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April 16, 2024

Mark D. Marini, Secretary
Massachusetts Department of Public Utilities
One South Station, 3rd Fl.
Boston, Massachusetts 02110

Re: ***Boston Gas Company*, D.P.U. 24-25**
***Eversource Gas Company of Massachusetts*, D.P.U. 24-26**
***NSTAR Gas Company*, D.P.U. 24-27**
***Fitchburg Gas & Electric Light Company*, D.P.U. 24-28**

Dear Secretary Marini:

Enclosed for filing in the above-captioned matters please find the Office of the Attorney General's Redacted Initial Brief. Please contact me if you have any questions.

Thank you for your attention to these matters.

Sincerely,

/s/ Elizabeth A. Anderson
Elizabeth A. Anderson
Assistant Attorney General

Enclosure

cc: Scott Seigal, Hearing Officer
Service Lists

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 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 & 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**

INITAL BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL

I. INTRODUCTION

In February 2024, four Massachusetts local distribution companies ("LDCs")—Boston Gas Company d/b/a National Grid ("Boston Gas" or "Company"); Eversource Gas of Massachusetts d/b/a Eversource Energy ("EGMA"); NSTAR Gas Company d/b/a Eversource Energy ("NSTAR Gas"); and Fitchburg Gas & Electric Light Company d/b/a Unitil ("FG&E")[1]—filed petitions with the Department of Public Utilities ("Department") pursuant to G.L. c. 164, § 94A ("Section 94A")

[1] FG&E also filed a six-year transportation agreement. D.P.U. 24-28, Exh. Unitil-FXW-1, at 2.

for approval of six-year agreements with Constellation LNG, LLC ("Constellation") for the sale and purchase of natural gas in either liquid or vapor form from Everett Marine Terminal ("EMT") ("Agreements").[2] The Agreements are conditioned on the Department's approval of the Agreements by May 1, 2024. If approved, as filed, the "Agreements in aggregate provide the LDCs the option to purchase 17 billion cubic feet ("Bcf") of winter gas over the next six years (1.9 Bcf per year in year 1, growing to 3.5 Bcf per year in year 6) at an average estimated cost of roughly $55/MMBtu," assuming all 17 Bcf is called upon, which means a subset of Massachusetts ratepayers will be paying an estimated $946 million under these Agreements for gas supply by EMT over the next six years.[3]

The Massachusetts Attorney General's Office ("AGO"), as the Commonwealth's ratepayer advocate,[4] filed notices of intervention, pursuant to G.L. c. 12, § 11E(a), in each docket. Thereafter, the Department issued a revised procedural schedule[5] setting deadlines, over the course of two months, for parties to issue discovery (March 20), file testimony (March 20), conduct evidentiary hearings (April 1 - April 3, and April 8),[6] and file initial briefs (April 16).

While the AGO's Initial Brief focuses on the Boston Gas Agreement, the AGO's most significant concerns detailed below—namely, the lack of proactive planning and the high cost of the Agreements; the lack of clarity around how these Agreements fit into the LDCs' overall plan

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[2] *Boston Gas*, D.P.U. 24-25, Exh. NG-Agreement-1 (Feb. 9, 2024); *EGMA*, D.P.U. 24-26, Exh EGMA-EBS-1 (Feb. 12, 2024); *NSTAR Gas*, D.P.U. 24-27, Exh. NSTAR-EBS-1 (Feb. 12, 2024); *FG&E*, D.P.U. 24-28, Exh. Unitil-FXW-1 (Feb. 16, 2024).

[3] Exh. AG-MTLF-1, at 6.

[4] G.L. c. 12, § 11E(a).

[5] Procedural Notice (March 25, 2024). The Department's initial procedural schedule gave the parties until April 10, 2024, to file initial briefs. Procedural Notice (Feb. 2, 2024).

[6] No party requested evidentiary hearings.

to comply with the Global Warming Solutions Act ("GWSA") and the Commonwealth's climate goals; and the lack of an exit strategy to prevent another round of long-term contracts in six years—apply to all four of the Agreements.

In D.P.U. 24-25, as described further below, Boston Gas presents evidence that its Agreement is in the public interest pursuant to the Department's well-established standard of review under G.L. c. 164, §94A. The Company—along with EGMA, NSTAR Gas, and FG&E—request Department approval of their respective Agreements with EMT to ensure EMT's continued operation beyond May 31, 2024.[7] Due to EMT's status as the sole local source of LNG supply for Boston Gas during the winter months as well as EMT's unique capability to (1) inject into the end of the Algonquin and Tennessee interstate pipeline systems in Everett, and (2) bolster pressures on constrained portions of the pipeline systems, Boston Gas claims the Company will experience serious reliability concerns if EMT retires.[8] According to Boston Gas, reliability risks without EMT include an inability to maintain distribution system pressures when the pipelines are constrained during peak periods of cold weather, thus requiring the Company to curtail service to some of its customers.[9] Furthermore, Boston Gas makes clear that there are no viable alternatives available to fill the needs met by EMT, at least in the near-term.[10]

[7] Exh. AG-MLTF-1, at 15. EMT currently operates under a two-year FERC-approved cost-of-service agreement which is due to expire on May 31, 2024. *Id.* at 48. *See also* 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. 24-28, Exh. Unitil-FXW-1, at 12.

[8] D.P.U. 24-25, Exh. NG-Agreement-1, at 21, 30–31; *see also* D.P.U. 24-26, Exh. EGMA-EBS-1, at 25–27; D.P.U. 24-27, Exh. NSTAR-EBS-1, at 27–28; D.P.U. 24-28, Exh. Unitil-FXW-1, at 12.

[9] D.P.U. 24-25, Exh. AG-4-3; *see also* D.P.U. 24-26, Exh. AG-4-3; D.P.U. 24-27, Exh. AG-4-3; D.P.U. 24-28, Exh. AG-4-3; Exh. Unitil-FXW-1, at 13, 32.

[10] D.P.U. 24-25, Exh. NG-Agreement-1, at 31–37; *see also* D.P.U. 24-26, Exh. EGMA-EBS-1, at 26–29; D.P.U. 24-27, Exh. NSTAR-EBS-1, at 29–33; D.P.U. 24-28, Exh. Unitil-FXW-1, at 12–13, 24–25.

Given the serious reliability risks raised by Boston Gas, and the apparent lack of viable alternatives to EMT currently available to the Company, the AGO does not recommend that the Department reject this Agreement. The AGO does, however, have major concerns about the Agreement, including: (1) Boston Gas' failure to adequately address its requisite reliance on LNG supply from Constellation, including its failure to effectively plan for the likely closure of EMT in June 2024, leading to what appears, here, to be a very high-priced contractual arrangement that ratepayers will have underwrite; (2) the significant increase in the Company's MSQ of LNG over the term of the Agreement and whether it is compliant with the Commonwealth's Global Warming Solutions Act[11] ("GWSA") goals; and (3) Boston Gas' lack of a plausible exit strategy to ensure that the Company does not need to again petition the Department for approval of a gas supply agreement with Constellation in 2030.

If the Department approves the Agreement, the AGO requests that the Department direct Boston Gas to file an annual report on whether, and to what extent, the Agreement has facilitated the Company's plan to meet GHG emission reduction goals in compliance with the GWSA and pursuant to the Department's orders in D.P.U. 20-80-B and D.P.U. 20-80-C. The AGO also requests that the Department direct Boston Gas to provide annual updates regarding the Company's efforts to reduce and/or eliminate its dependence on EMT in the near-term, ideally through a combination of a reduction in gas demand, and an implementation of alternative solutions to meet system reliability.

[11] Chapter 298 of the Acts of 2008.

II. STANDARD OF REVIEW

Section 94A requires gas and electric companies seeking contracts "for the purchase of gas or electricity covering a period in excess of one year" to obtain Department approval.[12] In evaluating a gas company's options for commodity resource acquisitions under Section 94A, the Department examines whether the acquisitions are consistent with the public interest.[13] In order to demonstrate that a proposed acquisition 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 negotiation.[14]

III. DESCRIPTION OF THE COMPANY'S AGREEMENT

The Agreement, as proposed, will provide Boston Gas with the option to purchase up to 8,630,000 dekatherms ("Dth")[15] (or 8.63 Bcf) of winter gas over the next six years[16] at an average estimated cost of $[redacted]/MMBtu;[17] meaning Boston Gas' ratepayers will be paying an estimated [redacted] million ([redacted]) for LNG supply from Constellation over the six-year term of the Agreement.[18] More specifically, ratepayers will be paying approximately $[redacted] million in non-commodity demand charges; $[redacted] million in commodity demand charges; and $[redacted] million

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12 G.L. c. 164, § 94A.

13 *Id.*; *Commonwealth Gas Company*, D.P.U. 94-174-A at 27 (1996).

14 D.P.U. 94-174-A, at 27.

15 1 Dth = 1 MMBtu.

16 D.P.U 24-25, Exh. NG-Agreement-1, at 3.

17 Exh. AG-MLTF-1, at 37, Fig. 11.

18 *Id.* at 36, Fig. 10.

in commodity rate charges over the term of the Agreement.[19] Under the terms of the Agreement, the Company will pay for both the non-commodity demand charge and the commodity demand charge—which, together, make up the bulk of the overall costs of the Agreement—regardless of whether Boston Gas exercises its rights under the Agreement to purchase natural gas supplies in any given winter season. The commodity rate charge, on the other hand, is only incurred if Boston Gas exercises its option to purchase the natural gas from EMT. That is, if Boston Gas does <u>not</u> call on natural gas supply, the Company pays no commodity rate charge, but it still pays the non-commodity and commodity demand charges.

Accordingly, ratepayers will be on the hook to pay for a large majority of the costs incurred under the Agreement regardless of whether the Company ends up needing to use the gas supply provided by the Agreement. More concerning for ratepayers, the total cost of the Agreement is unknown because both the commodity demand charge and the commodity rate charge are calculated using index-based pricing formulas, which are variable in nature.[20] This uncertainty is further compounded by the multiplier and adder components[21] included in the commodity demand charge formula.[22]

Boston Gas claims that EMT is uniquely positioned to support the Company's gas system reliability during the winter demand seasons and demand days due to both its location and its

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19 *Id.* (assuming the Company takes the full MSQ under contract).

20 D.P.U. 24-25, Exh. NG-Agreement-2, at 5, Contract Price Table.

21 D.P.U. 24-25, Exh. AG-1-2. *See also*, Exh. AG-MLTF-1, at 25 ("the LDCs indicate that the purpose of the adders and multipliers is to allow Constellation to recover its costs of procuring LNG from upstream suppliers. . . . Boston Gas indicated that the multiplier '[redacted]' while the adder '[redacted].'39").

22 D.P.U. 24-25, Exh. NG-Agreement-2, at 5, Contract Price Table.

significant send-out capacity.[23] Further, the Company claims the Agreement is: (1) necessary to address the "deficit in the Company's available peak day and peak season assets" and "gas system reliability;"[24] and (2) the only viable alternative to meet the Company's natural gas supply needs.[25]

IV. ARGUMENT

A. Whether the Agreement is Consistent with the Boston Gas' Portfolio Objectives.

To substantiate that a resource is consistent with a company's portfolio objectives, the company may refer to the portfolio objectives established in its most recent Department-approved forecast and supply plan ("F&SP") or in a recent review of supply contracts under G.L. c. 164, § 94A, or the company may describe its objectives in the filing accompanying the resource proposal.[26] Boston Gas states that it relied upon the methodology approved in its most recent Department-approved F&SP to prepare the updated forecast of customer requirements in support of the Agreement.[27] The Company explains that its updated forecast is lower than the forecast approved in the F&SP, which projected a fairly significant increase in demand through 2030.[28]

In the Company's F&SP proceeding, D.P.U. 22-149, the AGO requested that the Department, among other things, (1) direct the Company to adopt a design day planning criteria of 76.8 Enhanced Degree Days ("EDD"), which would annually save ratepayers millions in gas costs, and (2) reject the Company's design day forecasting model and require Boston Gas to re-

23 D.P.U. 24-25, Exh. NG-Agreement-1, at 30.

24 *Id.* at 26.

25 *Id.* at 39.

26 D.P.U. 94-174-A, at 27.

27 D.P.U. 24-25, Exh. NG-Forecast-1, at 5.

28 *Id.* at 9–10.

evaluate, restructure, and improve the accuracy of its design day forecast.[29] The AGO also requested that the Department:

> [D]irect the Company to clarify whether, and to what extent, the recent developments around the Constellation LNG facility impact the Company's Forecast & Supply Plan. Further, the Department should open an investigation to better understand the impact of a potential closure of Constellation on the distribution operations of the relevant LDCs and to begin discussions on possible alternatives to meet their respective supply needs.[30]
>
> In addition, and addressed more fully below, the AGO pointed out that:
>
> The Company forecasts an increase of 7.6% to its sendout requirement under a base case scenario and a 6.7% increase over the capacity resources it currently holds. These significant increases in forecasted future gas usage and capacity come when the Commonwealth is positioning itself to dramatically reduce the state's reliance on fossil fuels to achieve net-zero emissions by 2050. The Company's F&SP is counter-intuitive and inconsistent with the State's objectives and the Company's own net-zero plans, as filed in D.P.U. 20-80. This result is, in part, due to the forecast and supply plan regulatory process – which was enacted over 25 years ago as part of a much larger effort to restructure the electric utility industry in Massachusetts to combat soaring electricity rates. Now, this antiquated law is unfit to link the least-cost-energy objective first enunciated by the Legislature in 1997 to the present net-zero decarbonization policy objective today.[31]

To that end, the AGO recommended "that the Department direct the Company to revise its F&SP to be consistent with the Commonwealth's GHG reduction mandates."[32]

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29 *Boston Gas*, D.P.U. 22-149, <u>AG. In. Br.</u>, at 1 (June 7, 2023).

30 *Boston Gas*, D.P.U. 22-149, <u>AG. Ltr. in Lieu of Reply Br.</u>, at 2 (June 14, 2023); *See also*, D.P.U. 22-149, <u>F&SP Petition</u>, at 99 ("[O]n September 8, 2022, FERC held a New England Winter Gas-Electric Forum to bring together stakeholders in New England to discuss the challenges faced historically during New England winters and discuss the stakeholders' differing expectations of challenges for future winters. At that meeting, Constellation confirmed publicly that it does not have any commitments to remain open beyond winter 2023/24. Without a commitment from an anchor tenant, Constellation noted the possibility of shutting down its Everett terminal. <u>In light of these challenges, the Company will continue to pursue available resources and incremental opportunities in order to meet customer requirements as needed</u>.") (emphasis added).

31 *Id.* at 2.

32 *Id.*

In its order addressing the Company's long-range forecast, the Department found that the Company's "adoption of a 78 EDDs design-day standard with a one-day-in-47.9-years probability of occurrence complies with Department precedent and is supported by the Company's weather data."[33] Further thereto, the Department found that "the Company's method for determining the design-year and design-day standards provides a reasonable basis for resource planning decisions and, as such, is reviewable, appropriate, and reliable."[34] The Department concluded that "the Company has presented the most accurate forecast it could, based on the modeling process and the data available in 2022."[35]

Regarding the adequacy of the Company's five-year supply plan, the Department found "that [Boston Gas] demonstrates that it has adequate supplies and facilities, and an action plan, to meet sendout requirements . . . throughout the forecast period."[36]

Concerning the AGO's request that Boston Gas address the impact of the potential closure of EMT on the Company's F&SP, the Department noted that it "issued a letter to all LDCs requesting that they respond to various questions seeking to assess the impact on reliability of service as well as the availability of alternative resources."[37] The Department, however, did not

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33 D.P.U. 22-149, Order, at 15 (Oct. 31. 2023).

34 *Id.* at 16.

35 *Id.* at 31–32 (the Department did, however, "direct the Company in its next filing to report on the steps taken to address the accuracy of its firm forecast sendout model and the resulting design-day forecasts.").

36 *Id.* at 40–41 ("under certain planning scenarios, [Boston Gas'] existing supply portfolio is insufficient to meet the expected demand, and the Company will need other purchased resources, such as LNG or city-gate supplies to meet that demand . . . . [Boston Gas] presents a plan to acquire the necessary resources to meet its shortfall through either firm city-gate purchases, incremental long-term capacity contracts, or other long-term arrangements."); *see also*, *Boston Gas*, D.P.U 20-132, Order, at 28; Exh. AG-1-7(a).

37 D.P.U. 22-149, Order, at 50.

require Boston Gas to address the impact of the potential closure of EMT in its D.P.U. 22-149 F&SP. Instead, the Department directed Boston Gas "to fully address its need for service (vapor or liquid) from Everett, describe all future agreements with Everett, and provide a detailed description of alternative resource arrangements, if any, used to replace service from Everett" in its next F&SP.[38]

Addressing the AGO's concern that Boston Gas' gas forecast, which reflects an increase in demand over the five-year plan, will lead to increased GHG emissions, the Department found the "[w]hile the Commonwealth's climate targets provide some context for our review of the Company's Plan, it is not the purpose of this proceeding to evaluate whether or not an LDC is making satisfactory progress in achieving the Commonwealth's emissions targets."[39]

As the Company's forecast supporting the need for the Agreement is based on the methodology and F&SP approved in D.P.U. 22-149, the AGO will not relitigate decided issues in this proceeding regarding whether the proposed LNG supply from Constellation is consistent with the Company's F&SP portfolio objectives.

B. Whether the Agreement Compares Favorably to the Range of Alternative Options Available to Boston Gas.

When analyzing the alternatives available to Boston Gas, as compared to current market offerings, the Department "examines relevant price and non-price attributes" of the Agreement "to ensure a contribution to the strength of the overall supply portfolio."[40] Additionally, as part this

38 *Id*.

39 *Id*. at 48.

40 *Boston Gas*, D.P.U. 15-129, Order, at 3.

analysis, the Department will consider whether Boston Gas "used a competitive solicitation process that was fair, open, and transparent."[41]

1. Agreement price attributes.

In reviewing relevant price attributes, the Department will consider whether the pricing terms in the Agreement are competitive with those for the broad range of capacity, storage, and commodity options available to Boston Gas at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region.[42]

As described in detail in the testimony sponsored by the AGO in this proceeding, the terms of the Agreement will lead to high costs for ratepayers.[43] The ultimate cost of the Agreement is uncertain because it will fluctuate based on the underlying indices as well as decisions made by Boston Gas under the Agreement.[44] Further, the Agreement stands in contrast to the LNG supply arrangements that Constellation made with its affiliate, Constellation Mystic Power, under the terms of the cost-of-service agreement for the continued operation of the Mystic 8 and 9 natural gas-fired generating units, which is in effect from June 2022 to May 2024.[45] Under that agreement, Mystic was to be charged "for the actual cost of LNG it consumes from Everett at the daily weighted average cost of gas ("WACOG") of all LNG in the storage tanks adjacent to Everett on the applicable day of delivery."[46]

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[41] *Id*. at 4.

[42] *Id*.

[43] Exh. AG-MLTF-1, at 6; 64.

[44] *Id.* at 6.

[45] *Id.* at 29, 48.

[46] *Id.* at 28 & fn. 43.

It is not clear why the Agreement does not entail the same type of WACOG-based pricing that underlies the agreement between Constellation and its affiliate. That type of WACOG-based pricing would be a superior structure if the true goal of the Agreement was to allow Constellation to recover its costs of procuring LNG from upstream suppliers, while minimizing its own risk (and thus reducing or eliminating the risk premium it would need to build into the pricing formula).[47] WACOG-based pricing would also ensure that Constellation is not building an excessive markup above its LNG procurement costs, which would correct the lack of visibility in the Agreement that makes it impossible to distinguish between Constellation's actual costs versus any arbitrary markup that may be included.[48]

In reviewing the relative pricing attributes of the Agreement proposed in this proceeding, however, the Department also should factor into its analysis whether the late timing of contract negotiations with Constellation influenced contract pricing, rather than limiting its review to commodity options available to Boston Gas at the time of the acquisition. Consider, for example, that as early as 2015 and perhaps earlier[49] Boston Gas knew Constellation was a necessary supply source to maintain safety and reliability.[50]

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47 *Id.* at 29.

48 *Id.* at 6.

49 D.P.U 24-25, Exh. DOER 1-11 ("Concerns regarding the possible closure of the Everett Marine Terminal ("EMT") and its impact on New England have been a known possibility since the Federal Energy Regulatory Commission's ("FERC") 2008 approval of the facility's request for authorization to abandon services pursuant to its tariff.").

50 *See*, *Petition of Boston Gas Company and Colonial Gas Company, each d/b/a National Grid, for Approval of Contracts for Liquefied Natural Gas and Liquefaction Services, pursuant to G.L. c. 164, § 94A*., D.P.U. 15-129 (Aug. 20, 2015).

In D.P.U. 15-129, Boston Gas entered into a 5-year contract with GDF Suez (n/k/a Constellation), and agreements with other suppliers, for LNG supply.[51] Notably, Boston Gas acknowledged that "GDF Suez's rates have increased significantly since 2008 and there have been instances where [Boston Gas] has been unable to rely on GDF Suez to meet its supply requirements. . . . Thus, the Company does not have sufficient commercial alternatives and <u>needs to develop</u> other alternatives and avoid singular reliance on GDF Suez to ensure consistent supply and <u>reasonable</u> prices."[52] At that time, Boston Gas told the Department that it wanted to reduce its dependence on imported LNG and avoid the volatile pricing associated with those supplies.[53] Moreover, Boston Gas admitted that "[r]egarding price considerations, the Company states that without the proposed agreements, it would have to continue to obtain LNG from GDF Suez, subject to <u>increased rates</u> and GDF Suez's inability or unwillingness to consistently meet National Grid's requirements."[54]

Further, Boston Gas conceded in its last two Department-approved F&SPs that under certain planning scenarios the Company did not have sufficient supplies to address demand and thus needed additional resources, such as LNG, to meet that demand.[55] Yet, in the almost nine years since the D.P.U. 15-129 proceeding, Boston Gas never resolved its dependency on EMT, thereby necessitating this hastened Agreement and its attendant high pricing.

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51 D.P.U. 15-129, <u>Order</u>, at 25.

52 *Id.* at 4–5 (emphasis added).

53 *Id.* at 5.

54 *Id*. at 8.

55 D.P.U. 22-149, <u>Order</u>, at 40–41; D.P.U. 20-132, <u>Order</u>, at 28.

Boston Gas claims the Company was not at a disadvantage negotiating with Constellation,[56] despite the Company's compulsory partnership with EMT and its well-known lack of viable alternatives.[57] That claim rings hollow when viewed alongside Boston Gas' open acknowledgement that "there are no viable alternatives to meet the need by the Agreement that do not require additional natural gas infrastructure to be sited and built."[58] Indeed, anyone, including Constellation, reading the Company's filings since D.P.U. 15-129, understands that Constellation is vital to the Company's operations, as Boston Gas plainly admits in this proceeding, noting that, of the available alternatives, those "alternatives lack the locational benefits of EMT."[59]

Unfortunately, having neglected to address its obvious dependence on EMT and absence of viable alternatives, Boston Gas is yet again faced with petitioning the Department to approve another long-term contract with Constellation with pricing terms that appear to be more favorable to Constellation, and thus more costly to ratepayers. Thus, the Department has nothing to compare the Agreement with to determine whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options available to Boston Gas at the time of the acquisition. This story has repeated itself already; it should not continue to evade Department review.

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[56] D.P.U 24-25, Exh. AG-2-10(a).

[57] D.P.U. 24-25, Exh. AG-Agreement-1, at 20 ("strategic delivery site"), at 21 ("closure of the EMT threatens Boston Gas's ability to reliably serve its existing firm gas customers on high demand days"), at 30 ("Everett Marine Terminal is in a unique position to support gas system reliability due to both its location and significant sendout capability"), at 31 ("Constellation has the capability to inject into the end of the Algonquin and Tennessee systems in Everett and bolster pressures on these constrained portions of the pipelines systems that in turn supply approximately half of the Company's take stations in Massachusetts").

[58] D.P.U. 24-25, Exh. AG-Agreeement-1, at 9

[59] *Id.* at 12.

2. Agreement non-price attributes.

In reviewing relevant non-price attributes, the Department will consider whether the Agreement satisfies Boston Gas' non-price objectives, including, but not limited to, flexibility of nominations and reliability and diversity of supplies.[60] The Company's testimony emphasizes the reliability attributes of EMT, explaining that:

> Constellation has the capability to inject into the end of the Algonquin and Tennessee systems in Everett and bolster pressures on those constrained portions of the pipelines systems that in turn supply approximately half of the Company's take stations in Massachusetts. These injections are critical to ensure adequate pressures are maintained to these National Grid take stations and to provide for uninterrupted deliveries to the Company's customers. The Company's contractual pipeline deliveries alone may not be adequate to maintain system pressures to these stations. As the upstream pipelines serving the Company's distribution system continue to become more constrained, the operational flexibilities which they have historically provided will continue to diminish.[61]

The Company further maintains that, without EMT, there would be no local source of LNG supply that could be trucked to the Company's LNG facilities during the winter months.[62]

In D.P.U. 15-129, in reviewing the non-price attributes of the Company's agreement with GDF Suez, the Department found that the "Company simply has no alternative source of LNG" sufficient to meet the Company's needs and "ensuring its ability to serve customer requirements."[63] As part of its decision, the Department also relied on the claim by Boston Gas "that until the liquefaction facilities [the NGLNG liquefaction facility and the Northeast Energy

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60 *Boston Gas*, D.P.U. 15-129, Order, at 3–4.

61 D.P.U. 24-25, Exh. NG-Agreement-1, at 31.

62 D.P.U. 24-25, Exh. AG-4-3.

63 *Boston Gas*, D.P.U. 15-129, Order, at 22.

liquefaction facility][64] are complete, the Company will continue to obtain LNG from GDF Suez."[65],[66]

Here, even with long-term precedent agreements with NGLNG and Northeast Energy Center for LNG supply,[67] the Company remains dependent on EMT in much the same way that it was dependent on EMT in 2015. Potential alternatives to meet the Company's needs and ensure its ability to serve customer requirements remain insufficient to fully replace supplies from EMT and the reliability benefits provided by the facility.[68] Like the price attributes analysis, the non-price attributes analysis suffers from the same lack of alternatives for comparison, due to Boston Gas' longstanding and ongoing failure to develop viable alternatives to its reliance on EMT.

3. Competitive Solicitation Process.

As part of its analysis in determining whether the Agreement compares favorably to the range of alternative options reasonably available to Boston Gas at the time of the acquisition, the Department will consider "whether the Company used a competitive solicitation process that was fair, open, and transparent."[69] Here, although Boston Gas issued a request for proposals ("RFP")

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64 "In 2023, National Grid completed a project to add liquefaction capability at its Fields Point LNG facility in Providence, RI. As the FERC noted in Nov. 2023: this allows "National Grid to diversify winter peaking supplies by bringing in natural gas by pipeline instead of transporting LNG by truck." Also in 2023, "as noted by the FERC in Nov. 2023, a new facility entered service in New England with the completion of the Northeast Energy Center in Charlton, MA." https://www.northeastgas.org/about_lng.php.

65 *Boston Gas*, D.P.U. 15-129, Order, at 13.

66 In D.P.U. 15-129, the Company claimed that its ability to meet future requirements relied upon the implementation of three gas infrastructure projects, the Kinder Morgan Northeast Energy Direct ("NED") pipeline project, the NGLNG liquefaction facility, and the Northeast Energy liquefaction facility. Order, at 13. By the time of the Department's order on May 13, 2016, however, the NED project had already been suspended. Order, at 13, n. 10.

67 *Boston Gas*, D.P.U 22-149, F&SP Petition, at 101.

68 Exh. AG-MLTF-1, at 50–51.

69 *Boston Gas*, D.P.U. 15-129, Order, at 18.

to identify solutions to meet the Company's forecasted supply deficit, the Agreement was not a direct result of that RFP.[70] The Agreement was, in fact, not the product of a competitive solicitation process. That shortcoming, it seems, has not been fatal to the Department's approval of gas supply contracts in prior proceedings.

In D.P.U. 15-129, for example, the Department noted that even though Boston Gas did not conduct a competitive solicitation process, "the Department does not consider the lack of a competitive solicitation process in this matter fatal to the Company's petition, as a competitive solicitation would not have produced a viable, cost-effective alternative to the proposed contracts."[71] Because this Agreement essentially presents with many of the same facts present in 2015, the Department may be tempted to reach a similar conclusion—i.e., that Boston Gas appropriately considered reliability, safety, availability of resources, and cost and, therefore, there was no reasonable alternative to meet the Company's long-term design needs.[72] But given what has by now become a long history, an alternative and broader perspective would seem to be appropriate. The Department should therefore consider whether, over the intervening years, Boston Gas should have taken action to ensure that it would have competitive alternatives to EMT by the time it faced this question again. Perhaps even more importantly, the Department should consider whether to require the Company to develop viable alternatives between now and 2030, when this question will, in all likelihood, arise once more.

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70 D.P.U. 24-25, Exh. AG-Agreement-1, at 32–33.

71 *Boston Gas*, D.P.U. 15-129, <u>Order</u>, at 18.

72 *Id.* at 18–19.

4. GWSA

The final prong in the Department's determination of whether the Agreement is in the public interest focuses on whether the resource acquisition is consistent with the GWSA and any applicable emissions limit or sublimit set by the Secretary of Energy and Environmental Affairs ("EEA").[73] The Department recently explained that, in the context of a Section 94A proceeding, its "assessment of the GHG emissions reductions may vary case by case" and that the analysis would depend upon "the purpose of the proposed arrangement."[74]

The Department's recent orders in its *Investigation into the role of gas local distribution companies as the Commonwealth achieves its target 2050 climate goals* proceeding, D.P.U. 20-80, provide further context for a determination of whether the proposed arrangement is consistent with the GWSA. The Department's December 6, 2023 order in D.P.U. 20-80-B made clear that the Commonwealth's GHG emissions reduction goals will be met through a reduction in natural gas use by pursuing strategies that transition away from the gas system.[75] To facilitate this transition, the Department directed the LDCs to file Climate Compliance Plans every five years, with the first Plan due on April 1, 2025.[76] Each Plan must, among other requirements, demonstrate how the LDC proposes to contribute to the GHG emissions reduction sublimits set by EEA.[77] Further, in its April 2, 2024 *Order on Joint Motion for Clarification Filed by the Gas Local*

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73 G.L. c. 25, § 1A; *Liberty Utilities (New England Natural Gas Company) Corp., d/b/a Liberty,* D.P.U. 22-32-C, at 36 (2023); *Boston Gas Company, d/b/a National Grid,* D.P.U. 19-132, at 46-47; *NSTAR Gas Company d/b/a Eversource Energy*, D.P.U. 17-175, Order, at 43–44 (May 31, 2018).

74 D.P.U. 22-32-C, at 36.

75 Exh. AG-MLTF-1, at 57.

76 *See* D.P.U. 20-80-B, at 134.

77 *Id.*

Distribution Companies, the Department reiterated that it expects the LDCs, going forward, to "demonstrate that they have analyzed and considered the true costs and the true benefits of additional investments in the gas system in the context of the clean energy transition and the Commonwealth's target of achieving net-zero GHG emissions by 2050."[78]

Here, Boston Gas claims the Agreement is compliant with the GWSA because (1) to the extent that the Agreement leads to an increase in gas usage, "it will likely be used to serve new customers converting from oil heating to natural gas;"[79] and (2) the Agreement will not lead to an increase in GHG emissions as it is simply replacing existing supply from which no additional GHG emissions will result.[80]

As to the first assertion, the Company does not provide evidence to support its claim that its Agreement will likely be used to serve oil-to-gas conversion customers, thereby reducing GHG emissions and contributing to GWSA goals. This is a tried-and-true argument by the Company that should no longer be accepted at face value and without further scrutiny.[81] As highlighted by the testimony sponsored by the AGO in this proceeding, there are several issues with this claim. First, it is not at all clear that gas is less GHG intensive than oil in this case.[82] Second, the argument ignores the possibility of oil customers converting to electricity rather than gas.[83] Indeed, the

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78 D.P.U. 20-80-C, at 20 (2024).

79 D.P.U. 24-25, Exh. NG-Agreement-1, at 39.

80 *Id.*

81 *See, e.g.,* D.P.U. 19-132, at 47 (2020).

82 Exh. AG-MLTF-1, at 59.

83 *See, e.g.,* The Massachusetts 2025–2027 Energy Efficiency and Decarbonization Draft Plan, at 12 (April 1, 2024) (outlining the Program Administrators' goals for the next three-year plan, which include electrification as the "default solution for delivered fuels and electric resistance customers" for low-income customers), *available at* https://ma-eeac.org/wp-content/uploads/Final-Draft-MA-2025-2027-Plan-04-01-24.pdf.

Company plans to focus on oil-to-electric conversions to meet the Boston Building Emissions Reduction and Disclosure Ordinance ("BERDO").[84] Third, oil-to-gas conversions, even if slightly less GHG intensive in the short-term, will be insufficient to meet the Commonwealth's climate goals in the long-term and could, instead, work against those goals by investing in costly infrastructure that locks in future fossil fuel consumption in a way that continuing to use an existing oil system for a time may not.[85] Finally, the Company is unable to show that the 8 percent demand growth projected between winter 2023/2024 and winter 2028/2029 is driven solely by oil-to-gas conversions.[86] The volumes from the Agreement would serve this increased demand in the aggregate and thus cannot be siphoned off, and attributed to, a specific subset of customers.[87] Accordingly, the AGO urges the Department to reject the Company's claims that the Agreement is GWSA compliant due to oil-to-gas customer conversions.

As for the second assertion, in response to information requests, the Company explained that the Agreement will not replace any contracts from the Company's current portfolio, but rather will satisfy a portion of the Company's forecasted peak day and peak season deficit in the near term that can only be realistically served via imported LNG.[88] The Company further explains that "should the Company experience a decrease in customer growth, the Company may not be required to enter into any incremental purchases for imported LNG during the term covered by the Agreement."[89] In addition, the Company notes that "the Agreement is structured as a call option"

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84 *Id.*

85 *Id.*

86 *Id.* at 60.

87 *Id.*

88 D.P.U. 24-25, Exh. DPU-NG-1-20.

89 D.P.U. 24-25, Exh. AG-1-5.

and, accordingly, "should the Company's forecasted requirements decrease over the six-year term of the Agreement, the Company is not obligated to purchase the commodity."[90] Finally, the Company states that "many of the transportation contracts in the Company's portfolio are outside of their primary term and currently subject to renewal terms," which "provides the Company with ample opportunities to continuously evaluate contracts within the portfolio should a sustained decrease in customer requirements materialize."[91]

Hence, the Company has made some assertions in this proceeding that appear calculated to assuage the Department and other stakeholders that the Agreement will not hamper the transition away from a natural gas system, as envisioned by the Department's orders in D.P.U. 20-80. If the Department approves the Agreement, the AGO requests that the Department direct the Company to annually report on whether, and to what extent, the Agreement has facilitated the Company's plans to meet GHG emission reduction goals in compliance with the GWSA and pursuant to D.P.U. 20-80-B and D.P.U. 20-80-C. This should include reporting on whether the Company was able to forego entering into any incremental purchases for imported LNG during the term covered by the Agreement; whether the Company was able to eliminate or reduce any of its transportation contracts as a result of the Agreement; the amount of the commodity provided under this Agreement that the Company purchased each year, as well as the amount that the Company opted not to purchase; and any other impacts that the Agreement may have on the Company's supply portfolio. Most importantly for GWSA compliance, the Company should be directed to report on its ability to reduce customer demand for gas, and flexibly reduce supply in response in a way that keeps customer costs down.

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90 *Id.*

91 *Id.*

V. EXIT STRATEGY

Since 2015, Boston Gas has taken no overt actions to address its readily apparent dependence on EMT. The opening of two liquefaction facilities did little to stem the Company's appetite for EMT LNG supply. In fact, the Company's appetite for EMT LNG is only forecasted to burgeon four-fold over the next six years.[92] Yet, the Company provides no pathway nor does it even state an intention to curb its EMT LNG addiction.[93] Tellingly, Boston Gas represents that "[t]he Company is not proposing to implement specific, incremental demand side solutions over the term of the Agreement <u>to displace the need for the Company to rely on the Everett Marine Terminal at the conclusion of the proposed Agreement</u>."[94]

If the Department approves this Agreement, the AGO recommends that the Department direct Boston Gas to provide annual updates regarding the Company's earnest efforts to reduce and eliminate its dependence on EMT in the near-term, ideally through a combination of reducing its gas demand, and implementing alternative solutions that can meet customer needs reliably. In 2030, absent such a Department mandate here, and in the other EMT proceedings before the Department, ratepayers will again helplessly succumb to petitions by these LDCs for ongoing LNG supply from Constellation because, currently, these LDCs have no plan, obligation, or intention end their dependence on EMT.

VI. CONCLUSION

The Agreements proposed by the four LDCs in these proceedings represent a veritable Hobson's Choice. While there are other LNG suppliers (e.g., Repsol and Excelerate), only EMT

92 D.P.U. 24-25, Exh. NG-Agreement-2, at 3.

93 D.P.U. 24-25, Exh. AG-1-5.

94 D.P.U. 24-25, Exh. DOER-2-5 (emphasis added).

can directly inject gas supply into the distribution system at a point necessary to serve critical service areas, like the metro Boston area.[95] The LDCs acknowledge that there are limited alternatives to the flexibility, storage and send out capability, and reliability that EMT provides from a gas resource perspective.[96] Indeed, rejecting the Agreements could compromise the regional gas distribution system when supply is needed most during periods of high demand, like during a cold snap.[97]

The LDCs are not without fault for creating this quagmire. The LDCs knew, or should have known, for years that EMT could shutter operations. Yet, despite the LDCs' obvious dependence on this facility to reliably serve their gas customers and despite their claims that there are no viable alternatives, the LDCs have, thus far, failed to proactively address the problem, as evidenced by this last-minute dash to secure long-term contracts prior to the May 31, 2024, expiration date of the cost-of-service agreement currently responsible for EMT's continued operation. Further, the LDCs have offered no solutions to remedy the problem going forward, which does not instill confidence that this problem will be adequately addressed within the next six years.[98]

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95 D.P.U. 24-25, Exh. NG-Agreement-1, at 19; D.P.U. 24-26, Exh. EGMA-EBS-1, at 12 (EMT has the "ability to contract for firm deliveries to meters on the highly constrained AGT G-Lateral via EMT's firm pipeline contracts with primary receipt at EMT provides EGMA with a critical supply source to manage G-Lateral hourly flow limitations and avoid pipeline penalties to enhance reliability by not allowing supply pressures to deteriorate to levels that could cause distribution system outages.").

96 D.P.U. 24-25, Exh. NG-Agreeemnt-1, at 45, 47; D.P.U. 24-26, Exh. EMGA-EBS-1, at 9; D.P.U. 25-27, Exh. NSTAR-EBS-1, at 9; D.P.U. 24-28, Exh. Unitil-FXW-1, at 27–28, 32.

97 D.P.U. 24-25, Exh. NG-Agreement-1, at 21, 30–31; D.P.U. 24-26, Exh. EGMA-EBS-1, at 12 (EMT provides EGMA with a critical supply source to help prevent supply pressures to deteriorate to levels that could cause distribution system outages.); D.P.U. 24-27, Exh. NSTAR-EBS-1, at 12.

98 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

If the Department approves these Agreements, the Department should, as set forth above, direct all the LDCs to annually report on their efforts to not only comply with the Commonwealth's GWSA goals but also find resources to replace EMT beyond the 2029/2030 winter season.

Respectfully submitted,

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Dated: April 16, 2024

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 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 & 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**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in these proceedings in accordance with the requirements of 220 C.M.R. § 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston, Massachusetts this 16th day of April, 2024.

<u>/s/ Elizabeth A. Anderson</u>
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