



MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

NOTICE OF INQUIRY AND REQUEST ) D.P.U. 21-50
FOR COMMENTS )

COMMENTS OF THE ENVIRONMENTAL DEFENSE FUND

I. Introduction

EDF appreciates the opportunity to provide comments in DPU 21-50, Notice of Inquiry by the Department of Public Utilities ("Department") on its own Motion into procedures for enhancing public awareness of and participation in its proceedings ("Notice"). The actions of the Department in this proceeding should align with the policies outlined in the Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs. One such policy is to enhance "opportunities for residents to participate in environmental, energy and climate change decision-making."1 EDF suggests that for this purpose to be fulfilled, the Department will need to make changes to its procedures to ensure that they are understandable and promote inclusiveness. This will require looking at its procedures through a different lens – one that demystifies procedural processes. This docket represents an important first step.

Recognizing and understanding the barriers to access and participation in Department matters that may have a direct effect on communities will hopefully lead to improved decision making and more equitable outcomes. As the Massachusetts Decarbonization Roadmap makes clear, "broad and sustained public engagement during policy and program development, particularly with EJ populations, communities of color, and low-income residents, will not only be necessary to avoid inequitable outcomes, it will be a key step in achieving a Net Zero

1 Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs (2017) at page 5, www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy\_0.pdf.

future.”<sup>2</sup> Below EDF provides some initial thoughts in response to questions posed in the Department’s Notice and reserves the right to amend and augment its position as it learns more about the challenges faced by interested stakeholders and as this docket progresses.

## **II. Awareness of Department Proceedings**

As a starting point, the Department should consider creating a webpage that lists new filings categorized by city/town and the affected communities. The page should state in plain language what the petitioner is requesting, the date of the public hearing, provide a link to the corresponding notice and be available in languages in addition to English. A page organized in this fashion helps to eliminate confusion that may result from trying to search for cases in the Department’s electronic file room which requires searching by criteria such as docket number or case type. Such information may not be known initially by someone trying to find out if a certain case that has been filed affects their community. Although the Department does have a separate page that lists filings in the last 20 months, it does not give the reader easily accessible information regarding the communities affected.

With respect to how notice should be disseminated in communities, the Department should consider that since every community is different, there should be flexibility that allows additional notice variations to meet the communication needs of a given community. For example, there should be basic notice requirements in terms of the location of physical postings as well as postings via social media. However, before filing, the petitioner should also be required to reach out to community groups to discuss additional posting requirements. The petitioner should then be required to document any misalignment between what the community requested and what was done by the petitioner.

In its Notice, the Department has asked for suggested criteria regarding several topics including where notices should be posted, how to identify relevant community groups who should be sent notice and how and by what means the Department can effectively provide notice to people with limited English proficiency.<sup>3</sup> These questions go to the very core of accessibility and should be comprehensively addressed. While the Department will likely receive information regarding these issues in response to the Notice, the Department may want to consider additional, alternative means of gathering and synthesizing information. For example, the Department could consider establishing a community advisory group that can further discuss these important issues in a workshop-type setting that would allow for a free-flowing discussion and provide further guidance to the Department. The results of those discussions could then be incorporated into the docket in this case.

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<sup>2</sup> Massachusetts 2050 Decarbonization Roadmap at page 17 (December 2020), <https://www.mass.gov/doc/massachusetts-2050-decarbonization-roadmap/download>.

<sup>3</sup> Order at 4-5.

### **III. Accessibility**

Different types of Department proceedings may warrant different approaches. In Attachment A, EDF includes a report by the National Association of Regulatory Utility Commissioners setting forth emergent stakeholder processes that can be used as a key tool for informed decision-making. The report explains that traditional regulatory processes face challenges including legal barriers, capacity limitations, and stakeholder knowledge. It also compiles examples from state commissions that have employed stakeholder engagement processes, including feedback and lessons learned. The Department should explore whether such approaches are appropriate for the different types of dockets it opens.

Where the Department continues to deploy traditional regulatory processes, it should accommodate as much participation as possible. For example, with respect to accessibility to public hearings, public hearings should be held in the evening and have a virtual component. However, understanding that for some, evening hearings may be more difficult to attend, the Department may wish to consider restructuring its hearing process to make it more accessible by accommodating all work and family schedules. For example, if a hearing is held in the evening, it could be posted on-line within 24 hours and the Department could establish a specific timeframe for viewers to submit written comments.

Further, those who take the time to participate in a public hearing process whether in person, virtually or by the submission of written comments should know that they have been heard. The Department may want to consider a construct whereby a petitioner is required to group substantive comments received by the Department during a public hearing into categories. The petitioner would then be required, if necessary, to submit a supplemental filing explaining its response to the matters raised. This could have the benefit of ultimately streamlining Department proceedings since it may reduce the number of those who decide to formally seek intervention.

Another possible mechanism to improve participation is to have pre-evidentiary hearing workshops. The goal of the workshops would be educational. Not only would community members have a forum in which to ask questions and receive more information, but it would also be beneficial to the petitioner. Petitioners need a better way to understand and address community concerns. Further, pre-evidentiary workshops would allow organizations without an attorney to participate.

### **IV. Intervenor Funding**

While the Notice raises important matters for the Department to address, additional issues should also be explored to ensure more equitable processes. The Department's proceedings often contain barriers to meaningful participation by several interested

stakeholders, including environmental groups and environmental justice groups.<sup>4</sup> The highly technical nature of the Department's proceedings often renders them inaccessible to the general public unless a participant can invest significant time and resources. While the technical nature of the proceedings will not change, the Department could consider pathways to mitigate these barriers.

For example, the Department could consider spearheading an initiative to provide intervenor funding. This could be valuable in increasing accessibility for small community groups that are under-resourced. If the Department wants to help better ensure that all necessary aspects of a case are explored, allowing those who can add value to a proceeding but may not have the monetary means to do so cannot be ignored. This by all definitions is an equity issue. There are various ways in which intervenor funding can be structured. For example, funding could be paid at the end of a proceeding whereby the intervenor is then able to make a showing that their participation added value to the proceeding. In situations where funding is needed before a potential intervenor can participate, the Department may want to consider ways that the potential intervenor could make an up-front showing regarding the value they would be adding to the proceeding.

## **V. Conclusion**

There are numerous issues that the Department has to address to make it easier for people to find out about Department proceedings so they can make informed decisions as to whether they want to participate. Since there are so many components, EDF appreciates that the Department has reached out to stakeholders with a series of questions. However, EDF stresses that the communication process should continue, possibly through workshops held with community groups, to further explore the questions raised by the Department. EDF looks forward to working with the Department and other stakeholders on these issues.

Respectfully submitted,

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<sup>4</sup> Even when environmental groups have the ability to intervene in proceedings, the Department has denied their intervention. *See, e.g.*, Mass. DPU Docket No. 18-47, *NSTAR Gas Company*, Hearing Officer Ruling on Petitions to Intervene (July 17, 2018), Appeal to Commission (July 24, 2018); Mass. DPU Docket No. 17-166, *Bay State Gas Company*, Order at 10-14 (October 30, 2018) (affirming hearing officer's ruling on CLF's petition to intervene), appeal docketed No. SJ-2018-0556 (Mass. November 28, 2018); Mass. DPU Docket No. 16-181, *Boston Gas Company and Colonial Gas Company*, Order at 11-14 (2017) (affirming hearing officer's ruling on CLF's petition to intervene), appeal denied No. SJ-2017-0466 (Mass. January 8, 2019) (Single Justice).

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