

# STATE OF NEW YORK

7262

## IN SENATE

January 5, 2018

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government 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:

1 Section 1. Section 42 of the civil rights law, as amended by chapter  
2 292 of the laws of 1945, is amended to read as follows:

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

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

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

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

20 (a) Each electric corporation subject to section twenty-five-a of this  
21 chapter shall annually, on or before December fifteenth, submit to the  
22 commission an emergency response plan for review and approval. The emer-  
23 gency response plan shall be designed for the reasonably prompt restora-  
24 tion of service in the case of an emergency event, defined for purposes  
25 of this subdivision as an event where widespread outages have occurred

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

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1 in the service territory of the company due to storms or other causes  
2 beyond the control of the company. The emergency response plan shall  
3 include, but need not be limited to, the following: (i) the identifica-  
4 tion of management staff responsible for company operations during an  
5 emergency; (ii) a communications system with customers during an emer-  
6 gency that extends beyond normal business hours and business conditions;  
7 (iii) identification of and outreach plans to customers who had docu-  
8 mented their need for essential electricity for medical needs; (iv)  
9 identification of and outreach plans to customers who had documented  
10 their need for essential electricity to provide critical telecommuni-  
11 cations, critical transportation, critical fuel distribution services or  
12 other large-load customers identified by the commission; (v) designation  
13 of company staff to communicate with local officials and appropriate  
14 regulatory agencies; (vi) provisions regarding how the company will  
15 assure the safety of its employees and contractors; (vii) procedures for  
16 deploying company and mutual aid crews to work assignment areas; (viii)  
17 identification of additional supplies and equipment needed during an  
18 emergency; (ix) the means of obtaining additional supplies and equip-  
19 ment; (x) procedures to practice the emergency response plan; (xi)  
20 appropriate safety precautions regarding electrical hazards, including  
21 plans to promptly secure downed wires within thirty-six hours of notifi-  
22 cation of the location of such downed wires from a municipal emergency  
23 official; (xii) means of prohibiting unlawful discrimination during the  
24 restoration of service; (xiii) procedures to be followed for accurately  
25 determining the extent of a service outage, including the determination  
26 of the location of affected areas, the estimated number of customers and  
27 the overall number of people affected by loss of power or by voltage  
28 reductions; (xiv) procedures for estimating the time required for resto-  
29 ration of service to areas affected by the outage and communicating with  
30 media, life support and other special needs customers, public officials,  
31 medical and critical care facilities, and the public; (xv) policies for  
32 initiating and implementing load relief and load control programs; (xvi)  
33 procedures for obtaining and distributing dry ice, drinking water, emer-  
34 gency meals and other items that may become necessary in the event of an  
35 extended service outage; and ~~(xii)~~ (xvii) such other additional infor-  
36 mation as the commission may require. Each such corporation shall, on an  
37 annual basis, undertake drills implementing procedures to practice its  
38 emergency management plan. The commission may adopt additional require-  
39 ments consistent with ensuring the reasonably prompt restoration of  
40 service in the case of an emergency event.

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

44 (g) Each year, on or before the first day of April or on such other  
45 date as the commission may prescribe, each electric corporation shall  
46 (i) file an electric utility emergency plan including any such amend-  
47 ments as it deems necessary, or as the commission may require, to main-  
48 tain a high level of preparedness, and (ii) certify in a report to the  
49 commission that within the past twelve months it has periodically veri-  
50 fied telephone and other appropriate contacts, and updated its list of  
51 internal and external contact persons necessary to execute the plan, and  
52 has conducted one or more emergency exercises involving the management  
53 of the corporation and key company personnel assigned service restora-  
54 tion responsibilities. Prior to approving any such plan, the commission  
55 shall seek comments from interested state and local agencies and members  
56 of the public, and may require modifications or otherwise prescribe

1 conditions for approval. The commission shall ensure that comments are  
2 solicited from the state office of emergency management, the division of  
3 homeland security and emergency services and other appropriate state and  
4 local agencies, and from organizations that provide emergency shelter,  
5 warming/cooling stations and other relief efforts. As part of its  
6 review, the commission shall review the adequacy of any policies for  
7 reimbursing customers for losses due to outages or inadvertent inten-  
8 tional shutoffs of electricity. Such review shall include consideration  
9 of the appropriateness of any policy of providing for, limiting or deny-  
10 ing reimbursement for damages to electrical equipment or other losses  
11 attributable to the failure to deliver electricity or to significant  
12 reductions in the voltage of electricity delivered, including loss of  
13 business opportunities and the appropriateness of any duration standards  
14 in such policies. Such review shall also include the sufficiency of any  
15 monetary limits in such policies.

16 (h) Within sixty days following completion of service restoration in  
17 an emergency where the restoration period exceeds forty-eight hours,  
18 each electric corporation shall submit to the commission a review of all  
19 aspects of its preparation and system restoration performance. Based on  
20 this review or upon its own assessment of the electric corporation's  
21 performance in responding to such emergency, the commission may imme-  
22 diately order any modifications or conditions to the corporation's emer-  
23 gency plan that it deems necessary to ensure a high level of prepared-  
24 ness.

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

35 (j) The commission shall encourage electric corporations to identify  
36 and disseminate best practices in emergency planning and response. In  
37 addition to overseeing dissemination of best practices on an ongoing  
38 basis, the commission shall be authorized to initiate a statewide,  
39 collaborative emergency preparedness and storm management planning proc-  
40 ess involving all electric corporations and other involved organiza-  
41 tions.

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

44 § 66-p. Utility preparedness for outages and disruptions of service.  
45 1. Definitions. As used in this section:

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

50 (b) "Vegetation management" means programs and practices designed to  
51 prevent electric system disruptions or power outages caused by the phys-  
52 ical interference or collapse of trees, tree branches and other vege-  
53 tation on electric transmission and distribution lines.

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

1     2. Transmission and distribution company performance benchmarks and  
2 standards. (a) Within one year of the effective date of this section,  
3 the commission shall establish, and each transmission and distribution  
4 company shall comply with, power restoration performance benchmarks and  
5 standards to reduce the duration of outages and disruptions, and to  
6 facilitate restoration of power after outages or disruptions. Prior to  
7 establishing such benchmarks and standards, the commission may require  
8 companies to submit documents and any other information in their  
9 possession in order to assist the commission in establishing such bench-  
10 marks and standards.

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

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

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

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

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

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

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

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

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

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

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

53     (xi) reimbursement to residential customers for:

54     (A) actual losses of food spoiled due to lack of refrigeration caused  
55 during a power outage lasting forty-eight or more consecutive hours when  
56 greater than ten percent of a company's residential customers have lost

1 power, in an amount up to two hundred dollars upon submission of an  
2 itemized list and in an amount over two hundred dollars upon submission  
3 of an itemized list and proof of loss, up to a maximum of four hundred  
4 fifty dollars for any one customer for any one incident, which such  
5 amounts may be periodically reviewed and changed by the commission; and

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

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

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

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

16 (xv) any other standards the commission deems necessary.

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

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

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

51 (iii) vegetation management policies of each transmission and distrib-  
52 ution company including: (A) expenditures for tree trimming and other  
53 practices to prevent interference of transmission and distribution lines  
54 by vegetation; (B) incidence of power outages caused by vegetation  
55 including falling trees and tree branches caused by weather or other  
56 events; and (C) the amount and duration of power outages during previous



1 major storms caused by trees and limbs outside the current right of way  
2 management with consideration given to the quantity and effectiveness of  
3 prior tree trimming;

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

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

13 (vi) any other policy or practice the commission deems necessary to  
14 analyze in order to conduct the review required pursuant to this para-  
15 graph.

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

20 (e) The commission may also establish standards for acceptable  
21 performance by each transmission and distribution company in an emergen-  
22 cy, in accordance with this section, upon a determination by the commis-  
23 sion that the changed circumstances of any utility company necessitates  
24 such additional standards.

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

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

56 § 6. This act shall take effect immediately.