

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-34

March 18, 2019

Inquiry by the Department of Public Utilities, on its own motion, into the use of professional engineers by natural gas companies pursuant to G.L. c. 164, § 148, as added by St. 2018, c. 339, § 2.

Received

VOTE AND ORDER OPENING INQUIRY

MAR 25 2019

Engineering Board

I. INTRODUCTION

On December 31, 2018, Governor Baker signed as an emergency law Chapter 339 of the Acts of 2018, An Act Further Providing for the Safety of the Commonwealth's Natural Gas Infrastructure ("Act"). Section 2 of the Act amends G.L. c. 164 by adding Section 148, which provides:

Any engineering plans or specifications for engineering work or services that could pose a material risk to public safety, as determined by the [Department of Public Utilities ("Department")] pursuant to clause (l) of section 81R of chapter 112, developed by or on behalf of a gas company shall bear the stamp of a professional engineer certified under section 81E of said chapter 112; provided, however, that any such plan or specification shall be housed within the applicable gas company, subject to review and audit by the department, and shall be deemed to be filed with a public authority within the meaning of section 81M of said chapter 112.

Section 2 of the Act further states that the Department may promulgate regulations as necessary to implement G.L. c. 164, § 148 ("Section 148") and applicable provisions of subsection (l) of section 81R of said chapter 112.¹ To facilitate the promulgation of those

¹ As amended by the Act, G.L. c. 112, § 81R; subsection (l) provides in pertinent part that nothing in G.L. c. 112, §§ 81D to 81T, regarding the certification of professional engineers by the Board of Registration of Professional Engineers and of Land Surveyors, shall be construed to prevent or to affect the following:

the performance of engineering work and services by a person, firm or corporation subject to the jurisdiction of the [Department] ... which work and services are performed as part of their employment and for the benefit of such person, firm, or corporation; *provided, however, that this subsection shall not apply to engineering work or services that could pose a material risk to public safety, as determined by the [Department], performed by or on behalf of a gas company, as defined in section 1 of chapter 164, that distributes and sells gas within the commonwealth* (added language in italics).

regulations, the Department commences this proceeding to explore issues related to the use of professional engineers in relation to natural gas engineering plans, work, or services that could pose a material risk to public safety.

II. SOLICITATION OF COMMENTS

The Department seeks initial written comments on the issues that the professional engineer regulations should address, including the following:

- Scope of the work or services that could pose a material risk to public safety;
- Scope of documents that should bear a professional engineer's stamp;
- Role of the professional engineer with regard to this work or services;
- Compatibility with the federal minimum safety standards (49 C.F.R. Part 192);
- Application of the regulations to work or services started prior to the regulations' effective date;
- Availability of professional engineers to perform the work that the regulations would require them to complete and how their availability could affect the completion of necessary work;
- How the regulations should apply to emergency work;
- Limitations on the potential liability that professional engineers could face for the work that the regulations would require them to complete;
- Use of a professional engineer's stamp on generic or standard plans;
- Incorporation of the regulations into operations and maintenance procedures (49 C.F.R. § 192.605);
- Development of guidelines for operational activities (49 C.F.R. Part 192); and
- How the regulations could work or conflict with other regulations.

These comments are due no later than 5:00 p.m. on **Thursday, April 18, 2019**. The Department seeks reply written comments no later than 5:00 p.m. on **Thursday, May 2, 2019**. Written comments shall be limited in length to a maximum of ten one-sided, double-spaced typewritten pages. Based on the comments received, the Department will establish a further procedural schedule that may provide for technical sessions. The Department anticipates that this proceeding will result in a rulemaking conducted pursuant to G.L. c. 30A, § 2, and 220 CMR 2.00, to establish regulations for the use of professional engineers by natural gas companies.

Any person who desires to file written comments shall file an original and one copy of such written comments with Mark D. Marini, Secretary, Department of Public Utilities, One South Station, Fifth Floor, Boston, Massachusetts, 02110. All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dpu.efiling@mass.gov and the hearing officer, laurie.e.weisman@mass.gov; or (2) on a CD-ROM or USB drive. The text of the e-mail, CD-ROM, or USB drive must specify: (1) the docket number of the proceeding (D.P.U. 19-34); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. Documents filed with the Department will be available for public inspection at its offices during business hours and through our website by looking up the docket by its number in the docket database at <https://eeaonline.eea.state.ma.us/DPU/Fileroom> (enter "19-34"). To

request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), contact the Department's ADA coordinator at DPUADACoordinator@state.ma.us or (617) 305-3642.

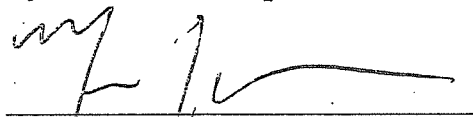
III. ORDER

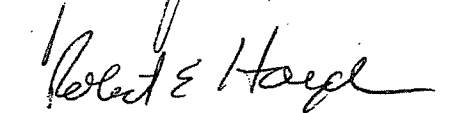
Accordingly, the Department

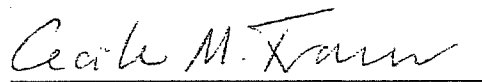
VOTES: To open an inquiry into the use of professional engineers by natural gas companies pursuant to G.L. c. 164, § 148; and it is

ORDERED: That the Secretary of the Department shall serve a copy of this Order on persons listed on the distribution list attached hereto.

By Order of the Department,


Matthew H. Nelson, Chair


Robert E. Hayden, Commissioner


Cecile M. Fraser, Commissioner

A true copy
Attest:


Mark D. Marini,
Secretary

DISTRIBUTION LIST

Abbie Goodman
American Council of Eng. Cos./MA
One Walnut St
Boston, MA 02108
agoodman@engineers.org

Board of Registration of Professional
Engineers
Division of Professional Licensure
1000 Washington Street, Suite 710
Boston, MA 02118
engineerboard@mass.gov

José Costa, Vice President
Operations Services
Northeast Gas Association
75 Second Avenue, Suite 510 Needham
Heights, MA 02494-2859
jcosta@northeastgas.org

Joseph Rogers, Esq.
Office of Ratepayer Advocacy Attorney
General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108
joseph.rogers@mass.gov

Rachael Graham Evans, Esq.
Department of Energy Resources
Commonwealth of Massachusetts
100 Cambridge Street, Suite 1020
Boston, MA 02114
rachel.evans@state.ma.us

Robert Rio, Esq.
Associated Industries of Mass.
One Beacon Street, 16th Floor
Boston, MA 02108
rrio@aimnet.org

David Ismay, Esq.
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
dismay@clf.org

Carol J. Holahan, Esq.
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600
cholahan@foleyhoag.com

Charles Harak, Esq.
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
charak@nclc.org

Jerrold Oppenheim, Esq.
57 Middle Street
Gloucester, MA 01930
jerroldopp@democracyandregulation.com

Nicole Horberg Decter, Esq.
Segal, Roitman, LLP
33 Harrison Avenue, 7th Floor
Boston, MA 02111
ndecter@segalroitman.com

Alfred Gordon O'Connell, Esq.
Pyle Rome Ehrenberg PC
2 Liberty Square, 10th Floor
Boston, MA 02109
agordon@pylerome.com

Christina Fisher, Esq.
Bloom Energy
1299 Orleans Drive
Sunnyvale, CA 94089
Christina.fisher@bloomenergy.com

Robyn Frank, Esq.
BBPC, LLC d/b/a Great Eastern
Energy
1515 Sheepshead Bay Road
Brooklyn, NY 11235
robynf@greateasternenergy.com

Laura S. Olton, Esq.
LSO Energy Advisors, LLC
38 Thackeray Road
Wellesley, MA 02481
laura@lsoenergyadvisors.com

Sean Burke
PowerOptions, Inc.
129 South Street, 5th Floor
Boston, MA 02111
SBurke@PowerOptions.org

Geoffrey Beckwith, Exec. Dir.
Mass. Municipal Association
One Winthrop Square
Boston, MA 02110
gbeckwith@mma.org

Karen Zink, President
The Berkshire Gas Company
115 Cheshire Road
Pittsfield, MA 01201
kzink@berkshiregas.com

Brian Roy, Acting Gas Superintendent
Holyoke Gas & Electric Dept.
99 Suffolk Street
Holyoke, MA 01040
broy@hged.com

Richard Labossiere, Gas Division Manager
Middleborough Gas & Electric Dept.
2 Vine Street
Middleborough, MA 02346
rlabossiere@mged.com

Mark Smith, President
Liberty Utilities
P.O. Box 911
Fall River, MA 02722-0911
Mark.smith@libertyutilities.com

Gregory Hill, Vice President
Eversource Energy
157 Cordaville Road
Southborough, MA 01772
Gregory.hill@eversource.com

Patrick M. Levesque, Utility Supervisor
Westfield Gas & Electric Department
100 Elm Street
P.O. Box 990
Westfield, MA 01086-0990
plevesque@wgeld.org

Ross Turrini, US Chief Gas Engineering
National Grid
25 Hub Drive
Melville, NY 11747
ross.turrini@nationalgrid.com

Peter Dion, General Manager
Wakefield Mun.
480 North Avenue
Wakefield, MA 01880
pdion@wmgld.com

James Wojcik
President
Blackstone Gas
61 Main Street, Box 162
Blackstone, MA 01504
jameswojcikbgc@comcast.net

Stephen H. Bryant, President
Columbia Gas of Massachusetts
4 Technology Drive, Suite 250
Westborough, MA 01581
sbryant@nisource.com

Christopher LeBlanc, Vice President
Unitil
325 West Road
Portsmouth, NH 03801
leblanc@unitil.com

Brian Quinn, Director
Engineering & Generation Assets
MMWEC
327 Moody Street
Ludlow, MA 01056
bquinn@mmwec.org

Roy Simoes, Engineering Supervisor
Peabody Municipal Light Plant
201 Warren Street
Peabody, MA 01960
Rsimoes@pmlp.com

Mike Murray, Esq.
American Gas Association
400 North Capitol Street, NW
Suite 450
Washington, DC 20001
mmurray@aga.org

Robert Clarillos, Admin. Manager
National Association of Pipeline
Safety Representatives
rclarillos@gmail.com