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June 5, 2009

Mary L. Cottrell, Secretary
Department of Public Utilities
One South Station, 2nd Floor
Boston, Massachusetts 02110

RE: Investigation by the Department of Public Utilities on its Own Motion into the Preparation and Response of the Massachusetts Electric Distribution Companies to the December 12, 2008 Winter Storm, D.P.U. 09-01-A.

Dear Secretary Cottrell:

Enclosed for filing with the Department please find the Attorney General's Initial Brief along with a Certificate of Service for filing in the above-referenced proceeding.

Thank you for your attention to this matter.

Very truly yours,

/s/ Jed M. Nosal

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Assistant Attorneys General

Enclosures

cc: Laura Koepnick, Hearing Officer, Department of Public Utilities
Joan Foster Evans, Senior Counsel, Department of Public Utilities
Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

**Investigation by the Department of Public Utilities
on its Own Motion into the Preparation and Response
of the Massachusetts Electric Distribution Companies
to the December 12, 2008 Winter Ice Storm.**

D.P.U. 09-01-A

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Boston this 5th day of June, 2009.

/s/ Jed M. Nosal

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Investigation by the Department of Public Utilities on its Own Motion into the Preparation and Response of the Massachusetts Electric Distribution Companies to the December 12, 2008 Winter Ice Storm.)))))))	D.P.U. 09-01-A
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I. EXECUTIVE SUMMARY

In the aftermath of a December 11-12, 2008 ice storm (“December 2008 Ice Storm” or “Ice Storm”), over 375,000 electric customers in Massachusetts were without power. Of that number, 28,500 Massachusetts homes and businesses in Unitil Corporation’s (“Unitil” or “Company”) Fitchburg Gas & Electric Light Company’s (“FG&E” or “Company”) service territory, or virtually 100% of its customers, lost power. FG&E is an electric distribution company that serves customers from the City of Fitchburg and towns of Lunenburg, Townsend and Ashby. One in five of those customers were without power for at least a week, while over 1,000 homes had no electricity for 12 days or more.

For Unitil, the Ice Storm exposed a Company that did little to prepare for a severe storm resulting in a failed response to the Ice Storm and leading to significant hardship among Unitil's customers. The December 2008 Ice Storm uncovered several planning and preventative deficiencies within the Company. These deficiencies existed prior to

the Ice Storm and directly contributed to the Company's inability to respond. First, the Company's Emergency Response Plan (ERP) was deficient, lacked scalability and clear public communication protocols; and was largely useless in the wake of the December 2008 Ice Storm. In addition, the Company was unaware of the plan's inadequacies prior to the Ice Storm because the plan was not sufficiently reviewed on a regular basis nor did the Company test the plan through drills or exercises. Second, the Company's plans for utilization of existing crews and mutual aid arrangements in advance of the December 2008 Ice Storm were woefully inadequate and negatively impacted the Company's initial response and ongoing restoration efforts. Third, the Company failed to invest in an outage management system ("OMS") or other means for managing the restoration of customers - depriving the Company of valuable information regarding the status of its system throughout the restoration process. Finally, the Company did not manage its vegetation properly. It did not make the necessary financial investment and inappropriately cut back on its tree trimming program, contributing to the damage to its system from the Ice Storm.

In addition to its failures prior to the Ice Storm, the Company's response to the Ice Storm failed on several levels. First, the Company's initial damage assessment in the immediate aftermath of the Ice Storm was woefully inadequate, resulting in misunderstanding regarding the true damage to the system and subsequent miscommunication to the public regarding restorations as well as the inefficient deployment of Company resources. Second, the Company's communication in the aftermath of the Ice Storm was abysmal with little or no information flowing to customers. The Company's call center was not only overwhelmed, at times it did not

have information available to it. At other times, even when it had information available to it, that information was not accurate. Third, the Company's efforts to secure outside assistance after some of its initial plans fell through were substandard; provoking extraordinary intervention by Governor Patrick and the region's elected officials to find additional assistance for the Company.

Potentially most egregious was the Company's failure to contact or address the needs of its known Life Support Customers (LSCs). Unitil had 67 customers who had identified to the Company that electricity was vital to their health and well-being. These are customers who might depend on a ventilator or other medical equipment powered by electricity for survival. Pursuant to Department requirements, utilities must contact these customers prior to a known storm event and thereafter after an outage in order to aid the customer with finding back-up power. Notably, Unitil made no efforts to contact these customers prior to the Ice Storm. *Additionally, throughout the outage, Unitil had contact with only 11 of the 67 customers, all of whom initiated the contact with Unitil.* In summary, Unitil made no proactive effort to contact LSCs. Despite a clear obligation and the public health crisis it created by failing to contact these individuals, Unitil failed to have contact with 56 of its 67 LSCs during the two week outage. Unitil left this vulnerable population without information or options to cope with a lengthy outage.

Despite a failure to plan for the Ice Storm and a failure to respond to the Ice Storm, which left many customers without power for two weeks, Unitil's failures led to an additional "kicker" for customers after finally restoring power. The Company issued over 4,000 estimated bills after the Ice Storm that it knew to be inaccurately high. Customers whose power had been interrupted by the Ice Storm received December 2008

estimated electric bills based on estimates of their usage in the full month of December 2007. Although nearly every Unitil customer was without power for a period in December 2008, customer bills included charges for the time period when there was no electrical power available due to the Ice Storm.

While the Company has indicated that it recognizes the significance of its failures, only through strong Department of Public Utilities' ("Department") action will the Company's customers be protected in the future. The Attorney General therefore recommends the Department take the following actions. First, the recommendations made by the Attorney General and former Chairman Yardley to improve Unitil's response to major storms and its communications with customers and public officials should be implemented. In particular, the Department should fully implement the Attorney General's timetables for implementation of the recommendations. Customers, however, should not be required to pay for the implementation of any recommendation that brings the Company in compliance with Department rules, regulations, directives or orders as the Company is already compensated in existing rates to maintain such requirements. Second, the Department should fine the Company a total of \$4.6 million pursuant to the provisions of G.L c. 164, § 1F. Third, the Department should make a finding that it will adjust downward the Company's allowed return on equity in an amount to be determined in the Company's next rate case. Finally, the Department should provide strict parameters for the recovery of any costs associated with the Company's restoration efforts. Such costs must be prudent and should be amortized over a significant period of time to avoid rate shock.

In Massachusetts, it has become the practice for a distribution company to fail to respond to a major ice storm and for the Department to investigate the failure to respond and to suggest corrective action.¹ The Department has ordered new procedures and processes to no avail. The time has come, and the circumstances justify, for the Department to take serious remedial *and* punitive action. Only through such a comprehensive remedy can we be assured that the events of December 2008 will not happen to Unitil's or any other distribution utility's customers.

II. PROCEDURAL HISTORY

On January 7, 2009, pursuant to its general supervisory authority under G.L. c. 164, § 76 and its authority to review service quality performance by electric utilities under G.L. c. 164, § 1E, the Department initiated a series of proceedings to investigate the efforts of the four affected electric utilities to prepare for and restore power in the aftermath of the Ice Storm. In particular, the Department initiated an investigation into “the adequacy of the electric Companies’ ice storm response/emergency restoration plans, and examination into each Company’s ice storm implementation with a focus on (1) the content and adequacy of the Company’s Ice Storm response/emergency restoration plans; (2) preparation for and management of the Ice Storm restoration efforts; (3) the degree of inter-company cooperation with respect to ice storm preparation, sharing of crews, outage management and system infrastructure inventories; (4) procurement and allocation of out-of-state mutual aid crews; (5) communications with state and local public safety officials; (6) internal company communications; (7) dissemination of public information; (8) transmission maintenance; and (9) identification

¹ *Hurricane Gloria*, D.P.U. 85-232; *Hurricane Bob*, D.P.U. 91-228; *Western Massachusetts Electric Company*, D.P.U. 95-86..

of company restoration practices that require improvement. The Companies were directed to file a report addressing each of these concerns by February 23, 2009.

The Department, on January 8, 2009, established a docket, D.P.U. 09-01-A, and scheduled service area public hearings into the Company's Ice Storm preparation and performance on January 27, 2009 and February 3, 2009 in Fitchburg and Lunenburg, respectively. At the service area public hearings, over 1,000 customers, including local elected and public safety officials, expressed frustration, anger and utter dissatisfaction with the length and competency of restoration efforts, public safety coordination and lack of sufficient and accurate information during the approximately two week outage. On February 23, 2009, each of the companies filed the required reports into their respective handling of restoration efforts following the Ice Storm.

As required by the Department's January 8, 2009 Order, the Company filed its report to the Department regarding its Ice Storm restoration efforts on February 23, 2009. In its report, Unitil sought to describe the breadth and scope of "unprecedented" damage to its system as a result of the December 2008 Ice Storm. It explained how the shortage of available crews hindered its restoration efforts and extended restoration times on its system. Unitil saw unprecedented demands placed on its customer communications systems that also affected its ability to properly communicate with public officials in the four municipalities.

In addition to the February 23, 2009 report as required by the Department, on March 25, 2008, Unitil filed a Response to the 2008 Ice Storm Self-Assessment Report ("Self-Assessment"), developed and drafted by Robert Yardley, former Department Chairman and corporate advisor, which was supported by his testimony. Exhs. FGE-5,

FGE-6 and FGE-7. The Self-Assessment set forth the Companies' version of events and, under various categories of topics related to the December 2008 Ice Storm, set forth lessons learned and 28 Recommendations on how the Company's might address those issues and remedy short comings in Unitil's Ice Storm restoration preparedness and performance. Through the testimony of its witnesses, Unitil has committed to implement each of its recommendations and not simply to consider them but to take action to effectuate the matters addressed by each of them. Tr. 4, pp. 850-851; Tr. 5, pp. 913-915; Exh. DPU RR-6.

Unitil filed joint testimony from four of its managers who had led the response effort in the Fitchburg service area: Thomas P. Meissner, Senior Vice President and Chief Operating Officer; George R. Gantz, Senior Vice President of Corporate Communications; Mark Lambert, Manager of Customer Services; and Raymond Letourneau, Director of Electric Operations. On rebuttal testimony, the Unitil panel also included Richard Francasio, an emergency response specialist, who, since the December 2008 Ice Storm, was hired by Unitil to coordinate future outage preparation and restoration efforts.

The Attorney General submitted prefiled testimony and rebuttal testimony from: Barbara R. Alexander, a Consumer Affairs Consultant, with an expertise in customer care and restoration communication protocols; Dr. Richard E. Brown, Senior Vice President of Operations for Quanta Technology, LLC, a nationally known, published expert on emergency preparedness and restoration techniques; City of Fitchburg's Fire Chief Kevin Roy; Fitchburg Police Sergeant/Emergency Liaison Glenn Fossa; and Fitchburg Public Works Commissioner Lenny Laackso. The Fitchburg emergency management team

members testified as to their dissatisfaction with Unitil's emergency support, restoration services and communications during the December 2008 Ice Storm.

The Town of Lunenburg also provided prefiled direct testimony from Fire Chief Scott Glenny and Thomas Alonzo, Chairman of the Board of Selectmen, both of whom recounted the lack of Unitil municipal support in the days following the December 2008 Ice Storm. They also testified to the lack of Unitil's responsiveness on "downed wires" required for street clearing of trees, responsiveness to critical care customer needs and public communications that lacked speed, accuracy and sufficiency.

Five days of hearings were conducted at the Department's offices between Monday, May 11, 2009 and Friday, May 15, 2009.

III. STANDARD OF REVIEW

A. G.L. c. 164, §76

The Department has broad authority to regulate and supervise the operation of electric utilities in the Commonwealth. G.L. c. 164, §76; DPU/DTE 96-24C, p. 7 (February 20, 1997). Under G.L. c. 164, § 76, the Department "ha[s] the general supervision of all gas and electric companies" G.L. c. 164, § 76. Under this supervisory authority, the Department has conducted numerous investigations of Massachusetts electric utilities. *See e.g. Western Massachusetts Electric Company*, D.P.U. 95-86; *Colonial Gas Company*, D.T.E. 02-44 (2002). Further, "the Supreme Judicial Court has held that the Department possesses 'broad investigative authority over electric utilities and may properly inquire into . . . the efficiency of [a regulated utility's] operations and the productivity of all its employees, both management and non-management.' *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, 43, 44 (1978)" *Western*

Massachusetts Electric Company, D.P.U. 95-86, p. 1, n. 2. As such, the Department must use this broad regulatory and supervisory authority to make findings with respect to Unitil's failure to prepare for the December 2008 Ice Storm, the Company's inability to conduct proper damage assessments, its failure to act appropriate during the Ice Storm and the additional consequential failings that resulted from these inadequacies.

B. G.L. c. 164, § 1F(7)

G.L. c. 164, § 1F(7) sets forth the Department's authority to hold utility companies accountable for service quality failures through a penalty scheme. It requires the Department to "promulgate rules and regulations to establish service quality standards for each distribution, transmission, and gas company, including, but not limited to, standards for universal service, customer satisfaction, service outages, telephone service, billing service, and public and employee safety." G.L. c. 164, §1F(7). Further, "[t]he Department is required to establish a code of conduct applicable to the provision of distribution and transmission services and the retail sale of electricity to all customers." *Id.* As part of its duty to ensure service quality, the statute provides the Department with the authority to issue civil penalties after a public hearing:

Any person, firm, electric or generation company, supplier, or other corporation doing business in the commonwealth who violates any provisions of said code or of any rule or regulation promulgated by the department pursuant to sections 1A to 1H, inclusive, **or any provision of chapter 93A**, pursuant to authority established by section 102C, shall be subject to a civil penalty not to exceed \$25,000 for each violation for each day that the violation persists; provided, however, that the maximum civil penalty shall not exceed \$1,000,000 for any related series of violations (emphasis supplied).

G.L. c. 164, § 1F(7).

The Department's fining authority under section 1F extends to any rule or regulation of the Department and encompasses the consumer protection provisions in G.L. 93A that protect utility customers specifically from conduct that is "unfair or deceptive." Section 1F's broad penalty provision combined with the broad supervisory authority contained in section 76 provide the Department with an important tool to hold utility company's accountable. Section 1F and the incorporation of section 93A therein demonstrates the Legislature's intent to allow the Department to consider evidence of such conduct for the purpose of levying the statutorily authorized fines.

C. G.L. c. 93A

Under G.L. c. 93A, in determining whether a practice is unfair, Massachusetts courts employ a three-part test that examines: (1) whether the practice is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive or unscrupulous; and (3) whether it causes substantial injury to consumers. *PMP Assocs., Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975). Deceptive practices will be found when false or misleading statements, or statements containing half-truths, are made. *Equitable Life Assurance Soc. v. Porter-Englehart*, 867 F. 2d 79, 89 (1st Cir. 1989) citing *Linthicum v. Archambault*, 379 Mass. 381, 388 n. 12 (1979). The SJC has noted that:

In determining whether an act or practice is deceptive, 'regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which [the act or practice] might reasonably be expected to have upon the general public.'" *Leardi v. Brown*, . . . [394 Mass. 151, 156 (1985)], quoting *P. Lorillard Co. v. Federal Trade Comm'n*, 186 F.2d 52, 58 (4th Cir. 1950).

Aspinall v. Phillip Morris Companies, Inc., 442 Mass. 381, 394 (2004).

When establishing whether a defendant has engaged in unfair or deceptive conduct, proof that the defendant “intended” to engage in unfair and deceptive acts and practices is not required. *Equitable Life Assurance Soc.*, 867 F. 2d at 89; *Linthicum*, 379 Mass. at 388 n. 12. Acts and practices violate G.L. c. 93A, §2 if they are “oppressive or otherwise unconscionable in any respect”. G.L. c. 93A, § 2(a) and 940 CMR 3.16(1). “Unconscionability must be determined on a case-by-case basis, with particular attention to whether the challenged provision could result in oppression and unfair surprise to the disadvantaged party and not to allocation of risk because of ‘superior bargaining power’”. See, e.g., *Waters v. Min Ltd.*, 412 Mass. 64, 68 (1992).

Unitil’s actions in failing to have an adequate emergency response plan, failing to conduct proper damage assessments, providing inadequate or incorrect information to the public, sending out estimated bills to customers that it knew to be incorrect and failing to contact its life support customers were unfair practices under G.L. c. 93A. As such, the Department should use its authority under G.L. c. 164, §1F to penalize the Company for its violations of chapter 93A.

IV. ARGUMENT

A. UNTIL FAILED TO ADEQUATELY PLAN AND PREPARE FOR OR TAKE STEPS TO PREVENT DAMAGE IN CONNECTION WITH A MAJOR OUTAGE EVENT

1. Emergency Response Plan

i. Unitil’s Emergency Response Plan Failed to Anticipate, Address and Account for a Severe Ice Storm Event

Unitil’s emergency response plan (ERP) failed to address and account for a severe ice storm event. The Company conceded that “With the benefit of hindsight, Unitil has concluded that the ERP is not adequate to respond to a storm that inflicts widespread

damage across a broad geographic region and results in a loss of power to a significant number of FG&E's customers ..." Exh. FGE-2, p. 23. The December 2008 Ice Storm may have been unprecedented for Unitil, but this ice storm should not have been unanticipated. Dr. Brown testified that for a "severe ice storm you see between 1 and 2 percent of the structures affected ... [i]n this case, this is 1.7%." Tr. 3, p. 609. One similar ice storm which struck within the region is the 1998 Maine and Canada ice storm to which Ms. Alexander referred and could have provided Unitil with planning criteria. Exh. AG-1, p. 8. Another is the Western Massachusetts Electric Company 1995 Summer Storm, which was the subject of a Department investigation, D.P.U. 95-86. It has been documented that hurricanes present outages of significant scale that must be planned and drilled for. See Department investigations into response efforts in the aftermath of *Hurricane Gloria*, D.P.U. 85-232, and *Hurricane Bob*, D.P.U. 91-228. In DPU 91-228, the Department placed all Massachusetts utilities on notice as to what needed to be part of an ERP. *Id.*, p. 39. And as recent history demonstrates, even a system-wide pandemic event impacting Unitil must be planned for. Tr. 2, p. 353. In short, Unitil should have had an ERP in place, with its management and staff fully familiar with their roles that would have allowed them to address events on the scale of the December 2008 Ice Storm.

Dr. Brown, in his observations concerning Unitil's ERP stated that "overall, the Unitil restoration processes as outlined in the ERP are general and do not define specific activities at specific times or sequences as part of an overall restoration effort." Exh. AG-2, p. 14. Unitil conceded that it failed to plan for and did "not perform detailed pre-storm planning activities based on set 120, 96, 72 or 48 hour intervals." Exh. AG 1-25. Dr. Brown saw this as a major flaw in Unitil's restoration preparedness and stated that

“without these types of checklists, the timeline and scope of Unitil’s pre-storm planning process is ad hoc and subject to heat-of-the-moment decisions that have not been tested through comprehensive drills.” Exh. AG-2, p. 16.

Unitil also suffered a total lack of preplanning for Mutual Aid and Contractors, which is discussed below. This demonstrated yet another failure in Unitil’s ERP. Thus, Unitil was negligent in constructing, maintaining and implementing an ERP without the specificity and scale to anticipate, address and account for a major ice storm event such as the December 2008 Ice Storm.

ii. Unitil Annual Meetings Of Its ERP Team Were Inadequate To Assess and Maintain Emergency Preparedness And Did Not Comply with the Department’s Directive To Conduct Annual Training Sessions in Emergency Preparedness

The Company’s failure to implement annual training sessions in emergency preparedness directly contributed to its failure to adequately respond to the December 2008 Ice Storm and jeopardized the health and safety of its customers. “The Department directs Companies to conduct annual training sessions in emergency preparedness.” D.P.U. 91-228, pp. 5, 7. Unitil conducted an annual low-to-middle managers meeting to review its ERP. It conducted such a meeting on August 28, 2008, but no “reports, recommendations, memorandums, agendas, presentations, projects, programs and meeting minutes for the August 28, 2008 meeting exist,” only the pre-agenda for the meeting. Exh. AG 4-115. It involved only local Unitil personnel and none of the Unitil senior management. Tr. 2, p. 302. This annual meeting was historically conducted to review the details for minor updates, such as new telephone numbers, and administrative matters. Tr. 2., p. 303. No training needs were identified, no drills occurred, nor was any scenario analysis presented in an attempt to simulate plan performance under stress

conditions. No senior management was invited to, or involved in the only event to plan implementation of Unitil's ERP. Tr. 2, p. 301-303.

Such annual meetings were, in and of themselves, inadequate to maintain emergency preparedness in response to any significant outage event or severe ice storm. Unitil conceded this as an element lacking from its ERP as part of its Self-Assessment Report. Exh. FGE-6, p. 110. By not having planned for and exercised roles by live drills of the ERP, Unitil failed to provide for and maintain the high degree of readiness required by the Department. D.P.U. 91-228, pp. 5, 7.

iii. Unitil Failed to Conduct Full Practice Drills That The Department Directs Must Be Conducted Annually to Maintain and Enhance Emergency Preparedness

Unitil's lack of drills is in direct contravention to the Department's directive that utilities incorporate drills and simulations in ERPs. This failure to follow Department directive contributed to its Ice Storm restoration failures and jeopardized the health and safety of its customers. DPU 91-228, p. 7. Except in response to less severe outage events, Unitil has never conducted a drill or system-wide exercise to test its ERP and expose operational flaws and shortcomings. Exhs. DPU 2-31, AG 3-80. Dr. Brown testified that "it is not possible to execute emergency processes during a major event without (prior conduct of) regular drills and exercises." Exh. AG-2, p. 15. Dr. Brown continued, "When a major ice storm hits, it is not the time for on-the job training". *Id* p. 15. Unitil conceded that "in certain instances, however, Unitil was forced to improvise and the plan was modified during the Ice Storm to respond to conditions on the ground". Exh. FGE-2, p. 24. Unitil's concession that it neglected to conduct ERP drills and exercises is a significant and contributing reason for their failure to properly and

effectively conduct a timely restoration effort in the aftermath of the December 2008 Ice Storm.

2. Existing Crews and Mutual Aid Arrangements in Advance of the December 2008 Ice Storm were Woefully Inadequate and Demonstrate Unitil's Lack of Preparedness

Unitil maintains a day-to-day complement of five overhead bucket crews, and an underground crew and substation crew. It also has one digger / auger truck for pole work. Exh. FGE-2, p. 36. A list of additional contractors is maintained as part of the ERP. Exh. FGE-2, Att. Vol II; FG&E041; FG&E042. These additional contractors could only be expected to provide a few more extra crews to Unitil's normal complement. *Id.* Unitil conceded that the additional contractors listed were not capable of providing the crews it needed to complete restoration in a reasonable timeframe. Exh. AG 1-23, Att. 1. This is particularly evident given that Unitil eventually had up to 299 crews working per day and still only completed service restoration *two weeks* after the December 2008 Ice Storm. Thus, it was incumbent on Unitil to have preplanned mutual aid and contractor arrangements. Unfortunately, Unitil utterly failed to consider or perform this planning function.

At the time of the December 2008 Ice Storm, there was no executed agreement among the New England Mutual Aid Group ("NEMAG"). At the time of the Ice Storm, Unitil was operating solely on a draft agreement basis, meaning no other utility had an obligation to provide Unitil crews. Exh. FGE-2 Att. Vol II; p. FG&E-58. In a severe ice storm such as the December 2008 Ice Storm, it should have been anticipated that relying on a draft agreement would not be sufficient.

Similarly, Unitil did have the opportunity but chose not to belong to IEEE Restore Power, a more broadly-based mutual aid listing. IEEE Restore Power would have provided a greater number of industry mutual aid contacts throughout the country. Exh. AG 5-126. Membership in IEEE Restore Power costs only \$2,000 per year. Tr. 1, p. 143. Unitil chose to forego these costs, and instead incurred a storm cost to date of \$12,917,746, at least some of which could have been avoided had Unitil been positioned to call in sufficient numbers of crews before the Ice Storm hit. Exh. AG RR-3.

Unitil was clearly unprepared for a region-wide event that affected other NEMAG members. The only list of contractors outside NEMAG that Unitil possessed was the grossly insufficient list of local contractors in its ERP.² Given the potential severity of ice storms such as the December 2008 Ice Storm and given Unitil's relatively small size, Unitil should have had a list of contractors on the eastern Seaboard, and had pre-arrangements in place to call for ice storm help, with sizeable electrical contractors from beyond the New England region. Exh. AG- 2, pp. 20-21; Tr. 3, pp. 599-600.

Unitil stated that it has no executed agreements for stand-by service (outside of the NEMAG process) with crew contractor firms. Exh. AG-1-51. When asked whether Unitil had considered calling in any of a number of nationally-known large electrical contractors such as Pike Electric, L. E. Myer, and PAR Electric Contractors, Unitil answered that it was not aware of the three named.³ Tr. 2, p. 224.

² Further, Unitil did not even bother to use this list. Unitil had a prior relationship with the largest contractor on its list, but never called them because Unitil "assumed that On Target was working somewhere and locked up." Tr. 1, p. 248. This is an incredible assumption to make when faced with the Ice Storm damage Unitil's weather forecasters clearly saw coming. Tr. 1, p. 169.

³ However, a single call by Dr. Brown ascertained that one nationally known electrical contractor, PAR Electrical Contractors, Inc., had the availability and logistical capability on or about December 12th to provide as many as 80 crews for Unitil within 24-36 hours. Exh. AG-2, p. 21; FGE-AG-17.

3. The Company Failed to Invest in an Outage Management System or Other Means for Managing Restorations

In the “Hurricane Bob” 1991 service restoration investigation, the Department described Massachusetts Electric Company’s then-current Outage Management System (“OMS”) as a computer network system that analyzes input from customer calls and provides an estimate of the number of customers without service and the probable source of the outage. *Hurricane Bob Service Restoration Investigation*, D.P.U. 91-228, p. 16 (1992). Now an OMS is best described as a system that compiles data from customer calls, customer databases, meters, services, circuits, work management systems, substations and other distribution and transmission infrastructure, and overlays that information onto a geographic information system (GIS) and provides a utility company with an understanding of the size and location of an outage with, inter alia, recommended switching scenarios and crew deployment directions. Exh. AG-1, Att. 1, pp. 2-3; AG-1, pp. 10-12. It is uncontested that Unitil does not have an OMS. Exh. AG 1-32. The Attorney General’s witness, Barbara Alexander, observed that as a result, “Unitil cannot gather outage information and project the status of its transmission and distribution system in a ‘real time’ environment”, that this “may have contributed in part to the lack of information available to many company employees concerning the nature of the damages incurred and the status of restoration activities through this extended outage.” She further observed that “Unitil’s customer service representatives also did not have ‘real time’ access to the status of the system and the status of restoration activities”. Exh. AG-1, p. 10. Ms. Alexander also stated that OMS installations are recognized as best practices within the utility industry. *Id.*, pp. 11-12. She further stated that “As a result, the fact that Unitil had been “studying” the need for OMS since 2006, but had not

invested in such a basic outage management tool to improve its reliability performance is disturbing”. *Id.*, p. 13. She also stated that the other three Massachusetts electric utilities all relied on their OMS systems to assist them in restoration planning and implementation.

Dr. Brown concurred with Ms. Alexander. He stated that “if Unitil had an OMS that was properly integrated into its customer service system and workforce management system, more accurate information would have been available for use in restoration and customer communications”. AG-2, p. 17. He also noted that the lack “certainly hindered efficient restoration activities once the main distribution feeder trunks were restored and restoration efforts become based on trouble tickets.” He also stated that “Most investor-owned utilities in the U.S. have an OMS.” *Id.*, p. 18.

It may not be a coincidence that the other three Massachusetts utilities, all of which have OMS systems, accomplished their restoration of power faster and more organized than Unitil and had better communications with customers. *Id.*, p. 13. The fact that the Department, almost 17 years ago, highlighted Massachusetts Electric Company’s (MECo, now National Grid) use of its OMS as a “best practice” underscores the neglectful condition and antiquated systems employed by Unitil. D.P.U. 91-228, p. 16. OMS is clearly a system that Unitil had notice of and should have been part of its ERP. The Company had over 17 years from the 1991 Hurricane Bob Investigation to take note of an OMS’ capabilities yet it waited until its 2009 Self Assessment to commit to purchase such a system. The evidence indicates that service restoration time would have

been shortened (as well as an initial damage assessment⁴) and likely more in line with other similarly impacted electric companies had an OMS been present on Unitil's system.

⁴ See D.P.U. 91-228, p. 16.

4. Unitil's Inadequate Tree Trimming Increased Line Damage During the December 2008 Ice Storm

Unitil's tree trimming program was inadequate, underfunded and the Company failed to properly inspect and clear its transmission and distribution system lines. Despite a documented issue with tree contact related outages, Unitil masked its tree trimming backlog through changes to the Company's guidelines for frequency of tree trimming and also reduced tree trimming clearance requirements. At the same time, the Company was in the midst of reducing its tree trimming budget. Moreover, the Company did not employ ground to sky tree trimming and did not systematically remove hazard trees as part of its tree trimming program. Combined, the program changes, reduced spending and deficient practices contributed to the damage to its system from the December 2008 Ice Storm.

In 2007, the Company's Tree Trimming Focus Team (TTFT) stated that since the implementation of its January 2001 tree management program, "tree related outages continued to be at least 50% of all outages." Exh. AG 1-1, Att. 1, p 1. For six years, the Company was aware that its current tree trimming guidelines still contributed to 50% of all of its outages. Also in 2007, the Company's TTFT projected that its tree trimming program was three and a half years behind on its eight year schedule cycle. Exh. AG 1-1, Att. 1, p. 1. To address the backlog, the TTFT recommended changing the tree trimming guidelines in February 2007, which resulted in different tree trimming cycles between multiphase and single phase wires. Exh. AG 1-1, Att. 1, p.1. The new tree trimming cycle guidelines went into effect February 2007. Tr. 1, p. 158. The single phase wires tree trimming cycle increased from 8 years to 10 years on the 4 kV lines, 5 years to

7 years on the 13.8 kV lines, and 4 years to 5 years on the 34.5 kV lines. Exh. AG 1-1, Att. 1, p. 1. In addition, the Company changed the tree trimming clearances whereby tree limbs and branches would be closer to its system's wires. *Id.* The tree trimming clearance above a single phase wire was reduced from 15 feet to 6 feet. *Id.* The tree trimming clearance adjacent to a single phase wire was reduced from 8 feet to 2 feet. *Id.* Lastly, the tree trimming clearance below was reduced from 10 feet to 2 feet on both its single phase and multiphase wires. *Id.*

Due to these guideline changes, the tree trimming program was between eighteen to twenty-one months behind schedule at the end of 2008. Exh. AG 4-101. The tree trimming backlog was indeed reduced, but at the expense of system reliability. Instead of increasing resources to meet the tree trimming cycle goals, the Company decided to change the tree trimming guidelines to reduce its backlog.

At the same time the Company was diluting its standards, the Company's tree trimming budget was in decline. Exh. AG 1-1. From 2006 to 2008 the distribution tree trimming budget declined \$38,712 or 11.8%. *Id.* The Company's TTFT recognized that "At present production levels, the DOC trimming budget was under funded by \$601K" and it recommended that the Company "consider increasing 2008 tree trimming budgets." Exh. AG 1-1, Att. 1, pp. 1-2; AG-2, p.8. Instead, the Company decreased its 2008 tree trimming budget by \$22,628 or 6.4% from 2007. Exh. AG 1-1. The Attorney General's witness, Dr. Brown surmised:

To address insufficient vegetation budgets, Unitil adjusted clearance standards and vegetation management cycles rather than significantly increasing vegetation management budgets. On distribution vegetation management, FG&E spent \$361,290 in 2006, \$352,823 in 2007, and \$330,195 in 2008 (AG 1-1, Attachment 1). This trend in budget reductions

will result in continued difficulties in achieving adequate clearances and an increased difficulty to place sufficient focus and effort on hazard tree removal.

Exh. AG-2, p. 9.

Instead of investing in an underfunded tree trimming program, Unitil chose to trim a lesser amount of tree branches and limbs around its wires and extended the tree trimming cycle on its multiphase wires. Exh. AG 1-1, Att. 1, p.1. The tree trimming guideline changes and reduction in the tree trimming budget allowed Unitil to reduce its tree trimming backlog from three and a half years in February 2007 to eighteen to twenty-one months at the end of 2008. Exh. AG 1-1, Att. 1, p.1.; AG 4-101. Unitil was able to achieve a reduction in its tree trimming backlog at the expense of system reliability during storms and increased risk for service interruptions.

The Company's tree trimming program also had fundamental flaws. First, Unitil did not employ "ground to sky" tree trimming. "Ground to sky" tree trimming, completely removes any vegetation around the primary conductor. Tr. 1, p. 156. The Company did not regularly engage in the use of "ground to sky" tree trimming and used this method in a very limited application. Tr. 1, p. 157. The Company used a tree trimming standard whereby there is a 15 foot window above the three-phase conductor. *Id.* The benefit of "ground to sky" is that ice buildup on overhanging branches will not fall and break on the wires during an ice storm. Exh AG-7, p. 10. The Company did not engage in "ground to sky" tree trimming because it is deemed too expensive. Tr. 1, pp. 157-158; Exh. FGE-4, p. 8. However, the Attorney General's witness Dr. Brown stated that the Company's current method is actually more expensive. "Although many municipalities require this type of trimming for aesthetic reasons, it results in high

trimming costs and lower reliability when compared to “ground to sky” trimming that does not allow branches to overhang conductors.” Exh. AG-2, p. 10. In light of the known benefits of “ground to sky” tree trimming, Unitil should have utilized the “ground to sky” approach in advance of the December 2008 Ice Storm.

Next, the Company’s tree trimming guidelines did not have a policy to address “hazard trees” or “danger trees” until 2007. Exh. AG 1-1, Att. 1., p. 1. In 2007, Unitil established a “Deadwood and Danger Tree Clearance” as part of its tree trimming guidelines. Exh. AG 1-1, Att. 1, p. 1; Tr. 1, p. 158. Under the Company’s Deadwood and Danger Tree Clearance guideline; however, the Company removed such trees only when they are within 20 feet clearance from both the single and multi-phase wires. Exh. AG 1-1, Att.1., p. 1. The Company did not inspect for potential danger trees outside its right of way that may pose a risk to its system. Exh. DPU 2-2. Danger trees caused significant damage to the Company’s system in the December 2008 Ice Storm. Exh. AG-7, p. 9. The Attorney General’s witness, Dr. Brown, recognized that Unitil is constrained by regulation and city ordinances and these “constraints inhibit the ability of Unitil to remove hazard trees, and therefore result in increased damage during ice storms.” Exh. AG-7, p. 9. However, Unitil should have had a policy in place to inspect such trees not on its right of way and where appropriate, seek to have danger trees removed. Also, there is nothing in the guidelines concerning a regular process to identify, itemize and inspect danger trees near its system. Exh. AG 1-1, Att. 2., p. 6.

Adequate tree trimming and inspection programs are fundamental to ensuring reliable utility service. “The Department finds that comprehensive monitoring of tree-growth along power lines is an essential element of any tree-trimming program, and such

monitoring allows companies the opportunity to identify, in advance, potential problem areas.” D.P.U. 91-228, p. 12. The Company’s tree trimming practices, the 2007 changes to its guidelines and its reduction in tree trimming budgets made the Company’s distribution and transmission system more vulnerable to tree related outages. This vulnerability was exposed during the December 2008 Ice Storm through the extensive tree related damage. The Companies are under a pre-existing Department directive to establish and maintain a comprehensive tree-trimming and tree-monitoring program. D.P.U. 91-228, p. 12. Record evidence that such tree-trimming and tree monitoring programs were not fully funded or properly implemented supports a finding that Unitil was in violation of its tree trimming program obligations for most of the last three years.

B. THE COMPANY FAILED TO ADEQUATELY RESPOND TO THE DECEMBER 2008 ICE STORM

1. Unitil’s Damage Assessment Did Not Provide Accurate Restoration Estimates Or Guidance To System Restoration Efforts

In the wake of the Ice Storm, Unitil’s initial damage assessment to determine what it needed to fix for restoration only covered its transmission and backbone distribution lines, and did not include any of Unitil’s lateral distribution lines, which represent two thirds of its system. Tr. 5 pp. 964 - 965; AG-7 p. 7. Unitil did not project what it had seen on the damage assessment in the transmission and backbone distribution systems, nor did it do spot checks on the lateral distribution system. Unitil simply and inconceivably assumed that when it was able to repower the transmission and backbone distribution, electric service to the lateral distribution would be restored to a large portion of their customers. Tr. 5, p. 968. Unitil never performed an initial damage assessment on

the lateral distribution lines, focusing its efforts on transmission repairs. Tr. 5 p. 1006. As a result, Unitil could not give an accurate estimate of time to restore. In fact, a Unitil public service announcement (PSA) stated, in error, that service restoration in Fitchburg would be completed by Thursday, December 19, 2008, in Lunenburg by Friday, December 20, 2008 and in Townsend and Ashby over the weekend Saturday/Sunday, December 21st and 22nd. It was not until National Grid was brought in to aid Unitil's restoration efforts that a detailed damage assessment of Unitil's lateral distribution system took place, performed by National Grid, on December 21, 2008 and December 22, 2008. Exh. FGE-6, p. 31.

Much of the failure to do an adequate assessment may be because of the lack of personnel that Unitil had available to perform an assessment. Unitil listed 26 personnel available to it for damage assessment in the aftermath of the December 2008 Ice Storm. Tr. 4, p. 659. Its initial damage assessment began on Friday, December 12, 2008 and it was completed on Tuesday, December 16, 2008. Exh. FGE-2, p. 51. However, these 26 people were also performing multiple other duties, including "wire down" assistance to public safety and tree crews, as well as accompanying outside crews. Tr. 4, p. 659. It is inexcusable for a utility to have insufficient personnel on call to do, *inter alia*, effective damage assessment after a major storm. Exh. FGE-7, pp. iii, 34. Unitil should have recognized this, prepared appropriately, and made pre-arrangements with contractors to pull in damage assessors in anticipation of the December 2008 Ice Storm. Unitil conceded that its efforts at damage assessment in the aftermath of the December 2008 Ice Storm fell well short of acceptable best utility practices. Exhs. FGE-7, p. 34; AG-1, p.8.

2. The Company Failed to Communicate And Interact With Public Officials And Customers

Attorney General witness, Barbara Alexander provided the best summary of Unitil's communications after the Ice Storm:

Unitil 'violated' all best practice recommendations [...] by failing to communicate accurate information, by constantly changing the message about when restoration would be accomplished, by failing to include town and area specific information in most messages, by using technical terms, and by not interacting frequently with the public via radio and television.

Exh. AG-1, p. 17.

Unitil failed to communicate properly with local officials in contravention to Department directive. D.P.U. 91-228, p. 14. Chief Glenney testified that it took a very long time following the Ice Storm before the Town of Lunenburg "received any contact from the power company itself." Tr. 3, p. 450. In fact, information did not come to the Town from Unitil until approximately December 15. *Id.*; Tr. 3, p. 456. Chairman Alonzo stated, that the Company, "had no press conferences, they had no news conferences, [and] they had no meetings with the Town Officials." Tr. 3, p. 456. Mayor Wong of Fitchburg testified that the Company did not follow its communications and restoration plans. Tr. A-1, pp. 19-20.

Municipal officials in the Emergency Operation Centers ("EOCs") of Fitchburg and Lunenburg were not satisfied with the information being provided to them by the Company representatives present. Tr. 1, p. 90-91. In fact, Governor Patrick and local elected officials had to step in and coordinate a series of phone meetings with state agencies, elected officials and company representatives to speed the recovery process and

facilitate communication with local public safety officials. Tr. B-1, p. 2. The Company itself recognized it needed help in communicating with emergency personnel. Tr. 1, p. 100.

Indeed, municipal officials were unanimous in their criticism of Unitil's efforts to communicate with them and the public and when it did to provide accurate and reliable information. Exhs. AG-3; AG-4; AG-5; LUN-1; LUN-2. Fitchburg Fire Chief Kevin Roy testified regarding EOC support. Chief Roy testified that Unitil did not provide the City with adequate support. He said that the Town had to repeatedly ask the Company to send someone to report full-time to their EOC and give them accurate information. The Town fielded numerous energy related calls. Further, the information provided to the Town about power issues during the first week proved to be inaccurate and unhelpful.

The Company failed to communicate with public officials because of a lack of information and a lack of correct information. The Company gave incorrect restoration times as a result of Unitil's initial damage assessment. During the first days of the Ice Storm, Unitil told its customers that power would be restored in days. Exh. AG-1-62, Att. 1. Eventually, the Company was not able to give specific restoration times until approximately December 23. Exh. FGE-7, p. 80. Between December 11 and December 16, the Company could provide no more specifics on restoration other than to say that restoration would occur in several days. Exh. AG-1-62. Given the estimates by Mr. Letourneau that "a forecast of over 1 inch of ice would likely result in an extended restoration period that could easily exceed one week", Unitil would have been much better off had it simply said in its early PSAs that restoration could take one to several weeks. At least customers would then have been prepared for an extended outage. Unitil

seemed to avoid using the word “weeks.” Unitil’s statements that it was “unable to estimate,” or stating that the restoration could take “several days,” or “days,” were all highly misleading. Exh. AG 3-88 Att. 1 p. 1. Customers, state and municipal officials noted how they depended on the Unitil restoration estimates to their detriment. Tr. A-1, pp. 51, 81-82; Tr. 3, pp. 454-455.

The Company failed to properly inform customers of the scope of work and therefore length of time required before restoration. Tr. 5, pp. 960-961. The Company’s call center was not only overwhelmed, at times it did not have information available to it. At other times, even when it had information available to it, that information was not accurate. Likewise, Mr. Gantz testified that the Company had not thought through “the messaging about damage assessment, compiling results, preparation of estimated restoration times” and that the Company should have. *Id.*

The Company used multiple channels of information but still did not provide accurate or timely information to its customers and municipal officials. Tr. 1, p. 91-93. The Company’s consultant, Robert Yardley noted that the Company failed in numerous ways. Tr. 5, p. 884. Mr. Yardley faulted the Company for not having effective public communications to provide customers with the information that they required. Tr. 5, p. 885. Mr. Yardley further suggests that a lot more communication could have taken place with customers before the event. Tr. 5, pp. 916-917.

3. Unitil Failed To Provide For Timely and Adequate Recruitment of Crews

Unitil was aware of the severity of the Ice Storm that was about to hit its service territory during the morning of December 11. Mr. Letourneau stated “some forecasters are calling for ice accretion in excess of 1 inch”. “Having a forecast of over 1 inch would

likely result in an extended restoration period that could easily exceed one week”. Exh. AG 3-88 Att. 1 p. 1. Despite this knowledge of the impending Ice Storm and its potential impact, Unitil conceded that it failed to vigorously recruit crews. Exh. FGE-7, pp. 25-28.

First based on Unitil’s unreliable assessment, it underestimated the overall crews needed for the restoration effort. Initially Unitil requested 40 crews through the New England Mutual Aid Group, a number far too small to address the devastation to Unitil’s system. Exh. FGE-2, p. 45. Compounding this situation was the eventual unavailability of 14 of the requested crews. *Id.* After this setback, Unitil did little to aggressively seek out other crews and contractors from both within and outside the region. *Id.*, p. 46.

Unitil compounded this mistake by failing to seek adequate mutual aid and contractor crews from available sources known throughout the greater electric industry⁵. Indeed, Unitil had a prior relationship with the largest contractor on its list, but never contacted them because Unitil “assumed that On Target was working somewhere and locked up.” Tr. 2, p. 248. This statement is remarkable if only to demonstrate that Unitil, even in the days immediately following the Ice Storm, failed to comprehend the scope of the damage to the system, and that Unitil made this assumption instead of simply picking up the phone and calling. When asked whether Unitil had considered calling in any of a number of nationally-known large electrical contractors such as Pike Electric, L. E. Myer, and PAR Electric Contractors, Unitil answered that it was not aware familiar with any of the three named. Tr. 2, p. 224. However, a call by the Attorney General’s witness, Dr. Brown, ascertained that PAR Electrical Contractors, Inc. had the availability and logistical capability on or about December 12 to provide as many as 80 crews for Unitil

⁵ Unitil’s failure to call in sufficient resources to address the damage to its system may have stemmed from its failure to perform an accurate and complete damage assessment, which will be addressed *infra*.

within 24-36 hours. Exh. FGE-AG-17. Rather than recognize the magnitude of the restoration effort ahead of it and “calling in the cavalry,” including additional damage assessors, Unitil preferred to “wait and see”.⁶ Exh. AG 3-88, Att. 1 p. 4. Given Unitil’s relatively small size, it should have been aware that any severe outage would necessitate outside crews and consequently made prearrangements for contracting, in advance, for crews and crew management as well as additional staging areas for foreign crews. Exh. AG-2, p.16.

As Dr. Brown stated, “The biggest contribution to long restoration times were insufficient crews early in the restoration process. The lack of sufficient crews was avoidable since contractor crews were available. Unitil simply did not contact these resources”. Exh. AG-2, p. 23. Unitil customers were asked to endure winter conditions without electricity for an extended period due to Unitil’s failure to recruit crews in an anticipatory and timely manner.

4. Unitil Failed To Comply With the Department’s Requirement on Contacting Life Support Customers

Life support customers (“LSC”) are the most vulnerable of a utility’s customers. These are customers who might depend on a ventilator or other medical equipment powered by electricity for survival. Because electricity is vital to these customers well-being, the Department has a clear directive on LSCs:

The Department finds that all Companies must implement a comprehensive plan for contacting LSCs to determine their specific needs. *Prior to an emergency*, the Companies should assist LSC customers in obtaining back-up power. Companies should establish a database to track and log contacts with LSCs. This database should include

⁶ Unitil claims this statement was taken out of context. FGE-4 p. 10 lines 11-23. However, the statement was made by Mr. Letourneau, the Director of Electric Operations, and he said it again, during evidentiary hearings. Tr. 2 p. 237.

relevant information such as the customer's name, address, telephone number, and type of life- support equipment, as well as the name and telephone number of a designated third-party contact, and the Company's feeder and pole number.

The Department directs the Companies to periodically contact LSCs to ensure that the Companies' records are accurate.

D.P.U. 91-228, p. 31(emphasis added).

Prior to the Storm, the Company had a written limited policy on LSCs that was in violation of the Department's directive. Unitil's ERP section 5.08.00 provided for the Company to contact LSCs⁷: "After the initial emergency has passed and a damage assessment has been made." Exh. FGE-2, Att 1(a), p. 38. Likewise, Mr. Lambert testified that Unitil had the "flexibility to do what is reasonable" with LSCs (Tr. 2, p.427):

Our practices prior to this ice storm and during this ice storm were to contact critical customers as they called in to report their outage. So shortly after each outage report of a critical care customer that was identified, a customer service representative would contact them to inform them that it could be a prolonged event, provide them with any safety information."

Tr. 2, p. 425. Mr. Lambert went on to add that "we did not have a written policy" and have never contacted life support customers prior to an event starting, so we would not have [a written policy]." Tr. 2, p. 431-432. Both the ERP and Mr. Lambert's "flexibility" notions violate the Department's directive.

Similarly, Unitil's activities before the storm and afterward violated the Department's directive. On the morning of December 11, Unitil possessed knowledge of

⁷ Section 5.08.00 of the ERP uses the term "medical priority customer", which is confusing since "life support customer" is also a term used twice in its restoration priority list in section 1.03.02 of the ERP. Exh. FGE 1-2. Att. 1(a), pp. 9, 38. However, the Company's witness, Mr. Lambert, at the evidentiary hearing stated that the Company interpreted "medical priority customer" the same as "life support customer." Tr. II, pp. 422-423.

weather forecasts stating that the Ice Storm would coat the FG&E service territory in over one inch of ice. Exh. AG 1-62, Att. 2, p.1. “As far as severity, the current thinking is that FG&E is in the worst position, followed by Capital, then Seacoast.” *Id.* With advance notice of a severe ice storm, Unitil should have followed the Department directive and contacted all LSCs to have them adequately prepared for the high likelihood of a loss of electrical power. When asked by the Department how long it would take for the Company to contact the 67 LSCs, the Company’s witness, Mr. Lambert, responded “Well, it would not have taken very long -- within hours -- to call them.” Tr. 2, p. 433.

Furthermore, after the Ice Storm hit, Unitil did not keep track of the LSCs that had contacted the Company. Unitil has 67 customers coded as LSCs⁸ in its service territory. Exh. AG 1-11. And yet Unitil had contact with only 11 customers, all of whom had initiated contact with Unitil first, between December 11 and 13. Exh. AG 1-13. Alarming, there are no records regarding the success rate of these attempts to establish contact. *Id.* This is a violation of D.P.U. 91-228, which requires the Company keep a “database to keep track and log contacts with LSC.”⁹

Shockingly, Unitil never made an effort to contact the remaining 56 LSCs. Exh. AG 1-12. This violated not just the LSC directive in D.T.E 91-228 but also Section 5.08.00 of Unitil’s ERP where “each Medical Priority Customer will be called by the designated Medical Priority Personnel.” Exh. FGE-2, Att. 1(a), p. 38. The Company did not attempt to use alternative options of reaching customers, such as, contacting local emergency response officials. Tr. 1, pp. 101-102. While the Company may not have

⁸ These customers are not the same as “crucial facilities” which is a separate list. Exh. AG 1-1.

⁹ As an example, Robert Botwell testified that he breathes by way of an electronic machine that requires electricity and that when he called Unitil he was told that there was nothing that the Company could do for him. Tr. A-1, pp. 108-109. Mr. Botwell is also diabetic and requires refrigeration for his insulin. Tr. A-1, p. 112.

intentionally ignored contacting LSCs, the Company did not fully exercise its own policy of “flexibility to do what is reasonable” before and after the Ice Storm. *Id.*

The Company fully admits that its policy was flawed. “Unitil should have called all of the critical-care customers during and before the Ice Storm. We have a procedure that is comprehensive to do this going forward, and this will not happen again.” Tr. 5, p. 1083. While Unitil is committed to correct and improve its policy of contacting LSCs going forward, it flouted the directives in D.P.U. 91-228, its own ERP, and the so-called “flexibility” it created to remotely address the needs of LSCs. The Company attempts to justify its actions and omissions by stating that the December 2008 Ice Storm was an unprecedented event. Tr. 3, p.426. However, D.P.U. 91-228’s was written after Hurricane Bob in 1991 and is based on an investigation on how Massachusetts utilities responded to that major storm event. Unitil’s flagrant disregard for the Department’s LSC directive suggests that the Company either did not learn from Hurricane Bob or simply chose not to apply the Department’s directive. In this context, such dereliction is unconscionable.

5. The Company Unfairly Sent Estimated Bills With Full Knowledge That They Were Charging Customers For Service That Was Not Supplied

Unitil issued estimated bills to customers for the full month of December during a period when thousands of customers were without power for almost two weeks. During that period Unitil’s automatic meter reading technology was only partially available – for those customers who had their power restored. Exh. AG-3-70. Customers whose power had been interrupted by the December 2008 Ice Storm received December 2008 estimated electric bills based on estimates of their usage in the full month of December

2007. Exh. AG-3-70. Those bills included charges for the time period when there was no electrical power available due to the December 2008 Ice Storm. Exh. AG-3-70.

Unitil was fully aware of the increased number of December 2008 *estimated* bills being issued and that such estimated bills included charges to customers for period when no power was available to them. Exh. AG 5-144.

The Company admits that it issued estimated bills “knowing that the calculation did not take into account the period a customer was out of service.” Exh. AG-5-144. Further, the Company conceded that it could have resolved the inflated bill issue by: 1) manually re-billing; 2) holding all estimated bills until valid meter reads were available; or 3) not issuing estimated bills. Instead, the Company knowingly and unfairly issued the estimated bills. *Id.* A total of 4,359 Massachusetts Unitil customers received estimated bills. Exh. AG 3-70.

VI. SPECIFIC RECOMMENDATIONS AND REMEDIES

A. THE DEPARTMENT SHOULD MANDATE THE 28 RECOMMENDATIONS MADE IN THE COMPANY’S SELF ASSESSMENT AND PROVIDE FOR REPORT AND OVERSIGHT OF IMPLEMENTATION

On March 25, 2008, Unitil filed a Self Assessment authored by Mr. Yardley which lays out a multitude of “lessons learned” during the December 2008 Ice Storm, as well as 28 recommendations to address those “lessons learned”. Exh. FGE-7. As noted by Ms. Alexander in her Rebuttal Testimony, the Self Assessment and its recommendations “reflect a reasonable approach to improve Unitil’s response to major ice storms and its communications with customers and public officials. However, the (Self Assessment)

fails to set forth a specific implementation plan with a timetable and specific milestones and performance criteria.” Exh. AG-6, p. 4.

In the course of hearings, Unitil witnesses were given the opportunity to respond to Exh. AG-5-127, Att. 1 (as updated in Exh. DPU RR-6) entitled an “Action Plan Summary” (“Action Plan”). The Action Plan is a multi-columned, multi-rowed spread sheet that, *inter alia*, listed each of the 28 recommendations, sub-processes of each such recommendation, priority rankings, internal and external touch points for implementation, accountable and sponsoring Unitil executives, current status through May 22, 2009, and proposed completion date. (See, also Exh. DPU RR-6 which updates Exh. AG 5-127.) Both Mr. Meissner, Unitil COO and Mr. Yardley affirmed that Unitil was committed to implementing all of the 28 recommendations and, on behalf of the Company, that they would agree to the “Comp. Date” on Action Plan, as the Companies’ implementation date. As such the Attorney General urges the Department to adopt, the Action Plan as mandatory, the 28 recommendations, implementation dates and action items set forth in Mr. Yardley’s testimony relative to each recommendation. Exhs. FGE-5; FGE-7; Tr. 5, pp. 859-915.

In addition to the aforementioned, however, while Mr. Yardley’s recommendations and Companies’ commitments to “dates certain” are a good start, the Department’s affirmative supervisory authority should also be brought to bear as oversight. Of concern is the passive language in some of the recommendations that should be made more specific. Department directives should also be specified. In that vein, the following are provided for the Department’s consideration:

- Recommendation 1, Recruitment of Crews, should be modified so it goes beyond recruitment of local tree trimming contractors to recruitment of tree trimming and electrical contractors in the Eastern United States. Recommendation 1(c) uses passive language “consider the benefits and costs of securing standby services” and should be rewritten require that the Company “secure standby services from a pool of contractors, and develop an extensive list of contractors in the Eastern United States which could be drawn upon” in the event of an impending ice storm and on a longer term contractual basis”.
- Recommendation 7 is “Evaluate options to improve” where an active statement would be to “improve” the reliability of field communications in the event of a sustained power outage.
- Recommendation 16 is “Reflect customer needs and expectations after an extended outage in any decision to issue estimated bills”. This statement can be interpreted to do nothing in the face of activity that appears to “cross the line” and represent a violation of G.L. c. 93A. In the future, Unitil should be advised not to issue estimated bills during an extended outage unless it can apply an algorithm to take into account the length of power outage for each customer. In addition, it should not bill for estimated usage unless it can clearly identify that the customer’s bill was estimated and that the Company took into account when power was out and did not bill for that portion.
- Recommendation 24: ERP Adequacy should specify ice storm preparation checklists, in time sequences before a storm hits, such as 120, 96, 72, 48 and 24 hour intervals, which is now only implicit in “specify ice storm preparedness in

greater detail”. The DPU should also require development of predictive damage capabilities so that Unitil has a basis to call in help prior to a storm event, especially damage assessment personnel. The ERP should explicitly state that an initial assessment of transmission and backbone distribution feeders is not an adequate assessment, that the assessment has to be of the entire system, including all branch distribution circuits.

- Recommendation 25: ERP Updates should specify that senior management must review the recommended changes as part of a formal review process, with reports to the DPU resulting. It should explicitly state that, at a minimum, annual ERP drills are required and that table top exercises of events of a varying nature should be walked through to be able to adequately assess whether the ERP can handle a variety of scalable events. A table top exercise is useful to determine what is in the plan, and training requirements.
- Recommendation 26: Mock Drills and Preparedness Conference Calls states that a mock drill should take place but does not specify how often. It should specify at least annually, and that a mock drill is an exercise to put training and ERP preparedness to the test.
- Recommendation 28 states that Tree Trimming policies should be revisited. The policies must be in line with industry standards, and should incorporate “ground to sky” trimming on backbone infrastructure. The Department should require an independent evaluation to show that it did indeed review industry standards, including the practices comparable to other New England utilities. Further, the

Department should require a showing that tree trimming was funded adequately to keep up with the schedule the policy requires.

1. Timeline, Reporting and Oversight of Yardley Recommendations

While Unitil has provided the Action Plan an updated implementation plan of the recommendations to the Department, it should require monthly reporting for the remainder of 2009 on implementation progress. Should this monthly reporting show significant delay or softening of the completion dates, the Department should consider initiating a follow-on investigation.

Beyond 2009, the Department should require reporting on a quarterly basis on any of the recommendations that are not yet fully implemented, until they are. Thereafter, the Department should require an annual report on emergency preparation, including ERP review and changes, senior management involvement in the same, table top exercises and drills that were conducted, and the results. Such an annual report should explicitly state what non-Unitil ERP and practices were reviewed, and explicitly state what national conferences and courses were attended in emergency preparation and response.

2. Ratepayers Should Not Pay Costs Associated with Bringing the Company into Compliance with Department Rules, Order and Directives.

Ratepayers should not be required to pay twice for adequate restoration service from the Company. Ratepayers have already paid, through rates approved by the Department,¹⁰ for an ERP and a reasonable process of restoration that should have existed for arguably the last seventeen years. D.P.U. 91-228. The Company's rates are

¹⁰ See *Fitchburg Gas and Electric Light Company*, D.T.E. 02-24/25 and D.P.U. 07-71.

set for it to manage its system and operations in conformance with DPU rules, regulations and directives.

The Department has stressed that customers should not be required to pay a utility twice for the same service. *See Investigation on the petition of the Secretary of Energy Resources* D.P.U. 84-276, p. 81 (1985) (“[T]he Department finds that care must be taken to ensure that the Qualifying Facility does not pay twice for any portion of these interconnection costs.”). The Department does not allow for double recovery from ratepayers. *See e.g. Boston Edison*, D.P.U. 98-119/126, p. 53 (1999) (“In this way, the Department will ensure that there is no double recovery . . .”). The Department also determined that a Company had, in violation of applicable regulations (220 C.M.R. 6:00), included interest costs on gas inventories within its Cost of Gas Adjustment (“CGA”) charges since 1987. *Fitchburg Gas & Electric Light Company*, D.T.E. 98-51, p. 21 (1998).

In D.P.U. 91-228, the Department directed Companies to review their emergency plans on an annual basis and to examine the other Companies’ plans in order to learn about any useful change. D.P.U. 91-228, p. 4. The Department directed the Companies, including Unitil to either “implement or to maintain a system for reviewing their emergency plans on an annual basis.” *Id.* Further, the Department directed the Companies “to implement annual training sessions in emergency preparedness.” *Id.*, p. 7. The Department went on to direct the Companies to have plans focusing on communication and cooperation with municipal officials; to institute comprehensive tree-trimming programs; and to review systems for weather tracking for effectiveness. *Id.*, pp. 913. As the Company was already obligated to take steps to ensure a reasonable process

of restoration including having an effective emergency plan, training, communication, tree-trimming programs and systems for weather tracking, ratepayers must not be asked to pay again for actions that the Company presumably had already done and was obligated to do each year.

Therefore, any of the Yardley recommendations cited in his direct testimony or the self-assessment report, which are designed to bring the Company into compliance with existing Department rules, regulations and guidelines, must not be passed through to ratepayers. Exhs. FGE-5; FGE-7. For example, ratepayers have been paying the Company to maintain an adequate ERP at least since the decision issued in D.P.U. 91-228. Asking ratepayers to pay for an update to the ERP would be tantamount to double recovery. In addition, damage assessment staffing and training, included in the self-assessment should not be paid for again by ratepayers because it was ordered in D.P.U. 91-228. Exh. FGE-7, p. iii; D.P.U. 91-228, p. 7 (“The Department directs the Companies to implement annual training sessions in emergency preparedness. . .”). Also, recommendation 18 of the Yardley self-assessment report, “Communication Protocols,” has already been directed by the Department and included in base rates. Exh. FGE-7, p. v; D.P.U. 91-228, pp. 7-9. Similarly, recommendation 28, “tree-trimming policies” is redundant with the directives on tree-trimming policies and procedures established by D.P.U. 91-228. Exh. FGE-7, p. viii; D.P.U. 91-228, pp. 9-12. Accordingly, customers must not be asked to pay twice for activities the Company is obligated to undertake to manage its system and operations.

B. THE COMPANY VIOLATED G.L. c. 164, § 1F(7) AND G.L. c. 93A AND MUST BE PENALIZED

G.L. c. 164 § 1F(7) directs the Department to establish a code of conduct and service quality regulations for the distribution and transmission of electricity and to hold utilities accountable. If a utility “violates any provisions of said service quality code or of any service quality rule or regulation, standard or directive promulgated by the department pursuant to sections 1A to 1H, inclusive, or any provision of chapter 93A, it may be subject to a civil penalty not to exceed \$25,000 for each violation for each day up to a maximum civil penalty of \$1,000,000 for any related series of violations.”

Unitil’s conduct violated chapter 93A and Department service quality rules, regulations, standards or directives before the December 2008 Ice Storm and during its response to the Ice Storm. As further set forth below, the Department should fine Unitil a total of \$4.6 million for these violations of service quality standards and G.L. c. 93A violations.

1. Emergency Response Plan

The Department should penalize the Company for its failure to maintain and execute a scalable ERP, capable of addressing the demands of the Ice Storm. Such penalties are justified because the Company has ignored Department Order D.P.U. 91-228 to develop, and maintain a functional, well-drilled ERP with established communications protocols. In addition, the failure to maintain an appropriate ERP is a violation of G.L. c. 93A. Unitil’s actions in preparation for, and in the aftermath of the Ice Storm, were detrimental to their customers in exacerbating and extending the Ice Storm outage.

Unitil's ERP was essential to coordinate with the municipalities to respond to an emergency. D.P.U. 91-228, pp. 8-9. The municipalities were provided a copy of the ERP and expected to be able to rely on it when there was an emergency. *Id.*, p. 9. In attempting to restore power after the Ice Storm, Unitil unilaterally decided to forego the ERP and proceeded with actions that did not comport with the plan, thereby causing disarray in the municipalities' response. Exh. FGE-2, pp 23-24.

The Company's ERP in effect for the Ice Storm was filed with the Department on or about August 28, 2008 and by doing so Unitil effectively certified to the Department that the ERP complied with D.P.U. 91-228 directives. Thus, as we are now aware, Unitil's ERP did not comply and Unitil should be fined \$25,000 per day beginning August 28, 2008. Because Unitil still does not have an appropriate ERP, this \$25,000 per day penalty should continue until today. However, a prescribed maximum penalty provision would apply to this series of related violations and consequently Unitil should be penalized \$1,000,000 for not having a functionally scalable ERP in place, at least since its last annual ERP submission on August 28, 2008. Exh. FGE-8.

2. Tree Trimming

Unitil failed to properly trim its trees leading to unsafe conditions for its customers that exacerbated damage from the Ice Storm. The February 8, 2007 Unitil TTFT had determined that at least 50% of all outages in its system were tree related. Exh. AG 1-1, Att. 1, p 1. In 2007, there existed a three and a half year tree trimming backlog. *Id.* The Company's TTFT recognized that, "At present production levels, the DOC trimming budget was under funded by \$601K" and it recommended that the Company "consider increasing 2008 tree trimming budgets." Exh. AG 1-1, Att. 1, pp. 1-2.; AG-2.

Unitil decided that the best way to address the tree trimming backlog was not to make a financial investment but to change its tree trimming guidelines. The Company ignored its own recommendations on increasing funding and instead reduced funding to its tree trimming program by 11.8% between 2006 and 2008. Exh. AG 1-1. The Company changed its trimming policy guidelines so that a substantially lesser amount of trimming took place around its wires, and to extend the tree trimming cycle on its multi-phase wires by one and two years. Exh. AG 1-1, Att. 1, p.1. The changes made in 2007 resulted in the tree trimming backlog being reduced to between 18 to 21 months. Exh. AG 4-101. The reduction in its tree trimming backlog was accomplished through a deceptive method by which more areas were being trimmed but with poorer quality. The Company's failure in meeting its 2007 SAIDI and SAIFI service quality benchmarks reflects the impact of these tree trimming guideline changes.

Unitil is under a well established, ERP-related Department directive to establish and maintain a comprehensive tree-trimming and tree-monitoring program. *Hurricane Bob Restoration Investigation*, D.P.U. 91-228, p. 12 (1992). Record evidence that such tree-trimming and tree monitoring programs were not fully funded or properly implemented supports a finding that Unitil was in violation of its Department tree trimming program obligations for most of the last three years. The Company deceptively reduced its tree trimming backlog by providing poorer quality (represented by shorter clearances) tree trimming services, which cumulated in greater damage from the December 2008 Ice Storm. Unitil's tree trimming guideline changes were a violation of a Department safety directive and G.L. c. 93A. Because Unitil has been out of compliance with the Department directive and with G.L. c. 93A since 2007 when the tree trimming

guidelines were changed it should be fined \$25,000 per day since 2007. This is a \$1,000,000 penalty under the statute.

3. Life Support Customers

Unitil failed to contact its life support customers (“LSCs”) creating a dangerous conditions, which could have resulted in serious injury or death. LSCs are defined as customers requiring electricity during a prolonged outage for things such as oxygen. Tr. 1, p. 97. A lack of electricity could mean a life or death situation for these customers. Tr. 1, pp. 97-98. Unitil had a list of the 67 LSCs prior to the Ice Storm. Exh. AG 1-1. The Company did not contact any LSCs prior to the Ice Storm’s arrival. Tr. 2, pp. 425, 431-432. After the Ice Storm passed, Unitil only responded to 11 of these customers; and did so only *after* the customers first contacted Unitil. Exh. AG 1-13. The Company did keep not records or logs regarding the 11 LSCs that contacted the Company. Exh. AG 1-13. Unitil took no affirmative action to ensure that these customers had electricity, nor did it take action to ensure that the customers were evacuated to shelters. Exh. AG 1-12.

Unitil’s inactions regarding LSC violated the Department’s directive in D.P.U. 91-228 and Unitil’s ERP. D.P.U. 91-228, p. 3; Exh. FGE-2, Att. 1(a), p. 38. Unitil engaged in unconscionable behavior, which was unfair to LSCs given the advance knowledge Unitil had about the December 2008 Ice Storm. In an electronic mail dated December 11, 2008 with a time stamp of 9:38 AM, Unitil was informed that the Ice Storm would produce in excess of one inch of ice in the FG&E service territory and that it would be hardest hit of Unitil’s three service territories. Exh. AG 1-62, Att. 2, p.1. The electronic mail was sent the morning prior to the storm reaching the region.

Through the act of accepting and keeping the list of LSCs, the Company should have recognized that LSCs are customers for whom electricity is essential. Tr. 1, p. 98. D.P.U 91-228 requires utilities to assist LSCs prior to an approaching storm, keep an LSC list, an LSC contact log, to have the LSC contacted prior to the storm and the for the Company to provide LSC assistance prior to the storm. D.P.U. 91-228, p. 31. The Company did not comply with these directives in D.P.U. 91-228. Contacting 67 LSCs during the 12 hour period prior to the Ice Storm's arrival would have taken only a few hours and require minimal resources. Tr. 2, p. 433. Unitil knew the Ice Storm was coming and had the capability and resources to reach out to LSCs to ensure that its most vulnerable customers were properly assisted and prepared. Unitil's callous failure to assist LSCs violates Department-ordered directives regarding LSC care and G.L. 93A.

As a result of this unconscionable behavior, the Department should issue civil penalties against the Company pursuant to G.L. c. 164, §1F(7). The Company should be assessed the maximum penalty of \$1,000,000. This amount is derived by assessing a penalty of \$25,000 for each of the 67 customers, which yields an amount of \$1,675,000. Pursuant to the statute, this penalty amount should be capped at \$1,000,000.

4. Unitil's Restoration Response Failures

The December 2008 Ice Storm was hardly unprecedented. The Attorney General's expert witness, Dr. Brown, stated, that for a "severe ice storm you see between 1 and 2 percent of the structures affected ... In this case (the December 2008 Ice Storm), this is 1.7%". Tr. 4, p. 609. The damage in this ice storm fell within parameters of what is reasonably expected based on other severe ice storm events around the country. Unitil should have been able to adequately prepare for it and respond to it.

Unitil failed to act in a responsible and reasonable manner in performing its December 2008 Ice Storm system restoration in that it failed to: (1) provide an adequate initial damage assessment of the Ice Storm's impact on its infrastructure; (2) provide sufficient, accurate and informative communications with its customers and public officials; and (3) recruit sufficient additional crews to adequately respond to a severe ice storm event. Lunenberg's Fire Chief Glenn highlighted all of these failures in his testimony when he noted:

it was quite a while before we ever received any contact from the power company (Unitil) itself. ... I believe it was somewhere around the 14th and the 15th before we actually had a whole bunch of information starting to come in to us from Unitil. **The problems we were having from Unitil was, the information we were getting was inaccurate. The number of crews that were supposedly in town working, the dates and times that they were trying to tell us that the power would be back on were not correct. At one point, I believe it was ...Tuesday that they were telling us by Friday** we would have substantial completion. We kept asking what "substantial completion" meant, and their answer to us was that all the primary lines would be up, and if your home was still connected to the primary lines, **you would have power around Friday.** (emphasis supplied)

Tr. 3, p. 450.

These restoration response failures each constitute a violation of Department directives long established and provided for as part of D.P.U. 91-228 (1992).¹¹ In D.P.U. 91-228, the Department made findings that a company's response to a storm should include an "accurate damage assessment(s)" as they are "vital to the restoration process" and co-ordination of company and municipal efforts and dissemination of accurate information is "essential" to swift restoration completion. D.P.U. 91-228, pp. 16; 21.

¹¹ Now enforceable pursuant to G.L. c. 164 § 1F(7).

Also, the Department found that the failure to expeditiously recruit outside crews could hinder restoration efforts and cause unnecessary protraction of outages. *Id.* p. 27.

Unitil's failures (1) to provide an accurate damage assessment; (2) to provide sufficient, accurate and informative communications with its customers and public officials; and (3) to recruit adequate numbers of crews to reasonably address ice storm damage are violations of Department directives and G.L. c. 93A. Each of these failures began on the day of the outage and ended when National Grid stepped in to perform a damage assessment and brought additional crew and communication systems -- a period of eight days. Unitil should be assessed a fine of \$25,000 a day for these three violations. Accordingly, the Company should be fined \$600,000 for restoration service quality standards violations under G.L. c. 164, §1F(7).

5. Estimated Billing

Unitil engaged in an unfair trade practice by providing estimated bills to its customers, which were based on estimated usages from December 2007 and were not adjusted for the power loss during the December 2008 Ice Storm. The Company overbilled residential customers \$203,683 when factoring in generation costs. *See* Exh. DPU RR-4. The Company was fully aware of the customer's power outage and could have manually re-estimated bills, held all the estimated bills until a valid read was available, not issued estimated bills or issued estimated bills knowing that the bill would not include a calculation of when the customer was without electricity. Exh. AG 5-144. A total of 4,359 Unitil customers received estimated bills that the Company knew to be inflated. Exh. AG 3-70. This is clearly an unfair practice by Unitil, given that it had full knowledge that its 4,359 customers did not have electricity for an extended period of

time. Unitil knowingly and unfairly charged customers for electrical distribution services not rendered, a violation of customers rights for services rendered.

Unitil should be penalized \$1,000,000 in accordance with G.L. c. 164, §1F(7) for its violation of G.L. c. 93A. The Company knew it was issuing estimated bills that were not accurate and included base charges for electricity not supplied during the December 2008 Ice Storm outage. The act of knowingly issuing these overstated bills was unfair under G.L. c. 93A, §2. Unitil's actions were unscrupulous and caused substantial injury to customers receiving bills. These same customers had experienced significant discomfort and out of pocket costs due to the Ice Storm. This requested penalty amount is derived by calculating a penalty of \$25,000 for each of the 4,359 customers who received estimated bills.

In summary, Unitil must be penalized for failing to take action to protect public safety and the health and welfare of its customers stemming from its actions in the following areas:

1. Emergency Response Plan;
2. Tree Trimming;
3. Life Support Customers;
4. Unitil's restoration response failures; and
5. Estimated Billing.

The Attorney General urges the Department to use its penalty authority under G.L. c. 164, §1F(7) in response to Unitil's significant failings to penalize the Company in the amount of \$4.6 million. The Attorney General interprets each of the above five violations as being separate and distinct and therefore subject to independent penalties under G.L. c. 164, §1F. G.L. c. 164 allows for a maximum penalty up to \$1,000,000 for any related series of violations. The above described violations are not related because

the existence of an inadequate emergency response plan and the Company's tree trimming violations existed prior to the Ice Storm. Further, the Company's treatment of its life support customers, its decision to send out inaccurate estimated bills for December 2008 and its restoration response failures each occurred independent of one another.

C. THE DEPARTMENT SHOULD REDUCE UNITIL'S ROE IN ITS NEXT RATE CASE FOR MANAGEMENT FAILURES RELATED TO THE RESPONSE TO THE 2008 ICE STORM

The complete failure by Unitil management to properly and timely respond to the events of the December 2008 Ice Storm require the Department to lower Unitil's ROE in the Company's next base rate case. Department precedent requires that in instances of subpar or questionable management performance, the ROE should be set at the low end of the range of reasonableness. *Fitchburg Gas and Electric Light Co.*, D.T.E. 02-24/25, p. 231 (2002). *Cambridge Electric Light Company*, D.P.U. 92-250, p. 162 (1993). Unitil management failed to perform a proper damage assessment, failed to follow its own ERP, failed to follow the dictates of D.P.U. 91-228, failed to communicate with customers, municipal officials and state officials, failed to contact life support customers and unreasonably and unfairly sent out estimated bills to customers when they knew that they were billing customers for power not used.

In D.T.E. 02-24/25, the Department set the ROE at the low end of the range of reasonableness for the Company's failure to provide the Department with complete information regarding a number of issues that could have affected ratepayers. D.T.E. 02-24/25, p. 231 (2002). In addition, the Department set Cambridge Electric Light Company's ROE at the low end of the range of reasonableness due to the questionable management performance of the Company concerning conservation and load

management activities. By comparison, Unitil's managerial failures caused far more harm to customers. LSCs were left without the electricity they needed to live and the elderly, the disabled and children were left for weeks without heat. For these reasons, the Department should set the Company's ROE at the low end of the range of reasonableness in the Company's next rate base proceeding.

D. THE DEPARTMENT MUST NOT ALLOW UNITIL RATEPAYERS TO BEAR THE BURDEN OF ICE STORM COSTS RESULTING FROM UNITIL'S MISMANAGEMENT OF THE ICE STORM RECOVERY

1. Unitil Should Not Be Allowed Recovery Of A Portion Of Ice Storm Costs And the Department Must Mitigate the Recovery Of Unrecovered Balances

To date, Unitil has incurred Ice Storm costs of approximately \$12,917,746. Exh. AG RR-3. The Company's Total Cost of Service in its last rate case was \$18,256,342. *Fitchburg Gas and Electric Light Company*, DPU 07-71, p. 204. If the Ice Storm costs were to be recovered in one year, this would represent an increase to base rates of over 70 percent. Clearly, mitigation of the Company's recovery of its Ice Storm expense is required in order to prevent rate discontinuity issues.

The Department's rate design policy is generally applied at the time of rate increase filing and only if an expense is extraordinary in relation to the company, the DPU may permit the expense to be amortized over a multi-year period. *Boston Edison Company*, D.P.U. 19300, p. 36. (1979). In light of the substantial size of these costs in relation to the Company's revenues, the Department should consider a lengthy amortization period of 10 years. A full recovery of costs would, at 10 years then be \$1.3 million per year (assuming no part of the Ice Storm cost is capitalized and included in rate base, since at this time the record contains no breakdown of which part would be

capitalized), this represents a 7% increase in base rates. Such an amortization period, at a minimum, would be necessary to avoid rate discontinuity.

Rate design changes should ensure rate continuity by being made in a predictable and gradual manner which allows consumers reasonable time to adjust their consumption patterns in response to a change in rate design. In line with Department precedent, unamortized balances associated with Storm costs are not included in rate base, and should not be allowed in any future Unitil storm cost recovery. *Boston Edison Company*, D.P.U. 1720, pp. 88-89 (1984). Deferred debit balances corresponding to this type of expense represent extraordinary, non-recurring costs that would, if not for the extraordinary nature, be excluded from cost of service.

Further, the Department in this instance should *not* allow full recovery of the Ice Storm costs due to Unitil's abject negligence and multiple failures in Ice Storm preparation and response, subjecting customers to lengthy winter outages without heat or lights and a potential loss of life scenarios. The Attorney General therefore recommends that any subsequent filing of Unitil for recovery of Ice Storm costs undergo a full investigation to determine if such cost were prudently incurred. Only after justification that these cost were prudent and not inflated due to the Company's mismanagement of its Ice Storm response, should they be allowed recovery.

VII. CONCLUSION

The Department, pursuant to the factual determinations and legal conclusions urged herein by the Attorney General, should 1) penalize the Company \$4.6 million pursuant to the Department's authority under G.L. c. 164 §1F(7); 2) adopt the 28 Self Assessment recommendations and the Attorney General's timeline to implement them

and its new emergency response plan; 3) defer payment by customers of the cost of implementing the 28 Self Assessment recommendations to avoid customers having to pay twice for the same service element or other emergency preparedness requirements resulting from this docket; 4) defer the conduct of a full prudence review of Unitil's Ice Storm recovery costs to its next full base rate proceeding; 5) in Unitil's next base rate case ensure that ratepayers do not bear the burden of Ice Storm costs resulting from the Company's mismanagement of the Ice Storm recovery; 6) also in Unitil's next base rate case, reduce Unitil's ROE; and (7) adopt all other Attorney General recommendations in this brief as they are in the best interests of Unitil's customers.

Respectfully submitted,

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