citing Exh. AG 25-2, Att. (a) at 7-8; Tr. 2, at 190, 196-197). The Company insists that AMI meters are technologically different than AMR meters and, therefore, they should have different service lives (Company Brief at 249, citing Exhs. AG 25-1; AG 25-2; Tr. 2, at 192-193). Further, NSTAR Electric claims that its proposed average service life for this account is consistent with its experience and industry practice and should be approved (Company Brief at 250). The Company further clarifies that an average service life of 15 years will have some meters lasting up to 28 years, which it claims is consistent with manufacturer representations (Company Brief at 250).

In conclusion, NSTAR Electric asserts that the Department should adopt the Company's proposed composite accrual depreciation rate of 2.91 percent as it is based on a combination of statistical analyses from a depreciation study, application of the depreciation expert's judgment, and current industry standards (Company Brief at 251). NSTAR Electric argues the Attorney General made no effort in her reply brief to rebut the Company's

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position and was unable to cite to any evidence that would suggest she relied on anything other than mathematical curve fitting (Company Reply Brief at 49-51).

3. Analysis and Findings

a. Standard of Review

Depreciation expense allows a company to recover its capital investments in a timely and equitable fashion over the service lives of the investments. Fitchburg Gas and Electric Light Company, D.T.E. 98-51, at 75 (1998); D.P.U. 96-50 (Phase I) at 104; Milford Water Company, D.P.U. 84-135, at 23 (1985); D.P.U. 1350, at 97. Depreciation studies rely not only on statistical analysis but also on the judgment and expertise of the preparer. The Department has held that when a company reaches a conclusion about a depreciation study that is at variance with that witness's engineering and statistical analysis, the Department will not accept such a conclusion absent sufficient justification on the record for such a departure. D.P.U. 92-250, at 64; The Berkshire Gas Company, D.P.U. 905, at 13-15 (1982); Massachusetts Electric Company, D.P.U. 200, at 21 (1980).

The Department recognizes that the determination of depreciation accrual rates requires both statistical analysis and the application of the preparer's judgment and expertise. Fitchburg Gas and Electric Light Company, D.T.E. 02-24/25, at 132 (2002); D.P.U. 92-250, at 64. Because depreciation studies rely by their nature on examining historic performance to

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assess future events, a degree of subjectivity is inevitable.<sup>90</sup> Nevertheless, the product of a depreciation study consists of specific accrual rates to be applied to specific account balances associated with depreciable property. A mere assertion that judgment and experience warrant a particular conclusion does not constitute evidence. Eastern Edison Company, D.P.U. 243, at 16-17 (1980); D.P.U. 200, at 20-21; Lowell Gas Company, D.P.U. 19037/19037-A at 23 (1977).

It thus follows that the reviewer of a depreciation study must be able to determine, preferably through the direct filing and at least in the form of comprehensive responses to well-prepared discovery, the reasons why the preparer of the study chose one particular life-span curve or salvage value over another. The Department will continue to look to the expert witness for interpretation of statistical analyses but will consider other expert testimony and evidence that challenges the preparer's interpretation and expects sufficient justification on the record for any variances resulting from the engineering and statistical analyses. D.P.U. 89-114/90-331/91-80 (Phase One) at 54-55. To the extent a depreciation study provides a clear and comprehensive explanation of the factors that went into the selection of accrual rates, such an approach will facilitate Department and intervenor review.

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<sup>90</sup> Subjectivity is especially relevant in the calculation of net salvage factors where the cost to demolish or retire facilities cannot be established with certainty until the actual event occurs. D.P.U. 92-250, at 66; D.P.U. 1720, at 44; D.P.U. 1350, at 109-110.

b. Accrual Rates

i. Account 361.00 (Structures and Improvements)

The current accrual rate for Account 361 is 1.50 percent, based on a 65-R2.5 curve for the former Western Massachusetts Electric Company (“WMECo”) and a 70-R3 curve for NSTAR Electric (Exhs. ES-JJS-3; AG 7-9, Att.). The Company proposes a 75-R3 curve, which results in an accrual rate of 1.55 percent, while the Attorney General proposes an 80-R3 curve with an accrual rate of 1.44 percent (Exhs. ES-JJS-3; AG-DJG-1, at 4, 16-17; AG 7-9, Att.). While the Attorney General argues her curve provides a better mathematical fit with a sum of squared differences (“SSD”)<sup>91</sup> of 0.0701 compared to the Company’s curve exhibiting an SSD of 0.2142, it is important to note that the Company’s analysis looks at two experience bands of data for this account, one from 1901 to 2020 and one from 2001 to 2020, while the Attorney General’s analysis only compares her curve to the larger experience band (Exhs. ES-JJS-2, at 70-76; AG-DJG-1, at 16-17). The Company’s proposal considers both bands and provides a balance between the two sets of data, whereas the Attorney General’s proposal ignores more recent trends in the retirement history (Exh. ES-JJS-2, at 70). The asset’s materials in Account 361 have also changed over the years, moving away from cement block structures to prefabricated and modular steel structures, which have been shown to have shorter service lives (Exhs. ES-JJS-Rebuttal-1, at 14-16; Tr. 2, at 202).

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<sup>91</sup> SSD is a measure of the distance between the proposed Iowa Curve and the observed life table, such that a lower SSD signifies a better mathematical fit (Exh. AG-DJG-1, at 17).



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Moreover, in a review of curve-life combinations used by other utilities, no company uses an average service life for Account 361.00 greater than 75 years, and most appear to use an average service life of 65 years (Exh. DPU 8-2, Att.). Based on the foregoing analysis, the Department finds the Company's proposed 75-R3 curve is reasonable and appropriate. Thus, we approve an accrual rate of 1.55 for Account 361.00 (Structures and Improvements).

ii. Account 362.00 (Station Equipment)

The current accrual rate for Account 362.00 is 2.01 percent, based on a 47-S0 curve for WMECo and a 60-R2.5 curve for NSTAR Electric (Exhs. ES-JJS-3; AG 7-9, Att.). The Company proposes a 62-R2.5 curve, which results in an accrual rate of 2.10 percent, while the Attorney General proposes a 69-R2.5 curve with an accrual rate of 1.86 percent (Exhs. ES-JJS-3; AG-DJG-1, at 4, 18-19; AG 7-9, Att.). Comparing the two curves, the Attorney General's curve has an SSD of 0.0592, and the Company's curve has an SSD of 0.0687, both of which could be considered a reasonable fit (Exh. AG-DJG-1, at 19-20). As with Account 361.00, here the Attorney General compares her proposed curve to only one experience band of data, while the Company's proposal considers two experience bands and attempts to strike a balance between them to capture temporal shifts in retirement trends (Exhs. ES-JJS-2, at 77-83; AG-DJG-1, at 19). From a visual fitting perspective based on the graphs provided by the Attorney General, the 69-R2.5 curve overshoots most of the data points through age 65, while the Company's curve better approximates these data points (Exh. AG-DJG-1, at 19). Furthermore, the Company's proposed 62-R2.5 curve is consistent with the average service lives utilized by comparable utilities (Exh. DPU 8-2, Att.). Based

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on the foregoing analysis, the Department finds the Company's proposed 62-R2.5 curve is reasonable and appropriate. Thus, we approve an accrual rate of 2.10 percent for Account 362.00 (Station Equipment).

iii. Account 365.00 (Overhead Conductors and Devices)

The current accrual rate for Account 365.00 is 3.09 percent, based on a 55-R0.5 curve for WMECo and a 48-R0.5 curve for NSTAR Electric (Exhs. ES-JJS-3; AG 7-9, Att.). The Company proposes a 60-R0.5 curve, which results in an accrual rate of 2.60 percent, while the Attorney General proposes a 66-O1 curve with an accrual rate of 2.22 percent (Exhs. ES-JJS-3; AG-DJG-1, at 4, 20-21; AG 7-9, Att.). The Attorney General's curve has an SSD of 0.1008, and the Company's curve has an SSD of 0.1768 (Exh. AG-DJG-1, at 21). Similar to Accounts 361.00 and 362.00, here the Attorney General compares her proposed curve to only one experience band of data, while the Company's proposal considers three experience bands for this account (Exhs. ES-JJS-2, at 96-105; AG-DJG-1, at 21). While the Attorney General's proposed curve provides a better mathematical fit to the larger experience band, the Company's proposal more accurately incorporates trends from more recent experience bands and considers the full set of retirement data points (Exh. ES-JJS-Rebuttal-1, at 19). Additionally, the Company's proposal is consistent with the curve-life combinations used by other utilities, as most utilize average service lives between 45 and 60 years for Account 365, and none use an O-type curve (Exh. DPU 8-2, Att.). As NSTAR Electric points out, the use of an O1 curve assumes the same level of retirements by age, unaffected by other forces of retirement such as wear and tear, which would be an unreasonable

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assumption (Exh. ES-JJS-Rebuttal-1, at 18-19). Based on the foregoing analysis, the Department finds the Company's proposed 60-R0.5 curve is reasonable and appropriate. Thus, we approve an accrual rate of 2.60 percent for Account 365 (Station Equipment).

iv. Account 366.00 (Underground Conduit)

The current accrual rate for Account 366.00 is 2.12 percent, based on a 65-R1.5 curve for WMECo and a 75-R3 curve for NSTAR Electric (Exhs. ES-JJS-3; AG 7-9, Att.). The Company proposes a 75-R3 curve, which results in an accrual rate of 2.10 percent, while the Attorney General proposes an 80-R3 curve with an accrual rate of 1.95 percent (Exhs. ES-JJS-3; AG-DJG-1, at 4, 22-24; AG 7-9, Att.). The Attorney General's curve has an SSD of 0.0887, and the Company's curve has an SSD of 0.1998 (Exh. AG-DJG-1, at 24). While the Attorney General's proposed curve provides a better mathematical fit based on the SSD, the retirement history and data points available for Account 366.00 are limited, with less than 15 percent of plant experiencing retirement (Exhs. ES-JJS-2, at 106-112; ES-JJS-Rebuttal-1, at 17). The Department has previously held that when an account has insufficient retirement history mathematical fitting may not be adequately relied upon to suggest a departure from a currently approved average service life and curve combination. D.P.U. 18-150, at 303. Here with a limited number of retirements, the Department does not find a compelling reason to change the 75-R3 curve that is currently used for NSTAR Electric for this account (Exhs. ES-JJS-2, at 106; AG 7-9, Att.). Further, in a review of other utilities it appears most utilize average service lives for Account 366.00 of 75 years or less, with only two out of 89 utilities using an 80-year average service life for this account.

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(Exh. DPU 8-2, Att.). Based on the Company's limited data and the practices of other utilities, the Department finds it is reasonable to keep the 75-R3 curve currently utilized for Account 366.00. Thus, we approve an accrual rate of 2.10 percent.

v. Account 370.10 (AMR Meters)

The current accrual rate for Account 370.10 is 5.88 percent, based on a 18-L1.5 curve for WMECo and a 23-R1.5 curve for NSTAR Electric (Exhs. ES-JJS-3; AG 7-9, Att.). While the Company's depreciation study and Attorney General both identify the 24-S0.5 curve as best matching the historical data, the Company proposes a terminal retirement date of 2028, which results in a depreciation accrual rate of 8.62 percent (Exhs. ES-JJS-2, at 142; ES-JJS-3; AG-DJG-1, at 4, 24; AG 7-9, Att.). The Attorney General states the terminal retirement date is not appropriate and proposes a depreciation accrual rate of 4.15 percent for Account 370.10 (Exh. AG-DJG-1, at 4, 24; Attorney General Brief at 151-152). The Attorney General acknowledges the Company's planned retirement of AMR meters and suggests it would not be unreasonable to apply a terminal life span to Account 370.10 if all assets are indeed retired by 2028 (Exhs. DPU-AG 2-4; Tr. 11, at 1209, 1217). The Attorney General insists, however, that the Company's proposal with respect to AMR meters is biased and simply a means to increase cash flow (Attorney General Brief at 151-152, citing Exh. AG-DJG-1, at 25-26).

The Department approved NSTAR Electric's AMI implementation plan and model tariff in D.P.U. 21-80-B/D.P.U. 21-81-B/D.P.U. 21-82-B. The Company's proposal to utilize a terminal life span retirement date of 2028 for Account 370.10 (AMR Meters) is

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consistent with the AMI implementation plan approved by the Department and helps ensure that customers pay for utility assets that are in-service, while limiting intergenerational inequity. Therefore, the Department approves the Company's proposed accrual rate of 8.62 percent for Account 370.10 (AMR Meters).

vi. Account 370.22 (AMI Meters)

For Account 370.22 (AMI Meters) the Company proposes a 15-S2.5 curve, which results in a depreciation accrual rate of 6.92 percent (Exhs. ES-JJS-3; AG 7-9, Att.). The Attorney General did not contest the curve-life combination in testimony, but for the first time on brief suggests that an average service life of 25 years is more appropriate for this account (Attorney General Brief at 152-153). The Attorney General contends that a 25-year average service life is more consistent with manufacturer and Company representations that AMI meters will last 20 years or more (Attorney General Brief at 152-153, citing Tr. 7, at 709, 712). While the Company and meter manufacturers acknowledge an estimated life of 20 years or more for AMI meters, NSTAR Electric accurately points out that utilizing a 15-year average service life for these assets means that some meters will last beyond 20 years, with some lasting up to 28 years (Exhs. ES-JJS-2, at 146; AG 35-1; Tr. 2, at 193, 197-199). Further, with the Company's own limited history for this account, the curve-life combinations used by other utilities can provide a relevant benchmark for industry standards. Currently, no electric utility uses an average service life of 25 years for AMI meters (Exh. DPU 8-2, Att.). Of those utilities with AMI meters, the range of average service lives is 10 to 20 years, with most using a 15-year curve (Exh. DPU 8-2, Att.). Based on the

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presently available information and the comparison to other electric utilities, the Department finds that a 15-S2.5 curve and corresponding accrual rate of 6.92 percent is appropriate for Account 370.22 (AMI Meters).

c. AMR and AMI Assets

As discussed in Section XV.A below, NSTAR Electric proposes a Company-specific AMI tariff consistent with the AMI implementation plan and model tariff approved in D.P.U. 21-80-B/D.P.U. 21-81-B/D.P.U. 21-82-B at 9-10, 234, 238-239, 285-286. In the instant proceeding, the Department investigated concerns regarding potential over- or under-collection of metering costs, the tracking of costs, and the potential for recovering all meter-associated costs through the Company's proposed AMI factor ("AMIF") (Exhs. DPU 9-1; DPU 33-3; DPU 43-1; DPU 46-3; RR-DPU-29; RR-DPU-33). As set forth in Section XV.C.2 below, the Department has determined the most prudent course of action is to recover all meter-related capital through the annual reconciling mechanism. As such, the depreciation expense associated with meters (Account 370.10, Account 370.21, Account 370.22, and Account 370.30) must be removed from base distribution rates. The Department reduces the Company's depreciation expense by \$26,909,787 to reflect the removal of these assets from rate base (Exh. ES-REVREQ-3, Workpaper 25 (Rev. 4)).<sup>92</sup>

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<sup>92</sup> \$26,909,787 represents the total depreciation expense associated with metering accounts and is the sum of \$17,099,862 associated with Account 370.10 (AMR Meters), \$1,047,243 associated with Account 370.21 (Non-AMR Meters – Old Technology), \$7,660,959 associated with Account 370.22 (AMI Meters), and \$1,101,723 associated with Account 370.30 (Metering Equipment) (Exh. ES-REVREQ-3, WP25 (Rev. 4)).

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d. Land and Land Rights

As part of NSTAR Electric's proposed depreciation expense, the Company includes a total of \$177,948 in depreciation expense associated with Land and Land Rights (Exh. ES-REVREQ-3, WP 25 (Rev. 4)).<sup>93</sup> The Department has consistently found that the purpose of depreciation is to recover the cost of a capital investment in order to replace a retired asset, and, therefore, there is no need to depreciate an asset that will not be retired. D.P.U. 93-60, at 188. See Berkshire Gas Company, D.P.U. 19580, at 16 (1978). Accordingly, the Department does not permit depreciation of land, land rights, or rights-of-way. D.T.E. 03-40, at 295; D.P.U. 93-60, at 188-189; D.P.U. 92-111, at 122; D.P.U. 19580, at 16; Western Massachusetts Electric Company, D.P.U. 18252, at 12 (1975). In the instant proceeding the Company does not provide a compelling argument to deviate from longstanding Department precedent, but simply presents a definition of "depreciation" from the Uniform System of Accounts (Exh. DPU 16-3). Therefore, the Department rejects the inclusion of \$177,948 in depreciation expense associated with Land and Land Rights. Accordingly, we reduce NSTAR Electric's proposed depreciation expense by \$177,948.

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<sup>93</sup> \$177,948 represents the sum of depreciation expense associated with Account 340.00 (\$140,680), Account 360.00 (\$37,229), and Account 389.00 (\$39) (Exh. ES-REVREQ-3, WP 25 (Rev. 4)).

e. Conclusion

The Department has reviewed NSTAR Electric's depreciation study and supporting workpapers, and we find that the Company properly supported the proposed service lives and survivor curves (Exhs. ES-JJS-1; ES-JJS-2; ES-JJS-3; DPU 8-1; DPU 8-2, Att.; DPU 8-6, Att.). Based on the analysis above, the Department finds it appropriate to reduce the Company's proposed depreciation expense by \$27,087,735, for a rate-year depreciation expense of \$197,606,240 (see Exh. ES-REVREQ-3, WP 25 (Rev. 4)).

C. Insurance Expense

1. Introduction

During the test year, NSTAR Electric booked \$4,035,454 in insurance expense and injuries and damages expense (Exh. ES-REVREQ-2, Sch. 15 (Rev. 4)). The Company proposes to increase its test-year insurance expense by \$2,171,572, resulting in a proposed insurance expense of \$6,207,026 (Exh. ES-REVREQ-2, Sch. 15 (Rev. 4)). In particular, during the test year, the Company booked \$357,088 in Directors and Officers liability insurance ("D&O liability insurance") coverage expense (Exh. ES-REVREQ-2, Sch. 15 (Rev. 4)). The Company proposes to increase D&O liability insurance expense by \$194,489, resulting in a proposed D&O liability insurance expense of \$551,578 (Exh. ES-REVREQ-2, Sch. 15 (Rev. 4)). Further, the Company did not include in its proposed insurance expense credits from its liability insurance carriers such as Nuclear Electric Insurance Limited ("NEIL") and Energy Insurance Mutual ("EIM") (Exhs. AG 8-45; AG 11-13).



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2. Positions of the Parties

a. Attorney General

The Attorney General raises two issues with respect to the Company's insurance expense. First, the Attorney General argues that the Company should not be allowed to recover the full amount of D&O liability insurance coverage expense (Attorney General Brief at 123-125). Second, the Attorney General argues that the Company failed to reflect future NEIL and EIM credits in its rate year (Attorney General Brief at 126-127, citing Exhs. AG-LA-1, at 28-30; AG 8-45; AG 11-13).

Regarding the D&O liability insurance coverage expense, the Attorney General claims that the cost of these policies should not be fully borne by the ratepayers because the majority of the benefits resulting from D&O liability insurance coverage, which protects the Company's officers and directors from lawsuits arising from their own decisions, accrue to the Company and its shareholders (Attorney General Brief at 123). The Attorney General contends that the burden rests with the Company to demonstrate that ratepayers will receive measurable benefits in exchange for the costs of its D&O liability insurance coverage, and that the Company failed to make such a showing (Attorney General Brief at 123, citing Town of Hingham v. Department of Telecommunications and Energy, 433 Mass. 198, 213-214 (2001), citing Metropolitan District Commission, 352 Mass. 18, 24; Wannacomet Water Company v. Department of Public Utilities, 346 Mass. 453, 463 (1963); D.T.E. 99-118, at 7 n.5).

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The Attorney General, however, recognizes that the D&O liability insurance policies may assist the Company in attracting higher-quality personnel (Attorney General Brief at 124, citing Exh. ES-RR/\_CPP/Comp-Rebuttal-1, at 9-10; Western Massachusetts Electric Company, D.P.U. 86-280-A, at 92 (1987)). Thus, the Attorney General argues that, despite the Company's failure to meet its burden of proof, shareholders and ratepayers should share the cost of these insurance expenses (Attorney General Brief at 124, citing Exh. ES-RR/\_CPP/Comp-Rebuttal-1, at 9-10; D.P.U. 86-280-A, at 92). Specifically, the Attorney General recommends that shareholders bear 75 percent, while ratepayers bear 25 percent, of the allocated D&O liability insurance coverage costs (Attorney General Brief at 124). The Attorney General notes that her recommendation is consistent with rulings by the Connecticut Public Utilities Regulatory Authority ("CT PURA") and other public utilities commissions (Attorney General Brief at 124, citing United Illuminating Company, CT PURA Docket No. 16-06-04, at 36 (2016); Ni Florida, LLC, FL PSC Docket No. 160030-WS, Order No. PSC-16-0525-PAA-WS, at 8 (2016); Connecticut Natural Gas Corporation, CT PURA Docket No.13-06-08, at 27 (2014); Entergy Arkansas, Inc., Arkansas PSC Docket No. 06-101-U, Order No. 10, at 70, (2007); Centerpoint Energy Resources Corp., Arkansas PSC Docket No. 04-121-U, Order No. 16, at 40 (2005); Southwest Gas Corporation, CPUC Application 02-02-012, Decision 04-03-034, at 34-35 (2004)). Therefore, the Attorney General recommends reducing the Company's proposed cost of service by \$335,135 to

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represent a 75/25 sharing of these costs between shareholders and ratepayers, respectively (Attorney General Brief at 124-125, citing Exh. AG-LA-2, Sch. 4).<sup>94</sup>

Regarding the NEIL and EIM insurance credits, the Attorney General argues that the Company failed to reflect future credits in its rate year (Attorney General Brief at 126-127, citing Exhs. AG-LA-1, at 28-30; AG 8-45; AG 11-13). The Attorney General posits that while the NEIL and EIM credits are not guaranteed to occur, it is very likely that they will occur in the future based on the Company's insurance historical records (Company Brief at 126-127, citing Exhs. AG-LA-Surrebuttal-1, at 8; ES-RR/Comp-Rebuttal, at 26). The Attorney General asserts that the historical record shows that the Company has received NEIL and EIM insurance credits from 2017 through 2021, and there is no reason to assume that these credits will not occur in the future (Attorney General Brief at 127, citing Exh. ES-RR/Comp-Rebuttal-1, at 26). Further, she argues that the Company will reap a financial windfall if the Company is allowed to keep these credits to the detriment of ratepayers (Attorney General Brief at 126-127, citing Exh. AG-LA-Surrebuttal-1, at 8). Therefore, the Attorney General argues that it is appropriate and important to include these credits as part of the Company's pro forma rate-year adjustment (Attorney General Brief at 127). Because the amounts of these credits fluctuate over time, the Attorney General recommends that the Company include a five-year average of credits in the pro forma

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<sup>94</sup> The Attorney General's proposed adjustment appears to be based on the Company's initial proposed test-year pro forma amount of D&O liability insurance expense, and the not the final amount proposed for recovery (Exhs. ES-REVREQ-2, Sch. 15; ES-REVREQ-2, Sch. 15 (Rev. 4)).

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test-year amount (Attorney General Brief at 126-128, citing Exhs. AG-LA-2, Schs. 8, 9; AG 1-61, Att. I (Supp. 1)). Thus, the Attorney General asserts that the Department should reduce NSTAR Electric's proposed insurance expense by \$50,575 and \$449,835 to reflect NEIL and EIM insurance credits, respectively (Attorney General Brief at 126-128, citing Exhs. AG-LA-2, Schs. 8, 9; AG 1-61, Att. I (Supp. 1)).

b. Company

NSTAR Electric asserts that the Attorney General's arguments and conclusions regarding the D&O liability insurance expense are flawed, against recent Department precedent, and should be disregarded (Company Brief at 179-180, citing D.P.U. 20-120, at 302-304). The Company contends that it has taken steps to control costs associated with this insurance coverage, which is a direct benefit to customers (Company Brief at 180-181, citing Exhs. ES-REVREQ-1, at 87-90; ES-RR/CPP/Comp-Rebuttal-1, at 8; DPU 15-8; DPU 15-10; DPU 55-3; AG 1-61 & Supp.; AG 1-63 & Supp.; AG 8-18). Further, the Company claims that the primary purpose of the D&O liability insurance coverage is not to cover bad faith actions of its directors and officers (Company Brief at 181, citing Exhs. ES-RR/CPP/Comp-Rebuttal-1, at 9; DPU 55-3). Instead, NSTAR Electric asserts that D&O liability insurance coverage protects its management should they be personally exposed to liability claims for the business decisions and actions they make while operating the Company, thus enabling its leadership to make business decisions confidently without the fear of personal financial loss (Company Brief at 181, citing Exh. ES-RR/CPP/Comp-Rebuttal-1, at 9).

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NSTAR Electric also contends that D&O liability insurance coverage benefits customers by ensuring that the Company is able to attract and retain skilled, experienced officers and trustees with long-term ties to the electric distribution industry who use their specialized areas of knowledge and expertise to provide safe and reliable service to customers (Company Brief at 181-182, citing Exh. ES-RR/PPP/Comp-Rebuttal-1, at 9-10). Finally, NSTAR Electric argues that the Attorney General's recommended cost sharing of D&O liability insurance expenses is arbitrary and unsupported by any analysis and, therefore, should be rejected (Company Brief at 182 & n.59, citing Exh. ES-RR/PPP/Comp-Rebuttal-1, at 8 n.2).

Regarding the NEIL and EIM insurance credits, NSTAR Electric argues that the Department should reject the Attorney General's recommendation because there is no guarantee that these credit distributions, prior years' distribution notwithstanding, will occur in the future (Company Brief at 182-183). In support of its position, the Company contends that it is unknown whether any NEIL and EIM insurance credit distributions will occur in the future and, therefore, the Attorney General's proposal is unmeasurable (Company Brief at 183). Further, the Company claims that it is inappropriate to utilize the five-year average of credit distributions because the annual distributions tend to fluctuate significantly (Company Brief at 183).

NSTAR Electric also argues that, adhering to the Department's regulatory principles, it would not propose to include speculative costs in the revenue requirement that do not pass the Department's known and measurable standard (Company Brief at 183). Thus, the

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Company argues that any reduction to the Company's insurance expense should not be based on speculation, and therefore, the Department should reject the Attorney General's recommendation (Company Brief at 182-183).

### 3. Analysis and Findings

Rates are designed to allow for recovery of a representative level of a company's revenues and expense based on a historic test year adjusted for known and measurable changes. D.P.U. 10-55, at 274; Bay State Gas Company, D.P.U. 09-30, at 218 (2009); D.T.E. 02-24/25, at 161; D.P.U. 92-250, at 106. The Department will include the most current cost of liability and property insurance, based on a signed agreement, as a reasonable cost of service. D.P.U. 10-55, at 276; D.P.U. 09-30, at 218; D.T.E. 02-24/25, at 161; D.P.U. 86-86, at 8-10; Colonial Gas Company, D.P.U. 84-94, at 44 (1984). The Department requires companies to provide evidence that they undertook reasonable measures to control property and liability insurance expenses. New England Gas Company, D.P.U. 08-35, at 119-120 (2009); D.T.E. 05-27, at 133-134; D.T.E. 03-40, at 184-185.

As noted above, the Attorney General contends that the Company should not be allowed to fully recover D&O liability insurance expense, and instead should share these costs with ratepayers (Attorney General Brief at 123-125). We disagree. In evaluating the Company's D&O liability insurance coverage, the Department considers whether the primary purpose of the policy is to cover bad faith actions and whether ratepayers receive measurable benefits. D.P.U. 20-120, at 302; D.P.U. 87-260, at 72-73; Commonwealth Gas Company, D.P.U. 87-122, at 51, 53-54 (1987); D.P.U. 87-59, at 41-42. In determining ratepayer

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benefits, the Department considers whether ratepayers would otherwise be required to pay for damages and legal fees arising out of such suits brought against the Company's directors and officers in the event the Company did not have such insurance. D.P.U. 20-120, at 302-303; D.P.U. 87-260, at 73. The record in this case demonstrates that the purpose of the Company's D&O liability insurance policy is to protect its directors and officers should they be personally exposed to liability claims for the business decisions and actions they make while employed by the Company or serving as a trustee, and to protect the personal assets of trustees and officers in a related lawsuit (Exh. DPU 55-3).

The record does not support a finding that the primary purpose of the D&O liability insurance policy is to protect the utility against bad faith actions of its directors and officers. In fact, such actions are expressly excluded by the policy (Exhs. ES-RR/PPP/Comp-Rebuttal-1, at 8-9; DPU 55-3 & Att.).<sup>95</sup> Thus, the Department finds that coverage by the D&O liability insurance policy primarily involves actions where the costs could be included in the Company's cost of service absent D&O liability insurance and, as such, the policy offers ratepayer benefits. D.P.U. 20-120, at 303. As such, we find that the costs associated with the Company's D&O liability insurance coverage are properly included in rates. D.P.U. 20-120, at 303-304; D.P.U. 87-260, at 73; D.P.U. 87-122,

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<sup>95</sup> For instance, the policy excludes claims in the event that a director or officer: (1) used their position to gain personal profit, financial advantage, or remuneration to which they were not entitled; or (2) committed a deliberately fraudulent or criminal act or omission or any intentional violation of any law, statute, or regulation (Exh. DPU 55-3, Att.).

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at 53-54; D.P.U. 87-59, at 41-42. Based on these findings, we need not address the merits of the Attorney General's recommended cost sharing approach.

Regarding the NEIL and EIM insurance credits, the record shows that NEIL made policy surplus distributions or insurance credits during the test year and in each of the prior five years (Exhs. AG 8-45; AG 1-61, Att. (e) (Supp. 1)). Likewise, EIM made similar policy surplus distributions during the test year and in each of the prior five years (Exhs. AG 11-13; AG 1-61, Att. (e) (Supp. 1)). Given this consistent history of credit receipts from NEIL and EIM, we are not persuaded by the Company's argument that there is no guarantee that these surplus distributions will occur in the future, and, therefore, are not known and measurable. D.P.U. 17-05, at 246-246. Further, the Department has found that EIM's policy surplus distributions are analogous to those made by NEIL.

See D.P.U. 87-260, at 26-36. As a mutual non-profit carrier, NEIL makes policyholder distributions to recognize a return of a portion of the policy's surplus. The Department has required participants to credit policyholder distributions and other adjustments to customers in a manner approved by the Department. New England Power Company/Montaup Electric Company, D.P.U. 1251, at 10 (1983); Western Massachusetts Electric Company, D.P.U. 990-A at 10 (1982); D.P.U. 990, at 4; Western Massachusetts Electric Company, D.P.U. 147-B at 2-3 (1981); Boston Edison Company, D.P.U. 376-A at 2 (1981); D.P.U. 376, at 15-16. The Department has historically treated such credits as an offset against the current NEIL premium for ratemaking purposes because "policyholder distribution is a known and measurable change that should be included as an offset to the



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Company's current NEIL premiums." D.P.U. 87-260, at 38-39.<sup>96</sup> Consistent with the treatment of NEIL surplus distributions in prior cases, the Department finds that, for the reasons explain above, it is also appropriate to adjust the Company's test year pro-forma cost of service to recognize the refund of the insurance proceeds from EIM, as well.

D.P.U. 17-05, at 246.

Between 2017 and 2021, NEIL credits per year have ranged from a low of \$4,472 in 2017 to a high of \$105,590 in 2020, and EIM credits per year have ranged from a low of \$217,583 in 2017 to a high of \$767,872 in 2019 (Exh. AG-LA-2, Schs. 9 & 10). Thus, the test-year level of NEIL and EIM credits are not necessarily representative. Therefore, the Department finds that it is appropriate to normalize test-year NEIL and EIM credits by applying a five-year average to determine a representative level to be included in rates. See D.P.U. 09-39, at 149. Normalization is not intended to ensure dollar-for-dollar recovery of a particular expense or credit; rather it is intended to include in the cost of service as a representative annual level. D.P.U. 10-55, at 339; D.T.E. 05-27, at 163; D.T.E. 03-40, at 163-164; D.T.E. 02-24/25, at 191; D.P.U. 96-50 (Phase I) at 77.

Based on the above considerations, the Department will adjust the Company's cost of service. In this regard, the Department accepts the Attorney General's calculation of the five-year credit averages, based on information provided by the Company (Exhs. AG-LA-2,

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<sup>96</sup> This ratemaking treatment is similar in concept to patronage refunds associated with CoBank, a lending institution that focuses on water systems, where the refunds serve to reduce the effective cost of the loan. Whitinsville Water Company, D.P.U. 08-33, at 14 (2008).

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Schs. 8 and 9; AG 1-61, Att. (e) (Supp. 1)). Accordingly, the Department reduces NSTAR Electric's proposed cost of service by \$500,410 (\$50,575 + \$449,835) (Exhs. AG-LA-2, Schs. 8 and 9; AG 1-61, Att. (e) (Supp. 1)).

The Department has reviewed NSTAR Electric's remaining insurance policies and supporting documentation. We find that the test-year insurance costs were reasonable, and the insurance expense premiums and proposed adjustments are based on actual policy rates and are thus known and measurable (Exhs. ES-REVREQ-1, at 88-92; ES-RR/CPP/Comp-Rebuttal-1, at 34-36; AG-DJE-1, at 9-12; AG-DJE-Surrebuttal-1, at 5-7; ES-REVREQ-2, Sch. 15 (Rev. 4); DPU 15-7, DPU 15-10; DPU 15-11; DPU 15-13, Supp. & Atts.; DPU 69-11 & Atts.; AG 1-61 & Atts. & Supps.; AG 4-19 & Att.; Tr. 1, at 145-146; RR-DPU-4 & Atts.; RR-AG-3). Further, the Department finds that NSTAR Electric has taken reasonable measures to control the costs of its insurance expense (Exh. DPU 15-8). Thus, with the exception of the adjustments set forth above, the Department accepts the Company's proposed insurance expense.

D. Board of Director Expenses

1. Introduction

Eversource Energy is governed by an eleven-member board of trustees, of whom ten are independent and one is a member of management (Exh. AG 1-2, Att. (5)(e) at 11). Each independent trustee receives an annual base retainer of \$115,000, with additional amounts for serving as lead trustee and committee chairs, along with \$160,000 in restricted stock units ("RSUs") (Exh. AG 1-2, Att. (5)(e) at 38). NSTAR Electric itself has a board of directors

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consisting of five Company officers who receive no additional compensation for their director responsibilities (Exhs. DPU 52-2; AG 1-2, Att. (6)(e) at 12 (Supp. 1)).<sup>97</sup> During the test year, the Company booked \$930,151 in board fees and meeting costs to its distribution operations (Exhs. DPU 52-2; AG 8-4, Att.; AG 21-7, Att.).<sup>98</sup> These costs include the Company's allocated portion of cash retainers and RSUs paid to the independent members of Eversource Energy's board of trustees<sup>99</sup> (Exhs. ES-RR/CPP/Comp-Rebuttal-1, at 5; DPU 52-2; AG 1-2, Att. (5)(e) at 38; AG 21-7, Att.; Tr. 6, at 642).

2. Positions of the Parties

a. Attorney General

The Attorney General asserts that the Department has made it clear that for costs to be recovered from ratepayers, a company must demonstrate that there is a link between the costs and ratepayer benefits (Attorney General Brief at 121, citing D.P.U. 20-120, at 224; D.P.U. 93-60, at 201; D.P.U. 92-111, at 127). The Attorney General contends that while

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<sup>97</sup> For purposes of this Order, the Department uses "board of trustees" when referring to Eversource Energy's governing body, "board of directors" when referring to the Company's own governing board, and "board" when referring to both the board of trustees and board of directors.

<sup>98</sup> While the Company did not propose an explicit adjustment to its test-year board expenses, the Company's proposed inflation allowance incorporates an increase to these expenses of \$138,795, representing inflation of 14.909 percent from the midpoint of the test year to the midpoint of the rate year (see Exhs. ES-REVREQ-3 WP 24 (Rev. 4); AG 8-4, Att.).

<sup>99</sup> The Company is only seeking rate recovery of trustee retainers and RSUs, and no other expenses trustees may incur in their duties such as travel expenses (Exh. AG 21-7, Att.; Tr. 6, at 642).

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the existence of the Company's board of trustees logically produces some tangential benefits to ratepayers, the Company's shareholders are the major beneficiaries associated with the proposed board fees and associated meeting costs (Attorney General Brief at 121-122, citing Exhs. AG-LA-1, at 11-12; ES-RR/CPP/Comp-Rebuttal-1, at 6).

The Attorney General argues that to better reflect the balance of benefits arising from a board of trustees between the Company and ratepayers, the Department should disallow 75 percent of board fees and meeting costs, resulting in what she calculates as a reduction of \$751,267 (i.e., the inflation-adjusted pro forma expense of \$1,001,689 x 75 percent) (Attorney General Brief at 122, citing Exhs. AG-LA-1, at 12; AG-LA-2, Sch. 2, Att.).<sup>100</sup> The Attorney General asserts that this ratemaking treatment is consistent with rulings from other jurisdictions, such as in Connecticut, where the CT PURA has allocated 75 percent of board of director costs to shareholders (Attorney General Brief at 122, citing Connecticut Water Company, CT PURA Docket No. 20-12-30, at 12-14 (2021); United Illuminating Company, CT PURA Docket No. 13-01-19, at 73 (2013)).

b. Company

NSTAR Electric argues that to recover board fees in cost of service, the Department requires a company to demonstrate a link between those fees and customer benefits (Company Brief at 184, citing D.P.U. 20-120, at 329). The Company challenges what it considers to be the Attorney General's attempt to create a new standard for recovery of board

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<sup>100</sup> The Attorney General's calculations are based on the Company's initially-proposed inflation factor of 7.691 percent (Exhs. AG-LA-2; AG 8-4, Att.).

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fees based on a requirement that ratepayers must be the majority or sole beneficiaries of these expenditures (Company Brief at 184).

The Company argues that the Attorney General has mischaracterized the customer benefits associated with board fees (Company Brief at 184). While NSTAR Electric acknowledges that Eversource Energy's board of trustees is tasked with representing shareholder interests, the Company contends that the Attorney General fails to recognize that actions taken to meet the board's obligations to shareholders also directly, and not tangentially, benefit customers (Company Brief at 184, citing Exh. ES-RR/PPP/Comp-Rebuttal-1, at 6). NSTAR Electric points to the organization of the board of trustees and various standing committees, as well as Eversource Energy's shift in accordance with nationwide trends from a per-meeting fee structure to providing a cash retainer and stock award in the form of RSUs (Company Brief at 185, citing Exhs. AG 1-2, Att. (5)(e) at 22-28; AG 21-7; Tr. 3, at 284-287; Tr. 6, at 637).<sup>101</sup> The Company contends that the board's organization and compensation structures ensure that board members have a stake in Eversource Energy (and by extension the Company), take a hands-on approach in executing their duties as board members, and are actively involved in managing the direction of the Company (Company Brief at 185-186, citing Tr. 7, at 639-640). NSTAR Electric also maintains that in protecting shareholder interests, the board of trustees ensures that the

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<sup>101</sup> The Company relies on a national benchmark in setting trustee compensation, including a review of peer utilities, and contends that it targets the median level (Company Brief at 186, citing Tr. 7, at 637-640).

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Company's assets, including those used to provide safe and reliable service to customers, are in good working order, as well as demonstrates to the financial markets and prospective shareholders that the Company is a solid and attractive financial investment (Company Brief at 184-185, citing Exh. ES-RR/CCP/Comp-Rebuttal-1, at 6). The Company argues that by attracting new shareholders, the board of trustees ensures that the Company benefits from a revenue stream that is used to fund capital projects that provide safe and reliable service to customers (Company Brief at 185, citing Exh. ES-RR/CCP/Comp-Rebuttal-1, at 6).

NSTAR Electric goes on to argue that even if there is no connection between board fees and benefits to customers, the Attorney General has failed to provide any analysis to support her recommended 75 percent disallowance beyond a brief reference to a similar conclusion by the CT PURA (Company Brief at 186, citing Exh. AG-LA-1, at 13-14 (Rev.)). The Company contends that a review of the PURA orders relied upon by the Attorney General demonstrates that the CT PURA's decisions were not based on any analysis, and that the Attorney General's recommendation is based on an arbitrary determination of costs and benefits (Company Brief at 186).

### 3. Analysis and Findings

The Department recognizes that a company incurs certain costs related to the operations of its board of directors, such as director fees and other expenses. Aquarion Company/Aquarion Water Company of Massachusetts/New England Service Company/Mountain Water Systems/Colonial Water Company, D.P.U. 21-54, at 26 (2021); Aquarion Water Company of Massachusetts, D.P.U. 08-27, at 88-92 (2009); D.T.E. 03-40,

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at 206-207; D.P.U. 92-111, at 147-148. While the Attorney General does not oppose the recovery of expenses related to the board on a per se basis, she proposes a sharing of these costs between the Company and its ratepayers on the basis of her benefits evaluation (Exh. AG-LA-1, at 13-14 (Rev.)).

A board of trustees or directors does not exist merely to satisfy legal governance requirements. Rather, it contributes to and shapes a company's culture, strategic focus, and financial performance, all of which are essential elements for any organization. While it is certainly true that neither Eversource Energy's board of trustees nor the Company's own board of directors are elected by ratepayers, the fiduciary duties of a regulated utility's governing body extend well beyond interests of shareholders. Specifically, a regulated utility is obligated to act in the best interest of ratepayers as part of that company's public service obligation to provide safe, reliable, and least-cost service. See D.P.U. 10-70, at 234 n.125; D.P.U. 07-50, at 5; D.P.U. 94-158, at 3; Boston Edison Company, D.P.U. 94-49, at 115-116 (1995); Boston Edison Company, D.P.U. 86-71, at 15-16 (1986). Consequently, decisions made by a utility's management and governing body cannot, and must not, prioritize shareholder interests over those of ratepayers. See Mergers and Acquisitions, D.P.U. 93-167-A at 22-23 (1994); Bay State Gas Company, D.P.U. 90-40, at 9-11 (1990).<sup>102</sup> The Department also notes that, unlike business organizations whose directors are chosen on

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<sup>102</sup> Utilities that fail to recognize this fundamental principle do so at their own peril. D.P.U. 85-266-A/85-271-A at 6-15.

the basis of the prestige they may provide to the enterprise,<sup>103</sup> Eversource Energy's board of trustees actively participates in the operations of Eversource Energy and its subsidiaries both collectively and through their active participation in various committees (Exh. AG 1-2, Att. (5)(e) at 22-28; Tr. 3, at 284-287; Tr. 6, at 637-640). Given the distinct public service obligations of a regulated utility's board of trustees or directors and the active participation of Eversource Energy's board of trustees in its operations, the record does not support a finding that the primary purpose of the board of trustees is to serve the interests of Eversource Energy's shareholders.<sup>104</sup> Based on these findings, we need not address the merits of the Attorney General's proposed allocation method.

Based on the foregoing analysis, the Department concludes that Eversource Energy's board of trustee activities benefit ratepayers.<sup>105</sup> Accordingly, the Department accepts

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<sup>103</sup> As a case in point, the now-defunct blood testing equipment manufacturer Theranos had a board of directors consisting of former cabinet members, congressmen, and military officials. While these directors may have sterling reputations in their respective fields, they do not appear to have been sufficiently involved in Theranos' medical technology business to engage in effective oversight.

<sup>104</sup> To assume otherwise sets the entire concept of utility regulation back to the days of Framingham Gas, Fuel, and Power Company, a "notoriously slovenly and corrupt affair" where one of the last corporate acts of previous management, at the onset of an investigation by the Board of Gas and Electric Light Commissioners, was to "lose" their entire body of records. Manufactured Gas Plant Remediation: A Case Study, Allen W. Hatheway and Thomas B. Speight, CRC Press (2018) at 381.

<sup>105</sup> The Department reminds Eversource Energy and the board of trustees of the importance of keeping customer benefits in mind during this upcoming winter season of anticipated high utility prices. While we recognize that Eversource Energy has little control over commodity prices, it does control other aspects of utility operations, such as customer shut-offs and arrearage management. We expect Eversource Energy



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NSTAR Electric's proposal to include the Company's share of expenses associated with Eversource Energy's board of trustees in the Company's cost of service.

E. Dues and Memberships

1. Introduction

NSTAR Electric maintains memberships in various industry and non-industry trade associations and organizations (Exhs. ES-REVREQ-1, at 70; ES-REVREQ-3, WP 12 (Rev. 4); AG 8-19, Att.). The Company refers to "industry" memberships as specific only to the utility industry and "non-industry" memberships as everything else (i.e., not specific to the utility industry) (Exh. DPU 53-1). NSTAR Electric proposes \$442,380 for industry dues expense and \$359,967 in non-industry dues expense, for a total test year pro forma amount of \$802,347 in dues and memberships expense (Exhs. ES-REVREQ-2, Sch. 12 (Rev. 4); ES-REVREQ-3, WP 12 (Rev. 4); DPU 53-2, Att.).

2. Positions of the Parties

a. Attorney General

The Attorney General argues that the Department should not allow the recovery of certain non-industry dues and membership expenses because the Company has not demonstrated a clear link between those costs and ratepayer benefits (Attorney General Brief at 128-130; Attorney General Reply Brief at 39). The Attorney General claims that for the majority of the non-industry organizations for which the Company seeks to recover dues, it

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and the board, to take those necessary actions to protect ratepayers during the challenging winter season.

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has offered only generalized ratepayer benefits without support for its assertions, and therefore, these costs should not be recovered from ratepayers (Attorney General Brief at 128-129, citing Exhs. AG-LA-1, at 19; DPU 15-1).

The Attorney General also argues that the Company, on brief, provides additional explanations and cites to information that it had not provided as record evidence in this proceeding, including describing organizations such as the International Energy Credit Association and ORC HSE Strategies, LLC, and citing to five organizations' websites (Attorney General Reply Brief at 39, citing Company Brief at 164-165). According to the Attorney General, NSTAR Electric bears the burden of demonstrating the link between the dues for which it seeks cost recovery and ratepayer benefits, and the Company's citing to this additional information as information that the Attorney General should have considered attempts to shift that burden (Attorney General Reply Brief at 39). The Attorney General also maintains that Company's attempt to shift the burden proves that the Company failed to meet its burden for cost recovery (Attorney General Reply Brief at 39).

Further, the Attorney General disputes the Company's inclusion of two entries for the same organization, i.e., Associated Industries of Massachusetts ("AIM") (Attorney General Brief at 129 & n.98). The Attorney General maintains that the double entry is a result of the Company paying dues for two calendar years in the test year, which is not a representative amount for this expense in a given year; therefore, one of the entries should be excluded from the revenue requirement (Attorney General Brief at 129 & n.98, citing Exh. DPU 53-2; RR-AG-11). Based on the above arguments, the Attorney General recommends a

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disallowance of \$347,854 in non-industry dues expense as well as one of the AIM entries (Attorney General Brief at 129; Attorney General Reply Brief at 39).<sup>106</sup>

b. Company

NSTAR Electric argues that the Department should reject the Attorney General's recommendation as it ignores record evidence that demonstrates the link between the various organizations and customer benefits (Company Brief at 163). Further, NSTAR Electric rejects the distinction between "industry" and "non-industry" dues and memberships, and the Company asserts that it belongs to these organizations because membership provides access to industry experts and professionals, insight, data, research, and information used to address emergent issues facing the industry and to identify and incorporate relevant information and best practices into the provision of safe and reliable service to its customers (Company Brief at 163-165, citing Exhs. ES-RR/\_CPP/Comp-Rebuttal-1, at 13-16; DPU 38-1; DPU 53-2; Tr. 5, at 494; Company Reply Brief at 45).

For example, NSTAR Electric contends that membership in organizations such as the Chambers of Commerce allows the Company to interact with its customers, learn about local issues impacting customers, and shape the way the Company services these customers; therefore, there is a direct link between membership and customer benefits (Company Brief

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<sup>106</sup> The Attorney General notes that its recommended disallowance excludes adjusted test-year amounts for four organizations (American Benefits Council, the Drug and Alcohol Testing Industry Association, the Electric Utility Industry Sustainable Supply Chain Alliance, and the Northeast Human Resources Association) that the Company discussed in the benefits section of its surrebuttal testimony (Attorney General Brief at 129-130, citing Exhs. ES-RR/\_CPP/Comp-Rebuttal-1, at 13-16; DPU 53-2, Att.).

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at 164, citing Tr. 5, at 494). Moreover, NSTAR Electric maintains that memberships in other non-industry categories such as ORC HSE Strategies, LLC, provides the Company access to industry experts and helps it develop processes and procedures to identify and reduce or remove potential workplace hazards and to train employees for accident prevention and response (Company Brief at 165). The Company contends that workplace safety is a key component of the provision of safe and reliable service, which benefits customers (Company Brief at 165).

In response to the Attorney General's assertion that the Company provided new evidence to demonstrate that certain dues are appropriate for cost recovery, NSTAR Electric contends that each of the organizations referenced in its initial brief were included in the Company's responses to information requests in this proceeding (Company Reply Brief at 44, citing Exhs. DPU 38-1; DPU 53-2). NSTAR Electric asserts that by including these organizations in these responses, the Company determined that they met the Department's standard for recovery (i.e., there is a link between the dues and customer benefits) (Company Reply Brief at 44-45, citing D.P.U. 20-120, at 329; Bay State Gas Company, D.P.U. 92-111, at 127 (1992); Milford Water Company, D.P.U. 92-101, at 54 (1992); The Berkshire Gas Company, D.P.U. 90-121, at 151 (1990)). Further, according to the Company, the missions of these organizations and their connection to providing customers with safe and reliable service are objective facts that are capable of definitive verification and are readily available to the Department and the Attorney General (Company Reply Brief at 45 & n.7).

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For all of the above reasons, NSTAR Electric claims that it met the Department's standard for inclusion of these costs, and the Department should reject the Attorney General's recommendations (Company Brief at 166, citing Exhs. ESRR/ CPP/Comp-Rebuttal-1, at 13-16; AG 22-2; AG 38-1; DPU 15-1, DPU 53-1; Company Reply Brief at 45). Finally, the Company agrees with the Attorney General that the Department should remove one of the double entries associated with AIM, a reduction of \$15,312 from its proposed cost of service (Company Brief at 165-166).

### 3. Analysis and Findings

The Department requires that the Company demonstrate a link between non-industry dues and memberships and ratepayer benefits for the costs to be recoverable in rates. See, e.g., D.P.U. 92-111, at 127; D.P.U. 92-101, at 54; D.P.U. 90-121, at 151. In support of its position that the costs should be recoverable, the Company generally states that all of the organizations offer insight, expertise, industry data, publications, and best practices that the Company uses to provide safe and reliable service (Company Brief at 163-165, citing Exh. ES-RR/ CPP/Comp-Rebuttal-1, at 13-16; DPU 38-1; DPU 53-2; Tr. 5, at 494; Company Reply Brief at 45). The Department asked the Company to outline specific, direct customer benefits related to each of its non-industry dues and memberships, and the Company's response was in the form of brief, general explanations, noting vague benefits such as input to inform the Company's efforts to provide service to customers and the opportunity to meet with business customers to exchange ideas to facilitate the Company's

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service to customers (Exhs. DPU 15-1; DPU 53-1).<sup>107</sup> While the Department recognizes that some of these memberships may help provide insight to NSTAR Electric on issues relevant to its business, the Company has not demonstrated that there is a clear link between the Company's memberships in the majority of these non-industry organizations and meaningful benefits to customers, or that these memberships are necessary to the provision of electric distribution service to customers.

Specifically, the Department finds that the Company sufficiently demonstrated direct and distinct benefits to ratepayers for four of the non-industry organizations for which it seeks to recover dues and membership costs – the American Benefits Council, the Drug and Alcohol Testing Industry Association, the Electric Utility Industry Sustainable Supply Chain Alliance (“EUISSCA”), and the Northeast Human Resources Association (e.g., the Company's membership in EUISSCA helps it to address supply chain issues) (Exh. ESRR/CCP/Comp-Rebuttal-1, at 13-16). On brief, the Company offers additional detailed explanations of benefits for other non-industry organizations, such as ORC HSE Strategies, LLC (Company Brief at 164-165; Company Reply Brief at 44-45). The evidentiary record, however, contains only the names of these organizations, and not detailed explanations (Exhs. ESRR/CCP/Comp-Rebuttal-1, at 13-16; DPU 15-1& Att.; DPU 38-1 &

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<sup>107</sup> In contrast, the Company provided clear, specific, and detailed customer benefits related to each of its proposed industry dues and memberships (Exh. AG 38-1, at 1-6). For example, Eversource Energy's participation on the Advanced Energy Economy's Utility Advisory Committee fosters understanding of generation and storage solutions to incorporate into long term system planning and supports a clean energy future at the Company (Exh. AG 38-1, at 5).

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Att.; DPU 53-1; DPU 53-2 & Att.; AG 8-19, Att.; AG 22-2; AG 38-1). As noted above, it is the Company's burden to establish that these non-industry dues and memberships benefit customers. See, e.g., D.P.U. 92-111, at 127; D.P.U. 92-101, at 54; D.P.U. 90-121, at 151. Simply listing the organizations in a response to an information request seeking substantive information does not satisfy that burden. Nor is it the Department's role to independently verify the nature of each organization and attempt to discern the link between their function and customer benefits.

Based on the foregoing considerations, the Department allows recovery of the costs associated with the four aforementioned organizations for which the Company demonstrated a clear link between costs and ratepayer benefits. The total cost proposed in the Company's cost of service for the American Benefits Council, the Drug and Alcohol Testing Industry Association, EUISSCA, and the Northeast Human Resources Association is \$12,113 (Exh. ES-REVREQ-3, WP 12 (Rev. 4)). We disallow recovery of the costs associated with the remaining non-industry memberships, as we conclude that it is inappropriate for ratepayers to fund the costs of non-industry dues and memberships for which the Company has not established a clear and direct link to ratepayer benefits on the record.

D.P.U. 20-120, at 329-330. Finally, the Department allows recovery of NSTAR Electric's industry dues and memberships, with the exception of one of the double entries associated with the Company's AIM membership, a reduction of \$15,312 (Exh. ES-REVREQ-3, WP 12 (Rev. 4); DPU 53-2, Att.; AG 38-1). Accordingly, the Department reduces the Company's

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proposed cost of service by \$363,166 (\$347,854 in disallowed non-industry dues + \$15,312 in disallowed industry dues).

F. Caregiver Program

1. Introduction

During the test year, NSTAR Electric booked \$85,432 for the Caregiver Program included in its proposed residual O&M expense (Exh. AG 8-10, Att.). Eversource Energy's operating companies implemented the Caregiver Program on July 1, 2019, in response to employee-requested support on storm days (RR-AG-14; Tr. 6, at 686).<sup>108</sup> Under this program, Eversource Energy makes quarterly payments of \$51,000, or approximately \$20 per employee, to the contractor Care.com for a total pool of 300 backup days available annually for employees (Tr. 6, at 681-682). The Company states that these backup days are available for care of an employee's dependents up to ten days per employee per year in the event of an emergency (Exh. AG 8-10). As part of this benefit, employees also receive a free membership to Care@Work to connect to a network of caregivers for dependent care (Exh. AG 8-10).

2. Positions of the Parties

a. Attorney General

The Attorney General argues that the Company failed to justify that the Caregiver Program costs are reasonable, prudently incurred, and benefit ratepayers (Attorney General

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<sup>108</sup> Employees of NSTAR Electric and Eversource Energy have storm restoration support roles during emergency storm days (Tr. 6, at 683).



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Brief at 130; Attorney General Reply Brief at 37, citing Fitchburg Gas and Electric Light Company, 375 Mass. 571, 582-583). She also contends that the Caregiver Program is not standard in the market (Attorney General Reply Brief at 37).

Further, the Attorney General argues that although the Company pays a single flat fee to provide the pool of 300 backup days to all employees, most employees do not use it (Attorney General Reply Brief at 37, citing Tr. 6, at 681). She asserts that the employees only used 18 days in 2019, 210 days in 2020, 90 days in 2021, and, as of July 15, 2022, 49 days in 2022 (Attorney General Reply Brief at 37, citing RR-AG-14). In particular, the Attorney General contends that the Company's employees only used a fraction of the backup days during the COVID-19 pandemic in 2020 (Attorney General Reply Brief at 37). She also claims that the flat fee is only the membership fee and does not cover the actual backup dependent care costs, which employees pay for themselves (Attorney General Reply Brief at 37-38, citing Tr. 6, at 685-686).

Moreover, the Attorney General argues that the Company has not provided documentation or evidence to support its claim that customers benefit from a stable workforce, which the Caregiver Program facilitates (Attorney General Brief at 130, citing Exh. ES-RR/\_CPP/Comp-Rebuttal-1, at 12). The Attorney General asserts that because NSTAR Electric does not track the number of missed workdays or employees who have left their jobs due to dependent care issues, the Company failed to demonstrate the Caregiver Program provides any impact on employee productivity or employee retention (Attorney General Brief at 130, citing Tr. 6, at 686).

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b. Company

The Company argues that the Caregiver Program benefits customers because it provides a safety net that ensures trained employees can perform their work duties to provide safe and reliable service to customers (Company Brief at 173). According to the Company, a recent childcare report issued by the Massachusetts Taxpayer Foundation determined that, due to inadequate childcare, individuals and families lose \$1.7 billion in wages from missing work or reducing their hours; employers lose \$812 million due to lower productivity and turnover/replacement costs; and Massachusetts forgoes \$188 million in tax revenues due to lower earnings and lost wages (Company Brief at 173, citing Exh. ES-RR/PPP/Comp-Rebuttal-1, at 11). NSTAR Electric asserts that the Caregiver Program also benefits customers by facilitating a stable workforce, as the program reduces the number of day employees miss from work when primary care is temporarily unavailable (Company Brief at 173-174). Further, NSTAR Electric contends that 31 percent of large employers offered subsidized caregiving programs like the Company's Caregiver Program to their employees in 2021, and between 25 and 30 percent of the utility companies offer subsidized childcare to their employees (Company Brief at 173, citing Tr. 6, at 695; Company Reply Brief at 41).

The Company also rejects the Attorney General's contention that most employees are not using the Caregiver Program. According to the Company, employees use the Caregiver Program in the event of emergencies to ensure that they are available to report to storm restoration support roles during ERP events (Company Reply Brief at 41, 42, citing Tr. 6,

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at 683). Finally, NSTAR Electric contends that it has met its burden of proof and burden of production in demonstrating that the costs associated with the Caregiver Program benefit customers, are reasonable, and were prudently incurred (Company Reply Brief at 43).

### 3. Analysis and Findings

The Company bears the burden of demonstrating that proposed costs benefit Massachusetts ratepayers, are reasonable, and were prudently incurred.

D.P.U. 11-01/D.P.U. 11-02, at 323; D.T.E. 03-40, at 140-141; D.P.U. 1699, at 13. This standard applies whether the expenses were incurred at the parent level or at the service company level. The Department has previously stated that the Department may consider allowing Caregiver Program costs if the Company provides convincing evidence substantiating the relationship between the benefit program and ratepayer benefits, and that these benefits are common industry practice and necessary for the Company to stay competitive in attracting skilled employees. D.P.U. 20-120, at 225.

The Company represents that it implemented the Caregiver Program in response its employees' need for dependent care during emergency storm response (Tr. 6, at 683, 686, 696). Most of Eversource Energy employees have a secondary responsibility in storm restoration support roles, in addition to their normal role, during a storm event, such as coordinating food and lodging for the storm restoration team (Tr. 6, at 683, 696). The frequency and severity of major storm events has increased noticeably since 2009, and such storms may arise on short notice when regular dependent care is unavailable (Tr. 6, at 696).

Massachusetts Electric Company, Nantucket Electric Company, and NSTAR Electric

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Company, D.P.U. 21-75/D.P.U. 21-76, at 22 (2021). The Department finds that by providing backup care during emergency storm response, the Caregiver Program creates stability in the workforce, and therefore provides benefits to ratepayers by enabling the Company to provide safe and reliable service to its customers. Regarding the availability of this benefit across the industry, the Company states that approximately 25 to 30 percent of utility companies offer subsidized childcare to their employees (Tr. 6, at 695). While this percentage may not rise to the level of common industry practice, in this instance, given the importance of providing a stable workforce during emergency storm response and the resulting benefits to customers, the Department allows the \$85,432 of costs associated with the Caregiver Program in the Company's residual O&M.

G. Enterprise Information Technology Expense

1. Introduction

Enterprise IT expense represents charges billed to NSTAR Electric for ESC's investments in IT systems that support more than one of the Eversource Energy operating companies (Exh. ES-REVREQ-1, at 72). Enterprise IT projects that support more than one company are installed at the service company level to efficiently implement one integrated solution to be used on a shared basis and to efficiently charge the costs of shared infrastructure across multiple entities (Exh. ES-REVREQ-1, at 72-73). Accordingly, Enterprise IT projects are capitalized by ESC and charged to the operating companies as expense through the general service company overhead rate (Exhs. ES-REVREQ-1, at 53-54, 72-73, 79-80; DPU 48-1; DPU 48-5; AG 1-28 & Att. (c); AG 1-92). ESC's revenue

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requirement for the Enterprise IT projects is comprised of depreciation expense and a return on ESC's gross investment base less accumulated depreciation and ADIT (Exhs. ES-REVREQ-2, Sch. 14 (Rev. 4); ES-REVREQ-4, Sch. 5(b) (Rev. 3)). ESC allocates 32.44 percent of Enterprise IT costs to NSTAR Electric, which represents the Company's proportionate share of net income and gross plant assets (Exhs. ES-REVREQ-1, at 81; DPU 48-5). This percentage allocator is a total Company allocator that includes transmission; therefore, the Company applies an additional adjustment to remove the portion of the expense attributable to transmission (Exhs. ES-REVREQ-1, at 81; ES-REVREQ-2, Sch. 14 (Rev. 4)). Finally, because ESC employees perform both capital and expense functions for the Company related to the Enterprise IT projects, an ESC expense ratio of 64.05 percent is applied against the total cost for NSTAR Electric, with the remainder charged to capital or other balance sheet accounts and not included in the revenue requirement (Exhs. ES-REVREQ-1, at 81; ES-REVREQ-2, Sch. 14 (Rev. 4); ES-REVREQ-4, Sch. 5(b) (Rev. 3)).

During the test year, the Company booked \$33,020,432 in Enterprise IT projects expense (Exh. ES-REVREQ-2, Sch. 14). The Company initially proposed a pro forma increase in Enterprise IT expense of \$10,869,443 based on the total estimated revenue requirement associated with: (1) expected changes in Enterprise IT expense through December 31, 2021; and (2) the post-test-year Oracle Utilities Analytics ("OUA")<sup>109</sup> and

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<sup>109</sup> The Company explains that the OUA project will replace the current FocalPoint reporting systems (Exhs. ES-ADDITIONS-1, at 60-61; ES-REVREQ-1, at 75). The implementation of OUA will address outage reporting system limitations by providing

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Network Management System (“NMS”)<sup>110</sup> capital projects undertaken by ESC in 2022 (Exhs. ES-REVREQ-1, at 73-74; ES-REVREQ-2, Sch. 14). During the proceeding, the Company reduced its proposed Enterprise IT pro forma adjustment to \$7,906,029 based on: (1) a revised calculation of ESC’s return on the test-year and post-test-year investments to reflect NSTAR Electric’s proposed weighted average cost of capital (“WACC”) and (2) updates to Enterprise IT project expense for actual 2022 ESC plant activity for the OUA and NMS projects (Exh. ES-REVREQ-2, Sch. 14 (Rev. 1 through 3)). Thus, the Company proposes a total Enterprise IT expense of \$40,926,462 (Exh. ES-REVREQ-2, Sch. 14 (Rev. 4)).

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a single, enterprise outage reporting system that is architected to integrate with ESC’s enterprise outage management system to provide outage related data in near real-time through a robust, high performance outage reporting platform (Exhs. ES-ADDITIONS-1, at 61; ES-REVREQ-1, at 75-76; AG 12-43).

<sup>110</sup> The Company explains that the NMS project will upgrade the current NMS system to the latest Oracle software version 2.4 in conjunction with the implementation of new server hardware that will enhance system performance and reliability to provide a modernized, technically current software/hardware platform that is fully vendor supported through 2023 (Exhs. ES-ADDITIONS-1, at 63; ES-REVREQ-1, at 77; AG 12-44). Additionally, four high business-value system enhancements, which include Training Simulator, Outage Mobile Application, Automated Single Outage No Light Closeout, and Automated Overlay Google Map Satellite Imagery, will be implemented as part of the NMS project to deliver significant new business capability that directly support and advance operational excellence across ESC (Exhs. ES-ADDITIONS-1, at 63; ES-REVREQ-1, at 77).

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2. Positions of the Parties

a. Attorney General

The Attorney General argues that NSTAR Electric failed to timely provide project closure reports to support its Enterprise IT expense, despite the Company's awareness of the Department's specific filing requirements (Attorney General Brief at 131-132, citing Exhs. ES-ADDITIONS-1, at 56-57; AG 15-21 through AG 15-25; D.P.U. 18-150, at 275). The Attorney General contends that the Company acknowledged the delay in providing the closing reports but claimed that all of the required documentation had been provided within six months of the initial filing (Attorney General Brief at 132, citing Exh. ES-RR/PPP/Comp-Rebuttal-1, at 40).

The Attorney General also claims that there are deficiencies with the variance analyses provided by the Company (Attorney General Brief at 132). In particular, the Attorney General asserts that the Company's purported variance analyses contains estimates, revisions, actuals, and the variance amount, but provide no actual analytical detail such as the reason for the variance or which costs contributed to the variance (Attorney General Brief at 132, citing Exh. DPU 69-12, Att. (a); Tr. 1, at 28-30).

The Attorney General argues that NSTAR Electric's failure to provide timely documentation that substantively complies with the Department's filing standards left insufficient time to conduct a meaningful review of costs and raised doubt about the accuracy of the Company's filing (Attorney General Brief at 132-133). Although the Attorney General does not recommend a specific disallowance of costs, she contends that the Department

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should enforce its existing standards and institute and enforce strong administrative safeguards to prevent similar issues in the future, such as the automatic disallowance of costs for projects for which mandated documentation is not provided with a Company's initial filing (Attorney General Brief at 132-133, citing D.P.U. 18-150, at 274-275). The Attorney General also asserts that the Department should require the following information in variance analyses: (1) original estimates, (2) any updated estimates and the related causes, and (3) detailed explanations for both the causes and amounts of any variances, including proper identification of which costs caused the variance (Attorney General Brief at 133).

The Attorney General argues that, despite the Company's position to the contrary, her recommendations are appropriate as they only seek enforcement of the Department's existing standards (Attorney General Reply Brief at 39-40). Finally, the Attorney General rejects any notion that her recommendations would penalize the Company for circumstances beyond its control (Attorney General Reply Brief at 40). The Attorney General contends that the information required to be submitted with the initial filing includes basic, essential Company-generated and maintained project documentation, and the Department's standard allows for additional supporting documentation to be provided through discovery in a timely fashion no later than the close of discovery (Company Reply Brief at 40, citing D.P.U. 18-150, at 275).

b. Company

NSTAR Electric asserts that it will examine the issues experienced with document production in this proceeding to refine and improve its processes for future filings; however,



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the Company argues that the automatic disallowance of costs without a showing of imprudence as suggested by the Attorney General is inappropriate and should be rejected (Company Brief at 210). NSTAR Electric contends that the Attorney General's recommendation is impermissibly punitive and could ultimately penalize the Company for circumstances beyond its control, such as when a vendor fails to provide an invoice in a timely fashion for its inclusion in the initial filing (Company Brief at 210). In addition, NSTAR Electric argues that the Attorney General's automatic disallowance recommendation ignores the Department's criteria in D.P.U. 18-150 that requires the Company to produce documentation throughout the course of the discovery period (Company Brief at 210).

Regarding the sufficiency of the information produced in this proceeding, NSTAR Electric claims that it has provided all project documentation supporting its Enterprise IT projects from 2016 through 2021, including Project Authorization Forms and any supplements, approvals, and the appropriate variance analyses for these projects, consistent with the Company's Capital Authorization Policy (Company Brief at 211, citing Exhs. ES-ADDITIONS-11, Atts. (a) through (f); DPU 69-12, Att. (c); RR-AG-11).

Further, NSTAR Electric asserts that it has met the Department's standard for the inclusion of the post-test-year OUA and NMS projects (Company Brief at 209). Specifically, NSTAR Electric contends that both projects are in service and used and useful, the projects advanced the ESC IT strategy and long-term investment plan, project costs were prudently incurred, and no party argued that the costs associated with the projects were imprudent or contrary to the Company's Capital Authorization Policy (Company Brief at 209, citing

Exhs. DPU 48-1; DPU 69-12). In addition, NSTAR Electric claims that the costs were fairly allocated from ESC to the Company (Company Brief at 209, citing Exhs. ES-REVREQ-1, at 72-73, 79-80; DPU 48-1 & Att.; DPU 48-5; AG 1-28 & Att.(c); AG 1-92). While the Company acknowledges that there were delays in providing documentation regarding these projects, the Company maintains that it ultimately provided a comprehensive, consolidated version of the Enterprise IT project documentation during discovery to aid in review of these projects (Company Brief at 209, citing Exhs. ES-REVREQ/CPP/Comp-Rebuttal-1, at 40; DPU 69-12).

### 3. Standard of Review

The standard for the inclusion of IT expense is comprised of three elements.<sup>111</sup> First, the investments underlying the IT expense must be in service and used and useful. D.P.U. 18-150, at 274, citing D.P.U. 95-118, at 42. Second, the underlying IT investments must be prudently incurred. D.P.U. 18-150, at 274, citing D.P.U. 95-118, at 42. Third, the underlying IT investments must be fairly allocated to the company, with an explanation of how the company and its ratepayers benefit from the investment. D.P.U. 18-150,

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<sup>111</sup> Historically, the Department reviewed a petitioning company's proposed IT expense under the standard of review for lease expense (*i.e.*, reasonableness), as the affiliated service company included IT expense in its lease charges to the petitioning company. D.P.U. 18-150, at 273; D.P.U. 15-155, at 308; D.P.U. 09-39, at 159-159. In D.P.U. 18-150, the Department found that, in conjunction with the increasing importance of IT in business functions, the size and scope of IT investments had become more significant and that this trend likely would continue. D.P.U. 18-150, at 272-273 & n.125. Based on these considerations, the Department found that the lease expense standard of review was no longer sufficient to satisfy the burden of proof necessary for IT-related expense. D.P.U. 18-150, at 273.

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at 274-275, citing Hingham Water Company, D.P.U. 88-170, at 21 (1989); Housatonic Water Works Company, D.P.U. 86-93, at 18 (1987); see also Milford Water Company, D.P.U. 12-86, at 11 (2013) (the Department must carefully scrutinize affiliate transactions because the exercise of control and the absence of arm's-length bargaining between affiliated companies can lead to "excessive charges for services, construction work, equipment and materials") (citations omitted); Public Utility Holding Company Act of 1935, P.L. No. 333, 49 Stat. 803, § 1(b)(2), (3) (1935) (Congress recognized concern with allocation of costs within public utility holding company as reason for legislative/regulatory control of holding companies where subsidiary company accounting practices and rates are affected); Report of the Special Commission on Control and Conduct of Public Utilities (1930 H. 1200), at 46 (March 1930) (consumers suffer from excessive charges by affiliates to operating companies). In addition, as part of their initial filings requesting new base distribution rates, petitioning companies must submit the following documentation for each service-company-allocated IT investment: (1) project sanctioning papers; (2) project closure reports; (3) variance analyses explaining the reasons for cost overruns and for demonstrating prudence; (4) project descriptions, including completed analyses enumerating ratepayer benefits and the investment's advancement of company IT strategy; and (5) the company's long-term investment plan. D.P.U. 18-150, at 275. Petitioning companies are also required to amend their initial filing to include documentation associated with post-test-year investments, if applicable. D.P.U. 18-150, at 275.

4. Analysis and Findings

The Department has reviewed the testimony and supporting documentation for the Company's test-year and post-test-year Enterprise IT investments, as well as updates provided during the proceeding, including initial and supplemental project authorization forms, project approvals, project costs, project closing reports, descriptions of ratepayer benefits, and variance analyses (Exhs. ES-REVREQ-1, at 72-73, 79-80; ES-ADDITIONS-1, at 52-65; ES-RR/CPP/Comp-Rebuttal-1, at 39-43; ES-ADDITIONS-8A & Supp.; ES-ADDITIONS-8B & Supp.; ES-ADDITIONS-11; DPU 15-2; DPU 48-1 & Att.; DPU 48-5; DPU 69-5, Att. & Supp. 1; DPU 69-6, Att. & Supp.; DPU 69-12 & Atts. (a) through (f)<sup>112</sup>; AG 1-28 & Att. (c); AG 1-92; Tr. 1, at 21-39, 65-68; RR-AG-1). We find that the test-year and post-test-year Enterprise IT projects are in-service, used and useful, the costs were prudently incurred, and the Company provided a reasonable explanation of the benefits to ratepayers (Exhs. DPU 48-1; DPU 69-12, Atts. (a), (c, parts 1-21)). For example, customers benefit from the proposed Enterprise IT investments because the systems are necessary for the provision of electric service to customers and they are less expensive for any individual operating company, including NSTAR Electric, when the systems undertaken within a cost-sharing framework (e.g., undertaken by ESC on behalf of the

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<sup>112</sup> At the Company's request, Exh. DPU 69-12, Att. (a) replaces Exhs. ES-ADDITIONS-9 & Rev.; Exh. DPU 69-12, Att. (b) replaces Exhs. ES-ADDITIONS-9 (Supps. 1 and 2); and Exh. DPU 69-12, Att. (c), parts 1 through 28 replace Exhs. ES-ADDITIONS-10, ES-ADDITIONS-10A, and ES-ADDITIONS-10 (Supps. 1 and 2).

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operating companies on a shared basis) (Exh. DPU 48-1). In addition, the Company's post-test-year OUA and NMS projects are in service, used and useful, and the costs of these projects were prudently incurred, with actual costs through June 30, 2022, being less than the estimated costs for these projects (Exhs. ES-ADDITIONS-8A & Supp; ES-ADDITIONS-8B & Supp.; DPU 69-5, Att. (Supp. 1); DPU 69-6, Att. (Supp. 1); DPU 69-12, Atts. (b), (c), parts 22-28); Tr. 1, at 30-31, 38).<sup>113</sup>

Further, we find that the test-year and post-test-year Enterprise IT project costs were fairly allocated to NSTAR Electric based on the Company's proportionate share of net income and gross plant assets (Exhs. ES-REVREQ-1, at 80-81; ES-REVREQ-2, Sch. 14 (Rev. 4); DPU 48-5; AG 1-28 & Att. (c); AG 1-92). The allocation is based on the Company's operations portfolio designation, which is largely asset driven and uses the referenced allocator (Exh. DPU 48-5). Lastly, the Company provided a summary of its IT long-term investment plan (Exh. DPU 48-1, Att.).

The Company acknowledges its challenges and delays in providing project documentation for Enterprise IT projects throughout this proceeding and concedes that it bears the burden to fully support its requests for cost recovery with appropriate

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<sup>113</sup> The Company outlines numerous business and operational benefits associated with the implementation of the OUA and NMS systems (Exhs. ES-REVREQ-1, at 76, 78-79; ES-ADDITIONS-1, at 61-62, 63-64). Any potential savings resulting from these systems would be recognized in the future, and, therefore, they are not currently quantifiable or included in the cost of service (see Exh. AG 14-6). The Department expects NSTAR Electric to reflect potential future savings in the Company's next base distribution rate case.

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documentation (Company Brief at 210). The Department recognizes that there are acceptable circumstances when not all required documentation may be available at the time of a company's initial filing. For example, as described above, two of NSTAR Electric's Enterprise IT projects in the instant proceeding were placed in service several months following its initial filing, and, therefore, the Company was unable to provide closing reports for these projects with the initial filing (Tr. 1, at 30-31, 38). Our standard for the inclusion of IT expense costs recognizes that petitioners are required to amend their initial filing to include documentation associated with post-test-year investments, if applicable.

D.P.U. 18-150, at 275.

The Department notes, however, that while NSTAR Electric ultimately provided the required documentation to support the recovery of the costs associated with its Enterprise IT projects, the Company did not provide all the required documentation with its initial filing, was required to submit supplements and revisions to numerous exhibits, inadvertently omitted certain information from exhibits, and often requested multiple extensions of time to respond to information requests regarding Enterprise IT projects (see, e.g., Exhs. ES-ADDITIONS-8A & Supp.; ES-ADDITIONS-8B & Supp.; ES-ADDITIONS-9 & Rev., Supps.; ES-ADDITIONS-10 & Supps.; ES-ADDITIONS-10A; DPU 69-12 & Atts.). Further, the Company's need to develop a "roadmap" mid-proceeding to facilitate the Department's and intervenors' review of the Enterprise IT documentation highlights the Company's difficulties in providing complete information in a timely, organized manner (Exhs. ES-RR/CPP/Comp-Rebuttal-1, at 40-41; DPU 69-12 & Atts.).

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Despite the Company's shortcomings in providing the Enterprise IT projects supporting documentation, we find that the Attorney General and other parties nevertheless had sufficient opportunity to review the documentation, issue discovery, conduct meaningful cross-examination at the evidentiary hearings, and present any objections to cost recovery for Department consideration (see, e.g., Exhs. AG-LA-1, at 4-8; AG 14-5; AG 14-6; AG 4-18; AG 12-43; AG 12-44; AG 24-6, AG 24-7; Tr. 1, at 21-39, 65-68; RR-AG-1; Attorney General Brief at 131-133; Attorney General Reply Brief at 39-40). As such, in this instance, we will not disallow any test-year or post-test-year Enterprise IT investments. Further, we are not persuaded that additional directives are necessary for future filings, such as the automatic disallowance of costs recommended by the Attorney General.

The Department does, however, reaffirm our requirements related to IT project documentation and reminds companies that it is critical for complete and detailed IT-related investment documentation to be submitted in a timely fashion so that the Department and intervenors have sufficient time for review. Specifically, as part of initial filings requesting new base distribution rates, petitioning companies must submit the following documentation for each service company-allocated IT investment: (1) project sanctioning papers; (2) project closure reports; (3) variance analyses explaining the reasons for cost overruns and for demonstrating prudence; (4) project descriptions, including completed analyses enumerating ratepayer benefits and the investment's advancement of company IT strategy; and (5) the petitioning company's long-term investment plan. D.P.U. 18-150, at 275. Further, variance analyses must contain original estimates, any updated estimates, detailed explanations for

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both the causes and amounts of variances, and identification of which costs caused the variance. Petitioning companies can amend initial filings to include documentation associated with post-test-year investments, if applicable. All additional supporting documentation provided through discovery should be produced in a timely fashion and no later than at least one week prior to the close of discovery.

Finally, consistent with Department precedent, for the return component of the Company's Enterprise IT project expenses, the Department calculates the WACC using the capital structure and ROE approved in this Order. D.P.U. 20-120, at 293-294; D.P.U. 19-120, at 255-256; D.P.U. 18-150, at 270-271. Using the capital structure and ROE approved in this proceeding produces an overall WACC of 7.06 percent and a pre-tax WACC of 9.02 percent. Application of the Company's approved pre-tax WACC to ESC's allocation of Enterprise IT expense results in a decrease of \$52,095 to the proposed rate year expense (see Exh. ES-REVREQ-2, Sch. 14, at 2 (Rev. 4)). Accordingly, the Department decreases the Company's proposed cost of service by \$52,095 for an approved increase to Enterprise IT expense of \$7,853,934.

#### H. Incremental COVID-19 Expenses

##### 1. Introduction

In response to the COVID-19 pandemic, the Department allowed each gas and electric company to record, defer, and track their incremental pandemic-related response costs, subject to a final determination as to their appropriate ratemaking treatment.

D.P.U. 20-58-D/D.P.U. 20-91, Interim Order on Ratemaking Proposal and Vote and Order



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Opening Investigation at 22-23 (December 31, 2020). Consistent with these rulings, Eversource Energy established affiliate-specific accounting work orders to identify and track incremental non-labor COVID-19 related expenses, such as costs associated with employee protection processes and equipment, facilities cleaning, maintaining the workforce at remote locations, certain telecommunication expenses, and other related costs (Exhs. DPU 3-1; DPU 19-4 & Att.; DPU 56-2).

As of December 31, 2020 (i.e., the end of the test year), NSTAR Electric had incurred total COVID-19-related expenses of \$8,848,163, of which \$7,907,079 was allocated to distribution operations (Exh. DPU 3-2, Att.). The Company also identified COVID-19-related cost savings of \$379,940 that were allocated to distribution operations, producing a net COVID-19-related expense of \$7,527,139 (Exhs. DPU 3-2; DPU 56-1).<sup>114</sup> Of the \$7,909,079 in distribution-related expenses, the Company identified \$4,675,470 as nonrecurring and thus eligible for deferral (Exhs. DPU 3-2; AG 1-34, Att. (h) at 7; AG 1-34, Att. (i) at 5; AG 21-1, Att.). The \$7,909,079 in total distribution-related expenses, less \$4,675,470 in deferrals, produced a total remaining COVID-19 expense allocated to distribution operations of \$3,231,610 (Exhs. DPU 3-2; AG 21-1, Att.; DPU 56-1).

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<sup>114</sup> Cost savings represent expenses that had been avoided as the result of suspended work activities. D.P.U. 20-58-D/D.P.U. 20-91, Interim Order on Ratemaking Proposal and Vote and Order Opening Investigation at 15 (December 31, 2020). The Company's calculations were based on the \$7,907,079 total distribution-related expense and did not factor in the \$379,940 cost savings (see Exhs. DPU 3-2; DPU 56-1).

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NSTAR Electric initially included \$3,231,610 in COVID-19-related expenses in its proposed cost of service (Exhs. DPU 56-1; AG 13-2). During the proceeding, the Company revised its estimate of ongoing COVID-19 response costs from \$3,231,610 to \$988,000, based on a review of its 2022 internal operating budgets (Exh. AG 13-2; RR-DPU-13). These expenses consist of: (1) \$362,000 in additional facilities cleaning costs; (2) \$75,000 in additional HVAC operation; (3) \$380,000 in additional IT costs; and (4) \$171,000 in telephone expenses for customer service representatives continuing to work from home (Exhs. DPU 56-2; AG 13-2). The Company states that because its operations have changed as a result of the pandemic experience, these additional expenses will continue to be incurred for the foreseeable future and have thus been incorporated in the Company's cost of service (Exhs. DPU 3-2; ES-REVREQ-2, Sch. 9, at 1 (Rev. 4)). The Company excluded the remaining \$2,243,610 from its proposed cost of service (Exh. ES-REVREQ-2, Sch. 9, at 1 (Rev. 4)).

2. Positions of the Parties

a. Attorney General

The Attorney General accepts NSTAR Electric's revised estimate of \$988,000 in ongoing incremental COVID-19 responses costs as appropriate (Attorney General Brief at 119, citing Exhs. ES-RR/CPP/Comp-Rebuttal-1, at 31-32; AG-DJE-Surrebuttal-1, at 2). Therefore, the Attorney General accepts the Company's proposed reduction of \$2,243,610 to its test year cost of service (Attorney General Brief at 119).

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b. Company

NSTAR Electric maintains that it has appropriately identified its recurring COVID-19 response costs (Company Brief at 219, citing Exh. DPU 56-2; RR-DPU-13). The Company also states, as noted by the Attorney General, that it has appropriately eliminated non-recurring COVID-19 response expenses from its proposed cost of service (Company Brief at 219-220, citing Exh. ES-REVREQ-2 (Rev. 2)).

3. Analysis and Findings

The Department's long-standing precedent allows only known and measurable changes to test-year expenses to be included in a company's cost of service. D.T.E. 98-51, at 61-62, citing Dedham Water Company, D.P.U. 84-32, at 17 (1984). Further, the Department permits a company to include expenses in its cost of service if a company can demonstrate that the expense is either annually or periodically recurring or, if non-recurring, is extraordinary in nature and amount as to warrant their collection by amortizing them over an appropriate time period. D.P.U. 1270/1414, at 33; see also D.P.U. 89-114/90-331/91-80 (Phase One) at 152; Western Massachusetts Electric Company, D.P.U. 88-250, at 65-67 (1989).

The Department has previously recognized that the COVID-19 pandemic has caused not only a public health emergency, but also a significant economic disruption to both customers and jurisdictional gas, electric, and water distribution companies throughout the country. D.P.U. 20-58, Order Opening Inquiry and Establishing Working Group at 2 (May 11, 2020); D.P.U. 20-58-A, Order on Customer Outreach Plan at 5 (June 26, 2020).

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While utilities in general faced shifts in demand and usage, increased operational burdens, collections shortfalls, and voluntary and mandatory moratoriums on disconnections, their employees also faced significant disruptions in their day-to-day working conditions. These disruptions necessitated remote work arrangements for those employees whose duties could be performed remotely, including access to IT that an individual employee would not be reasonably expected to personally possess (Exh. DPU 3-2). Because a significant number of employees are considered essential workers who do not have the ability to work remotely, the Company continued to incur facilities cleaning expenses to comply with the cleaning guidelines prescribed by the Center for Disease Control (“CDC”) as well as to ensure safe workspaces for its employees (Exh. DPU 3-2). With changes in CDC cleaning protocols and transitions to more of a hybrid work environment in 2021 and thereafter, the Department is satisfied that the test-year expense is not representative of the Company’s ongoing COVID-19 response costs that will be incurred in the future. Nonetheless, we recognize that some level of additional COVID-19 response costs will continue to be incurred for an indefinite time.

The Department has examined the Company’s calculations and assumptions behind its proposed \$988,000 in ongoing COVID-19 response expenses (Exh. DPU 56-2; Tr. 3, at 279-281; RR-DPU-13). The recurring facility cleaning and maintenance costs of \$362,000 consists of: (1) \$166,000 in increased cleaning of high-traffic areas and touch points identified for each of the Company’s Massachusetts facilities; (2) \$177,000 in janitorial overtime calculated for each facility; and (3) \$19,000 in costs associated with stocking the approximately 150 sanitation stations located at these facilities (Exh. DPU 56-2; Tr. 3,

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at 277-278; RR-DPU-13). The recurring electricity costs of \$75,000 are associated with additional run times for HVAC equipment based on both CDC and professional engineering guidelines, with a partial offset for lower base electricity costs versus pre-pandemic consumption levels (Exh. DPU 56-2; Tr. 3, at 279-280; RR-DPU-13). The recurring IT costs of \$380,000 assume a 25 percent reduction from 2021 expenses as employees transition from remote work to in-office work (Exh. DPU 56-2; Tr. 3, at 280; RR-DPU-13). The recurring customer service costs of \$171,000 are based on the Company's allocated share of the \$501,120 in increased costs associated with approximately 200 Eversource customer service agent expenses working 20 days a month (Exh. DPU 56-2; Tr. 3, at 279-281; RR-DPU-13). Based on our review, the Department finds that the \$988,000 identified by the Company as ongoing COVID-19 response costs is more representative of its ongoing expenses than test-year expense. Aquarion Water Company of Massachusetts, D.P.U. 11-43, at 182-183 (2012); D.P.U. 10-55, at 445. The Department also finds that these costs represent a known and measurable change to test-year cost of service. See D.P.U. 10-55, at 445; D.P.U. 09-30, at 211; D.P.U. 08-35, at 108; Oxford Water Company, D.P.U. 88-171, at 13-14 (1989). Accordingly, the Department allows the \$988,000 identified by the Company as ongoing COVID-19 response costs.

I. Employee Retention Credit

1. Introduction

The Coronavirus Aid, Relief, and Economic Security Act of 2020 established an employee retention credit ("ERC") to incentivize companies to retain employees during the

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COVID-19 pandemic (RR-AG-2).<sup>115</sup> The ERC operates in the form of a payroll tax credit that is claimed on an employer's quarterly Form 941 tax filings; during 2020, the credit was equal to 50 percent of up to \$10,000 in qualified wages paid to an employee (RR-AG-2). While NSTAR Electric had not yet received any of these credits during the test year, the Company booked the expected credits to be received for the years 2020 and 2021 to Account 408, Payroll Taxes (Exh. AG 11-12). The Company estimated that its share of ERCs for 2020 was \$1,823,800 (Exh. AG 11-12).

NSTAR Electric considered the ERC credits to be non-recurring because they were not expected to be available in the future, and therefore removed the anticipated ERC credit from its test-year cost of service (Exhs. ES-REVREQ-1, at 58; ES-REVREQ-2, Sch. 9 (Rev. 4); Tr. 1, at 85-86). This adjustment resulted in an increase of \$1,823,800 to its test-year cost of service (Exhs. ES-REVREQ-2, Sch. 9 (Rev. 4); ES-RR/CCP/Comp-Rebuttal-1, at 34; AG 21-5).

## 2. Positions of the Parties

### a. Attorney General

The Attorney General contends that the treatment of the ERC in this proceeding should be consistent with the treatment applied in D.P.U. 20-91 (Attorney General Brief at 120; Attorney General Reply Brief at 35). The Attorney General reasons that if the ERC

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<sup>115</sup> Section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, modified the provisions of the ERC and extended its application to July 1, 2021. Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020).

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was a credit to expense and was non-recurring, then it should be eliminated from the determination of the Company's revenue requirement (Attorney General Brief at 119-120). Further, the Attorney General argues that for consistency, if the Department eliminates the ERC from NSTAR Electric's revenue requirement here, then the ERC must also be eliminated from any level of COVID-19 expense that the Company is ultimately authorized to recover in D.P.U. 20-91 (Attorney General Brief at 120; Attorney General Reply Brief at 35).

b. Company

NSTAR Electric argues that it has appropriately eliminated the effects of the ERC on its cost of service (Company Brief at 220, citing Exhs. AG 11-12; AG 11-22; AG 13-4; AG 21-5; Tr. 1, at 83-86; RR-AG-2; Company Reply Brief at 40-41). According to the Company, because the ERC was not included as an offset in its request to recover incremental COVID-19 costs in D.P.U. 20-91, the ERC must be removed from cost of service to avoid an improper reduction to cost of service (Company Brief at 220, citing RR-AG-2). The Company notes that it will offset any COVID-19 response costs that are ultimately authorized in D.P.U. 20-91 with the ERC (Company Reply Brief at 40-41).

3. Analysis and Findings

The Department typically includes a test year level of expenses in cost of service and will adjust this level only for known and measurable changes. Milford Water Company, D.P.U. 17-107, at 104 (2018), citing D.P.U. 11-01/D.P.U. 11-02, at 345; D.P.U. 07-71, at 120; D.P.U. 87-260, at 75. In this regard, the Department has consistently held that there

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are three classes of expenses that are recoverable through base rates: (1) annually recurring expenses; (2) periodically recurring expenses; and (3) nonrecurring extraordinary expenses.

D.P.U. 17-107, at 104-105, citing D.P.U. 11-01/D.P.U. 11-02, at 345; D.T.E. 98-51, at 35; D.P.U. 95-118, at 121-122; D.P.U. 1270/1414, at 32-33.

The provisions of the ERC expired, with some limited exceptions not applicable to the Company, during the fourth quarter of 2021.<sup>116</sup> Consequently, the Department finds that the ERC is a nonrecurring credit to payroll taxes, and that its inclusion in the Company's cost of service would produce a distorted level of payroll tax expense. See, e.g., Aquarion Water Company of Massachusetts, D.P.U. 17-90, at 247-248 (2018). Further, we find that the Company has properly calculated the necessary adjustment to its proposed cost of service (Exhs. ES-REVREQ-2, Sch. 8, at 2 (Rev. 4); AG 11-12; AG 11-22; AG 21-5; Tr. 1, at 83-86; RR-AG-2). Therefore, the Department accepts the Company's proposed adjustment, and we remove the ERC from the Company's test-year cost of service. The elimination of this credit produces an increase of \$1,823,800 to the Company's test-year cost of service (Exhs. ES-REVREQ-2, Sch. 9 (Rev. 4); ES-RR/CCP/Comp-Rebuttal-1, at 34; AG 21-5).

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<sup>116</sup> See Internal Revenue Bulletin: 2021-65, Termination of the Employee Retention Credit Under Section 3134 of the Code in the Fourth Calendar Quarter of 2021 for Certain Employers.



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J. Work Asset Management Expenses

1. Introduction

As part of Eversource Energy's technology modernization initiatives, it has embarked on the implementation of a new Work and Asset Management System ("WAM System") across all of its electric transmission and distribution operations, including those of the Company (Exh. ES-ADDITIONS-10, at 1059; Tr. 7, at 766-767). During the test year, NSTAR Electric booked approximately \$3,200,000 in expenditures associated with the implementation of the WAM System to Account 921, Office Supplies and Expenses (Exh. DPU 3-14). These expenses represented the cost of employee training intended to familiarize Company personnel with the use of the WAM System (Exh. AG 16-15).

2. Positions of the Parties

a. Attorney General

The Attorney General argues that the WAM System training expenses are nonrecurring and should be excluded from the Company's proposed cost of service (Attorney General Brief at 117; Attorney General Reply Brief at 35). In support of her position, the Attorney General contends that once the Company's employees are appropriately trained on the use of the WAM System, these training costs should not be expected to continue (Attorney General Brief at 117). The Attorney General also contends that the Company's Account 921 expenses for 2021 decreased by an amount similar to what would be expected if the WAM System training costs were removed and were consistent with the 2019 expenses when adjusted for inflation and "some level" of continuing costs related to COVID-19

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(Attorney General Brief at 117-118, citing Exhs. AG DJE-1, at 6-7; AG 1-2, Att. (6)(e) at 170 (Supp. 1)).

Further, the Attorney General dismisses the Company's claim that it has incurred significant training expenses during the first quarter of 2022 as a non sequitur unsupported by any evidence (Attorney General Brief at 118). She points out that during Department questioning, the Company was unable to confirm whether the increase in expenses booked to Account 921 during the first quarter of 2022 was attributable to training costs (Attorney General Brief at 118, citing Tr. 7, at 764; Attorney General Reply Brief at 35)

Based on the nature of the Company's test-year WAM System training expenses and lack of evidence that the Company's test-year Account 921 expenses are representative of future expenditures, the Attorney General argues that the Company's proposed WAM System training expenses are nonrecurring (Attorney General Brief at 118; Attorney General Brief at 35). Thus, she asserts that the Company's proposed cost of service should be reduced by \$2,777,920, which represents the portion of the \$3,200,000 in total expenses associated with distribution operations (Attorney General Brief at 119, citing Exh. AG DJE-1, at 7, Sch. 1).<sup>117</sup>

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<sup>117</sup> The Attorney General calculates that, after factoring in working capital, return requirements, and income taxes, her proposed adjustment produces an overall reduction of \$3,038,162 to the Company's proposed cost of service (Exh. AG DJE-1, at 7, Sch. 1).

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b. Company

NSTAR Electric argues that while the WAM System training costs are not in themselves a recurring expense, the Company continually conducts other trainings across its organization to ensure that employees and contractors are able to perform their duties consistent with Company systems, procedures, and processes (Company Brief at 211, citing Exhs. ES-RR/CPP/Comp-Rebuttal-1, at 32; AG 16-15). For example, the Company maintains that although there are no incurred or forecasted WAM System training expenses for 2022 and 2023, its overall Account 921 expenses during 2021 were \$6,939,589, and were \$6,471,458 during the first quarter of 2022 (Company Brief at 211, citing Exhs. ES-RR/CPP/Comp-Rebuttal-1, at 32-33; AG 21-4). The Company contends that it will continue to incur training expenses, including training on a range of IT platforms that ESC is developing over the next four years (Company Brief at 211, citing Exh. ES-RR/CPP/Comp-Rebuttal-1, at 33; Company Reply Brief at 39, citing Exhs. DPU 48-1; ES-ADDITIONS-8A at 2-3). The Company argues that because training costs are recurring, its test-year WAM System training costs provides an appropriate representative expense to be included in the cost of service (Company Brief at 212, citing Exh. ES-RR/CPP/Comp-Rebuttal-1, at 33; Tr. 7, at 766-769).

In the alternative, NSTAR Electric proposes that if the Department determines that its WAM System training costs are not representative, then the expenses should be normalized rather than eliminated in their entirety (Company Reply Brief at 39-40). According to the Company, normalization places a certain degree of risk back on the utility that would be

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expected in the course of operations (Company Reply Brief at 40, citing D.P.U. 92-101, at 48-49; D.P.U. 92-78, at 9; D.P.U. 1720, at 89). The Company proposes that if the Department declines to allow the test-year expense in full, a normalization period of four years would be appropriate in view of the relatively short life associated with IT (Company Reply Brief at 39 n.5, citing Bay State Gas Company, D.P.U. 13-75, at 261-263 (2014)).

### 3. Analysis and Findings

Test-year expenses that recur on an annual basis are eligible for full inclusion in cost of service unless the record supports a finding that the level of the expense in the test year is abnormal. D.P.U. 1270/1414, at 33. The Department's longstanding policy regarding adjustments to O&M expense levels is to set a representative level of expenses that are reasonably expected to recur on a normal annual basis. D.P.U. 1270/1414, at 33.

Account 921 encompasses a wide range of expenditures, representing office supplies and expenses incurred in connection with the general administration of the utility's operations that are assignable to specific administrative or general departments, and not specifically provided for in other accounts. 18 CFR Part 101, Account 921. Examination of the Company's bookings to Account 921 and its related subaccounts for the years 2018 through 2021 indicates that the most significant activity occurs in three subaccounts, with a fourth subaccount acting as a clearing account (Exhs. DPU 3-14; AG 1-2, Att. (6)(e) at 170 (Supp. 1); AG 1-34, Atts. (d) at 25, (e) at 18-19, (f) at 26, (g) at 19, (h) at 27, (i) at 19-20, (k) at 27 (Supp. 1), and (l) at 20 (Supp. 1)). While the Company points to the significant

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increase in its Account 921 expenses for the first quarter of 2022, the Company was unable to quantify the reasons for this increase aside from generalized observations about other training programs (Tr. 7, at 765, 768-769). Moreover, the magnitude of the reported increase (i.e., more than doubling test-year expense on an annualized basis) is suggestive of some unusual activity during that period. On this basis, the Department finds that there is insufficient evidence to support consideration of the Company's expense levels for the first quarter of 2022 in assessing the representativeness of its test-year Account 921 expenses.

While the Department acknowledges that utilities engage in employee training on an ongoing basis, the WAM expenses are nonrecurring, and the Company has failed to demonstrate that its test-year Account 921 expenditures are representative of the level of expense that will be incurred in the future. Therefore, the Department finds it appropriate to remove the test-year WAM expenses from the Company's proposed cost of service.

D.P.U. 10-55, at 332-333; D.P.U. 08-35, at 120-125.<sup>118</sup> Of the \$3,200,000 in test year WAM expenses, the Company allocates 13.19 percent, or \$422,080, to its transmission operations (Exhs. AG-DJE-1, at 7, Sch 1; DPU 3-2, Att.). The remaining 86.81 percent, or \$2,777,920, represents the portion associated with distribution operations (Exhs. DPU 3-2, Att.; AG-DJE-1, at 7, Sch. 1). Accordingly, the Department reduces the Company's proposed cost of service by \$2,777,920.

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<sup>118</sup> NSTAR Electric's alternative proposal to normalize the WAM System training expenses was offered on reply brief. We find the proposal to be untimely, as neither the Department nor the remaining parties had an opportunity to conduct meaningful investigation.

K. Rate Case Expense

1. Introduction

Initially, the Company estimated that it would incur \$3,816,170 in rate case expense (Exhs. ES-REVREQ-1, at 100; ES-REVREQ-2, Sch. 19). Based on its final invoices and projected costs to complete the compliance filing, the Company proposes a total rate case expense of \$3,108,191 (Exhs. ES-REVREQ-2, Sch. 19 (Rev. 4); DPU 30-8, Att. A (Supp. 3)). NSTAR Electric's proposed rate case expense includes costs related to legal representation, rate case support, and expert consulting services related to the Company's (1) PBR proposal, (2) depreciation study, (3) cost of capital study, and (4) allocated cost of service ("ACOSS") study (Exhs. ES-REVREQ-1, at 94-95, 100; ES-REVREQ-3, WP 19; AG 5-35, Att. A; DPU 30-1).<sup>119</sup>

The Company proposes to normalize the rate case expense over a five-year period based on the statutory requirement (Exhs. ES-REVREQ-1, at 100; ES-REVREQ-2, Sch. 19 (Rev. 4); DPU 30-21). Normalizing the Company's proposed rate case expense of \$3,108,191 over five years produces an annual expense of \$621,638 (Exh. ES-REVREQ-2, Sch. 19 (Rev. 4)).

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<sup>119</sup> The Company utilized ESC or internal employees as witnesses for certain aspects of the rate case, such as revenue requirement, employee compensation and benefits, and rate design, as well as legal support. The payroll costs for these employees are included in employee compensation and benefits rather than in rate case expense (Exh. DPU 30-11; Tr. 14, at 1507).

2. Positions of the Parties

The Company maintains that it appropriately conducted a competitive solicitation process consistent with the Department's requirements (Company Brief at 198-199). The Company also asserts that it has taken steps to control rate case expense, including selecting outside service providers that provided blended hourly fees, discounts, and not-to-exceed levels (Company Brief at 199, citing Exhs. DPU 30-3; DPU 30-17). In addition, NSTAR Electric maintains that it performs a detailed review of the outside service providers' invoices and resolves any questions or anomalies prior to approving for payment (Company Brief at 199-200, citing Exh. DPU 30-17). No intervenor addressed the Company's rate case expense on brief.

3. Analysis and Findings

a. Introduction

The Department allows recovery for rate case expense based on two important considerations. First, the Department permits recovery of rate case expense that actually has been incurred and, thus, is considered known and measurable. New England Gas Company, D.P.U. 10-114, at 219-220 (2011); D.P.U. 07-71, at 99; D.T.E. 05-27, at 157; D.T.E. 98-51, at 61-62. Second, such expenses must be reasonable, appropriate, and prudently incurred. D.P.U. 10-114, at 220; D.P.U. 09-30, at 226-227; D.P.U. 95-118, at 115-119.

The overall level of rate case expense among utilities has been, and remains, a matter of concern for the Department. D.P.U. 10-114, at 220; D.P.U. 07-71, at 99; D.T.E. 03-40,

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at 147; D.T.E. 02-24/25, at 192; D.P.U. 93-60, at 145. Rate case expense, like any other

expenditure, is an area in which companies must seek to contain costs. D.P.U. 10-114,

at 220; D.P.U. 07-71, at 99; D.T.E. 03-40, at 147-148; D.T.E. 02-24/25, at 192;

D.P.U. 96-50 (Phase I) at 79. All companies are on notice that the risk of non-recovery of

rate case expenses looms should they fail to sustain their burden to demonstrate cost

containment associated with their selection and retention of outside service providers.

D.P.U. 10-114, at 220; D.P.U. 09-39, at 289-293; D.P.U. 09-30, at 238-239; D.T.E. 03-40,

at 152-154. Further, the Department has found that rate case expenses will not be allowed in

cost of service where such expenses are disproportionate to the relief being sought.

D.P.U. 10-114, at 220; D.P.U. 10-55, at 323; see also Barnstable Water Company,

D.P.U. 93-223-B at 16-17 (1993).

b. Competitive Bidding Process

i. Introduction

The Department has consistently emphasized the importance of competitive bidding for outside services in a petitioner's overall strategy to contain rate case expense.

See, e.g., D.P.U. 10-114, at 221; D.P.U. 09-30, at 227; D.T.E. 05-27, at 158-59;

D.T.E. 03-40, at 148; D.T.E. 02-24/25, at 192. If a petitioner elects to secure outside

services for rate case expense, it must engage in a competitive bidding process for these

services. D.P.U. 10-114, at 221; D.P.U. 09-30, at 227; D.P.U. 07-71, at 99-100, 101;

D.T.E. 03-40, at 153. In all but the most unusual of circumstances, it is reasonable to

expect that a company can comply with a competitive bidding requirement. D.P.U. 10-55,



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at 342. The Department fully expects that competitive bidding for outside rate case services, including legal services, will be the norm. D.P.U. 10-55, at 342.

The requirement of having to submit a competitive bid in a structured and organized process serves several important purposes. First, the competitive bidding and qualification process provides an essential, objective benchmark for the reasonableness of the cost of the services sought. D.P.U. 10-114, at 221; D.P.U. 09-30, at 228-229; D.P.U. 07-71, at 101; D.T.E. 03-40, at 152. Second, it keeps even a consultant with a stellar past performance from taking the relationship with a company for granted. D.P.U. 10-114, at 221; D.P.U. 07-71, at 101; D.T.E. 03-40, at 152. Finally, a competitive solicitation process serves as a means of cost containment for a company. D.T.E. 03-40, at 152-153.

The competitive bidding process must be structured and objective and be based on a RFP process that is fair, open, and transparent. D.P.U. 10-114, at 221, 224; D.P.U. 09-30, at 227-228; D.P.U. 07-71, at 99-100; D.T.E. 03-40, at 153. The timing of the RFP process should be appropriate to allow for a suitable field of potential service providers to provide complete bids and provide the company with sufficient time to evaluate the bids. D.P.U. 10-114, at 221; D.P.U. 10-55, at 342-343. Further, the RFP issued to solicit service providers must clearly identify the scope of work to be performed and the criteria for evaluation. D.P.U. 10-114, at 221-222; D.P.U. 10-55, at 343.

The Department does not seek to substitute its judgment for that of a petitioner in determining which service provider may be best suited to serve the petitioner's interests and obtaining competitive bids does not mean that a company must necessarily retain the services

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of the lowest bidder regardless of its qualifications. D.P.U. 10-114, at 222; D.T.E. 03-40, at 153. The need to contain rate case expense, however, should be accorded a high priority in the review of bids received for case work. D.P.U. 10-114, at 222; D.T.E. 03-40, at 153. In seeking recovery of rate case expenses, companies must provide an adequate justification and showing, with contemporaneous documentation, that their choice of outside services is both reasonable and cost-effective. D.P.U. 10-114, at 222; D.T.E. 03-40, at 153.

ii. Company's RFP Process

The Company seeks to include expenses associated with the following: (1) PBR proposal; (2) depreciation study; (3) cost of capital study; (4) ACOSS study; (5) legal services; and (6) rate case support (Exhs. ES-REVREQ-1, at 94-95, 100; ES-REVREQ-3, WP 19; DPU 30-1; DPU 30-8, Att. A (Supp. 3); DPU 30-18). NSTAR Electric provided documentation demonstrating that it conducted a competitive bidding process for each of its service providers utilized solely for this base distribution rate proceeding (Exhs. DPU 30-1 & Atts.; DPU 30-7; DPU 30-18; DPU 50-2). The Company also utilized a managed services program vendor who conducted analysis and prepared documentation supporting the filing of exhibits related to capital additions as well as administrative support in submitting filings pursuant to a competitive bidding process that was conducted in 2017 (Exhs. DPU 30-7; DPU 30-18).

Based on our review of the RFPs and responses, we conclude that the Company's choices regarding its consultants, including attorneys, were reasonable and cost effective (Exhs. DPU 30-1, Atts. (h) through (l); DPU 30-2 & Atts.; DPU 30-3 & Att.). We also

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find that NSTAR Electric appropriately considered price and non-price factors before selecting the providers that it determined would provide the best combination of price and appropriate quality of service (Exhs. DPU 30-1, Atts. (h) through (l); DPU 30-2 & Atts.; DPU 30-3 & Att.). For each category, the Company appropriately selected a provider that possessed expertise and experience, knowledge of Department ratemaking precedent and practice, familiarity with the Company's operations, and a comprehensive understanding of the tasks for which it was requested to bid (Exhs. DPU 30-1, Atts. (h) through (l); DPU 30-2 & Atts.; DPU 30-3 & Att.). Based on the foregoing, the Department concludes that NSTAR Electric conducted a fair, open, and transparent competitive bidding process for the attorneys and consultants (Exhs. DPU 30-1, Atts. (h) through (l); DPU 30-2 & Atts.; DPU 30-3 & Att.).

c. Various Rate Case Expenses

The Department has directed companies to provide all invoices for outside rate case services that detail the number of hours billed, the billing rate, and the specific nature of the services performed. D.P.U. 10-114, at 235-236; D.T.E. 03-40, at 157; D.T.E. 02-24/25, at 193-194. The Department has reviewed the invoices provided by NSTAR Electric and finds that the invoices are properly itemized (see, e.g., Exhs. DPU 30-8, Atts. B through G; DPU 30-8, Atts. E, F (Supp. 3)). In addition, the Department finds that the total costs associated with each service provider are reasonable, appropriate, and proportionate to the overall scope of work provided and were prudently incurred (see, e.g., Exhs. DPU 30-8, Atts. B through G; DPU 30-8, Atts. E, F (Supp. 3)).

d. Normalization of Rate Case Expense

The proper method to calculate a rate case expense adjustment is to determine the rate case expense, normalize the expense over an appropriate period, and then compare it to the test-year level to determine the adjustment. D.P.U. 10-55, at 338-339; D.T.E. 05-27, at 163; D.T.E. 03-40, at 163; D.T.E. 02-24/25, at 197; D.T.E. 98-51, at 62; D.P.U. 95-40, at 58. The Department's practice is to normalize rate case expense so that a representative annual amount is included in the cost of service. D.P.U. 10-55, at 339; D.T.E. 05-27, at 163; D.T.E. 03-40, at 163; D.T.E. 02-24/25, at 191; D.T.E. 01-56, at 77; D.T.E. 98-51, at 53; D.P.U. 96-50 (Phase I) at 77. Normalization is not intended to ensure dollar-for-dollar recovery of a particular expense; rather, it is intended to include a representative annual level of expense. D.P.U. 10-55, at 339; D.T.E. 05-27, at 163; D.T.E. 03-40, at 163-164; D.T.E. 02-24/25, at 191; D.P.U. 96-50 (Phase I) at 77.

Typically, the Department determines the appropriate period for recovery of rate case expense by taking the average of the intervals between the filing dates of a company's last four base distribution rate cases, including the present case, rounded to the nearest whole number. D.P.U. 10-55, at 339; D.T.E. 05-27, at 163 n.105; D.T.E. 03-40, at 164 n.77; D.T.E. 02-24/25, at 191. If the resulting normalization period is deemed unreasonable or if the company has an inadequate rate case filing history, the Department will determine the appropriate normalization period based on the particular facts of the case. South Egremont Water Company, D.P.U. 86-149, at 2-3 (1986).

NSTAR Electric proposes a five-year rate case expense normalization period based on the period for filing rate cases pursuant to Massachusetts law (Exhs. ES-REVREQ-1, at 101-102; DPU 50-2). The Company also provided a calculation of the average interval between its last four base distribution rate cases, which resulted in an average interval of ten years (Exh. ES-REVREQ-4, Sch. 3).<sup>120</sup> In its calculation, NSTAR Electric did not include any base distribution rate cases involving the former WMECO. Utilizing both NSTAR Electric's and the former WMECo's filings, the average interval between the Company's last four base distribution rate cases is seven years (Exh. ES-REVREQ-4, Sch. 3).<sup>121</sup> As discussed in Section IV.D.5.a above, the Department has approved a PBR plan for the Company that includes a five-year term and stay-out provision. The Department has considered the term of a PBR in establishing an appropriate rate case expense normalization

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<sup>120</sup> In addition to the current filing, NSTAR Electric's prior base distribution rate filings were D.P.U. 17-05, Boston Edison Company/Cambridge Electric Light Company/Commonwealth Electric Company/NSTAR Gas Company, D.T.E. 05-85 (2005), and D.P.U. 92-250 (Exh. ES-REVREQ-4, Sch. 3, at 1). Between D.P.U. 22-22 and D.P.U. 17-05, the interval is 4.99 years; between D.P.U. 17-05 and D.T.E. 05-85, the interval is 11.11 years; and between D.T.E. 05-85 and D.P.U. 92-250, the interval is 13.06 years. The sum of these intervals divided by three and rounded to the nearest whole number results in a normalization period of ten years ( $29.18/3 = 9.73$ ).

<sup>121</sup> The former WMECo's prior base distribution rate filings were D.P.U. 17-05, D.P.U. 10-70, and Western Massachusetts Electric Company, D.T.E. 06-55 (2007). Between D.P.U. 22-22 and D.P.U. 17-05, the interval is 4.99 years; between D.P.U. 17-05 and D.P.U. 10-70, the interval is 6.53 years; and between D.P.U. 10-70 and D.T.E. 06-55, the interval is 3.72 years. The sum of these intervals divided by three and rounded to the nearest whole number results in a normalization period of five years ( $15.24/3 = 5.08$ ). The average of NSTAR Electric's interval and the former WMECo's interval is 7.41 years (rounded to seven).

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period. D.P.U. 17-05, at 281-282; D.P.U. 09-30, at 241; D.P.U. 07-71, at 105; D.T.E. 05-27, at 163-164; D.T.E. 03-40, at 163; D.T.E. 01-56, at 75; D.P.U. 96-50 (Phase I) at 78. The Department has found that the term of a PBR that prevents a company from filing a new base distribution rate case for a predetermined period provides a more representative basis for establishing a rate case expense normalization period. D.P.U. 17-05, at 282; D.P.U. 96-50 (Phase I) at 78. Accordingly, the Department finds that a five-year normalization period is appropriate.

e. Conclusion

The Company proposed and the Department has accepted a final rate case expense of \$3,108,191 (Exhs. ES-REVREQ-2, Sch. 19 (Rev. 4); DPU 30-8 (Supp. 3), Att. A). Based on a five-year normalization period, the annual level of rate case expense to be included in the Company's cost of service is \$621,638 (\$3,108,191 divided by five years). The annual level of rate case expense approved in this proceeding is reflected in Schedule 2 below.

VIII. EXCESS ACCUMULATED DEFERRED INCOME TAXES

A. Introduction

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 ("2017 TCJA") was signed into law.<sup>122</sup> Among other things, the 2017 TCJA reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. Pub. L. No. 115-97, § 13001. On February 2, 2018, the Department, pursuant to G.L. c. 164, §§ 76,

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<sup>122</sup> Pub. L. No. 115-97, 131 Stat. 2054: An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

93, 94 and G.L. c. 165, §§ 2, 4, opened an investigation into the effect on rates of the decrease in the federal corporate income tax rate on the Department's regulated utilities.

Effect of Reduction in Federal Income Tax Rates on Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15, Order Opening Investigation (February 2, 2018).<sup>123</sup>

The Department determined, among other things, that for certain regulated utilities, including the Company, the reduction in the federal corporate income tax rate resulted in booked ADIT that was in excess of future liabilities. D.P.U. 18-15, Order Opening Investigation at 4. Thus, as part of the investigation, certain regulated utilities, including the Company, were directed to file a proposal to refund to ratepayers the balance of excess ADIT as of December 31, 2017. D.P.U. 18-15, Order Opening Investigation at 5.

The Department subsequently directed NSTAR Electric to refund excess ADIT to ratepayers through a 2017 Tax Act Credit Factor ("2017 TACF") as a separate reconciling component in the Company's annual rate adjustment/reconciliation filing. D.P.U. 18-15-E at 38-39. The Department determined that the credit factor would remain in effect until the excess ADIT balance is transferred to the new rates that are established in the Company's next base distribution rate proceeding, or unless otherwise directed by the Department. D.P.U. 18-15-E at 39 n.34.

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<sup>123</sup> For a complete background and procedural history, refer to D.P.U. 18-15-A at 1-7.

B. Company Proposal

NSTAR Electric states that its excess ADIT balance as of December 31, 2021, was \$428,741,374<sup>124</sup> before tax gross-up and \$589,902,826 after tax gross-up (Exhs. ES-REVREQ-2, Sch. 32 (Rev. 4); DPU 51-7). From this amount, the Company deducted a flow-through adjustment of \$57,583,262 for items that are primarily depreciation flow-through, and income tax deficiency amounts prior to the 2017 TCJA rate change (Exhs. DPU 18-2; DPU 51-7). Overall, the Company reports a grossed-up net excess ADIT balance of \$532,319,565 at year-end 2021 (Exhs. ES-REVREQ-2, Sch. 1, at 4, Sch. 32 (Rev. 4); DPU 51-7).

The Company proposes to continue refunding excess ADIT related to the 2017 TCJA to customers through the 2017 TACF (Exh. ES-REVREQ-1, at 143). As such, the Company does not propose any excess ADIT-related adjustments to the cost of service in this proceeding (Exh. ES-REVREQ-1, at 143). No party addressed the Company's excess ADIT proposal on brief.

C. Analysis and Findings

In D.P.U. 18-15-E, at 39, the Department found that given that NSTAR Electric would refund excess ADIT to ratepayers through its annual rate adjustment/reconciliation filing, the amounts are subject to reconciliation once the final tax liabilities come due. Further, we noted that we fully expected NSTAR Electric to make these determinations as

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<sup>124</sup> Of this amount, \$47,637,826 was attributable to non-property related excess ADIT, and \$381,103,548 was attributable to property-related excess ADIT (Exh. DPU 51-7).



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soon as practicable and to implement appropriate adjustments, supported by testimony and exhibits, in future reconciliation filings. In the instant proceeding, the Company has provided total excess ADIT to be refunded to customers as a result of the 2017 TCJA and shown that it tracked the difference between the excess ADIT amortization and the actual refunds through 2017 TACF over time since the D.P.U. 18-15-E decision (Exhs. DPU 18-4, Att.; DPU 32-1 & Att.; DPU 61-14). Further, the Department finds the Company's reported excess ADIT balances to be acceptable (Exh. DPU 51-7).

As noted above, the Department previously directed NSTAR Electric to refund excess ADIT to ratepayers through the 2017 TACF until the Company could transfer the excess ADIT balance to new rates established in the Company's next base rate proceeding, or unless otherwise directed by the Department. D.P.U. 18-15-E, at 39 n.34. In support of its proposal to continue refunding excess ADIT through the 2017 TACF instead of transferring the balance to base distribution rates, the Company points to Budget of the U.S. Government for Fiscal Year 2023, wherein the Administration seeks to raise the federal corporate income tax rate from 21 percent to 28 percent (Exh. DPU 32-3 & Att. at 40, 135). While a change in this tax rate is not certain, if a change does occur the Company would be required to adjust the excess ADIT balance and amortization periods applicable to ensure an accurate refund to customers. We find that it would be administratively efficient for the Company to address future adjustments to the excess ADIT balance and amortization periods through the 2017 TACF. Moreover, the record shows that the balance of unprotected, non-property-related excess ADIT will be fully refunded to customers by the end of the rate

year (Exh. DPU 18-4, Att.; Tr. 1, 140-141). Thus, we find that it would be inappropriate to include the balance in base distribution rates for at least the next five years. Based on these considerations, the Department finds that it is reasonable and appropriate for the Company to retain the 2017 TACF. See D.P.U. 18-150, at 197-198 (allowing National Grid (electric) to retain its tax credit provision due to potential changes Internal Revenue Service normalization requirements).<sup>125</sup> Accordingly, we allow the Company's proposal.

IX. PENSION ADJUSTMENT FACTOR ALLOCATION AND MOTION FOR APPROVAL OF REQUEST FOR ORAL ARGUMENT

A. Introduction

Prior to February 1, 2018, NSTAR Electric recovered a portion of its pension and PBOP expense in its base distribution rates (Exh. ES-REVREQ-7, at 2). See also D.P.U. 17-05, at 323 & n.166; NSTAR Pension, D.T.E. 03-47-C at 7 n.2 (2004).<sup>126</sup> Because a portion of pension and PBOP expense were embedded in base distribution rates, the Company needed to allocate these embedded expenses between its distribution and

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<sup>125</sup> If there is a change in the federal corporate income tax rate that necessitates any adjustments to the excess ADIT balance or amortization amounts, the Department may consider opening an investigation to address the change.

<sup>126</sup> NSTAR Electric and the former WMECo were separate companies until January 1, 2018, when WMECo was consolidated into NSTAR Electric after approval of the transaction by the Department. D.P.U. 17-05, at 4, 43-44. While a portion of NSTAR Electric's pension and PBOP expenses were recovered through base distribution rates, all of WMECo's qualified pension plan pension and PBOP costs were recovered through its own PAM. D.P.U. 17-05, at 323. In D.P.U. 17-05, the Department approved the transfer of all of NSTAR Electric's qualified pension plan pension and PBOP costs to the pension adjustment factor. D.P.U. 17-05, at 324.

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transmission functions. D.T.E. 03-47-B (Phase II) at 10-11. During this time, the Company relied on a transmission allocator in its calculation of its proposed pension adjustment factors (“PAF”) that varied from year to year to recognize the actual expense allocated to its transmission function based on FERC’s formula rate that uses a labor allocator (Exh. ES-REVREQ-7, at 3-7). In contrast, according to the Company, the Attorney General has advocated the use of a fixed ratio of 3.84 percent using the allocation between its distribution and transmission embedded expenses in base distribution rates based on the ratio originally established for NSTAR Electric in D.T.E. 03-47 (Exh. ES-REVREQ-7, at 3).

Although the allocation issue has been resolved for the Company’s post-2018 PAF filings, the allocation issue continues to affect eight PAF filings covering the years 2011 through 2018 that are currently pending before the Department. The outstanding dockets are: NSTAR Electric Company and NSTAR Gas Company, D.P.U. 11-91; NSTAR Electric Company and NSTAR Gas Company, D.P.U. 12-113; NSTAR Electric Company and NSTAR Gas Company, D.P.U. 13-184; NSTAR Electric Company and NSTAR Gas Company, D.P.U. 14-145; NSTAR Electric Company, NSTAR Gas Company, and Western Massachusetts Electric Company, D.P.U. 15-147; NSTAR Electric Company, NSTAR Gas Company, and Western Massachusetts Electric Company, D.P.U. 16-182; NSTAR Electric Company, NSTAR Gas Company, and Western Massachusetts Electric Company, D.P.U. 17-159; and NSTAR Electric Company and NSTAR Gas Company, D.P.U. 18-121.

According to the Company, the Attorney General has challenged the recovery of approximately \$26,835,250 in pension costs, including carrying charges, in these dockets

(Exh. ES-REVREQ-7, at 3). The Company notes that the allocation issue has been outstanding for over ten years and maintains that lack of resolution of the issue is creating significant regulatory uncertainty (Exh. ES-REVREQ-7, at 2-3). NSTAR Electric states that the Department's resolution of this impasse is needed in this case before the Company can commit to take on the risk of a ten-year PBR Plan (Exh. ES-REVREQ-7, at 2-3).

On September 2, 2022, the Company filed its initial brief in this proceeding. In its brief, the Company addressed the pension allocation issue and requested oral argument before the full Commission because the Department did not inquire about the issue during the discovery or evidentiary hearing phase of the proceeding (Company Brief at 374-380). No other party briefed this issue. On September 7, 2022, the Company filed a Motion for Approval of Request for Oral Argument on this pension allocation issue ("Motion").<sup>127</sup> On September 23, 2022, the Attorney General filed an Opposition to NSTAR Electric's Motion ("Attorney General Opposition").

B. Positions of the Parties

1. Company

NSTAR Electric contends that the pension allocation issue has been unresolved for over a decade, and that the contested amount currently stands at approximately \$26.8 million,

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<sup>127</sup> The Motion is a five-page document without pagination. For purposes of the form of motions and briefs filed with the Department, the Department adopts the requirements for pagination of briefs of the Massachusetts Rules of Appellate Procedure, Rule 20(a)(5) (consecutive page numbering). For purposes of cites to the Motion in this Order, the Department identifies the page where the content appears.

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including \$8.4 million in carrying costs (Motion at 3; Company Brief at 374-375). The Company asserts that given this magnitude of potential exposure, the Department must resolve the pension allocation issue so that the Company and Attorney General can decide on the appropriate next steps, including seeking judicial review if so determined (Motion at 5; Company Brief at 375-376).<sup>128</sup>

NSTAR Electric defends its use of a variable transmission allocator, arguing that its use was designed to match the annual ratio of transmission and distribution expenses in the PAM with the actual ratio of transmission and distribution expense approved by FERC in setting transmission rates (Company Brief at 375). Further, NSTAR Electric contends that the use of a variable transmission allocator was approved by the Department as part of the Company's compliance filing in D.T.E. 03-47.<sup>129</sup>

The Company also contends that it properly incorporated the allocation of pension/PBOP expense into the PAF formula (Company Brief at 376-379). In addition, the Company maintains that the Attorney General is not seeking to correct a computational error in the PAF formula, but rather seeks to modify the PAF formula itself (Company Brief at 379). According to the Company, the Massachusetts Supreme Judicial Court has repeatedly held that a mechanically applied formula rate is a fixed rate that cannot be

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<sup>128</sup> NSTAR Electric contends that if the Department were to decide against the Company on this issue, then it would seek judicial review on the basis of reversible legal error (Company Brief at 375).

<sup>129</sup> The Company's brief makes reference to D.T.E. 03-87, which pertains to a double-pole proceeding, and, therefore, appears to be a typographical error.

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changed outside of a base distribution rate proceeding, as had been done in D.P.U. 17-05 (Company Brief at 380, citing Attorney General v. Department of Public Utilities, 453 Mass. 191 (2009)).

In support of its Motion, the Company asserts that the complexity of the method to allocate annual pension expense for the PAM necessitates oral argument to ensure that: (1) the issues are fully litigated on the record; (2) all parties have an opportunity to make a complete presentation of their respective positions; and (3) any questions that the Department may have about the parties' positions are thoroughly addressed and examined before a decision is made (Motion at 4). According to the Company, there is no record in this proceeding beyond the initial filing addressing the allocation method for annual pension expense for the PAM between distribution and transmission, the Department did not ask any questions about this issue during the conduct of this proceeding, and the Company has not had the opportunity to fully defend its position given the limited, pointed questions raised by the Attorney General (Motion at 4). Further, NSTAR Electric contends that there are multiple, complex issues of law to address that require counsel to interpret the Company's assertions (Motion at 4). Thus, the Company argues that there is a lack of defined evidence outlining the pension allocation issue on the record, and it is unreasonable and unfair to adjudicate the matter without of allowing oral argument by the parties (Motion at 4).

## 2. Attorney General

The Attorney General argues that the open PAF dockets are the appropriate forum for the Company to make its arguments (Attorney General Opposition at 3). Further, the

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Attorney General contends that the Company has mischaracterized her position as to the pension allocation issue (Attorney General Opposition at 3). According to the Attorney General, in the PAF dockets, she did not advocate for a fixed 3.84-percent allocation factor, but instead argued that the Company erred in its calculation of the PAF and needs to adjust the transmission allocator within the PAF where the pension and PBOP currently in rates enters into the calculation (Attorney General Opposition at 5). The Attorney General contends that her recommendation would only require corrective calculation of the Company's PAF, which can be achieved in the PAF dockets and is not required to be addressed in this instant base distribution rate case (Attorney General Opposition at 4-5).

The Attorney General also argues that the Motion is untimely and unsupported by a showing of good cause to excuse the delay (Attorney General Opposition at 2-3, citing 220 CMR 1.01(4), 1.02(5), 1.11(2)). Further, the Attorney General contends that, if granted, the Motion would result in oral argument being held after the briefing period, thereby denying intervenors an opportunity to appropriately respond to arguments raised at the hearing (Attorney General Opposition at 3). Thus, the Attorney General asserts that the Motion should be denied (Attorney General Opposition at 3).

C. Analysis and Findings

The Department first will address the Motion. The Department's regulations governing requests for oral arguments can be in found in 220 CMR 1.11(2), which provides:

Oral Argument, When Made. When, in the opinion of the presiding officer, time permits and the nature of the proceedings, the complexity or importance of the [issues] of fact or law involved, and the motion or at the request of a party or staff counsel at or before the close of the taking of testimony, allow

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and fix a time for the presentation of oral argument, imposing such limits of time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of testimony.

The decision to allow for oral argument is completely within the Department's discretion.

Bay State Gas Company, Interlocutory Order on Appeal of Hearing Officer Ruling on Intervention, D.P.U. 16-12, at 8 n.6 (March 8, 2016); The Berkshire Gas Company, D.P.U. 15-178, Interlocutory Order on Appeal of Hearing Officer Ruling on Intervention and Motion for Clarification at 8 n.6 (February 17, 2016); The Berkshire Gas Company, D.P.U. 15-48, Interlocutory Order on Motion to Stay and Appeals of Hearing Officer Ruling on Intervention at 15 n.6 (June 19, 2015); NSTAR Electric Company, D.P.U. 12-19, at 10 n.10 (2012); D.P.U. 11-43, at 6, 9. Further, the Department finds no statutory right to oral argument before an administrative agency.<sup>130</sup>

As an initial matter, the Motion was filed approximately six weeks after the close of hearings, and the Company provides no reason for this inordinate delay. As such, we find the Motion is untimely. Nevertheless, even if the Motion was made within the time prescribed by 220 CMR 1.11(2), the Department finds that the Company did not demonstrate that oral argument is warranted in this proceeding. NSTAR Electric's prefiled initial testimony, supporting appendix, initial brief, and Motion provided ample background

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<sup>130</sup> The Massachusetts Administrative Procedures Act, G.L. c. 30A, contains no such right. Further, the Department does not find that due process interests require oral argument. See, e.g., Federal Communications Commission v WJR, The Goodwill Station, Inc., 337 U.S. 265, 275 (1949) (due process law as guaranteed by the Fifth Amendment does not require federal administrative agencies to accord oral argument).



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information and Company commentary on the pension allocation issue (Exhs. ES-REVREQ-1, at 209-210; ES-REVREQ-7; Company Brief at 374-380; Motion at 2-5). Further, the remaining parties had the opportunity to issue discovery, conduct cross-examination of witnesses, file comments, and respond to the Motion to address the pension allocation issue. Oral argument was not necessary to flesh out the issues. Based on these considerations, the Motion is denied.

Notwithstanding our findings above, the Department will address the issue of NSTAR Electric's pension allocation in the pending PAF dockets. Three cases, D.P.U. 11-91, D.P.U. 12-113, and D.P.U. 13-184, have been fully briefed by both the Company and the Attorney General. The Attorney General has submitted prefiled testimony in D.P.U. 14-145, D.P.U. 15-147, D.P.U. 16-182, D.P.U. 17-159, and D.P.U. 18-121. Given the procedural posture of the Company's PAF proceedings, including the evidentiary record developed to date, the Department finds that it is more appropriate and efficient to continue to adjudicate the pension allocation issue in those open dockets.<sup>131</sup> Accordingly, the Department declines to examine NSTAR Electric's pre-2018 pension allocations in this Order.

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<sup>131</sup> Given the nature of the unresolved issue and in the exercise of its discretion, the Department will consider whether oral argument in any of these open dockets is necessary.

X. STORM COST RECOVERY MECHANISM

A. Introduction

The parameters of NSTAR Electric's current storm cost recovery mechanism ("storm fund") were approved in the Company's last base distribution rate proceeding, D.P.U. 17-05. In particular, the Department: (1) established that a storm-fund-eligible event must meet a \$1.2 million incremental O&M cost threshold; (2) set the annual storm fund contribution collected through base distribution rates at \$10 million; (3) approved an annual O&M expense associated with storm events of \$3.6 million; (4) approved a symmetrical cap of \$30 million on the storm fund balance; (5) approved the accrual of carrying charges at the prime rate for storm-fund-eligible events, with recovery to begin at the time that the costs are incurred; and (6) allowed the Company to seek cost recovery through the exogenous cost provision of the PBR mechanism (pending a prudence review) provided that the combination of any single storm in excess of \$30 million and balance of the storm fund exceeds \$75 million. D.P.U. 17-05, at 547-559. The Department also established reporting requirements to allow for expedited and efficient review of the Company's storm-cost filings and for an evaluation of the prudence of storm-related costs. D.P.U. 17-05, at 562.

B. Company Proposals

1. Storm Fund Modifications

The Company proposes to continue its storm fund mechanism with four modifications. First, the Company proposes to increase the storm-fund-eligible event threshold to \$1.3 million in incremental O&M costs (Exhs. ES-CAH/DPH-1, at 98; ES-REVREQ-1,

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at 162). NSTAR Electric states that its proposal is based on increasing the current threshold of \$1.2 million by the cumulative inflation change of the GDP-PI, as reported by the U.S. Bureau of Economic Analysis, from 2016 through 2020 (Exhs. ES-REVREQ-1, at 163; DPU 4-7. Att.).

Second, the Company proposes to increase the annual storm fund contribution collected through base distribution rates to \$31 million (Exhs. ES-CAH/DPH-1, at 98; ES-REVREQ-1, at 162, 181; ES-REVREQ-2, Sch. 22 (Rev. 4)). According to the Company, its current annual storm fund allowance of \$10 million is insufficient, given the large disparity between the annual average of incremental O&M costs related to storm-fund-eligible events experienced during the last several years and the amount currently amortized through base distribution rates (Exh. ES-REVREQ-1, at 163). The Company states that its proposal is based on the average monthly storm costs of approximately \$2.6 million incurred between February 1, 2018 (the date that rates established in D.P.U. 17-05 were implemented) through the end of the test year, multiplied by twelve months (Exhs. ES-REVREQ-1, at 181; ES-REVREQ-2, Sch. 22 (Rev. 4)).

Third, NSTAR Electric proposes to increase the annual O&M expense associated with storm events to \$7.8 million (Exh. ES-REVREQ-1, at 164-164). The Company bases this proposal on the average number of storm-fund-eligible events from 2017 through 2020, which were six events on average, multiplied by the proposed storm-fund-eligible event threshold of \$1.3 million (Exhs. ES-CAH/DPH-1, at 98; ES-REVREQ-1, at 164-165; AG 12-6).

Fourth, NSTAR Electric proposes that, for each storm-fund-eligible event subsequent to the seventh event in a calendar year, the Company is permitted to recover the storm-fund-eligible event threshold of \$1.3 million through the storm fund (Exhs. ES-CAH/DPH-1, at 98; ES-REVREQ-1, at 162, 165-166, 169-170; DPU 34-1). Conversely, if there are less than five storm-fund-eligible events in a calendar year, customers would receive a \$1.3 million credit for the number of events less than five that did not occur (Exhs. ES-CAH/DPH-1, at 98; ES-REVREQ-1, at 162, 169-170; DPU 34-1).

## 2. Other Proposals

In addition to the proposed modifications to the storm fund, the Company sets forth three additional proposals. First, the Company proposes to recover the current storm-fund-eligible event threshold of \$1.2 million for six storm-fund-eligible events that occurred in 2020 and seven storm-fund-eligible events that occurred in 2021, for a total of \$15.6 million in costs (Exh. ES-REVREQ-1, at 173; Company Reply Brief at 49).

Second, NSTAR Electric proposes to maintain its current storm cost adjustment recovery factor (“SCRAF”) and to recover, beginning on January 1, 2023, and subject to a future prudence review and reconciliation, a portion of the Company’s outstanding storm fund deficiency of approximately \$106 million over a five-year period for an annual amortization amount of \$21.2 million (Exhs. ES-REVREQ-1, at 178-180; DPU 4-8, Att. (b)).<sup>132</sup>

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<sup>132</sup> Currently, the Company recovers an annual amortization amount of \$28 million through the SCRAF for costs associated with storm-fund-eligible events that occurred prior to February 1, 2018 (Exh. ES-REVREQ-1, at 178). On December 31, 2022,

Third, the Company proposes to recover through the SCRAF beginning on January 1, 2024, subject to future prudence review and reconciliation, \$196.2 million in costs associated with two exogenous storm events – Tropical Storm Henri and the October 2021 Nor’easter (Exhs. ES-REVREQ-1, at 179-180; ES-REVREQ-4, Sch. 11(d); DPU 4-8, Att. (c); DPU 4-13).<sup>133</sup> The Company proposes to recover the costs for these two storm events over a five-year period for annual amortization amount of \$39.2 million (Exhs. DPU 4-8, Att. (c), at 1; DPU 4-13; DPU 4-14 & Att.).

C. Positions of the Parties

1. Attorney General

The Attorney General argues that NSTAR Electric’s storm cost recovery proposals improperly attempt to insulate the Company from all storm-related financial risk (Attorney General Brief at 133, citing D.P.U. 15-155, at 83; D.P.U. 09-39). In particular, the Attorney General recommends that the Department reject four of the Company’s proposals.

First, the Attorney General argues that Company’s proposal to increase the annual storm fund contribution collected through base distribution rates to \$31 million represents a significant shift of financial risk to ratepayers (Attorney General Brief at 138). Moreover, the Attorney General contends that the Company’s request is unnecessary because it can

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the amortization period associated with these storms expires (Exh. ES-REVREQ-1, at 178).

<sup>133</sup> The Company notes that the amortization of the exogenous cost currently collected through the SCRAF expires on December 31, 2023 (Exhs. ES-REVREQ-1, at 179; DPU 4-13, at 1).

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recover additional storm costs through the existing SCRAF, which the Company proposes to extend in the instant proceeding (Attorney General Brief at 138, citing Exh. ES-REVREQ-1, at 181).

Second, the Attorney General argues that NSTAR Electric's proposal to recover the storm-fund-eligible event threshold of \$1.3 million for each storm after the seventh storm also seeks to eliminate the Company's storm-related financial risk (Attorney General Brief at 137, citing D.P.U. 15-155, at 78). In this regard, the Attorney General contends that NSTAR Electric already is insulated from the cost-risk of storms due the large number of storm cost recovery mechanisms approved for the Company in recent years (Attorney General Brief at 138, citing D.P.U. 17-05, at 547-548, 550, 553-555, 559, 561, 562, NSTAR Electric Company, D.P.U. 21-133; D.P.U. 21-75/D.P.U. 21-76; NSTAR Electric Company, D.P.U. 20-29). Moreover, the Attorney General asserts that NSTAR Electric earns an ROE that, in part, is intended to compensate the Company for such risks (Attorney General Brief at 138). Finally, the Attorney General asserts that maintaining a fixed number of storm-fund-eligible event threshold amounts in base distribution rates is a fair and reasonable way to balance financial risk between the Company and its ratepayers (Attorney General Brief at 137).

Third, the Attorney General argues that NSTAR Electric's request to recover the storm-fund-eligible event threshold amounts for the six storm events in 2020<sup>134</sup> should be

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<sup>134</sup> The Attorney General does not address the Company's request to recover the storm-fund-eligible event threshold amounts attributable to seven storms in 2021.

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rejected because it contravenes the Department's Order in D.P.U. 17-05, it would retroactively alter the entire regulatory treatment of storm costs and storm fund cost eligibility, and it would improperly rebalance the risk for storm recovery in the Company's favor (Attorney General Brief at 135-136, citing D.P.U. 17-05, at 548-549; Attorney General Reply Brief at 41-43). Further, the Attorney General contends that if NSTAR Electric's proposal is allowed, it would triple the recovery currently allowed in base distribution rates and would represent one-and-a-half times the amount the Company proposes to include in base distribution rates going-forward (Attorney General Reply Brief at 41). In addition, the Attorney General asserts that approving this proposal would allow the Company to consistently recover storm-related costs when such costs exceed the representative amount set in base distribution rates, with no corresponding path for ratepayers to benefit in the years when costs are less than those in base distribution rates (Attorney General Reply Brief at 43).

Finally, the Attorney General argues that the Department should reject the Company's proposal to recover costs associated with Tropical Storm Henri and the October 2021 Nor'easter (Attorney General Brief at 139). The Attorney General asserts that this proposal should be rejected because the Company has not yet provided supporting documentation or costs for Department review (Attorney General Brief at 139).

## 2. Company

The Company contends that storms are more common due to changes in weather patterns and climate change and are more costly due to expectations (customer and political) that compel more rapid restorations (Company Brief at 312). According to the Company,

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these circumstances are beyond its control and are creating an unpreventable increase in the cost of storm response (Company Brief at 312). As such, the Company requests that the Department consider the proposed modifications to the storm fund structure (Company Brief at 312-318). Further, the Company asserts that its proposal to maintain the SCRAF is in the best interest of ratepayers as it serves to minimize carrying charges that ultimately will be recovered for the storm fund qualifying events which, in turn, mitigate bill impacts and maintain stabilized rates (Company Brief at 320-323). The Company's responses to the four arguments raised by Attorney General are discussed below.

First, the Company argues that its proposal to increase the annual storm fund contribution collected through base distribution rates to \$31 million does not represent a significant shift of risk to ratepayers (Company Brief at 331). Rather, the Company contends that its proposal meets the Department's objective of maintaining a sufficient reserve in the storm fund for the benefit of both the Company and its customers (Company Brief at 331). The Company further asserts that to maintain a balance between storm cost recovery and rate stability, the annual storm fund contribution collected through base distribution rates is designed to recover qualifying storm costs while eliminating rate changes (Company Brief at 331, citing Exhs. ES-STORMS-Rebuttal-1, at 22; AG 12-7).

Second, the Company argues that its proposal to recover the storm-fund-eligible event threshold of \$1.3 million for each storm after the seventh storm should be approved, as it is a reasonable and an appropriate means of balancing risk and cost-sharing between the Company and its customers (Company Brief at 317-318, 330, citing Exhs. ES-STORMS-Rebuttal-1,



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at 14-15; DPU 20-3). The Company contends that this proposal recognizes the inevitable year-to-year variability of storm-fund-eligible events, as well as the fact that larger-scale events may occur that can exceed any number of storms that the Department would find appropriate for setting the threshold (Company Brief at 317-318). Further, the Company asserts that the proposal is symmetrical, so that if there is a deviation resulting in a lower number of storms in a year, customers would be credited with the storm-fund-eligible event threshold (Company Brief at 318). Nevertheless, the Company claims that, while fewer than six storm-fund-eligible events could occur in any given year, it is more likely that the number of storm events in any year will exceed six (Company Brief at 329).<sup>135</sup>

Third, NSTAR Electric argues that the Department specifically permitted the Company to propose an appropriate level of recovery associated with the storm-fund-eligible event threshold amounts for the six storm events in 2020 (Company Brief at 325-326, citing D.P.U. 21-75/D.P.U. 21-76, at 28). Further, the Company contends that allowing recovery through base distribution rates of the storm-fund-eligible thresholds for three storm events, as approved in D.P.U. 17-05, is an ineffective means of determining a representative number of storm-fund-eligible storms due to the increasing frequency and intensity of storms (Company Brief at 326-327, citing D.P.U. 17-05, at 546; D.P.U. 21-75/D.P.U. 21-76, at 22; Company Reply Brief at 48). According to the Company, the actual number of storm-fund eligible

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<sup>135</sup> The Company notes that since 2020, the number of qualifying storm fund events has exceeded the number of storm-fund-eligible event thresholds included in base distribution rates as the representative number of such storms (Company Brief at 329, citing Exhs. ES-STORMS-Rebuttal-1, at 8; DPU 20-3).

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storm occurrences in a given year exceeds the number of storms the Department has historically allowed in base distribution rates (Company Reply Brief at 47). Thus, the Company asserts that there is no imbalance in allowing the recovery of storm-fund-eligible event thresholds over the representative number of storms established in D.P.U. 17-05 (Company Brief at 328). Based on these considerations, the Company seeks recovery of the storm-fund-eligible event threshold amounts for six storm events in 2020, and for seven additional storm events in 2021 (Company Brief at 327-328; Company Reply Brief at 48). The Company argues that disallowing these costs without a finding that the costs were unreasonably incurred is not an appropriate outcome (Company Reply Brief at 47).

Finally, NSTAR Electric disagrees with the Attorney General's recommendation to deny the Company's proposal to recover costs associated with Tropical Storm Henri and the October 2021 Nor'easter (Company Brief at 332, citing Attorney General Brief at 139). The Company argues that it is important to begin cost recovery of these storm events on January 1, 2024, in order to strike an appropriate balance between cost recovery and rate stability (Company Brief at 332, citing Exh. DPU 4-14). In this regard, the Company contends that a delay in recovery of these costs would create significant fluctuations in customer rates as well as significant carrying charges (Company Brief at 332, citing Exhs. DPU 4-14; AG 20-3). For these reasons, the Company asserts that the Department should approve cost recovery commencing January 1, 2024, associated with Tropical Storm Henri and the October 2021 Nor'easter (Company Brief at 332).

D. Analysis and Findings

1. Introduction

The Department's primary objective for allowing a storm fund is to levelize the recovery of storm restoration costs of major storms on ratepayers. D.P.U. 17-05, at 545; D.P.U. 15-155, at 73; Fitchburg Gas and Electric Light Company, D.P.U. 13-90, at 13 (2014), citing D.P.U. 10-70, at 201-202; D.P.U. 09-39, at 206. The Department has recognized that the use of storm funds may shift the burden of cost recovery disproportionately to ratepayers without providing commensurate benefits. D.P.U. 17-05, at 545; D.P.U. 15-155, at 73; D.P.U. 13-90, at 13. As such, the Department has put all EDCs on notice that if they seek continuation of a storm fund in their next base distribution rate case, they must demonstrate why the continuation of a storm fund is in the best interest of ratepayers. D.P.U. 17-05, at 545; D.P.U. 15-155, at 73-74; D.P.U. 13-90, at 14-15.

2. Continuation of the Storm Fund

The Department has devoted significant time and resources to the improvement of each electric utility's storm response. As a result, storm response requirements are now more formalized, more comprehensive, and more rigorous. See, e.g., G.L. c. 164, § 1J; 220 CMR 19.03 (setting forth standards for the acceptable performance for emergency preparation and restoration services for electric and gas companies); Investigation by Department of Public Utilities into Responses to Tropical Storm Irene and October 2011 Snowstorm, D.P.U. 11-85-B/11-119-B at 141 (2012) (imposing penalties for company's failure to timely respond to emergency wires-down calls and communicate effectively with

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municipal officials and customers); D.P.U. 11-119-C at 71-72 (imposing penalties for company's failure to restore service to its customers in a safe and reasonably prompt manner). To meet these requirements, EDCs are expected to properly prepare for and implement storm response measures that restore power safely and expeditiously. These obligations require the Company to devote substantial resources to achieving the desired results. Further, as the Company's recent history indicates, the frequency and severity of major storms has increased (see, e.g., Exhs. ES-REVREQ-1, at 159; ES-REVREQ-2, Sch. 22, at 2 (Rev. 4); ES-REVREQ-4, Sch. 11 & Atts.; DPU 4-8, Atts. (b), (c), (d); DPU 20-3, Att.; AG 11-29, Att.; AG 8-80, Att.)). Not surprisingly, the costs of responding to these events have increased as well (see, e.g., Exhs. ES-REVREQ-4, Sch. 11 & Atts.; DPU 4-8, Atts. (b), (c), (d); DPU 20-3, Att.; AG 8-80, Att.)).

We acknowledge that NSTAR Electric's current storm fund mechanism has not provided the desired balance between cost recovery and rate stability. Specifically, the overall number of NSTAR Electric's major storm events in the past several years have contributed to a large storm fund deficit that expanded even further due to the accumulation of a significant amount in carrying charges.<sup>136</sup> The severity and frequency of these storms could not have been anticipated when NSTAR Electric's storm fund mechanism was developed, or when it was most recently refined in D.P.U. 17-05. As a result, without a storm fund mechanism, it is unlikely that NSTAR Electric could have absorbed the large

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<sup>136</sup> As previously noted, the Company estimates its current storm fund deficit at \$106 million (Exh. DPU 4-8, Att. (b)).