



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY  
ATTORNEY GENERAL

(617) 727-2200  
(617) 727-4765 TTY  
[www.mass.gov/ago](http://www.mass.gov/ago)

By E-Mail (Pursuant to Temporary Changes to Filing Requirements, Effective March 12, 2020)

April 1, 2020

Mark D. Marini, Secretary  
Department of Public Utilities  
One South Station, 5th Floor  
Boston, MA 02110

**Re: D.P.U. 19-GSEP-01 through D.P.U. 19-GSEP-06**

Dear Secretary Marini:

Enclosed please find the Office of the Attorney General's *Emergency Motion*. Please file in each of the above-captioned proceedings according to your usual practice.

Thank you for your attention to this matter.

Sincerely,

*/s/ Ashley Gagnon*

Ashley Gagnon  
Assistant Attorney General

Enclosures

cc: Alice Davey, Hearing Officer  
Sarah Smegal, Hearing Officer  
Carol Pieper, Hearing Officer  
Service Lists

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

**2019 Gas System Enhancement Program Filings**

**D.P.U. 19-GSEP-01**

**through**

**D.P.U. 19-GSEP-06**

**EMERGENCY MOTION OF THE ATTORNEY GENERAL  
TO DELAY IMPLEMENTATION OF PLANNED INCREASES  
IN CHARGES FOR GAS SYSTEM ENHANCEMENT PROGRAMS**

**I. INTRODUCTION**

Pursuant to 220 C.M.R. §1.04 (5) of the Procedural Rules of the Department of Public Utilities (the “Department”) and the authority conferred by G.L. c. 25, §4B the Attorney General’s Office, Office of Ratepayer Advocacy (“AGO”) respectfully moves that the Department refrain from approving and delay for at least three months implementation of any requested increase to gas customer surcharges related to increased funding of Gas System Enhancement Programs (“GSEPs”). Local Distribution Companies (“LDCs”) have requested Department approval to collect over \$51 million in additional annual revenues from customers, effective May 1, 2020, to fund planned GSEP activities. However, the extraordinary circumstances surrounding the Commonwealth’s response to the COVID-19 pandemic and the unprecedented financial and economic impacts wrought by the pandemic necessitate a delay of any GSEP increases in order to alleviate financial hardship among gas customers, especially residential customers, and ensure reasonable and affordable access to gas distribution service. Accordingly, if the Department approves GSEP plans that will result in rate increases, the AGO

seeks a delay of at least three months in the implementation of these charges until the COVID pandemic can be contained and the Commonwealth returns to normal business and economic activities.

## **II. BACKGROUND**

On March 10, 2020, Governor Charlie Baker declared a state of emergency throughout the Commonwealth in response to the Coronavirus outbreak (“COVID-19”) and ensuing pandemic.<sup>1</sup> Such designation affords the Governor sweeping powers to reorder the conduct of business, social and governmental transactions to ensure the safety and protection of life and property. Pursuant to such authority the Governor has closed public and private elementary and secondary schools<sup>2</sup> and has ordered cessation of all non-essential work and business activity and shuttered workplaces not related to COVID-19 essential services.<sup>3</sup> Such order also prohibits all public and private gatherings, whether for community, civic, public, leisure or faith-based purposes, larger than ten persons.

As of March 30, 2020, there have been 5,752 confirmed cases of COVID-19 in Massachusetts and over 56 deaths in the Commonwealth attributed to the outbreak.<sup>4</sup> Officials in the Department of Unemployment Assistance are reportedly experiencing a 2,000 percent

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<sup>1</sup> Executive Order No. 591 available at <https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19>

<sup>2</sup> See <https://www.mass.gov/doc/march-16-2020-k-12-school-closing-order/download>

<sup>3</sup> See COVID-19 Order No. 13 available at <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download>; COVID-19 Order No. 21 available at <https://www.mass.gov/doc/march-31-2020-essential-services-extension-order/download>

<sup>4</sup> See <https://www.mass.gov/doc/covid-19-cases-in-massachusetts-as-of-march-30-2020/download>

increase in unemployment claims from pre-pandemic levels.<sup>5</sup> 148,000 claims were filed in the last week alone, a 19-fold increase in claims filed the previous week.<sup>6</sup> Nationwide, the Department of Labor is reporting the highest level of seasonally adjusted new unemployment claims in recorded history. *Id.*

On March 27, 2020, in response to the extraordinary economic and business injury occasioned by COVID-19, the Governor postponed until July 15 the deadline for filing individual state income tax returns and applicable tax payments.<sup>7</sup>

In addition, acting pursuant to the declared state of emergency and the authority conferred upon the Department by G.L. c. 25, §4B the Department Chair issued on March 24, 2020, an emergency Order prohibiting all investor-owned gas, electric and water companies from suspending service to customers due to non-payment of billed amounts.<sup>8</sup> In addition, the Chair's Order prohibits such companies from threatening disconnection of gas, electricity or water service due to non-payment of bills. Similar efforts to protect customers and ameliorate financial hardship are underway in other states.<sup>9</sup>

On March 27, 2019 in Northfield Water Company, D.P.U. 19-57, the Department requested that a water company voluntarily suspend for two-months the planned April 1, 2020

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<sup>5</sup> See <https://www.wbur.org/bostonmix/2020/03/27/massachusetts-coronavirus-unemployment-insurance-explainer>

<sup>6</sup> See <https://www.wbur.org/bostonmix/2020/03/26/massachusetts-unemployment-numbers>

<sup>7</sup> See <https://www.mass.gov/news/massachusetts-announces-state-income-tax-filing-deadline-being-extended-to-july-15>

<sup>8</sup> See <https://www.mass.gov/news/baker-polito-administration-temporarily-prohibits-utility-shutoffs-to-protect-massachusetts>

<sup>9</sup> Government bodies have ordered suspensions of disconnection activities statewide in California, Colorado, Connecticut, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia and Wisconsin. See <https://cleanenergy.org/blog/live-utilities-that-have-and-have-not-suspended-disconnects-amid-covid-19/>

effective date of new water rates. The request was necessitated to “help mitigate the economic impact that new rates would have on customers who already face extraordinary challenges as a result of the COVID-19 pandemic.” Hearing Officer Memorandum, D.P.U. 19-57 at 2. Such efforts also are being pursued in other states. The New York Public Service Commission on March 25, 2020, approved an order postponing for three months the planned effective date of distribution rate increases granted to National Grid’s New York gas and electric operations, impacting more than two million customers in upstate New York.<sup>10</sup> The Ontario Energy Board on March 24, 2020, acted to ameliorate customer hardship by suspending all electricity time-of-use rates, freezing charges for all energy use at the off-peak rate of 10.1 cents/kWh.<sup>11</sup>

### **III. THE DEPARTMENT HAS AUTHORITY AND DISCRETION TO SUSPEND GSEP RATE INCREASES**

The Legislature provided the Department with ample discretion regarding the evaluation and approval of a proposed GSEP plan. G.L. c. 164, §145 (d) provides:

The Department may . . . make other modifications to a plan as a condition of approval. The Department shall consider the costs and benefits of the plan including, but not limited to, impacts on ratepayers....

Accordingly, a primary consideration of Department approval of any GSEP initiative is the ability of gas customers to afford the increase in GSEP costs.

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<sup>10</sup> See

[http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/EFCBF3CC9E94E9268525853500649D06/\\$File/pr20033.pdf?OpenElement](http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/EFCBF3CC9E94E9268525853500649D06/$File/pr20033.pdf?OpenElement)

<sup>11</sup> See <https://news.ontario.ca/opo/en/2020/03/ontario-providing-electricity-relief-to-families-small-businesses-and-farms-during-covid-19.html>

Here, the Department should make this determination in the context of the current economic and financial uncertainty caused by the COVID-19 emergency response. Thousands of customers across the Commonwealth have seen their lives upended and their financial security devastated by the economic shutdown necessitated to stem the pandemic. Thousands have been furloughed from work or face the dismal prospects of ensuing layoffs in the days and weeks ahead as business, commercial, and financial transactions seize up. The first day of every month brings new financial struggles to meet mortgage and rent bills, posing substantial hardships for the Commonwealth's many newly unemployed workers and business owners whose retail establishments have been ordered closed.

The Legislature has set forth expressly the Department's authority in this area. G.L. c. 25, §4B provides in relevant part:

Upon declaration by the governor that a state of emergency exists, the governor may authorize the chairman of the department of public utilities to take such action that the chairman may consider necessary to assure public safety and welfare . . . or continuing availability of gas, electric and water utility services. Under such authority, the chairman may issue operational and management directives and order expenditures or other measures by any investor-owned utility that the chairman considers necessary to respond to the state of emergency[. . . .]. . . . The chairman may temporarily suspend any department rule or regulation and implement any emergency rule, procedure or protocol that is necessary to respond to the emergency.

As noted above, the Department has already exercised its authority under this statute to address several COVID-19 related issues.

Accordingly, pursuant to both the Department's discretion afforded by Section 145 to modify and approve GSEP plans and its plenary authority under G.L. c. 25, §4B, the Department should act now to protect gas customers from the additional hardships of increased GSEP charges. Such action is necessary to ameliorate the impact of GSEP programs on financially

distressed and economically devastated ratepayers while ensuring continued access to essential gas distribution services.

Importantly, the LDCs would not be harmed by a delay in the implementation of the increased charges because the very nature of the GSEP mechanism ensures that the LDCs are made whole on an annual basis. The Gas System Enhancement Adjustment Factors (“GSEAFs”) that would go into effect on May 1 as a result of these proceedings recovers actual and planned investment made beginning January 1, 2015, and in annual periods January 1 through December 31 of each GSEP investment year. *See, e.g., Eversource Energy*, M.D.P.U. No. 402R, § 8.4(9). To the extent that an LDC does not recover its full construction costs through the GSEAF, the LDC can seek to recover those under-recovered amounts through the Gas System Enhancement Reconciliation Adjustment Factors (“GSERAFs”) that result from the LDC’s Gas System Enhancement Reconciliation Filings (“GREC”) filings. One of the determinations that the Department makes as part of the GREC proceedings is “whether the gas company has over- or under-collected its requested revenue requirement.” *Eversource Energy*, D.P.U. 19-GREC-06, at 7 (2019). As a result of this determination, the LDCs implement the GSERAFs, which “recover from, or credit to, ratepayers the under- or over-collection of costs to replace eligible aging and leak-prone natural gas infrastructure.” *Id.*, at 1 n.1. Therefore, to the extent that the LDCs do not recover the complete costs associated with the 2020 GSEP year as a result of delayed implementation, or otherwise, the LDCs, pursuant to the typical GSEP process, can seek to collect any under-recoveries through the GSERAFs implemented as a result of the GREC process. Importantly, the LDCs can seek carrying costs on any under-recovered balances at the prime rate as reported by the Wall Street Journal. *See, e.g., Eversource Energy*, M.D.P.U. No.

402R, § 8.4(14). Therefore, the GSEP process itself ensures that the LDCs would remain whole and would not be harmed as a result of any delayed implementation.<sup>12</sup>

#### IV. CONCLUSION

The COVID-19 pandemic has precipitated unprecedented changes in civic and business, activities and social and faith-based relationships. These government-ordered restrictions have wrought profound and far-reaching economic and financial hardships on residents and consumers of gas distribution services. With no end to restrictions in sight, and the prospect of a prolonged economic recovery once the pandemic subsides the Department should act now to ensure continuing access to gas distribution service and protect the health and safety of the Commonwealth's gas ratepayers. The AGO urges the Department to immediately suspend for at least three months the effective date of any approved increases to GSEP surcharges.

Respectfully submitted,

MAURA HEALEY  
ATTORNEY GENERAL

By: Ashley Gagnon  
Ashley Gagnon  
Elizabeth Mahony  
Margaret Sullivan  
Assistant Attorneys General  
Massachusetts Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

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<sup>12</sup> Similarly, as the AGO noted in its Initial Briefs in each of the GSEP dockets, given the restrictions implemented to reduce the spread of COVID-19, the LDCs will likely have a reduced construction season to complete GSEP work in 2020. Therefore, there is a significant likelihood that if the increased GSEAFs are approved as filed, customers would pay upfront for work that the LDCs will not be able to complete.



Dated: April 1, 2020

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

**2019 Gas System Enhancement Plan  
Filings**

**D.P.U. 19-GSEP-01—D.P.U. 19-GSEP-06**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 1<sup>st</sup> day of April, 2020.

*/s/ Ashley Gagnon*  
Ashley Gagnon  
Assistant Attorney General  
Office of the Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200