The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 17-172 May 31, 2018

Petition of Bay State Gas Company d/b/a Columbia Gas of Massachusetts, for Approval of a Firm Transportation Agreement and Related Contracts, pursuant to G.L. c. 164, § 94A.

APPEARANCES: Shaela McNulty Collins, Esq.
NiSource Corporate Services Company
4 Technology Drive, Suite 250
Westborough, Massachusetts 01581
-and-
Kenneth W. Christman, Esq.
NiSource Corporate Services Company
121 Champion Way, Suite 100
Canonsburg, Pennsylvania 15317
FOR: BAY STATE GAS COMPANY
Petitioner

Maura Healey, Attorney General
Commonwealth of Massachusetts
By: Matthew Saunders
William Stevens, Jr.
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, Massachusetts 02108
Intervenor

Caitlin Peale Sloan, Esq.
Conservation Law Foundation
62 Summer Street
Boston, Massachusetts 02110
Intervenor

James Avery, Esq.
Pierce Atwood, LLP
100 Summer Street, Suite 2250
Boston, Massachusetts 02110
FOR: THE BERKSHIRE GAS COMPANY
Limited Participant

Ashley Wagner, Esq.
Keegan Werlin LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110
-and-
Stacey M. Donnelly, Esq.
National Grid
40 Sylvan Road
Waltham, Massachusetts 02451
FOR: BOSTON GAS COMPANY AND COLONIAL GAS COMPANY
Limited Participant

Brendan Vaughan, Esq.
Keegan Werlin, LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110
FOR: NSTAR GAS COMPANY
Limited Participant

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I. INTRODUCTION AND PROCEDURAL HISTORY

On November 2, 2017, Bay State Gas Company d/b/a Columbia Gas of Massachusetts ("Bay State" or "Company") filed a petition with the Department of Public Utilities ("Department") pursuant to G.L. c. 164, § 94A ("Section 94A") seeking approval of three contractual arrangements: (1) a 20-year firm transportation contract with Tennessee Gas Pipeline Company, LLC ("Tennessee"); (2) a 20-year firm transportation contract with Portland Natural Gas Transmission Systems ("PNGTS"), which requires PNGTS to acquire firm transportation with TransCanada Gas Pipelines Limited ("TransCanada") and Union Gas Limited ("Union") and requires the Company to enter into a letter agreement with PNGTS for a 21-year, six-month, and 21-day extension of two existing firm transportation service agreements; and (3) two ten-year firm winter season supply agreements with Repsol Energy North America Corporation ("Repsol"). The Department docketed this matter as D.P.U. 17-172.[1]

The agreement with Tennessee ("Tennessee Agreement") will provide up to 96,400 dekatherms ("Dth") per day of firm transportation capacity with primary receipt points at Dracut, Massachusetts ("Dracut") and Haverhill, Massachusetts ("Haverhill"), and deliveries to city gate points in the Company's Lawrence, Massachusetts ("Lawrence") and

[1] The Berkshire Gas Company, Boston Gas Company d/b/a National Grid, and NSTAR Gas Company d/b/a Eversource Energy filed petitions in November 2017, seeking the Department's approval of similar agreements with Tennessee. Those matters are docketed as D.P.U. 17-145, D.P.U. 17-174, and D.P.U. 17-175, respectively. The Berkshire Gas Company and Boston Gas Company d/b/a National Grid, in their respective matters, also sought approval of similar agreements with PNGTS. The Berkshire Gas Company further sought approval of a similar agreement with Repsol.

Springfield, Massachusetts ("Springfield") divisions. Three construction projects are required to provide the capacity under the Tennessee Agreement: (1) a new city gate station called West Longmeadow to provide a new point of delivery into Springfield; (2) replacement of existing compression at Tennessee's Agawam compressor station receipt point; and (3) a new two-mile pipeline loop within an existing right of way starting at the Agawam compressor station, which will be dedicated for service at the Company's Agawam gate station. The agreements with PNGTS ("PNGTS Agreement") and Repsol will provide seasonal peaking capacity backed by imported liquefied natural gas ("LNG") through Repsol's LNG import terminal in St. John, New Brunswick, Canada ("Canaport") and year-round firm pipeline capacity with access to supplies at the Dawn, Ontario, Canada ("Dawn") hub through PNGTS, TransCanada, and Union. The PNGTS Agreement will provide up to 14,300 Dth/day of capacity under the Portland Xpress project. For direct access to gas supplies at Dawn, the PNGTS Agreement also provides for approximately 60,600 Dth/day of capacity on TransCanada and approximately 60,800 Dth/day on Union. The first Repsol Agreement will provide a maximum daily quantity ("MDQ") of 32,900 Dth ("Repsol-1 Agreement"), and the second Repsol Agreement will provide a MDQ of 14,100 Dth ("Repsol-2 Agreement," and together with the Repsol-1 Agreement, the "Repsol Agreements").

On November 7, 2017, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E(a), and was recognized as a full party to this proceeding. Conservation Law Foundation ("CLF") filed a petition to

intervene as a full participant in the matter on December 28, 2017. The Department issued a ruling granting CLF's petition on January 17, 2018.[2] Boston Gas Company and Colonial Gas Company d/b/a National Grid, The Berkshire Gas Company ("Berkshire"), and NSTAR Gas Company d/b/a Eversource Energy ("NSTAR Gas") petitioned for limited participant status on December 15, 2017, December 22, 2017, and December 28, 2017, respectively. The Department granted their petitions on January 12, 2018.

On January 17, 2018, the Department established the procedural schedule for this proceeding. The Department held a public hearing on February 13, 2018, pursuant to a duly issued notice.[3] The Department conducted an evidentiary hearing in this matter on March 20, 2018. The Company sponsored the testimony of Joseph Ferro, manager of regulatory affairs, and of Michael D. Anderson, director of supply development in the energy and supply optimization department of NiSource Corporate Services. CLF sponsored the testimony of Dr. Elizabeth A. Stanton, Director and Senior Economist of the Applied Economics Clinic of the Global Development and Environment Institute at Tufts University.

In addition to the exhibits contained in the original filing and the prefiled witness testimony and exhibits, the record contains responses to 128 information requests and

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[2] The Berkshire Gas Company opposed CLF's intervention in D.P.U. 17-145. Boston Gas Company d/b/a National Grid, NSTAR Gas Company d/b/a Eversource Energy, and Bay State did not take a position on CLF's petition filed in their respective dockets, D.P.U. 17-174, D.P.U. 17-175, and the instant docket.

[3] The public hearing was initially scheduled for January 4, 2018, but was postponed to February 13, 2018, due to inclement weather.

eight record requests.[4] On April 5, 2018, the Company, the Attorney General, and CLF filed initial briefs. On April 12, 2018, the Company filed a reply brief. CLF did not file a reply brief. The Attorney General timely filed a letter in lieu of a reply brief.

II. STANDARD OF REVIEW

In evaluating a gas company's 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. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a local gas distribution company ("LDC") must show that the acquisition is: (1) 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. D.P.U. 94-174-A at 27.

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 requirements plan or in a recent review of supply contracts under Section 94A, or may describe its objectives in the filing accompanying the proposed resource. D.P.U. 94-174-A at 27-28. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a

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[4] The Department also received approximately 75 written comments from members of the public.

contribution to the strength of the overall supply portfolio. D.P.U. 94-174-A at 28. As part of the 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. D.P.U. 94-174-A at 28. 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. D.P.U. 94-174-A at 28-29. In making these determinations, the Department considers whether the LDC used a competitive solicitation process that was fair, open, and transparent. The Berkshire Gas Company, D.T.E. 02-56, at 10 (2002); Bay State Gas Company, D.T.E. 02-52, at 8-9 (2002); KeySpan Energy Delivery New England, D.T.E. 02-54, at 9-10 (2002); The Berkshire Gas Company, D.T.E. 02-19, at 6, 11 (2002).

III. DESCRIPTION OF COMPANY'S PROPOSAL

On June 29, 2017, Bay State and Tennessee entered into a precedent agreement for 20-year firm transportation service (Exhs. CMA/MDA-1, at 6 & n.3, 15; CMA/MDA-2, at 6). The parties executed an amendment to precedent agreement on September 5, 2017, which revised the negotiated rate agreement included in Exhibit A to the precedent agreement (Exhs. CMA/MDA-1, at 6 & n.3; CMA/MDA-2, at 1). The precedent agreement, as amended, is referred to herein as the "Tennessee Agreement." The Tennessee Agreement is expected to go into service on November 1, 2018, and is designed to provide up to 96,400 Dth/day of transportation service with primary receipt points at Dracut and Haverhill

and deliveries to city gate points in the Company's Lawrence and Springfield divisions (Exh. CMA/MDA-1, at 15-17, 28). As a result of the Tennessee Agreement, Bay State will reduce capacity on two of its existing Tennessee contracts but will leave other Tennessee contracts unmodified (Exh. CMA/MDA-1, at 30). Pursuant to the Tennessee Agreement, Tennessee will undertake three construction projects that will enhance reliability to existing customers and improve system reliability (Exh. CMA/MDA-1, at 32-34).[5] The Company has a one-time, up to ten-year extension right for up to 100 percent of the contract quantities at the lower of: (1) the negotiated rate set forth in the negotiated rate agreement; (2) the maximum recourse rate applicable to the Tennessee Agreement in effect on the last date of the primary term; or (3) another rate mutually agreed upon by Tennessee and the Company (Exh. CMA/MDA-1, at 19-20).

On August 31, 2017, Bay State and PNGTS entered into a precedent agreement for 20-year firm transportation service (Exh. CMA/MDA-3, at 1, 3). Additionally, the Company and PNGTS entered into a letter agreement providing for a 21-year, six-month, and 21-day extension of two existing firm transportation service agreements (Exh. CMA/MDA-1, at 21). The PNGTS Agreement is expected to go into service on November 1, 2018, and is designed to provide up to 14,300 Dth of capacity under the Portland Xpress project (Exhs. CMA/MDA-1, at 43; CMA/MDA-3, at 3). The Company views the

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[5] The three projects are: (1) a new gate station called West Longmeadow; (2) replacement of existing compression at Tennessee's Agawam compressor station; and (3) a two mile pipeline loop within an existing right of way of the Agawam Lateral starting at the Agawam compressor station and dedicated to service at the Company's Agawam gate station (Exh. CMA/MDA-1, at 32-34).

PNGTS Agreement primarily as substitute capacity for the withdrawn Northeast Energy Direct ("NED") supply path contract (Exh. CMA/MDA-1, at 8). Specifically, the PNGTS Agreement is designed to provide upstream supplies for the proposed Tennessee Agreement and is not additional transportation capacity delivered to Bay State's city gates (Exh. CMA/MDA-1, at 8). The PNGTS Agreement will facilitate a continuous pipeline path from the Dawn hub to Tennessee at Dracut and Haverhill (Exh. CMA/MDA-1, at 43).

On October 24, 2017, Bay State and Repsol entered into two ten-year firm winter season peaking commodity purchase agreements (Exhs. CMA/MDA-1, at 7; CMA/MDA-4, at 1, 5). The terms of the Repsol Agreements begin November 1, 2018, and end March 31, 2028 (Exhs. CMA/MDA-1, at 27; CMA/MDA-4, at 1, 5).

The Company analyzed its need for incremental resources using its established forecast and supply planning process, which determines trends in customer requirements under normal and design weather conditions over a five-year period (Exh. CMA/MDA-1, at 51-53).[6] Bay State relied on its most recently approved forecast and supply plan, Bay State Gas Company, D.P.U. 15-143 (2016) ("2015 F&SP"). The Company used its planning process as approved in the 2015 F&SP to develop both load requirements and resource requirements over a five-year planning horizon beginning in 2015/2016 and extended out to 2028/2029 (Exhs. CMA/MDA-1, at 54; DPU 2-24). Bay State assumed that it would continue its present-day efforts at load reduction through its energy efficiency programs throughout the ten-year forecast period (Exh. DPU 2-24). Thus, the Company

[6] A design condition signifies an extreme weather scenario.

reduced the design day demand by over 33,000 Dth, which represents more than ten percent of the projected design day demand for the 2028/2029 winter for the Lawrence and Springfield divisions (Exh. DPU 2-14, at 1).

Based on this analysis, Bay State identified a need for design day capacity of 52,000 Dth/day in 2018/2019 growing to 68,000 Dth/day in 2028/2029, and a design winter need of 800,000 Dth in 2018/2019 growing to more than 1.6 million Dth in 2028/2029 for the Springfield and Lawrence divisions (Exh. CMA/MDA-1, at 35, 38). The Company states that incremental capacity resources are needed to ensure reliability and deliverability of natural gas to meet customer requirements, and that the addition of the Proposed Agreements will meet these needs and address the shortfall (Exh. CMA/MDA-1, at 47-48). In addition, the Proposed Agreements will mitigate price volatility and increasing costs by providing a firm pathway to adequate supplies at the Dawn hub and the Canaport LNG terminal with a primary delivery to Tennessee at the Dracut receipt point (Exh. CMA/MDA-1, at 47-49, 54).

Bay State identified three conceptual alternatives to the Proposed Agreements: (1) other interstate pipeline resources; (2) increased reliance on LNG, propane-air, or compressed natural gas; and (3) increased reliance on city gate purchases or seasonal supply from ENGIE Gas & LNG, LLC ("ENGIE") (Exh. CMA/MDA-1, at 13-14, 38-39). The Company states, however, that there are no interstate pipeline resources other than those reflected in the Proposed Agreements and no other viable alternatives available in the marketplace (Exh. CMA/MDA-1, at 12-13, 38-39).

Currently, Bay State relies on the use of LNG and other on-system peaking resources to meet approximately 47 percent of its design day requirements in its Lawrence and Springfield divisions (Exh. CMA/MDA-1, at 58). The Company states that an increased reliance on on-system peaking resources would pose price concerns and a lack of flexibility (Exh. CMA/MDA-1, at 38-45, 56-58). Further, the lack of potential capacity release value is a negative consideration when reviewing on-system peaking as an alternative to pipeline capacity (Exh. CMA/MDA-1, at 63). Moreover, the Company states that trucking LNG during extended extreme cold periods would pose reliability and safety concerns (Exh. CMA/MDA-1, at 38). Bay State considered seasonal supplies from ENGIE, but determined it was not a preferred optimization option due to higher cost (Exh. CMA/MDA-1, at 58-59).

With respect to non-price factors, Bay State considered reliability, flexibility, and diversity (Exhs. CMA/MDA-1, at 58-59; DPU 1-16). The Company states there is substantial uncertainty as to whether supplies to the Company's city gates would be available today under design conditions (Exh. CMA/MDA-1, at 65). Moreover, Bay State indicates that the Proposed Agreements provide access to adequate, reliable supplies delivered into the Tennessee capacity to ensure reliable service to its planning load customers over the next ten years (Exh. CMA/MDA-1, at 65). Further, the Company states that the Proposed Agreements will increase the flexibility and diversity of the Company's portfolio by accessing supply from the West at the Dawn hub via TransCanada and PNGTS and from imported LNG via Repsol's Canaport terminal (Exh. CMA/MDA-1, at 66). Thus, Bay State claims

that considering both price and non-price factors, the Proposed Agreements represent the most viable alternative reasonably available for the Company to meet current and forecast customer requirements in a least-cost, reliable manner (Exh. CMA/MDA-1, at 67).

IV. POSITIONS OF THE PARTIES

A. Attorney General

The Attorney General argues that, when determining whether the Proposed Agreements are consistent with the Company's portfolio objectives, the Department should rely on Bay State's 2017 forecast and supply plan ("2017 F&SP") pending in Bay State Gas Company, D.P.U. 17-166, rather than its approved 2015 F&SP (Attorney General Brief at 3). The Attorney General asserts that, using the 2017 F&SP, the Repsol Agreements should be disallowed if they are evaluated on the basis of the Company's base case forecast, and that the Repsol-2 Agreement should be disallowed using the Company's 2017 base or high case forecast (Attorney General Brief at 9-11). The Attorney General asserts that the primary driver of the Proposed Agreements is Bay State's ability to meet existing and projected design day and seasonal requirements from its 2015 F&SP (Attorney General Brief at 8, citing Tr. at 42-44; RR-AG-3; Exh. CMA/MDA-1, at 34-35). However, the Attorney General argues, the Company's forecast of customer requirements from its 2015 F&SP is considerably higher than its 2017 F&SP forecast (Attorney General Brief at 8, citing Tr. at 42-44; RR-AG-3; Exh. CMA/MDA-1, at 34-35).

The Attorney General claims Bay State's 2017 F&SP's forecast base case model is a reasonable forecast of actual planning load, while Bay State's 2015 F&SP forecast

consistently forecasted more customers compared to the actual number of customers (Attorney General Brief at 7-8, citing Exh. AG 4-3, Att. AG 4-3). The Attorney General states that, although not yet approved by the Department, the 2017 F&SP provides more recent information and that relying on the allegedly outdated 2015 F&SP is not reasonable and appropriate (Attorney General Brief at 7, citing The Berkshire Gas Company, D.P.U. 15-48, at 42 (2015)). The Attorney General asserts that if the forecast from the 2017 F&SP is used, the Repsol-2 Agreement is not necessary in either the high or base case scenarios (Attorney General Brief at 10, citing Exh. AG 2-13, Att. 2-13(a)).

The Attorney General argues that the Company's 2017 F&SP's extended design day forecast, base case scenario, shows total requirements for winter 2027/2028 to be 58,939 Dth/day less than what was forecasted under the 2015 F&SP's extended design day forecast, high case scenario (Attorney General Brief at 10, citing RR-AG-4, Att. AG-4(a), at 1; Exh. AG 1-22, Att. AG 1-22(a), at 1).[7] According to the Attorney General, this variation calls into question the necessity of the Repsol Agreements, which collectively provide an MDQ of 47,000 Dth (Attorney General Brief at 10, citing RR-AG-4, Att. AG-4(a), at 1; Exh. AG 1-22, Att. AG 1-22(a), at 1). Accordingly, the Attorney General contends that it would be in the best interests of the Company's customers for the Department to rely upon the Company's 2017 F&SP rather than the 2015 F&SP in

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[7] The Attorney General states that of the four LDCs currently seeking approval of gas resource agreements with Tennessee, PNGTS, and others, only Bay State relies on a design day, high case scenario rather than a design day, base case scenario to support its need for the Proposed Agreements (Attorney General Brief at 10). See above, note 1.

determining whether the Proposed Agreements are consistent with the Company's portfolio objectives (Attorney General Brief at 13).

Further, the Attorney General recommends that the Department require Bay State to assign a Department–approved pro rata portion of the Tennessee construction costs to its capacity-exempt customers in recognition of the benefits these customers will derive from the projects (Attorney General Brief at 12). The Attorney General states that the construction projects will provide benefits to both firm and capacity-exempt customers by enhancing system reliability, improving operational flexibility, and increasing minimum delivery pressures, yet all of the costs will be recovered from the Company's firm customers (Attorney General Brief at 11, citing Exh. CMA/MDA-1, at 33-34; Tr. at 16, 18-20, 60). The Attorney General argues that this cost recovery is contrary to the Department's longstanding precedent, which provides that no class of customers should pay more than the costs of serving that class (Attorney General Brief at 11-12, citing Cost Based Reconciling Factors, D.P.U. 12-126A through D.P.U. 12-126*I*, at 29 n.22 (2013), citing Bay State Gas Company, D.P.U. 12-25, at 445 (2012); The Berkshire Gas Company, D.P.U. 15-GC-21 (2015)). The Attorney General contends that the Department should require Bay State to spread construction costs equitably among all of its customers, not just its firm customers, and that such distribution of costs would be in the best interests of Bay State's customers (Attorney General Brief at 3, 13).

B. Conservation Law Foundation

CLF argues that the Department should reject the Proposed Agreements as they are inconsistent with both Section 94A and the Global Warming Solutions Act, Chapter 298 of the Acts of 2008 ("GWSA") (CLF Brief at 6). In summary, CLF claims the Proposed Agreements are inconsistent with the Company's portfolio objectives because the Company's model does not compare all resources on an equal basis, the Company failed to consider all reasonably available alternatives to additional gas supply, the Company did not conduct a request for proposal ("RFP") process, and the Company failed to consider energy efficiency appropriately (CLF Brief at 6-13). CLF argues that the Proposed Agreements are inconsistent with the GWSA because Bay State makes no showing of the potential climate impacts of the Proposed Agreements, fails to offer credible data regarding capacity to be used for oil heating customer conversions, does not provide an analysis regarding greenhouse gas emissions impacts, and fails to consider alternative thermal resources (CLF Brief at 4-5, 11-13). Further, CLF requests that the Department develop consistent standards for the inclusion of information and analysis related to the greenhouse gas emission impacts of future proposed natural gas transportation and supply service agreements (CLF Brief at 6).

First, CLF claims that Bay State failed to demonstrate that the Proposed Agreements are consistent with the portfolio objectives established in Bay State's most recent forecast and supply plan (CLF Brief at 6). CLF argues that, although a company's process for identifying and evaluating resources in a forecast and supply plan must include a mechanism for comparing all resources, including energy efficiency, on an equal basis, the Company has

modeled only gas supply resources, ignoring advanced energy efficiency, demand management, and storage options (CLF Brief at 7, citing Boston Gas Company and Colonial Gas Company, D.P.U. 13-01, at 19 (2014); Exh. CLF-EAS-1, at 10-11). According to CLF, given this fundamental flaw in Bay State's approach to modeling the necessity of a proposed supply resource, the Department cannot conclude that the Proposed Agreements are consistent with Bay State's portfolio objectives (CLF Brief at 7).

Next, CLF contends that the Company has failed to provide sufficient evidence that it considered reasonably available alternatives to additional gas supply, including evidence of an RFP process (CLF Brief at 8). According to CLF, this does not comply with the Department's requirement of a fair, open, or transparent solicitation process (CLF Brief at 8, citing Blackstone Gas Company, D.P.U. 11-77, at 7 (2011)). CLF asserts that Bay State should publicly offer other suppliers the opportunity to compete for Bay State's business and, because it did not, Bay State failed to meet its burden of proof for this element of the public interest standard (CLF Brief at 8).

Further, CLF argues that the Company made no real efforts to quantify the cost of procuring either demand-side resources or energy efficiency, and did not issue any RFPs to determine if energy efficiency or demand response measures could reduce peak day and peak season demands (CLF Brief at 9, citing Exh. DPU 2-17). CLF asserts that the Company instead relied on its joint efforts with all electric and natural gas distribution companies under the Green Communities Act, St. 2008, G.L. c. 169, § 69 effective July 2, 2008 ("GCA"), as evidence that it adequately considered energy efficiency as an alternative (CLF Brief at 9,

citing Exh. DPU 2-12). According to CLF, the Company's reliance on the existing three-year energy efficiency programs implemented under the GCA is misplaced because the cost-effectiveness analysis required by the GCA vastly differs from the analysis of energy efficiency as an alternative to additional supply resources required pursuant to G.L. c. 164, § 69*I* ("Section 69*I*") (CLF Brief at 9-10). CLF maintains that participation in the three-year energy efficiency programs does not obviate Bay State's obligation to demonstrate that it considered demand-side resources as an alternative to the Proposed Agreements, and that Bay State has failed to provide any evidence that the alternative of energy efficiency is unavailable or more expensive than the Proposed Agreements (CLF Brief at 10-11). CLF requests that the Department reject the Company's petition as it fails to meet its burden under Section 94A (CLF Brief at 13).

CLF further argues that the Department should not approve of Bay State's petition because the Company has failed to establish that the Proposed Agreements are consistent with the GWSA (CLF Brief at 11-13). CLF asserts that the GWSA comprises both an energy policy and an environmental policy of the Commonwealth, and that Bay State's petition is completely silent regarding the Proposed Agreements' consistency with the GWSA (CLF Brief at 11). CLF explains that because Section 94A requires that the Proposed Agreements be consistent with the Company's forecast and supply plan approved under Section 69*I*, and Section 69*I* purportedly requires the Company to demonstrate that its forecast and supply plan is consistent with the current environmental policies of the Commonwealth, then that means Section 94A necessarily requires that the Proposed

Agreements be consistent with the GWSA, an environmental policy of the Commonwealth (CLF Brief at 11, citing Section 69*I* at (2)-(3)). As such, CLF contends that Bay State is obligated to provide sufficient evidence for the Department to consider the potential climate impacts of the Proposed Agreements and that the Department must consider the GWSA as part of a Section 94A proceeding (CLF Brief at 11).

CLF also contends that the GWSA establishes requirements for substantial reductions in greenhouse gas emissions reductions across all sectors and expressly requires the Department to consider reasonably foreseeable climate change impacts and effects when considering and issuing permits, licenses, and other administrative approvals and decisions (CLF Brief at 4-5, 11, citing GWSA at § 7 (amending G.L. c. 30, § 61)).

According to CLF, to meet its burden under Section 94A as informed by the GWSA, Bay State must provide credible evidence regarding how much of the proposed capacity might be used to convert customers from oil heating to natural gas heating, rather than releasing it or selling it for other uses — all of which CLF argues will ultimately lead to greenhouse gas emissions (CLF Brief at 12). CLF contends that the Company provided limited data regarding oil heating customers in its service territory and resorted to conclusory statements regarding the number of customers that the Company "anticipates" will switch from oil heating to natural gas heating over the next ten years (CLF Brief at 11-12). CLF claims that such data and expectations do not constitute an analysis of greenhouse gas emissions impacts as the GWSA requires (CLF Brief at 12, citing Exh. DPU 2-21).

CLF specifically questions whether transitioning Bay State's existing oil heating customers to natural gas will further the goals of the GWSA, asserting that residential combustion of natural gas has only an estimated 25 percent lower greenhouse gas emission than heating oil, without including associated methane emissions (CLF Brief at 12-13, citing Exh. DPU 2-20). CLF also challenges Bay State's assumption that all oil heating customers will either continue to heat with oil or will switch to natural gas heating, arguing that Bay State failed to consider alternative thermal resources, such as heat pumps, solar thermal heating, and geothermal heating (CLF Brief at 12). CLF asserts that the use of natural gas as a long-term replacement for oil heating has major carbon implications compared with other alternative thermal resources, and argues that it is unrealistic for the Company to expect the home heating market to remain the same over the next 20 years, especially where CLF anticipates change within the next five years (CLF Brief at 12). CLF contends that Bay State must support its assumptions regarding new natural gas customers (extrapolated from existing oil heating customers) with a market analysis of heating resources to prove that natural gas will be the preferred alternative resources for any timeframe covered by the Proposed Agreements (CLF Brief at 12).

Lastly, CLF argues that the Department must mandate a uniform filing format in precedent agreement proceedings that requires petitioners to submit with the initial filing information relevant to assessing the impacts of precedent agreements under the GWSA (CLF Brief at 12). In support, CLF alleges that "unnecessarily truncated" procedural schedules and the current manner in which petitioners present information relative to the

GWSA through discovery do not allow the Department or intervenors opportunity to investigate a company's basis for filing a petition (CLF Brief at 13). CLF recommends that the Department require all future petitioners seeking approval of precedent agreements pursuant to Section 94A to provide information and supporting analyses related to the impact of proposed precedent agreements on greenhouse gas emissions in the petitioners' initial filings (CLF Brief at 13).

C. Company

The Company argues that the Proposed Agreements are consistent with the Company's portfolio objectives as approved in its 2015 F&SP and compare favorably with the reasonably available alternatives (Company Brief at 1). First, Bay State contends that the Proposed Agreements are necessary to provide firm capacity to meet existing and forecasted deficiencies (Company Brief at 9, citing Exh. CMA/MDA-1, at 54). The Company specifies that the Proposed Agreements will eliminate an existing design day deficiency and a design season deficiency, as well as meet projected demand growth through winter 2028/2029 (Company Brief at 9, citing Exh. CMA/MDA-1, at 16). Bay State asserts that without the Proposed Agreements, its 2015 F&SP projects a 2018/2019 base case deficiency for the combined Springfield and Lawrence divisions of more than 52,000 Dth, increasing to more than 68,000 Dth in 2028/2029 (Company Brief at 15-16, citing Exh. CMA/MDA-1, at 35, 38).

Second, the Company contends that the Proposed Agreements will mitigate growing reliability risks to the Company's existing and future customers in its Springfield and

Lawrence divisions by providing firm access to both a vibrant supply hub and imported LNG (Company Brief at 2, 9, 16, citing Exh. CMA/MDA-1, at 17, 35). Bay State claims that the Proposed Agreements replicate the supply reliability and price stability of the NED project by providing firm pathway access to less expensive, less volatile, and more reliable natural gas supplies at the Dawn hub and Canaport terminal with a primary delivery to Tennessee at Dracut (Company Brief at 16, citing Exhs. CMA/MDA-1, at 29, 34-36, 47-48, 54; DPU 1-16). The Company states the Proposed Agreements mitigate price volatility associated with relying on secondary capacity and spot supply from Dracut (Company Brief at 18, citing Exhs. DPU 1-16; AG 1-11; AG 2-23).

Bay State indicates that it currently meets deficiencies by relying on city gate delivered supplies, which are not provided on a primary firm basis and are, therefore, not always reliable and available, and are subject to price volatility due to weather conditions, capacity constraints, and variations in demand (Company Brief at 2, 18, citing Exhs. CMA/MDA-1, at 35-36; DPU 1-16; AG 1-11). The Company doubts future availability of city gate capacity and argues it is critical for the Company to acquire firm capacity and supply through the Proposed Agreements (Company Brief at 19, citing Exh. AG 2-23). Bay State concludes that the Proposed Agreements will contribute to its overall portfolio goal of developing a least-cost portfolio, balanced with considerations of reliability, flexibility, and diversity, consistent with Bay State's 2015 F&SP (Company Brief at 19, citing Exh. CMA/MDA-1, at 53-54).

The Company disagrees with the Attorney General's recommendation that the Department rely on the Company's 2017 F&SP currently under review in D.P.U. 17-166 in evaluating the Proposed Agreements rather than the 2015 F&SP, stating that no Department precedent requires such a result (Company Reply Brief at 3). Bay State argues that its reliance on the approved 2015 F&SP is consistent with Department precedent and past review of precedent agreements, and that the Attorney General has not justified a departure from past practices (Company Reply Brief at 4-5, citing D.P.U. 94-174-A at 27-28; Boston Gas Company and Colonial Gas Company, D.P.U. 16-138, at 9 (2016); Bay State Gas Company, D.P.U. 17-97 (2017); Bay State Gas Company, D.P.U. 17-85 (2017); Bay State Gas Company, D.P.U. 15-175 (2016); Bay State Gas Company, D.P.U. 15-170 (2016); Bay State Gas Company, D.P.U. 15-142 (2016); Bay State Gas Company, D.P.U. 15-39 (2016); Bay State Gas Company, D.P.U. 13-158 (2014)).

Moreover, the Company states that the 2017 F&SP had not been prepared at the time the Tennessee Agreement was executed (which Agreement was also the basis for the PNGTS Agreement and the Repsol Agreements), so it would be directly contrary to Department precedent to evaluate precedent agreements for consistency with a forecast and supply plan that did not exist at the time of acquisition of the natural gas resources under the proposed precedent agreements (Company Reply Brief at 4-5, citing Exhs. CMA/MDA-1, at 16; CMA/MDA-2; AG 1-4, Att.; DPU 1-1; Tr. at 75-76). Bay State argues that the Attorney General's reliance on D.P.U. 15-48 (where the Department approved use of a not-yet-approved forecast and supply plan in evaluating proposed agreements) is misplaced

because although the forecast relied upon by Berkshire in D.P.U. 15-48 had not yet been approved, the evidentiary record in the forecast and supply plan proceeding was complete, the parties were preparing to file briefs, and no party had challenged Berkshire's forecast or the methods employed (Company Reply Brief at 5-6). Bay State explains that the procedural posture here is completely distinguishable in that the 2017 F&SP was only filed three days before the instant matter while the 2015 F&SP was approved approximately nine months before the first of the Proposed Agreements was executed (Company Reply Brief at 6). Therefore, the Company asserts the timing supports reliance upon the 2015 F&SP, not the 2017 F&SP (Company Reply Brief at 6).

In addition, contrary to the Attorney General's claim, Bay State asserts that the 2017 F&SP is not necessarily more reliable than the 2015 F&SP because, according to the Company, the differences between the 2015 F&SP and 2017 F&SP high case scenarios converge over the 20-year terms of the Proposed Agreements and are merely a result of the statutory requirement that forecasts be updated every two years, resulting in a new forecast that could be different from the previously approved one, but is not per se better than the other (Company Reply Brief at 6-7, citing Attorney General Brief at 8-10; Exhs. AG 1-22(a), Att.; AG 2-5; AG 2-23; RR-AG-4(b)). See Company Reply Brief at 7, Graph 1 (illustrating the convergence of the design day high case scenarios and citing Exh. AG 1-22(a); RR-AG-4(b)). Regardless of small changes between forecasts in the short term, the Company contends it is long-term trends the Company is most concerned with when evaluating a capacity agreement (Company Reply Brief at 8, citing Tr. at 42-44;

Exhs. AG 2-23; AG 2-26). Bay State reports it considers factors that include natural gas market conditions, extreme weather conditions, capacity constraints, customer behavior, reliability, and price stability (Company Reply Brief at 9, citing Company Brief at 16-21; Exhs. DPU 1-16; AG 2-23; AG 2-26). The Company criticizes the Attorney General's attempt to single out the Company for using its high case and states that NSTAR Gas also appears to rely on forecast values that are the same or above its high case forecast, and further explains that this is an appropriate supply planning strategy that is consistent with Department precedent (Company Reply Brief at 10 & n.7, citing D.P.U. 15-143, at 11, 39). Bay State contends that the Attorney General is overlooking the complexity and uncertainty of resource planning in making her arguments against application of the 2015 F&SP (Company Reply Brief at 10, citing Attorney General Brief at 8-10).

The Company similarly criticizes the Attorney General's claim that the Repsol-2 Agreement must be rejected based on the 2017 F&SP, stating that the Company's procurement decisions are not the result of a simple, mechanical application of a demand forecast to a market opportunity, and that the Attorney General fails to appreciate the price stability and non-price benefits of all of the Proposed Agreements, most significantly the reliability of city gate capacity to meet future customer requirements (Company Reply Brief at 10, citing Attorney General Brief at 8-10). Bay State asserts that its public service obligation to acquire resources to serve customers reliably under all conditions and avoid an interruption of service means it cannot focus only on reducing the demand forecast, as the Attorney General does (Company Reply Brief at 10-11, citing Exh. AG 2-23). As the

Proposed Agreements mitigate reliability, pricing, and market condition concerns that have significant cost implications for customers, the Company urges approval (Company Reply Brief at 11, citing Exh. AG 2-23).

Lastly, in response to the Attorney General's argument that capacity-exempt customers should pay for additional capacity projects they stand to benefit from, Bay State argues this would be in contradiction of the terms laid out in the Department's natural gas unbundling policy (Company Reply Brief at 11, citing Natural Gas Unbundling, D.T.E. 98-32-A at 1 (1998)). According to the Company, regardless of potential benefits from the Proposed Agreements, imposing any of the costs on capacity-exempt customers would require changing the Department's unbundling construct and is outside the scope of this proceeding (Company Reply Brief at 13). Bay State also claims that, because the benefits of the additional upstream capacity are not intended for capacity-exempt customers, the benefits afforded to them are a positive externality and are not associated with any additional costs to Bay State's other customers (Company Reply Brief at 12).

Addressing the range of available alternatives to the Proposed Agreements, Bay State argues that there are none (Company Brief at 19). The Company considered: (1) other interstate pipeline resources; (2) increased reliance on LNG, propane-air, or compressed natural gas, also known as on-system peaking resources; and (3) increased reliance on city gate purchases or seasonal supply from ENGIE (Company Brief at 19, citing Exhs. CMA/MDA-1, at 13, 38-39, 58-59; AG 1-3; DPU 2-13). However, Bay State contends that there are no interstate pipeline resources other than those reflected in the

Proposed Agreements, with no projects available in the foreseeable future; increased reliance on on-system peaking resources would be more expensive than the Proposed Agreements and would not afford the same operational benefits; city gate delivered supplies are not provided on a primary firm basis, which exposes Bay State to reliability risks; and seasonal supply from ENGIE would cost more than the Proposed Agreements (Company Brief at 19-22). Therefore, Bay State asserts the Proposed Agreements are the superior resources available to meet its existing and future city gate requirements reliably and at least cost (Company Brief at 22, citing Exh. CMA/MDA-1, at 58, 67).

The Company contends that the Proposed Agreements are also favorable with respect to non-price factors, including reliability, flexibility, and diversity (Company Brief at 23, citing Exh. CMA/MDA-1, at 63-65). Bay State characterizes reliability as the most significant non-price factor, and argues the Proposed Agreements address a critical, growing reliability risk, i.e., the fact that 22 percent of Bay State's current firm pipeline capacity is used to transport gas supplies from the North and East, which supplies are projected to decline in the near future, while supplies from the South and West are fully subscribed, requiring buildout of pipeline infrastructure for incremental supplies (Company Brief at 16-21, 23, citing Exh. CMA/MDA-1, at 65; Company Reply Brief at 9, citing Exh. CMA/MDA-1, at 11-13). The Company contends that the Proposed Agreements provide access to adequate, reliable supplies delivered into Tennessee capacity to ensure reliable service to the Company's customers over the next ten years (Company Brief at 23, citing Exh. CMA/MDA-1, at 65).

Bay State asserts that the Proposed Agreements also increase the flexibility and diversity of its portfolio by accessing supply from the West at the Dawn hub via Tennessee and PNGTS and from imported LNG at the Canaport terminal via Repsol (Company Brief at 24, citing Exh. CMA/MDA-1, at 66). The Proposed Agreements, according to the Company, will provide direct access to growing supplies of domestic natural gas capable of serving customer needs for decades to come, coupled with a balanced seasonal supply provided via imported LNG (Company Brief at 25-26, citing Exh. CMA/MDA-1, at 67).

In response to CLF's claim that Bay State has failed to demonstrate that the Proposed Agreements satisfy the standard under Section 94A and are consistent with its 2015 F&SP, Bay State argues that the Department should reject (as it has in the past) CLF's argument that the SENDOUT modeling evaluates only the available gas supply resources rather than the full suite of resources and resource management tools available to Bay State (Company Reply Brief at 13, citing CLF Brief at 7). The Company explains that it appropriately considered energy efficiency as a reduction to gas demand, including more than 33,000 Dth of energy efficiency savings on design day in the Springfield and Lawrence divisions, which represents greater than ten percent of the total design day for those divisions (Company Brief at 14; Company Reply Brief at 13). Bay State further explains that, consistent with Department precedent, once energy efficiency savings are netted out from the demand side, there is no requirement that Bay State model energy efficiency as a supply resource, particularly because there are no Department-approved energy efficiency or demand reduction measures on which Bay State can rely to meet its design day or design season requirements (Company Reply

Brief at 13, citing D.P.U. 15-39, at 27). Bay State also criticizes CLF's "serious questions" as to the need for the Proposed Agreements as a misapprehension or mischaracterization of the data set forth in Exhibit DPU 2-19 (Company Reply Brief at 13 n.11, citing Exh. DPU 2-19).

Regarding CLF's argument that the Department should reject the Proposed Agreements because the Company failed to consider the full range of available resources, including energy efficiency, the Company contends that CLF's arguments are not supported by the record (Company Reply Brief at 13-14). The Company states that nothing in the background or experience of CLF's witness, Dr. Stanton, demonstrates any natural gas industry knowledge or expertise that successfully counters the expertise of the Company's witness, Mr. Anderson (Company Reply Brief at 14). Moreover, Bay State contends that when given the opportunity to support Dr. Stanton's testimony, CLF seemingly acknowledged her lack of qualifications by failing to answer Department discovery (Company Reply Brief at 14, citing Exhs. DPU-CLF 1-1 through DPU-CLF 1-9 (stating "to date in this docket, CLF has stated no such position," "to date in this docket, CLF has stated no such belief," and "CLF has not set forth any standards in this docket to date"); DPU-CLF 1-11). The Company argues that Dr. Stanton's testimony that there are additional, unspecified energy efficiency efforts or other possible alternative resources available to the Company is completely unsubstantiated, unsupported, speculative, and cannot reliably meet the actual requirements of the Company's customers (Company Reply Brief at 14, citing Exhs. DPU 2-14; DPU 2-15). Further, the Company states that the Department

requires all discussions regarding expansion of energy efficiency programs, and the associated cost-effectiveness, to be within the context of the development of a three-year energy efficiency planning cycle (Company Reply Brief at 14-15, citing The Berkshire Gas Company, D.P.U. 16-103, at 24 (2017)). CLF's recommendations set forth in Dr. Stanton's testimony are more appropriately addressed to the Energy Efficiency Advisory Council ("EEAC") process, according to Bay State (Company Reply Brief at 15, citing Exh. DPU 2-12). The Company urges the Department to reject CLF's testimony and claims (Company Reply Brief at 14).

In response to CLF's argument that the Department should reject the Proposed Agreements on the basis that the Company did not conduct an RFP process, the Company contends that it did consider three alternatives to the Proposed Agreements, but as none of the alternatives was viable, an RFP process would not have produced a viable, cost-effective alternative to the Proposed Agreements (Company Reply Brief at 15). Bay State contends that CLF seeks to impose new, unwarranted, and burdensome considerations in supply cases without any indication that they would contribute to least-cost planning or meet any portfolio objectives (Company Reply Brief at 15-16).

The Company states that CLF mischaracterizes the requirements of the GWSA and ignores regulations implementing the GWSA in asserting that the Proposed Agreements must be rejected by the Department (Company Reply Brief at 16). CLF's position, according to Bay State, suggests that renewable thermal resources alone are consistent with the GWSA without regard to, or evidence of, their ability to meet customer demand (Company Reply

Brief at 16, 20). The Company states that it seeks to reduce greenhouse gas emissions, but it must also fulfill its public service obligation to provide safe, reliable, and least-cost service to its customers (Company Reply Brief at 20, citing Exhs. DPU 1-16; DPU 2-25). Bay State argues that the goal of the GWSA, and Bay State's commitment, to reduce greenhouse gas emissions cannot override Bay State's public service obligation (Company Brief at 20, citing NSTAR Gas Company, D.P.U. 14-150, at 307 (2015); New England Gas Company, D.P.U. 10-114, at 76 n.58 (2011); Report to the Legislature, D.P.U. 08-78, at 4 (2009); Incentive Regulation, D.P.U. 94-158, at 3 (1995)).

Moreover, the Company contends that the Proposed Agreements comply with the GWSA as per regulations promulgated by the Department of Environmental Protection ("DEP"), which do not preclude the use of natural gas as a heating source nor prevent the Company from contracting for firm capacity (Company Reply Brief at 17, citing G.L. c. 21N; 310 CMR 7.73). Bay State argues that the GWSA places the burden of developing regulations to implement greenhouse gas emissions reductions on DEP, not the Department, and that CLF cannot ask the Department to impose additional requirements beyond those imposed by DEP (Company Reply Brief at 17). According to the Company, CLF heavily relies on the GWSA's amendment of Section 61 of the Massachusetts Environmental Policy Act, G.L. c. 30, §§ 61-62H ("MEPA"), in claiming that the Department is required to consider potential climate impacts when issuing its decisions (Company Reply Brief at 22-23, citing GWSA at § 7; G.L. c. 30, § 61; Section 69*I*). The Company explains that this reliance is misplaced because Section 61 findings are only

required where an environmental impact report is necessitated, which is not the case here, so MEPA is inapplicable and Section 61 findings are not necessary (Company Reply Brief at 23, citing 301 CMR 11.01(4); NRG Canal 3 Development LLC, EFSB 15-06/D.P.U. 15-180, at 156-157 (2017)). Bay State urges the Department to reject CLF's request to develop a framework for assessing greenhouse gas impacts of precedent agreements when evaluating them under Section 94A (Company Reply Brief at 23).

Lastly, the Company argues that, despite the lack of a regulatory requirement to do so, it is has provided evidence that the Proposed Agreements are consistent with the GWSA (Company Reply Brief at 23-24). First, Bay State argues that the Department has previously accepted a precedent agreement as consistent with the GWSA if it facilitates oil-to-natural-gas heat conversions (Company Reply Brief at 24, citing D.P.U. 15-39, at 41-42; D.P.U. 13-158, at 21-22). Consequently, the Company maintains that the Proposed Agreements are in compliance with the GWSA because the ensuing access to lower-cost natural gas supplies will support customer conversions from oil heating to natural gas heating (Company Reply Brief at 23-24, citing Exhs. DPU 1-16; DPU 2-25). Second, the Company states that the Department has previously found precedent agreements consistent with the GWSA when the agreements are for replacement capacity (Company Reply Brief at 24, citing D.P.U. 15-39, at 41-42; D.P.U. 13-158, at 21-22). Bay State reports that approximately 84 percent of the proposed Tennessee Agreement will be utilized in place of interruptible capacity to serve forecasted design day demand (Company Reply Brief at 24, citing Exhs. DPU 1-16; DPU 2-25). Bay State argues that the Proposed Agreements are, therefore,

consistent with the goals of the GWSA and are in the public interest (Company Reply Brief at 24).

V. ANALYSIS AND FINDINGS

A. Introduction

The Department must evaluate whether the proposed acquisition is consistent with the public interest. Section 94A; D.P.U. 94-174-A at 27. To make this determination, the Department considers whether the acquisition is consistent with the Company's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company at the time of the acquisition or contract negotiations. D.P.U. 94-174-A at 27. Finally, the Department will consider the consistency of the proposed acquisition with the GWSA.

B. Consistency with the Public Interest

1. Consistency with Portfolio Objectives

In establishing that the acquisition of a resource is consistent with a 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. D.P.U. 94-174-A at 27-28. In the instant proceeding, the Company argues that acquisition of the Agreements is consistent with the portfolio objectives established in the Company's most recently approved forecast and supply plan, the 2015 F&SP (Exh. CMA/MDA-1, at 53-54, 68). CLF argues that Bay State has failed to demonstrate that

the Proposed Agreements are consistent with the portfolio objectives established in the 2015 F&SP (Exh. CLF-EAS-1, at 6, 8).[8] We disagree with CLF's contention. In our Order approving the 2015 F&SP, the Department found Bay State's forecasting method to be appropriate and reliable, and found that its forecast met the Section 69*I* requirements. D.P.U. 15-143, at 18. Further, the Department found that the Company formulated an appropriate process for identifying a comprehensive array of supply options, developed appropriate criteria for screening and comparing supply resources, and devised a mechanism to compare resources on an equal basis. D.P.U. 15-143, at 36.

For the instant filing, Bay State updated its high case demand forecast and supply plan approved in D.P.U. 15-143 to cover a ten-year planning period, rather than the usual five-year planning horizon, and made adjustments to address continued energy efficiency efforts and capacity-exempt migration (Exhs. CMA/MDA-1, at 54; AG 1-22; DPU 2-4). Based on this analysis, the Company determined its shortfall on the design peak day is projected to grow to 68,000 Dth/day by the end of the forecast period 2028/2029 and to

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[8] But see Exhs. DPU-CLF 1-6 (asking CLF to "describe the additional materials that CLF believes are needed to allow for sufficient third-party review of how the Company's [Proposed Agreements] ... will resolve the Company's current design day and design season deficiency," to which CLF responded, "To date in this docket, CLF has stated no such belief"); DPU-CLF 1-7 (asking CLF to "list the additional information that CLF believes is needed to determine whether the Company's Proposed [Agreements] are necessary to meet the Company's forecast of customer needs in future years," to which CLF responded, "To date in this docket, CLF has stated no such belief); DPU-CLF 1-8 (asking CLF to "describe what additional evidence CLF believes is needed to determine whether the Company's Proposed [Agreements] result in the least-cost supply and demand resource mix," to which CLF responded, "To date in this docket, CLF has stated no such belief").

approximately 97,300 Dth/day in the high case scenario for 2028/2029 (Exhs. CMA/MDA-1, at 35, 38; AG 1-11; AG 1-22; DPU 2-9(a), Att.). The Attorney General recommends that the Department use the Company's 2017 F&SP instead of the updated 2015 F&SP in reviewing the Proposed Agreements (Attorney General Brief at 7). The Attorney General argues that, although the 2017 F&SP is not approved, it provides more recent information concerning Bay State's forecasted customer requirements (Attorney General Brief at 7). Further, the Attorney General points out that the Company's 2017 F&SP design day, high case forecast of customer requirements is considerably lower than the Company's 2015 F&SP forecast (Attorney General Brief at 8).

We disagree with the Attorney General's recommendation that the Department review the Proposed Agreements based on the Company's 2017 F&SP. We find that the Attorney General mistakenly relies upon D.P.U. 15-48 to argue that using an older, but approved, forecast is imprudent. In D.P.U. 15-48, at 42, the Department allowed Berkshire to rely on a filed and investigated, but not yet approved, forecast. We explained that, when Berkshire had filed its supply contract case, the evidentiary record in the forecast and supply plan proceeding was complete, except for the filing of legal briefs, and no party had challenged Berkshire's forecast or the methods employed. D.P.U. 15-48, at 41-42. Furthermore, Berkshire had updated its forecast and supply plan filing and the Department reviewed and approved the updated forecast and supply plan in D.P.U. 15-48. Here, the 2017 F&SP was filed three days before the Proposed Agreements were filed and initial briefs in the 2017 F&SP proceeding were very recently submitted on May 2, 2018, with the Attorney

General raising numerous issues with the filing. D.P.U. 17-166, Initial Filing (October 30, 2017); D.P.U. 17-166, The Office of the Attorney General Initial Brief (May 2, 2018). We do not see an analogy between the procedural posture of D.P.U. 15-48 and that of D.P.U. 17-166, and decline to review the Proposed Agreements under Bay State's 2017 F&SP. Therefore, we find that the Company's updated forecast is appropriate in this proceeding because it is consistent with the forecast method used in the Company's 2015 F&SP, which, as we stated above, the Department found to be reviewable, appropriate, and reliable. Further, Bay State's use of an updated forecast and supply plan is consistent with past practice and Department precedent regarding precedent agreements, where we have accepted such analyses based on an updated version of a company's most recently approved forecast and supply plan. Boston Gas Company, D.P.U. 15-34, at 31-32 (2015); D.P.U. 13-158, at 19; NSTAR Gas Company, D.P.U. 13-159, at 19-20 (2014).

Further, the Department has, on numerous occasions, reiterated that in establishing a resource acquisition's consistency with a 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. D.P.U. 94-174-A at 27-28. Bay State's negotiations with Tennessee began 18 months earlier, in April of 2016, immediately upon the termination of the NED project (Exh. CMA/MDA-1, at 4 & n.1-2). Directing the Company to use the 2017 F&SP would be inappropriate as it had not been prepared at the time the Tennessee Agreement, which is the basis for the related PNGTS and Repsol Agreements,

was negotiated and executed (Tr. at 75-76). Bay State's negotiations preceded both Tennessee's open season and the execution of the Tennessee Agreement (Exhs. CMA/MDA-1, at 16; CMA/MDA-2; AG 1-4; DPU 1-1). The Department reviews the prudence of the gas supply contract decisions as of the time the utility decides to enter into the contract and not in hindsight with regard to outcome, whether good or ill. D.P.U. 94-174-A at 27-28.

The Attorney General also argues that the Company improperly chose to rely on its 2015 F&SP design day, high case scenario to inform its contract decisions rather than its design day, base case scenario (Attorney General Brief at 10). The Department disagrees and finds that Bay State's reliance on its design day, high case scenario is appropriate. The Department has repeatedly stated that a gas company must demonstrate that it has an identified set of resources that meets its projected sendout under a reasonable set of contingencies. Bay State Gas Company, D.P.U. 02-75, at 13-14 (2004); D.P.U. 15-143, at 20. We find that a high case scenario fits within the category of reasonable contingencies and approve the Company's use of a high case design day scenario. See D.P.U. 15-48, at 42 (rejecting the Attorney General's contention that the forecast capacity was overstated and finding that Berkshire's forecast actually reflected a more conservative base case scenario because recent trends were more aligned with the high case scenario).

The Proposed Agreements are needed to address a shortfall and a critical reliability concern that Bay State has in relation to its resource portfolio (Exhs. CMA/MDA-1, at 29, 34-36, 38, 58-62; DPU 1-6). The Proposed Agreements will provide access to less

expensive and more reliable natural gas supplies by providing a firm pathway to adequate supplies at the Dawn hub and the Canaport LNG terminal with primary delivery to Tennessee at the Dracut receipt point (Exh. CMA/MDA-1, at 47-48, 54). The Department agrees with the Company that the Proposed Agreements will mitigate the price volatility associated with relying on secondary capacity and spot supply from Dracut (Exhs. DPU 1-16; AG 1-11; AG 2-23).

CLF argues that the Company has failed to provide sufficient evidence to demonstrate that the Proposed Agreements result in the least-cost supply and demand resource mix (Exh. CLF-EAS-1, at 8).[9] Specifically, CLF states that Bay State has modeled only gas supply resources, ignoring advanced energy efficiency, demand management, and storage options (Exh. CLF-EAS-1, at 8-11).[10] To the extent that CLF continues to stand behind these assertions, we disagree.[11] We also note that CLF's arguments here are similar to past arguments made and rejected in previous precedent agreement cases.[12]

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9 See above, note 8.

10 But see Exh. DPU-CLF 1-9 (asking CLF to "describe what additional information CLF believes is needed to determine whether the Company could meet its portfolio objectives using resources other than the Proposed [Agreements]," to which CLF responded, "To date in this docket, CLF has stated no such belief").

11 See above, notes 8, 10.

12 See D.P.U. 15-48, at 21-22; D.P.U. 15-39, at 18-19; D.P.U. 15-34, at 18-19; D.P.U. 13-159, at 11-13; D.P.U. 13-158, at 11-13; Boston Gas Company and Colonial Gas Company, D.P.U. 13-157, at 12-14 (2014).

Bay State's determination of its load requirements already fully incorporates the effects of energy efficiency. This is because the Company subtracts the projected energy efficiency savings approved by the Department in the Company's most recent three-year energy efficiency plan from the Company's load forecasts, effectively reducing the load requirements for planning purposes (Exhs. DPU 2-12 through DPU 2-14; DPU 2-24). Thus, since the impact of energy efficiency is included in the load requirements analysis, there is no need for the SENDOUT modeling to specifically model the energy efficiency impact (Exh. DPU 2-14). Once energy efficiency savings are netted out from the demand side, there is no requirement that Bay State model energy efficiency as a supply resource because there are no Department-approved energy efficiency or demand reduction measures that Bay State can call upon to specifically meet its design day or design season requirements. Boston Gas Company and Colonial Gas Company, D.P.U. 13-157, at 23 (2014); D.P.U. 13-159, at 21. Although savings from gas energy efficiency programs are reliable and verifiable, gas energy efficiency and demand response resources — unlike gas supply resources — are not dispatchable resources. D.P.U. 13-157, at 23. This point was essentially conceded by CLF in its response to discovery (Exh. DPU-CLF 1-10 (asking CLF to "explain how energy efficiency measures can be dispatched by the Company to meet design day or design season requirements," to which CLF failed to respond and instead discussed non-dispatchable resources)).

Based upon the foregoing, we find that Bay State properly updated and used its previously reviewed and approved methodology in its 2015 F&SP to determine its planning

load beginning in 2015/2016 and extended out to 2028/2029, and find that the proposed acquisition is consistent overall with the Bay State's portfolio objectives.

2. Comparison to Alternatives

The Section 94A public interest standard also requires the Company to demonstrate that the proposed acquisition compares favorably to the range of alternative options reasonably available to the Company at the time of the acquisition. D.P.U. 94-174-A at 27. In evaluating this aspect of the proposed acquisition, the Department considers whether Bay State used a competitive solicitation process that was fair, open, and transparent. D.T.E. 02-56, at 10; D.T.E. 02-52, at 8-9; D.T.E. 02-54, at 9-10; D.T.E. 02-19, at 6, 11.

CLF argues that the Company has failed to introduce evidence of an RFP process or credible consideration of any alternatives to additional gas supply and, therefore, the Department should not approve of the Company's petition (CLF Brief at 8). We disagree. Bay State did not issue an RFP for the Proposed Agreements because there are no alternatives to the services provided under those Agreements (Exhs. CMA/MDA-1, at 13, 38-39; AG 1-3; DPU 2-13). The Company considered three conceptual alternatives to the Proposed Agreements (Exhs. CMA/MDA-1, at 12-13, 38-40, 56-60; CMA/MDA-7; DPU 2-13; AG 1-3; AG 2-6). We do not consider the lack of a competitive solicitation process to be a fatal flaw to Bay State's petition as we are not persuaded that a competitive solicitation would have produced a viable, cost-effective alternative to the services provided by the Proposed Agreements. In fact, the record shows that there are very limited options

available to the Massachusetts LDCs and Bay State did consider other options (Exhs. CMA/MDA-1, at 12-13, 38-40, 56-60; CMA/MDA-7; DPU 2-13; AG 1-3; AG 2-6).

The Company considered three conceptual alternatives to the Proposed Agreements: (1) other interstate pipeline resources; (2) increased reliance on LNG and other on-system peaking resources; and (3) increased reliable on city gate purchases or seasonal supply from ENGIE (Exhs. CMA/MDA-1, at 13, 38-39; DPU 2-13; AG 1-3). First, Bay State demonstrated that there are no other pipeline resources other than the Tennessee Agreement available to Bay State (Exh. CMA/MDA-1, at 12-13). Second, the increased reliance on on-system peaking resources would be more expensive than the Proposed Agreements (Exh. CMA/MDA-1, at 18, 38-40). The Company currently relies on on-system peaking resources to meet approximately 47 percent of its design day requirements in its Lawrence and Springfield divisions (Exh. CMA/MDA-1, at 13 n.9, 58). Third, city gate delivered supplies are not provided on a primary firm basis and are, therefore, interruptible by Tennessee exposing Bay State to reliability risk (Exh. CMA/MDA-1, at 60-61). Record evidence indicates that interruptible capacity on the region's domestic interstate pipelines is becoming less reliable due to declining production volumes from Maritimes Canada and increased utilization of the Tennessee system (Exh. CMA/MDA-1, at 31-32, 35-37, 48-49, 61). Additionally, supplies historically available to Dracut are being eliminated, concentrating the primary replacement into imported LNG with commensurate market power and reliability implications (Exh. CMA/MDA-1, at 61-62). Bay State did not consider imported LNG on a stand-alone basis because it is not a firm city gate supply option for

Bay State's Lawrence and Springfield divisions (Exh. CMA/MDA-1, at 56-57). Lastly, the Company considered a limited seasonal LNG offer provided by ENGIE against the Repsol, PNGTS, and TransCanada options (Exhs. CMA/MDA-1, at 58-59; AG 1-3). Therefore, we find that the Company demonstrated that there are no viable alternatives available to it.

CLF claims that Bay State ignored additional energy efficiency measures and demand response as replacements for the Proposed Agreements (CLF Brief at 9). We disagree. As we explain below, additional energy efficiency measures are considered as part of a company's three-year energy efficiency planning and not on a piece-meal basis. The Department approved the Company's most recent three-year plan in 2016-2018 Three-Year Energy Efficiency Plans Order, D.P.U. 15-160 through D.P.U. 15-169 (2016) ("Three-Year Plans Order"). Energy efficiency plans in the Commonwealth are approved pursuant to the GCA, which requires gas and electric utilities in Massachusetts to develop and submit statewide energy efficiency plans. G.L. c. 25, § 21(b)(1). In order for the utilities to receive approval of their individual plans, they must demonstrate that their plans "provide for the acquisition of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply." G.L. c. 25, § 21(b)(1). In the Three-Year Plans Order at 164, the Department found that the amount of therm savings expected from the Company's energy efficiency programs is consistent with the achievement of all available cost-effective energy efficiency.

In addition, the Department recognizes that the pursuit of all available cost-effective energy efficiency savings is not a static process but is continually evolving. D.P.U. 16-103,

at 23. All of the energy efficiency measures approved by the Department are the result of collaborative efforts among many participants, including the LDCs, the Attorney General, and the Department of Energy Resources. D.P.U. 16-103, at 23. Moreover, three-year energy efficiency planning and implementation is both an iterative and collaborative process that begins at the EEAC level, where the environmental community's interests are currently being represented. G.L. c. 25, § 22. Accordingly, it is premature in this proceeding to rule on the cost-effectiveness or appropriateness of expanding energy efficiency programs. See D.P.U. 16-103, at 23-24 (finding same in the context of a forecast and supply plan case). In fact, this discussion is more appropriately placed before us not in the gas resource planning for one LDC, but in the context of the development of a three-year energy efficiency planning cycle. D.P.U. 16-103, at 24. Therefore, we encourage CLF to provide its recommendations to the EEAC for future consideration.

In considering the alternatives available to it and evaluating the Proposed Agreements, Bay State considered both price and non-price factors. With respect to price factors, the Company has shown that it had no viable alternatives to the Tennessee Agreement (Exh. CMA/MDA-1, at 34-35). Based on the evidence presented, we find the Tennessee Agreement to be the Company's most economic option to secure firm capacity. The PNGTS Agreement will enable Bay State to directly access lower-cost gas supplies at Dawn where gas supplies are increasing as a result of the construction of the Rover and NEXUS pipelines, which will move Marcellus and Utica Shales supplies from the tri-state region of Ohio/Pennsylvania/West Virginia to Dawn and the Michigan-Chicago markets

(Exh. CMA/MDA-1, at 62). Additionally, TransCanada received National Energy Board authorization to significantly reduce its rates from the Western Canadian Supply Basin ("WCSB") to encourage WCSB producers to transport more gas to Dawn (Exh. CMA/MDA-1, at 62). Lastly, the cost of the Proposed Agreements could be further reduced by the value obtained from capacity release or other optimization opportunities (Exh. CMA/MDA-1, at 63). Based on the evidence presented, we find the Proposed Agreements to be Bay State's most economic options to secure long-term firm capacity to the Springfield and Lawrence divisions with the embedded option to adjust upstream capacity in future years as needed.

Regarding non-price factors — in particular, reliability — the Company demonstrated that the Proposed Agreements will significantly enhance the reliability of supply into the Company's Lawrence and Springfield divisions (Exh. CMA/MDA-1, at 65). The Proposed Agreements provide access to adequate, reliable supplies delivered into the Tennessee capacity to ensure reliable service to its planning load customers over the next ten years (Exh. CMA/MDA-1, at 65). In addition, the Proposed Agreements will increase Bay State's flexibility and diversity of supply by accessing supply from the West at the Dawn hub via TransCanada and PNGTS and from imported LNG via Repsol's Canaport terminal (Exh. CMA/MDA-1, at 66).

Accordingly, we find that the Company has established that, based on both price and non-price factors, the Proposed Agreements represent the most viable, reasonably available alternatives for the Company to meet its current and forecasted customer requirements in a

least-cost, reliable manner (Exh. CMA/MDA-1, at 67). Based on the foregoing, we find that Bay State has demonstrated that the Proposed Agreements compare favorably to the range of reasonably available alternative options.

Lastly, the Tennessee Agreement requires Tennessee to complete three construction projects (Exh. CMA/MDA-1, at 18). We find that the Company has demonstrated that these construction projects will provide system improvements that will benefit all Bay State customers by enhancing system reliability, improving operational flexibility, and increasing minimum delivery pressures (Exh. CMA/MDA-1, at 32-37). The Attorney General objects to only firm customers paying for these construction projects given that the system enhancements will provide benefits to all of Bay State's customers (Attorney General Brief at 11). The Attorney General argues that this is inconsistent with the Department's precedent that no class of customers should pay more than the cost of serving that class (Attorney General Brief at 11, citing D.P.U. 12-126-A at 29, n.22). We disagree.

Gas companies in Massachusetts are required to plan and procure resources to meet the sendout requirements of firm sales service customers and transportation customers. D.T.E. 98-32-B at 40-41; Assignment of Interstate Capacity, D.T.E. 04-1, at 26-27 (2005). Gas companies have no obligation to procure pipeline capacity on behalf of capacity-exempt customers. Consistent with these requirements, in its 2015 F&SP, the Company excluded capacity-exempt transportation demand from its assessment of its planning load requirements. See D.P.U. 15-143, at 7, 9, 11. This is because Bay State is not obligated to plan or procure resources for its capacity-exempt customers. See D.P.U. 15-143, at 9. Instead, the

capacity-exempt customers receive their gas supply and upstream pipeline capacity from their marketers. The Proposed Agreements are needed to serve the Company's firm sales and transportation customers, not its capacity-exempt customers. Since Bay State is not acquiring the resources to serve capacity-exempt customers, it follows that the capacity-exempt customers are not responsible for the costs associated with the Proposed Agreements. That is, they are not causing the Company to incur such costs on their behalf. The Attorney General's recommendation that we assign some of the costs to the capacity-exempt customers is in direct conflict with the Department's well-established policy that cost responsibility must follow cost incurrence. See Boston Gas Company, D.P.U. 96-50 (Phase I), at 133-134 (1996); Boston Gas Company, D.P.U. 93-60, at 331-337, 410, 432 (1993); Bay State Gas Company, D.P.U. 92-111, at 54, 283-284, 311-312 (1992); Boston Edison Company, D.P.U. 1720, at 114 (1984); Generic Investigation of Rate Structures, D.P.U. 18810, at 14 (1977). Accordingly, we reject the Attorney General's recommendation that the Department assign a portion of the costs associated with the Proposed Agreements to the capacity-exempt customers.

C. GWSA Considerations

1. Uniform Filing Standard

CLF argues that the Department should reject the Company's petition because it is not consistent with the GWSA and further claims the Department "needs to mandate a uniform standard for producing relevant facts related to greenhouse gas emissions in future precedent agreement dockets" (CLF Brief at 6). Though CLF cites to no authority for the proposition,

such a uniform standard reportedly "must include, at a minimum, an analysis of the potential greenhouse gas impacts attributable to the Proposed Agreements and a determination of whether such agreements can somehow be consistent with the GWSA's mandates to reduce greenhouse gas emissions" (CLF Brief at 5). The Company urges the Department to reject CLF's proposed requirements as completely unsubstantiated and unsupported by anything in the record or statute and states that the Department has previously rejected in other cases assertions made here by CLF related to required GWSA analyses (Company Reply Brief at 13-15). When the Department asked CLF through information requests to elucidate its position regarding the appropriate analysis to be made under the GWSA and basis therefor, CLF declined to do so and seemingly renounced stances it took in its prefiled testimony.[13] Now, CLF attempts to revive its positions on brief, which the Department rejects as an inappropriate end run around discovery[14] and contrary to accepted legal standards for the presentation of arguments following the close of evidence.[15]

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[13] For nine of the eleven information requests served by the Department upon CLF regarding portions of Dr. Stanton's testimony (usually quoted in the Department's information requests), CLF responded either "CLF has stated no such position," "CLF has stated no such belief," or "CLF has not set forth any standards in this docket" (Exhs. DPU-CLF 1-1 through DPU-CLF 1-9). The Company argues that CLF's failure to respond to the Department's discovery requests in support of Dr. Stanton's testimony is an acknowledgement of Dr. Stanton's lack of qualifications to opine on how a natural gas utility should develop and acquire resources to satisfy customer demand (Company Reply Brief at 14, citing Exhs. CLF-EAS-1; DPU-CLF 1-1 through DPU-CLF 1-9; DPU-CLF 1-11).

[14] The purpose of discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is

Moreover, there is nothing that delegates authority to the Department to "consider the overall impact of pollution on society in the course of carrying out its regulatory function." Massachusetts Electric Company v. Department of Public Utilities, 419 Mass. 239, 247 (1994). CLF relies upon the Department's statement in NSTAR/Northeast Utilities Merger, D.P.U. 10-170-B at 77 (2012), that "the GWSA requires that agencies, including the Department, consider reasonably foreseeable climate change impacts, including additional [greenhouse gas] emissions, when considering and issuing permits, licenses and other administrative approvals and decisions" to claim that "[t]he Department has recognized its obligations under the GWSA to consider climate change impacts, including additional greenhouse gas emissions, in past decisions in which it was required to determine whether an administrative approval was 'in the public interest'" (CLF Brief at 5). The NSTAR/Northeast Utilities decision is taken out of context.

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compiled. 220 CMR 1.06(6)(c). Among other things, CLF's attitude in responding to information requests has hindered the efficiency of the hearing process and not contributed to narrowing the scope of issues.

[15] For example, CLF's description of the minimum parameters of a uniform standard set forth at page 5 of its brief and quoted above is consistent with page 24 of CLF's prefiled testimony where CLF's witness stated that for proposed contracts for new gas supply an "[a]nalysis should be presented of the known and reasonably estimable greenhouse gas emissions that can and should be assumed will occur from the transport and distribution of the gas associated with a proposed contract" (Exh. CLF-EAS-1, at 24). However, when the Department inquired further about Dr. Stanton's testimony and asked CLF in discovery whether such an analysis was required regarding proposed precedent agreements in order for the Department to make findings under the GWSA, CLF responded that it "ha[d] stated no such position" (Exh. DPU-CLF 1-5). Therefore, it is disingenuous now for CLF to take the exact position it disavowed previously.

In NSTAR/Northeast Utilities, the Department was considering a settlement of the parties regarding the merger of the two petitioning electric utilities. Pursuant to the applicable standard of review set forth by G.L. c. 164, § 96, which had recently been amended by the GCA, the Department was to consider specific factors, including a new factor added by the GCA requiring a consideration of "long-term strategies that will assure a reliable, cost-effective energy delivery system." D.P.U. 10-170-B at 31, citing G.L. c. 164, § 96. The Department was also required to consider "proposed rate changes, if any" in reviewing the merger proposal, which necessarily entailed reference to G.L. c. 164, § 94 standards. D.P.U. 10-170-B at 31, citing G.L. c. 164, § 94; Attorney General v. Department of Telecommunications and Energy, 438 Mass. 256, 263-265 (2002); NEES/EUA Merger, D.T.E. 99-47, at 18-20 (2000); BECo/ComEnergy Acquisition, D.T.E. 99-19, at 7 (1999).

The Supreme Judicial Court has ruled that:

> The [D]epartment does not have responsibility for the protection of the environment. It has regulatory authority over an electric utility's rates, and reasonable costs to be incurred in protecting the environment, whether mandated or voluntary, may be reflected in a utility's approved rates. In its rate regulatory function, therefore, the [D]epartment may direct the avoidance of conditions that a utility might experience, provided that reasonably anticipated future circumstances will impose costs on the utility that will be detrimental to the interest of ratepayers.

Massachusetts Electric Company, 419 Mass. at 246. In reviewing the proposed merger under G.L. c. 164, §§ 94 and 96, the Department acknowledged the recent spate of legislation (including the GCA and the GWSA) focused on renewable energy and the reduction of greenhouse gas emissions and considered the "long-term strategies" factor added

by the GCA. D.P.U. 10-170-B at 76-77. In this context, the Department also reconsidered its standard of review for utilities mergers generally under G.L. c. 164, § 96. D.P.U. 10-170-B at 76-77.

The Department further considered as context the GWSA's amendment of MEPA, requiring all agencies "[i]n considering and issuing permits, licenses and other administrative approvals and decisions" to "consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise." G.L. c. 30, § 61, at ¶ 2. Section 61, however, only applies to agencies when conducting MEPA reviews of "projects," and nothing in the GWSA, the GCA, or elsewhere expanded the MEPA definition of "project" set forth in Section 62 of MEPA. It is indisputable that the merger issue presented in D.P.U. 10-170, and the issue presented in the instant matter, are not within MEPA. See Enos v. Secretary of Environmental Affairs, 432 Mass. 132, 136 (2000) (describing "MEPA, its legislative purpose, and its administrative scheme" and noting that "MEPA review begins when the proponent of the project files an environmental notification form (ENF) [pursuant to G.L. c. 30, § 62A], to advise the Secretary of the nature of the project," which has not occurred in connection with the instant petition). MEPA's direction that agencies consider "reasonably foreseeable climate change impacts" in connection with administrative approvals and decisions does not apply in the context of precedent agreement cases or related forecast and supply plan cases and, for that reason, the issue is not discussed in relevant Department jurisprudence. See, e.g., NSTAR Gas Company, D.P.U. 16-40 (forecast and supply plan); D.P.U. 15-143 (forecast and supply

plan); D.P.U. 15-48 (precedent agreement); D.P.U. 15-34 (precedent agreement). Additionally, the Department is expressly exempted from the provisions of Section 61 of MEPA in reviewing forecast and supply plans pursuant to the third paragraph of Section 69*I*.

This is not to say, of course, that the Department will not continue to consider environmental impacts within the boundaries set by current statutory and case law. The Department remains mindful that "[i]ssues of clean energy and climate change [are] an integral component of the energy portfolio in Massachusetts." D.P.U. 10-170-B at 76. However, as we found less than six months after the Supreme Judicial Court's decision in Massachusetts Electric Company, 419 Mass. 239 (1994):

> [W]hile environmental compliance or similar costs are appropriate to take into consideration in determining whether a resource is safe, reliable, and least-cost, the Department concludes that this is far different from taking these factors into consideration in order to further environmental protection as a primary purpose.

Integrated Resource Planning, D.P.U. 94-162, at 8 (1995). In finding that the GWSA required consideration of greenhouse gas emissions in the context of the NSTAR/Northeast Utilities merger, the Department did not (and, indeed, could not) unilaterally extend the reach of the GWSA or MEPA. The Department sought to be proactive in an electric utilities merger case, having previously recognized that "the electric industry will bear a significant share of the Commonwealth's burden of attaining the GWSA's stringent greenhouse gas emissions reduction requirements." D.P.U. 10-170, Interlocutory Order on Standard of Review at 26 (March 10, 2011). See Massachusetts Electric Company and Nantucket

Electric Company, D.P.U. 10-54, at 176-177 (2010) (discussing challenges to be faced by the electric sector in achieving greenhouse gas emissions).[16]

The issues presented by the electric utilities merger in D.P.U. 10-170 and the context in which the Department reconsidered the applicable standard of review pursuant to G.L. c.164, § 96 cannot be applied in evaluating the Proposed Agreements because, in order to do so, the Department would have to exceed its statutory authority, which the Department declines to do and has been admonished in similar contexts to avoid and leave to the legislature. See Massachusetts Electric Company, 419 Mass. at 246-247 ("[The effects of pollution on society] are important subjects, but they lie in the jurisdiction of legislatures and those environmental (and rate) regulators to whom legislatures have delegated authority to act."). For the foregoing reasons, the Department rejects CLF's request that it "mandate a uniform standard for producing relevant facts related to greenhouse gas emissions in future precedent agreement dockets" (CLF Brief at 6).

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[16] This greater burden to be borne by electric utilities is demonstrated by the regulations promulgated by the Department of Environmental Protection under the GWSA following the Supreme Judicial Court's decision in Kain v. Department of Environmental Protection, 474 Mass. 278 (2016). Gas utilities are obligated to quantify, identify, and reduce methane gas leaks; they are not limited in their abilities to purchase natural gas or contract with suppliers, are not prohibited from seeking additional capacity from new infrastructure, or required to otherwise reduce greenhouse gas emissions. 310 CMR 7.73. See G.L. c. 164, §§ 144-145. Electric utilities, in contrast, are obligated to reduce each year their annual aggregate carbon dioxide emissions in generating electricity, are limited in their contracting abilities (unless clean energy standards are met), and must purchase an annually increasing minimum amount of renewable energy from the regional electric grid for consumption in Massachusetts. 310 CMR 7.74, 7.75.

2. Evidence of Climate Impact

CLF alleges that the GWSA requires a certain showing by the Company in order for the Department to approve the Proposed Agreements, and claims the Company failed "to provide adequate evidence regarding the climate impacts and effects of the Proposed [Agreements]" (CLF Brief at 11). The Company responds that there is no statutory support for CLF's arguments and that CLF is mistaken in its apparent belief that the GWSA limits the growth of the natural gas distribution industry (Company Reply Brief at 21-23). As stated above, the Department declines to exceed its statutory authority and elevate GWSA considerations to a primary factor in its analysis under Section 94A. There is simply no legal support for CLF's position, either cited by CLF or located by the Department. Section 7 of the GWSA amended only MEPA, and the regulations promulgated under MEPA clearly outline the limits of the Act's jurisdiction and specify that G.L. c. 30, § 61 findings are required where an "Agency that takes Agency Action on a Project for which the Secretary required an [Environmental Impact Report]." 301 CMR 11.12(5). See 301 CMR 11.01 (general provisions describing MEPA's purpose, applicability, procedure, administration, etc.); 11.02 (defining capitalized terms).

CLF further attempts to shoehorn the GWSA into the Department's review under Section 94A by looking to applicable review standards under Section 69*I* for forecast and supply plans (CLF Brief at 11). CLF claims that because Section 94A requires the supplies sought under the Proposed Agreements to be consistent with portfolio objectives established in Bay State's recently approved forecast and supply plan, and because Section 69*I*

purportedly requires Bay State to "demonstrate consistency with the current environmental policies of the Commonwealth," then Section 94A necessarily requires a similar showing of consistency with the current environmental policies of the Commonwealth, including the GWSA (CLF Brief at 11). CLF's argument is flawed because Section 69*I* does not state a requirement of consistency with environmental policies, specifically. Section 69*I* refers only to "energy policies" and only mentions environmental impact in connection with new infrastructure, not contracts. Section 69*I* at (2)-(3) (requiring forecast of gas requirements to take into account, inter alia, energy policies and referring to environmental impact in connection with siting of facilities and pipelines). Demonstrating that the Commonwealth's energy policies were "taken into account" in planning is a far cry from requiring a showing of compliance with the specific mandates of the GWSA and a detailed analysis of greenhouse gas emissions, as CLF claims are necessary.

Moreover, the Commonwealth's energy policies do not seek to somehow eliminate or reduce natural gas usage in the Commonwealth, which appears to be CLF's view. In fact, in 2014, the legislature directed the Department, starting January 1, 2015, to "authorize gas companies ... to design and offer programs to customers which increase the availability, affordability and feasibility of natural gas service for new customers." An Act Relative to Natural Gas Leaks, Chapter 149, Section 3, of the Acts of 2014. This Act is an energy policy of the Commonwealth with which the Proposed Agreements are consistent.

Criticizing the Company's analysis of the Proposed Agreements in the context of the GWSA, CLF relies on the Company's responses to Record Requests DPU-1 and DPU-3

regarding the number of residential customers in the Company's service territory using a source other than natural gas for heating and actual and projected customer conversions from oil to natural gas for heating. CLF states that the responses "do[ ] not constitute an analysis of the greenhouse gas impacts of the Proposed [Agreements],"despite the fact that the record requests were not seeking such an analysis (CLF Brief at 12). CLF also ignores the responses to information requests in which the Department did ask, and Bay State did expound upon, energy efficiency and the Proposed Agreements' impact on greenhouse gas emissions. Those responses describe the consideration of energy efficiency in the reduction of demand when calculating the least-cost supply and demand resource mix, the portion of the total permitted greenhouse gas emissions for the Commonwealth represented by the Proposed Agreements, and the reduction in greenhouse gas emissions achieved through conversions from oil heating to natural gas heating and use of natural gas heating in new construction (Exhs. DPU 1-16; DPU 2-12 through DPU 2-14; DPU 2-18 through DPU 2-22; DPU 2-24; DPU 2-25). CLF offers no comment on any of the relevant responses to the Department's second set of information requests regarding energy efficiency and the Proposed Agreements' impact on greenhouse gas emissions, except to reject the response to DPU 2-21 stating that data regarding anticipated conversions from oil heating to natural gas heating over the next ten years "is also not an analysis of greenhouse gas impacts" (CLF Brief at 12, citing Exh. DPU 2-21).

CLF argues that the Company cannot credibly assert that the home heating market will continue to use natural gas as a preferred heating source and claims, without any citation

to authority, that "the burden is on the Company to perform a market analysis of heating sources to support the idea that gas will be a preferred alternative for any portion of the duration of the Proposed [Agreements]" (CLF Brief at 12). CLF ignores that Bay State has an obligation to serve existing customers.[17] As we have stated above, the Proposed Agreements are necessary to meet projected customer demand, so while the Company can incorporate energy efficiency trends and look at non-fossil fuel heating advancements in planning and considering demand at the lowest cost, it still must fulfill its public service obligation to provide safe, reliable, and least-cost service using the resources available at the time of acquisition. D.P.U. 94-174-A at 27. CLF offers no evidence that renewable thermal resources, such as air source heat pumps, solar thermal heating, and geothermal heating, can meet the Company's projected demand.

3. Other Alleged Deficiencies in the Company's Filing

On brief, CLF identifies other information Bay State supposedly should have provided, including "how much of the additional capacity might be actually used to convert existing oil heating customers to natural gas, versus being released and/or re-sold for other uses," "methane emissions from the gas distribution system" that would be associated with residential gas heating conversions from oil to natural gas, and, as part of the initial filing, "supporting analysis related to the greenhouse gas emissions impacts of the proposed agreements" (CLF Brief at 12-13). Simply put, CLF's expectations are not in line with

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[17] See D.P.U. 16-103, at 59, citing Boston Gas Company, D.P.U. 88-67, at 282 (1988), citing Gas Transportation, D.P.U. 85-178, at 8 (1987).

Department precedent and statutory limitations upon our review of precedent agreements, and are unsupported by citations to law.

Moreover, CLF has already stated in responses to information requests that it does not take the position that: (1) "the Department is required to cite to 'quantitative evidence regarding emissions levels expected as a result of the end-use combustion of [the Proposed Agreements'] gas'" (Exh. DPU-CLF 1-1); (2) "the Department is required to 'include [an] assessment ... regarding the levels of greenhouse gas emissions required by the GWSA, or the proposed contract's impact on those levels, at any time during the life of the contract[ ] at issue ... '" (Exh. DPU-CLF 1-2); (3) "the Department is required to craft a standard of review for proposed precedent agreements under the GWSA" (Exh. DPU-CLF 1-3); (4) there is a "reasonable minimum standard" in showing consistency with the GWSA (Exh. DPU-CLF 1-4); or (5) "the Department is required to present an analysis 'of the known and reasonably estimable greenhouse gas emissions that can and should be assumed will occur from the transport and distribution of the gas associated with a proposed contract'" (Exh. DPU-CLF 1-5). See Company Reply Brief at 14 (arguing that CLF's failure to respond to discovery requests was an acknowledgement of Dr. Stanton's lack of qualifications to support CLF's prefiled testimony). Accordingly, the Department rejects CLF's arguments on brief that the foregoing are required, as this explicitly contradicts CLF's previous statements and, as already explained, would require the Department to exceed its statutory authority.

4. Consistency with the GWSA

Regardless of whether the GWSA requires the review or outcome championed by CLF, as we have done in past Section 94A cases, the Department considers as a factor in its public interest review whether Bay State has provided adequate evidence of the Proposed Agreements' consistency with the GWSA. See, e.g., D.P.U. 15-34, at 41; D.P.U. 13-157, at 24. The record evidence indicates that the additional capacity will be used, in large part, to serve new customers converting from oil heating to natural gas, and therefore, the Department expects that the acquisition of the proposed capacity will further reduce greenhouse gas emissions and contribute towards GWSA goals (Exhs. DPU 1-16; DPU 2-20; DPU 2-21; DPU 2-25). In addition, Bay State is acquiring capacity through the Proposed Agreements as partial replacement capacity, from which no additional greenhouse gas emissions will result (Exhs. DPU 2-13; DPU 2-25). Based on the foregoing, the Department finds that the Company has provided adequate evidence regarding the Proposed Agreements' consistency with the GWSA.

D. CLF's Participation

We recognize that a party should be left to complete its own balance of risk and reward in making tactical litigation decisions as long as tactical advantage is not achieved at the expense of the Department. See Cahaly v. Benistar Property Exchange Trust Company, Inc., 85 Mass. App. Ct. 418, 429 (2014). Of course, a party will be held to the predictable consequences of its strategic choices, regardless of outcome. See Wilson v. Town of Mendon, 294 F.3d 1, 13 (1st Cir. 2002) (holding that a party "having chosen a

strategy … cannot now complain of being hoisted on a petard of his own contrivance"); Microsystems Software, Inc. v. Scandinavia Online AB, 226 F.3d 35, 41 n.6 (1st Cir. 2000) (noting that a strategic choice in not intervening means an appellant will be held to the "no intervention, no appeal" rule later). For those reasons, the Department does not normally comment upon a party's litigation strategy, but in the case of CLF we feel obligated to depart from our normal practice.

We have already discussed, above, the fact that CLF asserted positions in its prefiled testimony in this case that it subsequently refused to support in responses to discovery, only to reassert the same positions on brief. We reiterate that this approach is not conducive to facilitating the conduct of an efficient and orderly proceeding and is ultimately unfair to the parties and to the Department. In this and other dockets, CLF has repeatedly criticized the Department's decisions with regard to when CLF may intervene as a full party and has been equally critical of the Department's procedural schedules when granted full party status. See, e.g., Boston Gas Company and Colonial Gas Company, D.P.U. 16-181, CLF's Appeal of Hearing Officer Ruling on Petition to Intervene at 5 (February 28, 2017); D.P.U. 15-39, CLF's Initial Brief at 3-4 (July 17, 2015); Boston Gas Company and Colonial Gas Company, D.P.U. 15-36, CLF's Appeal of Hearing Officer Ruling on Petition to Intervene at 5 (June 5, 2015); D.P.U. 13-159, CLF's Initial Brief at 3 (December 13, 2013).

We first address CLF's participation as a full party in this matter. The Department granted CLF's petition to intervene in part based upon CLF's representation that:

> CLF would bring its unique experience and particular expertise to bear on, among other things, fully briefing of all aspects of the legal contentions CLF more than

> colorably raises herein and would pursue valuable discovery in the public interest — including discovery requests and cross-examination of witnesses — that will elucidate issues related to, *inter alia*: (a) the [C]ompany's compliance with the requirements of G.L. c. 25, § 21 to meet increased natural gas resource needs first through energy efficiency and other demand side measures; (b) the intersection of the [Proposed Agreements] with the requirements of the Global Warming Solutions Act (GWSA) to reduce greenhouse gas emissions over time, particularly in the timeframe after 2020 for which no state regulations relevant to gas system emissions currently exist; (c) environmental costs and benefits of the [P]roposed [Agreements] and alternatives; (d) coordination between the electric sector and natural gas sector, given increased reliance on natural gas as a fuel for electric generation; and (e) the accuracy of the Company's stated need for incremental supply capacity (Petition to Intervene of the Conservation Law Foundation at 6).

In reality, CLF ultimately did not take full advantage of its full party status in this proceeding, which it asserted was "required in order for CLF to adequately protect the substantial and specific interest it has by and through its members" (Petition to Intervene of the Conservation Law Foundation at 6). CLF served no discovery requests, recanted the relevant and potentially enlightening portions of its prefiled testimony in response to Department information requests, conducted no cross-examination, filed an initial brief that is not specific to the Company's filing and is substantively identical to the briefs filed in the other three pending precedent agreement cases (and could have been filed as a limited participant), and did not file a reply brief responding to specific counterarguments made by the Company in response to CLF's assertions.

Next, we turn to CLF's critique of the procedural schedule in this proceeding. Despite its representation that it "labor[ed] under [an] expedited schedule in the docket" (CLF Brief at 3, 13), CLF assented without comment to the procedural schedule that was ultimately adopted and, when sought, was granted a five-day extension of time to submit its

prefiled testimony (Stamp-Granted Unopposed Motion to Extend the Deadline for Intervenor Testimony of Conservation Law Foundation, February 6, 2018). CLF did not seek any other procedural deadline extensions. Contrary to CLF's assertion, there was not an "unnecessarily truncated procedural schedule" employed in this case (nor is there one routinely employed in other precedent agreement cases) that prevented the Department and intervenors from evaluating the Company's petition (CLF Brief at 13). Indeed, though CLF chose not to serve any information requests at all, the Department and the Attorney General served 52 and 76 information requests, respectively, in multiple sets.

The Department recognizes that intervenors such as CLF can bring valuable insight to the Department's investigations and adjudications. We encourage parties seeking to intervene or participate in Department proceedings to pursue their legal rights while at the same time contributing meaningfully to the investigation or adjudication.[18]

VI. CONCLUSION

The Department has reviewed the Company's petition and the evidence presented to determine whether the Company's acquisition of gas resources through the Proposed Agreements is: (1) consistent with the Company's portfolio objectives; and (2) compares favorably to the range of available alternative options. The Department finds that the

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[18] The Supreme Judicial Court has recognized that the Department may seek an intervenor's "extensive help in fully elucidating the issues." Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 46 (1978). However, CLF's unhelpful participation in this case has denied the Department and the parties the benefit of CLF's "unique experience and particular expertise" offered in its petition to intervene and intimated in its prefiled testimony.

Company has identified a need for incremental capacity to ensure reliability and deliverability of natural gas to meet customer requirements. We also find that the Company has established that the proposed acquisition of gas resources through the Proposed Agreements will enable the Company to meet its short- and long-term requirements. We further find that the proposed acquisition will enhance the reliability, flexibility, and diversity of the Company's supply portfolio.

Accordingly, based on our review, the Department finds that the Company's proposed acquisition of gas resources is consistent with the public interest, as it is consistent with the Company's portfolio objectives and compares favorably to the range of reasonable alternatives. The Department further finds that the proposed acquisition is consistent with the GWSA. For all of the foregoing reasons, the Department approves the Proposed Agreements.

VII. ORDER

Accordingly after due notice, hearing, and consideration, it is hereby

ORDERED: That the precedent agreement for a 20-year firm transportation contract between Bay State Gas Company d/b/a Columbia Gas of Massachusetts and Tennessee Gas Pipeline Company, LLC is APPROVED; and it is

FURTHER ORDERED: That the precedent agreement for a 20-year firm transportation agreement between Bay State Gas Company d/b/a Columbia Gas of Massachusetts and Portland Natural Gas Transmission Systems and related letter agreement

providing for a 21-year, six-month, and 21-day extension of two existing firm transportation service agreements are APPROVED; and it is

FURTHER ORDERED: That the two ten-year agreements for firm winter season peaking supply between Bay State Gas Company d/b/a Columbia Gas of Massachusetts and Repsol Energy North America Corporation are APPROVED; and it is

FURTHER ORDERED: That Bay State Gas Company d/b/a Columbia Gas of Massachusetts shall comply with all directives contained in this Order.

By Order of the Department,

/s/
Angela M. O'Connor, Chairman

/s/
Robert E. Hayden, Commissioner

/s/
Cecile M. Fraser, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.