



THE COMMONWEALTH OF MASSACHUSETTS
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January 18, 2022

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

Re: *Investigation by the Department of Public Utilities On Its Own Motion Into Electric Distribution Companies' (1) Distributed Energy Resource Planning and (2) Assignment and Recovery of Costs for the Interconnection of Distributed Generation, D.P.U. 20-75*

Dear Secretary Marini:

Enclosed please find the Attorney General's Notice of Retention of Experts and Consultants. Please file according to your usual practice. Thank you for your assistance in this matter.

Sincerely,

/s/ Elizabeth Mahony

Elizabeth Mahony
Assistant Attorney General

Enclosures

cc: Katie Zilgme, Hearing Officer

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Inquiry by the Department of Public Utilities on its own Motion into Electric Distribution Companies' (1) Distributed Energy Resource Planning and (2) Assignment and Recovery of Costs for the Interconnection of Distributed Generation

D.P.U. 20-75

**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 (the "Attorney General's Office") hereby gives notice to the Department of Public Utilities (the "Department") of its intent to retain experts and consultants (the Attorney General's Office's "Notice of Retention") in the above-captioned proceeding and to allow full parties to this proceeding the opportunity to comment on its decision to do so. As set forth at greater length in the ensuing sections, the Attorney General's Office has determined that it is necessary to retain experts and consultants to assist in this proceeding and therefore it is eligible to expend the full amount of the \$150,000 of charge-back funds authorized by G.L. c. 12, § 11E(b) for such ends.

II. BACKGROUND

The Department oversees the interconnection of Distributed Generation ("DG") facilities to the electric power system through the Standards for Interconnection of Distributed Generation tariff ("DG Interconnection Tariff")¹. The Department investigated the DG Interconnection

¹ The electric distribution companies' DG Interconnection Tariffs are as follows: (1) Fitchburg Gas and Electric Light Company d/b/a Unitil – M.D.P.U. No. 269; (2)

Tariff in 2002, 2011, and 2019. Distributed Generation, D.T.E. 02-38 (2002); D.P.U. 11-75 (2011); D.P.U. 19-55 (2019). In the intervening years, cost allocation concerns as well as technological advances and successes in Commonwealth DG project development have presented new questions and challenges not currently contemplated or addressed in the DG Interconnection Tariff. Therefore, on October 22, 2020 the Department proposed a Straw Proposal to address: (1) a new distributed energy resource planning process; and, (2) methods for assignment and recovery of costs associated with DG interconnection. Vote and Order Opening Investigation, at 2 (October 22, 2020) (“Order Opening Investigation”). The Department established a provisional system planning program for funding essential upgrades to the electric power system (“EPS”) to “foster timely and cost-effective development and interconnection of DG.” Order on Provisional System Planning Program, D.P.U. 20-75-B at 2 (November 24, 2021) (“Provisional Order”). The Department received comments and reply comments on its Straw Proposal on December 23, 2020, February 5, 2021, May 28, 2021, and June 8, 2021; received responses to interrogatories from the EDCs and stakeholders; and, held a technical conference on June 3, 2021. The Department has not issued an order pertaining to the long-term system planning process contemplated in the Order Opening Investigation’s Straw Proposal. *Id.* at 26, 35.

The Department’s Provisional Order addressed the “unique and immediate challenges” facing DG in the Commonwealth in the short term with future petitions from the individual EDCs anticipated to implement the provisional program. Meanwhile, the Department expects the long-term system planning first contemplated in the Straw Proposal will “take multiple

Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid – M.D.P.U. No. 1320; and (3) NSTAR Electric Company d/b/a Eversource Energy – M.D.P.U. No. 55.

years.” Provisional Order at 26. Stakeholders anticipate additional process, including requests for comment and interrogatories, to complete the Department’s investigation of long-term system planning.

II. 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 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.² 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.

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,³ “the use of an expert or consultant *shall* be approved.” *Id.* (emphasis added).

² 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.

³ 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).

III. USE OF EXPERTS AND CONSULTANTS IN D.P.U. 20-75

The Department has recognized the Attorney General's Office's prerogative in obtaining experts and consultants pursuant to G.L. c. 12, § 11E(b).⁴ 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).

This proceeding will involve the continued review of the Department's Straw Proposal and the Distribution Companies'⁵ system planning. The issues to be reviewed by the Department, the Distribution Companies and stakeholders will cover policy, cost and technical matters. This will likely include analysis of engineering, rate design, and bill impact proposals. 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 consideration of proposed planning concepts and language, as well as supplemental expertise to assist the Attorney General's Office with the additional tasks concomitant with representing ratepayer interests in this proceeding. The Attorney General's Office requires supplemental expertise in order to effectively advocate before the Department for an outcome that is in the best interest of the Distribution Company's customers.

⁴ 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).

⁵ The Distribution Companies include three companies in Massachusetts: NSTAR Electric Company, d/b/a Eversource Energy; Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid; and Fitchburg Gas and Electric Light Company d/b/a Unitil.

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 the Company's filing 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 in this docket 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 use of experts in this docket is approved by the Department, 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)). All invoices will be reviewed by the Attorney General's Office prior to being submitted 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 "intrastate operating revenues as reported to the Department in their respective Annual Returns." *Joint Petition of Electric Distribution Companies for Approval of*

Model Solar Massachusetts Renewable Target Tariff, Order on Attorney General’s Notice of Retention of Experts and Consultants, at 5 (November 26, 2017).

Finally, the Attorney General’s Office notes that its ability to pay experts and consultants in connection with this docket 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.

IV. 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. 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 approval pursuant to G.L. c. 12, § 11E(b).

Respectfully submitted,

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Dated: January 18, 2022