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April 8, 2020

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


Re: Gas Companies' Response to AGO Emergency Motion - D.P.U. 19-GSEP-01 through D.P.U. 19-GSEP-06

Dear Secretary Marini:

On behalf of NSTAR Gas Company d/b/a Eversource Energy ("Eversource"), Boston Gas Company and the former Colonial Gas Company d/b/a National Grid ("National Grid"), Bay State Gas Company d/b/a Columbia Gas of Massachusetts ("CMA"), Fitchburg Gas & Electric Light Company d/b/a Unitil ("Unitil"), Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities ("Liberty Utilities"), and The Berkshire Gas Company ("Berkshire")(together, the "Gas Companies"), enclosed for filing is the Gas Companies' response to the April 1, 2020 Emergency Motion filed by the Office of the Attorney General in the above-referenced proceedings.

Please contact me with any questions you may have. Thank you for your attention to this matter.

Sincerely,


Danielle C. Winter

Enclosures

cc: Sarah Smegal, Hearing Officer
Carol Pieper, Hearing Officer
Alice Davie, Hearing Officer
Service Lists, D.P.U. 19-GSEP-01 through D.P.U. 19-GSEP-06

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

_____)	
2020 Gas System Enhancement Program Plans)	D.P.U. 19-GSEP-01 through
_____)	D.P.U. 19-GSEP-06

JOINT RESPONSE OF EVERSOURCE, NATIONAL GRID, COLUMBIA GAS OF MASSACHUSETTS, UNITIL, LIBERTY UTILITIES and BERKSHIRE GAS COMPANY to the OFFICE OF THE ATTORNEY GENERAL’S EMERGENCY MOTION REGARDING GSEP IMPLEMENTATION

I. INTRODUCTION

On October 31, 2019, the Gas Companies each filed their respective Gas System Enhancement Program (“GSEP”) Plans with the Department of Public Utilities (the “Department”).¹ Pursuant to Chapter 149 of the Acts of 2014, codified in G.L. 164, §145 (“Section 145”), the GSEP Plans are designed to accelerate the replacement of leak-prone infrastructure on the respective distribution systems to improve the safety and reliability of the distribution systems and reduce lost and unaccounted for natural gas through a continued reduction in natural gas system leaks. Under Section 145(d), the Department is required to review the GSEPs within six months of the October 31st filing date (i.e., by April 30 of the next year). Section 145(e) mandates that the Department put in place a rate factor to provide recovery of the projected revenue requirement associated with the 2020 GSEP projects beginning May 1, 2020 (i.e., the Gas System Enhancement Adjustment Factor or “GSEAF”).

¹ The “Gas Companies” are NSTAR Gas Company d/b/a Eversource Energy (“Eversource”), Boston Gas Company and the former Colonial Gas Company d/b/a National Grid (“National Grid”), Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“CMA”), Fitchburg Gas & Electric Light Company d/b/a Unitil (“Unitil”), Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities (“Liberty Utilities”), and The Berkshire Gas Company (“Berkshire”).

On March 10, 2020, Governor Baker issued Executive Order No. 591 and declared a state of emergency in Massachusetts in response to the COVID-19 pandemic.² Prior to the declaration, the Gas Companies were already preparing for the impact of COVID-19 on business operations to assure they would be able to continue providing safe and reliable natural gas service in Massachusetts, while safeguarding the welfare and health of employees and customers. On March 11, 2020, the Department directed the Gas Companies to submit information on their business continuity plans in relation to the on-going pandemic. Shortly thereafter, each of the Gas Companies submitted responses to the Department’s questions regarding business continuity and workplace safety in light of the pandemic. The Gas Companies are in daily contact with the Pipeline Safety Division (“Division”) of the Department regarding business operations during the pandemic and will continue to coordinate closely until there is a cessation of emergency circumstances surrounding the pandemic. The Gas Companies appreciate the Department’s swift and decisive actions in response to these unprecedented circumstances and look forward to continuing to work constructively with the Department, the Division and other stakeholders to take steps that are in the best interests of customers.

In addition to taking comprehensive steps to prepare employees to take all necessary measures to protect themselves and customers from the further spread of COVID-19, the Gas Companies have taken steps to assist customers in light of the unprecedented pandemic and its far-reaching impact on the state and national economies.

² Natural Gas distribution pipeline work is classified as an essential service pursuant to EXHIBIT A OF THE ORDER OF THE GOVERNOR ASSURING CONTINUED OPERATION OF ESSENTIAL SERVICES IN THE COMMONWEALTH, CLOSING CERTAIN WORKPLACES AND PROHIBITING GATHERINGS OF MORE THAN 10 PEOPLE (March 23, 2020); <https://www.mass.gov/doc/covid-19-essential-services/download>.

For example, the Gas Companies have suspended disconnection of service for non-payment for both residential and commercial customers consistent with the Department's March 24, 2020 Emergency Order. Effective as of March 17, 2020, the Gas Companies eliminated late payment charges for all commercial customers. Additionally, the Gas Companies are offering longer-term and flexible payment arrangements to customers; enrolling customers in budget billing plans to smooth out payments; and waiving any payment arrangement minimum deposits for customers. The Gas Companies' skilled and highly-trained customer service representatives are available to assist customers with additional financial programs offered by the Gas Companies, including but not limited to setting up payment plans through the Arrearage Management Plans ("AMPs") and directing customers to apply for fuel assistance even if the customers did not originally qualify, but now have a change in economic circumstances due to the pandemic. Lastly, the Gas Companies are providing guidance on conservation and other resources to help customers manage any potential increase in energy use now that a significant number of customers are working from home.

On April 1, 2020, the Attorney General for the Commonwealth of Massachusetts ("Attorney General" or "AGO") filed an Emergency Motion in the above-referenced dockets requesting that, if the Department approves the Gas Companies' GSEPs and GSEAFs for effect May 1, 2020, the Department should delay the implementation of the GSEAFs for "at least" three months until the pandemic is contained and the Commonwealth returns to normal business and economic activities (Motion at 1-2). The Gas Companies appreciate that the Attorney General is seeking to help customers during this time of unprecedented need and join in that goal. However, the proposed delay of the implementation of the GSEAFs will be detrimental -- not beneficial -- to the interests of customers during these difficult months and into the future. There are other steps

that should be taken to help customers without causing future harm, as the Attorney General's suggested actions will do. For that reason, the Department should deny the Attorney General's Motion.

II. RESPONSE TO EMERGENCY MOTION

Given the extraordinary circumstances facing customers, it is critical to employ comprehensive and effective means of assistance. There is no doubt about this fact. In that regard, the Gas Companies recognize that the Attorney General is looking to act quickly to institute meaningful protections for customers, and the Gas Companies support that important objective. However, the Gas Companies are concerned that the AGO has not based the request put forth in the Emergency Motion on facts or an appropriate rationale. Instead, the delay of statutory rate increases is a blunt and ineffective tool that will work to the detriment of customers for several reasons.

A. The Attorney General's Request Is Not Consistent with Massachusetts Law.

Putting aside all other considerations, Section 145 does not authorize the Department to refrain from putting the GSEAFs in place on May 1, 2020. Section 145 states unambiguously that, when a gas company files a plan on or before October 31 for the subsequent construction year, the Department must review the plan within six months, and the Department must issue a decision on the October 31st GSEP filing on or before April 30th. Section 145 states that the GSEP is effective as of the date of filing, subject to modifications made by the Department as a condition of approval. Id. Section 145 also states that the Department may modify a plan prior to approval at the request of a gas company or make other modifications to a plan as a condition of approval. Id. The Department is required to consider the costs and benefits of the plan including, but not limited to, impacts on ratepayers, reductions of lost and unaccounted for natural gas through a reduction in natural gas system leaks and improvements to public safety. Id. If a plan is in compliance with

Section 145 and the Department determines the plan reasonably accelerates eligible infrastructure replacement and provides benefits, the Department must issue preliminary acceptance of the plan in whole or in part. Section 145(e). There is no discretion accorded to the Department on these points.

In particular, the AGO's recommendation that deferring the GSEAFs would constitute a modification authorized by Section 145 is wrong. Section 145(d) authorizes the Department to modify *the GSEP Plans*, such as by denying a proposal to include the replacement of incidental pipe in the GSEP (see, e.g., NSTAR Gas Company d/b/a Eversource Energy, D.P.U. 17-GSEP-06, at 19-21 (2018)), or *to modify the proposed GSEAFs*, such as by requiring a company to recalculate its revenue requirement exclude the recovery of costs associated with the repair of Grade 3 leaks of environment significance ("G3SEIs") from its GSEAF in advance of the Department's final regulations on G3SEIs (see, e.g., Bay State Gas Company d/b/a Columbia Gas Company, D.P.U. 17-GSEP-05, at 14-15 (2018)).

Section 145 does not, as argued by the Attorney General, give the Department the authority *to suspend* or otherwise refuse to institute the May 1, 2020 effective date of the GSEAFs. At its core, the Attorney General is asserting that the Department has the authority to waive a statutory requirement, which is the May 1, 2020 GSEAF effective date. Even the most generous reading of Section 145 does not support this contention. Under the Attorney General's proposal, the Department would approve the Gas Companies' GSEPs and GSEAFs following its consideration of the factors listed in Section 145(d), consistent with the mandates of Section 145, i.e., find that no modifications of either the GSEPs and/or GSEAFs were necessary to meet the Section 145 standard. Then, despite those findings, the Department would have to issue a decision suspending the effectiveness of the GSEAFs for "at least" three months, while still requiring the Gas

Companies to execute on the 2020 GSEP Plan. There is simply no basis in the statute for this type of outcome or for the Department to exercise discretion over these legislatively prescribed elements of the GSEP process.

Thus, the Attorney General seeks to expand the Department's statutory authority under Section 145 to allow for the suspension of the GSEAFs, which is an impermissible exercise of the Department's statutory authority. An agency has no inherent authority beyond its enabling act and therefore, it may do nothing that contradicts such legislation. ENGIE Gas & LNG LLC v. Dep't of Pub. Utilities, 475 Mass. 191, 205 (2016).

The Attorney General further argues that the Department may suspend the GSEAFs pursuant to G.L. c. 25, §4B ("Section 4B"), which states, in pertinent part, that the Department may take such action that the Chair considers necessary to assure public safety or welfare or to continue the availability of gas service (Motion at 5-6). As noted above, the Gas Companies have suspended disconnection of service for non-payment for both residential and commercial customers consistent with the Department's March 24, 2020 Emergency Order. Thus, the Gas Companies are already taking the steps that the Department sees as appropriate to address the upcoming challenges for customers, based on information known to date. It is also clear that the Department is anticipating further targeted actions, as would be appropriate.³

As a result, suspension of the GSEAFs is not consistent with Massachusetts law, nor necessary to "assure the continued availability of gas service as contemplated by Section 4B." In fact, suspension of the GSEAFs would not in any way further the public safety under Section 4B. To the contrary, the suspension of the GSEAFs would be detrimental to the public welfare, in that

³ On March 31, 2020, the Department issued a request for comments on the best practices to implement following the cessation of the COVID-19 pandemic-related moratorium on customer service disconnection for non-payment.

it would unreasonably and unwisely jeopardize cash flow for the Gas Companies and result in increased costs being passed on to all customers at a later date, when bills will be at or near their highest level due to increased gas usage during the winter season.

B. The Attorney General’s Recommendation Would Have a Detrimental Impact on Customers.

As detailed above, the Gas Companies, in concert with the Department and the Division, have already taken steps to assist customers and are working on additional ways to help customers navigate the financial impacts of the pandemic. In that context, the Attorney General’s recommendation will frustrate the Gas Companies’ effort to assist their customers. The Motion ignores the fact that there are likely to be many customers who will be able to continue to pay their bills, notwithstanding the destructive economic impact of the pandemic. Therefore, an approach that negates appropriate rates for *all customers* will produce eventual cost increases, including the recovery of carrying charges, for *all customers* including the customers that the AGO seeks to protect (Motion at 6-7). Thus, the AGO is suggesting the use of blunt instrument to achieve an outcome that will absorb resources that could and should be more thoughtfully targeted to customers in need.

The Attorney General argues that there is no harm to the Gas Companies in delaying the implementation of the GSEAFs as the companies will be able to recover any under-recoveries through the 2020 GSEP Reconciliation (“GREC”) proceedings to be filed May 1, 2021 (Motion at 6-7). Although it is accurate that the Gas Companies would eventually be made whole for any under-recoveries, the Attorney General fully ignores the burden that this would create *for customers*. The GSEAFs that the Attorney General seeks to suspend for “at least” three months go into effect May 1, 2020, at the start of the summer season *in conjunction with off-peak cost of gas adjustment factors* when gas usage, and the bills associated with that usage, are at their lowest.

For example, for NSTAR Gas Company, the rate changes that will take effect on May 1, 2020 are the Cost of Gas Adjustment (“CGA”) Factor, the Gas System Enhancement Adjustment Factor (“GSEAF”), and Revenue Decoupling. The total reduction for an R-3 residential heating customer between April and May would be a *decrease* of \$66. Based on the average peak versus off-peak months, the total bill decrease would \$146. Similar outcomes would apply to the other Gas Companies.

By contrast, the Gas System Enhancement Reconciliation Adjustment Factors (“GSERAFs”), through which the Gas Companies would recover the under-recoveries associated with the AGO’s recommended suspension of the GSEAFs, go into effect on November 1, 2021, *at the start of the heating season* at the same point that the peak-period CGA factors go into effect. Thus, customer bills would increase for delayed GSERAF costs at a point when both unit costs and consumption increases. Consequently, the Attorney General’s proposal would certainly and unavoidably layer additional costs on customers at a time when customers would already be experiencing higher bills than on May 1. In effect, the Attorney General is asking the Department put customers on a GSEP payment schedule that saddles them with a balloon payment on November 1, 2020. This is clearly contrary to the customer interest and indicative of the lack of consideration underlying this recommendation.

In addition, the Attorney General’s recommendation fails to give any consideration to the assistance that is being put in place to help customers across the board, including mortgage and rent relief and expanded unemployment benefits, as well as the other aid provided to individuals and small businesses through the recently passed CARES Act. H.R. 748, which was signed on March 27, 2020, allocates \$2.2 trillion in support to individuals and businesses affected by the pandemic and economic downturn, including approximately \$300 billion in aid to income-eligible

individuals and families in the form of one-time payments, \$260 billion in additional unemployment payments, \$10 billion in emergency grants to small businesses, \$350 billion in Small Business Administration loans, and tax credits aimed at enabling employers who have had to close or restrict their businesses due to the pandemic to retain their employees on the payroll. There is no doubt that the “trickle down” of these resources will be a lengthy process that will not reach every customer and will not be sufficient to address the needs of all affected customers. However, the Department has to consider the totality of these unique circumstances, including the relief available to many customers, to craft an approach that balances customer interests with the imperative of avoiding actions that impair the Gas Companies’ ability to maintain the financial integrity necessary to continue to provide safe and reliable distribution service. The potential impacts of COVID-19 are broader than just GSEP, and therefore the GSEP dockets are not the right place to address the overall impacts of COVID-19 for the Gas Companies’ customers. Moreover, the Attorney General’s recommendation that the GSEAFs should be delayed for “at least three months” would likely result in a situation where there is simply no good time to layer on an “out of sequence” rate change, creating a cascading impact in relation to other increases that will have to take place in the future.

It is in the best interest of customers to allow the GSEAFs to go into effect on May 1, 2020, coinciding with the start of the summer months when both gas usage and the corresponding bills are low. The Gas Companies are hypersensitive to the challenges faced by their customers as a result of the pandemic, particularly those customers who are unable to pay their bills even in the best of times. The most effective strategy to address the financial challenges of these and other customers is to rely on the existing regulatory construct with creativity and improvements, which will require those customers who are able to pay their bills to remit payment at the appropriate

time, while providing assistance to those who cannot. In contrast, the Attorney General’s proposal would further burden *all customers*, including those the AGO is seeking to help, at a time when bills are increasing due to peak-period rates and higher consumption. Accordingly, the Department should deny the Attorney General’s Motion.

C. The Attorney General’s Recommendation Would Have a Detrimental Impact on the Financial Integrity of the Gas Companies When It Can Be Least Afforded.

The Attorney General’s recommendation is ominous in its willingness to restrict the cash flow that the Gas Companies rely on to conduct daily operations and to provide safe and reliable service to customers, including the construction of GSEP projects to replace aging, leak-prone infrastructure. A delay of the GSEAFs for “at least” three months as proposed by the AGO will negatively affect utility cash flow and send very poor signals to credit rating agencies and equity analysts, which are the sources of utility capital, at the very point that the Gas Companies likely need to rely on external funding sources to maintain operations (because customer revenues are reduced).

Credit rating agencies, such as S&P, Moody’s and Fitch, will have significant concerns about the reduction in revenue that would result from the GSEAF deferral for an unspecified duration and the inevitable impact on the Gas Companies’ liquidity and cash flow as a result of that deferral, especially if the rating agencies anticipate further rate deferrals that could be imposed on the Gas Companies as a result of the pandemic. Credit rating agencies react to this type of risk by downgrading the credit worthiness of utilities.⁴ A further downgrade would potentially restrict access to capital and increase the cost that the Gas Companies and their customers incur to borrow

⁴ On April 2, 2020, S&P Global Ratings revised downward its assessment of the North America utility industry to negative from stable as a result of the COVID-19 pandemic. The S&P downgrade is provided as Attachment A to the Gas Companies’ response to the Attorney General’s Motion.

money, particularly at a time when there is unprecedented demand on financial institutions for short-term borrowing, and, absent Federal Reserve intervention, potential strains in market liquidity. Adoption of the Attorney General's recommended action would be viewed negatively in the capital markets creating an extremely detrimental impact on not only the Gas Companies but also, by extension their customers. As a result, this impact must be avoided.

If the Gas Companies' cash flows are detrimentally affected by the lack of revenue or available capital in the marketplace, all the Commonwealth's citizens and the municipalities that receive substantial property tax revenues from the Gas Companies for GSEP projects and other necessary work would be harmed by the lack of liquidity and cash flow. More importantly, a rate deferral for an unspecified period would adversely affect the Gas Companies' liquidity at precisely that same time the Gas Companies may begin to experience an increase in arrearage balances due to the COVID-19 pandemic. A sharp increase in arrearage balances in combination with an indefinite GSEAF deferral would create the financial equivalent of a "perfect storm" in that Gas Companies' cash flows would be drastically reduced at precisely the time that they will be challenged in accessing other cash funding from external sources. Assuming capital resources could even be obtained, the cost would be much higher than would otherwise occur.

Therefore, although at first glance the Attorney General's recommendation appears to be in the interest of customers, it is not. The Attorney General's well-intentioned but ill-advised proposal will only create *additional* financial stress for customers and unnecessary risk for the Gas Companies that will translate into increased costs for customers. Accordingly, the Department should deny the Emergency Motion to avoid burdening customers with unintended consequences.

III. CONCLUSION

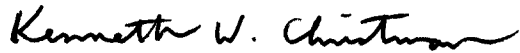
As noted above, the Gas Companies appreciate the attempt by the Attorney General to take immediate steps to help customers during the unprecedented COVID-19 pandemic and its concomitant impacts on all aspects of day-to-day life in the Commonwealth. However, the tact taken by the Attorney General in the Emergency Motion would harm customers at a time when they can least afford additional financial stresses, while jeopardizing the cash flows of the Gas Companies and sending a negative signal to the capital marketplace. To avoid these detrimental impacts, the Department should deny the Attorney General's Emergency Motion and instead allow the GSEAFs to go into effect on May 1, 2020.

The Gas Companies are actively working to evaluate and develop additional innovative assistance programs for customers and anticipate that they will work with the Department, the Division and stakeholders, such as the Attorney General, to explore the most effective and impactful means of assisting customers during the pendency and aftermath of the COVID-19 pandemic. That assistance should continue to be carefully crafted to address current concerns and issues without creating future injurious impacts for customers.

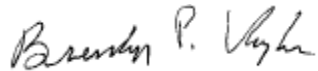
Respectfully Submitted,

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MASSACHUSETTS,**

By its attorneys,



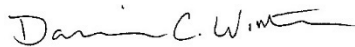
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