

Assessing and complying with regulatory oversight on utility performance

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ABSTRACT

This paper emphasises the importance of — and the complexity inherent in — the navigation of regulatory oversight and legal requirements in the area of electric utility performance. With a particular focus on utility companies in New York State, it discusses recent measures taken to adapt to the changing demands of regulatory compliance.

Keywords: *regulatory compliance, emergency planning, emergency management, electrical utility infrastructure, legal requirements*

OVERVIEW OF UTILITY REGULATION

Every private and municipal utility has a regulator of some form. For National Grid and the other investor-owned utilities in New York State, that regulator is a state government agency that oversees and regulates electric, gas, water and telecommunication companies. As events, storms, changes in political leadership, industry incidents or other events occur, regulatory orders and case laws are created to protect the public interest and support oversight and accountability for investor-owned utilities. The goal of regulation, in most contexts, is to drive a specific practice or establish a measure of oversight which may create positive impacts from negative outcomes within the area in which the

regulation is enforced. Overall, the regulations, regardless of where they came from in the grand scheme of implementation, are created requiring utilities to comply or risk facing monetary fines and consequences for non-compliance.

Throughout a response or event, utilities must remain flexible, scalable and responsive while using the principles of the incident command system, which is adaptable to the company's structures and needs.¹ Utilities can implement an emergency response plan (ERP) to help coordinate and document the actions and efforts needed to comply with regulatory orders and laws. By creating these procedures and using emergency management properties, the company can support a response to emergencies that is compliant with all legislative, legal and regulatory obligations. Companies should focus these documents on public safety, workforce safety and by outlining and defining restoration procedures and processes to prioritise outage restoration actions to be taken. These documents are important not only for the company's guidance on the actions needed for the restoration of power to customers but also for compliance with legal requirements set forth by regulations.

Regulatory orders

Over the past 11 years, regulators have implemented 36 regulatory orders with nearly 300 actionable items that require review, validation, legal evidence of completion and compliance, and may require some form of reporting criteria to be performed by the various investor-owned utilities. To ensure compliance with these regulations, companies are required in some capacity to stand up a team or department of personnel focused on emergency response, restoration and compliance with regulatory orders and oversight. These groups span from individuals performing

multiple tasks as part of their normal daily work (eg ‘blue-sky work’) and are coordinated and executed with emergency response plans, procedures and training requirements to ensure the legal requirements ordered by the state regulators of the utilities are being met. All utilities must also file an ERP with the state regulators each year, which is then reviewed, commented on and updated to ensure compliance with the state regulatory orders and requirements. These ERPs vary in complexity from company to company but must have the information required by the state regulators which are defined in the legal orders to which the electrical utilities are held accountable.

Complexity of legislation and orders

Throughout the years, based on storm response and in some cases current political climate, there is a consistent stream of legislation being implemented into law which utilities must follow. Typically, new legislation does not supersede earlier legislation; rather, all legislation is all congruent, and hence requires knowledge of all legislation regardless of when it was issued.

An example of a regulatory case that is a driving case law within the New

York utility business is Case 13-E-0140, which provides regulation on the Utility Emergency Performance Metrics, also commonly known as the Scorecard. This case law comes into effect when an outage duration lasts more than three days, or to any qualifying network outage in New York City. By regulation of this order, if the utility believes that the restoration will exceed 72 hours, or if the regulator requests the company to file documentation for a Scorecard event, the utility is both to score itself and be scored according to the criteria mentioned in this case law. This case law was adapted to function as a tool to assess each utility’s response and restoration efforts for an outage event, and to assess the actions taken and communications performed by the utility throughout the planning and execution of restoration of the event.² The law is broken down into three sections: preparation, operational response and communication. The three sections provide more focused evaluation and scoring criteria for utility companies to assess themselves against (see Tables 1–3), in order to confirm that expectations are being met within the defined periods.

The law breaks down each section into measurement criteria under areas

Table 1: Preparation (10 per cent of total)

<i>Area of interest</i>	<i>Definition of measure</i>	<i>Measurement criteria</i>	<i>Points</i>
1. Event anticipation	Complete steps to provide timely and accurate emergency event preparations in response to the national weather service (NWS) or the company's private weather service, in accordance with the company's Public Service Commission (PSC) approved emergency response plan, for an event impacting the company's service territory	1.1 Employees/contractors planning	15
		1.2 Press releases issued/text messages/mail sent	15
		1.3 Municipal conference calls held and highly effective	20
		Municipal conference calls held and effective	10
		1.4 Life support equipment (LSE) customers alerted	15
		1.5 Point of contact for critical facilities alerted	15
		1.6 Company compliance with training programme as specified in commission approved emergency plan	15
		1.7 Participation in all pre-event mutual assistance group calls	15
		1.8 Verify materials/stockpiles levels based on forecast	40
		If materials are not on hand, correct situation within 24 hours	
	Total	150	

Table 2: Operational response (60 per cent of total)

<i>Area of interest</i>	<i>Definition of measure</i>	<i>Measurement criteria</i>	<i>Points</i>
2. Down wires	Response to downed wires reported by Municipal Emergency Official	<18 hours (3–5-day restoration) <36 hours (<5-day restoration)	60
3. Preliminary damage assessment	Completion of preliminary damage assessment	<24 hours from start of restoration	30
4. Crewing	80% of the forecast crewing committed to utility	<48 hours from the start of restoration	30
5. Estimated time of restoration (made available by utility on web, IVR, to CSRs, etc.)	Publication of global estimated time of restoration (ETR) in accordance with ETR protocol	Exceed expectations <24 hours (3–5-day restoration) <36 hours (>5-day restoration)	50
		Meets expectations <36 hours (3–5-day restoration) <48 hours (>5-day restoration)	30
	Publication of regional/county ETR in accordance with ETR protocol	Exceeds expectations <24 hours (regions with 3–5-day restoration) <36 hours (regions with >5-day restoration)	50
		Meets expectations <36 hours (regions with 3–5-day restoration) <48 hours (regions with >5-day restoration)	30
	Publication of local/municipal ETR in accordance with ETR protocol	Exceeds expectations <36 hours (3–5-day restoration) <48 hours (>5-day restoration)	50
		Meets expectations <48 hours (3–5-day restoration) <72 hours (>5-day restoration)	30
6. ETR accuracy	Global ETR accuracy as published in accordance with ETR requirement time	Accurate within ± 24 hours	40
	Regional ETR accuracy as published in accordance with ETR requirement time	Accurate within ± 12 hours (3–5-day restoration) Accurate within ± 24 hours (>5-day restoration)	40
	Local ETR accuracy as published in accordance with ETR requirement time	Accurate within ± 12 hours	40
7. Municipality coordination	Coordination with municipalities regarding hazards or electric utility equipment impeding road clearing, down wires, critical facilities, etc.	Execution of Coordination Protocols pursuant to Commission Approved Emergency Plan	20
8. County Emergency Operations Center (EOC) coordination	Coordination with county EOCs	Execution of Coordination Protocols pursuant to Commission Approved Emergency Plan	20
9. Utility coordination	Electric utility coordination with other utilities (electric, gas, communications, water)	Execution of Coordination Protocols pursuant to Commission Approved Emergency Plan	20
10. Safety	Measure of any employee or contractor serious injury doing hazard work during storm/outage restoration	Zero injuries	80
11. Mutual assistance	Crew requests made through all sources of mutual assistance	Crew requests made within: 36 hrs (3–5-day restoration) 48 hrs (>5-day restoration)	20
12. Restoration times	Time it takes utility to restore power to 90% of customers affected	TBD	—
Total			550

Table 3: Communication (30 per cent of total)

<i>Area of interest</i>	<i>Definition of measure</i>	<i>Measurement criteria</i>	<i>Points</i>
13. Call answer rates	Customer calls answered by properly staffing call centres	≥90% calls answered within 90 sec 80% to <90% calls answered within 90 sec	
14. Municipal calls	Municipal calls must be properly managed and provide, at minimum, baseline information, updates on road clearing activities, and allowing for Q&A	Municipal calls held and highly effective Municipal calls held and effective Successful implementation of an operator assisted calling system	
15. Web availability	Company's website must be available around the clock, and must be updated at least hourly, until restoration is complete	Websites should include the baseline restoration information, all press releases issued during the event, a complete list of safety tips, an outage location map of affected areas, summaries of outages and ETRs by municipality and county, and the locations and times of dry ice distribution.	40
16. Life support equipment (LSE) customers	LSE customer contact	80% affected LSE customers contacted within 12 hours	15
		LSE customers that were unable to be contacted has at least 15 attempts made within 12 hours	15
		100% affected LSE customers contact or referred to an emergency service agency within 24 hours	20
17. PSC reporting	Provide storm event information to PSC in accordance with Electric Outage Reporting System (EORS) guideline requirements	All reporting on time, including at a minimum information required by existing EORS guidelines	40
18. Customer communications	Press releases/text messaging/email/social media	Issue daily messages through the stated communications vehicles for each day of the utility restoration which must include information such as outages, ETRs, contact information, etc.	60
19. Outgoing messages on telephone	Recorded message providing callers with outage information is updates within one hour of communication releases.	Message must be updated within an hour of communication releases that is consistent and coincides with the information contained in news releases	20
20. PSC complaints	Number of storm/outages related PSC complaints received	≤20 per 100,000 customers affected	20
		≤40 per 100,000 customers affected	10
		Total	300

of interest with a provided definition of measure and a point scoring system for each individual expectation defined within the section. For example, the preparation section of the scorecard is 10 per cent of the overall scoring and has a single area of interest, 'Event Application', which has eight sub-bullets of expected actions with scores ranging from 10 to 40 points,

for a possible total of 150 points. This measure requires utilities to 'Complete steps to provide timely and accurate emergency event preparation in response to the National Weather Service or the company's private weather service forecast, in accordance with the company's Public Service Commission approved Electric Emergency Plan, for an event expected to

impact the company's service territory'.³ Operational Response is worth 60 per cent of the grade, and is broken down into 11 areas of interest with 18 sub-bulleted actions, and Communications is worth 30 per cent of the total grading, and has eight areas of interest with 14 sub-bulleted expected actions for grading. Each section is explained in further detail within the order on the measure and criteria for grading purposes to total up to a possible 1,000 points for the overall scorecard grade.

When performing the after-action report and Scorecard report as required by the legislation, the utilities must then supply the data from the entire event within 30 days of the completion of customer restoration, at which time, and following Public Service Commission (PSC) review, each utility will be supplied with a review of the information and a determined score for each event. The utilities must then file a NYCRR Part 105 report within 60 days per 16 CRR-NY Part 105. Given the complexity of just a singular order, such as Case 13-E-0140, it is vital for utilities to embrace the processes to implement essential preparedness measures, not only to maintain customers' power, but also to avoid massive monetary fines and expenditures, which may entail multiple negative impacts on the utility.

STAYING COMPLIANT

Compliance is a cycle like any other business process. It is a constant balance of determining workforce resources for both everyday 'blue-sky' work and storm response needs. This balance includes the simple emergency management principles to support business continuity and assess utility readiness to respond, which requires efficient and effective performance response capabilities within the emergency response organisation. This response assists

with compliance with regulatory concerns, whether in terms of outage length, distribution of dry ice and bottled water to customers in high-impact areas to support perishables and sanitary drinking conditions, or some of the many other required communications and actions needed to maintain compliance with the many legal orders and legislation. This makes it even more essential for utilities to perform self-critical after-action reviews, internal auditing to determine response effectiveness, and validation of regulatory compliance through programme management and process improvement initiatives and assessing overall vulnerability for future regulations or events.

Part of that process involves using emergency management principles such as mitigation and preparedness. This includes anticipating regulatory concerns and assessing needs as well as previous findings in the area of response and regulatory compliance — not simply of the company, but also other utility companies within the jurisdiction and state. By mitigating hazard impacts, building stronger infrastructure, and establishing effective plans and procedures to maintain consistent business resiliency and continuity of services, it removes many of the risks associated with the unpredictable nature of what lies ahead.

Preparation

Preparation is a major milestone in compliance. Whether preparing for new legislative requirements or a potential emergency response, it is essential to do the homework in order to answer the question of 'what if?'. 'What if' questions can also be a pitfall: as they can easily send the process down a rabbit hole, when assessing and preparing the situation it is important to determine the scope and intent of that preparation within the context of a worst-case scenario. The

decision on scope and intent should be based on engineering controls, regulatory requirements, customer needs, costs and many other business factors that need to be considered. Keeping things specific, measurable, attainable, relevant and time-based (ie SMART)⁴ is an effective way to put preparation and mitigation efforts inside a practicable box of expectation to be executed during emergency preparation and response.

Operational response

Responding to regulatory requirements as well as to storm events, the understanding of previous responses, previously applied requirements and current expectations, are all key factors in the requirements process. Each one of the regulations implemented by governmental orders requires understanding of the history of the response, or lack thereof, to prevent future mistakes and determine the lessons learned. Dependent on the utility company, the response could be simple and confined to their jurisdiction(s), or in some cases could be state-wide or even cross state lines due to the vast size of the service territories managed.

Recovery is one of the most important steps in compliance. How did we do? What might be required of the utilities depending on how well the company or other companies responded or were perceived to respond? Could it have been prevented and how? These are all pertinent questions to ask about the response to any level of event, whether small and localised or large and state-wide. Did the response meet the previously documented requirements and how? This question can be easily answered by asking how the company did and whether the ERP was followed as written. If things went well, the inquiry from regulators has a better chance of being better understood and responded to; but if the response did not,

it leaves the potential of facing regulatory comment and will likely require an update to the ERP, which is the driving document in response and recovery efforts to ensure compliance. In many cases, the issues and concerns for one company may apply to all other utilities within the state, depending on the regulator's findings.

This also goes for non-storm, day-to-day, 'blue-sky' compliance. In the case of National Grid, the ERP is the roadmap to regulatory compliance both for response to storm events as well as day-to-day compliance expectations.

Communication

It is all about communication, communication, communication. Whether it is company to regulator, company to customer, or customer to regulator, there are many avenues of communication prior to, during restoration and after the event to ensure information exchange occurs. Utility performance is regulated by laws, judged by the customer and executed by the individuals working for the utility. To meet the requirements of the legislative orders imposed on utilities, there must be open and constant communication among all stakeholders to ensure the effectiveness of the response to an event or the compliance with the regulations.

Company-to-regulator communication occurs often within day-to-day operations and storm event preparedness. E-mails, text messages and phone calls can occur at any time, for any issue or concern, and come in the form of regulatory reporting of outages, equipment failures, work-related injury or incidents, or even incidents involving members of the public being affected by utility equipment. Whether it be damage caused by a member of the public (eg a car accident involving a power pole) or damaged equipment causes an incident to a member of the public (eg a broken pole arm falls on a vehicle or in

a yard), the incident will be reported to the regulator for notification and review. In the event of a storm, company-to-regulator reporting is performed during four-hour electronic reporting requirements, which provides information such as reporting of outage numbers, company and contracted resources obtained for restoration purposes, mutual assistance requests and planning and actions the company is taking to prepare for the potential of an upcoming weather event. These are just a couple of examples of the many communications that are made daily between the companies and the regulators within the state that must be performed to remain compliant with legislative orders and requirements.

Company-to-customer communications take on many forms to meet regulatory requirements. Whether the customer be the individual residents and businesses within the community to which power is supplied, or the county, town, state and other municipal customers that are stakeholders in emergency outage response or day-to-day operational concerns within their service territory, communications must be clear, concise and interactive to achieve the most beneficial outcome for all parties. During a storm event, public communication takes the form of text alerts, e-mails, website communications, social media posts, and can be delivered by the company to special needs customers, such as individuals within the life support equipment (LSE) programmes mandated by legislative order, or people who are registered as elderly, blind or disabled, through additional programmes that help customers communicate their individual needs regarding electrical power stability and restoration due to medically required LSE or special needs or circumstances. These programmes come with registration requirements and annual validation updates that are communicated to customers

through social media posts, press releases and newsletters provided by the company, and produced in multilingual text. Once in the programme, customers are contacted during storm events, which may require multiple phone calls, electronic communications and possibly in-person visits to assess whether the customer is still without power, should earlier communications obtain no response. This activity is conducted according to a legally defined cadence, with a required minimum of several types of communication methods, in-person verification, and if registered individuals cannot be reached, the utility is required to place a referral to local emergency services personnel or law enforcement to perform wellness checks. During day-to-day operations, annual mailers, semi-annual customer communications and re-verification requirements are legally required to be provided to all customers, and a contact list for designated LSE customers must be maintained and updated with the most current information provided to the company, so that the company is abreast of its customer needs and maintains regulatory compliance.⁵

Regular interactions with municipal partners help to keep open lines of communication and preparation activities to minimise the impact on customers and constituents within the company's jurisdictions. The performance of community leader conference calls, which is required by regulatory order to be performed during storm events to prepare and inform the municipal partners, highest-ranking county officials, persons in elected positions on many of the local community political levels, and local emergency response representatives, are performed by inviting the listed individuals to a teleconference call, in which the call is recorded per regulatory requirement, to discuss upcoming plans and considerations being applied by the utilities. These calls may have to

be made daily, with all personnel invited from the list of individuals kept by the company, regulated by public service law. These calls are recorded and transcribed to demonstrate compliance with the regulatory requirements. Semi-annually, this list of personnel is updated by communicating out to the points of contact to confirm contact information and any title or positional changes that may have occurred. Other information is supplied during those validation efforts, some of which are lists of what are defined as critical facilities per the definitions provided in public service laws. These facilities also have annual outreach and communication requirements prior to and during the recovery of events in which they are affected. This assists in allowing the facility the needed information for them to plan appropriately for extended power outages based on their own emergency practices prior to and during an outage event. These phone conferences are also currently being performed for State Department of Transportation authority personnel and telecommunication companies to ensure that all stakeholders within the state and service territories are involved in the planning and execution of the restoration of power. These calls aid in supplying up-to-date information and engagement of all parties prior to and during outage events to allow for the open discussion of any concerns or issues that may arise to ensure customers can be restored efficiently and expeditiously.

Other restoration communications from company to customer take the form of social media posts, website information, mass-text and e-mail communications, and the ability for individuals to report outages to the companies through either telephone, Internet or other electronic means of communications. These communications are also highly regulated and require specific actions to be performed within allotted periods to avoid monetary

finances and penalties. These public utterance communications are performed to ensure that customers are well informed and can notify the company of their concerns or needs during an event.

It is important for the company communicate throughout the event and share information to ensure a consistent message is supplied internally and externally. Due to its importance, there is a single control point for these types of communications performed through the Public Information Office (PIO) and their designated emergency response organisational personnel. In conjunction with the PIO and team, company contact centres have the ability, through cloud-based technology, to distribute incoming phone calls from customers to their designated agents. This process is aided with interactive communication messaging through a third-party application to customers to verify whether their power has been restored during large-scale events. This is performed through inter-voice response (IVR) units, which handle outbound and upfront messaging through the contact centre, which are also regulated by New York State public service law requirements on timing and percentage of calls received from customers to the contact centre and the timing in which IVR messages are put out in conjunction with press releases and public information outreach.

Lastly, the customer always has the right to discuss their concerns and issues with the regulator directly. This customer-to-regulator communication allows direct communication with the complaints department of the regulator, which tracks and provides these complaints to the utilities, which are in turn required to respond promptly with resolution or explanation of the complaint. No matter how you break down the communications, there is always an avenue for one party or the other to communicate with one another,

which ultimately results in a regulatory requirement to be met by the utility as regards the communication activity.

A little help, please?

National Grid participates with the New York investor-owned utilities in the New York Public/Private Utility Mutual Assistance Protocol, which provides an outline of general principles and practices for the New York State utilities to follow, enabling them to leverage a public-private partnership among the utilities within New York State. This provides access to critical resources that can facilitate and expedite utility restoration following an emergency that has impacted customers throughout the state.

Annual and weekly collaboration meetings, as well as impromptu calls as the need arises, are a common occurrence among the many investor-owned utilities within the state. To help one another understand the concerns that come with regulatory compliance, the different investor-owned utilities work on both voluntary collaboration efforts and those required by law. A joint utility meeting is required to occur annually with all investor-owned utilities within the state, but it does not stop there. Collaboratively, the utilities work weekly in what are called 'joint utility collaboration meetings', where the individuals involved or in charge of emergency planning activities and regulatory compliance for the separate utilities get together virtually to discuss upcoming legislation, recent inquiries from the regulators on any given utility, upcoming filings, or requirements of new or existing legislation affecting utilities within the state, and much more. This collaborative effort helps to keep a common operating picture and collective understanding for all incoming requests or upcoming requirements, essentially working as a team so that nothing comes as a surprise to anyone. Without this

collaborative effort, the utilities would essentially be working in silos and would be unable to work as a collective in combating issues, discussing joint acceptance and ideas on regulatory requirements and requests, or working as a team to combat any storms affecting multiple companies throughout the state. During storm events, all utility leads will be texting or talking on conference calls discussing weather impacts, concerns, and potential needs for help from one another to help restoration efforts go quickly and efficiently.

Other collaborative aid comes from the Edison Electric Institute (EEI) Mutual Assistance System, which manages several Regional Mutual Assistance Groups (RMAGs) made up of companies located across the USA and Canada. The participating utilities are all members of EEI, with each company following the EEI agreement and guiding principles for both providing and requesting mutual assistance. EEI member companies have established and implemented an effective system whereby member companies may receive and provide assistance in the form of personnel and equipment to aid in restoring and/or maintaining electric utility service when said service has been disrupted in response to all types of incidents and events including severe weather, loss of business continuity, loss of critical infrastructure, etc., or any combination of these. RMAGs are organised geographically to meet the needs of electric companies most effectively during emergency situations. Although participation is voluntary, each company in an RMAG has committed, when possible, to send assistance its restoration workers, contractors, and specialised equipment to help other companies in the network when called upon to do so. Companies may request specialised skill sets, equipment or materials, as well as other types of resources that may be needed, including line-workers,

tree trimmers and damage assessors, to list just a few examples. By sharing resources among companies, the RMAGs help to mitigate the risks and costs related to restoring power following major outages. Together, the RMAGs enable a consistent, unified response to emergency events that result in a significant loss of power. National Grid is a member of the North Atlantic Mutual Assistance Group and works in collaboration with other utilities and RMAG regions supplying additional means to help mitigate regulatory concerns and execution of actions to maintain regulatory requirements. In other words, many hands make light work.

LEVERAGING TECHNOLOGY

Technological advancement occurs every day in the business world and the utilities are always looking for the most cost-effective means to organise and communicate, not only to the customers, but also internally to their own people. Within the field of emergency planning, companies are using many applications to coordinate efforts among their response personnel with capability to store, communicate, track and trend information and data. This assists companies in the business compliance, risk management and internal auditing needed to maintain regulatory compliance. These types of programmes and applications allow for collaborating, storing and communicating information for day-to-day operations in emergency planning, coordination of emergency response organisation personnel prior to and during emergency response. They can also be helpful in collecting regulatory evidence for internal auditing purposes to ensure business compliance, allowing for ease of access when using cloud-based technology to store pertinent files, data, and reports for future reference during regulatory inquisition and

internal auditing by company legal departments. To aid with these inquiries or audit requirements, companies can perform actions such as storing data from each storm event in a unique storm number labelled file, which may include a few files, e-mails and folders, or a large array of information depending on the severity of the storm and the actions needed for response. This allows companies to set up a foundation of information that can always be consistently kept in any event to meet baseline requirements and produce evidence to meet future regulatory needs and inquiries.

In conjunction with collaboration applications, companies may also use mass notification programmes to organise and manage electronic communications used for regulatory compliance and emergency response. Each storm event triggers regulatory communications, such as holding company resources in areas, communications between customers, companies, and the regulators, as discussed previously in this paper, for which the mass communication application allows companies to create a repository of contact information. This helps execute mass notification to employees, stakeholders and customers while storing required contact information that can be periodically updated per regulatory requirements.

Although technology has become a crucial asset in the utility's compliance arsenal, supporting the use of cloud-based storage, widespread communication abilities and the automation of data input and processes, it cannot be the ultimate solution for decision making during storm events. Companies must still rely on company policy and the experience of their personnel, in combination with their technology, to make proper decisions with respect to, for example, crew counts for storm response, unforeseen issues that may arise or issues that require immediate

attention from knowledgeable and experienced personnel, and other potential pitfalls within processes or technology failures. Furthermore, storm events themselves are unique from one event to the next, and ever changing the way companies respond and react to incidents. This requires companies to create and supply robust yet flexible guidance and policies to navigate regulatory compliance concerns and adapt to situations that arise (ie ERPs). Companies must be able to perform a calibration of compliance based of perceived risks while keeping a more conservative approach and should be confident and steadfast in the incorporation of the ERP that has been created to meet company expectations as regards the actions required to maintain regulatory compliance.

THE COST OF COMPLIANCE

The Honourable Paul McNulty, United States Deputy Attorney General during the George W. Bush Administration, once said: 'If you think compliance is expensive, try non-compliance'.⁶ In the context of regulatory compliance, it is hard to imagine a truer statement. For each violation of regulatory law, a company can incur fines in the hundreds of thousands, to millions of dollars, depending on the severity and quantity of infraction(s). Every dollar spent on preparedness and mitigation saves a larger percentage of money that would otherwise be incurred in the legal aftermath of a disruptive event.

Financial penalties are a direct result of alleged ERP violations and poor storm response performance. Although the size of penalties is currently capped in New York State, proposed legislation looks set to remove all financial penalty caps, increasing the likelihood of higher monetary fines in the future. Recent alleged violations that are still being litigated include IVR system failures, call centre answer rates, not following

damage assessment protocols, failure to keep a functional website, internal website failures, failure to follow LSE customer contact requirements and many more. Many of these alleged infractions or violations are regulatory matters that require utility companies across the entire state service territory — including those not found to be in violation — to take proactive measures. The severity and potential amounts of monetary fines alone require companies to carefully consider the risk versus reward and the pitfalls of non-compliance.

Assessment of risk versus reward is a common practice in many businesses, and one of the key components in business resiliency and emergency planning processes and programmes. Companies taking a proactive approach to resilience perform ongoing assessments of the cost of compliance versus the risks of non-compliance, informed by their internal business plans, company mission, staffing and workload capabilities, previous and future legislation that may affect business practices, and a host of other factors that play into day-to-day operations.

One of the greatest risks associated with non-compliance, especially in the utility business, is the loss of public trust. Although some businesses are regulated monopolies, certain utilities within smaller areas are essentially 'mom and pop' businesses that may not have the funding and resources to incur multiple violations but may also struggle to maintain compliance due to a lack of adequate revenue. When customers lose faith in such companies and demand regulatory intervention to fix concerns or address perceived issues, regaining their custom can take years. On top of this, assuming the company is able to survive such an extended period of revenue loss, it may well find that is spending more on fines and public relations campaigns than regulatory compliance would have cost in the first place.

Other risk factors to consider are the voices of stakeholders and the legal teams involved in the compliance process. These interactions are pertinent to company processes to minimise legal entanglements and litigation issues for future cases, legislation, and audit findings. Increases in operational funding for mitigation, compliance, and other activities to minimise issues and maintain trust from both the public and regulators might be a difficult discussion to have with stockholders and investors without the proper research, data analysis and discussion regarding the compelling ‘why?’ behind the increase in cost.

CONCLUSION

Addressing regulatory oversight and compliance for utility performance is something that many utilities work through every day. With the growing litigation and laws being produced in New York, utilities work daily in collaboration with one another to analyse and communicate ways to help one another meet the requirements of the laws and orders produced. Regardless of the origins of the case law, regulations are imposed, and utilities must comply. By performing collaboratively with other utilities, executing a proactive functional risk assessment, and communicating proactively via multiple avenues of communication, a company has a chance of navigating the uncertain legislative waters of regulatory oversight. As technology grows and advances, utilities have a unique opportunity to enhance their abilities while also keeping a simple and manageable approach to process improvement. By utilising simple processes such as understanding needed resources, supporting readiness, executing efficient and effective response to events, performing after-action reviews, legal regulatory auditing, and repeating this cycle regularly, a company can help in effectively running their day-to-day operation

and avoiding regulatory fines. There is no shortage of regulation to protect customer interests. Companies need to understand the risks associated with non-compliance with legal orders, while keeping in consideration cost, finances, business plans and other pertinent information to understand the impact to their company and customers as time progresses.

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