



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

June 24, 2022

Mark D. Marini, Secretary
Massachusetts Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Re: *Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty, D.P.U. 22-32*

Dear Secretary Marini:

Enclosed please find the Attorney General's Motion to Dismiss. Please file according to your usual practice. Thank you for your assistance in this matter.

Sincerely,

/s/ Margaret L. Sullivan

Margaret L. Sullivan
Assistant Attorney General

Enclosures

cc: Sarah Smegal, Hearing Officer
Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty)))))	D.P.U. 22-32
--	-----------------------	---------------------

**THE OFFICE OF THE ATTORNEY GENERAL’S
MOTION TO DISMISS**

Pursuant to 220 C.M.R. §§ 1.06(5)(e), the Office of the Attorney General (“AGO”) moves to dismiss without prejudice the petition of Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty (“Liberty” or “the Company”).

I. INTRODUCTION

On October 29, 2020, the Department of Public Utilities (“the Department”) opened its investigation into the future of gas, D.P.U. 20-80 (the “Future of Gas Investigation”). The purpose of the Future of Gas Investigation is “to examine the role of Massachusetts gas local distribution companies (the “LDCs”) in helping the Commonwealth to achieve its 2050 climate goals.” D.P.U. 20-80, Order Opening Investigation, at 1. To draw out potential decarbonization pathways, the Department requested that each LDC provide a proposal that includes its “recommendations and plans for helping the Commonwealth achieve its 2050 climate goals,” to be filed by March 2022. Order Opening Investigation at 6.

Liberty’s March 2022 filing describes a multipronged plan for decarbonization that will allow the Department to develop a regulatory roadmap facilitating the energy transition. As to one of these prongs, the Company states that “[t]he harmonization of Liberty’s statewide and corporate policies regarding greenhouse gas emissions reduction is further supported by its

decision to develop renewable natural gas ('RNG') as a green fuel for the future....” D.P.U. 20-80, Liberty’s Proposal to Support Massachusetts 2050 Climate Goals: Initial Net Zero Enablement Plan, Mar. 18, 2022, at 3, 26. The Company provides more detail regarding its development of RNG under its “LDC-Specific Transition Plan.” *Id.* at 26. Specifically, the Company states that it plans to, *inter alia*, “submit a filing for an opt-in RNG program increasing the share of biomethane in Liberty’s fuel mix to approximately 4%.” *Id.* The Company further identifies the opt-in RNG program as one of three components of its LDC-specific plan, and it does state that “additional dockets may evolve” in the future. *Id.* at 26–27.

As of the date of this filing, the Department has not opined on the propriety of any aspect of Liberty’s proposal, and the procedural schedule in D.P.U. 20-80 is currently postponed in order to allow the Department to review the hundreds of stakeholder comments submitted in response to the LDCs’ proposals. D.P.U. 20-80, Memorandum, June 3, 2022.

On March 31, 2022, Liberty filed a petition with the Department under G.L. c. 164, § 94A for approval to enter a twenty-year purchase and sale agreement for biomethane with third-party supplier Fall River RNG LLC, a subsidiary of Fortistar Methane Group. Liberty supported its petition with pre-filed testimony that makes clear that the proposal here is the same proposal discussed in the Company’s March 2022 filing in D.P.U. 20-80 and under review in that proceeding. Exh. LUDG/KJ-1, at 8–9.

II. ARGUMENT

The Department should dismiss Liberty’s petition in this docket without prejudice. At any time after an initial filing, a party may move for dismissal as to all or any issues in the case. 220 C.M.R. § 1.06(6)(e). Although the Department has not incorporated the Massachusetts Rules of Civil Procedure into its own procedural rules, the Department has frequently taken guidance

from them and considers them to be instructive and a “useful dispositive model.” Order, *Joint Petition of New England Gas Company, Plaza Massachusetts Acquisition, Inc., The Laclede Group, Inc., and Liberty Utilities Co. pursuant to G.L. c. 164, § 96, for Approval of the Sale of the Assets of New England Gas Company*, D.P.U. 13-07, at 10 n.10 (Aug. 15, 2013) (citing *Massachusetts Institute of Technology*, D.P.U. 94-101/95-36, at n.5 (1995)). Massachusetts Rule of Civil Procedure 12(b)(9) allows for dismissal based on “pendency of a prior action in a court of the Commonwealth.” In other words, the rule allows for “dismissal where a prior action involving the same issues is pending between the same parties.” *X.Z. v. H.D.*, 94 Mass. App. Ct. 1109, 1109 (2018). Similarly, the Department has discretion to dismiss a petition where it implicates issues that the Department is already addressing in another docket. *Petition of International Paper Company for an Order directing Western Massachusetts Electric Company to offer to provide retail electric distribution service*, D.P.U. 96-82, at 2–3 (1996) (dismissing a petition where “the issues raised [were] core elements of the Department’s ongoing efforts to effect a comprehensive restructuring of the electric service industry” in the state, the Department was “currently engaged in active deliberation” on those issues, and “the issues raised by petitioners [would] be addressed in that docket”). Pursuant to the principles set forth in Mass. R. Civ. P. 12(b)(9) and *International Paper Company*, the Department should dismiss the Company’s petition.

First, the Department should dismiss the petition because a prior action (D.P.U. 20-80) involving the same parties and issues is pending before the Department. The Company’s petition here seeks Department approval of a renewable natural gas contract as part of the Company’s proposed decarbonization plan—and both this particular contract and the Company’s proposed

decarbonization plan are at issue in D.P.U. 20-80.¹ Although D.P.U. 20-80 is an investigation and as such does not have “parties,” it is significant that the proponent of the opt-in RNG program is the same—Liberty—in both dockets and that all of the intervenors in this docket are participants in D.P.U. 20-80, as well. *See Lyons v. Duncan*, 81 Mass. App. Ct. 766, 771 (2012) (affirming dismissal where defendant in second lawsuit was one of several in the first lawsuit, the plaintiffs were the same in each, and the claims were identical in each suit). The underlying purpose of Mass. R. Civ. P. 12(b)(9), to promote efficient decision making by preventing litigating the same issues over multiple proceedings, applies here, and the Department should dismiss the petition.

Second, the Department also should dismiss the petition under the principles that the Department expressed in *International Paper Company*. Just as the petitioner in *International Paper Company* sought to circumvent a comprehensive Department investigation into restructuring the electricity industry in the Commonwealth, Liberty has asked for relief that would circumvent the Department’s deliberations in a closely related, ongoing investigation—namely, the Future of Gas Investigation. *See* D.P.U. 96-82, at 2–3.

In the Future of Gas docket, the Department is actively engaging with the issue of whether and how biomethane will play a role in the energy transition. *See* D.P.U. 20-80, DPU-Comm 3-1 (bill impacts of biomethane blending); DPU-Comm 6-4 (throughput and composition with optimistic biomethane assumptions); DPU-Comm 6-5 (throughput and composition with

¹ The AGO is aware that certain of the intervenors in this docket have moved to stay the Company’s petition here based on similar arguments that the Department is considering the proposed contract and the underlying policy behind it in D.P.U. 20-80. The AGO, however, moves separately because it believes that somewhat different relief is appropriate (dismissal versus a stay) and thus, its motion has a different standard of review. *See Joint Motion to Stay Proceeding*, at 5–6 (June 3, 2022).

conservative biomethane assumptions); DPU-Comm 6-6 (impact on alternative biomethane suppliers); DPU-Comm 6-7 (allocation of decarbonized gas between rate classes), DPU-Comm 6-9 (methods of allocating biofuel availability in calculating “fair share” of biomethane); DPU-Comm 6-10 (compound annual growth rate in required biomethane throughput); and DPU-Comm 6-11 (obstacles for transporting and delivering biomethane from out of state). These questions make clear that the Department has not decided the appropriate role for biomethane in the complex set of decarbonization proposals that Liberty, its fellow LDCs, and other stakeholders have put forward. This is a live issue that the Department is investigating comprehensively as to all LDCs in the Future of Gas Investigation. Liberty’s attempt to circumnavigate the Department’s comprehensive investigation in the Future of Gas proceeding by gaining approval in this docket is both an inappropriate effort to evade the Department’s ongoing proceedings in D.P.U. 20-80 and administratively inexpedient.

Accordingly, for the same reasons that the Department dismissed the petition in *International Paper*, the Department should dismiss Liberty’s petition here. *See* D.P.U. 96-82, at 2–3.

III. CONCLUSION

Liberty has proposed in D.P.U. 20-80 a set of decarbonization options that are expressly subject to stakeholder input and Department scrutiny. At the same time, Liberty seeks Department approval for a component of that decarbonization proposal in this docket. The Department should reject Liberty’s attempt to put the cart before the horse and instead allow the 20-80 process—one that could go so far as to “recast[] the role of the LDCs”—to run its course. Order Opening Investigation at 1. Under the guidance of Rule 12(b)(9) or *International Paper Company*, the Company’s requested relief is “impractical and imprudent.” D.P.U. 96-82, at 3.

The AGO therefore respectfully requests that the Department dismiss Liberty's petition without prejudice.

Respectfully submitted,

ATTORNEY GENERAL
MAURA HEALEY

By: /s/ Margaret L. Sullivan
Margaret L. Sullivan
Jo Ann Bodemer
Assistant Attorney General
Massachusetts Attorney General
Maura Healey
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Dated: June 24, 2022

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty)))))	D.P.U. 22-32
--	-----------------------	---------------------

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston, Massachusetts, this 24th day of June, 2022.

/s/ Margaret L. Sullivan
Margaret L. Sullivan
Assistant Attorney General
Massachusetts Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200