

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Massachusetts Electric Company
Nantucket Electric Company
d/b/a National Grid

D.P.U. 11-85-A
D.P.U. 11-119-A

**REPLY BRIEF
OF THE ATTORNEY GENERAL**

Respectfully submitted,
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REPLY BRIEF OF THE ATTORNEY GENERAL

I. INTRODUCTION

Pursuant to the briefing schedule established by the Department of Public Utilities (the “Department”) in D.P.U. 11-85-A/11-119-A, the Attorney General submits her Reply Brief¹ responding to the arguments made by Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (“National Grid” or “Company”) in its Initial Brief, dated July 18, 2012 (“Company Initial Brief”). The Department’s focus should be on how National Grid implemented its Electric Emergency Plan (“EEP”)², whether the Company’s restoration efforts complied with its EEP and whether the Company’s restoration efforts complied with 220 C.M.R. § 19.00 *et seq.*, and the requirement that service be restored in a safe and reasonably prompt manner. Further, the Department must take action by penalizing the Company and directing it to improve its emergency response planning to ensure that an investigation of electric distribution companies is not required each time severe weather occurs in Massachusetts. The Department

¹ This brief is not intended to respond to every argument made or position taken by the Company. Rather, this Reply Brief is intended to respond only to the extent necessary to assist the Department in its deliberations. Silence by the Attorney General with respect to any issue addressed in the Company’s Initial Brief cannot be construed as assent to its position.

² The Company’s use of the term EEP is synonymous with the term Emergency Response Plan, or “ERP”, as used throughout this document.

should also consider remedial action to improve the Company's storm response, such as requiring the Company to keep track of its wires down. At a minimum, the Department must ensure that National Grid implements each of its "lessons learned" to improve its emergency response and restoration. Co. Br., at 149-158.

The Attorney General recommends that in addition to examining the Company's adherence to its EEP, the Department also consider reassessing the standards mandated by National Grid's EEP. That is, even if the Department finds that National Grid complied with each EEP standard, the Department may find that National Grid's EEP is not meeting the public's need for reliable restoration of service.

II. STANDARD OF REVIEW

The Company incorrectly argues that the Department's standard of review in this matter is narrow. First the Company argues that G.L. c. 164, § 76 is not specific to service restoration, which implies that it is not applicable in this case. However, it is widely recognized that Section 76 provides the Department with broad oversight authority to regulate gas and electric distribution companies, "and to reinforce to the Company as well as other distribution companies the importance of fulfilling their obligation to provide safe and reliable service." *Fitchburg Gas & Electric Light Company d/b/a Unitil*, D.P.U. 11-01/11-02, at 21 (2011). 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). This investigation concerns the fundamental purpose of National Grid’s operations—its provision of safe and reliable service to its customers. Co. Br., Executive Summary, at 2. To argue that G.L. c. 164, § 76 is inapposite because it does not specifically enumerate service restoration is to ignore the plain meaning of the statute, which is to empower the Department with “general” supervisory authority. Thus, the plenary powers granted to the Department in G.L. c. 164, § 76 are applicable here.

Second, G.L. c. 164, § 85B(d) also allows the Department to “deny the recovery of all, or any part of, the service restoration costs through distribution rates, commensurate with the degree and impact of the service outage.” In its tortured effort to convince the Department that the scope of this investigation and the Department’s remedies are narrow, the Company argues that the provision in G.L. c. 164, § 85B(d) pertaining to the Department’s ability to deny the recovery of service restoration costs is not applicable. Co. Br., at 8. However, during evidentiary hearings, it was established that the cost of service restoration is at issue in the case and cost information has been provided by the Company in discovery. Tr. 3, at 364-366; Exh. DPU 4-1. If the Department finds it necessary to penalize the Company for its poor performance in the storms, it may choose to deny certain service restoration costs. 220 C.M.R. § 19.00 *et seq.* In D.P.U. 11-01/11-02, Fitchburg Gas & Electric Light Company d/b/a Unitil (“Fitchburg”) proposed a Major Storm Reserve Recovery Mechanism. *Fitchburg Gas & Electric Light Company d/b/a Unitil*, D.P.U. 11-01/11-02, at 367-368 (2011). However, in light of the company’s management deficiencies in its response to Winter Storm 2008, the Department

rejected this request. *Id.*, at 373. Specifically, the Department found that it was “not in the public interest to approve a storm fund for Fitchburg at this time.” *Id.* The Department further determined that “Fitchburg must demonstrate a record of improved performance before it is allowed the greater discretion with ratepayer funds that comes from a storm fund mechanism.” *Id.* Finally, the Department also determined that it should not shift the risk of unanticipated storm expenses solely to the company’s ratepayers given Fitchburg’s recent history of demonstrated subpar management performance. *Id.* In sum, the Company cannot explain away the statutory authority and administrative precedent that the Department possesses and relied upon to open this investigation. *Cf. Co. Br.*, at 10 (“[T]he only standards that have been established are those that are set forth in the regulations promulgated in 220 C.M.R. 19.03.” *Id.*).

Next, the Company argues that the regulations promulgated by the Department in accordance with G.L. c. 164, § 1J, *i.e.*, 220 C.M.R. 19.00 *et seq.*, are the only standards pertaining to acceptable performance for emergency preparation and restoration of service. *Co. Br.*, at 9. Further, the Company argues that the Department’s Guidelines for ERPs established in D.P.U. 10-02-A concern uniformity of content and formatting requirements that electric companies must follow when structuring their ERPs. *Id.* The Company fails to recognize that the Department possesses a wealth of administrative precedent concerning emergency restoration, to which the Company must adhere. *See, e.g.*, Hurricane Gloria, D.P.U. 85-232 (1986); Hurricane Bob, D.P.U. 91-228 (1992); *Investigation by the Department of Public Utilities on its Own Motion into the Preparation and Response of Fitchburg Gas and Electric Light Company d/b/a Unitil to the December 12, 2008 Winter Storm*, D.P.U. 09-01-A (2009); *Western Massachusetts Electric Company*, D.P.U. 95-86 (1995).

III. ARGUMENT

A. NATIONAL GRID IS REQUIRED TO BE PREPARED FOR ALL WEATHER EVENTS

The Company's Initial Brief provides ample discussion of the severity of Tropical Storm Irene and the October Snowstorm. Co. Br., Executive Summary, at 1-2, 2-7. The storms were severe. *Id.* In order to describe the severity, the Company compares the damage caused by Tropical Storm Irene and the October Snowstorm to the damage caused by the 2008 Ice Storm. *Id.* Following the 2008 Ice Storm, the Department opened investigations into each of the electric distribution companies in the state but focused only on Fitchburg Gas & Electric Light Company d/b/a Unitil. *Investigation by the Department of Public Utilities on its Own Motion into the Preparation and Response of Fitchburg Gas and Electric Light Company d/b/a Unitil to the December 12, 2008 Winter Storm*, D.P.U. 09-01-A (2009). In D.P.U. 09-01-A, the Department stated that it "will not absolve the Company from its public service obligations simply because this Storm was bigger than the Company has experienced." *Id.*, at 48. Further, in the 2008 ice storm investigation of Fitchburg, the Department stated that Fitchburg's reliance on its performance during recent storms as its primary emergency planning and training vehicle was not sufficient. *Id.* at 47. Therefore, National Grid's claim that its performance during the 2008 Ice Storm—which it classifies as a more severe storm than either Tropical Storm Irene or the October Snowstorm—should have some bearing on the Department's evaluation of its performance in this docket is simply erroneous. The Department has made it clear that rather than allowing a company to rest on its laurels, it will evaluate a utility's storm restoration performance on a case-by-case basis.

1. National Grid's Comparison of Tropical Storm Irene and the October Snowstorm to the 2008 Ice Storm is Faulty

The Company stated that it was thoroughly investigated after the 2008 ice storm. Co. Br., at 7. However, in D.P.U. 09-01-B, the investigation consisted of one public hearing, only two (2) sets of discovery by the Department, three (3) sets of discovery by the Attorney General and no evidentiary hearings. *Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid*, D.P.U. 09-01-B (2010). Two members of the public spoke at the public hearing in Worcester. *Id.*, at 1-2. The Department also received 12 written comments. *Id.*, at 2. The investigation culminated in a four-page letter order from the Department describing the procedural history of the investigation and concluding that it had no evidence that National Grid failed to restore service in a safe and reliable manner. *Id.*, at 4. In addition, the Department noted that National Grid identified a number of areas that it intended to investigate, review, and modify to improve future storm response. *Id.* This shows neither a thorough investigation was performed, nor a ringing endorsement of National Grid's storm response in 2008. Moreover, the Company fails to recognize that following the 2008 ice storm, the Legislature passed legislation to heavily penalize companies for poor performance related to storm outages and delayed restoration.

B. NATIONAL GRID FAILED TO ADEQUATELY PLAN AND PREPARE FOR THESE MAJOR OUTAGE EVENTS

1. The Adequacy of National Grid's Preparation and Restoration Are at Issue in this Case

National Grid argues that it activated and followed its EEP to safely restore power to its customers as quickly and responsibly as possible. Co. Br., at 159.

An EEP is a plan established by utilities to address outages caused by storms and other natural disasters, civil unrest, major equipment failure, or other emergencies. The EEP is intended to provide a framework for an orderly company response in these situations. The EEP sets forth the procedures during major emergencies for restoration of electric service, notification to applicable government agencies and the public of emergency restoration progress, and response to official requests for specific emergency actions.

Investigation by the Department of Public Utilities on its Own Motion into the Preparation and Response of Fitchburg Gas and Electric Light Company d/b/a Unitil to the December 12, 2008 Winter Storm, D.P.U. 09-01-A, p. 26 (Nov. 2, 2009) (hereinafter “Unitil 2008 Winter Storm”).

However, having an approved EEP in place is not the same as proving that the EEP was efficiently and effectively implemented. National Grid acknowledged this in its Initial Brief, when it reiterated a point clarified by the Department in its rulemaking docket that established 220 C.M.R. 19.00 *et seq.* Co. Br., at 10. “The Department has stated that implementation of an EEP in and of itself does not constitute compliance with the Department’s standards.” *Id.*, at 10, *citing* D.P.U. 10-01-A at 10. For example, if the EEP stated that the Company must have municipal liaisons in an emergency event, and the Company had municipal liaisons, but those municipal liaisons failed to communicate accurate and timely information to their municipal counterparts, the Company did not follow the intent or spirit of the EEP. Therefore, the issue here is whether the requirements of an EEP were executed in a manner conducive to safe and reasonably prompt service restoration, not whether the Company had an approved EEP or filed required reports with the Department. The Company is required to both have a plan *and* execute it. G.L. c. 164, § 85B; 220 C.M.R. 19.03.

Moreover, the Company has a public service obligation to provide safe and reliable service to its customers that is independent of the Company’s enumerated EEP requirements. *Unitil 2008 Winter Storm*, D.P.U. 09-01-A, at ix.

2. ERP Declaration (Failure to Identify the Proper ERP Event Level)

One factor which very likely contributed to the Company's failure to identify the proper ERP level in a timely way was the lack of a systematic way to translate parameters of forecasted weather into estimates of expected storm damage. The Company asserts that it relies on the many years of experience of its key personnel (*i.e.*, the top level of its Incident Command Structure, or ICS) and eschews any attempt to systematize that experience into a series of tables or a mathematical model. During the hearings, the Department led an extensive discussion on this topic, probing the Company's witnesses to gain the specifics of the process, or in the Department's words, "we're going to hope to have a conversation more about specifics than generalities." Tr. 3, at 503. Yet, what follows for the next twenty pages of the evidentiary hearing transcript was a description of a "discussion" that took place among the Company's top level ICS personnel, who said that they weighed various factors throughout this process, such as "condition of your system, wind speeds, precipitation, and any other factors such as tree conditions at that time." Tr. 3, at 503-523. When the Department then asked if any part of this process was written down in any way, the following exchange occurred:

- A. [Root]: We don't write that down; it's really a debate and discussion about it based on experience. We don't use a computer model to generate that.
- Q. [Department]: An Excel-based model? Any kind of spreadsheet that the company uses to try to look at how the information coming in for this storm compares to specific similar information from other storms and other types of damage that would have ensued, so you would have some idea of how to respond, in terms of crew resources and length of duration of the storm?
- A. [Root]: I think that the experience . . . of people who have been through those types of storms, remember the magnitude of those storms, so we didn't rely on an Excel spreadsheet of storms, as most of us have lived through those storms.

Id., at 509. In other words, there was nothing memorialized anywhere throughout this process; rather, everything remained in the heads of the Company's top level ICS personnel, which makes

the process seemingly very subjective and unreliable. Such subjectivity and unreliability in the assessment process is especially problematic for other Company employees who may have to perform similar assessments and make similar decisions in the future, and undercuts the value of all the training that National Grid touts that it has. *See Co. Br.*, at 21-24.

Then again on the final day of the hearings, the Department asked the Company to elaborate on its response to information request DPU-6-1. Tr. 5, at 1047-1051. This response addressed National Grid's intention to explore the use of a more systematic approach to damage forecast modeling and included the Company's commitment as part of the settlement agreement in the *Investigation by the Department of Public Utilities on its Own Motion into the Preparation and Response of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid to the December 26, 2010 Winter Storm*, D.P.U. 11-03 (2011) to "work with a university partner to develop a model to project total estimated time of restoration, based on a weather forecast, historical correlations between weather and reliability, historical confidence levels for weather forecasts, historical crew counts and availability, and geographic differences across the Company's service territory." Exh. DPU-6-1(a). In its reply to further questioning from the bench at the evidentiary hearing, the Company acknowledged its intention and the benefit it could bring:

Q. [Department]: And so how would you use this? I'm just trying to make sure I understand. How would you plan to use this forecast?

A. [ROOT]: It would be another tool for us to be able to, I would say, validate our historical projection of what the impact of an oncoming storm might be.

Q. [Department]: And would you use that resource to estimate crews resources that you needed or personnel resources that you needed to respond to the storm?

A. [ROOT]: It would certainly be an input into it. I view this to be a long-term, a long-term project, for two reasons. One is, you don't have these large-magnitude storms that often, so your database isn't tremendously robust, to begin with, and

there's a statistical issue with that. But if you don't start building that database based on the past recent history we've had, going backwards and then going forwards, if you don't start it, you'll never get there. So the idea is, the more that we come up with a model, we can keep enhancing the model, and ideally it will get more accurate on where we were going with it.

Tr. 5, at 1049-1050.

Even after acknowledging that this project was likely to improve the process and would only get better with each use, the Company's witness, Mr. Root, falls back to its lack of confidence in the approach by saying, "I wouldn't say that I have any expectations in the reasonable future that this will be the gospel, bible of exactly what's going to happen, but I think it would be – it's one of the things that you keep working on." *Id.*, at 1050. Further, when probed about his knowledge of other utilities' practices in using storm damage modeling, Mr. Root claimed to know nothing of the work of other utilities in the industry, including Florida Power & Light, by stating, "I'm not familiar with their company's models." Tr. 5, at 1086. It is therefore more than reasonable to conclude that the Company is going through the motions here, unhurriedly pursuing this project as a condition of the settlement, while showing little confidence in its eventual success.

On the other hand, the Attorney General's witnesses opined that they have had some success with a more systematic approach to damage modeling, have recommended it as a best practice, and agreed with its inclusion in the settlement agreement in D.P.U. 11-03. Exh. AG-DO-CF-2, at 2. The Company's agreement to work with a university partner to develop a model as a condition of the settlement agreement in D.P.U. 11-03—a significant snowstorm that occurred a mere eight months before Tropical Storm Irene, and ten months before the October Snowstorm—only to then perfunctorily dismiss the idea in these proceedings, clearly demonstrates National Grid's indifference to the gravity of the situation. The time has come for

the Department to use its penalty authority to get the undivided attention of utilities in this Commonwealth—like National Grid—that make empty promises to their ratepayers. The utilities are rewarded enough for what they do “right,” or in compliance with the statutes and regulations; it is now time to penalize them for their shortcomings. This is especially true of National Grid when viewing the totality of the circumstances in its restoration efforts after Tropical Storm Irene and the October Snowstorm.

3. Vegetation Management/Enhanced Hazard Tree Mitigation (EHTM)

With respect to vegetation management and the use of its Enhanced Hazard Tree Mitigation (EHTM) program, the Company’s arguments in its Initial Brief are flawed and miss several points that the Attorney General offered in her Initial Brief.

First, the Company acknowledges that “[v]egetation management is a critical component of improving customers’ service reliability, both day-to-day as well as in a storm,” and that the “single largest cause for interruptions in an electric system is tree-related.” Co. Br., at 11-12 (internal citations omitted). In justifying the vegetation management and storm hardening programs National Grid currently has in place, the Company nevertheless goes on to cast blame on the municipalities and customers it serves by saying that they “do not want their trees trimmed at all” or “only want a light trim which is less than the Company’s specifications would recommend.” *Id.*, at 12 (internal citations omitted); *see also id.*, at 15. The fact that the Company may be encountering any opposition for any portion of its tree pruning should not be given significant weight by the Department, because: (1) it is obligated to work these purported issues out; and (2) there is no quantifiable evidence in the record of how many municipalities and customers are supposedly causing this problem. *See, e.g., id.*, at 15 (where the Company cites to

“at least *one instance*” where it has been informed that no EHTM will be permitted in a particular community) (emphasis added).

Second, in its initial brief, National Grid seems to be averring that because the Company increased its vegetation management spending over the past 10 years, those increases are *per se* evidence that its vegetation management is aboveboard and producing less tree-related outages on its systems during significant storm events as those seen here. *See* Co. Br., at 12. Certainly, the Attorney General recognizes that increases in a utility’s spending on vegetation management may result in reduced tree-related outages; however, such a conclusion presupposes that the vegetation management plan is implemented consistently and methodically across the utility’s system, which, despite its self-interested assertions to the contrary, was not the case for National Grid, especially when viewed in light of its EHTM program.

As noted in her Initial Brief, the Attorney General’s witnesses acknowledged that National Grid’s EHTM program was a step in the right direction, and commended the Company for adopting a 4- to 5-year cycle for regular trimming. AG Br., at 13 (internal citations omitted). However, Messrs. O’Neill and Fijnvandraat took issue with the paltry amount of circuits that had actually been targeted through the Company’s EHTM program, a mere 17.5 percent. *Id.* The Attorney General’s point in this regard is apparently lost on the Company, because the record remains unrefuted by the testimony of the Company’s own witnesses that only 236 of 1,300 circuits were trimmed under the EHTM program, and Messrs. O’Neill and Fijnvandraat opined that such a limited percentage of the total circuit miles left much of the Company’s system virtually unhardened. *Id.*; Exh. AG-DO-CF-1, at 11. Moreover, as a reliability-based program, the Company’s EHTM program is backward-looking and targets the worst performing circuits, which is presumably why such a small percentage of circuits were targeted for hazard tree

removal. *See* Co. Br., at 13. Nevertheless, the Company never established that only those circuits that actually were targeted and trimmed—that is, the 17.5 percent (or 236 of 1,300 total circuits)—were representative of the only circuits that experienced trouble in these storms. Instead, the whole point of the Attorney General’s argument that National Grid’s EHTM program must be broadened to include the entirety of its circuits is that clearly more than 17.5 percent of its circuits were affected by these storms and experienced vegetation-related outages. *Id.*; *see also* Exh. AG-DO-CF-1, at 11, 35-36; Tr. 1, at 93-94; Exh. AG-5-2. In this regard, National Grid’s approach to storm hardening before Tropical Storm Irene and the October Snowstorm simply will not help the Company in the future with other, unprecedented Level 5 storms.

4. Distribution Automation

In its initial brief, National Grid attempts to refute the Attorney General’s argument that its use of distribution automation was insufficient in its restoration process for these storms. Co. Br., at 16-17. The Company’s attempt is futile, however, because by its own admission, “the Company recognizes that distribution automation works effectively in small localized events.” *Id.*, at 17. Further, as already outlined in the Attorney General’s Initial Brief, the Company’s “efforts to increase the installation of advanced distribution automation on its distribution system” is being done to “facilitate its restoration efforts.” AG Br., at 14; Exh. NG-Rebuttal, at 15. Contrary to the Company’s assertions on brief, the Attorney General’s witnesses never stated that distribution automation would prevent “a car from hitting poles, winds from blowing debris onto wires, or even one tree from falling on the Company’s distribution infrastructure.” Co. Br., at 16 (internal citations omitted). Instead, the Attorney General’s witnesses merely opined that the use of more pervasive distribution automation certainly would have facilitated the

Company's restoration efforts in these storms, a point that National Grid conceded, and that remains unrefuted.

5. Safe Restoration - Downed Wires Response

In Section V.B of its initial brief, the Company defends its response to downed wires during both storms. *See* Co. Br., at 102-110. It quotes D.P.U. 08-112 with regard to the uniform protocols that the Department approved to bring clarity and coordination to the communications between electric utilities on the one hand and municipal police and fire officials on the other. *Id.*, at 103. The Company uses its brief to describe at length the process that it says normally takes place, and extends that to the situations of Tropical Storm Irene and the October Snowstorm, in some cases describing what "would" take place under the process it has established. *Id.*, at 106-108. Yet, in a lengthy footnote (fn. 20), the Company acknowledges what became apparent during the hearing: that its system for recording the details of each wire down trouble call, including those that use the police/fire priority system described in D.P.U. 08-112, cannot be relied upon to provide an accurate account of its performance during the two storms. *Id.*, at 108, n. 20. This is so despite the fact that the Company agreed, in its settlement of D.P.U. 11-03, to develop a service quality metric that could properly report its performance on downed wire response in major storms.

Taken at face value then, the Company's system indicates that it had significant delays for a large number of wire down calls. Ample evidence about the details of the Company's delays in responding to wires down is found in its response to information request AG-2-5 and corresponding attachments. Salient examples of specific wire down calls were also discussed in detail during cross-examination of the Company's witnesses during the hearing. *See, e.g.*, Tr. 1, at 183-198; Tr. 2, at 206-214. In the light of the fact that the Company admits its wires down

record keeping system is flawed, the bald assertion that “The Company followed the Department-approved statewide wires down protocol after each storm event and otherwise acted consistently with its EEP regarding wires down response” simply is without merit and cannot be credited. Co. Br., at 110. On its face, National Grid has failed to carry its burden of proof to assure the Department that its performance was aboveboard in this area of emergency response; stating otherwise is simply not supported in the record evidence. Given that National Grid’s response to wires down was egregiously inadequate, the Attorney General urges the Department to seriously consider the inherent safety issues surrounding all aspects of wires down in its final disposition of these proceedings. Indeed, the record here is peppered with multiple examples of wire down calls that should have been given much better attention than they were, and at a minimum, the Company must perfect its record keeping system for wire down calls if it hopes to continue to avoid even one catastrophic injury and/or death related to the same. Looking forward, there is simply too much at stake for any member of the public to suffer a significant injury or die as a result of a wire down situation that was not properly handled by the responsible utility.

6. Reasonably Prompt Restoration

In Section V.C of its initial brief, the Company addresses its “Restoration Prioritization and Resources” for Tropical Storm Irene and the October Snowstorm. Co. Br., at 110-119. The Company’s argument includes references to the point at which 90 percent of its customers were restored in each storm and also to the peak level of resources “ultimately” obtained in each storm, while simultaneously citing the difficulty of getting those resources earlier in each storm due to demands on resources from other utilities. *Id.*, at 39, 113. The Company correctly cites the Attorney General’s claim that it “had the choice of acquiring sufficient crews to be able to

adequately scale up to handle the Level 5 Event” and failed to do so. *Id.*, at 114. The Company then attempts to refute the Attorney General’s ancillary comment that, with the limited resources it was able to obtain, the Company appeared to be torn between using resources for damage assessment and restoring power. *Id.* In the process, National Grid left unrefuted the Attorney General’s primary claim of inadequate early mobilization of sufficient resources. By contrast, the Attorney General’s witnesses, in their pre-filed testimony and during the hearing, compared the Company’s inadequate response to the proper response of other utilities in the area that were experiencing the same storms (*e.g.*, Unitol, municipal light companies, and Long Island Power Authority (LIPA)). While companies like LIPA, which, in Mr. O’Neill’s words “pulled the trigger early and hard,” National Grid remained gun-shy on mobilization and its performance ultimately suffered. Tr. 5, at 945.

In Section IV.E, Determination of Crew Needs, the Company addresses the decision process by which it went about procuring resources for these two storms. Co. Br., at 36-48. Echoing similar comments in the post-storm reports and in the hearing, the Company described how its efforts to obtain crews for Tropical Storm Irene were thwarted by the early committal of utilities to the south that allowed those utilities to obtain resources which the Company would normally have used. *Id.*, at 38; *see also* Exh NG-1, and NG-2. At the same time, the Company describes how other utilities’ allied contract resources were “were being held until the projected path of Irene had passed their service areas without incident.” Co. Br., at 39. The Attorney General’s witnesses asserted that the Company should have done the same, holding onto its resources in case they were needed. Tr. 5, at 944-945. Notwithstanding the Attorney General’s witnesses’ opinions in this regard, the Company erroneously asserts that, “. . . there is no evidence in the record of this proceeding that supports a conclusion that the Company should

have commenced marshaling available resources any sooner than they did for either event.” *Id.*, at 48.

The result of the Company’s delay is also apparent in its command of mutual assistance resources. As the Company asserts in its initial brief, “[a]s of 4:00 PM on August 29, approximately 7,000 line personnel had been requested by electric distribution companies along the east coast. National Grid ultimately secured twenty-four released line workers for New England restoration.” Co. Br., at 44. That the Company was only able to secure 24 resources out of requests that totaled 7,000 speaks volumes about the Company having come late to the game.

The Company also rests its argument on an assertion that its ERP does not indicate the required level of resources for each storm level, and so it cannot be found in violation of its ERP for not mobilizing to any particular level. This argument turns the entire ERP process on its head. What is the purpose of having an emergency response process if it is not to ensure that the Company prepares for and then properly executes a plan that provides “safe and reasonably prompt restoration”? 220 C.M.R. § 19.03.

Despite the commitment it made as part of the D.P.U. 11-03 settlement agreement to improve performance, the Company failed to meet its responsibility under its ERP to provide safe and reasonably prompt restoration due to its inordinate delay in committing to mobilize sufficient resources in both storms.

C. NATIONAL GRID'S COMMUNICATION FAILURES VIOLATED ITS ERP

1. Communication with First Responders Was Poor

The Company describes its processes for internal communications, communications with state elected officials and regulatory officials, advanced planning and training communication with municipal officials and its municipal contact database for emergency events in great detail³ but pays less attention to the communication troubles experienced by local public safety officials during the events. Co. Br., at 63-76,127-134.

When the Company does turn to the troubles experienced by local public safety officials as represented in the testimony of Fire Chiefs Neenan and Francis, it mischaracterizes their testimony. Exh. AG-JN-1; Exh. AG-RF-1; Co. Br., at 136-137. The Company is correct that Chief Francis added “minor things” to his public statement. Co. Br., at 136. He changed his quotation from “never did they tell a chief or municipal official of an extended restoration period,” to clarify that a couple of days into the storm, he and the Mayor received timetables. *Id.* At the time of the Chief’s testimony at the public hearing on November 8, 2011 in Brockton, he was speaking of when he and the Mayor were told that the City would “be back up and running as soon as the wind died down.” Tr. 5, at 884. The Company wishes to discredit the Chief’s testimony – delivered live on November 8, 2011, submitted as Testimony by the Attorney General on March 14, 2012 and provided again by the Chief during evidentiary hearings on June

³ National Grid’s Initial Brief addresses numerous subject matters that were not necessarily material issues presented during these proceedings. *See, e.g.*, Co. Br., at Sections IV.B., IV.D., IV.F., IV.G.1., IV.G.2., V.D.7. Because it is National Grid’s burden to demonstrate that it adhered to the statutory and regulatory mandates prescribed upon it with respect to the Company’s responses to both storms, the Attorney General certainly appreciates that the Company’s Initial Brief incorporates all aspects the Company deems relevant to these proceedings, including what it believes it did right. Nevertheless, it is self-evident that the Department would not have opened these investigations into the Company’s practices and emergency responses to Tropical Storm Irene and the October Snowstorm had National Grid done everything “right” and/or determined that there was nothing to investigate.

8, 2012 – by implying that he “refined and clarified” his testimony and fails to address his concerns that he was not told until three or four days later when power would be restored. Co. Br., at 136; Tr. 5, at 903 (“I believe it was sometime either Tuesday or Wednesday before we were told what the restoration period was going to be.”). Further, the Company fails to refute Chief Francis’s concerns about wires down personnel from National Grid, such as: (1) failing to appear on the scene for some time; (2) leaving his firefighters to remain on the scene to stand by wires down; (3) a lack of incident command at the Company; and (4) the Company’s failure to use common terminology with the fire chiefs. Exh. AG-RF-1, at 3; Co. Br., at 135-136.

The Company continues to ignore the important public safety concerns of fire chiefs, including Chief Neenan of Pembroke, by focusing on the fact that Chief Neenan complimented National Grid executive Joe Carroll rather than replying to Chief Neenan’s concerns about receiving estimated times of arrival (“ETAs”) and cut and clear crews. Exh. AG-JN-1. Chief Neenan testified that at some point, like other fire departments, “we had no available apparatus or people left to respond because they were standing by downed wires and we couldn’t leave in the interest of public safety.” *Id.* National Grid ignores these concerns and instead blithely states that the Chiefs’ testimony, “should be balanced with the hours and days of communication that occurred between the Company and municipal officials in the wake of T.S. Irene.” Co. Br., at 137.

With regard to communications with local officials, the Company stopped sending notifications to local officials during the October Snowstorm. Co. Br., at 137. In spite of the Company’s explanation that it did so because its method of faxing outage information from its ORP reporting system was disabling the fax machines of some local officials, this does not excuse the Company from finding a workaround for this problem and meeting its ERP

requirement to provide general communications with municipal officials. Co. Br., at 69; Exh. NG-5, § .113.2, at 4.

2. National Grid Does Not Refute the Attorney General's Analysis of the Company's Communication Efforts.

The Attorney General stands by her contention that National Grid failed to communicate adequately with its customers during the storm events. National Grid provides no evidence to refute this. Rather, the Company provides a detailed explanation of communications with non-life support customers "prior to and after an emergency event." Co. Br., at 76.

IV. SUMMARY AND RECOMMENDATION

Section 1J of Chapter 164 of the General Laws provides for penalties for a Company's violation of standards. "The penalty is \$250,000 for each violation for each day the violations exist, with a maximum penalty of \$20,000,000 for any related series of violations." G.L. c. 164, § 1J; Co. Br., at 5.

A. THE ATTORNEY GENERAL RECOMMENDS THAT NATIONAL GRID BE PENALIZED \$4,645,000 FOR VIOLATIONS ASSOCIATED WITH TROPICAL STORM IRENE AND \$11,680,000 FOR VIOLATIONS ASSOCIATED WITH THE OCTOBER SNOWSTORM PURSUANT TO G.L. C. 164, § 1J AND 220 C.M.R. § 19.03.

The Attorney General requests that the Department penalize National Grid \$250,000 per ERP violation per day for its failure to comply with four ERP requirements: (1) providing a timely damage assessment; (2) ensuring effective communications with customers; (3) failing to mobilize enough crews in Tropical Storm Irene; (4) failing to mobilize enough crews in the October Snowstorm; (5) failing to respond to priority wire down calls in accordance with its

ERP; (6) failing to communicate with local public safety officials during Tropical Storm Irene; and (7) failing to communicate with its customers per its ERP.

1. National Grid did not analyze its damage assessment information within 48 hours for Tropical Storm Irene

In violation of its ERP, National Grid did not analyze its damage assessment information within 48 hours for Tropical Storm Irene. The Attorney General recommends the maximum penalty amount under G.L. c. 164, § 1J of \$250,000 per violation per day. The violation persisted for five (5) days. The number of days was calculated by counting the number of days after 48 hours from the time that the storm began to the last day of restoration. Tropical Storm Irene began on August 28, 2012 at 1:00 am and all customers were restored by September 3, 2012. Co. Br., at 4. The Company should be fined from August 30, 2012 through September 3, 2012, the last day of restoration. Therefore, the recommended penalty is $(\$250,000 \times 5)$ \$1,250,000.

2. National Grid did not analyze its damage assessment information within 48 hours for the October Snowstorm

In violation of its ERP, National Grid did not analyze its damage assessment information within 48 hours or sooner for the October Snowstorm. As such, the Attorney General recommends the maximum penalty amount under G.L. c. 164, § 1J, \$250,000 per violation per day. The violation persisted for 6 days. The number of days is determined by counting the number of days from 48 hours after the storm started to the last day of restoration. The October Snowstorm began on October 29, 2012 at 10am and lasted through 12 noon on November 7, 2012. Co. Br., at 5. Therefore, National Grid was in violation between October 31, 2012 and

November 6, 2012, the last day of restoration. The recommended penalty therefore is (\$250,000 x 6) \$1,500,000.

3. National Grid did not mobilize enough crews for Tropical Storm Irene in violation of its ERP

Tropical Storm Irene restoration efforts lasted for 7 days. Co. Br., at 4. The storm began on August 28, 2012 and restoration concluded on September 3, 2012 at 10:00pm. Exh. NG-1, at 35. The Attorney General's expert, Mr. O'Neill, testified that restoration should have been completed in 5 days as a general matter for storms like this. Tr. 5, at 937-939. The Attorney General recommends a penalty of \$250,000 per violation per day. The timeframe of the violation is two (2) days for Tropical Storm Irene, which represents the difference between five (5) days for restoration, per Mr. O'Neill's testimony, and seven (7) days, the time required for restoration. Therefore, the Attorney General recommends that Nation Grid be penalized (\$250,000 x 2 days) \$500,000 for its failure to mobilize enough crews to respond to the storm.

4. National Grid did not mobilize enough crews for the October Snowstorm in violation of its ERP

The October Snowstorm restoration efforts lasted for 9 days. Exh. NG-2, at 3. The October Snowstorm began on October 29, 2012 at 10am and lasted through 12 noon on November 7, 2012. *Id.* The Attorney General's expert testified that restoration should have been completed in 5 days as a general matter for storms like this. Tr. 5, at 937-939. Using the same formula employed in Section IV.(A)(3) above, the Attorney General's recommended penalty is \$250,000 per violation for four (4) days, or \$1 million, for National Grid's failure to mobilize enough crews to respond to the storm.

5. National Grid failed to respond to priority wire down calls in accordance with its obligation to restore power in a safe and reasonably prompt manner per 220 C.M.R. 19.03(1)

A wire down can represent a very serious public safety hazard. Tr. 5, at 892 (“Priority 1 is a life-threatening situation, which would be an immediate harm or put someone in harm's way.”). All wires down have to be treated as live until the electric company attends to it and determines whether it is live or dead and removes it. Exh. AG-JN-1. Until that time, wires down can block roads preventing first responders from reaching people in emergencies. *Id.* The Attorney General recommends penalizing the Company \$5,000 for each priority wire down call (a wire down call made by police and fire personnel) that was not dispatched in a timely manner. Priority 1 is defined as a life-threatening situation, priority 2 is defined as an incident that National Grid needs to respond to but is not life threatening and priority 3 defines all other wire down calls from public safety officials. Tr. 5, at 892-893.

During Tropical Storm Irene, there were 13,062 wires down. Co. Br., at 6. Between August 28, 2011 and August 30, 2011 the Company was very far behind in completing wire down orders. For example, on August 28th, 85% of 6,090 wire down orders were incomplete. On August 29th, 66% of 11,059 wire down orders were incomplete. Exh. AG 1-15; Exh. DPU 9-23. There were also 1,148 Priority Wire Down calls during Tropical Storm Irene. Exh. AG 1-15; Exh. DPU 9-23. The distribution of those calls by duration of time between when the call was received and when it was dispatched (not even when someone showed up, which was presumably about a half-hour later) shows that 229 calls were not responded to in a reasonable timeframe. The Attorney General believes it is reasonable to conclude that the Company should be fined \$5,000 for each call that was not dispatched within a reasonable time, which, given the exigency of priority wire down calls, she is defining here as 24 hours. Therefore, the

recommended penalty is (229 delinquent wire down calls x \$5,000) \$1,145,000 for National Grid's failure to respond to priority wire down calls in a timely manner during this emergency event. 220 C.M.R. 19.03 (1).

During the October Snowstorm, there were approximately 21,529 wires down. Co. Br., at 6. Between October 29th and October 31st the Company was very far behind in completing wire down orders. Exh. AG 1-15; Exh. DPU 9-23. There were also 1,686 Priority Wire Down calls that were not responded to within 24 hours during the October Snowstorm. Exh. DPU 3-7. The Attorney General recommends that the Company be fined \$5,000 for each priority wire down call that was not dispatched within a reasonable time, defined here as 24 hours. Using the same formula applied in the preceding paragraph, the recommended penalty in this storm is (1,686 delinquent wire down calls x \$5,000) \$8,430,000.

6. National Grid failed to communicate with local public safety officials during Tropical Storm Irene in violation of its ERP

Despite its obligation to communicate with local public safety officials per its ERP, National Grid failed to communicate with the Quincy Fire Department during the first 24 hours of Tropical Storm Irene. Exh. AG-KC-1, at 3. Also, National Grid failed to "maintain basic levels of responsible communication with municipal officials and emergency management and safety offices" in the Town of Tyngsborough. Exh. AG-EC-1. Similarly, National Grid failed to communicate clearly with the Director of Emergency Management in Southborough. Exh. AG-NPA-1. National Grid also failed to communicate to the Fire Chief and Mayor of the City of Brockton that the Company had revised its restoration time from 3 days to 5-7 days. Exh. AG-RF-1. Lastly, National Grid failed to communicate with Pembroke's Fire Chief until

Wednesday, August 31. Give that the storm began on August 28 at 1 a.m., the Chief lacked any communication for four (4) days. Co. Br., at 4.

Based on these violations, the Attorney General recommends a penalty of \$250,000 for the communications violations of National Grid's EEP involving Quincy, Tyngsborough and Southborough for a total of \$750,000. For National Grid's failure to revise its restoration time for Brockton, the Attorney General recommends a penalty of \$250,000 for each day of the two (2) days that Brockton lacked a revised restoration time, resulting in a total penalty of \$500,000. Further, the Attorney General recommends a penalty of \$250,000 for each of the four (4) days that National Grid failed to communicate with Pembroke's Fire Chief, resulting in a total penalty of \$1,000,000.

7. National Grid Failed to Communicate with Customers per its ERP

During the October Snowstorm, National Grid did not alert customers to the potential for a weeklong restoration of service. AG Br., at 17. Despite the Company's argument that an event did not exist on October 28th or 29th, and therefore the Company was not obligated to communicate much to its customers during those two days, the Company went into great detail describing its pre-event planning and communications, indicating that an event was imminent. Co. Br., at 63-85, 124-125. The Company argues that it provided initial estimated times of restoration ("ETRs") by October 31, 2011. Co. Br., at 125. For its failure to provide ETRs to customers between October 28-30, 2011 the Attorney General recommends a penalty of \$250,000 for each day that this failure occurred or \$750,000.

In sum, the Attorney General recommends a total penalty of \$4,645,000 for violations associated with Tropical Storm Irene and \$11,680,000 for violations associated with the October Snowstorm.

B. RECOMMENDED CHANGES TO INFORMATION TO BE FILED WITH THE DEPARTMENT

The Attorney General makes the following recommendations with respect to action that the Department can take to improve National Grid's emergency planning and restoration efforts. First, with respect to National Grid's Emergency Response Plan, the Department should focus on whether National Grid fully complied with its ERP, Department precedent, and 220 CMR, § 19.00 *et. seq.* Exh. DPU-4-1; D.P.U. 10-02-A; and 220 CMR § 19.00, *et. seq.* If the Department determines that National Grid is complied with its plan, yet tens of thousands of customers remained without power and heat for significant periods of time, it seems prudent to explore ways in which the ERP can be improved. The issue of ERP reform should be addressed in the Department's existing ERP docket for National Grid, D.P.U. 12-ERP-11. In particular, the Department should, if necessary, examine the ERP's requirements with respect to the Company's communication with customers, municipal officials and public safety officials. Finally, the Company should be required to implement all of the lessons learned described in its December 20, 2011 Technical Session Report and the Technical Session Report Update of May 15, 2012. Exh. NG-3; Exh. NG-4.

Respectfully submitted,
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