

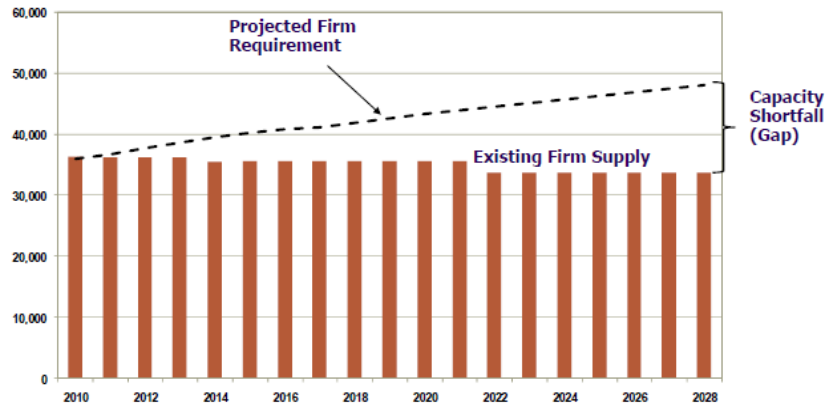


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Are We Ready?

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Are We Ready?



- Increased Demand
- Increased Generation
- Business Impact?
- Energy Security



- Increased Storm Activity
- Power Distribution and Reliability
- Business Impact?

Supply Side Factors

- What Are The Drivers? Cheaper, Cleaner, and More Reliable Energy
- Two Challenges Facing Us Today;
 - Need additional generation
 - Must address our aging infrastructure
- US Average Outage Duration Is 120 Minutes And Getting Worse;
 - Projected to be > 140 minutes by 2020,
 - Rest of industrialized world is < 10 minutes and getting better
- Infrastructure Is Designed For Peak Conditions Which Occurs $\leq 1\%$ of the Time
- New Challenges That We Must Address
 - Increase Diversity of Power Sources
 - Renewable portfolio standards
 - Increasing Environmental Requirements
 - Escalating Security Concerns
 - On-shore resources
 - Use “non-traditional” resources

Load Side - Factors

- Changing Demands On The Grid
 - Integration of electric vehicles
 - By 2020, entertainment, computers and gadgets will account for 45% of electricity used in the home and need the equivalent of 14 average-sized power stations to power them, increasing demand for near-perfect power.
- Increased Demand
- Energy Efficiency
 - Buildings
 - Public facilities
- Demand Limiting
 - Frequency regulation
 - Demand response
 - Demand limiting
- Economic growth

Damaging Storms Seem To Be More Frequent

- Power Outages
 - More frequent and longer in duration
 - One area of Maryland – 6 weeks of outages in the last 18 months
- Aging infrastructure more susceptible to damage
- Costly to upgrade infrastructure on a large scale
 - How do we pay for it?
 - What is the cost of “do nothing” to the economy?
- Grid Stability
 - Increased use of renewable energy
 - Distributed generation and the associated interconnections
 - Renewable and distributed generation – does the grid provide back-up?

We Can Prepare

- **Traditional Efficiency Improvements**
 - Building management system
 - Lighting retrofits
 - HVAC upgrades
 - Building envelope improvements
 - Usage transparency through advanced metering
- **On-site Generation and Storage Capacity**
 - Gas turbines
 - Diesel generators
 - Power storage (thermal, electric)
 - Renewable energy (PV, wind turbines)
 - Electric vehicle infrastructure
- **Implement Advanced Controls**
 - Demand response programs
 - Balance system supply and demand
 - Optimization of power system based on performance metrics
- **Operate with Utility Grid or in Island Mode**
 - Automatic connect and disconnect from main grid to meet specific performance outcomes

What are the Ripple effects of Preparing?

- Renewable Energy
 - Who provides back-up? At what cost?
 - Grid stability when renewable energy drops off
- Distributed Generation
 - Who provides back-up and at what cost?
 - Fuel supplies during emergencies? In general?
 - Approvals – local and state
 - “Mini-utilities” and Micro-grids– can they exist? Who regulates?
- Businesses
 - Energy Efficiency – good business – can they obtain needed ROI?
 - Energy Security – at what price?
 - Availability of low priced fuel for micro-grids and distributed generation

Thank you!

Connecticut Power And Energy Society How Do We Get Prepared?

Emergency Management and Continuity Planning – The Developing Legal Issues

March 2013



Preface

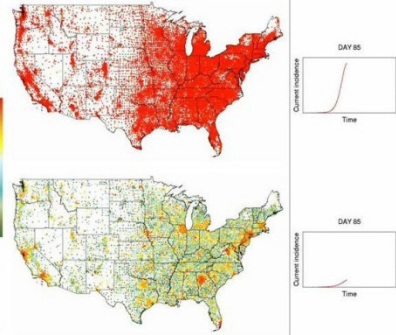
- **This presentation is intended to facilitate a discussion of the issues presented and does not constitute legal advice. Any questions regarding specific legal issues should be reviewed with a lawyer engaged by you for that purpose.**
- **Copies of the presentation outline are available in the meeting materials. Please excuse the level of detail of some slides in the presentation; additional detail is provided to make the copies more useful for future reference.**
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Discussion Topics

- Risks and Consequences
- Government “Guidance”
- Liability Standards Cases
- Minimizing Liability
- Planning Considerations





Potential Risks

– Paint the Picture of Risk



- Public Health Emergencies (perceived or real, reactions of government and individuals)
- Accidents (spills, fires, explosions, etc.)
- Intentional Harm (terrorism, vandalism, etc.)
- Natural Events (hurricanes, floods, ice storms, etc.)
- Technology Events (Equipment failures)



What Do We Mean by “Consequences”

- Think: “Exposures”
 - Personal Injury / Property Damage Liability
 - Regulatory Liability
 - Corporate Asset Injury
 - Physical Asset Injury
 - Financial Injury
 - Reputation Injury
 - Investor Confidence Injury
- Question:
 - What Standards Must be Met to Minimize these Exposures?

Potential Sources of Standards for Emergency and Continuity Planning and Response



Post 9/11: A Decade of Changing Expectations ?

- Consider: Popular expectation changes lead to legal expectation changes
 - Common Law (court decision) changes to tort standards
 - In Re: September 11 Litigation
 - Legislative/Regulatory Changes
 - Targeted new standards for some risks (e.g. Chemical Facility Anti-terrorism Standards)
 - Congressional statements on the appropriate private party standard of care
 - Wealth of government “guidance” information

Government Action Affecting General Emergency Management/Continuity Planning Standards

- **NFPA 1600 – Voluntary “National Preparedness Std.”**
 - *9/11 Commission Recommendation:* We endorse the American National Standards Institute’s recommended standard for private preparedness. . . . We believe that compliance with the standard should define the **standard of care** owed by a company to its employees and the public for legal purposes.
 - 2004 “Sense of Congress” – DHS should promote adoption of voluntary national preparedness standards such as NFPA 1600 (See, Intelligence Reform and Terrorism Prevention Act 2004)
- **DHS – June 2010**
 - Adopts Standards for Voluntary Private Sector Preparedness Accreditation and Certification Program
 - NFPA 1600
 - ASIS SPC.1-2009 - Organizational Resilience Standard
 - British Standard BS 25999 - Business Continuity Management
- **See also, ISO – 2012 :** ISO 22301- Societal Security – Business Continuity Management System Requirements

Common Law Theories of Liability – Negligence

- **Negligence Elements: Injury to Persons or Property**
 - Defendant owed a duty of care to injured party (legal question)
 - In Re September 11 Litigation:
 - Finds: A duty to protect against terrorist acts exists
 - Failure to take reasonable steps to carry out duty (negligence)
 - What is reasonableness standard today ?
 - Consider: 9/11 Commission statement, Sense of Congress 2004 , DHS Adopts Preparedness Certification standards, wealth of available government guidance on preparedness
 - Negligence was actual cause of injury
 - Negligence was proximate cause of injury (sig. relationship)
 - Unforeseeable third party criminal acts may break causal connection
 - What is foreseeable today?
 - Health Emergencies, Accidents, Intentional Acts, Natural Disasters, Technology Failures
 - WTC 1998 litigation – foreseeability not even in contention (1998)

Special Liability Considerations for Certain Plaintiff Groups

- **Employees**
 - Workers Compensation Limitations
 - But Recall: 9/11 Commission: “We believe that compliance with the [NFPA] standard should define the standard of care owed by a company to its employees and the public for legal purposes.”
- **Customers**
 - Is this a non-compensable “general duty”?
 - Plaintiffs with significant claims may argue outside general duty
 - Addressed by PURA in rate and shareholder allocations?
- **Shareholders (economic injury)**
 - Loss of revenue – regulatory action/inability to continue operations
 - Loss of stock value/reputation – if unaddressed foreseeable risk

Interplay of Regulatory & Industry Standards

- **NFPA 1600 & Other Continuity Planning Standards**
 - (NFPA 1600 § 4.5.1 (2010)– comply with law, policies and industry codes of practice)
 - Consider:
 - RCRA contingency plans
 - EPCRA documentation
 - OSHA general duty standard/emergency action plan std.
 - CAA § 112(r) measures
 - TSCA – PCB management
 - Will you have complied with NFPA if you don't comply with other laws?
- **Consider how standards may be interrelated**
- **9/11 Commission–Intel.ReformAct2004–NFPA–regulations–industry codes**

“Guidance”: Risk Management Principles, Training and Exercises

- **Critical Infrastructure Partnership Advisory Council Annual Report (DHS 2011) - Goals include:**
 - **Use sound risk management principles to implement physical and cyber measures that enhance preparedness, security and resilience**
 - **Partner to conduct comprehensive emergency, disaster, and business continuity training and exercises to enhance reliability and emergency response**

A “New” Liability Theory?

- Negligent Failure to Plan

- Is there a duty to plan for protection of employees, business visitors, shareholders, and customers?
- Supporting arguments:
 - Based on new foreseeability of risks - terror attacks or other events at your operations or elsewhere that may cause interruption of business or injury to persons or property
 - Vulnerabilities of modern interconnectedness and reliance upon others to conduct your operations
 - You may be best positioned to evaluate the risks, prevent or mitigate the potential damage and bear the costs of prevention
 - Best positioned party is assigned the duty to mitigate



Exposures = Planning and Implementation

- ***Katrina - Hospital Case***

- Plaintiff patients and visitors trapped for days without power and supplies
- Claims of failure to prepare and respond to foreseeable disaster
- Inadequate auxiliary power
- Maintenance staff prior warnings
- \$25 MM settlement

- **So. Cal. Edison – Review**

- 2011 windstorm outages
- Panel found company misclassified event class
- No “incident commander”
- Didn’t follow plan procedures
- Inadequate supplies
- No recent test of plans
- Previous after action reviews failed to implement “lessons learned” (“training failure?”)
 - How is your follow-through record?

Minimizing Failure to Plan Liability

- Managing Your Emergency & Continuity Plan

- **Perform periodic reviews of risk assessment, business impact analysis, and mitigation measures**
- **Amend the plans appropriately to address:**
 - facility-specific changes in personnel, operations, and equipment
 - changing regulations and other standards
 - drill experiences and real world events (yours or others)
- **Audit and document efforts – remember, the individuals who have done the planning, conducted drills, researched adopted improvements, etc. over the years may retire, leave, etc. (Knowledge transfer can be critical)**

Minimizing Failure to Plan Liability

- Other Considerations to Address the Standard of Care

- **The Plan Development Process**
 - Board Involvement (document it)
 - Board protection
 - Board confirms the corporate priority and supports needed resources
- **The Plan Implementation Process**
 - Follow the Plan as Best you Can
 - Don't blindly follow (e.g. a situation not covered by plan)
 - Don't fail to follow plan due to ignorance or complacency
 - Think of your plan as a future trial exhibit
 - Will it have a positive or negative impact on jurors?

Issues to Consider:

- **Numerous legal/financial/public policy/corporate citizenship reasons for emergency planning**
- **Questions to ask yourself:**
 - Have we taken appropriate steps to address risks?
 - Do we have appropriate plans?
 - Are we confident personnel are effectively trained and would implement the plan as needed?
 - Have we involved all the right internal and external parties in planning?
 - Have we documented our planning and implementation efforts?



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