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March 25, 2024

BY ELECTRONIC DELIVERY ONLY

Scott Seigal, Hearing Officer
Massachusetts Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Subject: **D.P.U. 24-25** Petition of Boston Gas Company d/b/a National Grid for Approval of a Gas Supply Agreement with Constellation LNG, LLC, pursuant to G.L. c. 164, § 94A
 D.P.U. 24-26 Petition of Eversource Gas Company of Massachusetts d/b/a Eversource Energy for Approval of a Gas Supply Agreement with Constellation LNG, LLC, pursuant to G.L. c. 164, § 94A
 D.P.U. 24-27 Petition of NSTAR Gas Company d/b/a Eversource Energy for Approval of a Gas Supply Agreement with Constellation LNG, LLC, pursuant to G.L. c. 164, § 94A
 D.P.U. 24-28 Petition of Fitchburg Gas and Electric Light Company d/b/a Unitil for Approval of a Gas Supply Agreement with Constellation LNG, LLC, pursuant to G.L. c. 164, § 94A
 Conservation Law Foundation's Opposition to the LDCs' Joint Motion for Clarification

Dear Hearing Officer Seigal,

Attached hereto for filing please find Conservation Law Foundation's (CLF) Opposition to the LDCs' Joint Motion for Clarification.

Thank you for your time and consideration of these matters.

Very truly yours,

A handwritten signature in black ink that reads "Priya Gandbhir".

Priya Gandbhir, Esq.
Senior Attorney

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Petition of Boston Gas Company
d/b/a National Grid for Approval of a
Gas Supply Agreement with Constellation
LNG, LLC, pursuant to G.L. c. 164 §94A

D.P.U. 24-25

Petition of Eversource Gas Company
of Massachusetts d/b/a Eversource
Energy for Approval of a Gas Supply
Agreement with Constellation LNG, LLC,
pursuant to G.L. c. 164 §94A

D.P.U. 24-26

Petition of NSTAR Gas Company
d/b/a Eversource Energy for Approval of a
Gas Supply Agreement with Constellation
LNG, LLC, pursuant to G.L. c. 164 §94A

D.P.U. 24-27

Petition of Fitchburg Gas and Electric Light
Company d/b/a Unitil for Approval of a
Gas Supply Agreement with Constellation
LNG, LLC, pursuant to G.L. c. 164 §94A

D.P.U. 24-28

**CONSERVATION LAW FOUNDATION'S OPPOSITION
TO THE LOCAL GAS DISTRIBUTION COMPANIES'
JOINT MOTION FOR CLARIFICATION**

NOW COMES Conservation Law Foundation ("CLF") and in accordance with 220
C.M.R. 1.11(11) and the March 20, 2024 Hearing Officer Memorandum regarding Responses to
Post-Interlocutory Order Motion for Clarification, submits its Opposition to the local gas

distribution companies (“LDCs”)¹ Motion for Clarification to the Massachusetts Department of Public Utilities (“DPU” or “Department”) in four matters pertaining to the LDCs’ gas supply agreements with Constellation LNG, LLC (“Constellation”). In support of its Opposition, CLF states as follows.

FACTS

1. Everett Marine Terminal (“EMT”) is a liquefied natural gas (“LNG”) facility located in Everett, Massachusetts.²
2. Almost all census blocks in Everett and surrounding municipalities include environmental justice populations as defined under Massachusetts law.³
3. EMT came under Constellation’s ownership on October 1, 2018.⁴
4. EMT is the primary source of fuel for Mystic Generating Station (“Mystic”), which operates two gas-fired generation facilities pursuant to a Cost-of-Service Agreement (“Mystic COS Agreement”) with New England’s regional electric grid operator (Independent System Operator New-England or “ISO-NE”).⁵
5. The Mystic COS Agreement expires on May 31, 2024; prior to the initiation of the present matters, it was anticipated that EMT would cease operations when the Mystic COS Agreement expired.⁶

¹ The LDCs are: Boston Gas Company d/b/a National Grid (“National Grid”, Eversource Gas of Massachusetts d/b/a Eversource Energy (“EGMA”), NSTAR Gas Company d/b/a Eversource Energy (“Eversource”), and Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”).

² Everett LNG Facility” available at: <https://www.constellationenergy.com/our-company/locations/location-sites/everett-lng-facility.html>

³ 2021 Mass. Acts Chapter 8; Massachusetts 2020 Environmental Justice Populations (updated 2022), available at: <https://mass-coeca.maps.arcgis.com/apps/webappviewer/index.html?id=1d6f63e7762a48e5930de84ed4849212>.

⁴ See “Everett LNG Facility”, supra.

⁵ See, e.g. Kiger, Miles, “FERC Alters Mystic’s Cost-of-Service Agreement; Commissioner Glick Dissents Again” (Jan. 13, 2021) available at: <https://www.jdsupra.com/legalnews/ferc-alters-mystic-s-cost-of-service-5098015/>

⁶ Johnson, Bob, “Closing of Everett Terminal: Navigating New England’s Gas Supply Challenges” (Dec. 6, 2023), available at: <https://stanwichenergy.com/insights/closing-of-everett-terminal-navigating-new-englands-gas-supply-challenges#:~:text=Timeline%20for%20the%20terminal's%20closure,in%20alleviating%20regional%20gas%20constrains..>

6. On October 15, 2021, National Grid issued a Request for Proposals (“RFP”) to “gas marketers, producers, portable project operators and pipeline developers, to solicit proposals so that it may continue to safely and reliably meet a portion of its peak day requirements beginning with the winter of 2024/25[.]”⁷; National Grid “received several proposals, including an offer from Constellation.”⁸
7. On October 22, 2021, EGMA issued a ““Regional Supply RFP’ [...] to survey supply options for its potential peak season requirements[.]” to which Constellation (and others) responded.⁹
8. On October 22, 2021, Eversource issued a ““Regional Supply RFP’ [...] to survey supply options for its potential peak season requirements[.]” to which Constellation (and others) responded.¹⁰
9. On May 17, 2023, Unitil “received a sample indicative offer from Constellation” which led to the creation of Unitil’s gas supply agreement with Constellation; one day later the first meeting between Unitil and Constellation occurred.¹¹
10. On February 9, 2024, National Grid filed a Petition for Approval of a Gas Supply Agreement with Constellation LNG, LLC pursuant to M.G.L. c. 164 (“National Grid’s Petition”); National Grid’s Petition was docketed at D.P.U. 24-25.
11. On February 12, EGMA filed a Petition for Approval of a Gas Supply Agreement with Constellation LNG, LLC pursuant to M.G.L. c. 164 (“EGMA’s Petition); EGMA’s Petition was docketed at D.P.U. 24-26.

⁷ D.P.U. 24-25 Exh. NG-Agreement-1 at 32 of 47.

⁸ *Id* at 33.

⁹ D.P.U. 24-26 Information Request Response DPU-EGMA-1-3 at 1 of 3.

¹⁰ D.P.U. 24-27 Information Request Response DPU-NSTAR-1-3 at 1 of 3.

¹¹ D.P.U. 24-28 Information Request Response AG-1-13 at 1 of 3.

12. On February 12, Eversource Energy filed a Petition for Approval of a Gas Supply Agreement with Constellation LNG, LLC pursuant to M.G.L. c. 164 (“Eversource’s Petition”); Eversource’s Petition was docketed at D.P.U. 24-27.
13. On February 16, Until filed a Petition for Approval of a Gas Supply Agreement with Constellation LNG, LLC pursuant to M.G.L. c. 164 (“Until’s Petition”); Until’s Petition was docketed at D.P.U. 24-28.
14. Approval of the LDCs’ Petitions would result in EMT remaining open for six additional years and in gas rate increases of up to 7%.¹²
15. On February 23, 2024, Hearing Officer Seigal of the DPU issued a Procedural Notice and Ground Rules for the four proceedings (D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-27, and D.P.U. 24-28), as well as an Order of Notice and Notice of Filing, Public Hearing, and Request for Comments; the latter document set forth a deadline of March 11, 2023 for interested parties to submit petitions to intervene.
16. On February 23, 2024, the Department issued an Order Establishing a Tiering and Outreach Policy in D.P.U. 21-50-A “Notice of Inquiry by the Department of Public Utilities on its own Motion into procedures for enhancing public awareness of and participation in its proceedings[.]” which defined, in part, “Tier 1” proceedings – i.e. highly impactful proceedings meriting expanded outreach and procedure – as having “a significant geographic-specific impact on an EJ population that is not shared by the rest of the service territory.”¹³
17. On March 11, 2024, CLF timely filed a Petition to Intervene in each of the four instant proceedings.

¹² See, e.g. D.P.U. 24-26 Exh. EGMA-EBS-1 at 25 of 32.

¹³ D.P.U. 21-50-A Order Establishing Tiering and Outreach Policy at 5.

18. On March 13, 2024, National Grid, EGMA, Eversource, and Unitil filed oppositions to CLF's Petitions to Intervene in each of the four instant proceedings.
19. On March 15, 2024, the Department approved in part and denied in part CLF's Petition to Intervene ("the Interlocutory Order").
20. On March 18, 2024, CLF and Acadia Center timely filed joint comments in all four proceedings covering issues outside the scope of CLF's Limited Intervention.
21. On March 19, 2024, the LDCs filed a Joint Motion for Clarification on the Interlocutory Order on CLF's Petition to Intervene ("LDCs' Joint Motion").
22. On March 20, 2024, Hearing Officer Seigal issued a memorandum setting forth a deadline of March 25, 2024 for responses to the LDCs' Joint Motion.
23. On March 20, 2024, the discovery deadline for D.P.U. 24-25 through 24-28, CLF timely filed information requests to all four LDCs.

STANDARD OF REVIEW

A motion for clarification "may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning."¹⁴

ARGUMENT

I. The Department's Interlocutory Order on CLF's Petition to Intervene Does Not Require Clarification

Silence is "the absence of mention".¹⁵ The LDCs note in their Joint Motion that the Department, in its Interlocutory Order on CLF's Petition to Intervene "stated that it was 'unnecessary at this time' to make a determination as to whether CLF will be 'aggrieved by a

¹⁴ Petition of Bay State Gas Company, pursuant to G.L. C. 164 §94 and 220 C.M.R. 5.00 et seq., D.P.U. 09-30-A at 1 (2010), citing Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991) and others.

¹⁵ Merriam-Webster, "Silence", available at: <https://www.merriam-webster.com/dictionary/silence>.

final decision in these proceedings.’”¹⁶ The Department’s explicit, unambiguous mention of its decision that it is not necessary to determine whether CLF may be aggrieved by a final decision in these proceedings is, in fact, the opposite of silence. The Department made clear in its Interlocutory Order that it finds CLF’s expertise in matters pertaining to energy costs, utility contracting, environmental justice, and more (as well as CLF’s experience in previous matters pursuant to M.G.L. c. 164 §94A) relevant to and useful for the instant proceedings.¹⁷ Because the Department’s Interlocutory Order on CLF’s Petition to Intervene is neither silent nor ambiguous, the LDCs’ Joint Motion for Clarification must be denied.

II. The LDCs Filibustered Their Filings in the Instant Proceedings to Prevent Opposition to and Thorough Review of Their Tactics

The LDCs assert in their Joint Motion and Petitions that a Department decision is needed by May 1, 2024 because, under the terms of the LDCs agreements with Constellation, the “‘effective date’ of the contract is the date upon which the [LDCs] and the other entities ‘have received Final Regulatory Approval’ [...which] is defined to mean a ‘Regulatory Approval no longer capable of rehearing or appeal’”.¹⁸ Without “Final Regulatory Approval” Constellation would have the ability to unilaterally terminate the gas supply agreements with the LDCs; there are apparently also other circumstances under which Constellation could unilaterally terminate the gas supply agreements, but the LDCs nevertheless choose to fixate on whether CLF should be allowed intervenor status in these proceedings.¹⁹ The LDCs further assert that without the instant gas supply agreements with Constellation, they may not be able to provide reliable gas service to customers during the winter 2024-2025 period. This fact remains in dispute in

¹⁶ LDCs’ Joint Motion at 2 (internal citations omitted).

¹⁷ D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-27, D.P.U. 24-28 Interlocutory Order on the Petition to Intervene of Conservation Law Foundation at 8.

¹⁸ LDCs’ Joint Motion at 7-8.

¹⁹ *Id.*

discovery, as it is anticipated that as a result of the gas supply agreements at issue in the present matters, the LDCs will actually have a surplus of gas which they may choose to sell on secondary markets. Regardless, the Department must look beyond the LDCs' screen of securing reliable gas supply for winter 2024-2025. The LDCs fear that CLF's status as intervenor will eradicate these contracts because intervenor status confers with it the right to appeal, nullifying the LDCs' Agreements with Constellation if employed. However, the LDCs' failure to negotiate contracts that allow adequate time for standard procedural steps does not negate the need to ensure the Department's principles regarding intervention and stakeholder process are protected.

As demonstrated above, three of the four LDCs²⁰ involved in the Joint Motion began negotiations for their gas supply contracts with Constellation LNG, LLC in the fall of 2021. It has been well-recognized as public knowledge since at least early 2021 that Mystic's COS Agreement would end in May of 2024.²¹ The gas supply agreements at issue in the instant proceedings are a, if not the, major factor in determining whether EMT will continue to operate once Mystic's COS Agreement expires. The LDCs and their counterparty Constellation, owner of EMT, must have been aware of the timeline associated with operation and closure of EMT; nevertheless, they chose an effective date of May 1, 2024 for their gas supply agreements. Whether the negotiations for these contracts had concluded long before these filings were made in mid-February 2024 or immediately before, the parties to the agreements could have chosen an effective date that allowed for thorough and effective review of the gas supply agreements and their economic and environmental impacts. Instead, the LDCs have attempted to circumvent review by fast-tracking these proceedings and playing victim when standard procedural steps like

²⁰ The fact that Unifil's contract negotiations did not begin until May 2023 does not impact the underlying issue of whether EMT should remain open.

²¹ See Miles Kiger "FERC Alters Mystic Cost-of-Service Agreement", *supra*.

intervention are undertaken.

The LDCs allege that CLF is in the habit of delaying proceedings at the DPU²², but the fact is that CLF has met all procedural deadlines in this proceeding even when timelines have been overly condensed and despite other obligations faced. In reality, it is the LDCs that have a history of delaying filings to evade review²³ and requesting extensions of time – even in proceedings where their hands are so clearly on the wheel.²⁴ The truncated timelines set forth in the present matters as a result of the LDCs’ failure to provide a reasonable length of time between filing and the requested decision date have already prevented fair review of the issues in these proceedings; for example, in the present matters there were nine calendar days between the deadline for petitions to intervene and the closure of discovery. By contrast, in previous review of gas supply agreements the Department has allowed over a month between the deadline for petitions to intervene and discovery deadlines.²⁵

The present Joint Motion of the LDCs is merely another instance of their filibustering tactics; rather than allowing the Department and intervening parties sufficient time to review exhibits and discovery responses, the LDCs have filed a superfluous and baseless motion clearly designed to frustrate efforts to scrutinize the LDCs’ Petitions and supporting documents. As the LDCs have deliberately stunted the review period available for their gas supply agreements with

²² LDCs’ Joint Motion at 10.

²³ Shankman, Sabrina, “Massachusetts is phasing out natural gas. Why is it expanding in Douglas?” (Jul. 26, 2023), available at: <https://www.bostonglobe.com/2023/07/26/science/inside-the-town-of-douglas-decision-to-build-new-gas-pipelines/#bgmp-comments> “Apparently fearing that climate advocates or others would shut down the effort to bring gas to Douglas, Eversource ...then devised a plan to keep the long permitting process out of public view as long as possible, according to emails obtained under the federal Freedom of Information Act by the Energy and Policy Institute and shared with the Globe.”

²⁴ Examples abound in the instant proceedings alone, see: D.P.U. 24-25 National Grid’s Motions for Extension of Time dated March 1, 2024, March 8, 2024; D.P.U. 24-26 EGMA’s Motion for Extension of Time dated March 1, 2024; Eversource’s Motion for Extension of Time dated March 1, 2024; D.P.U. 24-28 Unitil’s Motion for Extension of Time dated March 4, 2024.

²⁵ See, e.g. D.P.U. 18-104, Procedural Notice and Ground Rules.

Constellation, it is all the more important that as many voices as possible are heard in these proceedings and therefore that the Department deny the LDCs' Joint Motion and that CLF retains its status as a limited intervenor.

III. Additional Considerations

a. The LDC's Manipulation of Time Must Not Become a Pattern

The LDCs' actions historically and in the present matters clearly indicate that these companies see themselves as above regulatory oversight. The LDCs' actions in failing to negotiate contract terms that allow for effective review of their merits demonstrate a deliberate attempt to circumvent regulatory process and place their own business needs above the interests of their customers and Massachusetts residents as a whole. Without question, the LDCs have designed a compressed procedural schedule in the present matters to secure their interests above those of the public, including their own customers. The Department must not allow this to become a common practice.

b. The Department Should Consider its own Efforts in Enhancing Effective Procedure and Policy through Public Participation

On April 16, 2021, the DPU opened an Inquiry into procedures for enhancing public awareness of and participation in its proceedings, in which it sought to "explore avenues to increase both the visibility of our public notices and public and stakeholder involvement in our proceedings."²⁶ Since then, the Department has provided several opportunities for feedback on its policies and procedures regarding public engagement in DPU proceedings, including multiple opportunities to submit written comments and hosting roundtables and other convenings to foster dialogue between the public, interested parties, and the utilities. As noted above, the Department determined that proceedings which have a "significant geographic-specific impact on an EJ

²⁶ D.P.U. 21-50, Vote and Order Opening Inquiry.

population that is not shared by the rest of the service territory” merit expanded public outreach.²⁷ The instant proceedings have a clear geographic-specific impact on the environmental justice community of Everett, as well as its neighbors, as approval would result in the continued operating of a fossil-fuel facility directly in their midst. Because the timing of these proceedings did not allow for expanded public engagement, such as providing notices to customers that the gas supply agreements would be under review at the DPU and that approval would result in – yet another – increase in customers’ bills, it is all the more vital that as many perspectives as possible are included in review of the LDCs’ Petitions and the financial and environmental impacts they will have on the environmental justice communities surrounding EMT. CLF has relationships with environmental justice communities and advocates, including in Everett and its neighboring city Chelsea, which provide it with unique perspective and knowledge otherwise missing from the slate of parties poised to review the LDCs’ Petitions. Under any normal discovery schedule, CLF would have sought to introduce environmental justice community expert testimony in these proceedings.

The LDCs assert that their request to the Department to demote CLF from limited intervenor to limited participant status is to protect customers. Their actions, however, make clear that if customers need protection from anyone, it is the LDCs themselves. “If the real purpose of regulation is performance, then regulation protects customers from poor performance – price gouging, false advertising, suboptimal service, and voicemail hell. Regulation protects consumers when markets fail consumers – when seller misbehavior draws no consequences because customers are captive.”²⁸ The LDCs speculate that while other intervenors to these

²⁷ D.P.U. 21-50-A Order, *supra*.

²⁸ Hempling, Scott, Preside or Lead? The Attributes and Actors of Effective Regulators, at 121.

proceedings²⁹ could also appeal the Department’s ruling, these intervenors represent customer interests, but CLF, “answering to no one but its own members and donors”³⁰ would not. The LDCs forget that CLF’s members and donors include gas customers; further, membership at CLF is voluntary. The LDCs, on the other hand, are private corporations beholden to the financial interests of their stakeholders above all else. LDCs’ customers generally do not choose their gas company or have a significant impact on their actions. It is not difficult to find gas customers throughout Massachusetts who are wary of and dissatisfied with the LDCs’ gas service, whether regarding prices, reliability, leaks, or more.

The LDCs’ efforts to steer the present matters in such a manner as to skirt necessary and useful procedural steps reveal the very reason stakeholder engagement, including CLF’s intervention, is critical. Accordingly, the Department should deny the LDCs’ Joint Motion for Clarification.

CONCLUSION

As demonstrated by CLF’s adherence to date in the procedural schedules for these four proceedings, CLF has no intention nor history of engaging in dilatory tactics. Rather, as the only non-governmental intervenor in these matters, CLF is uniquely positioned to provide perspective and expertise which may otherwise be missing in review of the LDCs’ Petitions. CLF has been actively engaged in matters at the DPU and has a close relationship with environmental justice communities and advocates, including in Everett and the surrounding communities. On the other hand, the LDCs actions in this and other proceedings demonstrate an intent to negate the DPU’s efforts to encourage public engagement and minimize transparency and due process. Despite

²⁹ The other intervenors are the Massachusetts Office of the Attorney General (“AGO”) and the Massachusetts Department of Energy Resources (“DOER”).

³⁰ LDCs’ Joint Motion at 10.

taking years to negotiate their gas supply contracts with Constellation, the LDCs see it fit to provide the Department only two months to conduct a proceeding that would normally take about six months from filing to decision.³¹ The LDCs' actions reveal an intent to hold both their regulators and their customers captive, demanding that everyone adhere to their wishes on their timeline. Accordingly,

WHEREAS the Department's Interlocutory Order on CLF's Petition to Intervene is clear and does not require clarification, and

WHEREAS the LDCs have deliberately delayed filing of the four instant proceedings to create an "emergency" in an attempt to prevent the Department and any interested parties from undertaking thorough examination of the LDCs' actions,

CLF respectfully requests that the Department DENY the LDCs' Joint Motion for Clarification.

Respectfully submitted on this 25 day of March, 2024,

BY:

CONSERVATION LAW FOUNDATION

By its attorneys:



Priya Gandbhir
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
Phone: 617-850-1777

³¹ See, e.g. D.P.U. 18-104.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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CERTIFICATE OF SERVICE

I, Priya Gandbhir, hereby certify that I have served true copies of the foregoing on the Service

List for the above-captioned proceeding as required by 220 CMR 1.00, et seq.

[Signature page follows]

Respectfully submitted on this 25th day of March 2024,

BY:

CONSERVATION LAW FOUNDATION

By its attorneys:

A handwritten signature in cursive script that reads "Priya Gandbhir".

Priya Gandbhir

Conservation Law Foundation

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