



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-GSEP-06

April 30, 2020

Petition of NSTAR Gas Company d/b/a Eversource Energy for approval of its 2020 Gas System Enhancement Plan, pursuant to G.L. c. 164, § 145, for rates effective May 1, 2020.

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TABLE OF CONTENTS

- I. INTRODUCTION 1
 - A. Procedural History 1
 - B. Procedural Ruling 3
 - 1. Introduction 3
 - 2. Positions of the Parties 4
 - a. Attorney General 4
 - b. Company 5
 - 3. Analysis and Findings 6
- II. STATUTORY REQUIREMENTS 7
- III. GAS SYSTEM ENHANCEMENT PLAN 10
 - A. Introduction 10
 - B. Accelerated Replacement 12
 - 1. Introduction 12
 - 2. Positions of the Parties 13
 - a. Attorney General 13
 - b. Company 15
 - 3. Analysis and Findings 17
 - C. Allowance for Funds Used During Construction 19
 - 1. Introduction 19
 - 2. Positions of the Parties 19
 - a. Attorney General 19
 - b. Company 20
 - 3. Analysis and Findings 22
 - D. Repair Costs for Grade 3 Leaks Identified as Having a Significant Environmental Impact and Proposed Tariff Revisions 24
 - 1. Repair Costs 24
 - a. Introduction 24
 - b. Positions of the Parties 25
 - i. Attorney General 25
 - ii. Company 25
 - c. Analysis and Findings 26
 - 2. Proposed Tariff Revisions 27
 - a. Introduction 27
 - b. Positions of the Parties 28
 - i. Attorney General 28
 - ii. Company 28
 - c. Analysis and Findings 28
 - E. Conclusion on the 2020 GSEP 29

IV. ORDER.....29

I. INTRODUCTION

A. Procedural History

On October 31, 2019, NSTAR Gas Company d/b/a Eversource Energy (“NSTAR Gas” or “Company”) submitted its 2020 gas system enhancement plan (“GSEP”) to replace aging natural gas pipeline infrastructure to the Department of Public Utilities (“Department”) pursuant to G.L. c. 164, § 145 (“Section 145”). In its initial filing, the Company sought approval to collect \$42,391,835¹ through its gas system enhancement adjustment factors (“GSEAFs”) to recover the estimated cost to replace eligible leak-prone infrastructure replaced in calendar year 2020, for effect on May 1, 2020 (Exhs. ES-BKR at 5, 13; ES-BKR-1, at Sch. 28). On December 9, 2019, the Company filed a revised revenue requirement of \$44,695,865 (Exh. AG 1-20 (Supp.), Att. (a) (“Exh. ES-BKR-1 (Rev.)”) at Sch. 1). To the revised revenue requirement, the Company adds the estimated costs to repair Grade 3 leaks identified as having a significant environmental impact (“G3SEI leaks”) of \$32,588, and subtracts the excess deferred income tax credit of \$278,221, resulting in a net amount to be collected through the GSEAFs of \$44,450,232 (Exh. ES-BKR-1 (Rev.), Sch. 28). Based on the Company’s revised proposed revenue requirement of \$44,450,232, including the adjustments mentioned above, NSTAR Gas proposes to implement GSEAF rates of \$0.1160 per therm for residential customers,

¹ This amount is comprised of a GSEP revenue requirement of \$42,637,469, estimated costs to repair Grade 3 leaks identified as having a significant environmental impact in the amount of \$32,588, and an excess deferred income tax credit of \$278,221 (Exh. ES-BKR-1, Sch. 28).

\$0.0855 per therm for small commercial and industrial (“C&I”) customers, \$0.0568 per therm for medium C&I customers, and \$0.0507 per therm for large C&I customers (Exhs. AG 1-20, at 4; ES-BKR-1 (Rev.), Sch. 28). The Department has docketed this matter as D.P.U. 19-GSEP-06.

The general terms of the Company’s GSEP and the formula for the calculation of its GSEAFs are set forth in Section 8.0 of its local distribution adjustment clause (“LDAC”) tariff, M.D.P.U. No. 402R (Exh. ES-BKR-4, § 8.0). As discussed below, NSTAR Gas proposes certain modifications to its LDAC tariff related to the inclusion of repair costs of G3SEI leaks (Exhs. ES-RJB at 5-6; ES-BKR at 11; ES-BKR-3, at 16-17, 21-23, 25-28, 31).

On November 1, 2019, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E(a). On December 3, 2019, the Department approved the notice of the Attorney General for retention of experts and consultants at funding not to exceed \$150,000, filed pursuant to G.L. c. 12, § 11(b). Pursuant to notice duly issued, the Department held a public hearing on December 4, 2019. In support of its filing, the Company sponsored the testimony of three witnesses: (1) Bryant K. Robinson, team leader in the Massachusetts revenue requirements group for the Company; (2) Robert J. Buffone, Jr., manager of risk management and investment strategy for the Company; and (3) James E. Dugan, team leader in the Company’s plant accounting services group.² The record consists of the Company’s initial

² On March 2, 2020, the Department granted the Company’s motion recognizing the substitution of Christopher J. Salbinski, manager of the Company’s plant accounting

filing and responses to 81 information requests.³ On March 25, 2020, the Attorney General and the Company submitted initial briefs. On April 1, 2020, the Attorney General submitted a letter in lieu of a reply brief and the Company submitted a reply brief.⁴

B. Procedural Ruling

1. Introduction

On April 1, 2020, the Attorney General filed an emergency motion (“Attorney General Motion”) asking the Department to delay the implementation of any increases in charges as a result of approved GSEPs (Attorney General Motion at 1). Specifically, the Attorney General requests the Department delay implementation of any approved increases by at least three months (Attorney General Motion at 1-2). On April 8, 2020, the local gas distribution companies (“LDCs”) filed a joint response to the Attorney General’s Motion (“LDC Response”). On April 16, 2020, the Attorney General submitted a motion for leave

services group, for Mr. Dugan as the witness of record for the prefiled direct testimony Exhibit ES-JED and accompanying exhibits initially submitted by Mr. Dugan in this proceeding.

³ On its own motion, the Department moves into the record the Company’s initial filing and the following prefiled witness testimony, responses to information requests, and exhibits, schedules, and attachments thereto: ES-RJB; ES-RJB-1 and ES-RJB-2; ES-BKR; ES-BKR-1 through ES-BKR-4; ES-JED; ES-JED-1 through ES-JED-4; AG 1-1 through AG 1-31, including AG 1-20 (Supp.); AG 2-1 through AG 2-15; AG 3-1 through AG 3-11; AG 4-1 and AG 4-2; AG 5-1 and AG 5-2; AG 6-1, including AG 6-1 (Supp.); DPU 1-1 through DPU 1-7; DPU 2-1 through DPU 2-8; and DPU 3-1 through DPU 3-4.

⁴ The Department finds that the evidentiary record and briefs in this proceeding provide an adequate basis to address the Company’s filing without a need for an adjudicatory hearing.

to file reply comments to clarify her request along with the reply comments (“Attorney General Reply”). On April 21, 2020, the LDCs submitted a response to the Attorney General’s reply comments.⁵

2. Positions of the Parties

a. Attorney General

In support of her motion, the Attorney General argues that the unprecedented financial and economic impacts brought on by the COVID-19 pandemic⁶ require the delay of any GSEAF increases to ease financial hardship for gas customers and to ensure reasonable and affordable access to gas distribution service (Attorney General Motion at 1). The Attorney General relies, in part, on the Department’s emergency Order prohibiting investor-owned gas, electric, and water companies from suspending service to customers or threatening to suspend service due to non-payment of billed amounts (Attorney General Motion at 3, citing Chairman’s First Set of Orders under G.L. c. 25, § 4B (March 24, 2020), available at: <https://www.mass.gov/doc/chairs-1st-set-of-orders-under-c-25-s-4b-re-covid-19/download>

⁵ There was no objection to the Attorney General’s motion for leave to file reply comments and, therefore, it is allowed.

⁶ On March 10, 2020, Governor Baker issued an Executive Order declaring a state of emergency regarding the 2019 novel Coronavirus (“COVID-19”), and noted that the World Health Organization had declared the COVID-19 outbreak as a public health emergency of international concern due to it being a contagious and, at times, fatal respiratory disease. See Executive Order No. 591: Declaration of a State of Emergency to Respond to COVID-19, dated March 10, 2020 and available at: <https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19> (last visited April 19, 2020).

(last visited April 10, 2020)) (“Emergency Order”). Further, the Attorney General argues that the Department has the authority to use its discretion in this regard (Attorney General Motion at 4-5, citing Section 145; G.L. c. 25, § 4B). Finally, she argues that the LDCs would not be harmed by the delay in GSEAF increase implementation because they cannot only collect any under-recoveries in the following reconciliation filing but could also collect carrying costs on any under-recovered balances (Attorney General Motion at 6; Attorney General Reply at 1).

b. Company

The LDCs jointly argue that the Attorney General’s request is not consistent with Massachusetts law (LDC Response at 4). Specifically, the LDCs argue that the Attorney General’s proposal incorrectly expands the Department’s authority under Section 145 (LDC Response at 5-6). The LDCs assert that Section 145 does not give the Department authority to suspend or otherwise refuse to institute the statutorily effective GSEAF date of May 1 (LDC Response at 5). The LDCs also assert that suspension of the GSEAF increases would not further public safety under G.L. c. 25, § 4B and would actually be detrimental to public welfare (LDC Response at 6-7). In addition, the LDCs argue that they have already taken measures to address the COVID-19 pandemic and assist their customers, including suspension of disconnections of service for non-payment for both residential and commercial customers, elimination of late payment charges for all commercial customers, implementation of longer-term and flexible payment arrangements, and enrolling customers in budget billing plans to smooth out payments (LDC Response at 2-3).

The LDCs also maintain that there are likely many customers who can pay their bills despite the economic impact of the pandemic and that any approach should be more targeted to customers in financial need (LDC Response at 7). Further, the LDCs contend that while the Attorney General is correct that the companies will ultimately be made whole for any under-recoveries, customers would be negatively impacted by applying GSEAFs to their bills during the peak season rather than the off-peak season and by adding unnecessary carrying costs (LDC Response at 7-8). Finally, the LDCs argue that delayed implementation of the GSEAF increases would negatively impact the LDCs' cash flow and consequently their credit ratings at a time when LDCs may need to be able to access cash funding from external sources (due to reduced revenues) (LDC Response at 11).

3. Analysis and Findings

The Department is cognizant of the unique circumstances of the COVID-19 pandemic and the impact on the health, welfare, and economic security of Massachusetts residents. Pursuant to G.L. c. 25, § 4B and the Governor's authorization, the Chairman of the Department may take such action as necessary to ensure public safety and welfare through the priority restoration or continuing availability of gas, electric, and water utility services. With this in mind, the Department acted swiftly and intentionally in response to the COVID-19 pandemic and issued an Emergency Order prohibiting all investor-owned gas, electric, and water companies from suspending or threatening to suspend service to customers due to non-payment of billed amounts (Emergency Order at 2).

In considering the Attorney General's request, there is no basis to conclude that the economic issues related to the COVID-19 pandemic will resolve in three months, and it is unfeasible to repeatedly delay implementation of the GSEAFs until the economic crisis subsides. In addition, delaying implementation of the GSEAFs will put an undue burden on ratepayers by introducing otherwise absent carrying costs. Those carrying costs could be significant because they would apply to the entire sum at issue during the delay, not just costs that exceed current construction estimates. Notably, delaying implementation of the GSEAF increases for at least three months would institute increased rates near the beginning of the colder months when customers' usage and bills are higher. Further, as noted by the LDCs, certain Massachusetts ratepayers will not be financially affected by COVID-19 and the generic action the Attorney General proposes could result in higher borrowing costs for the LDCs. Increased borrowing costs, as well as the carrying costs discussed above, could place further financial burden on all ratepayers. Based on these considerations, the Department denies the Attorney General's Motion to delay implementation of the approved GSEAF increases.

While the Department denies the Attorney General's request, the concerns that she raises are important. The Department will continue to monitor this situation, as well as the other effects of COVID-19, and we will implement further safeguards as appropriate.

II. STATUTORY REQUIREMENTS

Section 145 permits gas distribution companies to, in the interest of public safety and to reduce lost and unaccounted for natural gas, submit to the Department annual plans to

repair or replace aging or leaking natural gas infrastructure. Any plan filed with the Department shall include, but not be limited to the following: (i) eligible infrastructure replacement⁷ of mains, services, meter sets, and other ancillary facilities composed of non-cathodically protected steel,⁸ cast iron,⁹ and wrought iron,¹⁰ prioritized to implement the

⁷ Section 145(a) defines eligible infrastructure replacement to be:

a replacement or an improvement of existing infrastructure of a gas company that: (i) is made on or after January 1, 2015; (ii) is designed to improve public safety or infrastructure reliability; (iii) does not increase the revenue of a gas company by connecting an improvement for a principal purpose of serving new customers; (iv) reduces, or has the potential to reduce, lost and unaccounted for natural gas through a reduction in natural gas system leaks; and (v) is not included in the current rate base of the gas company as determined in the gas company's most recent rate proceeding.

⁸ Cathodic protection is a technique to reduce the corrosion of a metal surface by making that surface work as the cathode of an electrochemical cell. NACE International SP0169-2013, Standard Practice, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," at § 2, revised October 4, 2013.

⁹ This category applies to gray-cast iron that is a cast ferrous material in which a major part of the carbon content occurs as free carbon in the form of flakes interspersed through the metal. American Gas Association, Gas Piping Technology Committee, Guide for Gas Transmission Distribution, and Gathering Piping Systems, at § 192.3, Subpart A, Glossary of Commonly Used Terms (2015 Ed.). Compared to steel or plastic, it is relatively brittle and, like steel, is susceptible to corrosion. American Gas Association, Managing the Reduction of the Nation's Cast Iron Inventory, at 4 (2013), available at: https://www.aga.org/sites/default/files/managing_the_nations_cast_iron_inventory.pdf (last visited April 21, 2020).

¹⁰ Together with cast iron, wrought iron pipelines are among the oldest energy pipelines constructed in the United States. The degrading nature of iron alloys, the age of the pipelines, and the pipe joint designs have greatly increased the risk involved with the continued use of such pipelines. United States Department of Transportation, Pipeline

federal gas distribution pipeline integrity management plan annually submitted to the Department, and consistent with 49 C.F.R. §§ 192.1001 through 192.1015; (ii) an anticipated timeline for the completion of each project; (iii) the estimated cost of each project; (iv) rate change requests; (v) a description of customer costs and benefits under the plan; and (vi) any other information the Department considers necessary to evaluate the plan. Section 145(c). Annual changes in the revenue requirement eligible for recovery pursuant to the plan shall not exceed (i) 1.5 percent of the gas company's most recent calendar year total firm revenues, including gas revenues attributable to sales and transportation customers, or (ii) an amount determined by the Department that is greater than 1.5 percent of the gas company's most recent calendar year total firm revenues, including gas revenues attributable to sales and transportation customers. Section 145(f).¹¹

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. Section 145(d).¹² The Department is required to consider the costs and benefits of the plan including, but not

& Hazardous Materials Safety Administration, Pipeline Replacement Background, available at: https://opsweb.phmsa.dot.gov/pipeline_replacement/default.asp (last updated March 17, 2020).

¹¹ The revenue requirement includes depreciation expense, property taxes, and a return on investment associated with the plan. Section 145(e). Any revenue requirement approved by the Department in excess of such cap may be deferred for recovery in the following year. Section 145(f).

¹² If 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. Section 145(d). The plan is effective as of the date of filing, pending Department review. Section 145(d).

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. Section 145(d). The Department is also required to give priority to plans narrowly tailored to addressing leak-prone infrastructure most immediately in need of replacement. Section 145(d).

If a plan complies with Section 145, and the Department determines that it reasonably accelerates eligible infrastructure replacement and provides benefits to customers, the Department must preliminarily accept the plan either in whole or in part. Section 145(e). The gas company may begin recovering the estimated plan revenue requirement beginning on May 1 of the year following submission of the plan. Section 145(e). Subsequently, on or before May 1 of each year, the gas company must file final project documentation for construction completed the previous calendar year in order to demonstrate substantial compliance with the plan and to demonstrate that the costs were reasonably and prudently incurred. Section 145(f). The Department also may discontinue the replacement program and require a gas company to refund any costs charged to customers due to failure to substantially comply with a plan or failure to reasonably and prudently manage project costs. Section 145(h).

III. GAS SYSTEM ENHANCEMENT PLAN

A. Introduction

NSTAR Gas distributes natural gas to approximately 300,000 customers in 51 communities in central and eastern Massachusetts (Exh. ES-RJB-1, at 7). The Company owns and operates approximately 3,292 miles of distribution mains and 204,947 services

(Exh. ES-RJB-1, at 8, Table 1). The Company states that approximately 19.4 percent (638 miles) of NSTAR Gas' distribution system mains are composed of non-cathodically protected steel and wrought iron and approximately 9.6 percent (317 miles) of its distribution system is composed of cast iron, which means that approximately 29 percent of the distribution system mains (955 miles) is composed of leak-prone materials (see Exh. ES-RJB-1, at 8, Table 1).

Historically, NSTAR Gas replaced approximately 25 miles of leak-prone pipe per year (Exh. ES-RJB-1, at 4). NSTAR Gas' GSEP established a program to replace eligible aging infrastructure over a 25-year period, with an anticipated replacement rate of 50 miles per year following a five-year ramp-up period (Exh. ES-RJB-1, at 4-5). NSTAR Gas Company, D.P.U. 14-135, at 34-35 (2015). The Company anticipates extending the ramp up period for an additional two years to reach a replacement rate of 60 miles per year, and to reduce the overall GSEP program to less than 25 years (Exh. ES-RJB-1, at 13-14). In 2019, NSTAR Gas anticipated replacing 50 miles of leak-prone main and 3,000 associated services (Exh. ES-RJB-1, at 5). The Company estimated that it is currently on track to meet these goals (Exh. ES-RJB-1, at 4). In 2020, NSTAR Gas anticipates replacing 55 miles of leak-prone main and 3,000 associated services (Exh. ES-RJB-1, at 15).

In its revised filing, the Company presented its 2020 estimated GSEP revenue requirement of \$44,695,865 (Exh. ES-BKR-1 (Rev.), Schs. 1, 28). This amount did not

exceed the Company's 3.0-percent GSEP cap¹³ of \$46,561,261 (Exh. ES-BKR-1 (Rev.), Schs. 1, 29). NSTAR Gas Company, D.P.U. 18-GSEP-06, at 63 (Rev. May 31, 2019). See Section 145(f)(ii). The Company then added \$32,588 to its revenue requirement to account for the cost of proposed repairs of ten G3SEI leaks, and subtracted \$278,221 from its revenue requirement to account for the excess deferred income taxes returned to ratepayers per the final order issued in Effect of Reduction in Federal Income Tax Rates on Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15-E (2018) (Exh. ES-BKR-1 (Rev.), Schs. 1, 30, 31). This resulted in a final requested 2020 revenue requirement of \$44,450,232 (Exh. ES-BKR-1 (Rev.), Sch. 28).

The Attorney General raised issues regarding safety concerns associated with the acceleration of GSEP replacement, costs associated with vintage-year allowance for funds used during construction ("AFUDC") amounts, and cost recovery and tariff revisions related to G3SEI leaks (Attorney General Brief at 1).

B. Accelerated Replacement

1. Introduction

In response to an over-pressurization of Bay State Gas Company's natural gas distribution system in the Merrimack Valley in 2018, the Department contracted with Dynamic Risk Assessment Systems, Inc. ("Dynamic Risk") to conduct an independent

¹³ In NSTAR Gas Company, D.P.U. 18-GSEP-06, at 28-29 (2019), the Department found that the use of a 3.0-percent cap was consistent with the intent of Section 145. See also M.D.P.U. No. 402R, § 8.7.1.

statewide assessment of the safety of Massachusetts' natural gas distribution system and the operations and maintenance functions of natural gas companies in Massachusetts. As part of its statewide assessment, Dynamic Risk provided observations regarding the physical integrity and safety of the gas system, commented on Massachusetts gas companies generally and specifically, and identified numerous best practices for the companies to adopt. Statewide Assessment of Gas Pipeline Safety: Commonwealth of Massachusetts by Dynamic Risk Assessment Systems, Inc. (January 29, 2020) ("Dynamic Risk Assessment").¹⁴

2. Positions of the Parties

a. Attorney General

The Attorney General argues that the Department should not permit the Company to accelerate its 2020 GSEP replacement, or any future GSEP replacements, until (1) the Department has an opportunity to review and assess the adequacy of the Company's plan provided in response to the Dynamic Risk Assessment ("Assessment Plan"), (2) the Company has demonstrated that it has implemented all improvements deemed necessary by the Department, and (3) the Department affirmatively determines that the Company is able to perform its GSEP acceleration safely (Attorney General Brief at 2, 11, citing Exhs. AG 6-1; AG 6-1 (Supp.), Att. B at 1). The Attorney General asserts that although the Dynamic Risk Assessment noted some strengths about NSTAR Gas, it also included opportunities for

¹⁴ The Department incorporates by reference pursuant to 220 CMR 1.10(3) the Dynamic Risk Assessment, which is available at: <https://www.mass.gov/doc/dynamic-risk-phase-2-rev-1/download> (last visited April 10, 2020).

improvement such as reviewing and improving excavation practices, considering an increase in the pace of leak-prone pipe replacement to reduce risk provided it can be done safely, tracking critical gas events like over-pressurizations on low pressure systems, conducting root cause analysis as a means to learn from every critical event, developing and implementing a plan to lower the number of over-pressure events, and improving assessment of work position of equipment during excavations to protect against potential pipe damage (Attorney General Brief at 6-7, citing Dynamic Risk Assessment, App. B.4, at B-37). In addition, the Attorney General maintains that the Dynamic Risk Assessment also contained a review of the Company's written procedures and program that included a number of additional observations and recommendations (Attorney General Brief at 7, citing Dynamic Risk Assessment, App. B.4, at B-40-B-41).

The Attorney General notes that the Department directed the Company to submit a plan in response to the Dynamic Risk Assessment, and the Attorney General asserts that while NSTAR Gas submitted the required Assessment Plan on February 28, 2020, the Company is still in the process of developing and/or implementing solutions to recommendations included in the Dynamic Risk Assessment (Attorney General Brief at 8, citing Exh. AG 6-1 (Supp.), Att. B at 5-9). Further, the Attorney General states that NSTAR Gas is in the process of evaluating and/or implementing a number of specific best practices recommendations (Attorney General Brief at 8-9, citing Exh. AG 6-1 (Supp.), Att. B at 16-32). The Attorney General maintains that NSTAR Gas states that it has implemented over 90 percent of the identified lessons learned from the Merrimack Valley

incident, but does not state what the lessons were or how the Company identified the lessons learned (Attorney General Brief at 9, citing Exh. AG 6-1 (Supp.), Att. B at 37). The Attorney General maintains that the Department should not allow NSTAR Gas to increase its pace of replacement in the 2020 GSEP year and beyond until the Department finds that the Company can perform any proposed acceleration safely and that the Company is actively working to improve pipeline safety (Attorney General Brief at 10).

b. Company

NSTAR Gas argues that the Department should disregard the Attorney General's recommendation to require the Company to refrain from accelerating its GSEP (Company Reply Brief at 6). Specifically, the Company maintains that the Dynamic Risk Assessment acknowledges the benefits of the Company's GSEP replacement pace and strategy and does not recommend the Company slow its pace of replacement (Company Reply Brief at 4-5, citing Dynamic Risk Assessment at 35). The Company argues that the Dynamic Risk Assessment indicates that the Company stands out from its LDC peers for the drop in discovered leaks in 2013 through 2018, and notes that the Company has been consistently improving on its discovery and repair of leaks since 2013 and is on pace to meet the 20-year replacement timeline (Company Reply Brief at 5, citing Dynamic Risk Assessment at 35; App. B at B-38, n. 277). In addition, NSTAR Gas contends that the Dynamic Risk Assessment does not recommend that the Company slow its replacement, but rather requests confirmation that the increased replacement can be done safely, that there is an availability of

adequate resources, and that the Company has a qualified and competent workforce (Company Reply Brief at 5, citing Dynamic Risk Assessment at 38).

Further, NSTAR Gas contends that in its Assessment Plan filed with the Department, it illustrates that the Company has an adequate amount of resources and a qualified and competent workforce to continue to safely accelerate the pace of replacement (Company Reply Brief at 5, citing Exhs. ES-RJB-1, at 13-18, 29-31; AG 6-1 (Supp.), Att. B at 3). For example, the Company maintains that, in response to the Dynamic Risk Assessment, it explained that its original five-year ramp up period was necessary to hire, train, and qualify a sufficient number of internal and contractor resources to safely and efficiently implement the GSEP (Company Reply Brief at 5, citing Exh. AG 6-1 (Supp.), Att. B at 3). Therefore, the Company maintains that it has demonstrated that it has all of the necessary components in place to continue to accelerate its replacement pace under the GSEP, while the Attorney General offers no contradictory evidence, yet recommends that the Company be prevented from meeting the mandates of Section 145 for the benefit of customers and the Commonwealth (Company Reply Brief at 5). NSTAR Gas argues that such a recommendation is inconsistent with and counterintuitive to the recommendations in the Dynamic Risk Assessment, which seek to strike a balance between the benefits of accelerated leak-prone infrastructure replacement and remaining mindful of safety and resource considerations (Company Reply Brief at 5-6, citing Dynamic Risk Assessment at 38). Therefore, the Company urges the Department to reject the Attorney General's recommendations and approve the Company's 2020 GSEP, including its proposed

replacement acceleration to reduce the overall timeline of the GSEP from 25 to 20 years (Company Reply Brief at 6).

3. Analysis and Findings

The Attorney General argues that the Department should not authorize the Company to accelerate its 2020 GSEP replacement, or any future GSEP replacements, until the Department has had an opportunity to review and evaluate the Company's Assessment Plan in response to recommendations and requirements set forth in the Dynamic Risk Assessment (Attorney General Brief at 2). The Department declines to adopt the Attorney General's proposal for several reasons. First, the proposal is contrary to the mandate of the GSEP statute. Specifically, Section 145 requires LDCs that file a GSEP to "include a timeline for removing all leak-prone infrastructure on an accelerated basis specifying an annual replacement pace." The Department has previously found that the GSEP is intended to accelerate the replacement of leak-prone pipe, and that in the absence of the GSEP, aging infrastructure would be retired and replaced in due course. NSTAR Gas Company, D.P.U. 15-GSEP-06, at 24 (2016). Thus, the Attorney General's recommendation defeats the legislative purpose of the GSEP statute encouraging the removal and replacement of leak-prone pipe from the Massachusetts gas distribution system on an accelerated basis.

Second, the Attorney General has not presented any evidence that the Department should be concerned about NSTAR Gas' ability to proceed safely with its GSEP at this time. The Dynamic Risk Assessment recommends that Massachusetts LDCs accelerate the replacement of leak-prone pipe, but only if it can be done in a safe manner. Dynamic Risk

Assessment at 84, § 12.1. The Department will not assume a safety-related GSEP violation exists. If NSTAR Gas conducts its accelerated natural gas pipeline infrastructure replacements with relaxed safety measures or without making safety its primary consideration, the Department will take appropriate measures. Until there is evidence of this, the Department will not proactively terminate or limit the Company's GSEP work.

In addition, many issues raised in the Dynamic Risk Assessment are beyond the scope of this GSEP proceeding, which is a review of the Company's plan to replace leak-prone infrastructure in the subsequent construction year. The Department determines that the observations and recommendations provided in the Dynamic Risk Assessment, and the Company's responses to them in its Assessment Plan, are best addressed in the investigatory activities already being undertaken by the Department specifically for that purpose, rather than in the GSEP dockets.

In reviewing a company's GSEP, the Department considers the costs and benefits, including the impact on ratepayers. Section 145(d). Therefore, in approving a company's GSEP, the Department has necessarily weighed the costs and benefits of the program. Accordingly, the Department declines to preemptively suspend or delay any acceleration of NSTAR Gas' 2020 GSEP replacement, or any future GSEP replacements, to the extent NSTAR Gas later seeks to do so.

C. Allowance for Funds Used During Construction

1. Introduction

The Department initially denied recovery of AFUDC through the GSEP to avoid greater than full recovery of construction costs. Fitchburg Gas and Electric Light Company, et al., D.P.U. 16-GREC-01-A through D.P.U. 16-GREC-06-A at 18-19 (2017). In the 2017 GREC proceedings, the Department recognized that excluding AFUDC from the GSEP might fail to fully compensate the LDCs for the borrowing costs they incurred associated with construction and instructed the companies to jointly propose a method for including AFUDC in the GSEP. NSTAR Gas Company, D.P.U. 17-GREC-06, at 34 (2017). In the 2018 GSEP proceedings, the LDCs proposed methods for recovery of AFUDC through the GSEPs. NSTAR Gas Company, D.P.U. 18-GSEP-06, at 51-52 (2019). Additionally, in D.P.U. 18-GSEP-06, at 60, the Department revised its prior position with respect to AFUDC in GSEP revenue requirements and allowed for the inclusion of AFUDC in the GSEP.

As part of its 2020 GSEP revenue requirement, NSTAR Gas seeks to recover the following AFUDC balances as project costs for GSEP investment years previously disallowed: \$14,221 for 2015; \$152,960 for 2016; \$72,826 for 2017; and \$79,752 for 2018, for a total of \$319,759 (Exh. ES-BKR at 11).

2. Positions of the Parties

a. Attorney General

The Attorney General asserts that NSTAR Gas incorrectly interpreted the Department's decision in D.P.U. 18-GSEP-06 to allow the inclusion of AFUDC accrued

prior to 2019 in the cost of plant included in the GSEP revenue requirement (Attorney General Brief at 14). She maintains that the prospective nature of the Department's 2018 GSEP Order was clear and does not support the Company's attempt to incorporate prior years' AFUDC into this year's GSEP recovery (Attorney General Brief at 14, citing D.P.U. 18-GSEP-06, at 52). The Attorney General claims that the Department did not express clear intent for the decision to be applied retroactively and the Department did not characterize its decision regarding AFUDC as retroactive, so application must be prospective only (Attorney General Brief at 15, citing New England Gas Company, D.P.U. 11-84/12-74/13-154, at 17 (2016), quoting Massachusetts Electric Company/Nantucket Electric Company Service Quality, D.T.E. 01-71B at 16-17 (2002)). In addition, the Attorney General argues that the Company's failure to seek post-order clarification or relief in D.P.U. 18-GSEP-06 forecloses the Company's ability to claim retroactivity now (Attorney General Brief at 14-15, citing 220 CMR 1.11(10)).

b. Company

NSTAR Gas states that it has properly calculated and included the AFUDC for GSEP investment years 2015 through 2018 in its 2020 GSEP revenue requirement (Company Brief at 20-22; Company Reply Brief at 10-14). The Company argues that exclusion of AFUDC associated with vintage GSEP projects would be contrary to the Department's decision in D.P.U. 18-GSEP-06 because it prevents the Company from recovering prudently incurred costs that were incurred solely to finance the construction of the GSEP projects (Company Reply Brief at 11). The Company contends that the Department's authorization to include

AFUDC in future GSEP filings meant the Company was authorized to include the AFUDC associated with all of its GSEP projects in future GSEP filings (Company Reply Brief at 11). NSTAR Gas asserts that the Attorney General did not oppose the Company's proposal to include vintage year AFUDC in D.P.U. 18-GSEP-06, and cannot now oppose it here, particularly where the Attorney General has not provided any independent evidence demonstrating that the AFUDC associated with the construction of vintage GSEP projects is somehow different than the AFUDC associated with the construction of future GSEP projects (Company Reply Brief at 11-12). NSTAR Gas asserts there is no basis to treat vintage year AFUDC differently and, therefore, the Company appropriately included the vintage year AFUDC in the 2020 GSEP revenue requirement (Company Reply Brief at 11-12).

The Company further argues that the Attorney General cannot ignore the fact that each GSEP filing includes a revenue requirement that incorporates vintage years' revenue requirements approved by the Department in prior GSEP and GREC filings, and each GSEAF calculation submitted by the Company includes a layered revenue requirement based on costs incurred and work performed from prior years (Company Reply Brief at 12, citing M.D.P.U. No. 402S, at § 8.4.9; Exhs. ES-BKR-1; DPU 1-6; DPU 2-4). NSTAR Gas also asserts that the case law the Attorney General relies upon in arguing for the exclusion of vintage year AFUDC actually supports the Company's position because it explains that the prohibition against retroactive ratemaking does not apply to reconciling mechanisms (Company Reply Brief at 13, citing D.P.U. 11-84/12-74/13-154, at 9). Finally, the Company argues that it was under no obligation, nor was there a need, to file a motion for

clarification in response to the Department's Order in D.P.U. 18-GSEP-06, because the directive and intent was clear: in future GSEP and GREC filings the Company is authorized to include in the revenue requirement for recovery through the GSEAF or the GSERAF the AFUDC associated with the GSEP projects that form the basis of the revenue requirement (Company Reply Brief at 13-14, citing D.P.U. 18-GSEP-06, at 59-62).

3. Analysis and Findings

In D.P.U. 18-GSEP-06, at 60, the Department found that its previous concerns regarding AFUDC did not warrant the continued disallowance of AFUDC recovery from the GSEP and, therefore, the Department allowed the inclusion of AFUDC in future GSEP filings. Neither the Company nor the Attorney General opposed inclusion of AFUDC for recovery within the GSEP, which the Department noted at the outset of its findings, so the Department focused its analysis on the calculation method for recovery, not whether recovery would occur. D.P.U. 18-GSEP-06, at 59-62. The Department directed companies to include AFUDC in their future GSEP filings and instructed companies to include details about any changes to their AFUDC policies since the enactment of Section 145 (i.e., 2014), thereby permitting the Department to evaluate consistency. D.P.U. 18-GSEP-06, at 60, 62. There is no requirement that the Department say more on an uncontested issue; the Order was sufficiently clear. Nevertheless, the Department confirms that contrary to the Attorney General's assertions, the Department's decision in D.P.U. 18-GSEP-06 authorized the Company to include, in future GSEP filings, the recovery of AFUDC costs incurred in vintage GSEP years 2015 through 2018.

Retroactivity is inherent in reconciling mechanisms, and this is true for the GSEP mechanism as it permits LDCs to recover costs for vintage years in subsequent GSEP and GREC proceedings as part of the requested revenue requirement. See Fitchburg Gas and Electric Light Company v. Department of Public Utilities, 440 Mass. 625, 637 (2004); D.P.U. 11-84/12-74/13-154, at 15 (citations omitted). Once the Department revised its decision on the recovery of AFUDC, there was no basis for the Department to treat AFUDC costs differently starting with the 2020 GSEP. It was appropriate and consistent to permit all vintage year GSEP AFUDC costs to be included and recovered starting with the 2020 GSEP. Again, in the 2019 GSEP dockets no party disputed the inclusion of AFUDC in the GSEP revenue requirement, and an adjustment of the GSEP mechanism is within the Department's "general supervisory authority over utility costs . . . and is consistent with its 'broad authority to determine ratemaking matters in the public interest.'" 440 Mass. 625 at 637 (citations omitted). This adjustment does not constitute impermissible retroactive adjustments of a company's base distribution rate. See D.P.U. 11-84/12-74/13-154, at 15 (citing cases). Moreover, the costs themselves are not subject to dispute and this docket is the appropriate venue for recovery. Based on the foregoing, the Department finds that the Company's inclusion of AFUDC costs for GSEP investment years 2015 through 2018 in the 2020 GSEP revenue requirement is appropriate.

D. Repair Costs for Grade 3 Leaks Identified as Having a Significant Environmental Impact and Proposed Tariff Revisions

1. Repair Costs

a. Introduction

On August 8, 2016, Governor Baker signed into law An Act to Promote Energy Diversity, St. 2016, c. 188 (“Energy Diversity Act”). Section 13 of the Energy Diversity Act mandates that the Department establish specific criteria to identify G3SEI leaks and establish a plan to repair such leaks. On March 8, 2019, the Department established guidelines related to the Energy Diversity Act. Uniform Natural Gas Leaks Classification Rulemaking, D.P.U. 16-31-C (2019). All G3SEI leaks must be repaired no more than three years after identification, with some requiring repair within two years and others requiring repair within one year. 220 CMR 114.07(2).

The Company initially estimated ten G3SEI leaks for repair under its 2020 GSEP with an estimated total leak repair cost of \$32,588 (Exhs. ES-BKR at 12; AG 1-20, Att. (a), Schs. 1, 31). During the proceeding, the Company revised the number of G3SEI leaks for repair under its 2020 GSEP and stated that it identified six G3SEI leaks, five of which would be repaired and one of which would be eliminated under the 2020 GSEP (Exh. AG 3-2, Att.). On brief, the Company acknowledged that because of the reduced number of G3SEI leaks that would be repaired in 2020, the estimated repair costs for G3SEI leaks should be reduced by \$16,295 (Attorney General Brief at 12 n.5; Company Reply Brief at 9 n.1).

b. Positions of the Parties

i. Attorney General

The Attorney General argues that the Company has not demonstrated that the estimated costs to repair G3SEI leaks in its 2020 GSEP are incremental to such repairs otherwise conducted as part of normal business (Attorney General Brief at 11-13, citing D.P.U. 16-31-C at 18 n.20). The Attorney General contends that the Company's proposal inappropriately assumes that the remediation costs are somehow automatically incremental to Company expenses that the Company already recovers through base distribution rates (Attorney General Brief at 12). Specifically, the Attorney General asserts that the Company acknowledged that, in the absence of the Energy Diversity Act and the Department's directives, the leaks now identified as G3SEI leaks would not have gone undetected or unrepaired, and that the Company fails to explain how the repair costs of the five G3SEI leaks that it proposes to recover in this docket are incremental to what otherwise would have been repaired and recovered (Attorney General Brief at 12-13, citing Exhs. AG 4-1, AG 5-2). Therefore, the Attorney General requests that the Department disallow the Company's request to recover any costs for the repair of G3SEI leaks through the GSEAF for the repair of G3SEI leaks (Attorney General Brief at 13).

ii. Company

The Company asserts that the costs incurred for the repair of G3SEI leaks are incremental to those recovered through base distribution rates and should therefore be recovered through the GSEP (Company Reply Brief at 6). The Company argues that but for

the Energy Diversity Act and Department regulations mandating the prioritization and repair of G3SEI leaks, the Company would have continued to treat these leaks like all other Grade 3 leaks and would have engaged in routine monitoring until the pipe was replaced (Company Reply Brief at 7-8, citing Exhs. AG 5-1; AG 5-2). The Grade 3 leaks would have been identified as non-hazardous and not prioritized for repair (Company Reply Brief at 8, citing Exhs. AG 5-1; AG 5-2).

As a result of the new regulations involving G3SEI leaks, the Company maintains it developed and employed processes to identify, track, and record costs for G3SEI repairs and now allocates funds and resources to identify, repair, and eliminate G3SEI leaks, which it would not have done in the absence of the G3SEI regulations (Company Reply Brief at 8, citing Exhs. ES-RJB at 5, 7; DPU 3-1; AG 4-1). NSTAR Gas argues the Attorney General has offered no evidence to contradict the Company's evidence that the costs associated with the repair of G3SEI leaks are incremental (Company Reply Brief at 9). The Company urges the Department to reject the Attorney General's recommendation and instead find that the costs the Company incurs in relation to G3SEI leak repairs as part of its 2020 GSEP are incremental to the costs incurred in relation to other non-G3SEI leak repairs and are appropriately recovered through the GSEP (Company Reply Brief at 9).

c. Analysis and Findings

Section 13 of the Energy Diversity Act requires that G3SEI leaks be repaired and that a timeline be established for doing so. The Department mandated these requirements in Department regulations. D.P.U. 16-31-C at 6. Prior to these Department regulations,

NSTAR Gas was obligated to annually evaluate and monitor G3SEI leaks until they were repaired. Section 13 of the Energy Diversity Act also requires that the Department provide for the recovery of expenses incurred for repairs of G3SEI leaks as part of the GSEP, without a reduction to the recovery for eligible pipe replacement.

Since the Company was not previously required to repair G3SEI leaks and is now directed to prioritize the repair of G3SEI leaks, the Department agrees with the Company that these costs are incremental to normal business operations and, therefore, should be recovered through the GSEP. But for the Energy Diversity Act and the Department's subsequent regulations, the Company would not be incurring the costs of prioritizing the repair of G3SEI leaks. Therefore, the Department allows \$16,293¹⁵ in estimated costs associated with the repair of G3SEI leaks in the GSEP.

2. Proposed Tariff Revisions

a. Introduction

The Company has also submitted a revised LDAC tariff that provides for the recovery of G3SEI leak repair costs (Exhs. ES-BKR at 11; ES-BKR-3; ES-BKR-4). The Company proposes to exclude eligible G3SEI expenses from the application of the GSEP cap and add the annual eligible G3SEI expenses to its proposed capped GSEP revenue requirement when calculating the GSEAFs (Exhs. ES-BKR-3, at §§ 8.2, 8.5.1; ES-BKR-4, at §§ 8.2, 8.5.1).

¹⁵ The allowed amount of \$16,293 is derived from the Company's initial proposal of estimated costs of \$32,588 less reduced costs of \$16,295, which the Company acknowledged on brief (Company Reply Brief at 9 n.1).

The Company has defined G3SEI leaks consistent with 220 CMR 114.07 (Exhs. ES-BKR-3, at § 8.4(20); ES-BKR-4, at § 8.4(20)). The Company also indicates that a description of the process used to identify and repair G3SEI leaks will be included in a future GSEP filing (Exhs. ES-BKR-3, at § 8.10.1; ES-BKR-4, at § 8.10.1).

b. Positions of the Parties

i. Attorney General

The Attorney General contends that the Company's proposed changes to the LDAC tariff fail to acknowledge that the Company can only recover incremental G3SEI leak repair costs (Attorney General Brief at 13). The Attorney General asserts that the Company should modify the language in the proposed tariff to ensure that G3SEI leak remediation expenses are only eligible for recovery when they exceed the level of leak remediation currently performed by the Company (Attorney General Brief at 12-13).

ii. Company

The Company argues that the tariff language ensures that costs incurred from repairing G3SEI leaks are incremental, as any repair of G3SEI leaks on the Company's system is incremental to the costs recovered through base distribution rates (Company Reply Brief at 9). The Company maintains that the tariff language is appropriate for this reason and does not need to be modified further (Company Reply Brief at 10).

c. Analysis and Findings

Consistent with our findings above regarding the incremental nature of G3SEI leak repair costs, the Department finds that no further revisions are required to the Company's

proposed LDAC tariff. The Department finds that the proposed changes to the LDAC tariff are reasonable and consistent with applicable statutes and Department regulations. Therefore, the Department accepts these modifications.

E. Conclusion on the 2020 GSEP

Based on the Department's review of the record in this proceeding, and to the extent not otherwise addressed above, we find that the Company's 2020 GSEP complies with the requirements set forth in Section 145. Accordingly, the Department approves NSTAR Gas' 2020 GSEP, for effect May 1, 2020. Based on the modifications and directives set forth in this Order, the Department declines to approve the requested 2020 revenue requirement of \$44,450,232, and the proposed GSEAF rates, and directs the Company to submit a compliance filing that includes a revised revenue requirement and revised GSEAF calculations reflecting the reduced G3SEI leak repair costs of \$16,293 approved for recovery above, for effect from May 1, 2020 through April 30, 2021.

IV. ORDER

Accordingly, after notice, hearing, and due consideration, it is

ORDERED: That the petition of NSTAR Gas Company for approval of its 2020 gas system enhancement plan is APPROVED; and it is

FURTHER ORDERED: That the gas system enhancement adjustment factors of NSTAR Gas Company in the amounts of \$0.1160 per therm for residential customers, \$0.0855 per therm for small commercial and industrial customers, \$0.0568 per therm for

medium commercial and industrial customers, and \$0.0507 for large commercial and industrial customers, to take effect May 1, 2020, are DENIED; and it is

FURTHER ORDERED: That NSTAR Gas Company shall comply with all directives in this Order.

By Order of the Department,

/s/
Matthew H. Nelson, Chair

/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.