

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

GRANTED
6/16/2020
Hearing Officer
Weisman
J. E. Weisman

_____)
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. 19-140

JOINT MOTION FOR EXTENSION OF TIME

I. Introduction

On May 22, 2020, Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“CMA”), the Massachusetts Office of the Attorney General (“AGO”), and the Massachusetts Department of Energy Resources (“DOER”), 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”), requested that the Department of Public Utilities (the “Department”) appoint Settlement Intervention Staff (“SIS”) to participate in the resolution of the above-referenced proceeding (the “Motion”), regarding the Greater Lawrence Incident.¹ On May 29, 2020 the Department stamp-approved the Motion, following opportunity for comment.

¹ “Greater Lawrence Incident” means the fires and explosions that occurred on September 13, 2018 in Lawrence, Andover and North Andover, Massachusetts related to the delivery of natural gas by CMA and the subsequent shut-down of the CMA affected gas delivery system by September 14, 2018, the CMA restoration and recovery efforts undertaken in response thereto from and including September 14, 2018, and the gas leak that occurred on September 27, 2019 on a main that CMA installed during such efforts and the CMA restoration of outages resulting from such leak.

In conjunction with its approval of the Motion, the Department issued a directive entitled “Appointment of Settlement Staff” setting a deadline of Monday, June 15, 2020 for filing of a proposed settlement (“Settlement Directive”). By this Motion, the Settling Parties request extension of the deadline for filing of a settlement agreement to Monday, June 22, 2020. For the reasons set forth herein, there is good cause for the extension.

II. Basis for Extension

The Settling Parties requested assignment of SIS in the above-referenced proceeding to collaborate with the Settling Parties to address three specific issues, as follows:

1. To 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 Division of Pipeline Safety.
2. To 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. To 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.”²

Beginning Monday, June 1, 2020, the Department’s SIS engaged with the Settling Parties in a series of discussions to reach resolution in these three designated areas. Significant progress toward settlement has occurred through these discussions and the issues are substantially narrowed.

However, as part of its assignment of SIS, the Department set a deadline of June 15, 2020 for the filing of a settlement agreement, stating as follows:

By June 15, 2020, SIS and the other full parties to this proceeding shall submit a proposed settlement that is sufficient for the Department to review and consider in resolution of this proceeding, pursuant to 49 U.S.C. § 60105, G.L. c. 164, §§ 76, 105A, and 220 CMR 69.00. If a proposed settlement cannot be submitted by June 15, 2020, the parties shall notify the Department that its proceeding may continue without settlement.

Appointment of Settlement Staff at 2-3.

The Settling Parties agree that the issues involved in the three areas identified as appropriate for the Department’s SIS are resolved or are resolvable. In addition, the Settling Parties (exclusive of the Department’s SIS) are making substantial progress on all other issues associated with the Department’s approval of Eversource’s acquisition of the assets comprising the operations of CMA under G.L. c. 164, § 96 and § 94. However, additional time is necessary to finalize a settlement agreement relating to the Department’s approval under G.L. c. 164, § 96 and § 94.

² 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 Asset Purchase Agreement (“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.

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, which is the start of the 2020/2021 winter heating season. Therefore, the Settling Parties and the Department's SIS are in agreement that administrative efficiency would be well served by the filing of a single settlement agreement encompassing: (1) resolution of the amount of the payment to be made by NiSource and CMA that would be sufficient for the Department to terminate D.P.U. 19-140, and fulfill the prerequisite to closing of the "MDPU Required Resolution;" and (2) resolution of other issues arising under G.L. c. 164, § 96 and § 94, or otherwise required by Massachusetts law and Department precedent to be determined by the Department in order for the transaction to move forward in accordance with the terms contemplated by NiSource and Eversource in the APA.

The Settling Parties are endeavoring to complete the documentation associated with this comprehensive settlement by June 22, 2020. Should additional time be necessary to complete preparation of the filing requirements, the Settling Parties will notify the Department on or before June 22, 2020. However, the Settling Parties are committed to complete the filing encompassing all issues necessary for the Department to move forward to initiate the proceeding under G.L. c. 164, § 96 and § 94, and to terminate the proceedings in D.P.U. 19-140 and D.P.U. 19-141 and associated matters, no later than June 30, 2020 in any event. Lastly, the Settling Parties and the Department's SIS agree that Items 1 and 2 listed above, are under discussion and will be subject to a separate "Consent Order" executed by the Department's SIS and CMA, which is expected to be finalized no later than June 30, 2020.

V. CONCLUSION

The issues involved in the three areas identified above, as appropriate for the Department's SIS, are resolved or are resolvable. In addition, the Settling Parties (exclusive of the Department's SIS) are making substantial progress on all other issues associated with the Department's approval of Eversource's acquisition of the assets comprising the operations of CMA under G.L. c. 164, § 96 and § 94. Therefore, the Department should allow an extension of the June 15, 2020 settlement filing deadline to provide additional time for development of a comprehensive settlement agreement addressing all aspects necessary for the Department's approval of the transaction consistent with the terms contemplated by the APA.

WHEREFORE, for the reasons stated above, the Settling Parties respectfully request that the Department grant this motion to extend the deadline for filing of a settlement agreement to June 22, 2020.

Respectfully submitted.

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d/b/a Columbia Gas of
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**Massachusetts Department of
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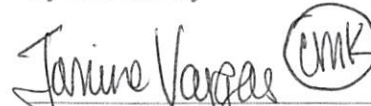
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