

L. W. Deering
Hearing Officer
GRANTED
12-23-19

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

_____)
Bay State Gas Company d/b/a)
Columbia Gas of Massachusetts) D.P.U. 19-140
_____)

**REVISED MOTION OF COLUMBIA GAS OF MASSACHUSETTS
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

I. INTRODUCTION

Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“CMA” or the “Company”) hereby requests the Department of Public Utilities (the “Department”) grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D, G.L. c. 4, § 7 cl. 26(f) and (n), and 220 C.M.R. § 1.04(5)(e).

Specifically, the Company requests that the Department protect from public disclosure confidential customer data and personal employee information; Confidential Energy Infrastructure Information (“CEII); and materials that are the subject of an ongoing investigation by the United States Attorney’s Office for the District of Massachusetts contained in the following responses to information requests and attachments thereto submitted previously in Docket No. 19-PL-07: Attachment PL-1-4(c); Attachment PL-1-6(a)-(d); Response PL-1-8; Attachments PL-1-8(g)-(m); Response PL-1-9; Attachments PL-1-9(a)-(e); Attachment PL-1-10(a) and (b); Response PL-1-11; Attachments PL-1-11(a); Response PL-1-14; Attachments PL-

1-14(a)-(d); Attachments PL-1-15(a)-(d) and (f)-(h)¹; Response PL-1-16; Attachment PL-1-16(a); Attachments PL-1-17(b)(a) through (aa); Attachment PL-1-18(a); Attachments PL-1-19(a), (c) and (d); Attachment PL-1-20(a); and Attachment PL-1-24 (together the Confidential Attachments).² As discussed below, public disclosure of this information would reveal proprietary, investigative, or confidential employee, vendor, and customer contact information, which could expose the Company's customers, vendors and employees to harassment and abuse; would reveal certain CEII-related materials that are protected by statute, and would disclose materials that are currently the subject of an ongoing investigation in a separate legal forum. Any such disclosure could harm the competitive business position of the Company, its customers; impact the safety and security of the Company's system; and potentially jeopardize the integrity of the ongoing investigation.

The Company has provided the Confidential Attachments to the Hearing Officer in this proceeding in a sealed envelope marked "Confidential." Consistent with Department precedent, the Company has prepared redacted versions of the Confidential Attachments for filing in the public record in this proceeding.³

II. STANDARD OF REVIEW

The Department is authorized to protect from public disclosure "trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings." G.L. c. 25, § 5D. In interpreting this statute, the Department has held that

¹ On November 1, 2019 the Company filed a Motion for Confidential Treatment seeking protective treatment for, among others, Attachments PL-1-15(a)-(k). As outlined below, the Company is not seeking protective treatment for Attachments PL-1-15(f) and (i)-(k). The Company's November 1, 2019 Motion is revised here to clarify the responses and attachments for which the Company seeks protective treatment.

² In the Department's October 25, 2019 Order Opening Investigation, the Department directed the Company to identify and provide redacted copies of any confidential materials submitted in Docket No. 19-PL-07.

³ As outlined below, the Company is requesting that the Department protect Attachment PL-1-6(a)-(d) in the entirety due to the ongoing federal investigation into the Merrimack Valley Event.

G.L. c. 25, § 5D, “places the burden of proof on companies requesting confidential treatment.”
The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 20 (1994).

Accordingly, a party seeking to protect information from public disclosure must demonstrate that: (1) the information for which protection is sought constitutes trade secrets, confidential, competitively sensitive or other proprietary information; and (2) there is a need to ensure nondisclosure of the information. The Berkshire Gas Company et al., D.T.E. 01-41, at 17 (2001); Western Massachusetts Electric Company, D.T.E. 99-56, at 4 (1999). In assessing the need for nondisclosure, the Department will consider the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., D.P.U. 93-187/188/189/190, at 20-23; Boston Gas Company, D.P.U. 92-259, at 106 (1993), Essex County Gas Company, D.P.U. 96-105, at 2-3 (1996). Where a party proves such a need, the Department will protect only so much of the information as is necessary to meet the need for nondisclosure and may limit the length of time that such protection is in effect. D.T.E. 01-41, at 17-18; D.T.E. 99-56, at 4; D.P.U. 93-187/188/189/190, at 20.

Further, G.L. c. 4, § 7, clause 26(f) specifically exempts from the definition of “public records:” “investigatory materials necessarily compiled out of the public view by...other investigatory officials, the disclosure of which would probably so prejudice the possibility of effective law enforcement” such that the disclosure is not in the public interest. Lastly, G.L. c. 4, § 7, cl. 26 sets out the statutory definition for “Public Records” as enumerated documents, maps, photographs, etc. that are made or received by any officer or employee of any state agency, department, board, commission, etc. G.L. c. 4, § 7, cl. 26(n) exempts CEII from the public records law and thus public disclosure requirements as follows:

(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

G.L. c. 4, § 7, cl. 26(n).

III. ARGUMENT

A. **Certain Confidential Attachments Contain Materials that Are Subject to an Ongoing Federal Investigation and Should be Protected from Public Disclosure.**

In Information Request PL-1-6, the Department requested the following information from the Company:

- a) Project overview;
- b) Timeline for each phase of the project, from inception until the time of the incident, including dates and times for all tie-ins and abandonment of pipelines;
- c) All GIS maps, drawings, and data;
- d) Project work / job orders;
- e) Uprate certificates (if applicable);
- f) Corrosion control requirements;
- g) Dig Safe tickets;
- h) Proposed tie-in plans;
- i) Valve location records;
- j) Pressure test charts and related records;
- k) Calibration dates for all equipment used;
- l) As built drawings; and
- m) Proposed abandonment plans.

The Company has provided these requested documents, encompassed in Attachment PL-1-6(a)-(d), comprising the project documentation and work packet for the South Union Street Project in Lawrence. Matters addressed within these materials are the subject of an ongoing

criminal investigation by the United States Attorney's Office for the District of Massachusetts. Disclosure of the Attachment PL-1-6(a)-(d), and the materials contained therein, may prejudice the on-going investigation. As Attachment PL-1-6(a)-(d) is engrossed in this ongoing investigation, and to protect the integrity of ongoing investigation by federal authorities, the responsive documentation contained in Attachment PL-1-6(a)-(d) should be protected from public disclosure. See G.L. c. 4, § 7 clause 26 (f). G.L. c. 4 § 7.⁴ Therefore, the Company has not provided a redacted version of this attachment for the public record.

B. The Confidential Attachments Contain CEII Materials and Should be Protected from Public Disclosure.

The Department has plain and unambiguous statutory authority to keep CEII information contained in the Confidential Attachments, specifically in Attachments PL-1-4(c), Attachment PL-1-6(a)-(d); Attachments PL-1-9(a)-(e), Attachment PL-1-10(a), Response PL-1-11; Attachments PL-1-17(b)(a)-(aa), and Attachment PL-1-20(a), as confidential pursuant to G.L. c. 4, § 7, clause 26(n). The Legislature, which enacted Clause 26(n) in 2002 in response to the events of September 11, 2001, clearly expressed a desire to protect public safety by exempting materials related to a utility's critical infrastructure from the general presumption that certain information is a public record. The Department has noted that its authority to keep materials exempt under G.L. c. 4, § 7, clause 26(n) is "separate and apart" from (and, by implication, broader than) its more narrowly construed authority under G.L. c. 25, § 5D. D.T.E. and Siting Board Rulemaking, D.T.E. 98-84, at 23 (2003) (declining to rule with particularity in the context of a rulemaking regarding the protection of critical energy infrastructure).

⁴ Additionally, as discussed in Sections III.B and III.C, Attachment PL-1-6(a)-(d) contains diagrams, plans and other data that constitutes CEII, as well as containing personal information of Company employees and contractors, all of which must be protected from disclosure.

The Company recognizes that the Department must balance two competing interests of the public in making its determination whether to keep particular information such as the CEII contained in the Confidential Attachments as confidential pursuant to G.L. c. 4, § 7, clause 26(n). The Department must weigh the public's interest in transparency and information and the public's interest in safety, security and the safe and reliable provision of gas service. However, by inserting clause 26(n) as a specific exemption to the general presumption of disclosure, the Legislature has statutorily communicated its belief that the interest in safety, security and the safe and reliable provision of gas service should outweigh the public's interest in transparency and information where disclosure jeopardizes public safety. The Department has performed this balancing in the past and protected information pursuant to G.L. c. 4, § 7, clause 26(n). Verizon New England, Inc. d/b/a Verizon Massachusetts, D.T.E. 02-8, at 11-12 (2005) (granting Verizon's motion to restrict public disclosure of results of internal security reviews).

Based on the language of G.L. c. 4, § 7, cl. 26(n), the Company classifies the Confidential Attachments as CEII, as the Confidential Attachments contain specific maps and diagrams demonstrating the exact location of mains, services and valves critical to the Company's energy infrastructure, as well as emergency preparedness training documents analyzing emergency training exercises performed by the Company, the disclosure of which would show potential bad actors the specific streets and locations in the Company's service territory where certain mains, services, and valves are located and have been replaced in recent years, as well as reveal internal security and emergency training materials, and hereby seeks to protect these documents from public dissemination. In D.P.U. 19-GSEP-05, the Department approved a similar request for protective treatment of CEII information. See D.P.U. 19-GSEP-05, Bay State Gas Company d/b/a Columbia Gas of Massachusetts (September 6, 2019 Hearing

Officer Ruling on Critical Energy Infrastructure Information) (protecting as CEII maps and diagrams of mains and services). Based on this precedent, and the Department's statutory authority, the Company respectfully requests that that Department afford protective treatment for the Confidential Attachments.

C. The Confidential Attachments Contain Confidential Employee, Customer, and Vendor Information and Should be Protected from Public Disclosure.

Attachments PL-1-4(c), PL-1-6(a)-(d), Response PL-1-8; PL-1-8(a)-(m), Response PL-1-14; Attachments PL-1-14(a)-(d), Attachments PL-1-15(a)-(d) and (f)-(h), Response PL-1-16; Attachments PL-1-16(a), PL-1-18(a), PL-1-19(a) and (c), Attachment PL-1-20(a) and Attachment PL-1-24 contain confidential employee identification information, including names, phone numbers, e-mail addresses, and user identification numbers of Company employees, as well as containing the names, addresses, phone numbers and account numbers of the Company's customers. All of this information is protected as confidential and maintained by the Company as such.

The Company does not publicly disclose the names and revenue information of customers served by the Company, nor does it disclose their contact information including phone numbers, emails, addresses and other identification information. Public disclosure of such information could expose the Company's customers to fraud and abuse by third parties. In order to protect the Company's customers privacy interests, this information must be maintained as confidential and proprietary information. See, Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, D.P.U. 15-155 (allowing December 17, 2015 Motion for Confidential Treatment of customer-specific information).

Further, the Confidential Attachments contain personal information associated with employees and contractors, such as names, contact information, and job qualifications. To the

extent an individual is not an officer of the Company, this information is not publicly available and should be treated as confidential for reasons of privacy. Pursuant to G.L. c. 4, § 7(26)(c), materials or data “relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy” are not public records subject to disclosure.

The Department has previously considered the privacy implications of releasing personally identifying employee information (salary and employee names) to the public and accorded confidential treatment to such information. Aquarion Water Company of Massachusetts, Inc., D.P.U. 11-43, Hearing Officer Ruling on Motion for Confidential Treatment at 5-6 (Nov. 9, 2011) (privacy concerns with releasing identifying non-officer employee information justified confidential treatment).

Moreover, there is no compelling public policy that would mandate the disclosure of employee information. Rather, it is sound public policy to ensure the privacy and security of individuals working for the Company or customers taking service from the Company. For these reasons, personal information regarding customers, employees or contractors should be protected from public disclosure indefinitely. See also G.L. c. 93H & 201 C.M.R. §§ 17.00 *et seq.* (protecting against disclosure of “personal information”). This provides an exception from the general statutory mandate in G.L. c. 66, § 10 that all documents and data received by an agency of the Commonwealth are to be viewable public records.

IV. CONCLUSION

The Department has consistently held that maps and diagrams containing the specific locations of active and retired mains, services and valves, as well as emergency preparedness documents and training procedures constitute CEII, and therefore, should be protected from

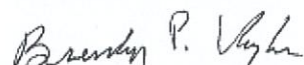
public disclosure. In accordance with this precedent and the statutory requirements of G.L. c. 4 § 7 clause (n), the Company respectfully requests that the Department grant the Company's motion and provide protective treatment for the CEII portions of the Confidential Attachments. Further, for the reasons outlined above, the Company respectfully requests that employee and customer names and contact information contained in the Confidential Attachments be maintained as confidential, and that the Department protect Attachment PL-1-6(a)-(d) due to the ongoing federal investigations into the Merrimack Valley Event. Lastly, given that the CEII-related information and confidential customer and employee names are unlikely to change at any time, the Company respectfully requests the Confidential Information be protected from disclosure for an indefinite period of time.

WHEREFORE, the Company respectfully requests that the Department grant its motion for protective treatment of confidential information.

Respectfully submitted by,

**Bay State Gas Company d/b/a
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By its attorneys,



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