



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

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KARYN E. POLITO  
LIEUTENANT GOVERNOR

KATHLEEN A. THEOHARIDES  
SECRETARY OF ENERGY  
AND ENVIRONMENTAL AFFAIRS

ONE SOUTH STATION  
BOSTON, MA 02110  
(617) 305-3500

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CHAIR

ROBERT E. HAYDEN  
COMMISSIONER

CECILE M. FRASER  
COMMISSIONER

**DIG SAFE  
NOTICE OF PROBABLE VIOLATION**

ELECTRONIC MAIL - READ RECEIPT REQUESTED

May 7, 2020

D.P.U. 19-DS-0588

Mr. David Grande  
The Berkshire Gas Company  
115 Cheshire Road  
Pittsfield, MA 01201

Dear Mr. Grande,

***This Notice of Probable Violation ("NOPV") has important information that affects your company's legal rights. Please read the entire letter carefully.***

Based on information submitted to the Pipeline Safety Division ("Division") of the Department of Public Utilities ("Department"), the Division has reason to believe that The Berkshire Gas Company ("Respondent") may have violated the applicable provisions of G.L. c. 82, §§ 40 through 40E ("Dig Safe Law") or 220 CMR 99.00 ("Dig Safe Regulations"), or both, with respect to a properly tendered Dig Safe notice submitted by J.S. Rae, Inc. prior to an excavation that occurred on August 26, 2019, at [REDACTED]

Greenfield, Massachusetts. Respondent may have also violated the federal damage prevention code, 49 C.F.R. § 192.614, if applicable.

Specifically, the Division has reason to believe that Respondent failed to designate the location of the underground facilities adequately, as required by the Dig Safe Law, G.L. c. 82, § 40B and 220 CMR 99.06 and failed to report a suspected violation of the Dig Safe Law to the Department within 30 days of learning of the circumstances, as required by 220 CMR 99.07(10). If the violation report regarding this incident has not been included with this NOPV, it is available for review upon request.

A violation relating to a natural gas pipeline facility is subject to a civil penalty of not more than \$200,000 each day, up to a maximum civil penalty of \$2,000,000 for a related series of violations. 49 U.S.C. § 60122(a)(1); G.L. c. 164, § 105A; 220 CMR 99.14(1). A violation relating to any other underground facility is subject to a civil penalty of \$1,000 for a first offense, and between \$5,000 and \$10,000 for any subsequent offense within twelve consecutive months. G.L. c. 82, § 40E; 220 CMR 99.14(2). In determining the amount of the civil penalty, the Division shall consider the following criteria, pursuant to 220 CMR 99.14(3): (a) the nature, circumstances, and gravity of the violation, including adverse impact on the environment; (b) the degree of Respondent's culpability; (c) Respondent's history of prior offenses; (d) any good faith by Respondent in attempting to achieve compliance after notification of a violation; (e) the effect on Respondent's ability to continue in business; (f) the economic benefit gained from violation, if readily ascertainable,

without any reduction because of subsequent damages; and (g) such other matters as justice may require.

In the present matter, the Division has reviewed the circumstances of the allegations and is prepared to resolve this matter upon Respondent's agreement to the terms in the attached Consent Order and payment of a civil penalty in the amount of **\$40,000**. This penalty is due, in part, to Respondent's failure to report the incident to the Department in addition to Respondent's 13 confirmed violations of G.L. c. 82, § 40B in the previous twelve months

To resolve this matter, Respondent must respond to the Division in one of the following ways.

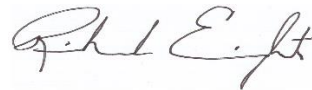
1. Consent Order and Payment: To resolve this matter without disputing the alleged violations, Respondent or a duly authorized representative must sign and return the enclosed Consent Order to the Division **within 30 days of the date of this NOPV**, along with a check or money order for **\$40,000** made payable to the Commonwealth of Massachusetts. 220 CMR 99.09(2)(a). **Respondent should also inform the Division at (617) 305-3570 or DPU.DamagePrevention@mass.gov that the Consent Order and payment have been mailed.**
2. Response to NOPV: Because of the circumstances surrounding the COVID-19 outbreak in Massachusetts, the Division is encouraging all parties to provide a **substantive written response by email** to DPU.DamagePrevention@mass.gov **within 30 days of the date of this NOPV**. This reply must be signed by Respondent or a duly authorized representative, and it must include a complete statement of all relevant facts and any relevant documents. 220 CMR 99.09(2)(b). The statement may include an explanation of the reasons for disputing the allegations, a complete description of the markings provided, and any additional evidence such as photos, maps, work orders, emails, correspondence, or witness statements.

If Respondent is unable to provide a substantive written reply by email or requires an informal conference, please contact us **within ten business days of the date of this NOPV** at (617) 305-3570 or [DPU.DamagePrevention@mass.gov](mailto:DPU.DamagePrevention@mass.gov). We will make every effort to provide reasonable accommodations.

Failure to respond to this NOPV constitutes a waiver of Respondent's right to contest the allegations and authorizes the Department, without further notice to Respondent, to find the facts to be as alleged in the NOPV and to issue a remedial order finding Respondent to have violated the law and liable to pay the civil penalty. 220 CMR 99.09(4).

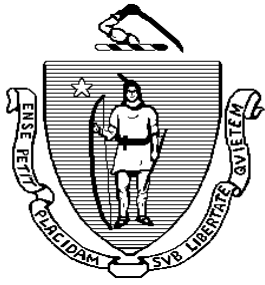
If you have any questions concerning this notice, please direct your inquiries to Ms. Vanessa Do Arcovio at (617) 305-3570 or [DPU.DamagePrevention@mass.gov](mailto:DPU.DamagePrevention@mass.gov). As noted, all written responses should be emailed to [DPU.DamagePrevention@mass.gov](mailto:DPU.DamagePrevention@mass.gov). We look forward to hearing from you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. Enright", is positioned above the printed name of the signatory.

Richard Enright, Director  
Pipeline Safety Division  
Department of Public Utilities

Enclosure



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

### CONSENT ORDER

In the matter of The Berkshire Gas Company

D.P.U. 19-DS-0588

#### **I. JURISDICTION**

1. Pursuant to G.L. c. 82, § 40E and G.L. c. 164, § 105A, the Department of Public Utilities ("Department") has authority to enforce violations of the provisions of G.L. c. 82, §§ 40 through 40E ("Dig Safe Law"), 220 CMR 99.00 ("Dig Safe Regulations"), and 49 C.F.R. § 192.614.
2. The Department issued the Dig Safe Regulations to establish procedures for the determination of violations of the Dig Safe Law and the Dig Safe Regulations.
3. Pursuant to Delegation Order, D.P.U. 18-44-A (2018), the Commission of the Department delegated to the Department's Pipeline Safety Division ("Division") the administration and enforcement of the Dig Safe Law.
4. For purposes of this Consent Order, The Berkshire Gas Company ("Respondent") is a Company within the meaning of the Dig Safe Law and the Dig Safe Regulations.
5. Respondent has stipulated and consented to the issuance of this Consent Order with the attached Compliance Agreement.

#### **II. DIG SAFE VIOLATIONS AND CIVIL PENALTY**

Pursuant to the authority vested in it by D.P.U. 18-44-A, the Dig Safe Law, and the Dig Safe Regulations, the Division hereby orders that:

1. Based on information referenced in the Notice of Probable Violation ("NOPV") issued by the Division and dated May 7, 2020, the Division finds that Respondent violated G.L. c. 82, § 40B of the Dig Safe Law, the Dig Safe Regulations, or 49 C.F.R. § 192.614 (if applicable) in connection with an excavation that occurred at [REDACTED] Greenfield, Massachusetts, on or about August 26, 2019. The NOPV is attached hereto and made a part hereof.
2. Pursuant to G.L. c. 82, § 40E and 220 CMR 99.14, the Division imposes upon Respondent a civil penalty of **\$40,000**. A violation relating to a natural gas pipeline facility is subject to a civil penalty of not more than \$200,000 each day, up to a maximum civil penalty of

\$2,000,000 for a related series of violations. 49 U.S.C. § 60122(a)(1); G.L. c. 164, § 105A; 220 CMR 99.14(1). A violation relating to any other underground facility is subject to a civil penalty of \$1,000 for a first offense, and between \$5,000 and \$10,000 for any subsequent offense within twelve consecutive months. G.L. c. 82, § 40E; 220 CMR 99.14(2).

3. Respondent shall pay the civil penalty ordered herein by remittance to the Division of a check or money order in the amount of **\$40,000** made payable to the Commonwealth of Massachusetts.

### **III. RESPONDENT REQUIREMENTS**

1. Respondent shall sign the Stipulation below and return this complete document to the Division along with payment of the civil penalty.
2. All submissions by Respondent in accordance with this Consent Order shall be addressed to:

Attention: Damage Prevention Program  
Pipeline Safety Division  
Department of Public Utilities  
One South Station  
Boston, MA 02110

### **IV. STIPULATED TERMS**

Respondent, through the signature below, by the person to whom this Consent Order is issued or a duly authorized representative, acknowledges agreement to the terms contained herein, pursuant to 220 CMR 99.13(1). In signing this Order, Respondent neither admits nor denies that a violation of any Department or federal pipeline safety law or regulation occurred in relation to the above-noted matters. Further, Respondent agrees to issuance of this Consent Order and stipulates to the following:

1. Respondent, by signing the Stipulation, hereby waives:
  - (a) All rights to informal review pursuant to 220 CMR 99.10;
  - (b) All rights to an adjudicatory hearing pursuant to 220 CMR 99.10(3);
  - (c) Any and all procedural rights available in connection with the issuance of the Consent Order;
  - (d) All rights to seek any type of administrative or judicial review of the Consent Order;  
and
  - (e) Any and all rights to challenge or contest the validity of the Consent Order.

2. Respondent expressly acknowledges that neither Respondent nor the Division has any intention to enter into a contract.
3. The terms and provisions of this Consent Order and Stipulation shall be binding upon, and inure to the benefit of, Respondent and the Division and their successors in interest.
4. Nothing in these Stipulated Terms shall preclude any proceedings brought by the Department to enforce the terms of the Consent Order, and nothing in these Stipulated Terms constitute, nor shall Respondent contend that they constitute, a waiver of any right, power, or authority of any other representative of the Commonwealth or an agency thereof to bring other actions deemed appropriate.

**V. FINAL ORDER**

1. This Consent Order and Stipulation is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, having the force and effect of a remedial order, pursuant to 220 CMR 99.13(2), and expressly does not form, and may not be considered to form, a contract binding on the Division, the Department, or the Commonwealth of Massachusetts.
2. The terms of this Consent Order and Stipulation, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreement, or prior arrangements between the Division and the Respondent, whether oral or written.

By Order of the Division

\_\_\_\_\_  
Richard Enright, Director  
Pipeline Safety Division  
Department of Public Utilities

Date: \_\_\_\_\_

**The undersigned, duly authorized, stipulates to and acknowledges agreement to the terms herein.**

**The Berkshire Gas Company**

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

COMPLIANCE AGREEMENT  
BETWEEN THE DEPARTMENT OF PUBLIC UTILITIES  
AND THE BERKSHIRE GAS COMPANY

D.P.U. 19-DS-0588

The Berkshire Gas Company (“Respondent”) agrees to take the following actions within the specified time periods:

1. Within 21 days of the effective date of this Order, Respondent shall update its maps and records regarding the address specified in the Consent Order with the accurate location of its pipeline facilities.
2. Within 30 days of the effective date of this Order, Respondent shall supply the Division with documentation that it has complied with Item 1, above.
3. Within 30 days of the effective date of this Order, Respondent shall pay a civil penalty of \$40,000 to the Commonwealth of Massachusetts.