



## Department of Public Service

125 East Bethpage Road, Plainview, NY 11803  
www.dps.ny.gov/longisland

**John B. Rhodes**  
Chair and  
Chief Executive Officer

**Thomas Congdon**  
Deputy Chair and  
Executive Deputy

**Robert Rosenthal**  
General Counsel

**Michelle L. Phillips**  
Secretary

August 19, 2020

### **VIA EMAIL & US MAIL**

Andrea Elder-Howell, Esq.  
Vice President-Legal Services  
333 Earle Ovington Blvd, Suite 403  
Uniondale, New York 11553

Re: Notice of Apparent Violations Related to Tropical Storm Isaias  
and Direction of Prompt Interim Remedial Action

Dear Ms. Elder-Howell:

This letter is to notify PSEG Long Island (PSEG LI) that, based on the initial investigation undertaken by the Department of Public Service (Department), PSEG LI is in apparent violation of the State Public Service Law (PSL), the Public Authorities Law (PAL), and associated regulations, based on PSEG LI's wholly inadequate response to the August 2020 Tropical Storm Isaias. As detailed below, the Department's initial investigation shows that PSEG LI apparently failed to follow its Department-recommended and Long Island Power Authority (LIPA) Board of Trustees-adopted Emergency Response Plan's (ERP) requirements relating to PSEG-LI's: (1) damage assessment responsibilities; (2) responsibility to maintain a functional Outage Management System (OMS); (3) responsibility to publish accurate Estimated Time of Restoration (ETR) notices; and (4) responsibility for timely and effective communication and coordination with its customers, local municipal governments, and state agencies. This Notice also provides a series of corrective actions that PSEG LI must implement immediately to mitigate the still-existing severe threats to public health and safety resulting from PSEG LI's inactions and to prevent any potential failings in case of another significant storm event this year.

### **Law Governing the Potential Violations**

The Public Authorities Law (PAL) §1020-f(cc)(2) requires PSEG LI to file an Emergency Response Plan consistent with both PSL §66(21) and 16 NYCRR Part 105, which specify the content of such critical plans. Further, pursuant to PSL §3-b(c)(ii) the Department is empowered

to review and make recommendations and determinations with respect to PSEG LI's performance in restoring service or otherwise meeting the requirements of the ERP.

The Department's oversight responsibility for utilities' emergency response actions, including PSEG LI, occurs in three phases: storm preparation, active monitoring of utility impacts and system restoration, and post-storm analysis. To ensure that electric utility companies are fully prepared, PSL §66(21)(a) and 16 NYCRR Part 105 require each major electric utility to submit a comprehensive ERP to the Department. The ERPs detail procedures and define roles, responsibilities, and required training to reduce confusion and promote a common understanding of the restoration process. The ERPs are annually reviewed by the Department, which is authorized to provide conditions and recommendations for the adoption of the ERP. Consistent with Part 105, PSEG LI is also required to perform restoration efforts in compliance with its ERP and is expected to update its plan after a major event to capture all lessons learned and incorporate all best practices.

Pursuant to PSL §3-b(c)(ii) the Department's authority includes determining whether PSEG LI is reasonably able to implement the ERP, whether the length of any outages related to such emergency were materially longer than they would otherwise have been because PSEG LI failed to reasonably implement the ERP, the reasonableness of costs associated with such emergency response, the costs, if any, that were unreasonably and imprudently incurred by PSEG LI, and whether PSEG LI would be liable for any such costs pursuant to the terms and conditions of the operations services agreement (Amended and Restated Operations Services Agreement or A&R OSA).

As you are aware, this is not the first time that the Department has investigated and reviewed PSEG LI's response to a major storm event and made recommendations for improvement. Further the Department intends to determine as part of its investigation whether PSEG LI's failures at issue result in forfeiture of performance metric incentive compensation, whether PSEG LI is liable for any disallowed costs, whether PSEG LI failed to meet the minimum Major Storm Performance Metrics levels, and whether PSEG LI's contract and authority to operate on Long Island should be terminated. *See e.g.*, §§5.1(C); 5.3(C); and 8.4(C) of the A&R OSA. The Department also reserves the right to seek all remedies available under the law.

### **Potential Violations**

Tropical Storm Isaias first appeared in PSEG LI's service territory on Tuesday afternoon, August 4, 2020 in the form of severe winds and rain. Throughout the afternoon and into the evening of the August 4, the PSEG LI service territory experienced winds gusting to 70+ mph, with sustained winds of 40+ mph for over five hours, causing severe damage to trees, poles, and conductors.

Peak outages in New York due to Tropical Storm Isaias reached approximately 920,000 customers, with approximately 1.3 million customers directly impacted. As of the evening of Thursday, August 6, 2020, the Department understands that PSEG LI experienced 420,000 customer outages. In the PSEG LI territory, service outages continued for several days and into

the week of August 10. The Department's initial conclusion, based on its preliminary assessment, is that, in its opinion, PSEG LI was not prepared for the storm and failed to follow its approved ERP in three critical respects.

*I. Damage Assessment*

The Department understands and its initial investigation identified that PSEG LI did not conduct adequate damage assessment, which led to ineffective assignment of resources and restoration crews, and thereby exacerbated issues regarding inaccurate Estimated Times to Restore. See PSEG LI ERP §13.1.2.

*II. Outage Management System (OMS) and Estimated Times of Restoration (ETRs)*

OMS systems provide a core resource for a utility to manage response and restoration efforts during outage events. OMS systems process reported customer outage information; predict outages to capture the full extent of customers impacted; create, prioritize, and manage jobs; and interface with various applications to provide consistent and updated outage information to utility resources and the public during emergency response operations.

Since the OMS is connected to many independent functions and acts as a definitive source of information for many operational applications, it is imperative that the OMS process accurate information and remain functional even when other applications are impacted. New York State regulations include a baseline obligation that companies acknowledge that an "extraordinary volume of customer calls" will occur "during emergency events" and that companies' systems effectively handle such high call volumes during an emergency event. 16 NYCRR §105.4(b)(9).

The Department understands and its initial investigation identified that PSEG LI's OMS became overloaded and lost functionality during Tropical Storm Isaias. These OMS issues, in turn, resulted in problems with the appropriate establishment of ETRs.

An ETR is the approximate date and time an electric utility expects service will be restored after a power outage. Customers depend on ETRs to make health and safety decisions, including determining the need for alternative accommodations, ensuring adequate resources and supplies are available during extended outages, and addressing any medical needs. Further, municipalities rely on ETRs to plan properly for the care and safety of their constituents and protection of property. To be useful and informative, the ETRs must be timely, accurate, and made widely accessible. An inaccurate ETR does not benefit the customers or municipalities and, taken to the extreme, can lead to personal injury or even death. Therefore, an ETR must be accurate to satisfy the intent of a utility ERP.

The breakdown and failure of PSEG LI's OMS system prevented it from identifying the location, volume, and extent of customer outages, whether these outages were part of a larger outage, or a more localized outage. PSEG LI released inaccurate ETRs in the aftermath of the storm and continued to release inaccurate ETRs into the following weekend and week (August 8-11). This failure also exacerbated PSEG LI's inability to appropriately dispatch resources to

address outages. The apparent failure of PSEG LI's OMS and the company's inaccurate and untimely ETRs constitute potential violations of its ERP. *See* PSEG LI ERP §§7; 8; and 8.5.

### *III. Communications*

New York State regulations, as noted above, include a baseline obligation that companies acknowledge that an “extraordinary volume of customer calls” will occur “during emergency events” and that companies’ systems effectively handle such high volumes of calls during an emergency event. 16 NYCRR §105.4(b)(9).

In addition, companies must train on and integrate communication systems and test their functionality. 16 NYCRR §105.4(b)(4), (7), (10).

PSEG LI's failure to maintain functional means of communicating with customers and necessary external stakeholders, municipal leaders, and local public works departments undermines the basic effectiveness of PSEG LI's emergency response. This is most evident in PSEG LI's apparent failure to appropriately respond directly to Life Support Equipment (LSE) and Critical Care customers.

In addition, PSEG LI's failure to manage the volume of customer calls during and after the storm including calls to PSEG LI's Customer Assistance Center (CAC), its failure to appropriately respond to these calls, and its apparent failure to pursue additional methods of communication when primary channels failed demonstrates a serious lapse in PSEG LI's ability to effectively conduct itself pursuant to the requirements of its ERP.

These lapses exacerbated the challenges of any restoration effort and may have led to the misapplication of resources, ultimately eroding customer confidence in the company's ability to provide safe and adequate service. *See* PSEG LI ERP §2; 3.2; 11; 12; 12.5; and 12.10.

The Department's investigation into this matter is continuing. The above-noted list of potential violations may be supplemented as the investigation continues.

Should these and other potential violations be confirmed, the Department may take any and all available remedies at its disposal.

### **Remedial Actions**

In addition to the above-identified potential violations, the Department both requests and expects PSEG LI to immediately implement the following interim remedial action items:

- Test, repair or upgrade the Outage Management System to guarantee functionality as well as all communication systems to receive and respond to extraordinary high customer call volumes, and certify to the Department within 10 days of this letter that PSEG LI command and communication systems and Outage Management System will effectively handle such high call volumes. *See* 16 NYCRR §105.4(b)(9);
- Immediately begin the process of adding crewing capacity via retainer contracts from private contractors or utilities located outside of New York, with a goal to be able to secure

sufficient crewing to double your existing internal capacity, and report bi-weekly to the Department on your crewing capacity for the remainder of the 2020 calendar year;

- Develop other plans to secure utility crews in addition to private contractor and mutual aid provided by the NAMAG before and during storms, and report bi-weekly to the Department on your progress for the remainder of the 2020 calendar year;
- Test capabilities at all command and data centers, call centers and back-up command centers to ensure capability to handle an outage impacting 90% or more of your customers in the PSEG-LI service territory and provide confirmation back to the Department regarding the results of this test within 10 days;
- Refine coordination plans with municipalities tailored to each county (road clearing, local liaisons, etc.) and provide to the Department within 20 days a written confirmation from each county Emergency Operations Center that they understand and accept the plan; and
- Update Life Support Equipment and Critical Infrastructure lists to remove or add customers as necessary and file such updated lists to the Department within 10 days.

Should PSEG LI fail to undertake these actions immediately or within the time frames identified above, the Department will not hesitate to pursue all remedies available under the law, including recommending all remedies available to LIPA under the A&R OSA.

Following the storm and given the extent of the outages and service failures, the Department shares the view of many Long Island officials that PSEG LI should promptly establish a program to provide financial compensation to its customers who lost refrigerated food and medicine.<sup>1</sup> PSEG LI's announcement on Monday August 17, 2020 that the company was initiating a program to provide its customers financial restitution for their loss of food and medicine is a step that begins to address customer needs and concerns. While the Department's investigation continues, given the extent and duration of the outages and service failures and as a first step, the Department also had called on PSEG LI to waive any claim for 2020 incentive payments under the A&R OSA, and we are pleased that Mr. Eichhorn has publicly stated that PSEG LI will do so.

Should you have any questions regarding this Notice, please contact my colleague John Sipos at the below address:

John Sipos  
DPS Deputy General Counsel  
New York State Department of Public Service  
3 Empire State Plaza, 18<sup>th</sup> Floor  
Albany, NY 12223  
john.sipos@dps.ny.gov  
+15184742510

---

<sup>1</sup> See, e.g., letters from Assembly Member Griffin (dated August 6, 2020) letter from Senators Thomas, Kaminsky, Kaplan, and Gaughran, and County Executive Curran (dated August 10, 2020).

Very Truly Yours,



By: J Suich  
Director, OIE

CC: Thomas Falcone, LIPA Chief Executive Officer  
Anna Chacko, LIPA General Counsel  
Bobbi O'Connor, LIPA Secretary to the Board of Trustees  
Dan Eichhorn, PSEG LI President and Chief Operating Officer  
Kevin Wisely, DPS Office of Resiliency and Emergency Preparedness Director  
Guy Mazza, DPS Long Island Director  
Nicholas Forst, DPS Long Island Assistant Counsel  
Larry Schimmel, NYSAG General Counsel