COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Bay State Gas Company Petition for Approval of Incremental Capacity and Supply Agreement with Northeast Energy Associates	))))))	**D.T.E. 06-7**

INITIAL BRIEF OF THE ATTORNEY GENERAL

Respectfully submitted,

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I. INTRODUCTION

Pursuant to the briefing schedule established by the Department of Telecommunications and Energy ("Department") in this proceeding, Attorney General, Thomas F. Reilly, submits His Initial Brief responding to the Petition of Bay State Gas Company ("Bay State" or "Company") for approval of an agreement ("Proposed Agreement") between Bay State and Northeast Energy Associates, a Limited Partnership ("NEA").

Under the Proposed Agreement, Bay State would assume an obligation to purchase baseload winter gas supply service and firm transportation capacity from NEA to serve its Brockton Division. NEA may assign additional firm transmission capacity to Bay State which would terminate the Proposed Agreement, including Bay State's obligation to purchase baseload winter gas supply.

II. PROCEDURAL HISTORY

On January 27, 2006 Bay State filed a Petition for Approval of the Proposed Agreement, an agreement that covers a period longer than one year that is subject to review by the Department. M.G.L. c. 164, § 94A. The Attorney General intervened as a matter of right on February 23, 2006 pursuant to M.G.L. c. 12, § 11E, and on February 28, 2006 the Department conducted a public hearing and a procedural conference to establish a procedural schedule. The Department conducted an evidentiary hearing on April 18, 2006 and Bay State submitted its Initial Brief on May 9, 2005. In the evidentiary hearing Bay State sponsored a single witness, Francisco C. DaFonte, Director of Bay State's Energy Supply Services.

III. THE COMPANY'S PROPOSAL

Under the Proposed Agreement Bay State would become obligated to purchase 48,000 Dth per day of baseload winter gas supply during the winter months of November through March during a five-year term commencing on November 1, 2006 and continuing through March 31, 2011. NEA may elect to extend the term through November 30, 2016.[1] Exhibit ("Exh.") FCD-1, at 3. 5, 6. As of November 1, 2006, NEA would also permanently assign firm transportation capacity on the Algonquin Gas Transmission System ("Algonquin System") to Bay State, for a primary term expiring on November 30, 2016. Exh. DTE-1-8; Evidentiary Hearing Transcript ("Tr.") at 12 lines 9-12; Exh. FCD-1 Confidential at 8, part (b). Bay State would also have a right of first refusal to upstream capacity held by NEA. Exh. FCD-1 Confidential at 9, part (b)(c)

[1] Bay State may opt out of purchase obligations for November and March. *Id.* Forty-eight thousand Dth per day represents approximately twenty-eight percent of the Company's supply portfolio. Exh. D.T.E. 1-10

The Proposed Agreement will terminate at any time during its term if NEA assigns and releases upstream capacity to Bay State.[2] Tr. at 14-16; Exh. FCD-1 Confidential, at 9 part (a), 10 part (d). If the Proposed Agreement terminates, Bay State would not have sufficient winter gas supply for the Brockton Division, which could occur as soon as November 1, 2007. Tr. at 16, lines 7-24, at 7, lines 1-9. Bay State customers would have to pay an additional $2.9 million for the upstream capacity and Bay State would have to purchase gas to replace the loss of winter gas supply for the Brockton Division. *Id.*; Exh. AG-1-10.

The Company relied on the portfolio objectives it identified in its 2002 Long-range Forecast approved in D.T.E. 02-75 ("2002 Long-range Forecast") to demonstrate that the proposed acquisition of supply and capacity under the Proposed Agreement is consistent with the Company's portfolio objectives. *See* Exh. BSG-1 at 4, lines 6-26, at 10, lines 4-12, at 11; *see generally Bay State Gas Company*, D.T.E. 02-75 (2002). According to the Company, the resource acquisition is consistent with the portfolio objectives identified in the 2002 Long-range Forecast because it would reduce portfolio costs, maintain portfolio reliability, provide flexibility and acquire viable resources. *Id.* at 11, lines 1-6; Exh. DTE-1-2. The Company also stated that it relied on planning methods approved in the 2002 Long-range Forecast to evaluate the Proposed Agreement's consistency with its portfolio objectives. Exh. BSG-1, at 4.

The Company attempted to demonstrate a need for the 48,000 Dth per day of winter gas supply that it would purchase through the Proposed Agreement based on supply deficiencies identified in the 2002 Long-range Forecast. Exh. AG-1-12. It points to the design day forecast in the 2002 Long-range Forecast:

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[2] CONFIDENTIAL: REDACTED

> Bay State's . . . resource supply plan (D.T.E. 02-75) indicated the Brockton division would need additional resources (13,400 Dth/day) on the design day during the winter 2006-2007 . . . In that plan, Bay State assumed its existing city-gate service with DOMAC [for 25,000 Dth per day that previously served the Brockton Division] would continue.

Exh. AG-1-12; *see also* Exh. FCD-1 at 4. Tr. at 27, 15-24, 28, 1-24, 29, 1-4.

The 2002 Long-range Forecast design day forecasts, however, do not cover the same period of time as the Proposed Agreement.[3] The Company then created an accessory design day forecast for the 2005-2010 period ("Accessory Forecast") to further demonstrate the need for the resource. Exh. AG-1-12, Attachment at 3; Exh. AG-2-3, Attachment; Exh. RR-AG-2. The design day Accessory Forecast assumed a growth rate of 1.0 percent per year, which is lower than the growth rate of 1.5 percent per year assumed in the 2002 Long-range Forecast. Tr. at 10, lines 1-6; Exh. RR-AG-2; Exh. DTE -1-4.

IV. STANDARD OF REVIEW

The Department applies a "public interest" standard of review to evaluate a gas utility's resource options for the acquisition of commodity resources and acquisition of capacity under M.G.L. c. 164, § 94A. *Commonwealth Gas Company*, D.P.U. 94-174A at 27 (1996); *KeySpan Energy Delivery New England*, D.T.E. 04-9 at 10. 19-20 (2004). The Company must show that:

> [t]he 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 and its customers, including releasing capacity to customers migrating to transportation.

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[3] The 2002 Long-range Forecast includes projections for the Brockton Division's requirements and resources only through October 31, 2007. The Proposed Agreement contemplates a term ending March 31, 2011, or upon election of NEA, on November 30, 2016. Exh. FCD-1 at 5 (defining Term).

> To establish that a resource is consistent with a company's portfolio objectives, the company may refer to the 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 resource proposal.

Id.

V. ARGUMENT

A. *Bay State Failed To Demonstrate That The Supply and Capacity Acquisition Under The Proposed Agreement Is Consistent with the Company's Portfolio Objectives*

1. Bay State Attempts To Use Outdated Long-range Forecasts To Support the Proposed Agreement

The Department has held that "[t]he company may refer to the portfolio objectives established in a recently approved forecast and requirements plan" to show that the proposed resource acquisition is consistent with the company's portfolio objectives. *See Berkshire Gas Company*, D.T.E. 02-56 (2002); *Bay State Gas Company*, D.T.E. 02-52 (2002); *KeySpan Energy Delivery New England* , D.T.E. 02-54 (2002); *Berkshire Gas Company*, D.T.E. 02-19, at 11 (2002); *Bay State Gas Company*, D.T.E. 98-79 (1998); *Commonwealth Gas Company*, D.P.U. 94-174-A at 27 (1996).

Bay State has relied on 2002 Long-range Forecast supplemented with the Accessory Forecast, to show that the proposed resource acquisition is consistent with the Company's portfolio objectives. Bay State's 2002 Long-range Forecast, however, is outdated and violates the two-year statutory filing requirement contained in M.G.L. c. 164, § 69I. Therefore, it does not provide a sufficient basis for the Department to evaluate whether the Proposed Agreement is consistent with the Company's portfolio objectives.

According to M.G.L. c. 164, § 69I:

> Every gas company . . . shall file with the department a long-range forecast with respect to the gas requirements of its market area . . . . Such forecast shall be filed at least every two years. [4]

Bay State filed the 2002 Long-range Forecast on November 15, 2002, approximately three-and-a-half years ago. Tr. at 35, lines 9-14; DTE 02-75 (2002), page 1. Although the Company should have submitted a new long-range forecast on or before November 15, 2004, the Company's witness claimed that in D.T.E. 02-75, the Department ordered it to file a long-range forecast in October of 2006. Tr. at 35, lines 9-14. In D.T.E. 02-75, the Department stated that it "[a]pproves Bay State's supply plan for the years 2002/2003 through 2006/2007, but it did not state that the Company should submit an updated plan in October 2006, nor did it state that in the order denying Bay State its motion for reconsideration. D.T.E. 02-75 at 38; *see generally* D.T.E. 02-75A.

Even if the Department had made such an order, the clear language of M.G.L. c. 164, § 69I, requires the Company to file every two years and the Department has noted its own lack of authority to take actions that conflict with the two-year statutory filing requirement. *Berkshire Gas Company*, D.T.E. 89-99 at 4 *citing Berkshire Gas Company.* D.P.U. 96-92 at 11.

In an attempt to circumvent the statutory requirements, the Company filed an untested Accessory Forecast to its 2002 Long-range Forecast. While added forecasts may assist the Department on occasion, the Accessory Forecast should not serve as a proxy for Bay State's failure to submit a long-range forecast in compliance with M.G.L. c. 164 § 69I. The Accessory

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[4] Prior to 1992, gas companies had to submit plans every five years, but when the statute was amended in 1992 the legislature changed that requirement to the current, every two years. Mass. Gen. Law. Annotated, Vol. 26A, at 182, (2003).

Forecast fails to meet the level of reliability of a fully adjudicated long-range plan, and is not a substitute for a showing that the acquisition is consistent with the Company's portfolio objectives through an approved long-range forecast.

2. Bay State Relied On A Planning Methodology That Differs From Its Approved Planning Methodology

The record shows that the Company apparently departed from approved planning methods. The Company, without explanation, changed the growth rate in the Accessory Forecast from the 1.5 percent growth rate approved in the 2002 Long-range Forecast to a growth rate of 1 percent. Tr. at 10, lines 1-6, at 24-25; D.T.E. 02-75; Exh. RR-AG-2; Exh. DTE -1-4.

The Department has not conducted a rigorous review of the forecasts and planning method used by the Company since this proceeding is not a full adjudication of the forecast and supply plan like those conducted pursuant to M.G.L. c. 164, § 69I. The validity of the Accessory Forecast has not been tested and any changes in growth rates have not been reviewed. The Department should not allow the Company to use the Accessory Forecast as a proxy for a long-range forecast.

Bay State has failed to demonstrate that the supply and capacity acquisitions under the Proposed Agreement are consistent with the Company's portfolio objectives because of it has relied only on the outdated 2002 Long-range Forecast and the untested Accessory Forecast. Therefore, the Department should provisionally accept the Proposed Agreement, but require the Company to submit a full update to the 2002 Long-range Forecast before the approval of the Proposed Agreement.

B. The Company Failed To Demonstrate That Continuous Upstream Transmission Capacity Remains Consistent With Its Portfolio Objectives

The Proposed Agreement will terminate if NEA assigns certain upstream capacity to Bay State.[5] Tr. at 12-13. Bay State did not demonstrate that ownership of all upstream capacity is consistent with its portfolio objectives. The Department should not approve the Proposed Agreement until the Company had demonstrated that ownership of all upstream capacity is consistent with its portfolio objectives. If the Company does not, then the Department should reject the Proposed Agreement.

VI. CONCLUSION

Bay State has failed to meet its burden to demonstrate that the Proposed Agreement is consistent with its portfolio objectives. It has inappropriately relied on an outdated version of its 2002 Long-range Forecast and the unreviewed Accessory Forecast to support its Proposal. The Department, therefore, should condition the approval of the Proposed Agreement on the Company's immediate filing of an update to its 2002 Long-range Forecast and demonstrates that all upstream capacity acquisition is consistent with its portfolio objectives. The Company has also failed to show that the potential upstream capacity acquisition is consistent with the Company's portfolio objectives.

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[5] *See* CONFIDENTIAL FN2 for details on the upstream capacity assignment.

Respectfully submitted,

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