

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

Bay State Gas Company d/b/a Columbia Gas of Massachusetts	) ) ) )	D.P.U. 19-140
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**COLUMBIA GAS OF MASSACHUSETTS’ STATEMENT IN SUPPORT OF  
A FINDING OF CRITICAL ENERGY INFRASTRUCTURE INFORMATION**

**I. INTRODUCTION**

Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“CMA” or the “Company”) hereby requests the Department of Public Utilities (the “Department”) grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in compliance with a Consent Order and Compliance Agreement, dated August 14, 2020, with the Department’s Pipeline Safety Division (the “Division”) in accordance with G.L. c. 25, § 5D, G.L. c. 4, §7 cl. 26(f) and (n), and 220 C.M.R. § 1.04(5)(e).

Specifically, the Company requests that the Department protect from public disclosure detailed maps, schematics, and photographs containing Confidential Energy Infrastructure Information (“CEII”) produced as Attachment 19-140-15(b), Attachment 19-140-22(e), Attachment 19-140-22(f), and Attachment 19-140-22(g) (the “CEII Attachments”). As discussed below, public disclosure of the CEII Attachments would reveal certain CEII-related materials that are protected by statute. Any such disclosure could harm the competitive business position of the Company and impact the safety and security of the Company’s system.

The Company is contemporaneously providing redacted versions of the CEII Attachments for the public record in this case, and un-redacted versions of the CEII Attachments to the Hearing Officer and the Office of the Attorney General via electronic mail.

## II. STANDARD OF REVIEW

The Department is authorized to protect from public disclosure “trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings.” G.L. c. 25, § 5D. In interpreting this statute, the Department has held that G.L. c. 25, § 5D, “places the burden of proof on companies requesting confidential treatment.” The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 20 (1994).

Accordingly, a party seeking to protect information from public disclosure must demonstrate that: (1) the information for which protection is sought constitutes trade secrets, confidential, competitively sensitive or other proprietary information; and (2) there is a need to ensure nondisclosure of the information. The Berkshire Gas Company et al., D.T.E. 01-41, at 17 (2001); Western Massachusetts Electric Company, D.T.E. 99-56, at 4 (1999). In assessing the need for nondisclosure, the Department will consider the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., D.P.U. 93-187/188/189/190, at 20-23; Boston Gas Company, D.P.U. 92-259, at 106 (1993), Essex County Gas Company, D.P.U. 96-105, at 2-3 (1996). Where a party proves such a need, the Department will protect only so much of the information as is necessary to meet the need for nondisclosure and may limit the length of time that such protection is in effect. D.T.E. 01-41, at 17-18; D.T.E. 99-56, at 4; D.P.U. 93-187/188/189/190, at 20.

Further, G.L. c. 4, § 7, clause 26(f) specifically exempts from the definition of “public records:” “investigatory materials necessarily compiled out of the public view by...other investigatory officials, the disclosure of which would probably so prejudice the possibility of effective law enforcement” such that the disclosure is not in the public interest. Lastly, G.L. c. 4, § 7, cl. 26 sets out the statutory definition for “Public Records,” which includes documents,

maps, and photographs that are made or received by any officer or employee of any state agency, department, board, commission. G.L. c. 4, § 7, cl. 26(n) exempts CEII from the public records law and thus public disclosure requirements as follows:

(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

G.L. c. 4, § 7, cl. 26(n).

### **III. ARGUMENT**

#### **A. The CEII Attachments Should be Protected from Public Disclosure.**

The Department has plain and unambiguous statutory authority to keep CEII information contained in the CEII Attachments, specifically in Attachment 19-140-15(b), Attachment 19-140-22(e), Attachment 19-140-22(f), and Attachment 19-140-22(g), as confidential pursuant to G.L. c. 4, § 7, clause 26(n). The Legislature, which enacted Clause 26(n) in 2002 in response to the events of September 11, 2001, clearly expressed a desire to protect public safety by exempting materials related to a utility's critical infrastructure from the general presumption that certain information is a public record. The Department has noted that its authority to keep materials exempt under G.L. c. 4, § 7, clause 26(n) is "separate and apart" from (and, by implication, broader than) its more narrowly construed authority under G.L. c. 25, § 5D. D.T.E. and Siting Board Rulemaking, D.T.E. 98-84, at 23 (2003) (declining to rule with particularity in the context of a rulemaking regarding the protection of critical energy infrastructure).

The Company recognizes that the Department must balance two competing interests of the public in making its determination whether to keep particular information such as the CEII

contained in the CEII Attachments as confidential pursuant to G.L. c. 4, § 7, clause 26(n). The Department must weigh the public's interest in transparency and information and the public's interest in safety, security and the safe and reliable provision of gas service. However, by inserting clause 26(n) as a specific exemption to the general presumption of disclosure, the Legislature has statutorily communicated its belief that the interest in safety, security and the safe and reliable provision of gas service should outweigh the public's interest in transparency and information where disclosure jeopardizes public safety. The Department has performed this balancing in the past and protected information pursuant to G.L. c. 4, § 7, clause 26(n). Verizon New England, Inc. d/b/a Verizon Massachusetts, D.T.E. 02-8, at 11-12 (2005) (granting Verizon's motion to restrict public disclosure of results of internal security reviews).

Based on the language of G.L. c. 4, § 7, cl. 26(n), the Company classifies the CEII Attachments as CEII, as the CEII Attachments contain the detailed maps, schematics and photographs of the Company's distribution system, regulator stations, and LNG Facilities, the public exposure of which could reveal sensitive information to bad actors and jeopardize public safety. Based on this precedent, and the Department's clear statutory authority to protect emergency training exercises and the results of emergency training exercises as CEII, the Company respectfully requests that that Department afford protective treatment for the CEII Attachments.

#### **IV. CONCLUSION**

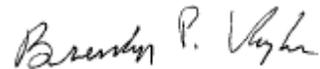
The Company respectfully requests that the Department grant the Company's motion and provide protective treatment for the CEII Attachments. Furthermore, given that the CEII Attachments are likely to change at any time or to lose their confidential nature, the Company respectfully requests the CEII Attachments be protected from disclosure for an indefinite period of time.

**WHEREFORE**, the Company respectfully requests that the Department grant its motion for protective treatment of confidential information.

Respectfully submitted by,

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

By its attorneys,



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