



Department of Public Service

Public Service Commission

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Three Empire State Plaza, Albany, NY 12223-1350
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August 28, 2020

Via Electronic and U.S. Mail

The Honorable Andrew M. Cuomo
Governor of New York State
NYS Capital Building
Albany, New York 12224

Dear Governor Cuomo:

In accordance with the provisions of Section 170 of the Executive Law, the following are actions the Department of Public Service (Department) has taken, or will be taking, to implement the recommendations contained in the Office of the State Comptroller's (OSC) final audit report (2018-S-28) Enforcement of Commission Orders and Other Agreements.

Recommendation #1:

Actively monitor all conditions listed in Commission Orders to ensure all utilities are in compliance.

Action Plan: Through a combination of annual field, record and management audits; continuous data analysis and risk assessments; and analysis of consumer complaint trends, the Department effectively monitors the utilities' compliance with Order requirements and takes appropriate action when necessary to ensure compliance. However, the Department has identified potential improvements to its processes and has taken the following actions to address this recommendation:

The Offices of Internal Audit and Investigations & Enforcement performed a joint review of the processes used to upload and monitor Order Conditions in the Department's internal document system's (DMM) compliance tracking module. While no significant control weaknesses were observed, the review identified opportunities to further strengthen controls, including the development of quarterly metric reports directed to executive management, the capacity to include certain filings from a stand-alone tracking system into the compliance module, and the

practice of utilizing interim reporting requirements for certain Condition Orders. These improvements have been implemented.

A Lean Project team was formed to review the Department's Order Condition monitoring processes; identify areas for improvement; and provide recommendations to strengthen these processes. Project work finished in May 2020, resulting in several improvements that will enhance the Department's ability to monitor utility condition compliance. These solutions include, but are not limited to:

- Standardizing the criteria used by staff to determine whether an Order Condition has been completed;
- Enhancing DMM's audit trail capabilities to provide a more detailed record of utility submissions and staff reviews;
- Updating monthly compliance reports to provide additional information to both staff and management;
- Revising procedures used by the Offices to designate compliance monitoring assignments to staff; and
- Developing a training program to ensure staff are utilizing these improvements appropriately.

The Department expects the redesigned processes to be implemented by the end of August 2020. An additional DMM enhancement was proposed that would provide the utilities with a real time summary of all compliance items completed and due when logging into the system. Due to resource requirements, this proposal will not likely be implemented until 2021.

Recommendation #2:

Develop and issue Orders that include well-defined, measurable, and enforceable conditions. The Orders should also include the consequences for non-compliance, as appropriate.

Action Plan: The Department agrees that well-defined, measurable and enforceable conditions are essential elements of a Commission Order and, though the Department feels that its Orders as previously written already included these elements, has taken the following actions to address this recommendation:

Immediately following release of the audit report, all Office of General Counsel staff were instructed on how to develop Order Conditions that include specific requirements such as established dates and timeframes for compliance obligations. In July and August 2020, a formal training program concerning these instructions was provided to all relevant Department staff.

In addition, the Office of Investigations & Enforcement reviews all draft Commission Orders to ensure compliance with the new requirements, while, on a quarterly basis, the Office of Internal Audit reviews a sample of order conditions to ensure they continue to meet this criteria.

As for including consequences for non-compliance, the Department maintains its position that there is no legal or policy reason to include this information in each and every Order issued by the Commission since the New York State legislature has already specified what the potential

consequences are for violating Commission Orders as established in Public Service Law sections 25, 25-a and 26.

Recommendation #3:

Verify the accuracy of data submitted by utilities that is used by the Commission or Department to evaluate or make decisions concerning the utilities. This includes data submitted for performance metrics, safety standards, and Utility Service Quality Reports.

Action Plan: Neither staff or the Commission rely on unaudited information to make any decisions that will affect the utilities or the State's ratepayers. All information used to establish utility rates, issue Negative Rate Adjustments, or make important decisions is fully audited during the Department's comprehensive rate case process and the Office's annual audit activities. However, the Department recognizes the audit's concerns and has taken the following actions to address this recommendation:

The Offices, in particular the Offices of Electric, Gas & Water (OEGW) and Consumer Services (OCS), have taken steps to further enhance existing data verification procedures.

OEGW is in discussions with the major utilities to obtain raw data from the utilities' systems so that Office staff can perform its verification steps against unmanipulated information. For example, the utilities will provide GPS location data, which includes dates and times, for all facilities that were inspected by utility personnel. OEGW staff will then select a sample of inspections and request supporting documentation from the utilities to verify the inspection was completed as required. The information would be further verified during staff's annual site visits and field audits to utility facilities. OCS has rewritten its procedures to require staff to audit all utility service quality information prior to sharing this data with the Commission.

In addition, the Office of Internal Audit has been working with the individual Offices to catalog all sources of external information used to evaluate or make decisions concerning the utilities and review how the information is audited by staff.

Recommendation #4:

Develop policies and procedures that provide employees with standard monitoring steps to perform when overseeing compliance with merger or acquisition Orders, as well as steps addressing the auditing of data submitted in support of Utility Service Quality Reports.

Action Plan: The Department agrees that comprehensive policies and procedures are essential to effective operations and has taken the following actions to address this recommendation:

The Offices have reviewed all procedures related to compliance monitoring and updated these documents as appropriate. The Offices of Telecommunications; Accounting, Audits & Finance; Consumer Services; and Electric, Gas and Water have expanded upon existing procedures to provide staff with additional guidance when monitoring compliance with Order conditions.

August 28, 2020

If you have any questions regarding this response, please contact me at 518-474-2523.

Sincerely,

A handwritten signature in black ink that reads "John B. Rhodes". The signature is written in a cursive, slightly stylized font.

John B. Rhodes
CEO

Cc: Lieutenant Governor Kathleen Hochul
Senator Andrea Stewart-Cousins
Senator Liz Krueger
Assemblyman Carl Heastie
Assemblyman William Barclay