

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 16, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 17-E-0594 - Proceeding on Motion of the Commission to Investigate the March 2017 Windstorm, Related Power Outages, and Rochester Gas and Electric and New York State Electric & Gas Restoration Efforts.

ORDER INSTITUTING PROCEEDING AND TO SHOW CAUSE

(Issued and Effective November 16, 2017)

BY THE COMMISSION:

INTRODUCTION

Department of Public Service (DPS) Staff (Staff) have completed their investigation concerning the performance of New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RGE) and Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid) during and following the March 8, 2017 Windstorm (windstorm or event). The DPS windstorm findings and recommendations are in a document titled "March

2017 Windstorm: A Report on NYSEG and RGE Electric Restoration and Communication Efforts".¹

The DPS investigation considers whether each utility properly prepared for, and responded appropriately to, the effects of the storm in compliance with its annually filed Emergency Response Plan (ERP).² Additionally, Staff determines whether there are any lessons learned and best practices that should be implemented in future ERPs. Staff's investigation examined the communications used to inform customers, emergency management personnel, governmental officials, and the media of the utility's response and restoration efforts, as well as each utility's operational performance.

While Staff found certain areas where NYSEG and RGE, collectively the "Companies", performed appropriately, Staff's analysis found several areas where the Companies did not follow their ERP and identified areas where the Companies need improvement during emergency outage events. Staff did not identify significant issues or deficiencies with National Grid's performance; therefore, the DPS Report and this proceeding focuses mainly on the performance of NYSEG and RGE.

¹ Matter 17-00540, In the Matter of an Investigation into the March 2017 Windstorm, Related Power Outages, and Rochester Gas and Electric and New York State Electric & Gas Restoration Efforts, March 2017 Windstorm: A Report on NYSEG and RGE Electric Restoration and Communication Efforts (November 2017) (DPS Report).

² Case 16-E-0635, In the Matter of the December 15, 2016 Electric Emergency Plan Review, Order Approving Amended Emergency Plans (issued March 13, 2017) (ERP Order). Also, Commission regulation.6 requires compliance with the effective ERP. 16 NYCRR §1051.5.3 requires annual ERP filings and Public Service Law (PSL) §66(21) requires these filings on or before December 15 for the following calendar year. Additionally, NYSEG and RGE file a combined ERP to be followed by both companies.

The DPS Report provides Staff's assessment of the performance of NYSEG and RGE during their respective restoration efforts. The DPS Report identified approximately 30 recommendations for corrective actions to be implemented in the Companies' ERP. Additionally, the DPS Report identified 4 ERP violations for NYSEG and 8 violations for RGE.³ The DPS Report presents credible information to warrant Commission action requiring NYSEG and RGE to formally respond to the conclusions drawn in the DPS Report. By this Order, therefore, NYSEG and RGE are directed to show cause why: (i) the Commission should not pursue an administrative penalty, pursuant to Public Service Law (PSL) § 25-a, for the Companies' apparent failure to follow their ERP as approved and mandated by the ERP Order and Commission regulations, and (ii) the Companies should not implement the DPS Report recommendations into their ERPs.

LEGAL AUTHORITY

Public Service Law § 65(1) requires utilities to provide "service, as shall be safe and adequate and in all respects just and reasonable." Public Service Law § 66(2) authorizes the Commission to investigate utilities. Public Service Law §66(21) requires each electric utility to file its ERP on or before December 15 of each year for Commission review and approval. Both PSL §66(21) and 16 NYCRR Part 105 specify the content and information to be in the ERP.

Public Service Law § 25-a (3) and (5) authorize the Commission to commence an administrative penalty proceeding against combination gas and electric corporations to determine, by a preponderance of the evidence, whether the corporation violated the Public Service Law or an order or regulation

³ DPS Report, pp. 4 & 8-12.

adopted pursuant to the Public Service Law. Such violations, pursuant to PSL § 25-a(3), may warrant a Commission-assessed penalty not to exceed the greater of, . . .

a sum not exceeding the greater of one hundred thousand dollars or two one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense.

Violations pursuant to PSL §25-a(5) may warrant a Commission-assessed penalty against,

...a combination gas and electric corporation determined by the commission to have failed to reasonably comply with a preponderance of the evidence with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the overall reliability and continuity of electric service, including but not limited to the restoration of electric service following a major outage event or emergency, shall forfeit a sum not to exceed the greater of:

(a) five hundred thousand dollars or four one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or

(b) the maximum forfeiture determined in accordance with subdivision three of this section.

BACKGROUND

On Wednesday, March 8, 2017, a severe windstorm hit Western New York causing widespread damage to the area. Earlier that day and prior to entering the State, the storm had also severely impacted other states, such as Michigan and Wisconsin. Sustained winds in the 50 to 70 miles per hour range uprooted and snapped trees, which in turn caused significant damage to the electric infrastructure. The worst of the windstorm had winds gusting to 81 mph in Rochester. Power lines and poles were down causing large scale electric outages in the area. Roads were blocked by trees and other debris, hampering vehicles' access to streets and restoration efforts. Strong winds from the windstorm lasted into the early morning of Thursday, March 9, 2017. The windstorm was immediately followed by a cold front that caused temperatures to dip below freezing creating further challenges for customers already without heat and electricity. Winter storm Stella also impacted the area prior to complete service restoration.

Although 14 of 17 divisions in the Companies' service territories experienced a notable amount of customer outages, the hardest hit areas were Lancaster and Lockport for NYSEG, and Central and Sodus for RGE. The Companies and National Grid reported that more than 250,000 customers experienced a loss of power during the windstorm, with peak outages of approximately 123,000 and 48,000 for RGE and NYSEG, respectively. Nearly 93,000 of the customer outages occurred in Monroe County. Restoration took until March 13, 2017 for NYSEG and March 15, 2017 for RGE. RGE received and handled 76,426 outage calls between March 8 and March 15, 2017, while NYSEG received 66,121 outage calls between a similar period.⁴

⁴ DPS Report, pp. 12-13.

For National Grid, areas from its Genesee, Frontier, and Southwest divisions sustained damage from the windstorm, with the most damage in the Genesee division. Customer outages for National Grid peaked at 113,000 and complete restoration was accomplished on March 12. Staff found that National Grid restored more than 90% of affected customers within 36 hours. Only approximately 8,000 customers in the Genesee division went into the third day of restoration. National Grid received and handled 17,327 outage calls between March 8 and March 12, 2017.

16 NYCRR Part 105 requires any New York investor-owned utility that experiences an outage with a restoration period exceeding three days to file self-assessments of their restoration efforts.⁵ NYSEG and RGE submitted a combined report related to this event because they follow one comprehensive ERP.⁶ National Grid filed a report related to the outages in its Genesee division.

ALLEGED VIOLATIONS

The Companies did not follow their respective ERP in several instances. Accordingly, the ERP Order approving and requiring ERP implementation, as well as Commission regulations requiring ERP compliance, were arguably violated. As discussed above, the Commission may assess a penalty under PSL §25-a if it determines there has been a violation of a Commission order or regulation. Below are descriptions of potential ERP violations

⁵ 16 NYCRR §105.4(c).

⁶ Matter 17-00540, supra., NYSEG/RGE Part 105 Report (filed May 15, 2017).

uncovered during Staff's investigation and contained in the DPS Report.⁷

ERP Section 9.3.2.2: Life Support Equipment (LSE) Customers⁸

The Companies' ERP concerning the specific need to communicate with LSE customers that have lost power is as follows:

In the event the Companies have not been able to reach the LSE customer (or their designee) within a 24-hour period via phone call, the company will complete a follow-up field visit to assess the customer's situation. In the event that the Companies engage outside agencies in the future, the process will include follow-up with those agencies to verify results.

When attempts at direct contact are unsuccessful or impractical during an event, the Companies will make referrals to local or county Emergency Operations Centers, first responders or other human service entities for further direct contact attempts. A referral will be made by the Life Support Coordinator to the Public Liaison Officer. The Public Liaison Officer will work directly with the individual county Emergency Operations center to process the referral and provide follow up on the status. The Public Liaison Officer will update the Life Support Coordinator once a status update is received from Emergency Operations.

While the reported initial delay in providing LSE referrals to Emergency Operations Centers (EOCs) is troublesome, the issue was resolved the first evening with the assistance of Staff and referral lists were provided daily. The initial delay and lack of coordination is the basis of a DPS Report recommendation, and we urge the Companies to revise their ERP

⁷ This Order to Show Cause is preliminary to and not the requisite Commission penalty notice pursuant to PSL §25-a(2)(b).

⁸ DPS Report, pp. 50-54.

accordingly to ensure LSE referrals are effectively communicated to the appropriate EOCs and third-parties.

What is more troubling is the Companies' apparent failure to verify whether the LSE customers were contacted once referrals occurred throughout the event. The Companies remain ultimately responsible for ensuring that this potentially vulnerable customer population is contacted and supported during an emergency event. This responsibility does not shift to the referring entity upon referral. The lack of verification as required by the ERP was not in the public interest, and could have resulted in harm to or death of an LSE customer.⁹ Therefore, this violation of the ERP, ERP Order and regulations calls for a potential penalty under the applicable statute.

Additionally, also pursuant to Section 9.3.2.2,

Once an outage is deemed to be a Class II or III emergency and at the direction of Area Command, the on-call Customer Advocate (or designee) will be notified by his/her management designee. The Customer Advocate (or designee) will retrieve a listing of all LSE customers impacted via an SAP transaction. This report will highlight any incidents of an outage, voltage problem, flicker, or partial power, which involves an LSE customer.

The Companies produced a report that did not identify all LSE customers due to improper software systems. During this event, one LSE customer suffering an electric outage was not initially included in this report. This misidentification of a LSE customer is not a trivial matter and must not only be rectified, but arguably forms the basis of an additional violation. As above, the Companies were fortunate that no injury or harm occurred; but that alone cannot excuse the

⁹ The Commission understands that no LSE customer was injured because of this violation; however, this does not excuse the Companies' inaction.

failure to identify all LSE customers without electric service during an emergency event. Therefore, this violation is also the basis for a potential penalty.

ERP Section 8.2.1: Estimated Times of Restoration (ETR)¹⁰

The Companies' ERP states the need to comply with ETR Protocols developed to ensure the public and Staff are adequately informed. The ETR Protocols require that within the first 36 hours of the restoration period, for storms with expected restoration periods five days or less, DPS Staff will be provided with a global ETR. Additionally, regional/county ETRs are to be established for areas expected to be restored in five days, even if the total restoration period is expected to be more than five days.

NYSEG did not publish a global ETR within the requisite 36 hours. Further, the Companies did not provide unique regional/county ETRs for lesser impacted areas, but instead simply used global ETRs for all impacted areas. The ETR Protocols are considered minimum requirements and the Companies' failure to timely communicate appropriate ETRs to its customers and/or municipal officials is of great concern. Customers and officials are dependent on a utility to provide estimated restoration times to enable proper decision-making during an emergency outage event, including when and where to proceed to established shelters during the restoration period. These violations, therefore, form the basis of a potential penalty for both Companies.

¹⁰ DPS Report, pp. 42-45.

ERP Section 9.1: Interactive Voice Response (IVR) updates¹¹

The Companies relied on automated IVR messaging to communicate with their customers. ERP Section 9.1 requires that,

The NYSEG and RG&E IVR, websites and mobile views interface with the SAP Outage Management System (OMS) to provide timely information to customers.... IVR messaging shall be updated within one hour of a press release being issued.

From the evening of March 8 until the afternoon of March 10 (approximately 45 hours), RGE did not update its IVR system. During this time-period, useful information was being shared through several press releases and other means; however, RGE failed to update its IVR messaging to readily inform customers that were actively reaching out to the Company. This failure is a violation of the ERP Order and regulation by RGE, and is a potential penalty.

ERP Section 9.1: Call Center¹²

Section 9.1 also requires a certain level of initial call center staffing based on the severity level of an outage event. The windstorm is considered a "disaster event" defined as over 100,000 customer outages. The Companies identified the appropriate level of such staffing in their ERP and this level was adopted in the ERP Order. During the windstorm, RGE did not have the required staffing in its call center for a Disaster Event in accordance with the ERP. Therefore, this call center understaffing is a violation and the basis of a penalty.

¹¹ DPS Report, pp. 56-59.

¹² DPS Report, p. 58.

ERP Section 8.2.2: Restoration Priorities¹³

Restoration activities need to account for critical facilities to ensure that the safety and welfare of the impacted areas are properly maintained. Each utility has a predefined list of critical facilities within its service territory. According to Section 8.2.2,

A priority list should be developed by Incident Command to determine the order of importance for restoring critical facilities... The IC Operations section shall follow these system restoration priority guidelines taking into consideration the needs of critical facilities affected..

RGE did not create a comprehensive priority list of all critical facilities to be used for determining restoration priority; rather, the Company included only a small number of critical facilities once an outage was reported by a facility. The awareness of all critical facilities impacted is important for public health and aids in timely restoration efforts. RGE failed to identify critical facility customers and then include these customers into the restoration plan and efforts. This alleged failure forms the basis for a potential penalty for RGE.

ERP Sections 8.1.4: Damage Assessment¹⁴

Sections 5.1 and 8.1.4 concern performing damage assessment activities. Section 8.1.4, specifically states:

The Planning Section Chief (or Incident Commander) will initiate the Damage Assessment program. The Planning Section Chief instructs the Damage Assessment Branch Director (if applicable) regarding how much of the system to assess and the time period in which the analysis is required to be completed. Each Division

¹³ DPS Report, pp. 37-38.

¹⁴ DPS Report, pp. 33-34.

strives to maintain the resources necessary to conduct a preliminary damage assessment for the three-phase and impacted circuits as rapidly as is safe and practical during the first daylight opportunity after the start of restoration.

In general, completion of a preliminary assessment for three-phase and impacted circuits as rapidly as is safe and practical during the first daylight opportunity during an event is desired in order to capture the most critical information (e.g., broken pole locations, blocked roads and environmental concerns with leaking transformers). Events particular to each emergency however may influence the timetable. Depending on conditions, a sampling of the affected area may be utilized to estimate the extent of the damage.

RGE did not start three-phase damage assessment until Friday, March 10. The first daylight opportunity was on March 9. The Company elected to delay damage assessment activities and use its resources on March 9 to verify broken pole locations, rather than perform a holistic view of how the system was impacted. RGE's untimely three-phase damage assessment forms the basis of an additional potential penalty.

ERP Section 8.1.3: Wires Down¹⁵

ERP Section 8.1.3 addresses the Companies' wires down protocol:

Municipal reports of wires down will follow Public Service Law protocols to promptly secure downed wires within thirty-six hours of notification.

Reports of wires down are assigned according to the priorities outlined in EOP-023...

Both utilities were not able to secure downed wires within 36 hours of notification. NYSEG secured sixty-nine

¹⁵ DPS Report, pp. 39-42.

percent and RGE secured seventy-two percent within that time period. Further, RGE did not prioritize wires down per EOP-023. These failures constitute a violation of the ERP Order and Commission regulation, and therefore, form the possible basis for a penalty.

DISCUSSION

Recommendations/Areas of Improvement

Staff's review of the Companies' performance during the windstorm identified many opportunities for improvement that should be resolved by complying with the Companies' revised ERP. The Companies' self-assessment report, along with the DPS Report, identify recommendations that will enable the Companies to communicate and respond more timely and effectively after an emergency outage event. The Commission encourages the Companies to consider the implementation of all recommendations. This implementation is crucial and should occur unless satisfactory reasons are provided suggesting a different course.

The Companies should address with respect to the implementation of each specific recommendation contained in the DPS Report, whether the Commission should mandate, reject or modify, in whole, or in part, such recommendations. The Companies response should include a discussion of which recommendation[s] it opposes, the reasons for such opposition, and an indication of any alternatives it proposes to address the root cause of all recommendations to which it is objecting. The Companies must demonstrate how any alternative more effectively addresses the underlying findings, produces more benefits or less risk, or is more technically feasible. If recommendations are opposed without proposing any alternatives, the Company shall provide a justification as to why alternatives were not available or feasible. If a recommendation has already been initiated, or the Companies agree that it should be implemented,

the Companies should so state along with an appropriate compliance timeline.

To ensure the timely implementation of the recommendations into the ERP, NYSEG and RGE are ordered to respond within 30 days of the date of the issuance of this Order to Show Cause. The Companies are encouraged to consult with Staff during the development of their response.

Alleged Violations

Concerning the violations of the ERP, ERP Order and 16 NYCRR Part 105, NYSEG and RGE are ordered to show cause within 30 days of the date of this Order why the Commission should not seek administrative penalties for the Companies' failure to comply with the requirements of its own procedures contained in the ERP, thereby violating the Commission's ERP Order and 16 NYCRR §105.6.

The Department shall designate appropriate trial Staff to investigate the alleged violations and pursue any potential penalties under PSL §25-a, if necessary. Once designated, the Companies may consult with trial Staff during the development of their response.

The Commission orders:

1. A proceeding is instituted and New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation are ordered to show cause, within 30 days of the date of this Order, why the Public Service Commission should not commence an administrative penalty action, pursuant to Public Service Law § 25-a, for violations of the Commission's Order Approving Amended Emergency Plans in Case 16-E-0635 or 16 NYCRR Part 105.

2. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation shall address within 30 days of this Order, whether the Commission should mandate, reject or modify, in whole or in part such recommendations contained in the March 2017 Windstorm: A Report on NYSEG and RGE Electric Restoration and Communication Efforts. The response shall include a discussion of which recommendations the Companies oppose or request to modify, the reasons for such opposition or modification, as well as a description of any alternatives proposed to address the root cause of all recommendations to which they are objecting. If recommendations are opposed without proposing any alternatives, the Company shall provide a justification as to why alternatives were not available or feasible.

3. For each and every recommendation not fully accepted, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation shall provide justification for its proposed alternatives and demonstrate how such alternatives more effectively address the root cause of the underlying recommendations, produce more benefits or less risk, or are more technically feasible. Specific implementation steps; implementation schedule with start and end dates; and significant interim milestones (if applicable) should be provided.

4. For each and every recommendation accepted, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation shall provide its specific implementation steps; implementation schedule with start and end dates; provide its priority relative to other recommendations; significant interim milestones (if applicable); and deliverable(s) which demonstrate the recommendation was implemented.

5. The Secretary in her sole discretion may extend the deadlines set forth in this Order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary