

HOUSE No. 4329

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2115, amended in section 1, in line 12, striking out the words "records, information and personnel necessary to respond to the state of emergency" and inserting in place thereof the words "documents, information and personnel necessary to respond to the state of emergency; provided, however, that documents and information provided to the chairman during such state of emergency shall be subject to the exemption provided by subclause (n) of clause Twenty-sixth of section 7 of chapter 4, to the extent necessary to protect the public safety"; and in section 5, in line 58, by adding at the end thereof the following sentence: "The department shall accord protected treatment under section 5D of chapter 25 to confidential, competitively-sensitive or other proprietary information contained in an emergency response plan and shall also confirm the application of subclause (n) of clause Twenty-sixth of section 7 of chapter 4 so as not to jeopardize public safety.") of the House Bill relative to public utility companies (House, No. 4126), reports the accompanying bill (House, No. 4329).

An Act RELATIVE TO PUBLIC UTILITY COMPANIES.

FOR THE COMMITTEE:

On the part of the House:

BARRY R. FINEGOLD

ROBERT L. RICE, JR

ROBERT S. HARGRAVES

On the part of the Senate:

MICHAEL W. MORRISSEY

JENNIFER L. FLANAGAN

BRUCE E. TARR

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act RELATIVE TO PUBLIC UTILITY COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 25 of the General Laws is hereby amended by inserting
2 after section 4A the following 2 sections:-

3 Section 4B. Upon declaration by the governor that a state of emergency exists, the
4 governor may authorize the chairman of the department of public utilities to take such action that
5 the chairman may consider necessary to assure public safety and welfare through the priority
6 restoration or continuing availability of gas, electric and water utility services. Under such
7 authority, the chairman may issue operational and management directives and order expenditures
8 or other measures by any investor-owned utility that the chairman considers necessary to respond
9 to the state of emergency, including but not limited to, expenditures for the deployment of
10 personnel, equipment and other assets or property of an alternative utility to assume
11 responsibility for the restoration of service if, in the judgment of the chairman, the affected
12 utility is incapable of restoring service. The chairman shall have immediate access to all utility
13 documents, information and personnel necessary to respond to the state of emergency; provided,
14 however, that documents and information provided to the chairman during such state of
15 emergency shall be subject to the exemption provided by subclause (n) of clause 26 of section 7
16 of chapter 4, to the extent necessary to protect the public safety. The chairman may temporarily
17 suspend any department rule or regulation and implement any emergency rule, procedure or
18 protocol that is necessary to respond to the emergency. Any orders issued by the chairman shall
19 expire within 30 business days unless ratified by the commission prior to the 30 day expiration;
20 provided, however, that said ratification by the commission shall prescribe an end date for each
21 order. Expenses authorized by the chairman under this section may be recognized by the
22 department for all purposes as proper business expenses of the affected utility or alternative
23 utility subject to investigation and recovery through rates. The affected utility shall be required to
24 reimburse the alternative utility for all its costs incurred within 90 days of the receipt of invoices

25 for the cost of service. Failure of any investor-owned utility to carry out an order by the chairman
26 authorized under this section shall be subject to investigation and a penalty of up to \$1,000,000
27 per violation. A penalty levied by the department shall be returned to ratepayers through
28 distribution rates. Any investor-owned utility aggrieved by an order or directive issued by the
29 chairman under this section may request a hearing within 90 days from the date the state of
30 emergency ends.

31 Section 4C. (a) As used in this section, “emergency” shall mean a situation or condition
32 which presents a threat to the public safety and welfare of the company’s customers. An
33 organized labor activity conducted for union recognition or as a tactic in contract negotiations
34 shall not, of itself, constitute an emergency.

35 The attorney general on his own initiative, or upon petition by the department or by the
36 city council in an affected city or by the board of selectmen in an affected town, may bring an
37 action in superior court requesting the appointment of a receiver to oversee the operation of an
38 investor-owned electric distribution, transmission or natural gas distribution company who
39 serves less than 100,000 customers in the commonwealth. The court may appoint a receiver to
40 operate the company, provided that the court finds that an emergency exists, and that the
41 company has (a) materially violated standards for responding to emergencies, or (b) there is
42 other compelling evidence that the company will not be able to comply with such standards
43 without a receivership.

44 (b) The court may appoint as a receiver any person appearing on a list established for the
45 purpose by the chairman and the secretary of energy and environmental affairs after the chairman
46 and secretary consult with representatives of investor-owned electric distribution, transmission
47 and natural gas distribution companies.

48 (c) The purpose of a receivership created under this section shall be to safeguard the
49 health, safety and welfare of the company’s customers. A receiver appointed hereunder shall not
50 take any actions or assume any responsibilities inconsistent with this purpose.

51 (d) No person shall impede the operation of a receivership created under this section.
52 There shall be an automatic stay for a 120-day period subsequent to the appointment of a
53 receiver, of any action that would interfere with the functioning of the company, including but
54 not limited to, cancellation of insurance policies executed by the company or repossession of
55 equipment used in the facility.

56 (e) Unless the court determines otherwise, a receivership created under this section shall
57 not exceed 1 year.

58 (f) A receiver appointed pursuant to this section shall have access to all company utility
59 assets and records and may manage the company's assets in a manner which will restore or
60 maintain an acceptable level of service. The receiver may hire, direct or manage any employee,
61 discharge any non-union employee, order an internal management audit, expend existing
62 company utility revenues for labor and materials and make additional expenditures essential to
63 providing an acceptable level of service; provided, that such expenditures are funded in
64 accordance with generally accepted utility practices. Any costs incurred by the department or
65 receiver under this section shall be the responsibility of the company. The company may petition
66 the court to determine the reasonableness of any expenditure by the receiver.

67 (g) The court shall set a reasonable compensation for the receiver that is consistent with
68 the regulations of the department. Such compensation shall be paid from the revenues of the
69 company.

70 (h) No person shall bring an action against a receiver appointed under this section without
71 first securing leave of court. The receiver shall be deemed the beneficiary of any insurance
72 policies held by the company relating to the liability of directors or officers of the company.

73 (i) The department may promulgate rules and regulations, as necessary, for the
74 implementation of this section.

75 (j) Notwithstanding the foregoing, this section shall not apply to an electric or gas
76 distribution company serving less than 100,000 customers within the commonwealth that has an
77 affiliate in the state which serves more than 100,000 customers within the commonwealth and
78 the affiliates perform emergency restoration jointly.

79 SECTION 2. Section 1E of chapter 164 of the General Laws, as appearing in the 2008
80 Official Edition, is hereby amended by striking out subsections (c) and (d) and inserting in place
81 thereof the following subsection:-

82 (c) The department shall promulgate regulations relative to an alternative dispute
83 resolution process for the handling of damage claims by customers in an amount under \$100.
84 The department shall establish a 60 day timeline for the resolution of all mediation claims. The
85 department shall issue a biannual report to the joint committee on telecommunications, utilities
86 and energy which shall include, but not be limited to, the following information: the nature of
87 consumer claims, the number of consumer claims and the resolutions of consumer claims
88 reviewed by the department during the previous 6 months. Said report shall be available for
89 public review at the department.

90 SECTION 3. Section 1F of said chapter 164, as so appearing, is hereby amended by
91 striking out, in line 238, the figure “\$1,000,000”, and inserting in place thereof the following
92 figure:- \$5,000,000.

93 SECTION 4. Said chapter 164 is hereby further amended by inserting after section 1H
94 the following 2 sections:-

95 Section 1I. Each investor-owned electric distribution, transmission, and natural gas
96 distribution company shall file a report with the department by March first of each year
97 comparing its performance during the previous calendar year to the department's service quality
98 standards and any applicable national standards as may be adopted by the department. The
99 department shall be authorized to levy a penalty against any distribution, transmission, or gas
100 company which fails to meet the service quality standards in an amount up to and including the
101 equivalent of 2.5 per cent of such company's transmission and distribution service revenues for
102 the previous calendar year.

103 Section 1J. The department shall promulgate rules and regulations to establish standards
104 of acceptable performance for emergency preparation and restoration of service for electric and
105 gas distribution companies doing business in the commonwealth. The department shall levy a
106 penalty not to exceed \$250,000 for each violation for each day that the violation of the
107 department's standards persists; provided, however, that the maximum penalty shall not exceed
108 \$20,000,000 for any related series of violations. The department shall open a full investigation,
109 upon its own initiative, or upon petition of the attorney general or by the city council in an
110 affected city or by the board of selectmen in an affected town, regarding a violation of the
111 department's standards of acceptable performance to determine whether the electric or gas
112 distribution company violated such standards; provided, however, that said petition shall be filed
113 with the department not later than 90 days after the violation has been remedied.

114 SECTION 5. Said chapter 164 is hereby further amended by inserting after section 85A
115 the following section:-

116 Section 85B. (a) Each electric distribution, transmission and natural gas distribution
117 company conducting business in the commonwealth shall annually, on or before May 15, submit
118 to the department an emergency response plan for review and approval. The emergency
119 response plan shall be designed for the reasonably prompt restoration of service in the case of an
120 emergency event, which is an event where widespread outages have occurred in the service area
121 of the company due to storms or other causes beyond the control of the company. The
122 emergency response plan shall include but not be limited to, the following:-

123 (1) the identification of management staff responsible for company operations during an
124 emergency;

- 125 (2) a communications system with customers during an emergency that extends beyond
126 normal business hours and business conditions;
- 127 (3) contact with customers who had documented their need for essential electricity for
128 medical needs;
- 129 (4) designation of staff to communicate with local officials and relevant regulatory
130 agencies;
- 131 (5) provisions regarding how the company will assure the safety of its employees and
132 contractors;
- 133 (6) procedures for deploying company and mutual aid crews to work assignment areas;
134 and
- 135 (7) identification of additional supplies and equipment needed during an emergency and
136 the means of obtaining additional supplies and equipment.

137 The filing with the department shall also include a copy of all written mutual assistance
138 agreements among utilities. The department shall accord protected treatment under section 5D of
139 chapter 25 of confidential, competitively sensitive or other proprietary information contained in
140 any emergency response plan and shall also confirm the application of subclause (n) of clause 26
141 of section 7 of chapter 4 so as not to jeopardize public safety.

142 (b) After review of an investor-owned electric distribution, transmission or natural gas
143 distribution company's emergency response plan the department may request that the company
144 amend the plan. The department may open an investigation of the company's plan. If, after
145 hearings, the department finds a material deficiency in the plan, the department may order the
146 company to make such modifications that it deems reasonably necessary to remedy the
147 deficiency.

148 (c) Any investor-owned electric distribution, transmission or natural gas distribution
149 company failing to file its emergency response plan may be fined \$500 for each day during
150 which such failure continues. The fines levied by the department shall be returned to ratepayers
151 through distribution rates.

152 (d) Notwithstanding any existing power or authority, the department may open an
153 investigation to review the performance of any investor-owned electric distribution, transmission
154 or natural gas distribution company in restoring service during an emergency event. If, after
155 evidentiary hearings or other investigatory proceedings, the department finds that, as a result of
156 the failure of the company to implement its emergency response plan, the length of the outages
157 were materially longer than they would have been but for the company's failure, the department
158 may deny the recovery of all, or any part of, the service restoration costs through distribution
159 rates, commensurate with the degree and impact of the service outage.

160 SECTION 6. The rules and regulations required by section 1J of chapter 164 of the
161 General Laws, inserted by section 4 of this act, shall be promulgated on or before May 17, 2010.