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A QUICK LOOK INTO IMPORTANT ISSUES OF THE DAY

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Responding to Disasters: Clearing the Way for Utilities

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Within a week of Superstorm Sandy's 2012 landfall and the ensuing destruction of critical infrastructure, the largest utility in New Jersey had over 4,000 utility workers from 24 states working throughout its service territory to restore power. Residents may have been surprised to see a Wisconsin utility crew in their New Jersey suburb, but this type of cross-state collaboration between utilities was integral to ensuring that New Jersey—along with more than a dozen other states affected by the storm—had enough equipment, trucks, skilled workers and expertise to address the myriad problems the storm caused.

Many similar scenes have played out since—from California's 2018 Camp Fire to 2019's Hurricane Dorian—but Superstorm Sandy ushered in a variety of changes in how governments and industry prepare for disaster recovery.

Utility mutual assistance agreements, which have been used for decades, provide the contractual and cost-reimbursement details between utilities prior to any event, enabling resource-sharing, supporting coordination and restoring power more quickly.

In an effort to remove any lingering red tape, states began to supplement these agreements through legislation in the years after Superstorm Sandy by establishing a legal backstop to support and facilitate their execution. Most often, this has taken the form of providing tax and certification exemptions for out-of-state businesses engaged in disaster recovery efforts. At least 24 states have enacted laws to grant these exemptions upon the declaration of a state of emergency or national disaster.

State transportation regulations can provide another obstacle to responding to disasters quickly. Out-of-state utility crews traveling through unaffected states on their way to a disaster area may be subject to registration, permitting and other

Did You Know?

- It is estimated that weather-related power outages cost the U.S. economy $200 billion from 2008 to 2012.
- Superstorm Sandy saw the largest number of utility workers dispatched through mutual assistance agreements nationally, with 70,000 workers from 80 electric utilities entering the affected area.
- Although hurricanes and wildfires get wide news coverage, flooding is actually the most common natural disaster in the United States.

requirements in each state along the way. Waiving such requirements could expedite disaster responses. Travel waivers and permitting responsibilities in many states lie with the governor, but state lawmakers may consider addressing them through legislation to facilitate quicker responses to emergencies like wildfires, hurricanes, earthquakes and other natural disasters.

With the number of billion-dollar natural disasters steadily increasing since 1980, ensuring swift emergency responses will be increasingly important to states and utility companies.

State Action

Many states have created tax liability immunity for companies directly involved in disaster relief efforts. After a disaster, utility companies are needed to quickly restore power—a necessity for basic daily functions and integral to the recovery process. Given this need, electric, natural gas, telecommunications, and other critical infrastructure companies are often singled out in rapid response bills. In Georgia, for example, some out-of-state businesses are exempt from licensing, registration requirements and income taxes while performing disaster-related work such as repairing gas and electric distribution systems.

In some states, there are caveats to the tax liability immunity—fuel or local sales taxes, for example, are not always included. North Dakota and Tennessee passed business rapid response legislation in 2017 and 2020, respectively. The laws stipulate that out-of-state businesses still must pay fuel taxes, local sales taxes, and taxes on accommodation or transportation while responding to a disaster. However, in the case of most mutual assistance agreements, the requesting utility will reimburse the responding utility for these costs.

Licensing agreements are often also included in business rapid response bills. While some mutual assistance agreements include licensing reciprocity, legislation ensures this process is standardized for the many utilities that operate within a state and region. New Jersey enacted legislation to lift local occupational licensing or registration requirements for specified out-of-state businesses and employees, including electric utility workers, during an emergency response if they are licensed to perform the same activity in their home state.

Regional Mutual Assistance Groups (RMAGs) consist of seven regional mutual assistance groups of investor owned utilities (IOUs), which coordinate regionally during natural disasters. Public power utilities and electric cooperatives have separate but parallel approaches to mutual assistance. These groups can coordinate the distribution of people and supplies throughout all states and territories.

States have worked to preempt potential delays that could result from the strict enforcement of certification requirements or from transportation delays as responding utilities pass through unaffected states on their way to the state experiencing an emergency. The Texas Legislature passed its law allowing the governor to suspend motor carrier registration requirements during a declared disaster in another state the year after Superstorm Sandy hit. In doing so, the state sought to facilitate the rapid movement of emergency response workers and equipment through Texas, even though the disaster wasn't a direct threat to the state.

Once in the state, there is a specific amount of time that the business can remain until they resume liability for taxes and licensing requirements. In Wisconsin, the disaster period technically begins 10 days prior to the emergency and ceases 60 days after the state of emergency ends. Arkansas, however, extends its exemptions for emergency response activities to "a reasonable time before, during, and after a state disaster or emergency is declared."

Federal and Industry Action

State approaches to disaster recovery are built on national standards for cross-state communication and collaboration. Coordination beyond state lines and outside of state government is also essential. The Electricity Subsector Coordinating Council (ESCC) which represents investor-owned electric companies, rural electric cooperatives and public power utilities, works with the federal government to create a consistent dialogue surrounding problems and solutions for the electricity sector nationally.

There are also linkages directly between states and the federal government. The Energy Emergency Assurance Coordinators program, for example, designates contacts in each state who work directly with the U.S. Department of Energy's (DOE) Office of Cybersecurity, Energy Security, and Emergency Response to collaboratively plan for and respond to energy emergencies. For example, during preparation for the landfall of Hurricane Dorian in 2019, the ESCC helped coordinate the prestaging and repositioning of crews from over 30 states in the event they needed to deploy by working with DOE, the Federal Emergency Management Agency and other agencies.

The response to Hurricane Dorian also relied on emergency assistance agreements at the state level. The Emergency Management Assistance Compact (EMAC) creates a legal baseline for resource-sharing between states, especially in a disaster. EMAC also establishes the legal precedent for cross-state licenses and credentials to be honored outside the home state.

Additional Resources

- NCSL's report on Securing the Nation's Energy Future: 2019-2020 State Legislative Action
- NARUC's "Regional Mutual Assistance Groups: A Primer"
- NGA's "Executive Authority During Energy Emergencies: A Roadmap for Governors"
- EEI's "Understanding the Electric Power Industry's Response and Restoration Process"

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