

Eversource Energy (NSTAR), and Fitchburg Gas and Electric Light Company d/b/a Unutil (Unutil) (collectively, the Companies), each filed a petition with the Department of Public Utilities (Department or D.P.U.) for approval of an agreement with Constellation LNG, LLC (Constellation) for the sale and purchase of natural gas for the period June 1, 2024 through May 31, 2030 (Agreements) pursuant to G.L. c. 164, § 94A (Section 94A).¹

If approved, the Agreements would likely have the effect of keeping the Everett Marine Terminal (EMT) operational following the retirement of the adjacent Mystic Generating Station on May 31, 2024. This generating facility is New England's largest fossil fuel-fired power plant, and it is located in Everett, an environmental justice community.² Its retirement marks a key milestone in the Commonwealth's - and the region's - energy transformation.

The Department of Energy Resources (DOER) commends the Department for hosting a public hearing on the Agreements in the City of Everett on March 12, 2024. At a Federal Energy Regulatory Commission (FERC) forum held last year regarding regional winter reliability, Massachusetts' Energy and Environmental Affairs Secretary Rebecca Tepper emphasized the importance of ensuring that the voices of Everett residents, who are impacted directly by the operation of EMT, are heard regarding the facility's future.³ DOER appreciates the participation of Everett residents and others at the public hearings, which provided them an opportunity to address the Department directly in connection with its review of the Agreements.

¹ The Department docketed the petitions as D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-28, and D.P.U. 24-28, respectively.

² The City of Everett meets one or more of the environmental justice population criteria under Massachusetts law, as shown at: <https://www.mass.gov/info-details/massgis-data-2020-environmental-justice-populations>

³ AD22-9-000, *2023 New England Winter Gas-Electric Forum*, Transcript, June 6, 2023, eLibrary No. 20230721-4000, at 138:7-25.

While the Department must, of course, scrutinize the Agreements under the statutory standard set forth in Section 94A, the Department should also view these proceedings through a broader lens, consistent with its statutory mandate to consider equity and greenhouse gas (GHG) emissions. Massachusetts is harnessing our state's resources - from the winds off our shores to the creative minds designing innovative technologies - to address climate change. We are forging partnerships with neighboring states and federal agencies, cities and towns, colleges and universities, and industry leaders to transition to a clean energy future. In so doing, we are keeping front of mind the need to decarbonize equitably, reliably, and affordably.

The Department's recent investigation into the future of gas takes a critical step toward building a bridge to this clean energy future by reducing Massachusetts' dependence on natural gas.⁴ DOER agrees with the Department that "[t]he ambitious mandates established by the Commonwealth require gas local distribution companies (LDCs) to move beyond 'business as usual' in their gas system planning[.]"⁵ DOER recognizes that the Department seeks "to discourage further expansion of the natural gas distribution system" and encourages the Department to review the Agreements in this proceeding to ensure they are aligned with the new regulatory direction established in its Order in the Future of Gas.⁶

If the Department approves the Agreements, DOER respectfully requests that the Department adopt the following two recommendations. First, the Agreements should only be a short-term bridge to ensure reliability and must include a pathway to move away from the Companies' need for EMT by the end of the contract terms in 2030. DOER respectfully

⁴ *Investigation by the Department of Public Utilities on its own Motion into the role of gas local distribution companies as the Commonwealth achieves its target 2050 climate goals*, D.P.U. 20-80-B (2024) (the Future of Gas).

⁵ D.P.U. 20-80-B at 14.

⁶ *Id.*

recommends that the Department direct the Companies to jointly propose a plan, describing the actions that the Companies will take individually and collectively, to reduce their reliance on EMT by the end of each of the six-year contracts and submit this EMT Transition Plan (Plan) as part of their first Climate Compliance Plans (CCPs) due on April 1, 2025.⁷

Second, DOER recommends that the Department require the Companies to file uniform, annual reports regarding the Agreements as compliance filings in the instant dockets, as further discussed below.

II. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources, as well as for the acquisition of capacity under Section 94A, the Department examines whether the acquisition of the resource is consistent with the public interest.⁸ To demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition: (1) is consistent with the company's portfolio objectives; and (2) compares favorably to the range of alternative options reasonably available to the company at the time of the acquisition or contract renegotiation.⁹

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved forecast and supply plan or in a recent review of supply contracts under Section 94A, or may describe its objectives in the filing accompanying the proposed resource.¹⁰ In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price

⁷ *Id.* at 134.

⁸ *Id.* at 67 (citing *Commonwealth Gas Company*, D.P.U. 94-174-A at 27 (1996)).

⁹ *Id.*

¹⁰ D.P.U. 94-174-A at 27-28.

attributes of each contract to ensure a contribution to the strength of the overall supply portfolio.¹¹ As part of its review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region.¹² In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies.¹³ In making these determinations, the Department considers whether the LDC used a competitive solicitation process that was fair, open, and transparent.¹⁴

More recently, the Legislature has taken steps to focus the Department's regulatory mandate on GHG emission reductions in addition to its traditional concerns of ensuring safety, security, reliability, equity, and affordability. Both the 2021 Climate Act and 2022 Clean Energy Act include changes to the Department's regulatory authority over gas companies.¹⁵ In 2021, the Legislature added Section 1A to the Department's statutory authority under G.L. c. 25, which provides:

In discharging its responsibilities under [chapter 25] and chapter 164, the department shall, with respect to itself and the entities it regulates, prioritize safety, security, reliability of service, affordability, equity and reductions in greenhouse gas emissions to meet statewide greenhouse gas emission limits and sublimits established pursuant to chapter 21N.

¹¹ *Id.* at 28.

¹² *Id.*

¹³ *Id.* at 28-29.

¹⁴ *The Berkshire Gas Company*, D.T.E. 02-56 at 10 (2002); *Bay State Gas Company*, D.T.E. 02-52 at 8 (2002); *KeySpan Energy Delivery New England*, D.T.E. 02-54 at 9 (2002); *The Berkshire Gas Company*, D.T.E. 02-19 at 11 (2002).

¹⁵ *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy*, St. 2021, c. 8 (2021 Climate Act), and *An Act Driving Clean Energy and Offshore Wind*, St. 2022, c. 179 (2022 Clean Energy Act). *See also*, D.P.U. 20-80-B at 18.

Thus, in addition to requiring that an LDC show that the acquisition: (1) is consistent with the company's portfolio objectives; and (2) compares favorably to the range of alternative options reasonably available to the company at the time of the acquisition or contract renegotiation, as required by G.L. c. 164, § 94A, the Department must also prioritize the above factors in evaluating the proposed acquisition of a resource pursuant to Section 94A.¹⁶

Finally, in its Order on the Future of Gas, the Department directed each LDC to file individual CCP every five years, with the first such plan being due on or before April 1, 2025.¹⁷ Each CCP must demonstrate how the LDC proposes to: (1) contribute to the prescribed GHG emissions reduction sublimits set by the Massachusetts Executive Office of Energy and Environmental Affairs for both Scope 1 and Scope 3 emissions; (2) satisfy customer demand safely, reliably, affordably, and equitably using known and market-ready technology available at the time of the filing; (3) use pilot or demonstration projects to assist in identifying investment alternatives; (4) incorporate the evaluation of previous metrics; and (5) implement recommendations for future plans.¹⁸

III. SUMMARY OF THE AGREEMENTS

Constellation owns EMT¹⁹ and the adjacent Mystic Generating Facility, a 1,413 MW natural gas-fired power plant (Mystic 8 & 9) located in Everett, Massachusetts.²⁰ Since the early 2000s, Mystic 8 & 9 have supported the operation of²¹ and served as the “anchor customer” for

¹⁶ G.L. c. 25, § 1A; *Liberty Utilities (New England Natural Gas Company) Corp.*, D.P.U. 22-32-C at 36 (2022).

¹⁷ D.P.U. 20-80-B at 134.

¹⁸ *Id.* at 134-135.

¹⁹ EMT opened in 1971. D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 9.

²⁰ *See* D.P.U. 24-25, Exh. NG-Agreement-1 at 20-21; D.P.U. 24-26, Exh. EGMA-EBS-1 at 8; D.P.U. 24-27, Exh. EGMA-EBS-1 at 9

²¹ D.P.U. 24-25, Exh. NG-Agreement-1 at 20-21; D.P.U. 24-26, Exh. EGMA-EBS-1 at 8-9; D.P.U. 24-27, Exh. NSTAR-EBS-1 at 9-10; D.P.U. Exh. Unitil-FXW-1 at 7-8.

EMT, which is the power plant's sole source of fuel.²² With the Mystic 8 & 9 units set to retire at the end of May 2024, the future of EMT is uncertain.²³

The Companies each propose to enter into a six-year Agreement with Constellation from June 1, 2024, through May 31, 2030.²⁴ The Agreements provide for the purchase of natural gas, in liquid or vapor form, up to a maximum daily quantity (MDQ) and maximum seasonal quantity (MSQ) that varies by Company. The MDQs and MSQs for EGMA, NSTAR, and Unitil remain static throughout the six-year term.²⁵ National Grid's quantities, however, approximately quadruple over the term.²⁶

Each Company's financial obligations under the Agreements are similarly structured and consist of four main elements: non-commodity demand charge, commodity demand charge, firm transportation charge, and a commodity rate.²⁷ According to the Companies, the demand charges designate each Company's responsibility for fixed costs associated with the operation and maintenance of EMT (non-commodity demand charge) and for reservation of liquefied natural

²² D.P.U. 24-25, Exh. NG-Agreement-1 at 20-21; D.P.U. 24-26, Exhs. Filing Letter, EGMA-ESB-1 at 8-9; D.P.U. 24-27, Exhs. Filing Letter, NSTAR-ESB-1 at 9-10; D.P.U. 24-28, Exh. Unitil-FXW-1 at 7-8; *see also* D.P.U. 24-25 through D.P.U. 24-28, Exh. AG-MLTF-1 at 10, 47-48

²³ *Id.*

²⁴ D.P.U. 24-25, Exh. NG-Agreement-1 at 6, 25; D.P.U. 24-26, Exh. EGMA-EBS-1 at 3; D.P.U. 24-27, Exh. EGMA-EBS-1 at 3; D.P.U. 24-28, Exh. Unitil-FXW-1 at 3. In addition to its Agreement with Constellation, Unitil seeks approval of an associated trucking contract with Transgas Inc. for LNG trucking to its Westminster LNG facility. D.P.U. 24-28, Exh. Unitil-FXW-1 at 2.

²⁵ D.P.U. 24-26, Exh. EGMA-EBS-1 at 16-17; D.P.U. 24-27, Exh. NSTAR-EBS-1, at 17; D.P.U. 24-28, Exh. Unitil-FXW-1 at 14-15.

²⁶ D.P.U. 24-25, Exh. NG-Agreement-1 at 22.

²⁷ D.P.U. 24-25, NG-Agreement-2 (REDACTED) at 4; D.P.U. 24-26, EGMA-EBS-2 (REDACTED) at 4; D.P.U. 24-27, NSTAR-EBS-2 (REDACTED) at 4; D.P.U. 24-28, Exh. Unitil-FXW-2 (REDACTED) at 4; *see also* D.P.U. 24-25 through D.P.U. 24-27, Exh. AG-MLTF-1 at 17-18.

gas (LNG)(commodity demand charge).²⁸ The firm transportation charge is intended to compensate Constellation for its firm transportation contracts on interstate pipelines, which are necessary to deliver the Companies' MDQs.²⁹ The commodity rate applies to volumes called for under each Agreement.³⁰ In addition to the core contract terms, each Agreement allows Constellation to pass through certain compliance costs associated with changes-in-law, subject to a capping mechanism.³¹

IV. ARGUMENT

A. If the Department Approves the Agreements, It Should Direct the Companies to Propose a Transition Plan for Displacing Their Reliance on EMT at the End of the Agreement Term.

Should the Department find that the Agreements meet the standard for approval under Section 94A, it must ensure an orderly transition away from the Companies' dependence on EMT by 2030 when the term of each Agreement expires. The Companies' claimed reliance on and asserted lack of viable alternatives to EMT, coupled with recent Commonwealth policy developments and GHG emission-reduction requirements, demonstrate that a transparent and proactive plan is necessary to bridge solutions that align with Massachusetts' decarbonization mandates and regulatory framework.

DOER respectfully recommends that the Department direct the Companies to collaboratively propose a Plan for displacing their reliance on EMT at the end of the Agreement

²⁸ See, e.g., D.P.U. 24-25, Exh. NG-Agreement-1 at 23-24; D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 17-18.

²⁹ D.P.U. 24-26, Exh. EGMA-EBS-2 (REDACTED) at 3, 6; D.P.U. 24-27, Exh. NSTAR-EBS-2 (REDACTED) at 3, 6; D.P.U. 24-28, Exh. Unitol-FXW-2 (REDACTED) at 6.

³⁰ D.P.U. 24-25, Exh. NG-Agreement-1 at 23-24; D.P.U. 24-25 through D.P.U. 24-27, Exh. AG-MLTF-1 at 18.

³¹ See, e.g., D.P.U. 24-25, Exh. NG-Agreement-1 at 24; see also D.P.U. 24-26, Exh. EGMA-EBS-2 (REDACTED) at 15-16; D.P.U. 24-27, Exh. NSTAR-EBS-2 (REDACTED) at 15-16; D.P.U. 24-28, Exh. Unitol-FXW-2 (REDACTED) at 14-15.

term and submit the Plan as part of their first CCPs. Following submission of the Plan, the Companies should file quarterly progress reports detailing their progress toward eliminating the need for EMT at the conclusion of each Agreement.

1. *The Agreements Should Align with the Commonwealth's Clean Energy and Decarbonization Requirements*

The Companies' petitions come at a pivotal time in Massachusetts' energy transformation amid efforts to achieve statutorily mandated GHG emission reductions. The Commonwealth is statutorily mandated to achieve net-zero GHG emissions by 2050.³² To achieve these mandates, Massachusetts must achieve sector-specific emissions reductions established in the Clean Energy and Climate Plans (CECPs) for 2025, 2030,³³ and 2050.³⁴ Several sectoral sublimits apply to sectors served by the natural gas distribution utilities, including the building sector, the industrial sector, and the natural gas distribution and services sector.³⁵ By 2030, the CECPs require 49 percent, 23 percent, and 82 percent reductions from 1990 levels for the building, industrial, and natural gas distribution and services sectors, respectively.³⁶ The end of the term of the Agreements coincides with the 2030 CECP's interim sector-specific emissions limits. Moreover, the Massachusetts Department of Environmental Protection is engaging with stakeholders on the development of a Clean Heat Standard designed to increase percentages of clean heat services so

³² St. 2008, c. 298, as amended by St. 2021, c. 8.

³³ Massachusetts Executive Office of Energy and Environmental Affairs, Clean Energy and Climate Plan for 2025 and 2030 (June 2022) (available at: [Massachusetts Clean Energy and Climate Plan for 2025 and 2030 | Mass.gov](#))

³⁴ Massachusetts Executive Office of Energy and Environmental Affairs, Clean Energy and Climate Plan for 2050 (Dec. 2022) (available at: <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>)

³⁵ 2025/2030 CECP at 23, 75-76.

³⁶ *Id.*; D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 55.

that sales of fossil fuels are phased down to meet emissions reduction goals for the thermal sector.³⁷

The Companies' petitions also come on the heels of the Department's Order in the Future of Gas, which sets forth the Department's regulatory framework for systematically reducing Massachusetts' reliance on natural gas. In that Order, the Department emphasized the need for LDCs to "move beyond 'business as usual' practices toward active participation in developing innovative solutions to achieving the clean energy future codified in Massachusetts' GHG emissions reduction targets."³⁸ As discussed below in Section IV.A.3, the Department operationalizes this principle by directing the LDCs to file comprehensive CCPs every five years with the first filing due on or before April 1, 2025. The Department recognized that "to achieve the Commonwealth's climate targets, there must be a significant increase in the use of electrified and decarbonized heating technologies."³⁹

Similarly, the Department held that each LDC should begin examining opportunities to minimize gas infrastructure investment.⁴⁰ Going forward, to receive full cost recovery for additional investment in gas infrastructure, each Company must analyze whether such investments are consistent with state emissions reduction targets and that non-pipeline alternatives (NPAs) were adequately considered and found to be non-viable or cost prohibitive.⁴¹

³⁷ See MassDEP Clean Heat Standard Draft Framework (Nov. 2023) (available at: <https://www.mass.gov/doc/chs-draft-program-framework/download>)

³⁸ D.P.U. 20-80-B at 18.

³⁹ *Id.*, Summary at 1.

⁴⁰ *Id.* at 97-98.

⁴¹ *Id.* On April 2, 2024, the Department issued an Order granting in part and denying in part the LDC's joint motion for clarification and concluded, among other things, that an NPA analysis should be applied to all investments in new natural gas infrastructure at a project level and that, in advance of an approved NPA analysis framework, the LDCs should make all reasonable efforts to incorporate NPA analyses in their investment analysis decisions after December 6, 2023. D.P.U. 20-80-C at 23.

LDCs are also prohibited from recovering costs associated with marketing related to the promotion or expansion of gas service.⁴² Thus, the Department must evaluate the Agreements proposed in this proceeding for alignment with the Global Warming Solutions Act (GWSA), the CECs and their prescribed interim sectoral sublimits, and the Department’s directives in the Future of Gas.

2. *The Companies Must Commit to End Reliance on EMT by the End of the Contract Term.*

Each Company states that the Agreements are a potential six-year bridge in the Commonwealth’s decarbonization pathway while providing reliable gas supply for existing customers in the short-term.⁴³ Despite these claims, the Companies do not rule out further contracting with Constellation beyond the term of the Agreements.⁴⁴ In lieu of contracting with Constellation, the Companies point to a range of potential “supply side” (*i.e.*, non-electrification) replacement resources that they anticipate could replace EMT beyond the 2029/2030 season. These include LNG supply contracts with other suppliers, use of LNG and compressed natural gas facilities, additional storage capacity or vaporization capacity at existing LNG facilities, potential distribution system upgrades, pipeline expansion, on system infrastructure, and pipeline capacity made available through de-contracting of capacity by other entities.⁴⁵

⁴² D.P.U. 20-80-B at 56-57.

⁴³ See *Interlocutory Order on the Petition to Intervene of Conservation Law Foundation*, D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-27; D.P.U. 24-28, at 5 (Mar. 15, 2024); See also, LDC Oppositions to CLF Motion to Intervene, D.P.U. 24-25 Opposition at 9; D.P.U. 24-26 Opposition at 9; D.P.U. 24-27 Opposition at 9; D.P.U. 24-28 Opposition at 9 (Mar. 12, 2024).

⁴⁴ See D.P.U. 24-25, Exh. AG-1-5; D.P.U. 24-26, Exh. AG-1-5; D.P.U. 24-27, Exh. AG-1-5; D.P.U. 24-28, Exh. AG-1-5.

⁴⁵ D.P.U. 24-25, AG-1-5; D.P.U. 24-26, AG-1-5; D.P.U. 24-27, AG-1-5; D.P.U. 24-28, AG-1-5. See also, D.P.U. 25-26, DPU-EGMA-1-2 and D.P.U. 25-27, DPU-NSTAR-1-2.

The Companies do not present specific plans for eliminating their dependence on EMT. Rather, their responses leave open whether they would pursue additional contracts with Constellation, replacement supply for EMT, infrastructure solutions, or some combination. The Companies should develop a plan to pursue a path beyond the term of the Agreements to comport with Massachusetts' emissions reduction mandates and the regulatory framework laid out in the Future of Gas.⁴⁶ DOER respectfully requests that the Department address the uncertainty that is compounded by each Company's claimed reliance on and asserted lack of viable alternatives to EMT.⁴⁷

Orderly planning beyond the Agreements must start concurrent with any Department approval, given the limited time to evaluate and implement alternatives.⁴⁸ A "wait and see" approach is insufficient. Indeed, the instant proposals are a cautionary tale that illustrates how a failure to proactively plan beyond the term of the Agreements can carry significant implications for environmental justice communities, consumer costs, system reliability, and Massachusetts' ability to meet its GHG emissions reductions mandates. While the Companies claim that the Agreements are GWSA compliant, they have not provided any specific analysis to support these claims.⁴⁹ The Massachusetts Attorney General's Office (AGO) presented expert testimony indicating that the Agreements would pose significant costs to ratepayers and that consumers

⁴⁶ See, e.g., Exh. D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1, at 52-53.

⁴⁷ D.P.U. 24-25, Exh. NG-Agreement-1, at 30-39, 46; D.P.U. 24-26, Exh. EGMA-EBS-1, at 9, 21-31; D.P.U. 24-27, Exh. NSTAR-EBS-1, at 9, 22-25, 27-32; and D.P.U. 24-28, Exh. Unitil-FXW-1, at 22-28.

⁴⁸ See, e.g., D.P.U. 24-26, Exh. AG-1-5(c); D.P.U. 24-27, Exh. AG-1-5(c).

⁴⁹ See D.P.U. 24-25, Exhs. DOER-1-8; DPU-NG-1-17 D.P.U. 24-26, Exh. DOER-1-6; D.P.U. 24-27, Exh. DOER-1-6; D.P.U. 24-28, Exh. DOER-1-6.; D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 6-7; 53-63.

could end up paying an estimated \$946 million (or more) over the six-year term.⁵⁰ The AGO also that raises serious concerns about the pricing formula due in part to lack of transparency.⁵¹

Moreover, while the Companies knew, or should have known, as early as 2008 that EMT might shut down, the Companies did not start evaluating alternatives until 2020/2021.⁵² The Companies did not finalize and present the Agreements to the Department until February 2024, when they requested expedited review and approval by May 1, 2024.⁵³ As a result, the Department and stakeholders have had an extremely limited amount of time to evaluate a unique, complex transaction, with state and regional impacts. The Companies provide no indication that they expect circumstances will be any different in six years.

3. The Companies' First CCPs Provide an Appropriate Venue to Detail Concrete Steps to a Future Beyond the Agreements.

The Companies' first CCPs, due on or before April 1, 2025, provide an appropriate venue to start this critical planning and implementation effort and for each Company to make a meaningful commitment to move away from its reliance on EMT. Each Company's CCPs will include five-and 10-year planning horizons demonstrating how the Company proposes to contribute to prescribed GHG emission-reduction sublimits and serve customer demand safely, reliably, affordably, and equitably.⁵⁴ Additionally, each CCP should detail total investment, analysis of alternative methods to meet emissions reductions, and use pilot or demonstration projects to assist in identifying investment alternatives.⁵⁵

⁵⁰ D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 34-35, 39.

⁵¹ *Id.* at 39-40, 51.

⁵² D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 47-51; D.P.U. 24-25; Exh. DOER-1-11.

⁵³ D.P.U. 24-25, Exh. NG-Agreement-1 at 25; D.P.U. 24-26, Filing Letter; D.P.U. 24-27, Filing Letter; D.P.U. 24-28, *Notice of Filing, Public Hearing, and Request for Comments* (Feb. 23, 2024).

⁵⁴ D.P.U. 20-80-B at 134.

⁵⁵ *Id.* at 134-35.

The CCPs reflect a holistic view of the LDCs' strategies to achieve compliance with climate mandates along with thorough evaluation and consideration of alternatives to investment. Incorporating a Plan relative to EMT into each of the Companies' CCPs will ensure that there is a forum dedicated to proactively and transparently planning a path forward beyond the Agreements and how that plan will contribute to and fit within the Companies' overall CCPs and align with the regulatory framework laid out in D.P.U. 20-80-B. A holistic forum like the CCPs is consistent with the AGO testimony observing that:

[t]he GWSA does not apply to each individual supply resource, but rather to the aggregate emissions from the LDC's entire portfolio (in fact, the GWSA and CECP do not apply even at the level of individual LDCs but across the entire sector; though Order 20-80-B makes clear that each LDC is responsible to reduce its own emissions consistent with the subsector limits. The key here is that each Agreement is part of an LDC's supply portfolio that is designed to support plans for rising demand, not falling demand-and certainly not falling at a rate consistent with the emission reduction requirements of the GWSA and CECP).⁵⁶

Moreover, the five-year cadence, and five- and 10-year planning horizons align with an expiration of the term of the Agreements in 2030.⁵⁷ Similarly, the interplay between each Company's Agreement in the overall retention of EMT support a collective Plan.⁵⁸

As part of the Plan, the Department should require each Company to: (1) identify all potential supply and demand-side alternatives to EMT at the end of the Agreement term, as well as their costs, feasibility, timelines, and how each would contribute to emissions reductions; (2) identify and propose potential demonstration or pilot programs, including for strategic electrification, in each Company's service territory to displace the need for EMT;⁵⁹ and (3)

⁵⁶ D.P.U. 24-25 through 24-28, Exh. AG-MTLF-1 at 61.

⁵⁷ D.P.U. 20-80-B at 134-135.

⁵⁸ See, e.g., D.P.U. 24-27, Exh. NSTAR-EBS-1 at 21; D.P.U. 24-26, Exh. EGMA-EBS-1 at 20; DP.U. 24-25, Exh. NG-Agreement-1 at 25-26.

⁵⁹ D.P.U. 20-80-B at 134. See also, D.P.U. 20-80-B at 135.

incorporate customer, stakeholder, and community input into development of the Plan.⁶⁰ To ensure that the Companies are in a position to file the Plan with their first CCPs, the Department should also require the Companies to provide a report in October 2024 detailing their progress toward developing the Plan. After the Department and stakeholders evaluate the Plan through the CCP process, the Department should require the Companies to file quarterly progress reports detailing their progress toward eliminating the need for EMT at the conclusion of the Agreements.

DOER understands that the Plan will inherently involve components ripe for coordination among the Companies (and the electric distribution companies) and components that are specific to the configuration and needs of each Company's respective system and available supply and demand alternatives (which may involve competitively sensitive information). Ultimately, any Department directives associated with the Plan's incorporation of joint and company-specific components should aim to preserve flexibility in development and execution of the Plan, optimize opportunities for synergies, and provide substantial opportunity for transparency, stakeholder engagement, and Department oversight.

DOER does not propose to alter the standard of review under Section 94A through an Order in this proceeding. DOER instead recommends that, concurrent with any Order approving the Agreements pursuant to Section 94A, the Department should exercise its authority under G.L. c. 25, § 1A to impose conditions on any approval of the Agreements. This Department action is essential in safeguarding consumers against the possibility that the Companies would continue to be dependent on EMT in six-years or petition the Department for approval of gas infrastructure

⁶⁰ D.P.U. 20-80-B at 135, n. 85.

alternatives that run counter to the Future of Gas principles or GHG emissions reduction mandates.

B. If the Department Approves the Agreements, It Should Require each Company to File Uniform, Annual Reports Regarding Their Respective Agreements.

The structure of the proposed Agreements create uncertainty regarding their ultimate costs and climate impacts, which will depend on various decisions by each of the Companies and Constellation over the six-year term. For example, certain contract pricing terms are tied to indices that will vary over the term of the Agreements.⁶¹ As noted above in Section, IV.A.3, the Attorney General has raised concerns regarding the lack of transparency into the Agreements' pricing terms and how they result in significant costs to consumers.⁶² Additionally, the Agreements are structured as option contracts, meaning that the Companies are able, but not required to call on their MDQs and MSQs in each season.⁶³ Therefore, the amount of commodity that each Company will call on over the term of the Agreement and the cost that each Company will pay for that commodity will not be known until after the end of each year.

In addition to the core pricing terms, the Agreements allow Constellation to pass through incremental costs related to a "Change in Law" subject to a capping mechanism.⁶⁴ The Agreements also provide for potential true ups and credits to the Companies under certain circumstances.⁶⁵

⁶¹ See, D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 21, 33-34, 38-39.

⁶² D.P.U. 24-25 through 24-28, Exh. AG-MLTF-1 at 27-28, 38-39, 51.

⁶³ D.P.U. 24-25, Exh. NG-Agreement-1 at 23; D.P.U. 24-26, Exh. DOER-2-6; D.P.U. 24-27, Exh. DOER-2-3; D.P.U. 24-28, Exh. DOER 2-4.

⁶⁴ D.P.U. 24-25, Exhs. NG-Agreement-1 at 24, NG-Agreement-2 (REDACTED) at 12-13, Special Provision G; D.P.U. 24-26, Exh. EGMA-EBS-2 (REDACTED) at 15-16, Special Provision J; D.P.U. 24-27, Exh. NSTAR-EBS-2 (REDACTED) at 15-16, Special Provision J; Exh. Unutil-FWX-2 (REDACTED) at 14-15, Special Provision G.

⁶⁵ See, e.g., D.P.U. 24-25, Exh. NG-Agreement-2 (REDACTED) at 12-13; D.P.U. 24-26, Exh. EGMA-EBS-2 (REDACTED) at 6-7; D.P.U. 24-27, Exh. NSTAR-EBS-2 (REDACTED) at 6-7; Exh. Unutil-FWX-2 (REDACTED) at 6-8.

Given the extent of unknowns associated with the Agreements and how they will play out from year-to-year, the Department should require each of the Companies to file uniform, annual reports on their respective agreements as compliance filings in the instant docket. Such reports should include, but not necessarily be limited to, information regarding total costs and costs associated with each pricing element under the Agreements, volumes called upon during winter and summer seasons, the extent of any credits to the Companies, and whether the Companies made any third-party sales of gas allocated to it under the Agreements resulting in credits to consumers.⁶⁶ Additionally, each of the Companies should detail the extent and nature of costs that Constellation passes through pursuant to the Agreements' "Change in Law" provision, whether the Companies disputed any such charges, and the result of any dispute/challenge.⁶⁷ Annual, uniform reporting across the Companies would provide critical, timely, and centralized transparency into the Agreements and their impacts over the six-year term.

V. CONCLUSION

Each of the Agreements impacts consumer costs, environmental justice communities, reliability, and the Commonwealth's ability to meet GWSA and CECP sublimit emissions reduction mandates. If the Department approves the Agreements, it should only be a short-term bridge to ensure reliability and must include a pathway to obviate each Company's need for EMT by the end of the contract terms in 2030. Thus, if the Department approves the Agreements, DOER respectfully requests that the Department adopt two recommendations. First, the Department should direct each Company to file a Plan, with their first CCPs due on or before April 1, 2025, describing the actions that they will take, individually and collectively, to

⁶⁶ See, e.g., D.P.U. 24-25, Exh. AG-4-5; D.P.U. 24-28, Exh. AG-4-5.

⁶⁷ See, D.P.U. 24-26, Exh. DOER-2-9 (REDACTED); D.P.U. 24-27, Exh. DOER-2-6 (REDACTED) D.P.U. 24-28, Exh. DOER-2-7.

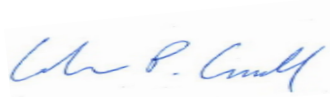
eliminate their reliance on EMT by the end of each of the six-year Agreements. As part of this recommendation, the Department should require each Company to file quarterly reporting of the Company's progress toward that objective.

Second, the Department should require each Company to file uniform, annual reports regarding the Agreements' various components, such as cost and commodity quantities, as compliance filings in the instant dockets. These reports would provide critical, timely, and centralized transparency into how the Agreements play out from year to year.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENERGY RESOURCES

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DATE: April 16, 2024

Certificate of Service

I hereby certify that I have this day served the foregoing documents upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1).

/s/ Colin P. Carroll
Colin P. Carroll