

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 18, 2019

COMMISSIONERS PRESENT:

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

CASE 19-E-0288 - Proceeding on Motion of the Commission to
Commence a Judicial Enforcement Proceeding
Against New York State Electric and Gas
Corporation.

ORDER DIRECTING COMMENCEMENT OF JUDICIAL ENFORCEMENT PROCEEDING

(Issued and Effective April 18, 2019)

BY THE COMMISSION:

INTRODUCTION

The Department of Public Service (DPS or Department) has completed a comprehensive investigation of New York State's major electric utilities concerning the storm response and service restoration performance by certain electric utilities to Winter Storm Riley.¹ As discussed in the Commission's Order Instituting Proceeding And To Show Cause in Cases 19-E-0105, et

¹ The major electric utilities consist of Consolidated Edison Company of New York, Inc. (Con Edison), Central Hudson Gas & Electric Corporation (Central Hudson), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Rochester Gas and Electric Corporation (RGE), Orange & Rockland Utilities, Inc. (Orange & Rockland), and PSEG Long Island (PSEG LI) (collectively referred to as "Companies" or "Utilities").

al.,² the response to and service restoration following several winter and spring storm events³ were part of the comprehensive investigation of the Department, which is discussed in the accompanying April 2019 DPS Report.⁴

The 2018 Winter and Spring Storms affected almost all portions of the State resulting in hundreds of thousands of peak customer outages, with restoration in some instances taking over one week. However, portions of the lower Hudson Valley, including Westchester, Putnam, and Orange Counties, were the hardest hit, reeling from the rapid succession of storm events, with NYSEG's Brewster Division experiencing lengthy and sustained customer outages. Customers and municipal officials in the Brewster service area expressed dissatisfaction with utility storm performance serving this area. The DPS Report resulted in 77 recommendations for NYSEG to implement in its Emergency Response Plan (ERP) and provides a basis for Department of Public Service Staff's (DPS Staff) conclusion that NYSEG potentially violated its ERP on 20 separate occasions throughout the 2018 Winter and Spring Storms.⁵ The 2019 Order to Show Cause contends that NYSEG not only violated its ERP, but

² Cases 19-E-0105, et al., Commission Investigating Utility Preparation and Response to Power Outages During the 2018 Winter and Spring Storms, Order Instituting Proceeding And To Show Cause (issued April 18, 2019)(2019 Order to Show Cause).

³ Winter Storms Riley (March 3, 2018) and Quinn (March 7, 2018), the April (April 4, 2018) and May (May 4, 2018) Windstorms, and the May Thunderstorm (May 15, 2018) are collectively referred to as the "2018 Winter and Spring Storms").

⁴ Case 19-M-0285, In the Matter of Utility Preparation and Response to Power Outages During the March 2018 Winter and Spring Storms, 2018 Winter and Spring Storms Investigation (April 18, 2019) (DPS Report).

⁵ 2019 Order to Show Cause, pp. 10-24.

also violated the Commission's Order approving the NYSEG ERP⁶ and Commission regulations mandating that utilities comply with their ERP.⁷ The DPS Report concludes that NYSEG failed to obtain resources to effectively conduct damage assessment, failed to appropriately contact all its Life-Support Equipment (LSE) customers, as well as, failed to disseminate critical information through various available avenues of communication to its customers, the media, and affected municipalities. DPS Staff contends that such conduct by NYSEG violates the Commission's ERP Order and regulations and could result in NYSEG being potentially liable for penalties pursuant to both PSL §25 and §25-a.

The litany of storm related issues identified in the DPS Report is concerning and raises questions about NYSEG's emergency response and restoration performance for certain, less central, portions of its electric service territory. This is not the first time the Commission has been concerned with NYSEG's response and restoration performance. Dating back to Superstorm Sandy, and more recently the 2017 Windstorm,⁸ NYSEG's inability to respond and restore service to the satisfaction of its customers, governmental entities, and the Commission is well

⁶ Case 17-E-0758, In the Matter of the December 15, 2017 Electric Emergency Plan Review, Order Approving Electric Emergency Response Plans on an Interim Basis (issued April 19, 2018) (ERP Order).

⁷ PSL §66(21) requires these filings on or before December 15 for the following calendar year. Also, Commission regulation 16 NYCRR Part 105 requires compliance with the effective ERP and requires annual ERP filings.

⁸ Case 17-E-0594, Investigation into March 2017 Windstorm Related Power Outages, Staff Report on NYSEG and RGE Electric Restoration and Communication Efforts (issued November 16, 2017) (2017 Windstorm Report).

documented and demonstrates a pervasive pattern of inadequate response and restoration performance.

The apparent inability to sufficiently improve the Company's storm response and service restoration performance through implementation of, and adherence to, numerous repeated directives by the Commission is sufficient to warrant further Commission action. By this Order, the Commission instructs the Counsel to the Commission to commence a special proceeding or an action in the New York State Supreme Court in the name of the Commission and the People of the State of New York to stop and prevent future violations of Commission regulations and orders by NYSEG.

LEGAL AUTHORITY

Public Service Law (PSL) § 65(1) requires utilities to provide "service, as shall be safe and adequate and in all respects just and reasonable." PSL § 66(2) authorizes the Commission to investigate utilities and empowers the Commission to "order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity." Further, PSL § 66(11) empowers the Commission "in all parts of the state... to conduct an investigation or hearing... in reference to any matter within its jurisdiction."

PSL § 66(21) requires each electric utility to file its ERP on or before December 15 of each year for Commission review and approval, consistent with the enumerated criteria contained in the statute, and with additional requirements the Commission may adopt that are consistent with "ensuring the reasonably prompt restoration of service in the case of an emergency event." PSL § 66(21) and Part 105 of Title 16 in the New York Codes, Rules, and Regulations (Part 105) require each

major electric utility to submit a comprehensive ERP to the Commission for approval. PSL § 66(21)(c) authorizes the Commission "to open an investigation to review the performance of any corporation in restoring service or otherwise meeting the requirements of the emergency response plan during an emergency event."

Under PSL § 26, the Commission may direct the Counsel to the Commission to commence enforcement proceedings in New York State Supreme Court.⁹

DISCUSSION

This Order addresses the DPS Report's recommendation that the Commission should commence enforcement proceedings against NYSEG.¹⁰ The DPS Report points out the many deficiencies of NYSEG's past emergency response and restoration efforts and its continued inability to satisfactorily adhere to the procedures and processes detailed in its ERP approved by the Commission; such non-compliance identified by Staff supports the Commission's direction to the Commission's Counsel to commence a judicial enforcement action seeking to enjoin NYSEG from further violating the ERP Order, or any subsequent order approving NYSEG's ERP, and Commission regulations concerning utility emergency response and restoration.

The Commission initiated a similar action recently in Cases 16-W-0259, et al.¹¹ While the facts and circumstances surrounding the American Water Enforcement Order were different than presented in this case, a similar Commission action is warranted. Here, the DPS Report describes NYSEG's apparent

⁹ See also, PSL §12.

¹⁰ DPS Report, p. 170.

¹¹ Cases 16-W-0259, et al., American Water Company, Inc. - Rates, Order Directing Commencement of Judicial Enforcement Proceedings (issued July 12, 2018) (American Water Enforcement Order).

continued inability to, among other things, perform satisfactorily during events calling for emergency response and restoration in the service area served and supported by its Brewster Division. The Commission is statutorily charged with ensuring that NYSEG "provide safe and adequate service,"¹² which includes satisfactory emergency response and electric service outage restoration. Consequently, the Commission agrees that further enforcement action is necessary to ensure full compliance with the Company's ERP, ERP related orders, and Commission regulations.

Going forward, the Commission may also separately consider other potential pathways and measures to protect ratepayers and deter unsatisfactory performance by NYSEG, as well as determine whether certain costs should be borne by NYSEG's shareholders.

CONCLUSION

The Commission determines that it is in the public interest for the Counsel to the Commission to commence a special proceeding or an action in New York State Supreme Court, pursuant to PSL § 26, to stop and prevent ongoing or future violations of the PSL and Commission regulations and orders by NYSEG.

¹² PSL § 65(1).

The Commission orders:

1. Counsel to the Commission shall commence a special proceeding or an action in the New York State Supreme Court in the name of the Commission and the People of the State of New York to stop and prevent ongoing or future violations by New York State Electric and Gas Corporation of Commission regulations and orders.

2. This proceeding is continued.

(SIGNED)

KATHLEEN H. BURGESS
Secretary