



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 20, 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:

The Office of the Attorney General (“AGO”) submits these comments in response to the “Interlocutory Order and Draft Policy on Enhancing Public Awareness and Participation” (“Interlocutory Order”) issued by the Department of Public Utilities (the “Department”) on December 28, 2022, in D.P.U. 21-50.

As the AGO has stated in prior comments in this proceeding, the AGO appreciates the Department’s continued efforts to make participation in its proceedings more accessible. The steps detailed in the Interlocutory Order indicate that the Department is making progress towards improving accessibility. Interlocutory Order, at 4–6. Several participants at the Roundtable and commenters, including the AGO, highlighted the importance of including supplemental plain-language summaries in Notices; providing educational resources about specific proceedings as well as information about Department processes and how to participate in proceedings; and providing an option to subscribe to proceedings. *Id.*, at 6; *see* AGO Roundtable Comments (September 16, 2022); AGO Initial Comments (June 14, 2021). The AGO appreciates that the Department has either started providing these resources or is working towards providing them by this summer.

With regards to the draft policy, the AGO agrees with the Department that certain types of proceedings warrant higher levels of publication and outreach than other types of proceedings (“Types of Proceedings” section of the draft policy), and that petitioners should be required to reach out to affected communities with regards to the petitioner’s proposal (“Petitioner Outreach Plan” section of draft policy). In order to provide more predictability and consistency, the AGO recommends that the Department provide additional guidance and direction with regards to the Types of Proceedings tiering criteria and the timing of the tiering determination. The AGO also recommends that the Department be responsive to community requests and regularly reevaluate the appropriateness of the tiering criteria and associated outreach requirements. In terms of the Petitioner Outreach Plan, the AGO recommends that the Department provide additional support

to Petitioners and oversight, to ensure that the outreach is effective and meaningful.

Types of Proceedings

The draft policy states that the tiering criteria are “designed to serve as guidance, but [that] the Department will determine under which tier each proceedings falls on a case-by-case basis.” Interlocutory Order, at 8. Deciding tiering determinations on a case-by-case basis, however, creates a danger that tiering decisions will not be predictable or consistent. Particularly for Tier 1 proceedings, currently defined as “major, significant proceedings (which may include gas or electric base distribution rate cases or significant policy change initiatives) or proceedings with significant geographic-specific impact on environmental justice communities[.]” the AGO recommends that the Department first provide more details, as well as examples, regarding which proceedings would qualify under Tier 1 and then solicit comments from stakeholders on a revised policy.

The Department should also provide additional details on the timing of the Department’s tiering determination, which is not yet described in the draft policy. The proposed Petitioner Outreach Plan requires that petitioners file a community outreach plan with each petition consistent with the outreach required by the appropriate tier. Thus, the petitioner would need to know the Department’s tier determination well before filing the initial petition to develop an outreach plan consistent with the requirements for that tier.

As the Department acknowledges, “[t]he pursuit of better and more meaningful outreach and education is a process[.]” Interlocutory Order, at 3. Similar to the AGO’s prior recommendation that the Department take a community-focused and responsive approach to language access (AGO Roundtable Comments, at 4), the AGO recommends that the Department be responsive to community requests related to the tiering and associated outreach requirements, especially as the Department begins implementing a new policy. If a particular proceeding is more controversial than expected, if communities voice concerns over anticipated impacts, or if a community group expresses the need for more time or more outreach, the Department should take concrete steps to ensure that it is responsive to such outreach-related requests. The Department’s response may include pausing proceedings to facilitate more or different outreach in certain instances or providing more time to educate the community on the petition before the Department. The 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.

Petitioner Outreach Plan

With regards to the Petitioner Outreach Plan, the AGO believes that the Department is well positioned to offer additional support to Petitioners as well as oversight to ensure that the Petitioner Outreach Plan results in outreach that is meaningful to communities and stakeholders. The AGO recommends the following:

- The Department Should Develop and Maintain a List of Municipal Contacts and Community Organizations to Receive Notice: Under the draft policy, the petitioner is responsible for developing a list of municipal contacts and community organizations to whom notice will be issued. Interlocutory Order, at 9. To support petitioners in their outreach, the AGO recommends that the Department develop and maintain (through regular updates) lists of municipal contacts and interested community organizations throughout the Commonwealth.¹ During the Roundtable as well as in the AGO's work with the Stakeholder Working Group,² which included outreach to municipal staff and elected officials, several people representing municipalities said that Notices related to energy issues were not always received by the correct staff member. For instance, a Notice sent to a mayor's office, likely one of dozens of similar documents received by a municipal office each month, may not be forwarded on to the appropriate department or staff member (e.g., an energy coordinator) in a timely manner. With regards to community organizations, the AGO recommends that the Department develop and maintain a list, similar to the list of municipal staff. Community groups that have filed comments in prior proceedings can be included in the list, and the Department should work with the Executive Office of Energy & Environmental Affairs ("EEA") to identify organizations that have expressed interest in energy, environmental justice, climate, and related issues. Rather than each utility developing and maintaining their own list, the Department should provide a list that serves as a starting point; utilities can then expand the list based on their existing contacts and knowledge of their particular service area.³
- The Department Should Develop a Standard Way to Determine when Petitioners Must Provide Translation and Interpretation Services: Under the Petitioner Outreach Plan,

¹ The Petitioner would minimally be required to conduct outreach to the contacts on the Department's list, but could conduct outreach to additional contacts, as appropriate.

² As the AGO shared in its Roundtable and Initial comments, the AGO convened a Stakeholder Working Group ("SWG") in 2021. The SWG includes representatives from community organizations as well as people with expertise in Department and Energy Facilities Siting Board proceedings. The SWG has discussed barriers to participation and is finalizing recommendations for how the Department's proceedings can be accessible to a broader range of participants, and how the Department can provide meaningful opportunities for stakeholders to provide input. The SWG intends to share its work in the near future.

³ The Department can use this opportunity to conduct outreach to municipalities and community organizations to ensure that the list contains the appropriate individuals and that contact information is accurate.

Petitioners are also responsible for “provid[ing] plans for translation and interpretation services (including which languages and the justification for those languages)[.]” Interlocutory Order, at 9. The AGO recommends that the Department develop a standardized way to determine when petitioners must provide translation and interpretation services. Although a list similar to the one maintained by the Department of Environmental Protection for when public water systems must provide translations of certain documents⁴ would ensure transparency and consistency, the AGO recommends that the Department consider utilizing EEA’s interactive Environmental Justice mapping tool, which includes a map of languages spoken in the Commonwealth.⁵ In this way, there is some predictability provided for communities (*i.e.*, they know when translation and interpretation services will be provided, and when they may need to request such services), and the decisions related to language access will be consistent across utilities and service territories.

- There Should Be Oversight by a Third-Party on the Adequacy of the Petitioner’s Outreach and Outreach Plan: The AGO is concerned that, as proposed, the Petitioner Outreach Plan and the associated outreach is not subject to any external review to ensure the outreach is comprehensive and meaningful. The AGO recommends that the Department assign a third-party to evaluate the Petitioner’s outreach, which may include assessments of how communities, community organizations, and municipalities view the outreach. The outcome of the third-party evaluation of the Petitioner’s outreach may result in the Department providing directives to Petitioners if the Outreach Plan is inadequate.

While the draft policy indicates progress towards improving public participation, it is limited to publication of Notice and outreach by Petitioners. Although these are important steps to removing existing barriers to meaningful participation, the AGO reiterates its recommendations that (1) the Department form an advisory council or working group to ensure that the Department has the benefit of continuing and ongoing input from stakeholders, and (2) the Department hire staff dedicated to working with the public, through a community liaison, community outreach, or public participation division.⁶ AGO Roundtable Comments, at 3.

In addition, there are several short-term steps that the AGO recommends that the Department pursue, including the following: (1) the Department and Petitioners should provide easy-to-read summaries of Orders and Petitions for proceedings of concern to impacted

⁴ See Department of Environmental Protection, “Language Translation Requirements for Specific MA Cities and Towns,” *available at* <https://www.mass.gov/info-details/requirements-for-language-translations#language-translation-requirements-for-specific-ma-cities-and-towns->.

⁵ See EEA, “Environmental Justice Populations in Massachusetts,” “Languages Spoken in Massachusetts” tab, *available at* <https://mass-eoea.maps.arcgis.com/apps/MapSeries/index.html?appid=535e4419dc0545be980545a0eeaf9b53>.

⁶ While the AGO is aware that the Department has created a new staff position, the Public Access Coordinator, the AGO notes that additional staff resources will likely be necessary to make the types of improvements recommended by the AGO and other stakeholders.

communities, especially for long or highly technical orders; (2) the Department should consider issuing tentative decisions and allowing an opportunity for comments and input from stakeholders in certain proceedings; (3) the Department should develop a way to respond to comments from stakeholders so that stakeholders understand the impact that their input has on Department decisions; (4) the Department should develop additional educational materials (including videos, sample motions, and a handbook) to make the content of proceedings as well as the procedural requirements more accessible; and (5) the Department should proactively publicize proceedings of particular importance or interest through a monthly mailing list or through social media posts. AGO Roundtable Comments, at 3–5.

The AGO appreciates the opportunity to participate in this proceeding and to offer comments on the draft policy.

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Jessica R. Freedman
Jessica R. Freedman
Assistant Attorney General
Massachusetts Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

cc: Scott Seigal, Hearing Officer
Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

**Notice of Inquiry by the Department of
Public Utilities on its own Motion into
Procedures for Enhancing Public
Awareness of and Participation in its
Proceedings**

D.P.U. 21-50

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 20th day of January, 2023.

/s/ Jessica R. Freedman
Jessica R. Freedman
Assistant Attorney General
Massachusetts Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200