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May 15, 2015

**VIA E-FILING AND HAND DELIVERY**

Mark D. Marini  
Department of Public Utilities  
One South Station, Second Floor  
Boston, Massachusetts 02110

***Re: Petition of Bay State Gas Company d/b/a Columbia Gas for Approval  
of a Firm Transportation Agreement with Tennessee Pipeline  
Company, LLC, Pursuant to G.L. c. 164 § 94A  
Docket No. D.P.U. 15-39***

Dear Secretary. Marini:

Enclosed relative to the above-referenced matter, please find one original and two photocopies of the Motion for Leave to Answer Opposition Filing to and Answer in Support of the Petition to Intervene of Northeast Energy Solutions, Inc. and a Certificate of Service in the above proceeding. Thank you for your attention to this matter.

Very truly yours,

  
Vincent DeVito

VD:kmp

Enclosures

cc: Laurie E. Weisman, Hearing Officer  
Service List, D.P.U. 15-39

{Client Files/BUS/308841/0004/COR/B0530930.DOCX;1}

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

\_\_\_\_\_)  
Petition of Bay State Gas Company d/b/a )  
Columbia Gas for Approval of a Firm )  
Transportation Agreement with Tennessee )  
Pipeline Company, LLC, Pursuant to )  
G.L. c. 164, § 94A )  
\_\_\_\_\_)

D.P.U. 15-39

**MOTION FOR LEAVE TO ANSWER OPPOSITION FILING TO,  
AND ANSWER IN SUPPORT OF THE PETITION TO INTERVENE  
OF NORTHEAST ENERGY SOLUTIONS, INC.**

Pursuant to 220 C.M.R. § 1.4(5), Northeast Energy Solutions, Inc. (“NEES”) respectfully requests leave to submit this Answer to the May 12, 2015 response of Baystate Gas Company d/b/a Columbia Gas of Massachusetts (“Columbia”) opposing NEES’ Petition for leave to Intervene (the “Petition”).

**I. MOTION**

The Department of Public Utilities (the “Department”) in its established schedule for submitting petitions to intervene did not establish a schedule for submission of answers to any opposition to such petitions. As a result, NEES respectfully submits this Motion for leave to answer in support of the Petition. NEES wishes to ensure that the facts relevant to the Petition are examined fully and to provide full analysis of the law supporting its Petition in order to ensure that its ability to participate as an intervenor in this proceeding is not unduly restricted. In light of the response of Columbia to NEES’ petition, allowing NEES to provide additional clarifying information will assist the Hearing Officer in resolving the issues relevant to ruling on the Petition.

## II. ANSWER

### A. Introduction

On April, 3 2015, Columbia filed for approval of a Precedent Agreement (the “Precedent Agreement”) between Columbia and Tennessee Gas Pipeline Company, L.L.C. by the Department which involves the transportation of gas via the expansion of an existing pipeline in a project known as the Northeast Energy Direct (“NED”). On April 14, 2015, the Department issued a Notice of Filing and Public Hearing and set a deadline of May 5, 2015 for petitions for leave to intervene in the proceeding. NEES filed the Petition on May 5, 2015. On May 12, 2015, Columbia filed a response to such petition opposing the request of NEES for intervenor status. For the reasons set forth in this answer and in the Petition, the Department should exercise its broad discretion with respect to intervention to grant the petition of NEES to intervene in the proceeding. NEES is substantially and specifically affected by the proceeding and it has a particular interest in the proceeding which is not adequately represented by any other party to the proceeding.

### B. Standard of Review

The Department is examining whether the Precedent Agreement is consistent with the public interest. Investigation by the Dep’t of Telecommunications and Energy Pursuant to G.L. c. 164, § 94A into the Petition of The Berkshire Gas Company, D.T.E. 04-35, at 8 (2004) (“Berkshire Gas”). In making such examination, Columbia must show the Precedent Agreement “(1) is consistent with the company’s portfolio objectives and (2) compares favorably to the range of alternative options reasonably available to the company and its customers including releasing capacity to customers migrating to transportation, at the time of the acquisition or

contract negotiation.” Id. In addition, the Department will determine whether the Precedent Agreement satisfies Columbia’s non-price objectives, including flexibility of nominations and reliability and diversity of supplies. Id.

The Department may “allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose.” G.L. c. 30A, § 10(4); see 220 C.M.R. § 1.03(1). The Department has very broad discretion in determining whether to grant intervention. Boston Edison Co. v. Dep’t of Pub. Utils., 375 Mass. 1, 45 (1978). In considering a petition to intervene or participate, a Hearing officer may consider, among other factors:

The interests of the petitioner, whether the petitioner’s interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner’s intervention on the proceeding, and the nature of the petitioner’s evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Boston Edison Co., D.P.U. 96-23, at 10 (citations omitted). A party seeking intervention may show that it has a “peculiar interest” but is not necessary in the case of potential intervenors who represent a large group of ratepayers. See Robinson v. Department of Public Utilities, 416 Mass. 668, 671 (1993). In Robinson, the court noted that full intervenor status had been granted to entities representing large groups of ratepayers, however, “Robinson, *as a single ratepayer*, had to show ‘peculiar damage to himself.’” 416 Mass. 668 at 674 (emphasis added).

**B. Argument in Favor of NEES’ Intervention in Proceeding**

Columbia, in its response to the Petition has asserted that NEES should be denied intervenor status because NEES has not shown it will be substantially and specifically affected by the proceeding, NEES would not suffer a “peculiar damage” as a result of the proceeding, and

the interests of NEES are adequately represented by other parties to the proceeding. NEES's interests, as a representative of a large group of landowners and ratepayers impacted by the present matter are substantially and specifically affected by the proceeding. Furthermore, although NEES, as a representative of a large group of ratepayers, as opposed to an individual ratepayer, is not required to demonstrate a "peculiar interest" in the proceeding, NEES nevertheless has a "peculiar interest" in this matter by representing ratepayers and landowners with a specific interest in ensuring that the Precedent Agreement and the available alternatives are analyzed in light of the regulatory impacts on NED and the environmental, economic and other impacts of NED of which NEES, through its other advocacy activities, possesses valuable expertise which will be of use to the Departments consideration of the Precedent Agreement.

**(i). *NEES Will be Substantially and Specifically Affected by the Proceeding***

NEES, through its constituent members, represents over 101,850 individuals in The Commonwealth of Massachusetts and collectively own or hold conservation restrictions on over 46,211 acres of land in the Commonwealth. This includes individuals in all of the cities and towns served by Columbia. NEES was founded to represent its members in providing energy infrastructure analysis and advocacy regarding the economics of energy projects and transactions in the Northeastern United States. NEES represents individuals who will be subject to any change in rates as a result of the Precedent Agreement as well as landowners whose property interests will be impacted by the development of NED and whose interests will be substantially and specifically affected by the proceeding and State Representative Michael Brady ("Rep. Brady"), a member of The Commonwealth of Massachusetts House of Representatives, in his capacity as a member of the House of Representatives.

Representatives of large groups of ratepayers are substantially and specifically interested in proceedings such as this one which could impact the cost of energy for their members. See Robinson, 416 Mass. 668 at 674. In Robinson, the court noted that groups representing large groups of ratepayers had been admitted to the proceeding as full intervenors. 416 Mass. 668 at 674. Representatives of multiple ratepayers, have a substantial and specific interest in ensuring that the Precedent Agreement compares favorably to the available alternatives and that the Precedent Agreement satisfies Columbia's non-price objectives. See Berkshire Gas, D.T.E. 04-35, at 8. Rep. Brady, as a member of the House of Representatives, has a substantial and specific interest in ensuring his constituents, who reside in an area serviced by Columbia, have access to affordable energy service. In Robinson, State Representative Christopher Hodgkins was permitted to intervene in the matter in full. 416 Mass. at 670 n.2. Similarly, Rep. Brady seeks to intervene, through NEES, in order to represent his constituents.

In addition, the proposed route of NED, which will provide the gas contracted for by the Precedent Agreement, will cross numerous communities in which NEES represents landowners. The landowners in Martorano v. Department of Public Utilities, a citizens group representing impacted landowners in a community affected by a pipeline project was allowed to intervene in a Department proceeding. 401 Mass. 257, 260 (1987). Landowners have a substantial and specific interest in ensuring that the favorability of available alternatives to the Precedent Agreement takes into account the impacts the Precedent Agreement will have on landowners. See Id.

Finally, the Department's consideration of the Precedent Agreement could impact proceedings with respect to the approval of NED, along with related matters, before the Federal Energy Regulatory Commission and the U.S. Department of Energy to which NEES is an active

party or anticipates to be an active party, and as a result, the proceedings with respect to the Precedent Agreement substantially affect the interests of NEES and its members.

**(ii). *NEES Could Suffer a “Peculiar Damage” as a Result of the Proceedings***

As shown in Section II above, NEES, as a representative of a large group of ratepayers is not required to demonstrate a “peculiar damage” to be admitted as an intervenor to this proceeding, nevertheless, NEES could suffer a “Peculiar Damage” as a result of the Proceedings. See Robinson, 416 Mass. 668 at 674. The Precedent Agreement could result in increased costs to NEES’s ratepayer members, in addition, NEES’s members have a particular interest in ensuring that their energy resources are delivered in a manner that takes into account the environmental, economic and other impacts of energy infrastructure projects. Additionally, NEES’ landowner members could suffer damage as a result of the approval of the Precedent Agreement through the impact such proceeding will have on NED. NED, on which the Precedent Agreement depends could impact NEES members’ property interests through takings, environmental impacts, and decreased land values. Rep. Brady is a legal representative of his constituents and as an elected official in a specific community served by Columbia, as opposed to the state as a whole, his interests in the proceedings are distinct from those of the Attorney General See Id. Thus a failure to adequately examine the available alternatives in light of these factors would damage NEES through cost increases on its ratepayer members and potential damage to its landowner members.

**(iii). *The Interests of NEES Cannot be Adequately Represented by Any other Party***

As a result of its activities before the Federal Energy Regulatory Commission with respect to NED, NEES possesses valuable expertise with respect to NED and the environmental

and economic impacts of the project. NEES's expertise in this matter cannot be replicated by another party to the proceeding, and as a result, if NEES is not granted leave to Intervene, its interests in the matter will not be adequately represented causing harm to NEES and its members. In addition, NEES believes such information, including expert testimony with respect to NED, will be valuable information for the Department in its consideration of the available alternatives to the Precedent Agreement as well as whether or not the Precedent Agreement is consistent with Columbia's non-price objectives. See Berkshire Gas, D.T.E. 04-35, at 8. In addition, NEES represents landowners and Rep. Brady whose interests are not represented by the Attorney General.

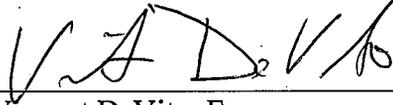
For the foregoing reasons, granting NEES's petition to be admitted as an intervenor to the proceeding is consistent with the Department's standard for intervention and would be a proper exercise of the Department's broad discretion with respect to intervention. See G.L. c. 30A, § 10(4); 220 C.M.R. § 1.03(1); Robinson, 416 Mass. 668 at 674; Martorano 401 Mass. at 260; Berkshire Gas, D.T.E. 04-35, at 8.

### **III. CONCLUSION**

For the reasons described above, Northeast Energy Solutions, Inc. respectfully requests that the Massachusetts Department of Public Utilities grant the Petition of Northeast Energy Solutions to intervene in the proceeding fully as a party thereto and requests a hearing pursuant to 220 C.M.R. 1.06(1) to offer further comment with respect to such petition.

Respectfully Submitted,

NORTHEAST ENERGY SOLUTIONS, INC.



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Dated: May 15, 2015

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

Petition of Bay State Gas Company d/b/a )  
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D.P.U. 15-39

**CERTIFICATE OF SERVICE**

I hereby Certify that I have this day served the foregoing document upon the persons on the Service List in the above captioned proceeding in the manner required by the Department of Public Utilities' Rules of Practice and Procedure.



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Dated: May 15, 2015