The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 18-15-F February 15, 2019

Investigation by the Department of Public Utilities, on its Own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies.

ORDER ON (1) MOTION FOR RECONSIDERATION FILED BY BAY STATE GAS COMPANY, d/b/a COLUMBIA GAS OF MASSACHUSETTS; and (2) REFUND OF TAX SAVINGS ACCRUED FROM JANUARY 1, 2018 THROUGH JUNE 30, 2018

APPEARANCES: Eric J. Krathwohl, Esq.
Rich May, P.C.
176 Federal Street
Boston, Massachusetts 02110
FOR: AGAWAM SPRINGS WATER COMPANY
Affected Company, D.P.U. 18-15-1

Danielle C. Winter, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
FOR: AQUARION WATER COMPANY OF MASSACHUSETTS, INC.
Affected Company, D.P.U. 18-15-2

Shaela McNulty Collins, Esq.
NiSource Corporate Services
4 Technology Drive, Suite 250
Westborough, Massachusetts 01581
FOR: BAY STATE GAS COMPANY, d/b/a COLUMBIA GAS OF MASSACHUSETTS
Affected Company, D.P.U. 18-15-3

James M. Avery, Esq.
Pierce Atwood LLP
100 Summer Street
Boston, Massachusetts 02110
FOR: THE BERKSHIRE GAS COMPANY
Affected Company, D.P.U. 18-15-4

Andrew J. Newman, Esq.
8 Cefalo Road
Needham, Massachusetts 02494
FOR: BLACKSTONE GAS COMPANY
Affected Company, D.P.U. 18-15-5

Matthew S. Stern, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
FOR: LIBERTY UTILITIES (NEW ENGLAND NATURAL GAS COMPANY) CORP., d/b/a LIBERTY UTILITIES
Affected Company, D.P.U. 18-15-7

Eric J. Krathwohl, Esq.
Rich May, P.C.
176 Federal Street
Boston, Massachusetts 02110
FOR: MILFORD WATER COMPANY
Affected Company, D.P.U. 18-15-8

Meabh Purcell, Esq.
National Grid
40 Sylvan Road
Waltham, Massachusetts 02451
FOR: MASSACHUSETTS ELECTRIC COMPANY, NANTUCKET ELECTRIC COMPANY, BOSTON GAS COMPANY and COLONIAL GAS COMPANY, each d/b/a NATIONAL GRID
Affected Companies, D.P.U. 18-15-9 and D.P.U. 18-15-10

Robert J. Keegan, Esq.
Robert N. Werlin, Esq.
Steven Frias, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
FOR: NSTAR ELECTRIC, d/b/a EVERSOURCE ENERGY
and NSTAR GAS d/b/a EVERSOURCE ENERGY
Affected Companies, D.P.U. 18-15-11 and
D.P.U 18-15-12

Eric J. Krathwohl, Esq.
Rich May, P.C.
176 Federal Street
Boston, Massachusetts 02110
FOR: PINEHILLS WATER COMPANY
Affected Company, D.P.U. 18-15-13

Gary Epler, Esq.
Unitil Service Corp.
6 Liberty Lane West
Hampton, New Hampshire 03842
FOR: FITCHBURG GAS AND ELECTRIC LIGHT
COMPANY (GAS and ELECTRIC DIVISIONS), d/b/a
UNITIL
Affected Companies, D.P.U. 18-15-14 and
D.P.U. 18-15-15

Maura Healey, Attorney General
Commonwealth of Massachusetts
By: Joseph W. Rogers
John J. Geary
Sarah Bresolin
Joseph Dorfler
Ashley Gagnon
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, Massachusetts 02108
Petitioner, D.P.U. 17-181
Intervenor, D.P.U. 18-15

Kerry T. Ryan, Esq.
Bogle, DeAscentis & Coughlin, P.C.
25 Foster Street, First Floor
Quincy, Massachusetts 02169
FOR: TOWN OF HINGHAM
Intervenor, D.P.U. 18-15-2

James B. Lampke, Esq.
Town of Hull
115 North Street
Hingham, Massachusetts 02043
FOR: TOWN OF HULL
Intervenor, D.P.U. 18-15-2

Jeffrey T. Blake, Esq.
Nicole J. Costanzo, Esq.
KP Law, P.C.
101 Arch Street
Boston, Massachusetts 02110
FOR: TOWN OF OXFORD
Intervenor, D.P.U. 18-15-2

TABLE OF CONTENTS

I. INTRODUCTION AND PROCEDURAL HISTORY[1]

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 ("Act") was signed into law.[2] Among other things, the Act reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. On February 2, 2018, the Department, pursuant to G.L. c. 164 §§ 76, 93, 94 and G.L. c. 165, §§ 2, 4, opened an investigation into the effect on rates of the decrease in the federal corporate income tax rate on the Department's regulated utilities. Investigation by the Department of Public Utilities, on its Own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15 (February 2, 2018).

In its Order opening the investigation, the Department found that, as a result of the lower federal corporate income tax rate, the rates being charged by certain jurisdictional companies may no longer be just and reasonable as of January 1, 2018. D.P.U. 18-15, at 4-5. Accordingly, the Department directed each company subject to the investigation[3] to

---

[1] For a more complete background and procedural history, refer to Investigation by the Department of Public Utilities, on its Own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15-A at 1-7 (June 29, 2018).

[2] Pub. L. No. 115-97, 131 Stat. 2054: An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

[3] The following companies are subject to the Department's investigation: Agawam Springs Water Company; Aquarion Water Company of Massachusetts, Inc.; Bay State Gas Company d/b/a Columbia Gas of Massachusetts; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid; Boston Gas Company and Colonial Gas Company, each d/b/a National Grid; Milford Water Company; NSTAR

file, on or before May 1, 2018, a proposal, accompanied by testimony and supporting documentation, to address the effects of the Act and, in particular, a proposal to reduce its rates, effective July 1, 2018, through the establishment of a revised cost of service incorporating the lower federal corporate income tax rate in effect as of January 1, 2018, and holding all other components used to design rates constant. D.P.U. 18-15, at 5-6. The Department also directed the companies to address in their respective proposals the adjustment of rates going forward and also incorporate the timely refund of revenues associated with the lower tax expense on current income and excess accumulated deferred income taxes ("ADIT"), and any other related adjustment necessitated by the Act. D.P.U. 18-15, at 5. Finally, to the extent that a company sought to implement any part of its rate adjustment, including the refund of excess ADIT, on a date later than July 1, 2018, the Department found that the company must demonstrate that ratepayers will not be harmed by the proposal and that the proposal is otherwise in the public interest. D.P.U. 18-15, at 6 n.9.

Electric Company, d/b/a Eversource Energy; NSTAR Gas Company, d/b/a Eversource Energy; Pinehills Water Company; and Fitchburg Gas and Electric Light Company d/b/a Unitil. D.P.U. 18-15-A at 1-3. Blackstone Gas Company and Whitinsville Water Company no longer are subject to this investigation. D.P.U. 18-15-A at 3 n.6, 43. In addition, the Department's approval of a settlement in The Berkshire Gas Company, D.P.U. 18-40-B (January 18, 2019), resolved all issues in the instant proceeding as they relate to The Berkshire Gas Company. D.P.U. 18-14-B at 13. Finally, the effect of the Act on the rates charged by Harbor Electric Energy Company will not be addressed in the instant proceeding. D.P.U. 18-15-A at 5 n.9.

On or about May 1, 2018, each electric, gas and water utility subject to this investigation filed a proposal, as directed in D.P.U. 18-15. On June 29, 2018, the Department issued an Order to address the various proposals filed by the utilities subject to this investigation. Investigation by the Department of Public Utilities, on its Own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15-A (2018). In that Order, the Department focused on the implementation of adjustments to base distribution rates for effect July 1, 2018. See D.P.U. 18-15-A at 26-27, 30-59. The Department also determined that it would address the following issues in the second phase of this investigation: (1) for the utilities that have not already agreed to return these amounts to ratepayers, the refund of amounts associated with a revised cost of service incorporating the lower federal corporate income tax rate from January 1, 2018 through June 30, 2018, and holding all other components used to design rates constant;[4] (2) the excess recovery in rates of ADIT related to the Act; and (3) the effect of the Act on the various reconciling mechanisms. D.P.U. 18-15-A at 27. On July 19, 2018, Aquarion Water Company of Massachusetts, Inc. ("Aquarion Water") and Bay State Gas Company, d/b/a Columbia Gas of Massachusetts ("Bay State") each filed a motion for reconsideration of the Department's Order in D.P.U. 18-15-A.

---

[4] The Department stated that it would address any arguments raised by the parties regarding retroactive ratemaking in the second phase of this investigation. D.P.U. 18-15-A at 27.

On July 25, 2018, after opportunity for comment, the Department issued a procedural schedule applicable to the second phase of this proceeding, which provided for discovery and the filing of briefs. No party requested an evidentiary hearing, and the Department determined that an evidentiary hearing was not necessary regarding the phase two issues.

On or about August 24, 2018, the Department received initial briefs from the Attorney General, Agawam Springs Water Company ("Agawam Springs"), Bay State, Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities ("Liberty Utilities"), Milford Water Company ("Milford Water"), Pinehills Water Company ("Pinehills Water"), and The Berkshire Gas Company ("Berkshire Gas"). The Department also received (1) a joint initial brief from Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("National Grid (Electric)"), and Boston Gas Company and Colonial Gas Company, each d/b/a National Grid ("National Grid (Gas)")[5], and (2) a joint initial brief from Aquarion Water, NSTAR Electric Company, d/b/a Eversource Energy

[5] The Department shall refer to National Grid (Electric) and National Grid (Gas) collectively in this Order as "National Grid."

("NSTAR Electric"),[6] and NSTAR Gas Company, d/b/a Eversource Energy ("NSTAR Gas").[7]

On or about August 31, 2018, the Department received reply briefs from the Attorney General, Liberty Utilities, and National Grid. The Department also received (1) a joint reply brief from Agawam Springs, Milford Water, and Pinehills Water, and (2) a joint reply brief from Eversource and Aquarion Water.

On September 24, 2018, the Department issued an Order addressing the excess recovery in rates of ADIT related to the Act and the effect of the Act on the various reconciling mechanisms, as these issues relate to Aquarion Water and National Grid (Gas). Investigation by the Department of Public Utilities, on its Own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15-D (2018). On December 21, 2018, the Department issued an Order addressing the excess recovery in rates of ADIT related to the Act and the effect of the Act on the various reconciling mechanisms, as these issues relate to Agawam Springs, Pinehills Water, Bay State, Liberty Utilities, Milford Water, National Grid, NSTAR Electric, NSTAR Gas, and Unitil. Investigation by the Department of Public Utilities, on its Own

---

6 In NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05, at 28-55 (2017), the Department approved the corporate consolidation of Western Massachusetts Electric Company with and into NSTAR Electric Company pursuant to G.L. c. 164, § 96. The legal name of Eversource's electric distribution company in Massachusetts is now NSTAR Electric Company; it continues to do business as Eversource Energy.

7 The Department shall refer to NSTAR Electric and NSTAR Gas collectively in this Order as "Eversource."

Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15-E (2018).

In the instant Order, the Department will address the motion for reconsideration filed by Bay State.[8] In addition, the Department will address the refund to ratepayers of tax savings accrued as a result of the Act from January 1, 2018 through June 30, 2018,[9] as it pertains to Bay State, Liberty Utilities, National Grid, Eversource, Unitil, Aquarion Water, Milford Water, Agawam Springs, and Pinehills Water.

II. BAY STATE MOTION FOR RECONSIDERATION

A. Introduction

At the time that the Department issued its decision in D.P.U. 18-15-A, Bay State had a pending base rate case before the Department, which was docketed as D.P.U. 18-45. Bay State made a number of Act-related proposals in D.P.U. 18-45, and referred to these proposals in its various filings in D.P.U. 18-15. In D.P.U. 18-15-A at 39-40, the Department allowed Bay State's proposal to defer the implementation of the required

---

[8] Milford Water, Agawam Springs and Pinehills Water each argue, on brief, that the Department should "reverse and vacate its decision in D.P.U. 18-15-A" regarding the adjustments to base distribution rates effective July 1, 2018 (Milford Water Brief at 12; Agawam Springs Brief at 14; Pinehills Water Brief at 14). However, unlike, Bay State and Aquarion Water, Milford Water, Agawam Springs and Pinehills Water did not file a timely motion for reconsideration of D.P.U. 18-15-A and, therefore, the Department will not address these arguments.

[9] For NSTAR Electric, the period at issue is January 2018, because the company incorporated the lower federal corporate income tax rate in its rates effective February 1, 2018. NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05-C at 9-11 (2018).

Act-related base rate change from July 1, 2018, to the effective date of new rates in D.P.U. 18-45 (i.e., March 1, 2019). In addition, the Department also approved Bay State's proposal to return to ratepayers approximately $12.5 million associated with tax savings from the period January 1, 2018, through February 28, 2019, with interest at the prime rate. D.P.U. 18-15-A at 38-40.[10]

In its compliance filing to D.P.U. 18-15-A, Bay State argued that it should be allowed to implement the Act-related rate change on July 1, 2018, rather than to defer the implementation to March 1, 2019, as the company originally proposed (Compliance Filing (July 2, 2018) Cover Letter at 1, citing D.P.U. 18-15-A at 59-60). On June 3, 2018, Bay State filed a motion for "Approval of Rate Reduction" and raised the same argument. On July 10, 2018, the Department issued an Order allowing an adjustment to Bay State's rates, effective July 1, 2018, to account for the reduction in the federal corporate income tax rate. Investigation by the Department of Public Utilities, on its Own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies, D.P.U. 18-15-B at 9 (2018).

---

[10] Bay State proposed to return the majority of these amounts through a distribution rate credit that would be in effect from March 1, 2019 through April 30, 2020, with the remaining $247,000, associated with the company's local production and storage function, to be refunded through the company's 2019 off-peak cost of gas adjustment clause filing. D.P.U. 18-15-A at 39. Bay State asserted that its proposal to refund tax savings to customers, with interest, for the period starting January 1, 2018, was contingent upon Department approval of its proposal to defer any Act-related rate changes until March 1, 2019. D.P.U. 18-15-A at 39 n.35.

In its Order, the Department noted that the approval of Bay State's request to reduce rates effective July 1, 2018, in no way modified the findings in D.P.U. 18-15-A at 39, that the reduction in federal corporate income tax rate as a result of the Act constituted a significant, known and measurable change in Bay State's cost of service and that this change in the company's cost of service rebuts the presumption that rates as of January 1, 2018, were just and reasonable. D.P.U. 18-15-B at 8. Further, the Department found that if Bay State sought to modify or otherwise request that the Department reconsider the findings in D.P.U. 18-15-A, the company was required to file a timely and supported motion with the Department. D.P.U. 18-15-B at 8. Further, we noted that unless otherwise ordered by the Department, Bay State shall return to ratepayers all amounts associated with tax savings from the period January 1, 2018 through June 30, 2018, with interest at the prime rate, starting March 1, 2019. D.P.U. 18-15-B at 8-9.

Bay State did not challenge the Department's Order in D.P.U. 18-15-B. However, on July 19, 2018, Bay State timely filed a motion for reconsideration ("Bay State Motion") of the Department's Order in D.P.U. 18-15-A. Subsequently, on September 5, 2018, the parties in D.P.U. 18-45 submitted a Joint Motion for Approval of Settlement Agreement and a proposed Settlement Agreement, which included the refund of tax savings from the period January 1, 2018 through June 30, 2018, through a six-month distribution rate credit that was to begin on November 1, 2018 (Settlement Agreement at § 1.6.7). The Settlement Agreement also included a proposal for the return to ratepayers of excess ADIT (Settlement Agreement at §§ 1.6.4, 1.6.5, 1.6.6). On September 19, 2018, prior to any Department

action on the Bay State Motion or the proposed Settlement Agreement, Bay State filed a motion to withdraw its base rate case, which was approved by the Department on the same day.

B. Standard of Review

The Department's Procedural Rule, 220 CMR 1.11(10), authorizes a party to file a motion for reconsideration within 20 days of service of a final Department Order. The Department's policy on reconsideration is well-settled. See, e.g., Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1981). Reconsideration of previously decided issues is granted when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. The Berkshire Gas Company, D.P.U. 905-C at 6-7 (1982) (finding extraordinary circumstances where union contract expiration and subsequent strike prevented company from providing ratified union contract payroll increases until several days after final Order issued); cf. Boston Gas Company, D.P.U. 96-50-C (Phase I) at 25 (1997) (finding creation of nonunion compensation pool after the close of the record was not an extraordinary circumstance). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. See, e.g., Boston Gas Company, D.P.U. 96-50-C (Phase I) at 22 (1997); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2, 25-26 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

A motion for reconsideration should not attempt to reargue issues considered and decided in the main case. See, e.g., Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3, 7-9 (1991); Boston Edison Company, D.P.U. 1350-A at 4-5 (1983). The Department has denied reconsideration where the request rests upon information that could have been provided during the course of the proceeding and before issuance of the final Order. See, e.g., Boston Gas Company, D.P.U. 96-50-C (Phase I) at 36-37 (1997); Boston Gas Company, D.P.U. 96-50-B (Phase I) at 8 (1997). The Department has stated that the record in a proceeding closes, at the latest, when an Order is issued. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987). Thus, the Department may deny reconsideration when the request rests on a new issue or updated information presented for the first time in the motion for reconsideration. See, e.g., Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987).

C. Positions of the Parties

Bay State argues that the Department improperly relied on the Act-related proposals it made in D.P.U. 18-45 as a basis for directing Bay State to make these Act-related rate adjustments in D.P.U. 18-15 (Bay State Motion at 1). According to Bay State, the Act-related testimony and supporting exhibits filed in D.P.U. 18-45 were never offered into evidence in the instant proceeding, were improperly incorporated by reference by the Department in this proceeding, and contradict evidence existing in the record of the instant proceeding (Bay State Motion at 1-2, 7-13). In particular, Bay State asserts that it indicated

through its discovery responses in D.P.U. 18-15 that if the Department intended to address in the instant proceeding the company's Act-related proposals made in D.P.U. 18-45, then the company would "extract" its Act-related proposals from the base rate case and put those proposal on a "separate track" comparable to what was filed by other companies not currently engaged in rate cases (Bay State Motion at 10, citing Exh. DPU-1-1). Further, Bay State asserts that this separate track meant that the company would retract its proposal to refund tax savings starting January 1, 2018, and instead implement a rate change as of July 1, 2018, without retroactive effect (Bay State Motion at 10, citing Exh. DPU-1-1).

Bay State also argues that the Department improperly imposed a retroactive rate adjustment on the company, even though the Department determined that further investigation was needed into whether it had the legal authority to require a refund of any tax savings accrued from January 1, 2018 through June 30, 2018 (Bay State Motion at 1-2). Bay State maintains that the Department cannot lawfully impose a retroactive rate adjustment without the company's acquiescence, which Bay State contends it did not provide in the instant proceeding (Bay State Motion at 6).

Based on these arguments, Bay State requested that the Department reconsider its decision in D.P.U. 18-15-A and "retract or void" the approval of the company's proposal, made in D.P.U. 18-45, to return to ratepayers approximately $12.5 million associated with

tax savings from the period January 1, 2018 through February 28, 2019,[11] with interest at the prime rate (Bay State Motion at 14). Instead, Bay State asserted that the Department should consider this proposal as part of the company's base rate proceeding in D.P.U. 18-45, where the proposal was initially made (Bay State Motion at 14).

On July 26, 2018, the Attorney General filed a response to the Bay State Motion ("Response to Bay State Motion"). The Attorney General argues that Bay State raises no new issues or arguments to justify reconsideration of the Department's Order in D.P.U. 18-15-A and that the Department's Order was and clear and should be followed (Response to Bay State Motion at 1). As such, the Attorney General asserts that the Department should deny the Bay State Motion (Response to Bay State Motion at 1).

D. Analysis and Findings

As noted above, subsequent to our decision in D.P.U. 18-15-A, the Department allowed Bay State's request to adjust it rates, effective July 1, 2018. D.P.U. 18-15-B at 9. Bay State did not challenge that decision. Therefore, what remains to be determined is whether Bay State has presented an appropriate basis to reconsider the Department's approval in D.P.U. 18-15-A of its proposal to return Act-related tax savings to ratepayers that have accrued between January 1, 2018 and June 30, 2018.

On September 5, 2018, Bay State submitted a Settlement Agreement, which addressed the remaining Act-related issues, including the refund of tax savings from the period

---

[11] As noted above, Bay State did not challenge the Department's Order in D.P.U. 18-15-B allowing the adjustment to Bay State's rates, effective July 1, 2018, to account for the reduction in the federal corporate income tax rate.

January 1, 2018 through June 30, 2018. However, on September 19, 2018, Bay State withdrew its base rate case and with it the Settlement Agreement. Therefore, Bay State's requested relief in its motion – to allow for reconsideration of whether it should be required to return any tax savings accrued between January 1, 2018 and June 30, 2018 in its rate case – is not a viable remedy.

Despite the fact that Bay State did not challenge the findings in D.P.U. 18-15-B, we find that the Bay State Motion was timely and acted to preserve the company's arguments regarding the Department's legal authority to order the refund of tax savings accrued from January 1, 2018, through June 30, 2018. Based on the manner in which the company presented its various filings, the Department approved in D.P.U. 18-15 (i.e., the instant tax Act investigation docket) what appeared to be Bay State's proposal to return to ratepayers all Act-related tax savings starting January 1, 2018, although deferred until the effective date of any new rates in D.P.U. 18-45 (i.e., Bay State's rate case). See D.P.U. 18-15-A at 39. This view is further reinforced by the Department's approval of Bay State's amended proposal to adjust its rates effective July 1, 2018, rather than wait until March 1, 2019, as it had originally proposed. See D.P.U. 18-15-B at 9.

After review of the Bay State Motion, the Department concludes that, based on the ambiguity in the company's filings, we inadvertently failed to appreciate the contingent nature of the company's Act-related proposals in D.P.U. 18-45 in the context of this proceeding. Accordingly, to the extent that it seeks reconsideration of the Department's approval in D.P.U. 18-15-A of Bay State's proposal to return Act-related tax savings to ratepayers that

have accrued between January 1, 2018 and June 30, 2018, the Bay State Motion is granted. The Department will address Bay State's arguments as they pertain to the refund of tax savings accrued from January 1, 2018 through June 30, 2018, in the context of similar arguments raised by other companies below in Section III.

III. REFUND OF TAX SAVINGS ACCRUED FROM JANUARY 1, 2018 THROUGH JUNE 30, 2018

A. Introduction

In D.P.U. 18-15-A, the Department found that the change in the federal corporate income tax rate was a significant, known and measurable reduction in certain companies' costs of service and that it was necessary to order an adjustment, effective July 1, 2018, to the companies' rates. See D.P.U. 18-15-A at 29-30, citing Investigation into Effect of the Reduction in Federal Income Tax Rates on Utility Rates as a Result of the Tax Reform Act of 1986, D.P.U. 87-21-A at 7-8 (1987). Subsequently, Bay State, Liberty Utilities, National Grid (Electric), NSTAR Gas, Unitil, Agawam Springs and Pinehills Water adjusted their respective rates, effective July 1, 2018.[12] In addition, pursuant to directives issued in D.P.U. 18-15-A, Milford Water and National Grid (Gas) made adjustments to their respective rates in their then-pending base rate proceedings.[13] Therefore, as a result of the

---

12 The Department also approved Unitil's proposal to return to ratepayers the tax savings accrued from January 1, 2018, through June 30, 2018. D.P.U. 18-15-A at 57-59.

13 Aquarion Water filed a motion for reconsideration rather than make the required rate reduction. No other company challenged the Department's Order in D.P.U. 18-15-A. Further, NSTAR Electric adjusted its rates as of February 1, 2018, to account for the Act. D.P.U. 17-05-C at 9-11. Further, Berkshire Gas made Act-related rate

Department's Order in D.P.U. 18-15-A, Massachusetts ratepayers received a prompt benefit of the change in the federal tax code as it relates to base rates effective on and after July 1, 2018.[14]

Similarly, in D.P.U. 18-15-D and D.P.U. 18-15-E, the Department determined that the reduction in the federal corporate income tax rate resulted in booked ADIT that are in excess of future liabilities for the companies and, therefore, it was necessary and appropriate for these companies to return to ratepayers any excess ADIT related to the Act. D.P.U. 18-15-D at 13; D.P.U. 18-15-E at 22-23. Pursuant to these Orders, Aquarion Water, Bay State, Liberty Utilities, Milford Water, National Grid, NSTAR Electric, NSTAR Gas, and Unitil have begun to return excess ADIT to ratepayers. No party has appealed these Orders. Therefore, as a result of the Department's Orders in D.P.U. 18-15-D and D.P.U. 18-15-E, Massachusetts ratepayers received a prompt benefit of the change in the federal tax code as it relates to excess ADIT.

In the sections below, the Department will address whether it is appropriate for Eversource, Aquarion Water, Bay State, Liberty Utilities, National Grid, Milford Water, Pinehills Water, and Agawam Springs to return to ratepayers any tax savings as a result of the Act that were accrued from January 1, 2018 through June 30, 2018. As discussed below,

---

adjustments as part of its recently-approved settlement with the Attorney General in D.P.U. 18-40. See D.P.U. 18-40-B at 13.

[14] As noted above, Aquarion Water did not adjust its rates effective July 1, 2018, or follow the Department's directives to book the tax savings as a regulatory liability and return those amounts to ratepayers as part of its then-pending base rate case. Rather, Aquarion Water filed a motion for reconsideration of D.P.U. 18-15-A.

the companies offer several arguments in support of their position that the Department cannot, as a matter of law, direct the refund of such savings. Nonetheless, some companies also posit that the Department may examine the individual circumstances of each utility and evaluate the company's earnings to determine whether equity would suggest that customers should be the beneficiaries of a refund for tax savings accrued from January 1, 2018 through June 30, 2018. Conversely, the Attorney General argues that ratepayers are entitled to all of the Act-related savings accrued during this time period and that to return such savings would not violate law or policy.

B. Positions of the Parties

1. Companies

a. Retroactive Ratemaking

Eversource, Aquarion Water, Bay State, Liberty Utilities, National Grid, Milford Water, Pinehills Water, and Agawam Springs argue that because base rates are set prospectively, the Department is not authorized to make retroactive adjustments to base rates based on a review of past losses or gains to either the utility, customers, or particular classes of customers (Eversource/Aquarion Water Brief at 12-17, citing e.g., G.L. c. 164, § 94; Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 627-628 (2004); Massachusetts Electric Company v. Department of Public Utilities, 383 Mass. 675, 676 n.1 (1981); Boston Gas Company, D.T.E. 96-50-D at 7 (2001); The Berkshire Gas Company, D.P.U. 92-210, at 236 (1993); Bay State Brief at 1; Liberty Utilities Brief at 10-11, citing same; National Grid Brief at 6-12, citing same;

Milford Water Brief at 4-5; Pinehills Water Brief at 4-5; Agawam Springs Brief at 4-5; Eversource/Aquarion Water Reply Brief at 1-2; National Grid Reply Brief at 8; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 9-12). Thus, these companies claim that once established by the Department, a base rate cannot be adjusted to account for fluctuations in actual costs, but can only be changed prospectively when a company files for new rates pursuant to the procedures set out in G.L. c. 164, § 94 (Eversource/Aquarion Water Brief at 17; Bay State Brief at 1; Liberty Utilities Brief at 16; National Grid Brief at 7; Milford Water Brief at 4-5; Pinehills Water Brief at 4-5; Agawam Springs Brief at 4-5; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 9-12).[15] Accordingly, Eversource, Aquarion Water, Bay State, Liberty Utilities, National Grid, Milford Water, Pinehills Water, and Agawam Springs assert that the Department is prohibited from retroactively adjusting the companies' Department-approved rates to account for the impact of the Act (Eversource/Aquarion Water Brief at 17-18; Bay State Brief at 1; Liberty Utilities Brief at 16; National Grid Brief at 28-29; Milford Water Brief at 5; Pinehills Water Brief at 4-5; Agawam Springs Brief at 4-5).

Further, Eversource, Aquarion Water, Liberty Utilities, and National Grid argue that the previous refund of federal tax savings pursuant to the Department's decision in

---

[15] In particular, Eversource, Aquarion Water, Liberty Utilities, and National Grid contend that they charged customers during the applicable refund period pursuant to Department-approved rates that were based on a representative level of expenses and found to be just and reasonable by the Department (Eversource/Aquarion Water Brief at 17; Liberty Utilities Brief at 16; National Grid Brief at 15; Eversource/Aquarion Water Reply Brief at 6-7; National Grid Reply Brief at 3).

D.P.U. 87-21-A is not dispositive of whether a tax savings refund is appropriate in the instant case (Eversource/ Aquarion Water Brief at 9, 20-21; Liberty Utilities Brief at 8; National Grid Brief at 9). In particular Eversource, Aquarion Water, Liberty Utilities, and National Grid note that the tax change presented in D.P.U. 87-21-A was known to the companies and addressed by the Department well before it took effect and, therefore, raised no retroactive ratemaking concerns (Eversource/Aquarion Water Brief at 9, 20-21; Liberty Utilities Brief at 8; National Grid Brief at 19).[16]

b. Presumption of Just and Reasonable Rates

Eversource, Aquarion Water, Liberty Utilities, National Grid, Milford Water, Pinehills Water, and Agawam Springs take issue with the Department's decision in D.P.U. 18-15-A that the change in the federal corporate income tax rate is a significant, known, and measurable reduction in the companies' costs of service sufficient to rebut the presumption that rates as of January 1, 2018, were just and reasonable (Eversource/Aquarion Water Brief at 20, citing D.P.U. 18-15-A at 29; Liberty Utilities Brief at 19-20; National

[16] Moreover, National Grid argues that the instant proceeding is distinguishable from federal precedent that allows an exception to the prohibition against retroactive ratemaking when a utility is put on notice of a potential future rate adjustment (National Grid Brief 11, citing OXY USA. v. Federal Energy Regulatory Commission, 64 F.3d 679, 699 (D.C. Cir. 1995)). According to National Grid, the OXY USA court held that the notice exception does not violate the rule against retroactive ratemaking "'because all parties are placed on notice that the agency has the authority to order a refund'" (National Grid Brief at 11, citing OXY USA. v. Federal Energy Regulatory Commission, 64 F.3d 679, 699 (D.C. Cir. 1995)). National Grid argues, however, that this notice exception is inapplicable because, under Massachusetts law, the Department has no such refund authority (National Grid Brief at 11).

Grid Brief at 19; Milford Water Brief at 5; Pinehills Water Brief at 5; Agawam Springs Brief at 5). In particular, Eversource, Aquarion Water, Liberty Utilities, and National Grid contend that because the just and reasonable standard has been developed through Massachusetts law and Department precedent to give meaning and substance to the Department's inquiry into the propriety of prospective rate changes proposed under G.L. c. 164, § 94, the standard also is subject to the legal restraint on the Department's authority to order retroactive adjustments (Eversource/Aquarion Water Brief at 21-22, citing G.L. c. 164, § 94; Maryland Casualty Insurance Company v. NSTAR, 471 Mass. 416, 425 (2015); Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 637 (2004); Attorney General v. Department of Telecommunications and Energy, 438 Mass. 256, 264 n.13 (2002); Town of Hingham v. Department of Telecommunications and Energy, 433 Mass. 198, 203, 205 (2001); Attorney General v. Department of Public Utilities, 392 Mass. 262, 265 (1984); Attorney General v. Department of Public Utilities, 390 Mass. 208, 227 (1983); New England Telephone and Telegraph Company v. Department of Public Utilities, 371 Mass. 67, 73 (1976); City of Newton v. Department of Public Utilities, 367 Mass. 667, 679-680 (1975); Metropolitan District Commission v. Department of Public Utilities, 352 Mass. 18, 27 (1967); New England Gas Company, D.P.U. 10-114, at 22 (2011); Boston Gas Company, D.T.E. 96-50-D at 7-8 (2001); Massachusetts Electric Company, D.P.U. 95-40, at 155 (1995); Western Massachusetts Electric Company, D.P.U. 85-270, at 10 (1986); Liberty Utilities Brief at 20-21, citing same; National Grid Brief at 19-20). Therefore, these

companies assert that the Department's reliance on the just and reasonable standard as the basis for a retroactive refund of tax savings is misplaced (Eversource/Aquarion Water Brief at 22; Liberty Utilities Brief at 21; National Grid Brief at 20).[17]

Further, Eversource, Aquarion Water, Liberty Utilities, and National Grid contend that the Department's reliance on the tax reductions of the Act as affording an "unqualified benefit to utilities" sufficient to rebut the presumption that rates as of January 1, 2018 are just and reasonable, is also flawed (Eversource/Aquarion Water Brief at 23; Liberty Utilities Brief at 21; National Grid Brief at 23). In particular, Eversource, Aquarion Water, Liberty Utilities, and National Grid assert that credit ratings agencies have observed the potential adverse impact of the Act on utility cash flows and credit metrics and, therefore, the Department cannot presume that the companies earned at or above their respective allowed returns on equity ("ROE") or that rates are no longer just and reasonable simply because the federal corporate income tax rate has been reduced (Eversource/Aquarion Water Brief at 23-24, citing Rating Action: Moody's Changes Outlooks on 25 US Regulated Utilities Primarily Impacted By Tax Reform, Moody's Investors Service, January 19, 2018; Liberty Utilities Brief at 22, citing same; National Grid Brief at 23-24, citing same).

---

[17] Eversource, Aquarion, Liberty Utilities, and National Grid also argue that the Department's reliance on D.P.U. 87-21-A to support a finding that the companies' rates are not just and reasonable is flawed because, as they note above, the decision in D.P.U. 87-21-A resulted in a prospective change in rates and did not implicate retroactive ratemaking concerns (Eversource/Aquarion Brief at 20-21; Liberty Utilities Brief at 18-19; National Grid Brief at 23; Eversource/Aquarion Water Reply Brief at 2-3).

c. Known and Measurable Standard

Eversource, Aquarion Water, Liberty Utilities, and National Grid argue that base distribution rates are set prospectively based on a representative level of a company's revenues and expenses (i.e., a test year), adjusted for known and measurable changes (Eversource/Aquarion Water Brief at 24-25, citing Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 627-628 (2004); Liberty Utilities Brief at 23, citing same; National Grid Brief at 8, 16, citing same). Moreover, Eversource and Aquarion Water argue that known and measurable changes must be based on record evidence and are permitted only for limited period of time after the test year (Eversource/Aquarion Water Brief at 25-26, citing NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05, at 233 (2017); Bay State Gas Company, D.P.U. 12-25, at 133-134 (2012); New England Telephone, D.P.U. 18210, at 2 (1975); Liberty Utilities Brief at 24, citing same; National Grid Brief at 21; Eversource/Aquarion Water Reply Brief at 1-2). In this regard, Eversource, Aquarion Water, Liberty Utilities, and National Grid assert that a known and measurable tax adjustment applied years after the companies' rates were set is not reasonably related to the respective test years in those rate cases (Eversource/Aquarion Water Brief at 26; Liberty Utilities Brief at 24; National Grid Brief at 21). Thus, Eversource, Aquarion Water, Liberty Utilities, and National Grid contend that using the known and measurable standard as a basis to order a refund of tax savings accrued from January 1, 2018 to June 30, 2018, would undermine the predictability of Department precedent, the certainty provided to jurisdictional

companies for the conduct of their business, the confidence of investors in the stability of the regulatory construct, and the stability of customers' rates (Eversource/Aquarion Water Brief at 26-27, citing NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05-B at 129 (2018); Bay State Gas Company, D.P.U. 09-30, at 159 (2009); Nunnally, D.P.U. 92-34-A at 5 (1993); Liberty Utilities Brief at 24-25, citing same; National Grid Brief at 22-23, citing same).

d. Single Issue Ratemaking

Eversource, Aquarion Water, Liberty Utilities, National Grid, Milford Water, Pinehills Water, and Agawam Springs argue that the Department should not authorize a rate adjustment based on one cost component (i.e., federal tax expense) in a company's cost of service (Eversource/Aquarion Water Brief at 37-39; Liberty Utilities Brief at 12; National Grid Brief at 15-16; Milford Water Brief at 9-11; Pinehills Water Brief at 11-13; Agawam Springs Brief at 11-13; National Grid Reply Brief at 2; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 12-13). In particular, National Grid and Liberty Utilities contend that the Department must review in a base rate proceeding all of a company's expenses and revenues in order to determine an appropriate level of just and reasonable rates (National Grid Brief at 16, citing Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 628 (2004); Boston Consolidated Gas vs. Department of Public Utilities, 321 Mass. 259, 268 (1946); Liberty Utilities Brief at 12).

In this regard Eversource, Aquarion Water, Liberty Utilities, Milford Water, Pinehills Water, and Agawam Springs argue that the Department's investigation was inadequate because ROE is an essential aspect of the Department's inquiry into the propriety of rates (Eversource/ Aquarion Water Brief at 22-23, citing NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05-B at 129 (2018); Eastern Edison Company, D.P.U. 1580 (Part I) at 13 (1984); Liberty Utilities Brief at 21, citing same; Milford Water Brief at 6-7; Pinehills Water Brief at 6-7; Agawam Springs Brief at 6-7). Eversource, Aquarion Water, and Liberty Utilities note that the Department neither investigated nor considered the companies' earnings in the period between January 1, 2018, and the date that new base rates reflecting the federal tax change (i.e., January 1, 2018, for NSTAR Electric and July 1, 2018, for NSTAR Gas and Liberty Utilities) became effective (Eversource/Aquarion Water Brief at 23; Liberty Utilities Brief at 21).

Similarly, Milford Water, Pinehills Water, and Agawam Springs contend that the companies' overall financial condition and, in particular, earned ROE should be examined when determining whether rates are just and reasonable, and these companies assert that they have not earned a reasonable ROE for several years leading up to this proceeding (Milford Water Brief at 7-8; Pinehills Water Brief at 7-8; Agawam Springs Brief at 7-8; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 5). These companies assert that their current revenues are insufficient and that lowering rates to account for the refund period would exacerbate this problem (Milford Water Brief at 8-9; Pinehills Water Brief at 8-9; Agawam Springs Brief at 8-9). Pinehills Water and Agawam Springs also claim that they

can demonstrate that other significant changes in their respective costs of service have occurred since their rates were established and, therefore, a rate adjustment based on a single cost item should not be permitted (Pinehills Water Brief at 12-13; Agawam Springs Brief at 12-13).

Further, Eversource, Aquarion Water, National Grid, Milford Water, Pinehills Water, and Agawam Springs argue that single issue ratemaking is generally disfavored and it is only permitted when the magnitude of an expense increase is significant enough to require extraordinary treatment and when a more broad-base rate proceeding would burden ratepayers with additional expense (Eversource/Aquarion Brief at 37-38, citing Attorney General v. Department of Public Utilities, 453 Mass. 191, 201 (2009); National Grid Brief at 17, citing same; Milford Water Brief at 10, citing same; Pinehills Water Brief at 12, citing same; Agawam Springs Brief at 12, citing same). In this regard, Eversource and Aquarion Water note that, at the time the Department issued D.P.U. 18-15-A, Aquarion Water had a base rate proceeding pending before the Department and, therefore, there was no added burden to ratepayers that would justify a single issue adjustment to Aquarion Water's cost of service (Eversource/Aquarion Water at 37-39, citing Aquarion Water Company of Massachusetts, Inc., D.P.U. 17-90 (2018)). Similarly, National Grid notes that its gas operating companies were subject to a pending base rate proceeding at the time that the Department issued D.P.U. 18-15-A and, therefore, there was no added burden to ratepayers that would justify a single issue adjustment to the gas companies' cost of service (National Grid Brief at 18-19, citing Boston Gas Company and Colonial Gas Company,

D.P.U. 17-170 (2018)). Milford Water and Agawam Springs raise similar arguments, noting that they too were subject to pending base rate proceedings when the Department issued D.P.U. 18-15-A (Milford Water Brief at 9-11, citing Milford Water Company, D.P.U. 17-107 (2018); Milford Water/Pinehills Water/Agawam Springs Reply Brief at 13-14, citing Agawam Springs Water Company, D.P.U. 17-52).

Finally, Eversource, Aquarion, Liberty Utilities, National Grid, Milford Water, Pinehills Water, and Agawam Springs assert that any directive to a company to refund tax savings without considering whether the company is earning below its authorized ROE would result in unlawful confiscation (Eversource/Aquarion Brief at 5, 19; Liberty Utilities Brief at 28; National Grid Brief at 24-26; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 14-15).

e. Filed Rates Doctrine

Eversource, Aquarion Water, Liberty Utilities, and National Grid argue that an adjustment to their costs of service for January 1, 2018 through June 30, 2018, would violate the filed rates doctrine, which prohibits a utility from charging rates for its services other than those approved and filed with the Department (Eversource/Aquarion Water Brief at 18, citing e.g., G.L. c. 164, § 94; Town of Framingham, D.T.E. 02-46, Interlocutory Order on Scope, at 7 (2003); Cambridge Electric Light Company, D.P.U. 94-101/95-36, at 19 (1995); Liberty Utilities Brief at 16-17, citing same; National Grid at 12-15, citing same). In this regard, Eversource, Aquarion Water, Liberty Utilities, and National Grid contend that they have appropriately charged ratepayers Department-approved rates from January 1, 2018,

through June 30, 2018 (Eversource/Aquarion Water Brief at 19, citing NSTAR Gas Company, D.P.U. 14-150, at 17 n.8, 433-434 (2015); Aquarion Water Company of Massachusetts, Inc., D.P.U. 11-43, at 286 (2012); Western Massachusetts Electric Company, D.P.U. 10-70 (2011); Boston Edison Company, D.T.E. 05-85, at 33 (2005); Liberty Utilities Brief at 17, citing Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities, D.P.U. 15-75 (2016); National Grid Brief at 14, citing Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 15-155, at 376-383, 530 (2016)).

f. Threshold Test

Eversource, Aquarion Water, Liberty Utilities, and National Grid argue that, although the Department cannot make retroactive rate adjustments as a matter of law, it may examine the circumstances of each individual utility and, in certain cases, apply a "threshold test" based on the company's earnings to determine whether equity would suggest that customers should be the beneficiaries of a refund for tax savings accrued from January 1, 2018 through June 30, 2018 (Eversource/Aquarion Water Brief at 29, citing Fitchburg Gas and Electric Light Company, D.T.E./D.P.U. 05-GAF-P4/06-28, at 14-30 (2015); Liberty Utilities Brief at 27, citing same; National Grid at 24-25; Eversource/Aquarion Water Reply Brief at 4-5, 7-8, 11; National Grid Reply Brief at 17). More specifically, they propose that if a company earned at or below their authorized ROE during 2018, the company should not be required to provide a refund to ratepayers of tax savings accrued during January 1, 2018 through June 30, 2018 (Eversource/Aquarion Water Brief at 30; Liberty Utilities Brief at 28; National Grid at 25; Eversource/Aquarion Water Reply Brief at 5, 7-8). Conversely, Eversource,

Aquarion Water, Liberty Utilities, and National Grid propose that if a company earned at or above its authorized ROE during 2018, then ratepayers would be entitled to a refund (Eversource/Aquarion Water Brief at 30; Liberty Utilities Brief at 28; National Grid Brief at 24-25; Eversource/Aquarion Water Reply Brief at 5, 7-8).[18] Eversource, Aquarion Water, and Liberty Utilities assert that application of such a test does not require a lengthy general rate case, is supported by Department precedent, preserves the fundamental regulatory principle that rates must be just and reasonable, and avoids retroactive ratemaking (Eversource/Aquarion Water Brief at 29-32, citing Attorney General v. Department of Public Utilities, 453 Mass. 191, 201-202 (2009); Fitchburg Gas and Electric Light Company, D.T.E./D.P.U. 05-GAF-P4/06-268, at 24-30 (2015); Fitchburg Gas and Electric Light Company, D.T.E. 05-GAF-P4/06-28 at 9, 15 (2006); Bay State Gas Company, D.T.E. 05-27, at 178, 189-190 (2005); Fitchburg Gas and Electric Light Company, D.T.E. 02–24/25, at 170–172 (2002);; Liberty Utilities Brief at 27-31, citing same).[19]

---

[18] Eversource, Aquarion and Liberty Utilities propose to refund to ratepayers the amount of earnings above the authorized ROE for the applicable refund period (Eversource/Aquarion Water Brief at 35; Liberty Utilities Brief at 32). National Grid proposes to refund to ratepayers an amount "equal to the reduction in federal tax expense that would result from the respective revenue requirement gross-up factor at the time of base distribution rates changed as a result of the last general rate case, reflecting the reduced federal tax rate of 21 percent" (Exh. NG-1, at 19).

[19] Eversource and Aquarion Water submit that, applying the threshold test to them, there is no basis to refund tax savings accrued from January 1, 2018 through June 30, 2018 for Aquarion or for January 2018 for NSTAR Electric (Eversource/Aquarion Water Brief at 33-36). Eversource and Aquarion Water argue that, with respect to NSTAR Gas, the Department should base the threshold test on the company's 2018 earnings as compared to its authorized ROE (Eversource/Aquarion Water Brief at 35). Liberty

Milford Water. Pinehills Water, and Agawam Springs generally support the aforementioned threshold test (Milford Water/Pinehills Water/Agawam Springs Reply Brief at 16). However, these companies argue that to the extent a company's rates changed during 2018 (e.g., Milford Water's rates resulting from D.P.U. 17-107), the Department should compare the company's previously approved ROE with the actual ROE for the twelve-month period prior to the change in rates to determine whether a refund is appropriate (Milford Water/Pinehills Water/Agawam Springs Reply Brief at 16).

g. Response to the Attorney General

Eversource, Aquarion Water, National Grid, Milford Water, Pinehills Water, and Agawam Springs reject the Attorney General's assertion that the Department's directive that the companies book the tax savings as regulatory liabilities provides a sufficient basis to subsequently order a refund of those savings (Eversource/Aquarion Water Reply Brief at 9-11; National Grid Brief at 12-18; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 5-7). Rather, they argue that the purpose of establishing regulatory assets and liabilities is to maintain the continued recovery of prudently incurred costs and not to justify retroactive changes to previously-established rates (Eversource/Aquarion Water Reply Brief at 10, citing Fitchburg Gas and Electric Light Company, D.P.U. 11-01/D.P.U. 11-02, at 52 (2011); Aquarion Water Company of Massachusetts, D.P.U. 04-77, at 5 (2005); North Attleboro Gas Company, D.P.U. 93-229, at 7-8 (1994); National Grid Reply Brief

---

Utilities and National Grid make similar arguments (Liberty Utilities Brief at 31-32; National Grid Brief at 24-25).

at 13, citing New England Gas Company, D.P.U. 12-68 (2013); Milford Water/Pinehills Water/Agawam Springs Reply Brief at 6-7).

Further, Eversource, Aquarion Water, National Grid, Milford Water, Pinehills Water, and Agawam Springs argue that, contrary to the Attorney General's assertions, Massachusetts precedent does not support allowing a tax savings refund as an exception to the prohibition against retroactive ratemaking for extraordinary and unforeseeable expenses incurred by utilities (Eversource/Aquarion Water Reply Brief at 12-15; National Grid Reply Brief at 9-12; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 7-9). In particular, Eversource, Aquarion, and National Grid contend that the precedent cited by the Attorney General does not support the broad proposition that there is an unqualified exception to the legal prohibition against retroactive ratemaking for extraordinary decreases in expenses but rather recognizes that the Department is authorized to engage in single issue ratemaking under certain conditions (Eversource/Aquarion Water Reply Brief at 12-15, citing Attorney General v. Department of Public Utilities, 453 Mass. 191 (2009); National Grid Reply Brief at 9-12, citing same).[20] Milford Water, Pinehills Water, and Agawam Springs contend that even if the Department were to apply the deferral standard rationale to the refund of tax

[20] Eversource and Aquarion argue that because the manner in which retroactive ratemaking is defined, interpreted, and applied varies considerably from state to state, the Department should look only to Massachusetts precedent when deciding this issue (Eversource/ Aquarion Water Reply Brief at 15-16). Further, they and National Grid assert that the Washington Utilities and Transportation Commission decision cited by the Attorney General does not provide a sound basis upon which to order a refund of tax savings (Eversource/Aquarion Water Reply Brief at 15-16; National Grid Reply Brief at 7).

savings, as suggested by the Attorney General, the resulting financial impact on these companies would be significant, a result the companies assert runs contrary to the objectives underlying the Department's deferral standard (Milford Water/Pinehills Water/Agawam Springs Reply Brief at 7-9).

Eversource, Aquarion Water, National Grid, Milford Water, Pinehills Water, and Agawam Springs also dispute the Attorney General's claim that the companies will reap a windfall by not refunding tax savings to customers (Eversource/Aquarion Water Reply Brief at 6-8; National Grid Reply Brief at 2-6; Milford Water/Pinehills Water/Agawam Springs Reply Brief at 2-4). Eversource, Aquarion Water, and National Grid argue that because they charged Department-approved rates from January 1, 2018, through June 30, 2018, there can be no impermissible windfall if they retain the tax savings (Eversource/Aquarion Water Reply Brief at 6-7; National Grid Reply Brief at 3). Further, as discussed above, Milford Water, Pinehills Water, and Agawam Springs argue that because they each earned below their allowed-ROE for the refund period, there would be no financial windfall to these companies if they do not refund the tax savings to ratepayers (Milford Water/Pinehills Water/Agawam Springs Reply Brief at 2-4).

Finally, Eversource, Aquarion, and National Grid dispute the Attorney General's contention that they delayed the implementation of appropriate rate adjustments for ratepayers (Eversource/Aquarion Water Reply Brief at 7-8; National Grid Reply Brief at 2-3). These companies note that Act-related rate changes were made in conjunction with pending or recently completed base rate proceedings, or on July 1, 2018, pursuant to the Department's

Order in D.P.U. 18-15-A (Eversource/Aquarion Water Reply Brief at 7; National Grid Reply Brief at 2-3).

2. Attorney General

a. Introduction

The Attorney General argues that, consistent with the Department's findings in D.P.U. 18-15-A, the change in the federal corporate income tax rate is a significant, known, and measurable reduction in the companies' costs of service, sufficient to rebut the presumption that rates as of January 1, 2018, are just and reasonable (Attorney General Reply Brief at 10, citing D.P.U. 18-15-A at 26-30). The Attorney General argues that that all tax savings associated with the period from January 1, 2018, through June 30, 2018, are ratepayer funds (Attorney General Brief at 5). The Attorney General maintains that the money at issue is not utility revenues but rather represents tax liabilities that, due to the Act, no longer exist (Attorney General Brief at 5). Therefore, the Attorney General asserts that the tax savings already should have been returned to ratepayers and that the companies should not be permitted to reap a "windfall profit" as a result of any delay in the return of these funds (Attorney General Brief at 5). Further, the Attorney General argues that, contrary to the companies' assertions, the Department has the authority to engage in single issue ratemaking to effectuate the return of the tax savings to ratepayers (Attorney General Reply Brief at 10).

In addition, the Attorney General contends that, other than Bay State and Aquarion Water, the companies did not file appropriate motions for reconsideration of the

Department's decision in D.P.U. 18-15-A and, therefore, any arguments raised on brief in this regard are untimely (Attorney General Reply Brief at 11).[21] Further, the Attorney General asserts that the companies would be unable to meet any reconsideration standard, as no mistake, inadvertence, or extraordinary circumstance exists as to warrant reconsideration of the Department's Order in D.P.U. 18-15-A (Attorney General Reply Brief at 11-12).

b. Department Authority to Order Refund of Tax Savings

The Attorney General asserts that the Department has the authority to ensure that ratepayers receive the full benefit of the Act. First, the Attorney General argues that the Department's directive in D.P.U. 18-15 for the companies to account for the aforementioned tax savings and book them as a regulatory liability was legally appropriate and acted to preserve the Department's authority to later determine how the revenues should be treated without implicating any retroactive ratemaking concerns (Attorney General Brief at 6-8, citing e.g., NSTAR Gas Company, D.P.U. 14-150, at 255 (2015); Fitchburg Gas and Electric Light Company, D.P.U. 07-71, at 65 (2008); Boston Gas Company, D.P.U. 96-50 (Phase I) at 111 (1996); Barnstable Water Company, D.P.U. 93-223-B at 12 (1994); Boston Edison Company/Cambridge Electric Light Company/Commonwealth Electric Company/NSTAR Gas Company, D.T.E. 02-78 (Stamp Approval) (2002); Commonwealth Electric Company, D.P.U. 88-135/151, at 92 (1989); Attorney General Reply Brief at 2). In this regard, the Attorney General argues that the companies knew, or should have known,

---

[21] The Attorney General filed a separate opposition to the Bay State Motion and Aquarion Water's motion for reconsideration.

that the tax savings were subject to return to ratepayers as of January 1, 2018, because (1) on December 20, 2017, she filed a complaint with the Department to ensure that ratepayers realize the full benefits of the Act and (2) the Department previously ordered companies to account for a similar reduction in the federal corporate income tax rate in D.P.U. 87-21-A (Attorney General Brief at 8).

Second, the Attorney General argues that the return to ratepayers of the tax savings for the period of January 1, 2018 through June 30, 2018, is consistent with Department precedent related to the treatment of extraordinary expenses (Attorney General Brief at 9; Attorney General Reply Brief at 2-3). In this regard, she contends that even if the concept of retroactive ratemaking is implicated by the refund of tax savings, courts have recognized an exception to the prohibition against retroactive ratemaking for extraordinary and unforeseeable increases and decreases in expenses incurred by utilities (Attorney General Brief at 9, citing Attorney General v. Department of Public Utilities, 453 Mass. 191, 201-02 (2009); Turpen v. Oklahoma Corp. Commission, 769 P.2d 1309, 1332 (Okla. 1988); Re Kansas City Power and Light Company, 75 Pub. Util. Rep. 4th (PUR) 1, 38–41 (Mo. Pub. Serv. Comm. 1986); Narragansett Electric Company v. Burke, 415 A.2d 177, 178–80 (R.I. 1980); Wisconsin's Environmental Decade, Inc. v. Public Service Commission, 98 Wis.2d 628, (Ct. App. 1980)). Further, the Attorney General asserts that the Department has effectively recognized such an exception by allowing companies to defer accounting treatment of certain extraordinary expenses incurred prior to the test year to allow utilities the ability to recover these expenses through future rates (Attorney General Brief at 9-10,

citing Fitchburg Gas and Electric Light Company, D.P.U. 09-61 (2009); Aquarion Water Company of Massachusetts, D.P.U. 04-77, at 5 (2005); North Attleboro Gas Company, D.P.U. 93-229 (1994)). The Attorney General notes that the Department has allowed utilities to create regulatory assets in order to defer for future ratemaking treatment (i.e., collect from ratepayers) significant expenses (Attorney General Brief at 7, 10). The Attorney General argues that reasoned consistency requires that the Department apply the same rationale when utilities experience extraordinary, non-recurring expense reductions (Attorney General Brief at 10 (emphasis in original)). Accordingly, the Attorney General asserts that the tax savings accrued from January 1, 2018 through June 30, 2018, represent a substantial, extraordinary, and non-recurring change to the companies' rates and that Department precedent requires the entire balance of tax savings to be returned to ratepayers (Attorney General Brief at 10).

Third, the Attorney General argues that ordering the companies to return tax savings to ratepayers would be consistent with decisions made by other public utility commissions (Attorney General Brief at 11). In particular, she notes that the Washington Utilities and Transportation Commission ("WUTC") rejected a similar proposal to tie the refund of Act-related tax savings to earnings above authorized ROE in 2018, finding that ratepayers should receive a refund of all tax savings dating back to January 1, 2018 (Attorney General Brief at 11, citing WUTC v. Cascade Natural Gas Corporation, UG-170929 (July 20, 2018). The Attorney General notes that the WUTC found that the Act "'may create a windfall to utilities, the proper treatment of which does not constitute prohibited retroactive ratemaking'"

(Attorney General Brief at 11, citing UG-170929, at 12). Further, the Attorney General maintains that WUTC reasoned that the tax reductions provided by the Act were unforeseeable and extraordinary, such that they could be treated as an exception to any rule against retroactive ratemaking (Attorney General Brief at 11, citing UG-170929, at 12).

For all of these reasons, the Attorney General asserts that the Department appropriately exercised its authority to order the companies to create regulatory liabilities to preserve the tax savings, beginning on January 1, 2018, for the benefit of ratepayers (Attorney General at 11). Further, she submits that because the companies did not flow through those savings back to ratepayers beginning January 1, 2018, the Department should require the entire amount of tax savings to be returned to ratepayers with interest at the prime rate (Attorney General Brief at 11).

c. Threshold Test

The Attorney General argues that Department should reject any "threshold test" that would render a tax savings refund dependent on whether a company earned above its allowed ROE for 2018 (Attorney General Reply Brief at 4). The Attorney General contends that such an inquiry is irrelevant to the decision of whether a refund of tax savings is warranted (Attorney General Reply Brief at 4). According to the Attorney General, a utility merely has the opportunity to earn its allowed ROE but not a guarantee, and there are no concerns of confiscation if the companies are required to return the tax savings despite earning below their allowed ROEs (Attorney General Reply Brief at 5, 7, citing Federal Power Commission v. Natural Gas Pipeline Company, 315 U.S. 575 (1942)). Further, the Attorney General

submits that the impact of the Act is unrelated to the companies' investments or incurred costs and, therefore, the refund of tax savings cannot be blamed for the companies' failure to earn their allowed ROEs (Attorney General Reply Brief at 6).

Moreover, the Attorney General claims that the threshold test proposals to return tax savings only if the companies earn more than their respective allowed ROE itself constitutes an example of retroactive ratemaking, to which the companies are opposed (Attorney General Reply Brief at 6, citing Boston Gas Company, D.T.E. 96-50-D at 7-8 (2001)). Finally, the Attorney General rejects any notion that credit ratings agencies have observed the potential adverse impact of the Act on utility cash flows and credit metrics (Attorney General Reply Brief at 7). According to the Attorney General, the companies' credit ratings have not been downgraded as a result of the Act (Attorney General Reply Brief at 7-10).

d. Remedy for Delayed Return of Savings

The Attorney General argues that the companies "ironically claim" that the prohibition against retroactive ratemaking applies to the tax savings, but the companies are the ones who have delayed returning these savings and, therefore, are responsible for the passage of time that they now claim would make Department action retroactive (Attorney General Brief at 12). The Attorney General contends that the Department should not reward such gamesmanship at the expense of ratepayers, but rather should review each company's refusal to comply with the Department's directives in its next base rate proceeding and reduce the company's ROE accordingly (Attorney General Brief at 12).

C. Analysis and Findings

Eversource, Aquarion Water, Bay State, Liberty Utilities, National Grid, Milford Water, Pinehills Water, and Agawam Springs claim that, as matter of law, the Department is prohibited from directing a refund to ratepayers of tax savings accrued from January 1, 2018 through June 30, 2018. These companies cite various ratemaking principles in support of their arguments, including single-issue and retroactive ratemaking. Further, some companies posit that the Department may examine the individual earnings of each company to determine whether equity would suggest Act-related rate adjustments for the period January 1, 2018 through June 30, 2018. Conversely, the Attorney General argues that the Department has the legal authority to adjust the companies' rates as a result of the Act without violating any established ratemaking principles. In reaching our determination as to the appropriate treatment of tax savings accrued from January 1, 2018 through June 30, 2018, the Department has given careful consideration to all of the arguments raised by the companies and the Attorney General.

In D.P.U. 18-15-A, the Department addressed its general authority to engage in single-issue ratemaking. The Department expressly considered and rejected arguments raised by the companies that the Department could not, as a matter of law, adjust rates based on a single cost factor such as the federal corporate income tax rate, without also adjusting other expenses that may have changed since the companies' rates were established by the Department or considering the impact of the adjustment on the company's ROE. D.P.U. 18-15-A at 28-30. In D.P.U. 18-15-A at 28, the Department also considered and

rejected arguments that we must examine the actual amount of taxes paid or earnings, as measured by comparing the actual and the allowed ROE, before implementing any rate changes or the return of tax savings related to the Act. Additionally, the Department already considered and rejected these arguments in its investigation about the effects of a 1987 decrease in the federal corporate income tax rate. D.P.U. 18-15-A at 28, citing D.P.U. 87-21-A at 10-11.

Ultimately, the Department determined that the change in the federal corporate income tax rate was a significant known and measurable reduction in the companies' costs of service, sufficient to rebut the presumption that rates as of January 1, 2018, were just and reasonable. D.P.U. 18-15-A at 29. The Department determined that it could exercise its discretion to investigate and, where appropriate, require single-issue rate adjustments or refunds to account for the change in the federal corporate income tax rate as of January 1, 2018. D.P.U. 18-15-A at 30. We affirm here that the Department has the discretion to engage in single-issue ratemaking, where appropriate, and to adjust rates based on a single cost factor, such as a change the federal corporate income tax rate. D.P.U. 87-21-A at 7-12; see also Attorney General v. Department of Public Utilities, 453 Mass. 191, 201 (2009); Capital Recovery, D.P.U. 859, at 6 (1982); Cambridge Electric Light Company, D.P.U. 490, at 2 (1981). The Department appropriately exercised this discretion in the first phase of the instant proceeding to require prospective adjustments to the affected companies' base distribution rates as a result of the Act for effect July 1, 2018. See D.P.U. 18-15-A

at 26-27, 30-59. Similarly, we find that single-issue ratemaking does not prohibit the treatment of tax savings accrued from January 1, 2018 through June 30, 2018.

The Department has not, however, previously considered the issue of retroactive ratemaking in the context of a change in the federal corporate income tax rate. The last reduction in the federal income tax rate was signed into law in October 1986 and took effect approximately eight months later on July 1, 1987. Investigation into Effect of the Reduction in Federal Income Tax Rates on Utility Rates as a Result of the Tax Reform Act of 1986, D.P.U. 87-21, at 1 (1987). Given this timing, the Department was able to complete its investigation into the effect of the 1987 reduction in the federal income tax rate and direct the utilities to make prospective changes to their rates as of the date the tax change went into effect. D.P.U. 87-21-A at 2, 4, 22. Accordingly, issues of retroactive ratemaking were not implicated in D.P.U. 87-21.

Here, the Act was signed into law on December 22, 2017, approximately one week prior to the effective date of the reduction in the federal corporate income tax rate on January 1, 2018. D.P.U. 18-15, at 2. The Department opened the current investigation a short time later on February 2, 2018. Recognizing that the affected companies needed sufficient time conduct a comprehensive review of the Act, the Department directed the companies to file proposals on or before May 1, 2018, to address the effects of the Act, and also to account for any revenues, as of January 1, 2018, associated with the difference between the previous and current corporate income tax rates and to book such amounts as regulatory liabilities. D.P.U. 18-15, at 5 n.6. Because it was not possible to complete our investigation before the

Act took effect, the Department must address the companies' arguments that we are prohibited by the rule against retroactive ratemaking from ordering a refund to ratepayers of the tax savings accrued from January 1, 2018 through June 30, 2018.

The Department may not generally order retroactive adjustments of a company's base distribution rates. See Boston Edison Co. v. Department of Public Utilities, 375 Mass. 1, 6 (1978); Lowell Gas Co. v. Attorney General, 377 Mass. 37, 44-45 (1979); Fryer v. Department of Public Utilities, 374 Mass. 685, 689-690 (1978). However, the rule against retroactive ratemaking is not without exception. For example, exceptions to retroactive ratemaking have been recognized for the recovery of extraordinary past losses that otherwise would not be recoverable in future rates. See, e.g., Attorney General v. Department of Public Utilities, 390 Mass. 208, 228-229 (1983); Attorney General v. Department of Public Utilities, 453 Mass. 191, 201-202 (2009); Electric Industry Restructuring, D.P.U. 95-30, at 29, 37-39 (1995). Further, rate adjustments associated with reconciling mechanisms do not constitute retroactive ratemaking. Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 627-628 (2004). In addition, in certain circumstances, notice that rates under investigation are provisional and subject to later revision may change what otherwise would be retroactive ratemaking into a prospective process.[22] See, e.g., Columbia Gas Transmission Corp. v. FERC, 895 F.2d

---

[22] The Attorney General maintains that the companies were on sufficient notice as early as December 20, 2017 (i.e., the date the Attorney General petitioned the Department to open an Act-related investigation) that they may be required to return to ratepayers any tax savings accrued as of January 1, 2018 (Attorney General Brief at 8). At the

791, 797 (D.C. Cir. 2007); Illinois v. Illinois Commerce Commission, 510 N.E.2d 850 (1987); Exxon Co., USA v. FERC, 182 F.3d 30, 49 (D.C. Cir. 1999).

While retroactive ratemaking may not be an absolute prohibition on the refund to ratepayers of extraordinary amounts in all circumstances, we are persuaded by the companies' arguments that the timing of the Act and retroactive nature of any rate adjustments make a refund of tax savings accrued from January 1, 2018 through June 30, 2018 inappropriate.[23] Although the timing of the Act precludes the return of any additional tax savings amounts to ratepayers in this phase of the investigation, as a result of the Department's Order in D.P.U. 18-15-A, ratepayers have received a prompt and significant benefit from the change in the federal tax code through lower base distribution rates effective July 1, 2018. In addition, as a result of the Department's Orders in D.P.U. 18-15-D and

---

latest, the affected companies were on notice that such tax savings were under investigation as of February 2, 2018, when the Department opened the instant investigation and directed the companies to book as regulatory liabilities any revenues associated with the difference between the previous and current corporate income tax rates as of January 1, 2018. D.P.U. 18-15, at 5.

[23] Contrary to the companies' assertions, the filed-rate doctrine would not act as a bar to the refund of any tax savings in this case. The filed-rate doctrine generally forbids a regulated entity to charge rates for its services other than those properly on file with the appropriate regulatory authority. Cambridge Electric Light Company, D.P.U. 94-101/ 95-36, at 18 (1995), citing Towns of Concord, Norwood & Wellesley v. Federal Energy Regulatory Commission, 955 F.2d 67, at 71 (D.C. Cir. 1992); see also Arkansas Louisiana Gas Company v. Hall, 453 U.S. 571, at 577 (1981) (Stevens J., dissenting)). If the Department had required a refund of tax savings, the companies would be required to file new tariffs, as appropriate, to implement the refund. Accordingly, any Department Order directing a refund would not compel the companies to charge tariffed rates other than those that were duly filed and approved. See Investigation Into Rate Structures that will Promote the Efficient Deployment of Demand Resources, D.P.U. 07-50-B at 38 (2008).

D.P.U. 18-15-E, ratepayers will continue to receive a significant benefit from the change in the federal tax code as it relates to the return of excess ADIT. The total benefit to Massachusetts's ratepayers from these Orders is tens of millions of dollars. See, e.g., D.P.U. 18-15-A at 61-66; D.P.U. 18-15-D at 15, 18; D.P.U. 18-15-E at 51-53.

In reaching our decision here, the Department did not need to apply a threshold earnings test, as suggested by the companies. Nonetheless, we are mindful of the issues raised by the companies with respect to short-term cash flow constraints as a result of the Act and the related potential for a credit downgrade that could ultimately harm ratepayers (see Eversource/Aquarion Water Brief at 23-24; Liberty Utilities Brief at 22; National Grid Brief at 23-24). Based on all of the above considerations, the Department will not require the companies to refund to ratepayers any tax savings accrued between January 1, 2018 and June 30, 2018.

IV. ORDER

Accordingly, after due notice, hearing, opportunity for comment and consideration, it is

ORDERED: That the motion for reconsideration filed by Bay State Gas Company, d/b/a/ Columbia Gas of Massachusetts is GRANTED to the extent set forth above; and it is

FURTHER ORDERED: That Aquarion Water Company of Massachusetts, Inc.; Bay State Gas Company, d/b/a Columbia Gas of Massachusetts, Inc.; Boston Gas Company and Colonial Gas Company, each d/b/a National Grid; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid; NSTAR Electric Company, d/b/a Eversource Energy; NSTAR Gas Company, d/b/a Eversource Energy; Milford Water Company; Pinehills Water Company; and Agawam Springs Water Company shall comply with all other orders and directives contained in this Order.

By Order of the Department,

/s/

Angela M. O'Connor, Chairman

/s/

Robert E. Hayden, Commissioner

/s/

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.