Post Comment Period Addendum to Regulatory Analysis – 815-RICR 00-00-05

Division of Public Utilities and Carriers

815-RICR 00-00-05

PART 5 – STANDARDS OF ACCEPTABLE PERFORMANCE FOR EMERGENCY PREPARATION AND RESTORATION OF ELECTRIC DISTRIBUTION AND GAS DISTRIBUTION COMPANIES

Concise Summary

The Division of Public Utilities and Carriers has conducted a Regulatory Analysis of this proposed regulation as directed by RI General Laws 42-35-2.9. The Regulation, proposed in response to a statutory requirement that electric and gas utilities file annual Emergency Response Plans with the Division is necessary for the Division to review and enforce terms of this statutory requirement. There is no additional cost to the Division in administering provisions of the rule, and care was taken to avoid any additional utility costs beyond what is required by statute. The regulation only applies to regulated gas and electric utilities with virtually all of the requirements exclusively applying to the state's lone dominant gas and electric utility.

REASON FOR RULEMAKING:

It is the purpose of these rules to establish standards of acceptable performance for emergency preparation and restoration of service for investor-owned electric distribution and investor-owned gas distribution companies.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE:

These rules are issued pursuant to the authority granted by R.I. Gen. Laws § 39- 2-27, and shall apply to any person, firm, corporation, or other entity now or hereafter engaged as an investor-owned public utility in the business of furnishing electric distribution services and/or natural gas distribution services within the State of Rhode Island.

TESTIMONY AND COMMENTS:

There were no comments offered at the Public Hearing, aside from a recitation of the travel of the Docket by a Division staff attorney. Only one series of written comments was received. Those comments, offered by RI Energy, were all accepted.

CHANGE TO TEXT OF THE RULE:

First Comment:

First, the Company proposes a change to the definition of "Emergency Event" in Section 5.4(C). As drafted, the proposed definition "Emergency Event" is overly broad because it does not define "widespread," and leaves open the possibility that the proposed Emergency Preparedness Standards and any potential penalties from alleged noncompliance could apply to any cause beyond the public utility's control. The Company's proposed revision would provide clarity to the definition of "Emergency Event." Therefore, the Company proposes to add the following redlined language at the end of the definition of "Emergency Event" in Section 5.4(C) to more directly link the definition to the activation of the Company's Emergency Response Plan ("ERP"):

"Emergency Event" means an event where widespread outages or Service Interruptions have occurred in the service area of a Public Utility due to storms or other causes beyond the control of the Public Utility that is classified as a Type 1, 2, or 3 event under the Public Utility's Emergency Response Plan.

Division Response:

The Division accepts the proposed change as clarifying language. This added language makes it clear that an emergency event is a substantial service interruption, as opposed to smaller incidents.

Second Comment:

Second, the Company proposes a change to Section 5.5(C)(1) to remove the requirement that an electric distribution company's annual report include supporting documentation and details regarding each meeting. The Company conducts dozens of meetings each year, and has dozens (and perhaps hundreds) of additional conversations that could be classified as a "meeting" under a broad interpretation of word. To require detailed reporting separately for each meeting would impose significant administrative burden on the Company and the Division with no appreciable public safety benefit. In addition, this level of individualized reporting and documentation would require that the Company allocate resources that could otherwise be utilized in conjunction with prompt restoration of service. The Company will be able to provide supporting documentation on its preparation for Emergency Events that detail trainings and drills/exercises. Therefore, the Company proposes the following redlined revision to Section 5.5(C)(1):

1. Each electric distribution company shall submit an annual report with supporting documentation to the Division on its preparation for Emergency Events that details each meeting, training, and drill/exercise held pursuant to § 5.5(A)(1)(2) of this Part.

Division Response:

The Division accepts the change as reasonable. The goal of this provision was to provide the Division with information that supports the agency's statutory directive to ensure the adequacy of the annually filed plans, and in this particular case, to have data related to the sufficiency of

training. We concur that the documentation of each meeting would be potentially burdensome, and of limited value in supporting our statutory directive.

Third Comment:

Third, if the Division does not accept the Company's proposed change to the definition of "Emergency Event" above, the Company proposes to remove Section 5.5(C)(3) in its entirety. That provision would require the Public Utility to, within 90 days following an Emergency Event, submit a detailed report with supporting documentation to the Division on its restoration performance, including lessons learned. Complying with this requirement as currently drafted would result in the Company submitting an abundance of reports with the Division. For instance, the Company experienced 54 Type 5 events in the last two years. Under the requirement as proposed in Section 5.5(C)(3), the Company would have filed 54 detailed reports with the Division with supporting documentation on its restoration performance and lessons learned. Therefore, the Company proposes that the Division remove Section 5.5(C)(3) in its entirety.

3. Within 90 days following an Emergency Event, each Public Utility shall submit a detailed report with supporting documentation to the Division on its restoration performance, including lessons learned; and

Division Response:

We have opted to accept the additional language pertaining to the "Emergency Event" definition and accept this third proposal. In context of this section of the rule and considering the clarification of "Emergency Event", this language is redundant. This reporting requirement can be addressed through Division and Commission Dockets.

Fourth Comment:

Fourth, the Company proposes changes to Section 5.6(A)(1) to provide clarity. Instead of the requirement to identify "management staff responsible for Public Utility operations," the Company proposes that it be required to identify the "incident command positions" responsible for "emergency operations." Narrowing the identification of responsible staff to those in their incident command positions is more closely tied to the Company's responsibilities under the ERP. Providing the identification of all management staff who work on all public utility operations is overly broad; however, identifying the staff in incident command positions involved in emergency operations has a more direct relationship to the ERP. Further, it would be challenging for the Company to identify the specific number of workers in the ERP, as required. Mr. Thomas Kogut Docket No. D-24-06 – Rhode Island Energy Comments May 24, 2024 Page 3 of 4 The Company is flexible in the number of workers needed and utilized under the ERP at any given time, and the number of workers constantly increases and decreases. Therefore, the Company proposes the following redlined revision to Section 5.6(A)(1):

1. Identification of incident command positions management staff responsible for Public Utility emergency operations, including a description of their specific duties and identification of the number of workers;

Division Response:

In accepting this change the Division notes, the Company's position on staff identification is reasonable and does not interfere with the identification of incident command positions. Providing the identification of all management staff who work on all public utility operations is overly broad; however, identifying the staff in incident command positions involved in emergency operations has a more direct relationship to the ERP. Further, it would be challenging for the Company to identify the specific number of workers in the ERP, as required.

Fifth Comment:

Fifth, the Company proposes to remove the requirement in Section 5.6(A)(3) to communicate with Life Support Customers after each Emergency Event. The Company firmly agrees with communicating with Life Support Customers before and during an Emergency Event to make sure those vulnerable customers are aware of an impending Emergency Event and safe during the event. When an Emergency Event is over, however, there is no longer a public safety benefit to additional communication with Life Support Customers. Therefore, the Company proposes the following redlined revision to Section 5.6(A)(3): For electric distribution companies, procedures for maintaining an updated list of Life Support Customers, including a process to update a Public Utility's Life Support Customer list when a customer notifies the Public Utility of a medical need for electric service, communicating with Life Support Customers before, and during and after an Emergency Event, and procedures for prioritizing power restoration to Life Support Customers.

3. For electric distribution companies, procedures for maintaining an updated list of Life Support Customers, including a process to update a Public Utility's Life Support Customer list when a customer notifies the Public Utility of a medical need for electric service, communicating with Life Support Customers before and, during and after an Emergency Event, and procedures for prioritizing power restoration to Life Support Customers;

Division Response:

The Division concurs with the position that communication with Life Support customers is crucial prior to and amidst an event, but not so once the public safety threat has been resolved.

Sixth Comment:

Sixth, in Section 5.6(G), the Company proposes to add a cross-reference to Section 5.6(F). Section 5.6(F) describes the process by which the Division would review and approve ERPs filed by the Company. Section 5.6(G) references updates or changes to the ERP that would go into effect when filed with the Division, pending Division review and approval. Such Division review

and approval in Section 5.6(G) should be consistent with the process outlined in Section 5.6(F). Therefore, the Company proposes the following redlined revision to Section 5.6(G):

C. If a Public Utility makes any updates or changes to its ERP between annual filings, it shall submit such changes to the Division as soon as possible. Such changes shall go into effect when filed with the Division, pending Division review and approval in accordance with § 5.6(F) of this Part.

Division Response:

The Division concurs. The company is correct in noting "Such Division review and approval in Section 5.6(G) should be consistent with the process outlined in Section 5.6(F)."

Seventh Comment:

Seventh, the Company believes that the references to "R.I. Gen. Laws § 29-2-27" in Section 5.7(A)(1) and Section (B)(1) should be to "R.I. Gen. Laws § 39-2-27." Further, the Company proposes that Section 5.7(B)(1) should include language introducing the list of factors that the Division may consider in assessing any penalties. Therefore, the Company proposes the following redlined revisions to Section 5.7(B)(1) (with the corresponding revision to the statute referenced in Section 5.7(A)(1)):

B. Penalties

1. If after an investigation the Division finds a violation of established standards established, the Division shall levy a penalty pursuant to the provisions of R.I. Gen. Laws § 329-2-27. In assessing any penalties, the Division may consider:

Division Response:

The Division accepts the changes that correct the statutory reference and adds introductory language prior to the list of factors that may impact penalties.

REGULATORY ANALYSIS:

In the development of this proposed Rule, the Division engaged utilities, and particularly the state's dominant gas and electric utility in developing the draft regulation. The shared goal was to be a cost-effective as possible while supporting the regulatory framework for the Division to review the annually filed emergency response plans, as required by statute. The Comments submitted by RI Energy are all consistent with these goals.

Analysis of the benefits and costs of a reasonable range of regulatory alternatives reflecting the scope of discretion provided by the statute authorizing the proposed rule:

The regulation is proposed in light of statutory requirements of utilities to comply with R.I. Gen. Laws § 39-2-26 and § 39-2-27. In the process of developing the draft rule, the Division engaged

utilities and incorporated several suggestions that were useful in clarifying and streamlining the proposal. The regulation is designed not to exceed the spirit of the statute and in most instances reflects statutory requirements and current practices.

Demonstration that there is no alternative approach among the alternatives considered during the rulemaking proceeding which would be as effective and less burdensome to affected private persons as another regulation. This standard requires that an agency proposing to write any new regulation must identify any other state regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

This is the first iteration of a regulation specifically related to the filing and content of gas and electric utility emergency response plans. The Division believes the regulation serves as a guide to utilities in complying with the statute to file annual emergency response plans and as such, is not burdensome. The regulation does not overlap with the authority or responsibilities, but it does reference and acknowledge the regulatory role of the Public Utilities Commission.

Additional considerations:

The benefits of the proposed rule justify the costs of the proposed rule:

The provision of safe and reliable service is a major goal of this agency as well as a statutory requirement that the utilities file annual emergency response plans. Delayed service restoration is a concern for public safety as well as causing significant negative economic impact for businesses and residents. While we do not anticipate that the rule would have any cost impact on the Division, we have also worked with the utilities to not include any provisions that would incur additional utility costs beyond the underlying statutory requirement.

The proposed rule will achieve the objectives of the authorizing statute in a more cost-effective manner, or with greater net benefits, than other regulatory alternatives.

As noted, the Division engaged utilities, and particularly the state's dominant gas and electric utility in developing the draft regulation. The shared goal was to be a cost-effective as possible while supporting the regulatory framework for the Division to review the annually filed emergency response plans, as required by statute.