



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

February 11, 2020

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

**Re: Investigation by the Department of Public Utilities on Its Own Motion into the
Efficiencies of Operations and Productivity of National Grid's Management and
Personnel, D.P.U. 19-117**

Dear Secretary Marini:

Enclosed for filing please find the Office of the Attorney General's Comments on National Grid's Revised Request for Proposals in the above-referenced docket. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Alexander M. Early

Alexander M. Early
Assistant Attorney General

Encl.

cc: Jessica Ellis, Hearing Officer
Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Investigation by the Department of Public Utilities on Its Own Motion into the Efficiencies of Operations and Productivity of National Grid’s Management and Personnel)	
)	
)	D.P.U. 19-117
)	
)	
)	

**COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL ON
NATIONAL GRID’S REVISED REQUEST FOR PROPOSALS**

I. INTRODUCTION

The Office of the Attorney General (“AGO”) hereby files its comments on the Revised Request for Proposals (“Revised RFP”) filed by Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (collectively, “National Grid” or “Company”) concerning the Company’s independent audit (“Management Audit”) ordered by the Department of Public Utilities (“Department”). As described at greater length herein, the Revised RFP outlines procedures that would provide numerous opportunities for the Company to influence the Management Audit process. Revised RFP, Att.1, at 5. In addition, the Company requests that the Department allow the Company to move an additional item into Phase I of the Management Audit, namely issues concerning the Company’s electric vehicle (“EV”) program. Revised RFP, Att.1, at 3. These changes, among other problems evident in the Company’s original draft RFP filing, threaten to undermine the independence of the auditor and to reduce the auditor’s effectiveness by overloading Phase I of the Management Audit, which is already on a tight time schedule.

The AGO respectfully requests that the Department reject the Company’s Revised RFP and adopt the AGO’s changes as outlined herein. In particular, the Department should: 1)

require measures to ensure that the auditor remains independent; 2) reject the Company's attempt to overload Phase I and extend the timeline for completion of Phase I by three months; 3) direct the Company to send the final version of the RFP to additional consulting firms with experience in conducting comprehensive utility management audits.

II. BACKGROUND

In the Company's last rate case, D.P.U. 18-150, the Department identified several potential problems with the Company's operations and found that "there are certain areas that require further investigation into the efficiencies of operations and productivity of National Grid's management and personnel." *Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid*, D.P.U. 18-150, at 499 (2019). In particular, the Department raised concerns with the Company's approach to IT investment, management of the Company's Phase I and Phase II EV programs, and management of the interconnection process. *Id.*, at 499–501. With respect to the interconnection process, the Department stated that it was "troubled" by particular actions taken by the Company. *Id.*, at 501.

Based on these concerns, the Department found that the Company and its ratepayers would benefit from a "more in-depth review of National Grid's management practices through a comprehensive independent management audit of the Company." *Id.*, at 502. The Department stated its intent to open an investigation to address, at a minimum: "(1) the Company's strategic planning processes; (2) National Grid's staffing decisions and the extent to which they affect the Company's efficiency of operations and the productivity of its employees; and (3) potential management problems through to the highest levels of the organization, as well as potential management issues related to National Grid's relationship with NGSC." *Id.* The Department also ordered that National Grid's shareholders bear the costs of the Management Audit. *Id.*

On November 25, 2019, pursuant to D.P.U 18-150, the Department opened an investigation, on its own motion, to conduct a Management Audit regarding certain potential management problems of the Company. D.P.U. 18-150, at 502–03. The Department docketed this matter as D.P.U. 19-117.

On December 17, 2019, the Department issued a hearing officer memorandum outlining the two phases of the Management Audit. The first phase of the audit (“Phase I”) would address, at a minimum: “(1) the Company’s strategic planning processes; (2) National Grid’s staffing decisions and the extent to which they affect the Company’s efficiency of operations and the productivity of its employees; and (3) potential management problems from low level employees through to the highest levels of the organization, as well as potential management issues related to National Grid’s relationship with NGSC.” H.O. Memo, at 1–2 (Dec. 17, 2019). The second phase of the audit (“Phase II”) would address: “(1) management practices and (2) internal and external communication in the areas of IT strategy, cybersecurity, electric vehicle programs, and interconnection programs.” *Id.*, at 2. The Department anticipated that Phase I would be complete and ready for review by October 1, 2020 and that Phase II would be complete and ready for review by December 1, 2021. *Id.*

On January 15, 2020, the Company submitted a draft Request for Proposals (“RFP”) to the Department for services related to the Management Audit. In the filing, the Company requested one change to the Department’s bifurcation grouping so that Phase I also included “internal and external communication in the areas of IT strategy and Cybersecurity.” RFP Letter, at 2. Following a conference call with the Company, Department, and the AGO on February 4, 2020, the Department directed the Company to submit a Revised RFP reflecting the move of IT and Cybersecurity issues to Phase I and also to provide a scope of work for Phase II

of the audit.¹ On February 5, 2020, the Company submitted its Revised RFP, which included a number of changes.

III. COMMENTS

The Company's Revised RFP contains serious deficiencies that threaten to undermine the independence of the Management Audit and the ability of any consultant to complete a meaningful review of the Company's operations and management structures in the timeframe prescribed by the Department.² In addition, the Company's proposal to send the final RFP to only four consultants would not ensure that the Department's choice of auditor will be well informed and that the final work product will accomplish the Department's objectives. These issues are addressed in greater detail below.

A. Management Audit Independence

The Department should reject the Company's Revised RFP and require certain measures to ensure that the Management Audit process and the auditor remain free from the Company's influence. The Department's order in D.P.U. 18-150 raised several serious concerns with the

¹ It is the AGO's understanding from the Company's January 15 filing and the February 4 conference call that internal and external communication in the areas of electric vehicle and interconnection programs were to remain in Phase II of the audit.

² It is the Department and not the Company that controls the audit process. G.L. c. 25, § 5E; G.L. c. 164, § 76. *See Boston Edison Company vs. Department of Public Utilities*, 375 Mass. 1, 44 (1978). As part of its audit authority, the Department should ensure the independence of the analysis concerning the practices of National Grid USA. The audit should also meet the customary standards of professionalism and address the areas of the audit scope required by the Department. The end result of this audit process should be to improve operations and service for customers which will result in improved safety, efficiency and dollar savings for customers over time, and ensure that those savings are captured in rate cases. Ratepayers are entitled to an audit that meets the above standards and is free from Company influence. *See Attachment A, Case 18-M-0195 - Proceeding on Motion of the Commission to Conduct a Comprehensive Management and Operations Audit of National Grid USA's New York Electric and Gas Utilities* (New York Public Service Commission October 2, 2019).

Company's operations and concluded that a "comprehensive *independent* management audit" was necessary. D.P.U. 18-150, at 502 (emphasis added). Despite the Department's unmistakable directive that the audit be "independent," both the original and Revised RFP filings outline procedures which are replete with opportunities for the Company to exert its influence over the auditor.

First, in the Company's February 5 Revised RFP filing, the Company added the following sentence to the Audit Scope for Phase I concerning the Company's IT strategy: "[t]he Consultant will further investigate the Attorney General's assertion that the Company's approach to IT investment is reactive, uncoordinated, and has not been vetted to determine benefits Massachusetts customers receive for the costs allocated to them." Revised RFP, Att. 1, at 5. The Company's addition of this task to the proposed Audit Scope is inappropriate for a number of reasons. It will be the auditor's job to independently review the *Company's* operations and management issues that the Department identified in the Company's last rate case, D.P.U. 18-150, not to opine on particular positions taken by other parties in that case. Although the Management Audit will undoubtedly answer whether the AGO and the Department were right to be concerned about the Company's IT investment approach, specifically asking the auditor to "investigate the Attorney General's assertion" is well beyond the scope of the Management Audit and risks influencing the auditor's analysis.³ The auditor's focus should remain on the Company's actions. Therefore, the Department should order the Company to strike this sentence from the Revised RFP.

³ Moreover, this subject was not raised during the February 4 conference call and was not one of the areas that the Department directed the company to "fix" in the Revised RFP.

In addition, both the original and Revised RFP contain other process elements which provide numerous opportunities for the Company to put its thumb on the scale of the Management Audit process. The Company states that “periodic oral and written reports will be necessary in addition to the frequent informal contact between the Consultant and the Company.” Revised RFP, Att. 1, at 5. In furtherance of the Company’s apparent desire to maintain strict control over the Management Audit, the Audit Scope contemplates that: 1) the Company alone will receive “Weekly Informal Reports” regarding interviews and site visits scheduled for the following week; 2) the Company requires two weeks’ advance notice for interview requests with the Company, National Grid Services Company, and National Grid USA, *and* an interview guide outlining the interview duration and topics to be discussed; and 3) the Company has the right to request interview summaries—which include “participants’ conclusions and observations”—after the interviews take place. Revised RFP, Att. 1, at 6–7.

There is no reason why the Company should be allowed to have strict control over the audit of its own operations and management practices. Although certain Company personnel may need to be kept in the loop regarding the scheduling of interviews, coordinating site visits, and responding to information requests, it does not follow that the Company should be granted access to all of the auditor’s substantive interview notes or other workpapers prior to the completion of the Management Audit report. To the extent that the Company wishes to correct factual errors or otherwise address the auditor’s conclusions it will have the ability to do so once the Draft Report is available. *See* Revised RFP, Att. 1, at 7. However, allowing the Company to control the process and to receive periodic reports with substantive information on the auditor’s work prior to the conclusion of the Management Audit undermines the independent nature of the review process and could affect the accuracy of the final report.

To remedy these issues, the AGO requests that the Department require the following changes to the Company's processes as outlined in the Revised RFP: 1) the Company should designate a small number of Company employees whose job it is to coordinate interview requests, site visits, responses to information requests, and any other necessary contact with the auditor, and wall off all others from the process (beyond those that the auditor needs to interview); 2) Weekly Informal Reports should also be made to the Department and the AGO; 3) requests for interviews need only be made one week in advance, as opposed to two weeks in advance; 4) interview guides should not be provided prior to the interview; and 5) substantive information contained in interview summaries or other auditor workpapers should not be provided to anyone in the Company until after the Draft Report is submitted to the Company, the Department, and the AGO.

B. Bifurcation and Timeline

The Department should also reject the Company's proposal to move additional items from Phase II of the Management Audit into Phase I. In its original January 15 RFP filing, the Company requested one alteration to the Department's bifurcation grouping to have the auditor review "internal and external communication in the areas of IT strategy and cybersecurity" in Phase I of the Audit instead of Phase II." RFP Letter, at 2. Now, with its Revised RFP filing, the Company seeks to move another item to Phase I—the review of "the Phase I EV and Phase II EV Programs"—leaving the Company's management of its interconnection process as the sole area for review in Phase II. Revised RFP, at 3. Indeed, even prior to its latest filing, the Company's RFP contemplated the possibility that the auditor would conduct the work for Phases I and II simultaneously. RFP, Att. 1, at 3.

The AGO is concerned that the Company's proposed additions to Phase I, which has a current deadline of October 1, 2020, will result in a Final Report that fails to provide the "in-depth" review the Department contemplated in ordering the Management Audit. *See* D.P.U. 18-150, at 502. Put simply, if the auditor is tasked with reviewing substantially all of the Department's review areas by October 1, the additional work could negatively impact the thoroughness of the auditor's review of the Company's operations and management practices, to the ultimate detriment of the Company and its ratepayers. Therefore, the Department should reject the Company's requests to reorder the bifurcation groupings and direct the Company to proceed as originally contemplated in the Department's December 17 hearing officer memorandum.

More broadly, the AGO recommends that the Department extend the expected timeline for the completion of Phase I, irrespective of whether the Department decides to approve the Company's proposed additions to Phase I. According to the Company's proposed Audit Timetable and Procedures, the auditor will only have approximately 3.5 months from the date that the Department approves the selection of the auditor and work plan (May 13, 2020) to the issuance of the Phase I Draft Report (August 31, 2020). RFP, Att. 2, at 1. In addition, the current timeline also creates logistical challenges because it would require the auditor to schedule interviews, site visits, and responses to information requests during the summer holidays. Therefore, an extension of time is likely to result in a more comprehensive and thorough audit. The AGO recommends giving the auditor an additional three months for the completion of Phase I, so that the Draft Report would be due on November 31, 2020, and the Final Report would be due on January 1, 2021

Moreover, whether or not the Department decides to keep the current October 1 deadline, it should put certain measures in place to ensure that the Company works expeditiously to provide needed information to the auditor. As an example, the Department should require a deadline of seven days for the Company to respond to information requests from the auditor rather than leave the response time open-ended as currently contemplated. Ultimately, the Department should ensure that the auditor has sufficient time to produce a quality work product within whatever time constraints the Department decides to impose.

C. RFP Recipients

Lastly, the Department should direct the Company to request bids on its final RFP from more consulting firms than the four listed in its January 15 RFP Filing. Specifically, the Company states that it intends to issue the RFP to Navigant Consulting, Inc., Jacobs Consultancy Inc.,⁴ Schumaker & Company Consulting,⁵ and FTI Consulting. RFP Letter, at 2. Notwithstanding any experience these companies may have, there are numerous other consultants with experience in conducting comprehensive utility management audits in this and other jurisdictions. Rather than limit the response to potentially four proposals, at most, the Department should require the Company to issue the RFP to a broader pool of consultants with relevant experience. At a minimum, the Company should send the RFP to the consultant lists used in previous Department management audit proceedings, including D.P.U. 08-110, D.P.U.

⁴ Jacobs Consultancy Inc. was rebranded as “Advisian” following an acquisition by WorelyParsons in April 2019. <https://www.worleyparsons.com/news/2019/apr-jacobs-ecr-acquisition-completes>.

⁵ The Company’s cover letter submitting its original draft RFP identifies the consultant as “*Shumaker & Company Consulting*” (emphasis added). This appears to be a typo.

09-01-A, and D.P.U. 10-155.⁶ In particular, in D.P.U. 09-01-A, Fitchburg Gas and Electric Light Company d/b/a Unitil sent its RFP to eleven consulting firms and received a total of nine responses. Having more proposals from qualified bidders in this case will help ensure that the Department has the opportunity to choose the best-qualified auditor to accomplish the Department's objectives and achieve benefits for the Company and its ratepayers.

IV. CONCLUSION

For the reasons discussed above, the AGO recommends that the Department: 1) require measures to ensure that the auditor remains independent; 2) reject the Company's attempt to overload Phase I and extend the timeline for completion of Phase I by three months; 3) require the Company to send the final version of the RFP to additional consulting firms with experience in conducting comprehensive utility management audits. The AGO appreciates the opportunity to offer these preliminary comments on the draft RFP and looks forward to providing comments on the auditor proposals once received by the Company.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL

By: /s/ Alexander M. Early
Alexander M. Early
Assistant Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Dated: February 11, 2020

⁶ In D.P.U. 10-155, the hearing officer required a similar step after the Company received no bids on its original RFP. See *Audit of Boston Gas Company, Essex Gas Company, and Colonial Gas Company, d/b/a National Grid*, D.P.U. 10-155, Hearing Officer Memorandum, at 2 (June 6, 2012).

