

**STAMP APPROVED  
by DPU Commission  
5/29/2020**

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May 22, 2020

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:

On behalf of Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“CMA”), the Massachusetts Office of the Attorney General, and the Massachusetts Department of Energy Resources, as parties to the above-referenced proceeding, with the cooperation of NiSource Inc. (“NiSource”), parent company of CMA, and Eversource Energy (“Eversource”) (collectively, the “Settling Parties”), enclosed is a Joint Motion for Appointment of Department Settlement Intervention Staff (“Joint Motion”).

By this Joint Motion, the Settling Parties hereby request that the Department of Public Utilities (the “Department”) appoint Settlement Intervention Staff (“SIS”) to participate in the resolution of the above-referenced proceeding. The Settling Parties are making this request in furtherance of the transaction contemplated in the Asset Purchase Agreement executed by and among NiSource, Eversource, and CMA on February 26, 2020, providing for Eversource’s acquisition of the assets comprising the operations of CMA. Eversource and NiSource are committed to obtaining necessary approvals and achieving satisfaction of required conditions by September 30, 2020, to allow for the transaction closing and Eversource ownership prior to November 1, 2020 (start of the 2020/2021 winter heating season). As discussed in the Joint Motion, the Department’s appointment of SIS would assist in reaching settlement on pipeline safety matters within the Department’s exclusive purview.

Thank you for your attention to this matter.

Sincerely,



Cheryl M. Kimball

Enclosure

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



2020, to allow for the Transaction closing and Eversource ownership prior to November 1, 2020, which is the start of the 2020/2021 winter heating season.

As stated in the APA, the Transaction is subject to Massachusetts statutory approvals, resolution of certain proceedings before governmental bodies, and other prerequisites to closing. Specifically, the Transaction is subject to the Department's approval under G.L. c. 164, § 96, with confirmation under G.L. c. 164, § 21, that Eversource will possess all of the franchise rights and obligations of CMA upon closing and that further action, pursuant to G.L. c. 164, § 21, is not required to complete the Transaction.

In addition to the requirements of Massachusetts law, the terms of the APA encompass other prerequisites for closing, which must be fulfilled for the Transaction to move forward. One of those prerequisites is the termination of the 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, D.P.U. 19-140, and other pending enforcement, assessment and compliance actions currently under investigation and pending before the Department (the "DPU Enforcement and Compliance Actions") that the Department would intend to have resolved in the context of settling D.P.U. 19-140.

For the reasons discussed below, the appointment of SIS to participate in settlement of the DPU Enforcement and Compliance Actions would greatly facilitate the settlement process surrounding the Transaction, while assuring that the Department's oversight and supervision is maintained in relation to the resolution of this important proceeding. In particular, appointment of SIS would allow the Department to fulfill its role under Chapter

164 and associated pipeline safety regulations to protect the safety of natural gas service to CMA customers.

## **II. Background on the Transaction and Settlement Prospects**

On September 13, 2018, CMA experienced an over-pressurization of the low-pressure natural gas distribution system serving parts of Lawrence, Andover, and North Andover, Massachusetts (“Greater Lawrence Incident”). A series of structure fires and explosions occurred following the over-pressurization, resulting in one death, the hospitalization of 22 individuals and the damage or destruction of 131 homes and businesses. D.P.U. 19-140, Order Opening Investigation, at 1 (2019).

On October 25, 2019, the Department opened two investigations into the Merrimack Valley Incident: (1) D.P.U. 19-140, which is focused on CMA’s responsibility for and response to the Greater Lawrence Incident, as well as CMA’s restoration efforts following the incident, pursuant to G.L. c. 164, § 105A; and (2) D.P.U. 19-141, which is focused on CMA’s efforts to prepare for and restore service following the Greater Lawrence Incident, pursuant to G.L. c. 164, § 1J. 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, D.P.U. 19-141, at 2 (2019).<sup>1</sup>

On February 26, 2020, Eversource and NiSource announced that they had reached agreement wherein Eversource would purchase CMA’s assets for \$1.1 billion, subject to certain adjustments at closing. As outlined in the APA, the acquisition must be approved by the Department pursuant to G.L. c. 164 § 96, and other prerequisites must be satisfied.

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<sup>1</sup> The Settling Parties are working diligently toward a resolution of D.P.U. 19-141 and are not requesting the participation of SIS in that docket.

Specifically, for the Transaction to move forward, following the issuance of the Department's final decision approving the sale and acquisition under G.L. c. 164 § 96, the following Department actions and approvals must have occurred: (1) "*MDPU Approval*," which means the Department's approval of the transactions contemplated by the APA, as required by the Department pursuant to G.L. c. 164 § 96, and any applicable rules and regulations promulgated by the Department (APA, Article 1, Section 1.1); and (2) "*MDPU Required Resolution*," which means the final resolution or termination of all pending and future actions, claims, and proceedings under the Department's jurisdiction against NiSource and CMA relating to the Greater Lawrence Incident, as well as other pending assessment, compliance or enforcement actions (APA, Section 10.1), which would include, among other matters, D.P.U. 19-140.<sup>2</sup>

Since making the announcement on February 26, 2020, NiSource and Eversource have engaged in preliminary settlement discussions with the AGO and DOER regarding the Transaction. However, the Department's noticed adjudicatory proceeding in D.P.U. 19-140 is underway; but, has not progressed to the point that there is sufficient clarity for the Settling Parties to reach consensus on the merits of the matter without input from the Department. To that end, the Settling Parties need to be in a position to assess and agree upon the resolution of the DPU Enforcement and Compliance Actions as part of a potential settlement of the issues relating to the Transaction. Thus, the Department's participation in the process, through appointment of SIS, would greatly facilitate the settlement process, enabling the Settling Parties to remain within parameters consistent with the Department's plan and objectives for its the Merrimack Valley Investigation.

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<sup>2</sup> There are other prerequisites to closing that apply, but these requirements are not germane to the Department's compliance and enforcement proceedings, which are the subject of Section 10.1 of the APA.

### III. Department Practice and Precedent

The Department has a longstanding process in place for assigning SIS to participate in settlement processes involving regulated electric, gas, and water utilities and other stakeholders, including the AGO, low-income advocates, and environmental interest groups.<sup>3</sup> Under the Department's settlement process, two separate staffs are designated by the Department's commissioners: an advisory staff and a SIS. The advisory staff conducts the adjudicatory portion of the proceeding, including discovery, public and evidentiary hearings, and legal briefing, while providing advice and counsel to the Department as to the final decision to be issued by the Department, pursuant to G.L. c. 30A. The SIS maintains separation from the advisory staff, participating in negotiations with the utility and other intervenors to settle some or all of the contested issues in the case. The Department directly designates staff members as SIS, typically including staff from the Department's appropriate technical divisions, in addition to legal staff. See, 2018 Department of Public Utilities Annual Report, at 34.

The SIS does not have direct communication with the Department's commissioners regarding the pending case once they have commenced participation in the proceeding as SIS. Rather, the SIS works collaboratively with the parties to develop and propose a settlement of the issues that SIS is appointed to participate in. Typically, the Department will accept a proposed settlement, if settlement is reached with the participation of SIS, although the Department always reserves the authority to address the specific

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<sup>3</sup> The SIS process has been typically been used to effectively and efficiently address rate proceedings for regulated water companies. See Duck Farm Springs Water Company, D.P.U. 89-259-A, at 2 (1991); South Egremont Water Company, D.P.U. 95-119/95-122, at 1, n.2 (1996); Whitinsville Water Company, D.P.U. 17-108-A, at 2, n. 3; Mountain Water Systems, D.P.U. 17-154, at 2; see also D.P.U. 17-154 Department Memorandum Appointing SIS (2017). Although the Department's SIS process was originally developed for use in rate cases for regulated water companies, the Department has used SIS in various types of electric and natural gas company proceedings.

circumstances of the proceeding under consideration. The Department has recognized that the chief advantages of settlements are reductions in the administrative burdens of developing a record, holding hearings, and achieving speedier resolution of utility applications. At its core, the SIS process is a tool to assure that proceedings are resolved in a manner that protects customers, assures the provision of safe and reliable utility service, results in just and reasonable rates, and reduces cost and time associated with adjudicating petitions to the Department.

The Department has successfully employed the SIS process to a variety of proceedings. For example, prior to the enactment of the Green Communities Act, the Department utilized SIS in relation to regulated gas and electric utility energy efficiency offerings, including the associated cost recovery. See Western Massachusetts Electric Company, D.P.U. 92-13, at 1-2 (1992); Fitchburg Gas and Electric Light Company, D.P.U. 92-181-A at 4, n. 8 (1994); Massachusetts Electric Company, D.P.U. 92-217, at 2 (1993); NSTAR Gas Company, D.T.E./D.P.U. 04-37-A, at 1 (2008); Bay State Gas Company, D.P.U. 04-39-A, at 1 (2008).

The Department has also utilized SIS in relation to telecommunications issues. For example, the Department assigned SIS in a telecommunications proceeding where customers raised concerns about the quality of service of the Telecommunications Relay Service, which used third-party operators to connect deaf, hard of hearing, and speech impaired individuals with persons of unimpaired hearing/speech by way of the telephone network. MCI Telecommunications Corporation, D.P.U./D.T.E. 96-118, at 3 (1998).

More technically complex cases have also benefitted from the SIS process. In 1986, the Department opened an investigation into the pricing and ratemaking treatment to be

afforded new electric generating facilities that were not qualifying facilities as defined in its regulations governing the sale of electricity by small power producers and co-generators. Investigation by the Department into Pricing and Ratemaking Treatment, D.P.U. 86-36-G/G1/G2/G3/G4, at 1 (1989). As part of the regulatory framework addressing these facilities, the Department required a pre-filing settlement process. Id. at 59. If resources were available, staff members from the Department and/or the Energy Facilities Siting Board (“EFSB”) would participate in the settlement process as full participants. Id. at 61. Department staff who participated in the settlement process would be prohibited from participating in the Department or the EFSB’s review and eventual adjudication of the filing. Id.

Most recently, the Department employed an enhanced SIS process in relation to its regulation of competitive suppliers operating in Massachusetts. Under its statutory authority, the Department is authorized, following a G.L. c. 30A proceeding, to investigate and take licensure action, including suspension or revocation of a license, denial of an application for license renewal or implementation of a probationary period, or levy civil penalties against a competitive supply company that has significant consumer issues or has violated Department regulations. Order Establishing Final Interim Guidelines for Competitive Supply Investigations and Proceedings, D.P.U. 16-156-A, at 1 (2017).

Under the Department’s Interim Guidelines, the Delegated Commissioner and the Prosecuting Officer, consistent with the Department’s use of SIS, are responsible for, among other things, negotiating a consent agreement with a competitive supply company. Id. at 20-21. The Delegated Commissioner, the Prosecuting Officer, and their staff will serve as SIS and, in addition to negotiating a consent order with the competitive supplier,



are responsible for presenting any consent order to the Department for its approval. Id. at 24. The Delegated Commissioner and the Prosecuting Officer are excluded from running a formal proceeding or participating in the issuance of a final order at the conclusion of a formal proceeding involving that competitive supplier. Id.

Accordingly, the Department has an established process of longstanding tenure that could be used in the above-referenced proceeding to reach an expeditious, warranted and appropriate result for customers of CMA.

#### **IV. Basis for Appointment of SIS**

Assignment of SIS to assist in fulfilling the MDPU Required Resolution will enable the Department to participate directly in developing a resolution of the DPU Enforcement and Compliance Actions, while maintaining firm and effective regulatory oversight in relation to the issues to be adjudicated in that proceeding.

Neither the AGO, DOER, nor even CMA have sufficient line of sight into the parameters of the Department's Merrimack Valley Investigation to form a complete settlement perspective because the Department has not issued a Notice of Probable Violation for the pipeline safety investigation. Assignment of SIS is likely to result in a more expeditious resolution to enable a settlement filing with the Department and, ultimately, review and approval of Eversource's acquisition of the CMA assets on a timely

basis.<sup>4,5</sup>

Specifically, the Settling Parties request that the Department assign SIS to collaborate with the Settling Parties to:

1. Identify the specific areas of alleged non-compliance with the Department's pipeline safety regulations that the Department expects to adjudicate as part of D.P.U. 19-140, as well as other assessment, compliance or enforcement actions currently pending before the Department through its Pipeline Safety Division.
2. Identify the improvement or modifications of operating procedures, process changes, or other non-monetary compliance efforts that should be instituted by CMA prior to closing of the Transaction, and/or by Eversource following the closing of the Transaction, to address the areas of non-compliance identified by the Department in Item 1.
3. Quantify the payment in lieu of penalties that would be sufficient for NiSource and CMA to make to terminate D.P.U. 19-140 and fulfill the prerequisite to closing of the MDPU Required Resolution.

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<sup>4</sup> With respect to matters under review in D.P.U. 19-140, the Department's Pipeline Safety Division has had its investigation underway since the onset of the Greater Lawrence Incident, and CMA has responded to numerous requests for information and several exit letters from the Department in relation to the original incident and several follow-up issues. The Department also has access to the record compiled by the National Transportation Safety Board, as the Department was a participant in that investigation. With respect to matters under review in D.P.U. 19-140, CMA has submitted comprehensive reports to the Department on all aspects of the Greater Lawrence Incident and follow-up issues.

<sup>5</sup> Eversource has consistently indicated in all of its communications to potential stakeholders that a high priority for Eversource is control of the CMA assets prior to the start of the peak winter season on November 1, 2020. For this to occur, the Department's final decision approving the transaction will need to be completed no later than September 30, 2020, to allow time for closing and other transition necessities.

Given the importance of addressing the public safety in relation to the Greater Lawrence Incident and across CMA's entire system, the Department would appropriately have a strong interest in assuring that any settlement agreement that incorporates provisions on a potential disposition of CMA's responsibilities and liabilities in relation to the DPU Enforcement and Compliance Actions is in the public interest. Assignment of SIS would inject the Department's perspective, oversight and input into the settlement process, which would greatly assist the Settling Parties given that none of the Settling Parties fulfill the role that the Department does in overseeing the safety of the distribution system.

Given the importance of resolving the DPU Enforcement and Compliance Actions and enabling the successful and timely completion of the Transaction, customers will benefit from the dual protection provided by having the Settling Parties and SIS participate in the negotiations, followed by the Department's review and approval of any settlement agreement that might flow from those negotiations.

## **V. CONCLUSION**

For the reasons discussed above, the Department should appoint SIS staff to assist in the settlement process of the DPU Enforcement and Compliance Actions. The Department's SIS process has been used for decades in a variety of proceedings to protect the interests of customers on an efficient and effective basis. Appointment of SIS will enable this proven, customer-focused approach, while maintaining the Department's full authority and flexibility to review any settlement agreement that might be developed and presented to the Department in the final result. In particular, customers affected by the Greater Lawrence Incident will be assured that the Department is maintaining strict

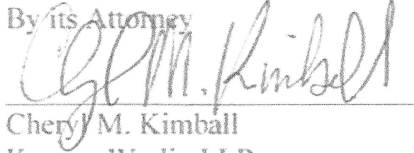
oversight, on dual platforms, over any settlement agreement to ensure that their rights are fully and vigorously protected.

**WHEREFORE**, for the reasons stated above, the Settling Parties respectfully request that the Department grant this motion to assign SIS in relation to the DPU Enforcement and Compliance Actions.

Respectfully submitted,

**Bay State Gas Company  
d/b/a Columbia Gas of  
Massachusetts**

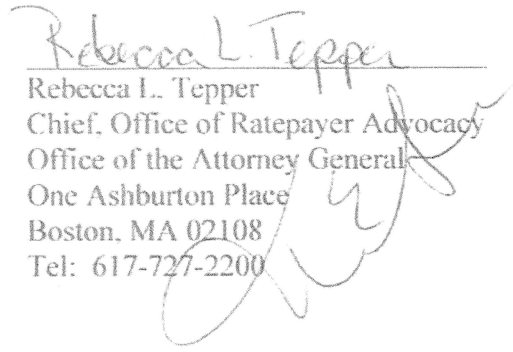
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Dated: May 22, 2020