



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 10-01

February 2, 2010

Investigation by the Department of Public Utilities on its own Motion commencing a rulemaking pursuant to 220 C.M.R. § 2.00 et seq. establishing 220 C.M.R. § 19.00.

ORDER ADOPTING EMERGENCY REGULATIONS

I. INTRODUCTION

By this Order, and pursuant to G.L. c. 30A, § 2 and 220 C.M.R. § 2.00, the Department of Public Utilities (“Department”) adopts emergency regulations establishing 220 C.M.R. § 19.00 to create standards of acceptable performance for emergency preparation and restoration of service for electric distribution and gas companies, and establishing requirements for emergency response plans (“ERP”), consistent with the provisions of St. 2009, c. 133, An Act Relative to Public Utility Companies.

It is imperative that public utility companies prepare for outages and, in the event of an outage, restore service in a safe and reasonably prompt manner. The Department finds that the emergency regulations are therefore necessary for the public safety and general welfare of citizens of the Commonwealth and that delay in implementation of the regulations would be contrary to the public interest. The emergency regulations are designated as 220 C.M.R. § 19.00 and are effective upon filing with the Secretary of the Commonwealth.

II. RELEVANT STATUTES AND REGULATIONS

Pursuant to G.L. c. 164, § 76, the Department has general supervisory authority over all gas and electric companies. The Department also has authority to regulate and control the storage, transportation and distribution of gas and the pressure under which these operations may respectively be carried on. G.L. c. 164, § 105A.

On November 12, 2009, Governor Patrick signed into law St. 2009, c. 133, An Act Relative to Public Utility Companies (“Act”). This Act amended G.L. c. 164 by adding two new sections, §§ 1J and 85B. Section 1J requires the Department to promulgate rules and

regulations to establish standards of acceptable performance for emergency preparation and restoration of service for electric distribution and gas companies doing business in the Commonwealth. This section provides the Department with explicit authority to impose penalties for violations of the standards. Section 85B requires that electric distribution and gas companies submit annually an ERP for review and approval by the Department.

III. DISCUSSION

A. Background

Public utility companies in Massachusetts have an obligation to provide safe and reliable service to the public. Fitchburg Gas and Electric Light Company d/b/a Unitil, D.P.U. 09-01-A at 6-8 (2009). This obligation includes the responsibility to restore service in a timely manner when service to a customer has been interrupted. Id.

B. Standards

With the passage of the Act, the Legislature granted the Department authority to establish standards for emergency preparation and restoration of service and to levy a penalty for violations of such Department standards. The Department's new standards are set forth in 220 C.M.R. § 19.03. The standards require that electric distribution and gas companies ensure that they (1) are adequately and sufficiently prepared to restore service to their customers, and (2) restore service in a safe and reasonably prompt manner in the event of an outage. For gas companies, the standards incorporate the comprehensive system of existing federal and state requirements and guidelines for handling outages and emergency events. See

49 U.S.C. §§ 60101- 60125; 49 C.F.R. Part 192; G.L. c. 164, § 105A; 220 C.M.R. § 69.00 and 220 C.M.R. §§ 100.00 through 113.00.

As part of the standards, the Department has established reporting requirements for preparation and restoration of service activities. Through these reporting requirements, the Department will assess the electric distribution and gas companies' actions in response to service outages and determine whether companies are prepared for future events.

C. Emergency Response Plans

An integral part of the standards are the ERPs, which the Act requires electric distribution and gas companies to submit annually by May 15 to the Department for review and approval. Requirements for the ERPs are established in Section 19.04 of the regulations. Gas companies must comply with these requirements in addition to the existing requirements under federal and state law. See 49 U.S.C. §§ 60101- 60125; 49 C.F.R. Part 192; G.L. c. 164, § 105A; 220 C.M.R. § 69.00 and 220 C.M.R. §§ 100.00 through 113.00. For electric distribution companies, the Department will open a separate docket establishing ERP guidelines, which will provide for greater uniformity of their content and format. Through the participatory process of that companion proceeding, the Department will work with the electric distribution companies and other stakeholders to develop the specifics of the ERPs.

D. Investigations and Remedies

Section 19.05 of the regulations establishes when the Department will open an investigation regarding a violation of the standards. First, the Department may open an investigation on its own initiative. Second, the Department will open an investigation upon

petition of the Attorney General or by an affected city or town. Third, the Department will open an investigation if an electric distribution company does not restore service to at least 95 percent of its affected customers within 72 hours of an outage. If after investigation the Department finds a violation of its standards, the Department shall levy a penalty and may deny recovery of service restoration costs.

IV. ADOPTION OF THE REGULATIONS

By this Order, the Department establishes 220 C.M.R. § 19.00, Standards of Performance for Emergency Preparation and Restoration of Service for Electric Distribution and Gas Companies, to establish (1) standards of acceptable performance for outage preparation and restoration of service for electric distribution and gas companies, and (2) requirements for emergency response plans consistent with the provisions of St. 2009, c. 133, an Act Relative to Public Utility Companies.

Accordingly, the Department adopts the attached as emergency regulations, “Standards of Performance for Emergency Preparation and Restoration of Service for Electric Distribution and Gas Companies,” 220 C.M.R. § 19.00. These regulations become effective today, upon filing with the Secretary of the Commonwealth, and will remain in effect for a period not to exceed three months.¹

¹ The Department is issuing a procedural notice concurrently with this Order, which provides for a public hearing and comment on the emergency regulations.

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220 CMR 19.00: STANDARDS OF PERFORMANCE FOR EMERGENCY
PREPARATION AND RESTORATION OF SERVICE FOR
ELECTRIC DISTRIBUTION AND GAS COMPANIES

Section

19.01: Purpose and Scope

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19.04: Emergency Response Plans

19.05: Department Investigation into Company Performance; Remedies

19.06: Miscellaneous

19.01: Purpose and Scope

- (1) Purpose. 220 CMR 19.00 establishes regulations establishing:
 - (a) standards of acceptable performance for outage preparation and restoration of service for electric distribution and gas companies; and
 - (b) requirements for Emergency Response Plans, consistent with the provisions of St. 2009, c. 133, an Act Relative to Public Utility Companies.
- (2) Scope. 220 CMR 19.00 applies to all Gas and Electric Distribution Companies subject to the jurisdiction of the Department.

19.02: Definitions

For the purpose of 220 CMR 19.00, the terms set forth in 220 CMR 19.02 are defined as follows, unless the context otherwise requires.

Company refers to an investor-owned electric distribution company or gas company as defined in M.G.L. c. 164, §1.

Department means the Department of Public Utilities, Commonwealth of Massachusetts.

Emergency Event means an event where widespread outages have occurred in the service area of the company due to storms or other causes beyond the control of the company as defined in M.G.L. c. 164, § 85B(a).

Emergency Response Plan (ERP) means a Company's plan which prepares the

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Company to restore service in a reasonably prompt manner in the case of an outage, including an outage associated with an Emergency Event, as required by M.G.L. c. 164, § 85B.

Life Support Customers, also known as medical priority customers, means those customers who have provided documentation to the Company of their medical conditions necessitating utility service.

Mutual Assistance Agreement means an agreement between the Company and other utilities or resource providers both inside and outside the state. These agreements detail specifics for obtaining or lending resources when internal resources are not sufficient to ensure the safe and reasonably prompt restoration of service in the case of an outage, including an outage associated with an Emergency Event. These agreements typically address material, equipment, and trained personnel to complement and work with Company personnel.

19.03: Performance Standards for Outage Preparation and Restoration of Service

- (1) This section sets forth the standards that shall apply to each Company's performance regarding:
 - (a) preparation for restoring service during an outage, including an outage associated with an Emergency Event; and
 - (b) restoration of service during an outage, including an outage associated with an Emergency Event.

- (2) Throughout the year, each electric Company shall ensure that it is adequately and sufficiently prepared to restore service to its customers in a safe and reasonably prompt manner during an outage, including an outage associated with an Emergency Event. This shall include at a minimum, but not be limited to:
 - (a) implementing all components of the electric Company's ERP related to planning and preparation for outage restoration;
 - (b) conducting the following on at least an annual basis:
 1. Meetings with state and local officials to ensure effective and efficient flow of information and substantial and frequent coordination between the Company and local public safety officials, including coordination with local officials with respect to vegetation management; and
 2. Training and drills/exercises to ensure effective and efficient performance of personnel during outages, and to ensure that each Company has the ability to restore service to its customers in a safe and reasonably prompt manner during an outage;

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- (c) maintaining updated lists of: local elected and appointed officials, state and local public safety officials, Life Support Customers, and all internal and external personnel involved in the Company's restoration efforts.
- (3) Each gas Company shall prepare and follow written procedures for outage preparation and restoration of service consistent with those required by 49 U.S.C. §§ 60101-60125; 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; M.G.L. c. 164, §§ 85B and 105A; 220 CMR 69.00 and 220 CMR 100.00 through 113.00. Each gas Company shall include these written procedures in their respective manuals for conducting operations and maintenance activities and for emergency response, and, where appropriate, in their manuals of written procedures to minimize hazards resulting from gas pipeline emergencies, as required by 49 C.F.R. Part 192; 220 CMR 69.00 and 220 CMR 100.00 through 113.00.
- (4) In the event of an outage, including an outage associated with an Emergency Event, each Company shall restore service to its customers in a safe and reasonably prompt manner. This shall include at a minimum, but not be limited to, implementing all components of the Company's ERP related to restoration of service during an outage.
- (5) Each Company, as identified below, shall comply with the following reporting requirements:
- (a) Each electric Company shall submit a detailed report with supporting documentation to the Department for each meeting, training, and drill/exercise held pursuant to 19.03(2)(b);
 - (b) During an outage, including an outage associated with an Emergency Event, each gas and electric Company shall provide periodic reports to state and local officials that contain detailed information related to outage conditions and restoration performance for each affected city and town; and
 - (c) Following an outage associated with an Emergency Event, each gas and electric Company shall submit a detailed report with supporting documentation to the Department on its restoration performance during the outage, including lessons learned.

19.04: Emergency Response Plans

- (1) Each Company shall submit to the Department an ERP that shall be designed for the safe and reasonably prompt restoration of service in the case of an outage, including an outage associated with an Emergency Event. The ERP shall include, but not be limited to, the following:

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- (a) the identification of management staff responsible for Company operations during an emergency, including a description of their specific duties;
- (b) a process for communicating with customers during an outage, including an outage associated with an Emergency Event, that extends beyond normal business hours and business conditions;
- (c) procedures for maintaining a list Life Support Customers that is updated at least annually, communicating with Life Support Customers before, during and after an Emergency Event, and providing information to public safety officials regarding the status of service to Life Support Customers' homes;
- (d) the designation of staff to communicate with local officials, including public safety officials, and relevant regulatory agencies;
- (e) provisions regarding how the Company will assure the safety of its employees, contractors and the public;
- (f) procedures for deploying Company and contractor crews, and crews acquired through Mutual Assistance Agreements to work assignment areas; and
- (g) identification of additional supplies and equipment needed during an emergency and the means of obtaining additional supplies and equipment.

(2) The ERP shall set forth the content, format and timeline for each report that the Company shall submit to the Department, or provide to state and local officials, pursuant to 220 CMR 19.03(5).

(3) Each Company shall file an ERP, which the Company has reviewed and updated within the previous twelve months, with the Department on or before May 15th each year, for review and approval. The filing shall include a copy of all written Mutual Assistance Agreements into which the Company has entered, and identify and describe any modifications to the ERP and Mutual Assistance Agreements. A Company that fails to timely file its ERP may be fined \$500 for each day during which such failure continues. The fines levied by the Department shall be returned to ratepayers through distribution rates.

(4) After review of a Company's ERP, the Department may request that the Company amend the ERP. The Department may open an investigation of the Company's ERP. If, after hearings, the Department finds a material deficiency in the ERP, the Department may order the Company to make such modifications to the ERP that it deems reasonably necessary to remedy the deficiency.

(5) If a Company makes any updates or changes to its ERP between annual filings, it shall submit such changes to the Department as soon as possible.

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19.05: Department Investigation into Company Performance; Remedies

(1) Investigations.

(a) The Department may open an investigation into a Company's preparation for or restoration of service during any outage, including an outage associated with an Emergency Event.

(b) The Department shall open an investigation into an electric Company's restoration of service during an outage, including an outage associated with an Emergency Event, if the Company does not restore service within 72 hours to at least 95% of its affected customers.

(c) The Department shall open a full investigation upon petition of the Attorney General or by the city council in an affected city or by the board of selectmen in an affected town to determine whether a Company violated the Department's standards. Petitions for an investigation shall be filed with the Department not later than 90 days after the violation has been remedied.

(2) Penalties. If after investigation the Department finds a violation of its standards, the Department shall levy a penalty not to exceed \$250,000 for each violation for each day that the violation of the Department's standards persists; provided, however, that the maximum penalty shall not exceed \$20,000,000 for any related series of violations. In determining the amount of the penalty, the Department shall consider, among other factors, the following:

(a) the gravity of the violation;

(b) the appropriateness of the penalty to the size of the Company;

(c) the good faith of the Company in attempting to achieve compliance; and

(d) the degree of control that the Company had over the circumstances that led to the violation.

(3) Recovery of Service Restoration Costs. If after investigation the Department finds that, as a result of the failure of the Company to implement its ERP, the length of the outages were materially longer than they would have been but for the Company's failure, the Department may deny the recovery of all, or any part of, the service restoration costs through distribution rates, commensurate with the degree and impact of the service outage.

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19.06: Miscellaneous

The Department may grant, for good cause shown and not contrary to statute, an exception from any provision of 220 CMR 19.00.

REGULATORY AUTHORITY

220 CMR 19.00: M.G.L. c. 164, §§ 1J, 76, 85B and 105A.