

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

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

COMMENTS OF THE NATIONAL CONSUMER LAW CENTER

I. OVERVIEW OF THE PROCEEDING

On April 16, 2021, the Department on its own motion opened this inquiry “into procedures for enhancing public awareness of and participation in its proceedings.”¹ The stated purposes of the inquiry are to “increase both the visibility of our public notices and public and stakeholder involvement in our proceedings.”² In support of opening this Inquiry, the Department cites both the Executive Office of Energy and Environmental Affairs’ 2017 Environmental Justice Policy³, and Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, as well as its current practices and policies to make notices and proceedings more accessible for those whose primary language is other than English. In order to solicit useful comments, the Department has posed twelve questions it hopes commenters will address.

II. INTEREST OF THE NATIONAL CONSUMER LAW CENTER

The National Consumer Law Center (“NCLC”) advocates on a broad range of issues, in forums around the country, on behalf of low-income consumers. In Massachusetts, NCLC has

¹ “Vote and Order Opening Inquiry,” (April 16, 2021), at 1 (hereafter, “Inquiry”).

² *Id.*

³ Available at www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf.

intervened in a large number of Department proceedings. Our attorneys are well-able to track relevant proceedings and to effectively intervene. Some of the groups we have represented over the years, by partnering with NCLC, have also been adequately advised of relevant Department proceedings and been able to have their input heard and considered.

However, we know that there are many groups who either find it hard to learn about relevant Department proceedings, or find the barriers to participating – such as the lack of notices being provided in other languages – difficult to overcome. We commend the Department for opening this proceeding on its own motion.

In connection with the current proceeding, we circulated a survey to scores of non-profit organizations, legal aid programs and others around the state, most of which NCLC has not formally represented in Department proceedings, and who, in large measure, have not actively engaged with Department proceedings. We learned that their most common concerns, regarding issues that fall within the jurisdiction of the Department are: (1) that utility bills are unaffordable;⁴ (2) service disconnection; (3) that competitive supply contracts are overpriced; and (4) that they find it hard to access the protections and assistance available to low-income utility customers.⁵

We note this because a fundamental question is whether increasing public participation, in and of itself, advances the public good. For example, having more groups become aware of

⁴ NCLC has analyzed data submitted by utility companies in D.P.U 20-58, and has found that by March 2021, the combined arrearages held by all customer classes analyzed had reached \$878.6 million dollars, which is \$232.1 million more due than at the beginning of the COVID-19 shutdown. This is an increase of \$143.9 million from the total in November 2020 (\$734.7 million). All residential customers (regular residential and low-income residential customers) owed \$224.8 million more in March 2021 than they did in March 2020, which amounts to a \$308 increase in average arrearage per customer.

⁵ Approximately thirty people responded to the survey during May-June 2021, representing a range of non-profit groups, social service agencies, and municipal programs. While not a random sample, respondents represented rural and urban areas across the state.

notices of rate increase requests and testifying at public hearings does not necessarily result in rates being more affordable. Rather, that could require a change in the current regulatory paradigm, which always sets rates designed to provide companies with an adequate return on investment, but which does not explicitly ensure that rates are affordable.⁶ Similarly, making it easier for households to access the protections that are available to low-income customers⁷ would require changes in more than public notices and translation services, but rather changes in the type and extent of community outreach conducted by the Department's Consumer Division.⁸ Moreover, for many groups who are aware of Department proceedings, they still find it impossible to participate in a meaningful way due to lack of resources that would allow them to retain lawyers or experts that are often essential for effectively engaging with the Department.⁹

Thus, we see the current docket as a very important step towards the goal of increasing public awareness of Department proceedings, including among environmental justice communities and those for whom English is not their primary language. We encourage the Department to also consider how the public can have a greater impact on policies so that the Department's decisions will promote better economic and environmental outcomes for the greatest number of the Commonwealth's citizens. Better awareness is a necessary, but not necessarily sufficient, step towards better decision-making.

⁶ NCLC is of course well aware that the Department has adopted discount rates and arrearage management programs that make bills more affordable; has regulations that protect vulnerable low-income households from having their service terminated (e.g., as provided in 220 C.M.R. 25.03); and has taken aggressive steps during the COVID-19 pandemic to further protect residential customers from loss of utility service. We applaud the Department's various efforts to help financially struggling customers.

⁷ *E.g.*, protections under 220 C.M.R. 25.03 for the seriously ill, elderly, those with an infant under 1 year old in the household.

⁸ This point is discussed more fully below at page 11.

⁹ This point is discussed more fully below at pages 10-11.

III. ANSWERS TO THE DEPARTMENT'S QUESTIONS

Q1. Identify additional physical or electronic platforms in which public notices could be reasonably published or disseminated to reach affected and interested stakeholders and ratepayers (e.g., alternative public newspapers, social media, or local venues).

A1. In response to the survey we circulated, respondents listed the sources where they believe their clients or members are most likely to get information as: local newspapers, radio and TV outlets; Facebook groups; churches; senior centers; town offices; housing authority offices; immigrant assistance centers; and various social media. To the extent that the Department can ensure that notice is more widely disseminated through these channels, that will likely increase public awareness of Department notices. We also note that there is at least one resource that lists immigrant journalism and ethnic media sources in Massachusetts, the GlobalBoston list, and there may be others as well.¹⁰

Respondents to our survey suggested that social media sites such as Facebook, Instagram and TikTok are used in their communities as sources of news and information.

We do think it very helpful that the Department is considering additional platforms. In our survey, about three-fourths of the respondents did not know that they could participate in Department proceedings regarding prices, services and other issues.

Q2. Identify criteria that the Department could use to identify relevant platforms or locations to publish public notices to enhance public awareness of relevant proceedings.

¹⁰ GlobalBoston, "Ethnic Newspapers of Greater Boston," contains a list of currently published newspapers as well as papers that have ceased publication, at <https://globalboston.bc.edu/index.php/home/bibliography/ethnic-newspapers/>

A2. We suggest that the Department consult with other state agencies that may have similarly sought to increase the dissemination of notices and information, particularly agencies that work with immigrants or with environmental justice communities. We further suggest that when regulated utilities file a proceeding, the Department should require the filing to include a community outreach plan relevant to the subject matter and geographic scope of the filing.

Q3. Identify criteria that the Department could use to identify relevant community groups or organizations that should be sent public notices in order to enhance awareness of relevant proceedings.

A3. As in our answer to the prior question, we encourage the Department to consult with other state agencies that may have similarly tried to identify groups that should receive public notices, particularly the Executive Office of Energy and Environmental Affairs, Department of Energy Resources, and the Massachusetts Office for Refugees and Immigrants. We further recommend that the Department seek to identify attorneys at Massachusetts Law Reform Institute, Greater Boston Legal Services and other legal aid offices who would choose to be on a list for notice of proceedings. We further suggest that the Department seek to identify individuals at the Massachusetts Office of Elder Affairs, at local Councils on Aging, the Massachusetts Senior Action Council, and elder services organizations who would agree to accept notice and disseminate those notices to their constituencies.

Q4. Discuss how and by what means the Department can effectively provide notice to people with limited English proficiency. As part of this discussion, please describe criteria that the Department could use to determine whether to translate notices into other languages.

A4. We believe that the regulated utilities track the non-English languages that are spoken in their communities, which would help the Department determine which languages are commonly-enough spoken to require translation of key notices. We do think that notices of Department proceedings should be translated into at least the two or three languages, other than English, which are most commonly used in a particular utility territory. We also again suggest that the Department consult with other state agencies which have wrestled with this same problem. In particular, the experiences of the Trial Court Office of Language Access could prove useful.¹¹

We note that the Department's website contains a Google translate widget, as do most mass.gov websites. The translation feature works for items that are posted directly to the website as HTML, but not to linked documents in PDF or other formats. We encourage the Department to take full advantage of this feature by posting important notices and information in formats that can be translated by the translation widget.

Q5. Discuss how costs associated with the publication of notice or translation services for proceedings that are not filed by a Department-regulated company should be recovered (e.g., petitions filed by municipalities, individual customers, stakeholders, or associations).

A5. NCLC has no way to even guess whether such costs would be relatively small, or large, in the aggregate. If small, those costs could perhaps be absorbed by the Department's existing budget. If that is not possible, we urge the Department to recommend that the legislature appropriate adequate funds for notices and translation services in state budget. Other state agencies may have already addressed this issue, especially because most other state agencies

¹¹ <https://www.mass.gov/orgs/trial-court-office-of-language-access>

do not have the option of assessing those costs on regulated companies.

Q6. Describe criteria that the Department could use to determine whether interpretation services should be provided at hearings and the best practices for providing interpretation services at such hearings. In this response, please address virtual, in-person, and hybrid hearings, as well as hearings where interpretation into multiple languages may be required. Also address any feasibility considerations in providing such services.

A6. We recommend that the Department engage in conversations with the Trial Court Office of Language Access, which likely has useful experience to share. Other state agencies, such as the Massachusetts Department of Public Health, have experience in implementing language access. In addition, the Department may wish to consult with the Massachusetts Law Reform Institute, which has a long history of advocating for language access to courts and state agencies and with the Language Access Coalition comprised of legal aid advocates in Massachusetts.¹²

Q7. Discuss criteria that the Department could use to identify the appropriate language or languages to use to translate our public notices and/or to interpret at a hearing.

A7. The Department could begin by identifying a member of staff to be the contact person for language access questions. The Department and other agencies developed preliminary language access plans prior to 2016, which are available online,¹³ and the Department's plan identified contact persons at that time. Requests made to such a contact person might help the Department to identify language needs, although this alone would not be adequate. We

¹² Information on the Language Access Coalition and memoranda from some state agencies are available at <https://www.masslegalservices.org/library-directory/language-access>.

¹³ Language Access Plans available at <https://www.masslegalservices.org/content/mass-energy-and-environment-language-access-plans-may-2016>.

recommend that the Department also consult with other state agencies to help identify best practices.

The utilities are likely to know the most commonly spoken languages in their service territories. The Department could request that utility companies include this information when filing new cases.

Q8. Discuss criteria that the Department could use to identify language access service providers with the technical knowledge necessary to best convey technical information into other languages, both orally and in writing.

A8. The Massachusetts Trial Court Office of Language Access may be helpful, since court interpreters may need to be familiar with technical or legal terms, depending on the cases that they interpret.

The Department might also be able to issue a detailed RFP to identify interpreter services that can provide the needed expertise.

Q9. Identify any criteria that the Department could use to determine the date, time, duration, and location (physical or virtual) to hold a public hearing that would be the most convenient for local community members.

A9. Community groups we work with always stress the need to include at least some public hearings, in any given proceeding, at night, and in the geographic territory of the utility or other petitioner. To the extent the territory of the utility or other petitioner includes significant numbers of persons for whom English is not the primary language, we encourage the Department to arrange for translation services for at least one of the other commonly spoken languages. We also encourage the Department to shift some of this burden to petitioners, by

requiring them to file outreach plans with their initial petitions, when public hearings will be required.

Q10. Discuss any suggestions related to a pre-registration process to make comments, as well as the process for making comments in general, at public hearings.

A10. We recommend that pre-registration should be an option, and that it would not be unreasonable to recognize those who have pre-registered before other speakers. However, given that many who speak at public hearings are not always familiar with rules of practice and procedure, those who wish to speak, but who have not pre-registered, should be allowed to do so. The Department should also provide an opportunity for written comments to be submitted, and that speakers at a public hearing should be advised that they can choose to make their comments under oath and have them included in the formal record.

Q11. Identify how you learned of this proceeding (e.g., newspaper, word of mouth, city or town website, from the Department).

A11. NCLC was on the Department's service list, and we received notice by email.

Q12. Provide any additional comments or suggestions regarding the methods that the Department could employ to increase stakeholder and public awareness of and participation in our proceedings and develop best practices for when and how to use language access services.

A12.

(1) The Department should ensure that those with various disabilities can become aware of proceedings and participate. This includes, among other things, physical access to buildings when hearings are in-person as well as access for the hearing and vision impaired. For virtual

hearings, the Department should consider that those without good Broadband service may have difficulty participating and consider providing other means, e.g., a phone call-in number as well as Zoom or other video link. The Department could consult with the Massachusetts Office on Disability, and advocacy organizations such as the Disability Law Center. Also, we have formatted these comments using Calibri font, and note here that fonts such as Arial, Helvetica, Calibri, Verdana and Courier are easier for persons with dyslexia to read than serif fonts such as Times New Roman.

(2) Notices should include a plain language description of issues that impact consumers and communities, e.g., rate or other financial impact; environmental impacts; etc.

(3) The Department's web page should include a section or separate page explaining how to participate in Department proceeding, including how to submit written or oral comments, whether comments will be made part of the record (if so, how to ensure that), and clear instructions on how to navigate the "file room." As just one example of how the Department web site could be improved, the California commission has a page on "How to become a party to a proceeding."¹⁴ Much about the practice before the Department is opaque to those who are not lawyers, and even to lawyers who do not frequently practice before the Department, including how to sign up to receive notices of proceedings. Much can be done to make the practices more transparent.

(4) We believe the greatest barrier to increased public participation is the lack of intervenor compensation. Most Department proceedings are technically complex and require the commitment of substantial amounts of time, to have an impact. California provides the best

¹⁴ https://www.cpuc.ca.gov/party_to_a_proceeding/

example of a robust intervenor compensation system that has resulted in consumer groups being able to participate consistently and effectively.¹⁵ Petitioning companies spend large amounts of money, almost always recovered from ratepayers, on their petitions and interventions. Consumers, environmental and community groups struggle to compete on a level playing field. The Department should consider adoption of a robust intervenor compensation system.

(5) For most utility customers, the Consumer Division is potentially their most important point of contact. We strongly recommend that the Division host regular meetings with interested organizations and members of the public. Years ago, the Division hosted meetings that included company credit managers and advocates from legal services, community action programs, and other groups. We strongly recommend reinstating such meetings. The Consumer Division may also consider regular community outreach and listening sessions, possibly in partnership with the Attorney General's consumer outreach division.

We further recommend regular and transparent reporting of the complaints that come before the Consumer Division, including complaints against competitive energy suppliers, and their resolutions or outcomes. This proceeding could include a session on how to continue to strengthen the Department's Consumer Division, and how the Division might help serve as a resource for communities who want to learn more about the Department's activities.

¹⁵ The California Public Utilities Commission has a succinct and helpful summary of the Intervenor Compensation Program at <https://www.cpuc.ca.gov/icompl/>. A detailed Intervenor Compensation Program Guide can be found at [file:///C:/Users/chara/Downloads/UPDATED%20Icomp%20Program%20Guide%20\(April%202017\).pdf](file:///C:/Users/chara/Downloads/UPDATED%20Icomp%20Program%20Guide%20(April%202017).pdf). The California program is authorized by statute, Cal. Pub. Util. Code §1802 *et seq.*

(6) As we noted in Section II, above, more participation is not a sufficient end in and of itself. The purpose of greater participation, we post, is to ensure that all voices that would want to be heard are heard, and, even more so, are listened to and have an impact on and improve Department decision-making. Consistent with the underpinnings of this very proceeding, which includes reliance on the Commonwealth’s Environmental Justice (“EJ”) Policy, we encourage the Department to include an EJ impact analysis in relevant cases, including all general rate cases, cases regarding the siting of facilities and infrastructure, and other cases that will have a significant impact on the cost of utility service or the environment.

IV. CONCLUSION

We appreciate the opportunity to submit these comments to the Department and anticipate working together to help strengthen opportunities for public and consumer involvement before the Department, with a strong focus on facilitating participation by representatives of environmental justice communities, immigrant groups, and people of color who are impacted by the actions of the Department. Meaningful participation also requires that the Department incorporates input from under-represented groups into its decision-making process and explains how the input influenced the decision. Communities of color, environmental justice communities, and others under-represented groups have experience and information that can improve the Department’s process and decisions. We look forward to further engagement in these proceedings.

Respectfully submitted,

National Consumer Law Center

By:

/S/

Jenifer Bosco
Staff Attorney
National Consumer Law Center
7 Winthrop Sq., 4th floor
Boston, MA 02110
617-542-8010
jbosco@nclc.org

Dated: June 14, 2021