



November 16, 2022

Kerri DeYoung Phillips, Hearing Officer
Mark D. Marini, Secretary
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Via Email to dpu.efiling@mass.gov and kerri.phillips@mass.gov

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Re: Docket 22-43; Comment on Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, for recovery of incremental operations and maintenance expenses associated with fourteen (14) qualifying storm events that occurred between February 2020 through December 2020.

Dear Hearing Officer Phillips, Secretary Marini, and Service List:

Conservation Law Foundation (“CLF”) respectfully submits this comment urging the Department of Public Utilities (“DPU”) to deny National Grid’s request for recovery and require that they include verifiable utility resilience measures to be eligible for future O&M expense recovery. This will increase reliability for customers, improve worker and infrastructure safety, and reduce the fiscal weight of future recovery measures on ratepayers.

Climate change poses a severe and increasing threat to the health and safety of Massachusetts residents and to our economy. The Commonwealth is already experiencing warmer temperatures, increased storm intensity, rising sea levels, and more extreme precipitation events, all of which are projected to get worse over the next century.¹ In recognition of the growing threat that climate change poses, the state has adopted numerous laws and policies regarding climate change and climate adaptation efforts. This includes Governor Baker’s 2016 Executive Order 569 (E.O. 569), which requires that all state agencies assess vulnerability, adaptive capacity, and resiliency of infrastructure and other assets. The 2021 climate omnibus bill and 2020 Roadmap bill further demonstrate the legislature’s intent to prioritize energy resilience and decarbonization, with HB 5060 (2021) calling for recommendations on how energy storage systems should “contribute to the decarbonization and operational resilience of

¹ EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS AND EMERGENCY MANAGEMENT AGENCY, *Massachusetts State Hazard Mitigation and Climate Adaptation Plan* (Sept. 2018), <https://www.mass.gov/files/documents/2018/10/26/SHMCAPSeptember2018-Full-Plan-web.pdf>.

critical emergency infrastructure” to “enhance the reliable delivery of electricity . . . and minimize ratepayer costs.”²

Given the charge of the DPU to regulate utilities to ensure safe, reliable service, alongside the threat that climate change poses to the safe, reliable operation of utilities, the DPU must require National Grid to include verifiable utility resilience measures in its recovery plan and account for known impacts of climate change over the coming decades. By failing to initiate rulemaking on climate adaptation and not requiring utilities to assess climate risks in their operations and maintenance (“O&M”) costs, the DPU has allowed a lapse in regulatory responsibility to compound into systemic failure, affecting the livelihoods, health, and security of the people of Massachusetts.

The DPU Can and Must Require Utilities to Incorporate Climate Adaptation in Their O&M Costs.

The DPU has the legal authority to require utilities to assess vulnerabilities and adapt to climate change. As the primary regulator of the state’s investor-owned electric and gas utilities, the DPU is charged with ensuring that safe and reliable service is provided. Specifically, the DPU has general supervision authority regarding public safety:

The department shall have the general supervision of all gas and electric companies and shall make all necessary examination and inquires and keep itself informed as to the condition of the respective properties owned by such corporations and the manner in which they are conducted with reference to the safety and convenience of the public, and as to their compliance with the provisions of law and the orders, directions, and requirements of the department . . .³

The DPU has acknowledged that “[t]here is a fundamental evolution taking place in the way electricity is produced and consumed in Massachusetts . . . driven, in large part, by a number of legislative and administration policy initiatives designed to address climate change and foster a clean energy economy” and that “this evolution is changing the operating environment for electric distribution companies in Massachusetts.”⁴ As part of this evolution, and consistent with its general supervisory authority, the DPU has the ability and obligation to require utility companies to address the anticipated effects of climate change as part of their budgeted O&M costs.

Under current climate models, “more frequent, severe, and longer-lasting extreme heat events are expected to make blackouts and power disruptions more common, increase the potential for electricity infrastructure to malfunction, and result in increased risks to public health

² H.B. 5060 192nd section 80(b) and (c).

³ G.L. c. 164, § 76

⁴ D.P.U. 17-05, Order Establishing Eversource’s Revenue Requirement at 374 (Nov. 30, 2017).

and safety.”⁵ Without a thorough vulnerability assessment of gas and electric infrastructure and the implementation of adaptation measures such as weatherization, elevation, undergrounding, relocation, and vegetation management, these disruptions will be more extreme and long-lasting.

Utility disruptions impact the public deeply, driving discomfort, illness, medical complications, generally hazardous conditions, and avoidable death. Loss of electricity can lead to food spoilage, water contamination, and an inability to use essential medical devices.⁶ Extreme temperatures cause severe discomfort, especially in children, the elderly, and immunocompromised individuals.⁷ These complications can lead individuals to pursue hazardous solutions, including heating their homes with gas stoves, using a generator in unsafe locations, and consuming spoiled or contaminated food and drink unknowingly.⁸

The DPU’s duty to serve and ensure safe, reliable service mandates that it require utility companies to minimize and prevent these disruptions wherever possible. This requires building a commitment to climate adaptation measures in O&M recovery costs.

Incorporating Climate Risk into O&M Costs is Financially and Socially Wise

Several studies show that incorporating climate adaptation measures now will save millions, if not billions, of dollars in damage costs by the end of the century.⁹ It is therefore fiscally prudent to incorporate adaptation and resilience measures into O&M costs now. By planning for climate impacts now, utilities will suffer fewer outages, be better equipped to deal with natural disasters, and provide more reliable, cost-efficient service to their customers.

Outages also have a disparately large impact on the elderly, children, linguistic minorities, and low-income households.¹⁰ These impacts are felt due to the physical vulnerability of the very old and very young, the language barrier preventing linguistic minorities from seeking or receiving sufficient help and support, and the inability of low-income individuals to finance household resilience or alternative relief measures. Immunocompromised and disabled individuals likewise suffer greatly during outages. Hospitals and other healthcare providers are dependent upon electric power and, in the event of prolonged outages, healthcare services may be delayed, reprioritized, or even canceled.¹¹ These complications cause substantial harm to

⁵ U.S. Dep’t Energy *et al.*, *Impacts, Risks, and Adaptation in the United States*, 2 Fourth Nat’l Climate Assessment c.4 at 181.

⁶ Ready.gov, POWER OUTAGES (2022), <https://www.ready.gov/power-outages> (last visited Nov. 1, 2022).

⁷ Stephanie E. Chang, *Socioeconomic Impacts of Infrastructure Disruptions*, OXFORD UNIVERSITY PRESS, Oct. 26, 2016, at 15, available at Oxford Research Encyclopedia of Natural Hazard Science, <https://doi.org/10.1093/acrefore/9780199389407.013.66>.

⁸ *Id.* at 8, 9.

⁹ Environmental Defense Fund and the Sabin Center for Climate Change Law, *Climate Risk in the Electricity Sector: Legal Obligations to Advance Climate Resilience Planning by Electric Utilities*, ENVTL. L. REV., 577, 617, 618 (2021).

¹⁰ Chang, *supra* note 7 and accompanying text.

¹¹ *Id.* at 9

those most vulnerable to health complications, and reduce the capacity for healthcare workers to sufficiently handle emergency situations.

Energy distribution companies are already required to engage in a limited amount of emergency planning, including, for example, annual meetings with local officials to ensure effective flow of information about the coordination of vegetation management, and develop an emergency response plan that includes preparation for emergency events.¹² While such planning and preparation is important, it is near-term and reactive. It does not replace the need for forward-looking, longer-term planning for climate change impacts including an analysis of likely frequency and intensity of emergency events and their effect on utility infrastructure.

O&M Costs that Fail to Consider and Prepare for Climate Risks are Excessive, Unwarranted, and in Bad Faith

Massachusetts law requires that operations must be prudent, cost-effective, and reasonable in order to recover operational costs.¹³ “It is well-settled that while public utilities should be permitted to charge rates which are compensatory of the full cost incurred by efficient management, they may not recover costs which are excessive, unwarranted, or incurred in bad faith.”¹⁴ As major natural disasters and their associated recovery costs become more frequent, it is unreasonable for utilities not to implement quantifiable utility resilience measures accounting for the known impacts of climate change. Should National Grid fail to implement these adaptation measures, the DPU should withhold further recovery costs pursuant to G.L. ch. 164 § 94G.

By failing to require utilities to plan for the impacts of climate change, the DPU risks abdicating its requirement to ensure safe, reliable, and affordable energy in the commonwealth. Utilities continuing to operate and invest in infrastructure without consideration of climate change unreasonably burdens ratepayers by pushing the costs of failing to prepare onto them. By allowing utilities to recover the costs of restoring service and repairing equipment after storms year after year, the DPU’s continuation of the status quo will likely cost ratepayers more than the cost to prepare the system better for anticipated storm severity.

Given the clear impact of climate change on the frequency and intensity of emergency events, utility company O&M costs must include consideration of and planning for climate change. To ignore adaptation measures in O&M costs is unreasonable, imprudent, and financially unsound. Continuing to reward utility companies full recovery of these costs without requiring any proactive change is a violation of a utility’s responsibility to its customers, which the DPU exists to protect. We therefore respectfully urge the DPU to deny National Grid’s

¹² 220 CMR 19.03(2). “Emergency Preparation. Each Company shall ensure that it is adequately and sufficiently prepared to restore service to its customers in a safe and reasonably prompt manner during an Emergency Event. . . . (b) For gas companies, this shall include at a minimum preparing and following written procedures . . .”

¹³ Mass. Gen. Laws ch. 164 § 94G (a), (b).

¹⁴ *Boston Gas Co. v. Department of Pub. Utils.*, 387 Mass. 531, 539 (1982).



request for storm cost recovery and require National Grid and its subsidiaries to conduct a vulnerability assessment and implement verifiable utility resilience measures accounting for the known impacts of climate change.

Please contact me (617-850-1761; jepke@clf.org) if you have any questions.

Sincerely,

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Conservation Law Foundation