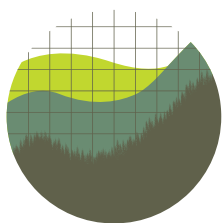


The Obligation to Serve in Massachusetts

Gas Service and the Energy Transition



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In Massachusetts, achieving the state’s decarbonization target in a cost-effective manner will likely require the refusal of new gas service in addition to the termination of existing gas service in certain buildings and its replacement with electric service. The scope of utilities’ legal obligation to serve their customers will be central to those efforts. Local distribution companies (LDCs) must generally continue service to existing customers in their territories unless the costs of providing service would result in a permanent financial loss (except in certain instances of nonpayment). However, the Massachusetts Department of Public Utilities (DPU) might have some discretion to allow termination of service following a hearing. In addition, LDCs may reject new customers in certain circumstances, and may take on new customers only when the incremental costs of expansion do not exceed incremental revenues. DPU has also already acknowledged that gas is a substitutable resource with respect to new customers, which could provide relevant precedent for a similar finding with respect to existing customers as DPU implements policies that shift the role of LDCs in providing energy to customers in Massachusetts. This policy brief describes and contextualizes the statutory provisions, previous DPU orders, and legal cases that relate to Massachusetts’s obligation to serve and that will inform how Massachusetts navigates its gas system transition.

1. Background

Several states have adopted decarbonization targets that require significant changes to their energy sectors, particularly in the proportion of energy provided by natural gas.¹ The Global Warming Solutions Act, as amended in 2021, requires the Massachusetts Department of Environmental Protection to set interim statewide greenhouse gas emissions targets for 2025, 2030, 2040, 2045, and 2050.² The statute also includes a requirement that the 2050 emissions level achieve at least net-zero emissions and be less than or equal to 85 percent below 1990 levels.³ In June of 2022, Massachusetts agencies adopted statewide interim targets of 33 percent below 1990 levels by 2025 and 50 percent below 1990 levels by 2030.⁴ The targets included “sector-based sublimits” for residential heating and cooling (29 percent below 1990 levels by 2025 and 49 percent below 1990 levels by 2030) and for natural gas distribution and service (82 percent below 1990 levels by 2025, and the same target for 2030).⁵

Meeting these targets will likely demand significant building electrification. In Massachusetts, a 2020 analysis of how to decarbonize the energy system found that “low electrification of both buildings and transport was . . . incompatible with the net-zero emissions target,”⁶ meaning that the decarbonization of energy use in buildings will generally require substituting the use of gas onsite in residential and commercial buildings with electric alternatives. Consistent with this conclusion, the Massachusetts DPU has stated that “[t]here is a fundamental evolution taking place in the natural gas local distribution industry in Massachusetts,” and that a major reason for that evolution is Massachusetts’s broader climate and clean energy goals.⁷ As recent reports analyzing pathways to meet Massachusetts’s net-zero target noted, “[s]upplies

¹ See, e.g., Justin Gundlach & Elizabeth B. Stein, *Harmonizing States’ Energy Utility Regulation Frameworks and Climate Laws: A Case Study of New York*, 41 ENERGY L.J. 211, 224 (2020) (“Though [New York’s Climate Leadership and Community Protection Act] does not expressly repeal or modify section 30 of the Public Service Law, it mandates greenhouse gas reductions by 2050 that are almost certainly unattainable while gas utilities continue to furnish residential customers with the amount of gas service they currently receive.”).

² Mass. Gen. Laws. ch.21N §§ 3(b) (setting out this framework), 1 (defining “department” to mean the Department of Environmental Protection).

³ *Id.* § 3.

⁴ BETHANY A. CARD, DETERMINATION OF STATEWIDE GREENHOUSE GAS EMISSIONS LIMITS AND SECTOR-SPECIFIC SUBLIMITS FOR 2025 AND 2030 1 (Jun. 30, 2022), <https://www.mass.gov/doc/2025-and-2030-ghg-emissions-limit-letter-of-determination/download>.

⁵ *Id.*

⁶ EVOLVED ENERGY RSCH., ENERGY PATHWAYS TO DEEP DECARBONIZATION: A TECHNICAL REPORT OF THE MASSACHUSETTS 2050 DECARBONIZATION ROADMAP STUDY 3 n.3 (2020), <https://www.mass.gov/doc/energy-pathways-for-deep-decarbonization-report/download>.

⁷ NSTAR Gas Co., D.P.U. 19-120, 2020 WL 6484303, at *32 (Mass. DPU Oct. 30, 2020).

of [decarbonized fuels such as renewable natural gas and hydrogen] are considered limited and costly,”⁸ whereas high levels of building electrification represented a more cost-effective way of reaching Massachusetts’s net-zero goals, and would avoid high and rising gas rates associated with a low building electrification pathway.⁹

Massachusetts has instituted a planning proceeding to manage the shifting LDC landscape.¹⁰ That proceeding seeks to identify mechanisms for Massachusetts to achieve net-zero emissions that also “safeguard[] ratepayer interests [and] ensur[e] safe, reliable, and cost-effective natural gas service,” which DPU has recognized may involve “recasting the role of LDCs in the Commonwealth.”¹¹ The proceeding was initiated in October of 2020 and will result in a broad policy plan for the future of LDCs in the state.¹² In this proceeding, the Attorney General’s office has recommended that regulatory approaches should be informed by both “internal and external environmental costs of gas usage, the social value of greenhouse reductions, and the social cost of methane usage.”¹³ That office has also recommended a number of potential regulatory shifts to achieve these goals, including structured comparisons of additional gas capacity contracts and gas supply to potential non-pipeline alternatives;¹⁴ new requirements that utilities justify proposed gas pipe replacements as the least-cost alternatives;¹⁵ the development of an “investment alternatives calculator” that can be applied consistently across gas infrastructure investment decisions, and that incorporates externalities like the social cost of carbon into investment decisionmaking;¹⁶ and the establishment of a uniform cost-benefit analysis model for extensions of service lines that reflects the state’s policies to reduce natural gas use.¹⁷

Electrifying buildings that currently receive gas service will require transitioning certain customers who currently depend on gas to all-electric units. As utilities end gas service and transition to providing solely electric service in certain locations, Massachusetts utilities and regulators will need to navigate the question of whether terminating gas service – even if electric service is offered as a substitute – would infringe on the obligation of gas distribution companies to serve their customers.¹⁸ Issues related to termination of gas service have already been raised in the planning proceeding in Massachusetts.¹⁹ Broadly, LDCs generally have some “obligation to serve” customers in their service territories. This duty originated in common law and was conceptualized as a component of the regulatory arrangement that allowed utilities to

⁸ THE CADMUS GRP., ARUP, VEIC, ENERGY FUTURES GRP. & EVOLVED ENERGY RSCH., BUILDINGS SECTOR REPORT: A TECHNICAL REPORT OF THE MASSACHUSETTS 2050 DECARBONIZATION ROADMAP STUDY 21 (2020), <https://www.mass.gov/doc/building-sector-technical-report/download>.

⁹ EVOLVED ENERGY RSCH., *supra* note 6, at 4.

¹⁰ Docket card available at Energy and Environmental Affairs, Docket No. 20-80, <https://eeonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber/20-80> (last visited Aug. 25, 2022).

¹¹ Vote and Order Opening Investigation, D.P.U. 20-80, at 1 (Mass. DPU Oct. 29, 2020), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/12820821>.

¹² *Id.* at 4.

¹³ REBECCA L. TEPPER ET AL., REGULATING UNCERTAINTY: THE OFFICE OF THE ATTORNEY GENERAL’S REGULATORY RECOMMENDATIONS TO GUIDE THE COMMONWEALTH’S GAS TRANSITION TO A NET-ZERO FUTURE 17 (2022), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/14922535>.

¹⁴ *Id.* at 28–29.

¹⁵ *Id.* at 30–31.

¹⁶ *Id.* at 33–35.

¹⁷ *Id.* at 31–32.

¹⁸ See NICHOLAS WALLACE, AMANDA ZERBE, MICHAEL WARAS & DEBORAH A. SIVAS, REMOVING LEGAL BARRIERS TO BUILDING ELECTRIFICATION 6 (2020), https://www-cdn.law.stanford.edu/wp-content/uploads/2020/10/2020-10-20_Natural-Gas-Memo_formatted.pdf (describing issues associated with termination of gas service and substitution of electric service).

¹⁹ See TEPPER ET AL., *supra* note 13, at 31 n.110 (describing potential issues associated with termination-of-service regulations in Massachusetts).

function as monopolies in exchange for providing utility service to all customers in their service territories who wanted it.²⁰ The precise contours of the obligation differ from state to state according to relevant state statutes and case law.²¹

This policy brief describes and contextualizes the statutory provisions, previous DPU orders, and legal cases that relate to Massachusetts's obligation to serve and that will inform how Massachusetts navigates its gas system transition.

2. General Statutory and Regulatory Aspects of the Obligation to Serve in Massachusetts

Massachusetts statutes generally contemplate continued provision of energy service to existing customers, except in certain cases, such as when continued service would impose permanent financial costs to the LDC or in cases involving nonpayment. Utilities do not bear the same obligation to serve new customers, however. DPU regulations provide further details concerning the obligation, including the type of service to be provided, associated fees, and the procedures for termination of service.

Statutes

With limited exceptions, residents or business operators have a right to “gas or electricity” and may petition DPU to order the LDC to resume gas or electric service.²² The law differs, however, when it comes to LDCs extending service to a would-be customer that requests it. For instance, in cases where an LDC supplies gas only to a particular town, DPU is not permitted to order the LDC to supply gas to a new customer if doing so would “result in permanent financial loss to the corporation.”²³

In general, LDCs can typically terminate service due to nonpayment, but there are also some exceptions.²⁴ The state restricts termination due to bill nonpayment in a variety of situations, many of which relate to financial hardship: in households in which an individual is experiencing a serious illness;²⁵ during winter months, when a customer's gas or electric service supports heat;²⁶ in households where an infant is domiciled;²⁷ or where the failure to pay relates to an appliance that the LDC itself provided.²⁸

²⁰ See WALLACE et al., *supra* note 18, 7 (2020), https://www-cdn.law.stanford.edu/wp-content/uploads/2020/10/2020-10-20_Natural-Gas-Memo_formatted.pdf (first citing *Montgomery Ward & Co. v. N. Pac. Terminal Co. of Or.*, 128 F. Supp. 475, 490–91 (D. Or. 1953)); and then citing *United Fuel Gas Co. v. R.R. Comm'n of Ky.*, 278 U.S. 300, 308–09 (1929)).

²¹ Compare Gundlach & Stein, *supra* note 1, at 224 (describing utility obligation to continue service to existing customers in New York), with WALLACE ET AL., *supra* note 18, at 7–8 (describing contours of obligation in California).

²² MASS. GEN. LAWS ch. 164, § 92 (“Right of User to Gas or Electricity”); see also *id.* § 92A (similar but for bulk gas supply). Notably, the language of this provision refers to “gas or electricity” service, which suggests that arguably, service of either kind may be sufficient. However, the parallel construction of section 92A (“Right of User to Bulk Gas”) – which exclusively references bulk gas service – suggests that section 92 may instead be intended to provide recourse for lapses in either gas or electric service (not to present either service as sufficient). This ambiguity is, of course, not present for the bulk gas users referenced in section 92A.

²³ *Id.* § 92. In addition, while in general the statute defining service obligations distinguishes between LDCs that distribute both gas and electricity based on which energy product they originally produced and distributed, see *id.* §§ 1, 1b, 60, this provision applies to both categories of LDC, as well as LDCs that provide only gas or only electricity.

²⁴ *Id.* § 58A (“The supply may be shut off from any premises until all arrears for gas or electricity furnished thereon to such consumer shall have been paid.”); see *id.* §§ 124A–125.

²⁵ *Id.* § 124A.

²⁶ *Id.* § 124F.

²⁷ *Id.* § 124H.

²⁸ *Id.* § 124B.

Regulations

DPU has adopted implementing regulations that articulate how LDCs' obligation to serve customers operates. In general, LDCs must file terms and conditions for their provision of service to retail customers; those terms and conditions are subject to DPU approval.²⁹ Currently, LDCs must offer service at a "default service" rate to any retail customer located within their service territory who is not currently receiving service from another entity entitled to sell natural gas (in Massachusetts's competitive retail market for gas service, retail agents can act as intermediaries between gas customers and LDCs).³⁰ Customers who do not receive separate "supplier service" receive service at the default service rate.³¹

DPU regulations also spell out procedures for termination of service. In situations where residents or business owners located in an LDC's service territory believe termination has been improper, they may challenge an LDC's refusal of service and seek relief from DPU.³² DPU can approve a service termination for any reason other than nonpayment only after a hearing.³³ However, DPU or a designee may deviate from its typical termination-of-service regulations for good cause, and the rules governing service termination should not be construed to "prevent termination for reasons of safety, health, cooperation with civil authorities" or on any other basis for which there is statutory authority for termination.³⁴ When service is initiated or terminated, either when the meter is read or involuntarily, the LDC may not charge a fee for initiating or terminating service.³⁵ After the LDC is given adequate notice and an opportunity to respond in a dispute relating to the termination of service, a relevant statute states that DPU "may" order the LDC to provide the service requested "upon such terms and conditions as are legal and reasonable."³⁶

In sum, DPU regulations generally require an LDC to offer service at a default rate to new customers within the LDC's service territory.³⁷ While DPU has discretion to approve termination of service – particularly for health or safety reasons – it must first hold a hearing and then approve termination.³⁸ The termination regulations grant DPU fairly wide latitude to approve termination of service that may be in the public interest or inflict high costs on the LDC.

²⁹ 220 MASS. CODE REGS. § 14.03(2)(c).

³⁰ *Id.* § 14.03(4)(a)–(c) ("Default Service shall be available to any Retail Customer who is not receiving Supplier Service in accordance with the Local Distribution Company's terms and conditions." *Id.* § 14.03(4)(b).); *see also id.* § 14.02 (defining "Default Service" as "service other than Supplier Service that is provided to a Retail Customer in accordance with [the ensuing regulations] and the provisions set forth in the Default Service tariff and terms and conditions as may be approved and on file with the Department").

³¹ *Id.* § 14.02 (defining "Supplier Service" as the sale of natural gas to a retail consumer by an entity other than that which provides default service, and defining a "Supplier" as an entity other than a default service provider or retail agents which sells natural gas).

³² MASS. GEN. LAWS ch. 164, § 92; *see also id.* § 92A (similar but for bulk gas supply).

³³ 220 MASS. CODE REGS. § 25.02(3) ("Service shall not be terminated for any reason other than failure to pay a bill, unless the Department certifies its approval after giving both parties an opportunity to be heard.").

³⁴ *Id.* §§ 25.01, 25.02(3).

³⁵ *Id.* § 14.03(4)(e).

³⁶ MASS. GEN. LAWS ch. 164, § 92.

³⁷ Service territories can change through sale of product, mergers, acquisitions, or divisions of the companies. In those situations, there must be continuity of service to customers, and DPU's review of such actions focus on financial costs to customers. *See Bos. Gas Co. v. DPU*, 368 Mass. 780, 799 (1975); *Bay State Gas Co. v. DPU*, 459 Mass. 807, 809–10 (2011).

³⁸ 220 MASS. CODE REGS. § 25.02.

3. Summary of Relevant Public Utility Commission Decisions

Gas utilities have an obligation to serve existing customers at the “lowest possible cost,” which should also be the lowest societal cost. DPU orders reflect a concern that LDCs should serve existing customers continuously and reliably at the “lowest possible cost”³⁹ and should not take on new supply contracts with wholesale suppliers or customers if doing so would compromise the quality or cost of service to existing customers.⁴⁰ However, the perspective from which DPU assesses whether an LDC is serving its customers at the “lowest cost” is not that of an individual customer or the LDC. Rather, rates should reflect the cost to society of the consumption of resources used to produce the utility service.

Gas is a readily substitutable service, and, accordingly, DPU has additional discretion to allow an LDC to decline to serve new customers. In a 2021 order considering a performance-based ratemaking proposal, DPU observed that gas is a “readily substitutable” service.⁴¹ It went on to explain that “[a] fundamental difference between electric and gas companies is that substitutes for gas are readily available (e.g., propane, oil, and electricity), while electric service is an essential service for which no ready substitute exists.”⁴² This finding is not new. DPU noted in the 1980s that “there exists an available alternative for virtually every end-use application of natural gas.”⁴³ DPU is well aware that the upfront costs of converting from gas to an alternative can be prohibitively high for many customers,⁴⁴ but it has also recognized that “customers are not tied to the gas distribution system in the long run.”⁴⁵

Thus there is supporting precedent for DPU to find that providing electric service can permissibly serve as a substitute for gas service. Particularly if the costs of providing electricity service as a substitute for gas service are considerably lower for all parties – and for society as a whole – such a decision would rest on a solid and long-standing foundation. Arguably, this would be so even if the price differential between service types resulted from, for instance, a policy instrument intended to internalize the costs of pollution by assigning a price to carbon dioxide and methane emissions. However, while DPU has previously noted the substitutability of gas in the context of performance-based ratemaking – and relied on that finding to justify a lesser obligation for LDCs to serve new customers⁴⁶ – DPU does not yet appear to have reconciled this finding with the statutory language outlining the obligation for existing customers. Courts in many states have found “abandonment” of service permissible when an adequate substitute is available, even if the quality or type of service differs somewhat from the original service that was provided.⁴⁷

³⁹ *Berkshire Gas Co.*, D.P.U. 93-22, 1995 WL 125599 (Mass. DPU Feb. 15, 1995).

⁴⁰ *See Berkshire Gas Co.*, 1995 WL 125599 (describing three-part test for evaluating the quantitative and qualitative net benefits of a contract that would incrementally expand an LDC’s supply of gas for resale); *see also* *Bay State Gas Co.*, D.P.U. 12-25, 2012 WL 5448763 (Mass. DPU Nov. 1, 2012).

⁴¹ *Bos. Gas Co.*, D.P.U. 20-120, 2021 WL 4552393, at *67 n.72 (Mass. DPU Sept. 30, 2021). (Note: DPU denied the Boston Gas Company’s proposal to establish a non-pipeline alternative performance incentive mechanism (PIM) in order to defer it to the proceeding in D.P.U. 20-80, examining the LDCs’ role in the Commonwealth’s achievement of its target 2050 climate goals. *Id.* at *68.)

⁴² *Id.* at *67 n.72.

⁴³ *New Eng. Energy Grp.*, D.P.U. 85-178, at 10 n.4 (Mass. DPU Aug. 7, 1987), <https://fileservice.eea.comacloud.net/FileService.Api/file/File-Room/9175938>.

⁴⁴ *Id.* (“[T]he cost of converting to end-use appliances or equipment which use substitutes for natural gas can be and often is sufficiently prohibitive to make a significant number of customers effectively captive to the LDC over the short term.”).

⁴⁵ *Bos. Gas Co.*, D.P.U. 88-67, at 282 (Mass. D.P.U. Sept. 30, 1988), <https://fileservice.eea.comacloud.net/FileService.Api/file/File-Room/9176107>.

⁴⁶ *See infra* note 50 and accompanying text.

⁴⁷ *See WALLACE et al.*, *supra* note 18, at 15–16 (describing body of “abandonment case law and outlining factors that generally make particular service an adequate substitute).

Notably, DPU has already relied on its finding that gas is substitutable to find that new customers are not subject to the same obligation as existing customers. In its 1995 *Berkshire Gas* order, DPU stated that due to the “ready availability of substitutes for gas service,” it had previously “allowed gas utilities discretion over new loads.”⁴⁸ A 2021 DPU order spelled this out further, finding that any obligation to prospective customers was conditional on two factors:

- (1) [T]he gas company’s having sufficient physical capacity to do so without reducing service to existing customers; and
- (2) the prospective customer’s paying the cost for installing suitable gas distribution facilities for service, so that existing customers do not subsidize the cost of the extension of service.⁴⁹

In the future, if the costs associated with maintaining gas infrastructure for a diminishing customer base come to exceed the costs associated with transitioning to non-emitting substitutes, a similar logic regarding LDC capacity and the allocation of customer costs could reasonably be applied to decisions about existing customers as well.

Utilities may not serve new customers if doing so would impose costs on existing customers. Before expanding its distribution network, an LDC must first ensure that “incremental costs to expand its distribution network do not exceed the incremental revenues from such expansion.”⁵⁰ Therefore, a utility “need not serve new customers in circumstances in which the addition of new customers would raise the cost of gas service for existing firm ratepayers.”⁵¹ In the ongoing gas planning proceeding in Massachusetts, the Attorney General’s office has recommended standardizing the process of making this cost determination and reviewing tariff provisions and current LDC practices to ascertain whether they may be “inconsistent with existing State policies by incentivizing new customers to join the gas system and allowing the LDCs to extend their systems through plant additions.”⁵²

In the context of the energy transition, these findings mean that DPU has grounds to refuse to serve additional customers who are not yet connected to the gas distribution network when additional costs would be passed on to existing customers, even if the additional customers are within an existing LDCs’ service territory. Instead, customers seeking to join the gas distribution network for the first time can be provided solely electric service even if they would prefer gas service, eliminating the need to electrify those buildings later on.

⁴⁸ *Berkshire Gas Co.*, D.P.U. 93-22, 1995 WL 125599 (Mass. DPU Feb. 15, 1995).

⁴⁹ *Bos. Gas Co.*, D.P.U. 20-120, 2021 WL 4552393, at *68 (Mass. DPU Sept. 30, 2021).

⁵⁰ *Bay State Gas Co.*, D.P.U. 12-25, 2012 WL 5448763 (Mass. DPU Nov. 1, 2012).

⁵¹ *Id.*

⁵² TEPPER ET AL., *supra* note 13, at 32.

4. Relevant Massachusetts Case Law

While the obligation to serve has primarily been discussed in the context of DPU orders—since the primary procedural mechanism to enforce the obligation is via a petition to DPU⁵³—several Massachusetts cases provide insight into other aspects of the obligation. In particular, *Weld v. Gas & Electric Light Commissioners*,⁵⁴ a 1908 Massachusetts Supreme Judicial Court case, outlined several key and relevant principles related to utilities’ obligations to consumers.

If service is not impaired, one entity may arrange with another entity to provide substitute service. The core question in *Weld* was whether one LDC could arrange with another to provide substitute service (although in this case, the two LDCs provided the same general kind of service – electricity).⁵⁵ Notably, in *Weld*, doing so would have had no impact on particular consumers or the public interest.⁵⁶ The court ultimately held that “details of administration, not inconsistent with the legislative policy of the commonwealth, may be left to the corporation, so long as adequate provision is made for the public.”⁵⁷ But the court withheld judgment on “whether such an arrangement could be availed of as a justification, if, unexpectedly, it should turn out that the public interest was injuriously affected.”⁵⁸ The court’s reasoning suggests that the legality of arranging substitute service by another utility is conditional on whether such substitute service adversely affects the public interest. *Weld* does not spell out, however, how a court should assess the effect of substitute service on the public interest.

Utilities generally must secure legislative permission before entirely abandoning performance of their public functions. In *Weld*, the court found that utilities are quasi-public corporations that must “exercise [the] franchise for the benefit of the public, with a reasonable regard for the rights of individuals who desire to be served, and without discrimination between them.”⁵⁹ Moreover, utilities may not “relieve [themselves] from this duty as long as [they retain their] charter.”⁶⁰

Weld and similar cases appear to establish that a utility cannot fully abandon a service territory without making alternate service arrangements, formally relinquishing its franchise to another entity, or obtaining legislative permission.⁶¹ In addition, due to its public nature, any such utility “cannot sell or mortgage its property so as to impair in any substantial degree its ability to continue to perform its public service, without legislative consent.”⁶² So, when either abandoning a territory without making alternative arrangements or selling or mortgaging property in a way that impairs service, utilities must seek legislative consent. Each of the requirements for proper exercise of a utility’s franchise outlined in *Weld* are somewhat flexible and open to interpretation – for instance, consideration of the public interest could include protection

⁵³ Massachusetts courts clarified in 1946 that a petition to DPU is the appropriate and exclusive procedural mechanism for resolving disputes over termination of service. *Wyatt v. Bos. Consol. Gas Co.*, 319 Mass. 251, 252 (1946). However, the courts have identified a consumer right to have service continued while a genuine dispute is pending before DPU; that right is enforceable via an injunction. *Cambridge Elec. Light Co. v. DPU*, 363 Mass. 474, 497 (1973). DPU has even occasionally heard petitions when termination of service has been threatened but not actually implemented. *Id.* at 495.

⁵⁴ 197 Mass. 556 (1908).

⁵⁵ *Id.* at 556–58.

⁵⁶ *Id.* at 559–60.

⁵⁷ *Id.* at 560.

⁵⁸ *Id.*

⁵⁹ *Id.* at 557.

⁶⁰ *Id.*

⁶¹ *Id.*; see also *Att’y Gen. ex rel. Corp. Comm’r v. Haverhill Gaslight Co.*, 215 Mass. 394, 400 (1913) (“A public service corporation by accepting the rights and privileges conferred by its act of incorporation and by entering into the enjoyment of its franchises undertakes to perform all the public duties required of it. Under the circumstances here disclosed it cannot surrender its franchises nor disable itself from the performance of its public functions without the consent of the Legislature.”)

⁶² *Haverhill Gaslight Co.*, 215 Mass. at 399.

against direct or indirect public health harms that result from gas. These harms could potentially encompass climate-change related harms that result from gas use, damage resulting from gas leaks or explosions, or individual health issues caused by gas combustion.⁶³ Similarly, a “reasonable regard” for individual consumers might be satisfied by an attractive subsidy to transition to electric service.

5. Key Takeaways for Massachusetts’s Electrification Efforts

In states like Massachusetts that have emissions targets which necessitate some degree of building electrification, any obligation that LDCs have to provide continued service of a particular type – or to extend gas service to new customers – could be a potential legal roadblock to achieving the necessary electrification of existing or new buildings. Relevant aspects of this issue in Massachusetts include the following:

- In Massachusetts, a state statute gives residents or business operators a right to “gas *or* electricity” (emphasis added), and these individuals can seek out service if it is not provided.⁶⁴ Interpretation of this statute will likely be relevant to arguments concerning the scope of the obligation.
- Regulations govern Massachusetts’ provision of default service and termination procedures.⁶⁵ (These regulations could presumably be modified, or more specific clauses could be added, as appropriate and necessary to accommodate any shifts needed to enable Massachusetts’ emission targets.)
- Previous decisions by DPU evaluate costs in relation to the obligation, limit LDCs’ obligations to existing customers, and even limit circumstances in which LDCs may serve new customers.⁶⁶
- Previous decisions have found that gas is substitutable. Although this finding was made in relation to new customers, DPU could extend this logic to existing customers as appropriate,⁶⁷ which could provide support for the legality of transitioning gas customers to electric service to facilitate the same end-uses.
- Case law provides precedent for arrangement of substitute service (albeit service of the same general type) and also sets out a relevant “public interest” standard.⁶⁸

⁶³ See, e.g., Eric D. Lebel et al., *Methane and NOx Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, 56 ENV’T. SCI. & TECH. 2529, 2529 (describing leakage from gas stoves and its climate impacts, which are comparable to the “annual carbon dioxide emissions of 500,000 cars”); Marty Ahrens & Ben Evarts, NATURAL GAS AND PROPANE FIRES, EXPLOSIONS AND LEAKS: ESTIMATES AND INCIDENT DESCRIPTIONS, NAT’L FIRE PROT. ASS’N 1-14 (Oct. 2018), <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Hazardous-materials/osNaturalGasPropaneFires.ashx> (listing fires and explosions associated with natural gas); Thomas Fuller, *California Utility Found Guilty of Violations in 2010 Gas Explosion that Killed 8*, N.Y. TIMES (Aug. 9, 2016), <https://www.nytimes.com/2016/08/10/us/california-utility-found-guilty-of-violations-in-2010-gas-explosion-that-killed-8.html>; Eric D. Lebel et al., *Composition, Emissions, and Air Quality Impacts of Hazardous Air Pollutants in Unburned Natural Gas from Residential Stoves in California*, 56 ENV’T. SCI. & TECH. 15,828, 15,828 (finding benzene emissions resulting from natural gas stove leakage that exceed state standards, at levels similar to exposure environmental tobacco smoke); Weiwei Lin et al., *Meta-analysis of the Effects of Indoor Nitrogen Dioxide and Gas Cooking on Asthma and Wheeze in Children*, 42 INT’L. J. EPIDEMIOLOGY 1724, 1724 (finding that gas in cooking increases risk of wheeze and asthma).

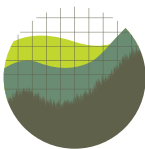
⁶⁴ MASS. GEN. LAWS ch. 164, § 92.

⁶⁵ See text accompanying n.38 *supra*.

⁶⁶ See text accompanying nn.39–49 *supra*.

⁶⁷ See text accompanying n.41 *supra*.

⁶⁸ See text accompanying nn.54–63 *supra*.



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