

# The Commonwealth of Massachusetts

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## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 21-50-B

April 22, 2025

Inquiry by the Department of Public Utilities on its own Motion into procedures for enhancing public awareness of and participation in its proceedings.

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ORDER

## I. INTRODUCTION AND PROCEDURAL HISTORY

On April 16, 2021, the Department of Public Utilities (“Department”) issued a Vote and Order opening this inquiry to examine procedural enhancements to its public notice requirements to increase public awareness of and participation in Department proceedings. The Department docketed this proceeding as D.P.U. 21-50.

On December 28, 2022, after receiving comments from various individuals and entities, and conducting a virtual stakeholder roundtable in coordination with the Energy Facilities Siting Board (“EFSB”),<sup>1</sup> the Department issued an Interlocutory Order and Draft Policy on Enhancing Public Awareness and Participation (“Draft Policy”), with a request for comments on the Draft Policy. D.P.U. 21-50, at 9-10 (2022). The Draft Policy proposed grouping Department proceedings into three different tiers, depending on case complexity and significance, with different publication and outreach requirements appropriate to each tier.

On February 23, 2024, after reviewing the comments received on the Draft Policy, conducting a virtual technical conference with interested stakeholders, and soliciting further information and comments from interested stakeholders, the Department issued an Order, D.P.U. 21-50-A, announcing its Tiering and Outreach Policy. The Tiering and Outreach Policy

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<sup>1</sup> The EFSB -- which opened its own proceeding into examining procedural enhancements, docketed as EFSB 21-01 -- reviews proposed large energy facilities, including power plants, electric transmission lines, intrastate natural gas pipelines, and natural gas storage tanks. See generally G.L. c. 164, §§ 69H – 69Q. While the Department administratively supports the work of the EFSB, the EFSB is not under the supervision and control of the Department and makes its decisions independently from the Department. G.L. c. 164, § 69H; see also Department of Public Utilities, Energy Facilities Siting Board, <https://www.mass.gov/orgs/energy-facilities-siting-board> (last visited on April 3, 2025).

included a chart that categorized different types of Department proceedings into tiers and provided specific outreach requirements for each tier.

On September 17, 2024, the Department released its updated Language Access Plan (“LAP”) following a 60-day public comment period. The updated LAP was developed in coordination with the Department’s parent agency, the Executive Office of Energy and Environmental Affairs (“EEA”), and other EEA agencies and pursuant to Informal Resolution Agreements between (1) EEA and the United States Environmental Protection Agency, (2) the Department and the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (“DOT PHMSA”), and (3) EFSB and DOT PHMSA. The LAP outlines existing language access services and best practices that the Department will follow to improve language access through translated materials and interpretation.<sup>2</sup>

In this Order, we address the impact of the updated LAP on the language access services requirements applicable to proceedings under the Tiering and Outreach Policy, add a certification requirement to petitioner outreach plan submissions for Tier 1 proceedings, and clarify the applicability of the Department’s Tiering and Outreach Policy to EFSB proceedings.

## II. LANGUAGE ACCESS SERVICES REQUIREMENTS FOR TIER 1 PROCEEDINGS

In D.P.U. 21-50-A, the Department stated that for Tier 1 proceedings impacting an entire service territory, petitioners shall translate the pre-filing materials into the top three languages spoken in the Commonwealth (*i.e.*, Spanish, Portuguese, and Mandarin) and, to the extent

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<sup>2</sup> The Department’s updated LAP can be found at <https://www.mass.gov/info-details/language-access-at-the-department-of-public-utilities-dpu> (last visited on April 3, 2025).

practicable, any additional languages upon request to the petitioner. D.P.U. 21-50-A at 29 & App. A: Tiering and Outreach Policy § 2.a. For Tier 1 proceedings with a significant geographic-specific impact on an environmental justice (“EJ”) population not shared by the rest of the service territory, the Department directed petitioners to coordinate with municipal and community leaders in those communities to determine the appropriate languages for translation. D.P.U. 21-50-A at 29-30 & App. A: Tiering and Outreach Policy § 2.a. The Department further stated that petitioners, in coordination with the Department, would determine the languages required for interpretation services at public hearings after filing their petitions. D.P.U. 21-50-A at 30 & App. A: Tiering and Outreach Policy § 2.a. Finally, the Department stated that it expected to issue an updated LAP within the next twelve months that would provide further details regarding the Department’s language access policies. D.P.U. 21-50-A at 30.

As noted above, the Department issued an updated LAP on September 17, 2024. The updated LAP establishes new language access requirements that appear to conflict with those previously established in D.P.U. 21-50-A. The LAP provides that for “certain complex or high-profile proceedings (e.g., base distribution rate proceedings and statewide investigations) ... the Department will seek to provide language access services by translating and interpreting into languages regularly encountered within the applicable service area.” LAP at 7. The designation of proceedings that are complex or high-profile accords with the definition of Tier 1 proceedings in D.P.U. 21-50-A, which are proceedings that involve significant policy changes or fundamental changes to process (including base distribution rate cases, significant notices of inquiry, and proceedings that have a significant geographic-specific impact on an EJ population that is not

shared by the rest the service territory). D.P.U. 21-50-A at 20 & App. A: Tiering and Outreach Policy § 1.

The LAP provides that for statewide proceedings that are complex or high-profile (e.g., Tier 1 proceedings), “languages regularly encountered” means the top five languages spoken in Massachusetts by persons with limited English proficiency (“LEP”) using data from the U.S. Census Bureau’s American Community Survey or other appropriate sources. LAP at 7. Attached to the LAP is an appendix that identifies Spanish, Portuguese, Chinese (both Mandarin and Cantonese), Haitian Creole, and Vietnamese as the top five languages spoken by persons with LEP in Massachusetts. This appendix may be revised and updated at times apart from scheduled updates to the LAP. LAP at 8.

For service territory-specific proceedings that are complex or high-profile, “languages regularly encountered” means no more than the top five languages spoken by at least three percent or 1000 members of the population with LEP, whichever is less, within at least one census tract of the service territory. LAP at 7. The LAP appendix provides a list of the languages that meet those criteria for each gas and electric distribution company’s service territory. For service territory-specific proceedings that do not encompass a distribution company’s entire service territory, the languages listed for that distribution company may be modified as appropriate for the target service territory. LAP at 8. For location-specific proceedings that are complex or high-profile, the Department will determine the appropriate languages for translation and interpretation by examining the census tracts within the designated geographic area of the proposed project and identifying the languages spoken by at least five percent of the population who identify as having LEP. LAP at 7-8.

As stated above, the Department recognizes that the language access service requirements in its updated LAP impose requirements on petitioners beyond those established in its Tiering and Outreach Policy. Conscious of the timing of the two documents, the Department has intended for the updated LAP requirements to supersede the requirements of the Tiering and Outreach Policy. See D.P.U. 21-50-A at 30 (acknowledging that then-anticipated updates to the LAP would supplement the Tiering and Outreach Policy). Thus, within 60 days after the date of this Order, petitioners are directed to begin providing translation and interpretation services in compliance with the LAP. Further, in compliance with the LAP, the Department may require petitioners to provide language translation and interpretation services throughout a proceeding. Petitioners shall take steps to ensure that such services are available upon request by the Department.

### III. PETITIONER OUTREACH PLAN CERTIFICATION FOR TIER 1 PROCEEDINGS

Pursuant to the Tiering and Outreach Policy § 3, a petitioner must include with its Tier 1 petition an outreach plan specific to the proceeding that includes: (1) a list of the municipal and community organizations to which the notice will be provided; (2) plans for translation and interpretation services (including which languages and the justification for those languages); (3) the plain language summary; and (4) a description of the outreach already conducted and any additional planned outreach efforts. To facilitate the Department's review of these outreach plans, we further direct petitioners to include with each Tier 1 outreach plan a notarized certification, similar to those provided with returns of service, stating that the undersigned

certifies that the outreach required for the proceeding has been developed and conducted pursuant to the outreach plan and as directed by the Department.<sup>3</sup>

#### IV. APPLICABILITY OF THE DEPARTMENT'S TIERING AND OUTREACH POLICY TO EFSB PROCEEDINGS

In D.P.U. 21-50-A at 21, the Department declined to specifically exclude EFSB cases, G.L. c. 164, § 72 filings (regarding permission to construct and the taking of land for transmission lines), and G.L. c. 40A, § 3 filings (regarding zoning exemptions) from Tier 1 status. In doing so, the Department first noted that the EFSB was conducting its own public access proceeding, EFSB 21-01, and would make its own determinations regarding publication and outreach for EFSB cases. D.P.U. 21-50-A at 21. As noted in footnote 1 above (and as stated in D.P.U. 21-50-A at 1 n.1), the Department administratively supports the work of the EFSB, but the EFSB is not under the supervision and control of the Department and makes its decisions independently from the Department. G.L. c. 164, § 69H. Thus, the directives in D.P.U. 21-50-A and the Tiering and Outreach Policy are applicable only to Department proceedings and not EFSB proceedings.

With respect to G.L. c. 40A, § 3 proceedings, the recently enacted “An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers,” Acts of 2024, c. 239 (“2024 Climate Act” or “Act”) has removed those proceedings from Department oversight in favor of EFSB oversight. 2024 Climate Act, § 37. Regarding G.L. c. 164, § 72 proceedings, the Act transfers that authority from the Department to the EFSB as of March 1, 2026. 2024 Climate

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<sup>3</sup> The notarized certification requirement is not required for Tier 2 and Tier 3 proceedings because petitioners may submit standard outreach plans for those proceedings. D.P.U. 21-50-A, at 25 & App. A: Tiering and Outreach Policy § 3.

Act, §§ 75, 139. The 2024 Climate Act also transfers the authority to grant zoning exemptions in the City of Boston, pursuant to St. 1956, c.665, § 6, from the Department to the EFSB as of March 1, 2026. 2024 Climate Act, §§ 91, 139. Until then, the directives in D.P.U. 21-50-A and the Tiering and Outreach Policy will not apply to these proceedings. Rather, the EFSB's own publication and outreach requirements will apply.

#### V. CONCLUSION

The Department opened this inquiry on April 16, 2021, with a Vote and Order seeking comments on various issues related to public involvement and participation in its proceedings. Many of the issues raised have been addressed and formalized in D.P.U. 21-50-A and the Tiering and Outreach Policy. See also D.P.U. 21-50, Interlocutory Order and Draft Policy at 4-6 (December 28, 2022) (noting actions already taken to improve public participation and outreach). In addition, the Department recently finalized its LAP, EJ Strategy,<sup>4</sup> and Public Involvement Plan,<sup>5</sup> all of which address and clarify public participation and outreach issues related to this inquiry. The Department also hired a Director of Environmental Justice and Public Participation to guide the Department in its EJ and public participation efforts, and will be creating a Public Participation Division, pursuant to the 2024 Climate Act, § 10. Further, the Department has taken the following steps to enhance public involvement and participation in its proceedings:

(1) arranging for transcripts to be made available for free on its website on the online file room

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<sup>4</sup> The Department's EJ Strategy is located on page 124 of the Executive Office of Energy and Environmental Affairs EJ Strategy, available at <https://www.mass.gov/doc/february-2024-environmental-justice-strategy-english/download> (last visited on April 3, 2025).

<sup>5</sup> Available at <https://www.mass.gov/info-details/eea-and-dpu-public-involvement-plans-pips> (last visited April 3, 2025).



for the applicable docket, (2) improving its online file room website functionality so that it will be searchable, (3) announcing important proceedings on its social media platforms, (4) incorporating more plain language in its notices, (5) allowing public comments to be submitted after public hearings, and (6) addressing public comments in its orders.

In concluding this inquiry, the Department acknowledges all the comments received, even those that may not have been specifically addressed (such as scheduling public hearings at multiple locations and times, the use of social media, and funding for translations and intervenors). These comments are beneficial in informing the Department how it might improve public access and involvement in Department proceedings going forward. We thank all the commenters and stakeholders for their participation in this inquiry.

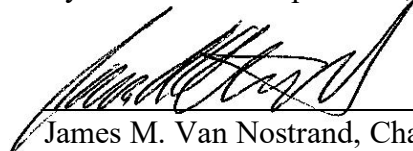
VI. ORDER

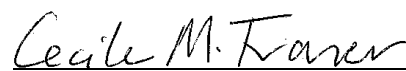
Accordingly, after notice, comment, and due consideration, it is

ORDERED: That the Secretary of the Department shall distribute electronically and, where requested, serve by mailing this Order on the Department's distribution list for this proceeding; and it is

FURTHER ORDERED: That petitioners subject to the Department's jurisdiction shall comply with all directives contained in this Order.

By Order of the Department,

  
James M. Van Nostrand, Chair

  
Cecile M. Fraser, Commissioner