



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 18-40-B

January 18, 2019

Petition of The Berkshire Gas Company for approval of the rates and charges set forth in proposed tariffs M.D.P.U. Nos. 492 through 514 and approval of a general increase in base distribution rates for gas service pursuant to G.L. c. 164, § 94 and 220 CMR 5.00.

ORDER ON PROPOSED SETTLEMENT

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I. INTRODUCTION AND PROCEDURAL HISTORY¹

On May 17, 2018, The Berkshire Gas Company (“Berkshire Gas” or “Company”), filed a petition with the Department of Public Utilities (“Department”) for an increase in gas distribution rates. Berkshire Gas’s last base distribution proceeding was in 2002. The Berkshire Gas Company, D.T.E. 01-56 (2002). The Department docketed the instant matter as D.P.U. 18-40, and we suspended the effective date of the proposed rate increase until April 1, 2019, to investigate the propriety of the Company’s petition.

In the filing, the Company proposes an increase in base distribution revenues of approximately \$4.5 million. This increase includes the Company’s request to transfer the recovery of approximately \$1.4 million in replacement costs of Gas System Enhancement Plan (“GSEP”) investments from the Local Distribution Adjustment Factor (“LDAF”) to base distribution rates. Thus, the proposed increase in base distribution revenues of \$4.5 million would be offset by a revenue decrease of \$1.4 million to the LDAF, which would result in a \$3.1 million, or 4.3 percent, increase in total annual operating revenues. The initial filing contains several ratemaking proposals, including the implementation of an alternative ratemaking mechanism (“ARM”) that would allow the Company to annually adjust its distribution rates without filing for a base rate proceeding, or, in the alternative, provide for a capital cost recovery mechanism. Additionally, the Company proposes to implement rate mechanisms to (1) decouple

¹ For a complete background and procedural history of this proceeding, refer to The Berkshire Gas Company, D.P.U. 18-40-A at 1-5 (December 20, 2018).

its gas revenues from its sales and (2) recover costs associated with pension and other post-retirement employee benefits.

The Attorney General of the Commonwealth of Massachusetts (“Attorney General”), the Department of Energy Resources (“DOER”) and the Low-Income Weatherization and Fuel Assistance Program Network (“Low-Income Network”) are full intervenors in this proceeding. NSTAR Gas Company, d/b/a Eversource Energy, is a limited participant.

On December 4, 2018, the Company and Attorney General (“settling parties”) filed for Department approval of a rate settlement agreement resolving a number of issues raised during the course of this proceeding as an alternative to a fully litigated rate case. Specifically, the settling parties filed the following documents: (1) a Joint Motion for Approval of Settlement Agreement (“Joint Motion”); (2) the Settlement Agreement (“Settlement”), including a summary of the adjustments to the Company’s revenue requirement calculated under the terms of the Settlement (Attachments A and B); and (3) an Explanatory Statement (“Explanatory Statement”), including the derivation of certain adjustments proposed for approval (Attachments A and B).² In the Joint Motion, the settling parties request that the Department find that (1) the terms of the Settlement are reasonable and (2) implementation of the terms of

² In a hearing officer memorandum issued August 2, 2018, the Department required that any settlement include an explanatory statement to facilitate review of any settlement proposal. The Department required that the explanatory statement include a procedural history, a section-by-section summary of the settlement, and any other materials needed to evaluate the settlement, including the following information: (1) the issues underlying the settlement and the major implications of the settlement; (2) whether any of the issues raise policy implications; (3) whether other pending proceedings may be affected; and (4) whether the settlement involves issues of first impression, or if there is any change in treatment from a previously decided issue.

the Settlement will result in just and reasonable rates for the Company (Joint Motion at 2).

Although DOER and the Low-Income Network were each a party to the proceeding, neither of them signed the Settlement.

Under the terms of the Settlement, the agreement is deemed withdrawn unless the Department approved the entire Settlement by January 1, 2019, or, in the alternative, approved § 1.6.7.1 and § 1.6.7.2 of the Settlement by January 1, 2019, and the remainder of the Settlement by February 1, 2019. On December 20, 2018, the Department approved § 1.6.7.1 and § 1.6.7.2 of the Settlement. The Berkshire Gas Company, D.P.U. 18-40-A at 7-8 (December 20, 2018).³ Pursuant to the procedural schedule established by the Department for review of the Settlement, the deadline to file comments on the remaining provisions of the Settlement was January 11, 2019. The Department received no comments related to any provision in the Settlement. In the instant Order, the Department will address the remaining provisions of the Settlement.⁴ The final evidentiary record consists of 678 exhibits.⁵

³ Sections 1.6.7.1 and 1.6.7.2 of the Settlement provided for approval of the Company's proposed Peaking Service Tariff rate schedule and an adjustment to the Company's Cost of Gas Adjustment Clause to reflect the change to the Peaking Service Tariff rate schedule, each for effect January 1, 2019.

⁴ As discussed in D.P.U. 18-40-A at 4-5, & nn.2-4, on December 5, 2018, the Department established a procedural schedule for review of the Settlement that provided for discovery and comment deadlines applicable to § 1.6.7.1 and § 1.6.7.2, and separate deadlines applicable to the remainder of the Settlement.

⁵ On December 20, 2018, the Department entered into evidence the testimony, schedules, and most of the information requests filed to date, including information requests related to § 1.6.7.1 and § 1.6.7.2. D.P.U. 18-40-A at 5 n.4. On December 11, 2018, December 21, 2018, and January 3, 2019, the settling parties provided responses to information requests issued by the Department related to the remaining provisions of the

II. DESCRIPTION OF PROPOSED SETTLEMENT PROVISIONS

A. Introduction

The Settlement provides for a distribution rate increase in two phases: (1) an increase of \$1.69 million⁶ over current rates, effective February 1, 2019; and (2) an increase of up to \$0.70 million through an adjustment to the Company's Local Distribution Adjustment Clause ("LDAC"), effective December 1, 2019 (Settlement at §§ 1.1.1 & nn.2, 3, 1.1.5, 1.8.4; Attachment B). Other than the February 1, 2019, and December 1, 2019, distribution rate increases, the Company may not increase or redesign base distribution rates to become effective prior to November 1, 2021 (Settlement at §§ 1.1.6, 1.11.1).⁷

B. February 1, 2019 Distribution Rate Increase

In arriving at the agreed-upon rate increase, the settling parties made the following adjustments, effective February 1, 2019, to the revenue requirement proposed in the Company's initial filing: (1) exclusion of \$0.08 million associated with changes to the Company's

Settlement. On its own motion, the Department moves these responses into the evidentiary record.

⁶ The increase of \$1.69 million consists of an adjusted base rate increase of \$263,000, plus the transfer of \$1.43 million in GSEP investments from the LDAF to base distribution rates (Settlement at § 1.1.1 & nn.2, 3; Attachment B).

⁷ Under the terms of the Settlement, the Company would be entitled to seek from the Department, a deferral of any incremental costs associated with required safety or reliability investments or expenses associated with new regulatory or statutory mandates adopted after the date of the Settlement, and the Company also may implement, with Department approval, any new, generally applicable cost recovery mechanisms established by legislation or regulations (Settlement at § 1.12.1). The Settlement provides that nothing shall preclude the Attorney General from challenging any such request by the Company (Settlement at § 1.12.2).

headcount;⁸ (2) exclusion of \$0.02 million associated with the Company's medical insurance expense; (3) exclusion of \$0.04 million associated with rate case expense; (4) exclusion of \$0.10 million associated with the recalculation of the return portion of the shared services capital asset costs; and (5) exclusion of \$0.05 million associated with the Company's proposed changes in depreciation accrual rates to remove depreciation expense associated with land-related property accounts⁹ (Settlement at §§ 1.3, 1.4).

The Settlement sets forth several proposed tax-related adjustments for effect February 1, 2019. First, pursuant to the Settlement, the Company shall design its base rates to return to ratepayers, over a 15-month period with interest on the monthly balance at the prime rate, a regulatory liability of \$1.47 million associated with calendar-year 2018 and January 2019 federal income tax savings resulting from the Tax Cuts and Jobs Act ("Act") (Settlement at n.3; §§ 1.6.1 & n.5, 1.6.5).¹⁰ The Settlement provides that the Company would adjust its base rates effective

⁸ Under the Settlement, the Company shall be entitled to increase its shared services expense by \$0.08 million (Settlement at § 1.3.1).

⁹ The Settlement provides that the Company shall use the proposed plant account depreciation accrual rates set forth in the initial filing (Settlement at § 1.4.1).

¹⁰ On December 22, 2017, the Act was signed into law. See 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. Among other things, the Act reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. On February 2, 2018, the Department opened an investigation to determine the Act's effect on the rates of the Department's regulated utilities. Investigation by the Department of Public Utilities, on its own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15 (February 2, 2018). Subsequently, the Department approved the Company's proposal to return to ratepayers savings associated with the reduction in the federal income tax rate as part of this instant base rate case. D.P.U. 18-15-A at 41-42

May 1, 2020, as appropriate, to reflect the completion of the return of such tax savings to ratepayers (Settlement at § 1.6.5).¹¹

Second, the Company will include in distribution rates an annual amortization designed to return to ratepayers \$11.37 million in excess accumulated deferred income taxes (“ADIT”) that result from the Act (Settlement at § 1.6.2).¹² The Company will use an amortization period of 19.9 years for property-related excess ADIT and a five-year amortization period for non-property related excess ADIT (Settlement at § 1.6.4).¹³

Third, the Settlement provides for a \$0.10 million revenue requirement decrease associated with the change in the Massachusetts franchise tax rate (Settlement at § 1.6.6).¹⁴

(July 29, 2018). The Department directed the Company to return the amounts over a 15-month period and with interest at the prime rate. D.P.U. 18-15-A at 41-42.

¹¹ The settling parties do not consider the May 1, 2020 adjustment as a new rate increase or new rate design (Exh. DPU-SP-4).

¹² In D.P.U. 18-15-A at 22-23, the Department noted that the Company proposed to refund to ratepayers excess ADIT through an annual amortization beginning when new rates take effect. The Department subsequently addressed the refund of excess ADIT in D.P.U. 18-15-E (2018). In that Order, the Department acknowledged the filing of the instant Settlement and noted that to the extent that the excess ADIT issue was not resolved through a Department-approved settlement of D.P.U. 18-40, we would issue a separate Order in D.P.U. 18-15 to resolve this issue. D.P.U. 18-15-E at 4 n.6.

¹³ The Settlement provides that once the amortization of excess ADIT in distribution rates begins, it will be offset by reduced revenues received from customers equal to the excess ADIT credit grossed up by a conversion factor (Settlement at § 1.6.3). The excess ADIT credit will increase rate base by the same amount and at the same time the excess ADIT is amortized and refunded to customers, thereby matching the expense with the rate base increase (Settlement at § 1.6.3).

¹⁴ On July 24, 2013, the Legislature passed An Act Relative to Transportation Finance, St. 2013, c. 46 (“Transportation Finance Bill”). In pertinent part, the Transportation

Under the Settlement, the Company will use a 12.5-year amortization period to collect an additional \$0.89 million of deferred income tax resulting from a recalculation of deferred taxes related to this rate change (Settlement at § 1.6.6).

Under the Settlement, capital additions completed during the period January 1, 2001, through December 31, 2017, including those presented for recovery in the Company's May 1, 2018, GSEP reconciliation filing, docketed as D.P.U. 18-GREC-02, would be included in the rate base used to calculate the February 1, 2019 distribution rate increase (Settlement at § 1.2.1).¹⁵ Further, the Settlement provides that certain safety and reliability investments initiated at the Company's Greenfield and Pittsfield liquid propane facilities in 2017, and completed in November 2018, would be included in rate base (Settlement at § 1.7.1). The settling parties state that these investments at the Greenfield and Pittsfield facilities increase the Company's proposed revenue requirement by \$0.30 million (Settlement at § 1.7.1).

Pursuant to the Settlement, the Company's proposed rate mechanisms and rate schedules set forth in the Company's initial filing, including a reconciling mechanism to recover costs associated with pension and other post-retirement employee benefits, a revenue decoupling

Finance Bill repealed G.L. c. 63, § 52A, which provided for a state franchise tax rate of 6.5 percent for public utility corporations. Consequently, utility corporations lost their separate tax status for tax years beginning on and after January 1, 2014, and became subject to the tax rates applicable to corporations pursuant to G.L. c. 63, § 39. For the Company, the tax rate increased to 8.0 percent (see Exhs. BGC-DSD/AD-1, at 31, 33-34; BGC-DSD/AD-3, Sch. 4, at 5). The increase in the franchise tax rate results in an ADIT deficiency on the Company's books.

¹⁵ The Department approved the Company's GSEP reconciliation filing on October 31, 2018. The Berkshire Gas Company, D.P.U. 18-GREC-02, at 33-34 (2018).

mechanism (“RDM”), and a low-income discount adjustment, but excluding the proposed ARM and the alternative capital cost recovery mechanism, would be implemented on February 1, 2019 (Settlement at § 1.1.7). The Settlement provides for Department review and approval of the particular rate mechanisms and schedules proposed for implementation on February 1, 2019 (Settlement at §§ 1.1.7, 1.10.4). Regarding the proposed RDM, the Settlement provides for Department approval by February 1, 2019, a one-time increase of \$0.26 million to be applied to the Company’s initial peak-period RDM adjustment (Settlement at § 1.6.7.3).

Pursuant to the Settlement, the Company will use a 9.70 percent return on equity for ratemaking purposes, which the settling parties state will reduce the Company’s proposed revenue requirement by \$0.54 million (Settlement at § 1.5.1). Additionally, the Company will use a capital structure consisting of 54.0 percent common equity and 46.0 percent long-term debt, excluding goodwill, which the settling parties state will reduce the Company’s proposed revenue requirement by \$0.47 million (Settlement at § 1.5.2). The resulting calculated weighted average cost of capital to be used for ratemaking purposes, pursuant to the Settlement, is 8.33 percent (Settlement at § 1.5.3).

C. December 1, 2019 Distribution Rate Increase

The Settlement provides for an additional increase of up to \$0.70 million through an adjustment to the LDAC, effective December 1, 2019, based on the actual costs incurred by the Company for certain safety and reliability investments to be completed and placed into service on or before December 1, 2019, at the Company’s North Adams liquid propane facility and Whately liquefied natural gas facility (Settlement at §§ 1.8.1, 1.8.4).

Pursuant to the Settlement, by October 14, 2019, the Company will submit sufficient documentation to verify such costs to the Attorney General and the Department (Settlement at § 1.8.2). The Company and the Attorney General will collaborate to verify the costs by October 31, 2019 (Settlement at § 1.8.3). In the event that the Attorney General and the Company fail to reach agreement, the Company may seek Department verification of the costs for implementation through the LDAC, effective December 1, 2019 (Settlement at § 1.8.5). On or before November 1, 2019, the Company will file with the Department documentation and work papers demonstrating the bill impacts associated with the Company's implementation of the December 1, 2019 distribution rate increase (Settlement at § 1.8.7). The Settlement provides that if the actual revenue requirement exceeds \$0.70 million, then there will be no implication as to the prudence of such investment, and the prudence of such investment will be determined in the Company's next base rate proceeding (Settlement at § 1.8.6).

D. Cost Allocation and Rate Design

Under the Settlement, the distribution rate increase effective February 1, 2019, will be allocated by the percentage of volumetric base revenue generated from current base rates (approved in D.T.E. 01-56) and using 2017 test year normalized sales volumes (Settlement at § 1.9.1). The Company will add the resulting allocated portion of the base revenue increase to the 2017 volumetric base revenue of each volumetric rate component to determine the target volumetric base revenue for each rate component (Settlement at § 1.9.1). For each rate class, to derive the base rates to become effective February 1, 2019, the Company will divide the target

volumetric base revenue for each rate component by the 2017 test year normalized volumes (Settlement at § 1.9.1).

Pursuant to the Settlement, all distribution rate increases resulting from the Settlement would only impact the volumetric components of base rates, except that the demand charge for rate class T-54 will be adjusted (Settlement at § 1.10.1). The current customer charge will remain unchanged for all rate classes as a result of the February 1, 2019 distribution rate increase (Settlement at §§ 1.10.2, 1.10.3).

E. Other Settlement Terms

The Settlement states that it (1) shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false; and (2) establishes no principles and, except as to those issues resolved by approval of this Settlement, shall not foreclose any party from making any contention in any future proceedings (Settlement at §§ 2.1, 2.2). The Settlement provides that the settling parties agree that the content of Settlement negotiations, including work papers and documents produced in connection with the Settlement, is confidential (Settlement at § 2.3). The Settlement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion and that the content of settlement negotiations are not to be used in any manner with these or other proceedings involving the parties to this Settlement (Settlement at § 2.3).

The settling parties state that the intent is for the Company's customers to receive the full benefit of the matters addressed in the Settlement, not some substitute regulatory treatment of lesser value, and that the terms of the Settlement shall not be interpreted to diminish the intended

customer benefit (Settlement at § 2.4). The Settlement prohibits the Company from recovering more than once any charges collected under this Settlement or in any other rate, charge, or tariff the Company collects, and it requires a full refund with interest as soon as reasonably possible in the event that such over-recovery is discovered (Settlement at § 2.8).

The terms of the Settlement provide that the Department shall have its usual jurisdiction to implement the terms of the Settlement (Settlement at § 2.7). The Settlement provides that nothing in the Settlement shall be construed to limit the Attorney General's right to petition the Department for a review of the Company under G.L. c. 164, § 93 or other laws or regulations, or to pursue any cause of action related to the Settlement in court under G.L. c. 93A (Settlement at §§ 2.7, 2.9).

The Settlement provides that its provisions are not severable and that the Settlement is conditioned on approval in full by the Department (Settlement at § 2.5). The Settlement provides that it shall be effective upon its approval by the Department, and should the Department not approve the Settlement in its entirety by February 1, 2019, the Settlement states that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (Settlement at § 2.6).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay

State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company,

D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15; D.P.U. 88-28/88-48/89-100, at 9.

It is well established that the Department's goals for utility rate structure are efficiency, simplicity, continuity, fairness, and earnings stability. D.P.U. 95-104, at 15; Bay State Gas Company, D.P.U. 92-111, at 283 (1992); see also Massachusetts Electric Company, D.P.U. 95-40, at 144-45 (1995). The Department has previously accepted settlements which include cost allocation and/or rate design when such settlements were consistent with the Department's goals. D.P.U. 96-60; D.P.U. 96-70; D.P.U. 95-104, at 15; Massachusetts Electric Company, D.P.U. 91-52 (1991).

IV. ANALYSIS AND FINDINGS

The Department has reviewed the Settlement, in light of the evidence, regarding the appropriate revenue requirement for the Company, including the Company's initial filing and responses to information requests as well as responses to information requests from the settling parties and the comments submitted in this proceeding. The Settlement, taken as a whole, provides for a level of additional revenues that is consistent with findings that might reasonably have been made by the Department. Based on this review, the Department finds that the Settlement produces a level of revenues consistent with the establishment of just and reasonable rates. Further, the Department has reviewed the proposed LDAC tariff provisions to implement a reconciling mechanism to recover costs associated with pension and other post-retirement

employee benefits (proposed M.D.P.U. No. 528) and the proposed revenue decoupling adjustment clause tariff (proposed M.D.P.U. No. 530), and we find that the proposed rate mechanisms are consistent with Department precedent and similar Department-approved mechanisms and that they will result in just and reasonable rates. In addition, we find that the proposed 25 percent low income discount adjustment applicable to Rates R-2 and R-4 customers (proposed M.D.P.U. Nos. 518 and 519) is consistent with Department precedent and previously approved low income adjustments. The Department concludes that the Settlement is consistent with both applicable law and the public interest and results in just and reasonable rates because it represents a reasonable resolution of the many issues in this proceeding, including the tax-related issues under investigation in D.P.U. 18-15. NSTAR Electric Company, D.T.E. 03-121, at 49 (2004).¹⁶ Accordingly, the Settlement is approved.

In accordance with the terms of the Settlement, the Department's acceptance does not constitute a determination as to the merits of any allegations or contentions made in this proceeding not expressly covered by the Settlement. In addition, the Department's acceptance does not establish a precedent for future filings, whether ultimately settled or adjudicated.

This Order is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, and expressly does not form, and may not be considered to

¹⁶ As the Department has noted in the past, the Settlement's confidentiality provision set out at Section 2.3 does not bind the Department or preclude its inquiry as events may warrant. Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-114/03-118, at 6 n.4 (2005); Boston Edison Company, D.T.E. 03-117-A (Phase II) at 5 n.6 (2004). To the extent that the parties intend the assertion of confidentiality to be a motion for protective treatment, it is premature.

form, a contract binding on the Department or the Commonwealth of Massachusetts. In ruling on the Settlement, the Department has exercised its regulatory authority under G.L. c. 164, §§ 76, 94, and 94I; the Department's approval of the Settlement does not operate to make the Department a party to the Settlement.

Notwithstanding any agreements reached by the settling parties, the Department may enforce any of the commitments or obligations provided in the Settlement Agreement and the terms of this Order under its regulatory authority, including G.L. c. 164, §§ 76, 94, and 94I, and not as a matter of contract law.

With the approval of the Settlement, the Company is directed to file new tariffs to be effective February 1, 2019. The Department directs that the Company make such a compliance filing consistent with the terms of the Settlement.

V. ORDER

Accordingly, after due notice, public hearing, opportunity to comment, and consideration, it is

ORDERED: That the Joint Motion for Approval of Settlement, submitted by The Berkshire Gas Company and the Attorney General of the Commonwealth of Massachusetts on December 4, 2018, is GRANTED, and the remaining provisions of the Settlement Agreement are APPROVED and it is

FURTHER ORDERED: That proposed tariffs M.D.P.U. Nos. 492 through 508 and M.D.P.U. Nos. 510 through 514 filed by The Berkshire Gas Company on May 17, 2018, to become effective June 1, 2018, are DISALLOWED; and it is;

FURTHER ORDERED: That The Berkshire Gas Company shall file new schedules of rates and charges as required by this Order and shall design all rates in compliance with this Order; and it is

FURTHER ORDERED: That The Berkshire Gas Company shall comply with all other orders and directives contained in this Order.

By Order of the Department,

/s/

Angela M. O'Connor, Chairman

/s/

Robert E. Hayden, Commissioner

/s/

Cecile M. Fraser, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.