

**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 Goals)	
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JOINT LOCAL DISTRIBUTION COMPANY RESPONSE TO THE MOTION FOR CLARIFICATION BY THE OFFICE OF THE ATTORNEY GENERAL

I. INTRODUCTION

On October 29, 2020, the Department of Public Utilities (“Department”) issued a Vote and Order Opening Investigation (“Notice of Investigation” or “NOI”) into the role of natural gas local distribution companies (“LDCs”)¹ within the Commonwealth’s initiative to achieve target 2050 goals for net-zero greenhouse gas (“GHG”) emissions. Specifically, the Department states that it will explore strategies to enable the Commonwealth to move into its net-zero GHG emissions energy future, while simultaneously safeguarding customer interests; ensuring safe, reliable and cost-effective natural gas service; and, potentially recasting the role of LDCs in the Commonwealth (NOI at 1).

In its NOI, the Department charts a focused and detailed action plan for the LDCs, comprised of several, sequential steps and associated requirements, along with a set of milestones

¹ The LDCs include: The Berkshire Gas Company; NSTAR Gas Company and Eversource Gas Company of Massachusetts each d/b/a Eversource Energy; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty; Boston Gas Company and the former Colonial Gas Company each d/b/a National Grid; and Fitchburg Gas and Electric Light Company d/b/a Until.

and opportunity for input by stakeholders. The sequence delineated by the Department is as follows:

- (1) The LDCs must initiate a joint request for proposals (“RFP”) process to identify and retain an independent consultant(s) that will conduct a study and prepare a report within the parameters set out by the Department (NOI at 4).
- (2) The LDCs must jointly develop and issue the RFP consistent with the Department’s directives in the NOI (NOI at 6). The LDCs must develop the scope of work for the RFP incorporating the Department’s parameters, after consultation with the Office of the Attorney General (“AGO”), the Department of Energy Resources (“DOER”) and other interested stakeholders (id.). The LDCs will select the independent consultant on the basis of proposals received and are responsible for all costs and expenses associated with retaining the consultant (id.).
- (2) Once the independent consultant is retained, the consultant will review the 2050 Decarbonization Roadmap and the 2030 Clean Energy and Climate Plan (“CECP”) (together, the “Roadmaps”), identify any pathways not examined in the Roadmaps, and perform a detailed study of each LDC that analyzes the feasibility of all potential pathways (NOI at 5). The RFP process must be conducted so as to allow for the commencement of work upon the issuance of the Roadmaps, or if issued on different days, whenever the first Roadmap is issued (NOI at 7).
- (3) The LDCs working with the consultant must integrate the individual analyses into one, collective report that performs meaningful comparisons among the LDCs (the

“Report”) and submit company-specific proposals to the Department on or before March 1, 2022, including each LDC’s respective recommendations and plans for contributing to the Commonwealth’s effort to achieve 2050 climate goals, supported by the Report (NOI at 5-6). The LDCs must submit the Report, analysis and supporting data to support their recommendations.

- (4) Prior to the filing on March 1, 2022, the LDCs must engage in a stakeholder process to solicit feedback and advice on both the Report and the proposals (NOI at 6). Additional opportunity for stakeholder comments on the LDCs’ proposals will be provided by the Department in a proceeding to take place post-filing (*id.*).
- (5) The LDCs must submit progress reports to the Department on March 1, 2021 and September 1, 2021.

On November 6, 2020, the AGO filed a Motion for Clarification (“Motion”) with respect to the NOI. In the Motion, the AGO asserts the NOI 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 is selected; and (2) the stakeholder process contemplated during the development of the Consultant Report and LDC proposals, prior to the filing on March 1, 2022 (AGO Motion at 3).

The specific clarifications requested by the AGO are as follows:

- (1) The AGO asserts that the NOI is unclear as to “the extent of meaningful stakeholder input on the scope of work in the RFP given this compressed timeline” and as to “whom the LDCs are required to solicit input and how these interested stakeholders

will be identified” (NOI at 3, emphasis added).

- (2) The AGO requests that the Department clarify “the process or approvals that will be used to ensure the LDCs retain an ‘independent’ consultant” (NOI at 4). The AGO asserts that 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.
- (3) The AGO asserts the NOI is “unclear” regarding stakeholder involvement in the development of the Report and LDC proposals (id. at 4). In particular, the AGO asserts that the NOI is unclear as to whether the Department intends for stakeholder input to be an ongoing process during the development of the Report and the LDC proposals with “multiple opportunities to provide advice and feedback to the independent consultant(s), or whether the Department is authorizing the LDCs to “limit” stakeholder input to providing comment on a draft Report or draft proposals prior to the March 2022 filing deadline (AGO Motion at 4).

On November 18, 2020, the Department issued a Hearing Officer Memorandum directing responses to the Motion be filed on or before December 1, 2020. Therefore, in accordance with the Department’s regulations and the Hearing Officer Memorandum, the LDCs jointly file this limited response to the Attorney General’s Motion.

II. STANDARD OF REVIEW

The Department's Procedural Rule, 220 CMR 1.11(11), authorizes a party to file a motion for clarification within 20 days of service of a final Department Order. Clarification of previously

issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Gas Company and Colonial Gas Company, D.P.U. 17-170-B at 4 (2018); Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas and Electric Light Company, D.P.U. 18296/18297 at 2 (1976).

III. JOINT RESPONSE OF THE LDCs

Contrary to the claims put forth by the AGO, the Department's NOI is not silent, nor ambiguous with respect to: (1) the role and responsibilities of the LDCs to develop and issue an RFP to select an independent consultant(s) to develop the Report and associated recommendations; or (2) the role of stakeholders in that process and the associated opportunities for input. The Department's instructions are detailed, focused and appropriately aimed at allowing the LDCs to conduct a comprehensive study serving as the basis for thoughtful, substantiated recommendations to the Department as to the options available to each LDC to contribute to the Commonwealth's target of net-zero emissions by 2050. As a result, the AGO's Motion is not a request for clarification, but rather a request for the Department to modify the intended design of the LDC study and investigation to suit the AGO's purposes.

Specifically, the AGO seeks to convert the process designed by the Department to afford greater control to the AGO of the LDC consultant initiative. If "clarified" as requested by the AGO, the design of the process would morph from the LDCs' submission of a studied,

substantiated, collective proposal to the Department for review, stakeholder comment and determination through a Department proceeding, to a process where the AGO and other stakeholders are inserted into the development of the Report and the LDC proposals with their input required to be “baked in” the work product before the Department starts its review (NOI at 4-5). Thus, the AGO’s requests for “clarification” are suggesting a significant modification of the Department’s process design and are not a matter of “clarification.”

In fact, there are several reasons that “clarification” of the NOI is unnecessary and unwarranted.

First, the AGO asserts the NOI is “unclear” with respect to the stakeholder involvement in the “development of the RFP and the Department’s oversight of the RFP Process” to ensure that an “independent” consultant is selected (NOI at 3). More specifically, the AGO requests that the Department clarify the process or approvals that will be used to ensure the LDCs retain an “independent” consultant (NOI at 4). The AGO further asserts that 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.

However, the Department’s NOI makes it eminently clear that the LDCs are directed to: (1) jointly develop the RFP; (2) jointly develop the scope of work consistent with the Department’s directives, including three specific elements delineated in the NOI (NOI at 5-6); and (3) consult with the AGO, DOER and other interested stakeholders before finalizing the scope of work and issuing the RFP. Thus, there is no ambiguity as to the process the LDCs should follow to develop the RFP and retain the consultant.

With respect to the AGO’s request for clarification as to the Department’s “oversight” to

ensure that an “independent” consultant is selected, the AGO has not defined what is meant by the term “independent” for purposes of this proceeding.² Nor, has the AGO identified any specific concern or issue that the AGO is trying to address. In particular, the AGO has not articulated any reason or basis for the implicit assumption that the Department’s management of the RFP process and selection of the consultant(s) would result in a better compilation of talent and skill for the required investigation.

By contrast, the Department has made it clear that it expects the LDCs to develop the RFP to identify one or more consulting firms with the expertise and experience to: (1) present a forecast, estimate, or other quantification of the costs and actual economy-wide GHG emissions reductions involved in transitioning the natural gas system; (2) present a discussion of qualitative factors such as impacts on public safety, reliability, economic development, equity, emissions reductions, and timing; and (3) develop proposed recommendations to reduce GHG emissions from the sale and distribution of natural gas, among other details (NOI at 5-6).

In fact, the Department directs the LDCs to undertake an investigation and analysis that has likely not been performed anywhere in the U.S., nor attempted in the Northeast where reliance on natural gas for home heating is significant particularly in older buildings, and in less financially advantaged communities. To evaluate and resolve the complex questions involved, the LDCs will

² Assuming, for example, that the AGO intends the term “independent consultant” to mean that the consulting firm should not include any former employees of any of the companies, the claim makes no sense in this context. The LDCs will need to attract interest in the RFP from consulting firms with deep industry knowledge and expertise. Former employees are a valuable source of expertise under these circumstances and the fact that a member of a consulting firm has worked for one of the companies in the past should not rule out that firm for participation in the RFP for that reason. This is an investigation of the future of natural gas service and how a transition will be made without jeopardizing the safety and reliability of gas service and while maintaining affordability and industry expertise is a necessity. In this context, there is no concern that the AGO has elucidated with respect to a need for the Department to participate to select the consultant in order to assure that an “independent” consultant is selected.

need to solicit and retain one or more consultants with significant expertise and experience to investigate and analyze the very unique, challenging circumstances that exist in the Northeast for the gas systems and their respective customers.

In that context, there is no efficiency or advantage that would naturally arise from the Department's management of the RFP or the Department's selection of the consultant(s). Fundamentally, the Department is asking the LDCs to develop a plan for the future of their businesses, which is a matter of great significance for the LDCs, their customers and their shareholders. The LDCs are best suited to use their contacts in the industry to seek out potential candidates for the work and to assess the combination of talent and expertise that will be suitable to evaluate the difficult issues inherent in the transformation of natural gas systems over the next 30 years.³

The Department's process design implicitly recognizes both the challenge and the efficiency of having the LDCs work collectively, with outside consultants, to identify the optimal going-forward plan of operation to contribute to the Commonwealth's net-zero emissions goals. Given the complexity of the task before the LDCs, the Department has appropriately left it to the LDCs' initiative and discretion to retain advisors with the depth and breadth of expertise and experience necessary to accomplish the Department's directives, rendering the "clarification" sought by the AGO unnecessary and unwarranted.

Second, the AGO claims that there is a need for clarification in relation to the stakeholder process contemplated during the development of the Consultant Report and LDC proposals, prior

³ The LDCs expect to include a broad range of recognized industry experts with expertise in environmental, engineering, decarbonization strategies, economic policy, and utility ratemaking.

to the filing on March 1, 2022 (AGO Motion at 3). However, this claim is not correct. The Department's NOI explains clearly and unambiguously that the AGO, DOER and stakeholders will: (1) have a role in shaping the scope of work for the consulting project through consultation on the RFP; (2) have an opportunity to review and comment on the proposals that flow from that scope of work, prior to the LDCs' filing at the Department in March 2022; and (3) have an opportunity to participate in a proceeding conducted by the Department following the submission of the Report and the LDC proposals.

In particular, the Department's NOI makes it clear that it has not designed a process that anticipates the direct engagement of the AGO in conducting the consultant study and developing the LDCs' recommendations and proposals. This is appropriate because the LDCs should have the rights and responsibilities to conduct a study and evaluation that is appropriate for their businesses; and, to present these recommendations to the Department for its review and approval through a fair and transparent proceeding involving stakeholder comment and participation. Injecting the AGO and other stakeholders into the interim phase of developing and defining the LDCs' recommendations and proposals fundamentally changes the Department's chosen process design, placing the AGO and other stakeholders in a position of priority vis-à-vis the Department and requiring the LDCs to work through their business issues with a broad range of stakeholders, but without the Department's participation, which would be infeasible and extraordinarily time consuming.⁴ The Department has provided for stakeholder input prior to the submission of the

⁴ The Department should take note of the inconsistency inherent in the AGO's claims. The AGO seeks to have the Department inject the AGO and other stakeholders into the RFP process through the Department's "oversight" and selection of the consultant(s), but then seeks to obviate the Department's participation during the study phase by injecting the AGO and other stakeholders into the process to devise LDC recommendations rather than participating in the Department's process, as the Department has envisioned.

Report and LDC recommendations with the Department, which is workable and appropriate.

Third, the AGO asserts that the NOI is unclear as to “the extent of meaningful stakeholder input on the scope of work in the RFP” and as to “whom the LDCs are required to solicit input and how these interested stakeholders will be identified” (NOI at 3). However, the crux of the RFP is the scope of work and the AGO fails to identify any reason that the scope of work would take a substantial amount of time to develop. The Department’s NOI delineates the specific elements of the evaluation that will define the scope of work and requires the LDCs to incorporate those directives (NOI at 5-6). The elements specified by the Department are comprehensive and cover the gamut of major considerations involved in the initiative. Therefore, it is unclear why the AGO expects that it will take inordinate time to develop the scope, unless the AGO is seeking to expand the scope beyond what the Department has identified. Nor does the AGO explain why it will be so difficult to identify potential stakeholders when the LDCs routinely participate in a range of proceedings before the Department and are knowledgeable of the constituencies that may want to participate.

Fourth, the AGO asserts the NOI is “unclear” regarding stakeholder involvement in the development of the Report and LDC proposals (id. at 4). In particular, the AGO asserts that the NOI is unclear as to 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 LDCs to “limit” stakeholder input to providing comment on a draft Report or draft proposals prior to the March 2022 filing deadline” (AGO Motion at 4). As discussed above, the Department’s directives on this point are not unclear. The Department has clearly delineated the

responsibilities of the LDCs in moving forward with this expansive initiative and has set the clear expectation that the AGO, DOER and stakeholders will have input into the scope of work; will have input on the LDCs' proposals before the March 2022 filing is made to the Department; and, will participate in a proceeding before the Department following the submission of the Report and the LDC-specific recommendations to evaluate the outcome of that work.

Accordingly, "clarification" of the Department's process is neither necessary nor warranted. The Department has designed a process to initiate the transition of the natural gas industry consistent with the Commonwealth's work to achieve 2050 net-zero emissions goals. This process is taking place squarely under the Department's jurisdiction and the Department has appropriately and judiciously identified that the appropriate boundaries of the AGO's participation is as the consumer advocate in a proceeding conducted before the Department, rather than a business planner.

To provide insight into the process envisioned by the LDCs to comply with the Department's directives in the NOI, the LDCs offer the following.

1. The LDCs plan to develop a draft RFP, including evaluation criteria, with provisions that are fully consistent with the NOI, at a minimum. Although the LDCs have not yet identified further items for inclusion in the scope of work, the LDCs anticipate that additional items may be advisable for inclusion so that all of the information necessary to formulate a collective proposal to transition the natural gas industry is gathered.
2. The LDCs will then solicit input and feedback from the AGO, DOER and other stakeholders prior to the issuance of the RFP. Specifically, the LDCs will share the

draft RFP with the Attorney General, DOER, Associated Industries of Massachusetts, the National Consumer Law Center, the Low-Income Energy Affordability Network, and environmental policy advocates, as well as other stakeholder groups recommended by the AGO, if any. The LDCs must be ready to issue the RFP by the time the Roadmaps is issued, which is anticipated to occur during the week of December 14, 2020. Accordingly, the LDCs will solicit input and dialogue from these stakeholders to inform the LDCs' development of the scope of review if received in advance of the issuance of the Roadmaps. The LDCs will document this input and maintain notes as to the basis for decisions made in formulating the final RFP.

3. The LDCs will develop a list of consulting firms that will receive the RFP and will share that list with the AGO and DOER and take any feedback, prior to the issuance of the RFP. The LDCs may expand the list based on this feedback.
4. The LDCs will finalize and issue the RFP to a range of professional consulting firms with differing types of expertise to explore the tools that exist in the marketplace to conduct the evaluation and study.
5. The LDCs will notify the Department, the AGO and DOER when the decision is made to retain a specific consulting firm(s) for the initiative. The LDCs will prepare and share with stakeholders the documentation as to the evaluation of proposals received and other analysis or documentation supporting the final decision.

6. Prior to filing the Report and the LDCs' proposals, the LDCs will engage in a stakeholder process to solicit feedback and advice on both the Report and the proposals. As preparation for that process, the LDCs plan to update stakeholders periodically regarding the consultant's progress when interim milestones are achieved.
7. Lastly, the LDCs plan to consult with the AGO and DOER throughout the next 18 months and fully recognize – and value -- the benefit of working collaboratively with the AGO, DOER and other stakeholders to craft a thoughtful, workable and feasible transition. The AGO's apparent concerns with having input into the overall process are unfounded in this respect.

IV. CONCLUSION

Given the detail provided in the Order, the Motion does not meet the Department's standard of review for clarification. The LDCs remain committed to involving stakeholders throughout the proceeding consistent with the Department's directives and beyond. In light of the timeframe established for the issuance of the RFP and selection of an independent consultant(s), the LDCs respectfully request the Department allow the LDCs to move expeditiously to develop the RFP, in consultation with the above-referenced stakeholders, as outlined herein.

Respectfully Submitted,

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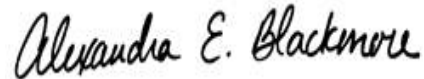
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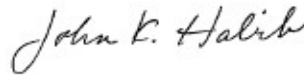
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