

On October 8, 2021, Unitil, after consultation with the AG, submitted an alternative proposal whereby:

- lower Basic Service rates than Unitil originally proposed would be implemented for residential, small general service and medium general service customers effective December 1, 2021; and
- the balance of the requested Basic Service rate increases would be deferred for collection beginning on June 1, 2022 through the Basic Service Adjustment Factor (“BSAF”), which applies to all Unitil distribution customers.⁴

The same day, the Department issued a Notice of Filing and Request for Comments seeking written comments from interested stakeholders regarding the Proposal and “other possible means to mitigate the effect on customers of the proposed basic service rate increase.”⁵ RESA submitted comments in response to the Notice, including alternative approaches for mitigating the impact of the proposed rate increase.⁶

On October 22, 2021, the Department issued the Order, which adopted the Proposal. RESA now hereby requests that the Department reconsider the Order and reinstitute the Basic Service rates that Unitil initially proposed on a prospective basis as soon as possible.

LEGAL STANDARD

Reconsideration of previously decided issues is granted when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision.⁷ Alternatively, a motion for

⁴ Comments of Fitchburg Gas and Electric Light Company d/b/a Unitil (Oct. 7, 2021), at 2 (“Proposal”).

⁵ Notice of Filing and Request for Comments (“Notice”), at 2.

⁶ Comments of Retail Energy Supply Association (Oct. 18, 2021) (“RESA Comments”).

⁷ See, e.g., D.T.E./D.P.U. 06-60-A, *Petition of Russell Biomass LLC, pursuant to G.L. c. 40A, § 3, for exemption from the zoning by-laws of the Town of Russell to construct and operate a wood-burning electric generating facility*, Order on Motion for Reconsideration and Late Filed Motion for Limited Participant Status (Nov. 14, 2008) (“Russell Reconsideration Order”), at 3.

reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence.⁸

ARGUMENT

The Department erred in concluding that a portion of Unitil's proposed Basic Service rate increase should be deferred and requiring that the deferral be collected from all customers through delivery rate. Thus, extraordinary circumstances warrant reconsideration. Accordingly, consistent with the Electric Restructuring Act and Department precedent,⁹ the Department should reconsider the Order.

I. THE DEPARTMENT ERRED IN DEFERRING A PORTION OF THE BASIC SERVICE RATE INCREASE

Under the Proposal, as adopted by the Order, Unitil will implement a smaller Basic Service rate increase than originally proposed and defer the balance of the increase for collection from all distribution customers between June 1, 2022 and December 31, 2022.¹⁰ However, doing so is inconsistent with the Electric Restructuring Act and decades of Department precedent. Thus, by ordering the deferral of a portion of the rate increase, the Department made a mistake of law; thereby, giving rise to extraordinary circumstances warranting reconsideration.¹¹

⁸ See, e.g., Russell Reconsideration Order, at 3.

⁹ See Docket No. D.P.U. 14-BSF-D3-A, *Petition of Massachusetts Electric Company and Nantucket Electric Company to Department of Public Utilities for approval of standard Basic Service rates for: (1) November 1, 2014 through April 30, 2015, for its residential, street lighting, and small commercial and industrial customers; and (2) November 1, 2014 through January 31, 2015, for its medium and large commercial and industrial customers*, Order on Mitigating the Impact of the Increase of Standard Basic Service Rates of Massachusetts Electric Company and Nantucket Electric Company (Nov. 6, 2014) (“National Grid Basic Service Order”).

¹⁰ Proposal, at 2; Order, at 16.

¹¹ Cf. Russell Reconsideration Order, at 3.

The Electric Restructuring Act specifically states that “competitive markets in generation should . . . provide electricity buyers and sellers *with appropriate price signals*”¹² Consistent with the statutory requirement, the Department has found that:

It is essential to the development of a robust competitive market to have prices set at levels that provide customers with appropriate price signals regarding the costs associated with providing the service, as established by the competitive market. Default service prices that do *not* represent the *actual cost* of providing the service would inhibit the development of a competitive generation market and would thus be *detrimental to all electricity consumers*.¹³

Therefore, no matter how significant, “[m]asking of seasonal price variability is an avoidance of reality that *serves no one*.”¹⁴

Further, the Department has held that “[d]efault service is intended to be a basic service that provides customers with the *appropriate incentives to turn to the competitive market* for more sophisticated or advantageous service offerings.”¹⁵ As a consequence, “[a]n underlying goal of the Department’s default service pricing policies is to ensure that, to the extent possible, default service customers pay *the full costs* of providing that service.”¹⁶

In furthering this goal, the Department has relied on several guiding principles, including that “default service prices should be market based, be procured through reasonable business practices, and *take into account the costs of providing default*

¹² Electric Restructuring Act, § 1(g) (emphasis added).

¹³ Docket No. D.T.E. 99-60, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Pricing and Procurement of Default Service pursuant to G.L. c. 164, § 1B(d)*, Order D.T.E. 99-60-A (May 11, 2000) (“D.T.E. 99-60-A”), at 3 (emphasis added).

¹⁴ Docket No. D.T.E. 99-60, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Pricing and Procurement of Default Service pursuant to G.L. c. 164, § 1B(d)*, Letter to Massachusetts Electric Company (Apr. 3, 2001) (“D.T.E. 99-60 Letter”), at 3 (emphasis added).

¹⁵ *Id.* at 2 (emphasis added).

¹⁶ Docket No. D.T.E. 99-60, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Pricing and Procurement of Default Service pursuant to G.L. c. 164, § 1B(d)*, Order D.T.E. 99-60-C (Oct. 6, 2000) (“D.T.E. 99-60-C”), at 7 (emphasis added).

service, consistent with the development of robust competitive retail markets.”¹⁷ In particular, the Department has held that “it is *critical* that *all* costs of providing default service be included in the retail price to provide an accurate price signal.”¹⁸ However, the Order does just the opposite. Instead of ensuring that customers are given accurate price signals that provide appropriate incentives for customers to turn to the competitive market, the Department has ordered a deferral that is “detrimental to all customers” and “serves no one”¹⁹ in direct contravention of the Electric Restructuring Act and more than twenty (20) years of Department precedent.²⁰

The Order attempts to justify this departure by relying on: (a) the change in Until’s procurement practices; (b) the economic effects of the COVID-19 pandemic; and (c) the significance of the rate increase.²¹ However, none of those reasons justify adoption of an Order that contradicts the requirements of the Electric Restructuring Act or the Department’s well-established and long-held precedent.

First and foremost, Unutil’s departure from approved procurement practices was undertaken without Department pre-approval.²² Rather than unilaterally taking such action, Unutil should have sought pre-approval from the Department. By failing to do so, Unutil acted imprudently and deprived the Department of the opportunity to determine the

¹⁷ D.T.E. 99-60-A, at 3 (emphasis added).

¹⁸ *Id.* at 6 (emphasis added).

¹⁹ *Cf. id.* at 3; D.T.E. 99-60 Letter, at 3

²⁰ *See* Electric Restructuring Act, § 1(g); D.T.E. 99-60-A; D.T.E. 99-60 Letter.

²¹ Order, at 12.

²² Letter Order (Oct. 12, 2021) (approving Unutil’s departure from approved Basic Service procurement requirements *after* the solicitation was already conducted).

potential effect on customers *before* creating a situation that resulted in the drastic increase in Basic Service rates.²³

Second, while RESA acknowledges the challenges presented by the COVID-19 pandemic, the Department has already taken significant steps to mitigate the effects of those challenges on consumers. Specifically,

the Department has directed all electric and gas distribution companies to take reasonable actions to mitigate the financial effects of large increases to energy costs this winter. Letter from Commissioners of the Department to the Presidents of the Massachusetts Electric and Gas Companies (October 19, 2021). The Department directed the companies to promote and allow residential customers to enroll in budget billing programs throughout the winter months, which will allow customers to spread their total electricity costs evenly over a specified time period. Additionally, the [distribution] companies are directed to guide customers that have difficulty paying their bills towards appropriate assistance programs, such as arrearage management plans and/or the Low-Income Home Energy Assistance Program. The [distribution] companies are also required to increase customer education regarding energy efficiency, particularly for low-income customers, focusing on behaviors and measures to assist customers in reducing their near-term energy bills, as well promote long term energy and demand savings.²⁴

The Department can help customers further mitigate the impact of the Basic Service increase by expanding consumer education efforts regarding competitive supply opportunities. Competitive supply offers significant, tangible benefits to all customers (including residential customers) and, particularly, in the current situation for Until customers. Because individual electric suppliers engage in different wholesale procurement strategies and hedge power at different times and in different ways, they can offer—and are offering—more competitive and longer term options than Until’s

²³ See Order, at 12 (noting that, if Until had conducted the procurement as required, the Basic Service rates would have been consistent with those that the Department ultimately approved).

²⁴ Order, at 2.

proposed Basic Service rates.²⁵ For example, the Energy Switch Massachusetts website (“EnergySwitchMA Website”) lists various offers with prices that are significantly less than Until’s proposed Basic Service rate with terms of 12-24 months.²⁶ Some of these offers include additional value-added products and services, such as additional renewable energy content and rewards programs.²⁷ Customers choosing these options would avoid Unutil’s proposed Basic Service rate hike, realize savings, and receive additional value.

Further, competitive supply offers customers price stability over longer terms than Basic Service.²⁸ Price stability is a real and tangible benefit for customers seeking to manage fluctuations in monthly energy costs. Thus, a customer on a long-term fixed rate plan is protected from substantial and unforeseen increases in wholesale energy prices. This benefit of competitive supply is significant for customers already enrolled in long-term competitive supply contracts with terms extending beyond the winter 2021-22 Basic Service period. If the Department reconsiders the Order, these customers will be able to avoid entirely Unutil’s proposed increase in Basic Service rates. This benefit of competitive supply is also significant for customers not currently enrolled in long-term

²⁵ See Energy Switch Massachusetts, <https://www.energyswitchma.gov/#/compare/5/1/01420/> (last visited Nov. 5, 2021) (showing multiple residential offers for Zip Code 01420 that are lower than Unutil’s proposed Basic Service rates with terms of 12-24 months).

²⁶ See *id.*

²⁷ See *id.* (showing residential offers for Zip Code 01420, including an offer of \$0.12990 for six months (with a rewards program) and an offer of \$0.16990 for twelve months (with 100% renewable energy content)). The only residential offer for the 01420 Zip Code on the EnergySwitchMA Website with a price higher than Unutil’s originally proposed Basic Service rate is a 100% renewable offer and includes a rewards program. See *id.* (showing a residential offer for Zip Code 01420 of \$0.21890 for six months with 100% renewable content).

²⁸ See *id.* (showing multiple residential offers for Zip Code 01420 that are lower than Unutil’s proposed Basic Service rates with terms of 12-24 months).

competitive supply contracts because it provides opportunities for long-term price certainty.²⁹

In fact, in the current circumstances, competitive supply offers customers the best option for addressing the potential increase in Basic Service costs. Unlike customers in a monopoly-based generation supply regime, customers in Massachusetts can choose the option that best serves their needs and preferences. Customers can shop based on price as well as length of term and value-added components (e.g., additional renewable energy content). Thus, Until customers can choose a lower-priced competitive supply option instead of Until's proposed Basic Service rate. In fact, customers can save nearly six cents per kilowatt hour by choosing one of the currently available competitive supply options.³⁰ Unlike the Proposal, enrolling in lower-priced competitive supply will actually reduce a customer's expense, *not simply shift* expense to another period or to other customers.

Lastly, the amount of the Basic Service increase did not warrant departure from the Department's long-standing precedent. Until's originally proposed Basic Service rate increase was no more significant than that which the Department has previously approved. In 2014, the Department authorized an increase in Basic Service rates of thirty-seven percent (37%) over the prior winter.³¹ In this case, Until's originally proposed residential fixed price increase represented "a 34.8 percent increase versus rates in effect December 1, 2020."³² As the Department has previously concluded, *no matter how*

²⁹ See Energy Switch Massachusetts, <https://www.energyswitchma.gov/#/compare/5/1/01420/> (last visited Nov. 5, 2021) (showing a residential offer for Zip Code 01420 of \$0.16390 for twenty-four months).

³⁰ See *id.* (showing a residential offer for Zip Code 01420 of \$0.12990).

³¹ See National Grid Basic Service Order, at 3, 15.

³² Until Filing, Cover Letter, at 3.

significant “[m]asking of seasonal price variability is an avoidance of reality that serves no one.”³³

Moreover, “Basic [S]ervice rates are already designed to mitigate price volatility for customers by averaging six monthly prices into one flat rate.”³⁴ Indeed,

deferring costs from the current basic service term to another term . . . would not be in the ratepayers’ best interests, would disrupt the competitive market, might result in higher basic service bid prices in the future, could shift costs to non-basic service customers, and would be contrary to Department precedent.³⁵

Specifically, such action “would not reduce the cost of basic service for customers, but instead would spread the cost recovery over a longer period of time, which would increase carrying charges and distort price signals.”³⁶

Recognizing this, over the last twenty (20) years, the Department has refused to mitigate prior increases in default service rates. For example, in 2001, the Department declined to approve a Massachusetts Electric Company proposal to calculate the fixed price default service option based on a twelve month (rather than six month) weighted average cost because it would simply create a scenario whereby “default service customers will pay below-market prices . . . during the initial six-month period . . . [and] pay above-market prices over the later six month period.”³⁷ Further, the Department found that the proposal would “*not reduce the price for any customers*, it suppresses the market price signal as it would otherwise be experienced by customers nearer to the time

³³ D.T.E. 99-60 Letter, at 3.

³⁴ National Grid Basic Service Order, at 10.

³⁵ *Id.*

³⁶ *Id.*

³⁷ D.T.E. 99-60 Letter, at 2.

of usage; and it does so by simply shifting the time-period over which default service supply costs must be paid.”³⁸

Similarly, in response to a request from the distribution companies to implement a standard offer service fuel adjustment (“SOSFA”) “as a result of substantial increases in fuel costs, which ha[d] driven up the price of electric generation,”³⁹ the Department was “faced with the difficult task of balancing the burden of allowing present cost recovery against the potentially *greater harm of increasing deferrals* to be recovered in the future.”⁴⁰ Ultimately, the Department rejected a deferral of the cost increases associated with the SOSFA for several reasons. First, “costs that are not recovered from [default] service customers now will be recovered, with interest, from *all* customers in the future, *regardless whether* the customer received [default] service or not.”⁴¹ Additionally, “there is grave financial risk in forcing large deferrals” as “the total amount of costs deferred for future recovery could well grow to a level that would threaten the financial viability of the distribution companies.”⁴² Furthermore, “continuing to price [default] service significantly below costs artificially *impedes* the development of a truly robust competitive market and the ability of competitive suppliers to develop products at prices that would attract customers.”⁴³ All of these principles remain true and relevant today.

In fact, in the Order, the Department acknowledged:

changing basic service rates by delaying cost recovery from the current basic service term to another term would not be in the ratepayers’ best

³⁸ D.T.E. 99-60 Letter, at 2 (emphasis added).

³⁹ Docket Nos. D.T.E. 00-66, 00-67, 00-70, *Standard Offer Service Fuel Adjustments*, Letter Order (Dec. 4, 2000), at 1.

⁴⁰ *Id.* at 2 (emphasis added).

⁴¹ *Id.* at 3 (emphasis in original).

⁴² *Id.*

⁴³ *Id.* at 4 (emphasis added).

interests, would disrupt the competitive market, might result in higher basic service bid prices in the future, could shift costs to non-basic service customers, and would be contrary to Department precedent.⁴⁴

However, even though it “would *not* be in the ratepayers’ best interests,”⁴⁵ the Department erred and authorized a deferral that is fundamentally inconsistent with its prior precedent and the principles of the Electric Restructuring Act. Given this error, the Department should reconsider the Order and adopt the Basic Service rates originally proposed.⁴⁶ By imposing the full Basic Service rate increase immediately - before the Fitchburg aggregation is approved - the Department can ensure that there is a larger Basic Service customer base to absorb the increase.⁴⁷

II. THE DEPARTMENT ERRED IN AUTHORIZING RECOVERY OF DEFERRED BASIC SERVICE COSTS THROUGH DELIVERY RATES

In the Order, the Department also erred in authorizing recovery of the portion of the Basic Service rate increase that was deferred through delivery rates from all distribution customers.⁴⁸ This was a mistake of law because it conflicts with the Electric Restructuring Act and Department precedent, further distorts price signals, and shifts costs to shopping customers and unfairly forces them to subsidize Basic Service customers. Thus, extraordinary circumstances exist that warrant reconsideration.⁴⁹ As consequence, to the extent the Department continues to permit deferral of Unutil’s Basic

⁴⁴ Order, at 11.

⁴⁵ *Id.* (emphasis added).

⁴⁶ RESA recognizes that Unutil has already sent notice to customers of the proposed Basic Service increase to be effective December 1. Notice, at 2 (“The Company is required to provide 30-days notice of changes in the basic service rate.”). However, if the Department grants this motion and corrects its error, it can then order Unutil to send another notice to customers increasing the Basic Service rates as of January 1, 2022.

⁴⁷ See AG Comments, at 2-3 (“If and when Fitchburg launches its aggregation program, Unutil will lose approximately 71% of its total distribution service load and 77% of its total Basic Service load.”) (citations omitted).

⁴⁸ See Order, at 13-16.

⁴⁹ *Cf.* Russell Reconsideration Order, at 3.

Service rate increase (which RESA vehemently opposes), it should correct this error and require that Unitil recover the portion of the Basic Service rate increase that was deferred in future Basic Service rates (not delivery rates).

Both the Massachusetts legislature and the Department have long-recognized the need to ensure that rates are cost-based and customers receive appropriate price signals.⁵⁰ Costs associated with Basic Service “should be recovered from or refunded to the customer *that caused the costs*.”⁵¹ Basic Service is provided to customers that are *not* served by competitive suppliers (i.e., shopping customers).⁵² Collecting deferred Basic Service rates through the BSAF will shift costs from Basic Service customers to all customers. As a result, customers who are on competitive supply, including customers receiving competitive supply through the Lunenburg and Ashby aggregations,⁵³ will be forced to bear costs to serve Basic Service customers – costs for services that they do not receive and that subsidize the EDCs’ Basic Service customers. Furthermore, customers who chose competitive supply and who took appropriate steps to protect against the significant increases that are now being reflected in Unitil’s Basic Service rates by locking in prices will find that their hedging strategy was for naught as they will now have to bear those costs anyway (albeit, in their delivery rates).

⁵⁰ See, e.g., Electric Restructuring Act, § 1(g); D.T.E. 99-60-A; D.T.E. 99-60-A Letter; D.T.E. 99-60-C.

⁵¹ D.P.U. 09-26, *Report of the Department of Public Utilities regarding the impact of the existing basic service adjustment mechanism on the competitive retail electricity market pursuant to Section 102 of the Green Communities Act, Chapter 169 of the Acts of 2008*, Report (June 1, 2009) (“09-26 Report”), at 6 (emphasis added).

⁵² See M.G.L. c. 164, § 1 (defining “Basic service” as: “the electricity services provided to a retail customer upon either: (i) the inability of a customer to receive competitive supply from a supplier . . .; (ii) the failure of the retail customer to elect competitive supply from a supplier . . .; or (iii) upon the expiration of and the retail customer's failure to renew a competitive supply contract . . .”).

⁵³ Cf. AG Comments, at 2 (“Unitil’s electric service territory includes only four communities (Ashby, Fitchburg, Lunenburg and Townsend) for which it is obligated to provide Basic Service electric supply. Two of these communities—Lunenburg and Ashby—already receive most of their electricity pursuant to previously approved municipal aggregation plans.”) (citations omitted).

In the Order, the Department determined that permitting recovery of deferred Basic Service rates in delivery rates is consistent with precedent because the Department has authorized the recovery of default service reconciliations from all distribution customers.⁵⁴ However, the deferral of winter 2021-22 Basic Service expenses is not comparable to reconciling certain over- and under-recoveries; it is a specific accommodation provided only to current Basic Service customers and from which current shopping customers do not benefit. Further, because Basic Service would be available to competitive supply customers *without* the deferral, the deferral itself provides no inherent benefit to shopping customers. Consequently, requiring shopping customers to bear the costs of the Basic Service deferral “is inconsistent with the Department's principles of cost causation and fairness in rate design.”⁵⁵ Thus, the Department should reconsider the Order and require that any deferral be collected solely from Basic Service customers.⁵⁶

CONCLUSION

For all the foregoing reasons, the Department should reconsider the Order, direct Unitil to implement the originally proposed Basic Service rate increase prospectively and as soon as possible consistent with rate increase notice requirements.⁵⁷ In that way,

⁵⁴ See Order, at 14; see also D.T.E. 99-60-C.

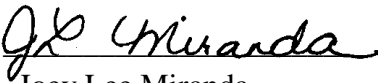
⁵⁵ Cf. D.P.U. 15-80, *Petition of Fitchburg Gas and Electric Light Company (Electric Division) d/b/a Unitil pursuant to G.L. c. 164, § 94, and 220 C.M.R. § 5.00 et seq. for approval of a general increase in electric base distribution rates and implementation of a capital cost adjustment mechanism to become effective July 1, 2015* and D.P.U. 15-81, *Petition of Fitchburg Gas and Electric Light Company (Gas Division) d/b/a Unitil pursuant to G.L. c. 164, § 94, and 220 C.M.R. § 5.00 et seq. for approval of a general increase in gas base distribution rates to become effective July 1, 2015*, Order (Apr. 29, 2016), at 22.

⁵⁶ To the extent the Department is concerned that there will not be a sufficient Basic Service customer base from which to collect any deferred costs, the Department can mitigate this risk, by delaying implementation of the Fitchburg aggregation until the deferred costs are recovered.

⁵⁷ Any amounts that have been deferred prior to such rate change should be recovered from Basic Service customers during the Winter 2021-22 Basic Service period.

customers can compare the full cost of default service with the full value of competitive offerings and make informed decisions regarding participation in the competitive market.

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