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December 3, 2018

His Excellency Charlie Baker
Governor of the Commonwealth of Massachusetts
State House, Room 280
Boston, MA 02133

RE: H.4979, *An Act to Ensure the Safety and Soundness of the Commonwealth's Natural Gas Infrastructure*

Dear Governor Baker:

On behalf of the board of the American Council of Engineering Companies of Massachusetts (ACEC/MA), I am submitting some comments and issues related to H.4979, *An Act to Ensure the Safety and Soundness of the Commonwealth's Natural Gas Infrastructure*.

ACEC/MA is the business association of engineering and land surveying firms in Massachusetts. Our firms design the public and private infrastructure that contributes to the economic vitality and quality of life here in the Commonwealth. We have 120-member firms employing about 7,000 people in the Commonwealth, including engineers, land surveyors, and other professionals focused on public and private infrastructure

The Merrimack Valley gas disaster was a wake-up call to the Commonwealth's leaders and the public about the importance of maintaining the safety of our natural gas and electric infrastructure and the importance of designing and constructing this infrastructure under the direct supervision of professional engineers. We applaud the Baker-Polito Administration for their leadership and diligence in addressing the many challenges facing the Merrimack Valley's residents and businesses. We also applaud the Administration for responding so quickly to the recommendations in the National Transportation Safety Board Report on the disaster. But as state leaders consider legislation to prevent future issues, it is important to consider several issues. We present the issues outlined in this letter in the spirit of partnership and with a focus on improving the safety of the Commonwealth's gas and electric utilities. We welcome the opportunity to discuss them with you.

In this letter, we are:

- 1) providing our comments regarding the proposed legislation;
- 2) raising some issues that will need to be discussed and addressed by the Board of Registration of Professional Engineers and Land Surveyors; and,
- 3) suggesting some modifications to the proposed legislation.

We also respectfully ask that you attach H. 4420, *An Act Relative to Public Safety in Excavation* to this legislation, as its passage would also improve the safety of underground construction projects. This is a non-controversial bill and one that would provide much needed modernization of the Dig Safe law in the Commonwealth.

I. ACEC/MA comments on H.4979, An Act to Ensure the Safety and Soundness of the Commonwealth's Natural Gas Infrastructure are below:

M.G.L. c. 112, § 81(R)(l) & c. 164, § 146:

- We appreciate the risks to public safety posed by natural gas infrastructure engineering and construction work. Electric infrastructure engineering and construction work poses the same or similar risks. Rather than amending the statutes a further time later on, we propose including electric utilities with gas utilities in the proposed amendments.
- “Material Risk” is an ambiguous term that we believe is undefinable leading to our concerns regarding the uncertainty of how the term will be applied. Rather than apply a “material risk” standard we propose that the proposed language apply to any engineering instruments of service issued for construction on behalf of a utility company so that engineering firms do not have to guess what instruments of service have to be stamped.

M.G.L. c. 164, § 146:

- The proposed § 146 uses the term “plans and specifications” when referring to engineering documents. Engineering documents, however, include other engineering work product such as assessments, evaluations and studies. We, therefore, suggest replacing “plans and specifications” with “Instruments of Service” which is a term that encompasses all engineering work product, is a term commonly understood throughout the industry, and is a defined term in 250 CMR 2.09, i.e.

Instruments of Service is any document or medium memorializing the professional service or creative work of engineering and land surveying involving the special education, training, and experience of the nature required for registration as a Professional Engineer or Professional Land Survey.

Instruments of Service is also used repeatedly in the “Professional Seal” Regulation. *See* 250 CMR 5.03.

- The proposed § 146 includes the qualifier “for engineering work or services”. Engineering Instruments of Services are issued for multiple purposes including for construction and for engineering assessments, evaluations and studies. As noted above, the inclusion of Instruments of Services should obviate the need for the “for engineering work or services” qualifier which might not encompass all purposes for which Instruments of Service are issued.
- This section should not be applied retroactively. This will force an engineer who was not in responsible control of the creation of the engineering instruments of service to stamp them in violation of 250 CMR. This presents potential issues with professional liability insurance and compliance with professional regulations. Moreover, utility engineering departments will need time to reorganize so they are in compliance with this new law going forward. Please find a further discussion regarding this issue below.

- The stamp of a professional engineer indicates that the professional engineer personally prepared the engineering instrument of service or that it was prepared under that engineer’s direct charge and supervision. *See* 250 CMR 5.03. We, therefore, believe “stamp” standing alone speaks for itself and “of approval” after “stamp” is unnecessary.
- The professional engineer in responsible charge should be the one who stamps the engineering plans and specifications as required by 250 CMR.

II. This bill raises several issues that would need action and consideration by the Board of Registration of Professional Engineers and Professional Land Surveyors:

- The proposed legislative requirement that a licensee be in responsible charge of utility engineering work that was previously exempted from the licensure requirement, places existing unlicensed utility designers in a position where they may lose their jobs unless they can perform the engineering work under the direct charge and supervision of a licensed engineer.
 - With the foregoing in mind, a utility engineering department would need to hire at least one Professional Engineer to run the department and be in responsible control of all Instruments of Service developed by that engineering department or would need to contract with external consulting engineering firms that would perform some of this work.

Under current regulations (250 CMR) applicants for licensure are required to:

1. Have an engineering degree or be a 20-year candidate.
2. Have gained the required experience under the direct charge and supervision of a licensed engineer. *There may not be licensed engineers in supervisor positions overseeing the current design work within a Utility’s Engineering Department, therefore at least one would need to be hired to be in direct charge.*
3. Provide a minimum of 3 professional references from other licensed engineers. *In places where licensure is not required finding 3 licensees to serve as references for new applicants may be difficult or impossible.*

III. ACEC/MA Proposed language for the bill is shown below:

Chapter 112, Section 81(R)(l):

(l) the performance of engineering work and services by a person, firm or corporation subject to the jurisdiction of the department of telecommunications and energy 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 performed by or on behalf of a gas or electric utility company, as defined by section 1 of chapter 164, that distributes and sells gas or electricity within the commonwealth;**

Chapter 164, Section 146:

Any engineering Instruments of Service developed after _____, 2019, by or on behalf of a gas or electric company shall bear the stamp of a professional engineer in responsible charge who is certified under section 81E of said chapter 112; provided, however, that any such Instrument of Service shall be housed within the applicable gas or

electric company subject to review and audit by the department of public utilities and shall be deemed to be filed with a public authority within the meaning of section 83M of said chapter 112. The department of public utilities may promulgate regulations as necessary to implement this section and applicable provisions of subsection (l) of section 81R of said chapter 112.

Regarding the last sentence proposed for Chapter 164, Section 146: we would ask that the Department of Public Utilities work with the Board of Registration of Professional Engineers and Land Surveyors in promulgating such regulations to ensure that professional engineers can comply with the public utility and professional licensure regulations.

In addition, we urge the legislature to pass H. 4420, a separate bill that modernizes the Dig Safe law, currently in the House Committee on Ways and Means. This bill would also improve the safety and soundness of the Commonwealth's natural gas and utility infrastructure by mandating Dig Safe participation in the identification of underground utilities at the beginning of a project so that land surveyors are able to see more accurate information about utility locations early in a project.

We welcome the opportunity to discuss the issues raised in this letter to improve the legislation and ultimately improve public safety for the Commonwealth's natural gas infrastructure.

Thank you for your consideration. For more information, please contact Abbie Goodman, agoodman@engineers.org or 617-305-4112.

Sincerely yours,

Signature on original letter

Abbie R. Goodman
ACEC/MA Executive Director

Cc:

Angela M. O'Connor, Chairman of the Department of Public Utilities (DPU)
Charles Borstel, Commissioner of the Division of Professional Licensure (DPL)
Clinton Dick, Executive Director, Board of Registration of Professional Engineers and Professional Land Surveyors