

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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

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

**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 (n) and 220 C.M.R. § 1.04(5)(e).

Specifically, the Company requests that the Department protect from public disclosure confidential personal employee information contained in the following responses and attachments to information requests submitted previously in Docket No. 19-PL-07: Attachment PL-1-6(e), Attachment PL-1-6(f), response PL-1-9, Attachments PL-1-9(g) and (h), and Attachment PL-1-18(b) (together the Confidential Attachments).¹ As discussed below, public disclosure of this information would reveal confidential employee contact information and the location of critical energy infrastructure information (“CEII”), including regulator stations, which could expose the Company’s vendors and employees to harassment and abuse and would reveal certain CEII-related materials that are protected by statute. Any such disclosure could

¹ 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.

harm the competitive business position of the Company and its employees.

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.

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

Attachments PL-1-6(e), PL-1-6(f), and PL-1-18(b) contain confidential employee identification information, including names, phone numbers, e-mail addresses, and user identification numbers of Company employees. All of this information is protected as confidential and maintained by the Company as such. 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.

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 Response PL-1-9 and Attachments PL-1-9(g) and (h) 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).

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 Response PL-1-9 and Attachments PL-1-9(g) and (h) as CEII, as it contains the locations of regulator stations inspected by the Company in its service territory, the disclosure of which would show potential bad actors the specific streets and locations in the Company's service territory where regulator stations are located and when said stations were inspected, 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.

IV. CONCLUSION

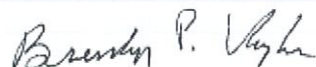
For the reasons outlined above, the Company respectfully requests that employee and customer names and contact information, and CEII information contained in the Confidential Attachments be maintained as confidential. Lastly, given that the Confidential Information is unlikely to change at any time, 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
Columbia Gas of Massachusetts**

By its attorneys,



Brendan P. Vaughan, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
(617) 951-1400

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