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August 12, 2020

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

Re: Inquiry into Establishing Policies and Practices for Electric and Gas Companies – D.P.U. 20-58

Dear Secretary Marini:

On behalf of distribution company members of the Ratemaking Working Group[1] ("Working Group"), enclosed are the Distribution Companies' joint comments on the ratemaking report filed on August 5, 2020.

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

Sincerely,

Cheryl M. Kimball

Enclosure
cc: Rachel Cottle, Esq. – Hearing Officer
Elizabeth Anderson, Esq. – Office of the Attorney General
Robert Hoagland, Esq. – Department of Energy Resources
Charles Harak, Esq. - National Consumer Law Center
Jerrold Oppenheim, Esq. – LEAN
Robert Rio – Associated Industries of Massachusetts

[1] Members of the Ratemaking Working Group are Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, Boston Gas Company and Colonial Gas Company, each d/b/a National Grid, and NSTAR Gas Company and NSTAR Electric Company, each d/b/a Eversource Energy, Bay State Gas Company d/b/a Columbia Gas of Massachusetts, Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities, The Berkshire Gas Company (collectively "Distribution Companies"); the Office of the Attorney General ("AGO"), the Department of Energy Resources, the National Consumer Law Center, the Low-Income Energy Affordability Network and the Associated Industries of Massachusetts (together, the "Working Group").

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Inquiry of the Department of Public Utilities into Establishing Policies and Practices for Electric and Gas Companies Regarding Measures in Connection to the State of Emergency Regarding the Novel Coronavirus (COVID-19)	)	D.P.U. 20-58

JOINT COMMENTS OF THE MASSACHUSETTS DISTRIBUTION COMPANIES ON RATEMAKING RELATED TO COVID-19

I. INTRODUCTION

On May 11, 2020, the Department of Public Utilities (the "Department") opened a proceeding into establishing policies and practices regarding ratemaking measures for electric and gas companies in response to the effects of the novel coronavirus ("COVID-19") pandemic. The Department established a Ratemaking Working Group ("Working Group") to assist the Department in establishing appropriate policies and practices. This Working Group included Massachusetts electric and gas distribution companies (collectively, the "Distribution Companies") as well as the Office of Attorney General (the "Attorney General"). On August 5, 2020, the Working Group filed a report (the "Ratemaking Working Group Report") with the Department indicating the areas of agreement and disagreement between the Distribution Companies and the Attorney General.

These Joint Comments will address the four major areas of disagreement between Distribution Companies and the Attorney General, which are as follows: (1) the rate of return to be used in the Cash Working Capital computation; (2) the sharing of Arrearage Forgiveness Costs;

(3) the parameters of recovery of Bad Debt Cost; and (4) the recovery of Incremental COVID-19 O&M Expenses.

II. CASH WORKING CAPITAL

The Distribution Companies and the Attorney General are in agreement that each company should: (1) recover a cash working capital adjustment; and (2) quantify that adjustment by re-running the cash working capital study using the formula and calculation methodology set in the respective company's most recent base-rate case. The Distribution Companies and the Attorney General also agree that companies with PBR rate plans would need to recognize any adjustments to the amount recovered in base rates occurring through application of the PBR rate formula (Ratemaking Working Group Report at 3-4). However, the Distribution Companies proposed to set the carrying cost for incremental cash working capital at the pre-tax overall weighted average cost of capital ("WACC"), while the Attorney General opposed the use of the WACC and recommended that carrying costs for the incremental cash working capital amount should instead be limited to the Companies' short-term debt rate (id.). In addition, the Distribution Companies have not proposed a specific cut-off date for the cash working capital adjustment, while the Attorney General proposed a cut-off to the recovery in May-June 2022 (id.). For the reasons set forth below, the Department should adopt the Distribution Companies' proposals as to cash working capital because the proposals are consistent with Department precedent and warranted under current conditions.

It is well established Department precedent that the WACC is applied to cash working capital. Boston Gas Company, D.P.U. 96-50 (Phase I) at 26 (1996). "Working capital is provided either through funds internally generated by the Company, net retained earnings, or through short-term borrowing. The Department's policy is to permit a company to be reimbursed for the costs associated with the use of its own funds and for the interest expense it incurs for borrowing." Id. The "reimbursement is accomplished by adding a working capital component to a company's rate base computation" and the WACC is applied to rate base. Id.

There is no reason to depart from Department precedent in relation to carrying costs on cash working capital due to COVID-19. To address the increased need for cash working capital due to the lag in revenues caused by the COVID-19 pandemic, the Distribution Companies have used a mixture of financing sources. Since March 2020, the Distribution Companies have relied on the mixture of capital resources available to them including short-term and long-term debt and retained earnings. Some Distribution Companies have issued both more equity and more long-term debt to help with cash flow needs. The Distribution Companies cannot solely rely on short-term borrowing to fund the increase in cash working capital needs.

Even if the Distribution Companies could exclusively use debt to fund their increased needs for cash working capital, the debt could not be exclusively short-term. Debt of "less than one year, by definition," is "a short term debt." Southern Union Company, D.T.E. 01-52, at 9 (2001); see G.L. c. 164 §14. The Companies' needs for greater cash working capital will not end after one year. Because of the Department's directives related to the termination of service, the Distribution Companies' ability to collect revenues will be greatly diminished for at least two years. Therefore, the Attorney General's recommendation to limit carrying costs to the short-term debt rate does not reflect the real costs of the Distribution Companies to finance their increased needs for cash working capital over the next few years.

Furthermore, if the Department were to apply a short-term debt rate to the carrying costs associated with the increased need to finance cash working capital, there could be a negative impact to the credit ratings of the Distribution Companies. On April 2, 2020, Standard & Poor's

("S&P") downgraded its outlook on the North American utility sector from "Stable" to "Negative" due to the impact COVID-19. S&P explained its decision by noting that although companies with decoupling structures may be able to offset some of that lower usage from commercial and industrial customers, bad debt expenses likely would increase. S&P also expected negative discretionary cash flow associated with high capital investment commitments and the lack of access to the equity markets" to "lead to a weakening of credit measures" for utilities.[1]

The cash resources available to the Distribution Companies are finite and continued access to capital markets at affordable rates is predicated on the regulatory climate. The credit rating agencies are watching the situation closely. If the Department were to apply a short-term debt rate to the carrying costs associated with the Distribution Companies' increased need for cash working capital, there could be negative consequences for the ability of Distribution Companies to access capital at affordable rates. Accordingly, the Attorney General's recommendation to apply a short-term debt rate to carrying costs for cash working capital should be rejected.

Lastly, the Department should not set a specific cut-off date for the cash working capital adjustment, and if it does, it should not be May-June 2022. The expectation is that the Distribution Companies will be able to terminate service to customers beginning in May 2021. However, it is not clear when the current state of emergency related to COVID-19 will be fully lifted. There is a possibility that the emergency may continue beyond May 2021, and therefore, it is premature for the Department to set a specific cut-off date at this time. Moreover, even if the Distribution Companies are able to terminate service to customers beginning in May 2021, it will take more than a one year for cash working capital requirements to return to normal. Customers will be allowed to enter into payment plans of up to one year to pay their arrears. Therefore, it will take

[1] S&P Global Ratings, *COVID-19: The Outlook For North American Regulated Utilities Turns Negative*, April 2, 2020.

at least another year for the Distribution Companies to allow the payment period to expire and then to conduct collection efforts. Therefore, the impact of COVID-19 on cash working capital requirements could extend into 2024. Accordingly, it is premature for the Department to set a specific cut-off date for the cash working capital adjustment.

III. SHARING OF ARREARAGE FORGIVENESS COSTS

The Distribution Companies and the Attorney General are in agreement that the Distribution Companies should be allowed to recover arrearage forgiveness costs through the RAAF and that the costs associated with the one-time small C&I customer arrearage forgiveness program will be deferred for future recovery (Ratemaking Working Group Report, at 5). However, the Attorney General has proposed that the Distribution Companies be restricted to recovery of 50 percent of these costs. The Department should reject the Attorney General's recommendation because it is inconsistent with Department precedent and contrary to the law.

Since 1978, the Department has approved lower utility rates for customers who are low-income. Massachusetts Electric Company, D.P.U. 19376 (1978); American Hoechest Corp. v. Department of Public Utilities, 379 Mass. 408, 412-413 (1980). The Legislature has mandated and the Department has implemented lower utility rates for low-income customers. G.L. c. 164 § 1F(4); Low Income Discount Participation Rate, D.T.E. 01-106-A (2004). Furthermore, the Legislature has mandated and the Department has implemented arrearage forgiveness programs of utility payments for low-income customers. St. 2005, c. 140, § 17; Standards for Arrearage Management Programs for Low-Income Customers, D.T.E 05-86 (2006). The costs of these programs have always been recovered from other customers. See e.g. American Hoechest Corp. v. Department of Public Utilities, 379 Mass., at 409 ("the costs of the reduced rate to be shared equally by all customer classes"); .G.L. c. 164 IF(4) ("cost of such discounts shall be included in the rates charged to all other customers of a distribution company"); and D.T.E 05-86 at 11 ("AMP costs should be recovered from all ratepayers, as are lost revenues resulting from the low-income discount").

Utility companies are not required to absorb the cost associated with such programs. In fact, in American Hoechest Corp., the Massachusetts Supreme Judicial Court cited favorably the decision of another state court which rejected a state utility commission's attempt "to invade management's province by directing a utility to make a charitable contribution." Rhode Island Consumers Council v. Smith, 111 R.I. 271, 301 (1973), cited in American Hoechest Corp. v. Department of Public Utilities, 379 Mass. at 411. The costs of programs such as the AMP or the low-income discount are "an experiment in alternative rate design." American Hoechest Corp. v. Department of Public Utilities, 379 Mass. at 412-413. The Department "is free to select or reject a particular method as long as its choice does not have a confiscatory effect or is not otherwise illegal." Id., at 413. Requiring the Distribution Companies to absorb half of the cost of arrearage forgiveness would be confiscation.

Furthermore, it should be emphasized that the increase in arrearage forgiveness is not the result of actions by the Distribution Companies but is the result of the COVID-19 pandemic and the government directives. Accordingly, the Attorney General's recommendation to require Distribution Companies to absorb arrearage forgiveness is contrary to Department precedent, confiscatory and inequitable.

IV. PARAMETERS OF RECOVERY OF BAD DEBT COST

The Distribution Companies and the Attorney General are essentially in agreement that each company should be able to recover the increase in commodity related bad debt costs (Ratemaking Working Group Report at 5). However, the Distribution Companies and the Attorney

General disagree as to the recovery of delivery-related bad debt cost. The Distribution Companies proposed to set a baseline bad debt amount as the amount included in base rates or the three-year average of the delivery-related net charge offs for the years 2017, 2018, and 2019, whichever is higher (id.).[2] Amounts recorded for bad debt expense in excess of the baseline amount will be deferred for future recovery (id., at 6) The Companies would track bad-debt write-offs from 2020 through a end point defined in the future by the Department, based on known circumstances (id.).

The Attorney General made four recommendations limiting the Distribution Companies' recovery of delivery related bad debt. These recommendations are: (1) a certain threshold amount above the baseline amount should be applied to order to obtain bad-debt recovery; (2) recovery of incremental bad debt cost through this proceeding for the companies with PBR plans should be prohibited; (3) the Department should permit Distribution Companies to recover only 50 percent of extraordinary bad debt expense; and (4) the Department should cut off recovery as of May-June 2022 (id. at 6-7). However, the Department should reject the Attorney General's recommendations as to bad debt recovery because these recommendations are inconsistent with Department precedent and not reasonable under current conditions.

The Attorney General's recommendation to establish a certain threshold amount above the baseline accomplish the recovery of "extraordinary" bad debt cost is not appropriate under the circumstances. Generally, the Department determines whether a non-recurring expense is extraordinary for purposes of deferral accounting by comparing the expense to a utility's total operating revenues. Bay State Gas Company d/b/a Columbia Gas of Massachusetts, D.P.U. 13-75, at 261-262 (2014). Although the Department has never established an exact percentage or

[2] For companies with PBR, the level of bad debt in base rates would be adjusted by any annual PBR adjustment.

threshold, it has treated an IT project costing equal to one percent of a utility's operating revenues as extraordinary. Id.

Here, the bad debt cost associated with COVID-19 is not comparable to an IT project within the control of the utility in that the extraordinary bad debt expense that utilities will experience will be the result of COVID-19 pandemic, an act of God, and emergency government restrictions on utility collection efforts. Therefore, the Department should treat the recovery of COVID-related bad-debt cost in a manner comparable to expenses incurred as a result of natural disaster such as a hurricane. The Department has established storm funds for electric distribution companies. Storm fund mechanisms permit utilities to recover incremental costs related to major storms because these storms require the use of resources not provided for in base rates. See Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, D.P.U. 18-150, at 397, 416-418 (2019) (the threshold is $1.55 million per storm); NSTAR Electric Company and Western Massachusetts Electric Company, d/b/a Eversource Energy, D.P.U. 17-05, at 548-549 (the threshold is $1.2 million per storm because it "represents an appropriate cost distinction between events that require a response using resources that are contemplated in base rates and those events that are larger in nature and involve resources beyond the level provided in base rates").

The Distribution Companies' proposal permits the recovery of bad debt only where it exceeds a baseline amount which is the higher of the amount included in base rates or the three-year average of the delivery-related net charge offs for the years 2017, 2018, and 2019. This is a reasonable approach that parallels the treatment that the Department applies to storm expense. Like the approach to storms, the Distribution Companies will only be allowed to recover an additional amount of bad debt cost that exceeds what it is expected to be recovered currently in base rates.

In addition, the Attorney General recommended that the Department prohibit the recovery of incremental bad debt cost through this proceeding for the companies with PBR plans on the basis that the PBR plans already contemplate this cost. This recommendation should be rejected. PBR plans are not designed to recover extraordinary expenses *not experienced in the sample period – and not even experienced in the past 100 years*. The annual adjustments computed in accordance with the revenue-cap formulas embedded in the PBR plans are not designed to reimburse utilities for the expenses associated with a once in a century pandemic like COVID-19, and there is no reasonable argument that the AGO could put forward that would contradict this fact.

With respect to the exogenous cost factor in a PBR plan, this mechanism is designed to recover costs that are: (1) beyond the utility's control; (2) arise from a change in accounting requirements or regulatory, judicial or legislative directives or enactments; (3) unique to the electric distribution industry; and (4) significant. D.P.U. 18-150, at 14-15, 65; D.P.U. 17-05, at 340, 396. Although the increase in bad-debt cost is certainly beyond the utility's control; arises from a change in regulatory directives; and is significant, it is not necessarily unique to the electric or gas distribution industry. Bad debt for all industries in our economy will likely increase due to COVID-19, yet other industries do not have an obligation to serve customers through all circumstances (or even with a higher standard than usual, which is what the Companies are experiencing). Therefore, the more direct path of permitting all utilities to obtain cost recovery of extraordinary bad cost through this proceeding is the appropriate path, particularly given the utmost level of scrutiny that is being paid to this issue by credit and equity analysts.

The Attorney General also recommended that the Department should restrict Distribution Companies to recovery of only 50 percent of "extraordinary" bad-debt cost. This recommendation should be rejected as entirely inconsistent with both Department and Supreme Judicial Court precedent. The Department does not condition the recovery of extraordinary non-recurring expenses on the utility absorbing 50 percent of the expenses, i.e., it is inconsistent to first demand that the utility show the cost is "extraordinary" and then find that 50 percent of the cost should be denied for recovery. D.P.U. 13-75, at 261-262 (2014).

Also, the Department does not condition the recovery of extraordinary non-recurring expenses caused by an act of Nature, such as a storm, on the utility's absorption of 50 percent of the expenses. D.P.U. 18-150, at 416-418; D.P.U. 17-05, at 548-549. The Supreme Judicial Court has declared that "public utilities should be permitted to charge rates which are compensatory of the full cost incurred by efficient management" and "not recover costs which are excessive, unwarranted, or incurred in bad faith." Boston Gas Co. v. Department of Pub. Utils., 387 Mass. 531, 539 (1982); see New England Tel. & Tel. Co. v. Department of Pub. Utils., 371 Mass. 67, 79 (1976); New England Tel. & Tel. Co. v. Department of Pub. Utils., 360 Mass. 443, 483-484 (1971). The Attorney General will not be able to show that the anticipated extraordinary increase in bad debt cost for the Distribution Companies is somehow "excessive, unwarranted, or incurred in bad faith." The anticipated extraordinary increase in bad debt cost will be the result of COVID-19 and government directives prohibiting and/or delaying with utility collection efforts.

Lastly, the Department should not set a specific cut-off date for unique ratemaking treatment for bad debt recovery, and if it does, it should not be May-June 2022. As previously explained, the expectation is that the Distribution Companies will be able to terminate service to customers beginning in May 2021. However, it is not clear when the current state of emergency related to COVID-19 will be fully lifted. Therefore, it is premature for the Department to set a specific cut-off date at this time. Furthermore, even if the Distribution Companies are able to terminate service to customers beginning in May 2021, it will take more than one year for the total extent of the bad-debt problem to be revealed. Customers will be allowed to enter into payment plans of up to one year or more to pay their arrears. It will take at least another year for the Distribution Companies to engage in collection efforts to get some of the bad debt paid. Therefore, the impact of COVID-19 on bad-debt costs could persist well into 2024. Accordingly, it is premature for the Department to set a specific cut-off date for the ratemaking treatment for the recovery of bad debt.

V. INCREMENTAL COVID-19 O&M EXPENSES

The Distribution Companies and the Attorney General disagree as to the recovery of incremental O&M expenses related to COVID-19 such as the cost of personal protection equipment and increased cleaning at facilities (Ratemaking Working Group Report at 7). The Distribution Companies proposed to recover these expenses, net of any cost savings incurred due to COVID-19, subject to the Department's exogenous cost threshold of 0.001253 of a utility's total operating revenues (id., at 7-8). The Attorney General opposes any recovery by the Distribution Companies.

As discussed earlier, the Department permits recovery for purposes of deferral accounting of an extraordinary, non-recurring expense. D.P.U. 13-75, at 261-262. The expenses associated with COVID-19 are indisputably non-recurring and, if those costs are more than 0.001253 of a utility's total operating revenues, those costs should be considered extraordinary. Furthermore, the incremental O&M expenses the utilities will experience will be the result of COVID-19 pandemic, an act of nature outside the control of the Companies. In other proceedings, the Department has permitted to utilities to recover the incremental extraordinary expenses incurred because of a natural disaster like a hurricane. D.P.U. 18-150, at 416-418 D.P.U. 17-05, at 548-

549. Therefore, the Distribution Companies' proposal is consistent in general with Department precedent and appropriate for a once in a century event like COVID-19.

VI. CONCLUSION

The Distribution Companies appreciate the opportunity to address the areas of disagreement with the AGO and look forward to the Department's consideration of the issues. In that regard, the Distribution Companies seek the Department's approval of the following summary proposals, subject to the **agreed upon** changes and additions referenced in the August 5, 2020 Ratemaking Working Group Report:

Summary of Ratemaking Treatment

Summary of Needed Cost Recovery Mechanisms	
Costs to be Recovered	**Mechanism for Recovery**
Cost of Carrying Customer Arrearages	Delivery-Related Cash Working Capital Adjustment through RDM (Electric) or LDAC (Gas)
Cost of Carrying Supply-Related Customer Arrearages	Basic Service Administrative Cost Factor (Electric) or Cost of Gas Adjustment Clause (Gas)
Commodity-Related Bad-Debt Cost	Basic Service Administrative Cost Factor (Electric) or Cost of Gas Adjustment Clause (Gas)
Cost of Carrying POR Payments to Competitive Suppliers	Purchase of Receivables
Residential Arrearage Forgiveness	Residential Assistance Adjustment Factor
Small C&I Arrearage Forgiveness	Authorized Deferral
Delivery-Related Bad Debt Cost COVID-19 Expenses Waived Revenues	Authorized Deferral

Standard for Recovery of Regulatory Assets

The COVID-19 Response Regulatory Asset would record the costs incurred for the following cost categories: (1) incremental delivery-related bad-debt cost; (2) incremental COVID-19 operating expenses; (3) waived revenues; and (4) arrearage forgiveness for small C&I customers. Each Distribution Company would be eligible to record the designated costs beginning

March 1, 2020 as a deferral, subject to a set of criteria that the Department would establish for each cost category.

Each Distribution Company would be eligible to commence amortization and recovery through rates of the deferral as of the date of: (1) new base distribution rates in the next base-rate proceeding; (2) exogenous cost recovery, if a performance-based ratemaking plan has been previously authorized by the Department; or (3) through another ratemaking proceeding, as approved by the Department (in lieu of a base-rate case).

Each Distribution Company would have the burden of demonstrating that amounts deferred are related to the impact of COVID-19. Amounts deferred would be recoverable over a period of up to five years, depending on the type and magnitude of costs incurred. The criteria that would apply to the demonstration would be different for each type of cost deferred, as follows:

Summary of Criteria for Recovery of Deferral	
Cost Category	**Criteria**
Delivery-Related Bad-Debt Cost	• Incremental, as determined by comparison of pre-COVID baseline, established as the higher of three-year average (2017-2019) or last base rate case. • Measured over 24-month period, July 1, 2020 through June 30, 2022, and July 1, 2022 through June 30, 2024, depending on the respective utilities timing of rate case filings. • Report filed August 1, 2022.
Small C&I Arrearage Forgiveness	• All forgiveness amounts are incremental
COVID-19 Response Expenses	• Would not be incurred "but for" COVID response • Offset by operating savings, if any • Contemporaneous documentation
Waived Revenues	• Amount allowed in base rates, annualized