

August 25, 2023

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

Re: *Inquiry by the Department of Public Utilities of its own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings*, D.P.U. 21-50

Dear Secretary Marini:

On July 24, 2023, the Department of Public Utilities (“Department”) hosted a technical conference to discuss the Department’s December 28, 2022 Interlocutory Order and Draft Policy on Enhancing Public Awareness and Participation (“Draft Policy”).

By Hearing Officer Memorandum issued July 25, 2023, the Department invited comments from interested parties by August 14, 2023. Subsequently, the Attorney General’s Office, Office of Ratepayer Advocacy (“AGO”) requested, and the Department granted, an extension to August 25, 2025, to file comments. Pursuant to that amended schedule, the AGO submits this letter as its initial comments.

The AGO appreciates the Department’s ongoing efforts to make participation in its proceedings more accessible. The AGO also commends the Department for implementing several recommendations from various commentors, including the AGO, such as the provision for translation and interpretation services and additional educational materials on the Department’s website.

The AGO supports the Department’s proposal to organize proceedings into multiple tiers and to promote meaningful outreach by petitioners (*see generally* AGO Comments (Jan. 20, 2023)).¹ The AGO looks forward to continuing its work with the Department and interested stakeholders to expand access to and participation in Department proceedings, and to ensure that the changes to be implemented, through an adopted policy, serve to benefit affected ratepayers.² To that end, the AGO would like to expand on some of its prior comments, and

¹ The Draft Policy included two sections: (1) Types of Proceedings, where the Department set forth the criteria for different tiers of proceedings (“Proposed Tiering”), each of which would require a different level of publication and outreach (Interlocutory Order, at 8–9); and (2) Petitioner Outreach Plan, in which the Department set out requirements for petitioners to file a community outreach plan relevant to the subject matter and geographic scope of the proceeding, and consistent with the level of publication and outreach required by the proceeding’s tier. *Id.*, at 9. In the July 11, 2023 Hearing Officer Memorandum, the Department provided a tiering chart with different types of proceedings categorized into Tier 1, Tier 2, and Tier 3 (“Tiering Chart”).

² Depending on the specifics included in the Department’s adopted policy, expanded notification procedures, outreach, and language access will benefit ratepayers in a variety of ways, including through

propose modifications to the Department’s Proposed Tiering and Tiering Chart, and Petitioner Outreach Plan. *See* Interlocutory Order, at 8–9; July 11, 2023 Hearing Office Memorandum.

After a brief overview of the historical context within which this Department proceeding takes place, the AGO addresses: (1) the Proposed Tiering and Tiering Chart; (2) the Petitioner Outreach Plan; and (3) recommended additional steps the Department should take to support opportunities for meaningful public participation and the development of a robust record in Department proceedings.

1. **Historical Context**

The Department opened this investigation in April 2021, approximately three weeks after Governor Baker signed into law *An Act Creating A Next-Generation Roadmap for Massachusetts Climate Policy* (“2021 Climate Act”).³ The language and directives of the 2021 Climate Act reflect the legislature’s clear directive to the Department to prioritize equity, along with other key priorities. 2021 Climate Act, § 15. The legislature also articulated “environmental justice principles,” which include “the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies[,]” and “the equitable distribution of energy and environmental benefits and environmental burdens.” *Id.*, at § 56. Through this proceeding, the Department can take important steps to ensure that these legislative directives are reflected in some of the Department’s policies.

It is also important to acknowledge that the Department opened this proceeding approximately 13 months into the COVID-19 pandemic, which threw existing inequities into stark relief, forcing the Commonwealth and the nation to grapple with the impact of racism on our past and present, and providing unpleasant insights into the way racism continues to infect the systems and structures that have very real impacts on people’s lives. The pandemic, tragically, had outsized impacts on communities of color, both in the Commonwealth and nationwide, resulting, in part, from the existing health disparities due to disproportionate exposure to air pollution.⁴

increased transparency, greater access to and involvement in proceedings and decision-making, and more opportunities to interact with petitioners and the Department.

³ *See* Vote and Order Opening Inquiry, at 1 (situating this proceeding within the Department’s broader efforts to develop an agency-specific environmental justice strategy consistent with the Executive Office of Energy and Environmental Affairs’ (“EEA”) 2017 Environmental Justice Policy and the 2021 Climate Act). EEA’s Environmental Justice Policy was updated on June 24, 2021, and now includes the foundational definitions for environmental justice principles and populations, and environmental benefits and burdens, from the 2021 Climate Act.

⁴ *COVID-19’s Unequal Effects In Massachusetts: Remediating The Legacy Of Environmental Injustice & Building Climate Resilience* (“*COVID-19’s Unequal Effects*”), Office of Massachusetts Attorney General Maura Healey (2020), at 5, available at: <https://www.mass.gov/doc/covid-19s-unequal-effects-in-massachusetts/download>. With regards to the disproportionate impact of air pollution: “Air

While the pandemic put a spotlight on air pollution and existing health disparities, the causes and impacts of environmental racism are broader.⁵ Here in Massachusetts, researchers found that “working class families and people of color face a ‘triple unequal exposure effect’ to toxic pollution and other environmental hazards in comparison with higher-income residents.”⁶ It is no coincidence that facilities like waste treatment plants, landfills, chemical processing plants, and other industrial operations, necessary to keep our economy running, are sited in areas that disproportionately impact people of color and low income communities.⁷ Similarly, it is no coincidence that the expansion of the nation’s highways disproportionately impact “Black and brown communities.”⁸ Indeed, a 2019 analysis found that “Asian American, African American,

pollution disproportionately impacts Black and Latinx communities, in part because industrial facilities and highways are heavily concentrated in low-income communities and communities of color. Scientists have demonstrated this trend locally. In a study from the BU School of Public Health, concentrations of fine particulate-matter pollution (PM2.5) and nitrogen oxide (NO2) were highest for Black and Latinx communities in Massachusetts. The study found these inequalities have not only persisted but in fact worsened over time, even as overall PM2.5 and NO2 exposure in the Commonwealth has decreased. Another study found that higher NO2 concentrations in Worcester were associated with lower median household income and educational attainment.” *Id.* (footnotes omitted).

⁵ *What is environmental racism and how can we fight it?*, WORLD ECONOMIC FORUM (Jul. 31, 2020) (defining “environmental racism” as a “a form of systemic racism whereby communities of colour [sic] are disproportionately burdened with health hazards through policies and practices that force them to live in proximity to sources of toxic waste such as sewage works, mines, landfills, power stations, major roads and emitters of airborne particulate matter. As a result, these communities suffer greater rates of health problems attendant on hazardous pollutants.”), available at: <https://www.weforum.org/agenda/2020/07/what-is-environmental-racism-pollution-covid-systemic/>.

⁶ Daniel R. Faber and Eric J. Krieg, *Unequal Exposure to Ecological Hazards 2005: Environmental Injustices in the Commonwealth of Massachusetts* (“*Unequal Exposure to Ecological Hazards 2005*”), NORTHEASTERN ENVIRONMENTAL JUSTICE RESEARCH COLLABORATIVE (2005), at 1, available at: <https://www.issuelab.org/resources/2980/2980.pdf>

⁷ See *Unequal Exposure to Ecological Hazards 2005*, at 1 (noting that the “triple unequal exposure effect” for “working class families and people of color” in Massachusetts is due largely to “exposure to: (1) greater concentrations of polluting industrial facilities and power plants, [and] (2) greater concentrations of hazardous waste sites and disposal/treatment facilities, including landfills, incinerators, and trash transfer stations[.]”); *COVID-19’s Unequal Effects*, at 5; see also Diane Toomey, *Coal Pollution and the Fight For Environmental Justice*, YALE ENVIRONMENT 360 (June 19, 2013) (“Thirty-nine percent of the people living near coal-fired power plants are people of color, so what’s absolutely true is that there are a disproportionate number of people of color living next to these plants. Seventy-eight percent of African Americans live within 30 miles of a coal-fired power plant.”), available at: https://e360.yale.edu/features/naacp_jacqueline_patterson_coal_pollution_and_fight_for_environmental_justice.

⁸ Noel King, *A Brief History Of How Racism Shaped Interstate Highways*, NPR (Apr. 7, 2021) (“Planners of the interstate highway system . . . routed some highways directly, and sometimes purposefully, through Black and brown communities. . . . [R]ight now, we can see that race frequently explains which communities receive the benefits of our transportation system and infrastructure and which communities were forced to host the burdens.”), available at: <https://www.npr.org/2021/04/07/984784455/a-brief-history-of-how-racism-shaped-interstate-highways>.

and Latino residents of Massachusetts, as well as people of other races, are exposed to higher PM_{2.5} pollution from cars, trucks, and buses than are white residents.”⁹ Moreover, historically, fossil fuel burning facilities have “disproportionately burdened” “lower income communities and communities of color[.]” including in Massachusetts.¹⁰

The Commonwealth is in the early stages of transitioning to a just and equitable clean energy future, providing the Department with a unique opportunity to establish procedures that can facilitate meaningful opportunities for residents to participate in and provide input in proceedings, especially for those residents who continue to experience disproportionate impacts related to air pollution and energy infrastructure siting. Changes to procedures, as contemplated through the instant proceeding, are a critically important starting point. Meaningful participation from diverse communities and a better developed record should lead to better, more equitable results.

2. Comments on the Department’s Proposed Tiering and Tiering Chart

The AGO appreciates the Department’s efforts to clarify and add detail to its Proposed Tiering (Interlocutory Order, at 8-9), with the Tiering Chart included in the July 11, 2023 Hearing Officer Memorandum. To build on these proposals, the AGO recommends certain modifications to ensure that tiering designations (and the associated level of outreach) reflect the impact of proceedings on communities and the interest of communities in engaging in proceedings.

a. Timing of Initial Tiering Determination

The AGO continues to recommend that the Department add details to the Draft Policy related to the timing of the Department’s tiering determinations.¹¹ For example, under the current Proposed Tiering and Tiering Chart, the Department does not specify when it will make its tiering

⁹ Maria Cecilia Pinto de Moura, David Reichmuth, and Daniel Gatti, *Inequitable Exposure to Air Pollution from Vehicles in Massachusetts*, Union of Concerned Scientists: Fact Sheet, at 1 (June 2019) (also noting that “[r]esearch links exposure to [PM_{2.5}] to increased illness and death, primarily from heart and lung diseases.”), available at: <https://www.ucsusa.org/sites/default/files/2020-05/inequitable-exposure-to-vehicle-pollution-ma.pdf>. These higher exposure levels were not marginal; populations of color in the study ranged from 26% to 36% higher exposure to this hazardous air pollution. *Id.* The Fact Sheet explains, “[d]ecisions about where to place highways, where to invest in public transportation, and where to build housing have all contributed to a transportation system that concentrates emissions on communities of color.” *Id.*, at 2.

¹⁰ *Unequal Exposure to Ecological Hazards 2005*, at 41 (listing six large power plant polluters in Massachusetts, as of 2003, along with emission levels of mercury, sulfur dioxide, nitrogen oxide, and volatile organic compounds). *See also id.*, at 1 (listing the “greater concentrations of polluting industrial facilities and power plants” in lower income communities and communities of color as one of the causes of the “triple unequal exposure effect[.]”), 40 (stating that “the state’s power plants are disproportionately located in communities of color and lower income communities.”). The AGO notes that some of the plants listed in Table 5B on page 41 of *Unequal Exposure to Ecological Hazards 2005* have since been closed.

¹¹ AGO Comments, at 2 (Jan. 20, 2023) (“The Department should also provide additional details on the timing of the Department’s tiering determination[.]”).

determination or when a petitioner must seek such a determination. *See* Interlocutory Order 8-9, Tiering Chart. To make this new process more predictable, the AGO recommends that the Department develop a formalized timeline, including a deadline for a petitioner to seek a tiering determination and a date for when the Department will issue its tiering determination. The AGO recommends that Tier 1 and Tier 2 determinations be made as soon as possible to allow petitioners sufficient time to prepare for and conduct community outreach before filing a petition.

b. Modification of Tiering Determinations

The Department has provided additional details about how it intends to tier proceedings (*see generally*, Tiering Chart), which will provide some consistency and transparency to the Department's tiering determinations. Although the AGO previously raised concerns that the Department's intention to make tiering determinations on a case-by-case basis created a danger that tiering decisions will lack predictability or consistency (AGO Comments, at 2 (Jan. 20, 2023)), the AGO acknowledges that some flexibility will support the ultimate goal of promoting public involvement in Department proceedings. *See* Vote and Order Opening Inquiry, at 3.

The following recommendations are intended to provide mechanisms to give the Department some flexibility to change tiering determinations. First, the AGO recommends that the Department modify the Draft Policy to make clear that: (a) the Department can elevate a proceeding's tier; but (b) the Department will not lower a proceeding's Tier (e.g., from Tier 1 to Tier 2).¹²

Second, the AGO recommends that the Department establish a mechanism to change its initial tiering determination. A tiering determination should reflect the perceived effects a proceeding may have on impacted communities as well as the likely interest the proceeding will garner from stakeholders to engage and participate in the decision-making process. Correspondingly, a proceeding's tier designation will determine the petitioner's obligations related to outreach, as well as the Department's obligations to oversee the petitioner's outreach efforts and to facilitate additional outreach efforts. *See* Interlocutory Order, at 8-9. In instances where a proceeding's default or initial tier determination does not reflect the magnitude of the potential impact of a proceeding, or the potential for stakeholder and community contributions to the record, there should be a means for stakeholders to request and for the Department to increase the tier designation to align the potential and perceived impacts of a proceeding with the appropriate level of outreach.¹³

¹² If the Department finds that it is appropriate to change the guidance included in an adopted Tiering Chart, such changes should be made in regular updates to the adopted policy, which should be done on a regular basis and with input from stakeholders (e.g., every six months or annually). *See* AGO Comments, at 2 (Jan. 20, 2023) (stating, "[t]he Department should also continually assess and improve upon its new policy in regular intervals, such as every six months or annually, based on stakeholder feedback.").

¹³ The opportunity for stakeholders to avail themselves of this mechanism will be important where the specific impacts of a proposed project or action are not immediately apparent or are not apparent based

Third, the AGO recommends that the Department develop a mechanism for stakeholders to seek reconsideration of the Department's initial tiering determination. The Department's initial tiering determinations will likely be based on information provided by a petitioner, without the benefit of perspectives and information from stakeholders, who may have concerns not experienced or addressed by the petitioner. Consequently, the AGO recommends that the Draft Policy include: (1) a mechanism for stakeholders to comment on or challenge the Department's initial tiering determination;¹⁴ and (2) parameters for when the Department will, *sua sponte*, elevate a proceeding's tiering designation. There may also be instances where the potential impacts or location of the potential impacts may not be clear based on the information initially available, but may later reveal themselves in the course of the proceedings.¹⁵ Accordingly, the AGO recommends that the Department establish a mechanism to elevate a tiering determination during a proceeding.

By setting out formalized mechanisms to address such scenarios in an adopted policy (and before the policy is implemented), the Department may avoid unnecessary confusion and delay and can ensure that tiering designations reflect input from stakeholders as well as information from petitioners.

c. Tier 2 Outreach Requirements

The AGO recommends that the outreach requirements listed under Tier 2 proceedings be expanded to include the requirement that petitioners: (1) conduct "outreach to municipal and community leaders;" and (2) provide information on the proceedings in "social media posts." *See* Interlocutory Order, at 8. These two requirements are currently limited to Tier 1 proceedings. *Id.*

on the initial information provided by the petitioner(s). This can happen with cumulative or with localized impacts, which may not be recognized or understood when a petition is filed.

¹⁴ This opportunity could be provided through a comment period (either before the Department's initial designation or immediately afterwards), or the opportunity for stakeholders to request a tiering designation change.

¹⁵ A potential issue likely to emerge with rigid tiering determinations is that proposals initially assumed to be lower-impact and designated as Tier 2 or 3 may in fact have substantial impacts meriting higher levels of outreach and engagement. With no way to change a tiering designation, proceedings may progress through the decision-making process without the stakeholder engagement and community input that the Draft Policy is intended to facilitate. A relevant example is proceedings in which the location of a facility has not yet been determined when a petition is filed. *See, e.g.,* D.P.U. 22-170, *Petition of National Grid for approval of the Company's Monson-Palmer-Longmeadow (East) Capital Investment Project proposal under the Provisional Program established by the Department in Provisional System Planning Program, D.P.U. 20-75-B*, Exh. NG-1, at 47 (stating, "[t]he substation upgrades will be followed by associated distribution line upgrades. At this stage the Company has the conceptual plan for distribution line construction. Most of the distribution line work will be upgrades of existing feeders and the new feeders will be primarily in roads that already have distribution assets. *After the distribution line design is completed, the Company will assess whether the distribution line work is likely to impact an EJ neighborhood.*") (emphasis added).

The AGO notes that, particularly for some proceedings currently designated as Tier 2, including Energy Efficiency Plans, Municipal Aggregation, and Electric Vehicle Plans, there are municipalities, stakeholder groups, and community leaders with significant interest and expertise, whose input has been and will continue to be valuable as the Department reviews these proceedings in the future. Thus, similar to what is contemplated in Tier 1 matters, the AGO supports the need for additional outreach efforts for Tier 2 matters.

3. Comments on the Department’s Proposed Petitioner Outreach Plan

As an initial matter, the AGO agrees with the Department that petitioners should reach out to affected communities and conduct outreach related to proposals. AGO Comments, at 1 (Jan 20, 2023). While the Department’s proposed Petitioner Outreach Plan includes important steps to remove barriers to meaningful participation in proceedings, the scope is too limited because it only addresses dissemination of notice and language access. *See* Interlocutory Order, at 9. Without more, this limited focus will not ensure that a petitioner’s outreach plan will effectively expand opportunities for stakeholders to participate in proceedings. The AGO recognizes the importance of balancing competing interests—petitioners’ interests in an administratively efficient review of their proposals, stakeholder and municipality interests in participating in proceedings, and the costs associated with conducting proceedings. *See* Interlocutory Order, at 7. Accordingly, if the outreach conducted by petitioners, pursuant to a Petitioner Outreach Plan, does not actually change or improve the opportunities for stakeholders to participate in proceedings, the costs associated with the outreach will result in few or no benefits for ratepayers and communities.¹⁶

According to a 2021 NARUC article, a robust stakeholder engagement process “[i]mproves the quality and efficiency of regulatory proceedings” and “[b]uilds stakeholder support,” as well as “increase[ing] support for prudent capital investments[.]”¹⁷ With this in mind, the AGO makes recommendations related to outreach timing, the accessibility of materials provided through a

¹⁶ The distribution companies have suggested that the changes contemplated by this proceeding will incur increased costs. *See, e.g.*, Joint Comments of the Distribution Companies, at 5, 6-7, 13, 14-15 (Jan. 20, 2023); Joint Response of the Distribution Companies, at 9, 10, 11 (Sept. 16, 2022); Joint Responses of the Distribution Companies, at 3, 6, 7, 8, 9 (May 25, 2022).

¹⁷ Jasmine McAdams, *Public Utility Commission Stakeholder Engagement: A Decision-Making Framework*, National Association of Regulatory Utility Commissioners, at 8 (Jan. 2021) (“When the stakeholder engagement process is well-designed, the benefits are actualized as ‘better information, decreased risk, and smarter solutions’ for all parties.”) (quoting De Martini, P., et. al., *The Rising Value of Stakeholder Engagement in Today’s High-Stakes Power Landscape*, ICF (2016), available at: <https://www.icf.com/insights/energy/the-risingvalue-of-stakeholder-engagement>), available at: <https://pubs.naruc.org/pub/7A519871-155D-0A36-3117-96A8D0ECB5DA#:~:text=The%20framework%20is%20organized%20into,outcomes%20and%20follow%20Dup%20actions>. The article also states that “[w]hen the stakeholder engagement process is well-designed, the benefits are actualized as ‘better information, decreased risk, and smarter solutions’ (De Martini et al., 2016, at 2) for all parties.” *Id.*, at 7.

petitioner's outreach efforts, and the Department's role supporting and overseeing a petitioner's outreach.

a. Timing of Outreach

Conducting outreach early in a proceeding is likely to yield more meaningful benefits compared to waiting until later in the proceeding to perform outreach, when it is unlikely that a petitioner will be able to modify a proposal based on late-received community input. Outreach efforts should be viewed as more than an announcement of a petitioner's proposal. That is, to ensure stakeholders have an opportunity to effectively participate in a proceeding, timely outreach and dissemination of notice is imperative to provide stakeholders sufficient time to learn about the proceeding, develop positions, and provide thoughtful input. Early outreach is particularly important "when the topic is highly technical."¹⁸ If outreach occurs too late, stakeholders (and especially the stakeholders with fewer resources and institutional knowledge) may be unable to prepare a suitable response, which may lead to exclusion from participation.

In some cases, such as proceedings designated Tier 1 or Tier 2, it may be appropriate for the Department to require the petitioner to conduct outreach to municipalities and stakeholders in advance of the petition being filed. Such early outreach would give the petitioner an opportunity to incorporate stakeholder input into their proposal, which might result in proffering new alternatives and/or lessening contentious issues. In contrast, once a petition is filed, the petitioner's planning timeline and the sunk costs of labor or other investments may cause the petitioner to view several elements of the proposal as fixed.

The AGO recommends the Department seek input from interested stakeholders regarding when to begin stakeholder outreach for each tier designation.¹⁹ The AGO also recommends that the Department considers the advance notification procedures related to implementation of the Massachusetts Environmental Policy Act in the Code of Massachusetts Regulations 11.05(4).²⁰

Whether pre-filing outreach is required or not, the Department should ensure that the Petitioner Outreach Plan is implemented well before the Department's public comment deadline to give stakeholders and communities sufficient time to learn about the proposal, develop reasoned

¹⁸ *Id.*, at 23.

¹⁹ The AGO has not made recommendations on the specific timing requirements and recommends that the Department work with petitioners, stakeholders (especially stakeholders who have experienced controversial energy issues in their communities, and therefore likely have valuable insights), and municipal and community leaders to assess when outreach should occur, ahead of when a distribution company files a petitioner for a proceeding with a Tier 1 or Tier 2 designation. The overall purpose of a pre-filing outreach requirement is to allow ample time for stakeholders and communities to organize and engage meaningfully with the proposal.

²⁰ See also Massachusetts Environmental Policy Act Office, *MEPA Public Involvement Protocol for Environmental Justice Populations*, effective Jan. 1, 2022, available at: <https://www.mass.gov/doc/final-mepa-public-involvement-protocol-for-environmental-justice-populations-effective-date-of-january-1-2022/download>.

positions, and allow for input on the proposal. Thus, outreach timetables should be developed with the needs of the stakeholder communities in mind, rather than the experienced practitioners.

Finally, the AGO recommends that the Department specify when the various steps of a petitioner’s outreach plan must take place. Clear guidance from the Department on this issue will support predictability and consistency for stakeholders and municipalities, as well as for petitioners.

b. Accessibility of Materials

The AGO recommends that the Petitioner Outreach Plan includes a requirement that the informational materials, being provided to stakeholders and municipalities, be clear and easy to understand, with no ambiguity or unnecessarily difficult words, offered in multiple languages relevant to the community, and clearly identify potential impacts to stakeholders. Under the current Draft Policy, petitioners are required to include a succinct, easy-to-understand summary of the petition in bill inserts for “base distribution rate cases and significant policy change initiatives” under Tier 1. *See* Interlocutory Order, at 8, 9.²¹ The AGO recommends that the Department modify the Draft Policy to explicitly require that for all proceedings, particularly for Tier 1, Tier 2, and highly complex proceedings, petitioners provide plain language notices²² and easy-to-understand summaries of petitions, and that these materials identify potential impacts to stakeholders. The Department should also consider modifying the Petitioner Outreach Plan to require petitioners to include additional educational material and/or links to additional materials in some proceedings (e.g., for Tier 1 and Tier 2, and highly technical proceedings). Well-designed educational materials can help establish shared expertise—“[e]stablishing a baseline level of expertise before diving into the issues of the proceeding is particularly important for more technical proceedings, and establishing this baseline can help bolster collaboration and cultivate useful ideas.”²³ Further, the AGO continues to support petitioners and the Department providing easy-to-read summaries of complex and lengthy petitions and decisions.²⁴

²¹ The Draft Policy states that “customers will also receive bill insert messaging for base distribution rate cases and significant policy change initiatives” (Interlocutory Order, at 8); and then states that the “[d]istribution companies, when required, must include as a billing insert a succinct easy-to-understand summary of the petition in a larger font size.” *Id.*, at 9.

²² The AGO acknowledges that the Department and distribution companies are making progress on plain-language summaries related to Notices. *See* Interlocutory Order, at 6.

²³ *Public Utility Commission Stakeholder Engagement*, at 25 (citing Billimoria et al., *Leading Utility Regulatory Reform: Process Options and Lessons from Oregon*, Regulatory Assistance Project and Rocky Mountain Institute (Mar. 2019), available at: <https://www.raponline.org/knowledge-center/leading-utility-regulatory-reform-processoptions>).

²⁴ AGO Comments, at 4-5 (Jan. 20, 2023); AGO Comments, at 3-4 (Sept. 16, 2022).

c. Department Support for and Oversight of Petitioner Outreach Plan

The AGO previously identified several ways the Department is well positioned to offer additional support to petitioners, as well as oversight to ensure that a petitioner’s outreach plan results in outreach that is meaningful to communities and stakeholders. *See* AGO Comments, at 3-4 (Jan. 20, 2023):

- Municipal and Community Organization Contact List: The Department should develop and maintain (through regular updates) a list of municipal contacts and community organizations to receive notice.²⁵ Under the Petitioner Outreach Plan, petitioners are responsible for developing a list of municipal contacts and community organizations. Rather than requiring each distribution company to develop and maintain their own list, the AGO recommends that the Department manages a list, which will serve as a starting point. Thereafter, distribution companies can expand the list based on their existing contacts, the proposal, and knowledge of their particular service area. *See* AGO Comments, at 3 (Jan. 20, 2023). In addition, the AGO recommends that the Department clarify the requirement that an “outreach plan must include a list of the municipal and community organizations to whom the notice will be issued” is applicable to both Tier 1 and Tier 2 proceedings. Interlocutory Order, at 9.
- Standardize When Petitioners Must Provide Translation and Interpretation Services: The Department should develop a standard way to determine when petitioners must provide translation and interpretation services. Under the Petitioner Outreach Plan, petitioners are responsible for providing plans for translation and interpretation services. Interlocutory Order, at 9. Rather than task each distribution company with developing individual plans, the AGO recommends that the Department establish the framework for when translation and interpretation services must be provided. AGO Comments, at 4 (Jan 20, 2023).
- Oversight on the Adequacy of a Petitioner’s Outreach and Outreach Plan: The Department should ensure that there is oversight from a third-party to ensure that a petitioner’s outreach efforts are implemented adequately, and consistent with an adopted policy. AGO Comments, at 4 (Jan. 20, 2023). Under the Department’s Draft Policy, the petitioner’s outreach associated with the outreach plan is not subject to any external review. The AGO continues to recommend that the Department ensure that there is third party oversight and review of Petitioner outreach to monitor the adequacy and efficacy of these efforts. *See* AGO Comments, at 4 (Jan. 20. 2023).

²⁵ The creation and existence of these Department-maintained lists should be publicized and advertised routinely to support broad awareness. The Department should make sure to update these lists of contacts regularly (i.e., at least annually), because outdated contacts will not be conducive to effective outreach.

4. Additional Comments

In addition to the outreach contemplated in the Draft Policy, including the AGO's modifications as discussed above, the AGO recommends that the Department complement an adopted policy with additional stakeholder and intervention-friendly policies. The AGO has discussed several of these recommendations in prior comments²⁶ and offers two more for the Department's consideration, intended to further support opportunities for meaningful public participation and the development of a robust record in proceedings.

a. Organize Stakeholders by Interest Level and Engagement Level

The AGO recognizes the challenges inherent in balancing robust engagement with manageable proceedings. Organizing stakeholders by level of interest and shared concerns could facilitate involvement by a variety of stakeholders, while still keeping proceedings efficient. The AGO recommends that the Department consider utilizing stakeholder mapping or a similar method to "organize stakeholders based on the type of engagement required[.]"²⁷ Thus, the Department can ensure that stakeholders who may be highly impacted by a proceeding have the opportunity to contribute more significantly to the decision-making process.²⁸

b. Petitioners Should Respond to Stakeholder and Community Input on the Record

For Tier 1 and Tier 2, and highly technical proceedings, the Department should require petitioners to record comments, questions, and concerns from stakeholders (i.e., the input received as the petitioner implements its Petitioner Outreach Plan) and to describe how stakeholder input was considered. If a petitioner modifies a proposal based on stakeholder input, the reason for the modification would then be on the record. Similarly, if a petitioner does not modify a proposal based on input, that would be stated explicitly. This requirement will help support meaningful

²⁶ The AGO continues to recommend that the Department consider: (1) issuing tentative decisions with periods for comment and input from stakeholders (AGO Comments, at 4 (Sept. 16, 2022)); (2) expanding the educational materials accessible through the Department and the distribution company websites (including sample and/or form-fillable motions and other filings, videos, and a handbook) (*id.*, at 4); (3) proactively publicizing important, high-impact proceedings (*id.*, at 5); and (4) forming an advisory council or a working group to ensure that the Department benefits from continuing and ongoing input from stakeholders. AGO Comments, at 4 (Jan. 20, 2023). The AGO also recommends that the Department expand the scope of these proceedings to consider a broader range of barriers to participation and actively seek out robust input from diverse stakeholders, including individuals and communities that are not represented in this proceeding and communities that have historically been under-represented in government decision-making. *See* AGO Comments, at 1, 3 (June 14, 2021); AGO Comments, at 1-2 (Sept. 16, 2022).

²⁷ *Public Utility Commission Stakeholder Engagement*, at 22.

²⁸ *See id.*, at 22-23 (discussing four engagement types, consult, coordinate, inform, and involve, and providing an example stakeholder mapping matrix that can be adapted by commissions).

participation, transparency, and accountability.²⁹ Further, this filing should be before the close of discovery to provide the Department and interested parties with the opportunity to issue discovery to the petitioner related to the input received and any modifications subsequently made to the proposal.³⁰

Thank you for the opportunity to offer comments on the Draft Policy and on the topics discussed at the July 21, 2023 technical conference.

Respectfully Submitted,

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²⁹ See *Overly Impacted & Rarely Heard: Incorporating Community Voices Into Massachusetts Energy Regulatory Processes* (May 2023), at 5 (noting under the heading of “Improving Transparency & Accountability” that one of the barriers to transparency and accountability is the lack of an “established process or requirement for decision-makers or petitioners to respond to stakeholder input,” and recommending that “[t]he [Department] . . . , as well as petitioners, should be required to respond to stakeholder comments and concerns[.]”), available at: <https://www.mass.gov/doc/overly-impacted-and-rarely-heard-incorporating-community-voices-into-massachusetts-energy-regulatory-processes-swg-report/download>. In a recent report from Lawrence Berkeley National Laboratory (“LBNL”), the authors discuss ways that commissions can strengthen and/or establish transparency and accountability mechanisms. The article points to a hypothetical Intervenor Compensation Program, and posits that if a desired outcome is to “increase contribution of frontline [and environmental justice communities],” “implementation steps” could include: (1) “[i]mprov[ing] transparency around which contributions were taken, and how[;]” (2) “feedback loops and accountability mechanisms to ensure that frontline and [environmental justice] contributions are considered[;]” and (3) “use of administrative funds to conduct recurring evaluation.” Sydney P. Forrester, Andrew J. Satchwell, *Developing an Equity Framework for State Regulatory Decision-Making*, LBNL (Aug. 2023), available at: https://eta-publications.lbl.gov/sites/default/files/equity_in_reg_decision_making.pdf.

³⁰ The AGO recommended that the Department develop a way to respond to comments from stakeholders, noting that “[a]s suggested during the Roundtable, there is significant frustration that comments from stakeholders do not have an impact on decisions and that the continued perception that comments are being disregarded then decreases the likelihood that people will actively engage [] in the future.” AGO Comments, at 4 (Sept. 16, 2022).