



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 10-01-A

April 16, 2010

Investigation by the Department of Public Utilities on its own Motion commencing a rulemaking pursuant to 220 C.M.R. § 2.00 et seq. establishing 220 C.M.R. § 19.00.

ORDER ADOPTING FINAL REGULATIONS

I. INTRODUCTION

By this Order, and pursuant to G.L. c. 30A, § 2, and 220 C.M.R. § 2.00, the Department of Public Utilities (“Department”) adopts as final the regulations establishing 220 C.M.R. § 19.00 to create standards of acceptable performance for emergency preparation and restoration of service for electric distribution and gas companies, and establishing requirements for emergency response plans (“ERP”), consistent with the provisions of St. 2009, c. 133, An Act Relative to Public Utility Companies.

On November 12, 2009, Governor Patrick signed into law St. 2009, c. 133, An Act Relative to Public Utility Companies (“2009 Act”). Among other provisions, the 2009 Act amends G.L. c. 164 by adding two new sections, §§ 1J and 85B. Section 1J requires the Department to promulgate rules and regulations to establish standards of acceptable performance for emergency preparation and restoration of service for electric distribution and gas companies doing business in the Commonwealth. This section provides the Department with explicit authority to impose penalties for violations of the standards. Section 85B requires that electric distribution and gas companies submit annually an ERP for review and approval by the Department.

On February 2, 2010, the Department issued an Order commencing a rulemaking and adopting emergency regulations creating standards of acceptable performance for emergency preparation and restoration of service for electric distribution and gas companies, and

establishing requirements for ERPs.¹ Order Adopting Emergency Regulations, D.P.U. 10-01 (February 2, 2010). The Department also solicited comments on the emergency regulations and, on February 19, 2010, published notice of the emergency rulemaking in the Massachusetts Register. 1150 Mass. Reg. at 33-34 (February 19, 2010). The emergency regulations are effective for three months and expire on May 2, 2010, unless the Department promulgates final regulations after an opportunity for public comment. G.L. c. 30A, § 2; 220 C.M.R. § 2.05(4). In this Order, the Department revises the emergency regulations as published on February 2, 2010, and adopts the revised regulations as final.

On March 12, 2010, the Department received written comments from the Massachusetts Emergency Management Agency (“MEMA”); Western Massachusetts Electric Company (“WMECo”);² and the Northeast Gas Association (“NGA”), submitting on behalf of Bay State Gas Company, The Berkshire Gas Company, Blackstone Gas Company, Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”), Holyoke Gas & Electric Department, Middleborough Gas & Electric Department, Boston Gas Company, Colonial Gas Company, and Essex Gas Company d/b/a National Grid, New England Gas Company, NSTAR Gas Company, Wakefield Municipal Gas & Light Department, and Westfield Gas & Electric.

¹ On February 16, 2010, the Department commenced a companion docket establishing ERP Guidelines for electric companies. ERP Guidelines, D.P.U. 10-02 (February 16, 2010).

² WMECo offers a separate set of comments, in addition to endorsing the Joint Electric Comments (WMECo Comments at 1). WMECo notes the close connection between this docket and D.P.U. 10-02 and therefore states that it incorporates by reference the first set of joint comments from D.P.U. 10-02 into this docket (WMECo Comments at 1-2).

Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, Unitil and WMECo (collectively, “Electric Companies”) submitted joint comments (“Joint Electric Comments”). On March 18, 2010, the Department held a public hearing to receive comments on the emergency regulations. The following participants testified at the public hearing: Alexandra Blackmore, counsel for Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid; Stephen Klionsky, counsel for WMECo; and, Thomas Kiley, representative for NGA.

II. FINAL REGULATIONS

A. Overview

Public utility companies in Massachusetts have an obligation to provide safe and reliable service to the public. This obligation includes the responsibility to restore service in a timely manner when service to a customer has been interrupted, regardless of the number of customers who have been interrupted. See Fitchburg Gas and Electric Light Company d/b/a Unitil, D.P.U. 09-01-A at 6-8 (2009). Pursuant to G.L. c. 164, § 76, the Department has broad supervisory authority over public utility companies. Included in this general authority is the ability of the Department to evaluate the performance of electric distribution and gas companies with regard to providing reliable service. See Report to the Legislature Re: Maintenance and Repair Standards for Distribution Systems of Investor-owned Gas and Electric Distribution Companies, D.P.U. 08-78, at 4 (2009) (citing Boston Gas Company v. City of Newton, 425 Mass. 697, 699 (1997) (the Department’s comprehensive oversight powers are to ensure reliable and safe services to the public by gas and electric distribution

companies)). The 2009 Act adds to the Department's authority to enforce a Company's responsibility to provide safe and reliable service and prompt restoration by explicitly requiring the Department to create standards of acceptable performance for emergency preparation and restoration of service, and granting the Department specific authority to evaluate companies' performance against these standards and penalize them for violations of the standards. G.L. c. 164, § 1J. The regulations establish those performance standards and the penalty provisions. 220 C.M.R. § 19.00. The regulations also establish standards for Companies to report their emergency preparation and restoration of service activities and establish requirements for the ERPs. 220 C.M.R. § 19.00.

In response to the comments we received on the emergency regulations, the Department refined the focus on preparation in the regulations from *outage* preparation to *emergency* preparation, which means preparing for an Emergency Event (see Joint Electric Comments at 2; WMECo Comments at 2-3; NGA Comments at 3). The Department recognizes that this clarification is consistent with the express language of G.L. c. 164, §1J ("the department shall promulgate rules and regulations to establish standards of acceptable performance for *emergency preparation* and restoration of service for electric and gas distribution companies doing business in the commonwealth") as well as the traditional operational functioning of the utilities to prepare for Emergency Events. The Companies state that currently they are prepared to address everyday outages and service interruptions through their normal operating procedures, but that Emergency Events require preparation that is beyond what is routine. In fact, the Electric Companies and NGA state that they design their ERPs primarily to cut

through their normal business procedures for restoring service to speed widespread repairs to a large number of concurrent service interruptions under emergency circumstances, and that focusing ERPs on addressing non-emergency outages could diminish, in the long run, the effectiveness of a Company's response to an actual emergency (Joint Electric Comments at 6-11; WMECo Comments at 2-3; NGA Comments at 3). Thus, the Department has amended the regulations to emphasize this heightened obligation to prepare for Emergency Events. This change is reflected throughout the final regulations, particularly in Sections 19.01(1) (Purpose), 19.03(2) (Emergency Preparation standard), and 19.04 (Emergency Response Plans), and is noted further below with regard to the relevant sections of the regulations.

In keeping with the plain language of the 2009 Act and existing statutory authority, one change that the Department did not make in the regulations, despite requests to do so, was to modify the restoration of service standard so that it is limited to restoration of service regarding Emergency Events (see Joint Electric Comments at 4-11; WMECo Comments at 2-3; NGA Comments at 3). The Department's broad authority to ensure "reliable utility service" (see Preamble to the 2009 Act) has been supplemented by the 2009 Act, which directs the Department to establish standards of acceptable performance for *restoration of service* and includes the specific penalty authority necessary to enforce the standards. Thus, the Department's standard shall require Companies to restore service to their customers in a safe

and reasonably prompt manner during all service interruptions³ and outages, including Emergency Events.

B. Standards of Acceptable Performance

The Department's standards of acceptable performance are set forth in 220 C.M.R. § 19.03. The standards require that electric distribution and gas companies ensure that they (1) are adequately and sufficiently prepared to restore service to their customers during an Emergency Event, and (2) restore service in a safe and reasonably prompt manner during all Service Interruptions and outages.⁴ The regulations also include a reporting standard.

In the final regulations, the Department clarifies the preparation standard, 220 C.M.R. § 19.03(2). As described above, the standard in 220 C.M.R. § 19.03(2) establishes that gas and electric distribution companies must ensure that they are adequately and sufficiently prepared to restore service to their customers in a safe and reasonably prompt manner during an Emergency Event. In addition, the final regulations clarify that the same standard for preparation applies to both electric distribution and gas companies, i.e., gas companies must be

³ To maintain consistency between the Department's regulations and the Service Quality Guidelines, the Department has added the term "Service Interruption" to the final regulations, 220 C.M.R. §§ 19.02 (Definitions); 19.05(3) (Recovery of Service Restoration Costs), to make it clear that the regulations apply to loss of service to customers, not solely equipment breakdowns. See Service Quality Guidelines, D.P.U. 04-116-C Appendix at 3, 5 (2007).

⁴ For gas companies, the standards also incorporate the comprehensive system of existing federal and state requirements and guidelines for handling outages and Emergency Events. See 49 U.S.C. §§ 60101- 60125; 49 C.F.R. Part 192; G.L. c. 164, § 105A; 220 C.M.R. § 69.00 and 220 C.M.R. §§ 100.00 through 113.00.

adequately and sufficiently prepared to restore service to their customers in a safe and reasonably prompt manner during an Emergency Event. 220 C.M.R. § 19.03(2).

Regarding the restoration of service standard, Section 19.03(3), the Electric Companies recommend that the Department clarify that companies should implement “all applicable components” instead of “all components” of their ERPs (Joint Electric Comments at 15-16). The Department agrees with this comment and includes the word “applicable” in the final regulations. In response to concerns raised by companies about when to implement their ERPs, the Department specifies that companies are required to implement their ERPs for Emergency Events. 220 C.M.R. §§ 19.03(2)(a); 19.03(3).

As part of the standards, the Department establishes reporting requirements for emergency preparation and restoration of service activities. At the request of MEMA, the Department specifies that companies shall send certain required reports to the appropriate regional MEMA representatives and municipal emergency managers, or their designees (see MEMA Comments at 1). 220 C.M.R. §§ 19.03(4).

C. Emergency Response Plans

Requirements for a company’s ERP are established in Section 19.04 of the regulations.⁵ Consistent with the concept of emergency preparation as the preparation for Emergency Events, the final regulations clarify that the ERPs are designed for the safe and reasonably

⁵ Gas companies must comply with these requirements in addition to existing requirements under federal and state law. See 49 U.S.C. §§ 60101- 60125; 49 C.F.R. Part 192; G.L. c. 164, § 105A; 220 C.M.R. § 69.00 and 220 C.M.R. §§ 100.00 through 113.00.

prompt restoration of service associated with an Emergency Event, rather than for all outages.

220 C.M.R. § 19.04.

The 2009 Act requires electric distribution and gas companies to submit their ERPs annually by May 15 to the Department for review and approval. G.L. c. 164, § 85B(a). The Electric Companies raise the concern that the regulations do not indicate when changes or updates to an ERP would become effective (Joint Electric Comments at 14-15). The Department does not want to impede companies from making changes to their ERPs that, based on their experiences and expertise, they deem beneficial for their emergency response. Thus, in the final regulations, the Department states that changes or updates to an ERP go into effect when filed with the Department while Department review and approval is pending.

220 C.M.R. §§ 19.04(4); 19.04(5).

For electric distribution companies, the Department has opened a separate docket, D.P.U. 10-02, establishing ERP Guidelines to provide for greater uniformity of ERP content and format. Through the participatory process of that companion proceeding, the Department has worked with the electric distribution companies and other stakeholders to develop the specifics of the ERPs and will address in that proceeding many of the requests MEMA and the Electric Companies have for more detail regarding the reporting requirements and the content of the ERPs (Joint Electric Comments at 11-14; WMECo Comments at 3-6; MEMA Comments at 1-2).

Regarding Mutual Assistance Agreements, the Electric Companies recommend that the Department redefine the term to mean the Edison Electric Institute's ("EEI") mutual assistance

agreements, because the Companies do not have formal, signed agreements with each other (Joint Electric Comments at 18). The Department has made minor alterations to the definition of Mutual Assistance Agreement, but does not limit the definition of Mutual Assistance Agreement to the EEI's agreements. 220 C.M.R. § 19.02.

The requirements for the ERPs include a provision pertaining to Life Support Customers. 220 C.M.R. § 19.04(1)(c). NGA is concerned about the application of this provision to gas companies and seeks to limit the requirements in the provision to electric distribution companies (NGA Comments at 3). The Department agrees that the provision regarding Life Support Customers is not applicable to gas companies and expressly limits the provision to electric distribution companies. See 220 C.M.R. §§ 19.02 (definition of Life Support Customers); 19.04(1)(c).

With regard to gas companies' ERPs, federal law requires gas companies to review and update their ERPs at least once each calendar year. 49 C.F.R. § 192.605. In addition, gas companies are required to periodically review the response of their personnel to determine the effectiveness of their ERPs, and amend those procedures should the situation warrant. Id. If, after approval of a gas company's ERP, the Department determines that the ERP is "inadequate," federal law grants the Department authority to require the company to revise the ERP. 49 U.S.C. 60108(a)(2); 49 C.F.R. § 192.603; 220 C.M.R. §§ 69.03; 69.07; 69.08. The final regulations do not change these existing requirements.

D. Investigations

Section 19.05 of the regulations establishes when the Department will open an investigation regarding a violation of the standards. The emergency regulations included a provision that the Department shall open an investigation if an electric distribution company does not restore service to at least 95 percent of its affected customers within 72 hours. 220 C.M.R. § 19.05(1)(b). The Electric Companies recommend that the Department delete the provision because the nature of storms in New England makes it difficult to account for the timing of interruptions, and restoration prioritization is affected by public safety concerns outside the control of the companies (Joint Electric Comments at 16-18; WMECo Comments at 4). The Electric Companies also acknowledge that the Department may open an investigation on its own initiative at any time (Joint Electric Comments at 17-18, citing G.L. c. 164, § 1J). Because the Department can open an investigation into a Company's restoration performance at any time, the Department has removed from the final regulations the provision that it shall open an investigation if an electric distribution company does not restore service to at least 95 percent of its affected customers within 72 hours. 220 C.M.R. § 19.05(1).

In the Electric Companies' comments, they state that demonstrated compliance with an ERP, on file and subject to review by the Department, appears to conclusively establish that an affected gas or electric company was reasonable and prompt in restoring service after an Emergency Event (Joint Electric Comments at 4). In this Order, the Department clarifies that implementation of an ERP in and of itself does not constitute compliance with the Department's standards. The regulations establish that implementation of a company's ERP is

one factor of its compliance with the emergency preparation and restoration of service standards. See 220 C.M.R. §§ 19.03(2)(a) (requirement that an electric company ensures it is adequately and sufficiently prepared to restore service in a safe and reasonably prompt manner “shall include at a minimum, but not be limited to” implementing a company’s ERP); 19.03(3) (requirement that company restores service in a safe and reasonably prompt manner “shall include at a minimum, but not be limited to” implementing its ERP).

III. CONCLUSION

Accordingly, the Department adopts the attached as final regulations, “Standards of Performance for Emergency Preparation and Restoration of Service for Electric Distribution and Gas Companies,” 220 C.M.R. § 19.00. These regulations are effective upon publication in the Massachusetts Register.

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220 CMR 19.00: STANDARDS OF PERFORMANCE FOR EMERGENCY
PREPARATION AND RESTORATION OF SERVICE FOR
ELECTRIC DISTRIBUTION AND GAS COMPANIES

Section

19.01: Purpose and Scope

19.02: Definitions

19.03: Performance Standards for Emergency Preparation and Restoration of Service

19.04: Emergency Response Plans

19.05: Department Investigation into Company Performance; Remedies

19.06: Miscellaneous

19.01: Purpose and Scope

- (1) Purpose. 220 CMR 19.00 establishes regulations establishing:
 - (a) standards of acceptable performance for emergency preparation and restoration of service for electric distribution and gas companies; and
 - (b) requirements for Emergency Response Plans, consistent with the provisions of St. 2009, c. 133, an *Act Relative to Public Utility Companies*.
- (2) Scope. 220 CMR 19.00 applies to all electric distribution and gas companies subject to the jurisdiction of the Department.

19.02: Definitions

For the purpose of 220 CMR 19.00, the terms set forth in 220 CMR 19.02 are defined as follows, unless the context otherwise requires.

Company refers to an investor-owned electric distribution company or gas company as defined in M.G.L. c. 164, § 1.

Department means the Department of Public Utilities, Commonwealth of Massachusetts.

Emergency Event means an event where widespread outages or Service Interruptions have occurred in the service area of a Company due to storms or other causes beyond the control of the Company.

Emergency Response Plan (ERP) means a Company's plan which prepares the

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Company to restore service in a safe and reasonably prompt manner in the case of an Emergency Event, as required by M.G.L. c. 164, § 85B.

Life Support Customers, also known as medical priority customers, means those customers who have provided documentation to the electric distribution company of their medical conditions necessitating electric service.

Mutual Assistance Agreement means an agreement among a Company and other utilities, both inside and outside the state, that details specifics for obtaining or lending resources, including, but not limited to, material, equipment, and trained personnel, when internal resources are not sufficient to ensure the safe and reasonably prompt restoration of service during an Emergency Event.

Service Interruption means the loss of service to one or more customers connected to an electric distribution company's distribution system.

19.03: Performance Standards for Emergency Preparation and Restoration of Service

(1) 220 CMR 19.03 sets forth the standards that shall apply to each Company's performance regarding:

- (a) emergency preparation;
- (b) restoration of service; and
- (c) reporting.

(2) Emergency Preparation. Each Company shall ensure that it is adequately and sufficiently prepared to restore service to its customers in a safe and reasonably prompt manner during an Emergency Event.

(a) For electric distribution companies, this shall include at a minimum, but not be limited to:

1. implementing all applicable components of the electric distribution company's ERP related to planning and preparation for Emergency Events;
2. conducting the following on at least an annual basis:
 - a. Meetings with state and local officials to ensure effective and efficient flow of information and substantial and frequent coordination between the Company and local public safety officials, including coordination with local officials with respect to vegetation management; and
 - b. Training and drills/exercises to ensure effective and efficient performance of personnel during Emergency Events, and to ensure that each Company has the ability to restore service to its customers in a safe and reasonably prompt manner.

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3. maintaining updated lists of local elected and appointed officials, state and local public safety officials, Life Support Customers, and all internal personnel and external entities involved in the Company's restoration efforts.
 - (b) For gas companies, this shall include at a minimum preparing and following written procedures consistent with those required by 49 U.S.C. §§ 60101 through 60125; 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; M.G.L. c. 164, §§ 85B and 105A; 220 CMR 69.00 and 220 CMR 100.00 through 113.00. Each gas company shall include these written procedures in their respective manuals for conducting operations and maintenance activities and for emergency response, and, where appropriate, in their manuals of written procedures to minimize hazards resulting from gas pipeline emergencies, as required by 49 C.F.R. Part 192; 220 CMR 69.00 and 220 CMR 100.00 through 113.00.
- (3) Restoration of Service. Each Company shall restore service to its customers in a safe and reasonably prompt manner during all Service Interruptions and outages. During an Emergency Event, this shall include at a minimum, but not be limited to, implementing all applicable components of the Company's ERP related to restoration of service.
- (4) Reporting. Each Company, as identified below, shall comply with the following reporting requirements:
- (a) Each electric distribution company shall submit a report with supporting documentation to the Department on its preparation for Emergency Events that details each meeting, training, and drill/exercise held pursuant to 220 CMR 19.03(2)(a)2.;
 - (b) During an Emergency Event, each Company shall provide periodic reports to the Department, appropriate regional Massachusetts Emergency Management Agency representatives and municipal emergency managers, or their designees, that contain detailed information related to emergency conditions and restoration performance for each affected city and town; and
 - (c) Following an Emergency Event, each Company shall submit a detailed report with supporting documentation to the Department on its restoration performance, including lessons learned.

19.04: Emergency Response Plans

- (1) Each Company shall submit to the Department an ERP that shall be designed for the safe and reasonably prompt restoration of service associated with an Emergency Event. The ERP shall include, but not be limited to, the following:
 - (a) identification of management staff responsible for Company operations, including a description of their specific duties;

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- (b) a process for communicating with customers that extends beyond normal business hours and business conditions;
- (c) for electric distribution companies, procedures for maintaining an updated list of Life Support Customers, including a process to immediately update a Company's Life Support Customer list when a customer notifies the Company of a medical need for electric service, communicating with Life Support Customers before, during and after an Emergency Event, and providing information to public safety officials regarding the status of electric service to Life Support Customers' homes;
- (d) designation of staff to communicate with local officials, including public safety officials, and relevant regulatory agencies;
- (e) provisions regarding how the Company will assure the safety of its employees, contractors and the public;
- (f) procedures for deploying Company and contractor crews, and crews acquired through Mutual Assistance Agreements to work assignment areas; and
- (g) identification of additional supplies and equipment needed during an emergency and the means of obtaining additional supplies and equipment.

(2) The ERP shall set forth the content, format and timeline for each report that the Company shall submit to the Department pursuant to 220 CMR 19.03(4).

(3) Each Company shall file an ERP, which the Company has reviewed and updated within the previous 12 months, with the Department on or before May 15th each year, for review and approval. The filing shall include a copy of all written Mutual Assistance Agreements into which the Company has entered, and identify and describe any modifications to the ERP and Mutual Assistance Agreements. A Company that fails to timely file its ERP may be fined \$500 for each day during which such failure continues. The fines levied by the Department shall be returned to ratepayers through distribution rates.

(4) A Company's ERP shall go into effect when filed with the Department, pending Department review and approval, and shall remain in effect until a new ERP is filed or the Department directs otherwise. After review of a Company's ERP, the Department may request that the Company amend the ERP. The Department may open an investigation of the Company's ERP. If, after hearings, the Department finds a material deficiency in the ERP, the Department may order the Company to make such modifications to the ERP that it deems reasonably necessary to remedy the deficiency.

(5) If a Company makes any updates or changes to its ERP between annual filings, it shall submit such changes to the Department as soon as possible. Such changes shall go into effect when filed with the Department, pending Department review and approval.

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19.05: Department Investigation into Company Performance; Remedies

(1) Investigations.

(a) The Department may open an investigation into a Company's performance regarding emergency preparation or restoration of service.

(b) The Department shall open a full investigation upon petition of the Attorney General or by the city council in an affected city or by the board of selectmen in an affected town to determine whether a Company violated the Department's standards. Petitions for an investigation shall be filed with the Department not later than 90 days after the violation has been remedied.

(2) Penalties. If after investigation the Department finds a violation of the standards established in 220 CMR 19.03, the Department shall levy a penalty not to exceed \$250,000 for each violation for each day that the violation of the Department's standards persists; provided, however, that the maximum penalty shall not exceed \$20,000,000 for any related series of violations. In determining the amount of the penalty, the Department shall consider, among other factors, the following:

- (a) the gravity of the violation;
- (b) the appropriateness of the penalty to the size of the Company;
- (c) the good faith of the Company in attempting to achieve compliance; and
- (d) the degree of control that the Company had over the circumstances that led to the violation.

(3) Recovery of Service Restoration Costs. If after investigation the Department finds that, as a result of the failure of the Company to implement its ERP, the length of the Service Interruptions or outages was materially longer than they would have been but for the Company's failure, the Department may deny the recovery of all, or any part of, the service restoration costs through distribution rates, commensurate with the degree and impact of the Service Interruptions or outages.

19.06: Miscellaneous

The Department may grant, for good cause shown and not contrary to statute, an exception from any provision of 220 CMR 19.00.

REGULATORY AUTHORITY

220 CMR 19.00: M.G.L. c. 164, §§ 1J, 76, 85B and 105A.