



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-34-A

October 11, 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.

INTERLOCUTORY ORDER AND STRAW PROPOSAL ON PROFESSIONAL ENGINEER REGULATIONS

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 for professional engineers certified under G.L. c. 112, § 81E to stamp any gas company's engineering plans or specifications for engineering work or services that could pose a material risk to public safety, as determined by the Department. 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 G.L. c. 112, § 81R subsection (l).¹

On March 18, 2019, to facilitate the promulgation of those regulations, the Department commenced 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

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* (new language in italics).

material risk to public safety. In the Order opening the inquiry, The Department solicited comments on the issues that the professional engineer regulations should address. The Department accepted initial written comments through April 18, 2019,² and reply comments through May 2, 2019.³

Based on the comments received, the Department has developed the Straw Proposal attached to this Order (“Straw Proposal”). The Straw Proposal represents the Department’s analysis of the comments received and establishes specific criteria for the use of professional engineers in relation to natural gas engineering plans, work, or services that could pose a material risk to public safety. In particular, the Straw Proposal delineates how natural gas companies are to use professional engineers on complex projects and defines the types of complex projects that warrant the use of professional engineers. The Department may initiate

² The following entities filed initial comments: the Office of the Attorney General of Massachusetts; Massachusetts Board of Registration of Professional Engineers and Land Surveyors; Bay State Gas Company d/b/a Columbia Gas of Massachusetts; NSTAR Gas Company d/b/a Eversource Energy; Boston Gas Company and Colonial Gas Company each d/b/a National Grid; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Fitchburg Gas & Electric Light Company d/b/a Until; The Berkshire Gas Company; New England Gas Workers Alliance; Massachusetts Society of Professional Engineers, Inc.; American Council of Engineering Companies of Massachusetts; and National Association of Pipeline Safety Representatives.

³ The following entities filed reply comments: Bay State Gas Company d/b/a Columbia Gas of Massachusetts; NSTAR Gas Company d/b/a Eversource Energy; Boston Gas Company and Colonial Gas Company each d/b/a National Grid; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Fitchburg Gas & Electric Light Company d/b/a Unutil; and Northeast Gas Association.

a formal rulemaking proceeding after we review the comments submitted pursuant to this Order.

II. SOLICITATION OF COMMENTS

The Straw Proposal is attached to this Order and may be inspected at the Department's offices, One South Station, Boston, Massachusetts or on the Department's website by looking up the docket in the docket database at <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber> (enter "19-34"). The Department seeks initial written comments on the Straw Proposal no later than **5:00 p.m. on Monday, November 4, 2019**. The Department seeks reply written comments no later than **5:00 p.m. on Monday, November 11, 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 as noted above. 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

ORDERS: That the Secretary of the Department shall serve a copy of this Order on all persons that have asked to be placed on the Department's general distribution list pursuant to 220 CMR 2.09 and the D.P.U. 19-34 distribution list.

By Order of the Department,

/s/

Matthew H. Nelson, Chair

/s/

Robert E. Hayden, Commissioner

/s/

Cecile M. Fraser, Commissioner