

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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NOTICE OF PROBABLE VIOLATION
ELECTRONIC MAIL – RETURN RECEIPT REQUESTED

November 19, 2020

D.P.U. 14-PL-07

Gregory Hill, Vice President
Gas Engineering
Eversource Energy
157 Cordaville Road
Southborough, MA 01722

Re: [REDACTED] Fairhaven

Dear Mr. Hill:

The Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”) issues this Notice of Probable Violation (“NOPV”) to NSTAR Gas Company d/b/a Eversource Energy (“NSTAR” or “Respondent”) pursuant to 220 CMR 69.03 and Delegation Order, D.P.U. 18-44-A (2018).

On October 24, 2013, an inspector from the Division conducted an inspection of Eversource’s facilities at a residence located at [REDACTED] Fairhaven, Massachusetts. During the inspection, the Division discovered that the gas service supplying [REDACTED]

was underlying portions of the residence. The Division conducted the inspection pursuant to G.L. c.164, §§ 76 and 105A and 220 CMR 69.02. As discussed in further detail below, the Division has reason to believe that Respondent may have violated 49 C.F.R. Part 192 (“Part 192”).

I. ALLEGATIONS

Respondent’s records indicate that a coated steel service line to [REDACTED] was installed on June 6, 1972. The original service card depicts the service line entering the east side of the building. The service card also indicates a service riser installed on the outside of the building, on the east side at the terminus of the service line.

Information obtained from the Town of Fairhaven (“Town”) indicates that in 1979, an addition to a sun room was constructed on the east side of the building. This addition created a crawl space in an area over the location of the riser. In 1989, a second addition and garage were constructed to the north of the original building and the 1979 addition; the garage was located over the existing coated steel service line. During the October 24, 2013 inspection, the Division discovered that the service line was underlying portions of the 1979 addition and 1989 garage, and terminated in the crawl space underlying the 1979 addition.

Further, the Division noted that the service riser located in the crawl space had a “riser valve” installed on the outlet of the riser. Both the Division inspector and an NSTAR representative concurred that the “riser valve” was not a valve that would have been used or installed by NSTAR, and the outlet of the “riser valve” contained piping that appeared to

have been installed by a third party, not by NSTAR. The piping led to the inlet of the meter, which was now located on the east wall of the 1979 addition, and continued to customer appliances. NSTAR had no record of the meter and regulator being relocated to the east side of the building.

Information from the Respondent revealed that NSTAR had sent service technicians to

██████████ on various occasions between 2008 and 2013:

- On December 15, 2008, NSTAR conducted a seven-year meter exchange. The service technician assigned to do the meter exchange task did not notice the lack of a service riser or make a notation of the situation.
- On July 29, 2009, NSTAR dispatched a service technician to investigate the report of an odor. The technician found an outside meter fit with multiple leaks on it. He also noticed that there was no riser present and that the service line was coming from under the addition (through the crawl space) to the meter fit. The technician notified NSTAR's Distribution department that he had an immediate hazard (leak) condition, and the Distribution department located and shut off the curb cock so that the technician could repair the leak.
- On January 3, 2012, NSTAR dispatched a service technician to ██████████ to investigate a noisy meter. The service technician removed the noisy meter and replaced it with a new meter. The service technician did not note that the meter did not have a service riser and associated piping to the meter inlet.

In addition, NSTAR performed leakage surveys for ██████████ on the following dates: December 25, 2005; August 11, 2008; and September 26, 2011. Notes for the 2008 and 2011 leakage surveys indicate that the meter was outside and did not require protection.

On October 24, 2013, in response to the technician's referral to NSTAR's Distribution department on July 29, 2009, NSTAR finally relocated the service to ██████████. NSTAR relocated the meter to the front of the building and replaced the service line

from the curb cock to the meter. NSTAR also replaced the customer piping inside [REDACTED] [REDACTED] to connect to the relocated meter and riser. In response to an information request, NSTAR stated that there had been repeated attempts to coordinate the relocation with the customer prior to that date.

Based on our investigation, the Division has reason to believe that NSTAR failed to follow federal pipeline safety regulations, 49 C.F.R. Part 192 (“Part 192”), with regard to the situation at [REDACTED], as well as failed to follow state regulations and its own operations and maintenance procedures. The relevant sections are as follows:

1. Part 192, § 192.13(b), (c) What general requirements apply to pipelines regulated under this part?
 - (b) No person may operate a segment of pipeline listed in the first column that is replaced, relocated, or otherwise changed after [November 12, 1970] unless that replacement, relocation, or change has been made in accordance with this part.
 - (c) Each operator shall maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this part.
2. Part 192, § 192.361(f) - Service lines: Installation.
 - (f) Installation of service lines under buildings. Where an underground service line is installed under a building:
 - (1) It must be encased in a gas-tight conduit;
 - (2) The conduit and the service line must, if the service line supplies the building it underlies, extend into a normally usable and accessible part of the building.
3. Part 192, § 192.605(a) Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.

4. Part 192, § 192.613(a), (b) Continuing Surveillance.

(a) Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.

(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved.

5. Part 192, §192.723(b)(2) Distribution systems: Leakage surveys.

(b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements:

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months.

6. Part 192, § 192.805(h) Qualification Program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.

7. State pipeline safety regulations, 220 CMR 101.00.

220 CMR 101.01: Compliance with MFS Standards. Every gas piping system shall be constructed, operated and maintained except as

otherwise provided in this regulation, in compliance with [49 C.F.R. Part 192].

220 CMR 101.06(21)(b): Distribution System Areas Not Included in the Principal Business District. Leakage surveys shall be made of the area not included in the principal business district at least once in every consecutive 24 month period.

8. NSTAR's Operation and Maintenance Plan ("O&M"), OM-60, Leakage Control, Sections 5(g).

5(g) All other service lines not covered in Section 5, Items a to f, will be surveyed at least once every five (5) calendar years at intervals not exceeding 63 months. This survey will include 20% of the service lines each year and shall include tests for gas leakage and visual inspection of [NSTAR]-owned inside service piping to the outlet of the meter or the connection to the customer's piping, whichever is further downstream.

The Department makes these allegations based on the following:

1. NSTAR had knowledge that the service line to [REDACTED] was underlying a building for a period of four years and three months, from July 29, 2009, to October 23, 2013, and did not relocate, sleeve, or remove the service line.
2. NSTAR did not conduct a proper "continuing surveillance" program of its distribution system because the building at [REDACTED] had an addition and an addition/garage built over the service line in 1979 and 1989, respectively.
3. NSTAR did not document that the service line had been encroached upon until 2009, and did not address the situation until 2013. Consequently, the service line was encroached upon for over 30 years, dating from its installation in June 1972.
4. NSTAR failed to conduct a leakage survey over the entire length of its service line because sections of the service line were inaccessible for 30 years.
5. NSTAR did not follow its O&M, which requires each service line be leak surveyed up to the outlet of the meter or to customers piping, whichever, is further downstream. As noted above, sections of the service line were inaccessible for 30 years.

6. NSTAR failed on two occasions to leak survey its distribution system within a 24-month period, as required by 220 CMR 101.06(21)(b).

In its February 7, 2014 cover letter to the information request responses, NSTAR stated that, as a result of this “audit,” it had taken action to improve its future performance relating to identifying and correcting unusual conditions found in the field. This action included: (a) providing refresher training to all service, distribution, and leak survey personnel regarding the need to recognize and report any unusual situations during the performance of their job duties; and (b) treating all locations where there is suspected customer alteration to company piping as a “diversion,” requiring immediate notification to a supervisor and addressing the situation as soon as possible. NSTAR provided a copy of the training presentation.

II. PRIOR CONSENT ORDER VIOLATIONS

NSTAR has signed the following Consent Order which pertains to similar violations of Part 192: D.P.U. 16-PL-01.

III. PROPOSED CIVIL PENALTY

Under the version of G.L. c. 164, § 105A effective in 2013, NSTAR is subject to a civil penalty not to exceed \$50,000 for each violation for each day that the violation exists, up to a maximum of \$1,000,000 for any related series of violations.

In determining the amount of the civil penalty, the Division shall consider the following, pursuant to G.L. c. 164, § 105A: the appropriateness of the penalty to the size of the business of the person, firm, or corporation charged; the gravity of the violation; and the

good faith of the person, firm, or corporation charged in attempting to achieve compliance, after notification of a violation.

In the present matter, the Division has reviewed the circumstances of the allegations and is prepared to resolve this matter upon NSTAR's agreement to the terms in the attached Consent Order and payment of a civil penalty in the amount of \$10,000.

IV. RESPONSE TO THIS NOPV

Within 30 days of receipt of this NOPV, NSTAR shall respond to the Division in one of the following ways, pursuant to 220 CMR 69.04:

1. Sign and return the attached Consent Order, thus agreeing to remit payment of the civil penalty by check or money order made payable to the Commonwealth of Massachusetts;
2. Submit an offer in compromise of the proposed civil penalty under 220 CMR 69.04(2);
3. Request an informal conference under 220 CMR 69.05; or
4. Submit a written reply to the Division disputing the allegation(s) contained in the NOPV. The reply must include a complete statement of all relevant facts and authority and full description of the reasons why the Respondent disputes the allegation(s) contained in the NOPV.

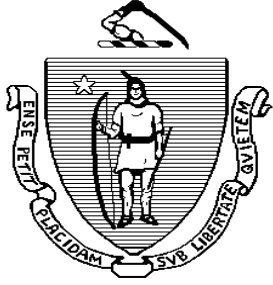
Failure to respond within 30 days of receipt of this NOPV will be deemed an admission to the allegations contained herein and a waiver of NSTAR's right to contest the allegations. If NSTAR fails to respond within 30 days, the Department may, without further notice, find the facts to be as alleged herein and issue a final Order, pursuant to 220 CMR 69.04(3).

Very truly yours,

Richard Enright, Director
Pipeline Safety Division

Enclosures: Consent Order
Compliance Agreement

Cc: Kerry Britland, Director, Regulatory Affairs, Eversource Energy
Kristen Gasparonis, Eversource Energy
Meggan Birmingham (Pena), Eversource Energy
Susan Kullberg, Eversource Energy
Danielle Winter, Esq., Keegan Werlin LLC
Michael Conkey, Assistant Director, Pipeline Safety Division
Janine D'Amico Vargas, Assistant General Counsel
Laurie Ellen Weisman, Division Counsel



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

CONSENT ORDER

November 19, 2020

D.P.U. 14-PL-07

In the matter of NSTAR Gas Company d/b/a Eversource Energy

I. JURISDICTION

1. This document, with the attached Compliance Agreement, is a Consent Order entered into between the Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”) and NSTAR Gas Company d/b/a Eversource Energy (“Respondent”), and is executed in accordance with 220 CMR 69.08.
2. The Division has authority to enter into this Consent Order on behalf of the Department pursuant to Delegation Order, D.P.U. 18-44-A (2018).
3. Failure to comply with the terms of this Order may result in the assessment of civil penalties and referral of this matter to the Attorney General for appropriate action.
4. The terms and conditions of this Order become effective upon signing by the authorized representatives of the Respondent and the Department.
5. Respondent has stipulated and consented to the issuance of this Consent Order.

II. VIOLATIONS AND CIVIL PENALTY

1. Pursuant to G.L. c. 164, §§ 76 and 105A, and 220 CMR 69.02, the Division conducted a pipeline safety inspection of the Respondent’s facilities and records. As a result of the inspection, the Director of the Division issued to the Respondent a Notice of Probable Violation (“NOPV”), D.P.U. 14-PL-07, dated November 19, 2020, in accordance with 220 CMR 69.03. The NOPV is attached hereto and made a part hereof.
2. Based on information contained in the NOPV, the Division finds that the Respondent violated pipeline safety regulations contained in 49 C.F.R. Part 192 (“Part 192”) and 220 CMR 101.00, specifically:

Consent Order

Part 192, § 192.13(b) - What general requirements apply to pipelines regulated under this part?

Part 192, § 192.13(c) - What general requirements apply to pipelines regulated under this part?

Part 192, § 192.361(f) - Service lines: Installation.

Part 192, §192.605(a) - Procedural manual for operations, maintenance, and emergencies.

Part 192, § 192.613(a) - Continuing Surveillance.

Part 192, § 192.613(b) - Continuing Surveillance.

Part 192, §192.723(b)(2) - Distribution systems: Leakage surveys.

Part 192, § 192.805(h) - Qualification Program.

220 CMR 101.06(21)(b): Distribution System Areas Not Included in the Principal Business District.

3. Pursuant to G.L. c. 164, § 105A, the Division hereby imposes upon the Respondent a civil penalty in the amount of \$10,000 for the above-noted violations.
4. The Respondent hereby agrees, upon signing and returning this Consent Order to the Division, to remit payment of the civil penalty by check or money order in the amount of \$10,000 made payable to the Commonwealth of Massachusetts, One South Station, Boston, MA 02110.

III. RESPONDENT REQUIREMENTS

1. **Respondent shall sign the Stipulation below and return this complete document to the Division.**
2. All submissions by Respondent in accordance with this Consent Order shall be addressed to:

Director
Pipeline Safety Division
Department of Public Utilities
One South Station
Boston, MA 02110

IV. STIPULATED TERMS

Pursuant to 220 CMR 69.08(1), the Respondent through the signature below, by the person to whom this Consent Order is issued or a duly authorized representative, acknowledges agreement to the terms contained herein without admitting or denying that a violation of any Department or federal pipeline safety law or regulation occurred in relation to the above-noted matters. Further, Respondent agrees to issuance of this Consent Order and stipulates to the following:

Consent Order

1. Respondent, by signing the Stipulation, hereby waives:
 - (a) All rights to informal review pursuant to 220 CMR 69.05;
 - (b) All rights to a hearing pursuant to 220 CMR 69.06;
 - (c) Any and all procedural rights available in connection with the issuance of the Consent Order;
 - (d) All rights to seek any type of administrative or judicial review of the Consent Order; and
 - (e) Any and all rights to challenge or contest the validity of the Consent Order.
2. Respondent expressly acknowledges that neither Respondent nor the Division has any intention to enter into a contract.
3. The terms and provisions of this Consent Order and Stipulation shall be binding upon, and inure to the benefit of, Respondent and the Division and their successors in interest.
4. Nothing in these Stipulated Terms shall preclude any proceedings brought by the Department to enforce the terms of the Consent Order, and nothing in these Stipulated Terms constitute, nor shall Respondent contend that they constitute, a waiver of any right, power, or authority of any other representative of the Commonwealth or an agency thereof to bring other actions deemed appropriate.

V. FINAL ORDER

1. This Consent Order and Stipulation is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, having the force and effect of a remedial order, pursuant to 220 CMR 69.07(2), and expressly does not form, and may not be considered to form, a contract binding on the Division, the Department, or the Commonwealth of Massachusetts.

Consent Order

2. The terms of this Consent Order and Stipulation, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreement, or prior arrangements between the Division and the Respondent, whether oral or written.

By Order of the Division

_____ Date: _____
Richard Enright, Director
Pipeline Safety Division
Department of Public Utilities

The undersigned, duly authorized, stipulates to and acknowledges agreement to the terms herein.

NSTAR Gas Company d/b/a Eversource Energy

_____ Date: _____
Gregory Hill
Vice President, Gas Engineering

COMPLIANCE AGREEMENT
BETWEEN THE DEPARTMENT OF PUBLIC UTILITIES
AND NSTAR GAS COMPANY D/B/A EVERSOURCE ENERGY

D.P.U. 14-PL-07

NSTAR Gas Company d/b/a Eversource Energy (“NSTAR”) agrees to take the following actions within the specified time periods:

1. Within 180 days of the effective date of this Order, NSTAR shall develop and conduct a refresher training program with all employees or third-party contractors who install or inspect service lines, risers, meters, and regulators within the state of Massachusetts. Those participating in this training shall include, but are not limited to, construction crews, fitters, inspectors, and supervisors.
2. Within 200 days of the effective date of this Order, NSTAR shall provide documentation to the Department to demonstrate that NSTAR has met the requirements of Item 1.
3. Within 30 days of the effective date of this Order, NSTAR shall pay a civil penalty of \$10,000 to the Commonwealth of Massachusetts.