COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 14-2 September 3, 2014

Comcast of Massachusetts III, Inc. v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission.

PHASE I ORDER

In this Order, the Department of Telecommunications and Cable ("Department") finds that the formula ("Massachusetts Formula") adopted in D.P.U./D.T.E. 97-82, *Cablevision of Boston Co. et al. v. Boston Edison Co.*, 1998 WL 35235111 (Apr. 15, 1998) ("*Cablevision*"), and further developed in D.T.E. 98-52, *A-R Cable Servs. Inc., et al. v. Mass. Elec. Co.* (Nov. 6, 1998) ("*A-R Cable*")[1] for establishing the maximum permitted pole attachment rates of utility companies, applies to municipal light plants ("MLPs") and municipal lighting commissions established pursuant to G.L. c. 164. Importantly, the Department finds there is sufficient flexibility within the Massachusetts Formula to accommodate any differences between MLPs and investor-owned utilities ("IOUs"), and still arrive at a fully-allocated, and justifiable pole attachment rate.

[1] Pursuant to Chapter 19 of the Acts of 2007, the Department of Telecommunications and Energy ("DTE") was dissolved on April 11, 2007. Jurisdiction over telecommunication and cable matters was placed in the newly-established Department of Telecommunications and Cable ("Department"). St. 2007, c. 19. Though newly-established, the Department, as a successor agency to the DTE, and prior to that, the Department of Public Utilities ("DPU"), considers all previous orders of the DTE and DPU to be precedential.

I. Background

On March 19, 2014, pursuant to G.L. c. 166, § 25A and 220 C.M.R. § 45.04, Comcast of Massachusetts III, Inc., ("Comcast") filed with the Department a pole attachment rate complaint ("Complaint") against the Peabody Municipal Light Plant and the Peabody Municipal Lighting Commission (together, "PMLP"). *See Comcast of Mass. III, Inc. v. Peabody Mun. Light Plant & Peabody Mun. Lighting Comm'n*, D.T.C. 14-2 Docket Sheet ("Docket") at 1. On April 3, 2014, the Department of Public Utilities ("DPU") exercised its right to intervene as a full party pursuant to ¶ 9 of the Memorandum of Agreement on Pole Attachment Jurisdiction executed on March 10, 2014, between the Department and the DPU. On May 8, 2014, the Ashburnham Municipal Light Plant ("AMLP") filed a Motion to Intervene. *Id.* On May 15, 2014, after a procedural conference, the Department directed parties to brief three issues relating to hearing format, and the AMLP Motion to Intervene. *See* Hearing Officer Order Directing Parties to Produce Procedural Briefs, Docket at 1. On May 27, 2014, pursuant to Department instructions, the parties filed Procedural Briefs. Docket at 1. On June 23, 2014, the Department issued a Hearing Officer Order on Hearing Procedure and Motion to Intervene, establishing a two-phase hearing and granting AMLP limited intervener status to participate in Phase I. *See* Hearing Officer Order on Hearing Procedure and Motion to Intervene, D.T.C. 14-2 (June 23, 2014) ("Procedural Order").

Under the Procedural Order, Phase I of the Department's investigation would determine whether the Massachusetts Formula for establishing the maximum permitted pole attachment rates of utility companies, applies to municipal light plants and municipal lighting commissions established pursuant to G.L. c. 164. *Id.* at 6. Phase II of the investigation would then focus on the PMLP-specific rates. *Id* at 2. On June 27, 2014, PMLP and AMLP jointly filed a Motion for

Reconsideration of a Portion of the Hearing Officer's Order on Hearing Procedure and Motion to Intervene, and a Motion to Stay Enforcement of the Hearing Officer's Order on Hearing Procedure and Motion to Intervene and to Toll the Period for Filing an Appeal. Docket at 1.

On July 1, 2014, the Department denied the Motion to Stay Enforcement and tolled the period to file an appeal until five business days after the Department rules on the Motion for Reconsideration. *See* Hearing Officer Email of July 1, 2014, Docket at 1. On July 8, 2014, pursuant to the Procedural Order, parties filed their Phase I initial briefs. Docket at 1. On July 22, 2014, pursuant to the Procedural Order, parties filed their Phase I reply briefs. *Id.* On September 2, 2014, the Department denied the Joint Motion for Reconsideration. *Id.*

II. Jurisdiction of the Department and Application of the Massachusetts Formula

Pole attachment rate regulation begins with 47 U.S.C. § 244 which states the Federal Communications Commission ("FCC") shall have the authority to regulate the rates, terms, and conditions for pole attachments except where a state has certified to the FCC that the state regulates such rates, terms, and conditions. 47 U.S.C. § 244(b), (c). In turn, Massachusetts Law states, "[t]he Department of Telecommunications and Energy[2] shall have the authority to regulate the rates, terms, and conditions applicable to attachments." G.L. c. 166, § 25A. Accordingly, Massachusetts has certified to the FCC that it regulates pole attachment rates, terms, and conditions. *See States that have Certified that they Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice (FCC May 19, 2010).

When reviewing pole attachment rates, the Department "shall determine a just and reasonable rate for the use of poles and communication ducts and conduits of a utility for

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[2] General Laws. c. 166, § 25A references the DTE, the predecessor agency of Department and the DPU. Pursuant to Chapter 19 of the Acts of 2007, the DTE was dissolved, with jurisdiction over the chapter divided between the Department and the DPU over telecommunications and energy matters respectively. *See* St. 2007, c. 19 (Apr. 11, 2007).

attachments of a licensee by assuring the utility recovery of not less than the additional costs of making provision for attachments nor more than the proportional capital and operating expenses of the utility attributable to that portion of the pole, duct, or conduit occupied by the attachment." G.L. c. 166, § 25A. Moreover, the statute directs that "[s]uch portion shall be computed by determining the percentage of the total useable space on the pole or the total capacity of the duct or conduit that is occupied by the attachment." *Id.*

Drawing from this statutory guidance in *Cablevision*, the Department developed the Massachusetts Formula as its legal standard. *See A-R Cable* at 7. In *Cablevision* the Department established a method designed to capture the fully-allocated costs of aerial pole attachments and which "is consistent with the Massachusetts pole attachment statute and regulations[.]" *Cablevision* at 18-19. The Massachusetts Formula involves three steps: (1) placing an average value on a utility's investment in poles (*i.e.* costs of bare poles and the costs to install the poles); (2) developing an annual carrying charge to recover the ongoing costs of poles (*i.e.* a utility's cost of capital, depreciation, taxes, operation and maintenance expenses); and (3) allocating the costs among the utility and others using the pole to attach their lines and facilities. *Id.* at 16.

When explaining its adoption of the Massachusetts Formula, the Department stated its "intent remains to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention." *A-R Cable* at 7. To that end, the Department endorsed the FCC method which it found "simplifies the regulation of pole attachment rates as much as possible by adopting standards that rely on publicly available FERC Form 1 data." *Cablevision* at 19. The Department found "that adopting a method that relies on publicly available data will facilitate the resolution of pole attachment rate complaints without the need for costly hearings." *Id.* However, "[w]e (the Department) depart from the

FCC method when additional costs or adjustments to the federal method are justified on state policy grounds, and are consistent with our goal of relying on publicly available data." *Id.*

Comcast argues that the Massachusetts Formula applies to pole-owning utilities pursuant to G.L. c. 166, § 25A. *See Comcast's Initial Phase I Brief,* DTC 14-2 at 1-2 ("Comcast Brief"). Moreover, Comcast argues, municipal light plants, being pole-owning utilities as defined by G.L. c. 166, § 25A, are bound by the Massachusetts Formula. *Id.* at 2. Comcast therefore asserts, "[a]s a consequence, PMLP must abide by the Massachusetts Formula, which was established to resolve precisely this type of dispute." *Id.* The DPU agrees, stating "[b]ecause municipal light plants are included in the statutory definition of 'utility,' DPU urges [the Department] to find that the Massachusetts Formula applies to PMLP in determining whether its pole attachment rates are just and reasonable." *See Phase I Initial Brief of the Department of Public Utilities*, DTC 14-2 at 7 ("DPU Brief").

AMLP and PMLP concede that they are "utilities" as defined under G.L. c. 166, § 25A, and do not "dispute that the Cablevision Formula applies to pole attachments."[3] *See Phase I Joint Reply Brief of Ashburnham Municipal Light Plant, Peabody Municipal Light Plant and the Peabody Municipal Lighting Commission*, DTC 14-2 at 2 ("Joint Reply Brief"). However, AMLP and PMLP assert the "legal and structural differences" between IOUs and MLPs are such that the Massachusetts Formula is incapable of producing a just and reasonable rate that would fairly compensate MLPs for their proper expenses and costs. *Id.* at 2-3. AMLP's and PMLP's position relies on three arguments: (1) IOUs and MLPs are fundamentally different in their ownership, management, regulation, and method of ratemaking; (2) the Massachusetts Formula includes numerous elements inapplicable to MLPs; and (3) application of the Massachusetts

[3] AMLP and PMLP refer to the "Massachusetts Formula" in their Joint Brief as the "Cablevision Formula." For the sake of administrative ease, the Department will use the term "Massachusetts Formula" in place of "Cablevision Formula" throughout this Order, except when directly quoting the AMLP and PMLP briefs.

Formula on MLPs would result in prohibited cross-subsidy. *See Joint Phase I Brief of Ashburnham Municipal Light Plant, Peabody Municipal Light Plant and the Peabody Municipal Lighting Commission*, DTC 14-2 at 3, 10, 13 ("Joint Brief").

The Department agrees with Comcast and the DPU that the Massachusetts Formula applies to MLPs, and addresses each of AMLP's and PMLP's arguments below.

A. There is no risk of cross subsidy.

AMLP's and PMLP's most serious objection to the use of the Massachusetts Formula on MLPs is that it results in a prohibited cross-subsidy. The Department finds that the Massachusetts Formula results in a pole attachment rate that is in compliance with the statutory requirements, and results in fully-allocated costs. As the costs are fully allocated, no cross-subsidy can occur.

When setting rates for pole attachments, the legislature's instructions to the Department are to "assure the utility recovery of not less than additional costs of making provision for attachments nor more than the proportional capital and operating expenses of the utility attributable to that portion of the pole, duct, or conduit occupied by the attachment." G.L. c. 166, § 25A. The Department is further directed that "[s]uch portion shall be computed by determining the percentage of the total useable space on a pole or the total capacity of the duct or conduit that is occupied by the attachment." *Id.* Hence the Department must allocate the cost of said attachment to the percentage of *useable* space it occupies.

Utility poles can be divided into two distinct areas, the area at the top where utilities can attach is known as "useable space," and the area towards the bottom of the pole is known as "support space." This support space, while necessary to hold the pole upright, is unusable for hanging attachments. *See Cablevision* at 16. AMLP and PMLP argue that the Massachusetts

Formula "is based on the useable space on the pole" and "does not provide for the bottom of the pole, or the support space without which the useable space would not exist." *See* Joint Brief at 13. AMLP and PMLP contend that because the Massachusetts Formula does not provide for support space, electric ratepayers are not compensated for the cost of support space used by cable subscribers. *Id.* They argue this creates a situation in which electric ratepayers are forced to subsidize the cost of support space for the attachments of cable subscribers. *Id.* In the case of IOUs, the cost of this subsidy is borne by stakeholders who either deduct it from profits or pass it through to ratepayers. However, because MLPs "cannot use revenues collected through rates to subsidize or donate to the support costs of cable subscribers" they must be treated differently. *Id.* at 14. AMLP and PMLP contend that "[t]he cost of providing 'useable space' for pole attachments necessarily includes the cost of the underlying support space." *Id.* at 15. And, because "[t]he Cablevision Formula does not include support space and is therefore not based on fully-allocated costs … [t]he Cablevision Formula would require the electric consumers of not-for-profit citizen-owned MLPs to subsidize the pole attachments of a global for-profit media and communications corporation." Joint Brief at 15-16 (citations omitted). AMLP and PMLP reason that because such a cross-subsidy is prohibited, the Department should apply a different formula to determine just attachment rates for MLPs.

The Department reaffirms that the Massachusetts Formula fully allocates the costs of pole attachments, including the costs of support space, and therefore does not risk cross-subsidy in its application to MLP pole attachment rates. As the Department found in its *Cablevision* Order "[a]s an initial step in calculating a fully-allocated rate, each of the parties calculates a value for [Boston Edison Co.'s] net investment per bare pole." *Cablevision* at 20 (discussing the application of the Department's newly adopted Massachusetts Formula). The Department later

affirmed, articulating that step one for calculating a fully-allocated pole attachment rate was to place an average value on a utility's net investment in poles, including the costs of bare poles and their installation. *A-R Cable* at 8. The Massachusetts Formula further accounts for the costs of poles, including support space, in step two where it develops an annual carrying charge to recover the ongoing costs of poles. *Id.* Hence, the Massachusetts Formula accounts for both the initial costs of the bare pole (including installation) and the ongoing costs of maintaining that pole including its support space. It is only later, when allocating the total cost, that the Massachusetts Formula distinguishes between useable and support space because it is required by statute. *See* G.L. c. 166, § 25A ("[s]uch portion shall be computed by determining the percentage of the total *useable* space on the pole … that is occupied by the attachment") (emphasis added). The Massachusetts Formula results in a fully-allocated pole attachment rate in accordance with the requirements of G.L. c. 166, § 25A, because it includes the full costs of a utility's investment in its poles, as well as its on-going maintenance costs for both useable and support space. Moreover, the Department finds there is no risk that applying the Massachusetts Formula to MLP pole attachment rates will result in cross-subsidy, because the full cost of support space would be allocated in accordance with the requirements of Section 25A.

B. Differences between IOUs and MLPs do not result in an unjust or unreasonable rate under the Massachusetts Formula.

In their Joint Brief, AMLP and PMLP list 16 differences between MLPs and IOUs ranging from separate statutory grants of authority, to ratemaking authority, treatment of tax liability, and management structures. *See* Joint Brief at 3-9. According to AMLP and PMLP:

> The fundamental legal differences between IOUs and MLPs in the purpose, ownership, management, operation, accounting requirements, legal requirements, and method of rate making demonstrate that MLPs and IOUs are entirely different types of entities. The statutory and regulatory differences – which have

> been established by the Massachusetts Legislature and recognized by the DPU – dictate that MLPs and IOUs cannot be treated identically. Consequently, the same formula to determine a just and reasonable pole attachment rate cannot apply to both MLPs and IOUs. This is shown by the decision in *Cablevision* where the Department addressed the impact of its determination of a pole attachment rate [*sic*] on electric ratepayers and CATV subscribers. For an IOU, the DPU is authorized to regulate the rates of IOUs. The DPU does not have the same authority over MLPs. Because of the fundamental differences between IOUs and MLPs, applying the Cablevision Formula to MLPs will result in impacts on the MLP electric ratepayers premised on an unlawful approach. The result will not yield just and reasonable rates for either the electric ratepayers of an MLP or for the CATV subscribers. This result would violate G.L. c. 166 Sec. 25A.

See Joint Brief at 10 (citations omitted). AMLP and PMLP do not explain specifically how any of the differences they identify affect the Massachusetts Formula in such a manner as to yield an unjust result. Moreover, they ignore the explicit statutory treatment of MLPs and IOUs under G.L. c. 166, § 25A, which defines a "utility" as "any person, firm, corporation, or *municipal light plant* that owns or controls or shares ownership or control of poles...." G.L. c. 166, § 25A (emphasis added).

Thus, despite the differences in statutory frameworks governing IOUs and MLPs, as to determining pole attachment rates, the legislative intent was unambiguously to hold both IOUs and MLPs to the same standard. *See Mass. Elec. Co. & Nantucket Elec. Co., each d/b/a Nat'l Grid*, D.P.U. 10-54, at 41 (2010) ("Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent." citing *Pyle c. Sch. Comm. of Hadley*, 423 Mass. 283, 285-86 (1996)). Indeed, had the legislature intended MLPs to receive different treatment, they clearly could have done so, as they did elsewhere in Section 25A when they exempted MLPs specifically from the provisions requiring nondiscriminatory access to wireless providers. G.L. c. 166, § 25A. The Department has previously established that the Massachusetts Formula

is the standard for determining the fully allocated costs of pole attachments. *See A-R Cable* at 7. AMLP and PLMP provide no legal basis for their contention that the Massachusetts Formula should not be applied to MLPs.

The Department is also unconvinced by AMLP's and PMLP's assertion that utilization of the Massachusetts Formula would infringe on the exclusive jurisdiction of an MLP to set rates in its community. *See* Joint Brief at 18; G.L. c. 164, §§ 56, 58 (vesting the management of an MLP with authority and control over the price of electricity it produces). According to AMLP and PMLP their "publicly elected commissions have determined the allocation between the electric ratepayers and the cable ratepayers based on fully allocated cost-of-service studies." *Id.* AMLP and PMLP argue that by failing to use such allocation, the Department would shift costs to electric ratepayers, in effect substituting "its judgment for the judgment of the publicly elected light commissioners of AMLP and PMLP who have exclusive legal jurisdiction to set rates in their communities." *Id.* As the DPU points out, this argument fails for two reasons. DPU Reply Brief at 4. First, G.L. c. 166, § 25A, gives the Department direct and unambiguous authority over the pole attachment rates of MLPs, whereas, G.L. c. 164, §§ 56 and 58[4] address the right of MLPs to set prices for gas and electricity within their municipal districts, but say nothing of pole attachment rates. *See* DPU Reply Brief at 4; G.L. c. 164, §§ 56, 58. Moreover, there is no threat of harm from cost-shifting in this case because the Massachusetts Formula results in a fully-allocated rate. *See infra* at 11-14; *Cablevision* at 16; *A-R Cable* at 8.

[4] AMLP and PMLP cite to Chapter 164 as granting light commissioners "exclusive authority" to set rates. However, the Department notes this exclusivity is subject to strict statutory limits (rates may not be less than the cost of production, nor yield more than 8% per-annum on the cost of the plant), and is subject to the approval of the DPU. *See* G.L. c. 164, § 58.

C. Despite inapplicable elements, the Massachusetts Formula is flexible enough to accommodate differences between IOUs and MLPs.

While AMLP and PMLP have established that many of the elements measured by the Massachusetts Formula are different between IOUs and MLPs, the Department finds there is sufficient flexibility within the Massachusetts Formula to accommodate those differences and arrive at a fully-allocated cost.

AMLP and PMLP contend that the three steps used in the Massachusetts Formula cannot be applied to MLPs "in the same manner as they have been applied to IOUs in order to reach a just and reasonable rate because the information that goes into the calculation for each step differs between MLPs and IOUs." *See* Joint Brief at 10. In support of their claim, AMLP and PMLP note that the basic source document for information under the Massachusetts Formula is the Federal Energy Regulatory Commission ("FERC") Form 1, which MLPs do not file. *Id.* at 11. Rather, "[t]he return an MLP files with the DPU does not include the same accounting which is part of the Cablevision Formula." *Id.* (citations omitted). AMLP and PMLP cite specifically to differences between MLPs and IOUs in the treatment of depreciation, taxes, interest, and rates of return. *Id.* AMLP and PMLP argue that the Massachusetts Formula cannot yield a just and reasonable result for MLPs, because it was designed to factor inputs from IOUs which differ a greatly for MLPs.

According to the DPU and Comcast, while certain differences do exist between IOUs and MLPs, the Massachusetts Formula is sufficiently flexible to accommodate them. As the DPU points out, MLPs are required to file annual returns with the DPU that follow a system of accounts which mirrors the FERC Form 1 that IOUs must submit. *See* DPU Reply Brief at 8. Indeed, the DPU points out several sections of the MLP annual return which are identical to the FERC Form 1, right down to account numbers and headings. *See Id.* at 9-10. This data is

publically available, and aligns with the Department's explicit intent with the Massachusetts Formula to establish a simple, expeditious procedure based on public records, that would facilitate the resolution of pole attachment rate complaints without the need for Department intervention. *See A-R Cable* at 7.

As discussed above, the Massachusetts Formula, at its core, is a simple, straight-forward formula whereby a utility's average investment in poles is added to its on-going carrying costs, and then allocated among the utility and other attachers to the pole. *See* Cablevision at 16. The purpose of the Massachusetts Formula is to provide an easy way to determine the fully-allocated costs of establishing and maintaining the pole. AMLP and PMLP argue that "[n]one of these steps can be applied to MLPs pursuant to the Cablevision Formula in the same manner as they have been applied to IOUs in order to reach a just and reasonable rate because the information that goes into the calculation for each step differs between MPLs and IOUs." Joint Brief at 10.

AMLP and PMLP contend specific components of the Massachusetts Formula and its operation do not apply. For example, AMLP and PMLP posit that "[t]he administrative carrying charge for an IOU is calculated by dividing the administrative expense (stated on FERC Form 1, Accounts 920-931) by the net plant in service." *Id.* at 11. And, that "[a]n IOU's maintenance carrying charge is determined by dividing maintenance expense (found on FERC Form 1, Account 593) by net investment in poles." *Id.* AMLP and PMLP conclude that "[n]one of these calculations will accurately capture the annual carrying charge for MLPs because MLPs do not file FERC 1 or submit the same accounting information on their returns to DPU." *Id.* Review of PMLP's 2012 annual return on file with the DPU, however, shows a category of expenses titled "Administrative and General Expenses" which is comprised of accounts 920-931. *See* Comcast Exhibit 14, p. 41. PMLP's annual return similarly contains an account 593 titled "Maintenance

of Overhead Lines" which includes information similar to the maintenance expense found in the same number account on the FERC Form 1 mentioned above. *Id.*

According to the DPU, the regulatory body with which the PMLP must file its return: "for purposes of the Massachusetts Formula, MLPs provide accounting information that is *virtually identical* to what IOUs provide in the FERC Form 1." DPU Reply Brief at 10 (emphasis added). Further, while "DPU recognizes certain differences do exist between MLPs and IOUs regarding depreciation, taxes, and rate of return . . . [a]ny such differences, however, can be accounted for within the context of the Massachusetts Formula and should be addressed in Phase II of this proceeding." *Id.* In other words, as the DPU aptly described, AMLP's and PMLP's arguments are not whether the Massachusetts Formula applies, but rather *how* the Massachusetts Formula should be applied to MLPs. *Id.* at 7.

The Department agrees with the DPU's assessment. AMLP and PMLP have provided ample evidence of the differences between IOUs and MLPs, but have not provided any compelling argument that such differences operate on the Massachusetts Formula in such a manner as to render it incapable of producing a just and reasonable rate. To the contrary, AMLP's and PMLP's argument is relevant only in the context of determining the values of specific inputs within the Massachusetts Formula, which is precisely the purpose of Phase II.[5] As explained above, the Massachusetts Formula was specifically designed to use publically available information to calculate a utility's full cost of providing a pole attachment, and then to allocate that cost by percentage of useable space an attachment occupies. *See Cablevision* at 18-19; G.L. c. 166, § 25A. The Department finds that while there may be differences in some of the inputs of this formula between MLPs and IOUs, the Massachusetts Formula would still result in

[5] The fact, for example, that depreciation is tied to useful asset life for IOUs and not for MLPs, is helpful when trying to determine a fair value input for the Massachusetts Formula, but it does not undermine the formula itsself.

a just and reasonable, fully-allocated pole attachment rate when applied to MLPs. Moreover, with the Massachusetts Formula affirmed as applying to MLPs, PMLP can now suggest proxy or alternative value inputs in Phase II of this investigation to accommodate the differences between itself and IOUs.

III. Conclusion

For the reasons set forth above, the Department finds that pursuant to G.L. c. 166, § 25A, the Massachusetts Formula as a matter of law, applies equally to IOUs and MLPs, and results in a fully-allocated pole attachment rate.

IV. Order

The Department hereby CLOSES its Phase I investigation into the Comcast complaint, and OPENS Phase II. Discovery for Phase II of this investigation will begin on Tuesday, September 3, 2014. Parties are directed to submit pre-filed testimony in compliance with this Order by September 17, 2014. The last day to issue Phase II discovery is September 24, 2014. Dates for the evidentiary hearing, and all other procedural matters will be determined by the Department at a later date.

So Ordered,

Karen Charles Peterson

Karen Charles Peterson
Commissioner

NOTICE OF RIGHT TO APPEAL

Pursuant to G. L. c. 25, § 5 and G. L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court.