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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- UTILITY SERVICE
RESTORATION ACT

Introduced By: Senator Roger Picard

Date Introduced: April 25, 2019

Referred To: Senate Commerce

(Lieutenant Governor)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND
2 CARRIERS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 2.2

4 UTILITY SERVICE RESTORATION ACT

5 **39-2.2-1. Purpose.**

6 The purpose of this chapter is to ensure that each investor-owned electric and gas
7 distribution company has in place emergency preparation plans designed to bring about the
8 prompt restoration of service in the event of widespread outages occurring in the service area of
9 each company.

10 **39-2.2-2. Definitions.**

11 As used in this chapter:

12 (1) "Commission" means the public utilities commission.

13 (2) "Company" means an investor-owned electric or gas distribution company.

14 (3) "Division" means the division of public utilities and carriers.

15 (4) "Emergency event" means an event where significant and/or widespread outages or
16 service interruptions occurred in the service area of a company.

17 (5) "Emergency response plan" or "plan" means a company's plan which prepares the
18 company to restore service in a safe and reasonably prompt manner in the case of an emergency

1 event.

2 (6) “Life support customers” means medical priority customers who have provided
3 documentation to the electric distribution company of their medical conditions necessitating
4 electric service.

5 (7) “Municipal liaison” means a liaison designated by a company to communicate with a
6 municipality during an emergency event.

7 (8) “Mutual assistance agreement” means an agreement among a company and other
8 utilities, both inside and outside of Rhode Island, that details specifics for obtaining or lending
9 resources, including, but not limited to, material, equipment, and trained personnel, when internal
10 resources are not sufficient to ensure the safe and reasonably prompt restoration of service during
11 an emergency event.

12 **39-2.2-3. Emergency response plans required.**

13 (a) Each electric distribution company and natural gas distribution company conducting
14 business in the state shall, on or before June 1, 2020, submit to the division an emergency
15 response plan that shall be designed to achieve a prompt restoration of service after an emergency
16 event. Such plans shall be filed annually with the division by the first Monday in June. After
17 review of an electric distribution or natural gas distribution company’s emergency response plan,
18 the division may request that the company amend the plan. The division may open an
19 investigation and conduct hearings on any plan and order modifications if deemed necessary by
20 the division.

21 (b) Any company that fails to file its emergency response plan may be fined five hundred
22 dollars (\$500) for each day during which such failure continues. Any fines levied by the division
23 shall be returned to ratepayers through distribution rates in a manner determined by the
24 commission.

25 (c) Plans shall include, but not be limited to, the following information:

26 (1) Identification of management staff responsible for company operations, including a
27 description of their specific duties; identification of the number of workers available to respond
28 within twenty-four (24) hours of an emergency event; and an estimation of the number of crews
29 and full-time equivalents available to respond within twenty-four (24) hours of an emergency
30 event;

31 (2) A communications process with customers that provides continuous access to staff
32 assistance, including, but not limited to, maintaining a website with estimated times of restoration
33 that shall be prominently displayed and updated at least three (3) times per day. The
34 communications process shall also provide estimated times of restoration at least three (3) times

1 per day through at least one other form of media outreach, and when requested by customers via
2 telephone;

3 (3) For electric distribution companies, procedures for maintaining an updated list of life
4 support customers, including a process to immediately update a company's life support customer
5 list when a customer notifies the company of a medical need for electric service, communicating
6 with life support customers before, during and after an emergency event, providing information to
7 public safety officials regarding the status of electric service to life support customers' homes, and
8 procedures for prioritizing power restoration to life support customers;

9 (4) Designation of staff to communicate with local officials, including public safety
10 officials, relevant regulatory agencies, and designated municipal liaisons, and designation of staff
11 to be posted at the Rhode Island emergency management agency's emergency operations center,
12 and in the event of a virtual activation of the emergency activation center, designation of an
13 employee or employees to participate in the virtual activation;

14 (5) Provisions regarding how the company will assure the safety of its employees,
15 contractors and the public;

16 (6) Procedures for deploying company and contractor crews, and crews acquired through
17 mutual assistance agreements to work assignment areas;

18 (7) Identification of additional supplies and equipment needed during an emergency and
19 the means of obtaining additional supplies and equipment;

20 (8) Designation of a continuously staffed call center in Rhode Island that is sufficiently
21 staffed to handle all customer calls for service assistance for the duration of an emergency event
22 or until full service is restored, whichever occurs first. If the call center is unable to operate
23 during an emergency event, the company shall provide for a call center within fifty (50) miles of
24 Rhode Island; and

25 (9) Designation of an employee or employees to serve as municipal liaisons for each
26 affected municipality within its service territory. The plan shall provide that each municipal
27 liaison has the necessary feeder map or maps outlining municipal substations and distribution
28 networks and up-to-date customer outage reports at the time of the designation as municipal
29 liaison. The plan shall provide that each municipal liaison has three (3) daily customer outage
30 report updates for the municipal liaison's respective municipality and that each municipal liaison
31 shall use the maps and outage reports to respond to inquiries from state and local officials and
32 relevant regulatory agencies.

33 **39-2.2-4. Standards for acceptable performance.**

34 (a) As part of its preparation for emergency events, electric distribution and gas

1 distribution companies shall also adhere to certain minimum standards of acceptable
2 performance. These standards are designed to buttress each company's emergency response plan
3 and to further ensure that each company is sufficiently prepared to restore service to its customers
4 in a safe and reasonably prompt manner after an emergency event. The following minimum
5 performance standards shall apply:

6 (1) For electric distribution companies,

7 (i) Conducting the following on at least an annual basis:

8 (A) Meetings with state and local officials to ensure effective and efficient flow of
9 information and substantial and frequent coordination between the company and local public
10 safety officials, including coordination with local officials with respect to vegetation
11 management; and

12 (B) Training and drills and/or exercises to ensure effective and efficient performance of
13 personnel during emergency events, and to ensure that each company has the ability to restore
14 service to its customers in a safe and reasonably prompt manner; and

15 (ii) Maintaining updated lists of local elected and appointed officials, state and local
16 public safety officials, life support customers, and all internal personnel and external entities
17 involved in the company's restoration efforts.

18 (2) For gas companies, the standards shall include, at a minimum, preparing and
19 following written procedures consistent with those required by 49 U.S.C. §§ 60101 through
20 60125; 49 CFR Part 192: Transportation of Natural and Other Gas by Pipeline: Minimum Federal
21 Safety Standards; and all applicable division rules and regulations. Each gas company shall
22 include these written procedures in their respective manuals for conducting operations and
23 maintenance activities and for emergency response, and, where appropriate, in their manuals of
24 written procedures to minimize hazards resulting from gas pipeline emergencies, as required by
25 49 CFR Part 192; and all applicable division rules and regulations.

26 (b) Each company shall comply with the following reporting requirements:

27 (1) Submit a report with supporting documentation to the division on its preparation for
28 emergency events that details each meeting, training, and drill and or exercise held pursuant to §
29 39-2.2-4(a)(1);

30 (2) During an emergency event, each company shall provide periodic reports to the
31 division, Rhode Island emergency management agency representatives and municipal emergency
32 managers, or designees, that contain detailed information related to emergency conditions and
33 restoration performance for each affected city and town;

34 (3) Following an emergency event, each company shall submit a detailed report with

1 supporting documentation to the division on the company's restoration performance, including
2 lessons learned; and

3 (4) Before, during, and after an emergency event, track, maintain, and ensure the
4 accuracy of all emergency event related data that the company collects.

5 (c) The division shall have the authority to open a docket and establish additional
6 standards of acceptable performance for emergency preparation and restoration of service for
7 each investor-owned electric and gas distribution company doing business in the state.

8 **39-2.2-5. Division review of company performance.**

9 (a) Notwithstanding any existing power or authority, the division may open an
10 investigation to review the performance of any company in restoring service during an emergency
11 event. If, after evidentiary hearings or other investigatory proceedings, the division finds that, as a
12 result of the failure of the company to follow its approved emergency response plan or any other
13 negligent actions or omissions by the company, the length of the outages were materially longer
14 than they would have been but for the company's failure, the division shall recommend that the
15 commission enter an order denying the recovery of all, or any part of, the service restoration costs
16 through distribution rates, commensurate with the degree and impact of the service outage.

17 (b) In addition, if the division determines, after investigation and hearing, that the
18 company has violated any of the prescribed standards of acceptable performance, the division
19 shall have the authority to levy a penalty not to exceed one hundred thousand dollars (\$100,000)
20 for each day that the violation of the standards persist; provided, however, that the maximum
21 penalty shall not exceed seven million five hundred thousand dollars (\$7,500,000) for any related
22 series of violations. In determining the amount of the penalty, the division shall consider, among
23 other factors, the following:

24 (1) The gravity of the violation(s);

25 (2) The appropriateness of the penalty to the size of the company;

26 (3) The good faith of the company in attempting to achieve compliance; and

27 (4) The degree of control that the company had over the circumstances that led to the
28 violation(s).

29 (c) Any penalty levied by the division against a company for any violation of the
30 division's standards of acceptable performance for emergency preparation and restoration of
31 service for electric and gas distribution companies shall be credited back to the company's
32 customers in a manner determined by the commission.

33 (d) Nothing herein shall prohibit any affected city or town from filing a complaint with
34 the division regarding a violation of the division's standards of acceptable performance by a

1 company; provided, however, that said petition shall be filed with the division no later than ninety
2 (90) days after the violation has been remedied. After an initial review of the complaint, the
3 division shall make a determination as to whether to open a full investigation.

4 SECTION 2. Section 39-4-22 of the General Laws in Chapter 39-4 entitled "Hearings
5 and Investigations" is hereby amended to read as follows:

6 **39-4-22. Penalties for violations.**

7 ~~Every public utility or water supplier pursuant to title 46, chapter 15.4 and all officers and~~
8 ~~agents thereof shall obey, observe, and comply with every order of the division made under the~~
9 ~~authority of chapters 1—5 of this title as long as the order shall be and remain in force. Every~~
10 ~~public utility or water supplier which shall violate any of the provisions of the chapters or which~~
11 ~~fails, omits, or neglects to obey, observe, or comply with, any order of the division, shall be~~
12 ~~subject to a penalty of not less than two hundred dollars (\$200), nor more than one thousand~~
13 ~~dollars (\$1,000) for each and every offense. Every violation of the order shall be a separate and~~
14 ~~distinct offense and, in case of a continuing violation, every day's continuance thereof shall be,~~
15 ~~and be deemed to be, a separate and distinct offense.~~

16 (a) Every officer, agent, or employee of a public utility ~~or water supplier~~ who shall
17 ~~violate~~ fail to obey, observe, and comply with any of the provisions of ~~the~~ chapters 1 through 5 of
18 this title, or any division rule, regulation or order, or who procures, aids, or abets any violation by
19 any public utility, ~~or water supplier~~ or who shall fail to obey, observe, or comply with, any order
20 of the division, or any provision of an order of the division, or who procures, aids, or abets any
21 public utility ~~or water supplier~~ in its failure to obey, observe, or comply with, any order or
22 provision, shall be guilty of a misdemeanor and shall be fined not less than ~~one hundred dollars~~
23 ~~(\$100) nor more than five hundred dollars (\$500)~~ one thousand dollars (\$1,000). In construing
24 and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or
25 other person acting for or employed by any public utility ~~or water supplier~~, acting within the
26 scope of his or her employment, shall in every case be deemed to be also the act, omission, or
27 failure of the public utility ~~or water supplier~~.

28 (b) The administrator may, in his or her discretion, in lieu of seeking criminal sanctions
29 provided in subsection (a) of this section, impose upon each public utility an administrative civil
30 penalty (fine) for the failure to obey, observe, and comply with any of the provisions of chapters
31 1 through 5 of this title, or division rule, regulation or order.

32 (1) In determining the amount of any penalty to be assessed pursuant to this section, the
33 division shall consider:

34 (i) The seriousness of the violation for which a penalty is sought;

1 (ii) The nature and extent of any previous violations for which penalties have been
2 assessed against the public utility or officer;

3 (iii) Whether there was knowledge of the violation;

4 (iv) The gross revenues and financial status of the public utility; and

5 (v) Such other factors as the division may deem appropriate and relevant.

6 (2) Whenever the division has reason to believe that a public utility should be subject to
7 imposition of a civil penalty as set forth in this section, it shall notify such public utility. Such
8 notice shall include, but shall not be limited to:

9 (i) The date and a brief description of the facts and nature of each act or failure to act for
10 which such penalty is proposed;

11 (ii) A list of each provision of chapters 1 through 5 of this title, or division rule,
12 regulation or order that the division alleges has been violated; and

13 (iii) The amount of each penalty that the division proposes to assess.

14 (3) Whenever the division has reason to believe that a public utility should be subject to
15 imposition of a civil penalty or penalties as set forth in this section, the division shall hold an
16 evidentiary hearing to demonstrate why the proposed penalty or penalties should be assessed
17 against such public utility.

18 (4) Any public utility determined by the division to have failed to reasonably comply as
19 shown by a preponderance of the evidence with any provision of chapters 1 through 5 of this title,
20 or division rule, regulation or order, shall forfeit a sum not exceeding the greater of two hundred
21 thousand dollars (\$200,000) or two one-hundredths of one percent (0.02%) of the annual
22 intrastate gross operating revenue of the public utility, not including taxes paid to and revenues
23 collected on behalf of government entities, constituting a civil penalty for each and every offense
24 and, in the case of a continuing violation, each day shall be deemed a separate and distinct
25 offense.

26 (5) Any payment made by a public utility as a result of an assessment as provided in this
27 section, and the cost of litigation and investigation related to any such assessment, shall not be
28 recoverable from ratepayers. All monies recovered pursuant to subsection (b) of this section,
29 together with the costs thereof, shall be remitted to, or for the benefit of, the ratepayers in a
30 manner to be determined by the division.

31 (6) In construing and enforcing the provisions of this section relating to penalties, the act
32 of any director, officer, agent or employee of a public utility acting within the scope of his or her
33 official duties or employment shall be deemed to be the act of such public utility.

34 (7) The penalties provided by this section are in addition to any other penalties or

1 [remedies provided in law.](#)

2 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- UTILITY SERVICE
RESTORATION ACT

1 This act would require every electric distribution company and natural gas distribution
2 company conducting business in the state on or before June 1, 2020, and annually thereafter, to
3 submit to the division of public utilities and carriers (DPUC) an emergency response plan to
4 address service restoration in the event of outages for review and approval. The act would also
5 authorize the assessment of monetary penalties to each investor-owned electric and gas
6 distribution company doing business in the state when the company does not comply with the
7 division's requirements for responding to and restoring utility service to customers.

8 This act would establish a process for the DPUC to assess administrative penalties
9 against a public utility for the failure to comply with any order or regulation of the division.

10 This act would take effect upon passage.

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