



# The Commonwealth of Massachusetts

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## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 15-184-A

March 4, 2020

Investigation by the Department of Public Utilities on its own Motion to Establish Electronic Filing Guidelines.

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FINAL ORDER

## I. INTRODUCTION

On December 30, 2015, the Department of Public Utilities (“Department”) issued an Order and Vote to Open Investigation on its own motion to establish electronic filing guidelines (“Opening Order”). The Department docketed the investigation as D.P.U. 15-184. The Opening Order aimed to develop guidelines that would establish a mechanism to allow us to more easily modify filing requirements in response to evolving technology. D.P.U. 15-184, at 1. In this Order, we summarize the comments received, address the adoption of electronic filing guidelines, including the viability of electronic-only docketing, and revise our standard ground rules to clarify requirements and reduce paper where practical.

## II. PROCEDURAL HISTORY

The Opening Order solicited comments from interested stakeholders on a variety of topics including: electronic docketing, i.e., making the electronic docket the official docket copy; the mechanism for electronic filing; the format of electronic filings; and electronic service to parties. D.P.U. 15-184, at 3-4. The Department received joint comments from distribution companies<sup>1</sup> (“Joint Comments”) and comments from the Attorney General and

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<sup>1</sup> The distribution companies responsible for the joint comments are: Bay State Gas Company d/b/a Columbia Gas Company; The Berkshire Gas Company; Blackstone Gas Company; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Boston Gas Company, Colonial Gas Company, Massachusetts Electric Company, and Nantucket Electric Company each d/b/a National Grid; NSTAR Gas Company and NSTAR Electric Company each d/b/a Eversource Energy; and Fitchburg Gas and Electric Light Company d/b/a Unitil (“Companies”).

the Cape Light Compact.<sup>2</sup> The Attorney General also filed reply comments. Following the submission of comments in this proceeding, the Department, in a separate proceeding, adopted final revised regulations pertaining to, in part, the Department's procedural regulations. Rulemaking Pursuant to Executive Order 562 to Reduce Unnecessary Regulatory Burden, D.P.U. 15-183-A (2016); 220 CMR 1.00.

### III. BACKGROUND

Currently, the Department's procedural regulations require paper filing.<sup>3</sup> See, e.g., 220 CMR 1.02(8), 1.05(1). The Department, however, typically requires parties to file and serve electronic documents in addition to paper documents. See, e.g., Fitchburg Gas and Electric Light Company, D.P.U. 19-SQ-10, Procedural Notice and Ground Rules (May 29, 2019). Further, in some proceedings, parties have asked for electronic service only, with no paper service. See, e.g., D.P.U. 19-SQ-10, Procedural Notice and Ground Rules (May 29, 2019).

The Department maintains a standard set of ground rules describing the process and requirements for filing documents, including paper and electronic filing and service, often

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<sup>2</sup> The Low-Income Weatherization and Fuel Assistance Program Network filed reply comments; however, they did not address electronic filing guidelines and instead addressed 220 CMR 25.00 (Billing and Termination Procedures), which is outside the scope of this proceeding.

<sup>3</sup> The Department's procedural regulations allow for electronic filing pursuant to electronic filing guidelines. 220 CMR 1.02(8). Given that the Department had not yet adopted such guidelines, the Department continued to require paper filings except in unique circumstances, e.g., where a discovery response was in a form that was impractical to provide on paper.

issued in docketed proceedings.<sup>4</sup> See, e.g., D.P.U. 19-SQ-10, Procedural Notice and Ground Rules (May 29, 2019). Hearing officers assigned to individual dockets have the discretion, for good cause, to amend the Department's standard ground rules. 220 CMR 1.01(4). The standard ground rules specify a requirement for electronic filing in addition to paper filing.

#### IV. SUMMARY OF COMMENTS

##### A. Electronic Docketing, Filing, and Service

The Companies and the Cape Light Compact support electronic docketing, i.e., maintaining electronic files as official copies in lieu of paper copies (Joint Comments at 2; Cape Light Compact Comments at 4-5). Should the Department adopt electronic docketing, the Companies request that the Department's receipt of the electronic version constitute the filing date for deadline purposes (Joint Comments at 2).<sup>5</sup> The Companies also note that there may be circumstances where a paper copy may be necessary, and the Department should allow for paper filing in those limited circumstances (Joint Comments at 2). The Attorney

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<sup>4</sup> The Department does not issue ground rules in every docketed proceeding; the decision to do so depends on the complexity of the case and party requests for specific process.

<sup>5</sup> In D.P.U. 15-183-A at 7-8, the Department revised our regulations to state that for electronic filings, we consider a document filed on receipt of the electronic copy by the Department. 220 CMR 1.02(2)(a). Nonetheless, the revised regulations also state that electronic filings will be permitted pursuant to the Electronic Filing Guidelines, which until this Order were not established.

General is open to electronic docketing provided the Department adopts a reliable system for maintaining electronic documents as originals (Attorney General Comments at 2).

The Companies and the Cape Light Compact support the use of electronic filing as the preferred means of filing for the Department (Joint Comments at 2; Cape Light Compact Comments at 3). All commenters said such a requirement would not be burdensome or unattainable (Joint Comments at 2; Attorney General Comments at 2; Cape Light Compact Comments at 4).

The Companies and the Attorney General support the current system of electronic filing, either by email or CD-ROM (Joint Comments at 3; Attorney General Comments at 3). The Companies and the Attorney General also suggest the Department accept filing via other portable data storage devices, such as USB drives, in addition to CD-ROMs and email attachments (Joint Comments at 3; Attorney General Comments at 3). The Attorney General requests that the Department's email address to which parties send files generate a received receipt to the filing party in order to confirm that the Department received the files (Attorney General Comments at 3). The Cape Light Compact suggests that the Department update its email to receive larger attachments, as the current email system does not allow attachments greater than ten gigabytes (Cape Light Compact Comments at 5). Both the Companies and the Cape Light Compact suggest the Department consider using a file transfer or file share website or service that would allow parties to directly upload filings (Joint Comments at 3; Cape Light Compact Comments at 5). The Companies note that direct uploads eliminate the

need for physical storage devices, such as CD-ROMs or USB drives, and that other regulatory bodies currently have such capability (Joint Comments at 3).

The Companies, the Attorney General, and the Cape Light Compact support the use of electronic service in lieu of paper service (Joint Comments at 5; Attorney General Comments at 5; Attorney General Reply Comments at 3-4; Cape Light Compact Comments at 6). The Attorney General requests that the Department require parties to provide paper copies to other parties on request (Attorney General Comments at 6).

B. Document Format

The Companies, the Attorney General, and the Cape Light Compact all support the continued use of portable document format (“PDF”) files (Joint Comments at 2; Attorney General Comments at 3; Cape Light Compact Comments at 6). The Attorney General requests that all PDF files be searchable and backward compatible with the prior two versions of Adobe Acrobat, accommodating parties that do not have the most recent version (Attorney General Comments at 4). The Companies state that they submit searchable PDF files when available, but they occasionally must submit scanned documents that are not searchable (Joint Comments at 3). The Companies and the Cape Light Compact both commented that requiring interactive tables of contents or bookmarks may be burdensome (Joint Comments at 4; Cape Light Compact Comments at 6).

The Companies, the Attorney General, and the Cape Light Compact all support the requirement that all spreadsheets be submitted in working Microsoft Excel (“Excel”) files with cell references and formulae intact (Joint Comments at 4; Attorney General Comments

at 4; Cape Light Compact Comments at 6). The Attorney General also requests that Excel files be provided to all parties to a proceeding and that such files be backward compatible with the last two versions of Excel (Attorney General Comments at 4-5).

The Companies are opposed to requiring that each information request response be submitted in a separate electronic file (Joint Comments at 4). The Companies argue that it is time consuming to name each discovery response file separately, and it is difficult to manage the individual files (Joint Comments at 4-5). The Companies offer to provide individual PDF files on a case-by-case basis and when requested by the hearing officer and may provide individual PDF files in future base distribution rate cases as a courtesy (Joint Comments at 5). The Companies request, however, that the Department treat the combined PDF file as the official filing for deadline purposes, allowing the Companies extra time to produce the individual PDFs (Joint Comments at 5). The Cape Light Compact recommends that the decision to require individual files be left to the hearing officer and that a single combined PDF file ensures the filing will be complete and eliminates confusion and the possibility of misplaced files (Cape Light Compact Comments at 7).

The Attorney General supports a requirement for individual PDF files for each information request response (Attorney General Comments at 5; Attorney General Reply Comments at 2). The Attorney General states that individual PDF files facilitate and expedite the discovery review process, as lengthy combined documents are time consuming to navigate, whereas an individual PDF allows immediate access to the relevant information request response (Attorney General Comments at 5). The Attorney General argues that the

Companies' perceived burden in creating separate PDF files is outweighed by the Department and reviewing parties' burdens in reviewing large, combined PDF files (Attorney General Reply Comments at 3). In particular, the Attorney General notes that locating particular information request responses is difficult when a single PDF file does not contain a complete set of responses, as is common when information request responses from a single set are filed at different times (Attorney General Comments at 3).

C. Other Comments

The Companies recommend adding a requirement to the standard ground rules requiring that the responsible party, in many proceedings the company, file a final exhibit list following an evidentiary hearing, which would update the draft exhibit list typically provided prior to evidentiary hearings (Joint Comments at 6). The Companies also recommend removing the requirement that parties provide an entire set of exhibits at the close of evidentiary hearings (Joint Comments at 6). The Cape Light Compact recommends the Department convene a working group to assess and improve the Department's electronic filing system and practices, to address technological advances as they become available, and to review best practices regarding electronic filing and docketing (Cape Light Compact Comments at 7). The Companies recommend that the Department address the technological advances as issues or questions arise, rather than establishing a working group or other committee to continually review such technology issues (Joint Comments at 7).



## V. ANALYSIS AND FINDINGS

### A. Introduction

Outlined here are electronic filing guidelines that the Department is formally adopting. As discussed in greater detail below, the Department does not currently have the resources to institute electronic docketing, i.e., paperless docketing. The Department, nevertheless, addresses the comments, suggestions, and requests made during this proceeding. Further, the Department clarifies electronic filing and service requirements and revises our standard ground rules aimed at reducing the use of paper to the extent practicable while still relying on paper docketing for the official record.<sup>6</sup> The revised standard ground rules are provided with this Order as Appendix I; a redline copy of the standard ground rules is provided as Appendix II.

### B. Electronic Filing, Docketing, and Service

While the Department has the infrastructure required for electronic filing and electronic service, the Department does not have the infrastructure required for electronic-only filing, i.e., electronic docketing. As the Attorney General noted, were the Department to maintain only electronic files with no paper back up, we would require a reliable and secure storage system. The Department does not currently have either the

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<sup>6</sup> Recently the Department informally updated our standard ground rules (Email correspondence from Hearing Officer S. Smegal to, inter alia, Companies, the Attorney General, Department of Energy Resources (January 3, 2020)). As outlined below, the revised standard ground rules provided here formalize those earlier changes.

necessary technology or the ability to acquire such technology that would provide a sufficiently reliable and secure storage system for maintaining electronic-only dockets, especially given the Commonwealth's retention requirements.<sup>7</sup> Thus, the Department will continue to require paper filing for official docketing purposes. Nonetheless, the Department will consider electronic filing, specifically receipt at [dpu.efiling@mass.gov](mailto:dpu.efiling@mass.gov), to constitute the filing date for deadline purposes consistent with 220 CMR 1.02(2).<sup>8</sup> Given that all commenters support both electronic filing and service and no commenter raised any impediments to such practices, the Department will continue to require electronic filing.

Electronic service to parties has been a common practice at the Department in recent years, and parties often request electronic service only. In light of that, electronic-only service will be the default method of service, allowing for parties to request paper service as they see fit. As is the current practice, parties to a proceeding may negotiate the manner of service with the other parties and we encourage all parties to consider electronic-only service where practical. The Department posts the service preferences of parties, if specified, on our online docket room service lists, and in the proceeding-specific ground rules, and the Department encourages all parties to adhere to those preferences in the interest of saving paper.

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<sup>7</sup> The Department is required to retain, on a permanent basis, docketed case files brought pursuant to G.L. c. 159 through 164. Massachusetts Statewide Retention Schedule No. 06-18, Section I08-02.

<sup>8</sup> To the extent parties send electronic copies via CD-ROM or USB drive, receipt of the device by the Department will constitute the filing date.

Since the opening of this docket and filing of comments, the Department has begun to allow, and in some cases prefer, the use of USB drives for electronic filing purposes, in addition to CD-ROMs. The Department considers the use of either storage device acceptable and we have modified the standard ground rules to allow for either USB drives or CD-ROMs (Appendix I, Section B.4.). Further, the Department continues to accept electronic filing via email.

The Department appreciates the Cape Light Compact's concerns regarding the maximum file size the Department's email system is able to receive, thus limiting the size of files parties may attach to a Department-bound email. Since opening this docket, the Department has upgraded our email system such that we are now able to receive emails with up to 20 MB of attachments. At this time, the Department is not capable of altering our email software or servers further to expand our ability to receive files greater than 20 MB in a single email. The Department is also unable to post documents that exceed 20 MB on our website. Thus, we have modified our standard ground rules to note these limitations (Appendix I, Section B.4.). We recognize that parties may need to provide documents that exceed 20 MB and, in these instances, they may submit large documents via CD-ROM or USB drive. While the Department will not be able to post documents larger than 20 MB on our website, we will make them available upon request.

We further decline to adopt the use of a file transfer service or website as recommended by the Companies and the Cape Light Compact. Specifically, we do not have the technological means to provide a reliable and secure file transfer service, and the present

system of allowing electronic filing via email or electronic storage device is generally sufficient.

With respect to the Companies' concern that electronic filing and service may not be practical or possible in all cases, the Department acknowledges that exceptions to the general rule requiring electronic filing are acceptable, and companies or other parties should raise such concerns in docketed matters as they arise. The Attorney General requests that in cases where parties have elected to receive electronic-only service, parties be required to provide paper copies on request. The Department agrees with the Attorney General's request and as is the Department's current practice, parties should provide paper copies to other parties on request.

With respect to the Attorney General's suggestion to have automatically generated email receipts for emailed files, we decline to adopt such a practice at this time. It is unclear whether the Department's software is capable of an automatically generated email receipt.<sup>9</sup> Further, an automatically generated receipt may not be useful if, for example, an attached document was corrupted or mis-labeled, since it would only indicate that an email with attachments was received.

### C. Document Format

The Department will continue to require parties to file all documents as PDF files and encourages all parties to file searchable PDF files whenever possible. The Department

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<sup>9</sup> Some programs allow the sender to request a delivery or read receipt, and the use of such is acceptable to the Department.

agrees with the Attorney General that parties should ensure that all PDF files are backwards compatible such that they work in the two previous versions of Adobe Acrobat Reader, as not all parties will have the most current versions of any given software. We have modified the standard ground rules to specify that PDF files be backwards compatible such that they may be opened in the previous two versions of the relevant software (Appendix I, Section B.4.).

The Companies and the Cape Light Compact oppose a requirement for interactive tables of contents or bookmarks in PDF files, and we agree that not all parties will have the ability to fulfill such a requirement.<sup>10</sup> Thus, we will not impose such a requirement at this time.

With respect to individual files for information request responses, we agree with the Attorney General. The Department's experience with navigating large dockets with many information requests suggests that individual information request response files are invaluable to discovery review in many instances, particularly in cases where parties do not submit entire sets of information request in a single document at the same time. The Department draws the same conclusion with respect to record request responses. We have modified the standard ground rules to include the requirement that individual PDF files be submitted for each information request response and each record request response (Appendix I, Section E.1., G.). Parties may request different ground rules in individual cases as they see

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<sup>10</sup> In the Opening Order at 4, the Department requested comments on the ability to incorporate interactive tables of contents or bookmarks in PDF files.

fit, but the hearing officer of each proceeding has the discretion to maintain the individual PDF file requirement. 220 CMR 1.01(4).

Since the Department opened this docket and received comments, it has become the Department's practice to require all workpapers be filed in a working Excel spreadsheet with all cell references and formulae intact in response to information requests. See, e.g., D.P.U. 19-SQ-01, Department's First Set of Information Requests (April 9, 2019). The Department has typically required or requested other types of filings, such as initial filings and attendant exhibits, be filed in the same manner and will continue to do so. Thus, we have modified the standard ground rules to state that all spreadsheets and workpapers, i.e., documents originally created as spreadsheets, be provided as working Excel files with all cell references and formulae intact (Appendix I, Section B.4.). We also agree with the Attorney General's request that parties file Excel files that are backwards compatible with the two previous versions of Excel, as not all parties will have the most recent software version. We have modified the standard ground rules to specify that Excel files be backwards compatible such that they may be opened in the previous two versions of the relevant software (Appendix I, Section B.4.).

D. Other Comments

The Companies make two suggestions regarding the Department's standard ground rules: (1) that we include a requirement that the relevant party file a final exhibit list following evidentiary hearings and (2) that we eliminate the requirement that parties submit a full set of exhibits at the close of evidentiary hearings. We agree that a final exhibit list may

prove useful to outside entities and hearing officers may allow or require such a filing in individual proceedings at their discretion, but we decline to adopt such a requirement in our standard ground rules. Since we opened this proceeding, the Department has removed the requirement for a full set of exhibits from the standard ground rules. Hearing officers may still require a full set of exhibits at their discretion, but it is no longer a standard Department practice.

Finally, the Cape Light Compact recommends that the Department convene a working group to address various issues, including evolving technology and evaluation of industry best practices. We decline to adopt this recommendation. We see no immediate need for a working group and intend to address issues associated with electronic filings as they arise, with the input of stakeholders. Nonetheless, the Department will continue to explore ways to reduce or remove technological barriers to electronic-only filing as technology evolves.

#### VI. ADDITIONAL REVISIONS TO STANDARD GROUND RULES

The Department makes the following additional revisions to our standard ground rules to clarify electronic document format requirements and to reduce the use and expense of paper filing.<sup>11</sup> We have modified the standard ground rules to state that all documents be submitted as searchable PDF files, with exceptions allowed for scanned documents that parties are unable to convert or at the hearing officer's discretion (Appendix I, Section B.4).

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<sup>11</sup> All modifications made herein do not alter the requirements, as described in the standard ground rules, regarding the filing of documents with the hearing officer for which a party has requested protective treatment or has deemed to constitute critical energy infrastructure information ("CEII").

In addition, the standard ground rules had required parties to file one docket paper copy of all files and a certain number of copies to be filed directly with the hearing officer. Hearing officers determine the required number of paper copies at their discretion. Prior to adopting the practice of electronic filing, we typically required such hearing officer copies for review. Given the ease and availability of electronic filing, in many cases, hearing officer copies are not useful or necessary, as staff reviews documents electronically. We therefore have modified the standard ground rules such that for certain documents, a docket paper copy is filed with the Department secretary only, with no additional hearing officer copies (Appendix I, Section B.2.). Specifically, one paper copy should be filed with the hearing officer for (1) prefiled testimony and (2) pleadings, motions, or memoranda. For all other documents, no additional paper copy to the hearing officer is needed. Hearing officers may still at their discretion require additional copies of any documents, either stating such in the proceeding-specific ground rules or requesting individual paper copies as the need arises.

In addition, the Department formalizes the following changes recently made to the standard ground rules, in which we: (1) removed the requirement that paper documents be accurately punched to fit a standard three-hole binder (Appendix II, Section B.3.); (2) included uniform naming convention format for information and record requests as well as supplemental and revised responses to information and record requests (Appendix I, Section B.3.); (3) included requirements that electronic files, whether email, CD-ROM, or USB, follow the appropriate naming conventions (Appendix I, Section B.4.); (4) for motions, added a requirement that parties first consult with other parties to determine whether there



are objections and removed requirement that copies of any cited cases, decisions, or other supporting authorities be in a separate appendix (Appendix I, Section D; Appendix II, Section D.); (5) expanded the description of the process to be followed when a party seeks protection of critical energy infrastructure information (Appendix I, Section E.2.c); (6) removed duplicative information under Hearing Exhibits (Appendix II, Section F.1.); (7) for late-filed exhibits, clarified that a motion to reopen the record must be provided and granted prior to any exhibits being submitted and added that any opposition should be submitted within five business days (Appendix I, Section F.2.); and (8) included instructions for making requests for accommodations or interpretation services for evidentiary hearings (Appendix I, Section H).<sup>12</sup>

Finally, we have included the revised standard ground rules on our website at <https://www.mass.gov/how-to/file-comments-or-pleadings-with-the-dpu>. We anticipate phasing out the issuance of ground rules in every proceeding and will instead, where appropriate, direct the parties to the standard ground rules on our website.

## VII. CONCLUSION

The Department appreciates the opportunity provided by this proceeding to establish, clarify, or amend our filing, docketing, and service requirements. The Department has made the revisions discussed above to our standard ground rules and they will be implemented on a going-forward basis by individual hearing officers. Finally, we note that all revisions to the

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<sup>12</sup> There were other non-substantive changes made for consistency with Department practice (see generally Appendix II).

