

# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 22-20

October 27, 2022

Petition of The Berkshire Gas Company, pursuant to G.L. c. 164, § 94 and 220 CMR 5.00, for approval of a rate settlement for base distribution rates effective January 1, 2023.

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### ORDER ON PROPOSED SETTLEMENT

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FOR: THE BERKSHIRE GAS COMPANY

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## I. INTRODUCTION AND PROCEDURAL HISTORY

On June 24, 2022, pursuant to G.L. c. 164, § 94 and 220 CMR 5.00, The Berkshire Gas Company (“Berkshire Gas” or “Company”) filed a petition with the Department of Public Utilities seeking approval of a rate settlement (“Settlement”) entered into with the Attorney General of the Commonwealth (“Attorney General”) (together, “Settling Parties”). The Department docketed this matter as D.P.U. 22-20.

Berkshire Gas currently provides retail natural gas distribution services to approximately 40,000 residential, commercial, and industrial customers in 20 municipalities in two, non-contiguous divisions in western Massachusetts (Exh. BGC-1 (Settlement) at 15). The Company is a subsidiary of Avangrid Networks, which is held in turn by Avangrid, Inc., with 81.5 percent of its outstanding shares held by Iberdrola, S.A. (“Iberdrola”), a company based in the Kingdom of Spain (Exhs. BGC-1 (Settlement) at 14; AG 1-2(1), Att. at 461; AG 1-3, Att. at 1868).

According to the Settling Parties, the Settlement is proposed in lieu of a base distribution rate filing wherein the Company represents that it was prepared to petition the Department for a proposed base distribution rate increase of \$10,700,000. In support of the Settling Parties’ proposal, Berkshire Gas filed the following documents: (1) a Joint Motion for Approval of Settlement; (2) the Settlement; (3) an Explanatory Statement; (4) testimony and schedules to illustrate its claimed \$10,700,000 increase; (5) copies of information requests issued by the Attorney General and the Company’s responses; (6) a summary of the adjustments to the Company’s revenue requirement calculated under the terms of the

Settlement; (7) illustrative customer bill impacts; and (8) proposed tariffs

M.D.P.U. Nos. 549 through 564 to implement the base distribution rate increase.

On August 16, 2022, the Attorney General filed a notice of intervention pursuant to G.L. c. 12, § 11E. Pursuant to notice duly issued, the Department held virtual public hearings on August 22, 2022, and August 24, 2022. The Department did not receive any other petitions to intervene. The evidentiary record consists of 195 exhibits.<sup>1</sup>

## II. DESCRIPTION OF PROPOSED SETTLEMENT PROVISIONS

### A. Introduction

In lieu of a fully litigated base distribution rate proceeding, the Settling Parties agreed to reduce the Company's proposed base distribution rate increase from \$10,700,000 to \$5,668,000 (see Settlement at § 2.1).<sup>2</sup> The \$5,668,000 increase comprises a revenue requirement of \$2,600,000 for effect January 1, 2023, and four possible step increases (Settlement at §§ 2.1.2, 2.1.4 through 2.1.7).

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<sup>1</sup> On its own motion, the Department admits into evidence the following exhibits: BGC-1 (Settlement); through BGC-7 (Settlement); DPU 1-1 through DPU 1-3; DPU 2-1 through DPU 2-4; DPU 3-1 through 3-4; DPU 4-1 through DPU 4-12; DPU 5-1 through DPU 5-3; DPU 6-1 through DPU 6-7; DPU 7-1 through DPU 7-14; DPU 8-1 through DPU 8-4; AG 1-1 through AG 1-102; AG 2-1 through AG 2-17; AG 3-1 through AG 3-8; AG 4-1 through AG 4-4; AG 5-1; AG 6-1; and AG 7-1 through AG 7-5.

<sup>2</sup> It appears that the Settling Parties rounded the proposed increase to \$5,700,000 (Settlement at § 2.1.1).

B. Step Increases

1. Introduction

Under the Settlement, Berkshire Gas may receive a step increase of up to \$963,000, effective January 1, 2023, and three step increases of up to \$2,105,000, effective January 1, 2024, if Berkshire Gas meets the conditions provided in the Settlement (Settlement at §§ 2.3, 2.4, 2.5, 2.6). The Settlement provides that other than the base distribution rate increase and step increases provided in the Settlement, Berkshire Gas may not increase or redesign base distribution rates to become effective prior to November 1, 2025, starting with the effective date of the Settlement (Settlement at § 2.7.1). Pursuant to the Settlement, the creation of any new reconciling rate recovery factor shall be deemed a base distribution rate increase and, therefore, may not become effective before November 1, 2025, unless mandated by statute (Settlement at § 2.7).

2. January 1, 2023 Step Increase

Under the Settlement, the Company shall be entitled to recover a step increase to base distribution rates effective January 1, 2023, of up to \$963,000 associated with the hiring of up to nine incremental employees that the Company asserts will be hired on or before November 30, 2022 (Settlement at § 2.3.1).<sup>3</sup> To qualify for the step increase, on or before December 7, 2022, the Company shall provide the Department and the Attorney General with an affidavit and associated documentation supporting the Company's total full time

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<sup>3</sup> Berkshire Gas provided descriptions of the nine open employee positions that are the subject of this step increase in Exhibit BGC-6 (Settlement).

employees (“FTE”) headcount as of November 30, 2022 (Settlement at § 2.3.2). Under the Settlement, the Company will calculate the amount of the step increase based on the number of FTEs as of November 30, 2022, in excess of 115 employees and the number of open employee positions filled (Settlement at § 2.3.3).

3. January 1, 2024 Step Increases

Under the Settlement, the Company shall be entitled to recover step increases to base distribution rates effective January 1, 2024, of up to \$2,105,000 (Settlement at §§ 2.4, 2.5, 2.6). The Company’s January 1, 2024 step increases comprise: (1) up to \$1,234,000 associated with the hiring of up to eleven incremental safety and reliability FTEs on or before November 30, 2023;<sup>4</sup> (2) up to \$571,000 for costs associated with certain capital investments placed in service in 2022; and (3) \$300,000 to reflect the termination of the revenue requirement adjustment related to the early implementation of rates on January 1, 2023 (Settlement at §§ 2.4, 2.5, 2.6).

To qualify for the increase associated with the incremental safety and reliability FTEs of up to \$1,234,000, on or before December 7, 2023, the Company shall provide the Department and the Attorney General with an affidavit and associated documentation supporting the Company’s total FTE headcount as of November 30, 2023 (Settlement at § 2.4.2). Under the Settlement, the Company will calculate the increase based on the

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<sup>4</sup> Berkshire Gas provided descriptions of the eleven safety and reliability employee positions that are the subject of this step increase in Exhibit BGC-1 (Settlement) at 23-26.

number of FTEs in excess of the Company's total FTE headcount as of November 30, 2022, and the number of safety and reliability positions filled (Settlement at § 2.4.3).

Pursuant to the Settlement, on January 1, 2024, Berkshire Gas may increase its base distribution rates to recover up to \$571,000 associated with post-test-year 2022 capital additions not eligible for recovery through the Company's gas system enhancement program ("GSEP") net of accumulated depreciation (Settlement at § 2.1.6). Further, the Settlement stipulates that on or before October 1, 2023, the Company shall submit to the Department and the Attorney General documentation and workpapers for a verification of the Company's non-GSEP capital additions placed in service in calendar year 2022 (Settlement at §§ 2.1.6, 2.5.1 through 2.5.3). In the event that the Settling Parties can reach an agreement on the Company's computation of non-GSEP capital additions placed in service in calendar year 2022, then the Company may increase its annual base distribution rates on January 1, 2024, up to, but not more than, \$571,000 (Settlement at § 2.5.4). If the Settling Parties fail to reach an agreement regarding this computation, then Berkshire Gas may petition the Department for verification of the Company's computation (Settlement at § 2.5.5). The Settling Parties agree to the process for calculating the January 1, 2024 step increase for post-test-year 2022 non-GSEP plant additions as described in Attachment A to the Settlement (Settlement at § 2.5.6).

### C. Capital Structure and Rate of Return

Pursuant to the Settlement, the Company will use a 9.70-percent return on equity for ratemaking purposes (Settlement at § 2.2.8.1). Additionally, the Company will use a capital

structure consisting of 54.0 percent common equity and 46.0 percent long-term debt, excluding goodwill (Settlement at § 2.2.8.2). The resulting calculated weighted average cost of capital to be used for ratemaking purposes, pursuant to the Settlement, is 7.20 percent (9.17 percent on a pre-tax basis) (Settlement at § 2.2.8.3).

D. Cost Allocation, Rate Design, and Low-Income Discount Rate

The Settlement provides that Berkshire Gas will assign the base distribution rate increase and step increases by the percentage of volumetric base revenue generated from current base distribution rates using the 2020 test year normalized volumes (Settlement at § 2.8). The base distribution rate increases established pursuant to the Settlement will impact the volumetric component of base distribution rates, i.e., the current customer charges of all rates classes will remain the same (Settlement at § 2.9). The Company's current discount rate for its low-income customers will also remain at 25 percent of the total residential gas bill (Settlement at § 2.10).

E. Community Benefits

If the Department approves the Settlement, the Company shall pay \$125,000 to the Attorney General for the purpose of assisting the Attorney General in the discharge of her duties under G.L. c. 93A and G.L. c. 12, § 11E (Settlement at § 2.11.1). The payment will be used to fund or assist in funding programs or initiatives designed to assist Massachusetts consumers, in the Company's service territories, with paying or lowering their natural gas bills (Settlement at § 2.11.2).

F. Regulatory Deferrals

To allow for the recognition of assets and liabilities under International Financial Reporting Standards (“IFRS”) accounting standards similar to those allowed under both the Department’s Uniform System of Accounts for Gas Companies (“USOA-Gas”) and generally accepted accounting principles (“GAAP”), the Settlement provides that Berkshire Gas has the right to receive full compensation and the obligation to fully return regulatory deferrals associated with the distribution rate components, independent of future demand or other contingent events, including in the event of no longer having a continuation of service (Settlement at § 3.13).<sup>5</sup> The Settlement further provides that nothing in this paragraph alters the right of the Company to record regulatory assets and liabilities under GAAP (Settlement at § 3.13).<sup>6</sup> According to the Settling Parties, this provision is intended to ensure that the Company will be able to continue accounting under IFRS in the same manner as currently

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<sup>5</sup> A regulatory asset is an incurred cost for which a regulatory agency, such as the Department, allows a regulated company to record a deferral to be considered for recovery in the future. Massachusetts Electric Company/Nantucket Electric Company, D.P.U. 10-54, at 318 n.235 (2010); NSTAR Pension, D.T.E. 03-47-A at 3 n.2 (2003). Both the Department’s USOA-Gas and GAAP through Financial Reporting Standards ASC 980, Regulated Operations, permit regulated utilities to book deferrals for recovery in the future. As a Spanish-owned company, Berkshire Gas’s parent company, Iberdrola, is required to comply with IFRS (Exh. DPU 3-3). As a U.S. regulated operating company, Berkshire Gas conducts its financial accounting consistent with both the USOA-Gas and GAAP.

<sup>6</sup> Similar provisions are found in the settlements of Berkshire Gas’s affiliates entered into in Connecticut, Maine, and New York (Exh. DPU 3-2, Atts. 1 through 3).

performed under both the USOA-Gas and GAAP, thereby eliminating the mismatch created by IFRS at the Avangrid level (Exh. DPU 3-3).

G. Other Settlement Terms

The Settlement states that it (1) shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false and (2) establishes no principles and, except as to those issues resolved by approval of this Settlement, shall not foreclose any party from making any contention in any future proceedings (Settlement at §§ 3.1, 3.2). The Settlement provides that the Settling Parties agree that the content of settlement negotiations, including workpapers and documents produced in connection with the Settlement, is confidential (Settlement at § 3.3). The Settlement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion and that the content of settlement negotiations is not to be used in any manner with these or other proceedings involving the parties to this Settlement (Settlement at § 3.3).

The Settling Parties state that the intent is for the Company's customers to receive the full benefit of the matters addressed in the Settlement, not some substitute regulatory treatment of lesser value, and the terms of the Settlement shall not be interpreted to diminish the intended customer benefit (Settlement at § 3.4). The Settlement prohibits the Company from recovering more than once any charges collected under this Settlement or in any other rate, charge, or tariff the Company collects, and it requires a full refund with interest as soon

as reasonably possible in the event that such over-recovery is discovered (Settlement at § 3.8).

The terms of the Settlement provide that the Department shall have its usual jurisdiction to implement the terms of the Settlement (Settlement at § 3.7). The Settlement provides that nothing in the Settlement shall be construed to limit the Attorney General's right to petition the Department for a review of the Company under G.L. c. 164, § 93 or other laws or regulations, or to pursue any cause of action related to the Settlement in court under G.L. c. 93A (Settlement at §§ 3.7, 3.9).

The Settlement provides that its provisions are not severable and that the Settlement is conditioned on approval in full by the Department (Settlement at § 3.5). The Settlement provides that it shall be effective upon its approval by the Department and, should the Department not approve the Settlement in its entirety by November 1, 2022, the Settlement states that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (Settlement at § 3.6, 3.10).

### III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60, at 5-6 (1996); Essex County Gas Company, D.P.U. 96-70, at 5, 7 (1996); Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties

does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15;

D.P.U. 88-28/88-48/89-100, at 9.

It is well established that the Department's goals for utility rate structure are efficiency, simplicity, continuity, fairness, and earnings stability. D.P.U. 95-104, at 15; Bay State Gas Company, D.P.U. 92-111, at 283 (1992); see also Massachusetts Electric Company, D.P.U. 95-40, at 144-145 (1995). The Department has previously accepted settlements that include cost allocation and/or rate design when such settlements were consistent with the Department's goals. D.P.U. 96-60, at 5-6; D.P.U. 96-70, at 6; D.P.U. 95-104, at 15; Massachusetts Electric Company, D.P.U. 91-52, at 3 (1991).

#### IV. ANALYSIS AND FINDINGS

The Department has reviewed the terms of the Settlement, supporting documents, and responses to all information requests. The Department also has carefully reviewed and considered the comments made at the public hearing. In particular, the Department has fully evaluated the proposed revenue increases in light of the information provided in and with the Settlement concerning the appropriate revenue requirement of the Company, its test-year revenues and expenses, and capital additions. The Department also has reviewed the proposed step increases to recover costs associated with: (1) the hiring of incremental employees on or before November 30, 2022; (2) the hiring of incremental safety and reliability employees on or before November 30, 2023; and (3) non-GSEP capital investments placed in service in 2022.

Based on all of the above considerations, we find that the Settlement, taken as a whole, provides for a level of additional revenues that is consistent with findings that might reasonably have been made by the Department, and, therefore, produces a level of revenues consistent with the establishment of just and reasonable rates. Further, we find that the Settlement results in a utility rate structure that reflects the Department's goals of efficiency, simplicity, continuity, fairness, and earning stability. D.P.U. 95-104, at 15.

In addition, the inability to book deferrals under IFRS accounting regulation creates a conflict between IFRS and both the USOA-Gas and GAAP at Berkshire Gas's parent company level. Nevertheless, the Department's accounting regulations, not those of domestic or foreign accounting organizations, govern the Company's operations in Massachusetts. G.L. c. 164, § 81; 220 CMR 50.00; NSTAR Gas Company, D.P.U. 14-150, at 108 (2015); Bay State Gas Company, D.P.U. 12-25, at 113 (2012). Article 3.13 of the Settlement does not seek to repeal or amend the deferral provisions of either the USOA-Gas or GAAP, but rather is intended to confirm the Company's ongoing ability to account for regulatory assets and liabilities consistent with the USOA-Gas and GAAP. This settlement provision thus resolves the mismatch that is created by the IFRS' difference from the deferral provisions of both the USOA-Gas and GAAP.

The provisions of the Settlement differ from the agreements that other Avangrid companies entered into in Connecticut, Maine, and New York in that while the settlements in those states specify which deferrals are subject to this provision, the Settlement has broader language that does not specify particular deferrals (compare Settlement at § 3.13 with

Exh. DPU 3-2, Att. A at 24, Att. B at 4, Att. C at 102). The Department interprets this provision of the Settlement as intending to cover all deferrals presently on the books of the Company, as well as those that may be incurred in the future. The Department finds that the broader language of the Settlement avoids potential disputes in the future as to which deferrals are covered under the Settlement, thereby providing greater clarity to affected parties.

Based on the foregoing analysis, the Department approves the deferral provisions of the Settlement. In doing so, we emphasize that our approval is based on the understanding that any current and future deferrals by the Company are covered by the Settlement.

The Department concludes that the Settlement is consistent with both applicable law and public interest, and we find that approval of the Settlement provisions results in a just and reasonable resolution of the many issues in this proceeding. Accordingly, the Settlement is approved.

In accordance with the terms of the Settlement, the Department's acceptance does not constitute a determination as to the merits of any allegations or contentions made in this proceeding not expressly covered by the Settlement. In addition, the Department's acceptance does not establish a precedent for future filings, whether ultimately settled or adjudicated.<sup>7</sup>

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<sup>7</sup> As the Department has noted in the past, the Settlement's confidentiality provision set out at Section 3.3 does not bind the Department or preclude its inquiry as events may warrant. Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-114/03-118, at 6 n.4 (2005); Boston Edison Company, D.T.E. 03-117-A

This Order is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, and expressly does not form, and may not be considered to form, a contract binding on the Department or the Commonwealth of Massachusetts. In ruling on the Settlement, the Department exercised its regulatory authority under G.L. c. 164, §§ 76, 94, and 94I; the Department's approval of the Settlement does not make the Department a party to the Settlement.

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

With approval of the Settlement, the Company is directed to file new tariffs on or before December 7, 2022, to be effective January 1, 2023, reflecting the base distribution rate increase of \$2,600,000, and the additional increase of up to \$963,000 associated with the hiring of up to nine incremental employees that the Company asserts will be hired on or before November 30, 2022, and relevant provisions of this Settlement. The Department directs that the Company make such a compliance filing consistent with the terms of the Settlement.

V. ORDER

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

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(Phase II) at 5 n.6 (2004). To the extent that the parties intend the assertion of confidentiality to be a motion for protective treatment, it is premature.

ORDERED: That the Joint Motion for Approval of Settlement, submitted by The Berkshire Gas Company and the Attorney General of the Commonwealth of Massachusetts on June 24, 2022, is GRANTED and the Settlement is APPROVED; and it is

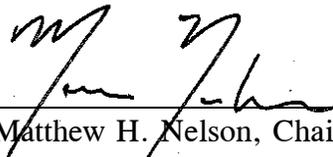
FURTHER ORDERED: That proposed tariffs M.D.P.U. Nos. 549 through 563 filed by The Berkshire Gas Company on June 24, 2022, to become effective November 1, 2022, are DISALLOWED; and it is

FURTHER ORDERED: That proposed tariff M.D.P.U. No. 564 filed by The Berkshire Gas Company on July 26, 2022, to become effective January 1, 2023, is ALLOWED; and it is

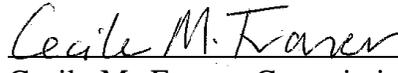
FURTHER ORDERED: That The Berkshire Gas Company shall file new schedules of rates and charges as required by this Order and shall design all rates in compliance with this Order; and it is

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

By Order of the Department,

  
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Matthew H. Nelson, Chair

  
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Robert E. Hayden, Commissioner

  
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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.