



Conservation
Law Foundation



Acadia
Center

Kerri DeYoung Phillips, Hearing Officer
Massachusetts Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

October 29, 2025

Subject: Petitions of NSTAR Electric Company, Massachusetts Electric Company and Nantucket Electric Company, and Fitchburg Gas and Electric Light Company for approval by the Department of Public Utilities of its Electric Sector Modernization Plans (D.P.U. 24-10, D.P.U. 24-11, and D.P.U. 24-12, respectively)
Comments in Response to Phase II Procedural Notice (Nov. 21, 2024)

Dear Hearing Officer Phillips:

In accordance with the November 21, 2024, Phase II Procedural Notice in the above-referenced matter, Conservation Law Foundation (“CLF”)¹ and Acadia Center² respectfully submit the following comments.

CLF and Acadia Center participate frequently in Department of Public Utilities (“DPU” or “Department”) matters, including the first phase of the 2024 Electric Sector Modernization Plan (“ESMP”) filings which gave rise to the present request for comments for Phase II of the current proceedings. Pursuant to the Phase II Procedural Notice (November 21, 2024), the Department requested comments from parties on several issues, namely, information on data and innovative cost recovery approaches, including those that support accelerated electrification and grid modernization efforts; as well as proposals on performance metrics and incentives relevant to longer-term cost recovery strategies.

The Department must prioritize incentives to reduce peak demand, as this is the most effective way to keep grid costs down for ratepayers. Without strong incentives, electric distribution companies will default to capital solutions, as the build-out of energy infrastructure and profitability are the Companies’ traditional approach to addressing peak demand. Capital-focused solutions, while sometimes necessary, can easily become contrary to goals for affordability, as well as for the modern electricity system made possible by new technologies. By investing in strategies that lower peak demand, rather than accommodating its growth, the Department can guide the utilities toward the design of an electric system that delivers affordability, reliability, and environmental benefits for everyone.

¹ CLF is a non-profit, environmental advocacy organization that uses the law, policy, science, and markets to promote a sustainable and equitable future for all of New England.

² Acadia Center’s mission is to advance bold, effective clean energy solutions for a livable climate and a stronger, more equitable economy.

Performance metrics targeting peak demand reduction can fundamentally alter long-term cost recovery trajectories. When utilities successfully reduce demand peaks, load forecasts flatten, diminishing capital needs and shrinking future revenue requirements. This virtuous cycle can benefit ratepayers for decades; however, the most significant benefits only accrue when metrics are deliberately designed within a comprehensive performance-based ratemaking (“PBR”) framework.

Performance-based ratemaking operates as an ecosystem, requiring all components to function together. Massachusetts currently lacks critical pieces, creating gaps where costs can balloon rather than decrease – outlined here:

1. *Insufficient Capital Expenditure/Operational Expenditure (CapEx/OpEx) Equalization.* Without mechanisms in place to substantially neutralize utilities’ capital bias, utilities will always choose steel-in-the-ground solutions on which they can earn a return, even when operational solutions or non-wire alternatives would better serve ratepayers. CapEx/OpEx equalization measures like Totex (a CapEx/OpEx equalization mechanism that is a portmanteau of Total Expenditures) remove the CapEx bias and allow utilities to consider the full field of solutions on equal footing.
2. *Flawed Multi-Year Rate Plans (MYRP).* The current MYRP framework should incorporate stronger cost-containment measures. Currently, there is significant revenue leakage occurring through additional capital tracking mechanisms that severely weaken the electric distribution companies’ incentive to control costs. Additionally, capital trackers, by design, reduce financial risk, especially when tied to spending under the utility’s direct managerial control. Thus, allowing carrying costs for under-collection at a rate higher than inflation functionally double compensates the electric distribution companies (which already benefit substantially from the existence of the trackers). This dynamic erodes cost-containment objectives on behalf of ratepayers.
3. *Missing Innovation Incentives.* Massachusetts lacks structured pathways for testing innovative solutions that could reduce costs while accelerating grid flexibility and clean energy adoption.

Incremental adjustments do not fix these structural flaws. Partial PBR implementation creates perverse incentives where utilities simply redirect revenue-seeking behavior toward remaining unregulated avenues, increasing ratepayers’ financial burden while stalling decarbonization or any other state policy goals the DPU determines should be evaluated through PBR. The following recommendations form a framework proven successful internationally,³ where each element reinforces the others to align utility profit motives with the public interest.

³ Cara Goldenberg, Kaja Rebane, & David Posner, *Totex Ratemaking Could Help Keep Rates Affordable Through the Clean Energy Transition*, RMI (July 13, 2022), available at <https://rmi.org/totex-ratemaking/>.

Massachusetts can leapfrog piecemeal and incremental approaches to implement bold, transformative regulation that ensures affordable clean energy for all ratepayers, while enabling utilities to thrive.

Incentives to Reduce Peak Demand

We strongly urge the Department to consider the adoption of the following incentives to encourage electric distribution companies to reduce peak demand:

1. *Total Expenditure (Totex) Regulation.* Totex represents the gold standard for eliminating capital bias, successfully implemented in the UK and Italy. Under Totex, utilities manage combined budgets for all expenditures, divided proportionally at the CapEx/OpEx ratio into funds that can earn a return and funds that cannot earn a return. This rationalization of the budget removes artificial distinctions driving overinvestment in infrastructure. To be successful, implementation requires:
 - (a) Robust multi-year rate plans with strong revenue caps to contain spending;
 - (b) Totex Incentive Mechanisms allowing utilities to retain efficiency savings while bearing overspending costs; and
 - (c) Separate treatment for uncontrollable costs like taxes.
2. *A Cohesive Set of Performance Incentive Mechanisms (PIMs), Starting With a PIM for Peak Load Reduction.* The Department should design a metric or metrics that directly reward megawatt reductions during system peaks, with penalties for missing targets. A separate PIM rewarding megawatt reductions in local peaks could also be established, as well with associated penalties for missing targets. PIMs should be symmetrical, in that they provide an opportunity for reward and an opportunity for penalty equally around a deadband, and any deadband should be set explicitly. Rewards should be set at reach levels, so that electric distribution companies are required to make a good faith effort to receive any additional basis points on their ROE. Electric distribution companies should be prohibited from double-recovery on PIMs by citing to performance metrics as requirements for additional revenue requirement in their MYRPs.⁴

The Department should also consider the adoption of PIMs that are tied to grid resilience and social equity. For example, the Illinois Commerce Commission adopted a portfolio of PIMs in 2022 that, in addition to reductions to peak load, called for a reduction in utility

⁴ See, also, Michael O'Boyle, *Designing a Performance Incentive Mechanism for Peak Load Reduction: A Straw Proposal*, Energy Innovation Policy & Policy & Technology (April 2016), available at https://energyinnovation.org/wp-content/uploads/peak_reduction_pim_whitepaper.pdf.

disconnections and increased reliability. The portfolio included multiple PIMs targeting impacts within environmental justice communities.⁵

3. *Incentives to Equitably Deploy Non-Wire Alternatives (NWA)*. Create specific compensation structures for equitably deploying distributed energy resources or energy efficiency resources as alternatives to traditional infrastructure. For example, this could be a PIM, or an alternative process for evaluating NWAs as compared to traditional infrastructure solutions.
4. *Interconnection Timeline Requirements*. Establish timetables with incentives for exceeding goals and penalties for delays, ensuring ESMPs align with state solar and battery deployment targets. This recommendation could also be enacted through a PIM, though rewards and penalties should not be on an average performance basis, but rather tied to individual project interconnection performance.
5. *EMSP Alignment with State Goals*. Require that ESMPs align with state goals for interconnection, solar capacity/deployment, as well as battery capacity/deployment.
6. *Innovation Framework*. At a minimum, establish a regulatory sandbox similar to Connecticut's Innovative Energy Solutions program, enabling controlled experimentation with emerging technologies.⁶

Utility Capital Trackers

The Department is also strongly encouraged to reevaluate the extensive network of capital trackers that electric distribution companies are currently able to take advantage of in addition to their multi-year rate plans. Capital trackers were developed to reduce regulatory lag for costs utilities exerted limited control over, preventing negative financial consequences for socially important businesses due to circumstances outside their control. Foundationally, capital trackers should only allow recovery categories of costs that meet the following conditions:

1. The cost component is large;
2. The utility's management has limited ability to control the costs; and
3. The costs are unpredictable and volatile.

⁵ RMI, *The Nuts and Bolts of Performance-Based Regulation: Tools to Build a More Affordable, Reliable, and Equitable Grid* (July 2024), available at https://rmi.org/wp-content/uploads/dlm_uploads/2024/07/PBR_Deck_final.pdf.

⁶ State of Connecticut, Public Utilities Regulatory Authority, Docket No. 17-12-03RE05, *PURA Investigation into Distribution Planning of the Electric Distribution Companies – Innovative Technology Applications and Programs (Innovation Pilots)* (March 30, 2022), available at <https://www.dpuc.state.ct.us/2nddockcurr.nsf/8e6fc37a54110e3e852576190052b64d/da52e606ad2c1efe85258815005aa04f/%24FILE/171203RE05-033022.pdf>.

Over time—especially since revenue decoupling—the Department has begun approving capital trackers that do not fully meet these original conditions, particularly the second condition (utility’s management has limited ability to control costs). This is concerning, as some trackers no longer address the discrete issues that the mechanism was intended to manage. Consequently, increased reliance on capital trackers has negatively impacted ratepayers for the following reasons:

1. *Financial Risk Shifted From Utilities to Ratepayers.* Under a traditional rate case, utilities bear some risk that regulators may deem an investment as imprudent and subsequently deny cost recovery. A capital tracker, however, streamlines cost recovery and allows utilities to reconcile costs more frequently, often without meaning oversight from intervenors or the public due to resource constraints. This process thus shifts financial risk to ratepayers, who have little ability to influence or challenge utility spending. For example, a tracker may permit a utility to recover the cost of building a substation while it is still under construction, regardless of whether it becomes “used and useful” before the company’s next rate case.
2. *Elimination of Regulatory Lag Reduces Cost Control Incentives.* Regulatory lag, or the time between the Department’s rate-setting and a utility’s next rate increase request, protects customers by incentivizing utilities to manage their projects efficiently (i.e., controlling their costs to prevent overspending beyond what they are allowed to recover). When utilities are aware that costs can be recovered through a tracker, their incentive to closely manage the financial costs of their projects disappears: trackers operating outside the revenue requirement remove a critical cost-containment mechanism, increasing the risk of utility overspending and project mismanagement.
3. *Reduced Regulatory Oversight.* Capital trackers circumvent the comprehensive review of a full rate case, which holistically looks at a utility’s overall financial health and overall spending. When utilities recoup significant costs outside this process, there is a risk that expenses will be recategorized to fit tracker criteria (and thus reducing the level of scrutiny able to be applied in a rate case). Further, the question of prudence is scrutinized separately for costs recovered through a capital tracker, and the more prudence is evaluated in a silo, the easier it is to overlook patterns of systemic management issues.
4. *Risks of “Double-Dipping”.* Utilities are compensated for risk through their authorized rate of return, which investors receive on their capital investments. Trackers virtually eliminate the risk of under recovering on tracked capital costs, but utilities will still earn a risk-premium return. This is profoundly unfair to ratepayers, who end up paying utility shareholders for a risk that no longer exists.
5. *Certain Costs Belong in Base Rates.* Grid modernization and operations and maintenance costs should be recovered through base rates, as these categories of costs fail the three-pronged test for tracker eligibility.

Massachusetts ratepayers face some of the highest energy costs in the nation and have had little relief in recent years to alleviate energy burden. For some, this means choosing between paying their energy bills and buying groceries or medicine. A well-designed electric grid compensated through a holistic PBR framework can provide the ability to fully support the Commonwealth's goal of eliminating greenhouse gas emissions while preserving and maintaining safe, reliable operations of the electric grid and addressing community needs. Performance metrics that target peak demand reduction can significantly lower long-term costs, but these benefits can only fully occur within a fully developed PBR framework. To address rising costs, the Department should adopt a comprehensive PBR model that aligns utility profits with the public interest and accelerates clean energy goals:

1. We strongly urge the Department to adopt targeted incentives that encourage electric distribution companies to reduce peak demand. This includes performance-based mechanisms for peak load reduction, equitable deployment of non-wire alternatives, and clear interconnection timelines with associated rewards or penalties. Additional measures include aligning ESMPs with state goals for solar and battery deployment. Together, these strategies will help optimize the grid for affordability, reliability, and sustainability.
2. Capital trackers, while useful to address specific issues, have evolved in ways that increase financial risk for customers, weaken cost-control incentives, and reduce regulatory oversight. They create the potential for utilities to earn "risk-based" returns, without actually bearing risk, which is fundamentally unfair to ratepayers. Finally, certain costs should remain in base rates and not be eligible for tracked cost recovery. To align with our Commonwealth's commitment to affordability and accountability, we urge the Department for a comprehensive review of all existing capital trackers in Phase II of this ESMP proceeding. This review should aim to eliminate mechanisms that undermine utility accountability and increase costs for customers.

CLF and Acadia Center look forward to working with the Department, stakeholders, and the Companies throughout this docket. Thank you for your time and attention to this matter. Please do not hesitate to contact CLF or Acadia Center with any further questions.

Very truly yours,



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With support from:

Restructuring Utility Incentive Working Group (RUI), composed of climate and clean energy nonprofits