



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-140

January 26, 2022

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.

HEARING OFFICER RULING ON CRITICAL ENERGY INFRASTRUCTURE INFORMATION

I. INTRODUCTION

On November 15, 2021, Eversource Gas Company of Massachusetts d/b/a Eversource Energy ("Company") submitted to the Department of Public Utilities ("Department") certain information in compliance with the August 14, 2020 Consent Order and Compliance Agreement between the Department's Pipeline Safety Division and Bay State Gas Company d/b/a Columbia Gas of Massachusetts ("Bay State"). The Company -- successor in interest to Bay State -- asserts that this information constitutes critical energy infrastructure information ("CEII") and is entitled to protective treatment pursuant to G.L. c. 4, § 7(26)(n) ("Exemption 26(n)").¹

¹ In September 2002, following the events of 9/11, the Legislature added an exemption for critical energy infrastructure information to the Public Records Law, G.L. c. 4, § 7(26), which was later modified by the Act of 2016, Chapter 121, Sections 1-3:

(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, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

II. ANALYSIS

The Department has developed a protocol to review a company's request for CEII protection for information submitted in the context of an adjudicatory proceeding, such as in response to an information request. The first step requires that the hearing officer conduct a threshold review to verify that the information claimed as CEII falls within the realm of Exemption 26(n). Next, the hearing officer will consider whether broad dissemination of such information could jeopardize public safety pursuant to Exemption 26(n). If the hearing officer rules that the information falls within Exemption (26)(n) and could jeopardize public safety if made public, then the Department will protect the information, but will not make a final determination as to whether it is likely to jeopardize public safety if disseminated to a particular requester pursuant to Exemption 26(n) until someone makes a public record request. See People for the Ethical Treatment of Animals, Inc. v. Department of Agricultural Resources, 477 Mass. 280, 286 (2017); D.P.U. 16-GSEP-05, Procedural Notice and Ground Rules at III.E.2.c. (December 16, 2016). Upon receipt of a public records request, the Department, through its records access officer, will conduct a secondary review to exercise its reasonable judgment in determining whether disclosure to the requester of the requested records is likely to jeopardize public safety pursuant to Exemption 26(n). 477 Mass. at 286. This process is not intended, nor should it be used, as a mechanism to withhold from public access information that does not pose a security risk for the energy infrastructure. The Department will take appropriate action against any parties who knowingly misfile public information as confidential CEII.

In accordance with that protocol, EGMA has physically segregated Attachment 19-140-8, Supp. (a) and Attachment 19-140-8, Supp. (c) and marked each page with "Contains CEII – Do Not Release." In addition, the Company has provided a statement of justification for claiming CEII. In its statement, the Company affirms that these pages contain the detailed diagrams and schematics of the Company's distribution system, the public exposure of which could reveal sensitive information to bad actors and jeopardize public safety (November 15, 2021 Statement at 3). The Company further states that these attachments contain diagrams relating to services at specific locations and valves which if disclosed could allow bad actors access to detailed information about the Company's distribution infrastructure, and should be protected from public disclosure (November 15, 2021 Statement at 3). The Company requests that the Department protect this information from public disclosure as CEII (November 15, 2021 Statement at 3).

I find that the Company has made a sufficient showing that the information for which it seeks protection falls within the realm of CEII, could jeopardize public safety if broadly disseminated, and should be protected from public disclosure at this time. See Investigation into Electric Companies' Biennial Reviews, D.T.E. 98-84/EFSB 98-5, at 23-24 (2003); see also Critical Energy Infrastructure Information, Order No. 630, 102 FERC ¶ 61,190 (February 21, 2003), 68 Fed. Reg. 9,857 (March 3, 2003).

The Department will maintain the information in a secure, nonpublic file. By placing the documents in a nonpublic file, the Department is not making a final determination on any claim of exemption from public record status unique to a particular requester pursuant to Exemption 26(n). Rather, that determination will be made by the records access officer only if and when someone makes a public records request pursuant to G.L. c. 66, § 6A; 950 CMR 32.02.

III. RULING

Accordingly, after due consideration, the Company's request for protective treatment for CEII is GRANTED, as provided herein. The Company shall comply with all directives outlined above.

Under the provisions of 220 CMR 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within three (3) 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(6)(d)(2).



Laurie Ellen Weisman
Hearing Officer