

United States Senate

WASHINGTON, DC 20510

January 12, 2023

Matthew Nelson
Chair
Massachusetts Department of Public Utilities
1 South Station
5th Floor
Boston, MA 02110

Dear Mr. Nelson:

We are writing to follow-up on the three-month anniversary of the field hearing of the U.S. Senate Banking, Housing, and Urban Affairs Committee Subcommittee on Economic Policy that Senator Warren chaired in Boston, Massachusetts on October 14, 2022 to discuss the management failures at the Massachusetts Bay Transportation Authority (MBTA) and the Massachusetts Department of Public Utilities (DPU), and the economic impacts of these failures on Massachusetts residents and the economy of the Commonwealth.¹

Your testimony described the extensive role of DPU in overseeing MBTA – which highlighted DPU’s role in the ongoing MBTA failures. According to your testimony:²

The chief activities of the Rail Transit Division can be divided into three general areas: (1) accident investigations; (2) ongoing monitoring of safety practices; and (3) monitoring of large capital delivery projects.

Our Rail Transit Division has staff on-call—24 hours per day, seven days per week—to respond to accidents and incidents. ... Division staff observe the MBTA’s investigation of an incident from beginning to end for the purpose of ensuring that the MBTA’s investigation into the cause and circumstances of the incident are “sufficient and thorough.”

In addition to responding to incidents, the Rail Transit staff observes the MBTA’s day-to-day safety practices and compliance with its own Agency Safety Plan. Last year, the Rail Transit staff conducted 472 oversight activities, including: (1) document reviews, rules reviews, and record reviews; (2) field observations

¹ Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee Field Hearing on Economic Policy, “Economic Impacts of Inadequate Transit Maintenance and Oversight: Examining Management Failures at the Massachusetts Bay Transportation Authority and the Massachusetts Department of Public Utilities,” October 14, 2022, <https://www.banking.senate.gov/hearings/economic-impacts-of-inadequate-transit-maintenance-and-oversight-examining-management-failures-at-the-massachusetts-bay-transportation-authority-and-the-massachusetts-department-of-public-utilities>.

² Senate Committee on Banking, Housing, and Urban Affairs, “Oral Testimony of Massachusetts Department of Public Utilities Chair Matthew Nelson Before the Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy,” <https://www.banking.senate.gov/imo/media/doc/Nelson%20Testimony%2010-14-22.pdf>.

conducted on-site at MBTA properties ... (3) interviews with MBTA employees after the DPU has made a field observation; and (4) inspections...

The Department also oversees the certification of large capital delivery projects, like Green Line Extension (GLX) and Green Line Train Protection System (GLTPS)... The DPU is responsible for safety oversight to ensure fulfillment of the MBTA's safety functions.

At the hearing, we learned about the severity of the MBTA's problems and how DPU's failure to address them led the Federal Transit Administration (FTA) to open a Safety Management Inspection (SMI) in April 2022, which was only the second of its kind in the history of the FTA.³ FTA Administrator Fernandez's testimony described the FTA findings, which revealed a pattern of leadership failures within both the MBTA and the DPU that have led to train collisions, derailments, injuries, and fatalities.⁴ The FTA's August 2022 final report on the results of its SMI revealed numerous unsafe practices at MBTA – including the “inappropriate storage of dangerous chemicals in rail yards” and “rule violations in readying trains for moves in the rail yard” – and that the DPU has failed at its fundamental role as a safety oversight mechanism for the MBTA.⁵

FTA concluded in its SMI report that DPU “does not use its available resources as effectively as it could to support field observations, audits, and inspections of MBTA's rail transit system to identify safety deficiencies and require their immediate resolution.”⁶ FTA also indicated that the problems at MBTA and DPU were not new: in 2019 the FTA observed a “higher overall rate of reportable safety events” in MBTA's safety data, and in their 2019 triennial audit, the FTA issued “16 findings of non-compliance,” of which seven were still pending at the time of our hearing.⁷ These seven outstanding findings “addressed the need for procedures to oversee specific roadway worker protection and track maintenance issues; for increased capabilities and capacity to oversee the identification and analysis of MBTA safety concerns and hazards; for needed improvements in the investigation and root-cause analysis of accidents; and for requiring and overseeing MBTA's development of corrective action plans to address safety deficiencies and concerns.”⁸ FTA's SMI stated that the agency has “not closed these remaining findings

³ U.S. Department of Transportation, Federal Transit Administration, “Safety Management Inspection - Final Report, Massachusetts Bay Transportation Authority/Massachusetts Department of Public Utilities,” August 31, 2022, https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-08/FTA-Safety-Management-Inspection-Report-for-MBTA-and-DPU_0.pdf; WCVB, “Federal Transit Administration report highlights deficiencies in MBTA safety, staffing, training,” August 31, 2022, <https://www.wcvb.com/article/mbta-fta-report-released-massachusetts-public-transportation-safety/40929222>.

⁴ Senate Committee on Banking, Housing, and Urban Affairs, “Testimony of The Honorable Nuria Fernandez, Administration, Federal Transit Administration, Before the Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy,” <https://www.banking.senate.gov/imo/media/doc/Fernandez%20Testimony%202010-14-22.pdf>.

⁵ U.S. Department of Transportation, Federal Transit Administration, “Safety Management Inspection - Final Report, Massachusetts Bay Transportation Authority/Massachusetts Department of Public Utilities,” August 31, 2022, pp. 64 and 75, https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-08/FTA-Safety-Management-Inspection-Report-for-MBTA-and-DPU_0.pdf.

⁶ *Id.*, pp. 75.

⁷ *Id.*, pp. 4.

⁸ *Id.*

because DPU has not yet demonstrated positive safety outcomes at MBTA with their proposed and implemented [Corrective Actions Plans].”⁹

As Administrator Fernandez told the Committee – and as your testimony addressed – the FTA has required a series of actions of MBTA and DPU. In June 2022, the FTA issued Special Directive 22-8 to the DPU, requiring it to “oversee the implementation of the four Special Directives issued to the Massachusetts Bay Transportation Authority (MBTA) that address immediate safety issues” and to “take actions to oversee MBTA’s corrective actions to address the pattern of safety incidents and interim safety findings concerning deferred track maintenance, uncontrolled train movements, management of the Operations Control Center, and lapsed training certifications of safety-sensitive rail personnel at the MBTA.”¹⁰ In August 2022, the FTA issued Special Directive 22-13 to the DPU, requiring it to “oversee the implementation of the four Special Directives issued to the Massachusetts Bay Transportation Authority (MBTA)” by the FTA that address the findings from the SMI, and to “take action to increase its technical capacity and its ability to oversee MBTA’s corrective actions to address the pattern of safety incidents and safety findings concerning workforce management, prioritization of safety management information, effectiveness of safety communication, and operating conditions and policies, procedures, and training.”¹¹

At our October 2022 hearing, you testified that “the DPU is working diligently to implement those actions” and that “DPU has already expanded its field work, including by conducting more in-person observations, and is working to increase its resources to be able to conduct even more field work and additional auditing of the MBTA. The DPU is also working to hire additional staff with transit safety experience in our Rail Transit Division, and we are actively recruiting and continually posting jobs.”¹²

We also heard troubling testimony about how neither you nor the two other DPU Commissioners appointed under Governor Baker, Robert Hayden and Cecile Fraser, had any background or experience in transportation issues.¹³

On December 12, 2022, you provided more detailed responses on DPU’s activities in response to Questions for the Record from Senator Warren sent after the hearing, which she submitted

⁹ *Id.*, pp. 18.

¹⁰ Federal Transit Administration, “FTA Special Directive 22-8,” June 28, 2022, <https://www.transit.dot.gov/regulations-and-programs/safety/fta-special-directive-22-8>.

¹¹ Federal Transit Administration, “FTA Special Directive 22-13,” August 31, 2022, <https://www.transit.dot.gov/regulations-and-programs/safety/fta-special-directive-22-13>.

¹² Senate Committee on Banking, Housing, and Urban Affairs, “Oral Testimony of Massachusetts Department of Public Utilities Chair Matthew Nelson Before the Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy, <https://www.banking.senate.gov/imo/media/doc/Nelson%20Testimony%2010-14-22.pdf>.

¹³ Senate Committee on Banking, Housing, and Urban Affairs, Questions by Senator Warren directed at Mr. Matthew Nelson, “Economic Impacts of Inadequate Transit Maintenance and Oversight: Examining Management Failures at the Massachusetts Bay Transportation Authority and the Massachusetts Department of Public Utilities,” October 14, 2022, <https://www.banking.senate.gov/hearings/economic-impacts-of-inadequate-transit-maintenance-and-oversight-examining-management-failures-at-the-massachusetts-bay-transportation-authority-and-the-massachusetts-department-of-public-utilities>.

through her position on the Senate Banking, Housing, and Urban Affairs Committee.¹⁴ In these responses, you described several activities underway by DPU:¹⁵

The DPU has been conducting timely review of the MBTA's CAPs and submitting our review to the FTA. The DPU has also created Inspection and Verification Plans for each MBTA Corrective Action and sent copies to the FTA.

In addition, the DPU has submitted to the FTA a CAP that responds to the issues that FTA directed DPU to address.

You also described changes in staffing, indicating that:¹⁶

The DPU has also increased the number of full-time employees that work on rail safety oversight beyond previous levels, and we are working to hire additional staff. DPU targets 18 full time employees dedicated to rail safety oversight. ...

More recently, following the FTA's 2022 triennial audit of the DPU, the DPU will conduct a workload assessment to determine the right compliment of staff and resources required to ensure effective oversight of MBTA's Safety program.

Finally, you informed the Committee that that “[t]he DPU is working to expand its resources to conduct more field work and auditing of the MBTA to provide further oversight and verify that the MBTA is carrying out the FTA’s directives,”¹⁷ and that “[t]he DPU is internally reviewing our policies and procedures, including updating staff’s technical training plans and automating the DPU’s process for verification of MBTA completed actions.”¹⁸

It is critical that DPU keep these promises and provide transparency about its progress in doing so, particularly since MBTA’s safety and performance problems have persisted in the wake of the hearing. On December 30, 2022, the T “quietly cut Orange Line service by nearly half” without notice or explanation to riders, nearly doubling scheduled wait times.¹⁹ Officials later stated that Orange Line riders should expect to “continue to experience longer headways” due to electrical issues with at least nine of the new subway cars, many of which had just entered service this past fall after the 30-day shutdown of the Orange Line.²⁰ Last week, passengers were

¹⁴ Mr. Matthew Nelson, Chair, Massachusetts Department of Public Utilities, Responses to Questions for the Record from Senator Elizabeth Warren, December 12, 2022, <https://www.warren.senate.gov/imo/media/doc/OFRs.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Boston Globe, “T quietly pulls new Orange line trains from service nearly doubling wait times,” Taylor Dolven, December 31, 2022, <https://www.bostonglobe.com/2022/12/30/metro/t-quietly-pulls-new-orange-line-trains-service-nearly-doubling-wait-times/>; NBC Boston, “Orange Line Riders to See Service Delays,” <https://www.nbcboston.com/on-air/as-seen-on/orange-line-riders-to-see-service-delays/2933757/>.

²⁰ WCVB, “MBTA starts 2023 with fewer Orange Line trains,” Todd Kazakiewich, January 2, 2023, <https://www.wcvb.com/article/mbta-2023-orange-line-trains-service-reduced/42380505>; NBC Boston, “New Year, Same Orange Line: Riders Dealing With Delays After 9 Cars Pulled,” Michael Rosenfield, January 2, 2023, <https://www.nbcboston.com/news/local/new-year-same-orange-line-problems-riders-to-face-longer-wait-times-after-9-cars-pulled/2933760/>; NBC Boston, “Long Waits Continue on Orange Line After MBTA Pulls Trains Over

stuck for nearly half an hour before being able to disembark, due to a train becoming disabled at Back Bay station.²¹ Orange, Green, and Red Line riders are being told to expect various disruptions to service throughout January 2023.²² These issues reveal ongoing problems with maintenance, quality, service, and transparency from the T, and continuing gaps and failures with DPU oversight.

You admitted at the hearing that “the [DPU]...needs to do more to oversee the actions that have happened on the MBTA,”²³ and it is important that you provide Congress and the public with information on your progress. In order to ensure that the DPU is carrying out its oversight responsibilities to protect MBTA riders, I request the DPU provide answers to the following questions no later than January 26, 2023.

1. Your responses to Questions for the Record from Senator Warren, submitted via the Senate Banking, Housing, and Urban Affairs Committee, indicated that “[t]he DPU has been conducting timely review of the MBTA’s CAPs and submitting our review to the FTA. The DPU has also created Inspection and Verification Plans for each MBTA Corrective Action and sent copies to the FTA. In addition, the DPU has submitted to the FTA a CAP that responds to the issues that FTA directed DPU to address.”²⁴
 - a. How many CAP reviews has DPU conducted and sent to FTA since the October 14, 2022 hearing?
 - b. How many of these have been approved by the FTA?
 - c. How many DPU Inspection and Verification Plans for each MBTA Corrective Action have been sent to FTA since October 14, 2022?
 - d. Has FTA approved or otherwise responded to these plans?
 - e. Has FTA responded to the CAP regarding issues that FTA directed DPU to address? If so, what was the response?

2. Your response to Questions for the Record indicated that “[t]he DPU has also increased the number of full-time employees that work on rail safety oversight beyond previous levels, and we are working to hire additional staff. DPU targets 18 full time employees dedicated to rail safety oversight. ... More recently, following the FTA’s 2022 triennial audit of the DPU, the DPU will conduct a workload assessment to determine the right

Electrical Issue, Marc Fortier and Mike Pescaro, December 30, 2022, <https://www.nbcboston.com/news/local/mbta-9-orange-line-cars-removed-from-service-for-repairs-due-to-electrical-arcing-issue/2932598/>.

²¹ Boston.com, “Trapped T passenger tweets ordeal after Orange Line doors won’t open,” Abby Patkin, January 6, 2023, <https://www.boston.com/news/local-news/2023/01/06/mbta-orange-line-passenger-tweets-ordeal-after-orange-line-doors-wont-open/>.

²² Boston.com, “What to know about shutdowns on the MBTA’s Orange, Green, and Red lines this month,” Ross Cristantiello, January 2, 2023, https://www.boston.com/news/local-news/2023/01/02/shutdowns-mbta-orange-green-red-line-january-2023/?p1=article_recirc_inline_feed.

²³ Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee Field Hearing on Economic Policy, “Economic Impacts of Inadequate Transit Maintenance and Oversight: Examining Management Failures at the Massachusetts Bay Transportation Authority and the Massachusetts Department of Public Utilities,” October 14, 2022, <https://www.banking.senate.gov/hearings/economic-impacts-of-inadequate-transit-maintenance-and-oversight-examining-management-failures-at-the-massachusetts-bay-transportation-authority-and-the-massachusetts-department-of-public-utilities>.

²⁴ Mr. Matthew Nelson, Chair, Massachusetts Department of Public Utilities, Responses to Questions for the Record from Senator Elizabeth Warren, December 12, 2022, <https://www.warren.senate.gov/imo/media/doc/QFRs.pdf>.

compliment of staff and resources required to ensure effective oversight of MBTA's Safety program."²⁵

- a. Since the hearing on October 14, 2022, how many new staff have been hired and are in place conducting MBTA oversight activities?
 - b. What were the results of the DPU workload assessment? Does DPU currently have appropriate staff and resources required to ensure effective oversight of the MBTA's safety program? If not, what additional needs were identified in the assessment?
3. At the October 14, 2022 hearing, we heard troubling testimony about how neither you nor the two other DPU Commissioners appointed under Governor Baker, Robert Hayden or Cecile Fraser, had any background or experience in transportation issues.²⁶
- a. What actions have you and other DPU officials taken to address this gap?
 - b. Please describe the number of staff with transit safety experience in the DPU's Rail Transit Division at the time of the October 2022 hearing, and the number of additional staff that have been hired since then. Please also include the number of currently open positions.
4. Your response to Questions for the Record stated that "the DPU is working to expand its resources to conduct more field work and auditing of the MBTA to provide further oversight and verify that the MBTA is carrying out the FTA's directives."²⁷
- a. What additional field work has DPU conducted since October 14, 2022? Please provide specific details on the nature of this work and any results.
 - b. How many audits of MBTA has DPU opened since October 14, 2022?
 - c. Have any of these audits been completed? If so, what were the results?
 - d. What audits are still open, and what are the subjects of these audits?
5. Your response to Questions for the Record stated that "[t]he DPU is internally reviewing our policies and procedures, including updating staff's technical training plans and automating the DPU's process for verification of MBTA completed actions."²⁸
- a. What were the results of DPU's internal review of policies and procedures?
 - b. Please provide a list of all updates to DPU staff's technical training plans put in place since October 14, 2022.
 - c. Please provide a list of all updates to DPU's process for verification of MBTA completed actions put in place since October 14, 2022.

²⁵ *Id.*

²⁶ Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee Field Hearing on Economic Policy, Questions by Senator Warren directed at Mr. Matthew Nelson, "Economic Impacts of Inadequate Transit Maintenance and Oversight: Examining Management Failures at the Massachusetts Bay Transportation Authority and the Massachusetts Department of Public Utilities," October 14, 2022, <https://www.banking.senate.gov/hearings/economic-impacts-of-inadequate-transit-maintenance-and-oversight-examining-management-failures-at-the-massachusetts-bay-transportation-authority-and-the-massachusetts-department-of-public-utilities>

²⁷ Mr. Matthew Nelson, Chair, Massachusetts Department of Public Utilities, Responses to Questions for the Record from Senator Elizabeth Warren, December 12, 2022, <https://www.warren.senate.gov/imo/media/doc/QFRs.pdf>.

²⁸ Mr. Matthew Nelson, Chair, Massachusetts Department of Public Utilities, Responses to Questions for the Record from Senator Elizabeth Warren, December 12, 2022, <https://www.warren.senate.gov/imo/media/doc/QFRs.pdf>.

6. Specifically, has DPU opened any audits or conducted any additional field work related to the shutdowns, delays, and disruptions that occurred in December 2022 and January 2023? Has DPU taken any other actions related to these shutdowns, delays, and disruptions?
7. Has the DPU resolved the seven outstanding findings of non-compliance from the FTA's 2019 audit?
 - a. If not, which findings are still open?
 - b. If not, what is the DPU's timeline for addressing these findings?
8. Per the SMI's required actions for the DPU, has the DPU updated its workload assessment to reflect the results of the SMI and addressed FTA's Special Directives 22-8 and 22-13?²⁹
 - a. If not, when will the DPU complete this required action?
9. Per the SMI's required actions for the DPU, has the DPU matched its resources to those identified in its updated workload assessment?³⁰
 - a. If not, when will the DPU complete this required action?
10. Per the SMI's required actions for the DPU, has the DPU updated its technical training plan, and, if bringing on new resources, developed a plan for hiring and training personnel and/or contractors to fill the identified staffing needs?³¹
 - a. If not, when will the DPU complete this required action?
11. Per the SMI's required actions for the DPU, has the DPU reviewed and updated its processes and thresholds for using its existing enforcement authority to ensure timely resolution of CAPs or other required actions for safety?³²
 - a. If not, when will the DPU complete this required action?
12. Per the SMI's required actions for the DPU, has the DPU completed a legal assessment regarding its organizational independence from MBTA that includes review of organizational mechanisms, including recusals, limited reporting relationships, and other features that provide legal separation between the two agencies and ensures DPU's independence to take enforcement action against MBTA?³³
 - a. If not, when will the DPU complete this required action?

²⁹ U.S. Department of Transportation, Federal Transit Administration, "Safety Management Inspection - Final Report, Massachusetts Bay Transportation Authority/Massachusetts Department of Public Utilities," August 31, 2022, pp. 89, https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-08/FTA-Safety-Management-Inspection-Report-for-MBTA-and-DPU_0.pdf.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

13. Per the SMI's required actions for the DPU, has the DPU conducted an assessment and determined if additional action is required to validate MBTA's fatigue management approach for rail transit officials and maintenance and engineering personnel?³⁴
 - a. If not, when will the DPU complete this required action?
 - b. If DPU finds that additional action is needed to reduce service hours to ensure the safety of MBTA employees and passengers, will the DPU use its own authority to require this action?

14. Per the SMI's required actions for the DPU, has the DPU adopted FTA's findings and required actions in Special Directives 22-9 through 22-12.³⁵
 - a. If not, when will the DPU complete this required action?

15. Per the SMI's required actions for the DPU, has the DPU in coordination with FTA, required, reviewed, and approved corrective action plans from MBTA to address FTA's findings and required actions in Special Directives 22-9, 22-10, 22-11 and 22-12, and to oversee the timely implementation and to close-out of these CAPs?³⁶
 - a. If not, when will the DPU complete this required action?

16. Per the SMI's required actions for the DPU, has the DPU identified the specific activities that it will undertake to ensure MBTA's completion of the required actions, a milestone schedule for completion of MBTA's required actions, and the parties at DPU and MBTA responsible for completing the required actions?³⁷
 - a. If not, when will the DPU complete this required action?

Thank you for your attention to this matter.

Sincerely,


Elizabeth Warren
United States Senator


Edward J. Markey
United States Senator

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*, pp. 90.

³⁷ *Id.*