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December 24, 2019

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

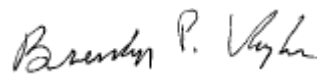
Re: Bay State Gas Company d/b/a Columbia Gas of Massachusetts, D.P.U. 19-140

Dear Mr. Marini:

Attached for filing in the above-captioned matter on behalf of Bay State Gas Company d/b/a Columbia Gas of Massachusetts (the "Company") is the Company's Opposition to the Petition to Intervene of Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC.

Thank you for your attention to this matter. Please contact me if you have any questions or wish to discuss.

Sincerely,



Brendan P. Vaughan

Enclosures

cc: Laurie E. Weisman, Esq. – Hearing Officer  
Service List – D.P.U. 19-140



December 19, 2019, Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC (collectively, “Direct”) filed a petition seeking intervention and reserving “the right to fully participate in this proceeding, including, without limitations, submitting comments and participating in hearings” (Direct Motion at 3).<sup>1</sup>

For the reasons stated herein, the Company opposes Direct’s petition. The Company’s opposition is necessary because: (1) Direct’s concerns regarding its economic status as a competitive gas supplier are outside the scope of this proceeding and are irrelevant to the issues that will be reviewed in this proceeding to investigate the September 13, 2018 over-pressurization incident and the Company’s compliance with federal and state pipeline safety regulations; and (2) Direct has not demonstrated that it is substantially and specifically affected by the Department’s investigation as described in the Order or by a specific possible outcome of the proceeding. Accordingly, the Department should deny Direct’s Petition. However, CMA does not oppose the granting of Limited Participant status to Direct.

## **II. STANDARD OF REVIEW**

The Department has well-established standards on intervention matters. In conducting an adjudicatory proceeding, the Department “may allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose,” as the Department may order. G.L. c. 30A, § 10. Pursuant to the Department’s regulations at 220 C.M.R. § 1.03(1)(b), a petition for leave to intervene in a Department proceeding must demonstrate how the petitioner is

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<sup>1</sup> Although Direct’s petition does not explicitly request a particular status (e.g., party, intervenor, limited participant, etc.) in this case, the Company interprets Direct’s request to participate in hearings as a request for full party status. As explained, the Company does not object to Direct’s participation as a limited participant in this case.

substantially and specifically affected by the proceeding. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 8 (1999), citing 220 C.M.R. § 1.03(1)(b) and G.L. c. 30A, § 10.

The case law from the Supreme Judicial Court on intervention matters is indisputably clear: The Department has extremely broad discretion in determining whether to allow participation, and the extent of participation, in its proceedings. Tofias v. Energy Facilities Siting Bd., 435 Mass. 340, 346 (2001) (finding that agencies have broad discretion to grant or deny intervention); Cablevision Sys. Corp. v. Dep't of Telecomm. & Energy, 428 Mass. 436, 439 (1998) (finding that agency has “broad discretion” to deny intervention); KES Brockton, Inc. v. Dep't of Pub. Utils., 416 Mass. 158, 165 (1993) (ruling that Department has “wide discretion to grant, limit, or deny a person leave to intervene”); Attorney Gen. v. Dep't of Pub. Utils., 390 Mass. 208, 216 (1983); Boston Edison Company v. Dep't of Pub. Utils., 375 Mass. 1, 45 (1978). Notably, based upon the deliberate use of the word “may” in G.L. c. 30A, § 10, the Court has recognized that “[t]he discretion to limit intervention was obviously intended to permit the [D]epartment to control the extent of participation by persons not sufficiently and specifically interested to warrant full participation, which might interfere with complicated regulatory processes.” Newton v. Department of Pub. Utils., 339 Mass. 535, 543 n.1 (1959).

When ruling on a petition to intervene or participate, a Hearing Officer may consider, among other factors:

The interests of the petitioner, whether the petitioner’s interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner’s intervention on the proceeding, and the nature of the petitioner’s

evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Boston Edison Company, D.P.U. 96-23, at 10 (citations omitted). In Save the Bay, Inc. v. Dep't of Public Utilities, the Court underscored the rigorous standard that must be satisfied by a petitioner in order to justify a grant as a full-party intervenor by stating that “the multiplicity of parties and the increased participation by persons whose rights are at best obscure will, in the absence of exact adherence to requirements as to standing, seriously erode the efficacy of the administrative process.” 366 Mass. 667, 672 (1975). Indeed, the Court went on to express that “to preserve orderly administrative processes and judicial review thereof, a party must meet the legal requirements necessary to confer standing.” Id.

It is not enough that a petitioner is a customer of an electric or gas company; a customer must be able to establish that it will experience “peculiar damage” in order to qualify for full-party status. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 11-12, 14 (1999), citing Robinson v. Dep't of Public Utilities., 416 Mass. 668, 673-74 (1993); Ginther v. Comm'r of Ins., 427 Mass. 319, 323 (1998) (stating that “[i]njuries that are speculative, remote, and indirect are insufficient to confer standing”); Attorney General, 390 Mass. at 216-17, n.7. A generalized interest by a customer that is not different from the interests of other customers is insufficient to warrant intervenor status. See Robinson, 416 Mass. at 673-74. Rather, by statute, it is the Attorney General who has the legal authority to represent the customers of electric and gas companies. G.L. c. 12, § 11E; see Eastern Edison Company, D.P.U. 96-24, at 6 (1997).

Even “the possibility that the Attorney General may not pursue all of a residential customer’s concerns in a rate proceeding does not require the [Department] to give that customer full party status.” Robinson, 416 Mass. at 673. Accordingly, the status of a petitioner as a ratepayer, standing alone, and without a clear showing that the petitioner’s interests are unique and

different from other customers, is insufficient to justify intervenor status. Id.; see Boston Edison Company, D.P.U. 97-63, at 16 (1997); Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 15 (1999).

Further, when ruling on petitions to intervene in proceedings affecting rates, the Department's task is not to address allegations of potential, collateral or indirect impacts to the competitive interests of commercial third parties; it is to assess how the proposal before the Department might affect an electric or gas company's customers. See Cablevision, 428 Mass. 439 (1988) (ruling that the Department did not commit error of law in concluding that its statutory obligation did not require it to consider the consequences of competitors). "Our cases have recognized that the [D]epartment's task, assigned by the Legislature, is the 'protection of ratepayers.'" Id. at 438-39; see Tofias, 435 Mass. at 346 (rejecting claim for intervention based on purely economic issues, because property owner failed to identify a specific and substantial interest warranting intervenor status); see also Newton, 339 Mass. at 543 n.1.

The Department may, however, allow persons not substantially and specifically affected to participate in proceedings for limited purposes. Tofias, 435 Mass. at 346, citing G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. at 45. Nonetheless, even as a limited participant, a petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant such status. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 8.

Although the Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes, it is sometimes necessary to limit such participation in order to manage efficiently the time and limited resources of the Department. As [Citizens Urging Responsible Energy]'s concerns may be adequately addressed by the Attorney General, limited participant status is not warranted in this proceeding.

Id. at 14. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Boston Edison, 375 Mass. at 45.

### III. ARGUMENT

In its Petition, Direct does not expressly assert that it meets the requirements for intervention because it is substantially and specifically affected by this proceeding. Rather, Direct speculates that “[a]s part of this investigation, the Department **could** find that [CMA’s] current systems, processes and/or operations require modification and those modifications **could** impact how gas suppliers, including [Direct], do business in Massachusetts (Direct Petition at 2-3 (emphasis added)). Direct obliquely asserts that it has “unique business and technical expertise” and “operational perspectives that could aid the Department in its investigation (id., at 3). However, these claims are speculative, wholly inadequate to meet the Department’s standard, and fail entirely to indicate a specific interest falling within the actual scope of the Department’s investigation.

In particular, Direct has failed to demonstrate that it will be substantially and specifically affected, or suffer a “peculiar damage,” because of any decision made by the Department in this proceeding, which is a fundamental prerequisite for granting intervention status. Attorney Gen. v. Dep’t of Pub. Utils., 390 Mass. at 216; Boston Edison Company v. Dep’t of Pub. Utils., 375 Mass. at 45; Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 11-12, 14, citing Robinson v. Dep’t of Pub. Utils., 416 Mass. 668, 673-74 (1993). The concerns raised by Direct in this proceeding reference speculative potential changes to “processes” and “systems” that “could” affect competitive gas suppliers, without any particular example of how this could be the case (Direct Petition at 2-3). Direct fails to cite to any actual change that could result from the Department’s investigation that could cause a “peculiar damage” to it, and fails

entirely to explain how its status as a competitive gas supplier might be affected by the Department's investigation into the specific over-pressurization event, the restoration work that followed the event, or CMA's compliance with federal minimum safety regulations and with the Department's pipeline safety regulations. Absent a specific and substantial interest in the actual subject matter of the proceeding, the Department should deny the petition. See, Tofias, 435 Mass. at 346.

A petitioner bears the burden of clearly demonstrating a substantial and specific interest in the particular case in which it seeks intervention, irrespective of whether it participated in similar cases in the past or how it may be situated vis-à-vis other potential participants in the subject proceeding. NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy, D.P.U. 17-05, Interlocutory Order on Appeal of Hearing Officer's Ruling on Petition to Intervene by Wal-Mart Stores East, L.P (Apr 7, 2017), at 9. Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 10-54, Interlocutory Order at 7-8 (August 20, 2010) (petitioner must demonstrate that the impact of the proceeding on petitioner would be different from the impact on others). Direct's petition fails to demonstrate how its interests are "unique and different" from others and is, therefore, insufficient to justify intervention into an investigation of a discrete event, the restoration work that followed and compliance with federal and state safety requirements. D.P.U. 17-05, Interlocutory Order on Appeal of Hearing Officer's Ruling on Petition to Intervene by Wal-Mart Stores East, L.P (Apr 7, 2017), at 9-10 (upholding denial of intervenor status where interests were not unique and different from other similarly situated customers).

As detailed above, when ruling on a petition to intervene or participate, a Hearing Officer may consider, among other factors, the scope of the proceeding, the nature of the petitioner's



evidence and whether such evidence will help elucidate the issues of the proceeding. See Interlocutory Order on Appeal of Hearing Officer Ruling, D.P.U. 13-01 (July 23, 2013); Boston Edison Company, D.P.U. 96-23, at 10 (citations omitted). In this instance, Direct's stated economic concerns related to some possible impact on competitive gas supply bear no connection to the scope of the proceeding, which the Department is conducting to investigate the September 13, 2018 over-pressurization event, the Company's restoration efforts in response to the event, and the Company's compliance with relevant statutory and regulatory safety requirements (Order at 4-5).

Further, Direct makes no attempt whatsoever to show any specific nexus between Direct's participation in the case and the issues that will be of focus the Department's investigation, which is the bare minimum requirement for full party status. If there is no statement as to how an outcome from the proceeding could (substantially) affect a specific interest of Direct, then there is no legitimate basis for their participation as a full party. D.T.E. 98-118/98-119/126, at 11-12, 14, citing Robinson, 416 Mass. at 673-74; Ginther, 427 Mass. at 323 (stating that "[i]njuries that are speculative, remote, and indirect are insufficient to confer standing"); Attorney General, 390 Mass. at 216-17, n.7. The Direct Petition is devoid of any showing connecting a specific business interest to a specific possible outcome of the Department's investigation into a past event that they have not even commented on in their petition.

Notwithstanding the weakness of Direct's petition, CMA does not oppose granting Direct status as a limited participant pursuant, allowing Direct to attend evidentiary hearings, receive copies of all filings, pleadings, and submissions made throughout the course of the proceeding, and make arguments on brief for the Department's consideration in accordance with the established procedural schedule.

**IV. CONCLUSION**

For the foregoing reasons, the Department should deny Direct's Petition to Intervene in this proceeding. CMA does not oppose Direct being granted status as a Limited Participant.

Respectfully submitted,

**BAY STATE GAS COMPANY D/B/A  
COLUMBIA GAS OF MASSACHUSETTS**

By its attorney,



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