STATE OF NEW YORK

10140

IN ASSEMBLY

March 20, 2018

Introduced by M. of A. BUCHWALD -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law and the executive law, in relation to prohibiting discrimination by public utility companies; and to amend the public service law, in relation to emergency planning and response

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 42 of the civil rights law, as amended by chapter 292 of the laws of 1945, is amended to read as follows:

§ 42. Discrimination by utility companies. It shall be unlawful for any public utility company, as defined in the public service law, to refuse to **provide service to or** employ any person in any capacity in the operation or maintenance of a public service on account of the **age, gender, sexual orientation, military, veteran or disabled veteran status, union membership,** race, creed, color or national origin of such person.

§ 2. Section 296 of the executive law is amended by adding a new subdivision 22 to read as follows:

22. It shall be an unlawful discriminatory practice for a public utility company, as defined in section two of the public service law, to discriminate in the setting of rates or services against any class of customers or locality, or for any person to violate section forty-two of the civil rights law.

§ 3. Paragraph (a) of subdivision 21 of section 66 of the public service law, as added by section 4 of part X of chapter 57 of the laws of 2013, is amended to read as follows:

(a) Each electric corporation subject to section twenty-five-a of this chapter shall annually, on or before December fifteenth, submit to the commission an emergency response plan for review and approval. The emergency response plan shall be designed for the reasonably prompt restoration of service in the case of an emergency event, defined for purposes of this subdivision as an event where widespread outages have occurred in the service territory of the company due to storms or other causes

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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beyond the control of the company. The emergency response plan shall include, but need not be limited to, the following: (i) the identification of management staff responsible for company operations during an emergency; (ii) a communications system with customers during an emergency that extends beyond normal business hours and business conditions; (iii) identification of and outreach plans to customers who had documented their need for essential electricity for medical needs; (iv) identification of and outreach plans to customers who had documented their need for essential electricity to provide critical telecommunications, critical transportation, critical fuel distribution services or other large-load customers identified by the commission; (v) designation of company staff to communicate with local officials and appropriate regulatory agencies; (vi) provisions regarding how the company will assure the safety of its employees and contractors; (vii) procedures for deploying company and mutual aid crews to work assignment areas; (viii) identification of additional supplies and equipment needed during an emergency; (ix) the means of obtaining additional supplies and equipment; (x) procedures to practice the emergency response plan; (xi) appropriate safety precautions regarding electrical hazards, including plans to promptly secure downed wires within thirty-six hours of notification of the location of such downed wires from a municipal emergency official; **(xii) means of prohibiting unlawful discrimination during the restoration of service; (xiii) procedures to be followed for accurately determining the extent of a service outage, including the determination of the location of affected areas, the estimated number of customers and the overall number of people affected by loss of power or by voltage reductions; (xiv) procedures for estimating the time required for restoration of service to areas affected by the outage and communicating with media, life support and other special needs customers, public officials, medical and critical care facilities, and the public; (xv) policies for initiating and implementing load relief and load control programs; (xvi) procedures for obtaining and distributing dry ice, drinking water, emergency meals and other items that may become necessary in the event of an extended service outage;** and [~~(xii)~~] **(xvii)** such other additional information as the commission may require. Each such corporation shall, on an annual basis, undertake drills implementing procedures to practice its emergency management plan. The commission may adopt additional requirements consistent with ensuring the reasonably prompt restoration of service in the case of an emergency event.

§ 4. Paragraph (g) of subdivision 21 of section 66 of the public service law is relettered paragraph (k), and four new paragraphs (g), (h), (i) and (j) are added to read as follows:

(g) Each year, on or before the first day of April or on such other date as the commission may prescribe, each electric corporation shall (i) file an electric utility emergency plan including any such amendments as it deems necessary, or as the commission may require, to maintain a high level of preparedness, and (ii) certify in a report to the commission that within the past twelve months it has periodically verified telephone and other appropriate contacts, and updated its list of internal and external contact persons necessary to execute the plan, and has conducted one or more emergency exercises involving the management of the corporation and key company personnel assigned service restoration responsibilities. Prior to approving any such plan, the commission shall seek comments from interested state and local agencies and members of the public, and may require modifications or otherwise prescribe conditions for approval. The commission shall ensure that comments are

solicited from the state office of emergency management, the division of homeland security and emergency services and other appropriate state and local agencies, and from organizations that provide emergency shelter, warming/cooling stations and other relief efforts. As part of its review, the commission shall review the adequacy of any policies for reimbursing customers for losses due to outages or inadvertent intentional shutoffs of electricity. Such review shall include consideration of the appropriateness of any policy of providing for, limiting or denying reimbursement for damages to electrical equipment or other losses attributable to the failure to deliver electricity or to significant reductions in the voltage of electricity delivered, including loss of business opportunities and the appropriateness of any duration standards in such policies. Such review shall also include the sufficiency of any monetary limits in such policies.

(h) Within sixty days following completion of service restoration in an emergency where the restoration period exceeds forty-eight hours, each electric corporation shall submit to the commission a review of all aspects of its preparation and system restoration performance. Based on this review or upon its own assessment of the electric corporation's performance in responding to such emergency, the commission may immediately order any modifications or conditions to the corporation's emergency plan that it deems necessary to ensure a high level of preparedness.

(i) The names and contact information of employees and outside contact persons may be deleted from copies of the plan available for public inspection, but such deleted information shall be subject to inspection by the commission and state employees. An electric corporation may request that the commission designate as confidential internal security matters and any other information required to be submitted in emergency plans. Such requests shall identify the specific information requested to be treated as confidential and shall explain why confidentiality is sought. Unless the commission directs otherwise, such information shall not be included in the plans available for public inspection.

(j) The commission shall encourage electric corporations to identify and disseminate best practices in emergency planning and response. In addition to overseeing dissemination of best practices on an ongoing basis, the commission shall be authorized to initiate a statewide, collaborative emergency preparedness and storm management planning process involving all electric corporations and other involved organizations.

§ 5. The public service law is amended by adding a new section 66-p to read as follows:

§ 66-p. Utility preparedness for outages and disruptions of service. 1. Definitions. As used in this section:

(a) "Electric transmission and distribution company", "transmission and distribution company" or "company" means an investor-owned utility company having annual revenues in excess of two hundred million dollars that transmits and distributes electricity within this state.

(b) "Vegetation management" means programs and practices designed to prevent electric system disruptions or power outages caused by the physical interference or collapse of trees, tree branches and other vegetation on electric transmission and distribution lines.

(c) "Unlawful discrimination" means any violation of section forty-two of the civil rights law.

2. Transmission and distribution company performance benchmarks and standards. (a) Within one year of the effective date of this section,

the commission shall establish, and each transmission and distribution company shall comply with, power restoration performance benchmarks and standards to reduce the duration of outages and disruptions, and to facilitate restoration of power after outages or disruptions. Prior to establishing such benchmarks and standards, the commission may require companies to submit documents and any other information in their possession in order to assist the commission in establishing such benchmarks and standards.

(b) The benchmarks and standards established by the commission shall be designed for power outages in which more than ten percent of a transmission and distribution company's customers are without power for more than forty-eight consecutive hours, or forty-eight aggregate hours within any fourteen day period, and shall include, but not be limited to, standards for:

(i) minimum staffing and equipment levels for each company, based on the number of customers served by such company and the nature of the infrastructure deployed to serve such company's customers in the event of an emerging or wide-spread outage or disruption;

(ii) a timetable for restoration of power in outages affecting more than ten percent, thirty percent, fifty percent and seventy percent of such company's customers;

(iii) a timetable for restoration of power when outages are due to blackouts of the entire grid;

(iv) creation of a communication plan between each company and its customers, including, but not limited to, communication during time periods that are not considered normal business hours;

(v) the safety of the company's employees, work crews and private contractors;

(vi) creation of mutual aid agreements with other utilities in the region and, as needed, in the United States and Canada, for mutual storm restoration assistance, which such agreements shall be filed with the commission;

(vii) notification to the commission and the public when a company has requested aid for storm restoration assistance from other utilities including the number of workers and/or additional equipment the company has requested;

(viii) communication and coordination between each company and the relevant state, municipal and/or emergency operations center officials concerning emergency preparation, road clearing and the establishment of restoration priorities;

(ix) tree trimming, cutting and removal by each transmission and distribution company to reduce power outages caused by trees and limbs;

(x) communication and coordination, after consultation with the division of homeland security and emergency services, between each transmission and distribution company and the public including, but not limited to, standards concerning the use of any emergency notification system to notify the public of the power restoration status and any dangerous conditions, including notification methods such as mobile telephone text messages, electronic mail and any other electronic or non-electronic means that the commission may require;

(xi) reimbursement to residential customers for:

(A) actual losses of food spoiled due to lack of refrigeration caused during a power outage lasting forty-eight or more consecutive hours when greater than ten percent of a company's residential customers have lost power, in an amount up to two hundred dollars upon submission of an itemized list and in an amount over two hundred dollars upon submission

of an itemized list and proof of loss, up to a maximum of four hundred fifty dollars for any one customer for any one incident, which such amounts may be periodically reviewed and changed by the commission; and

(B) actual losses of perishable prescription medicine, spoiled due to lack of refrigeration, upon submission of an itemized list and proof of loss and, if requested by the company, submission of authorization to enable the company to verify the claimed loss;

(xii) timely notification of power outages and restoration efforts by each company to any relevant state or municipal agency or officials including, but not limited to, any public safety agency or officials;

(xiii) the operation of an emergency call center by each company;

(xiv) the means of preventing unlawful discrimination during the restoration of service; and

(xv) any other standards the commission deems necessary.

(c) The commission, in developing its power restoration performance benchmarks and standards pursuant to paragraph (a) of this subdivision, shall review:

(i) each transmission and distribution company's current practices concerning power restoration after an emergency. Such review shall include, but not be limited to, an analysis of each such company's: (A) estimates concerning potential damage and power disruptions made prior to a potential outage affecting more than ten percent of a company's customers for a period of more than forty-eight consecutive hours, or forty-eight aggregate hours within any fourteen day period; (B) damage and power outage assessments after any emergency; (C) restoration management after any emergency, including access to alternate restoration resources via mutual aid agreements with other utilities for mutual storm restoration assistance, including those entered into with other transmission and distribution companies; (D) each company's plan for at-risk and vulnerable customers including, but not limited to, customers identified in paragraphs (a) and (b) of subdivision three of section thirty-two of this chapter; (E) policies concerning communication with state and local officials and customers, including notification of customer restoration estimates and the timeliness, accuracy and usefulness of such estimates; and (F) the need for mutual aid agreements with other utilities for mutual storm restoration including assistance from crews serving other utilities or companies;

(ii) the adequacy of each transmission and distribution company's infrastructure, facilities and equipment including, but not limited to, electric distribution lines, electric transformers and circuits, which shall include an analysis of: (A) whether such company is following standard industry practices for operation and maintenance of such infrastructure, facilities and equipment; and (B) whether such company has access to adequate replacement equipment for such infrastructure, facilities and equipment during the course of a power outage affecting more than ten percent of a company's customers for more than forty-eight consecutive hours, or forty-eight aggregate hours within any fourteen day period;

(iii) vegetation management policies of each transmission and distribution company including: (A) expenditures for tree trimming and other practices to prevent interference of transmission and distribution lines by vegetation; (B) incidence of power outages caused by vegetation including falling trees and tree branches caused by weather or other events; and (C) the amount and duration of power outages during previous major storms caused by trees and limbs outside the current right of way

management with consideration given to the quantity and effectiveness of prior tree trimming;

(iv) the impact including, but not limited to, potential reduction of power outages and potential cost of burying power lines underground were such effort to be undertaken;

(v) the impact of expanding the area adjacent to distribution lines for tree trimming including an analysis of the benefits and the costs of such expansion to ratepayers and the likelihood that such expansion would decrease damage to infrastructure, facilities and equipment used to distribute electricity and decrease power outage frequency or duration; and

(vi) any other policy or practice the commission deems necessary to analyze in order to conduct the review required pursuant to this paragraph.

(d) The commission shall permit each company to recover the reasonable costs incurred by such company to maintain or improve the reliability of such company's infrastructure necessary to meet the standards established pursuant to this section.

(e) The commission may also establish standards for acceptable performance by each transmission and distribution company in an emergency, in accordance with this section, upon a determination by the commission that the changed circumstances of any utility company necessitates such additional standards.

(f) Within one year following the establishment of the benchmarks and standards pursuant to paragraph (a) of this subdivision and each year thereafter, each transmission and distribution company shall provide an emergency response report to the commission. Such report shall include information and an analysis concerning such company's ability and performance during the preceding year to meet the emergency preparedness and response standards established by the commission pursuant to this section. In addition to the annual response report required in this paragraph, the commission may require any utility to submit a supplemental emergency response report after any storm, emergency or event causing significant power disruptions.

3. The commission shall review the performance of each transmission and distribution company after any emergency: (a) in which more than ten percent of any such company's customers were without power for more than forty-eight consecutive hours, or forty-eight aggregate hours within any fourteen day period; or (b) at the commission's discretion. The commission, upon a finding, after a hearing or opportunity to be heard, that any such company failed to comply with any restoration standard required by this section or any order of the commission in preparation for a power outage, or in restoration of a power outage, shall impose civil penalties against such company, not to exceed a total of two and one-half percent of such company's gross annual revenues from electric distribution. In determining the amount of any penalty, the commission may consider whether such company recovered costs incurred pursuant to paragraph (d) of subdivision two of this section to meet infrastructure reliability efforts to improve such company's performance. Any such penalty imposed shall be paid to the customers or ratepayers of such company in the form of a credit, which shall be credited within one hundred twenty days of such order. Any such penalty shall not be included as an operating expense of such company for the purposes of ratemaking.

§ 6. This act shall take effect immediately.