



program. This has resulted in longstanding partnerships with environmental and community development organizations such as Groundwork Lawrence and Lawrence Community Works, as well as elected and appointed officials within the City of Lawrence.

3. The Merrimack Valley is home to communities designated as environmental justice populations, which are more susceptible to the harm that could result from incomplete review of this matter.
4. On September 13, 2018, an over-pressurization event resulted in a series of explosions and fires in and around Columbia Gas' distribution system, which caused at least 25 injuries and one fatality ("Merrimack Valley Explosions"). CLF has engaged with community-based partners since the Merrimack Valley Explosions to identify and understand barriers to recovery and restoration for CLF members and community partners impacted by the incident, recognizing that many of the barriers to recovery and restoration mirror the barriers preventing equitable access to energy efficiency resources for hard to reach constituents.
5. Eversource Gas Company of Massachusetts and its holding company parent, Eversource Energy ("Eversource"), are engaged primarily in the electric and gas distribution business and serve approximately 3.7 million electric and gas customers in Connecticut, Massachusetts, and New Hampshire.<sup>1</sup> In Massachusetts, Eversource distributes gas through its subsidiary NSTAR Gas; pursuant to its 2019 annual return, NSTAR Gas serves 308,460 customers in Massachusetts.<sup>2</sup>
6. NiSource is an energy holding company which operates in seven states and serves approximately 4 million customers through its electric and gas distribution companies. Bay

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<sup>1</sup> Eversource "Customer Profile", <https://www.eversource.com/content/ema-c/about/about-us/about-us/customer-profile#:~:text=Eversource%20is%20New%20England's%20largest,Connecticut%2C%20Massachusetts%20and%20New%20Hampshire>. (accessed 8/18/20).

<sup>2</sup> Return of the NSTAR Gas Company to the Massachusetts Department of Public Utilities for the year ended December 31, 2019, March 20, 2020, <https://www.mass.gov/doc/nstar-gas-ar-2019/download>

State Gas Company d/b/a Columbia Gas of Massachusetts (“Bay State Gas”), one of the six natural gas distribution companies operated by NiSource, serves approximately 330,000 natural gas customers in more than 60 communities in the greater Springfield area, southeastern Massachusetts and the Merrimack Valley.

7. Eversource Gas of Massachusetts (“EGMA”) is a wholly owned subsidiary of Eversource incorporated in Massachusetts on May 15, 2020, pursuant to G.L. c. 164, § 1 to own and operate the business of Bay State Gas to be transferred in the present transaction.
8. In late February 2020, Eversource entered an agreement to purchase the corporate assets of Bay State Gas from NiSource for a sale price of 1.1 billion dollars (“the Agreement”). The asset purchase is the most recent action following investigations into the Merrimack Valley Explosions. The Agreement is the subject of the foregoing proceeding, as it requires approval from the Massachusetts Department of Public Utilities (“Department”) to proceed.<sup>3</sup>
9. This transaction will more than double the size of the Eversource’s gas customer base in Massachusetts. As stated in the Agreement, Eversource has agreed to purchase substantially all of the assets of Bay State Gas and all of the assets held by any affiliates of Bay State Gas that primarily relate to the business of storing, distributing or transporting gas to residential, commercial and industrial customers in Massachusetts, as conducted by Bay State Gas. Eversource will assume certain liabilities of Bay State Gas and its affiliates but will not assume any liabilities related to the Merrimack Valley Explosions.
10. Under the terms of the Agreement, any future rate changes that would be applicable to customers of Bay State Gas as of the Agreement closing date would occur only after the

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<sup>3</sup> M.G.L. c. 164, § 96; “Baker Cites ‘Real Benefits’ in Eversource-Columbia Gas Deal”, Colin A. Young, (Feb. 27, 2020). <https://www.wgbh.org/news/local-news/2020/02/27/baker-cites-real-benefits-in-eversource-columbia-gas-deal> (Feb. 27, 2020).

Department has conducted an adjudicatory proceeding under G.L. c. 164, § 94, consistent with the due process requirements of G.L. c. 30A. This announcement followed a settlement between Bay State Gas and the U.S. Attorney's office wherein Bay State Gas agreed to pay a criminal fine of 53 million dollars to resolve proceedings arising from the Merrimack Valley Explosions, which resulted in significant losses, including 22 injured people, one fatality, and disrupted lives and livelihoods for affected Columbia Gas customers for months or longer.<sup>4</sup>

11. Massachusetts Governor Charles Baker has highlighted the role of the Department in reviewing and approving Eversource's purchase of Bay State Gas, indicating the need to ensure the transaction addresses the safety concerns brought to light by the Merrimack Valley Explosions and that the transaction yields results which are beneficial to ratepayers.<sup>5</sup>

The Department review must include a determination whether a purchase and sale is consistent with the public interest, by considering potential rate changes, the long-term strategies that will assure a reliable, cost effective energy delivery system, any anticipated interruptions in service, or other factors which may negatively impact customer service.<sup>6</sup>

Other factors which may negatively impact customer service include costs and impacts associated with reliance on fossil fuel infrastructure and associated air pollution impacts.

12. The Global Warming Solutions Act ("GWSA") requires to the Commonwealth to achieve at least an 80 percent reduction in statewide emissions below 1990 levels.<sup>7</sup> Governor Baker's Administration issued a determination pursuant to the GWSA to achieve net zero greenhouse gas ("GHG") emissions by 2050, that in no event shall be greater than a level that is 85

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> M.G.L. c. 164, § 96(b).

<sup>7</sup> M.G. L. c. 21N, § 3(b).

percent below the 1990 level.<sup>8</sup> Further, the Massachusetts Senate has passed a bill to update the GWSA to similarly require net zero emissions by 2050.<sup>9</sup> In addition, the Commonwealth’s Executive Office of Energy and Environmental Affairs set forth its Clean Energy and Climate Plan for 2020, in which it laid out measures necessary to achieve the 2020 emissions target of 25 percent reduction from 1990 levels.<sup>10</sup>

13. CLF’s significant advocacy history has included litigation to enforce the GWSA, expand energy efficiency services, reduce reliance on fossil fuels, and support greater reliable on clean energy. For example, in the 2016 case Kain v. Dep’t of Env’tl. Prot., CLF contended that the Commonwealth is obligated to create and implement regulations to meet its carbon emission reduction mandates; the Massachusetts Supreme Judicial Court affirmed this assertion.<sup>11</sup> CLF has further worked to uphold the goals and purpose of the GWSA by means of its advocacy through an amicus brief it submitted in the 2018 case New England Power Generators Ass’n v. Dep’t of Env’tl. Prot.<sup>12</sup>
14. CLF also has a history of advocating for protections for gas ratepayers, including its work to ensure that the legislative intent of M.G.L. c. 164 § 94A, which pertains to contracts for purchase of gas or electricity and review of price paid—to protect ratepayers from certain types of financial risks.<sup>13</sup> In the present matter, CLF supports arrearage forgiveness for low- and moderate-income Bay State Gas customers, in accordance with M.G.L. c. 140, § 17 and orders establishing and expanding protections for low- and moderate-income customers.<sup>14</sup>

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<sup>8</sup> Executive Office of Energy and Environmental Affairs Determination of Statewide Emissions Limit for 2050, April 22, 2020, <https://www.mass.gov/files/documents/2020/04/22/FinalNZDetermLetter%28Signed%29.pdf>.

<sup>9</sup> An Act Setting Next-Generation Climate Policy, S.2477, <https://malegislature.gov/Bills/191/S2477>

<sup>10</sup> “Clean Energy and Climate Plan for 2020”, Massachusetts Executive Office of Energy and Environmental Affairs, <https://www.mass.gov/service-details/clean-energy-and-climate-plan-for-2020>

<sup>11</sup> Kain v. Dep’t. of Env’tl. Prot., 474 Mass. 278, 49 N.E.3d 1124 (Mass 2016).

<sup>12</sup> New England Power Generators Ass’n, Inc. v. Dep’t of Env’tl. Prot., 480 Mass. 398, 105 N.E.3d 1156 (2018).

<sup>13</sup> ENGIE Gas & LNG LLC v. Dep’t of Pub. Utilities, 475 Mass. 191, 192, 56 N.E.3d 740, 742 (2016).

<sup>14</sup> Order Establishing Standards for Arrearage Management Programs for Low-Income Customers, D.T.E. 05-86 (2006); Order Expanding Low-Income Consumer Protections and Assistance, D.P.U. 08-4 (2008).

15. Eversource, EGMA, NiSource, and Bay State Gas d/b/a Columbia Gas are hereafter collectively referred to as (“the Petitioners”) seek Department approval of a proposed settlement agreement along with the Massachusetts Attorney General’s Office, the Department of Energy Resources, and the Low-Income Weatherization and Fuel Assistance Program Network (“settling parties”).
16. In the present filing, the Petitioners provide testimony alleging that Eversource’s proposed acquisition of the Bay State Gas business is consistent with the public interest under G.L.c.164, § 96, including each of the factors that the Department considers in reviewing a utility asset sale and its impact on Massachusetts customers. Those factors include alleged net benefits in the range of \$281 million or more that will result for Bay State Gas customers in conformance with the Department’s standard for approval of an asset sale. The Petitioners assert that the proposed transaction presents “an unparalleled opportunity to bring value to Massachusetts utility customers due to the opportunities that exist to combine the operations of two, similarly sized natural gas distribution systems and achieve operating efficacy that will improve public safety and reliability, reduce environmental impact and, over time, drive cost efficiencies”.<sup>15</sup> Eversource further states that it “is galvanized by the challenge of making the most of this exceptional opportunity to achieve benefits for Massachusetts gas customers that would not be attainable under any other circumstance.”<sup>16</sup>
17. CLF asserts that the present transaction provides a unique opportunity to address public safety, rate, environmental justice, and climate concerns. If the Commonwealth is to meet its climate goal of net-zero greenhouse gas emissions by 2050, it is imperative that utilities have

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<sup>15</sup> Joint Petition of Eversource Energy, Eversource Gas Company of Massachusetts, NiSource Inc. and Bay State Gas Company d/b/a Columbia Gas of Massachusetts for Approval of Purchase and Sale of Assets Pursuant to General Laws Chapter 164, §§ 94 and 96 - D.P.U. 20-59, Exhibit JP-WJA/PMC-1 at Page 6.

<sup>16</sup> *Id.*

plans in place to do so as soon as possible.

18. In addition to the matters highlighted by Governor Baker, the proceeding and settlement agreement presents an opportunity to review Eversource's plan to meet regulatory and policy-based clean energy goals. Unfortunately, discussion of environmental considerations in the Petitioners' filing is limited to statements that increased equipment efficiency and economic incentives such as the Mass Save program will yield reductions in natural gas consumption. Of concern is the fact that, despite above-referenced statements as to the potential of this transaction to reduce environmental impact, at no point in their 272-page filing do the Petitioners address the Commonwealth's climate goals or the GWSA. Despite the Commonwealth's focus on achieving net-zero greenhouse gas emissions by 2050 and the potential for this transaction to further the Commonwealth's climate goals, the Petitioners do not even mention climate or indicate that a forthcoming long-term plan would focus on the considerations set forth in the GWSA.
19. In 2019, several dockets relating to this matter were opened before the Department, including two matters relating to the Merrimack Valley explosions (D.P.U. 19-140 and D.P.U. 19-141) and one for Eversource's petition to increase base distribution rates for gas service (D.P.U. 19-120). The Department granted Petitioners' Joint Motion to Consolidate dockets 19-140 and 19-141 into the present matter. Accordingly, although the present transaction does not include transfer of liability as to the Merrimack Valley Explosions, outstanding matters from dockets 19-140 and 19-141 must be resolved through this proceeding.
20. On March 6, 2020, CLF filed comments regarding Eversource's proposed rate increase in D.P.U. 19-120, highlighting that the same must include whether the rate increase would contribute to state requirements for reducing greenhouse gas emissions and any foreseeable

impacts of state climate policies and regulations on utility capital assets.<sup>17</sup> In those comments, CLF suggested certain actions which the Department could take to meet its obligations under the GWSA, including:

- a. Incorporation into relevant Department proceedings of an analysis of the implications of the utility's proposal for compliance with the GWSA's interim and 2050 targets and consideration of strategies to better ensure compliance in this sector;
- b. Development of a gas transition plan and schedule to phase out new natural gas connections; and
- c. Encouraging gas distribution utilities to pilot alternative heating and cooling technologies in the residential sector.

21. The foregoing matter presents a unique opportunity to evaluate and implement the suggestions outlined above.

### **STANDARD OF REVIEW**

22. The Department has broad, but not unlimited, discretion in determining whether to allow participation, and the extent of participation, in Department proceedings.<sup>18</sup> A petitioner for intervention must describe how the proceeding will substantially and specifically affect the petitioner.<sup>19</sup>

23. Factors which the Department may consider include, among others, 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 allowing the intervention, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate

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<sup>17</sup> Comments of Conservation Law Foundation in D.P.U. 19-120, Eversource, <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/11908412>.

<sup>18</sup> Boston Edison Co. v. Dept. of Public Utilities, 375 Mass. 1, 45 (1978), cert. denied, 439 U.S. 921 (1978).

<sup>19</sup> 220 C.M.R. § 1.03(1)(b); M.G.L. c. 30A, § 10;



the issues of the proceeding.<sup>20</sup>

**CLF AND ITS MEMBERS ARE SUBSTANTIALLY AND SPECIFICALLY AFFECTED**

**BY THE PROCEEDING.**

24. CLF and its members are substantially and specifically affected by the foregoing proceeding, as contemplated in M.G.L. c. 30A, § 10. CLF has a long history of significant and unique involvement in numerous facets of this proceeding: environmental and equity concerns in the Merrimack Valley; implementation of the GWSA, which CLF helped to shape and enact; and matters relating to utility rate-setting, gas distribution, energy efficiency, equity in environmental and energy decisions, among others.
25. As outlined above, key considerations in the review of Eversource's purchase of Columbia Gas' Massachusetts assets will include numerous issues that CLF works on: remedying the harm done to the community, addressing safety concerns brought to light by the Merrimack Valley Explosions, ensuring that the transaction is beneficial to ratepayers, and implementing a plan for Eversource to comply with the Commonwealth's clean energy goals, including Governor Baker's pledge and the EEA's determination that the Commonwealth must achieve of net-zero GHG emissions by 2050.<sup>21</sup>
26. CLF anticipates participating in the related matter of the Massachusetts Attorney General's petition on Eversource's and other local distribution companies' business plan, D.P.U. 20-80, as CLF and its members will be substantially and specifically effected by that proceeding.
27. CLF is active in the Merrimack Valley directly and through partnerships with local organizations to advocate for environmental justice and equity in energy and environmental decisions on behalf of its members in the Merrimack Valley and the Commonwealth.

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<sup>20</sup> Robinson v. Dept. of Public Utilities, 416 Mass. 668, 673-674 (1993).

<sup>21</sup> Cf. paragraph 12, above.

28. Due to the nature and scope of the proceeding, and CLF's unique and ongoing role in various issues that will be significantly impacted by the outcome of the proceeding, CLF and its members will be substantially and specifically impacted by the proceeding.

**CLF AND ITS MEMBERS HAVE INTERESTS THAT ARE UNIQUE AND CANNOT BE  
RAISED BY ANY OTHER PETITIONER**

29. CLF and its members have unique interests in the public policy matters at issue in the proceeding, and thus cannot be adequately represented by any other petitioner.

30. CLF has unique goals and interests in the proceeding due to its decades-long and ongoing involvement in relevant matters, such as the passage of the GWSA and its subsequent implementation and the organization's continuing role in successful implementation through 2050 goals, as well as CLF's work to bring environmental equity to the Merrimack Valley through the resolution of this matter and others. No other party could adequately represent CLF's unique interests.

31. CLF was granted limited participant status in D.P.U. 19-140 and 19-141, the two dockets regarding the Merrimack Valley explosions which have been consolidated into the proceeding at issue. CLF has dedicated significant time and resources reviewing responses to Department information requests in the previously cited investigatory dockets in preparation to advocate for an equitable resolution of those matters.

32. CLF's deep and ongoing relationship with its members in the Merrimack Valley, as well as the City of Lawrence and local community and environmental organizations, provide CLF with unique interests that are directly relevant to the foregoing proceeding.

**CLF'S PARTICIPATION WILL BE BENEFICIAL TO THE PROCEEDING AND HELP  
TO ELUCIDATE ISSUES**

33. CLF’s expertise in the details of the GSWA and other matters relating to this proceeding allow CLF to present a unique and important perspective on the same, ensuring that CLF’s participation will not be duplicative of other parties and will instead help facilitate an appropriate result.<sup>22</sup>
34. As demonstrated above, CLF has a long history of participating and intervening in Department rate-setting proceedings, including proceedings relating to Eversource and its formation, because of its unique interests and expertise regarding the Commonwealth’s energy systems and markets and it is considered an expert in energy issues within the Commonwealth, including the requirements of the GWSA.<sup>23</sup>
35. Whereas Eversource is the largest energy company in New England and the present transaction will serve to further expand its market share and will double its customer base in Massachusetts, a thorough and nuanced review of the public policy impact of the transaction is vital to ensuring that the outcome of this proceeding is rooted in fairness and equity for ratepayers and results in a clear path for Eversource’s compliance with the Commonwealth’s net-zero GHG emissions goals. CLF’s participation in this matter is crucial to obtaining this result.

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<sup>22</sup> As was noted in Berkshire Gas Company, D.P.U. 15-48, Hearing Officer Ruling at 7 (May 25, 2015), granting CLF intervention: “CLF has extensive knowledge regarding energy policy, including natural gas distribution infrastructure, which could elucidate important issues in this proceeding, to the extent that such issues are relevant. See Bay State Gas Company, D.P.U. 13-158, Hearing Officer Ruling at 4 (December 5, 2013); see also Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.P.U. 10-54, Hearing Officer Ruling at 14 (July 9, 2010) (granting the petition to intervene of CLF, Clean Power Now, Natural Resources Defense Council, and Union of Concerned Scientists in part based on findings that the evidence to be presented by each organization could help elucidate the issues in the proceeding).”

<sup>23</sup> See, e.g. CLF’s involvement in: D.P.U. 15-34, 15-39, 15-48 (reviewing precedent agreements associated with the proposed Northeast Direct natural gas pipeline); D.P.U. 15-181 and 16-05 (reviewing precedent agreements associated with the proposed Access Northeast natural gas pipeline); D.P.U. 13-157–13-159 (reviewing precedent agreements associated with the proposed Algonquin Incremental Market natural gas pipeline expansion project); D.P.U. 12-25 (a Bay State gas rate case); D.P.U. 12-19 and 10-54 (regarding long-term power purchase agreements for Cape Wind); D.P.U. 09-39 (the National Grid rate case implementing decoupling); and D.P.U. 09-30 (the Bay State Gas rate case implementing decoupling). CLF was also a party intervenor in D.P.U. 10-170 (merger proceedings between Northeast Utilities and NStar). See also Ruling on Petitions to Intervene and on Representation, EFSB 12-2, at 7 (Oct. 31, 2012)), in which CLF was granted party intervention by the Energy Facility Siting Board in EFSB 12-2 (Footprint Power Salem Harbor Development LP) and EFSB 15-06 (NRG Canal Unit 3) and EFSB 15-01 (Exelon Medway II, LLC).

36. CLF has unique and beneficial expertise and knowledge of the Merrimack Valley Explosions and response relative to environmental justice and the equitable resolution of these matters.

As discussed above, CLF has dedicated time to reviewing the responses to the Department's information requests in consolidated docket 19-141 to better advocate for an equitable resolution of the incident.

37. The Department and the proceeding would therefore benefit from CLF's participation as a full party in the above-referenced docket discussed herein, and can mitigate concerns about delay or other negative impacts on the proceeding by limiting CLF's party status to those issues referenced in this petition.

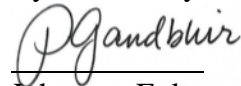
WHEREFORE, for the reasons outlined herein, CLF respectfully requests that the Department grant its Petition for Leave to Intervene as a party in the above-referenced docket; that Appearance of Counsel be entered; and that all notices, testimony, pleadings, and correspondences relating to the foregoing matter be directed to CLF.

Respectfully submitted on this 18th day of August, 2020

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