

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

_____))
Petition of The Berkshire Gas Company to)
the Department of Public Utilities for review) D.P.U. 16-103
and approval of its Long-Range Forecast and)
Supply Plan for the split years 2016/17 to)
2020/21, pursuant to G.L. c. 164, § 69I.)
_____)

INITIAL BRIEF OF THE LEGISLATORS

I. INTRODUCTION

Senate President Rosenberg and Representatives Stephen Kulik, Solomon Goldstein-Rose, Peter Kocot, John Scibak and Paul Mark (jointly, “Legislators”) submit their Initial Brief. The Legislators are deeply troubled by the natural gas service moratorium imposed by The Berkshire Gas Company (“Berkshire”). The moratorium has been, and will continue to be, a barrier to economic growth with repercussions throughout the affected communities. The Legislators, therefore, respectfully request that the Department of Public Utilities (“Department”) identify a way forward for ending the moratorium as soon as possible.

II. PROCEDURAL BACKGROUND

On July 8, 2016, Berkshire, pursuant to G.L. c. 164, § 69I, petitioned the Department for the review and approval of its long-range forecast and supply plan (F&SP) for the forecast period 2016/2017 through 2020/2021. F&SP at 1. The Attorney General’s Office filed a notice of intervention (“AG Intervention”) on July 26, 2016, pursuant to G.L. c. 12, §§10 and 11E and the Attorney General’s power under the common law to protect the public interest. AG Intervention at 1. The Department then

filed an order of notice (“Notice”) on July 27, 2016, and conducted public hearings on August 23 and 30, 2016. Notice at 1-2.

On August 31, 2016, the Hearing Officer issued a ruling (“August Ruling”) granting full party status to the Department of Energy Resources (DOER), the towns of Amherst, Deerfield, Hadley and Montague and the Legislators. August Ruling at 4-6. The Department also granted Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”) limited participant status. August Ruling at 6. The Legislators notified the Department of their desire to change their status from full party to limited participant on September 29, 2016, and their request was granted by the Hearing Officer in a ruling on October 19, 2016 (“October Ruling”). October Ruling at 2-3. In a letter dated March 1, 2017 (“Letter”), the Legislators notified the Department that Representative Solomon Goldstein-Rose would take the place of Representative Ellen Story in this proceeding, as Representative Goldstein-Rose had been elected to the seat in the House of Representatives that Representative Story had held prior to her retirement. Letter at 1.

III. BACKGROUND

In December 2014, Berkshire began a moratorium on new and incremental natural gas service that would ultimately extend to every community in its Eastern Division. F&SP at 24. Berkshire asserts that it imposed the moratorium to ensure the adequate flow of natural gas for the company’s existing customers as a matter of service consistency and safety. Id.

The Legislators collectively represent the communities that make up the Eastern Division, which is composed of the towns of Amherst, Deerfield, Greenfield, Hadley, Hatfield, Montague, Sunderland and Whatley, and have seen firsthand the impact that the

moratorium has had and will continue to have on the region's economic future. By limiting the use of natural gas in the Eastern Division, the moratorium has hindered economic development and commerce and, thereby, negatively impacted the affected towns and their residents.

IV. ARGUMENT

The effect of the moratorium on the communities of the Eastern Division has been significant; existing customers in the Eastern Division are unable to increase their use of natural gas and new customers are denied service entirely. The on-the-ground reality is that the moratorium is undermining the financial security of our towns and the quality of life of our residents.

Due to the moratorium, businesses are not choosing to locate or expand in the Eastern Division. As David G. Nixon, Town Administrator for the Town of Hadley, testified: "Generally, upon learning about the moratorium, and doing an internal cost analysis of using an alternative fuel source, the businesses found it would not be financially viable to locate or expand in Hadley." Exh. HADLEY-DGN-1 at 3, lines 43-46. Mr. Nixon listed large-scale restaurants, department stores and entertainment businesses among the businesses that were unable to locate or expand in Hadley because of the moratorium. Exh. HADLEY-DGN-1 at 2, lines 32-36.

This reality was echoed by Geoffrey Kravitz, Economic Development Director for the town of Amherst. He cited a master brewer and a restaurateur who were unable to locate or expand in Amherst. Exh. AMHERST-GK-1 at 3, lines 47-53. And this occurred in the midst of Amherst's efforts to increase commercial activity as part of the Amherst Master Plan. Exh. AMHERST-GK-1 at 2, lines 33-36.

This difficulty has not been confined to businesses that attempted to locate or expand in the Eastern Division after the moratorium's implementation. Businesses that were in the process of starting or expanding when the moratorium was imposed were affected, as well. Gene Crowley, for example, is a Hadley resident who has "firsthand experience with the problems of being a developer and property owner as a result of the moratorium." Tr. A at 48, lines 9-11. He was in the middle of a development project when he became aware of the possibility of a moratorium and it was too late to stop work on it; he has been left with empty units and has lost three restaurant deals. Tr. A at 48, lines 15-21.

In addition, the moratorium has limited the ability of businesses to transition a property's use, even when the property had natural gas access prior to the moratorium. Mr. Kravitz highlighted the challenges faced by property owners with natural gas service when transferring accounts to new tenants. Tr. A at 40, lines 17-23. Molly Keegan, Chair of the Hadley Select Board, offered her own example. She testified about two malls in Hadley that, after vacancies, have found themselves unable to use the vacated units for new tenants because the natural gas access had been shut off during the vacancies. Tr. A at 31, line 22-32, line 5.

Despite the challenges, some businesses have decided to locate or expand in Eastern Division towns. But they have faced higher costs than they would have had the moratorium not been in place. Both Mr. Nixon and Mr. Kravitz cite increased fuel costs caused by the moratorium because business owners must use electricity or propane instead of natural gas. Exh. HADLEY-DGN-1 at 3, lines 53-54; Exh. AMHERST-GK-1 at 4, lines 72-73. Chair Keegan articulated the human cost that comes from these higher

energy prices in her public hearing testimony, noting that the potential residents of a development for people over the age of 55 were, after the moratorium, unable to afford the increased price. Tr. A at 31, lines 17-21.

In her public hearing testimony, Chair Keegan raised another issue with the potential to ripple through the affected communities: the moratorium's impact on tax revenue. The town of Hadley is heavily reliant on the commercial activity generated by its proximity to the University of Massachusetts at Amherst and state highway route 9, which results in revenue from meal and hotel taxes. Tr. A at 30, line 22-31, line 4. Mr. Kravitz raised this point, as well, noting that a development built before the moratorium – which may not have been economically feasible if the moratorium had been in place – has “resulted in hundreds of thousands of dollars in new tax revenue [in 2016].” Tr. A at 41, lines 14-21. By limiting economic activity, the moratorium has already become a real threat to municipal budgets through reduced tax revenue. If it continues, these towns will be forced to make difficult decisions about which services they can afford to provide to their residents.

Compounding these problems is that there is no timetable for the moratorium's end, putting economic investment on hold and leaving business ventures in limbo. Peter Vickery, Chair of the Government Affairs Committee of the Amherst Area Chamber of Commerce, described Amherst as “in the doldrums”, without “wind in [its] sails” and “stuck.” Tr. A at 58, lines 4-6. Mr. Kravitz similarly discussed the importance of certainty to businesses in his public hearing testimony, noting that “regional and national developers are avoiding making any commitments to projects in Amherst until the moratorium is lifted.” Tr. A at 40, lines 9-11. Businesses need certainty when planning

endeavors because they require significant investment and years-long commitment.

Without a timetable for the moratorium's end in place, many businesses will find the resulting uncertainty unreasonably risky and refrain from doing business in these towns.

See, e.g., Tr. A at 40, lines 9-11.

As this testimony illustrates, the moratorium has had a significant impact on business in affected communities and will continue to hinder economic development and imperil municipal finance into the future. A new tap room or restaurant is not just a pleasant diversion for a town's residents and a housing development or new business is not a luxury; these are signifiers of a community's economic and financial health and vibrancy. This point was illustrated most clearly in the public hearing testimony of Mr. Crowley when he spoke of his economic losses and those of others who will not have the professional opportunities that come from construction and retail. Tr. A at 48, lines 19-24. The barrier that the moratorium has become to projects like these is a real threat to these communities.

While ending the moratorium may be complex, there are supply-side and demand-side opportunities that, when taken together, can end the moratorium swiftly and safely. As noted by John Rosenkranz in his testimony on behalf of the town of Montague, "there are actions Berkshire could take in the near term that would allow the Company to lift the moratorium this year." Exh. JAR-1 at 32, lines 9-10. Among other supply-side options, Mr. Rosenkranz suggested infrastructure upgrades and better use of Berkshire's existing liquefied natural gas peaking facility. Exh. JAR-1 at 3, lines 12-15.

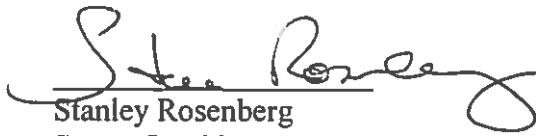
The demand-side options for ending the moratorium were discussed in the testimony of Kenji Takahashi, also on behalf of the town of Montague. He similarly

concluded that the moratorium could be ended “as early as 2017/18” and testified that it could be done “without the need for any new gas infrastructure.” Exh. KT-1 at 4, line 9. This achievement is possible through changes to Berkshire’s load forecast, increases in its energy efficiency and demand-response programs and the adoption of other recommendations. Exh. KT-1 at 6, line 10-8, line 2. On the basis of their testimony, it is clear that, while there may not be a single, readymade solution for ending the moratorium, a real, lasting solution is obtainable through a combination of measures that are within Berkshire’s ability to achieve in the near future.¹

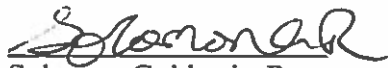
V. CONCLUSION

The Legislators understand the importance of ensuring an adequate flow of natural gas, particularly in light of public health and safety concerns in the event of an interruption. But they remain deeply troubled by the negative impact that the moratorium has had and will continue to have on their communities and constituents. The Legislators appreciate Berkshire’s willingness to work together and look forward to continuing to do so. But it is essential that the moratorium be lifted quickly. A continuing and open-ended moratorium is unacceptable. The Legislators, therefore, respectfully request that the Department clearly identify a way forward for ending the moratorium as soon as possible.

¹ The Legislators find the arguments made by Mr. Rosenkranz and Mr. Takahashi compelling, particularly the conclusions that additional gas infrastructure is unnecessary and that the moratorium can be lifted swiftly. These conclusions should be given great weight when the end of the moratorium is considered.



Stanley Rosenberg
Senate President
State House, Room 332
Boston, MA 02133



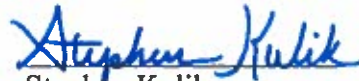
Solomon Goldstein-Rose
Representative
State House, Room 437
Boston, MA 02133



John Scibak
Representative
State House, Room 43
Boston, MA 02133

Dated: April 26, 2017

Respectfully Submitted,



Stephen Kulik
Representative
State House, Room 238
Boston, MA 02133



Peter Kocot
Representative
State House, Room 22
Boston, MA 02133



Paul Mark
Representative
State House, Room 160
Boston, MA 02133