



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-140

April 7, 2020

Investigation by the Department of Public Utilities on its own Motion into Bay State Gas Company d/b/a Columbia Gas of Massachusetts' responsibility for and response to the September 13, 2018 Merrimack Valley Incident, pursuant to 49 U.S.C. § 60105, G.L. c. 164, § 76, G.L. c. 164, § 105A, and 220 CMR 69.00.

D.P.U. 19-141

Investigation by the Department of Public Utilities on its own Motion into the Preparation and Response of Bay State Gas Company d/b/a Columbia Gas of Massachusetts with respect to the September 13, 2018 Merrimack Valley Gas Event pursuant to G.L. c. 164, §§ 1J, 76, and 85B, and 220 CMR 19.00.

HEARING OFFICER RULING ON PETITIONS TO INTERVENE

I. INTRODUCTION

On October 25, 2019, the Department of Public Utilities ("Department") voted to open two investigations into an overpressurization event resulting in a series of explosions and fires in the natural gas distribution system of Bay State Gas Company d/b/a Columbia Gas of Massachusetts ("Company") on September 13, 2018 ("September 13 Event"). The Department docketed these investigations as D.P.U. 19-140 and 19-141. D.P.U. 19-140 is an investigation into the Company's responsibility for the September 13 Event as well as its restoration efforts following the incident. D.P.U. 19-141 will focus on the Company's preparation for and management of the restoration efforts following the September 13 Event, and related public safety matters.

The Attorney General of the Commonwealth filed a notice of intervention pursuant to G.L. c. 12, § 11E, and was recognized as a full party to these proceedings. The Department received timely petitions to intervene as full participants in these matters from the following: Massachusetts Department of Energy Resources ("DOER"); Direct Energy Services LLC, Direct Energy Business LLC, and Direct Energy Business Marketing LLC (collectively, "Direct Energy"); Low-Income Weatherization and Fuel Assistance Program Network ("Network"); and Conservation law Foundation ("CLF"). The Department also received a request to participate as a limited participant in these matters from Groundwork Lawrence ("GWL").

The Company filed a response opposing Direct Energy's petition for full intervenor status and did not respond to any of the other petitions.

II. STANDARD OF REVIEW

The Department's regulations require that a petition to intervene or participate be in writing. 220 CMR 1.03(1)(a). To intervene, the petitioner must be substantially and specifically affected by the proceeding. 220 CMR 1.03(1)(b); see also G.L. c. 30A, § 10. To participate, a petitioner must demonstrate a sufficient interest in a proceeding. Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978), cert. denied, 439 U.S. 921 (1978). The Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216-217 (1983); Boston Edison, 375 Mass. at 45-46; City of Newton v. Department of Public Utilities, 339 Mass. 535, 543-544 (1959); see also Robinson v. Department of Public Utilities, 835 F.2d 19, 22 (1st Cir. 1987).

When ruling on a petition to intervene or participate, the Department 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. Based on these factors, the Department may limit intervention and participation. Robinson v. Department of Public Utilities, 416 Mass. 668, 673-674 (1993); Boston Edison, 375 Mass. at 46; Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 672 (1975); City of Newton, 339 Mass. at 543-544. The Department exercises the discretion afforded it under G.L. c. 30A, § 10, so that it may conduct a proceeding with the goal of issuing a reasoned, fair, impartial, and timely decision that achieves its statutory mandate. Eastern Edison Company, D.P.U. 96-24, at 6 (1997); New England Telephone and Telegraph Company, D.P.U. 91-30, at 2 (1991), citing Boston Edison, 375 Mass. at 46.

III. POSITIONS OF THE PARTIES

A. DOER

DOER is the Massachusetts executive agency responsible for establishing and implementing the Commonwealth's energy policies and programs generally, pursuant to G.L. c. 25A, § 6 (DOER Petition at 1). More specifically, G.L. c. 25A, § 6 authorizes DOER to do the following: (1) plan, develop, oversee, and operate programs to help consumers understand, evaluate, and select retail energy supplies and related services offered as a consequence of electricity and gas utility restructuring; (2) develop and administer programs relating to energy conservation, demand-side management, alternative energy development, non-renewable energy supply and resources development, energy bond authority, energy information and energy emergencies; (3) advise, assist, and cooperate with

other state, local, regional, and federal agencies in developing appropriate program and policies relating to energy planning and regulation in the Commonwealth; (4) develop energy data and information management capabilities to aid energy planning and decision-making; and (5) promote the development of sound energy education programs (DOER Petition at 2). DOER asserts that these proceedings will substantially and specifically affect DOER's ability to develop and implement consistent governmental policies with respect to the Commonwealth's energy programs (DOER Petition at 2). Thus, DOER requests the right to participate in all aspects of these proceedings including, as it deems necessary, the presentation of testimony, cross-examination of witnesses, and the presentation of arguments orally and through briefs (DOER Petition at 2).

B. Direct Energy

1. Direct Energy's Petition to Intervene

Direct Energy states that each of its three member companies is licensed as a gas supplier by the Department and relies on the local natural gas distribution companies to deliver natural gas to customers, but that incidents on the distribution system, including those in which service is interrupted or curtailed, specifically impact Direct Energy's business (Direct Energy Petition at 2). According to Direct Energy, the Department could find that the Company's current systems, processes, or operations require modification, and that those modifications could impact how gas suppliers including Direct Energy do business in Massachusetts (Direct Energy Petition at 3). Thus, Direct Energy claims that it has unique business and technical expertise as well as operational perspectives that no other participant in these proceedings can replicate, and that Direct Energy will aid the Department in its investigation, including providing the Department with insight into how any contemplated changes to the Company's current systems, processes, or operations could impact how gas suppliers do business in Massachusetts (Direct Energy Petition at 3).

2. Company's Opposition

The Company opposes Direct Energy's petition for two reasons. First, the Company argues that Direct Energy's concerns regarding its economic status as a competitive gas supplier are outside the scope of these proceedings and irrelevant to the issues that will be reviewed (Company Opposition at 2). Second, the Company argues that Direct Energy has not demonstrated that it is substantially and specifically affected by the Department's investigations or by a specific possible outcome of the proceedings (Company Opposition at 2).

More specifically, the Company contends that Direct Energy has not expressly asserted that it meets the requirements for intervention by being substantially and specifically affected (Company Opposition at 6). The Company argues that Direct Energy is speculating that the Department "could find" that the Company's current systems, processes, or

operations require modification and those modifications “could impact” how gas suppliers do business in Massachusetts (Company at 6, quoting Direct Energy at 3). Moreover, the Company describes Direct Energy’s claims of offering “unique business and technical expertise” and “operational perspectives” as speculative, wholly inadequate to meet the Department’s standard, and failing to indicate a specific interest within the scope of the Department’s investigations (Company Opposition at 6). The Company further argues that Direct Energy fails to demonstrate how its interests are unique and different from others, and that its stated economic concerns related to some possible impact on competitive gas supply bear no connection to the scopes of these proceedings (Company Opposition at 7-8). In addition, the Company asserts that Direct Energy makes no attempt to show any specific nexus between its participation and the issues that will be the focus of the Department’s investigations, or between a specific business interest and a specific possible outcome from the proceedings (Company Opposition at 8).

In short, the Company argues that Direct Energy fails to demonstrate that it will be substantially and specifically affected, or suffer a peculiar damage, as a result of these proceedings, which is a fundamental prerequisite for intervention status (Company Opposition at 6-7). Thus, the Company contends that the Department should deny Direct Energy’s petition for full intervenor status, but does not oppose the Department’s granting Direct Energy limited participant status in these proceedings (Company Opposition at 8).

C. Network

The Network is the organization of agencies that implements programs under G.L. c. 25, § 19(c) (Green Communities Act, St. 2008, c. 169, § 11) (Network Petition at 2). Among other services, the Network’s members advise customers about rates and payment options, and arrange rate payment assistance (Network Petition at 2). The Network states that it is the only representative of the low-income sector in these proceedings and is the only one with low-income customer information -- such as direct experience and consequences -- that can materially assist the Department in its investigations and deliberations (Network Petition at 1, 2). The Network explains that low-income consumers have been adversely affected by the September 13 Event and are finding it increasingly difficult to afford their energy bills because of (a) volatile but generally increasing energy prices and (b) general economic uncertainty, which includes decreasing public benefits, uncertain incomes, and increasing general prices (Network Petition at 1). Thus, the Network claims that it is substantially affected by these proceedings because the efficiency, weatherization, education, assistance, and counseling services that it offers are dependent on or affected by the outcome of these investigations, and because its clients depend on the aforementioned services (Network Petition at 2). Further, the Network states that it and its clients are substantially affected by interruption of gas service, including safety and communication related thereto, and by needs for assistance to clients without gas service (Network Petition at 2).

D. CLF

CLF is a non-profit, member-supported advocacy organization that works to solve environmental problems threatening the people, natural resources, and communities of New England (CLF Petition at 2). CLF states that it and its members are substantially and specifically affected by this proceeding and have standing to intervene for several reasons (CLF Petition at 2). First, CLF states that by and through its members, it has a substantial and specific interest in ensuring effective and sustainable resolution of this matter, and equitable and efficient restoration of the communities affected by the September 13 Event (CLF Petition at 2).

Second, CLF states that it has long partnered with the City of Lawrence (“City”) and with environmental and community-based organizations in the Merrimack Valley to mitigate environmental burdens and ensure all residents access to a healthy environment (CLF Petition at 2). Moreover, CLF states that its Massachusetts Advisory Board and staff were in Lawrence at the time of the September 13 Event and have worked with community-based partners since then to identify and understand barriers to recovery and restoration (CLF Petition at 2-3). CLF asserts that many of these barriers mirror the barriers preventing equitable access to energy efficiency resources for hard-to-reach constituents (CLF Petition at 3).

Third, CLF states that it has a long history of working on natural gas issues in Massachusetts, participating in regulatory and judicial proceedings related to proposed and existing gas pipeline infrastructure and new natural gas power plants in the region, and campaigning to address natural gas leaks from the state’s aging gas pipeline system (CLF Petition at 3). Further, CLF states that it has a long history of participating in Department proceedings related to utility rate setting, including gas pipeline projects and gas rate cases, and a long history of full intervention in Department proceedings involving grid modernization, energy efficiency, demand response, and renewable energy (CLF Petition at 3-4).

Finally, CLF states that it has special expertise and a substantial interest in the advancement of the objectives of Massachusetts Executive Order 552 on Environmental Justice, the 2017 Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs, Massachusetts Executive Order 526 regarding non-discrimination, diversity, and equal opportunity, and associated Language Access Policies as they relate to restoration efforts and allocation of resources to affected municipalities (CLF Petition at 4).

E. GWL

GWL states that it is a nonprofit organization seeking to regenerate, improve, and manage the physical environment by developing community-based partnerships that empower people, businesses, and organizations to promote environmental, economic, and social

well-being (GWL Petition at 1). GWL further states that it has a direct interest in the outcome of these proceedings because it has long-standing relationships with residents, businesses, and nonprofit organizations affected by the September 13 Event (GWL Petition at 1). In particular, GWL states that the September 13 event delayed GWL's open space development work, caused the cancellation of an annual cleanup event, and displaced its staff and constituents as GWL's relief efforts took priority over other work (GWL Petition at 1). GWL wishes to see any fines imposed on the Company used in the affected communities to fund such things as Supplemental Environmental Projects, support energy efficiency and renewable energy efforts, improve the local housing stock, and increase the tree canopy (GWL Petition at 1). GWL seeks to participate in these proceedings as a limited participant (GWL Petition at 1).

IV. ANALYSIS AND FINDINGS

We find that DOER will be substantially and specifically affected by the outcome of these proceedings because the proceedings relate directly to DOER's powers and duties pursuant to G.L. c. 25A, § 6. Accordingly, we find that DOER has met the Department's standard for intervention as a full party, and we grant it full party status in these proceedings.

We further find that GWL is entitled to limited participant status, as requested, based on its stated interest in these proceedings. GWL shall be entitled to (1) receive copies of all correspondence, pleadings, and discovery requests and responses; (2) attend all conferences and hearings; and (3) file briefs in accordance with the Department's procedural schedule.

As for the three remaining petitions, we find that Direct Energy, the Network, and CLF have not shown that they are substantially and specifically affected by these proceedings, nor have any of them demonstrated a sufficient interest in these proceedings that would warrant full intervenor status. Having an interest in a proceeding may entitle a party to limited participant status, but something more is required to justify full party status. See 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); see also Robinson v. Department of Public Utilities, 416 Mass. 668, 673 (1993); Attorney General, 390 Mass. at 217.

None of these three petitioners have presented a unique interest that cannot be raised by the Attorney General or DOER, or explored by the Department itself. Nor have any of them stated the relief sought or the nature of the evidence that they would produce to assist the Department in these investigations. In particular, we find that Direct Energy's interest as a competitive gas supplier concerned with how it does business in Massachusetts is beyond the scope of these proceedings and arguably speculative in this context. Moreover, Direct Energy fails to demonstrate how its business interest and potential damage are unique and different from others who could be affected by these proceedings.

Although none of these three petitioners has established how it is substantially and specifically affected by these proceedings, we authorize Direct Energy, the Network, and CLF to participate as limited participants in recognition of their interests in these proceedings. Boston Gas Company and Colonial Gas Company, D.P.U. 13-01, Hearing Officer Ruling on Petition to Intervene at 2-3 (May 9, 2013), affirmed, Interlocutory Order at 7-8 (July 23, 2013); Blackstone Gas Company, D.P.U. 12-119, Stamp-Granted Petition to Intervene (January 25, 2013); 220 CMR 1.03(1)(e). Each shall be entitled to (1) receive copies of all correspondence, pleadings, and discovery requests and responses; (2) attend all conferences and hearings; and (3) file briefs in accordance with the Department's procedural schedule.

V. RULING

For the above stated reasons, DOER's petition to intervene and GWL's request for limited participant status are hereby GRANTED.

The petitions to intervene of Direct Energy, the Network, and CLF are hereby DENIED as these entities have not demonstrated substantial and specific interests in the subject matter of these proceedings. Nevertheless, Direct Energy, the Network, and CLF may participate in the proceedings as limited participants, and the full parties to this proceeding shall provide them with copies of all notices, testimony, pleadings, correspondence, etc., pertaining to these proceedings.

Under the provisions of 220 CMR 1.06(5)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within three days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two days of the appeal. The Ruling remains in full force and effect unless and until set aside or modified by the Commission. 220 CMR 1.06(5)(d)(2).

/s/

Laurie Ellen Weisman
Lauren Morris
Hearing Officers