

HOUSE No. 4110

The Commonwealth of Massachusetts

By Mr. Finegold of Andover, for the committee on Telecommunications, Utilities and Energy, on House, No. 3066, a Bill regarding accountability of public utility companies (House, No. 4110). May 18, 2009.

An Act regarding accountability of public utility companies.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Barry R. Finegold	17th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act regarding accountability of 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 striking out section
2 5E, as inserted by section 9 of chapter 169 of the acts of 2008, and inserting in place thereof the following
3 sections:-

4 Section 5E. (a) The department may, from time to time, audit all companies subject to its
5 jurisdiction, except steam distribution companies. Such audits may include, but shall not be limited to,
6 review of the following documents: (a) all financial statements, the balance sheet, the income statement,
7 the statement of cash flows, the statement of retained earnings, the notes to the financial statements, and
8 the information in the annual return to the department; (b) all documents concerning reconciling
9 mechanisms related to rates, prices, charges, or costs and savings related to a merger, acquisition or
10 consolidation within 3 years after the merger, acquisition or consolidation; and (c) documents concerning
11 service quality measure statistics and service quality performance at least every 3 years or whenever
12 service quality penalties equal to or exceed 50 per cent of the maximum.

13 (b) Upon (i) failure of an investor-owned distribution, transmission or gas company serving less
14 than 100,000 customers to timely restore service after an outage effecting more than 500 customers or
15 more than one-third of the customers in any one municipality and (ii) the department taking action
16 pursuant to section 5F the department shall order an independent management audit for the purpose of
17 determining whether the company's management practices have caused, or substantially contributed to,
18 such failure to timely restore service after an outage effecting more than 500 customers or more than one-
19 third of the customers in any one municipality.

20 If the audit determines that the company's management practices caused, or substantially
21 contributed to, the failure to timely restore service after an outage effecting more than 500 customers or
22 more than one-third of the customers in any one municipality the department may order that the company
23 be placed into receivership. Upon such an order, the attorney general may bring an action in superior

24 court requesting the appointment of a receiver to operate the company; provided however, that unless the
25 court determines otherwise said appointment shall not exceed 120 days.

26 A receiver appointed pursuant to this section shall have access to all company utility assets and
27 records and may manage the company's assets in a manner which will restore or maintain an acceptable
28 level of service. The receiver may hire, direct, or manage any employee, discharge any non-union
29 employee, expend existing company utility revenues for labor and materials, and make additional
30 expenditures essential to providing an acceptable level of service, such expenditures to be funded in
31 accordance with generally accepted ratemaking practices. Any costs incurred by the department or
32 appointed receiver under this section shall be the responsibility of the company.

33 (c) Upon written complaint of the attorney general requesting an independent audit or
34 independent management audit of a company subject to the department's jurisdiction, the department
35 shall commence a proceeding within 30 days of receipt of the complaint for the purpose of ordering the
36 requested audit in a reasonable time. The results of any audit so ordered shall be filed promptly with the
37 department and each audit shall be paid for by the company that is the subject of the audit.

38 Section 5F. Upon the declaration of a state of emergency during which (i) an investor-owned
39 distribution, transmission or gas company serving less than 100,000 customers fails to timely restore
40 service after an outage effecting more than 500 customers or more than one-third of the customers in any
41 one municipality; (ii) said company fails to adequately implement its emergency response plan filed under
42 section 85B; and (iii) the department determines that such failure by said company constitutes a threat to
43 the health, safety and welfare of affected ratepayers the department may, in consultation with the
44 Massachusetts emergency management agency, take such action deemed necessary to assure public safety
45 and welfare through the priority restoration of gas, electric and water utility services, including (i)
46 implementing the company's emergency response plan filed pursuant to section 85B to timely restore
47 service in the affected area; and (ii) issuing operational and management directives necessary to timely
48 restore service in the affected area. Any company who willfully fails to carry out an order by the
49 department under this section shall be subject to a civil administrative penalty not to exceed \$1,000,000
50 per violation. Any distribution, transmission, or gas company aggrieved by an order or directive issued by
51 the department pursuant to this section may request a hearing within 90 days.

52 **SECTION 2.** Section 1E of chapter 164 of the General Laws, as most recently amended by
53 section 61 of said chapter 169 of the acts of 2008, is hereby amended by striking out paragraphs (c) and
54 (d) and inserting in place thereof the following paragraph:-

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

62 **SECTION 3.** Section 1F of chapter 164 of the General Laws, as appearing in the 2006 Official
63 Edition, is hereby amended by striking out, in line 259, the figure “\$25,000” and inserting in place thereof
64 the following figure:- “\$250,000”

65 **SECTION 4.** Said section 1F of said chapter 164 of the General Laws, as so appearing, is hereby
66 further amended by striking out, in line 261, the figure “\$1,000,000” and inserting in place thereof the
67 following figure:- “\$91,250,000”

68 **SECTION 5.** Said chapter 164 of the General Laws, as so appearing, is hereby amended by
69 inserting after section 1H the following section:-

70 Section 1I. (a) Each investor-owned distribution, transmission, and gas company shall file a
71 report with the department by March first of each year comparing its performance during the previous
72 calendar year to the department's service quality standards and any applicable national standards as may
73 be adopted by the department. The department shall be authorized to levy a penalty against any
74 distribution, transmission, or gas company which fails to meet the service quality standards in an amount
75 up to and including the equivalent of 2.5 per cent of such company's transmission and distribution service
76 revenues for the previous calendar year.

77 (b) Whenever a service quality penalty for a company levied by the department pursuant to
78 subsection (a) equals or exceeds 50 per cent of the maximum amount authorized to be levied pursuant to
79 said subsection (a) for 2 consecutive years, the department may levy a penalty against said distribution,
80 transmission or gas company which fails to meet the service quality standards in the next succeeding year
81 in an amount not to exceed 4 per cent of said company's transmission and distribution service revenues
82 for the previous calendar year. Nothing in this section shall prevent the department from approving, after
83 notice and a public hearing, an alternative distribution service quality plan that includes penalties and
84 incentives that exceed the maximum penalty amounts established herein; provided, however, that any
85 such plan must be voluntarily proposed by said affected distribution, transmission or gas company as part
86 of a settlement agreement or otherwise.

87 (c) A distribution, transmission, or gas company subject to a penalty under this section shall not
88 assesses, or otherwise require ratepayers to pay or reimburse said company, for the cost of the penalty.

89 **SECTION 6.** Said chapter 164 of the General Laws, as so appearing, is hereby amended by
90 inserting after section 85A the following section:-

91 Section 85B. (a) Each distribution, transmission and gas company conducting business in the
92 commonwealth shall annually, on or before May fifteenth, submit to the department for approval an
93 emergency response plan. The emergency response plan shall provide for the prompt and efficient
94 restoration of service in cases of emergency including, but not limited to: identification of management
95 staff responsible for company operations during an emergency; a communications system with customers
96 during an emergency that extends beyond the normal business hours and business conditions; contact
97 with customers who had documented their need for essential electricity for medical needs; designation of
98 staff to communicate with state and local officials and relevant regulatory agencies; provisions regarding

99 how the company will assure the safety of its employees and contractors; procedures for deploying
100 company and mutual aid crews to work assignment areas; and identification of additional supplies and
101 equipment needed during an emergency and the means of obtaining additional supplies and equipment.
102 The emergency response plan shall include a copy of all written mutual assistance agreements and a
103 description of all mutual assistance; provided, however, that the description of mutual assistance
104 agreements shall include a coordinated plan by all such utilities for: (i) the coordinated organization and
105 dispatch of all domestic utility and support crews within the state: (ii) the solicitation and distribution
106 within the state of all foreign utility and support crews; and (iii) such other matters related to mutual
107 assistance as the department may require.

108 (b) If the department fails to approve the proposed emergency response plan, it shall direct the
109 distribution, transmission or gas company to amend its plan and shall prescribe conditions for approval.
110 The company shall submit the appropriately revised plan to the department within 30 days receipt of
111 notice of disapproval of the plan originally filed. The distribution, transmission, or gas company may, on
112 its own initiative or at the request of the department, amend an approved emergency response plan,
113 subject to approval by the department. Under emergency conditions, a distribution, transmission or gas
114 company may modify its emergency response plan to the extent required to restore service in a safe and
115 efficient manner, provided that such modifications and the circumstances that caused them shall be
116 reported in writing to the department within 30 days of the full restoration of service.

117 (c) Any investor-owned distribution, transmission, or gas company failing to file its emergency
118 response plan may be fined \$500 for each day during which such failure continues.

119 (d) The department shall promulgate rules and regulations for the implementation, administration
120 and enforcement of emergency response plans and for the coordination of mutual assistance among
121 distribution, transmission or gas companies, and to establish performance standards to evaluate such
122 companies' responses to an actual or reasonably foreseeable emergency. Any investor-owned distribution,
123 transmission, or gas company who violates any provisions of said rules and regulations or fails to
124 adequately implement its emergency response plan shall be subject to a penalty not less than \$500,000
125 nor more than \$5,000,000.

126 (e) A distribution, transmission, or gas company subject to a penalty under this section shall not
127 assesses, or otherwise require ratepayers to pay or reimburse said company, for the cost of the penalty.