



# The Commonwealth of Massachusetts

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## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 15-183-A

May 31, 2016

Investigation of the Department of Public Utilities, on its own motion, instituting a rulemaking pursuant to G.L. c. 30A, § 2; 220 C.M.R. § 2.00 et seq.; and Executive Order 562 to amend or rescind 220 C.M.R. §§ 1.00, 2.00, 5.00, 6.00, 9.00, 11.00, 14.00, 30.00, 77.00, and 79.00.

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## I. INTRODUCTION

Pursuant to Executive Order 562, the Governor's Office directed each Executive Agency, including the Department of Public Utilities ("Department"), to undertake a review of its regulations.<sup>1</sup> The Governor's Office directed agencies to rescind, revise, or simplify their regulations in accordance with the requirements of Executive Order 562, and to retain or modify only those regulations that are mandated by law or essential to the health, safety, environment, or welfare of the Commonwealth's residents. Executive Order 562, §§ 2, 3. With this Order, the Department adopts the final regulations contained in 220 C.M.R. §§ 1.00; 2.00, 5.00, 6.00, 11.00, 14.00, 77.00, and 79.00 and rescinds 220 C.M.R. §§ 9.00 and 30.00.<sup>2</sup>

## II. PROCEDURAL HISTORY

On December 30, 2015, pursuant to G.L. c. 30A, § 2; 220 C.M.R. § 2.00; and Executive Order 562, the Department issued proposed regulations 220 C.M.R. §§ 1.00, 2.00, 5.00, 6.00, 11.00, 14.00, 77.00, and 79.00, as well as proposed rescissions of 220 C.M.R. §§ 9.00 and 30.00. Order Instituting Rulemaking, D.P.U. 15-183 (December 30, 2015). The proposed amendments were intended to eliminate duplicative regulations, update statutory references, rescind unnecessary regulations, and reduce the barriers to electronic filing.

On January 15, 2016, pursuant to the requirements of G.L. c. 30A, the Department published a notice of the proposed rulemaking in the Boston Herald and in the Massachusetts

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<sup>1</sup> See Office of the Governor, Commonwealth of Massachusetts, Executive Order No. 562 (March 31, 2015).

<sup>2</sup> Attached is a clean copy of the amended regulations, 220 C.M.R. § 1.00; 2.00, 5.00, 6.00, 11.00, 14.00, 77.00, and 79.00, and the rescinded regulations, 220 C.M.R. §§ 9.00 and 30.00.

Register. The Department sought initial written comments on the amendments to 220 C.M.R. §§ 1.00; 2.00, 5.00, 6.00, 11.00, 14.00, 77.00, and 79.00, as well as on the proposed rescission of 220 C.M.R. §§ 9.00 and 30.00, with a submission deadline of February 8, 2016. The Attorney General of the Commonwealth of Massachusetts (“Attorney General”), the Cape Light Compact, and the National Consumer Law Center (“NCLC”)<sup>3</sup> submitted initial comments. Additionally, the electric and gas distribution companies (“Companies”) submitted joint initial and reply comments. The Companies include Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“Bay State”); The Berkshire Gas Company (“Berkshire”); Blackstone Gas Company (“Blackstone”); Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”); Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities (“Liberty Utilities”); Boston Gas Company, Colonial Gas Company, Massachusetts Electric Company, and Nantucket Electric Company each d/b/a National Grid (collectively “National Grid”); and NSTAR Electric Company, Western Massachusetts Electric Company, and NSTAR Gas Company each d/b/a Eversource Energy (“Eversource”).

Pursuant to notice duly issued, the Department held a public hearing at its offices on February 10, 2016, at which NCLC provided comment. Additionally, upon motion by the Attorney General, the presiding officer granted a one-day extension for the deadline to file reply

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<sup>3</sup> On February 17, 2016, the Low-Income Weatherization and Fuel Assistance Program Network (“Network”) submitted comments in Investigation to Establish Electronic Filing Guidelines, D.P.U. 15-184, and stated it supported NCLC’s comments filed in this docket. The Attorney General also supports NCLC’s comments (Attorney General Reply Comments at 5). We do not discuss NCLC’s specific comments in this Order, or those of the Network or the Attorney General in this regard, because they address 220 C.M.R. § 25.00, which was not included in the Notice for this proceeding and is, therefore, outside the scope of this proceeding.

comments. On February 17, 2016, the Attorney General, and the Companies submitted reply comments. Additionally, the Secretary of State of the Commonwealth of Massachusetts (“Secretary of State”) provided the Department with several stylistic and formatting edits. For 220 CMR 1.00, 2.00, 5.00, 11.00, 14.00 and 79.00, the Secretary of State added regulation titles when other regulations were referenced and specific regulation cites for internal references where the previous regulations used “above.” Also, for 220 CMR 79.00, the Department agreed to remove the word “Form” from the regulation title as suggested by the Secretary of State. We incorporate all of the Secretary of State’s edits in the final regulations adopted in this Order. By this Order, we adopt all of the Department’s proposed amendments except for those noted below. Accordingly, we discuss only those parts of the proposed regulations that were addressed by commenters.

### III. 220 C.M.R. § 1.00: PROCEDURAL RULES

#### A. Date of Receipt By the Department

##### 1. Introduction

220 C.M.R. § 1.02(2)(a) governs when a communication submitted to the Department is deemed “received” for purposes of filing deadlines. In this proceeding, the Department proposed amendments to define the date of receipt for electronically filed documents.

##### 2. Comments

The Companies recommend removing the reference to business hours from 220 C.M.R. § 1.02(2)(a), which would allow electronic filings to be received any time on the calendar day rather than during business hours (Joint Comments at 4). The Companies argue that this is appropriate given that parties and the Department can receive electronic filings instantaneously

outside of regular business hours (Joint Comments at 4). The Companies further maintain that certain filings, such as discovery responses, require additional time due to the complexity of the filing and efforts necessary to comply with the Department's filing requirements (Joint Comments at 4). Specifically, the Companies assert that preparation and filing of discovery responses involves a multi-step process that includes drafting, reviewing and editing, legal reviewing and editing, signing-off, and formatting (Joint Comments at 4). According to the Companies, the formatting of discovery responses typically requires the conversion of files into portable document format ("pdf") files, redaction of confidential information, addition of headers, and reduction of file size to allow transmission (Joint Comments at 4). The Companies state that this step is in addition to the time it takes to accurately complete responses to discovery that may be issued in large numbers on the same date (Joint Comments at 5). The Companies argue that timing is especially problematic for dockets with short turn-around times (e.g., energy efficiency plans) (Joint Comments at 5). Further, the Companies contend that the time necessary to file pursuant to electronic filing guidelines is likely to increase if the Department requires some of the items listed in the Department's opening Order in Investigation to Establish Electronic Filing Guidelines, D.P.U. 15-184, including interactive tables of contents and individual pdf files (Joint Comments at 4).

The Attorney General recommends changes to 220 C.M.R. § 1.02(2)(a) to clarify that the date of receipt of an electronic filing is governed by the Department's business hours and holiday observances (Attorney General Comments at 2). The Attorney General argues that this clarification will avoid confusion and misinterpretation (Attorney General Comments at 2). The Attorney General disagrees with the Companies' proposal to allow filing beyond the

Department's business hours arguing that it would place a burden on the Attorney General and the Department to monitor dockets after hours for important filings, and would further delay the Department's and parties' review of filings (Attorney General Reply Comments at 2-3). Further, the Attorney General contends that the Companies' proposal would be especially problematic in the context of discovery in complicated matters with tight procedural schedules, such as base distribution rate cases, where the timely receipt of all discovery is crucial to fully analyze the Companies' filings (Attorney General Reply Comments at 3).

### 3. Analysis and Findings

We decline to adopt the Companies' proposal to allow electronic filings to be deemed received after business hours. The ability to file electronically does not warrant a change to our practice. The Companies' comments apply almost exclusively to filing responses to discovery and not the myriad of other filings governed by these provisions (e.g., petitions, complaints, motions, tariffs, and contracts). Also, we do not find persuasive the Companies' arguments that allowing electronic filing will necessarily increase the amount of time it takes to prepare a filing considering that parties currently file documents both electronically and in hard copy.

Nonetheless, the Department will be establishing electronic filing guidelines in D.P.U. 15-184 and will consider any arguments as to the feasibility of certain requirements in that docket.<sup>4</sup>

The Department finds that the Attorney General's recommended amendment to 220 C.M.R. § 1.02(2)(a) is appropriate to clarify that the date of receipt is governed by the Department's business hours, including observed holidays. Filing deadlines that occur during

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<sup>4</sup> We note that the Companies and the Attorney General are both participants in D.P.U. 15-184.



the Department's business hours allow for more timely receipt of materials in often time sensitive circumstances. Additionally, they allow filers to contact the Department if there is a question about or problem with their filing before the deadline to file has passed. Thus, we adopt the Attorney General's recommended amendments and the Department's proposed amendments to 220 C.M.R. § 1.02(2)(a).

B. Date of Receipt By Parties and Other Persons

1. Introduction

220 C.M.R. § 1.02(2)(b) governs when a communication submitted to a party or other person is deemed received for purposes of service deadlines. In this proceeding, the Department proposed amendments to define the date of receipt of electronically served documents.

2. Comments

The Attorney General recommends that the Department add language to 220 C.M.R. § 1.02(2)(b) stating that a communication is not received unless all materials associated with that communication have been served (Attorney General Comments at 2). Specifically, the Attorney General notes that sometimes parties and other participants provide confidential or bulk materials in hard copy, CD-ROM, or another portable storage device after the rest of the filing has been provided (Attorney General Comments at 2). The Attorney General contends that this causes a delay in reviewing the documents (Attorney General Comments at 2). No other commenter addressed this issue.

3. Analysis and Findings

The Department declines to adopt the Attorney General's proposal to amend 220 C.M.R. § 1.02(2)(b) to state that a communication is not received unless all materials associated with that

communication have been served. While we expect all parties to serve the entire communication by the relevant deadline, we understand that special arrangements for hand delivery or U.S. Mail are sometimes required for confidential and bulk materials due to their confidential nature or file size. We, note, however, that any materials not transmitted simultaneously with the rest of the filing must be served expeditiously. Any concerns about the length of delay in a particular proceeding should be brought to the specific presiding officer's attention. Thus, we adopt the Department's proposed amendments to 220 C.M.R. § 1.02(2)(b).

C. Extensions of Time

1. Introduction

220 C.M.R. § 1.02(2)(5) outlines the process for seeking extensions of time from the Department's prescribed filing time periods. The Department did not recommend any amendments to this provision.

2. Comments

The Companies seek clarification that a motion for extension of time may be submitted no later than the end of the calendar day of the prescribed time period (Joint Comments at 5). No other commenter addressed this provision.

3. Analysis and Findings

The Department's regulations currently allow parties to file motions for extension of time when they anticipate that any filing, e.g., discovery responses, comments, and briefs, will take longer than the time period prescribed by the Commission or presiding officer. The regulations further provide that such a motion "shall be made before the expiration of the period originally prescribed or as previously extended." In Section III.A, above, the Department declined to

extend the filing time periods to calendar days rather than business hours. Similar here, we decline to extend the filing time periods for extension requests to calendar days rather than business hours.<sup>5</sup> Thus, we make no amendments to 220 C.M.R. § 1.02(2)(5).

D. Formal Requirements as to Pleading, Documents, and Other Papers Filed in Proceedings

1. Introduction

220 C.M.R. § 1.02(2)(8) sets forth formal filing requirements for documents submitted to the Department. These requirements include the filing of original documents, the location of filing, and the format of the document. In this proceeding, the Department proposed amendments allowing a document transmitted by electronic means to be considered an original document.

2. Comments

The Companies suggest eliminating the references to page margins in 220 C.M.R. § 1.02(8) and request that the Department confirm that double-sided pages are permitted (Joint Comments at 5). The Companies argue that these requirements can impose undue burdens on the Companies and that the Companies should be afforded greater flexibility to format documents on a case-by-case basis while contributing to sustainability (Joint Comments at 6).

The Attorney General agrees with the Companies' suggestion regarding double-sided pages (Attorney General Reply Comments at 3). Regarding the Companies' recommendation to eliminate standardized page margins, the Attorney General asserts that without more information

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<sup>5</sup> While our regulations permit a request for extension on the date a filing is due, we encourage parties to file such a request well in advance to give the other parties and the Department adequate time for comment and review.

as to why page margins are problematic, the Department should reject the Companies' proposal (Attorney General Reply Comments at 3). Further, the Attorney General states that she is open to a system whereby an electronic document is considered an original document, provided that the Department adopts a reliable system for maintaining electronic documents as originals with no paper back up (Attorney General Comments at 3).

### 3. Analysis and Findings

With respect to 220 C.M.R. § 1.02(8), we decline to adopt the Companies' proposal to eliminate references to page margins. The Department finds that page margins are important to ensure the reviewability and usability of most documents filed with the Department in hard copy. We recognize that in some contexts, specific page margins are not possible or practical. In those cases, a party can seek permission from the presiding officer to file a document without the required page margins.

We find that it is appropriate to allow the filing of double-sided pages in paper filings. As noted by the Attorney General, this change will help reduce paper consumption and have little impact on the review of filings (see Attorney General Reply Comments at 3). The Department shares the Attorney General's concerns about adopting a reliable system for maintaining electronic documents. The Department will consider those issues as part of the D.P.U. 15-184 proceeding. In the interim, the Department will continue to require that all filings pursuant to 220 C.M.R. § 1.00 be made in hard copy format and stored by the Department according to current practice, unless instructed otherwise on a case-by-case basis.<sup>6</sup>

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<sup>6</sup> The Department will post on its website guidance for filing in the interim between issuance of this Order and the establishment of electronic filing guidelines.

E. Parties

1. Introduction

220 C.M.R. § 1.03(2) defines “Parties” for purposes of Department proceedings. In this proceeding, the Department proposed a grammatical edit.

2. Comments

The Companies suggest moving the definition of “Parties” from 220 C.M.R. § 1.03(2) to the Definitions section at 220 C.M.R. § 1.01 (Joint Comments at 6). The Companies assert that it would be helpful to have all definitions in one location, especially for members of the public seeking to intervene in a proceeding (Joint Comments at 6). No other commenter addressed this issue.

3. Analysis and Findings

The Department finds that the Companies’ suggestion to move the definition of “Parties” from 220 C.M.R. § 1.03(2) to the definitions section at 220 C.M.R. § 1.01 is appropriate. We have, therefore, deleted section 220 C.M.R. § 1.03(2) and moved the text into 220 C.M.R. § 1.01 between “Department” and “presiding officer.” Thus, we adopt the Companies’ suggested amendments to 220 C.M.R. §§ 1.01 and 1.03(2), as well as the Department’s proposed corrections to 220 C.M.R. § 1.03(2).

F. Motion for Protection from Public Disclosure

1. Introduction

220 C.M.R. § 1.04(5)(e) governs the procedures for filing a motion for protection from public disclosure, also known as a motion for confidential treatment. In this proceeding, the Department proposed a stylistic edit to change the term “hearing officer” to “presiding officer.”

## 2. Comments

The Companies propose changes to 220 C.M.R. § 1.04(5) that would allow parties to file a master motion for confidential treatment based on subject matter with an appendix listing all the documents containing such information and the date the documents were filed (Joint Comments at 6). The Companies state that the filer would update the appendix whenever filing new documents containing that subject matter (Joint Comments at 6). The Companies claim that this approach is used by the Maine Public Utilities Commission and provides two key benefits (Joint Comments at 6). First, the Companies argue that this approach will reduce the number of motions filed, and second, the Companies maintain that this approach creates a master list of confidential materials by category for ease of reference (Joint Comments at 6). The Companies further argue that this would be helpful with respect to sunset provisions, which are often based on the subject matter of the confidential information (Joint Comments at 6-7). To facilitate electronic filing, the Companies also recommend the Department eliminate reference to the words “written motion” and “envelope” within 220 C.M.R. § 1.04(5)(e).

The Attorney General opposes the Companies’ proposal arguing that the master motion and associated processes are unclear (Attorney General Reply Comments at 3). Specifically, the Attorney General questions whether this change will permit the Companies to designate documents as confidential based on categories of information delineated in a “master” motion, without providing other parties or the Department with an opportunity to respond to or rule on a document’s designation on a case-by-case basis (Attorney General Reply Comments at 3-4). Therefore, the Attorney recommends that if the Department decides to adopt the Companies’ recommendation that the Department should also adopt a procedure that would ensure that all

parties have an opportunity to respond to and the Department has an opportunity to rule on whether each document added to the proposed appendix should be granted protective treatment (Attorney General Reply Comments at 4).

3. Analysis and Findings

The Department declines to adopt the Companies' proposal to amend 220 C.M.R. § 1.04(5) to allow parties to file a master motion for confidential treatment. We share the Attorney General's concern that the Companies' proposal may not ensure that parties and the Department have a full opportunity to review the confidentiality of each document or redaction on a case-by-case basis.

The Department also declines to eliminate reference to "written motion" and "envelope" in 220 C.M.R. § 1.04(5). The references relate to motions for confidential treatment and the related confidential materials. As noted in Section III.D, above, until the Department finalizes its electronic filing guidelines, Companies should continue their standard practice of submitting all confidential materials in hard copy format, unless instructed otherwise on a case-by-case basis. Thus, we adopt the Department's proposed amendments to 220 C.M.R. § 1.04(5).

G. Service

1. Introduction

220 C.M.R. § 1.05 governs the manner in which documents shall be served to parties and other persons. In this proceeding, the Department proposed amendments allowing for the service of documents by electronic means.

## 2. Comments

The Attorney General recommends adding language to 220 C.M.R. § 1.05(1)(a) requiring parties to serve paper copies of any document filed electronically with the Department if requested by a party or other person (Attorney General Comments at 3). The Attorney General claims that a paper copy may expedite review in some proceedings, especially for parties that do not have the time or resources to print and organize lengthy documents (Attorney General Comments at 3).

Eversource, National Grid, and Unitil assert that the Attorney General's suggested language would require service of paper copies on any person who requests them, not just parties or participants, and that the hearing officer should have discretion to determine whether service of paper copies is appropriate in a proceeding (Joint Reply Comments at 2).

## 3. Analysis and Findings

The Department declines to adopt the Attorney General's proposal to modify 220 C.M.R. § 1.05(1)(a) to require the service of paper copies of electronically filed documents when requested by a party or other person. We expect that parties and participants in a proceeding will work collaboratively on requests for paper copies of electronically filed documents. In the context of a disagreement, however, the presiding officer shall retain the discretion to decide whether a party or participant shall be required to serve a paper copy of an electronically filed document. Thus, we adopt the Department's proposed amendments to 220 C.M.R. § 1.05.



## H. Notice

### 1. Introduction

220 C.M.R. § 1.06 governs the manner in which the Department provides notice of hearings as well as the required content of such notices. In this proceeding, the Department proposed a numbering change and several grammatical changes.

### 2. Comments

The Companies note that there is an incorrect reference to § 1.06(4)(d) that should be § 1.06(5)(d) (Joint Comments at 7). Additionally, the Companies note that 220 C.M.R. § 1.06(4)(b) does not require notices of hearings or filings to state where the public may review filings submitted to the Department, but that the Department's standard notices state that filings may be reviewed at the Department's or Companies' offices (Joint Comments at 7). The Companies ask that the Department change its standard practice because the Companies' offices contain highly sensitive confidential information, and they restrict access to their facilities (Joint Comments at 7). Thus, the filings are not typically readily accessible to the public at the Companies' offices (Joint Comments at 7).

The Attorney General recommends against adopting the Companies' proposal to cease stating in Department notices that filings may be reviewed at the Companies' offices (Attorney General Reply Comments at 4). The Attorney General argues instead that the Department should continue its practice and also add that filings may be viewed on company websites (Attorney General Reply Comments at 4). The Attorney General contends that while the Companies may have sensitive information, filings can be made available at their front offices (Attorney General Reply Comments at 4). Further, the Attorney General argues that it may be

easier for people who do not live or work near the Department's offices in Boston and do not have easy internet access to view filings at the Companies' offices (Attorney General Reply Comments at 4).

3. Analysis and Findings

With respect to 220 C.M.R. § 1.06(4)(a), the Department agrees that the reference to 220 C.M.R. § 1.06(4)(d) is an error and that it should be 220 C.M.R. § 1.06(5)(d). With respect to the Companies' and Attorney General's requests that the Department change its standard practice for writing notices, these requests do not impact the Department's regulations. The Companies and the Attorney General are encouraged to raise these concerns to presiding officers so appropriate decisions can be made on a case-by-case basis. Thus, we adopt the Companies' proposed numbering correction and the Department's proposed amendments to 220 C.M.R. § 1.06.

I. Copies of Exhibits to Parties and Department; Time of Service

1. Introduction

220 C.M.R. § 1.10(5) governs the manner in which parties must submit exhibits prior to a hearing, including the requirement to file nine copies. In this proceeding, the Department did not propose amendments to this provision.

2. Comments

The Companies and the Cape Light Compact recommend that the Department remove or replace the requirement contained in 220 C.M.R. § 1.10(5)(a) to file nine copies of exhibits (Joint Comments at 8; Cape Light Compact Comments at 3-4). The Cape Light Compact asserts that the benefits and administrative efficiencies afforded by electronic filing are defeated if there

are still regulatory requirements for the filing of multiple paper copies (Cape Light Compact Comments at 4).

### 3. Analysis and Findings

The Department finds that it is appropriate to amend 220 C.M.R. § 1.10(5)(a) to reduce the number of additional paper copies required. We also clarify that this provision applies to exhibits that have not previously been filed in the proceeding as part of initial filings, testimony, or discovery and that the party intends to rely on at evidentiary hearings or on brief. The presiding officer is in the best position to anticipate, on a case-by-case basis, the number of additional paper copies of exhibits that might be necessary for these purposes. Thus, we amend 220 C.M.R. § 1.10(5)(a) to state that parties should file additional copies of these exhibits as provided for in the ground rules for each proceeding or otherwise directed by the presiding officer.

## J. Rulings, Briefs, Oral Argument, and Post-Hearing Procedure

### 1. Introduction

220 C.M.R. § 1.11 governs post-hearing procedure including the filing of briefs and post-hearing motions for reconsideration. While the Department also allows motions for clarification, the regulations do not include the Department's precedent defining when such motions can be filed. Thus, the Department proposed to codify the Department's precedent regarding filing of motions for clarification.<sup>7</sup> The Department also proposed amendments to allow for the electronic filing of briefs and made corrections to grammar and internal references.

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<sup>7</sup> While the Department proposed to amend the regulations to include motions for clarification, we did not include specific language in the proposed regulations.

## 2. Comments

Both the Attorney General and the Companies support the Department's proposal to codify the Department's precedent with respect to filing motions for clarification (Attorney General Comments at 4; Joint Comments at 9). The Attorney General and the Companies suggest identical language with slightly different placement in the regulations (Attorney General Comments at 4; Joint Comments at 9). The Companies suggest including the language within 220 C.M.R. § 1.11(10), whereas the Attorney General suggests a new subsection (Attorney General Comments at 4; Joint Comments at 9).

With respect to 220 C.M.R. § 1.11(6), the Companies and the Cape Light Compact recommend that the Department remove or replace the requirement to file nine copies of briefs (Joint Comments at 8-9; Cape Light Compact Comments at 3-4). Lastly, the Companies suggest an additional subsection of 220 C.M.R. § 11.00 that would eliminate the Department's practice of requiring a separate set of exhibit copies and codifying a new policy requiring parties to file a final list of all the exhibits previously filed and moved into the record after the close of hearings.

## 3. Analysis and Findings

With respect to 220 C.M.R. § 1.11(10), the Department finds the Attorney General's and the Companies' language codifying the Department's precedent on filing motions for clarification to be appropriate. We, therefore, include a new subsection 220 C.M.R. § 1.11(11) and renumber the current subsection 220 C.M.R. § 1.11(11) (Extension of Judicial Appeal Period) as 220 C.M.R. § 1.11(12).

With respect to 220 C.M.R. § 1.11(6), while the Department is committed to reducing unnecessary paper filings, a limited number of paper copies of briefs may be necessary for the

Department's review purposes. The presiding officer is in the best position to anticipate, on a case-by-case basis, the number of paper copies of briefs that might be necessary. Thus, we amend 220 C.M.R. § 1.11(6) to state that parties should submit additional paper copies of briefs as provided for in the ground rules for each proceeding or otherwise directed by the presiding officer.

Lastly, we decline to adopt the Companies' suggestion to add a subsection of 220 C.M.R. § 11.00 eliminating the Department's practice of requiring a separate set of exhibit copies and providing for a final list of all the exhibits previously filed and moved into the record after the close of hearings. The presiding officer for each proceeding will address, in the ground rules or otherwise, whether a separate set of exhibit copies is necessary for a particular proceeding. Thus, we adopt a revised version of the Department's proposed amendments to 220 C.M.R. § 1.11.

IV. 220 C.M.R. § 2.00: RULES FOR ADOPTING, AMENDING, OR REPEALING REGULATIONS, AND FOR ISSUING ADVISORY RULINGS

A. Introduction

220 C.M.R. § 2.00 governs the procedures for adopting, amending, or appealing regulations, as well as issuing advisory rulings. The Department proposed amendments to allow for electronic filing and correct grammar.

B. Comments

The Companies state that they have no comments or suggested revisions with respect to the Department's proposed amendments to 220 C.M.R. § 2.00 (Joint Comments at 10). The Attorney General states that she is open to a system whereby an electronic petition, tariff, schedule, and contract filed pursuant to 220 C.M.R. § 2.00, are considered originals, provided

that the Department adopts a reliable system for maintaining electronic documents as originals with no paper back up (Attorney General Comments at 5).

C. Analysis and Findings

As stated in Section III.D, above, the Department shares the Attorney General's concerns about adopting a reliable system for maintaining electronic documents. The Department will consider those issues as part of the D.P.U. 15-184 proceeding. In the interim, the Department will continue to require that all petitions filed pursuant to 220 C.M.R. § 2.00 be made in hard copy format and stored by the Department according to current practice, unless instructed otherwise on a case-by-case basis.

V. 220 C.M.R. § 5.00: TARIFFS, SCHEDULES, AND CONTRACTS (OTHER THAN CARRIERS OF PROPERTY BY MOTOR VEHICLE)

A. Introduction

220 C.M.R. § 5.00 governs the filing of tariffs, schedules, and contracts and procedural requirements for proceedings in which a utility seeks a general increase in rates. The Department proposed amendments to allow for electronic filing as well as to add internal citations, correct grammar, and replace outdated references.

B. Comments

The Companies recommend removing the reference to business hours from 220 C.M.R. § 5.05, consistent with their proposal to allow filings by the end of the calendar day for 220 C.M.R. § 1.02(2) (Joint Comments at 10). The Companies argue that their proposal will provide more time to file complex documents like tariffs and contracts with no prejudice to any parties (Joint Comments at 10). The Attorney General disagrees with the Companies for the same reasons she opposes the Companies' proposal for 220 C.M.R. § 1.02(2) (Attorney General

Reply Comments at 5). Further, the Attorney General states that she is open to a system whereby an electronically filed tariff, schedule, or contract is considered an original document, provided that the Department adopts a reliable system for maintaining electronic documents as originals with no paper back up (Attorney General Comments at 5).

C. Analysis and Findings

The Department declines to adopt the Companies' proposal. As stated in Section III.A, above, filing deadlines during the Department's business hours allow for more timely receipt of materials in often time-sensitive circumstances. Further, they allow filers to contact the Department if there is a question about or problem with their filing before the deadline to file has passed. Thus, we adopt the Department's proposed amendments to 220 C.M.R. § 5.00. Additionally, as stated in Section III.D, above, the Department shares the Attorney General's concerns about adopting a reliable system for maintaining electronic documents. The Department will consider those issues as part of the D.P.U. 15-184 proceeding. In the interim, the Department will continue to require that all filings pursuant to 220 C.M.R. § 5.00 be made in hard copy format and stored by the Department according to current practice, unless instructed otherwise on a case-by-case basis.

VI. 220 C.M.R. § 6.00: STANDARD COST OF GAS ADJUSTMENT CLAUSE

A. Introduction

220 C.M.R. § 6.12 governs the procedures for filing amended gas adjustment factors. In this proceeding, the Department proposed an amendment to add a citation and align the filing deadlines with those prescribed in Investigation Concerning the Cost of Gas Adjustment Clause, D.T.E. 01-49-A (2001).

B. Comments

The Companies support the Department's revision to 220 C.M.R. § 6.12 to add the citation and update the time for filing amended gas adjustment factors from ten to seven days before the first billing cycle of the month in which it is proposed to take effect (Joint Comments at 11). No other commenter addressed this provision.

C. Analysis and Findings

The Department finds that it is appropriate to amend the filing deadline as proposed to align with the current requirements of D.T.E. 01-49-A, as well as to add the internal citation. Thus, we adopt the Department's proposed amendments to 220 C.M.R. § 6.12.

VII. 220 C.M.R. § 77.00: VOTING TRUST CERTIFICATES OF PUBLIC UTILITIES

A. Introduction

220 C.M.R. § 77.00 governs the sale and issuance of voting trust certificates by utilities. In this proceeding, the Department proposed amendments to remove outdated language and citations.

B. Comments

With respect to 220 C.M.R. § 77.00, the Companies suggest deleting the reference to the "Tercentenary Edition of the Massachusetts General Laws" to avoid confusion (Joint Comments at 11). No other Commenter addressed this provision.

C. Analysis and Findings

The Department finds it appropriate to delete the outdated reference to the "Tercentenary Edition of the Massachusetts General Laws" in 220 C.M.R. § 77.00. Thus, we adopt the Companies' and the Department's proposed amendments to 220 C.M.R. § 77.00.



### VIII. 220 C.M.R. § 79.00: ANNUAL RETURN

#### A. Introduction

220 C.M.R. § 79.00 governs the manner of filing and content requirements for annual returns for electric companies, gas companies, municipal lighting plants, and water companies. It also included the annual return forms for electric companies, gas companies, municipal lighting plants, and water companies. In this proceeding, the Department proposed amendments to unify the content requirements, including certification by a certified public accountant (“CPA”) across all four types of entities, and to remove the annual return forms.

#### B. Comments

With respect to 220 C.M.R. § 79.00, the Attorney General argues that the Department should modify its amendments to require CPA certifications of annual returns to be filed as a statement from an independent CPA because independence is important for reliability of the certification (Attorney General Comments at 5). The Companies, however, argue that the Department’s proposed requirement for the Companies to file a CPA’s certification is unnecessary and appears to fall outside of the Department’s stated purpose to “rescind, revise, or simplify their regulations” as stated in the Department’s Order opening this proceeding (Joint Reply Comments at 1, citing D.P.U. 15-183, at 2). The Companies further argue that for companies who submit a Form 10-K to the U.S. Securities and Exchange Commission or United States generally accepted accounting principles (“USGAAP”) financial statements with the Department, the Department could accept these documents for the proposed certification requirement (Joint Comments at 12). The Companies note that smaller utilities such as Liberty and Blackstone do not file a Form 10-K or USGAAP financial statement containing a CPA

certification, independent or otherwise, and that these proposed revisions would add an onerous substantive requirement to the Department's annual return regulations (Joint Comments at 12; Joint Reply Comments at 1-2).

The Companies note that G.L. c. 164, § 83, already requires the Companies to file annual returns with the Department that are signed and sworn to by the president or vice president, treasurer or assistant treasurer, and a majority of the directors, of the amount of their authorized capital, their indebtedness, and financial condition (Joint Reply Comments at 2). The Companies contend that there is no reason to also require each company to provide a CPA's certification in addition to the sworn signatures of a company's officers and directors given that directors have a fiduciary duty similar to that of a CPA (Joint Reply Comments at 2). Accordingly, the Companies request that the Department decline to adopt the Attorney General's proposed modification to 220 CMR § 79.00 and decline to adopt the Department's own proposed modifications to 220 C.M.R. § 79.00 maintaining the current requirements for filing of annual returns (Joint Reply Comments at 2). Should the Department find that any revisions are necessary, the Companies request that a separate proceeding be opened to fully investigate the necessity and appropriateness of such additional filing requirements (Joint Reply Comments at 2).

C. Analysis and Findings

We note that while the Attorney General and the Companies characterize the CPA requirement as a new requirement, electric companies are already required to file CPA certifications with their annual returns. 220 C.M.R. § 79.04(4). For gas companies, municipal lighting plants, and water companies, however, the Department's proposal to simplify the

regulations by creating the same requirements for all entities requires a substantive change to how gas companies, water companies, and municipal lighting plants prepare and file their annual returns. The Department is persuaded that its proposal imposes a burden on smaller companies who do not already file CPA-certified documents with their annual returns. Therefore, we retain the current CPA certification requirement for electric companies, but we do not add a new requirement for gas companies, municipal lighting plants, and water companies. Further, the Department will not adopt the Attorney General's recommendation to require certification by a statement from an independent CPA as this requirement will impose an additional substantive burden.

## IX. PROPOSED RESCISSIONS

### A. Introduction

The Department proposed to rescind 220 C.M.R. § 9.00, Cost Recovery for Major Electric Company Generation Investments, and 220 C.M.R. § 30.00, Requiring Private Investor Owned Electric Companies Operating Within the Commonwealth to Adopt Rates Structures Based on Peak Loads and Time Differential Pricing and Relating Costing Differential Methodologies.

### B. Comments

The Companies support the Department's proposed rescission of 220 C.M.R. § 9.00 (Joint Comments at 11). The Attorney General did not comment on 220 C.M.R. § 9.00. The Companies and the Attorney General support the Department's proposal to rescind 220 C.M.R. § 30.00. The Attorney General, however, notes that the Department should continue to

implement the policy framework set forth in Investigation into Time Varying Rates,

D.P.U. 14-04-C (2014) (Attorney General Comments at 5).

C. Analysis and Findings

The Department finds that it is appropriate to rescind 220 C.M.R. §§ 9.00 and 30.00, as proposed. Specifically, 220 C.M.R. § 9.00 is no longer necessary because electric distribution companies have divested their generation assets pursuant to G.L. c. 164, § 1A. Similarly, 220 C.M.R. § 30.00 is now obsolete because electric distribution companies have met all the requirements for implementing peak load pricing.<sup>8</sup>

X. ADOPTION OF FINAL REGULATIONS

For the reasons stated above, the Department, by this Order, adopts as final regulations 220 C.M.R. § 1.00, et seq., Procedural Rules; 220 C.M.R. § 2.00, et seq., Rules for Adopting, Amending, or Repealing Regulations and for Issuing Advisory Ruling; 220 C.M.R. § 5.00, et seq., Tariffs, Schedules, and Contracts (Other Than Carriers of Property by Commercial Motor Vehicle); 220 C.M.R. § 6.00, et seq., Standard Cost of Gas Adjustment Clause; 220 C.M.R. § 11.00, et seq., Rules Governing the Restructuring of the Electric Industry; 220 C.M.R. § 14.00, et seq., The Unbundling of Services Related to the Provision of Natural Gas; 220 C.M.R. § 77.00, et seq., Voting Trust Certificates of Public Utilities; and 220 C.M.R. § 79.00, et seq., Annual Return Form to be Filed by Gas, Electric, and Water Companies and Municipal Lighting Plants.

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<sup>8</sup> The Attorney General urges the Department to continue the policy framework implemented in D.P.U. 14-04-C. We note, however, that the Companies have met all the requirements of 220 C.M.R. § 30.00 independent of the Department's adoption of time varying rates in D.P.U. 14-04-C.

For the reasons stated above, the Department, by this Order, rescinds 220 C.M.R. § 9.00, et seq., Cost Recovery for Major Electric Company Generation Investments and 220 C.M.R. § 30.00, et seq., Requiring Private Investor Owned Electric Companies Operating Within the Commonwealth to Adopt Rates Structures Based on Peak Loads and Time Differential Pricing and Relating Costing Differential Methodologies.

The Department has filed standard Regulation Filing Forms, amended regulations 220 C.M.R. §§ 1.00, 2.00, 5.00, 6.00, 11.00, 14.00, 77.00, and 79.00, and rescinded regulations 220 C.M.R. § 9.00 and 220 C.M.R. § 30.00 with the Office of the Secretary of the Commonwealth, State Publications and Regulations Division. These amended and rescinded regulations supersede the proposed regulations and go into effect upon publication in the Massachusetts Register. See 950 C.M.R. § 20.00.

XI. ORDER

Accordingly, after notice, comment, hearing, and due consideration, it is

ORDERED: That the regulations, entitled “Procedural Rules,” attached hereto and designated as 220 C.M.R. § 1.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Rules for Adopting, Amending, or Repealing Regulations and for Issuing Advisory Rulings,” attached hereto and designated as 220 C.M.R. § 2.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Tariffs, Schedules, and Contracts (Other Than Carriers of Property by Commercial Motor Vehicle),” attached hereto and designated as 220 C.M.R. § 5.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Standard Cost of Gas Adjustment Clause,” attached hereto and designated as 220 C.M.R. § 6.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Rules Governing the Restructuring of the Electric Industry,” attached hereto and designated as 220 C.M.R. § 11.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “The Unbundling of Services Related to the Provision of Natural Gas,” attached hereto and designated as 220 C.M.R. § 14.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Voting Trust Certificates of Public Utilities” attached hereto and designated as 220 C.M.R. § 77.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Annual Return to be Filed by Gas, Electric, Water Companies, and Municipal Lighting Plants,” attached hereto and designated as 220 C.M.R. § 79.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Cost Recovery for Major Electric Company Generation Investments,” attached hereto and formerly designated as 220 C.M.R. § 9.00 et seq., are hereby RESCINDED; and it is



An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.