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.

VOTE AND ORDER OPENING INQUIRY

MAR 25 2019

Engineering Board
I. INTRODUCTION


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 (I) 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 (I) 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 (I) 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

A true copy
Attest:

Mark D. Marini,
Secretary

Cecile M. Fraser, Commissioner
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