



THE COMMONWEALTH OF MASSACHUSETTS  
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August 10, 2020

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



**Re: Investigation into Initiatives to Promote and Protect Consumer Interests in the  
Retail Electric Competitive Supply Market, D.P.U. 19-07**

**2019 Arrearage Management Plans, D.P.U. 19-AMP**

Dear Secretary Marini:

Enclosed for filing in the above-captioned matter please find the Office of the Attorney General's Notice of Retention of Experts and Consultants. Please feel free to contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

*/s/ Elizabeth A. Anderson*

Elizabeth A. Anderson  
Assistant Attorney General

Encl.

cc: Katie Zilgme, Hearing Officer  
Service List, D.P.U. 19-07/19-AMP

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

**Investigation into Initiatives to Promote  
and Protect Consumer Interests in the  
Retail Electric Competitive Supply Market**

**D.P.U. 19-07/19-07 AMP**

**2019 Arrearage Management Plans**

**THE OFFICE OF THE ATTORNEY GENERAL’S NOTICE OF  
RETENTION OF EXPERTS AND CONSULTANTS**

**I. INTRODUCTION**

Pursuant to G.L. c. 12, § 11E(b) the Office of the Attorney General of the Commonwealth ( “Attorney General’s Office”) has determined that it is necessary and appropriate to retain one or more experts or consultants to assist in this proceeding before the Department of Public Utilities (the “Department”). Therefore, the AGO hereby gives notice to the Department of its intent to retain experts and consultants in the above-captioned proceeding and to allow parties to this proceeding the opportunity to comment on its decision to do so.

**II. BACKGROUND**

On January 18, 2019, the Department of Public Utilities (the “Department”) opened an *Investigation into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market*, to (1) increase customer awareness of the electric competitive supply market and the value these markets can provide, thus allowing customers to make well-informed decisions; (2) improve the Department’s ability to oversee and investigate competitive suppliers’ marketing practices; and (3) improve the operational efficiency of the competitive market to optimize the value that the market can provide to customers. D.P.U. 19-07, at 4–5.

On June 10, 2020, the Department issued an order to expand the scope of the investigation to include the effect of the electric and gas competitive supply markets on low-income ratepayer assistance programs. D.P.U. 19-07/19-AMP, at 2. In the order, the Department stated that its intent was “to explore the extent of the impact of the electric and gas competitive supply markets on AMP success rates, low-income customers as a whole, and the general subsidy costs for the low-income assistance programs paid for by all ratepayers.” *Id.*, at 4. Accordingly, on June 15, 2020, the Department issued discovery to the electric and gas distribution companies to elicit “information necessary to determine the extent of the competitive supply market’s impact on low-income ratepayers.” *Id.*, at 5.

Given the AGO’s statutory role as the ratepayer advocate, it will fully participate in this investigation to represent ratepayer interests. *See* G.L. c. 12, § 11E.

### **III. STANDARD OF REVIEW**

G.L. c. 12, § 11E(a) grants the Attorney General’s Office broad authority to intervene, appear and participate in administrative, regulatory, or judicial proceedings on behalf of any group of consumers in connection with any matter involving rates, charges, prices and tariffs of an electric company, gas company, generator, transmission company, telephone company and telegraph company doing business in the Commonwealth and subject to the jurisdiction of the Department of Public Utilities or the Department of Telecommunications and Cable.

The Attorney General’s Office intervenes as a matter of right in Department proceedings.

G.L. c. 12, §§ 10, 11E.

The Green Communities Act, St. 2008 c. 169, expanded the Attorney General’s Office’s authority to participate in state and federal administrative and judicial proceedings on behalf of utility customers. As part of the Green Communities Act, the General Court also provided resources to enhance the Attorney General’s Office’s authority to participate in Department

proceedings by enacting a provision for it to retain experts and consultants. G.L. c. 12, § 11E(b) provides, in pertinent part, that “the Attorney General may retain an expert or a consultant to assist in proceedings before the Department of Public Utilities or the Department of Telecommunications and Cable” and “[a]ll reasonable and proper expenses, as defined in this section, shall be borne by the affected party in the proceeding and shall be paid by such party at such times and in such manner as the Attorney General directs.” The Department has clarified that, where a Department policy decision affects multiple companies, the Attorney General’s Office’s expenses are allocated on a pro rata basis. *See Investigation by the Department of Public Utilities*, D.P.U. 10-62-A, at 8–9.

The Attorney General’s Office’s determination “that the services of an expert or a consultant are necessary in a proceeding” is an administrative decision by the Attorney General’s Office.<sup>1</sup> *See* G.L. c. 12, § 11E(b). If the Attorney General’s Office believes that experts or consultants are necessary to adequately represent the interests of customers in a proceeding, the Green Communities Act provides that it may retain such experts or consultants at the affected utility’s expense. Upon the Attorney General’s Office’s determination that experts or consultants are necessary, § 11E(b) provides that the Attorney General’s Office “shall file notice in the proceeding that includes the type of expert or consultant sought and the anticipated cost.” Upon the filing of such notice, the Department:

shall allow full parties to the proceeding the opportunity to comment regarding the necessity or desirability of such services. Absent a showing that the costs proposed are unnecessary for the Attorney General to represent ratepayer interests in the proceeding or that such costs are not reasonable or proper, the use of the expert or consultant shall be approved.

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<sup>1</sup> The expert charge-back provision is governed by Chapter 12 of the General Laws, which enumerates some of the Attorney General’s Office’s statutory powers, as opposed to Chapter 25, which governs the powers of the Department.

G.L. c. 12, § 11E(b).

The notice requirements do not create any affirmative obligation other than to inform the Department of the Attorney General's Office's determination that an expert or consultant is necessary, set forth the anticipated costs, the type of consultant, and allow for comment by full parties. *Id.* Absent a showing by a full party that the use of an expert or consultant is unnecessary for the Attorney General's Office to represent ratepayer interests,<sup>2</sup> "the use of an expert or consultant *shall* be approved." *Id.* (emphasis added).

#### **IV. USE OF EXPERTS AND CONSULTANTS IN D.P.U. 19-07/19-AMP**

The Department has recognized the Attorney General's Office's prerogative in obtaining experts and consultants pursuant to G.L. c. 12, § 11E(b).<sup>3</sup> Unless a showing is made that the costs proposed are unnecessary for the Attorney General's Office to represent ratepayer interests in the proceeding or that such costs are not reasonable or proper, the use of the expert or consultant shall be approved. G.L. c. 12, § 11E(b).

To carry out its responsibilities in this docket, the Attorney General's Office requires consultants with the expertise to review and analyze the material filed in response to the Department's discovery requests and any future discovery request responses made in connection with the Department's expanded inquiry, D.P.U. 19-07/19-AMP. Areas of expert and consultant expertise may also include, but are not limited to, assistance with the formulation of additional

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<sup>2</sup> The Attorney General's Office's interpretation of its own authority should be given the same significant deference of any administrative agency in carrying out a power granted by the legislature. *Dowling v. Registrar of Motor Vehicles*, 425 Mass. 523, 525 (1997), quoting *Massachusetts Medical Society v. Commissioner of Insurance*, 402 Mass. 44, 62 (1988).

<sup>3</sup> See *Investigation by the Department of Public Utilities on its Own Motion into the Preparation and Response of the Massachusetts Electric Distribution Companies to the December 12, 2008 Winter Storm*, Hearing Officer Ruling at 1 (March 3, 2009). See also *Western Massachusetts Electric Company*, Order on Attorney General Notice to Retain Experts and Consultants, D.P.U. 09-05 (2008).

discovery requests, as well as a deep knowledge of the statutes and regulations of other states with respect to competitive supply markets and low-income assistance programs. A consultant with this type of expertise is necessary to develop, and meaningfully support, recommendations by the Attorney General's Office for the Department's consideration in its evaluation of the impact of the electric and gas competitive supply markets on low-income ratepayer assistance programs. Accordingly, to execute its statutory responsibility as an advocate for ratepayers, the Attorney General's Office requires the authorization to retain experts and consultants in this matter, pursuant to its right to do so under G.L. c. 12, § 11E(b).

Although the Attorney General's Office cannot predict with precision the total cost for its experts and consultants, it anticipates that the expenses for these services in connection with this docket will comply with the statutory threshold of \$150,000 set forth in G.L. c. 12, § 11E(b). If the Attorney General's Office later anticipates that its expert and consulting expenditures will exceed the \$150,000 threshold, the Attorney General's Office will make the necessary showing to the Department of the exigent circumstances that necessitates such additional spending pursuant to G.L. c. 12, § 11E(b).

In implementing the provisions of G.L. c. 12, § 11E(b), the Attorney General's Office will take several steps to ensure that expert services are procured and managed in the most cost effective and efficient manner. Once the Department approves the Attorney General's Office's use of experts in this proceeding, the Attorney General's Office will execute contracts with a not-to-exceed, maximum obligation to ensure that costs for these services are controlled. In addition, all contractors performing work for the Attorney General's Office in this proceeding will be subject to all the Commonwealth's standard contracts terms and conditions (albeit payable pursuant to the terms of G.L. c. 12, § 11E(b)). The Attorney General's Office will review all

invoices prior to submitting them for payment to ensure accuracy and compliance with the terms of the contract. Through these processes, the Attorney General's Office will make every effort to ensure that its proposed use of funds under G.L. c. 12, § 11E, is necessary to participate in the proceeding to protect customers.

The Attorney General's Office will bill each gas and electric local distribution company based on each company's "pro rata share of [their] operating revenues as shown on each company's Annual Return currently on file with the Department." *Investigation by the Department of Public Utilities*, D.P.U. 10-62-A, at 8-9.

Finally, the Attorney General's Office notes that its ability to pay experts and consultants for services rendered in assisting in the representation of the interests of ratepayers in this proceeding rests on Department approval. The Attorney General's Office, therefore, respectfully requests that the comment period on its petition be meaningful but brief, and that the Department issue an order on its Notice of Retention as soon as practicable.

## **V. CONCLUSION**

The Attorney General's Office has determined that it is necessary to retain experts and consultants in this docket in order to fully and adequately represent ratepayer interests. The participation of the Attorney General through the use of experts and consultants will enhance the record in this proceeding and assist the Department in its evaluation of the effect of the gas and electric competitive supply markets on low-income ratepayer assistance programs. Accordingly, the Attorney General's Office is entitled to expend up to the \$150,000 for the engagement of experts and consultants pursuant to G.L. c. 12, § 11E(b).

WHEREFORE, for the foregoing reasons, the Attorney General's Office requests the Department's prompt approvals pursuant to G.L. c. 12, § 11E(b).

Respectfully submitted,

ATTORNEY GENERAL  
MAURA HEALEY

By: /s/ Elizabeth A. Anderson  
Elizabeth A. Anderson  
Assistant Attorney General  
Attorney General Maura Healey  
Office of Ratepayer Advocacy  
One Ashburton Place  
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Dated: August 10, 2020



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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document 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 this 10<sup>th</sup> day of August, 2020.

*/s/ Elizabeth A. Anderson* \_\_\_\_\_

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