Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

Petition of Boston Gas Company d/b/a KeySpan Energy Delivery New England, pursuant to General Laws Chapter 164, § 94, and 220 C.M.R. §§ 5.00 et seq. for a general increase in gas rates.	D.T.E. 03-40

PETITION OF THE MASSACHUSETTS OILHEAT COUNCIL, INC. AND THE MASSACHUSETTS ALLIANCE FOR FAIR COMPETITION, INC. FOR LEAVE TO PARTICIPATE AS PARTIES

Pursuant to 220 C.M.R. § 1.03(1), the Massachusetts Oilheat Council, Inc. ("MOC") and the Massachusetts Alliance for Fair Competition, Inc. ("Alliance") hereby petition the Department of Telecommunications & Energy ("Department" or "DTE") for leave to intervene and participate as full parties in this proceeding. In support of this petition, MOC and the Alliance (collectively "petitioners") state as follows:

1. MOC is a not-for profit trade association representing independent marketers, distributors and retailers of heating oil, other petroleum-based products, heating equipment and related products and services. Its members supply and service primarily residential customers, as well as commercial and industrial consumers throughout the Commonwealth of Massachusetts. MOC's members provide these products and services to customers located within the service territory of, and in competition with, KeySpan Energy Delivery New

England (KeySpan or Company) and its affiliates.

2. MOC's offices are located at 118 Cedar Street, Wellesley Hills, Massachusetts 02481.

3. The Alliance is a coalition of small plumbing, electrical contracting, air conditioning, heating, ventilation and air conditioning (HVAC) businesses. Specifically, its members are engaged in the sale of plumbing, heating, ventilation, electrical and air conditioning equipment, products and services to residential and commercial customers in the Commonwealth. Alliance members provide these products and services to customers within the service territory of, and in competition with, KeySpan and its affiliates.

4. The Alliance's address is 5 Elm Street, Danver, MA 01923.

5. MOC and the Alliance intend to participate jointly in this proceeding because of their similar interests in this matter. Alternatively, should the Department determine that only one of the two petitioners will receive permission to intervene, then that petitioner desires to continue in the proceeding as a party.

6. On or about April 16, 2003, KeySpan filed with the Department a petition seeking a rate increase for its firm gas customers as well as approval for a price-cap performance-based rate plan. The Department suspended the date of the rate increase until November 1, 2003 to investigate the propriety of KeySpan's request.

7. In its filing, KeySpan seeks approval of a performance-based ratemaking plan and an overall increase of 9.59% in the Company's annual revenues. Among the items to be approved in this proceeding is the amount of the Company's promotional advertising budget to be utilized in encouraging conversions from alternative fuels such as oil and propane to natural

gas. As competitors of KeySpan for residential and commercial customers, the amount, manner and justification of the proposed promotional allowance is of substantial and significant interest to MOC and the Alliance. The petitioners would also be substantially and specifically impacted by use of ratepayer funds to subsidize marketplace competitors of the petitioners' members in the area of appliance service, repairs, upgrades, replacements and installation.

8. In addition, MOC and the Alliance are concerned with the impacts of KeySpan's promotional activities in both the appliance service and fuel/energy supply markets. Similar to the Department's interest in promoting and enhancing competition in the deregulated gas and electric commodities markets, the petitioners are interested in preserving full and fair competition which will ultimately benefit the ratepayer and the general public in all markets.

9. MOC and the Alliance are also interested in the relationship between KeySpan and its unregulated affiliates. There exist significant issues governing a utility's investment in its unregulated operations including the manner and extent to which the utility promotes its unregulated subsidiary; whether it is appropriate for affiliates to have similar names; and the existence, nature, extent and propriety of any subsidization by the utility of its unregulated operations.

10. These issues are of vital interest to the members of MOC and the Alliance who are engaged in the sale and installation of various unregulated products and services to customers located throughout the Commonwealth of Massachusetts. MOC and the Alliance are deeply concerned that utilities should not have the ability to improperly and unfairly subsidize their unregulated operations, or other selected non-affiliated entities, through the diversion and application of utility assets paid for by monopoly ratepayers. The establishment of a level

playing field for all market participants is extremely crucial in this regard and can be subverted if utilities are allowed to divert monopoly resources to unregulated ventures.

11. In this proceeding the Department will determine whether costs related both to promotional activities and to the support of KeySpan's affiliate(s) are necessary and appropriate in providing utility service to customers. The extent to which KeySpan may recover from ratepayers such expenditures is an appropriate subject of this ratemaking proceeding (See D.T.E. 00-57)[1].

12. As MOC and Alliance members will be substantially and specifically impacted by the Department's ruling in this proceeding, MOC and the Alliance desire to protect the interests of their members by participating as full parties in this proceeding.

13. MOC's interest in proceedings before the Department has previously been deemed substantial and its petition to intervene as a party approved by the Department in the Company's prior case. Boston Gas Company, DPU 96-50. MOC has also participated in other proceedings before the Department. (Bay State Gas Company, D.P.U. 95-52, Commonwealth Gas Company, D.P.U. 95-102, Unbundling of Gas Distributing and Supplies Service, D.T.E. 98-32). In addition, MOC and the Alliance were the petitioners in D.T.E. 00-57, which requested a Department investigation of the Boston Gas VPI Plus 2000 Program. (Petition dismissed by Order dated September 12, 2001.)

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[1] Petition of Massachusetts Oilheat Council, Inc. and Massachusetts Alliance for Fair Competition, Inc. Regarding the VPI Plus 2000 of Boston Gas Company, Colonial Gas Company and Essex Gas Company. These same petitioners questioned whether a particular promotional program was ratepayer funded. The Department responded in its dismissal order, inter alia, that any "ratemaking implication of the Companies' expenditures is not an issue appropriate for investigation outside of the context of a ratemaking proceeding…" (Order p. 11).

14. Due to the unique interests and concerns applicable to their members, and because they represent private enterprises in the energy and HVAC markets, MOC and the Alliance cannot be adequately represented by another party or participant in this proceeding. Moreover, the petitioners' participation in this proceeding will be of material value to the Department in its determination of the issues raised by the filing.

15. The undersigned counsel, Emilio Petroccione, also moves that he be permitted to appear in this proceeding, pro hac vice, on behalf of the petitioners. Mr. Petroccione has been a member in good standing of the bar of the State of New York since 1983, and there are, to his knowledge, no disciplinary proceedings pending against him in any jurisdiction. He has advised MOC and the Alliance concerning matters raised in this proceeding and has special knowledge regarding such matters. A motion for admission submitted by Massachusetts counsel and a certificate by Mr. Petroccione accompany this petition.

WHEREFORE, the Massachusetts Oilheat Council, Inc. and the Massachusetts Alliance for Fair Competition, Inc. respectfully request that the Department (a) grant their petition for leave to intervene and participate as full parties in this proceeding; (b) in the alternative, should full party status be denied, grant petitioners limited participant status with the ability to conduct discovery and file briefs and/or memoranda; (c) grant the motion to appear pro hac vice; and (d) grant such other relief as the Department may deem just and proper.

MOC and the Alliance hereby notice the appearance of the undersigned counsel. It requests that all notices, testimony, pleadings, and correspondence pertaining to this proceeding be directed as shown below.

Respectfully submitted,

Massachusetts Oilheat Council, Inc. and Massachusetts Alliance for Fair Competition, Inc.

By: _____

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