

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

PETITION OF FITCHBURG GAS AND	:
ELECTRIC LIGHT COMPANY D/B/A UNITIL	:
FOR APPROVAL OF BASIC SERVICE RATES	:
FOR DECEMBER 1, 2021 THROUGH MAY 31,	:
2022, FOR ITS SMALL AND MEDIUM	:
CUSTOMER GROUPS	:
	:

**RETAIL ENERGY SUPPLY ASSOCIATION’S
MOTION FOR EXTENSION OF JUDICIAL APPEAL PERIOD**

Pursuant to 220 CMR § 1.11(12), Retail Energy Supply Association (“RESA”) hereby submits this motion to extend the judicial appeal period in the above-captioned proceeding. In support of this request, RESA states the following:

INTRODUCTION

1. On October 1, 2021, Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) filed a petition for approval of new Basic Service rates to go into effect on December 1, 2021.¹
2. On October 6, 2021, the Attorney General (“AG”) submitted comments with a proposal to mitigate the rate impact of Unitil’s proposed Basic Service rate increases and requesting that, at a minimum, the Department of Public Utilities (“Department”) “defer a portion of Unitil’s proposed increase to residential customers.”²
3. On October 8, 2021, Unitil, after consultation with the AG, submitted an alternative proposal whereby (i) lower Basic Service rates than Unitil originally proposed

¹ Basic Service Filing of Fitchburg Gas and Electric Light Company d/b/a Unitil (Oct. 1, 2021).

² Comments of the Office of the Attorney General (Oct. 6, 2021), at 1, 3-4.

would be implemented for residential, small general service and medium general service customers effective December 1, 2021; and (ii) 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, which applies to all distribution customers.³

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.”⁴ RESA submitted comments in response to the Notice.⁵

5. On October 22, 2021, the Department issued an order, which adopted the Proposal.⁶ RESA now hereby requests that the Department extend the judicial appeal period applicable to the Order because RESA is seeking reconsideration of the Order.

STANDARD

6. In accordance with M.G.L. c. 25, § 5, judicial appeals from final Department orders must be filed within twenty (20) days after service of the order.⁷ Upon motion to the Department within the twenty-day period, a party may request an extension of the appeal period.⁸ Reasonable extensions shall be granted upon a showing of good cause.⁹

³ Comments of Fitchburg Gas and Electric Light Company d/b/a Unitil (Oct. 7, 2021), at 2 (“Proposal”).

⁴ Notice of Filing and Request for Comments, at 2 (“Notice”).

⁵ Comments of Retail Energy Supply Association (Oct. 18, 2021).

⁶ Order on Mitigating the Impact of the Increase of Standard Basic Service Rates of Fitchburg Gas and Electric Light Company (Oct. 22, 2021) (“Order”).

⁷ M.G.L. c. 25, § 5 (“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.”); 220 CMR 1.11(12).

⁸ 220 CMR 1.11(12).

⁹ *Id.*

7. “[G]ood cause is a relative term and depends on the circumstances of an individual case. Whether good cause has been shown is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other party.”¹⁰

8. Further, “[t]he filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion.”¹¹

ARGUMENT

9. RESA respectfully requests that the Department extend the judicial appeal period for twenty (20) days following final Department action on RESA’s motion for reconsideration.

10. Today, RESA is filing a motion for reconsideration of the Order. The requested extension is necessary to preserve RESA’s rights on appeal during the pendency of the motion for reconsideration. Without such an extension (and tolling) of the judicial appeal period, the judicial appeal period would expire before the Department rules on the motion for reconsideration,¹² and RESA would lose its ability to appeal the Order.

¹⁰ D.T.E./D.P.U. 03-11-A, *Investigation by the Department into The Berkshire Gas Company’s 2002 Service Quality Report, filed pursuant to Service Quality Standard for Electric Distribution Companies and Local Gas Distribution Companies*, D.T.E. 99-84 (June 29, 2001), Order Denying Motion for Reconsideration by the Attorney General (Aug. 9, 2007) (“Berkshire Service Quality Reconsideration Order”), at 8 (citations and internal quotation marks omitted); *see also* D.P.U. 21-60, *Petition of National Grid USA pursuant to G.L. c. 164, § 96(c) for a waiver of jurisdiction of the Department of Public Utilities regarding the sale of The Narragansett Electric Company*, Order on the Attorney General’s Motion for an Extension of the Judicial Appeal Period (Aug. 3, 2021) (“D.P.U. 21-60-A”), at 2, 4.

¹¹ D.P.U. 21-60-A, at 2 (citations omitted); Berkshire Service Quality Reconsideration Order, at 8 (citations omitted).

¹² Berkshire Service Quality Reconsideration Order, at 8.

11. Allowing the requested extension is also in the public interest. The issues in this proceeding have a significant bearing on the competitive retail electric market in Massachusetts.

12. When it passed the Electric Restructuring Act,¹³ the Massachusetts General Court found that “an important goal in electric restructuring is the development of a competitive marketplace.”¹⁴ Moreover, the Department has recognized that “[i]t 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.”¹⁵ Conversely, “[d]efault 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.”¹⁶

13. 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.”¹⁷ Thus, “deferring costs from the current basic service term to another term . . . would disrupt the

¹³ St. 1997, c. 164 (“Electric Restructuring Act”).

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)*, Order D.T.E. 99-60-A (May 11, 2000) (“D.T.E. 99-60-A”), at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 2.

competitive market . . .”¹⁸ Indeed, pricing 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.”¹⁹

Despite this, the Order fails to provide customers with accurate price signals.

14. This is not the first time the Department has had to determine the best manner in which to address significant increases in Basic Service rates²⁰ and it is unlikely to be the last. However, as the Order itself notes, the Department’s decision is a departure from its prior precedent.²¹ However, as RESA’s motion for reconsideration asserts, none of the Department’s stated reasons for such a departure justify adoption of an Order that contravenes the Electric Restructuring Act or more than twenty (20) years of Department precedent.²² Because the issues on reconsideration raise concerns about the Department’s departure from underlying statutory requirements in contravention of long-standing regulatory precedent and in a manner that will “artificially impede[] the development of a

¹⁸ 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”), at 10.

¹⁹ Docket Nos. D.T.E. 00-66, 00-67, 00-70, *Standard Offer Service Fuel Adjustments*, Letter Order (Dec. 4, 2000), at 4.

²⁰ See, e.g., National Grid Basic Service Order.

²¹ Order, at 11 (“In general, the Department has recognized that changing basic service rates by delaying cost recovery 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.”).

²² See Electric Restructuring Act, § 1(g); D.T.E. 99-60-A; 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).

truly robust competitive market and the ability of competitive suppliers to develop products at prices that would attract customers,”²³ it implicates the public interest.

15. Moreover, if the Department grants the motion for reconsideration, an appeal may not be necessary. However, even if the Department denies the motion for reconsideration, the Department’s reasoning on the issues, especially the reasons for its departure from the Electric Restructuring Act and long-standing precedent, could benefit the court and the parties’ understanding of the issues on appeal. Thus, granting the requested extension of the appeal period allows for an efficient use of administrative and judicial resources, which is also in the public interest.

16. The other parties to this proceeding, Unitil and the AG, will not be prejudiced by the requested extension because the Order adopted the Proposal that they put forth and they will retain the full procedural rights otherwise afforded to them to respond to RESA’s motion for reconsideration and to participate in any appeal.²⁴

17. As the foregoing demonstrates, good cause exists for the Department to grant the requested extension of the appeal period because the issues on reconsideration raise concerns about the Department’s departure from underlying statutory requirements in contravention of long-standing regulatory precedent that implicate RESA’s interests as well as the public interest.

²³ Docket Nos. D.T.E. 00-66, 00-67, 00-70, *Standard Offer Service Fuel Adjustments*, Letter Order (Dec. 4, 2000), at 4.

²⁴ See, e.g., 220 CMR 1.11(10) (“Parties to the proceeding shall be afforded a reasonable opportunity to respond to a motion for reconsideration.”).

CONCLUSION

For all the foregoing reasons, the Department should grant RESA's request to extend the judicial appeal period until twenty (20) days following final Department action on RESA's motion for reconsideration.

Respectfully submitted,
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ASSOCIATION

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