



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

TO: Service List, D.P.U. 14-86

Via: First Class Mail/Electronic Mail

FROM: David Gold, Hearing Officer

RE: Procedural Schedule and Ground Rules, D.P.U. 14-86

DATE: July 31, 2014

cc: Mark D. Marini, Secretary

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### PROCEDURAL SCHEDULE AND GROUND RULES

#### I. PROCEDURAL SCHEDULE

On July 16, 2014, the Department of Public Utilities (“Department”) conducted a public hearing and procedural conference in this matter. The Department of Environmental Protection (“DEP”) and the Department of Energy Resources (“DOER”) (collectively “Petitioners”), the Attorney General of the Commonwealth of Massachusetts (“Attorney General”), and Environment Northeast (“ENE”) submitted separate proposed procedural schedules. The Department and parties discussed the proposed schedules during the procedural conference.

In establishing the procedural schedule in this matter, I have considered the proposals submitted by the Petitioners, the Attorney General, and ENE. Further, I have considered the Department’s obligation to conduct its proceedings in an efficient and orderly manner, including taking the necessary time to develop a complete evidentiary record, to afford all parties due process, and to allow for deliberation by the Commission. Based on all of these considerations, and pursuant to 220 C.M.R. § 1.06(6), the following schedule will apply to the remainder of this proceeding:

September 30, 2014	Deadline for issuing discovery to DOER/DEP <sup>1</sup>
October 1, 2014	Deadline for intervenors to provide notice of intent to file testimony <sup>2</sup>
October 15, 2014	Final discovery responses from DOER/DEP due
<b>If no intervenor testimony</b>	
October 29 to November 4, 2014	Evidentiary hearings (Briefing schedule to be determined)
<b>If intervenor testimony</b>	
October 17, 2014	Deadline for intervenors to file direct testimony
November 14, 2014	Deadline for issuing discovery to intervenors
December 1, 2014	Final discovery responses from intervenors due
December 3, 2014	Deadline to file rebuttal testimony, if any
December 5 to 16, 2014	Evidentiary hearings (Briefing schedule to be determined)

## II. SERVICE LIST

The service list for these proceedings is set forth below:

Mark D. Marini, Secretary (paper and electronic)  
 Massachusetts Department of Public Utilities  
 One South Station, 5<sup>th</sup> Floor  
 Boston, Massachusetts 02110  
 Telephone 617-305-3500  
 Facsimile 617-345-9101  
 Email [dpu.efiling@state.ma.us](mailto:dpu.efiling@state.ma.us)

<sup>1</sup> Discovery responses should be provided ten business days from issuance of discovery request.

<sup>2</sup> For intervenors who intend to file testimony, the notice of intent to file testimony must contain the following information: (1) the identity of each witness; and (2) the subject matter on which each witness is expected to testify.

David Gold, Hearing Officer (paper and electronic)  
Massachusetts Department of Public Utilities  
One South Station, 5<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Telephone 617-305-3500  
Facsimile 617-345-9103  
Email [david.j.gold@state.ma.us](mailto:david.j.gold@state.ma.us)

Danah Tench, Esq. (paper and electronic)  
Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02018  
Telephone 617-574-6870  
Email [Danah.Tench@state.ma.us](mailto:Danah.Tench@state.ma.us)

Madelyn Morris, Esq. (paper and electronic)  
Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02018  
Telephone 617-574-6870  
Email [Madelyn.Morris@state.ma.us](mailto:Madelyn.Morris@state.ma.us)

Steven Venezia, Esq. (paper and electronic)  
Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, Massachusetts 02114  
Telephone 617-727-4732  
Facsimile 617-727-0030  
Email [steven.venezia@state.ma.us](mailto:steven.venezia@state.ma.us)

Michael Altieri, Esq. (paper and electronic)  
Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, Massachusetts 02114  
Telephone 617-626-1398  
Email [maltieri@MassMail.State.MA.US](mailto:maltieri@MassMail.State.MA.US)

Matthew Saunders (paper and electronic)  
Assistant Attorney General  
Massachusetts Attorney General  
Officer of Ratepayer Advocacy  
One Ashburton Place

Boston, Massachusetts 02108  
Telephone 617-727-2200  
Email [Matthew.Saunders@state.ma.us](mailto:Matthew.Saunders@state.ma.us)

Robert Rio, Esq. (electronic only)  
Senior Vice President and Counsel  
Associated Industries of Massachusetts  
1 Beacon Street, 16<sup>th</sup> Floor  
Boston, Massachusetts 02108  
Telephone 617-262-1180  
Email [rrio@aimnet.org](mailto:rrio@aimnet.org)

Robert Ruddock, Esq. (electronic only)  
Edward Wildman Public Policy Group  
111 Huntington Avenue  
Boston, Massachusetts 02199  
Telephone 617-239-0245  
Facsimile 800-432-5298  
Email [rruddock@edwardswildman.com](mailto:rruddock@edwardswildman.com)

Shanna Cleveland, Esq. (electronic only)  
Conservation Law Foundation  
62 Summer Street  
Boston, Massachusetts 02110  
Telephone 617-350-0990, extension 1716  
Email [scleveland@clf.org](mailto:scleveland@clf.org)

Caitlin Peale Sloan, Esq. (electronic only)  
Conservation Law Foundation  
62 Summer Street  
Boston, Massachusetts 02110  
Telephone 617-350-0990, extension 1770  
Email [cpeale@clf.org](mailto:cpeale@clf.org)

Mark LeBel, Esq. (electronic only)  
Environment Northeast  
101 Tremont Street, Suite 401  
Boston, Massachusetts 02108  
Telephone 617-742-0054  
Facsimile 617-542-0054  
Email [mlebel@env-ne.org](mailto:mlebel@env-ne.org)

Amy Boyd, Esq. (electronic only)  
Environment Northeast  
101 Tremont Street, Suite 401  
Boston, Massachusetts 02108  
Telephone 617-742-0054  
Email [aboyd@env-ne.org](mailto:aboyd@env-ne.org)

Jerrold Oppenheim, Esq. (paper and electronic)  
57 Middle Street  
Gloucester, Massachusetts 01930  
Telephone 978-283-0897  
Email [JerroldOpp@DemocracyAndRegulation.com](mailto:JerroldOpp@DemocracyAndRegulation.com)

Stacey M. Donnelly, Esq. (paper and electronic)  
40 Sylvan Road  
Waltham, Massachusetts 02451  
Telephone 781-907-1833  
Facsimile 781-296-8091  
Email [stacey.donnelly@nationalgrid.com](mailto:stacey.donnelly@nationalgrid.com)

John K. Habib, Esq. (paper and electronic)  
Keegan Werlin LLP  
265 Franklin Street  
Boston, Massachusetts 02110  
Telephone 617-951-1400  
Facsimile 617-951-1354  
Email [jhabib@keeganwerlin.com](mailto:jhabib@keeganwerlin.com)

Emmett E. Lyne, Esq. (electronic only)  
Rich May, P.C.  
176 Federal Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Telephone 617-556-3800  
Email [Elyne@richmaylaw.com](mailto:Elyne@richmaylaw.com)

Shaela McNulty Collins, Esq. (electronic only)  
Rich May, P.C.  
176 Federal Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Telephone 617-556-3800  
Email [SCollins@richmaylaw.com](mailto:SCollins@richmaylaw.com)

Jodi K. Hanover, Esq. (electronic only)  
Rich May, P.C.  
176 Federal Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Telephone 617-556-3800  
Facsimile 617-556-3889  
Email [jhanover@richmaylaw.com](mailto:jhanover@richmaylaw.com)

Jeffrey M. Bernstein, Esq. (paper and electronic)  
BCK LAW, P.C.  
One Gateway Center, Suite 809  
Newton, Massachusetts 02458  
Telephone 617-244-9500  
Email [jbernstein@bck.com](mailto:jbernstein@bck.com)

Jo Ann Bodemer, Esq. (electronic only)  
BCK LAW, P.C.  
One Gateway Center, Suite 809  
Newton, Massachusetts 02458  
Telephone 617-244-9500  
Facsimile 802-419-8283  
Email [jbodemer@bck.com](mailto:jbodemer@bck.com)

Staci Rubin, Esq. (electronic only)  
Alternatives for Community & Environment, Inc.  
2181 Washington Street, Suite 301  
Roxbury, Massachusetts 02119  
Telephone 617-442-3343, extension 236  
Facsimile 617-442-2425  
Email [Staci@ace-ej.org](mailto:Staci@ace-ej.org)

Kevin F. Penders, Esq. (paper and electronic)  
Keegan Werlin LLP  
265 Franklin Street  
Boston, Massachusetts 02110  
Telephone 617-951-1400  
Facsimile 617-951-1354  
Email [kpenders@keeganwerlin.com](mailto:kpenders@keeganwerlin.com)

### III. GROUND RULES

#### A. Generally

These proceedings shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. § 1.00 et seq., the Procedural Rules of the Department. In addition, the following ground rules shall supplement the Department's procedural rules in the conduct of these proceedings. These ground rules are deemed consistent with the orderly conduct of these proceedings. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

#### B. Filing of Documents

##### 1. Address of Filings

The original of all documents must be filed with Mark D. Marini, Secretary, Department of Public Utilities, One South Station, Fifth Floor, Boston, Massachusetts 02110. Unless otherwise noted, the original must be filed with the Department by 5:00 p.m. on the applicable due date.

##### 2. Number and Distribution of Paper Documents

For this proceeding, the Department requires paper documents to be filed and distributed in the following manner:

<u>Type of Document</u>	<u>Number of Copies</u>	<u>Distribution</u>
Prefiled Testimony	1 original and 4 copies	Original to Department Secretary and 4 copies to Hearing Officer
Information Requests and Responses	1 original and 4 copies	Original to Department Secretary and 4 copies to Hearing Officer
Responses to Record Requests	1 original and 4 copies	Original to Department Secretary and 4 copies to Hearing Officer
Bulk Responses (100 pages and more)	1 original and 1 copy <sup>3</sup>	Original to Department Secretary and 1 copy to Hearing Officer

<sup>3</sup> If any party is unable to submit a bulk response electronically, the party must contact the Hearing Officer in advance to explain why it is not filing electronically. The Hearing Officer will then determine whether additional paper copies are needed.

Pleadings, Motions, and Memoranda	1 original and 1 copy	Original to Department Secretary and 1 copy to Hearing Officer
Briefs	1 original and 4 copies	Original to Department Secretary and 4 copies to Hearing Officer

### 3. Format

All documents filed with the Department and all documents offered as exhibits shall be **accurately punched to fit a standard three-hole binder**. All documents shall be accompanied by a cover letter describing the filing and noting the distribution of copies. Responses to information and record requests shall contain the following information: (1) set and question number; (2) recitation of request; and (3) identity of the person who will support the response. Unless otherwise directed by the Hearing Officer, all responses to information requests should be pre-marked for identification in the following format:

D.P.U.:           14-86  
 Exhibit:  
 Date:  
 H.O.:             David Gold

### 4. Electronic Filing

All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dpu.efiling@state.ma.us](mailto:dpu.efiling@state.ma.us) and [david.j.gold@state.ma.us](mailto:david.j.gold@state.ma.us); or (2) on a CD-ROM. The text of the e-mail or CD-ROM label must specify: (1) the docket number of the proceeding (D.P.U. 14-86); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. Each response to an information request should be submitted as an individual PDF file (*i.e.*, the responses to information requests DPU 1-1 through DPU 1-7 should consist of seven separate PDF files). The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. The Department strongly encourages filers to avoid submitting scanned files but will accept them for posting when an alternative version does not exist in electronic format. In addition, if the petitioner, applicant, or any other participant has already filed a document relevant to this proceeding, such as the initial petition, application, or filing, without providing an electronic copy of that document, such entity is directed to do so in compliance with the above electronic filing requirements as soon as practicable. All documents submitted in electronic format will be posted on the Department's website: <http://www.mass.gov/dpu>.

Electronic copies must also be provided to all persons on the service list for this proceeding. Parties filing documents containing proprietary or other confidential materials



shall submit electronic copies of the redacted public version of such documents (see rules on protected materials below).

C. Exchange of Materials

All documents filed with the Department shall also be served upon each party and limited participant. Parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission (“fax”), e-mail, or other speedy means of delivery. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material. Where material is exchanged by means of fax or other electronic means, a follow-up copy of the material must be delivered by mail or by hand. Fax or other means of electronic delivery are not substitutes for filing the original of materials that must be submitted to Mark D. Marini, Secretary of the Department. All materials shall be deemed to be filed or received on the date on which the original filing is received (via mail or hand delivery) by the Department Secretary.

Where information requests are sent to a party by means of fax, the fax must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the deadline for response by the receiving party.

D. Motions

Consistent with 220 C.M.R. § 1.04(5), any motion, unless made during a hearing, shall be made in writing. This requirement includes requests for confidential treatment, extensions of time deadlines, or continuances of hearing dates. The moving party shall serve with the motion a statement of reasons, including the supporting authorities, why the motion should be granted. A statement of reasons may be included in the motion itself or may be contained in a separate document. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion. A party opposing a motion may serve an opposition within three (3) business days of such filing. Unless otherwise directed by the Hearing Officer, papers not served with the motion or answer/opposition may be filed only with leave of the Hearing Officer.

For all motions and other interlocutory matters, copies of any cited cases, decisions or other supporting authorities shall be provided to the Hearing Officer in a separate appendix to the motion.

E. Discovery

1. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34). Responses to information requests will not be part of the record unless marked and admitted into evidence.

Responses to information requests shall be filed within ten business days of receipt of the request, unless otherwise indicated. Where the computed response date is a Saturday, Sunday, or legal holiday, the response shall be due on the next following Department business day.

For the purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

2. Protected Materials

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. See G.L. c. 25, § 5D; G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth.

The Department has formalized its requirements for motions seeking to protect records from public disclosure in 220 C.M.R. § 1.04(5) (e). A party requesting confidential treatment must submit the request in writing at the time of filing, and 220 C.M.R. § 1.04(5)(e) provides that a party moving for a protective order shall substantiate its motion, which shall be treated as a public record, with the following information: (1) the time period for which confidential treatment is desired; (2) the reason the record was provided to the Department and the date of submittal; (3) a precise description of the information to be protected; (4) the reasons for claim of confidentiality, including proof that an exemption to public disclosure applies; (5) proof of the harm of public disclosure; (6) the extent to which the record or its contents has been disclosed to other persons or to federal, state and local agencies, including the status of any requests for confidentiality; and (7) a certification to the best of the moving party's knowledge, information and belief, that the information is not customarily available in the public domain. The party seeking such treatment bears the burden of demonstrating that the materials should be afforded the treatment requested notwithstanding the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the

Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect.

In conjunction with a motion for protection from public disclosure, one unredacted copy of the materials for which protection is sought must be filed directly with the Hearing Officer. The unredacted copy should be submitted in a sealed envelope, clearly marked with the words "CONFIDENTIAL" on the outside of the envelope as well as on each page of the materials. A redacted copy of the materials, marked "REDACTED," must also be filed for the public docket.

3. Discovery Disputes

The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance. Counsel for each of the parties shall confer in advance of filing any discovery motion in a good faith effort to narrow areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice.

All motions arising out of a party's response to, or asserted failure to comply with, an information or record request, shall be accompanied by a brief. With respect to each information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request; (2) the opponent's response; and (3) a specific legal and factual argument.

F. Hearing Exhibits

1. Offering of Exhibits

Where individual exhibits are already in the possession of all parties (e.g., information request responses), the proponent may, no later than 9:00 a.m. on the business day before the material is to be offered, inform all parties and the Hearing Officer of the intended use of such material. The proponent of an exhibit that is not already in the possession of all parties must offer the Department five (5) bench copies of the proposed exhibit (standard three-hole punch), pre-marked with: (1) the docket number of the proceeding; (2) the exhibit number for identification; and (3) the date the exhibit is offered for identification using the following format, in the upper right-hand corner of each exhibit:

D.P.U.: 14-86  
Exhibit:  
Date:  
H.O.: David Gold

Nonconforming documents will not be accepted.

If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must move to enter the missing part(s) into the record. Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

## 2. Exhibit Format

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify the method of addition on the record upon presentation for marking. Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

## 3. Late-Filed Exhibits

Exhibits offered after the close of the hearings labor under a heavy burden of untimeliness. Late-filed exhibits must be accompanied by a motion to reopen the record and be supported by appropriate affidavits. Only for good cause shown will such exhibits be marked and admitted into evidence. See 220 C.M.R. §§ 1.04(5), 1.11(8).

## G. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness at the hearing. 220 C.M.R. § 1.06(h). As such, they are part of the evidentiary record, unless challenged as unresponsive and stricken in whole or in part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the third business day following the day on which the request is made. Objections to record requests shall be made at the time the request is made and in no event later than the end (5:00 p.m.) of the next business day.

H. Hearing Arrangements

All evidentiary hearings will be conducted at the offices of the Department at One South Station, Boston, Massachusetts. The hearings will begin each day at 10:00 a.m., according to the established schedule. Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.