



MASSACHUSETTS' NATURAL GAS PIPELINE EXPANSION PROPOSAL

By: Lee Hansen, Associate Analyst

NATURAL GAS & ELECTRICITY

Over the past decade, technological advances in drilling techniques (e.g., “fracking”) have brought substantially more natural gas to market in North America, resulting in larger quantities and lower prices.

At the same time, an increasing amount of New England’s electricity now comes from natural gas as many coal and oil plants were, and will be, replaced by gas-powered power plants.

According to [ISO-New England](#) (the region’s electric grid operator), the portion of electricity produced with natural gas increased from 15% in 2000 to 44% in 2015. And looking ahead, 63% of the proposed new generating capacity is natural gas-fired generation.

ISSUE

Describe Massachusetts’ proposed natural gas “pipeline tax” on electric bills to pay for natural gas infrastructure. Does Connecticut law allow for a similar “pipeline tax?”

SUMMARY

In 2015, the Massachusetts Department of Energy Resources (DOER) proposed a plan to help limit wholesale electric rate volatility by allowing the state’s electric distribution companies (EDCs) to (1) enter into long-term contracts to procure capacity on new interstate natural gas pipelines and (2) recover their costs for the contracts through their electric distribution rates. In theory, by procuring the contracts the EDCs would encourage interstate pipeline companies to expand their infrastructure by providing financing and guaranteeing a market for the expansion. In turn, the expanded infrastructure would increase natural gas supplies to New England and help stabilize fuel costs for the natural gas fired power plants upon which the region has increasingly

come to rely for its electricity. Opponents of the proposal often refer to the potentially resulting electric rate increases as a “pipeline tax,” although it would not be a “tax” as the term is typically used (e.g., there is no mill rate on electric bills and it would not be collected by any government entity).



Recently, the Massachusetts Supreme Judicial Court significantly upset the proposal by ruling that the state's Department of Public Utilities (DPU), which regulates the EDCs, is not authorized to review and approve ratepayer-backed long-term contracts by EDCs for natural gas pipeline capacity.

In Connecticut, by contrast, [CGS 16a-3j](#) (enacted by PA 15-107) allows the Department of Energy and Environmental Protection (DEEP) commissioner, in consultation with other state officials, to solicit proposals for interstate natural gas pipeline capacity (among other energy and energy-related products and services). The law requires the commissioner to evaluate the proposals based on several factors, such as whether their benefits outweigh the costs to ratepayers and the extent to which they help reduce greenhouse gas emissions and improve air quality. If he finds a proposal to be in electric ratepayers' best interests, he can direct the EDCs to (1) enter into long-term agreements under the proposal, subject to the Public Utility Regulatory Authority's (PURA) review and approval and certain other limitations, and (2) recover their related costs and credit certain revenues, through a component of ratepayer electric bills.

DEEP subsequently issued a [Request for Proposals](#) (RFP) for Natural Gas Capacity, Liquefied Natural Gas, and Natural Gas Storage on June 2, 2016. It is currently evaluating the seven [proposals](#) that it received in response.

DOER'S PROPOSAL

Currently, the interstate natural gas pipeline system has a limited capacity to bring natural gas from the Marcellus Shale, where natural gas production has greatly increased, to New England, where natural gas demand has significantly increased due to the region's increased reliance on natural gas for heating and to generate electricity. In effect, the limited transmission capacity has created a bottleneck that can drastically increase electricity prices when the gas supply cannot meet increased demand (particularly during cold spells in the winter). For further discussion of the issue, see OLR Reports [2014-R-0267](#), *Natural Gas in the Electric Power Market* and [2015-R-0108](#), *Factors Behind Connecticut's High Electric Rates*.

According to DOER's [proposal](#), interstate pipeline developers are hesitant to invest the significant capital needed for infrastructure expansion, despite the region's increased demand for natural gas, without first having long-term contracts for pipeline capacity in place. On the other hand, electric generators who need the additional natural gas to generate electricity are hesitant to enter into long-term capacity contracts because they cannot be assured of receiving enough revenue to cover the contracts' costs each year.

To help address this mismatch between supply and demand, and ultimately help limit electric price volatility, DOER proposed a plan under which (1) the state's EDCs would enter into long-term contracts to purchase pipeline capacity, (2) the cost of the contracts would be passed on to the EDCs' ratepayers, (3) the contracts would encourage and help finance pipeline expansion, and (4) once the expansion is complete the EDCs will resell their capacity to electric generators and, in theory, increase gas supply and lower wholesale electric prices.

MASSACHUSETTS SUPREME JUDICIAL COURT DECISION

To implement its plan, DOER asked the state DPU to determine, among other things, whether DPU had the statutory authority to (1) review and approve gas capacity contracts entered into by the EDCs and (2) allow the EDCs to recover their costs for the contracts through their rates. After the DPU [determined](#) that it had such authority and issued an order outlining the filing requirements and standard of review for approving the contracts, several plaintiffs petitioned the Supreme Judicial Court to set aside the order because it was based on an erroneous interpretation of law.

On August 17, 2016, the court [ruled](#) that DPU could not review and approve EDC gas capacity contracts or allow EDCs to recover their contract costs through their rates because:

1. the state's statutes do not specifically authorize DPU to review and approve long term EDC contracts for natural gas and DPU had never previously done so and
2. approving the contracts would contradict the fundamental policy created by the state's electric restructuring (i.e., deregulation) law by (a) involving the EDCs in the electric generation business and (b) shifting the financial risks of generation development, fuel procurement, and planning from generators to ratepayers.

The court also noted that in the past, when the legislature sought to override the restructuring law's risk allocation policy, it did so by enacting legislation that required EDCs to seek proposals from renewable energy developers and explicitly authorized the DPU to review and approve any resulting contracts (*Engie Gas & LNG, LLC v. Department of Public Utilities*, (SJC 12051) (August 17, 2016)).

CONNECTICUT

Unlike Massachusetts, Connecticut has enacted legislation ([PA 15-107](#), codified at [CGS § 16a-3j](#)) that explicitly authorizes:

1. DEEP to (a) solicit proposals for natural gas pipeline capacity and other energy and energy-related products and services and (b) direct the EDCs to enter into contracts under the proposals that meet certain criteria and are in the ratepayers' best interests and
2. PURA to review and approve those contracts and allow the EDCs to recover their costs for the contracts through their rates.

A description of the act's main provisions is below.

Solicitation Types

The act allows the DEEP commissioner to solicit proposals for multiple long-term contracts to (1) secure cost effective resources to provide more reliable electric service for the state's electric ratepayers and (2) meet goals and policies established in the state's integrated resources plan (IRP) and comprehensive energy strategy (CES). It establishes three categories for the solicitations (Natural Gas Resources, Large Renewable Energy Sources and Hydropower, and Demand Response Measures and Small Renewable Sources) and specifies the types of proposals that the commissioner must solicit in each category.

Natural Gas Resources. For natural gas resources, the commissioner must solicit proposals for:

1. interstate natural gas transportation capacity,
2. liquefied natural gas,
3. liquefied natural gas storage,
4. natural gas storage, or
5. any combination of such resources.

These proposals must provide incremental capacity, gas, or storage with a firm delivery capability to transport natural gas to natural gas-fired generating facilities within New England's regional electric grid.

Large Renewable Energy Sources and Hydropower. For solicitations for large renewable energy sources and hydropower, the commissioner must seek proposals for (1) Class I renewable energy sources (e.g., solar or wind) with capacity of at least 20 megawatts and (2) verifiable large-scale hydropower. These proposals must include associated transmission (i.e., use of high-voltage lines to carry electricity from where it is generated to local substations).

The act also allows him to seek proposals for energy storage systems of at least 20 megawatts. He may also seek proposals for Class II renewable energy sources (e.g., trash-to-energy facilities) and certain existing hydropower resources to balance the delivery of Class I renewable energy sources (which may be intermittent) and improve the economic viability of such proposals.

Demand Response Measures and Small Renewable Sources. For solicitations for demand response measures and smaller renewable resources, the commissioner must seek proposals for (1) Class I renewable energy sources and Class III source projects (e.g., combined heat and power facilities) with a capacity between two and 20 megawatts and (2) passive demand response measures capable of reducing electric demand by at least one megawatt, including energy efficiency, load management, and the state's conservation and load management programs.

Solicitation and Evaluation

When soliciting proposals and evaluating any responses, DEEP must consult with PURA's electric procurement manager, the Office of Consumer Council, and the attorney general. It may issue solicitations on behalf of Connecticut alone or in coordination with other New England states.

The commissioner's evaluation of the responses to solicitations must be based on on factors including:

1. reliability improvements to the electric system, including during peak demand;
2. whether the proposal's benefits outweigh the cost to ratepayers;
3. fuel diversity;
4. the extent to which the proposal meets requirements to reduce greenhouse gas emissions and improve air quality, including the state's renewable portfolio standard;
5. the ratepayers' best interests; and
6. alignment with IRP and CES policy goals, including environmental impact.

DEEP (1) must compare a proposal's costs and benefits to those of other resources eligible to respond to DEEP's solicitations authorized under the act and (2) may also consider economic benefits to the state.

The act allows the commissioner to hire certain consultants to assist with solicitations and proposal evaluation. DEEP may recover its reasonable costs of up

to \$1.5 million associated with the solicitation and evaluation process through the non-bypassable federally mandated congestion charge on electric ratepayers' bills, even if DEEP selects no proposals.

Selection and Approval

If the commissioner finds a proposal to be in ratepayers' best interests, he may direct the EDCs to enter into long-term contracts under the proposal for:

1. passive demand response measures,
2. electricity,
3. electric capacity,
4. environmental attributes,
5. interstate natural gas transportation capacity,
6. liquefied natural gas,
7. liquefied natural gas storage,
8. natural gas storage,
9. energy storage, or
10. any combination of these measures.

The act limits the total aggregate capacity of the selected contracts to 375 million cubic feet per day of natural gas capacity or the equivalent megawatts of any combination of electricity and electric demand reduction. (The conversion rate of cubic feet per day to megawatts is unclear.) The act also limits selected proposals for demand response, renewable resources, and hydropower, in the aggregate, to 10% of the total load served by the state's electric companies.

PURA Review and Approval

Under the act, PURA must review and approve any agreement entered into as a result of a proposal. Electric companies must file an application for approval of any agreement with PURA, and PURA must approve it if it is cost effective and in electric ratepayers' best interests. If PURA does not issue a decision within 90 days, the agreement is deemed approved.

The electric companies must recover certain costs from ratepayers and credit ratepayers for certain revenue. Specifically, they must, through a fully reconciling component of electric rates for all the electric company's customers, (1) recover net

costs on a timely basis, including costs incurred under the agreement and reasonable costs incurred in connection with the agreement, and (2) credit customers for any net revenue from the sale of products purchased in accordance with long-term contracts authorized by the act. The act allows the electric companies to contract with a gas supply manager to sell natural gas products procured as a result of long-term contracts into the wholesale energy markets at the best available rates and in compliance with federal regulations.

Current RFPs

To date, DEEP has issued two RFPs under the authority granted to it by PA 15-107. The first, an [RFP from Private Developers for Clean Energy](#), was issued on March 9, 2016 and solicited offers for Class I renewable energy sources, Class III sources, passive demand response, and energy storage systems to secure cost-effective resources to provide more affordable and reliable electric service. The second, an [RFP for Natural Gas Capacity, Liquefied Natural Gas \(LNG\), and Natural Gas Storage](#), was issued on June 2, 2016 and solicited offers for natural gas resources to provide incremental capacity with primary firm delivery capability to transport natural gas to natural gas-fired generating facilities located in the New England regional electric grid.

DEEP is currently considering the proposals it received under both RFPs and has not yet issued a final determination for either.

HYPERLINKS

ISO-New England Resource Mix (<http://www.iso-ne.com/about/key-stats/resource-mix>).

DEEP Request for Proposals for Natural Gas Capacity, Liquefied Natural Gas, and Natural Gas Storage
([http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/32723b39b1c8b69885257fc6006cf337/\\$FILE/DEEP_Final%20Gas%20RFP_6.2.16.pdf](http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/32723b39b1c8b69885257fc6006cf337/$FILE/DEEP_Final%20Gas%20RFP_6.2.16.pdf)).

DEEP, Energy Filings, PA 15-107, § 1(d) – Natural Gas Capacity , LNG, and Natural Gas Storage Procurement, Proposals
([http://www.dpuc.state.ct.us/DEEPEnergy.nsf/\\$EnergyView?OpenForm&Start=30&Count=30&Expand=33.4&Seq=3](http://www.dpuc.state.ct.us/DEEPEnergy.nsf/$EnergyView?OpenForm&Start=30&Count=30&Expand=33.4&Seq=3)).

OLR Report 2014-R-0267 (<https://www.cga.ct.gov/2014/rpt/pdf/2014-R-0267.pdf>).

OLR Report 2015-R-0108 (<https://www.cga.ct.gov/2015/rpt/pdf/2015-R-0108.pdf>).

DOER Request to Open an Investigation into New, Incremental Natural Gas Delivery Capacity for Thermal Load and Electric Generation

(http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=15-37%2finitial_filing.pdf).

DPU 15-37 Order Determining Department Authority Under G.L. C. 164 § 94A
(http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=15-37%2f1537_Order_10215.pdf).

Engie Gas & LNG, LLC v. Department of Public Utilities, (SJC 12051) (August 17, 2016) (<http://www.mass.gov/courts/docs/sjc/reporter-of-decisions/new-opinions/12051.pdf>).

PA 15-107
(https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Public+Act&which_year=2015&bill_num=107).

DEEP, Notice of RFP from Private Developers for Clean Energy
([http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/ffee9c54378d404a85257f710054fb32/\\$FILE/RFP_03-09-16_CLEAN.pdf](http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/ffee9c54378d404a85257f710054fb32/$FILE/RFP_03-09-16_CLEAN.pdf)).

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