THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

KATHLEEN A. THEOHARIDES
SECRETARY OF ENERGY
AND ENVIRONMENTAL AFFAIRS

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

MATTHEW H. NELSON
CHAIR

ROBERT E. HAYDEN
COMMISSIONER

CECILE M. FRASER
COMMISSIONER

DIG SAFE
NOTICE OF PROBABLE VIOLATION

ELECTRONIC MAIL - READ RECEIPT REQUESTED

April 9, 2020 D.P.U. 19-DS-0847

Mark Huck
NE Damage Prevention Manager
National Grid
C/O Meghan Corkhum
939 Southbridge Street
Worcester MA 01610

Dear Mr. Huck,

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

Based on information submitted to the Pipeline Safety Division ("Division") of the Department of Public Utilities ("Department"), the Division has reason to believe that National Grid ("Respondent") may have violated the applicable provisions of G.L. c. 82, §§ 40 through 40E ("Dig Safe Law") or 220 CMR 99.00 ("Dig Safe Regulations"), or both, with respect to a properly tendered Dig Safe notice submitted by J. Tropeano, Inc. prior to an excavation that occurred on November 1, 2019, at [redacted], Concord,

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

Specifically, the Division has reason to believe that Respondent failed to designate the location of the underground facilities within 72 hours of receiving notification, as required by the Dig Safe Law, G.L. c. 82, § 40B and 220 CMR 99.06(1). If the violation report regarding this incident has not been included with this NOPV, it is available for review upon request.

A violation relating to a natural gas pipeline facility is subject to a civil penalty of not more than $200,000 each day, up to a maximum civil penalty of $2,000,000 for a related series of violations. 49 U.S.C. § 60122(a)(1); G.L. c. 164, § 105A; 220 CMR 99.14(1). A violation relating to any other underground facility is subject to a civil penalty of $1,000 for a first offense, and between $5,000 and $10,000 for any subsequent offense within twelve consecutive months. G.L. c. 82, § 40E; 220 CMR 99.14(2). In determining the amount of the civil penalty, the Division shall consider the following criteria, pursuant to 220 CMR 99.14(3): (a) the nature, circumstances, and gravity of the violation, including adverse impact on the environment; (b) the degree of Respondent's culpability; (c) Respondent's history of prior offenses; (d) any good faith by Respondent in attempting to achieve compliance after notification of a violation; (e) the effect on Respondent's ability to continue in business; (f) the economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and (g) such other matters as justice may require.

In the present matter, the Division has reviewed the circumstances of the allegations and is prepared to resolve this matter upon Respondent's agreement to the terms in the attached

Consent Order and payment of a civil penalty in the amount of **$25,000**. This penalty is due to Respondent having 176 confirmed violations of G.L. c. 82, § 40B in the previous twelve months.

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

1. Consent Order and Payment: To resolve this matter without disputing the alleged violations, Respondent or a duly authorized representative must sign and return the enclosed Consent Order to the Division **within 30 days of the date of this NOPV**, along with a check or money order for **$25,000** made payable to the Commonwealth of Massachusetts. 220 CMR 99.09(2)(a). **Respondent should also inform the Division at (617) 305-3570 or DPU.DamagePrevention@mass.gov that the Consent Order and payment have been mailed.**

2. Response to NOPV: Because of the circumstances surrounding the COVID-19 outbreak in Massachusetts, the Division is encouraging all parties to provide a **substantive written response by email** to DPU.DamagePrevention@mass.gov **within 30 days of the date of this NOPV**. This reply must be signed by Respondent or a duly authorized representative, and it must include a complete statement of all relevant facts and any relevant documents. 220 CMR 99.09(2)(b). The statement may include an explanation of the reasons for disputing the allegations, a complete description of the markings provided, and any additional evidence such as photos, maps, work orders, emails, correspondence, or witness statements.

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

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

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

Very truly yours,

Richard Enright, Director
Pipeline Safety Division
Department of Public Utilities

Enclosure

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

CONSENT ORDER

In the matter of National Grid D.P.U. 19-DS-0847

I. JURISDICTION

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

II. DIG SAFE VIOLATIONS AND CIVIL PENALTY

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

1. Based on information referenced in the Notice of Probable Violation ("NOPV") issued by the Division and dated April 9, 2020, the Division finds that Respondent violated G.L. c. 82, § 40B of the Dig Safe Law, the Dig Safe Regulations, or 49 C.F.R. § 192.614 (if applicable) in connection with an excavation that occurred at [redacted], Concord, Massachusetts, on or about November 1, 2019. The NOPV is attached hereto and made a part hereof.
2. Pursuant to G.L. c. 82, § 40E and 220 CMR 99.14, the Division imposes upon Respondent a civil penalty of **$25,000**. A violation relating to a natural gas pipeline facility is subject to a civil penalty of not more than $200,000 each day, up to a maximum civil penalty of $2,000,000 for a related series of violations. 49 U.S.C. § 60122(a)(1); G.L. c. 164, § 105A; 220 CMR 99.14(1). A violation relating to any other underground facility is subject to a civil penalty of $1,000 for a first offense, and between $5,000 and $10,000 for any subsequent offense within twelve consecutive months. G.L. c. 82, § 40E; 220 CMR 99.14(2).

3. Respondent shall pay the civil penalty ordered herein by remittance to the Division of a check or money order in the amount of **$25,000** made payable to the Commonwealth of Massachusetts.

III. RESPONDENT REQUIREMENTS

1. Respondent shall sign the Stipulation below and return this complete document to the Division along with payment of the civil penalty.

2. All submissions by Respondent in accordance with this Consent Order shall be addressed to:

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

IV. STIPULATED TERMS

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

1. Respondent, by signing the Stipulation, hereby waives:

   (a) All rights to informal review pursuant to 220 CMR 99.10;

   (b) All rights to an adjudicatory hearing pursuant to 220 CMR 99.10(3);

   (c) Any and all procedural rights available in connection with the issuance of the Consent Order;

   (d) All rights to seek any type of administrative or judicial review of the Consent Order; and

   (e) Any and all rights to challenge or contest the validity of the Consent Order.

2. Respondent expressly acknowledges that neither Respondent nor the Division has any intention to enter into a contract.

3. The terms and provisions of this Consent Order and Stipulation shall be binding upon, and inure to the benefit of, Respondent and the Division and their successors in interest.

4. Nothing in these Stipulated Terms shall preclude any proceedings brought by the Department to enforce the terms of the Consent Order, and nothing in these Stipulated Terms constitute, nor shall Respondent contend that they constitute, a waiver of any right, power, or authority of any other representative of the Commonwealth or an agency thereof to bring other actions deemed appropriate.

V. FINAL ORDER

1. This Consent Order and Stipulation is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, having the force and effect of a remedial order, pursuant to 220 CMR 99.13(2), and expressly does not form, and may not be considered to form, a contract binding on the Division, the Department, or the Commonwealth of Massachusetts.

2. The terms of this Consent Order and Stipulation, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreement, or prior arrangements between the Division and the Respondent, whether oral or written.

By Order of the Division

_____ Date: _____

Richard Enright, Director
Pipeline Safety Division
Department of Public Utilities

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

National Grid

By: _____ Date: _____
Print name: _____
Title: _____