



# The Commonwealth of Massachusetts

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## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 11-11

September 13, 2011

Inquiry Into Net Metering and Interconnection of Distributed Generation, pursuant to An Act Relative to Green Communities, St. 2008, c. 169, §§ 138-140 and St. 2010, c. 359, § 30.

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ORDER ON A PROPOSED  
SYSTEM OF ASSURANCE OF NET METERING ELIGIBILITY

TABLE OF CONTENTS

- I. INTRODUCTION ..... 1
- II. INQUIRY INTO NET METERING ISSUES..... 2
  - A. Procedural History..... 2
  - B. General Approach..... 4
- III. SYSTEM OF ASSURANCE OF NET METERING ELIGIBILITY ..... 5
  - A. Introduction ..... 5
  - B. Participation in the System of Assurance of Net Metering Eligibility ..... 5
    - 1. Participation to be Optional ..... 5
    - 2. Transparency of Current and Remaining Net Metering Capacity ..... 6
  - C. Transitional Period to System of Assurance of Net Metering Eligibility ..... 7
  - D. Administrator of the System of Assurance of Net Metering Eligibility ..... 8
  - E. Host Customers and an Assurance of Net Metering Eligibility ..... 9
  - F. Host Customers with Public Facilities ..... 10
    - 1. Development of Definition in D.P.U. 11-10..... 10
    - 2. Requirements for Public Facilities ..... 11
    - 3. Exceptions for Special Public Facilities..... 11
  - G. Confidentiality of Information in Application..... 12
  - H. Reservation Periods for an Assurance of Net Metering Eligibility ..... 13
  - I. Project Changes ..... 13
  - J. Applications That Exceed All Remaining Net Metering Capacity ..... 14
  - K. Fees..... 14
  - L. Small Class I Net Metering Facilities ..... 15
  - M. Conclusion ..... 16
- IV. SOLICITATION OF COMMENTS ..... 16

## I. INTRODUCTION

On July 2, 2008, Governor Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”), requiring, among other things, the Department of Public Utilities (“Department”) to adopt rules and regulations necessary to implement provisions relating to net metering. St. 2008, c. 169, § 78, codified as G.L. c. 164, §§ 138-140. The Department promulgated 220 C.M.R. § 18.00 et seq. to implement these provisions.<sup>1</sup> Net Metering Rulemaking, D.P.U. 08-75 (2009). In 2010, legislation was enacted<sup>2</sup> that requires the Department to adopt rules and regulations necessary to implement certain changes to net metering, including the adoption of a system that provides proposed facilities with an assurance of net metering eligibility (which also has been referred to as a “net metering queue”), as discussed further below. St. 2010, c. 359, §§ 25-30. Given that there is a statutory cap on net metering capacity,<sup>3</sup> such a mechanism of assurance of net metering eligibility will provide adequate certainty for host customers that they will be able to net meter when they are ready to interconnect their facilities, and will facilitate the efficient

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<sup>1</sup> To implement these requirements of the Green Communities Act, the Department also amended provisions of 220 C.M.R. § 8.00 et seq. and 220 C.M.R. § 11.00 et seq.

<sup>2</sup> On October 15, 2010, Chapter 359 of the Acts of 2010, An Act Making Appropriations for the Fiscal Years 2010 and 2011 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects was enacted to implement changes to the net metering provisions of G.L. c. 164, §§ 138 and 139.

<sup>3</sup> Pursuant to G.L. c. 164, § 138(f), “[t]he aggregate net metering capacity of facilities that are not net metering facilities of a municipality or other governmental entity shall not exceed 1 per cent of the distribution company’s peak load. The aggregate net metering capacity of net metering facilities of a municipality or other governmental entity shall not exceed 2 per cent of the distribution company’s peak load.”

planning and development of distributed generation resources. In this Order, the Department proposes a system of assurance of net metering eligibility. Once a final system of assurance of net metering eligibility has been adopted, the Department intends to initiate a formal rulemaking, as required by St. 2010, c. 359, § 30.<sup>4</sup>

## II. INQUIRY INTO NET METERING ISSUES

### A. Procedural History

On February 7, 2011, the Department opened, on its own motion, Inquiry Into Net Metering and Distributed Generation, D.P.U. 11-11, to assist in the implementation of certain net metering changes required by St. 2010, c. 359, §§ 25-30, as well as other existing implementation issues. The Department held four technical conferences in 2011 to engage interested persons in a discussion that identified: (1) issues related to the development of a system of assurance of net metering eligibility; (2) issues related to net metering and interconnection of distributed generation facilities; (3) processes for resolving certain identified issues (e.g., working groups, additional technical conferences, Department investigations); and (4) mechanisms for implementing or memorializing solutions to certain identified issues.<sup>5</sup>

On March 8, 2011, the Department solicited “straw” proposals from participants on the criteria and process for a system of assurance of net metering eligibility, and the Department encouraged participants, to the extent feasible, to submit joint proposals. On March 16, 2011,

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<sup>4</sup> In addition, the Department intends to amend 220 C.M.R. § 8.00 et seq. and 220 C.M.R. § 11.00 et seq. to implement the other changes to G.L. c. 164, §§ 138 and 139 that are required by St. 2010, c. 359, §§ 25-30.

<sup>5</sup> Technical conferences were held by the Department on February 14, March 23, April 25, and May 16, 2011.

participants filed seven proposals on a system of assurance of net metering eligibility.<sup>6</sup> On March 23, 2011, the proposals were discussed at a technical conference, and participants stated they would like an opportunity to revise their proposals. On March 31, 2011, the Department encouraged participants to continue to work together and submit revised proposals. Four revised proposals on a system of assurance of net metering eligibility were submitted in April 2011.<sup>7</sup>

The Department has carefully considered all of the proposals submitted. Among the revised proposals submitted to the Department, the most extensive and detailed proposal was submitted by the Joint Proponents. In putting forth our draft system of assurance of net metering eligibility, we have adopted much of the Joint Proponents' approach. However, when we have deemed it to be necessary, we have departed from their proposal. Also, while we have sought to maintain many of the key concepts of the Joint Proponents' proposal, we have altered much of the terminology and language to ensure consistency among the system of

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<sup>6</sup> Proposals were filed by: (1) Cape Light Compact and Cape and Vineyard Electric Cooperative, Inc. (together, "CLC and CVEC"); (2) the Massachusetts Net Metering Coalition ("MNMC"); (3) Fitchburg Gas and Electric Light Company d/b/a Unutil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, Western Massachusetts Electric Company (together, "distribution companies"); (4) My Generation Energy, Inc.; (5) Renewable Energy Massachusetts, LLC and Syncarpha Solar, LLC; (6) Renewable Resource Development Coalition ("RRDC"); and (7) Solventerra.

<sup>7</sup> Revised proposals were filed by: (1) Berkshire Photovoltaic Services ("BPVS"); (2) the electric distribution companies (together, "Distribution Companies"); (3) CLC, CVEC, MNMC, and RRDC (together "Joint Proponents"); and (4) My Generation Energy, Inc.

assurance of net metering eligibility, the statutory net metering provisions, and the Department's regulations.

The Department appreciates the substantial involvement and assistance of all participants, which has greatly assisted us in better understanding the issues related to the net metering provisions of G.L. c. 164, §§ 138-140, and designing our proposed system of assurance of net metering eligibility, as discussed below.

B. General Approach

The Department proposes to implement a system of assurance for net metering eligibility for both governmental and non-governmental renewable energy projects. Pursuant to St. 2010, c. 359, § 30, the Department is required to adopt rules and regulations for

a system that provides proposed net metering facilities of a municipality or governmental entity an assurance of net metering eligibility at the time the facilities meet criteria established by the Department. Nothing in the subsection shall limit the [D]epartment's authority to adopt rules and regulations relating to other proposed net metering facilities.

Accordingly, we conclude that we are required to develop a system of assurance of net metering eligibility for net metering facilities of a municipality or other governmental entity, and we will exercise our statutory authority to develop a system of assurance of net metering eligibility for non-municipal and non-governmental projects as well.

With regard to the system of assurance of net metering eligibility, the Department seeks to provide a high level of certainty to Distribution Companies, Host Customers, and proponents of renewable energy projects regarding the overall process, and also ensure that the process will be administered in a manner that is efficient, objective, transparent, and fair. To

balance the interests of all renewable energy project proponents, we have sought to develop a system of assurance of net metering eligibility that is flexible enough to accommodate different types of projects, while imposing reasonable limits on project timelines and potential changes. After adopting a system of assurance of net metering eligibility, the Department intends to initiate a formal rulemaking to promulgate regulations that would codify the system of assurance of net metering eligibility. Our goal is to provide renewable energy project proponents with an assurance of net metering eligibility as soon as possible, with formal regulations to follow. In the Department's view, this is the most expeditious manner in which to provide all participants with the regulatory certainty that they seek regarding a system of assurance of net metering eligibility (see e.g., Joint Proponents Comments at 1-2; Distribution Companies Comments at 1-2).

### III. SYSTEM OF ASSURANCE OF NET METERING ELIGIBILITY

#### A. Introduction

The Department's proposed system of assurance of net metering eligibility ("System of Assurance") is attached to this Order as Appendix A. We offer the following discussion to clarify certain aspects of the Department's proposed System of Assurance.

#### B. Participation in the System of Assurance of Net Metering Eligibility

##### 1. Participation to be Optional

While none of the proposals submitted specifically addressed whether the System of Assurance should be mandatory or optional, the comments imply that the System of Assurance should include all prospective Host Customers of net metering facilities. The Department proposes to allow, but not require, all Host Customers to apply for an assurance of net

metering eligibility in advance of interconnecting a net metering facility. See System of Assurance, § 2. We expect that most Host Customers will apply for an assurance of net metering eligibility in advance of interconnecting a net metering facility, especially when the total installed capacity of net metering facilities begins to approach the applicable cap, but we see no reason to require all Host Customers to do so. Because some Host Customers may experience a relatively easier permitting process and shorter timeframe to interconnect a net metering-eligible facility, the Department anticipates that requiring an assurance of net metering eligibility would be inefficient for some entities, and could even create unintentional costs and administrative burdens. Instead, we propose that all prospective Host Customers have the ability to interconnect a net metering facility without applying for an assurance of net metering eligibility. See System of Assurance, § 2. It will of course be the case that Host Customers who do not apply for such assurance will have no guaranty that they will be able to net meter their facility at the point at which they are ready to interconnect.

## 2. Transparency of Current and Remaining Net Metering Capacity

While an optional System of Assurance could result in somewhat less certainty for Host Customers about how much overall net metering capacity remains, the Department can and intends to require Distribution Companies to provide updates on both current and remaining capacity for net metering.<sup>8</sup> Specifically, 220 C.M.R. § 18.08(2) states that:

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<sup>8</sup> As described above, pursuant to G.L. c. 164, § 138(f) and 220 C.M.R. § 18.07(1), aggregate net metering capacity is determined on the basis of an electric distribution company's highest historical peak load. Accordingly, each electric distribution company's net metering capacity could change over time, although never in a downward direction. The Department proposes that the total capacity available under

Each Distribution Company shall file with the Department information regarding the provision of Net Metering services to its Customers, in a format and according to a schedule as determined by the Department.

Ultimately, a distribution company bears the responsibility of monitoring its progress towards each of its net metering caps, and each distribution company will continue to closely monitor all of its current and remaining net metering capacity, and update the administrator of the System of Assurance (“Administrator”) accordingly. This reporting requirement, combined with the administration of the System of Assurance, will provide significant transparency into the current and remaining net metering capacity in each distribution company’s service territory.

C. Transitional Period to System of Assurance of Net Metering Eligibility

In their comments, the Joint Proponents addressed the issue of net metering facilities that are already under construction. Specifically, the Joint Proponents proposed a 90-day period from the effective date of the System of Assurance during which these facilities would be “grandfathered” and deemed included under the net metering cap (Joint Proponents Comments at 3). Similarly, the Department proposes to identify a 90-day transitional period once the Department has adopted a final System of Assurance. Within this transitional period, such facilities would have two options. First, for a facility to be considered “already

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each net metering aggregate cap shall be calculated as: the total capacity of the net metering aggregate cap, minus the sum of the total installed capacity of net metering facilities and the expected installed capacity of potential net metering facilities where the Host Customer has received an assurance of net metering. See System of Assurance, § 5(B). The sum of installed capacity and potential capacity is calculated pursuant to 220 C.M.R. § 18.07.

interconnected” for purposes of determining the remaining cap on net metering capacity, the Host Customer must, within ten business days, notify the Administrator and submit certifications that the net metering facility will interconnect within 90 days. See System of Assurance, § 4(A). Alternatively, a Host Customer could submit an application for an assurance of net metering. See System of Assurance, § 4(A). In proposing the rules for this transitional period, the Department seeks to balance the interests of fairness and efficiency.

D. Administrator of the System of Assurance of Net Metering Eligibility

The proposals from participants provided considerable detail on the role of the Administrator, which has informed the Department’s proposal for the Administrator’s specific duties. See System of Assurance, § 5. However, the proposals from participants did not explicitly state whether the System of Assurance would be best administered by the Department, the Distribution Companies, or a third-party. Given the role of the Administrator, the Department proposes the use of a third party as the best choice.

To retain a third party as Administrator of the System of Assurance, the Department proposes to direct the Distribution Companies to jointly develop a request for proposals (“RFP”) for the services of a sole Administrator, which the Department would review and approve prior to the RFP’s issuance. The Department proposes that, once the Distribution Companies have received responses to the RFP, they would prepare a short list of bidders, upon which the Department of Energy Resources could comment and based upon which the Department would make the final selection of an Administrator.

The role of the Administrator will be to implement the System of Assurance in a manner that is efficient, objective, transparent, and fair. The Department has sought to provide adequate detail in this System of Assurance to set expectations for Host Customers who intend to avail themselves of it, while still leaving certain implementation details up to the Administrator, especially with regard to whether notifications and other communications should be made in writing, electronically, etc. See System of Assurance, § 5(A). In the Department's view, the Administrator will need sufficient latitude to implement the most efficient System of Assurance possible.

E. Host Customers and an Assurance of Net Metering Eligibility

The proposals submitted to the Department on the System of Assurance ascribed rights and obligations as belonging to projects or facilities (see e.g., Joint Proponents Comments at 1-8; My Generation Energy, Inc. Comments at 1-2; Distribution Companies Comments at 2; BPVS Comments at 1-2). Similarly, St. 2010, c. 359, § 30 requires the Department to design its System of Assurance to provide "net metering facilities" with an assurance of net metering eligibility. However, pursuant to the Department's definitions regarding net metering, a Host Customer is defined as "a Customer with a Class I, II, or III Net Metering Facility or Neighborhood Net Metering Facility that generates electricity on the Customer's side of the meter." 220 C.M.R. § 18.02. Also, the sections governing the calculation of net metering credits and associated billing refer to a Host Customer and not a project or facility.

See 220 C.M.R. §§ 18.03(3) and (4).

In the Department's view, while the specifics of a net metering facility are critical to an assurance of net metering eligibility, it is appropriate to read the language of the statute broadly and associate the assurance of net metering eligibility with a Host Customer. Fundamentally, net metering centers around the association between the distribution company and the customer. Accordingly, an applicant for an assurance of net metering eligibility would be a Host Customer and not a facility. See System of Assurance, § 4.

F. Host Customers with Public Facilities

1. Development of Definition in D.P.U. 11-10

On July 22, 2011, the Department opened a rulemaking to revise its regulations contained in 220 C.M.R. § 18.00 et seq. and implement the net metering provisions of St. 2010, c. 359, §§ 25-30. Rulemaking on Net Metering, D.P.U. 11-10 (2011). In that docket, we have solicited public comment on the definition of "Net Metering Facility of a Municipality or Other Governmental Entity." D.P.U. 11-10, at 2-3. Also, in D.P.U. 11-10, at 3, the Department sought public comment on whether this definition or any other definition related to the net metering provisions of St. 2010, c. 359, §§ 25-30 requires clarification. Accordingly, because the definition of "Net Metering Facility of a Municipality or Other Governmental Entity" ultimately will be addressed in D.P.U. 11-10, we need not replicate that process here. However, in this proposed System of Assurance, the Department has included all facilities of a municipality or other governmental entity in the definition of "Public Facilities," and has included a sub-category of these facilities in the definition of "Special Public Facilities." See System of Assurance, § 3.

## 2. Requirements for Public Facilities

In this proceeding, the Department seeks to define the requirements for Host Customers who seek an assurance of net metering eligibility for a Public Facility. In addition to the requirements for all Host Customers, the Department will require, as mandated by statute, that Host Customers who seek an assurance of net metering eligibility for a Public Facility furnish proof that: (1) the facility is either owned or operated by a municipality or other governmental entity; or (2) it is a facility for which the municipality or other governmental entity is assigned 100 percent of its output. See System of Assurance, § 4(C); St. 2010, c. 359, §§ 25-27.

## 3. Exceptions for Special Public Facilities

Participants have commented on the difficulties and delays involved in obtaining all governmental permits and approvals for a Public Facility, and the Joint Proponents included an exception for a “special public facility” (Joint Proponents Comments at 6). Accordingly, the Department proposes to include certain exceptions for a “Special Public Facility,” which is defined as a Public Facility for which: (1) the municipality or other governmental entity owns and operates the Facility; and (2) the Facility is located on property that is owned or leased by the municipality or other governmental entity. See System of Assurance, § 2. First, all necessary permits and approvals need not be submitted when a Special Public Facility files an application for an assurance of net metering eligibility, but such permits and approvals must be obtained within nine months of being granted an assurance of net metering eligibility. See System of Assurance, § 4(D). Second, a Host Customer of a Special Public Facility will have a longer initial reservation period than other facilities, as described in Section III.H, below.

See System of Assurance, § 7(A)(ii). In the Department’s view, these exceptions strike an appropriate balance between the interests of fairness and efficiency. The Joint Proponents proposed to provide this exception for a limited period of time (i.e., until the capacity of an applying facility plus all other Special Public Facilities reached 15 percent of the overall public cap) (Joint Proponents Comments at 2). Arguably, the Joint Proponents’ suggested limitation would be efficient, transparent, and objective to implement. However, the Department does not view this limitation as fair to other public facilities (i.e., those who would seek such “special” status except that the 15 percent limit has already been reached). Accordingly, unless adequate justification is offered, we decline to include this provision in the proposed System of Assurance. See System of Assurance, §§ 4(D) and 7(A)(ii).

G. Confidentiality of Information in Application

In comments, participants have identified transparency as a goal, but also informed the Department that some information associated with the development of a renewable energy project has competitive or proprietary value. To ensure that the System of Assurance is efficient, objective, transparent, and fair, the Department proposes to make most information submitted along with an application publicly accessible on a website. However, the Department recognizes that some information included in an application may have competitive or proprietary value. Accordingly, the Department proposes to withhold the executed interconnection service agreement and documentation of adequate site control from the public domain. See System of Assurance, § 9(A).

#### H. Reservation Periods for an Assurance of Net Metering Eligibility

The comments and proposals of participants have informed the Department as to the potential for difficulties and delays from legal and other challenges in the development of renewable energy facilities, even after such facilities have all necessary governmental permits and approvals. Accordingly, the Department proposes specific reservation periods that are intended to provide Host Customers with an opportunity to overcome such challenges within a reasonable amount of time. As proposed, there are different initial reservation periods for facilities with an assurance of net metering eligibility, based on the type of technology to be employed (i.e., wind, solar, etc.). See System of Assurance, § 7(A)(i). Also, the Department proposes extended reservation periods for facilities with an assurance of net metering eligibility, based on whether they face legal challenges or other types of challenges. See System of Assurance, § 7(B). In proposing these initial and extended reservation periods, the Department seeks to strike a fair and efficient balance between the interests of Host Customers with an assurance of net metering eligibility who encounter difficulties and delays and the interests of Host Customers who could be delayed or precluded from receiving an assurance of net metering eligibility by delayed projects that are occupying space under the net metering cap.

#### I. Project Changes

Participants have informed the Department that developers of renewable energy projects require considerable flexibility to accommodate project changes. However, while accommodating developers, the Department seeks to initiate a System of Assurance that is

efficient, objective, transparent, and fair. Accordingly, in designing the System of Assurance, the Department encourages Host Customers to seek an assurance of net metering eligibility after their project details are relatively firm and unlikely to undergo major future changes. See System of Assurance, § 8. Accordingly, the Department proposes to identify certain types of project changes and to indicate whether they would invalidate an application, an assurance of net metering eligibility, or a position on the waiting list. See System of Assurance, § 8.

J. Applications That Exceed All Remaining Net Metering Capacity

If a distribution company's net metering cap is reached, the Department proposes to provide prospective Host Customers with two options. Host Customers with applications that would exceed all remaining net metering capacity could: (1) choose to be included on a waiting list for net metering capacity; or (2) amend the application to request the amount of net metering capacity remaining. See System of Assurance, § 5(F).

K. Fees

The proposal put forth by the Joint Proponents included provisions regarding fees for receiving an assurance of net metering (Joint Proponents Comments at 3-4, 6). The Department proposes to require all Host Customers who seek an assurance of net metering eligibility to submit an application fee. See System of Assurance, §§ 4(B) and 5(D). In addition, the Department proposes to require Host Customers who seek an assurance of net metering eligibility to submit reservation fees for the amount of capacity they have requested. See System of Assurance, § 5(E). The intent of these fees is to defray all of the Administrator's costs of administering the System of Assurance. Ultimately, the Administrator

will have to set the specific amount and structure of fees, but the Department seeks public comment on an appropriate fee structure. See System of Assurance, §§ 5(D) and 5(E).

L. Small Class I Net Metering Facilities

Participants have informed the Department of the need to protect the interests of small net metering facilities in designing the System of Assurance (My Generation, Inc. Comments at 2-3; BPVS Comments at 1-2). The Department recognizes that: (1) large facilities are likely to seek and obtain an assurance of net metering eligibility relatively quickly; and (2) because small facilities typically interconnect with the Distribution Companies more quickly than large facilities, they are less likely to seek an assurance of net metering eligibility. Thus, large facilities are likely to seek and occupy most of the available capacity for net metering before small facilities can interconnect with the Distribution Companies. This is particularly problematic because, for several years, the vast majority of all distributed generation installations have been small facilities, which currently represent a burgeoning market, as demonstrated by the Department's report to the Legislature regarding on-site generation facilities for 2010 ("OSGF Report for 2010"), which is attached to this Order as Appendix B. In the Department's view, the proposed System of Assurance should not present a new obstacle to the continued growth of small facilities. Accordingly, the Department proposes to define a category called "Small Class I Net Metering Facilities" and reserve a portion of the available capacity for such facilities.<sup>9</sup> See System of Assurance, § 11.

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<sup>9</sup> As defined in the System of Assurance, § 3, a Small Class I Net Metering Facility means a Class I Net Metering Facility that qualifies for the Simplified Interconnection Process, as defined in each Distribution Company's interconnection tariff.

M. Conclusion

The Department has sought to develop and propose a System of Assurance that is efficient, objective, transparent, and fair, and that is also consistent with the legislative changes to net metering in St. 2010, c. 359, §§ 25-30. As discussed in Section IV, below, we now seek public comment on this proposed System of Assurance. The Department encourages any participants who seek to recommend changes to this proposed System of Assurance to state specifically which aspects should be changed, how they should be changed (including proposed language, if applicable), and why. Without adequate rationale for why a recommended change to the proposed System of Assurance would be efficient, objective, transparent, and fair, as well as consistent with the legislative changes to net metering in St. 2010, c. 359, §§ 25-30, the Department may decline to adopt a recommendation.

IV. SOLICITATION OF COMMENTS

The Department seeks initial written comments on its proposed System of Assurance no later than 5:00 p.m., **Tuesday, October 4, 2011**. In addition, written reply comments must be filed no later than 5:00 p.m. on **Wednesday, October 12, 2011**.

The original of all documents (i.e., paper copy) must be filed with Mark D. Marini, Secretary, Department of Public Utilities, One South Station, 5th Floor, Boston, Massachusetts, 02110. In addition, three (3) paper copies of all documents filed with the Department must be sent to Laura Bickel, Hearing Officer, Department of Public Utilities, One South Station, 5th Floor, Boston, Massachusetts 02110. All documents exceeding 20 pages in length must contain an executive summary.

