



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-156-B

July 6, 2017

### ORDER OF RIGHT OF DELEGATION

#### I. INTRODUCTION

Pursuant to G.L. c. 164, § 1F, the Department of Public Utilities (“Department”) shall promulgate rules and regulations to provide retail customers with the utmost consumer protections contained in law. In accordance with this mandate, the Department is authorized to license electric and gas competitive suppliers, electricity brokers, and gas retail agents (hereinafter referred to as “competitive supply companies” or “competitive supply company”). G.L. c. 164, § 1F; Rulemaking to Establish Rules Governing the Unbundling of Services Related to the Provision of Natural Gas, D.T.E. 98-32-E (2000). The Department is also responsible for addressing consumer complaints and ensuring that competitive supply companies comply with Department regulations. 220 C.M.R. §§ 11.07, 14.06(5), 25.00. As such, the Department is authorized to investigate competitive supply companies that are alleged to have violated G.L. c. 164, §§ 1A through 1F, or any regulation promulgated or Order issued thereunder. Further, after conducting a hearing that complies with

G.L. c. 30A, the Department is authorized to take licensure action or levy civil penalties against a competitive supply company. 220 C.M.R. §§ 11.07, 14.06(5), 25.00.<sup>1</sup>

On July 6, 2017, the Department issued a Final Order approving interim guidelines that establish the process by which the Department will investigate competitive supply companies alleged to have violated G.L. c. 164, §§ 1A through 1F, or any regulation promulgated or Order issued thereunder (“Interim Guidelines”). Investigation to Establish Interim Guidelines for Competitive Supply Investigations and Proceedings, D.P.U. 16-156-A (July 6, 2017).<sup>2</sup> The Interim Guidelines permit the Department to, among other things: (1) initiate and conduct informal reviews of competitive supply companies; (2) agree to remedial plans; (3) initiate formal proceedings by issuing a notice of probable violation (“NOPV”); and (4) enter into consent agreements prior to a final Department Order.

To carry out the informal and formal processes described in D.P.U. 16-156-A and implement the Interim Guidelines, the Commission hereby authorizes the Chairman of the Commission to delegate to one Commissioner (“Delegated Commissioner”), pursuant to G.L. c. 25, § 4, the authority to take the actions described below.

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<sup>1</sup> “Licensure action” includes suspension or revocation of a competitive supply company’s license, denial of an application for license renewal, or implementation of a probationary period. See, e.g., 220 C.M.R. § 11.05(2)(e).

<sup>2</sup> As noted in D.P.U. 16-156-A at 42, the Department will be conducting a rulemaking to update its existing electric and gas competitive supply regulations. This Order of Delegation is consistent with the Department’s current regulations and the Interim Guidelines approved in D.P.U. 16-156-A. If necessary, the Department will issue a revised Order of Delegation after the rulemaking is complete.

II. DELEGATION REGARDING INFORMAL REVIEW AND REMEDIAL PLANS

- A. Pursuant to D.P.U. 16-156-A and Interim Guidelines, § 3, the Delegated Commissioner shall have the authority to initiate and conduct an informal review of a competitive supply company alleged to have violated G.L. c. 164, §§ 1A through 1F, or any regulation promulgated or Order issued thereunder. The Delegated Commissioner may further delegate this authority to a hearing officer, who shall be the “Prosecuting Officer.”
- B. Pursuant to D.P.U. 16-156-A and Interim Guidelines, § 3(5)-(6), the Delegated Commissioner shall have the authority to resolve an informal review by entering into an informal remedial plan with a competitive supply company alleged to have violated G.L. c. 164, §§ 1A through 1F, or any regulation promulgated or Order issued thereunder. The Delegated Commissioner may not further delegate this authority.

III. DELEGATION REGARDING FORMAL PROCEEDINGS AND CONSENT AGREEMENTS

- A. Pursuant to D.P.U. 16-156-A and Interim Guideline, § 4, the Delegated Commissioner shall have authority to initiate a formal proceeding by issuing an NOPV to a competitive supply company if the Delegated Commissioner has reason to believe that a violation of G.L. c. 164, §§ 1A through 1F, or any regulation promulgated or Order issued thereunder has occurred or is occurring. The Delegated Commissioner may not further delegate this authority.

- B. Pursuant to D.P.U. 16-156-A and Interim Guidelines, § 5, the Delegated Commissioner shall have the authority to participate in a formal proceeding before the Department, which includes but shall not be limited to, presenting evidence in support of allegations contained in the NOPV, and presenting final arguments on the record. The Delegated Commissioner may further delegate this authority to a hearing officer. The Delegated Commissioner, the hearing officer designated by the Delegated Commissioner, and their support staff may not communicate with the two remaining nondelegated Commissioners, Presiding Officer, or their staff regarding an ongoing informal or formal investigation. In addition, the Delegated Commissioner, the hearing officer designated by the Delegated Commissioner, and their support staff may not preside over a formal proceeding regarding a competitive supply company that they have investigated.

- C. Prior to the issuance of a final Department Order, the Delegated Commissioner shall have authority to enter into a consent agreement with a competitive supply company and file a motion for approval of the consent agreement with the Department pursuant to D.P.U. 16-156-A and Interim Guidelines, § 7.

The Delegated Commissioner may not further delegate this authority.

By Order of the Department,

/s/  
Angela M. O'Connor, Chairman

/s/  
Robert E. Hayden, Commissioner

/s/  
Cecile M. Fraser, Commissioner