



THE COMMONWEALTH OF MASSACHUSETTS  
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November 6, 2020

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

**Re: Investigation by The Department of Public Utilities on its Own Motion into the Role of Gas Local Distribution Companies as the Commonwealth Achieves its Target 2050 Climate Goals, D.P.U. 20-80**

Dear Secretary Marini:

Enclosed for filing in the above-captioned matter please find the Office of the Attorney General's Motion for Clarification and Certificate of Service. Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

/s/ Jo Ann Bodemer  
Jo Ann Bodemer  
Assistant Attorney General

Encl.

cc: Sarah Smegal, Hearing Officer  
Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

**Investigation by The Department of Public Utilities  
on its Own Motion into the Role of Gas Local  
Distribution Companies as the Commonwealth  
Achieves its Target 2050 Climate Goals**

**D.P.U. 20-80**

**THE OFFICE OF THE ATTORNEY GENERAL'S  
MOTION FOR CLARIFICATION**

**I. INTRODUCTION**

Pursuant to 220 C.M.R. §§ 1.11(11), the Office of the Attorney General (“AGO”) hereby requests that the Department of Public Utilities (“Department”) clarify its October 29, 2020, *Vote and Order Opening Investigation* in D.P.U. 20-80 (“Order”). The AGO respectfully requests that the Department clarify the Order with respect to the directives for stakeholder participation in both the development of the Request for Proposal (“RFP”) for an independent consultant(s), as well as during the Massachusetts gas local distribution companies’ (“LDCs”) development of the report and proposals directed by the Department. As more fully discussed below, the Order is unclear as to the stakeholder involvement the Department contemplates. Similarly, it is unclear whether the LDCs selection of the independent consultant(s) will require Department approval.

**II. THE DEPARTMENT’S VOTE AND ORDER**

On October 29, 2020, by Vote and Order, the Department opened an investigation into the role of LDCs “in helping the Commonwealth achieve its target 2050 climate goals.” Order, at 1. In its Order, the Department states that “[t]hrough this proceeding the Department will solicit utility and stakeholder input and develop a regulatory and policy roadmap to guide the

evolution of the gas distribution industry, while providing ratepayer protection and helping the Commonwealth achieve its goal of net-zero GHG emissions energy.” Order, at 4.

Toward this end, the Department directs the LDCs to retain an “independent consultant to conduct a study and prepare a report.” Specifically, the Department charged the independent consultant to (1) review the pathways identified in the Executive Office of Energy and Environmental Affairs’ (“EEA”) 2050 Decarbonization Roadmap and the 2030 Clean Energy and Climate Plan (collectively, the “Roadmap”), (2) identify potential additional strategies for decarbonization that were not already identified in the Roadmap; and (3) for each LDC, analyze the feasibility of all pathways (“Consultant Report”). Order, at 4-5. While the Department clearly states that the utilities must retain the “independent” consultant(s), the Department is silent on any Department oversight or approvals designed to ensure the independence of the utilities’ selected consultant(s).

The Order requires each LDC to submit a proposal to the Department that is supported by the Report and includes the LDC’s recommendation and plan for helping the Commonwealth achieve its 2050 goals (“Proposals”). Order, at 6. The utilities must file their Proposals by March 1, 2022.

The Department provides for stakeholder involvement in four processes (1) the RFP; (2) the development of the Consultant Report; (3) the development of the utilities’ Proposals; and (4) the Department’s review of the Proposals. With respect to the RFP, the Department requires the LDCs to develop the scope of work to be included in the RFP “after consultation with the Attorney General, DOER, and other interested stakeholders.” Order, at 6. Regarding the Report and the utilities’ Proposals, the Department directs the utilities to “engage in a stakeholder process to solicit feedback and advice on both the Request and the [P]roposals.” Order, at 6.

This stakeholder process must be conducted “prior to” the utilities filing with the Department their Proposals and the Report on March 1, 2022.<sup>1</sup>

### **III. ARGUMENT**

“Clarification of previously issued Orders may be granted when an Order ... contains language that is sufficiently ambiguous to leave doubt as to its meaning.” *NSTAR Electric Company and Western Massachusetts Electric Company*, D.P.U. 17-05-D, at 5 (2018).

The Department should clarify its Order because the Order is unclear with respect to: (1) the stakeholder involvement in the development of the RFP and the Department’s oversight of the RFP process to ensure that an “independent” consultant(s) is selected; and (2) the stakeholder process contemplated during the development of the Consultant Report and utilities’ Proposals prior to their filing on March 1, 2022.

First, the AGO respectfully requests that the Department clarify the scope of stakeholder involvement in the development of the RFP, as well as the Department’s role in the oversight of the RFP process. Pursuant to the Order, the LDCs should retain the independent consultant(s) to permit work to begin concomitant with the issuance of the Roadmap, which is expected by the end of December 2020. Order, at 7. The Order, however, is unclear as to the extent of meaningful stakeholder input on the scope of work in the RFP given this compressed timeframe. Further, the Order is unclear as to whom the LDCs are required to solicit input and how these interested stakeholders will be identified. For instance, many stakeholders have filed comments

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<sup>1</sup> The Department also states that it intends to provide an opportunity for stakeholders to comment on the LDCs’ Proposals after they are filed by the utilities on March 21, 2022. The AGO does not seek clarity regarding this process as it is anticipated that the Department will provide further guidance on this issue after the LDCs file their Proposals.

in this docket. It is unclear whether the utilities are required to solicit input from the commenters in this docket (one group of interested stakeholders) or some other broader or narrower group.

The Department also should clarify the processes or approvals that will be used to ensure that the utilities retain an “independent” consultant. The AGO submits that to meet the compressed timeframe, the Department should oversee the RFP process or, at a minimum, require Department approval of the selected consultant(s) to ensure that a qualified independent consultant(s) is selected by the LDCs. Therefore, the AGO requests that the Department clarify its Order so that LDCs and stakeholders can fully understand their obligations and roles as the first stage of the investigation unfolds.

Second, the Department’s Order is similarly unclear regarding stakeholder involvement in the development of the Consultant Report and utilities’ Proposals. The Department only states that the LDCs “prior to filing [the Report and utilities’ Proposals] the LDCs shall engage in a stakeholder process to solicit feedback and advice.” Order, at 6. The Order is unclear whether the Department intends for stakeholder input to be an ongoing process during the development of the Report and the Proposals with multiple opportunities to provide advice and feedback to the independent consultant(s) or whether the Department is authorizing the utilities to limit stakeholder input to providing comment on a draft Consultant Report or draft Proposals prior to the March 2022 filing deadline.<sup>2</sup> The ambiguity leaves stakeholder involvement to the LDCs discretion, and potentially without an opportunity to provide meaningful input into the Consultant Report or utilities’ Proposals.

In its Order, the Department makes clear that stakeholder participation will be a foundational part of this proceeding. Providing meaningful stakeholder engagement, particularly

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<sup>2</sup> The Order is also unclear regarding which stakeholders the LDCs should ask to participate in the development of the Consultant Report and utilities’ Proposals.

in the development of the Report and Proposals, will ensure that the Department has the benefit of non-utility input “baked in” early in the process and before the Department starts its review. This is particularly important as the Consultant Report and Proposals (along with the EEA Roadmap) will likely become the foundation for further Department investigation and action in this docket. Providing additional direction and guidance that stakeholder participation cannot be an afterthought, but must be meaningful, will avoid uncertainty and result in a more fulsome record. The Department should provide the necessary guideposts to allow for robust stakeholder input from the onset of this investigation. As such, the AGO respectfully requests the Department provide clarity around its directives for stakeholder involvement as discussed herein.

#### **IV. CONCLUSION**

The AGO respectfully requests that the Department clarify its Order regarding stakeholder involvement in the LDCs’ issuance of an RFP for an independent consultant(s), the process to ensure the RFP results in the retention of an independent consultant(s), and stakeholder participation in the development of the Consultant Report and Proposals.

Respectfully submitted,

MAURA HEALEY  
ATTORNEY GENERAL

By: /s/ Jo Ann Bodemer  
Jo Ann Bodemer  
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Dated: November 6, 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 6<sup>th</sup> day of November 2020.

*/s/ Jo Ann Bodemer*  
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Office of Ratepayer Advocacy  
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