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March 30, 2026

VIA ELECTRONIC DELIVERY ONLY
Laurie Weisman, Hearing Officer
Massachusetts Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Subject: **D.P.U. 26-28** Petition of The Berkshire Gas Company for approval of a gas supply agreement with Constellation LNG, LLC, pursuant to G.L. c. 164, § 94A.

Dear Hearing Officer Weisman,

In accordance with the March 3, 2026 Notice of Filing, Public Hearing, and Request for Comments issued in the above-referenced proceeding, Acadia Center submits the below comments regarding the petition of the Berkshire Gas Company ("BGC") for approval of a gas supply agreement (the "Proposed Agreement") with Constellation LNG, LLC ("Constellation"), pursuant to G.L. c. 164, § 94A, filed with the Department of Public Utilities (the "DPU" or the "Department") February 20, 2026 (the "Petition").

In evaluating Massachusetts gas local distribution companies' resource options for the acquisition of commodity resources as well as for the acquisition of capacity under G.L. c. 164, § 94A, the DPU examines whether the acquisition of the resource is consistent with the public interest.[1] To demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company at the time of the acquisition or contract renegotiation.[2] In its review of an acquisition, the Department will also review relevant price and non-price factors. The Department will consider whether the pricing terms are competitive with those for the broad range of capacity, storage and commodity options that were available to the filing LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region.[3]

[1] Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996).
[2] D.P.U. 94-174-A at 27.
[3] Id.

The information contained in the Petition is sufficient for the Department to make a finding that the Proposed Contract (i) compares unfavorably to the range of alternative options reasonably available to BGC, and (ii) that its pricing terms are not competitive with those for the broad range of capacity, storage and commodity options that are available to BGC, as compared not merely with respect opportunities that were available to other LDCs in the region, but with specific reference to pricing terms that were incorporated in supply agreements with BGC's proposed counterparty Constellation for identical supply from the Everett LNG Marine Terminal ("EMT") approved by the Department pursuant to G.L. c. 164, § 94A with respect to Boston Gas Company d/b/a National Grid ("National Grid"), Eversource Gas Company of Massachusetts d/b/a Eversource Energy ("EGMA"), NSTAR Gas Company d/b/a Eversource Energy ("NSTAR"). and Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil"), in D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-27, and D.P.U. 24-28, respectively (the "EMT Agreements").

As part of its examination of whether a proposed resource acquisition is consistent with the public interest the Department must also consider whether the proposed acquisition is consistent with the Global Warming Solutions Act ("GWSA")[4] and any applicable emissions limit or sublimit set by the Secretary of Energy and Environmental Affairs.[5]

The information contained in the Petition is sufficient for the Department to make a finding that the proposed acquisition is inconsistent with the GWSA as compared with supply sources other than the supply proposed for delivery to BGC by Constellation under the Proposed Agreement.

I. Summary of the Proposed Agreement

a. Supply

The Proposed Agreement would provide up to 5,400 Dth of supply sourced from EMT for delivery to BGC's citygates for 30 days out of the year, as elected by BGC.[6]

b. Pricing

Per the testimony of BGC's Manager of Energy Services, Jay V. Fletcher (Exhibit BGC-JVF-1; the "Fletcher Testimony"), the Proposed Agreement contains four primary pricing components: (i) a Non-Commodity Demand Charge that covers the costs Constellation incurs to run and maintain EMT; (ii) a Commodity Demand Charge associated with the cost of securing international LNG shipments to serve the supply requirements of the Proposed Agreement; (iii) a reimbursement without markup for the costs of the capacity Constellation holds on the Tennessee Gas Pipeline needed to make deliveries to BGC's citygates; and (iv) a variable price component that is tied to the New York Mercantile Exchange ("NYMEX") natural gas futures

[4] St. 2008, c. 298

[5] G.L. c. 25, § 1A; D.P.U. 22-32-C at 36; D.P.U. 17-172, at 55; D.P.U. 15-34, at 41; D.P.U. 13-157, at 24.

[6] Petition of The Berkshire Gas Company for Approval of a Gas Supply Agreement with Constellation LNG, LLC pursuant to G.L. c. 164, § 94A, D.P.U. 26-28 at p. 2.

settlement price for the applicable month, plus a multiplier and an adder.[7] Notably, it was BGC that requested the addition of the adder to the variable price component.[8] BGC requested the addition of the adder, which would increase the cost of the variable price component, to offset a reduction in the amount of the Commodity Demand Charge and thus lower the sum of all the fixed charges ((i), (ii), and (iii), above) due under the Proposed Contract.[9]

c. Term

The Proposed Agreement represents the extension of an existing contract for EMT supply that would commence June 1, 2028, and terminate on May 31, 2030.[10] The two-year term of the Proposed Agreement was chosen in part to coincide with the May 31, 2030, termination date of the EMT Agreements approved by the Department in D.P.U. 24-25 through D.P.U. 24-28.

II. Approval of the BGC Proposed Agreement Would Result in Disparate and Unfair Treatment of National Grid, EGMA, NSTAR, and Unitil Ratepayers with Respect to Fixed Prices Paid Under the EMT Agreements

The BGC Proposed Agreement and the National Grid, EGMA, NSTAR, and Unitil EMT Agreements have fixed price and variable price components in common based on the maximum seasonal quantity of natural gas that each company has the right to call upon each year under the Agreements.[11] Moreover, the BGC Proposed Agreement and the EMT Agreements all include a non-commodity demand charge to recover EMT's operation and maintenance costs, and a commodity demand charge to recover EMT's costs to reserve LNG supplies.[12] Like the BGC Proposed Agreement, the EGMA, NSTAR, and Unitil EMT Agreements also contain a firm transportation charge to recover Constellation's costs to deliver natural gas to each Company at pre-determined or otherwise agreed to delivery points.[13]

The cost of sustaining EMT's operations is currently concentrated exclusively on National Grid, EGMA, NSTAR, and Unitil customers, and are paid via the fixed price components included in their respective EMT Agreements: the costs of EMT operations is not borne by other entities (gas utilities and power generators) that purchase supply in the spot market or through separate

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[7] Testimony of Jay V. Fletcher, Exhibit BGC-JVF-1, pp. 7-8.
[8] Id. at p. 8.
[9] Id.
[10] Id at p. 6.
[11] See Paragraph I b. herein with respect to BGC; Direct Pre-Filed Joint Testimony of Elizabeth D. Arangio, Faye Brown, Samara A. Jaffee, Michael J. Pini and Deborah M. Whitney, D.P.U. 24-25 Exhibit NG-Agreement-1, at pp. 23-24 with respect to National Grid; Testimony of Eric B. Soderman, D.P.U. 24-26 Exhibit EGMA-EBS-1, at p. 17 with respect to EGMA; Testimony of Eric B. Soderman, D.P.U. 24-27 Exhibit NSTAR-EBS-1, at p. 17 with respect to NSTAR; and Testimony of Francis X. Wells, D.P.U. 24-28 Exhibit Unitil-FXW-1, pp. 15-17 with respect to Unitil.
[12] See Paragraph Ib. herein with respect to BGC, and the Final Order re D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-27, and D.P.U. 24-28, May 17, 2025, at p. 8 with respect to National Grid, EGMA, NSTAR, and Unitil.
[13] Final Order re D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-27, and D.P.U. 24-28, May 17 ,2025, at p. 9.

firm contracts.[14] Because the cost of sustaining EMT's operations is not borne equally by all market participants who take supply from EMT, but is borne exclusively by National Grid, EGMA, NSTAR, and Unitil customers, the fixed price payments paid by those customers thus represent a subsidy transferred to the other entities and their customers who purchase EMT supply in the spot market or through separate firm contracts. This is the fundamental inequity embedded in the EMT Agreements: that all market participants do not share pari passu in paying the costs needed to sustain EMT's operations, but that they fall rather on National Grid, EGMA, NSTAR, and Unitil customers exclusively. The Proposed Agreement would compound that inequity by reducing the fixed fees (i.e. the Commodity Demand Charged) paid by BGC's customers relative to their peers who are served by National Grid, EGMA, NSTAR, and Unitil under the EMT Agreements. Specifically, by reducing the Commodity Demand Charge associated with the cost of securing international LNG shipments to serve the supply requirements of the Proposed Agreement—which together with the Non-Commodity Demand Charge are the two fixed price components common to the Proposed Agreement and the EMT Agreements—a portion of the cost of securing those shipments will be shifted onto National Grid, EGMA, NSTAR, and Unitil disproportionately. Moreover, because BGC will pay Constellation an adder in the form of a higher commodity price in exchange for lowering the Commodity Demand Charge, this inequitable result would be accomplished by BGC at the expense of paying a higher variable price component than it otherwise would have been required to pay by Constellation.

III. Availability of Supply Options Preferable to the Proposed Agreement

In his testimony in support of the proposed agreement, BGC Manager of Energy Services Jay V. Fletcher states that BGC considered three alternative options to the Proposed Agreement.[15] Two of the three available alternatives would require Constellation's acquiescence.

First, BGC contacted the Tennessee Gas Pipeline Company, L.L.C. to determine whether any capacity was available on the Tennessee Gas Pipeline ("TGP") that would match the 5,400 Dth/day of deliverability provided by the Proposed Agreement.[16] It was confirmed that there were no available transportation rights available on the TGP to meet the delivery requirements of the Proposed Agreement.

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[14] Massachusetts Office of Energy Transformation EMT Focus Area Working Group (FAWG) Findings of Relevance [Draft 1.28.2026] at pp. 2-3. https://www.mass.gov/doc/everett-marine-terminal-fawg-draft-findings/download ("The LDCs' long-term contracts with Constellation include fixed fees that, in the aggregate, provide Constellation with sufficient revenue to sustain EMT operations. The four LDCs represent Constellation's only customers with long-term contracts through 2030, and thus, the LDCs' ratepayers currently sustain EMT operations. EMT is a source of supply for other entities (gas utilities and power generators) that purchase supply in the spot market or through separate firm contracts. The share of the fixed costs paid by the LDC's customers would be reduced if additional entities entered into long-term contracts with Constellation to receive EMT supply or related services.")

[15] Testimony of Jay V. Fletcher, Exhibit BGC-JVF-1, pp. 10-11.

[16] Id.

Second, BGC asked Constellation whether it would relinquish that portion of the transportation rights it had reserved on the TGP to meet the delivery requirements of the Proposed Agreement: "[i]n this manner [BGC] could take control of the underlying TGP capacity and seek out a replacement service in lieu of the Proposed Agreement."[17] Constellation declined to relinquish its TGP capacity to BGC.

Finally, BGC asked Constellation whether it would move the delivery points used in the Proposed Agreement away from BGC's citygates to make capacity available from an alternate receipt point (e.g. Dracut, MA): "[BGC] could then contract with TGP for this capacity and seek out an alternative supplier to provide a similar service to that envisioned in the Proposed Agreement."[18] Constellation declined to move the delivery points used in the Proposed Agreement away from BGC's citygates.

By declining to relinquish its TGP capacity to BGC or to move the delivery points away from BGC's citygates, Constellation used its market power to compel BGC to execute the Proposed Agreement to take LNG vapor supply from EMT: a clear example of anticompetitive foreclosure.[19]

Constellation's refusal to relinquish its TGP capacity to BGC, or to move the delivery points away from BGC's citygates, not only frustrates the Department's goal to reduce or eliminate gas utility reliance on EMT, as expressed in its Final Order regarding the EMT Agreements, it increases the Commonwealth's reliance on EMT unnecessarily.[20] Constellation's foreclosure of alternative options also requires BGC's customers to pay more for the 5,400 Dth daily increment of supply contemplated by the Proposed Agreement since supply delivered via TGP would not require payment of either the Non-Commodity Demand Charge or the Commodity Demand Charge to Constellation. Based on the proposed Non-Commodity Demand Charge, and an estimate of Title Transfer Facility ("TTF") prices used to derive the Commodity Demand Charge, BGC estimates that the Proposed Agreement will result in a net increase in fixed

[17] Id. at p. 11.
[18] Id.
[19] International Competition Network, Unilateral Conduct Workbook Chapter 6: Tying and Bundling, pp. 20-21. https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/UCWG_UCW-Ch6.pdf "[F]oreclosure describes a situation in which a firm eliminates or impedes actual or potential competitors' access to a market. Such foreclosure of rivals may lead to anticompetitive foreclosure if it is substantial enough to make alternative sources of supply or distribution unavailable, more expensive, or less effective."
[20] Final Order re D.P.U. 24-25, D.P.U. 24-26, D.P.U. 24-27, and D.P.U. 24-28, May 17, 2025, at p. 57. "The Department finds it appropriate for the Companies to include in their inaugural climate compliance plans the following information: (1) whether, and to what extent, the [EMT] Agreements have facilitated the Companies' plans to meet GHG emission reduction goals in compliance with the GWSA; (2) a description of the Companies' efforts to reduce customer demand for natural gas; and (3) a description of the Companies' efforts to reduce or eliminate their reliance on EMT, including, but not limited to (i) the costs, feasibility, and timelines for each alternative identified; and (ii) a description of how each alternative identified would contribute to GHG emissions reductions. The Companies shall report this information annually to the Department on April 1st of each year through 2030."

demand charge payments by its customers equal to approximately $6 million per year.[21] Constellation's foreclosure of less expensive alternative options thus represents rent-seeking behavior.[22]

IV. Higher than Necessary Emissions Intensity

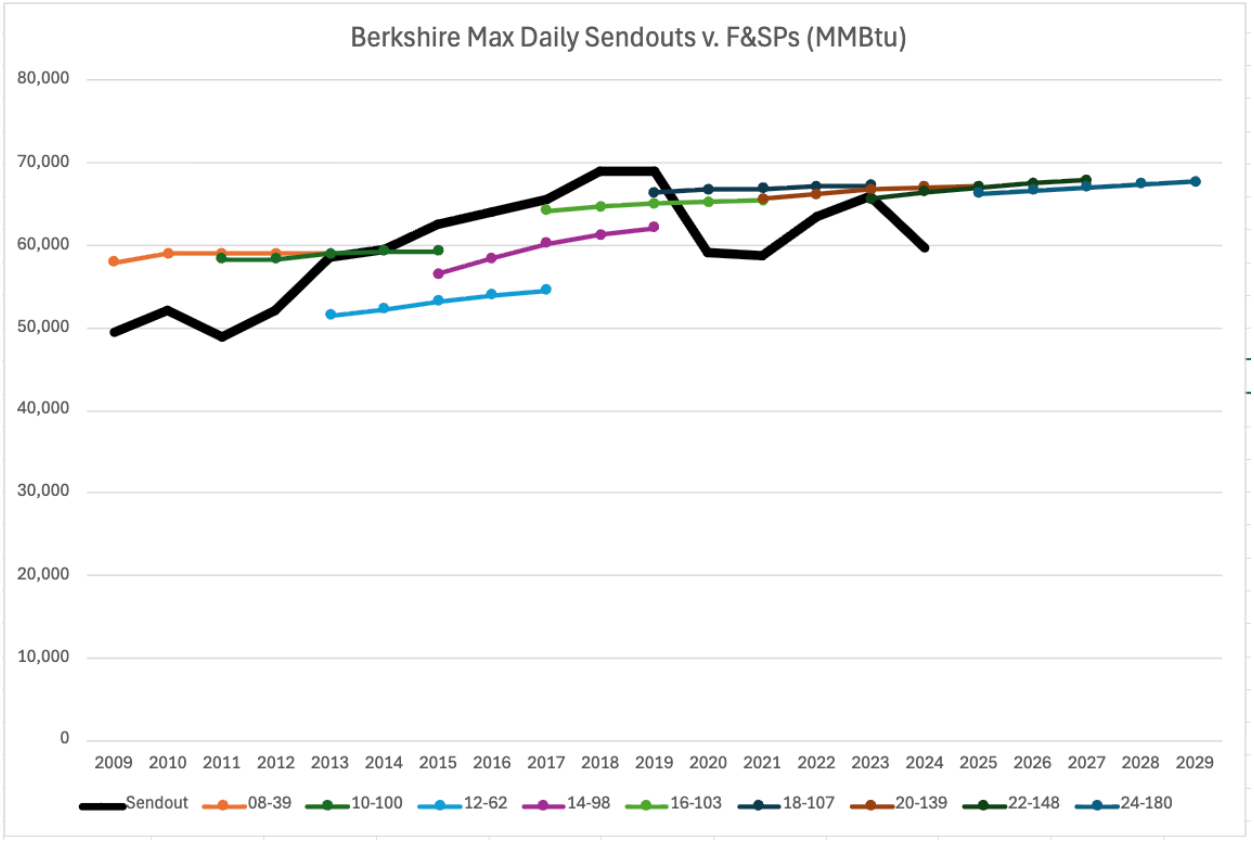
By declining to relinquish its TGP capacity to BGC or to move the delivery points away from BGC's citygates and compelling BGC to execute the Proposed Agreement, Constellation prevented BGC from accessing the comparatively less emissions-intensive TGP supply in lieu of the more highly emissions-intensive LNG-derived vapor supply contemplated by the Proposed Agreement. Globally, the average GHG emissions intensity of delivered LNG is just under 20 g CO2-eq/MJ (megajoule), compared with an average of 12 g CO2/MJ for natural gas supply overall.[23] The additional emissions associated with LNG are due to its liquefaction, maritime shipment, and regasification, which require additional amounts of energy and provide additional opportunities for methane to be vented directly into the atmosphere.[24] The Proposed Agreement is thus inconsistent with the GWSA as compared with supply sources other than the supply proposed for delivery to BGC by Constellation under the Proposed Agreement.

V. Lack of Demonstrated Need for the Proposed Agreement

Per the Fletcher Testimony, BGC's most recent (2024) Forecast and Supply Plan (the "D.P.U. 24-180 F&SP") indicates "demand for natural gas continues to grow in the Company's service territory, albeit at a modest rate." In fact, an examination of BGC's Forecast and Supply Plans submitted in 2018 (D.P.U. 18-107), 2020 (D.P.U. 20-139), and 2022 (D.P.U. 22-148), in addition to the D.P.U. 24-180 F&SP, shows that demand for natural gas in the Company's service territory has remained stable, and an examination of the Maximum Daily Sendouts reported in BGC's annual returns for the period 2009-2024 show that since 2014 its Maximum Daily Sendout has not been less than 60,000 MMBtu nor more than 70,000 MMBtu (i.e. 60,000 Dth – 70,000 Dth (1 MMBtu = 1 Dth)). (See the chart below.)

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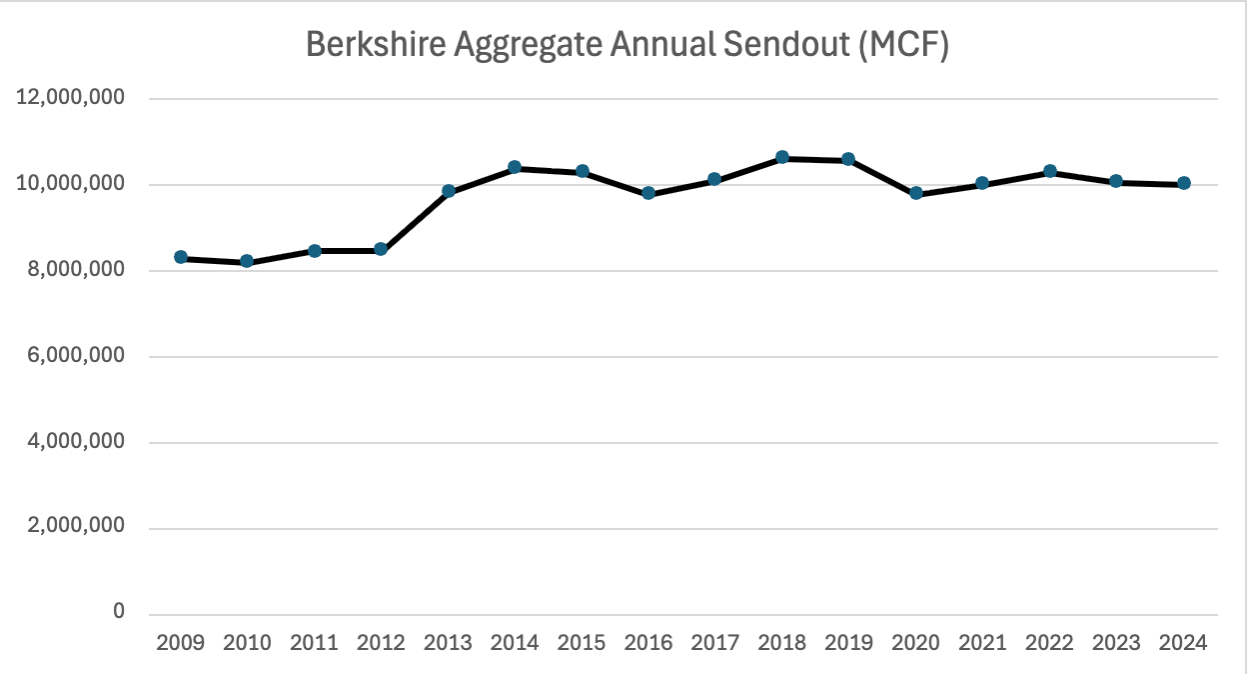
[21] Testimony of Jay V. Fletcher, Exhibit BGC-JVF-1, p. 8.
[22] International Encyclopedia of Human Geography (Second Edition), Chapter: Organizations, Nongovernmental, Glossary, Rent-Seeking https://www.sciencedirect.com/topics/social-sciences/rent-seeking "The term rent-seeking implies economic rent and refers to attempts by an individual, organization, or firm to gain money by economic and/or legal manipulation rather than by trade and production of wealth."
[23] Assessing Emissions from LNG Supply and Abatement Options, International Energy Agency at p. 5. https://iea.blob.core.windows.net/assets/df9b1bed-4e16-4db8-bec5-a5fa117a9130/AssessingemissionsfromLNGsupplyandabatementoptions.pdf
[24] Id. at pp. 13-16.



The 5,400 Dth of EMT supply contemplated by the Proposed Agreement thus represents only approximately 7.7% to 9% of BGC's Maximum Daily Sendout over the last 11 years. Per its most recent (2024) Annual Return BGC's total annual sendout equaled 10,035,158 Dth.[25] The Maximum Seasonal Quantity (MSQ) of EMT supply contemplated by the Proposed Agreement (5,400 Dth x 30 = 162,000 Dth) thus equals 1.6% of BGC's 2024 total annual sendout.

While BGC asserts that its D.P.U. 24-180 F&SP took energy efficiency into account in its forecast, and that customer demand is forecasted to "grow at a slow pace," BGC's annual returns for the period 2009-2024 indicate that demand, as represented by total annual sendout, has been relatively stable since 2020. (See the chart on the following page; 1 MCF = 1.04 MMBtu).

[25] BGC 2024 Annual Return at p. 51 of the .PDF. https://www.mass.gov/doc/berkshire-ar-2024/download



The relevant question that BGC must answer with respect to the need for the Proposed Contract is not what its D.P.U. 24-180 F&SP forecasts for customer demand, but what energy efficiency or demand reduction measures could be implemented to reduce its Maximum Daily Sendout by June 1, 2028, the inception date of the Proposed Contract, and whether those combined measures in the aggregate could reduce BGC's Maximum Daily Sendout by the 5,400 Dth increment of daily supply contemplated by Proposed Agreement. This is the question BGC should be required to answer with respect to energy efficiency and demand reduction. Mere reference to its D.P.U. 24-180 F&SP is insufficient.

VI. BGC Reporting Obligations and Timing of EMT Agreement Renewal Requests

If the Department were to approve the Proposed Agreement, it is presumed that BGC would be placed under the same reporting obligations as National Grid, EGMA, NSTAR, and Unitil.[26] Acadia Center recommends that, in that event, BCG's reporting obligation be imposed as of the effective date of the approving Order, and not as of the commencement date of the Proposed Agreement.

BGC has requested Department approval of the Proposed Agreement more than two years prior to the termination of its current EMT contract. In light of the compressed time frame to complete the Department's review of the EMT Agreements in D.P.U. 24-25 through D.P.U. 24-28, it is recommended that the Department require National Grid, EGMA, NSTAR, and Unitil to state affirmatively by the inception date of the Proposed Agreement whether they will require renewals of their EMT Agreements and, if so, be encouraged to initiate proceedings under G.L.

[26] See footnote 20, above.

c. 164, § 94A to review such renewals soon thereafter or, in any case, in sufficient time to avoid a recurrence of the compressed time frame that characterized their 2024 EMT dockets. That is, the Department should encourage, if it cannot require, National Grid, EGMA, NSTAR, and Unitil to follow BGC's example in filing their requests for extension or renewals of their EMT Agreements, if any, far in advance of their May 2030 termination dates.

VII. Conclusion

In evaluating Massachusetts gas local distribution companies' resource options for the acquisition of commodity resources as well as for the acquisition of capacity under G.L. c. 164, § 94A, the DPU examines whether the acquisition of the resource is consistent with the public interest. To demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company at the time of the acquisition or contract renegotiation.

With respect to BGC's portfolio objectives, the 5,400 Dth daily supply quantity contemplated under the Proposed Agreement to meet design day demand is 7.7% to 9% of BGC's Maximum Daily Sendout over the last 11 years. Absent a finding that BGC is unable to implement energy efficiency and demand reduction measures to reduce its Maximum Daily Sendout by 5,400 Dth Max, it is impossible to determine whether the Proposed Agreement is consistent with the company's portfolio objective "that [the capacity resources contemplated by the Proposed Agreement] will continue to be needed to reliably meet customer demands."[27]

With respect to price, BGC will pay Constellation an adder in the form of a higher commodity price in exchange for lowering the Commodity Demand Charge. This will reduce for BCG customers their share of the sum of the Commodity Demand Charge and Non-Commodity Demand Charge, while compelling the customers of National Crid, EGMA, NSTAR, to pay more, rather than an equal amount, for those same charges.

Finally, because Constellation has refused to relinquish its transportation rights on the TGP, or to shift the delivery point of its vapor deliveries, it is foreclosing BGC's access to other viable alternatives to supply under the Proposed Agreement. As a result, the Proposed Agreement would impose unnecessary Non-Commodity Demand Charges and Commodity Demand Charges on BCG customers, unnecessarily increase GHG emissions, and compel continuing reliance on EMT at the same time the Department is seeking to reduce or eliminate reliance on EMT by those local distribution companies that executed the EMT Agreements.

The information contained in the Petition is sufficient for the Department to make a finding that the Proposed Contract (i) compares unfavorably to the range of alternative options reasonably

[27] Testimony of Jay V. Fletcher, Exhibit BGC-JVF-1, p. 13.

available to BGC, and (ii) that its pricing terms are not competitive with those for the broad range of capacity, storage and commodity options that are available to BGC. Furthermore, The Proposed Agreement is inconsistent with the GWSA as compared with available supply sources other than the EMT supply proposed for delivery to BGC by Constellation under the Proposed Agreement.

Very truly yours,



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Signed In Support of these Comments:



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