



# The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine.  
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## AN ACT 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  
2 section 5E, as inserted by section 9 of chapter 169 of the acts of 2008, and inserting in  
3 place thereof the following sections:-

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

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

22 If the audit determines that the company's management practices caused, or  
23 substantially contributed to, the failure to timely restore service after an outage effecting  
24 more than 500 customers or more than one-third of the customers in any one municipality  
25 the department may order that the company be placed into receivership. Upon such an  
26 order, the attorney general may bring an action in superior court requesting the  
27 appointment of a receiver to operate the company; provided however, that unless the court  
28 determines otherwise said appointment shall not exceed 120 days.

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

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

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

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

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

71           **SECTION 3.** Section 1F of chapter 164 of the General Laws, as appearing in the  
72 2006 Official Edition, is hereby amended by striking out, in line 259, the figure “\$25,000”  
73 and inserting in place thereof the following figure:- “\$250,000”

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

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

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

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

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

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

104 Section 85B. (a) Each distribution, transmission and gas company conducting  
105 business in the commonwealth shall annually, on or before May fifteenth, submit to the  
106 department for approval an emergency response plan. The emergency response plan shall  
107 provide for the prompt and efficient restoration of service in cases of emergency including,  
108 but not limited to: identification of management staff responsible for company operations  
109 during an emergency; a communications system with customers during an emergency that  
110 extends beyond the normal business hours and business conditions; contact with customers  
111 who had documented their need for essential electricity for medical needs; designation of  
112 staff to communicate with state and local officials and relevant regulatory agencies;  
113 provisions regarding how the company will assure the safety of its employees and  
114 contractors; procedures for deploying company and mutual aid crews to work assignment  
115 areas; and identification of additional supplies and equipment needed during an emergency  
116 and the means of obtaining additional supplies and equipment. The emergency response  
117 plan shall include a copy of all written mutual assistance agreements and a description of  
118 all mutual assistance; provided, however, that the description of mutual assistance  
119 agreements shall include a coordinated plan by all such utilities for: (i) the coordinated  
120 organization and dispatch of all domestic utility and support crews within the state: (ii) the  
121 solicitation and distribution within the state of all foreign utility and support crews; and  
122 (iii) such other matters related to mutual assistance as the department may require.

123 (b) If the department fails to approve the proposed emergency response plan, it  
124 shall direct the distribution, transmission or gas company to amend its plan and shall  
125 prescribe conditions for approval. The company shall submit the appropriately revised plan  
126 to the department within 30 days receipt of notice of disapproval of the plan originally  
127 filed. The distribution, transmission, or gas company may, on its own initiative or at the

128 request of the department, amend an approved emergency response plan, subject to  
129 approval by the department. Under emergency conditions, a distribution, transmission or  
130 gas company may modify its emergency response plan to the extent required to restore  
131 service in a safe and efficient manner, provided that such modifications and the  
132 circumstances that caused them shall be reported in writing to the department within 30  
133 days of the full restoration of service.

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

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

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

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# House, No. 4110

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