



**Department of
Public Service**

Public Service Commission
Rory M. Christian
Chair and
Chief Executive Officer

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore
Commissioners

October 6, 2021

Ms. Cynthia Herubin
New York State Comptroller
110 State Street
Albany, New York 12236

Re: DPS Response to PSC Report 2021-F-5

Dear Ms. Herubin:

The following is the Department of Public Service's (Department) response to follow-up audit report 2021-F-5, released on September 1, 2021. The Department has worked diligently to address the recommendations included in the original audit report, 2018-S-21, Enforcement of Commission Orders and Other Agreements.

Recommendation #1: *Actively monitor all conditions listed in Orders to ensure all utilities are in compliance.*

Status: Implemented

Response: Per OSC's assessment, the Department has taken the necessary actions to ensure this recommendation is fully addressed including:

- Issuing policies and procedures that addressed responsibilities related to monitoring and tracking, compliance filing reviews, staff independent verification process, and steps to take if documentation is missing or not understood
- Developing plans to improve compliance tracking in its Order computer system, including real-time results that will be available to utilities as they log into the Department's Document and Matter Management System.

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.*

Status: Partially Implemented

Response: Per OSC's assessment the Department has taken some steps to address this recommendation, including:

- Issuing a policy that includes guidance to avoid the use of open-ended dates and subjective language and instead encourages the use of words such as "shall" and "must" in the Orders.
- Providing a formal training program to all relevant Department staff, which addressed the OSC audit recommendations, Order drafting process improvements, proposed changes to the electronic tracking system, and overdue Department reviews of Order conditions.
- Implementing quarterly reviews of all draft Orders by the Department's Office of Investigations & Enforcement to ensure compliance with the new requirements.
- Implementing quarterly audits of all Order conditions by the Department's Office of Internal Audit to ensure the conditions continue to meet the revised criteria.

The Department, however, maintains its position that there is no legal or policy reason to include and copy consequences for non-compliance in every Order because the State Legislature has already specified and set out the potential consequences for violating PSC Orders as established in Public Service Law.

In addition, from January 1, 2020 to July 2021, the Commission has approved enforcement settlement agreements as follows: NYSEG/RGE (\$10.5MM, alleged outage violations); Con Edison (\$15MM, alleged regulatory violations); Con Edison/O&R (\$10.75MM, alleged outage violations); NYSEG (\$1.5MM, alleged outage violations); National Grid (\$21MM, alleged regulatory violations); Altice (\$72MM, alleged outage violations); Con Edison/O&R (\$82MM, alleged outage and regulatory violations); Frontier (\$2.7MM, alleged outage violations); Central Hudson (\$1.5MM, alleged outage violations); RGE (\$5MM, alleged utility pole attachment violations); and Frontier (\$2.5MM, alleged utility pole attachment violations).

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.*

Status: Partially Implemented

Response: Per OSC's assessment the Department has taken some steps to address this recommendation, including:

- Issuing standard operating procedures related to the verification of data submitted by utilities for their Utility Service Quality Reports.

- The Department's Office of Electric, Gas, and Water (OEGW) recently began implementing this recommendation. Starting April 2021, OEGW requires utilities to submit information quarterly for review. The Department confirmed in May 2021 that they have begun receiving the data from the utilities. Also, OEGW has finalized formal procedures detailing their data collection and review processes.

The Department has fully complied with this recommendation as of September 30, 2021. The new procedures have been fully implemented by staff and are operating as intended.

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.*

Status: Implemented

Response: Per OSC's assessment, the Department has taken the necessary actions to ensure this recommendation is fully addressed including:

- Developing policies and procedures related to overseeing compliance with merger, acquisition, and auditing data for Utility Service Quality Reports.
- Updating and issuing several standard operating procedures for the Management Operations Audit Unit and Office of Accounting, Auditing, and Finance Unit.

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

Sincerely,



Rory M. Christian
Chair

cc: Thomas Congdon
Robert Rosenthal