



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

December 17, 2019

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

Re: Request of the Office of Attorney General, Office of Ratepayer Advocacy for Investigation into the Effect of the Individual Residential Supply Market on Low-Income Ratepayer Assistance Programs, Pursuant to G.L. c. 164, §§ 1F, 76C, 124A, 124E, 124F, 124H, and St. 2005, c. 140, § 17.

Dear Secretary Marini:

Pursuant to the authority delegated to the Department of Public Utilities (the “Department”) to implement protections and assistance for low-income ratepayers of electric and gas companies in G.L. c. 164, §§ 1F, 76C, 124A, 124E, 124F, 124H, and St. 2005, c. 140, § 17, the Office of the Attorney General (“AGO”) hereby requests that the Department initiate an investigation into the effect of the individual residential supply market on the low-income assistance programs for electric and gas ratepayers, including:

- the low-income discount rate;
- the arrearage management programs;
- protections from termination of service afforded to certain ratepayers experiencing financial hardship; and
- the overall subsidy costs for the low-income assistance programs paid for by all ratepayers.

The AGO requests that the Department investigate to determine the extent to which the individual residential electric supply market¹ has (1) increased low-income ratepayers’ bills; (2) increased subsidy costs—paid for by *all* ratepayers—for low-income assistance programs; and

¹ The “individual residential electric supply market,” as referenced in this Request, is a term used to describe the market in which residential ratepayers choose to purchase electricity supply directly from a company other than their electric company and does not include residential ratepayers who purchase electricity supply through an aggregation.

(3) weakened the overall effectiveness of the low-income assistance programs. The AGO also requests that the Department use the investigation to implement additional protections for low-income ratepayers. Action by the Department is necessary to ensure the public policy of the Commonwealth—affordable energy bills for low-income ratepayers—is no longer thwarted by unreasonably high supply rates. Department action is also necessary to reduce the costs incurred by all other ratepayers who support the low-income programs through various subsidies.

An investigation by the Department into these matters would be consistent with recent action by other Northeast states, including New York and Connecticut. In 2016, the New York Public Service Commission (“PSC”) issued an order generally prohibiting service by third-party suppliers to low-income ratepayers. State of New York Public Service Commission, *Proceeding on the Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*, Case 12-M-0476, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016). The New York PSC found this prohibition was necessary due to “the problem of overcharges to [low-income] customers and the resulting diminution of financial assistance to those customers.” *Id.*

On December 2, 2019, the Connecticut Public Utilities Regulatory Authority (“PURA”) issued a proposed final decision directing the transfer of all low-income ratepayers (referred to as “hardship customers”) to basic service (referred to as “standard service”) as soon as practicable. Connecticut Public Utilities Regulatory Authority, *Review of Feasibility, Costs, and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. State. § 16-245o(m)*, Docket No. 18-06-02, Proposed Final Decision, at 1 (Dec. 2, 2019), attached hereto as Exhibit A. The PURA found this was necessary because its investigation revealed that hardship customers paid \$7.2 million more between October 2016 through September 2018 for electric supply from third-party suppliers than they would have paid for standard service, “and they have not received commensurate value for this overpayment. This overpayment affects not only the hardship customers, but all Connecticut ratepayers contributing to the hardship payments.” *Id.*, at 1; 7.

Here, in Massachusetts, low-income ratepayers who received electric supply from individual residential suppliers between July 2015 and June 2018 were charged at least \$57 million more than they would have been charged for basic service from their electric distribution company. Massachusetts Attorney General’s Office, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts – August 2019 Update*, prepared by Susan M. Baldwin (“2019 AGO Report”), Table 2.1.²

Accordingly, like the New York PSC and the Connecticut PURA, the Department should act to protect the Commonwealth’s low-income ratepayers and the low-income assistance programs funded by all ratepayers.

²https://www.mass.gov/files/documents/2019/07/31/Massachusetts%202019%20Update_August%202019.pdf.

I. Background

a. Electric Industry Restructuring Act of 1997

In 1997, the Massachusetts General Court restructured the electricity industry, creating a market for the supply of electricity. St. 1997, c. 164. Restructuring created a new electric supply market to allow ratepayers to choose their electric supplier. Accordingly, all Massachusetts electric ratepayers pay two categories of rates when they pay their electricity bill: one rate for delivery services and one rate for electric supply.

In restructuring the electricity industry, the Legislature recognized that “electricity service is essential to the health and well-being of all residents of the commonwealth.” St. 1997, c. 164, § 1(a). The Legislature also found that “the restructuring of the existing electricity system should not undermine the policy of the commonwealth that electricity bills for low income residents should remain as affordable as possible.” St. 1997, c. 164, § 1(n).

b. Applicable Statutes and Regulations

i. Low-income discount rate

Pursuant to G.L. c. 164, § 1F(4) and the Department’s regulations at 220 C.M.R. § 11.04(5) and 220 C.M.R. § 14.03(2A), electric and gas distribution companies in Massachusetts provide a low-income discount rate to ratepayers who can demonstrate financial hardship.

ii. Arrearage management programs (“AMPs”)

Pursuant to St. 2005, c. 140, § 17 and the *Order Establishing Standards for Arrearage Programs for Low-Income Customers*, D.T.E. 05-86 (2006), and *Order Expanding Low-Income Consumer Protection and Assistance, Including Standards for Arrearage Management Programs, Discount Rate, Service Termination, and Energy Efficiency Programs*, D.P.U. 08-4 (2008), electric and gas distribution companies in Massachusetts provide arrearage-management programs to assist low-income ratepayers whose accounts are in arrears.

iii. Hardship protection from termination of service

Pursuant to G.L. c. 164, §§ 124A, 124E, 124F, 124H and the Department’s regulations at 220 C.M.R. § 25.03, certain residential accounts are protected from shut-off by the electric and gas distribution companies for nonpayment. To qualify for protected status from service termination, ratepayers must demonstrate financial hardship and meet other requirements such as: a member of the household suffers from a serious illness; a member of the household is elderly; or a member of the household is a child under twelve months of age.

c. Harm to Low-Income Ratepayers

Low-income ratepayers participate in the individual residential electric supply market at twice the rate of non-low-income ratepayers (35 percent participation rate for low-income

ratepayers vs. 18 percent participation rate for non-low-income ratepayers). 2019 AGO Report, at 14. Suppliers also consistently charge low-income ratepayers higher rates than non-low-income ratepayers that have resulted in low-income ratepayers paying significantly more for their electric supply. *Id.*, at 12–13. Statistical analysis revealed findings that suggest some suppliers target low-income neighborhoods for enrollment in competitive supply. Specifically, a ratepayer who resides in a low-income community is more likely to participate in the competitive supply market, even if that particular ratepayer is not low-income herself. *Id.*, at 17–18. For example, a low-income ratepayer from Dorchester or Roxbury is much more likely to participate in the market as compared to a low-income ratepayer from Beacon Hill or the Seaport. *See id.*, Figure 3.1. Overall, low-income ratepayers who received electric supply from individual residential suppliers between July 2015 and June 2018 were charged at least \$57 million more than they would have been charged for basic service from their electric distribution company. *Id.*, Table 2.1.

d. Harm to Non-Low-Income Ratepayers

Non-low-income ratepayers are also harmed by the impact of the individual residential supply market on low-income ratepayers. Specifically, all ratepayers pay more due to the higher rates charged to low-income ratepayers by individual residential electric suppliers, as detailed below:

i. Low-income discount rate

Households that qualify for a low-income rate receive a subsidy in the form of a reduced electricity distribution rate, or discount. *See* G.L. c. 164, § 1F(4) and 220 C.M.R. § 11.04(5). All other ratepayers fund the subsidy through the Residential Assistance Adjustment Factor, or “RAAF.” *See, e.g., Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid*, D.P.U. 18-RAAF-09, Exh. MJP-1, at 3 (2018) (“Each RAAF is comprised of a base factor for the recovery of estimated Rate R-2 [low-income] discounts and arrears forgiveness for the upcoming 12 months, and a reconciliation factor to credit the prior periods’ over-recoveries.”).

The discount provided applies to the total charges—delivery and supply—reflected on the electric bill. *See, e.g., Massachusetts Electric Service Rates*, <https://www.nationalgridus.com/MA-Home/Rates/Service-Rates> (“Eligible customers will now receive a credit based on 29 percent of the total charges reflected on their bill.”). The amount of the discount varies by distribution company, from 25 percent (Fitchburg Gas & Electric) to 36 percent (Eversource). *See Boston Gas Company and Colonial Gas Company, each d/b/a National Grid*, D.P.U. 17-170, Exh. Network-1-8 (March 12, 2018) (providing a list of low-income discount rates by distribution company). The actual amount of the subsidy thus increases if the low-income ratepayer has a higher bill because a supplier charges him or her a higher rate. Accordingly, higher supply rates for low-income ratepayers *also* result in higher distribution rates for non-low-income ratepayers who are required to pay for that subsidy.

ii. Arrearage management programs (“AMPs”)

Pursuant to statute and Department rules, each distribution company must administer an AMP to assist low-income ratepayers who fall behind in paying their bills. *See* St. 2005, c. 140, § 17; D.T.E. 05-86; D.P.U. 08-4. The AMPs “provide low-income utility consumers an opportunity to have all or a portion of an arrearage forgiven in exchange for payments of an amount and on a schedule designed individually for each participant . . . In exchange for compliance with these terms consumers are forgiven all or a portion of the arrearage by the utility company . . .” D.P.U. 08-4, at 4. The amounts forgiven by the distribution companies under the AMPs are recovered from ratepayers through the RAAF. *See, e.g.*, D.P.U. 18-RAAF-09, Exh. MJ-1, at 3. Many low-income ratepayers who receive electric supply from an individual residential supplier likely have much larger arrearages than if they had stayed with basic service, thus increasing the overall amount collected through the RAAF.

iii. Hardship protection from termination of service

Pursuant to statute and Department rules, residents who experience financial hardship and meet certain other requirements are protected from service termination. G.L. c. 164, §§ 124A, 124E, 124F, 124H; and 220 C.M.R. § 25.03. Hardship protected accounts receivable that are significantly overdue are ultimately recovered from other ratepayers, including, *e.g.*, any outstanding balances billed by an individual residential electric supplier. *See* D.P.U. 15-155, at 250–51 (allowing National Grid to recover the test year balance of hardship protected accounts receivable in the amount of \$40,607,637, amortized over five years, for an annual expense charged to ratepayers of \$8,121,527). This is possible due to the Purchase of Receivables (“POR”) program, which requires the distribution company to pick up the tab if a ratepayer on competitive supply is unable to pay his or her bill. *Investigation by the Department of Public Utilities regarding Purchase of Receivables pursuant to G.L. c. 164, § 1D and G.L. c. 164, § 76*, D.P.U. 10-53-B/C/D/E (2014). The POR program implemented by the Department in 2014 “mitigate[s] the risk that competitive suppliers bear regarding nonpayment by their customers, thus avoiding the need for suppliers to undertake costly credit screening and selective enrollment processes, particularly for small commercial and residential customers.” *Id.*, at 4.

iv. Bad debt

Arrearages and service terminations typically contribute to distribution company bad debt, which ultimately is paid through utility rates by all ratepayers. D.P.U. 08-4, at 3.

II. The Individual Residential Electric Supply Market Undermines the Commonwealth’s Public Policy to Assist Low-Income Ratepayers.

The laws and regulations described in this Request reflect the Commonwealth’s well-established public policy to assist and protect low-income ratepayers. As the Department stated in D.P.U. 08-4, at 3:

Utility bill arrearages and service terminations are a significant public policy concern, as they may (1) require consumers to sacrifice other basic needs (for example, health care, food, transportation, or child care) to pay for heating and other energy

expenses; (2) leave consumers without essential utility services; and (3) cause consumers to take extraordinary steps (such as moving to new locations in order to renew their utility service).

The data in this Request demonstrates that the effects of the individual residential electric supply market on low-income ratepayers are “undermin[ing] the policy of the commonwealth that electricity bills for low income residents should remain as affordable as possible.” *Cf.* St. 1997, c. 164, § 1(n). Indeed, low-income ratepayers who received electric supply from individual residential suppliers between July 2015 and June 2018 were charged at least \$57 million more than they would have been charged for basic service from their electric distribution company. 2019 AGO Report, Table 2.1.

The individual residential electric supply market thus also weakens the effectiveness of the low-income assistance programs, which were implemented to provide “affordability of essential energy needs.” D.P.U. 08-4, at 4. Here, there is evidence that over one-third of low-income ratepayers pay significantly higher rates for their electric supply than they would if they were not enrolled with individual residential suppliers. *See* 2019 AGO Report, at 14. High rates result in higher bills, thus affecting the affordability of the bills for low-income ratepayers.

III. The Department Should Act to Protect the Commonwealth’s Low-Income Ratepayers and to Protect the Integrity of the Low-Income Assistance Programs.

As part of Restructuring, the Legislature directed the Department to “promulgate rules and regulations to provide retail customers with the utmost consumer protections contained in law.” G.L. c. 164, § 1F. The Department should use the broad authority delegated to it by the Legislature to implement additional protections for low-income ratepayers who participate in the individual residential electric supply market. Action by the Department is necessary to ensure the Commonwealth’s goal of affordable energy bills for low-income ratepayers is no longer thwarted by high supply rates. Department action is also necessary to reduce the costs incurred by all other ratepayers who support the low-income assistance programs through various subsidies.

Protections for low-income ratepayers should include rules that require suppliers to provide guaranteed savings as compared to the fixed basic service rate to any low-income ratepayer who signs up to receive individual residential electric supply. The Public Utilities Commissions in New York, Pennsylvania, and Connecticut have all either implemented similar protections or are in the process of investigating the potential implementation of such

protections.³ In August of this year, the Illinois governor signed into law the Home Energy Affordability and Transparency (HEAT) Act (Senate Bill 651), which included a prohibition on suppliers signing up residential ratepayers receiving energy assistance unless the suppliers could provide a guarantee of savings.

IV. Conclusion

The Department should act in accordance with its long-standing commitment to protect Massachusetts' most vulnerable residents by opening an investigation to determine the extent to which the individual residential electric supply market has (1) increased low-income ratepayers' bills; (2) increased subsidy costs—paid for by *all* ratepayers—for low-income assistance programs; and (3) weakened the overall effectiveness of the low-income assistance programs.

The AGO also requests the Department use the investigation to implement additional protections for low-income ratepayers as necessary to ensure the integrity of the low-income assistance programs in the future.

WHEREFORE, the AGO respectfully requests the Department open an investigation to protect the Commonwealth's low-income ratepayers and low-income assistance programs, as described herein.

Respectfully submitted,

/s/ Elizabeth A. Anderson
Elizabeth A. Anderson
Assistant Attorney General
Massachusetts Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, Massachusetts 02108

cc: Shane Early, General Counsel
Jeffrey Leupold, Counsel III
Greggory Wade, Counsel
Attached Electronic Service List

³ See, e.g., State of New York Public Service Commission, *Proceeding on the Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*, Case 12-M-0476, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016); Connecticut Public Utilities Regulatory Authority, *Review of Feasibility, Costs, and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. State. § 16-245o(m)*, Docket No. 18-06-02, Proposed Final Decision (Dec. 2, 2019); Pennsylvania Public Utilities Commission, *Press Release: PUC Seeks Comment on a Proposed Policy Statement Setting Guidelines for CAP Customers Shopping for Electric Generation* (Feb. 28, 2019), available at: http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=4165.

VIA ELECTRONIC MAIL

Ben Dobbs, Department of Energy Resources
Colin Carroll, Department of Energy Resources
Meabh Purcell, National Grid
Brendan Vaughan, Keegan Werlin LLP
Jack Habib, Keegan Werlin LLP
Kerry Britland, Eversource
Patrick Taylor, Unitil
Jenifer Bosco, National Consumer Law Center
Charlie Harak, National Consumer Law Center
Alexa Rosenbloom, Greater Boston Legal Services
Audrey Eidelman, BCK Law, P.C.
Paul Gromer, Peregrine Energy Group
Kevin Penders, Preti Strategies
Joey Lee Miranda, Robinson and Cole
Jennifer Spinosi, CleanChoice Energy
Divonne Smoyer, Reed Smith LLP
Chris Kallagher, Direct Energy
Robert Munnely, Jr., Davis, Malm & D'Agostine