

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

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**NOTICE OF PROBABLE VIOLATION**  
**ELECTRONIC MAIL – RETURN RECEIPT REQUESTED**

February 11, 2022

D.P.U. 22-PL-06

Mark Prewitt  
Vice President, Pipeline Safety & Compliance  
National Grid  
40 Sylvan Road  
Waltham, MA 02451

Re: D.P.U. 22-PL-06, [REDACTED] Brookline (12/17/21)

Dear Mr. Prewitt:

The Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”) issues this Notice of Probable Violation (“NOPV”) to Boston Gas Company d/b/a National Grid (“National Grid” or “Company” or “Respondent”) pursuant to 220 CMR 69.03 and Delegation Order, D.P.U. 18-44-B (2020).

On November 8, 2019, the Division issued its Shallow Main Installations letter (“Letter”) to National Grid regarding shallow main installations. The Letter outlined the state and federal regulations governing the installation of shallow mains and emphasized the operator must make a written request to the Division *prior to* installation. On December 17, 2021, the Division

responded to an incident involving a damaged gas main that resulted in a release of gas at [REDACTED] [REDACTED] Brookline, pursuant to G.L. c.164, §§ 76 and 105A, and 220 CMR 69.02. On December 20, 2021, the Division sent an email to National Grid requesting information about the section of the damaged main, which the Company provided on January 3, 2021. On January 4, 2021, National Grid sent a Request for Waiver Form, SM2022-001, to the Division requesting a shallow main burial waiver for the [REDACTED] Brookline section of piping. As discussed in detail below, the Division conducted further investigation into the matter and has reason to believe that Respondent may have violated 49 C.F.R. Part 192 (“Part 192”) as well as Title 220 of the Code of Massachusetts Regulations.

I. FINDINGS

On July 1, 2021, the Company installed a [REDACTED] plastic main, which supplied the buildings at and surrounding [REDACTED] in Brookline. On December 17, 2021, a third-party excavator struck and damaged the main. On that date, the Division received a Telephonic Incident Notification and responded to the site to conduct a Damage Prevention inspection. During the inspection, the Division inspector observed that there was only 20 inches of cover where the main passed over a culvert crossing the street, rather than the required 24 inches. At the time of the incident, this shallow section of piping was not plated for protection. National Grid crew members indicated that they would be plating the section of pipe after it was repaired. The shallow, un-plated main was only discovered as a result of this incident.

The federal pipeline safety regulation Part 192, § 192.327(b) requires operators to install buried main with a minimum cover of 24 inches. In addition, 220 CMR 101.06(12) requires 24 inches of cover for buried mains but allows operators to install a main with less than 24 inches of

cover provided that the operator take certain precautions and receive Department approval. Operators may apply for waivers from this requirement pursuant to 220 CMR 101.03(1). The criteria for requesting a waiver were provided to National Grid in the Letter. Further, Attachment 1 of National Grid procedure CNST-04008 “Installing Plastic Mains”, as well as CNST-6030 “Protective Steel Plating for Gas Mains and Services”, Technical Bulletin A-20-01 “Shallow Distribution Main Installation & Waiver Approval Update”, and Technical Bulletin A-20-02 “Shallow Main Installation & Waiver Approval Update”, restate the requirements that Department approval must be obtained prior to installation and that plating is required for mains installed with less than 24 inches of cover.

At the time of the incident, on December 17, 2021, National Grid had not requested a waiver from Part 192, § 192.327(b) nor had it received Division approval for the shallow main installation at [REDACTED] in Brookline. In response to the Division’s December 20, 2021 email following the incident, National Grid admitted that the portion of main affected had a burial depth of 20”, that it had not sought a waiver or approval in advance of the installation, and that this section of piping was not plated. Following the incident, on January 4, 2021, National Grid did submit a shallow main waiver request for the shallow section of piping which the Division denied. The Division reiterates that shallow main waivers must be sought in advance or on the date of installation in accordance with 220 CMR 101.06(12).

## II. ALLEGATIONS

Based on the investigation, the Division has reason to believe that Respondent’s failure to seek a waiver prior to installing a shallow main and its failure to take adequate measures to

protect that main, may be in violation of certain sections of its own procedures as well as federal and state pipeline safety regulations. The alleged violations are as follows:

1. Part 192, § 13(c) - What general requirements apply to pipelines regulated under 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, § 192.327(b) - Cover.

(b) Except as provided in paragraphs (c) and (d) of this section, each buried main must be installed with at least 24 inches (610 millimeters) of cover.

3. 220 CMR 101.06(12)(e) - Cover.

(e) A main may be installed with less than 24 inches of cover providing:

1. Adequate measures are taken to prevent damage to the pipe by external forces.
2. That the maximum allowable operating pressure will produce a stress level of less than 20% of SMYS.
3. That the Department approves the installation.

### III. PRIOR CONSENT ORDER VIOLATIONS

National Grid has signed the following Consent Order that pertains to a similar violation of Parts 192, §§ 13(c), § 192.327(b), and 220 CMR 101.06(12)(e): 19-PL-30.

### IV. PROPOSED CIVIL PENALTY

Under G.L. c. 164, § 105A, National Grid is subject to a civil penalty not to exceed \$500,000 for each violation for each day that the violation exists, up to a maximum of \$10,000,000 for any related series of violations. These dollar amounts shall be doubled if the department determines that the violator has engaged in one or more similar violations in the three years preceding the violation. 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 National Grid's agreement to the terms in the attached Consent Order and payment of a civil penalty in the amount of \$100,000.


V. RESPONSE TO THIS NOPV

Within 30 days of receipt of this NOPV, National Grid 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.

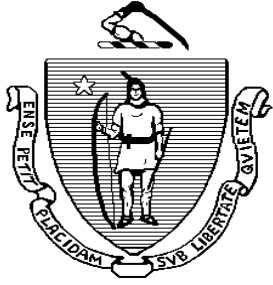
Failure to respond within 30 days of receipt of this NOPV will be deemed an admission to the allegations contained herein and a waiver of National Grid's right to contest the allegations. If National Grid fails to respond within 30 days, the Department may, without further notice, find the facts to be 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: Alexander Day, National Grid  
Thomas Kubilis, National Grid  
Justin Evans, Assistant Director, Pipeline Safety Division  
Janine D'Amico Vargas, Assistant General Counsel, Pipeline Safety Division  
Emily Hamrock, Division Counsel, Pipeline Safety Division



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

### CONSENT ORDER

February 11, 2022

D.P.U. 22-PL-06

In the matter of Boston Gas Company d/b/a National Grid

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#### **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 Boston Gas Company d/b/a National Grid (“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-B (2020).
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. 22-PL-06, dated February 11, 2022, 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, specifically:

**Part 192, § 192.13(c) – General.**

**Part 192, § 192.327(b) – Cover.**

**220 CMR 101.06(12)(e) - Cover.**

3. Pursuant to G.L. c. 164, § 105A, the Division hereby imposes upon the Respondent a civil penalty in the amount of \$100,000 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 \$100,000 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:

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.
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.**

**BOSTON GAS COMPANY D/B/A NATIONAL GRID**

\_\_\_\_\_ Date: \_\_\_\_\_  
Mark Prewitt  
Vice President, Pipeline Safety & Compliance

COMPLIANCE AGREEMENT  
BETWEEN THE DEPARTMENT OF PUBLIC UTILITIES  
AND BOSTON GAS COMPANY D/B/A NATIONAL GRID

D.P.U. 22-PL-06

Boston Gas Company d/b/a National Grid (“National Grid”) agrees to take the following actions within the specified time periods:

1. Within 30 days of the effective date of this Order, National Grid shall pay a civil penalty of \$100,000 to the Commonwealth of Massachusetts.
2. Within 30 days of the effective date of this Order, National Grid shall review the requirements of National Grid procedure CNST-6030 and Technical Bulletin A-20-02 with appropriate personnel. The procedural review shall include the identification of shallow mains by field crews and notification to National Grid management. This includes shallow mains encountered in the field and mains that, if installed, will not meet the cover requirements of 220 CMR 101.06(12).
3. Within 45 days of the effective date of this Order, National Grid shall provide documentation to the Pipeline Safety Division showing that it has satisfied the requirements of Item 2.
4. Within 45 days of the effective date of this Order, National Grid shall requalify the crew that installed the main which was completed on July 1, 2021, as well as the crew that made the repairs on December 17, 2021 on CT 31 – Installation of Pipe, CT 70 – Abnormal Operating Conditions and Properties of Natural Gas, and CT 71 – Operator Excavation and Backfilling in the Vicinity of a Pipeline.
5. Within 60 days of the effective date of this Order, National Grid shall provide documentation to the Pipeline Safety Division showing that it has satisfied the requirements of Item 4.
6. Within 75 days of the effective date of this Order, National Grid shall review other main installations of the crew that installed the main which was completed on July 1, 2021 to verify that any shallow mains were plated and waivers approved by the Division.
7. Within 90 days of the effective date of this Order, National Grid shall provide documentation to the Pipeline Safety Division showing that it has satisfied the requirements of Item 6.
8. Within 90 days of the effective date of this order, National Grid shall re-install the main at this location at the correct depth by relocating it.
9. Within 90 days of the effective date of this Order, National Grid shall provide documentation to the Pipeline Safety Division showing that it has satisfied the requirements of Item 8.