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October 29, 2015

Hon. Matt Carlin
Commissioner
Department of Public Safety
Boston Office
One Ashburton Place, Room 1301
Boston, MA 02108

Re: EO 562 Comments

Dear Commissioner Carlin:

This letter responds to the invitation that the Department of Public Safety (DPS) recently posted on its website soliciting comments and feedback pursuant to Executive Order 562. We wish to comment specifically upon the change made by the DPS to its Hoisting Machinery regulations in November 2013 with respect to the exemption applicable to certain public utilities, such as National Grid, which maintain DPS-approved in-service training and licensing programs. We also would like to supplement the comments that we provided regarding this regulatory change during the listening session conducted by the DPS on October 26, 2015, concerning 520 CMR 600, *et. seq.*

We would initially like to express our appreciation to Governor Charles Baker for offering this opportunity to submit comments to DPS on its current regulations concerning the public utility exemption pursuant to Executive Order 562. We would also want to thank you and the DPS for scheduling the October 26th listening session and for providing us with this additional opportunity to provide feedback on an issue that is very important to National Grid, its employees, and our customers.

As you are aware, Executive Order 562 requires all administrative agencies to review existing regulations to ensure that they are mandated by law and essential to the health, safety, environment, or welfare of the Commonwealth's residents. Agencies are expressly directed by Executive Order 562 to review their regulations and demonstrate how all regulatory requirements satisfy each of the seven criteria set forth in the Executive Order. The establishment of these criteria is extremely useful to ensure that the review of existing regulations meets certain benchmarks. We respectfully submit that when this analysis is performed with respect to the recent regulatory change

applicable to public utilities which maintain DPS-approved in-service training and licensing programs, it becomes evident that this regulatory change should not be retained and/or that it should be modified so as to permit qualified public utilities, such as National Grid, to continue to have the same exemption which DPS recognized prior to the issuance of its new regulations in November 2013.

We provide the following comments on and feedback with respect to the criteria set forth in Executive Order 562:

a) There Is No Need for Additional Governmental Intervention with Respect to Public Utilities That Maintain DPS-Approved In-Service Training and Licensing Programs.

When it passed the public utility exemption in 1991, the Massachusetts Legislature recognized that the normal certification and licensing process set forth in MGL c. 146, § 53 ("Section 53"), did not need to apply to all public utilities. The Massachusetts Legislature understood and appreciated that many public utilities in the Commonwealth had developed comprehensive training and safety programs for their employees which were designed to promote the health and safety of workers in the general public. The Massachusetts Legislature, therefore, created the public utility exemption set forth in the statute to acknowledge that additional state licensing of utility employees who completed approved in-service programs was neither required nor warranted.

The DPS recognized the full scope of this public utility exemption in implementing the regulations which it maintained right up through November 2013. The DPS regulations provided that to be eligible for the public utility exemption, utility companies needed to maintain an in-house service program which issued company licenses to employees who had been trained and qualified to operate hoisting equipment on the utilities' transmission and distribution systems. These utility in-service programs also had to be approved by the DPS and were subject to audit twice a year. The DPS regulations also only required that the utility have a state licensed supervisor "designated as the responsible person in charge of hoisting equipment." 520 CMR 6.05(10).

National Grid developed and has successfully implemented a DPS-approved in-service training and licensing program for over 20 years, all the while maintaining an excellent safety and operational record. To our knowledge, other utilities in the Commonwealth maintained similarly successful in-service training and licensing programs for many years. In addition, it is important to note that while Section 53 was amended in 2010, this amendment was not enacted or designed to address or correct any problem with the public utility exemption. Quite to the contrary, the amendment to the statute was intended to expand and extend the exemption to other non-utility companies in certain circumstances.

That the purpose and intent of the Section 53 amendment was to expand—and not to cut back on—the long-standing exemption for public utilities is also evidenced by the fact that the DPS continued to issue regulations recognizing the public utility exemption right up through the 2012 calendar year. Upon information and belief, the DPS also continued to inform eligible public utilities that their exemption would continue to apply to, and would cover, all public utility employees who had completed the requirements of the DPS-approved in-service training and licensing program. (A copy of 520 CMR 605(10), which was published during 2012, is attached at Tab A).

Moreover, that the purpose of the revised regulations issued by DPS in 2013 should have been to expand, rather than to restrict, the public utility exemption is likewise evidenced by the Notice of Public Hearing that it issued at that time. In that notice, the DPS confirmed that it intended to “expand the current exemption from the licensing and permitting requirements for public utility companies.” (A copy of the DPS’s July 8, 2013 Notice of Public Hearing is attached at Tab B). It is also important to note that while non-utility companies can potentially qualify for an exemption under the amendment, they must operate their equipment on their own property to qualify for the exemption. This was never a requirement for utilities to qualify for the public utility exemption, and this certainly is not how public utilities operate. When it passed the public utility exemption in 1991, the Massachusetts Legislature understood and appreciated that public utilities do not use hoisting equipment to work on poles located on their own property; instead, they must dispatch small groups of employees, or crews, to work on poles and other facilities located throughout their designated service territories. The Massachusetts Legislature also understood that public utility supervisors do not typically go out into the field with the hundreds of crews who are required to work on constructing and maintaining the utilities’ transmission and distribution lines. This is why the Massachusetts Legislature has not limited public utilities to having to work on their own property to qualify for the exemption.

In addition, the Massachusetts Legislature recognized under the public utility exemption the efficiency and value that approved in-service programs can provide to public utilities, utility workers, the DPS, and the general public. In-service programs provide an effective way to train, assess, and license large volumes of utility workers on the safe operation of the particular hoisting equipment they actually use to perform utility duties. As is noted above, thousands of utility workers are needed to construct and repair the tens of thousands of miles of distribution and transmission lines which service residences and businesses throughout the Commonwealth. In enacting the public utility exemption, the Massachusetts Legislature was aware that public utilities are in the best position to identify the specific types of hoisting equipment needed to maintain these transmission and distribution networks. Public utilities similarly are in the best position to develop training and licensing programs designed to ensure that utility workers are fully competent and qualified to operate that equipment.

National Grid developed and invested in its DPS-approved in-service program in reliance on this recognized exemption. While the Massachusetts Legislature authorized the DPS to review, approve, and audit public utility in-service programs, it recognized through the public utility exemption that there is no need for utility workers to go through

additional DPS testing and licensing. It is important to note that a company-issued license only permits a utility worker to operate the equipment on which the worker has been trained on the utility's transmission and distribution equipment. As was discussed at the listening session, requiring additional training for employees to be prepared to pass the Massachusetts licensing exam involves training on equipment the employee will never be called on to operate, a totally inefficient use of the time spent on training our employees. It is also important to note that eliminating redundant and unnecessary testing and licensing by DPS will allow the agency to operate more efficiently as well. DPS will be able to continue to direct its limited time and resources to the hundreds of non-utility businesses and applicants which remain in need of DPS testing and licensing.

Finally, National Grid respectfully submits that it has operated in compliance with the understood requirements of the public utility exemption for more than 20 years without any incident or citation from the DPS, and without detriment to the health or safety of its workers or members of the general public. (A copy of DPS's most recent approval of National Grid's in-service training and licensing program is attached at Tab C). With this history in mind, National Grid submits that there is no clearly identified need for additional governmental intervention with respect to public utilities like National Grid under these circumstances.

b) The DPS's Current Interpretation of its Regulations Applicable to the Public Utility Exemption Would Result in Substantial Unnecessary Expense Without Any Additional Benefit.

National Grid has estimated that the DPS's current interpretation of its regulations will result in an additional expense to National Grid that will initially exceed 2 million dollars. The Company will also incur an additional ongoing annual expense of close to \$500,000 because of DPS's current interpretation. (Attached at Tab D is a worksheet demonstrating this additional expense). This is because National Grid would be required to take individuals away from serving the public so that they could go through an additional certification process. It is hard to justify this additional expense, as there is no identified need for additional government regulation and the benefits associated with state licensing are unnecessary in the public utility industry.

c) The DPS's Interpretation of its Regulations Applicable to the Public Utility Exemption Exceeds Federal Requirements.

The Federal Occupational Safety and Health Administration ("OSHA") has developed and issued regulations applicable to the operators of cranes and other hoisting equipment. Before issuing these regulations, OSHA accepted comments pursuant to its rule-making process from many interested parties regarding the need for and scope of the certification requirements appropriate for different industries and with respect to different types of construction equipment. OSHA also engaged in independent fact-finding by accepting testimony from safety experts, labor and management representatives, and the general public. After considering all of the information gathered during this process, OSHA determined that there was no need for the

certification and licensing of employees in the telecommunications and electric utility industries who operate the equipment typically used to work on electric and telecommunication lines and equipment. See *OSHA's Final Rule, Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks*, 77 FR 67270 (Nov. 9, 2012) (attached at Tab E).

As did the Massachusetts Legislature when it passed the public utility exemption in 1991, OSHA recognized that the electric and telecommunication industries have extensive training and certification programs in place that adequately protect the health and safety of their employees as well as the general public. The OSHA regulations, therefore, contain a "digger derrick" exemption for the electric and telecommunications industries. This exemption applies to utility employees who use digger derricks when "augering holes for poles carrying electric or telecommunication lines, placing and removing poles, and for handling associated materials for installation on, or removal from, the poles, or when used for any other work subject to subpart V of this part." 29 C.F.R. § 1926.1400(c)(4).

This is the same type of work which historically has been covered by the public utility exemption in Massachusetts. National Grid respectfully submits that the DPS's interpretation of its November 2013 regulations exceeds the applicable federal requirements and should be rescinded or revised for this reason as well.

d) The DPS Has Not Yet Considered Less Restrictive or Intrusive Alternatives.

National Grid is also unaware of any DPS analysis or investigation of less restrictive or less intrusive alternatives to its interpretation of the November 2013 regulations. We are unaware, for instance, whether the DPS ever considered that it could have issued regulations that are continuing to recognize the exemption for public utilities which had been in place through 2012 when it sought to expand this exemption.

Furthermore, National Grid respectfully submits that if the DPS determined that additional regulations needed to be developed for the new companies that could potentially qualify for the exemption after the 2010 amendment, then it could have developed regulations applicable specifically to those companies. In this regard, the DPS could have conducted an evaluation of the typical operations of the non-utility companies seeking to qualify for this exemption to determine how the term "on site" should be applied to different industries based upon their normal operations.

As noted above, public utilities must maintain transmission and distribution lines that, unlike other businesses, are not located on company property or in some other single location. Given the realities of how public utilities must operate, the requirement of employing a state licensed supervisor for each utility crew would be totally unworkable and effectively eliminate the public utility exemption.

e) The DPS's Current Interpretation of its Regulations Applicable to the Public Utility Exemption Would Increase Costs and Adversely Affect Massachusetts Citizens and Rate Payers.

As is noted above, DPS's interpretation of its regulations will increase substantially the costs incurred by public utilities attempting to qualify for the public utility exemption. This significant cost would be incurred without any corresponding benefit to the health and safety of public utility workers or the general public. These additional costs would eventually be passed on to, and incurred by, rate payers as part of their regular utility charges, which would be detrimental to the Commonwealth's citizens.

Also, as was pointed out at the listening session, and acknowledged by multiple speakers, the opportunity to use non-Massachusetts based company employees to assist in storm restoration, specifically those not covered by declared State of Emergencies, is critical to the expedited restoration of service. At this point, we are not aware of any acknowledgement by DPS that there is a process to provide relief from the regulation's strict requirements for licensing.

f) The DPS Has Not Established a Process for Measuring the Effectiveness of its Regulation.

National Grid is unaware of any process or schedule developed by the DPS for measuring the effectiveness of its current interpretation of the public utility exemption.

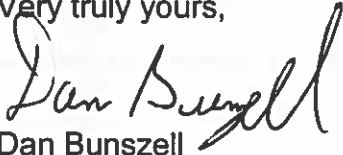
g) The DPS Has Not Set a Time Limit nor Provided a Process for Regular Review of its Regulation.

National Grid is also unaware of any time limit set by the DPS on its current interpretation of its regulations applicable to the public utility exemption. National Grid is also unaware of any process developed by the DPS for regularly reviewing its regulation.

For the foregoing reasons and others, National Grid respectfully submits that the DPS's current interpretation of its regulations applicable to the public utility exemption is not mandated by law or essential to the health, safety, environment, or welfare of the Commonwealth's residents. The Company similarly submits that the DPS's current position does not satisfy the criteria set forth in Executive Order No. 562, and is inconsistent with the Executive Order's goal and objective of eliminating such unnecessary and costly governmental regulation. The Company therefore requests that the DPS revise and/or modify the existing regulations upon conclusion of its review of 520 CMR 600, *et seq.*, so as to recognize the full scope of the public utility exemption as the DPS had done prior to November 2013.

We again thank you for this opportunity to comment on this important issue. Should you have any questions or need any additional information from National Grid, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink that reads "Dan Bunszell". The signature is written in a cursive style with a large, looping initial "D".

Dan Bunszell
Vice President
NE Electric Operations

