

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 20-80-A

February 10, 2021

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.

ORDER ON THE OFFICE OF THE ATTORNEY GENERAL'S
MOTION FOR CLARIFICATION

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 29, 2020, the Department of Public Utilities (“Department”) voted to open an investigation into potential policies that will enable the Commonwealth to reach its goal of net-zero greenhouse gas emissions by 2050 and the role of Massachusetts gas local distribution companies (“LDCs”) in achieving that goal. 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, Vote and Order Opening Investigation at 7 (October 29, 2020) (“Order”). In its Order, the Department directed LDCs to initiate a joint request for proposals (“RFP”) for an independent consultant¹ to conduct a study and prepare a report (“Report”) within the parameters discussed in the Order. Order at 4.

The LDCs are to develop the scope of work to be included in the RFP after consulting with the Attorney General of the Commonwealth of Massachusetts (“Attorney General”), the Department of Energy Resources (“DOER”), and other interested stakeholders. Order at 6. The Department directed that the RFP process be conducted to allow for the commencement of the work upon the issuance of the Roadmaps.² Order

¹ The Department acknowledged in the Order that multiple consultant firms may be required to fulfill the directives set forth in the Order. Order at 4-5. All references to the singular “independent consultant” herein are intended to refer to the plural. The use of a singular form is for simplicity of language only.

² In the Order, the term “Roadmaps” means (1) the 2050 Decarbonization Roadmap that the Executive Office of Energy and Environmental Affairs is developing in consultation with the Massachusetts Department of Environmental Protection and

at 3, 7. The resulting Report is to inform and support separate proposals from each LDC that include the LDC's recommendations and plans for helping the Commonwealth achieve its 2050 climate goals. Order at 6. Prior to filing the Report and their proposals, the LDCs are to engage in a stakeholder process to solicit feedback and advice on both the Report and the proposals. Order at 6. The Department intends to provide an opportunity for stakeholder comments on the LDCs' proposals. Order at 6.

On November 6, 2020, the Attorney General filed a Motion for Clarification ("Motion") requesting that the Department clarify its Order. The Attorney General's Motion presents three main areas of concern: (1) the development of the RFP; (2) the development of the Report and LDCs' proposals; and (3) the identities of the "interested stakeholders" and their roles in the development of the RFP, the Report, and the LDCs' proposals. The LDCs filed a joint response to the Attorney General's Motion ("Joint Response"). The

DOER and (2) the Commonwealth's Clean Energy and Climate Plan ("CECP") for 2030 that EEA also prepares. Order at 3. The 2050 Decarbonization Roadmap was issued on December 30, 2020. 2050 Decarbonization Roadmap, available at: <https://www.mass.gov/info-details/ma-decarbonization-roadmap>. The interim CECP for 2030 was also issued that day for public comment, but will not be finalized until March 2021. Interim CECP for 2030, available at: <https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2030>. The Department directed that if the Roadmaps were issued on different days, the RFP process should be conducted so as to allow for the commencement of work upon the issuance of the first of the Roadmaps. Order at 7.

Environmental Defense Fund (“EDF”), the Sierra Club, the Conservation Law Foundation (“CLF”) and the Town of Hopkinton (“Hopkinton”) also filed responses.³

As discussed below, the Department denies the Attorney General’s Motion because the Order’s directives are not sufficiently ambiguous to leave doubt as to their meaning. To the extent the Attorney General’s Motion seeks reconsideration, the Department denies the request for reconsideration as unsupported.

II. OVERVIEW OF DEPARTMENT DIRECTIVES AND MOTION FOR CLARIFICATION

A. The RFP Process

The Department’s Order anticipates that the Roadmaps will identify strategies to help the Department 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. To ensure a thorough and complete investigation, the Department required the LDCs to work with an independent consultant that will review the Roadmaps, identify any pathways not examined in the Roadmaps, and perform a detailed study of each LDC that analyzes the feasibility of all pathways. Order at 4, 5. After consulting with the Attorney General, DOER, and other

³ The deadline to file comments on the Motion was December 1, 2020 (November 18, 2020 Hearing Officer Memorandum at 2). On January 27, 2021, the Gas Leaks Allies filed comments on the Motion. On February 1, 2021, Mothers Out Front also filed comments on the Motion. Neither the Gas Leaks Allies nor Mothers Out Front filed a motion for permission to submit late filed comments as required by 220 CMR 1.02(5). Accordingly, the Department will not consider these late filed comments.

interested stakeholders to develop the scope of work to be included in the RFP, the LDCs are responsible for issuing the RFP and selecting the independent consultant to accomplish the tasks specifically described in the Order. Order at 5-6. The independent consultant is to commence work as soon as possible, ideally upon the issuance of the Roadmaps. Order at 7. The LDCs are to submit progress reports to the Department by March 1, 2021 and September 1, 2021. Order at 6.

The Attorney General seeks clarification of the extent of meaningful stakeholder input envisioned for the scope of work in the RFP (Motion at 3-4). Additionally, the Attorney General asks that the Department oversee the RFP process and require the LDCs to obtain Department approval of the selected consultant to ensure retention of an “independent” consultant (Motion at 4; see also Sierra Club Response at 2, requesting Department involvement in the RFP process and consultant selection).

B. The Report and the LDCs’ Proposals

We directed each LDC to submit a proposal to the Department, on or before March 1, 2022, that includes the LDC’s recommendations and plans for helping the Commonwealth achieve its 2050 climate goals, supported by the Report of the independent consultant. Order at 6. With their proposals, the LDCs are to submit the Report, analysis, and supporting data to the Department for review. Order at 6. Prior to filing the Report and the LDCs’ proposals, the LDCs must engage in a stakeholder process to solicit feedback and advice on both the Report and the proposals. Order at 6. The Department stated it also

intends to provide an opportunity for stakeholder comments on the LDCs' proposals. Order at 6.

The Attorney General seeks clarification as to whether the LDCs must solicit stakeholder feedback and advice on an ongoing basis during the development of the Report and the LDCs' proposals with multiple opportunities for input or whether the LDCs may limit opportunities to provide feedback and advice to comments on a draft Report and draft proposals (Motion at 4).

C. The "Interested Stakeholders"

The Department directed the LDCs to consult with the Attorney General, DOER, and other interested stakeholders to develop the scope of work to be included in the RFP. Order at 5-6. Then, prior to filing the Report and the LDCs' proposals with the Department, the LDCs must engage in a stakeholder process to solicit feedback and advice on both the Report and the proposals. Order at 6. The Department will further solicit stakeholder comments on the LDCs' proposals. Order at 6.

The Attorney General seeks clarification as to the identities of the "interested stakeholders" and how they will be identified, including whether the LDCs are required to solicit input and feedback from the commenters in the docket or some other broader or narrower group (Motion at 3-4).

III. 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 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); Fitchburg Gas and Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

IV. POSITIONS OF THE ATTORNEY GENERAL AND RESPONDENTS

A. Attorney General

The Attorney General asserts that clarification is necessary to provide for meaningful stakeholder input into the scope of the RFP and into the Report and proposals such that non-utility input is “baked in” early in the process and not left to the LDCs’ discretion (Motion at 3-5).

B. Environmental Defense Fund

EDF supports the Attorney General’s request for clarification as to which stakeholders should be asked to participate in the feedback process for the Report and LDCs’ proposals (EDF Response at 2). EDF proposes that the Department define parameters that maximize broad and inclusive stakeholder participation in this case, including a requirement that the

LDCs confirm in their status updates that the consultant has reviewed and considered any input provided by stakeholders (EDF Response at 2-3).⁴

C. Sierra Club

The Sierra Club supports the Attorney General's request that the Department provide clarification of the processes for stakeholder input in this docket in order to ensure a robust stakeholder process with respect to the RFP and the development of the Report and LDCs' proposals (Sierra Club Response at 2). The Sierra Club asserts that the Department should create a plan outlining the manner in which stakeholder input will be solicited and provide a schedule for the process within the existing time frame set forth in the Order, such that the plan and schedule result in an inclusive stakeholder process allowing for broad participation (Sierra Club Response at 2).

D. Conservation Law Foundation

CLF supports the Attorney General's Motion and requests that the Department task the Attorney General, DOER, or an alternate public entity with identifying and convening a group of technical stakeholders, including groups who customarily intervene in Department proceedings and other self-identified groups, to participate in drafting the scope of work for the independent consultant to be retained by the LDCs, as well as a public opportunity for broader stakeholder feedback on a proposed scope (CLF Response at 2). CLF suggests that

⁴ EDF also provides comment in its response regarding how the case should proceed, generally. The Department thanks EDF for its comments in this regard, but does not consider them in the context of the Attorney General's Motion as they are beyond the scope of the Motion.

after the release of the Roadmaps, stakeholders be given a meaningful opportunity to assess a draft scope of work within the context of the Roadmaps (CLF Response at 2).

CLF also agrees with the Attorney General that the Department should specify guideposts to allow for robust stakeholder input during the proceeding (CLF Response at 2). CLF opines that these guideposts should include technical conferences that examine how to minimize burdens on, and maximize benefits to, low- and moderate-income ratepayers and residents of environmental justice populations and regular calls or webinars where the independent consultant updates interested stakeholders on the progress of the analysis and builds in time for a question and answer period (CLF Response at 2-3). Lastly, CLF asks that the Department work to engage, or require the LDCs to work to engage, stakeholders that do not typically appear before the Department (CLF Response at 3).

E. Town of Hopkinton

Hopkinton, a host community to an LNG facility owned by Eversource Energy, asserts a particular interest in this investigation (Hopkinton Response at 1). Hopkinton agrees with the Attorney General that the Department should issue clear guidelines to ensure an independent and fulsome investigation with equal consideration given to the interests of all stakeholders (Hopkinton Response at 2). Toward that end, Hopkinton proposes specific suggestions which it contends will result in the “meaningful discussions and recommendations” envisioned by the Department’s Order (Hopkinton Response at 2). Order at 5.

In particular, Hopkinton would have the Department establish criteria designed to identify stakeholders and adopt procedures to ensure that all stakeholders are afforded the opportunity for meaningful and equal participation at each stage of the investigation (Hopkinton Response at 2-3). Hopkinton also requests the Department to adopt a rule requiring the consultant to notify all stakeholders whenever it solicits data or input from the LDCs and afford stakeholders the opportunity to provide any additional information they deem relevant (Hopkinton Response at 3). Hopkinton supports the Attorney General's request that the Department oversee the RFP process or approve the selection of the consultant (Hopkinton Response at 3). Additionally, Hopkinton would have the Department create a dossier of information "likely to bear upon the independence" of the consultant; share this information with stakeholders; provide an opportunity to comment on the issue of independence prior to approval of the consultant; and establish a set of objective criteria intended to ensure the consultant's independence (Hopkinton Response at 3). Finally, Hopkinton requests that the Department consider prohibiting or restricting certain communications among the consultant, its employees and the LDCs in order to prevent undue influence on the consultant by the LDCs (Hopkinton Response at 3).

F. Gas Local Distribution Companies

In a Joint Response, the LDCs outline a sequence of five steps with associated requirements, milestones, and opportunity for input by stakeholders that the LDCs state is delineated in the Order (Joint Response at 1-2). The LDCs argue in their Joint Response that the Order needs no clarification and that the Attorney General, by her Motion, seeks to

convert the process designed by the Department in order to afford greater control to the Attorney General of the LDC consultant initiative (Joint Response at 5). The LDCs claim that the Attorney General's requests for clarification are actually requests for significant modification of the Order such that the Attorney General and other stakeholders are inserted into the development of the Report and the LDCs' proposals with their input required to be "baked in" before the Department starts its review (Joint Response at 5-6).

The LDCs disagree with the Attorney General's expectation that it will take a substantial amount of time to develop the scope of work for the RFP where the Order delineates the specific elements of the evaluation and requires the LDCs to incorporate those in the RFP (Joint Response at 10, citing Order at 5-6). In the LDCs' opinion, the Department already set forth a comprehensive description of the scope of work such that little input is required to develop the scope, unless the Attorney General seeks to expand the scope beyond what the Department has already identified (Joint Response at 10). The LDCs also question the Attorney General's claim that it will be 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 (Joint Response at 10).

According to the LDCs, the Attorney General has not explained what it means to ensure an "independent" consultant is selected and has assumed without support that the Department's management of the RFP process and selection of the consultant would result in a better compilation of talent and skill for the required investigation (Joint Response at 6-7). The LDCs assert that they 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 in environmental, engineering, decarbonization strategies, economic policy, and utility ratemaking that will be suitable to evaluate the difficult issues inherent in the transformation of natural gas systems over the next 30 years (Joint Response at 8 & n.3).

As understood by the LDCs, the Order does not require direct engagement of the Attorney General in conducting the consultant study and developing the Report and LDCs' proposals, which the LDCs argue is appropriate because it should be the LDCs with the rights and responsibilities to conduct a study and develop proposals suitable for their businesses (Joint Response at 9). The LDCs state it would be infeasible and extraordinarily time-consuming to require the LDCs to work through their business issues with a broad range of stakeholders, but without the Department's participation (Joint Response at 9). The LDCs note that stakeholder input will occur prior to the submission of the Report and LDCs' proposals and that this level of input is workable and appropriate, and further note that the stakeholders then have the opportunity to participate in a proceeding before the Department following submission of the Report and proposals (Joint Response at 9-10, 11). It is the LDCs' position that the Department has identified appropriate boundaries for the Attorney General's participation as a consumer advocate before the Department rather than as a business planner (Joint Response at 11).

The LDCs outline the process they envision in complying with the Order's directives, submit that clarification of the Order is neither necessary nor warranted, and seek denial of the Attorney General's Motion (Joint Response at 5-6, 11-13).

V. ANALYSIS AND FINDINGS

A. The RFP Process

In the Order, the Department directed the LDCs to retain an independent consultant to review the Roadmaps, identify any pathways not examined in the Roadmaps, and perform a complete, comprehensive analysis of each LDC that analyzes the feasibility of all pathways and is then integrated into one, collective Report that performs meaningful comparisons among the LDCs. Order at 5. For each pathway proposed in the Roadmaps and separately identified by the independent consultant, the Department directed the independent consultant 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. The evaluation of costs shall include the following: (a) a discussion of possible mechanisms, methodologies, or policies to address the recovery of cost or responsibility for cost incurrence, as well as mitigation of costs and impacts for customers, particularly low-income customers; (b) a forecast, estimate, or other quantification of the electrification strategies, as well as other strategies identified through the analysis; and (c) for each electrification strategy, a transparent depiction of key assumptions used in the analysis and a calculation of GHG emissions reductions, inclusive of GHG emissions from generation sources.
- (2) Present a discussion of qualitative factors such as impacts on public safety, reliability, economic development, equity, emissions reductions, and timing.
- (3) Develop proposed recommendations to reduce GHG emissions from the sale and distribution of natural gas to meet applicable goals in relation to the Roadmaps, with specific initiatives, actions, and interim milestones.

Order at 5-6. Using the Roadmaps, the Report, the LDCs' proposals supported by the Report, and stakeholder input, the Department expects to 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.

The Order's detailed expectations and directives set the minimum parameters of the scope of work to be included in the LDCs' RFP and the Department's minimum expectations of the RFP process. The Order does not prohibit the LDCs from broadening the scope of the RFP, including to incorporate input from the Attorney General, DOER, and other interested stakeholders, especially to the extent that such input in the context of the Roadmaps will advance the Department's directives and expectations. The Department's directives and expectations are clear and require no clarification.

Further, the Department notes the Attorney General's arguments with respect to the RFP process are in the nature of a motion for reconsideration and not a motion for clarification. As the Attorney General fails to make the required showing to warrant reconsideration, the Department denies the request.⁵ The Department was purposeful in not

⁵ Reconsideration of previously decided issues is granted when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. The Berkshire Gas Company, D.P.U. 905-C at 6-7 (1982) (finding extraordinary circumstances where union contract expiration and subsequent strike prevented company from providing ratified union contract payroll increases until several days after final Order issued); cf. Boston Gas Company, D.P.U. 96-50-C (Phase I) at 25 (1997) (finding creation of nonunion compensation pool after the close of the record

inserting itself into the RFP and retention processes and requiring more Department oversight. This does not prevent the Attorney General, DOER, or any interested stakeholders from raising concerns about the consultant retained when the LDCs seek feedback and advice on the Report and the LDCs' proposals and when the Department solicits comments on the Report and LDCs' proposals once filed. See Order at 6.

Ultimately, the LDCs are responsible for accomplishing the tasks specifically described in the Order, and thus the Department intentionally made the LDCs the final decision-makers with respect to the scope of work to be included in the RFP. Order at 5-6. The Department acknowledges that the RFP process will likely be completed within a short time frame, and thus the Department was very detailed in its directives and expectations. The Department does not expect the LDCs and all interested stakeholders to reach an absolute consensus on the scope of any additional work to be included in the RFP. However, we do expect the LDCs to include relevant areas of inquiry raised by interested stakeholders following review of the Roadmaps, particularly to the extent such areas of inquiry were not anticipated by the Department prior to the publication of the Roadmaps. We note the

was not an extraordinary circumstance). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. See, e.g., D.P.U. 96-50-C (Phase I) at 22; New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2, 25-26 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983). Neither extraordinary circumstances nor claims of mistake or inadvertence are described in the Motion. A motion for reconsideration should not attempt to reargue issues considered and decided in the main case. See, e.g., Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3, 7-9 (1991); D.P.U. 1350-A at 4-5.

likelihood that such post-publication areas of inquiry will need to be considered during the proceeding. We also emphasize that a comprehensive Report will streamline the Department's review and conserve resources of the Department, LDCs, interested stakeholders, and, ultimately, ratepayers. Accordingly, we urge the LDCs to consider stakeholder input throughout the process of developing their Report in order to help facilitate an administratively efficient proceeding after the Report is filed with the Department. As discussed below, to verify compliance with the Department's directives to engage with stakeholders, the LDCs shall include in their status updates a summary of their engagement with stakeholders and input provided by stakeholders.

B. The Report and the LDCs' Proposals

The Department set the following benchmarks in the Order: (1) on or before March 1, 2021, the LDCs must submit a status update on their retention of the independent consultant and its progress to date; (2) on or before September 1, 2021, the LDCs must submit a second status update on the progress to date of the independent consultant; and (3) on or before March 1, 2022, the LDCs must submit the Report, the independent consultant's analysis and supporting data, and the LDCs' proposals that include the LDCs' recommendations and plans for helping the Commonwealth achieve its 2050 climate goals, as supported by the Report. Order at 6. Prior to filing the Report and LDCs' proposals on March 1, 2022, the LDCs are to engage in a stakeholder process to solicit feedback and advice on both the Report and the proposals. Order at 6.

The Department reiterates that the LDCs are responsible for accomplishing the tasks specifically described in the Order, and the Department directed the independent consultant retained by the LDCs to perform a complete, comprehensive analysis of each LDC that analyzes the feasibility of all pathways proposed in the Roadmaps and separately identified by the independent consultant. In accomplishing their tasks, the Department directed the LDCs to solicit both feedback and advice from interested stakeholders. These words are not synonymous; “feedback” denotes a reaction to past action and “advice” denotes a recommendation to future action. No clarification of the Department’s directives is needed.

The Department further declines to micromanage the stakeholder input process. The Department purposefully did not direct the LDCs to incorporate stakeholder feedback and advice, but neither does the Department expect the process to be a superficial one. The Department agrees with some of the commenters that in order to increase transparency of the stakeholder process during the development of the Report, the LDCs should include in their status updates a summary of their engagement with stakeholders and input provided by stakeholders. As stated in the Order, the Department further intends to solicit stakeholder comments after the LDCs submit the Report and their proposals, which will likely reflect the extent to which stakeholder feedback and advice were solicited and incorporated. Order at 6.

C. The “Interested Stakeholders”

The Department directed the LDCs to work with the Attorney General, DOER, and other interested stakeholders. Entities included in the distribution list for the Order were natural gas LDCs subject to the jurisdiction of the Department under G.L. c. 164 and parties

on the service lists for the Gas Three-Year Energy Efficiency Plans dockets, the Gas System Enhancement Plans dockets, and the Local Distribution Gas Adjustment Factor and Peak Cost of Gas Adjustment Factor Filings dockets. Order at 7. This resulted in a distribution list of more than 250 people. Multiple groups interested in this docket have also filed comments, including EDF, the Sierra Club, CLF, Mothers Out Front, and Boston Clean Energy Coalition. The LDCs are further familiar with groups that may want to participate based on the LDCs' past matters filed with the Department.

The Department intentionally did not create a specific list of "interested stakeholders" to avoid inadvertent exclusion of stakeholders that may provide useful guidance and input to the LDCs. We encourage the LDCs to work with a diverse group of interested stakeholders in developing the scope of work for the consultant and the Report. At the barest minimum, the Department expects the involvement of the Attorney General and DOER, but would like to see a much broader net of cooperation as the LDCs work toward the objectives the Department outlined for them in its Order. Incorporating feedback from diverse interest groups will ensure that LDCs take into account multiple perspectives and consumer interests.

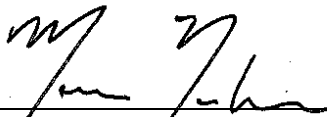
VI. ORDER

Accordingly, after opportunity for comment and consideration, it is

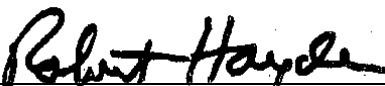
ORDERED: That the Office of the Attorney General's Motion for Clarification is DENIED for the reasons set forth above; and it is

FURTHER ORDERED: That the Massachusetts gas local distribution companies shall comply with all other directives contained in this Order.

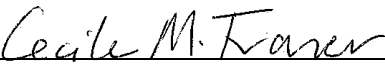
By Order of the Department,



Matthew H. Nelson, Chair



Robert E. Hayden, Commissioner



Cecile M. Fraser, Commissioner